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POLICY PAPER

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Safeguarding the Right to a Healthy Environment

- the Roles of States and Business Actors

Executive summary

Nearly half a century after the Stockholm Declaration in 1972 that provided common principles on the human environment, the United Nations (UN) Human Rights Council adopted Resolution 48/13 on the Human Right to a Clean, Healthy and Sustainable Environment (hereafter, right to a healthy environment) in October 2021.¹ While

the UN General Assembly has not yet adopted the right to a healthy environment, the council's near-unanimous recognition signals a heightened global interest in strengthening the legal obligations of duty bearers including states and business actors to tackle the triple planetary crises including climate change, biodiversity loss and toxic pollution that threaten life on earth and human rights.

RECOMMENDATIONS

- UN member states should recognise and adopt the right to a healthy environment at the General Assembly and thereby accelerate multilateral and regional efforts to strengthen environmental governance that ensures a clean, healthy, and sustainable environment for all.
- Business actors should fulfil their duty-of-care obligations to protect the environment and human rights that transcends national boundaries, in line with the Framework Principles of Human Rights and the Environment. This entails obligations to assess, prevent, and mitigate environmental harm and human rights risks, including the right to a healthy environment across value chains.
- Business actors should ensure effective and timely remedy for business-affected communities in line with the UN Guiding Principles on Business and Human Rights, as well as the Framework Principles on Human Rights and the Environment.
- Business actors should fulfil their procedural obligations related to environmental and human rights in accordance with existing regulations and human rights responsibilities. This includes meaningful engagement with human rights and environmental defenders to assess and mitigate risks.

The right to a healthy environment is particularly pertinent for individuals and groups whose lives are exposed to and threatened by environmental harm induced by business activities worldwide. When universally recognised by UN member states, this resolution has the potential to provide an overarching rights-based framework to hold duty bearers accountable to long-standing environmental harm that threatens the full enjoyment of human rights. It also strengthens obligations of duty bearers to respect human rights including the rights to life, liberty and security of all human rights defenders working on environmental matters.

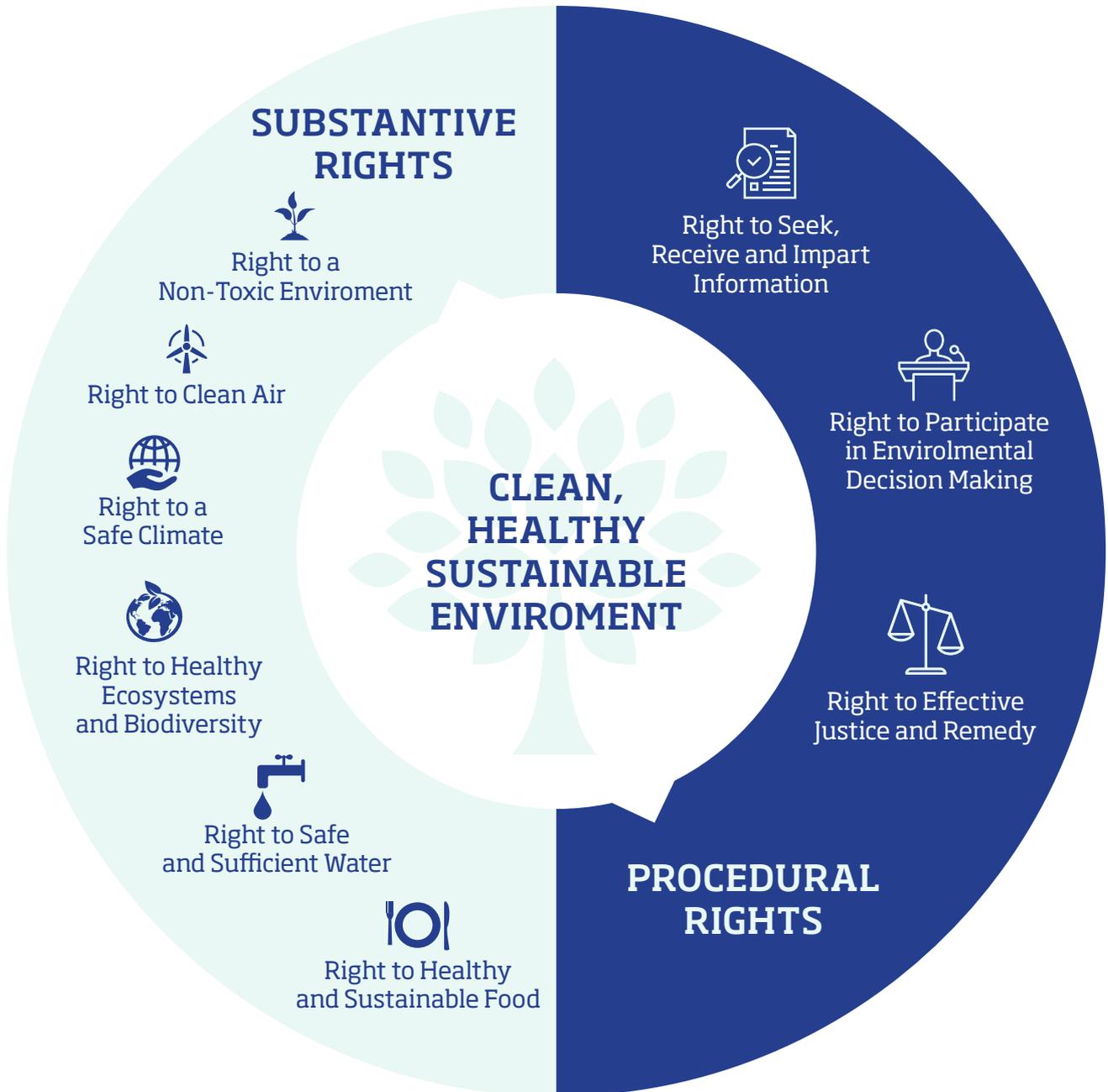
This paper elucidates expected effects of the resolution, especially for business actors, based on an analysis of policies and ongoing discussions that led to the recognition of the right to a healthy environment. It draws on Resolution 48/13 and the interrelated Framework Principles of Human Rights and the Environment adopted by the Human Rights Council in 2018 that emphasises business actors' obligations to respect and protect the environment across value chains, which is a critical foundation of the enjoyment of substantive human rights. Additionally, both the Resolution and the Framework Principles highlight the need for business actors to fulfil their procedural obligations such as providing public access to information about environmental matters, enabling the participation of local communities affected by business operations, as well as providing effective and timely remedy to business-affected communities.² Business actors' procedural obligations are particularly important in the face of escalating threats and violent attacks against individuals and groups defending the environment and human rights. As duty bearers, business actors must progressively improve their due diligence, which should transcend national boundaries to address the planetary crises and safeguard the right to a healthy environment for all.

From the periphery to the core

For decades, scientists and civil society organisations have documented countless cases of environmental injustice around the world in which local populations and ecosystems are affected by pervasive pollution and toxic hazards created by business activities. Scholars and environmental activists frequently refer to places that experience such environmental harm as modern-day sacrifice zones, where states and business actors neglect inhabitants exposed to life-threatening environmental conditions.³ Global climate change adds a further dimension to these environmental injustices. According to the Intergovernmental Panel on Climate Change, the intensified effects of climate change are already aggravating living conditions around the world.⁴

Faced with the triple planetary crises of climate change, biodiversity loss and pervasive pollution, the landmark adoption of the United Nations (UN) Human Rights Council's Resolution 48/13 on the Human Right to a Clean, Healthy, and Sustainable Environment on 8 October 2021 reflects the growing momentum to address long-standing environmental injustices (Figure 1). Building on foundations of environmental and human rights frameworks, the resolution brings the issue of environmental protection from the periphery to the core of human rights.⁵ While the UN General Assembly has not yet recognised the right to a healthy environment, Resolution 48/13 offers a glimmer of hope for individuals and groups whose lives and human rights have been affected by environmental destruction. Universal recognition of the right to a healthy environment has the potential to provide an overarching rights-based framework that would allow rightsholders to legitimately claim their right to a healthy environment and hold duty bearers accountable to environmental harm that threatens ecosystems and life on the planet.

Fig 1. Right to a Healthy Environment



Expanding business actors' duty-of-care obligations

The right hailed in Resolution 48/13 builds on the foundation of the 1972 Stockholm Declaration and reflects years of efforts by multiple state and non-state actors to promote a rights-based approach to environmental protection (Appendix 1). The resolution also mirrors ongoing global and regional discussions to improve environmental governance. This includes UN General Assembly Resolution 72/277 from 2018, which sought to strengthen global institutions, for example by adopting an international treaty on environmental protection known as the Global Pact for the Environment.⁶ Separate ongoing discussions to create a binding international treaty on business and human rights further stipulate business actors' duty-of-care obligations to respect and protect human rights. The obligations in the current draft include the right to a clean, healthy, and sustainable environment.⁷

In addition, there are other discussions, including the legislative proposal of the European Union (EU) on Corporate Sustainability Due Diligence;⁸ proposals by the Council of Europe

to add protocols to both the European Convention on Human Rights and the European Social Charter;⁹ as well as discussions to include ecocide in the Rome Statute on the International Criminal Court as a new category of international crime against humanity.¹⁰ Combined, these discussions and the Resolution 48/13 heighten the duty-of-care obligations of states and business actors to proactively apply the precautionary principle to identify, prevent and mitigate (as well as remedy) environmental harm that threatens ecosystems and life. Both states and business actors therefore have substantive obligations to protect the environment and human rights.

The resolution also highlights the procedural obligations of states and business actors in accordance with other international and regional institutions such as the Aarhus Convention and the Escazú Agreement that define regional standards on public access to information and participation (see Box 1). These obligations associated with ensuring the full enjoyment of the right to a healthy environment include providing access to environmental information, enabling meaningful public participation in environmental decision making, and securing access to justice and timely remedies for individuals and groups affected by business operations.¹¹

Box 1. Legislations on environmental information

The UN Economic Committee for Europe developed the Aarhus Convention (or Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters) in 1998 and it entered into force on 30 October 2001.¹² This convention guarantees the right of public access to envi-

ronmental information and requires public authorities to communicate such information in a comprehensible manner. In 2018, the Economic Commission for Latin American and Caribbean Region developed the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin

America and the Caribbean (known as the Escazú Agreement), which entered into force on 22 April 2021.¹³ It seeks to prevent conflict and achieve informed and inclusive decision making, as well as improve duty bearers' accountability to uphold their obligations related to the environment and human rights.

Resolution 48/13, together with the Framework Principles of Human Rights and the Environment recognised by the Human Rights Council in 2018, call on business actors to respect human rights including the rights to life, liberty and security of all human rights defenders working on environmental matters (see Box 2).¹⁴ In concordance with ongoing legislative discussions on Corporate Sustainability Due Diligence in the EU, business actors are expected to improve their duty-of-care performance across value chains. This includes taking necessary actions to identify, prevent, and mitigate existing and potential risks of envi-

ronmental harm and human rights violations.¹⁵ The EU’s current legislative proposal suggests that business actors will be held liable for failing to perform duty-of-care obligations, including taking reasonable measures to prevent and mitigate environmental harm and human rights risks.¹⁶ Such legislation would require business actors to be vigilant about environmental and human rights risks, develop due diligence policies, and take actions to prevent and redress environmental injustices in their business operations throughout the value chain (Figure 2).

Box 2. Framework Principles of Human Rights and the Environment

| | | |
|---|--|---|
| <p>The UN Human Rights Council adopted the 16-point Framework Principles on Human Rights and the Environment in 2018. The work, led by John Knox (UN Special Rapporteur on Human Rights and the Environment, 2012–2018), provides a framework for</p> | <p>stipulating duty bearers’ core human rights obligations in the context of environmental protection. The Framework Principles summarise the substantive and procedural obligations of duty bearers to uphold the right to a healthy environment. The highlighted</p> | <p>principles are not exhaustive and considered to bring coherence to existing body of institutions. These principles are considered to evolve and refined in accordance with changes in the relationship between human rights and the environment.</p> |
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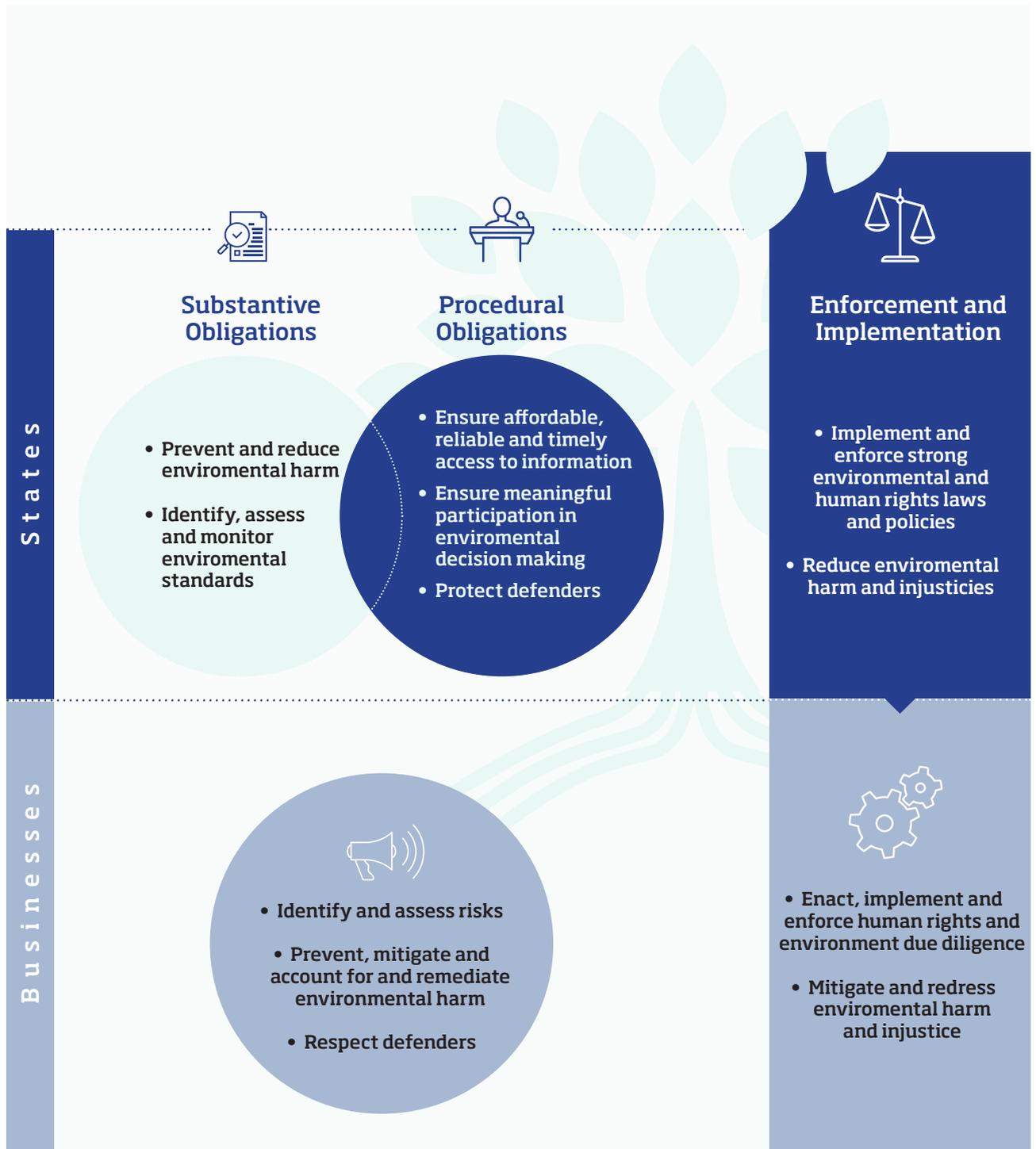
Identify, prevent, mitigate and remedy environmental harm and human rights risks

Resolution 48/13 has broadened the normative scope of human rights and strengthens ongoing discussions on due diligence practices, especially those performed by business actors.¹⁷ While various processes including the universal adoption of the right to a healthy environment, as well as discussions on global environmental governance are ongoing, the adoption of Resolution 48/13 has already increased the impetus to hold business actors liable for neglecting their substantive and procedural obligations related to the environment and human rights. The procedural obligations of

business actors are particularly important in the context of escalating attacks against environmental and human rights defenders.¹⁸

While many business actors may already assess environmental and human rights risks in their value chains, they frequently neglect the links between them. As a result, the most vulnerable and marginalised populations often remain exposed to environmental harm caused by business operations and continue to face obstacles to justice and rightful remedy.¹⁹ A report by the European Coalition for Corporate Justice discusses the challenges of redressing environmental injustices that transcend national jurisdictions.²⁰ It highlights two court cases, Arica Victims versus Promel in Chile (2007) and Arica victims versus Boliden Mineral AB (2013), in which generations of community members in Arica, Chile suffered from severe

Fig 2. Obligations of Duty Bearers



health effects caused by exposure to toxic waste that a Swedish multinational company exported to Chile between 1984 and 1985. A 2009 decision of the Chilean Supreme Court required the host company, Promel, to clean the contaminated area, but it failed to comply due to bankruptcy. A legal case was filed at a Swedish district court but dismissed in 2013. The decision was appealed in Sweden but further dismissed by the court of appeal in 2019 on the ground that the negligent act that gave rise to the alleged environmental harm had passed the statute of limitations.²¹

The legal cases brought forward by Arica victims exemplify that constitutions and national courts have thus far had a limited ability to force polluters to pay to redress intergenerational environmental harm that transcends national boundaries.²² The cases also demonstrate the legal barriers faced by local communities seeking timely and effective remedy for environmental harm instigated by a chain of business actors in different jurisdictions. They illustrate the limitations of the existing institutions that allow duty bearers to maintain the status quo and enable business actors that fail to uphold their substantive obligations to file lawsuits against rightsholders to silence their claims.²³ Such lawsuits violate the principles of the Aarhus Convention and the Escazú Agreement, which seek to secure procedural rights for rightsholders to hold duty bearers accountable for current and potential environmental harm that negatively affects the present and future generations' right to a healthy environment. The Arica victims' cases also highlight the failures of duty bearers, including states and business actors, to perform their duty-of-care obligations in line with the Framework Principles on Human Rights and the Environment.

Conclusion: Towards a healthy planet for all

Resolution 48/13 represents the culmination of decades of efforts to recognise the need to redress long-standing environmental injustices and address the planetary crisis that affects all lives on the planet. While the Human Rights Council's near-unanimous recognition of the resolution is a historic achievement, UN member states

must also recognize it in the General Assembly to secure its universal significance. Multilateral and regional collaborations by state actors are particularly needed to redress the extra-territorial effects of environmental harm and ensure that the rights-based framework is applied to safeguard the right to a healthy environment for all.

State actors also need to ensure procedural rights. Rightsholders cannot effectively claim the right to a healthy environment unless they are adequately represented and able to meaningfully participate in decision-making processes without repercussions. There is an urgent need to ease barriers including access to effective justice and timely remedy for defenders without being threatened, attacked, or killed.²⁴

It is also essential for duty bearers to accelerate the implementation of the Framework Principles on Human Rights and the Environment. Business actors should enact, implement, and enforce human rights and environmental due diligence across value chains to protect the right to a healthy environment. As duty bearers, business actors have substantive obligations to identify, prevent, and mitigate environmental harm that threatens human rights. They also have procedural obligations to provide necessary information and allow public participation, with a particular focus on vulnerable and marginalized populations. In addition, they are obliged to remedy existing and potential risks to environmental harm that threaten fundamental human rights. The use of threats and attacks against individuals and groups claiming their rights to a healthy environment must be condemned and prevented at all costs.

Appendix 1.

Relevant Guidance and Agreements

Global

- UN Resolution 48/13, The Human Right to a Clean, Healthy and Sustainable Environment (2022)
- UN Resolution 75/220, Harmony with Nature (2020)
- UN Resolution 72/277, Towards a Global Pact for the Environment (2018)
- UN Framework Principles on Human Rights and the Environment (2018)
- UN Resolution 66/288, Future We Want (2012)
- UN Guiding Principles on Business and Human Rights (2011)
- Rio Declaration, on the Environment and Development (1992)
- Stockholm Declaration, on Human Environment (1972)
- Universal Declaration of Human Rights (1948)

Europe

- EU legislative proposal on Corporate Sustainability Due Diligence (2022)
- EU Regulation on the Establishment of a Framework to Facilitate Sustainable Investment (2020)
- EU Directive as Regards Disclosure of Non-financial and Diversity Information by Certain Large Undertaking and Groups (2014)
- Aarhus Convention (1998)

Latin America

- Escazú Agreement (2018)

Endnotes

- 1 United Nations Human Rights Council (2021) “Resolution 48/13 The Human Right to a Clean, Healthy, and Sustainable Environment”. Human Rights Council
- 2 United Nations General Assembly. (2018). Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, and Healthy and Sustainable Environment.
- 3 Boyd, D. R. and Hadley-Burke, M. (2022) “Sacrifice Zones: 50 of the Most Polluted Places on Earth”. Vancouver, Canada: The University of British Columbia.
- 4 Working Group II Technical Support Unit (2022) Climate Change 2022 Impacts, Adaptation and Vulnerability. Geneva, Switzerland.
- 5 Interviews with Yves Lador, Earthjustice, May 2022; Jonas Ebbesson, Stockholm University, May 2022.
- 6 United Nations General Assembly (2018) “Towards a Global Pact for the Environment, A/RES/72/277”. New York; United Nations General Assembly (2019) “Follow-up to the Report of the Ad-hoc Open Working Group Established Pursuant to the Resolution 72/277, A/Res/73/333”. New York. Preliminary draft of the pact recognised both individuals’ right to an ecologically sound environment and states’ duty-of-care obligation to protect the environment. However, during the United Nations Environmental Assembly in February 2022, the text was water-downed and resulted in a political statement that failed to recognise the right to a healthy environment.
- 7 Open-ended Intergovernmental Working Group (2021) “Third Revised Draft: Legally Binding Instrument to Regulate in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises”. Geneva, Switzerland: United Nations Human Rights Council.
- 8 Proposal for the legislation was adopted by the European Commission in February 2022. The proposal is awaiting approval by the European Parliament and the Council. The European Parliament (2021) Corporate Due Diligence and Corporate Accountability. Strasbourg; European Parliament.
- 9 Anchoring the Right to a Healthy Environment: Need for Enhanced Action by the Council of Europe, (2021); interview with Yves Lador, Earthjustice, May 2022.
- 10 Independent Expert Panel for the Legal Definition of Ecocide (2021) “Commentary and Core Text”. Stop Ecocide Foundation.
- 11 See United Nations Economic Commission for Europe (1998) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus Convention. Denmark: UNECE; United Nations Office of the High Commissioner (2011) “Guiding principles on business and human rights.” Geneva: United Nations; United Nations Economic Commission for Latin America (2018) Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Escazú Agreement. Santiago: United Nations; and Knox, J. (2018) Framework Principles on Human Rights and the Environment. Geneva, Switzerland.
- 12 See <https://unece.org/environment-policy/public-participation/aarhus-convention/introduction>; <https://ec.europa.eu/environment/aarhus/>
- 13 See <https://www.cepal.org/en/escazuagreement>
- 14 United Nations Human Rights Council. (2021) “Resolution 48/13 The Human Right to a Clean, Healthy, and Sustainable Environment”. Human Rights Council.
- 15 See also Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, and Healthy and Sustainable Environment (2022) “The Right to a Clean, Healthy and Sustainable Environment: Non-toxic Environment”. Geneva, Switzerland: United Nations Human Rights Council.
- 16 European Commission (2022) “Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive EU 2019/1937”. Brussels, Belgium: European Commission.
- 17 See for example, draft proposal of the European Commission on mandatory human rights due diligence. European Commission (2022) “Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive EU 2019/1937”. Brussels, Belgium: European Commission; interview with Jonas Ebbesson, Stockholm University, May 2022.
- 18 See Business and Human Rights Resource Centre (2022) SLAPPs in Latin America. London; Global Witness (2020) Defending Tomorrow: The climate crisis and threats against land and environmental defenders. London. Available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/defending-tomorrow/>., Scheidel, A. et al. (2020) “Environmental Conflicts and Defenders: A Global Overview”, Global Environmental Change.63; Le Billon, P. and Lujala, P. (2020) “Environmental and land defenders: Global patterns and determinants of repression”, Global Environmental Change.65.
- 19 García Esteban, A. (2021) Suing Goliath. Brussels.
- 20 Ibid. At the time of the writing, Swedwatch is the main Swedish contact point and a member of the European Coalition for Corporate Justice (ECCJ).
- 21 Ibid. See also, Government Offices of Sweden. (2021). Sweden response to GC No 33. Ministry of Foreign Affairs. <https://spcommreports.ohchr.org/TMResults-Base/DownloadFile?gId=36334>

- 22 In the special procedures communications report dated 23 March 2021, a group of eight Special Rapporteurs claim that the dismissal of the appeal by the Arica Victims based on lapse of statutory limitation is a “denial of justice.” According to the group of Special Rapporteurs, the decision violates the business affected communities’ rights to a fair trial protected under the European Convention on Human Rights. See Orellana, M., Boyd, D. R., Mofokeng, T., Rajagopal, B., Lawlor, M., Gonzales Morales, F., De Schutter, O., & Arrojo-Agudo, P. (2021). Reference: ALI SWE 2/2021. United Nations Office of the High Commissioner. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26160>
- 23 Deva, S. et al. (2019) “Business and Human Rights Scholarship: Past Trends and Future Directions”, *Business and Human Rights Journal*, 4(2), pp. 201–212; Business and Human Rights Resource Centre (2020) *Strategic Lawsuits against Public Participation*. London; Global Witness (2020) *Defending Tomorrow: The climate crisis and threats against land and environmental defenders*. London; García Esteban, A. (2021) *Suing Goliath*. Brussels.; Business and Human Rights Resource Centre (2022) *SLAPPs in Latin America*. London.
- 24 Global Witness (2020) *Defending Tomorrow: The climate crisis and threats against land and environmental defenders*. London.

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