


THE PREVENTION PROJECT



Making  
**Prevention**  
a Reality

Preventing Mass Human  
Rights Violations in the  
Context of the Climate Crisis

Environment and Human Rights Workstream | June 2024



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 Federal Foreign Office



Human Rights

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# Project Overview

For the last three years, the Prevention Project hosted by the Center for Human Rights & Global Justice at the School of Law at NYU has been developing what it calls a “framework approach” to prevention that would correct some of the problems that have afflicted prevention thinking and practice heretofore. The main characteristics of this approach are:

- To take prevention out of the domain of crisis prevention, because as important as the latter might be, it narrows the scope of options, provides an incentive to concentrate on the role of international actors at the expense of other actors, and ignores both relevant causes and solutions. The project concentrates on broad and “upstreamed” preventive measures, consistent with ideas long expressed in various studies, reports, and resolutions—and, importantly, on empirical evidence.<sup>1</sup>
- To concentrate on *national initiatives*, since these are the ones that bear the brunt of the significant amount of preventive work that takes place on the ground on an everyday basis. Concentrating on national initiatives not only broadens the scope of options, actors, causes

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<sup>1</sup> Thus, the so-called “twin resolutions” on sustainable peace: “Emphasiz[e] the importance of a comprehensive approach to sustaining peace, particularly through the prevention of conflict and addressing its root causes, strengthening the rule of law at the international and national levels, and promoting sustained and sustainable economic growth, poverty eradication, social development, sustainable development, national reconciliation and unity, including through inclusive dialogue and mediation, access to justice and transitional justice, accountability, good governance, democracy, accountable institutions, gender equality and respect for, and protection of, human rights and fundamental freedoms.” See United Nations General Assembly (UNGA), *Peacebuilding and Sustaining Peace: Report of the Secretary-General*, A/74/976–S/2020/773 (30 July 2020), [https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/sg\\_report\\_on\\_peacebuilding\\_and\\_sustaining\\_peace.a.74.976-s.2020.773.200904.e\\_4.pdf](https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/sg_report_on_peacebuilding_and_sustaining_peace.a.74.976-s.2020.773.200904.e_4.pdf). The UN-World Bank report on *Pathways for Peace* (Washington, DC: World Bank, 2018) made the “business case” for prevention now six years ago, (available at: <https://www.pathwaysforpeace.org/>). The importance of broadening and “upstreaming” prevention measures had been the subject of consensus in the three important reviews of 2014–15. See the High-Level Independent Panel on Peace Operations (HIPPO), a periodic review of both DPKO Peacekeeping Operations and DPA Special Political Missions: United Nations General Assembly–Security Council, *Comprehensive Review of the Whole Question of Peacekeeping Operations in all Their Aspects, Comprehensive Review of Special Political Missions Strengthening of the United Nations System*, A/70/95–S/2015/446 (17 June 2015), [https://www.security-councilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2015\\_446.pdf](https://www.security-councilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_446.pdf); see also the report by the Advisory Group of Experts on the Review of the Peacebuilding Architecture (producing the so-called AGE Report) following ten years of work since the establishment of the Peacebuilding Commission and Support Office: Advisory Group of Experts, 2015 Review of the United Nations, Peacebuilding Architecture, *The Challenge of Sustaining Peace*, A/69/968–S/2015/490 (29 June 2015), [https://www.un.org/pga/wp-content/uploads/sites/3/2015/07/300615\\_The-Challenge-of-Sustaining-Peace.pdf](https://www.un.org/pga/wp-content/uploads/sites/3/2015/07/300615_The-Challenge-of-Sustaining-Peace.pdf); and the 1325 Review evaluating 15 years of implementation of 1325 Resolution: United Nations Women, *A Global Study on the Implementation of United Nations Security Council Resolution 1325: Preventing Conflict, Transforming Justice, Securing the Peace* (New York, NY: UN Women, 2015), <https://wps.unwomen.org/resources/>.

and solutions, it helps to “dedramatize” discussions about prevention, separating them from foreign interventions in internal affairs.

- The project has been articulating a “framework”—that is, it is trying to overcome the “silozation” and fragmentation of the important stock of knowledge accumulated through different national experiences on prevention, making explicit the “horizontal” linkages between the various topics, so that “scattershot,” “project-based” approaches to prevention can be replaced by comprehensive policies the various dimensions of which mutually support one another and produce sustainable impact over time. That is, each of the thematic workstreams of the project are conceived of as “elements” of a framework (which does not mean that they must all be implemented simultaneously, but that should be thought of holistically, as parts of a whole).
- The project rests on a universalistic presumption, meaning that it assumes that the challenges it addresses are challenges that all countries—North and South, East and West—at some point or another would face or would have faced, and that therefore, the framework contains elements that would be relevant at some point or another for all countries—recognizing that a framework is not the same as a blueprint, and that therefore, context-sensitive design and implementation of the recommendations is called for. The universalistic aspiration of the project has been operationalized in part by the selection of over 200 world-class academics and practitioners, globally dispersed (roughly 25 percent of participants from Africa, Asia, Europe, and the Americas, respectively, and with a very even gender distribution), who work in the different workstreams, constitute both the “brain trust” of the project and a set of “communities of practice” that are ready to provide technical advice on the ways to maximize the preventive potential of the different elements of the framework.
- Finally, but very importantly, the project rests on an understanding of human rights that differs significantly from the current conception of rights, which emphasizes the *redress* function of human rights. While this *ex post* accountability function of human rights is crucial, the project tries to recover the more pragmatic, problem-solving function embodied in the Universal Declaration of Human Rights, for example, which 75 years ago was adopted by Member States understanding that human rights were *ex ante* anti-grievance, and hence *preventive*, mechanisms.



# Methodology

Each of the workstreams of the project is composed of 15–30 experts, academics or practitioners, globally distributed, with diverse disciplinary backgrounds and different regional experiences. Once formed, each workstream met regularly to share knowledge and experiences of crafting, implementing, and testing preventive initiatives in the workstream’s thematic area. Following weeks of presentation, research, and discussion, the group narrowed its scope to a specific topic or problem, and participants worked together with the Prevention Project’s research and program staff for over a year to craft policy recommendations based on the best available evidence of preventive efficacy—and to highlight areas in which additional evidence is needed.

These efforts culminate in a thematic report with policy recommendations reflecting multiple rounds of review, discussion, and revision based on feedback from the community of practice. While the final report is mainly the responsibility of the lead author(s), it reflects the contributions of the members of the workstream, without aiming at complete consensus from every expert on the report’s full contents and each particular recommendation.

The work of the Prevention Project thus serves to advance global prevention efforts in three ways: (1) through the production of peer-reviewed knowledge on evidence-based prevention strategies to be applied at the national level, informed by real-world expertise; (2) by the formation of groups of experts who in addition to their specific disciplinary or thematic expertise can provide advice specifically on preventive measures in their areas of work; and (3) by providing inputs for ongoing discussions about prevention in multilateral organizations and intergovernmental processes, as well as at the national level.



# Executive Summary

**I**t is hard to overestimate the profound impact that the climate crisis has had and will continue to have on all life on earth and virtually all human rights. While difficult to implement, the needed response is clear—states and other stakeholders must take urgent action to prevent, mitigate, and adapt to the effects of the climate crisis and meet their environmental protection obligations. Yet, in parallel to environmental protection efforts, **states must also attend directly to the prevention of mass human rights violations occurring in the context of the climate crisis.**

This report argues that a **comprehensive, upstreamed, approach to the prevention of mass human rights violations serves both to protect rights-bearers and the environment itself from harm by leading to better governance outcomes.** For this purpose, the Environment and Human Rights Workstream positioned itself within the context of the July 2022 General Assembly Resolution on the Right to a Healthy Environment—an important milestone in the international conversation on the intersection between the environment and human rights. **This resolution presents the opportunity to broaden the understanding of human rights in the environmental context and advance their protection.**

To this end, this report provides policy recommendations on three discrete topics. These topics were selected because they each encapsulate a pressing issue affecting rights bearers across the full prevention cycle. Still, these topics do not exist in a vacuum—**any preventive solution must account for the full span and breadth of a person’s life.** Thus, the discussion of each topic will also consider identity-based characteristics that may act as risk multipliers but also as opportunities for preventive change. Namely, the intersectional identities and experiences of women and girls, Indigenous Peoples, and youth and future generations, as well as the effects of existing global and local patterns of poverty and inequality. These characteristics have an undeniable impact on a person’s ability to realize their human rights to the broadest extent possible as well as on state obligations toward them.

First, the report argues in favor of a **preventive public policy for the protection of environmental human rights defenders.** Discussion in this space has so far focused, though not implemented to a sufficient extent by any means, on the physical protection of environmental human rights defenders who face severe threats by virtue of their role. This is, of course, a crucial effort. Yet, adopting a preventive approach calls on stakeholders and policymakers to address environmental human rights defenders not only as individuals and communities needing protection but also as defenders of the public interest. Catalyzing the work of environmental human rights defenders and protecting their rights leads to beneficial environmental policies and positive governance outcomes overall.

Second, the report addresses **the prevention of mass human rights violations that might take place in the context of a *just* transition to a “green” economy**. This chapter adds to the debate on what makes a *just* transition by addressing three phases of that process that raise concrete human rights risks but that have preventive potential. The corresponding chapter begins by asking how to ensure that a transition doesn’t further existing global inequalities and how to achieve equitable distribution of benefits and losses. The chapter then shows how a preventive approach can protect the human rights of those affected by the transition (for any transformation of this magnitude will inevitably generate “winners” and “losers” and the rights of the latter need to be protected), and finally, as a particularly urgent topic, it shows how such an approach can protect the human rights of those involved, for example, in the extraction of minerals used in a clean economy. This chapter suggests that a *just* transition must focus on human rights and global justice. Specifically, the chapter focuses on intergenerational justice and the rights of those already marginalized, including workers and Indigenous and local communities, and some of the preventive tools available to them. The chapter argues that taking human rights obligations seriously can create value for communities, states, and corporations.

And third, the report addresses **the prevention of human rights violations occurring during the displacement of people provoked by environmental events, partly the result of the failure, thus far, to mitigate the consequences of the environmental crisis**. This chapter focuses on those communities that have been, or are at risk of being, involuntarily displaced, arguing that the most effective preventive policy is to clarify existing rules and protections and ensure that they are implemented adequately. In particular, this chapter concentrates on affected communities as those most at risk and urges states to consider their rights and needs seriously when making policy. This requires a contextualized analysis of the circumstances facing communities, as well as individual characteristics that may increase the risk of displacement or the risk of human rights violations as a result of displacement. This chapter finds that adopting a community-centered approach to involuntary displacement offers significant preventive potential.

**Overall, this report provides practical guidance for states and other stakeholders on how to prevent mass human rights violations across the different stages and impacts of the climate crisis. In this manner, this report substantiates one of the Prevention Project’s overarching arguments—when used as problem-solving, anti-grievance mechanisms, rather than *ex post* redress solutions, human rights can serve as a strong tool for the prevention of mass human rights violations.**

# Preventing Mass Human Rights Violations in the Context of the Climate Crisis



# Introduction

**Three things exercise a constant influence over the minds of men: climate, government, and religion.**

*Voltaire, Essai sur les moeurs et l'esprit des nations (1756)*

**T**he triple planetary crises of climate change, biodiversity and nature loss, as well as pollution, impact human rights in myriad ways, both direct and indirect, through environmental degradation and by affecting the abilities of states to satisfy their human rights obligations.<sup>2</sup> To name but a few such links between environmental disturbances and human rights, one cannot overestimate the impact of the climate crisis<sup>3</sup> on people's rights to life, security, and health. Nor should one ignore how those disturbances increase the likelihood of poverty, pollution, food insecurity, and other negative social, economic, and environmental effects. Studies also indicate that adverse environmental conditions have a clear impact on the incidence of conflict, which in turn negatively affects human rights.<sup>4</sup>

**The triple planetary crises of climate change, biodiversity and nature loss, as well as pollution, impact human rights in myriad ways, both direct and indirect, through environmental degradation and by affecting the abilities of states to satisfy their human rights obligations.**

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<sup>2</sup> See, e.g., Ashfaq Khalfan and Chiara Liguori, "Amnesty's Approach to Climate Change and Human Rights," in *Changing Perspectives on Human Rights: Climate Change, Justice and Human Rights*, David Ismangil, Karen van der Schaaf, and Lars van Troost eds., Strategic Studies (2020), 14–20, <https://www.amnesty.nl/content/uploads/2020/08/Verkenningen2020-climate-change.pdf?x55436>.

<sup>3</sup> In the interests of clarity and simplicity, this report will use the simplified term "climate crisis" to refer generally to the inter-related triple planetary crises of climate change, biodiversity and nature loss, and pollution, as well as the concept of global warming/heating. Where specific aspects of the crisis are discussed, narrower terms will be employed.

<sup>4</sup> The causal link between the climate crisis and conflict has been discussed and affirmed by scholars, NGOs, and international bodies. For a few central, yet not exhaustive, examples, see Barry S. Levy and Victor W. Sidel, "Collective Violence Caused by Climate Change and How It Threatens Health and Human Rights," *Health and Human Rights Journal* 16, no. 1 (June 2014), <https://heinonline.org/HOL/P?h=hein.journals/harhrj16&i=34>; for an example as early as 1998, see Wenche Hauge and Tanja Ellingsen, "Beyond Environmental Scarcity: Causal Pathways to Conflict," *Journal of Peace Research* 35, no. 3 (1998): 32–40, <https://doi.org/10.1177/0022343398035003003>; Colin P. Kelley, et al., "Climate Change in the Fertile Crescent and Implica-

The origins of these planetary environmental crises, dating back to the Industrial Revolution, stem from excessive exploitation of the natural environment, over-reliance on fossil fuels leading to noxious emissions, and the dependence on plastics and other pollutants, mainly by countries of the Global North, disproportionately impacting the world's most marginalized communities and exacerbating global inequalities.<sup>5</sup> Global heating is a human-made calamity, driven by an addiction to fossil fuels—coal, oil, and gas—that has spurred the gradual breakdown of the Earth's biosphere, collapsing biodiversity, and runaway warming. **Despite a scientific consensus that the effects of the climate crisis will be environmentally and ecologically catastrophic for humans, other living organisms, and their ecosystems, action to curb global carbon emissions and shore up environmental protections has been greatly delayed, slow to take shape, and thus far insufficient to avoid severe harms.**

The 2015 Paris Agreement marked a significant advancement in global discourse around the climate crisis, as broad recognition of the imperative of addressing global heating and environmental degradation and initial steps toward collective action to address emissions emerged following decades of Sisyphean efforts to marshal global cooperation toward decarbonization. However, the years following Paris have seen tepid progress at best—carbon emissions have continued to rise globally, and resultant environmental damages have continued to occur at greater rates and with greater severity, despite a measurable reduction in the rate of emissions growth.<sup>6</sup>

Current estimates place the world on a trajectory to heat between 2.5–3°C above pre-industrial levels by 2100—a far cry from past projections and the Paris Agreement's stated goal of limiting heating to 1.5–2°C.<sup>7</sup> The International Panel on Climate Change (IPCC) and International Energy Agency (IEA) insist that to keep the Paris Agreement's temperature ceiling alive, the usage of fossil fuels must contract sharply, and no new fossil fuel sources can come onstream. As things stand, fully implementing unconditional Nationally Determined Contributions (NDCs) made under the Paris Agreement would put emissions on track to limit temperature rise to 2.9°C above pre-industrial levels, with full implementation lowering this

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tions of the Recent Syrian Drought," *Proceedings of the National Academy of Sciences of the United States of America* 122, no. 11 (March 2015): 3241–46, <https://doi.org/10.1073/pnas.1421533112>; for a discussion of the direct and indirect ways in which the climate crisis and conflict interact, see United Nations Framework Convention on Climate Change (UNFCCC), *Conflict and Climate*, 12 July 2022, <https://unfccc.int/news/conflict-and-climate>.

<sup>5</sup> The drafting of this chapter was greatly assisted by a presentation given by Franz Baumann as part of the workstream's November 2023 workshop and additional written inputs; Baumann notes that, although scientific and technological advances were undoubtedly additional catalysts of the great economic acceleration after World War II, it was the burning of fossil fuels in ever greater quantities that catapulted humanity into the modern age of mass production and consumption. See United Nations University Institute for Environmental and Human Security, *Interconnected Disaster Risks Report 2023* (Bonn, Germany: UNU-EHS, 2023), <https://interconnectedrisks.org/>; "Territorial Emissions," Global Carbon Atlas, accessed 2 February, 2024, <http://www.globalcarbonatlas.org/en/CO2-emissions>.

<sup>6</sup> The United Nations Environment Programme (UNEP) found that the projected 2030 global greenhouse gas (GHG) emissions had fallen from 16 percent above then-current emissions levels at the time the Paris Agreement was signed in 2015 (based on policies in place at the time) to 3 percent above those levels as of 2023 (based on current policies). However, a 28 percent further reduction in GHG emissions must still occur by 2030 to limit warming to 2°C, and 42 percent for the 1.5°C pathway. See United Nations Environment Programme (UNEP), *Emissions Gap Report 2023: Broken Record* (Nairobi, Kenya: UNEP, 2023), 1, <https://doi.org/10.59117/20.500.11822/43922>.

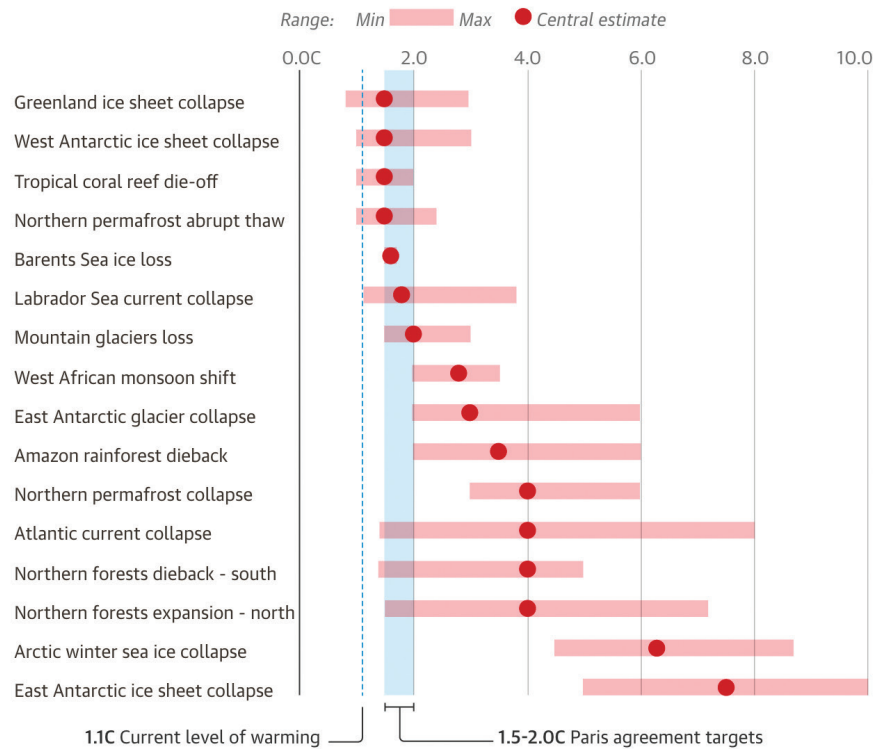
<sup>7</sup> UNEP, *Emissions Gap Report 2023: Broken Record*, 30–31. Note that pre-Paris projections of potential global temperature increases envisioned a rise of 4°C or even 5°C above pre-industrial levels by the end of the century.

figure to 2.5°C.<sup>8</sup> However, current fossil fuel consumption and the fossil fuel capacity being planned and constructed around the world are far greater than the amount that would be consistent with limiting warming to a level below 2°C, much less the more ambitious (and highly desirable) goal of 1.5°C.<sup>9</sup> **Absent a dramatic shift in trajectory, humans** (and the largest emitters, both historically and currently, in particular) **are putting the planet on a pathway toward disastrous outcomes stemming from rampant global heating and pollution and concomitant degradations of the biosphere.**

The climate crisis affects human rights through links that include labor market instability, rising inequality, changes in food prices, logistical constraints, and rapid migration and urbanization (which overstretch other government systems designed to secure important human rights, including the rights to health, housing, and education), and even through psychological responses. **Humanity and its habitats are closer to more key tipping points than ever before, and, with them, an accelerated rate of human rights violations. Solutions—while expensive, inconvenient, and contrary to some business interests in the short-term—are not impossible.**

### The risk of climate tipping points is rising rapidly as the world heats up

Estimated range of global heating needed to pass tipping point temperature



Guardian graphic. Source: Armstrong McKay et al, Science, 2022. Note: Current global heating temperature rise 1.1C Paris agreement targets 1.5-2.0C

<sup>8</sup> UNEP, *Emissions Gap Report 2023: Broken Record*.

<sup>9</sup> According to the UN-sponsored *Production Gap Report 2023*, “governments plan to produce, in 2023, around 110% more fossil fuels than would be consistent with limiting warming to 1.5°C (i.e. more than double), and 69% more than would be consistent with limiting warming to 2°C.” See Stockholm Environment Institute, Climate Analytics, E3G, International Institute for Sustainable Development, and United Nations Environment Programme (UNEP), *The Production Gap: Phasing Down or Phasing Up?* (November 2023), 16, <https://doi.org/10.51414/sei2023.050>.

Much important work to address the climate crisis has been and is currently being undertaken by stakeholders including states, international organizations, non-governmental organizations (NGOs), academics, practitioners, and local communities. However, **most of the attention has focused on environmental protection itself, rather than the prevention of large-scale human rights violations—and through that link, of conflict.** The issue of protecting people whose human rights are violated or negatively affected both by the effects of the climate crisis and by the actions humans take—positive and negative—to curb or remedy these environmental disturbances has received much less attention. Going forward, governments and stakeholders will have to choose, actively or by default, how to achieve the appropriate mix of two imperatives: mitigation and adaptation.<sup>10</sup>

Specifically, this report focuses on **the prevention of mass human rights violations occurring in the context of the climate crisis and actions taken to mitigate its effects.** This workstream began its work on the heels of significant developments in the international and national arenas, such as discussions at the 27th and 28th sessions of the Conference of the Parties (COP27 and COP28) to the United Nations Framework Convention on Climate Change (UNFCCC),<sup>11</sup> as well as burgeoning jurisprudence from regional and national courts around the world, which considered the rights to nature and broader intersections of the environment and human rights.<sup>12</sup> Most notably, in July 2022, the **United Nations General Assembly (UNGA) adopted Resolution 76/300, which recognized the Right to a Clean, Healthy, and Sustainable Environment.**<sup>13</sup> Resolution 76/300 is a clear marker of the growing recognition of the importance of the link between the environment and human rights during this critical moment of planetary crisis.

For this initial foray into the nexus between human rights and environmental disturbances, the Environment and Human Rights workstream began by considering the preventive dimension of the newly articulated right to a clean, healthy, and sustainable environment (hereinafter referred to more succinctly as the “right to a healthy environment”) expressed in Resolution 76/300. While not purporting to exhaust the scope of the content of this right, the workstream endeavored to examine key aspects related to realizing the right across the full prevention cycle, from upstream to downstream of violations and across both short- and long-term horizons. From the outset, the workstream sought to narrow the scope of its analysis to focus

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<sup>10</sup> For a brief explanation of these terms, see “What is the Difference Between Adaptation and Mitigation?” European Environment Agency, accessed 9 April 2024, [https://www.un.org/sustainabledevelopment/climate-change/](https://www.eea.europa.eu/en/about/contact-us/faqs/what-is-the-difference-between-adaptation-and-mitigation#:~:text=In%20essence%2C%20adaptation%20can%20be,of%20climate%20change%20less%20severe; see also United Nations, <i>Sustainable Development Goals, Goal 13: Take Urgent Action to Combat Climate Change and its Impacts</i>, accessed 26 March 2024, <a href=); United Nations Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2023: Synthesis Report*, AR6 (Geneva, Switzerland: IPCC, 2023), ¶ A2-2.7, [https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_SPM.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf) [hereinafter IPCC 2023 Report].

<sup>11</sup> “Climate Change: Decisions Taken at the Sharm El-Sheikh Climate Change Conference,” United Nations Framework Convention on Climate Change (UNFCCC), accessed 28 November 2023, <https://unfccc.int/cop27/auv>; noting specifically the operationalization of the loss and damage fund during the 28th session, see United Nations Framework Convention on Climate Change (UNFCCC), *COP28 Agreement Signals “Beginning of the End” of the Fossil Fuel Era*, 13 December 2023, <https://unfccc.int/news/cop28-agreement-signals-beginning-of-the-end-of-the-fossil-fuel-era>; United Nations Framework Convention on Climate Change, May 9, 1992, 1771, U.N.T.S., 107 [hereinafter UNFCCC].

<sup>12</sup> Annalisa Savaresi, “The Use of Human Rights Arguments in Climate Change Litigation and its Limitations,” in *Changing Perspectives on Human Rights: Climate Change, Justice and Human Rights*, David Ismangil, Karen van der Schaaf, and Lars van Troost eds., Strategic Studies (2020), 50–55, <https://www.amnesty.nl/content/uploads/2020/08/Verkenningen2020-climate-change.pdf?x55436>.

<sup>13</sup> United Nations General Assembly, Resolution 76/300, *The Human Right to a Clean, Healthy and Sustainable Environment*, A/RES/76/300 (26 July 2022), <https://digitallibrary.un.org/record/3982508?ln=en> [hereinafter Resolution 76/300]. Note that the resolution passed in a vote of 161 in favor, 0 against, and 8 abstentions.



on a **subset of the most pressing issues at each stage of prevention**. To that end, the workstream selected the following three topics for study and discussion in this report, at varying degrees of detail:

- I. **Catalyzing a preventive public policy for the realization of the work of (and consequent human rights risks for) environmental human rights defenders;**
- II. **The prevention of mass human rights violations that might take place in the context of decarbonization and a *just* transition to a “green” economy; and,**
- III. **The prevention of human rights violations occurring during the displacement of people provoked by environmental events.**

The choices were grounded in the following reasons: 1) these are topics in which the **links between the environment and human rights are obvious**, and moreover, in which **prevention is urgent and important**, 2) these topics are some of the most **critical, under-addressed**, areas of rights violations related to environmental disturbances and the climate crisis, and 3) there are conceptual links between these topics: they are **interrelated**.

One of the distinctive marks of this report is that it will consider human rights violations in the context both of environmental degradation and the transformation toward a “greener economy,” and importantly that it will **consider human rights not only in their redress dimension but, crucially, in their preventive dimension, that is—as problem-solving, anti-grievance mechanisms**.<sup>14</sup> As such, **all three topics selected correspond with particular points in the prevention lifecycle**. Environmental human rights defenders are at the frontlines of protecting the right to a healthy environment, and so protecting defenders against human rights violations and abuses is paramount for affecting upstream prevention with the potential to forestall downstream violations of the right to a healthy environment and the full spectrum of associated human rights (civil, political, economic, social, and cultural) with which it is allied. Further downstream, the energy and economic transition is fundamental for fulfilling the right to a healthy environment over the longer term, and the transition itself is a process rife with risks to human rights which must be managed accordingly in a preventive way. And even further downstream, at the point where the right to a healthy environment goes unfulfilled and the risk of displacement results (among other potential harms), preventive measures are necessary to mitigate that risk and to forestall the wide range of other forms of human rights violations that may result from displacement, a phenomenon that there are plenty of reasons to assume will only grow if the environmental crises are not effectively confronted.

Because respect for the right to a healthy environment is a condition of the full realization of nearly all other human rights, violations of this right radiate across other categories of rights, multiplying and amplifying the scope, scale, and severity of violations impacting those affected. Simply put, **the right to a healthy environment is central to robust human rights compliance**. Therefore, **safeguarding this right is a matter of immense significance for prevention efforts more broadly**. With this aim in mind, this report covers some of the core elements of the operationalization of this right: protecting environmental human rights defenders, promoting human rights in the context of a *just* transition, and preventing displacement

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<sup>14</sup> The Prevention Project as a whole tries to recover the preventive dimension of human rights. See Pablo de Greiff, *A Framework Approach to Making Prevention a Reality* (New York, NY: Prevention Project, March 2024), <https://tinyurl.com/prevention-framework-report>.

and mitigating its human rights impacts when it does occur.<sup>15</sup> This report will first undertake a more thorough analysis of the right to a healthy environment in the chapter following this introduction, and then address each of these key issues in succeeding chapters.

Furthermore, the workstream analyzed these topics through four “lenses,” which are incorporated throughout this report. These perspectives bring to the forefront the unique impacts of the climate crisis on the human rights of distinct groups, as well as on rights related to environmental activism or positionality.

- 1. Gender:** Women and girls are disproportionately impacted by climate change. Privilege, power, oppression, and intersections between different layers and vectors of disparity play an integral role in who is most impacted by climate change, often placing the greatest burdens on women—and on Indigenous women and women of other marginalized communities, in particular—with the specific types of effects being highly contextual and sensitive to other factors such as race, age, ethnicity, location, etc. The impact on women is only increased by their central role as caretakers and as environmental and human rights defenders. Environmental policy has an opportunity to shape itself with a focus on the safety and health of women.
- 2. Youth and future generations:** The forces of environmental destruction and climate change—and inaction by decision-makers in the face of these calamities—will disproportionately impact youth and future generations. Young people and children are also particularly susceptible to disease and detrimental health impacts of the climate crisis. Alongside these risks, many of this current generation of youth have asserted themselves as critical activists in the movement to tackle the challenges of climate change, meaning their potential power to affect change is unprecedented.
- 3. The role of Indigenous Peoples and Indigenous wisdom:** Indigenous Peoples take a central role in environmental defense that is much greater than their percentage in the global population.<sup>16</sup> Although they only comprise about six percent of the global population, Indigenous communities protect 80 percent of the remaining biodiversity on the planet.<sup>17</sup> They are at the frontline of protecting life in ecosystems and territories and carry critical

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<sup>15</sup> Of course, this group of topics is by no means a comprehensive—much less exhaustive—survey of the wide range of human-rights-related issues encapsulated within or implicated by the right to a healthy environment or the climate crisis more broadly. Such a survey is beyond the scope of this report, which aims more pragmatically at exploring a subset of the most pressing issues at the intersection of environment and human rights and across the prevention lifecycle. This is a starting point; myriad critical issues remain and require future study.

<sup>16</sup> Krushil Watene and Maria Luisa Acosta, “Indigenous Environmental Defenders are Critical for Nature and for Science, but Face Serious Risk,” *International Science Council* (9 August 2023), [https://press.un.org/en/2022/gashc4350.doc.htm](https://council.science/current/blog/indigenous-environmental-defenders-nature-science-risk/#:~:text=The%20essential%20role%20of%20indigenous,Dr; United Nations General Assembly, Third Committee, <i>Indigenous Peoples Still Suffer from Poverty: Climate Change and Loss of Ancestral Lands, Delegates Highlight in Third Committee, Special Rapporteur Stresses Industrialization, Overconsumption, Climate Change Lead to Biodiversity Decline in Indigenous Lands</i>, GA/SHC/4350, 12 October, 2022, <a href=); “Indigenous Peoples’ Rights,” Amnesty International, accessed 9 April, 2024, <https://www.amnesty.org/en/what-we-do/indigenous-peoples/>.

<sup>17</sup> United Nations Environment Programme (UNEP), *As Climate Crisis Alters Their Lands, Indigenous Peoples Turn to the Courts*, 8 August 2023, <https://www.unep.org/news-and-stories/story/climate-crisis-alters-their-lands-indigenous-peoples-turn-courts>; “State of the Environment, Climate: Indigenous Involvement,” Australian Government, accessed 28 May 2024, <https://soe.dceew.gov.au/climate/management/national-and-international-frameworks#-cli-21-figure-21-indigenous-peoples-and-the-environment>; Amnesty International, “Indigenous Peoples’ Rights.”

knowledge for the times ahead. And yet, these communities and people face compound risks to their human rights. Indigenous communities suffer increased impacts of environmental degradation, and their knowledge and experiences are often ignored. Recommendations need to address how to amplify the voices and wisdom of Indigenous and local communities in order to allow for upstreamed and contextualized prevention efforts. These communities must be empowered to make informed decisions based on open access to information and capacity-building.

- 4. Inequality and poverty:** The effects of environmental destruction on poverty and inequality can no longer be ignored or understated. The consequences of environmental despoliation are particularly detrimental in Indigenous and rural communities where a more significant portion of the population relies on environmental resources for work and sustenance. Tied into these are also considerations of race and decolonization. Inequality and poverty are crucial for the three main topics the report will address.

While these four perspectives each represent a salient category in the space of environment and human rights and point to identities that require consideration in any analysis of emergent issues in this space, it is also vital to take into account the **intersectional and identity-based overlaps and divergences** that arise from this analysis. As each section below will show, these categories present opportunities for activism and action, yet they also act as **risk multipliers** that cannot be viewed in a vacuum.



# Chapter I

## The Preventive Potential of the Right to a Clean, Healthy, and Sustainable Environment

### BRIEF HISTORY LEADING UP TO INTERNATIONAL RECOGNITION

**T**he right to a clean, healthy, and sustainable environment has been brought to the center of international debate with the July 2022 General Assembly Resolution 76/300, an important milestone in a global dialogue on the intersection of human rights and the environment that was decades in the making.<sup>18</sup>

While the right to a healthy environment had been enshrined in some national constitutions and legislation, as will be shown below, the UN Charter and other fundamental human rights treaties of the twentieth century were framed before the topic garnered significant attention and, as a result, are largely silent about it.<sup>19</sup> Now, with the advantage of hindsight, this seems a glaring lacuna.

In 1972, amid growing global awareness of environmental issues, Member States met at the Stockholm Conference on the Human Environment, adopting a declaration placing environmental issues at the forefront of global dialogue. The declaration began by stating, “[M]an 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.”<sup>20</sup> This catalyzed the creation of the United Nations Environment Programme,<sup>21</sup> which in turn

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<sup>18</sup> Resolution 76/300.

<sup>19</sup> For a discussion of indirect references to the right in these instruments, see European Parliament, Research Service, PE 698.846, *At A Glance: A Universal Rights to a Healthy Environment* (December 2021), [https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS\\_ATA\(2021\)698846\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS_ATA(2021)698846_EN.pdf); Pamela Chasek, “Stockholm and the Birth of Environmental Diplomacy,” *International Institute for Sustainable Development* (September 2020), [https://www.iisd.org/system/files/2020-09/still-one-earth-stockholm-diplomacy\\_0.pdf](https://www.iisd.org/system/files/2020-09/still-one-earth-stockholm-diplomacy_0.pdf).

<sup>20</sup> United Nations, *Declaration of the United Nations Conference on the Human Environment*, A/Conf.48/14/Rev. 1 (1973), <http://hrlibrary.umn.edu/instree/humanenvironment.html>, cited in United Nations Special Rapporteur on Human Rights and the Environment, David R. Boyd, *Recognizing the Right to a Healthy Environment: A/73/188 – Executive Summary*, (May 2022), <https://www.ohchr.org/sites/default/files/2022-05/Recognition-Summary-FINAL.pdf>.

<sup>21</sup> United Nations, “United Nations Conference on the Human Environment, 5–16 June 1972, Stockholm,” <https://www.un.org/>

eventually established the 1988 Intergovernmental Panel on Climate Change (IPCC).<sup>22</sup>

The Stockholm Conference was followed by varying degrees of national and regional action for environmental protection throughout the 1970s and 1980s. By 1992, when the Rio Summit took place, states around the world had adopted more than 1,100 environmental agreements.<sup>23</sup> The Rio Summit, while more focused on development, incentivized the adoption of constitutional principles for global environmental governance.<sup>24</sup>

**While the movement for the recognition of an international human right to a healthy environment continued through the 2000s, the status of a healthy environment as a human right remained disputed.** As late as 2009, a report from the Office of the High Commissioner for Human Rights (OHCHR) noted that although “climate change has obvious implications for the enjoyment of human rights, it is less obvious whether, and to what extent, such effects can be qualified as human rights violations in a strict legal sense.” The 2009 report cautioned that it would be “virtually impossible to disentangle the complex causal relationships” between emissions emanating from a certain country to specific human rights violations and that adverse effects of the climate crisis are often “projections about future impacts, whereas human rights violations are normally established after the harm has occurred.”<sup>25</sup>

The trend toward recognition of a healthy environment as a human right continued, in the face of such controversies.<sup>26</sup> By 2021, at least 155 states had enshrined the right to a healthy environment at a regional

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[en/conferences/environment/stockholm1972](https://www.un.org/en/conferences/environment/stockholm1972).

<sup>22</sup> “Impacts of Climate Change,” World Health Organization, accessed 2 February 2024, <https://www.who.int/southeastasia/activities/impacts-of-climate-change>.

<sup>23</sup> The “Rio Summit” was formally known as the 1992 United Nations Conference on Environment and Development. See United Nations Environment Program, “Dramatic Growth in Laws to Protect Environment, but Widespread Failure to Enforce, Finds Report,” Press Release: Environmental Rights and Governance (24 January 2019), <https://www.unep.org/news-and-stories/press-release/dramatic-growth-laws-protect-environment-widespread-failure-enforce>; David R. Boyd, “The Right to a Healthy and Sustainable Environment,” in *A Global Pact for the Environment – Legal Foundations*, Yann Aguila and Jorge E. Viñuales eds. (Cambridge, UK: Cambridge University Press, 2019), 30–37, <https://www.ceenrg.landecon.cam.ac.uk/system/files/documents/AguilaVinualesAGlobalPactfortheEnvironmentCambridgeReportMarch2019.pdf>.

<sup>24</sup> Boyd, “The Right to a Healthy and Sustainable Environment”; This included Principle 1 of the United Nations General Assembly declaration following the Rio summit, which stated that, “Human beings are at the [center] of concerns for sustainable development...[and] are entitled to a healthy and productive life in harmony with nature.” See United Nations General Assembly, *Report of the United Nations Conference on Environment and Development*, A/CONF.151/26 (12 August 1992), [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_CONF.151\\_26\\_Vol.I\\_Declaration.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf).

<sup>25</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR), “Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights,” A/HRC/10/61 (15 January 2009), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/103/44/PDF/G0910344.pdf?OpenElement>, cited in Savaresi, “The Use of Human Rights Arguments in Climate Change Litigation and its Limitations.”

<sup>26</sup> States discussed the climate crisis in highly influential forums such as the 2012 UN Conference on Sustainable Development, the 2015 UN Sustainable Development Summit (which announced a plan of action for people, planet, and prosperity composed of 17 Sustainable Development Goals to be achieved by 2030), the 2015 Paris Climate Change Conference (COP21), and the 2019 UN Climate Action Summit. See, respectively, United Nations General Assembly, Resolution 70/1, Transforming our World: the 2030 Agenda for Sustainable Development, A/RES/70/1 (25 September 2015), [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_70\\_1\\_E.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf); and “Documentation: Environment, Major Conferences and Reports,” United Nations Research, accessed 2 February 2024, <https://research.un.org/en/>

or national level, with over 100 including constitutional provisions.<sup>27</sup> Yet, despite efforts at the national level to enact environmental laws and build agencies concerned with the environment, enforcement of these laws and funding of these agencies remained a generally low priority. Moreover, at the international level, there was no similar success even in terms of the articulation of a legal framework (independently of questions relating to willingness to comply or of mechanisms of enforcement).<sup>28</sup>

A turning point in the international discussion to preserve the environment as a human right occurred via the adoption of Resolution 48/13 by the Human Rights Council in October 2021.<sup>29</sup> The United Nations recognized for the first time that “everyone, everywhere, has the right to live in a clean, healthy and sustainable environment and this needs to be given expression and definition by all entities of the UN.”<sup>30</sup>

Finally, on July 26, 2022, the General Assembly passed a resolution recognizing the right to a clean, healthy, and sustainable environment as a human right. The resolution was approved unanimously with 161 votes in favor (and a mere eight abstentions), including, for the first time, a favorable vote by the United States.<sup>31</sup> The adoption of Resolution 76/300, together with Resolution 48/13, represented an important advancement in **furthering the international commitment to addressing the triple planetary crises of climate change, biodiversity loss, and pollution**<sup>32</sup> and has been lauded as a “catalyst for accelerated action to achieve the Sustainable Development Goals.”<sup>33</sup>

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[docs/environment/conferences.](#)

<sup>27</sup> “The United States Recognizes the Human Right to a Clean, Healthy, and Sustainable Environment,” *American Journal of International Law* 117, no. 1 (2023): 128–33, <https://doi.org/10.1017/ajil.2022.85>.

<sup>28</sup> United Nations Economic Commission for Latin America and the Caribbean, *Sustainable Development 20 Years on from the Earth Summit: Progress, Gaps and Strategic Guidelines for Latin America and the Caribbean* (March 2012), <https://www.cepal.org/en/publications/1427-sustainable-development-20-years-earth-summit-progress-gaps-and-strategic>; United Nations International Council on Human Rights Policy, “Climate Change and Human Rights, A Rough Guide” (2008), [https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/Submissions/136\\_report.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/Submissions/136_report.pdf); Boyd, “The Right to a Healthy and Sustainable Environment.”

<sup>29</sup> United Nations Human Rights Council, Resolution 48/13, The Human Right to a Clean, Healthy and Sustainable Environment, A/HRC/RES/48/13 (8 October 2021), <https://undocs.org/A/HRC/RES/48/13>.

<sup>30</sup> United Nations Committee on Economic, Social and Cultural Rights, Opening Address by the Representative of the Secretary-General, 72nd Session, 16 September–14 October 2022, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=ZN6pIHZz9X4nSxDKBtHn75kiBYmqslDq94ntNmjSCQlsqbCuoN6pWLMkWSu2TjtAxfiVTvliudVT-gOzovaeMyA==](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=ZN6pIHZz9X4nSxDKBtHn75kiBYmqslDq94ntNmjSCQlsqbCuoN6pWLMkWSu2TjtAxfiVTvliudVT-gOzovaeMyA==).

<sup>31</sup> As noted by the *American Journal of International Law* in “The United States Recognizes the Human Right to a Clean, Healthy, and Sustainable Environment”: “Just nine and a half months earlier, in October 2021, the United States had opposed the Human Rights Council’s recognition of the same right.”

<sup>32</sup> United Nations, Human Rights 75 High-Level Climate and Environment Roundtable, “The Future of Human Rights, the Environment and Climate: Advancing the Right to a Healthy Environment, Including a Safe and Stable Climate, For All,” December 2023, <https://www.ohchr.org/sites/default/files/udhr/publishingimages/75udhr/HR75-high-level-event-Healthy-nvironment-think-Piece%20.pdf>; see also Paige McCartney, “Climate Reparations can be Used for Property Insurance, Says AG,” *The Nassau Guardian* (13 December 2023), [https://www.thenassauguardian.com/business/climate-reparations-can-be-used-for-property-insurance-says-ag/article\\_586e39ba-99bb-11ee-989c-53c4caa078ad.html](https://www.thenassauguardian.com/business/climate-reparations-can-be-used-for-property-insurance-says-ag/article_586e39ba-99bb-11ee-989c-53c4caa078ad.html).

<sup>33</sup> United Nations Special Rapporteur on Human Rights and the Environment, David R. Boyd, “Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment,” A/74/161, August 2022, <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/Report.pdf>.

## RESOLUTION 76/300 – POLICY GAPS AND OPPORTUNITIES FOR PREVENTION

Resolution 76/300 was the culmination of decades of negotiations, scholarship, scientific advancement, Indigenous wisdom, state action, and civil society advocacy. The unanimous passage of the resolution was a **forceful pronouncement of the importance of the right to a healthy environment**, and the text of the resolution reflects the centrality of this right as a linchpin undergirding a panoply of associated human rights of all types—civil, political, economic, social, and cultural. The resolution “*recogniz[es]* that...the protection of the environment, including ecosystems, contribute[s] to and promote[s]...the full enjoyment of all human rights,” and conversely “that environmental degradation, climate change, [and] biodiversity loss...constitute some of the most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights” — “implications of environmental damage [that] are felt by individuals and communities around the world.”<sup>34</sup> Therefore, the resolution “*affirm[s]* the importance of a clean, healthy and sustainable environment for the enjoyment of all human rights.”<sup>35</sup>

However, despite the significance of its powerful assertion of the right to a healthy environment — undeniably a major step forward toward meaningful global action — **Resolution 76/300 leaves the precise scope of this right unaddressed**. The resolution is a succinct three-page document, and its text does not articulate the content of the right, beyond merely proclaiming its existence and importance. Resolution 76/300 does explicitly state that promoting the right to a healthy environment “requires the full implementation of the multilateral environmental agreements” and calls for “stakeholders to adopt policies...to scale up efforts to ensure” the realization of the right, but the precise nature of these policies (other than full implementation of international agreements) is an open question.<sup>36</sup> Thus, **the resolution leaves open a number of critical policy gaps that do not allow stakeholders to fully realize its potential as a tool for the prevention of mass human rights violations**.

First, it is criticized by some states **as lacking clarity on the content and scope** of the newly minted right to a healthy environment. The US Permanent Mission to the United Nations underscored the need for a common understanding of the scope of the right just days before the resolution’s adoption, stating: “It is important to establish a common understanding of the right so that States have clarity as to its scope, as there is not yet a shared view of the basis for the right or of its scope.”<sup>37</sup> For the right to be implemented effectively, measures need to be taken to ensure governments fully understand how the destruction of the environment infringes on various human rights. **Ambiguity in the scope of the right and how it should be understood by stakeholders can lead to varied interpretations and inconsistent implementation, undermining the effectiveness of the proclaimed right.**<sup>38</sup>

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<sup>34</sup> Resolution 76/300.

<sup>35</sup> Resolution 76/300.

<sup>36</sup> Resolution 76/300.

<sup>37</sup> United States Mission to the United Nations, “Explanation of Position on the Right to a Clean, Healthy, and Sustainable Environment Resolution” (28 July 2022), <https://usun.usmission.gov/explanation-of-position-on-the-right-to-a-clean-healthy-and-sustainable-environment-resolution/>. It is interesting to note that 9 months prior, the United States had opposed an attempt to recognize the right before the Human Rights Council.

<sup>38</sup> On this point, see United Nations Special Rapporteur on Human Rights and the Environment, John Knox, *Framework Principles on Human Rights and the Environment* (Geneva, Switzerland: Office of the United Nations High Commissioner for Human Rights, 2018), <https://www.ohchr.org/sites/default/files/FrameworkPrinciplesUserFriendlyVersion.pdf>.

The scope and text of the resolution also reflect **pre-existing tensions between efforts to achieve a just and clean energy transition and the disproportionate effects of the climate crisis on the Global South.** While thinking about practical, preventive measures to safeguard human rights violations related to the environment, it is essential to consider that the climate crisis is not happening in a vacuum. Its causes and effects cannot be divorced from considerations of equity, existing and potential inequalities, and possible impact on political instability. On this point, it is important to note that the Global South took leadership over Resolution 76/300 in many ways.<sup>39</sup> As such, intersectional, international collaboration to further the right to a healthy environment presents an unprecedented opportunity to amplify the voices of the Global South in the realm of environment and human rights.

**Intersectional, international collaboration to further the right to a healthy environment presents an unprecedented opportunity to amplify the voices of the Global South in the realm of environment and human rights.**

A second potential gap relates to the **challenges of enforcing** a non-binding resolution.<sup>40</sup> As currently construed, the right to a healthy environment articulated in Resolution 76/300 is not expressly contained in a treaty or other binding legal instrument,<sup>41</sup> and the resolution does not elucidate a formal means of enforcing the right. Despite the fact that this resolution does not of itself create a binding legal obligation on states, however, it **presents opportunities for stakeholders to coalesce around it to catalyze the implementation of the right** in myriad ways. One potential avenue for implementing this right could be through formal (and binding) recognition of the right elsewhere in a treaty or other enforceable legal instrument.<sup>42</sup> But **bindingness is not a panacea, nor is formal legal enforceability the exclusive means**

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<sup>39</sup> United Nations News, *UN General Assembly Declares Access to Clean and Healthy Environment a Universal Human Right*, 28 July 2022, <https://news.un.org/en/story/2022/07/1123482>.

<sup>40</sup> Although one might envision arguments for viewing this resolution as potentially binding by virtue of its unanimous adoption (whether as evidence of custom, evidence of an authoritative interpretation of existing human rights obligations, or via other theories of legal solidification), this report will assume (without taking a stance on the question of bindingness) that the resolution functions as a non-binding instrument, as UNGA resolutions typically do. This assumption accounts for reservations stated by at least a few states that supported the resolution's passage. Significantly, the UK had stated that Resolution 76/300 itself is not sufficient to "create" a binding universal right, as that would require lengthy negotiations of an international treaty. See Foreign, Commonwealth & Development Office and UK Mission to the UN, "Speech: Explanation of Vote on Resolution on the Right to a Clean, Healthy and Sustainable Environment," 28 July 2022, <https://www.gov.uk/government/speeches/explanation-of-vote-on-resolution-on-the-right-to-a-clean-healthy-and-sustainable-environment>, as cited in Marc Limon, "The End of the Beginning: General Assembly Recognition of the Right to a Clean, Healthy, and Sustainable Environment," *Open Global Rights*, 1 February 2024, <https://www.openglobalrights.org/general-assembly-recognition-right-clean-healthy-sustainable-environment/>. A representative of the Russian Federation also argued that "[states] can only talk about a legally recognized right after such right is recognized exclusively within international treaties." See International Institute for Sustainable Development, "UNGA Recognizes Human Right to Clean, Healthy, and Sustainable Environment," 3 August 2022, <https://sdg.iisd.org/news/unga-recognizes-human-right-to-clean-healthy-and-sustainable-environment/>.

<sup>41</sup> Note, however, that the text of the resolution states that the right to a healthy environment is "related to other rights and existing international law," although it leaves the precise meaning and scope of such relationships unstated. See Resolution 76/300.

<sup>42</sup> Megan Donald, "Human Rights and the Environment," *Geneva Academy Briefing* no. 21 (December 2022), [https://www.geneva-academy.ch/joomlatools-files/docman-files/Briefing%2021\\_web.pdf](https://www.geneva-academy.ch/joomlatools-files/docman-files/Briefing%2021_web.pdf).



**by which rights can be implemented, promoted, or become influential.**<sup>43</sup> Even absent formally binding enshrinement of this right as an enforceable treaty obligation, the resolution may nonetheless function as a “soft law” instrument with strong legitimacy by virtue of its unanimous adoption.

**As a forceful proclamation of the existence and breadth of the right to a healthy environment, the resolution could serve as the basis for the articulation of a right that will come to garner increased recognition and traction as more states take action to comply with its dictates.** That is to say, while this resolution may not currently be binding on a formal level, it nevertheless inaugurates broad-based recognition of the right to a healthy environment and forms the foundation for a set of concomitant responsibilities that may become increasingly influential—possibly even functionally mandatory—whether or not they are ultimately enshrined in a binding legal instrument.

On a national level, **states have an opportunity to explicitly define the right to a healthy environment through domestic legislation.** When appropriate, states should additionally consider **codifying the right to a healthy environment in their national constitutions** to strengthen the legal framework supporting the right and its protections, as many states have in fact done. As noted in a 2020 report by David R. Boyd, United Nations Special Rapporteur on Human Rights and the Environment, “the legal recognition of this right can be itself considered a good practice.”<sup>44</sup> Specifically, provisions that mandate accountability and enforcement mechanisms in domestic legal systems are essential for the protection and affirmation of the right to a healthy environment, underpinning its significance and administrative viability.

A third gap is that the resolution **does not directly address the protection of some of the groups most vulnerable to human rights violations, or their roles in the protection of the environment—namely, environmental human rights defenders and future generations.** Instead, the resolution limits itself to recognizing that the consequences are felt most by those “already in vulnerable situations, including indigenous peoples, children, older persons and persons with disabilities.”<sup>45</sup> Additionally, the resolution recognizes the importance of women and girls as “leaders and defenders of natural resources and agents of change in safeguarding the environment.”<sup>46</sup> While the protection of these groups is paramount and will be discussed at length later in this report, this narrow focus of the resolution overlooks the

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<sup>43</sup> While this project affirms the importance of solidifying human rights obligations via enshrinement in formally enforceable treaties and other legal instruments, it nevertheless recognizes the limitations of such measures. Indeed, even the most broadly accepted and readily enforceable human rights obligations contained in widely adopted human rights conventions suffer from under realization in practice, in part because of the well-studied human rights implementation gap (for more on this, see the section on National Human Rights Institutions (NHRIs) in *Making Constitutional Promises Credible: The Preventive Potential of Guarantor Institutions* (New York, NY: Prevention Project, April 2024), <https://tinyurl.com/prevention-guarantors-report>, a report of the project’s Constitutional and Legal Tools workstream). These conventions are crucial for articulating the content of rights obligations, creating a systematic means of gauging and enforcing compliance, and expressing the imperative of respecting human rights, among other functions, but they do not of themselves ensure that rights are realized. Consistent with the project’s overarching goal of dedramatizing prevention and maximizing the effectiveness of preventive initiatives, this report is primarily concerned with the functional effectiveness of those prevention strategies that are most readily able to be adopted at the national and local levels. Thus, it eschews a fixation on formal bindingness in favor of a more wide-reaching analysis of all of the means by which the right to a healthy environment might spur effective implementation, especially through nationally led initiatives.

<sup>44</sup> Then known as the Special Rapporteur on Human Rights Obligations Related to the Enjoyment of a Safe, Clean, Healthy, and Sustainable Environment. See United Nations Special Rapporteur on Human Rights and the Environment, David R. Boyd, *Right to a Healthy Environment: Good Practices* (Nairobi, Kenya: United Nations Environment Programme, 2020), 10.

<sup>45</sup> Resolution 76/300.

<sup>46</sup> Resolution 76/300.

broader intersectional context. This gap needs to be filled, not only by referring to legal instruments and specific safeguards already in place but also by **designing new policy strategies capable of more robust prevention, greater protection, and deeper involvement by stakeholders.** These issues will be discussed further in Chapter II and Chapter III.

A fourth gap, not directly addressed by the resolution, is the **effects of climate events on human migration and displacement.** The existing global phenomenon of human migration and displacement has been propelled by the effects of the climate crisis in a manner that has a profound impact on human rights. Climate displacement, to be discussed further in Chapter IV, is only expected to grow in severity, while disproportionately affecting women, Indigenous communities, environmental defenders, and youth. A resolution concerning the right to a healthy environment adopted in a context in which climate-related displacement was already well known, should have at least addressed the importance of the issue.

This newly recognized human right can strengthen global environmental and human rights standards and their integration. Indigenous communities and environmental defenders have consistently spoken about the connection between humans and nature—the right to a healthy environment ensures that we are moving in the direction of connection rather than separation. Resolution 76/300 presents a unique opportunity for developing a preventive agenda to stop—or at the very least mitigate—mass violations of human rights occurring in the context of the climate crisis. This report provides upstreamed, intersectional, interdisciplinary, and collaborative policy recommendations to guide the implementation of this right in several crucial areas.

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## RECOMMENDATIONS

- Mechanisms for the prevention of mass human rights violations in the environmental context are enshrined in international, regional, and domestic law. These existing mechanisms would provide a strong foundation for prevention—if they were fulfilled adequately. States and other stakeholders know what needs to be done, yet their willingness to implement these measures differs greatly. This report, and the recommendations below, serve to highlight the benefits of a preventive perspective on the intersection of human rights and the environment and the urgent need to implement existing obligations fully.
- States should codify the right to a healthy environment in their national legislation and constitutions to strengthen the legal framework supporting the right. Whether through domestic implementation or discussions in international fora, all stakeholders should seek to define the scope and protections afforded by the right to a healthy environment explicitly.
- Future iterations and interpretations of the right to a healthy environment should directly address the groups most affected by the climate crisis and related human rights violations—namely, women and girls, Indigenous Peoples, environmental human rights defenders, elderly people, people with disabilities, and youth and future generations. Existing legal instruments and safeguards should be complemented by new policy strategies capable of robust prevention, greater protection of affected groups, and deeper involvement by all stakeholders.



## Chapter II

### A Healthy Earth for All: Catalyzing the Work of Environmental Human Rights Defenders Through Prevention\*

**P**revention is recognized as a cornerstone of international environmental law and human rights law. Yet, the prevention principle remains abstract and elusive in terms of what is required of states to prevent ecosystem harm and climate-related risks.<sup>47</sup> The specific objective of this chapter is to identify strategic entry points for ensuring the rights of environmental human rights defenders (EHRDs). Protecting their rights is of course an obligation in itself. And, as it happens, doing so will also have positive policy consequences, contributing to the prevention of massive irreversible destruction of ecosystems and biodiversity loss, which, in turn, prevents other mass human rights violations.

Protecting the environment demands, first, protecting the rights of those who defend it.<sup>48</sup> Building on the rights and protections afforded to human rights defenders,<sup>49</sup> the United Nations Environment Programme (UNEP) defines EHRDs as “individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the

**Protecting the environment demands, first, protecting the rights of those who defend it.**

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<sup>47</sup> Leslie-Anne Duvic-Paoli, *The Prevention Principle in International Environmental Law* (Cambridge, UK: Cambridge University Press, 2018), <https://www.cambridge.org/core/books/prevention-principle-in-international-environmental-law/93851A7B-5838CACCEE5896252BF2D5B1>.

<sup>48</sup> Economic Commission for Latin America and the Caribbean (ECLAC), *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean: Implementation Guide* (Santiago, Chile: ECLAC, 2023), 193, <https://observatoriop10.cepal.org/en/document/implementation-guide-escazu-agreement> [hereinafter Escazú Agreement].

<sup>49</sup> United Nations General Assembly, Resolution 53/144, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (9 December 1998) [hereinafter Declaration on Human Rights Defenders].

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environment, including water, air, land, flora, and fauna.”<sup>50</sup> As early as 1989, the need to protect the human rights of EHRDs along with the importance of their work for the protection of the environment and biodiversity have been widely recognized.<sup>51</sup> EHRDs also take a crucial advocacy role in “empowering communities and protecting ecosystems.”<sup>52</sup>

Efforts to protect EHRDs have concentrated on protection from physical threats to their personal integrity and life, given their role. This is evident through the UNEP’s “Defenders Policy,” which focuses on denouncing attacks on life and safety, advocating for better protections, and requesting accountability from state and non-state actors when EHRDs are adversely impacted.<sup>53</sup> This chapter argues that state authorities, policy makers, and social actors generally, including businesses, must recognize EHRDs as agents of change and as central actors in the construction of just sustainability pathways both intra and inter-generationally.

Respecting, protecting, and fulfilling the human rights of EHRDs as a state obligation is important independently of other considerations, but also—and this is a point not reflected on frequently enough—because doing so presumably leads to better outcomes. After all, EHRDs are often people who hold special knowledge, who promote a sustainability agenda, and who defend public interests. Thus, **respecting, protecting, and fulfilling the human rights of EHRDs is vital also for policy reasons as part of achieving strong outcomes for environmental policy from a governance perspective.**

**State authorities, policy makers, and social actors generally, including businesses, must recognize EHRDs as agents of change and as central actors in the construction of just sustainability pathways both intra and inter-generationally.**

<sup>50</sup> “Who Are Environmental Defenders,” United Nations Environment Program (UNEP), accessed 3 June 2024, <https://www.unep.org/topics/environmental-law-and-governance/who-are-environmental-defenders>.

<sup>51</sup> Claudia Ituarte-Lima, Maria Andrea Nardi, and Liisa Varumo, “Just Pathways to Sustainability: From Environmental Human Rights Defenders to Biosphere Defenders,” *Environmental Policy and Law Journal* 53, no. 5-6 (February 2024): 348, <https://doi.org/10.3233/EPL-239009>; Declaration on Human Rights Defenders.

<sup>52</sup> “Who Are Environmental Defenders,” UNEP.

<sup>53</sup> “UNEP’s Defenders Policy,” United Nations Environment Program (UNEP), accessed 3 June 2024, <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/uneps#:~:text=UNEP's%20Defenders%20Policy%20promotes%20greater.many%20parts%20of%20the%20world.>

## ENVIRONMENTAL HUMAN RIGHTS DEFENDERS: BOTTLENECKS AND WHY PREVENTION MATTERS

**A focus on the prevention of mass human rights violations is not only a matter of legal due diligence but also an opportunity for a paradigm shift that helps to overcome the hindrances that EHRDs face to reaching their full potential in the stewardship of biodiversity and healthy ecosystems, and tackling the climate, pollution, and water crises.** A paradigm shift involves leveraging empowering narratives through understanding the past and reorienting values, norms, and behaviors,<sup>54</sup> hence speaking a language of solidarity that resonates with EHRDs' narrative on solidarity between humans and other living beings is part of building trust and collective action on various levels.

Here we highlight three bottlenecks that a prevention public policy can help overcome. **First, a prevailing emergency discourse on EHRDs tends to cast them as “victims of violence in need of protection.”** In a 2024 report, the international NGO Front Line Defenders documented at least 300 environmental defenders killed in protecting the planet.<sup>55</sup> Between 2012 and 2022, the NGO Global Witness documented a total number of 1,910 killings.<sup>56</sup> On average, an environmental defender was killed every second day in 2022.<sup>57</sup> Environmental defenders face greater risk than other human rights defenders. As Front Line Defenders reported in 2021, 59 percent of the human rights defenders killed in connection with their role were “defending land, environmental and Indigenous Peoples’ rights.”<sup>58</sup> Data is clear—there is a concrete and pressing need to enhance the protection of EHRDs.

**Loss of life, however, is only one of the risks EHRDs face on an ongoing basis.** The role that they play as custodians and protectors of their lands often generates severe repercussions in addition to loss of life and extreme physical violence, including threats, criminalization, lack of access to information, smear campaigns on social media, and, as will be discussed below, different forms of judicial harassment.<sup>59</sup> As stated by John Knox, former United Nations Special Rapporteur on Human Rights and the Environment, “[M]urder is not the only way environmental defenders are persecuted; for every one killed, there are 20 to 100 others harassed, unlawfully and lawfully arrested, sued for defamation, amongst other intimidations.”<sup>60</sup>

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<sup>54</sup> See de Greiff, *A Framework Approach to Making Prevention a Reality*.

<sup>55</sup> Front Line Defenders, *Global Analysis 2023/24* (Dublin, Ireland: Front Line Defenders, 2024), 5, [https://www.frontlinedefenders.org/sites/default/files/1578\\_fld\\_ga23\\_online\\_u02.pdf](https://www.frontlinedefenders.org/sites/default/files/1578_fld_ga23_online_u02.pdf).

<sup>56</sup> Global Witness, *Standing Firm: The Land and Environmental Defenders on the Frontlines of the Climate Crisis* (London, UK: Global Witness, 2023), 4.

<sup>57</sup> Global Witness, *Standing Firm*, 9.

<sup>58</sup> Mariana Montoya, “Defending the Environment Shouldn’t be Deadly,” *World Politics Review*, 7 October 2022, <https://www.worldpoliticsreview.com/land-defenders-environmental-activists-indigenous-rights/>.

<sup>59</sup> “Working On Oil is Forbidden,” *Human Rights Watch*, 2 November 2023, <https://www.hrw.org/report/2023/11/02/working-oil-forbidden/crackdown-against-environmental-defenders-uganda>; “Uganda: Oil Pipeline Protests Stifled,” *Human Rights Watch*, 2 November 2023, <https://www.hrw.org/news/2023/11/02/uganda-oil-pipeline-protests-stifled>; “Uganda: Environmental Defenders Raising Concerns about the East Africa Crude Oil Pipeline Project Continue to Experience Attacks,” *Business & Human Rights Resource Center*, 20 December 2023, <https://www.business-humanrights.org/en/latest-news/uganda-continued-attacks-against-environmental-defenders-protesting-against-totalenergies-oil-pipeline-project-incl-company-response/>; Mohammed Yusuf, “Rights Group Claims Company Intimidates Communities Along Tanzania-Uganda Oil Pipeline,” *VOA News*, 8 December 2023, <https://www.voanews.com/a/rights-group-claims-company-intimidates-communities-along-tanzania-uganda-oil-pipeline/7389853.html>.

<sup>60</sup> “Who are Environmental Defenders,” UNEP.

Indigenous EHRDs, in particular, face a disproportionate lack of protection, with many crimes against them not reported to state authorities (sometimes for fear of reprisal), or presented by state authorities as decontextualized crimes that are unrelated to the defense of the environment, their territories and traditional ways of life.<sup>61</sup>

Viewing rights violations against EHRDs through this lens, it is evident that **race, indigenous struggles, and environmental defense are deeply intertwined**. This narrative, pervasive in mainstream discourse by allies of EHRDs, frequently underscores the vulnerability of these actors, portraying them as perpetually under threat of attacks and death. This situation demands a global call to action, highlighting the urgency and significance of the issue. Still, it is a mistake to think that the only effective protection schemes are those offered by authorities. **As a result, the situation calls for greater support and recognition of the agency of EHRDs and their communities, as well as their participation in designing effective protection.**

EHRDs, including women and girls, youth, children, people with disabilities, and Indigenous EHRDs, are not merely recipients of protection (such as it is) but active agents capable of mobilizing resources for their cause and implementing sustainable practices on their lands, waters, and territories.<sup>62</sup> By exclusively portraying vulnerability and risk as the primary motivators for action, there is a danger of perpetuating colonial attitudes in which the rights of EHRDs can only be safeguarded by non-rural, non-Indigenous individuals, reinforcing a problematic “white savior” mentality.<sup>63</sup> EHRDs are not inherently weak. Rather, their strength lies in challenging the existing status quo. For example, significant financial and political interests are involved in fossil fuels projects, which means that EHRDs resisting such projects operate in a heightened environment of personal risk and often face the combined weight, and even force, of state and corporate power. Yet, it is because EHRDs have the courage and power to challenge unsustainable or illegal development and biodiversity-harmful projects and advocate for change that EHRDs are at risk, and not because EHRDs are weak and powerless.<sup>64</sup>

It should be emphasized, as will be the case throughout this report, that these **intersecting identities do affect the human rights risks that EHRDs face and should affect policy in regard to the protection of their rights**. In a report by Michel Forst, former United Nations Special Rapporteur on Environmental Defenders, he acknowledges the diverse backgrounds, cultures, and belief systems of environmental defenders, recognizing that they may not always self-identify, or be identified by others, as EHRDs.<sup>65</sup> Forst emphasizes the interconnectedness between individual EHRDs and their respective groups, organizations, and communities, highlighting the need to appreciate the collective dimensions of their risks and opportunities. **Hence to understand further the varying ways in which EHRDs identify**

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<sup>61</sup> Krushil Watene and Maria Luisa Acosta, “Indigenous Environmental Defenders are Critical for Nature and for Science, but Face Serious Risk,” *International Science Council* (9 August 2023), <https://council.science/current/blog/indigenous-environmental-defenders-nature-science-risk/>.

<sup>62</sup> Ituarte-Lima, Nardi, and Varumo, “Just Pathways to Sustainability.”

<sup>63</sup> Colleen Murphy, “What is White Savior Complex and why is it Harmful?” *Health*, 17 August 2023, <https://www.health.com/mind-body/health-diversity-inclusion/white-savior-complex>.

<sup>64</sup> Claudia Ituarte-Lima, “Biosphere Defenders Leveraging the Human Right to Healthy Environment for Transformative Change,” *Environmental Policy and Law* 53, no. 2-3 (July 2023), <https://doi.org/10.3233/EPL-239003>.

<sup>65</sup> Michael Forst, “Vision for the Mandate: Statement by the Aarhus Convention’s Special Rapporteur on Environmental Defenders,” United Nations Economic Commission for Europe (2022), <https://unece.org/climate-change/press/un-special-rapporteur-environmental-defenders-presents-his-vision-mandate>.

themselves and perform their initiatives, it is important to note that EHRDs can be, and act, as communities as much as individuals.

### Shaping Their Own Rights – Indigenous Advocacy in Kenya and the DRC

In 2023, Indigenous EHRDs in Kenya helped to affirm the importance of public participation in environmental decision-making through litigious means. The defenders initiated a legal case before the Environmental and Physical Planning Division of the Kenyan Environmental and Lands Courts, seeking to reverse a decision by the government to lift a moratorium on logging without due public participation. The case culminated in a **court decision affirming that the public is entitled to participate in the making of laws, regulations, and guidelines governing logging activities**, declaring the government decision unconstitutional and void for lack of public participation, and compelling the government to follow existing laws and accountability standards regarding logging activities.<sup>66</sup> In doing so, **EHRDs have helped to create a significant precedent in Kenya and wider East Africa on the centrality of transparency and accountability in logging activities and encouraged judicial oversight of government decisions concerning the environment.**

EHRDs in Kenya and the Democratic Republic of the Congo (DRC) have also worked to **shape their own protections in legal frameworks**. In Kenya, civil society actors led an advocacy campaign that resulted in the enhancement of laws on the protection of the rights of EHRDs within the National Framework for Environmental Law.<sup>67</sup> In the DRC, Indigenous activists successfully pushed legislators to recognize and better protect Indigenous Pygmy people within a national law that, for the first time, allowed Indigenous people to access greater protections in the context of their own activism.<sup>68</sup>

<sup>66</sup> See *Law Society of Kenya v. Attorney General & 3 others; Katiba Institute & 6 others* (Interested Parties) (Environment & Land Petition E001 of 2023) [2023] KEELC 20583 (KLR) (12 October 2023); “Kenya’s Plan to Lift a Logging Ban Successfully Challenged by Civil Society,” *Natural Justice*, 12 October 2023, <https://naturaljustice.org/kenyas-plan-to-lift-a-logging-ban-successfully-challenged-by-civil-society/>.

<sup>67</sup> Natural Justice, *Adopting a National Law to Protect Environmental and Human Rights Defenders in Kenya* (Cape Town, South Africa: Natural Justice, 2023), <https://naturaljustice.org/publication/adopting-a-national-law-to-protect-environmental-and-human-rights-defenders-in-kenya/>.

<sup>68</sup> “New Legislation to Protect the Rights of the Indigenous Pygmy Peoples in the DRC,” *International Union for Conservation of Nature*, 5 August 2022, <https://www.iucn.org/story/202208/new-legislation-protect-rights-indigenous-pygmy-peoples-drc>; “New Law Promulgated to Promote and Protect the Rights of Indigenous People,” *International Work Group for Indigenous Affairs*, 23 March 2023, <https://iwgia.org/en/democratic-republic-of-congo/5045-iw-2023-drc.html?highlight=WyJjb25nby-IsImNvbmdvJ3MiXQ==>.



**Second, EHRDs are often presented as obstacles to progress, anti-development, or sometimes even as enemies of the state, which further amplifies the risks they face.**<sup>69</sup> Advocating against unsustainable development and injustice is not the same as being mere contrarians. Disempowering narratives towards EHRDs are an obstacle to catalyzing well-being not only for their communities but for public interest more broadly. One manifestation of this narrative is where certain national and multinational corporations use resources, litigation, and the associated media coverage to advance a narrative that disempowers, delegitimizes, and criminalizes EHRDs, who have significantly fewer resources in comparison.<sup>70</sup>

The abuse of the law and criminalization of EHRDs by certain corporations through strategic litigation against public participation, or SLAPP suits,<sup>71</sup> is part of this toxic mix. **The tactic of corporations seeking to censor, intimidate, and silence public opposition and the participation of EHRDs and advocates has negative consequences for both human rights and the environment.** Policy makers and other stakeholders have a key role in changing—and not reinforcing—a toxic narrative portraying EHRDs as “contrarian to development”.<sup>72</sup>

**Third, the narrative that depicts EHRDs solely as individual right-holders needing the protection of their personal integrity and lives is overly narrow.** This perspective often fails to sufficiently explore the broader context of the socio-ecological systems these EHRDs advocate for, as well as the collectives they represent and protect. While it is important to focus on individuals who are attacked or murdered, the mainstream narrative frequently overlooks the essence of who these EHRDs represent—not just as community members but also as bearers of collective worldviews and values. **The risk lies in abstracting the individual from their environment, potentially stripping EHRDs of their unique intersecting identities, whether they be female, young, members of Indigenous Peoples, fisherfolk, or peasants.** This abstraction misses the opportunity to understand the profound significance that each defender embodies in building on the heritage of past generations and their agency to impact their generation and generations to come. **Individuals do not exist in isolation.**

Prevention-focused public policy is useful in tackling the above-mentioned bottlenecks and nurturing a supportive narrative and enabling environment with and for EHRDs. In particular, preventive public policy is useful in changing the narrative of EHRDs as “anti-development” by tackling the root causes of state capture that generate disempowering narratives towards EHRDs, as well as generate distrust in institutions and undermine democratic values and meaningful public participation. Furthermore, preventive public policy has a critical role to play in placing the spotlight on EHRDs and supporting their agency, viewing individuals not in isolation but as an integral part of the collective(s) to which they belong. Doing so will **shed light on the crucial role of EHRDs in triggering positive societal change and contribute to catalyzing their work, thereby becoming a strong example of progressive environmental governance.**

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<sup>69</sup> Global Witness questions this narrative in Global Witness, *Enemies of the State?* (London, UK: Global Witness, 2019), <https://www.globalwitness.org/en/campaigns/environmental-activists/enemies-state/>.

<sup>70</sup> For further discussion of state capture and its intersection with the prevention of mass human rights, see a report of the project’s State Capture workstream, *State Capture as Enabling Condition for Human Rights Violations* (New York, NY: Prevention Project, June 2024), <https://tinyurl.com/prevention-statecapture-report>.

<sup>71</sup> A SLAPP suit can be civil or criminal and can include defamation cases.

<sup>72</sup> See examples in South Africa and across Latin America, Sheree Bega, “SA Must End SLAPP Suits, Says Environmental Lawyer,” *The Green Guardian*, 25 November 2023, <https://mg.co.za/the-green-guardian/2023-11-25-sa-must-end-slapp-suits-says-environmental-lawyer/>; Business & Human Rights Resource Center, *SLAPPs in Latin America: Strategic Lawsuits Against Public Participation in the Context of Business and Human Rights* (London, UK: Business and Human Rights Resource Center, 2022), <https://www.business-humanrights.org/en/from-us/briefings/slapps-in-latin-america/>.

In order to tackle the challenges mentioned above, and advance prevention in the context of EHRD's rights, this chapter builds on the Defend-Biosphere Framework.<sup>73</sup> The term "biosphere defenders" is understood to mean "individuals, groups and organizations who play a role in advancing pathways for just sustainability including by using the law to enact positive change for people and nature."<sup>74</sup> Importantly, this framework goes beyond the traditional silos of climate, biodiversity, and water/ocean defenders, bringing together various strategies that EHRDs have in their toolbox to drive positive change. This inclusive approach allows for a **holistic perspective on environmental law and governance**, merging insights from across fields of environmental work, aiming to unite efforts and create a more comprehensive understanding of the challenges and solutions to recognizing and supporting the work of EHRDs. For the purpose of this report, we refer to EHRDs while considering a broad interpretation of EHRDs/biosphere defenders. Through legal interpretation and conceptual and thematic analysis of literature, this chapter **tailors and expands the Defend-Biosphere Framework so it can be used as a policy-support tool to advance the prevention of mass human rights violations perpetrated on EHRDs.**<sup>75</sup>

## THE RIGHTS OF ENVIRONMENTAL HUMAN RIGHTS DEFENDERS AND STATE OBLIGATIONS

**Human rights law is not merely designed as a redress mechanism or means of reaction, *ex post*, to human rights violations, but importantly, as protective measures to avoid *ex ante* human rights harms.**<sup>76</sup> Like other human rights, state obligations towards EHRDs encompass obligations to respect, protect, and fulfill human rights. The fulfillment obligation assumes particular significance in dismantling structural impediments obstructing the realization of human rights, thereby catalyzing a virtuous spiral in which EHRDs can conduct their work effectively while contributing to sustainability and justice.

Among the relevant instruments that apply in the context of EHRD rights are the right to life and the right to freedom of opinion and expression, under the International Covenant on Civil and Political Rights (ICCPR),<sup>77</sup> alongside rights under the International Covenant on Economic, Social, and Cultural Rights (ICESCR).<sup>78</sup> As highlighted by the Office of the United Nations High Commissioner for Human Rights (OHCHR), "[w]hen closely scrutinized, **categories of rights such as "civil and political rights" or "economic, social and cultural rights" make little sense and hence it is increasingly common to**

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<sup>73</sup> Ituarte-Lima, Nardi, and Varumo, "Just Pathways to Sustainability."

<sup>74</sup> Coined by the lead author of this Chapter in Ituarte-Lima, "Biosphere Defenders Leveraging the Human Right to Healthy Environment for Transformative Change," and further developed in Ituarte-Lima, Nardi, and Varumo, "Just Pathways to Sustainability," 352.

<sup>75</sup> The concept of biosphere defenders, the Defend-Biosphere Framework, and the need to shift the narrative is further elaborated in three articles: Ituarte-Lima, "Biosphere Defenders Leveraging the Human Right to Healthy Environment for Transformative Change"; Ituarte-Lima, Nardi, and Varumo, "Just Pathways to Sustainability"; and in Claudia Ituarte-Lima, et al., "Discussion Paper: Biosphere Defenders in Latin America and the Caribbean," *Raoul Wallenberg Institute on Human Rights and Humanitarian Law & Global Network on Human Rights and Environment* (2024), <https://rwi.lu.se/publications/discussion-paper-on-biosphere-defenders-in-latin-america-and-the-caribbean/>.

<sup>76</sup> See de Greiff, *A Framework Approach to Making Prevention a Reality*.

<sup>77</sup> International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S., 171 [hereinafter ICCPR].

<sup>78</sup> International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S., 3 [hereinafter ICESCR].

**refer to civil, cultural, economic, political, and social rights.**<sup>79</sup> For instance, education on climate, biodiversity, and pollution enables individuals and groups to participate in political activities and exercise their freedom of expression and opinion, in order to advance the prevention of biodiversity loss and ecosystem degradation in an informed manner. States, as the main duty-bearers of human rights, are obligated to safeguard ecosystems and biodiversity. This duty arises from the vital role played by biodiversity in providing ecosystem services that are key for the full realization of a broad spectrum of human rights, encompassing the rights to life, health, food, water, and culture.<sup>80</sup>

### Explicit Recognition of the Rights of EHRDs: The Escazú Agreement

**The Escazú Agreement is the only plurilateral treaty that explicitly recognizes the rights of human rights defenders in environmental matters.** Article 9 of the agreement specifies the obligations of states regarding EHRDs directly, including a broad understanding of the full range of their rights, and a requirement to adopt the most favorable interpretation to promote the rights of environmental defenders.<sup>81</sup> This article also goes beyond civil and political rights, mandating that “[E]ach Party shall take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters.”<sup>82</sup>

At the April 2024 Escazú Agreement Conference of the Parties, the parties adopted a regional action plan focused on EHRDs in Latin America and the Caribbean, to advance the implementation of Article 9.<sup>83</sup> This plan is structured around four interrelated and complementary priority areas: knowledge creation, recognition, capacity-building, and cooperation with national implementation obligations. In order to meet the action plan’s goal of implementation over the next six years, the parties created dedicated spaces for public participation and committed to taking action at all national and sub-national levels.<sup>84</sup> Importantly, the action plan also includes evaluation, follow-up, and review procedures, as well as a voluntary fund to support implementation.

<sup>79</sup> United Nations Office of the United Nations High Commissioner for Human Rights (OHCHR), “Key Concepts on ESCRs - Are Economic, Social and Cultural Rights Fundamentally Different From Civil and Political Rights?” (Geneva, Switzerland: UN OHCHR), ¶ 3, <https://www.ohchr.org/en/human-rights/economic-social-cultural-rights/escr-vs-civil-political-rights>.

<sup>80</sup> UN OHCHR, “Key Concepts on ESCRs.”

<sup>81</sup> Escazú Agreement, art. 4.7, 9.

<sup>82</sup> Escazú Agreement, art. 9.2.

<sup>83</sup> United Nations Economic Commission for Latin America and the Caribbean (ECLAC), Third Meeting of the Conference of the Parties, 22–24 April 2024, <https://acuerdodeescazu.cepal.org/cop3/en>.

<sup>84</sup> United Nations Economic Commission for Latin America and the Caribbean (ECLAC), Report of the First Annual Forum on Human Rights Defenders in Environmental Matters in Latin America and the Caribbean, LC/TS.2023/38, 22–23 November 2022, <https://acuerdodeescazu.cepal.org/cop2/en/documents/report-first-annual-forum-human-rights-defenders-environmental-matters-latin-america-and>; United Nations Economic Commission for Latin America and the Caribbean (ECLAC), Report of the Second Annual Forum on Human Rights Defenders in Environmental Matters in Latin America and the Caribbean, LC/TS.2024/22, 26–28 September 2023, <https://repositorio.cepal.org/server/api/core/bitstreams/bfc3aef5-778c-40ba-bcd3-7be8173adb86/content>.

## INTERSECTIONALITY OF ENVIRONMENTAL HUMAN RIGHTS DEFENDERS AND HEIGHTENED STATE HUMAN RIGHTS OBLIGATIONS

States have heightened obligations toward certain groups of EHRDs.<sup>85</sup> The human rights risks and needs of EHRDs are varied and context-related. As noted above, these risks are multiplied by their intersections with other identities, creating additional vulnerabilities.<sup>86</sup> Yet, these intersectional identities also bring unique knowledge, life experience, and agency, which should figure in the rationale, design, and implementation of policies for the realization of the rights that these individuals and communities receive. We can see this in the following examples.

**Women and Girls:** Climate change amplifies existing gender inequalities and creates new threats to women’s livelihoods, health, and safety.<sup>87</sup> UN Women has estimated that women are 14 times more likely than men to die during a climate change-induced disaster.<sup>88</sup> Women EHRDs, in particular, often operate in situations of high risk. In 2023, 16 percent of the total number of lethal attacks against EHRDs were against women.<sup>89</sup> While this figure may seem low, women’s exposure to risk also intersects with their roles as caretakers. Additionally, women EHRDs are subjected to other violations at a heightened rate, including harassment, intimidation, sexual violence, defamation, threats to their families, and forced displacement. While men EHRDs are, of course, also subjected to these risks, women EHRDs “face attacks on two fronts—as well as being targeted for their activism, they also face gender-specific rights violations.”<sup>90</sup> These violations can come externally from state and corporate actors, and internally in the home as domestic violence and familial alienation due to their environmental work.<sup>91</sup>

**The human rights risks and needs of EHRDs are varied and context-related. Yet, these intersectional identities also bring unique knowledge, life experience, and agency, which should figure both in the rationale for and in the design and implementation of policies for the realization of the rights that these individuals and communities receive.**

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<sup>85</sup> See more in Ituarte-Lima, “Biosphere Defenders Leveraging the Human Right to Healthy Environment for Transformative Change”; Ituarte-Lima, Nardi, and Varumo, “Just Pathways to Sustainability.”

<sup>86</sup> S. Nazrul Islam and John Winkel, “Climate Change and Social Inequality,” *DESA Working Paper*, no. 152 (October 2017): 17, [https://www.un.org/esa/desa/papers/2017/wp152\\_2017.pdf](https://www.un.org/esa/desa/papers/2017/wp152_2017.pdf).

<sup>87</sup> “Explainer: How Gender Inequality and Climate Change are Interconnected,” United Nations Women, 28 February 2022, <https://www.unwomen.org/en/news-stories/explainer/2022/02/explainer-how-gender-inequality-and-climate-change-are-interconnected>.

<sup>88</sup> “SDG 13: Take Urgent Action to Combat Climate Change and its Impacts,” United Nations Women, (2018), <https://www.unwomen.org/en/news/in-focus/women-and-the-sdgs/sdg-13-climate-action>.

<sup>89</sup> Front Line Defenders, *Global Analysis 2023/24*, 9.

<sup>90</sup> Global Witness, *Standing Firm*, 11.

<sup>91</sup> Geoffrey Ondieki, Disha Shetty, and Aie Balagtas, “Climate Change Puts More Women at Risk for Domestic Violence,” *The Washington Post*, 3 January 2023, <https://www.washingtonpost.com/climate-environment/2023/01/03/domestic-violence-climate-change-umoja/>.

In 2013, the UN General Assembly adopted a resolution on “protecting women human rights defenders,”<sup>92</sup> which further specifies state obligations towards women human rights defenders under the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>93</sup> In particular, the General Assembly urges states to “promote gender equality, empower women and promote their autonomy and to promote and protect their equal participation, full involvement and leadership in society,” while developing effective measures oriented towards their protection.<sup>94</sup> Moreover, the General Assembly emphasized the need for participation, as women encompass the “independence and expertise with regard to their own needs.”<sup>95</sup>

### Leydy Pech – Mayan Beekeeper and Environmental Defender

Leydy Pech, an Indigenous Mayan beekeeper based in Mexico, successfully led a coalition that prevented agricultural company Monsanto from planting genetically modified soybeans in southern Mexico. In 2012, Pech brought together beekeepers, academics, and lawyers to support the safeguarding of their ancestral sustainable practice of beekeeping and also the health of local people by being affected by the glyphosate herbicide used in genetically modified soy cultivation. In June of that year, a coalition led by Pech filed a lawsuit against the Mexican government arguing that neither the government nor Monsanto had consulted indigenous communities before approving the permits for planting genetically modified soy.

In 2015, Mexico’s Supreme Court unanimously ruled that the **government must consult Indigenous communities** before planting genetically modified soybeans, canceled Monsanto’s permits, and prohibited the planting of genetically modified soybeans in two Southern Mexican states that are rich in biodiversity.<sup>96</sup> The case has resulted in a **historic precedent** and has been adopted by other Indigenous movements seeking to preserve Indigenous rights and land management. While Pech faced significant discrimination as a woman leading this action, she persisted and ultimately succeeded in the efforts of her coalition. Pech has called on “all governments and world leaders to rethink more comprehensive development models that respect and recognize human rights, autonomy, self-determination of Indigenous people and ancestral heritage.”<sup>97</sup>

<sup>92</sup> United Nations General Assembly, Resolution 68/181, Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: Protecting Women Human Rights Defenders [on the report of the Third Committee (A/68/456/Add.2)], A/68/181 (18 December 2013), <https://digitallibrary.un.org/record/764453?ln=en&v=pdf> [hereinafter Resolution 68/181].

<sup>93</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art. 14, ¶ f., Dec. 18, 1979, 1249 U.N.T.S., <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm> [hereinafter CEDAW].

<sup>94</sup> Resolution 68/181, ¶ 14.

<sup>95</sup> Resolution 68/181, ¶ 14.

<sup>96</sup> Rachel Stenson, “Leydy Pech: the Mayan Beekeeper who Took on a Corporate Giant,” *Latin America Bureau*, 30 November 2023, <https://lab.org.uk/leydy-pech-the-mayan-beekeeper-who-took-on-a-corporate-giant/>.

<sup>97</sup> The following case study was outlined in Ituarte-Lima, “Biosphere Defenders Leveraging the Human Right to Healthy Environment for Transformative Change.” See also “Leydy Pech,” The Goldman Environmental Prize, accessed 3 June 2024, <https://www.goldmanprize.org/recipient/leydy-pech/#recipient-bio>.

**Indigenous Peoples and local communities:** Indigenous Peoples and local communities are at the heart of local, regional, national, and international struggles for rights related to the environment due to their deep and enduring connections to land and the natural environment. As a result, Indigenous people and local communities play a critical role in advocating for sustainable practices, human rights, earth rights, and preserving biodiversity and ecosystems.<sup>98</sup> **Environment stewardship also means protecting Indigenous EHRDs in their struggles to safeguard the environment.**

Due to their unique position, **Indigenous people are over-represented as EHRDs compared to their percentage of the global population and face increased risks to their safety while they do this work.** In 2022 alone, more than a third of EHRDs murdered for their work were Indigenous people.<sup>99</sup> In 2021, Indigenous defenders were victims of more than 41 percent of the fatal attacks documented against EHRDs.<sup>100</sup> Additionally, as with EHRDs generally, Indigenous EHRDs are **often presented as anti-development**, which further amplifies the risks they face.<sup>101</sup> As noted above, attacks against Indigenous EHRDs often go unreported for fear of reprisal, or are not addressed by states within the context of the EHRDs' work.<sup>102</sup>

The heightened duties that states have toward Indigenous EHRDs have been clarified and expanded recently, both by John Knox, the former Special Rapporteur on Human Rights and the Environment,<sup>103</sup> and the Human Rights Council (HRC), which recently stressed "the need to pay particular attention to the rights and needs of Indigenous women, children, young persons, older persons, persons with disabilities and persons in vulnerable situations, and to intensify efforts to prevent and eliminate all forms of violence and discrimination in this regard, as set out in the United Nations Declaration on the Rights of Indigenous Peoples."<sup>104</sup>

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<sup>98</sup> Watene and Acosta, "Indigenous Environmental Defenders are Critical for Nature and for Science."

<sup>99</sup> Global Witness, *Standing Firm*, 11.

<sup>100</sup> Amitay, "How the UN Biodiversity Conference Impacts Indigenous Communities"; Global Witness, "Decade of Defiance," updated 10 May 2023, <https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/>.

<sup>101</sup> Permanent Forum on Indigenous Issues, "Indigenous Human Rights Defenders."

<sup>102</sup> Watene and Acosta, "Indigenous Environmental Defenders are Critical for Nature and for Science."

<sup>103</sup> United Nations Special Rapporteur on Human Rights and the Environment, John Knox, "Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment," A/HRC/34/49, 19 January 2017, [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/34/49](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/49).

<sup>104</sup> The drafting of this section was assisted by a presentation given by Alberto Saldamando as part of the workstream's workshop in November 2023; see United Nations Human Rights Council, Report of the Independent Investigative Mechanism for Myanmar, A/HRC/54/L.19 (9 October 2023), <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F54%2F19&Language=E&DeviceType=Desktop&LangRequested=False>; United Nations General Assembly, Outcome Document of the High-Level Plenary Meeting of the General Assembly Known as the World Conference on Indigenous Peoples Resolution 69/2 (22 September 2014), <https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F69%2F2&Language=E&DeviceType=Desktop&LangRequested=False>; see also United Nations General Assembly, Declaration on the Rights of Indigenous Peoples, Resolution 61/295, A/RES/61/295 (2 October 2007), <https://www.refworld.org/legal/resolution/unga/2007/en/49353> [hereinafter UN Declaration on the Rights of Indigenous Peoples].

## Indigenous Peoples and Afrodescendant's Stewardship and Participation in Brazil

From 2019 to 2022, governmental environmental policy weakened in Brazil, increasing deforestation and illegal mining in the Amazon.<sup>105</sup> EHRDs in Brazil continue to advocate for land rights and territorial demarcation so that they have the legal means to prevent harm to the Amazonian rainforest rich in biological and cultural diversity. The end of 2022 saw a newly elected government in Brazil and marked the beginning of a period of change for strengthening environmental regulations.

Two prominent EHRDs—Marina Silva, who is Afrodescendant, and Sônia Guajajara, who is part of the Tenetehara-Guajajara indigenous population—were respectively named as ministers of environment and Indigenous Peoples in Brazil's new government. Following the election, and in the backdrop of the murders of environmental defenders in the Amazon, Silva explained that the new government would build “a new democratic ecosystem,” prioritizing conservation and sustainability. Over the government's first term, it achieved an 83 percent reduction in deforestation, and the prevention of 5 billion tons of CO2 emissions, in alignment with its goal of net zero deforestation by 2030.<sup>106</sup>

While there are still many challenges afflicting the Brazilian Amazon,<sup>107</sup> **defenders in Brazil are perseverant in the stewardship of the Amazon which is not only critical for the country but the world as a whole.**

<sup>105</sup> “Crisis in the Brazilian Amazon,” *Human Rights Watch*, 19 April 2022, <https://www.hrw.org/news/2022/04/19/crisis-brazilian-amazon>.

<sup>106</sup> Jill Langolis, “Marina Silva on Brazil's Fight to Turn the Tide on Deforestation,” *Yale Environment 360*, 18 April 2024, <https://e360.yale.edu/features/marina-silva-interview>.

<sup>107</sup> “Human Rights Defenders in Brazil Disappointed by Lula and Mary Lawlor Agrees With Them,” *Human Rights Defenders Blog*, 24 April 2024, <https://humanrightsdefenders.blog/2024/04/24/human-rights-defenders-in-brazil-disappointed-by-lula-and-mary-lawlor-agrees-with-them/>.

**Youth and Future Generations:** The temporal scope of the climate crisis cuts across generations—past, present, and future. So too does the work of EHRDs, which may only be realized in the future, affecting today’s youth as well as future generations. Human rights are particularly important in the context of this group of EHRDs, as a mechanism that does not have a temporal limitation and allows for the introduction of principles of sustainable development and intergenerational equity into the discussion.<sup>108</sup>

This connection between the protection of EHRDs and the protection of the rights of future generations was reflected in the fifth thematic area of the 2020 United Nations Secretary-General’s Call to Action on Human Rights which focused on the Rights of Future Generations, calling on all stakeholders to develop system-wide protection for EHRDs.<sup>109</sup> General Comment 26 of the Convention on the Rights of the Child also provided guidance on state policy relating to EHRDs, in light of the right of the child to a healthy environment.<sup>110</sup> This included the important role of children as agents of change and intergenerational contributions, acknowledging that **“child environmental human rights defenders, as agents of change, have made historic contributions to human rights and environmental protection. Their status should be recognized, “and their demand for urgent measures to tackle global environmental harm should be realized.”**<sup>111</sup>

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<sup>108</sup> The recognition of the rights of future generations is elaborated on, for example, in the New Delhi Declaration of Principles of International Law relating to Sustainable Development, adopted at the 70th Conference of the International Law Association, held in New Delhi, India, 2–6 April 2002, Resolution 3/2002, Principle 2, [https://www.ilahq.org/en\\_GB/documents/confer-enceresolution-english-new-delhi-2002-3](https://www.ilahq.org/en_GB/documents/confer-enceresolution-english-new-delhi-2002-3), stating that “the principle of equity is central to the attainment of sustainable development. It refers to both inter-generational equity (the right of future generations to enjoy a fair level of common patrimony) and intra-generational equity (the right of all peoples within the current generation to fair access to the current generation’s entitlement to the Earth’s natural resources).” See also Claudia Ituarte-Lima, et al., “Discussion Paper: Biosphere Defenders in Latin America and the Caribbean.”

<sup>109</sup> United Nations Secretary-General, *The Highest Aspiration: A Call to Action for Human Rights*, 2020, [https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The\\_Highest\\_Aspiration\\_A\\_Call\\_To\\_Action\\_For\\_Human\\_Right\\_English.pdf](https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The_Highest_Aspiration_A_Call_To_Action_For_Human_Right_English.pdf).

<sup>110</sup> See United Nations Committee on the Rights of the Child, General Comment no. 26, CRC/C/GC/26, 22 August 2023, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/crcgc26-general-comment-no-26-2023-childrens-rights> [hereinafter General Comments 26].

<sup>111</sup> General Comment 26, ¶ 4; See also Article 7 of the Maastricht Principles on the Human Rights of Future Generations, which stipulates that “[S]tates must address and remedy intragenerational human rights violations – that is violations affecting members of present generations – in order to both realize the human rights of present generations and to avoid transmitting these violations to future generations.” Maastricht Principles on the Human Rights of Future Generations (2023), Principle 7, <https://www.rightsoffuturegenerations.org/the-principles>; The Hague Principles for a Universal Declaration on Responsibilities for Human Rights and Earth Trusteeship (2018), Principle 2, <https://www.earthtrusteeship.world/the-hague-principlesfor-a-universal-declaration-on-human-responsibilities-and-earth-trusteeship/>, which explains that “human rights are grounded in our membership within the community of life, the Earth community, which qualifies what rights we are called to honor and what responsibilities we have for each other and for nature.”



## Pacific Islands Students Fighting Climate Change – ICJ Advisory Opinion

Pacific Island Students Fighting Climate Change (PISFCC) is a youth-led organization, with members in all Pacific Island countries, and four chapters based in the Solomon Islands, Fiji, Vanuatu, and Tonga.<sup>112</sup> The group traces its climate advocacy to 2019 when a transnational contingent of law students across the University of the South Pacific’s campuses joined together to persuade the Pacific Island Forum to bring climate change and human rights issues to the International Court of Justice (ICJ).<sup>113</sup> Since this time, the PISFCC has advocated for the ICJ to produce an advisory opinion and has implemented education and advocacy amongst youth populations in the Pacific Islands.<sup>114</sup> Four years of advocacy by the PISFCC culminated in March 2023 when the UN General Assembly adopted Resolution 77/276 by consensus, requesting an advisory opinion from the ICJ.<sup>115</sup>

The advisory opinion is anticipated to address the **obligations and legal consequences of states with respect to their greenhouse gas-emitting acts and omissions to the detriment of island states**.<sup>116</sup> According to the PISFCC, the advisory opinion will “serve as a legal catalyst for action while clarifying international law on the subject.”<sup>117</sup> In preparation for the ICJ climate advisory proceedings, the PISFCC, in collaboration with ‘World’s Youth for Climate Justice’ and academics has developed a Handbook that includes a summary for policy makers, a legal memorandum responding to Resolution 77/276, and a status report on the relevant international and human rights law principles.<sup>118</sup> Although advisory opinions do not form a binding precedent under international law, the “legal weight and moral authority” that such a document will carry significant weight and, as alluded to by scholar Philip Sands, **can act as an “instrument of preventive diplomacy and help to keep the peace.”**<sup>119</sup>

<sup>112</sup> “Who We Are,” Pacific Islands Students Fighting Climate Change, accessed 29 May 2024, <https://www.pisfcc.org/who-we-are>.

<sup>113</sup> Pacific Islands Students Fighting Climate Change, “Who We Are.”

<sup>114</sup> Pacific Islands Students Fighting Climate Change, “Who We Are.”

<sup>115</sup> Pacific Islands Students Fighting Climate Change (PISFCC), *Youth Climate Justice Handbook: Summary for Policymakers* (Honaira, Solomon Islands: PISFCC, 2023), 4, <https://www.pisfcc.org/handbook>.

<sup>116</sup> Pacific Islands Students Fighting Climate Change, *Youth Climate Justice Handbook*.

<sup>117</sup> “To The International Court of Justice,” Pacific Islands Students Fighting Climate Change, accessed 29 May 2024, <https://www.pisfcc.org/icjao-1>.

<sup>118</sup> Pacific Islands Students Fighting Climate Change, *Youth Climate Justice Handbook*, 5.

<sup>119</sup> Pacific Islands Students Fighting Climate Change, “To The International Court of Justice.”

## Oposa v. Factoran – State Guardianship Over Future Generations

In the 1993 case of *Oposa v. Factoran*, child petitioners, through their parents, brought their case to the Supreme Court of the Philippines in response to the decision of the Department of Environment and Natural Resources (DENR) granting commercial logging licenses to extract timber from over 3.89 million hectares of forest.<sup>120</sup> The case was brought under Sections 15 and 16 of Article II of the 1987 Constitution of the Philippines which guarantees the right to a healthy environment. And, in **recognizing the legal personality of the petitioners to sue on behalf of succeeding generations, the court prevented further licenses from being issued.**<sup>121</sup>

The Court’s decision was based on two principles. The first, recognizing the state’s constitutional responsibility as *parens patriae*—parent of the nation—to ensure a “balanced and healthful ecology” under the right to health, for persons who are unable to care for themselves, which includes children.<sup>122</sup> Second, the principle of intergenerational responsibility—establishing the **responsibility to maintain a healthy environment for future generations** while empowering children to make demands concerning environmental justice and their constitutional rights.<sup>123</sup>

## CONCLUDING REMARKS: TOWARD A PREVENTIVE UNDERSTANDING OF THE RIGHTS OF ENVIRONMENTAL HUMAN RIGHTS DEFENDERS

### The Need for a Systemic Interpretation

**States have obligations to respect, protect, and fulfill the rights of EHRDs** which are derived from obligations specified in international human rights law, international environmental law, and regional instruments to which the respective states are parties. **While urgency often drives attention toward redress for violations against EHRDs, it is equally crucial to emphasize the prevention of such violations.** A focus solely on emergency situations faced by EHRDs, namely the public manifestation of physical threat, makes it less likely that attention will be paid to the more systematic and long-term action needed to prevent mass violations against EHRDs. As argued in this Project’s Framework Report,

<sup>120</sup> Claudia Ituarte-Lima, et al., *Prosperous and Green in the Anthropocene: The Human Right to a Healthy Environment in South-east Asia* (Lund, Sweden: Raoul Wallenberg Institute of Human Rights and Humanitarian Law, 2020), 62, <https://rwi.lu.se/wp-content/uploads/2020/11/Prosperous-and-green-in-the-Anthropocene-Report-index.pdf>.

<sup>121</sup> Ituarte-Lima, et al., *Prosperous and Green in the Anthropocene*, 62.

<sup>122</sup> Ituarte-Lima, et al., *Prosperous and Green in the Anthropocene*, 39.

<sup>123</sup> Ituarte-Lima, et al., *Prosperous and Green in the Anthropocene*, 62.

**attention to these systemic issues is needed to give prevention a fair chance.**<sup>124</sup> This preventive approach mitigates the risk of perpetuating a cycle of violence, fostering instead a cycle of sustainability and solidarity. **A comprehensive interpretation of defenders' rights, encompassing the full spectrum of human rights, is essential for states to fulfill their obligations.** This holistic perspective underscores the critical role that defenders play in advocating for sustainable solutions, thereby enhancing the visibility and importance of their contributions. Consequently, the interpretation of EHRD's rights should focus not only on civil and political rights and freedoms, or only on economic, social, and cultural rights but rather **view the human rights of EHRDs as belonging to a family of norms that 'travel together' alongside a network of institutions, together leading to a more effective preventive tool.**<sup>125</sup>

A crucial entry point for shifting from a focus on crisis situations to a focus on systemic preventive action is to **interpret the rights of EHRDs through the lens of the interdependence and indivisibility of human rights as a whole.** This approach can catalyze collaborative action among the network of authorities responsible for ensuring the realization of the full spectrum of EHRDs' rights. By doing so, prevention can become a powerful strategy for fostering the active engagement of defenders in political activities, empowering them to contribute significantly to the stewardship of biodiversity and ecosystems, and advancing a human rights-based economy. While this report cannot go into the breadth of EHRD's recognized rights under international human rights law, many of which are discussed above, two rights warrant specific mention: **freedom of expression and opinion and the right to public participation.** These rights are, first, interconnected, and present a strong tool for EHRDs given their individual and collective dimensions. As stated by OHCHR, "[P]articipation rights are inseparably linked to other human rights such as the rights to peaceful assembly and association, freedom of opinion and expression and the rights to education and to information."<sup>126</sup>

**EHRD's right to freedom of expression and opinion includes the right to access information held by state institutions and businesses but goes well beyond that.** It encompasses the broader "right of voice," facilitating the exchange of views and data that, in turn, enables informed participation in legal and policy processes. The current United Nations Special Rapporteur on Freedom of Expression and Opinion, Irene Khan, urged a reevaluation of sustainable development through the lens of freedom of expression, arguing that the commitment to leave no one behind can only be fulfilled when access to information and the voices of EHRDs, women, youth, and other marginalized groups are not merely acknowledged but actively heard, empowering these communities to participate effectively.<sup>127</sup>

Being actively heard inherently calls for access to information, which in turn allows for genuine participation in public policy and decision-making. In order for EHRDs to be able to challenge state or private action in which environmental human rights have not been upheld, they must have a real seat at the table in the making of laws, regulations, guidelines governing development activities, and the ability to challenge

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<sup>124</sup> See de Greiff, *A Framework Approach to Making Prevention a Reality*.

<sup>125</sup> See Prevention Project, *Making Constitutional Promises Credible*.

<sup>126</sup> See United Nations Office of the High Commissioner for Human Rights (OHCHR), OHCHR and Equal Participation in Political and Public Affairs: About Participations, accessed 11 June 2024, <https://www.ohchr.org/en/equal-participation#:~:text=Participation%20rights%20are%20inseparably%20linked,political%20and%20public%20participation%20exist>.

<sup>127</sup> United Nations General Assembly, *Sustainable Development and Freedom of Expression: Why Voice Matters –Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, A/HRC/53/25* (19 April 2023), [undocs.org/en/A/HRC/53/25](https://undocs.org/en/A/HRC/53/25).

## Being actively heard inherently calls for access to information, which in turn allows for genuine participation in public policy and decision-making.

those legal and policy instruments that lack public participation.

As mentioned above in a number of examples, EHRDs take on a central role in mobilizing on behalf of policies and laws to protect nature and the interests of children and future generations. Legal instruments must also be used to enshrine the protection of EHRDs. **Environmental legislation recognizing the rights of EHRDs and corresponding obligations**

**of duty-bearers is relevant for advancing not only access to justice in particular cases but also in shifting the narrative towards recognizing the public interest value of EHRDs' work, and their impact on good governance outcomes.** For example, the Indonesian Environment Protection and Management Law No 32 of 2009 recognizes the right to a healthy environment and the corresponding obligations of duty-bearers, specifically of prosecutors, in protecting and fulfilling the rights of EHRDs from abusive SLAPP suits. Part One of the law details the right to "... be entitled to proper and healthy environment as part of human rights", as well as "environmental education, information access, participation access and justice access in fulfilling the right to proper and healthy environment."<sup>128</sup> Part Two enshrines a specific obligation to "preserve the environmental functions as well as control environmental pollution and/or damage."<sup>129</sup> Importantly, Part One states that "[e]verybody struggling for a right to proper and healthy environment may not be charged with criminal or civil offense."<sup>130</sup> Thus, the law allows and obligates the state to protect EHRDs from legal persecution.

### Necessary Paradigm Shifts

Clarifying the content of international obligations concerning the rights of EHRDs, through examining human rights and environmental relevant instruments is important and receives its due attention in this chapter. Yet, equally important is unpacking how to advance a prevention policy that catalyzes the work of EHRDs. Policy makers have a key role in changing—rather than reinforcing—a toxic narrative portraying defenders as “opponents of development”. A preventive approach to the rights of EHRDs can be used to change this narrative by recognizing EHRDs as defenders of public interests, agents for positive environmental policies, and therefore for positive governance outcomes overall.

This change requires decision-makers to recognize and promote values of responsibility and Earth stewardship which entails solidarity with EHRDs. EHRDs stress the need for significant changes in human-nature interactions rooted in the principles of stewardship, cultivating relationships focused on caring, protecting, and restoring nature. They highlight how non-material aspects of well-being—such as solidarity, recognition, trust, and care—can forge alliances across various social groups. The identity of EHRD is inherently intersectional, spanning indigeneity, gender, ethnicity, age, class, and disability, among others. This intersectionality not only introduces challenges through compounding risks but also

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<sup>128</sup> Indonesian Environment Protection and Management Law No. 32 of 2009, art. 65.

<sup>129</sup> Indonesian Environment Protection and Management Law No. 32 of 2009, art. 67.

<sup>130</sup> Indonesian Environment Protection and Management Law No. 32 of 2009, art. 66.

creates opportunities for generating powerful synergies among grassroots movements with diverse thematic expertise.<sup>131</sup>

Solidarity catalyzed by EHRDs involves interspecies solidarity, envisioning alternatives of a good life that are regenerative rather than destructive to the foundations of life on Earth. **Rather than “owning” the land, many EHRDs, including many of those advocating for the rights of nature, see themselves as belonging and being part of nature. EHRDs’ perspectives can help transition from development visions based on resource overexploitation to alternative visions of a good life,** such as “*buen vivir*”—a philosophy premised on certain Indigenous principles that envisions a world where humans are not separated but part of a larger natural environment and which embraces diverse and multiple knowledge, realities, and perspectives. While there are significant challenges in the implementation of this vision of the world shared by many others, it has the potential to help us rethink the relationship between natural dynamics, land and water governance, and worldviews.<sup>132</sup>

**A preventive focus invites policy makers to envision a collaborative future where EHRDs co-create knowledge and evidence-based solutions with other practitioners and scholars, transcending the limitations of current fragmented paradigms that often privilege short-term development with a focus on consumption rather than the long-term well-being of present and future generations of humans and other living beings. A preventive focus allows policy makers to better comply with their obligations to respect, protect, and fulfill the rights of EHRDs.**

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<sup>131</sup> See more on coupling vulnerability with agency and solidarity in Claudia Ituarte-Lima “International Lawmaking: Women Shaping Principles and Solidarity,” in *International Environmental Law in Perspective*, Jonas Ebbesson and David Langlet eds. (Cambridge, UK: Cambridge University Press, forthcoming).

<sup>132</sup> See Maria Fernanda Ordóñez, Kelly Shannon, and Viviana d’Auria, “The Materialization of the *Buen Vivir* and the Rights of Nature: Rhetoric and Realities of *Guayaquil Ecológico* Urban Regeneration Project,” *City Territory and Architecture* 9, no. 1 (2022), <https://doi.org/10.1186/s40410-021-00147-w>.

## RECOMMENDATIONS

- States should ensure that existing legislation regarding the rights of environmental human rights defenders is consistent with international standards, or develop such legislation where it is lacking. Specifically, states should identify and reform rules of civil, administrative, and criminal procedure that limit the ability of defenders to exercise their rights. This includes developing legislation that protects defenders against abuse of the law in judicial or quasi-judicial processes initiated by the state or by businesses for intimidation purposes.
- Measures for achieving justice in response to attacks on environmental human rights defenders must include accountability and actual consequences for individuals and entities that fail to support and protect these defenders, including measures to prevent the recurrence of violations. Practical policy measures would include immediately canceling or suspending state or private projects where defenders have been threatened and preventing further threats before allowing such projects to proceed.
- In order for these measures to be implemented effectively, rather than remain as mere text, states should ensure they are institutionalized and endowed with adequate human and financial resources. Addressing corruption within government and by corporate entities will also contribute to the effective implementation of preventive measures while enhancing accountability and the rule of law.
- States should provide and guarantee an enabling environment for environmental human rights defenders and their organizations. Policy must be contextualized to account for the intersectional identities of defenders. Noting, especially, the central role taken by women and Indigenous defenders, who face heightened risks for violations of human rights, but also their extensive knowledge and specialized wisdom.
- The most profound impacts of environmental human rights defenders' work extends across generations. Thus, states must interpret the rights of defenders through the lens of intergenerational equity. To achieve this, states must recognize the crucial role of defenders as agents of positive change for the rights of present and future generations to a healthy environment. This recognition should be reflected in legislation, policies, and comprehensive guidelines in order to foster an environment that empowers environmental human rights defenders.
- Decision-making processes related to environmental policies must involve environmental human rights defenders, potentially affected communities, Indigenous Peoples, Afrodescendants, and other rights holders. Participation and inclusion must be guaranteed in every stage of the decision-making process, in line with the heightened obligations of states toward particularly affected groups, and taking into account their rights and needs.
- Participation and inclusion must be meaningful and genuine. States can achieve this goal by creating platforms that facilitate the participation of particularly affected groups in a manner

that honors their specific characteristics and lived experiences, ensuring preventive and proactive open access to information and promoting local legal empowerment.

- Adopting a comprehensive policy focused on prevention calls for a holistic multi-pronged approach. States and environmental human rights defenders can benefit from using a variety of policy measures and activism tools, as well as engagement with a broad range of duty-bearers and right-holders, to catalyze the highest level of protection and fulfillment of human rights.
- Human rights defenders are often underfunded and under-supported in their work. Funding defenders directly to support their initiatives, including through legal empowerment, and technical support for “learning by doing”, peer-to-peer, regional, and cross-regional learning, is crucial. In order to fulfill human rights obligations and prevent violations, states and donors should make international aid and investment in projects conditional on the respect of defenders’ rights.



# Chapter III

## A Prevention Approach to a *Just* Transition\*

**T**he need to transition from a fossil-fuel-based economy to a “green” economy is an undeniable and pressing imperative. Scientific and political authorities have made that case compellingly before, and we need not reiterate it here other than to note the urgency of the need for such a transition. In addition to the shift in energy resources, a “green” economy will involve other crucial changes, including in agricultural practices that involve deforestation, consumption, away from highly polluting plastics, and generally methods of production that require the use of “forever chemicals” and other hazardous materials. The point of this chapter is to **offer some considerations about what a debate on the *just* transition, which is usually conducted in economic or technical terms, stands to gain by introducing a preventive approach that takes human rights seriously.**

It is a fact that globally, economic systems, including entire modes of production, have been organized around highly polluting fossil fuels. While the increasing availability and lessening costs of less polluting energy resources weaken the (apparently) dilemmatic choice between protecting the environment or spurring economic growth, it would be naive to think that a transition of this nature and scale would not impose undue burdens on particular groups.

Indeed, this general statement should be disaggregated, for if the question is about designing *just* transitions to a “green” economy, there are plenty of additional questions relating to *justice* that such a transition generates. The remainder of this chapter will offer some ideas on the **contributions of a preventive understanding of human rights to three essential questions:**

- a. **How to distribute the benefits and losses incurred through the transition;**
- b. **How to protect the human rights of those affected by the transition; and**
- c. **How to protect the human rights of those involved in the production of components essential to the “green” transition.**

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\* The drafting of this chapter was greatly assisted by written inputs by Claudia Ituarte-Lima, Franz Baumann, and Pablo de Greiff, as well as presentations given by them as part of the workstream’s November 2023 workshop.



Fundamentally, a transition that does not prioritize respect for human rights will not only exacerbate the scale of human rights violations and abuses, but will also likely lead to a) poor environmental outcomes, and b) the sort of social and political dislocation—including population flows, inequality, and ultimately conflict, both internal and external—that hampers environmental causes. The aim then, should not be just to complete a transition to a “green” economy, but to do so *justly*, and thus prevent further mass violations of human rights. Inevitably, a *just* transition is one that must fulfil human rights obligations and global justice requirements.

**Inevitably, a *just* transition is one that must fulfil human rights obligations and global justice requirements.**

**Following one of the overarching themes of this report, this chapter discusses how human rights, as problem-solving, anti-grievance mechanisms, can serve as a tool for prevention in the context of a *just* transition.<sup>133</sup>**

## EQUITABLY DISTRIBUTING THE COSTS AND BENEFITS OF THE TRANSITION

At the most general level, a crucial question that a *just* transition to a cleaner economy will have to answer is **how to equitably distribute the costs of the shift to new modes of production**. While a good part of the discussion about the “green” economy has focused on decarbonization, we should remember that a cleaner economy also involves changes in agriculture so as to avoid, for example, deforestation, protect biodiversity, and limit plastic pollution. All of this involves costs of enormous proportions.<sup>134</sup> Moreover, countries are both unequally equipped to carry these costs and unequally responsible for causing the problems that we now need so urgently to resolve. Historically, wealthy countries in the Global North are responsible for the overwhelming majority of emissions, a result of the carbon-intensive

<sup>133</sup> See de Greiff, *A Framework Approach to Making Prevention a Reality*; in the specific context of the just transition, see Sébastien Jodoin, Annalisa Savaresi, and Margaretha Wewerinke-Singh, “Rights-Based Approaches to Climate Decision-Making,” *Current Opinion in Environmental Sustainability* 52 (2021): 45-53, <https://www.sciencedirect.com/science/article/abs/pii/S1877343521000762>.

<sup>134</sup> For the sake of illustration, the United Nations Trade & Development agency (UNCTAD), states that the cost of the energy transition for developing economies would be about “\$5.8 trillion annually from 2023 to 2030 for the 48 developing economies studied, equal 19% of their GDP. Per person, the annual cost comes to \$1,271 to achieve goals like providing universal access to electricity and improving access to clean energy, including clean cooking solutions.” See UNCTAD, “The Costs of Achieving the SDGs: Energy Transition,” accessed 10 June 2024, <https://unctad.org/sdg-costing/energy-transition>; the transition of fossil-fuel workers in the USA alone is estimated to cost \$600 billion. See Michaël Aklin and Johannes Urpelainen, “Enable a Just Transition for American Fossil Fuel Workers Through Federal Action,” *Brookings Institution*, 2 August 2022, <https://www.brookings.edu/articles/enable-a-just-transition-for-american-fossil-fuel-workers-through-federal-action/#:~:text=One%20study%20by%20Robert%20Pollin,about%20%24600%20million%20per%20year>; see also Chandra Bhushan, *Just Transition Costs and Cost Factors: A Decomposition Study* (New Delhi, India: International Forum for Environment, Sustainability & Technology, 2023), <https://iforest.global/wp-content/uploads/2023/03/Just-Transition-Costs-and-Cost-Factors.pdf>.

industrialization and development practices that have made them wealthy. Moreover, this development came, to some degree, at the expense of less wealthy countries in the Global South—both in the past, as early industrializing countries exploited the resources and labor of less developed countries through colonization and extraction, and in subsequent decades up to the present, as the time-lagged effects of emissions on the global climate have taken a great environmental toll predominantly on countries in the Global South.<sup>135</sup> It is a global tragedy and injustice of almost inexpressible proportions that the countries least culpable for causing climate change and least endowed with the resources necessary to build up resilience to its effects are the ones most affected by climatic shifts and resulting environmental disturbances.

Even today, despite more recent reductions in emissions by some of the greatest historical emitters in the Global North, those in the Global South are generally responsible for only a fraction of the emissions of those for which those in the Global North are responsible, both in the aggregate and even more so on a per capita basis.<sup>136</sup> Understandably, countries in the Global South do not consider it fair to see the developmental pathways that enabled Northern countries, since the Industrial Revolution, to accumulate their present wealth (at huge environmental costs, as it turns out) now closed to them. This issue, then, involves not just a **synchronic** dimension (what to do at *present* about these unequal possibilities of carrying the burdens of a transition to cleaner economies), but also a **diachronic** one (what weight to assign to all the environmental damage done *in the past* by some more than others).<sup>137</sup> Furthermore,

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<sup>135</sup> The Intergovernmental Panel on Climate Change (IPCC) has determined that “across sectors and regions the most vulnerable people and systems are observed to be disproportionately affected” by increasing frequency and severity of extreme weather events caused by climate change: “Regions and people with considerable development constraints have high vulnerability to climatic hazards. Global hotspots of high human vulnerability are found particularly in West-, Central- and East Africa, South Asia, Central and South America, Small Island Developing States and the Arctic. Vulnerability is higher in locations with poverty, governance challenges and limited access to basic services and resources, violent conflict and high levels of climate-sensitive livelihoods ... Between 2010–2020, human mortality from floods, droughts and storms was 15 times higher in highly vulnerable regions, compared to regions with very low vulnerability. Vulnerability at different spatial levels is exacerbated by inequity and marginalization linked to gender, ethnicity, low income or combinations thereof, especially for many Indigenous Peoples and local communities. Present development challenges causing high vulnerability are influenced by historical and ongoing patterns of inequity such as colonialism, especially for many Indigenous Peoples and local communities.” IPCC, “2022: Summary for Policymakers,” in *Climate Change 2022: Impacts, Adaptation and Vulnerability* (Cambridge, UK: Contribution of Working Group II to the Sixth Assessment Report of the IPCC, 2022), 9-12.

<sup>136</sup> From 1850 to 2002, the USA was responsible for about 30 percent of the Carbon Dioxide added to the atmosphere, the EU 27 percent, China and Russia 8 percent each, Japan 4 percent, and India 2 percent. As a group, developed countries added about 76 percent of Carbon Dioxide, compared to about 24 percent added by developing countries. See Kevin A Baumert, Timothy Herzog, and Jonathan Pershing, “Navigating the Numbers: Greenhouse Gas Data and International Climate Policy,” *World Resources Institute* (2005), [http://pdf.wri.org/navigating\\_numbers.pdf](http://pdf.wri.org/navigating_numbers.pdf). Per citizen, “the top 1% of emitters globally each had carbon footprints of over 50 tonnes of CO<sub>2</sub> in 2021, more than 1,000 times greater than those of the bottom 1% of emitters.” See Laura Cozzi, Olivia Chen, and Hyeji Kim, “The World’s Top 1% of Emitters Produce Over 1000 Times More CO<sub>2</sub> Than the Bottom 1%,” *IEA Commentary*, 22 February 2023, [https://www.iea.org/commentaries/the-world-s-top-1-of-emitters-produce-over-1000-times-more-co2-than-the-bottom-1?utm\\_source=cbnewsletter&utm\\_medium=email&utm\\_term=2023-02-24&utm\\_campaign=This+week+China+s+giant+food+system+Heat+pump+savings+Creating+carbon+space](https://www.iea.org/commentaries/the-world-s-top-1-of-emitters-produce-over-1000-times-more-co2-than-the-bottom-1?utm_source=cbnewsletter&utm_medium=email&utm_term=2023-02-24&utm_campaign=This+week+China+s+giant+food+system+Heat+pump+savings+Creating+carbon+space); note also that within-country inequalities correlate with emissions by different socio-economic groups as well, of course; elites in Southern countries emit carbons at higher levels than their co-nationals in lower income brackets. See, e.g., Lucas Chancel, Philipp Bothe, and Tancredè Voiturez, *Climate Inequality Report 2023, Fair Taxes for a Sustainable Future in the Global South* (Paris, France: World Inequality Lab, 2023), 18-25, <https://wid.world/wp-content/uploads/2023/01/CBV2023-ClimateInequalityReport-3.pdf>.

<sup>137</sup> This problem is only compounded by the fact that in some cases historically high polluters were also colonizers who wreaked havoc with their colonies’ natural resources. For a useful analysis of the temporal dimensions of the challenges involved in environmental problem-solving, see Thomas Hale, *Long Problems: Climate Change and the Challenge of Governing Across Time* (Princeton, NJ: Princeton University Press, 2024).

the diachronic dimension also extends **intergenerationally**, since present generations control decision-making and benefit from delaying or taking minimal action to address the crisis, while future generations will bear the greatest costs.<sup>138</sup>

### Intergenerational Inequality Before the Courts

**Rikki Held, et al., V. State of Montana, et al.** (2023):<sup>139</sup> A landmark decision was brought on behalf of 16 youth plaintiffs, suing the State of Montana, the Governor, and state agencies over two statutes that allow state agencies not to consider the effects of fossil fuels and emissions in permitting-related decisions. This violates the Montana constitution which enshrines a state obligation to improve and maintain a clean and healthy environment for future generations. Practitioners argue that this decision is the first of its kind and will open doors in other US jurisdictions.<sup>140</sup>

**Duarte Agostinho and Others v. Portugal and 32 Other States** (2024):<sup>141</sup> 6 Portuguese youth filed a petition before the European Court of Human Rights, alleging that the named states violated their human rights by failing to take sufficient action in response to the climate crisis by placing them at risk which is expected to increase throughout their lives. Specifically, petitioners argued that state action put them at risk of violations of their right to life, right to privacy, and right to not experience discrimination. In April 2024, the Court denied the application on inadmissibility grounds, finding that petitioners did not exhaust domestic remedies in Portugal and lacked territorial jurisdiction in the other states. Interestingly, the Court notes that “domestic case-law demonstrated that environmental litigation was now a reality of the domestic legal system,” perhaps pointing petitioners toward domestic courts.

<sup>138</sup> Philosopher Stephen Gardiner has labeled the convergence of global, intergenerational, and theoretical ethical problems arising from climate change a “perfect moral storm,” creating a global tragedy of the commons predicated on a variety of factors making those actors equipped to take action “vulnerable to moral corruption.” See Stephen M. Gardiner, “A Perfect Moral Storm: Climate Change, Intergenerational Ethics and the Problem of Moral Corruption,” *Environmental Values* 15 (2006): 397–413, <https://www.jstor.org/stable/30302196>.

<sup>139</sup> “Rikki Held, et al., v. State of Montana, et al., Cause No. CDV-2020-307,” Climate Case Chart, accessed 12 December 2023, [https://climatecasechart.com/wp-content/uploads/case-documents/2023/20230814\\_docket-CDV-2020-307\\_order.pdf](https://climatecasechart.com/wp-content/uploads/case-documents/2023/20230814_docket-CDV-2020-307_order.pdf).

<sup>140</sup> “Historic Climate Trial: Held v. State of Montana, June 12-20, 2023,” Youth. Gov, accessed 12 December 2023, <https://www.youthgov.org/held-v-montana/#lists>.

<sup>141</sup> Cláudia Duarte Agostinho and Others v Portugal and 33 Other States, European Court of Human Rights, Request No. 39371/20, Decision (Grand Chamber) 9 April 2024, [https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2024/20240409\\_3937120\\_decision.pdf](https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2024/20240409_3937120_decision.pdf).

The *just* transition is one that “... implies that the burdens and benefits of this change and of renewable energy production and consumption are fairly distributed.”<sup>142</sup> Since the transition to a “green” economy does not begin with a clean slate, but rather in a context of enormous pre-existing global inequality, the question is how to distribute the costs of the transition equitably, protecting the environment without hampering developmental opportunities for those who need them most and who are least responsible for creating the problems that need to be addressed so urgently now. Failing to address this issue will predictably lead not only to undesirable environmental outcomes but to the sort of social dislocations and mass rights violations that an upstreamed preventive strategy should contribute to avoiding.

The multidimensional web of justice-related concerns related to the climate crisis has implications on how the global community manages mitigation and adaptation as integral—yet potentially competing—aspects of the transition to a cleaner economy. Both priorities are cost-intensive endeavors, although they affect differently positioned countries in different proportions. Given the existential need to limit warming, some may view mitigation as the overriding priority—leading to the potential conclusion that the most advanced economies should focus their resources on investing in their own internal economic transitions and corresponding emissions reductions. However, such an internal fixation would ignore the very real harms of the climate crisis that are already placing immense burdens on the countries with the greatest vulnerability—burdens that appear likely to only increase over time. (Not to mention that a mitigation-at-all-costs approach would seem to justify exploitative models of resource extraction, so long as they aid transitions in wealthy countries.) Succeeding at mitigation, while crucial, cannot on its own create a globally *just* transition; mitigation and adaptation must go hand in hand, enabling vulnerable

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<sup>142</sup> See Annalisa Savaresi and Joana Setzer, “Rights-Based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers,” *Journal of Human Rights and the Environment* 13, no. 1 (2022): 7–34, <https://doi.org/10.4337/jhre.2022.01.01>.

countries to repair damage and build up resilience to future harms in lockstep with broad-based efforts to shift away from fossil-fuel-based economies.

The twin aspirations of decarbonization and reparation for loss and damage have for some time been at the forefront of global climate negotiations in the context of the annual sessions of the Conference of the Parties to the UNFCCC. Going back to the framing of the UNFCCC in 1992, the states parties to the convention (198 countries) **articulated the concept of common but differentiated responsibilities and respective capabilities (CBDR-RC) as a guiding principle for decarbonization and related economic and energy transitions.**<sup>143</sup> The preamble to the convention “*not[es]* that the largest share of historical and current global emissions...has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs.”<sup>144</sup> On that basis, the text of Article III (Principles) proceeds to state that “[P]arties should protect the climate system...on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities...[and] accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof,” while “the specific needs and special circumstances of the developing country Parties...should be given full consideration.”<sup>145</sup>

This principle reflects both historical and current emissions trends, as well as relative sustainable development needs, in assigning differentiated decarbonization burdens among countries. However, CBDR-RC has never been fully operationalized in multilateral decarbonization efforts. The Kyoto Protocol (COP3) envisioned a transition program with binding emissions reductions for developed countries and non-binding targets for developing countries, plus a clean development mechanism whereby developed countries could offset a portion of emissions by investing in sustainable development in developing countries—but the failure of the US to ratify the agreement (expressly on the basis of an objection to the non-binding nature of the targets for developing countries) compromised the viability and longevity of that program.<sup>146</sup> Fast forwarding to the Paris Agreement (COP21), CBDR-RC survived as expressive encouragement for developed countries to make more significant reduction pledges (i.e., nationally determined contributions or NDCs). The lack of a formal distinction between the relative responsibilities of developed and developing countries, however, coupled with the fact that the NDCs are non-binding, weakens the application of the principle, which now depends upon the will of developed countries to increase their NDCs electively.

The loss and damage agenda has evolved more slowly over the years since the framing of the UNFCCC, but it has gained momentum more recently. The Paris Agreement established the first global goal on adaptation (GGA) in order to “*enhanc[e] adaptive capacity, strengthen resilience and reduc[e] vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response*” to go along with the established mitigation goal (of limiting temperature rise to 1.5-2°C).<sup>147</sup> **Emerging from the negotiations at COP27 was, for the first time, an agreement to establish**

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<sup>143</sup> UNFCCC, art. III.

<sup>144</sup> UNFCCC, preamble.

<sup>145</sup> UNFCCC, art. III, ¶ 1, 2.

<sup>146</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 2303 U.N.T.S. 162.

<sup>147</sup> Conference of the Parties, Adoption of the Paris Agreement, art. 7, Dec. 12, 2015, FCCC/CP/2015/L.9/Rev/1.

**a loss and damage fund aiming to provide financial assistance to those countries most vulnerable to and impacted by the effects of the climate crisis.** As of 2024, the fund has received \$661.39 million in pledges<sup>148</sup>—a far cry, however, from the hundreds of billions of dollars that developing countries are estimated to incur in costs stemming from the climate crisis *annually* by 2030.<sup>149</sup> **It is already estimated that the sum of pledges as of 2024, even assuming it would all be received by the fund, would cover less than 0.2 percent of the sum needed.**<sup>150</sup>

**Mitigation and adaptation measures are thus both present in current multilateral efforts guiding the transition to a cleaner economy at the global level. Both goals, however, suffer from under-realization in practice:** countries are reducing emissions too slowly to meet the Paris Agreement’s stated objective (with most falling short of even their elective NDCs), and relatively little funding is flowing to vulnerable countries to compensate for loss and damage, increase resilience, and enable sustainable development in the context of the transition. Equity appears to have taken a backseat, while even the pace of mitigation efforts is tempered by hesitancy to commit to more meaningful action. **This is especially troubling from a human rights and prevention perspective because an imbalanced, unjust transition has the potential to multiply the human rights violations stemming from the crisis.** History is filled with examples of developmental advances made at great human cost on the backs of the most marginalized and vulnerable. Repeating historical patterns of exploitation as a means to the end of economic transition is untenable if human rights are to be taken seriously. As the following sections will illustrate, rights violations are already resulting directly from transition-related activities (such as resource extractions), in addition to those resulting indirectly from failures to promote resiliency where the risks are greatest. In the context of a *just* transition, equity, and prevention are closely intertwined, and a preventive approach to the transition necessarily prioritizes a balanced approach to adaptation and mitigation.

**Repeating historical patterns of exploitation as a means to the end of economic transition is untenable if human rights are to be taken seriously.**

While the pace of financing for the different elements of a *just* transition differs widely—albeit none of them nearly at the necessary rate<sup>151</sup>—**the introduction of human rights principles into environmental debates is useful in many ways**, despite the fact that as John Knox, former United Nations Special Rapporteur on the promotion and protection of human rights in the context of climate change has observed that

<sup>148</sup> “Pledges to the Loss and Damage Fund,” United Nations Framework Convention on Climate Change (UNFCCC), accessed 14 June 2024, <https://unfccc.int/process-and-meetings/bodies/funds-and-financial-entities/loss-and-damage-fund-joint-interim-secretariat/pledges-to-the-loss-and-damage-fund>.

<sup>149</sup> “COP27 Ends with Announcement of Historic Loss and Damage Fund,” United Nations Environment Programme (UNEP), 22 November 2022, <https://www.unep.org/news-and-stories/story/cop27-ends-announcement-historic-loss-and-damage-fund>.

<sup>150</sup> Nina Lakhani, “\$700m Pledged to Loss and Damage Fund at Cop28 Covers Less Than 0.2% Needed,” *The Guardian*, 6 December 2023, <https://www.theguardian.com/environment/2023/dec/06/700m-pledged-to-loss-and-damage-fund-cop28-covers-less-than-02-percent-needed>.

<sup>151</sup> Some areas related to the transition have seen some progress. Thus, for example, “[T]he world now invests almost twice as much in clean energy as it does in fossil fuels ... but there are major imbalances in investment, and Emerging Market and Developing Economies (EMDE) outside China account for only around 15% of global clean energy spending.” See International Energy Agency (IEA), *World Energy Investment Report 2024* (Paris, France: IEA, 2024), <https://www.iea.org/reports/world-energy-investment-2024>.

“[m]ultilateral environmental agreements almost never refer to human rights explicitly.”<sup>152</sup>

The continued fragmentation of legal regimes, manifested in the paucity of connections between international environmental law and human rights law, turns out to be a problem. Recognizing something as a human right, even if it is not via a treaty, but other instruments, including “soft law” instruments, is not inconsequential. Thus, for example, despite the fact that Resolution 76/300 (which was discussed earlier in this report) does not generate obligations of the same degree of bindingness as treaty-based obligations, it is not totally ineffective. In addition to motivating both law-making and constitutional and regulatory reforms at the national level, there is emerging evidence that, as a recent analysis of environmental litigation puts it,

The right to a healthy environment has been invoked in an increasingly large number of climate cases and not only by applicants but also by the courts themselves. By and large, the right to a healthy environment has so far been invoked to improve the implementation and enforcement of extant laws and to ask for the adoption of climate measures. When faced with cases invoking the right to a healthy environment, the courts tend to find in favour of the applicants more often than not. It seems therefore possible to affirm that, so far at least, the recognition of the human right to a healthy environment seems to have contributed to the success of human rights-based climate litigation.<sup>153</sup>

Beyond this general consideration, Knox argues that **human rights norms can contribute to environmental debates, especially in terms of access to information, public participation, and remedy**.<sup>154</sup> This chapter demonstrates the importance of these three norms. Indeed, they are related, for remedy, in general, is the sort of outcome that comes as the result of a claim, the effectiveness of which usually depends on public participation, which in turn is catalyzed and strengthened by access to information.

Now, focusing on more concrete contributions that might be helpful to resolving the issue at hand—the distribution of costs and benefits of the transition to a “green” economy, the broad human rights framework, and accumulated practices in its implementation, can provide useful guidance insisting on focusing on the marginalized and vulnerable.<sup>155</sup> This reaffirms, first of all, the principle underlying CBDR-RC articulated in the UNFCCC. Beyond that, it calls for distributing the costs of the transition in ways that protect the rights of Indigenous Peoples and local communities, women, youth, and also of workers, as we will argue in the next section. **Appealing more closely to human rights instruments and practices opens up accumulated experience** regarding, for example, the application of the United Nations Guiding Principles on Business and Human Rights<sup>156</sup> and the even more extensive experience with large-

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<sup>152</sup> The important exception being the 1992 Rio Agreement. See John H. Knox, “Human Rights,” in *Oxford Handbook of International Environmental Law*, Lavanya Rajamani and Jacqueline Peel eds. (Oxford, UK: Oxford University Press, 2021), 787, <https://doi.org/10.1093/law/9780198849155.001.0001>.

<sup>153</sup> Pau de Vilchez and Annalisa Savaresi, “The Right to a Healthy Environment and Climate Litigation: A Game Changer?” *Yearbook of International Environmental Law* 32 (2023): 17, <https://doi.org/10.1093/yiel/yvac064>.

<sup>154</sup> Vilchez and Savaresi, “The Right to a Healthy Environment and Climate Litigation,” 785.

<sup>155</sup> See, e.g., Margaret Young, “The Role of Human Rights Law in Climate Obligations,” *Open Global Rights*, 8 March 2024, <https://www.openglobalrights.org/role-human-rights-law-climate-obligations/>.

<sup>156</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR), *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (New York, NY and Geneva, Switzerland, 2011).

scale administrative reparations programs.<sup>157</sup> **While none of these instruments provide a blueprint for resolving the complicated question of the distribution of costs and benefits of the transition, or for overcoming what is ultimately a political—not a technical—bottleneck concerning the willingness to make the necessary investments, not making use of resources and experiences accumulated in the human rights field constitutes a wasted opportunity.**

## THE PROTECTION OF HUMAN RIGHTS OF THOSE AFFECTED BY THE TRANSITION

Both across and within countries, **the transition towards a “green” economy will involve, particularly in the short run, “winners” and “losers”**, and it does no one any favors to deny this fact. While the transition away from fossil fuels as well as broader protection of the environment including biodiversity will benefit all in the long run (without these, in the long run, life on the planet will become unsustainable), the transition is also one that at any given stage will generate gains for some and losses for others. Some of these losses may involve or amount to mass human rights violations.

Powerful economic interests exist in the energy sector, whereby elites benefiting from existing arrangements do what they can to hamper national and international action to end the fossil fuel economy because of the immense profits and other privileges they derive from it.<sup>158</sup> Similar efforts are made by agroindustries involved in deforestation, by petrochemical companies involved in the production of plastics, etc. While there are no reasons to worry about the well-being of elites that will “weather” the transition, the same cannot be said for those dependent on modes of production that will be phased out. Here again, there is a question about justice, equity, and human rights, particularly of the least favored, which need to be protected.<sup>159</sup>

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land: OHCHR, 2011), [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf) [hereinafter Guiding Principles on Business and Human Rights]; and United Nations Office of the High Commissioner for Human Rights (OHCHR), Human Rights, Climate Change, and Business (2021), <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/materials/KMBusiness.pdf>.

<sup>157</sup> See, e.g., United Nations Office of the High Commissioner for Human Rights (OHCHR), Rule of Law Tools for Post-Conflict States: Reparations Programmes, HR/PUB/08/1 (Geneva, Switzerland: OHCHR, 2008), <https://www.ohchr.org/en/publications/policy-and-methodological-publications/rule-law-tools-post-conflict-states-reparations>; and *The Handbook of Reparations*, Pablo de Greiff, ed. (New York, NY: Oxford University Press, 2006), <https://doi-org.proxy.library.nyu.edu/10.1093/0199291926.001.0001>.

<sup>158</sup> Since the Paris Agreement was signed in 2015, \$7 trillion has flowed into fossil fuel companies. In 2023 alone, these companies earned \$700 billion, half of which went to companies that are actually *expanding* the extraction of fossil fuels. See, e.g., Rainforest Action Network, Indigenous Environmental Network, Reclaim Finance, and Sierra Club Rainforest Action Network, *Banking on Climate Change: Fossil Fuel Finance Report 2024* (2024); [https://www.bankingonclimatechaos.org/wp-content/uploads/2024/05/BOCC\\_2024\\_vF1.pdf](https://www.bankingonclimatechaos.org/wp-content/uploads/2024/05/BOCC_2024_vF1.pdf). Compare these enormous earnings with the environmental record of the major energy corporations: “[o]ver the recorded history of industrial emissions, 20 corporations, such as Chevron and ExxonMobil, as well as state-owned energy companies in places like China and Saudi Arabia have been responsible for more than half of all cumulative carbon emissions, a share that has actually risen to more than 60 percent since 2016.” See Vann R. Newkirk III, “What America Owes the Planet,” *The Atlantic*, 11 June 2024, <https://www.theatlantic.com/magazine/archive/2024/07/climate-change-reparations-vanuatu-island/678489/>.

<sup>159</sup> Even in developed economies this is a problem that has not been effectively addressed, and which underlies profound shifts in political preferences. Coal-mining towns in the Appalachian Mountains in the US, for example, whose economies have declined significantly, have been hit particularly hard by the opioid epidemic and consequent “deaths of despair.” See, e.g.,



From its inception, **the concept of the *just* transition to a cleaner, greener, economy referred to the efforts to share the costs and benefits of such transition equitably**, calling for participatory processes that engage all stakeholders in decision-making, while recognizing multiple perspectives rooted in social, cultural, ethical, and gender differences. In this sense, **a *just* transition must involve maximizing the social and economic opportunities of climate action, including for women, people with disabilities, and Indigenous Peoples, while minimizing and carefully managing any challenges and unintended consequences for human rights, including labor rights, and the environment.**

In this regard, it should be noted that transition-development policies affect marginalized communities not just in the Global South. Consider, for example, “environmental justice communities” in the US. These are communities “composed predominantly of persons of color or a substantial proportion of persons below the poverty line,” that bear a disproportionate burden of environmental harms compared to surrounding or comparable communities.<sup>160</sup> Many of these communities are implementing *just* transition principles to prevent future harm and ensure equitable solutions. In Peoria, Illinois, for example, the community received compensation following a 2019 settlement order for harms caused by a coal-fired power plant that caused air pollution, impacting the health of locals nearby. The compensation also took the form of grants for clean energy projects “following *just* transition principles spearheaded by frontline community leaders.”<sup>161</sup>

The discussion below builds on existing scholarship on both the idea of a human-rights-based approach to a *just* transition and the principles of the *just* transition themselves. As stated by OHCHR, in collaboration with the International Labour Organization “[A] just transition would be one that measurably enhances all human rights...”<sup>162</sup> Adding that a human-rights-based approach to a *just* transition should focus on “building inclusive economies and societies - in which opportunities, resources and services are equitably shared and where governance is accountable...”<sup>163</sup> Human rights are an important mechanism in this regard, allowing states, international organizations, local communities, and other stakeholders to prioritize affected communities and promote “inclusive, equitable, and effective” decisions.<sup>164</sup>

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Travis Young, et al., “Mining, Loss, and Despair: Exploring Energy Transitions and Opioid Use in an Appalachian Coal Community,” *Energy Research & Social Science* 99, (2023), <https://doi.org/10.1016/j.erss.2023.103046>.

<sup>160</sup> “Environmental Justice Definitions,” New Mexico Department of Health, accessed 1 June 2024, <https://www.nmhealth.org/publication/view/help/309/#:~:text=Environmental%20Justice%20Community%20of%20Concern,to%20surrounding%20or%20comparative%20communities>.

<sup>161</sup> Claudia Blanco Nuñez and Joshua Axelrod, “Communities First: Equity and Justice in the Just Transition,” *Natural Resources Defense Council*, 29 March 2023, <https://www.nrdc.org/bio/claudia-blanco-nunez/communities-first-equity-and-justice-just-transition>.

<sup>162</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR) and International Labour Organization, “Human Rights and a Just Transition,” accessed 1 June 2024, <https://www.ohchr.org/sites/default/files/documents/issues/climate-change/information-materials/v4-key-messages-just-transition-human.pdf>.

<sup>163</sup> See e.g., “What is Just Transition,” Institute for Human Rights and Business, accessed 1 June 2024, <https://www.ihrb.org/explainers/what-is-just-transition>; “Respecting, Promoting, and Fulfilling Human Rights in the Just Transition Work Programme,” *Human Rights and Climate Change Working Group* (February 2024), <https://www.amnesty.org/fr/wp-content/uploads/2024/02/IOR4077432024ENGLISH.pdf>; Hansika Agrawal, et al., *Enabling a Just Transition: Protecting Human Rights in Renewable Energy Projects, a Briefing For Policymakers* (New York, NY: Columbia Center on Sustainable Investment, 2023), [https://ccsi.columbia.edu/sites/default/files/content/docs/publications/final\\_RenewablesAndHumanRights%20\(Brief\).pdf](https://ccsi.columbia.edu/sites/default/files/content/docs/publications/final_RenewablesAndHumanRights%20(Brief).pdf).

<sup>164</sup> Jodoin, Savaresi, and Wewerinke-Singh, “Rights-Based Approaches to Climate Decision-Making.”

## Workers and Affected Communities

As noted earlier in this report, **preventing harm related to the climate crisis, and resulting violations of the right to a healthy environment, are conditions linked with the full realization of nearly all other human rights, and central to robust human rights compliance.** In an effort to focus on the most affected communities, the section below will discuss two of these groups: workers and Indigenous and local communities.

The transition from carbon-intensive industries to more sustainable industries will affect the livelihood and in some cases the **individual and collective rights of workers in industries and sectors of the economy that are phased out.**<sup>165</sup> Addressing these harms requires forethought on the side of states and businesses, as well as effective social dialogue on a procedural and substantive level, in accordance with international human rights and labor standards.<sup>166</sup> **Workers**, individually or collectively as communities or through unions, **must be made part of the definition of priorities, decision-making, planning, implementation, monitoring, and evaluation of the transition process.** An adequate social safety net including adequate support for those who lose employment, the retraining and re-skilling of workers, and the creation of new employment opportunities must be part of the planning for a “green” economy. Such opportunities should be accessible and dignified, ensuring the right to adequate standards of living for workers and their families in their communities.<sup>167</sup>

In addition to risks to the right to work, the transition to a new economy also creates risks for other rights of those affected by the transition. They may face risks to their rights to life, health, and access to adequate food due to deteriorating environmental conditions,<sup>168</sup> or, risks to their rights to culture and adequate housing.<sup>169</sup> **Indigenous and local communities are particularly affected, as is the case with climate-related harm more generally,** and may suffer violations of their rights to self-determination or harm by land grabbing efforts in the name of the *just* transition, as the case of the Mexican wind farms below illustrates.<sup>170</sup> Yet, as was the case regarding EHRDs, it **would be erroneous to assume that Indigenous communities are inherently anti-development or anti-transition.** As is apparent by the two cases mentioned below, Indigenous communities in many cases **seek to realize their rights to self-determination, ownership, and control of their land, through equitable sharing of profits and burdens related to the transition.**<sup>171</sup>

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<sup>165</sup> ICESCR, art. 6.

<sup>166</sup> International Labour Organization (ILO), Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for all (Geneva, Switzerland: ILO, 2015), <https://www.ilo.org/publications/guidelines-just-transition-towards-environmentally-sustainable-economies>.

<sup>167</sup> ICESCR, art. 11.

<sup>168</sup> ICCPR, art. 6; ICESCR, art. 11, 12.

<sup>169</sup> ICESCR, art 11.1.

<sup>170</sup> UN Declaration on the Rights of Indigenous Peoples, art. 3, 7, 10, 11, 25, 26, 32.

<sup>171</sup> For other examples, see “Shared Prosperity Models & Indigenous Leadership for a Just Transition,” Business & Human Rights Resource Centre, accessed 1 June 2024, <https://www.business-humanrights.org/en/big-issues/natural-resources/shared-prosperity-and-indigenous-leadership-hub/>.

## Operation of Wind Farms Infringing on the Rights of Indigenous and Local Communities

**Mexico:** The ancestral land of the Zapotec community of Oaxaca State, México, is one of the windiest areas in the world. This land is also the location of 20 wind farms.<sup>172</sup> The Indigenous Zapotec people, alongside local NGOs and communities, have been opposing the manner in which the farms operate since their establishment, stating that they “... are not against technology, we are against foreigners with money, foreign companies trying to do things with our territory without asking us.”<sup>173</sup>

Alongside demands for inclusion, consultation, and participation of local communities, the community also pointed out that they do not benefit from the electricity produced by the wind farm. This is especially problematic since Oaxaca State has the third highest level of energy poverty in Mexico, with about 70 percent of the population not meeting their basic energy needs.<sup>174</sup> These efforts on the side of Indigenous and local communities encountered strong opposition and in some cases, violence.<sup>175</sup>

In 2022, Oaxaca’s First Court of District ordered the Mexican government to **cancel its contract with one company, considered to be one of the worst**. Yet, most of the wind farms are still in operation. **Indigenous and local communities argue that the companies have only contributed to poverty in the area**— “[T]he population has handed over more than 74,000 acres of land to these transnational companies. And they have dismantled the local economy, unleashing a whole chain of conflicts, because of the lack of work.”<sup>176</sup>

<sup>172</sup> Annalisa Savaresi and Joana Setzer, “A First Global Mapping of Rights-Based Climate Litigation Reveals a Need to Explore Just Transition Cases in More Depth,” *London School of Economics Grantham Research Institute*, 29 March 2022, <https://www.lse.ac.uk/granthaminstitute/news/a-first-global-mapping-of-rights-based-climate-litigation-reveals-a-need-to-explore-just-transition-cases-in-more-depth/>; see also, cited in Savaresi and Setzer, “Wind Farm in Mexico: French Energy Firm EDF Disregards Indigenous Rights,” *European Center for Constitutional and Human Rights* (October 2022), [https://www.ecchr.eu/fileadmin/Fallbeschreibungen/20201013\\_Case\\_report\\_EDF\\_EN.pdf](https://www.ecchr.eu/fileadmin/Fallbeschreibungen/20201013_Case_report_EDF_EN.pdf).

<sup>173</sup> Chris Hesketh, “Clean Development or the Development of Dispossession? The Political Economy of Wind Parks in Southern Mexico,” *Environment and Planning E: Nature and Space* 5, no. 2 (2022), <https://journals.sagepub.com/doi/full/10.1177/2514848621991764>.

<sup>174</sup> Paula Reisdorf, “Zapotec Communities Fight Électricité de France Wind Turbines in Oaxaca, Mexico,” *CORPWATCH*, 21 June 2023, <https://www.corpwatch.org/article/zapotec-communities-fight-electricite-de-france-wind-turbines-oaxaca-mexico>; Tom Azzopardi, “Mexico: EDF’s Gunaa Sicarú Wind Energy Project has Contract Cancelled Following a Court Ruling,” *WindPower Monthly*, Business & Human Rights Resource Center, 9 June 2022, <https://www.business-humanrights.org/en/latest-news/mexico-state-power-utility-cancels-contracts-with-edf-for-the-gunaa-sicar%C3%BA-project/>.

<sup>175</sup> Reisdorf, “Zapotec Communities Fight Électricité de France Wind Turbines in Oaxaca, Mexico.”

<sup>176</sup> Michael Fox, “Wind Energy in Mexico is not as Clean as you Think,” *The Real News Network*, 21 April 2023, <https://therealnews.com/wind-energy-in-mexico-is-not-as-clean-as-you-think>.

**Norway:**<sup>177</sup> A 2021 decision of the Norwegian Supreme Court held that the Storheia and Roan wind farms violated the rights of the Sami Peoples, an Indigenous community residing in Northern Norway, as well as parts of Sweden, Finland, and Russia. Specifically, the Court found that the operation of the wind farms violated the right of the Sami Peoples to enjoy their own culture, as per Article 27 of the ICCPR, as they were unable to herd their reindeer.

In December 2023 and March 2024, the Government of Norway reached an agreement with the Sami reindeer herders, which allows the wind farm to stay in operation. **The agreement secured the present and future rights of the herders over the land and their enjoyment of it, as well as annual compensation and a veto right to oppose a renewal or extension of the farms' licenses without Sami consent.**<sup>178</sup> Thus, the community was able to prevent future adverse effects of their rights through the production of “green” technologies.

## Preventive Tools

Preventive measures to protect those who are affected by the transition can follow a range of avenues, both legal and non-legal.

**Strategic litigation**, in particular, has played a significant role in challenging emission and fossil fuel policy by states and companies, advocating for the right to a healthy environment, and emphasizing the urgent need for a transition to clean energy.<sup>179</sup> One prominent example is the case of Urgenda Foundation v. State of the Netherlands,<sup>180</sup> where the Dutch Supreme Court upheld a ruling that required the government to limit greenhouse gas emissions by at least 25 percent by 2020 compared to 1990 levels.<sup>181</sup> This landmark case underscored the legal responsibility of governments to protect their citizens from the impacts of climate change and set a precedent for similar actions globally. By holding governments accountable, strategic litigation can **drive policy changes and enforce stricter emissions reductions, paving the way for a more just transition to renewable energy sources.**

<sup>177</sup> The drafting of this section was assisted by a presentation given by Lovleen Bhullar as part of the workstream's workshop in November 2023.

<sup>178</sup> Terje Solsvik and Nora Buli, “Norway Ends Dispute with Reindeer Herders Over Wind Farm,” *Swiss Info*, 6 March 2024, [www.swissinfo.ch/eng/norway-ends-dispute-with-reindeer-herders-over-wind-farm/73410608](https://www.swissinfo.ch/eng/norway-ends-dispute-with-reindeer-herders-over-wind-farm/73410608); Shannon McKeown-Gilmore, “Norway Ends Dispute with Sámi People Over Construction of Wind Farm on Indigenous Land,” *Jurist News*, 7 March 2024, [https://www.jurist.org/news/2024/03/norway-ends-dispute-with-sami-people-over-construction-of-wind-farm-on-indigenous-land/#:~:text=In%20October%202021%2C%20the%20Supreme,and%20Political%20Rights%20\(ICCPR\)](https://www.jurist.org/news/2024/03/norway-ends-dispute-with-sami-people-over-construction-of-wind-farm-on-indigenous-land/#:~:text=In%20October%202021%2C%20the%20Supreme,and%20Political%20Rights%20(ICCPR)).

<sup>179</sup> For a systematic analysis of climate-related litigation and its characterization, see Savaresi and Joana Setzer, “A First Global Mapping of Rights-Based Climate Litigation”; see also Maria Antonia Tigre and Natalia Urzola, “Just Transition Litigation: A Tool for More Just and Sustainable Economies,” *International Institute for Environment and Development*, 4 September 2023, <https://www.iied.org/just-transition-litigation-tool-for-more-just-sustainable-economies>; Laura Elizondo, “Just Transition Litigation: What Is It and How Can it Help Achieve a More Just Society?” *Earth.Org*, 27 November 2023, <https://earth.org/just-transition-litigation-what-is-it-and-how-can-it-help-achieve-a-more-just-society/#:~:text=On%20the%20basis%20of%20this,local%20communities%20and%20affected%20stakeholder>.

<sup>180</sup> Urgenda Foundation v. State of the Netherlands, HAZA C/09/00456689 [2015].

<sup>181</sup> “Urgenda Foundation v. State of the Netherlands,” Climate Case Chart, accessed 5 June 2024, <https://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/>.

Another significant example, also related to the principle of intergenerational justice discussed above, is *Juliana v. United States*,<sup>182</sup> a lawsuit filed by a group of young plaintiffs where they argued that the US government's promotion of fossil fuels violated their constitutional rights to life, liberty, and property, as well as failed to protect essential public trust resources. While the case faced procedural hurdles and is still pending, it has already raised substantial public awareness and legal discourse on the government's role in climate change and environmental protection.<sup>183</sup> Additionally, strategic litigation has targeted fossil fuel companies directly through cases brought against ExxonMobil and other oil giants for misleading the public and investors about the risks of climate change.<sup>184</sup> These lawsuits, and others discussed in this report, do not only seek accountability but also aim to redirect corporate behavior towards sustainable practices, thereby supporting the broader transition from fossil fuels to clean energy. Hence, **strategic litigation can advance broader goals beyond the individual client, has precedential and societal value, as well as a preventive action.**

While strategic litigation is an important tool for communities and organizations, it cannot be seen as the only or even the main tool for achieving progress towards a *just* transition for the following reasons a) the environmental crisis and its effects including resulting violations, can be global, transnational, or local. The problems are also broad in scope. Legal victories, such as they are, are by contrast, jurisdiction-specific, retrospective, and case-selective; b) affected communities face a clear imbalance of power, legal expertise, and resources needed to litigate effectively; c) justiciability and other procedural bars may prevent some suits from being brought in the first place; d) even after a decision has been granted in favor of communities, they may encounter implementation and enforcement challenges, and, finally e) strategic litigation can be a lengthy, expensive, and unpredictable process and can expose individuals and communities to pushback, threats, and targeted reprisals. Strategic litigation alone will not prevent mass human rights violations. Still, **as long as its limitations for individuals and communities are taken into account, it is a valuable tool in a prevention context.**

It is incumbent for preventive strategies for the protection of those affected by the transition to combine multiple measures and mechanisms for preventive action and work alongside a plurality of stakeholders. Based on a multi-pronged approach, prevention will likely rely on a combination of policy (including regulation and meaningful participation), law (including strategic litigation and enforcement), and community-based empowerment.

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<sup>182</sup> "Juliana v. United States," Climate Case Chart, accessed 5 June 2024, <https://climatecasechart.com/case/juliana-v-united-states/>.

<sup>183</sup> "Juliana v. United States," Our Children's Trust, accessed 10 June 2024, <https://www.ourchildrenstrust.org/juliana-v-us>.

<sup>184</sup> Commonwealth v. Exxon Mobil Corp., 489 Mass. 724, 731, 187 N.E.3d 393 (2022). For a description of the case, see "Commonwealth v. Exxon Mobil Corp." Climate Case Chart, accessed 5 June 2024, <https://climatecasechart.com/case/commonwealth-v-exxon-mobil-corp/>; Hana Vizcarra, "Understanding the New York v. Exxon Decision," *Environmental & Energy Law Program*, 12 December 2019, <https://eelp.law.harvard.edu/2019/12/understanding-the-new-york-v-exxon-decision/>.

Thus, no less useful than strategic litigation, is recognizing the **strong preventive potential of meaningful access to information and community participation and inclusion in planning and decision-making related to the energy transition**. This tool stems from **the principle of environmental democracy**, understood to mean that “decision-making concerning the environment is not purely a business decision but, instead, a community-focused matter in which people and communities must also be able to participate.”<sup>185</sup>

Achieving environmental democracy relies on the protection and fulfillment of other interconnected rights.<sup>186</sup> First, the **right to freely access information** must be discussed from a preventive, proactive, perspective through which states and businesses are obligated to make information related to transition projects and impacts public. Relying on action by communities, whether through freedom of information requests or some form of participatory process, is insufficient due to the known power imbalance of resources, expertise, and access. To this end, **states must ensure that communities are aware of, and understand, transition plans and how they may impact their rights and living conditions**. Information needs to be freely available in a timely manner, allowing communities to take an active role in environmental impact assessment, consultation, planning, and implementation processes.<sup>187</sup> Second, **meaningful participation** from a preventive perspective must be interpreted broadly—focusing on *meaningful* participation, rather than a perfunctory seat at the table. **Communities should be involved across the whole lifecycle of a transition project and be given adequate technical, legal, and substantial support**. In this regard, efforts should focus on affected communities, ensuring that those impacted by the transition are those whose participation is sought. Note that efforts toward environmental democracy have been recognized as having particular importance for Indigenous Peoples and part of ensuring free, prior, and informed consent (FPIC),<sup>188</sup> meaning “the right of Indigenous and tribal peoples to collectively decide on matters that stand to affect their lands, territories, resources, and cultural integrity,” in a manner which ensures their right to self-determination.<sup>189</sup>

This process has practical implications for states. Consider, for example, the 2021 decision by the Aarhus Convention Compliance Committee, which found that the UK did not comply with Article 7 to the convention as it did not allow for public participation with regard to a renewable energy plan and related projects.<sup>190</sup> States should consider enshrining these protections in domestic legislation that would create clear obligations to provide information and ensure meaningful participation. This is the case in Sierra Leon and Liberia, **which codified a requirement to obtain FPIC from all communities, broadening the scope of FPIC beyond its usual application solely to Indigenous communities**.<sup>191</sup>

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<sup>185</sup> “Background and Methodology: Environmental Democracy Background,” Environmental Democracy Index, accessed 10 June 2024, <https://environmentaldemocracyindex.org/node/2728.html>.

<sup>186</sup> Environmental Democracy Index, “Background and Methodology: Environmental Democracy Background.”

<sup>187</sup> Extractive Industries Transparency Initiative (EITI), *Engaging Communities in a Just Transition* (Oslo, Norway: EITI, 2023), 5–8, [https://eiti.org/sites/default/files/2023-10/EITI\\_Report\\_Engaging%20communities%20in%20a%20just%20transition.pdf](https://eiti.org/sites/default/files/2023-10/EITI_Report_Engaging%20communities%20in%20a%20just%20transition.pdf).

<sup>188</sup> See UN Declaration on the Rights of Indigenous Peoples, art. 3, 12, 26, 32; Paris Agreement, Preambular ¶ 11.

<sup>189</sup> Agrawal, et al., “Enabling a Just Transition,” 5–6.

<sup>190</sup> Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 30 Oct., 2001, 2161, U.N.T.S. 447; Economic Commission for Europe, Decision VII/8s of the Meeting of the Parties on Compliance by the United Kingdom of Great Britain and Northern Ireland with its Obligations Under the Convention (21 October 2021), <https://unece.org/env/pp/cc/decision-vii8s-concerning-united-kingdom>.

<sup>191</sup> See Liberia’s Land Rights Act (2018) [LR] and Sierra Leon’s Customary Land Rights Act (2022) [SR] and National Lands Commission Acts of (2022) [SR], cited in Agrawal, “Enabling a Just Transition,” 6. See also Linus Pott and Stanley N. Toe, “Reflecting on a Decade: Lessons from Liberia’s Land Rights Policy,” *World Bank Blogs*, 22 August 2023 <https://blogs.worldbank.org/>

The protections, rights, and tools discussed above are both a condition for ensuring equitable treatment and benefit-sharing of the revenues of transition projects, and a condition for preventing human rights violations.<sup>192</sup> Without them, communities would not be able to influence decision-making, be taken into account in planning processes, object to potentially harmful plans, or seek legal redress *ex ante* or *ex post*. If these are protected, ensured, and fulfilled, communities and host states will have a fairer shot at enjoying the fruits of their labor, land, and natural resources.<sup>193</sup>

## THE PROTECTION OF THE HUMAN RIGHTS OF THOSE INVOLVED IN THE PRODUCTION OF COMPONENTS ESSENTIAL TO THE “GREEN” TRANSITION

### **A just transition must protect individuals and communities involved in producing some of the components needed in the “green” economy.**

A just transition must protect individuals and communities involved in producing some of the components needed in the “green” economy. The transition to a “green” economy has relied to a large extent on the mining and extraction of minerals. This includes minerals essential for the batteries on which electric vehicles, solar panels, and personal electronic devices operate, such as lithium, nickel, cobalt, and copper, as well as other rare elements in the magnets used in wind turbines and electric motors. Quite aside from the fact that the extraction of such minerals needs to avoid

creating environmental ravages of their own,<sup>194</sup> here the concern is with the protection of the human rights of those involved in the extraction of such minerals.

As a particularly salient case study, the extraction of lithium and cobalt has garnered international attention and raised alarms as to its impact both on the environment itself and on the human rights of those involved in the labor required. Extraction activity has already caused severe environmental harm as well as human

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[en/sustainablecities/reflecting-decade-lessons-liberias-land-rights-policy#:~:text=In%202018%2C%20the%20Land%20Rights,first%20time%20in%20Liberia's%20history.](#)

<sup>192</sup> See, e.g., “Respecting, Promoting, and Fulfilling Human Rights in the Just Transition Work Programme,” *Human Rights and Climate Change Working Group*, 16-19.

<sup>193</sup> There is significant work on establishing community ownership models that are gaining traction in certain countries. Take, for example, the case of First Nations’ ownership of renewable energy assets in Canada, where Indigenous communities “[A]fter Crown and private utilities .... control the greatest number of renewable energy assets.” See “Community Ownership of Renewable Energy: How it Works in Nine Countries,” *Institute for Human Rights and Business*, 21 February 2023, <https://www.ihrb.org/focus-areas/just-transitions/community-ownership-of-renewable-energy-how-it-works-in-nine-countries>.

<sup>194</sup> For example, it takes 2 million liters of water to extract a single tonne of lithium, yet roughly 50 percent of global copper and lithium production is concentrated in areas with water scarcity. See “What are Energy Transition Minerals and How Can They Unlock the Clean Energy Age?” United Nations Energy Programme (UNEP), 19 February 2024, <https://www.unep.org/news-and-stories/story/what-are-energy-transition-minerals-and-how-can-they-unlock-clean-energy-age#:~:text=Transition%20minerals%20are%20naturally%20occurring,wind%20turbines%20and%20electric%20motors>, and “Reliable Supply of Minerals,” International Energy Agency (IEA), accessed on 1 June 2024, <https://www.iea.org/reports/the-role-of-critical-minerals-in-clean-energy-transitions/reliable-supply-of-minerals>.

rights impacts on local individuals and communities.<sup>195</sup> Additionally, renewable energy projects are, more often than not, located in critical areas for Indigenous and local communities. One such figure posits that “more than 50 percent of transition mineral reserves are on Indigenous Peoples’ land and territories, and a large percentage of renewable energy potential is located in marginalized rural communities’ land.”<sup>196</sup> These projects pose serious risks to the land and local communities, while also competing with locals over the use of natural resources, land, resource-based livelihoods, and biodiversity.<sup>197</sup>

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<sup>195</sup> Bruna Singh and Hannah Leao, “Where are the Human Rights in the Green Economy Transition?” *Oxford Human Rights Hub*, 17 September 2020, <https://ohrh.law.ox.ac.uk/where-are-the-human-rights-in-the-green-economy-transition/>.

<sup>196</sup> “Respecting, Promoting, and Fulfilling Human Rights in the Just Transition Work Programme,” *Human Rights and Climate Change Working Group*, 4-5.

<sup>197</sup> Shikha Lakhanpal and Ashwini Chhatre, “For the Environment, Against Conservation: Conflict Between Renewable Energy and Biodiversity Protection in India,” in *Conservation and Development in India*, Shonil Bhagwat ed. (London, UK: Routledge, 2018), cited by Shikha Lakhanpal, “Contesting Renewable Energy in the Global South: A Case-Study of Local Opposition to a Wind Power Project in the Western Ghats of India,” *Environmental Development Review* 30 (June 2019), <https://www.sciencedirect.com/science/article/abs/pii/S2211464518302185>.



## The Human Costs of Extractives

**The Lithium Triangle:** Argentina, Chile, and Bolivia hold more than half of global lithium deposits beneath the dry regions of the salt flats, with much of the resources being under ancestral indigenous lands. Lithium mining in this region is expected to yield significant profits for states and businesses, as well as play an important part in the transition to a “green” economy when the lithium mined is used in batteries of electric cars and consumer electronics. Yet activists warn that these **profits come at the expense of the environment and local communities in the region.** While some of the corporations mining the region struck agreements with the government or local communities, meant to offset damages, local communities argue that they are not fully reaping the benefits of the mining. Nor are they being compensated for the use of other natural resources, land degradation, and pollution.<sup>198</sup>

**Cobalt Extraction in the Democratic Republic of Congo:** The mining of Cobalt, also used in batteries for electric cars and smaller electronics, comes at the price of dire working conditions and child labor, as well as environmental degradation. A 2023 report by the Washington Post, following international pressure on mining multinationals to improve their human rights compliance, visited mining cities in the Democratic Republic of Congo (DRC).<sup>199</sup> In smaller, “artisanal” mines, the journalists found that workers were not supplied with adequate protective gear and that many of them appeared to be teens. Yet these conditions were also apparent for workers in industrialized mines, where there should have been more compliance regulation. There, workers sustained “life-changing injuries” due to the dangerous nature of the mining work and unsafe working conditions, after which they were often fired, with or without adequate severance, or did not receive compensation for their medical bills.

Additional reports published by NGOs in 2024 confirmed the environmental harm caused by industrial cobalt mining led to contamination of local water sources, agriculture, and ecosystems. **This harm has a direct impact on the rights of local communities in the area.** In a particularly staggering statistic, 56 percent of women and girls interviewed reported that the pollution had negatively affected their reproductive health, leading to, in some cases, miscarriages and birth defects.<sup>200</sup> These reports also point to the effects of cobalt mining on displacement, pointing to forced eviction of local communities to accommodate expansions of the mines.<sup>201</sup>

<sup>198</sup> Samar Ahmad, “The Lithium Triangle: Where Chile, Argentina, and Bolivia Meet,” *Harvard International Review* (2020), <https://hir.harvard.edu/lithium-triangle/>.

<sup>199</sup> Katharine Houreld and Arlette Bashizi, “Despite Reforms, Mining for EV Metals in Congo Exact Steep Cost on Workers,” *The Washington Post*, 4 August 2023, <https://www.washingtonpost.com/world/interactive/2023/ev-cobalt-mines-congo/>.

<sup>200</sup> “New Report Exposes the Environmental and Human Costs of DRC’s Cobalt Boom,” *RAID*, 27 March 2024, <https://raid-uk.org/report-environmental-pollution-human-costs-drc-cobalt-demand-industrial-mines-green-energy-evs-2024/>.

<sup>201</sup> Amnesty International, *DRC: Powering Change or Business as Usual?* (London, UK: Amnesty International, 2023), <https://www.amnesty.org/en/latest/news/2023/09/drc-cobalt-and-copper-mining-for-batteries-leading-to-human-rights-abuses/>.

## Prevention of Violations in the Context of Extractive Projects

Corporations hold an enormous amount of power in the global marketplace with some of them holding equity surpassing that of small countries. They are able to influence state policy and regulation, and, in some cases, benefit from weak governmental policy and regulation, corruption, and lack of strong institutions.<sup>202</sup> Although not always the case, many extractive hotspots are in the Global South, in countries that most rely on private extractive industry to promote growth, at a loss to their nationals.<sup>203</sup> This has been connected with the “resource curse,” where natural resource-rich countries are not able to reap the benefits of their resource wealth, due to over-reliance on one industry controlled by private interest.<sup>204</sup> Hence, **the manner in which many corporations operate in the extractive field continues to enable and worsen the reliance on those old patterns of exploitation, to the detriment of communities and host countries. Adopting a preventive, human-rights-based approach to the transition is needed to ensure that old patterns of exploitation and extraction are not repeated.**

As stated by the World Bank, the transition toward a “green” economy will have to rely on the extraction of minerals. And, the demand for these minerals will only increase as the transition progresses.<sup>205</sup> That is not to say that policy should not seek to enforce regulations on the extractive corporations. Quite the opposite, **corporations can, and should, be obligated to prevent environmental and human rights risks and/or harm that their extractive operations may create.** This report doesn’t need to elaborate on the well-established grounding set by the United Nations Guiding Principles on Business and Human Rights,<sup>206</sup> nor on their non-binding nature when not enshrined into national legislation. Instead, it will briefly point out that **adopting (and implementing) a human-rights-compliant approach to extractive operations can create value for communities, but also for corporations and host states.** Hence, the prevention of mass human rights violations is both a goal in itself and a mechanism for achieving better outcomes.

From the corporate point of view, some studies link corporate social responsibility (CSR) to an increase in business value, suggesting that “higher CSR leads to higher corporate value, higher equity returns, and lower risk, enhancing the general collateral value of the firm.”<sup>207</sup> Studies also show, in a conclusion that may seem counterintuitive to some, that extractive operations are “most productive in places with stable economies, governments, and markets for their inputs and outputs,” since “improving economic opportunities in host communities, countries, and regions could lower risk, lower production costs, and

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<sup>202</sup> Steven Kayambazinthu Msosa and Shame Mugova, “Corporate Social Responsibility Challenges in the Extractive Industry: An Introduction,” in *Corporate Social Responsibility in Developing Countries: Challenges in the Extractive Industry*, Steven Kayambazinthu Msosa, Shame Mugova and Courage Mlambo eds. (New York, NY: Springer, 2023), [https://doi.org/10.1007/978-3-031-27512-8\\_1](https://doi.org/10.1007/978-3-031-27512-8_1); for a discussion of the role of guarantor institutions in preventing human rights violations, see Prevention Project, *Making Constitutional Promises Credible: The Preventive Potential of Guarantor Institutions*.

<sup>203</sup> Msosa and Mugova, “Corporate Social Responsibility Challenges in the Extractive Industry.”

<sup>204</sup> “The Resource Curse,” Natural Resource Governance Institute (2015), [https://resourcegovernance.org/sites/default/files/nrgi\\_Resource-Curse.pdf](https://resourcegovernance.org/sites/default/files/nrgi_Resource-Curse.pdf); for further discussion of the effects of corruption and state capture by private interests on human rights, see *State Capture as Enabling Condition for Human Rights Violations* (NY, NY: Prevention Project, June 2024), <https://tinyurl.com/prevention-statecapture-report>.

<sup>205</sup> Kirsten Hund, et al., *Minerals for Climate Action: The Mineral Intensity of the Clean Energy Transition* (Washington, DC: The World Bank, 2020), <https://pubdocs.worldbank.org/en/961711588875536384/Minerals-for-Climate-Action-The-Mineral-Intensity-of-the-Clean-Energy-Transition.pdf>.

<sup>206</sup> Guiding Principles on Business and Human Rights.

<sup>207</sup> Msosa and Mugova, “Corporate Social Responsibility Challenges in the Extractive Industry.”

make extractive companies more profitable.”<sup>208</sup> Another study quantified “the cost of conflict with local communities,” at an estimated \$20 million in losses per week due to delayed production, also finding that incorporating timely community consultation into the lifecycle of extractive projects can mitigate these losses.<sup>209</sup> These studies show that there is profit-oriented evidence that corporations should have at least a certain vested interest in human rights and in strengthening local governments in host countries.

**If done right—meaning in accordance with human rights obligations—extractive operations can increase community access to affordable and reliable energy, including in remote locations, create local jobs, and promote self-sufficiency where projects are collectively owned and managed by local communities.** While this is an aspirational goal in many cases, it is the best option at the disposal of states and communities through which they can take both human rights and the urgent need for a transition involving minerals seriously. Meeting this goal does not rely solely on states, or the cooperation of corporations, but on cross-sector participation and collaboration, and inclusion of local communities. Thus, **bringing together all of the tools discussed above, corporate responsibility can become a preventive tool of its own, allowing communities to participate meaningfully in decision-making processes and gain ownership over extractive projects.**

## CONCLUDING REMARKS

The transition to a “green” economy is unequivocally necessary to stave off some of the catastrophic effects of global reliance on fossil fuels and the resulting climate crisis. With equal certainty, the transition will have human rights effects on workers, Indigenous and local communities, and others, given the magnitude of the changes required.

For this transition to be *just*, it must use human rights as a preventive mechanism. Adopting a comprehensive, human-rights-based approach to the transition can allow states, corporations, and other stakeholders to avoid exacerbating existing inequalities, through ensuring equitable distribution of the costs and benefits of the transition. This approach must pay particular attention to those individuals and communities most affected and marginalized by the transition, ensuring that their human rights are adequately protected.

For individuals, workers, and Indigenous and local communities, a preventive human rights framework must ensure that they participate meaningfully in all phases of the transition’s lifecycle, allowing them the fullest realization of their rights and an opportunity to seek agency and ownership over the transition process. This calls for a multi-pronged approach, relying on stakeholder collaboration and maximization of the preventive tools at their disposal.

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<sup>208</sup> Msosa and Mugova, “Corporate Social Responsibility Challenges in the Extractive Industry.”

<sup>209</sup> Romina Bandura and Austin Hardman, “Environmental, Social, and Governance Best Practices Applied to Mining Operations,” *Center for Strategic & International Studies*, 16 November 2023, <https://www.csis.org/analysis/environmental-social-and-governance-best-practices-applied-mining-perations>.

## RECOMMENDATIONS

- In considering the question of fair distribution in the context of the transition to a “green” economy, states and other stakeholders should focus on the need to avoid the generation and exacerbation of conflict and grievance that would result from continued inequitable distribution. For this purpose, stakeholders may avail themselves of the experience and lessons learned from human rights mechanisms of reparation and restitution.
- Policy facilitating climate action must avoid achieving mitigation benefits at the expense of human rights. To promote this goal, *just* transition principles should be embedded in national climate policies, including Nationally Determined Contributions (NDCs) and adaptation plans, thus supporting regulatory frameworks and effective nationally-led implementation. Additionally, *just* transition policy should take a decentralized approach through integration across governmental ministries and agencies to enhance collaboration. This is particularly important with regard to economic planning and finance policy.
- *Just* transition policies must take seriously the impact on, and resulting human rights risks for, those most affected by the transition—workers, local communities, Indigenous Peoples, and marginalized groups—and tailor policies to local needs and conditions. This should include providing practical solutions to workers affected by the transition, such as training and reskilling programs and assurances of adequate working conditions, as well as integrating models of equity sharing for affected communities.
- An effective *just* transition requires meaningful engagement with all stakeholders throughout all policy stages—from the policy creation stage, planning stages, environmental and human rights risk assessments, and the implementation of an environmental plan or project. Promoting engagement, inclusiveness, and participation can lead to more successful and equitable outcomes.
- Effective community engagement must be inclusive, transparent, culturally appropriate, and continuous. Participation of affected groups, individuals, and communities, should be a required stage of environmental, human rights, and investment assessments, as well as contract negotiation processes for both state and privately-led programs. To ensure effective engagement, states should provide independent technical and legal support to empower communities to participate in complex investment processes.
- A preventive human-rights-based approach to the *just* transition can benefit affected communities, states, and also corporations. Mandatory implementation of existing corporate responsibility guidelines, such as the UN Guiding Principles on Business and Human Rights, into domestic legislation and corporate policy can serve to promote human rights compliance in the transition process as well as better governance outcomes overall.

# Chapter IV

## Displacement in the Context of Climate Change and Climate Disasters\*

**T**he impacts of climate change and disasters can have devastating effects on people, communities, and their environments, exacerbating other drivers of displacement. Movement in this context can become necessary to avoid harm (for example, to avoid the risk of death or injury from a fire or a flood). Human rights obligations arise prior to and upon displacement,<sup>210</sup> and displacement can also cause further human rights risks (including death, injury, loss of property, livelihood, or cultural connection to land). The impacts of climate change are anticipated to increase in the coming years, meaning displacement in the context of climate change may also increase.<sup>211</sup>

**Displacement is always multi-causal.**<sup>212</sup> Climate change has an amplifying effect, interacting with other drivers of displacement.<sup>213</sup> As the impacts of climate change become more severe, displacement in this

<sup>210</sup> Noting that in certain circumstances, where safety or health are at risk, displacement may be required to comply with international human rights obligations. See United Nations Economic and Social Council, Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Methods of Work of the Commission Human Rights, Mass Exoduses and Displaced Persons Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39, Addendum: Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, 11 February 1998, Principle 6(1)(d), <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=E/CN.4/1998/53/Add.2&Lang=E> [hereinafter Guiding Principles on Internal Displacement].

<sup>211</sup> United Nations Secretary-General, *The Impacts of Climate Change on the Human Rights of People in Vulnerable Situations*, ¶ 12, A/HRC/50/57, (2022), <https://www.ohchr.org/en/documents/thematic-reports/ahrc5057-impacts-climate-change-human-rights-people-vulnerable>; IPCC 2023 Report, ¶ A2-2.7.

<sup>212</sup> See Jane McAdam and Tamara Wood, “Kaldor Centre Principles on Climate Mobility,” *International Journal of Refugee Law* (2024), Principle 4, <https://doi.org/10.1093/ijrl/eeae003> [hereinafter Kaldor Centre Principles] referring to the Nansen Initiative, “The Nansen Initiative: Disaster-Induced Cross-Border Displacement, Vol. I,” (2015), ¶ 76–86, 117–18, [https://disasterdisplacement.org/wp-content/uploads/2014/08/EN\\_Protection\\_Agenda\\_Volume\\_I\\_low\\_res.pdf](https://disasterdisplacement.org/wp-content/uploads/2014/08/EN_Protection_Agenda_Volume_I_low_res.pdf) [hereinafter Nansen Initiative]; see also Jane McAdam, “Building International Approaches to Climate Change, Disasters, and Displacement,” *Windsor Yearbook of Access to Justice* 33, no. 14, (2016): 3, <https://heinonline.org/HOL/P?h=hein.journals/windyrbj33&i=225>.

<sup>213</sup> Jane McAdam, “Displacement in the Context of Climate Change and Disasters,” in *The Oxford Handbook of International Ref-*

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context is also increasing,<sup>214</sup> and with it, the potential for mass human rights violations. The focus of this chapter, therefore, is on prevention of mass human rights violations of those whose displacement occurs in the context of climate change and disasters.

Displacement occurs in the context of both slow-onset changes (such as drought, sea level rise desertification, glacial melt, increasing temperatures, land degradation, loss of biodiversity, ocean acidification, and salinization) and rapid-onset disasters (such as wildfires or floods), as well as via the interactions between the two (for example, sea level rise means storm surges are riding on higher overall water levels).<sup>215</sup> Climate effects and disasters are also heavily influenced and multiplied by socioeconomic and governance factors as drivers that trigger displacement.<sup>216</sup>

## Climate change has an amplifying effect, interacting with other drivers of displacement.

**The most effective way to prevent mass human rights violations for those displaced in the context of climate change and disasters is to clarify how existing rules apply and ensure that they are implemented so as to address the needs and rights of at-risk populations.**

As such, a “toolkit” of measures is needed to respond to (the risk of) displacement in this context, to prevent mass human rights violations.<sup>217</sup> Rather than grand gestures, such as drafting new treaties or revisiting existing treaties, the most effective way to prevent mass human rights violations for those displaced in the context of climate change and disasters is to clarify how existing rules apply and ensure that they are implemented so as to address the needs and rights of at-risk populations.<sup>218</sup> Multiple strategies are also essential. Broadening access to regular permanent and temporary migration can reduce pressure on limited resources and reduce displacement risks.

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*ugee Law*, Cathryn Costello, Michelle Foster, and Jane McAdam eds. (Oxford, UK: Oxford University Press, 2021), 832–847, <https://doi.org/10.1093/law/9780198848639.001.0001>.

<sup>214</sup> IPCC 2023 Report, 6, ¶ A.2.5–7.

<sup>215</sup> Kaldor Centre Principles, Principle 4, referencing: Climate Council, *Briefing Statement: Damage from Cyclone Pam was Exacerbated by Climate Change* (2015), 1, <https://www.climatecouncil.org.au/uploads/417d45f46cc04249d55d59be3da6281c.pdf>.

<sup>216</sup> Christelle Cazabat, et. al., *Addressing Internal Displacement in The Context of Climate Change* (Geneva, Switzerland: Internal Displacement Monitoring Centre, September 2021), 1–26. [https://www.internal-displacement.org/sites/default/files/publications/documents/IDMC\\_SlowOnsetTypology\\_final.pdf](https://www.internal-displacement.org/sites/default/files/publications/documents/IDMC_SlowOnsetTypology_final.pdf).

<sup>217</sup> Kaldor Centre Principles, Principle 4; McAdam, “Building International Approaches,” 9.

<sup>218</sup> June McAdam, “Swimming Against the Tide: Why a Climate Change Displacement Treaty is Not the Answer,” In *Refugees and Rights*, Jane McAdam ed. (London, UK: Routledge, 2017), 379–404, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781315244969-17/swimming-tide-climate-change-displacement-treaty-answer-jane-mcadam>.

Displacement, migration, and other large or small movement of individuals and communities in the context of climate change and disasters (such as evacuations or planned relocations) are the subject of increasing public and political discourse. There has been a significant amount of scholarly work on climate mobility, and courts and tribunals are increasingly issuing rulings that clarify states' obligations in this area.<sup>219</sup> This coincides with a range of guidance documents, including existing treaties, that clarify state obligations toward these displaced people.<sup>220</sup> Yet, **gaps in understanding, inadequate international cooperation, and securitization of irregular movement continue to pose obstacles to preventing mass human rights violations in this context.**

## Terminology and Parameters

This chapter seeks to offer solutions to some of the more pressing obstacles, to prevent human rights violations being suffered by people (at risk of being) displaced in the context of climate change and disasters. It does this by focusing on communities remaining in place in the face of a changing climate, those who are internally displaced, and those who are displaced across international borders. Some positive examples of efforts to minimize displacement pressures are explored, before highlighting the need to guard against the compounding impacts that discrimination can have on human rights risks. First, however, it is necessary to clarify some terms and the scope of this contribution.

We refer to “displacement in the context of climate change and disasters” to refer to **involuntary movement and “climate mobility” as an umbrella term to refer to both voluntary and involuntary movement.** These terms are preferred to “climate-induced migration,” “climate refugees,” or similar terminology, which, aside from legal inaccuracies, do not account for the multi-causality of this form of displacement.<sup>221</sup> Generally, questions of causation can be difficult or impossible to answer, and are ultimately a distraction: whether displacement has been “caused” by climate change or by a disaster unconnected to climate change, the need to prevent human rights violations remains the same.<sup>222</sup> When referring to “disasters,” we adopt the definition used by the United Nations Office for Disaster Risk Reduction: “[A] serious disruption of the functioning of a community or a society at any scale due to hazardous events interacting with conditions of exposure, vulnerability and capacity, leading to one or more of the following: human,

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<sup>219</sup> In terms of judicial consideration, a selection of recent cases includes, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, European Court of Human Rights, Application no. 53600/20, Judgment (Grand Chamber) 9 April 2024; *Ioane Teitiota v. New Zealand* CCPR/C/127/D/2728/2016, United Nations Human Rights Committee (HRC), 7 January 2020; *Waratah Coal Pty Ltd v. Youth Verdict Ltd & Ors* (No 6) [2022] QLC 21 (Australia).

<sup>220</sup> Jane McAdam, “Moving beyond Refugee Law: Putting Principles on Climate Mobility into Practice,” *International Journal of Refugee Law* 34, no. 3-4 (October/December 2022): 440–48, <https://doi.org/10.1093/ijrl/eeac039>.

<sup>221</sup> United Nations International Organization for Migration (IOM), Migration Data Portal, “Types of migration: Environmental Migration,” accessed 30 May 2024, [https://www.migrationdataportal.org/themes/environmental\\_migration\\_and\\_statistics](https://www.migrationdataportal.org/themes/environmental_migration_and_statistics). The International Organization for Migration defines environmentally displaced persons as “persons who are displaced within their country of habitual residence or who have crossed an international border and for whom environmental degradation, deterioration or destruction is a major cause of their displacement, although not necessarily the sole one.” See also Susanne Melde, *Migration, Environment and Climate Change: Evidence for Policy (MECLEP) Glossary*, (Geneva, Switzerland: International Organization for Migration, 2014), [http://publications.iom.int/system/files/pdf/meclep\\_glossary\\_en](http://publications.iom.int/system/files/pdf/meclep_glossary_en); the Nansen Protection Agenda defines disaster displacement as referring to “situations, where people are forced or obliged to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of disasters triggered by natural hazards,” noting this can include “spontaneous flight or an evacuation order enforced by authorities”; “Key Definitions,” Platform on Disaster Displacement, Follow-up to the Nansen Initiative, accessed 3 June, 2024, <https://disasterdisplacement.org/the-platform/key-definitions/>.

<sup>222</sup> McAdam, “Displacement in the Context of Climate Change and Disasters,” 833.

material, economic and environmental losses and impacts.”<sup>223</sup> Disasters can include events that have no link to climate change, such as nuclear emergencies and earthquakes. These events can pose similar human rights risks as weather-related disasters, however, making it impossible or intolerably dangerous to live in a particular area. They are directly relevant to the environment and human rights generally and there is no logical reason to exclude displacement in this context from recommendations to prevent mass human rights violations.<sup>224</sup>

Displacement in the context of climate change and disasters often involves individuals or family groups, although it can also occur on a larger scale and affect whole communities. Indeed, language regarding “mass displacement” may be counter-productive, as states may be less inclined to assist if they believe that large numbers of people will be seeking assistance. Given the scale and likely increase of this displacement worldwide, however, there is scope for mass human rights violations to arise whether a particular displacement involves small or large numbers of people.<sup>225</sup> The recommendations here, therefore, apply equally to small- and large-scale displacement.

There is a continuum along which movement exists, and it is not always possible to clearly distinguish voluntary migration from involuntary displacement.<sup>226</sup> At one end of the spectrum, there are migrants who move within or between countries to pursue opportunities or life changes. At the other, it becomes impossible for people to remain at home for reasons of persecution, conflict, or environmental or other instability and they become displaced as a result. All forms of climate mobility can pose a significant risk of human rights violations (as well as providing avenues to avoid such violations) and is deserving of increased discussion and attention from policy makers. **We chose to focus on involuntary displacement, as the side of the blurred dichotomy that presents a strong preventive potential.** Given this context, however, our recommendations may have relevance for climate mobility more broadly.

Finally, for the purposes of this report, we are focusing on displacement in the context of climate change and disasters that does not necessarily have a link with conflict. Of course, both climate change and conflict can be drivers of displacement. Conflict or community unrest and the impacts of climate change can coincide with, interact with, and exacerbate one another. The avenues available to prevent mass human rights violations for people displaced by conflict, however, are already well established (if inconsistently implemented).<sup>227</sup> Avenues to prevent mass human rights violations for people displaced in the context of

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<sup>223</sup> “Sendai Framework Terminology on Disaster Risk Reduction: Disaster,” United Nations Office for Disaster Risk Reduction, accessed May 24, 2024, <https://www.undrr.org/terminology/disaster>.

<sup>224</sup> McAdam, “Displacement in the Context of Climate Change and Disasters”, 833.

<sup>225</sup> McAdam, “Displacement in the Context of Climate Change and Disasters”, 833; IPCC 2023 Report.

<sup>226</sup> “World Migration Educators’ Toolkit,” United Nations International Organization for Migration, accessed May 24, 2024, <https://wmr-educatorstoolkit.iom.int/>; International Federation of the Red Crescent, *Displacement in a Changing Climate* (Geneva, Switzerland, IFRC, 2021), 3-59 <https://www.ifrc.org/sites/default/files/2021-11/2021-Climate-Displacement-Report-Final.pdf>, citing Graeme Hugo, “Environmental Concerns and International Migration,” *International Migration Review* 30, no. 1 (1996): 105–331, <https://doi.org/10.1177/019791839603000110>.

<sup>227</sup> Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S., 137, [hereinafter 1951 Refugee Convention]; Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, 1001 U.N.T.S. 45.; Regional Refugee Instruments & Related, Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984; United Nations High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence Under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees and the Regional Refugee Definitions, HCR/GIP/16/12, 2 December 2016, <https://www.refworld.org/policy/legal->



climate change and disasters with no clear link to conflict are in greater need of clarification.<sup>228</sup>

It is particularly important that any coincidence of climate change and conflict as risks that driver displacement is not conflated with any risk being posed by people who are displaced. Displacement occurs because people are fleeing risk, whether the source of the risk is climate change, disasters, conflict or something else. Displaced people are not themselves a source of risk, and rhetoric that suggests that they do can contribute to human rights violations, by limiting protection avenues available and/or increasing discrimination against them.

As topics for future research, conflict related displacement as well as internal and external peacebuilding and migration policy, can of course serve as important tools that reduce the risk of displacement and associated human rights violations.

## STATES' OBLIGATIONS TO PREVENT HUMAN RIGHTS VIOLATIONS – A COMMUNITIES-FIRST APPROACH

There are two ways that human rights violations interact with displacement in the context of climate change and disasters. **First, human rights violations can exacerbate the impact of climate change** or disasters, increasing the risk that people and communities will become displaced. **Second, affected communities can suffer violations during or subsequent to displacement, and also as a result of remaining in the affected area.**

It is important to note that states cannot prevent all harm arising in the context of climate change and disasters, nor are they obliged to. States are required to respect, protect, and fulfill their human rights obligations.<sup>229</sup> It is only when they fail to do so that a human rights violation can occur. These harms will generally amount to human rights violations where states either cause harm directly prior to, during, or after displacement *or* a) are on notice of the nature of a risk to human rights, and b) do not take adequate steps to ameliorate that risk.<sup>230</sup>

Additionally, **states, civil society, international organizations, and other stakeholders must analyze the circumstances faced by at-risk communities and individuals, as they may not fit into what many would consider paradigmatic displacement.** For this purpose, we differentiate between three (roughly

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[guidance/unhcr/2016/en/113881](https://www.unhcr.org/refugees/2016/en/113881).

<sup>228</sup> United Nations High Commissioner for Refugees (UNHCR), *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters* (Geneva, Switzerland: UNHCR, 2020).

<sup>229</sup> States incur these obligations under international treaties to which they are a party, as well as under customary international law (unless they have persistently objected to the emergence of that rule).

<sup>230</sup> Walter Kälin, "Conceptualising Climate-Induced Displacement," *Climate Change and Displacement: Multidisciplinary Perspectives* 81 (2010): 102, [https://www.legalanthology.ch/t/kaelin\\_conceptualising-climate-induced-displacement\\_2010.pdf](https://www.legalanthology.ch/t/kaelin_conceptualising-climate-induced-displacement_2010.pdf).

delineated) categories. As made clear by the Kaldor Centre Principles on Climate Mobility, **states are obliged to:**

1. **Support communities to remain safely in place, where they want to, in the face of a changing climate;**<sup>231</sup>
2. **Facilitate safe movement where appropriate;**<sup>232</sup> and
3. **Ensure that those who are displaced can secure appropriate durable solutions quickly.**<sup>233</sup>

Determining whether these obligations have been fulfilled when people are remaining in place or displaced in the context of climate change and disasters requires systematic analysis. Sometimes states actively violate rights, for example by having discriminatory policies impacting access to information or support. At other times, the violation may constitute a failure to fulfill positive human rights obligations, such as ensuring people have access to life's essentials (minimum standard of shelter, food, or healthcare, for example). Rhetoric around displacement can also be damaging and lead to human rights violations. Securitization of displaced people, whereby displaced people are portrayed as a security risk rather than as people in need of protection, can be particularly damaging.<sup>234</sup>

**Harm can also arise that does not amount to a violation but warrants preventive action to minimize future risk of displacement and associated mass human rights violations.** For example, in September 2022, floods in Pakistan caused the displacement of 7.9 million people.<sup>235</sup> The damage caused to infrastructure during flooding resulted in ongoing harm to affected communities and could potentially become a contributing factor of future human rights violations. While Pakistan may not have been in violation of its obligations under international law in relation to this damage, avoiding and/or remedying this harm would help to reduce or mitigate human rights risks faced by affected populations,<sup>236</sup> including the risk of repeated displacement.<sup>237</sup>

It is essential that the views of affected communities are prioritized when developing policy responses to prevent human rights violations for people at risk of or in fact displaced in the context of climate

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<sup>231</sup> Guiding Principles on Internal Displacement, Principle 6.1; Kaldor Center Principles, Principle 1.

<sup>232</sup> Kaldor Center Principles, Principles 2–5, 13.

<sup>233</sup> Guiding Principles on Internal Displacement, Principle 6.3; Kaldor Center Principles, Principles 6–13.

<sup>234</sup> See, e.g., Philippe Bourbeau, *The Securitization of Migration: A Study of Movement and Order* (London, UK: Routledge, 2011); Anne Hammerstad, “The Securitization of Forced Migration,” in *The Oxford Handbook of Refugee and Forced Migration Studies*, Elena Fiddian-Qasmiyeh, Gil Loescher, Katy Long, and Nando Sigona, eds. (London: UK, OUP Oxford, 2014), 265–277.

<sup>235</sup> United Nations Office for the Coordination of Humanitarian Affairs, *Revised 2022 Flood Response Plan: Pakistan* (2022), <https://www.unocha.org/pakistan#:~:text=The%20Floods%20Response%20Plan%20from.dignity%20for%20flood%20Daffected%20people>.

<sup>236</sup> Human rights risks include risks to the right to life as enshrined in Article 6 of the ICCPR, and as clarified by the United Nations Human Rights Committee in General Comment 36, see UN Human Rights Committee (HRC), General Comment no. 36, “Article 6 (Right to Life),” ¶ 26, 62, CCPR/C/GC/36 (Sept. 3, 2019); Human rights risks also include risks to the right to an adequate standard of living and adequate healthcare, see Articles 11 and 12 of the ICESCR, and water and sanitation, see United Nations General Assembly, Resolution 64/292, *The Human Right to Water and Sanitation*, A/RES/64/292 (3 August 2010).

<sup>237</sup> European Commission, Directorate-General for European Civil Protection and Humanitarian Aid Operations, “Echo Daily Flash: Pakistan – Severe Weather and Floods,” 4 September 2023, <https://erccportal.jrc.ec.europa.eu/ECHO-Products/Echo-Flash#/daily-flash-archive/4878>.

change and disasters.<sup>238</sup> These views should be reflected in policy and legal responses, both for the effectiveness of the responses as well as to ensure that they are able to be implemented in practice. Partnerships with affected communities should be genuine, inclusive, and ongoing, as required by international human rights law.<sup>239</sup> Centering the views of these communities will ensure the effectiveness and legitimacy of policy and legal responses and prevent human rights violations.<sup>240</sup>

**Access to information and data is essential to preventing mass human rights violations for affected communities at risk of displacement, and for those already displaced.** People at risk of displacement are less able to protect themselves from harm if they are not aware of the risks that they are exposed to, as demonstrated in the below examples regarding Russia. Displaced people may lack information about previous disasters or present environmental conditions, heightened protections, and adaptation risks.<sup>241</sup> In particular, states must alert communities to imminent risks and ensure that they have the capacity to protect themselves from those risks, including by facilitating evacuations for people with compromised mobility if required.<sup>242</sup>

Data allows policy makers to understand the scale of the problem, including how different groups might be affected differently, and how they can best craft responses. Despite this, however, there is a lack of reliable, disaggregated data available regarding people displaced in the context of climate change and disasters, both internally and across international borders.<sup>243</sup>

**It is essential that the views of affected communities are prioritized when developing policy responses to prevent human rights violations for people at risk of or in fact displaced in the context of climate change and disasters.**

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<sup>238</sup> Kaldor Centre Principles, Principle 13.

<sup>239</sup> United Nations General Assembly, Resolution 217 (III) A, Universal Declaration of Human Rights, art. 21, (10 December 1948); ICCPR, art. 25, referenced in Kaldor Center Principles, Principle 13.

<sup>240</sup> Kaldor Center Principles, Principle 13.

<sup>241</sup> Elizabeth Warn and Susana Adamo, “The Impact of Climate Change: Migration and Cities in South America,” *World Meteorological Organization Bulletin* 63, no. 2 (January 2014), [https://www.researchgate.net/publication/267151559\\_The\\_impact\\_of\\_climate\\_change\\_migration\\_and\\_cities\\_in\\_South\\_America](https://www.researchgate.net/publication/267151559_The_impact_of_climate_change_migration_and_cities_in_South_America); Demet Intepe, et al., “The Dangers of Romanticising Local Knowledge in the Context of Disaster Studies and Practice,” in *Routledge Handbook on Cultural Heritage and Disaster Risk Management*, Rohit Jigyasu and Ksenia Chmutina eds. (London, UK: Routledge, 2023), 147–64.

<sup>242</sup> *Budayeva v. Russia*, European Court of Human Rights, Application no. 15339/02, Judgment 20 March 2008; *Kolyadenko and Others v. Russia*, European Court of Human Rights, Application no. 17423/05, ECtHR 338, Judgment 28 February 2012; Brandon Curtis, “Criminalizing Non-Evacuation Behavior: Unintended Consequences and Undesirable Results,” *BYU Law Review* 503, no. 2 (2015), <https://digitalcommons.law.byu.edu/lawreview/vol2015/iss2/8>; Bruce Burson, Walter Kälin, Jane McAdam, and Sanjula Weerasinghe, “The Duty to Move People Out of Harm’s Way in the Context of Climate Change and Disasters,” *Refugee Survey Quarterly* 37, no. 4 (2018): 379–407, <https://doi.org/10.1093/rsq/hdy015>.

<sup>243</sup> McAdam, “Moving Beyond Refugee Law.”

## Minimizing Displacement Pressures on the Local Environment

**One of the most effective ways to prevent mass human rights violations in this context is to minimize pressures on local environments.** Displacement can become necessary when the impacts of climate change reduce the capacity of the local environment to support ongoing population growth (or even continuing to support the same level of population).<sup>244</sup> Thus, assisting states in managing these pressures can reduce displacement—and related human rights—risks.

**Supporting more regular movement can be one tool to relieve this environmental pressure, either within a state's borders or through international migration.** Domestically, this can require consultation with both affected and host communities, to ensure that affected communities are welcomed and adequately catered for in terms of infrastructure and access to essentials. Regular movement across international borders can be achieved by expanding temporary or permanent migration pathways or reaching regional free movement agreements. In this way, scarce resources can be redistributed at home, meeting the needs of residents.<sup>245</sup> Remittances from people working abroad are also a valuable contribution to affected communities that can assist in alleviating pressure.<sup>246</sup>

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<sup>244</sup> See, e.g., “The Connections Between Population and Climate Change Info Brief,” Population Connection, accessed 25 May 2024, <https://populationconnection.org/resources/population-and-climate/>.

<sup>245</sup> Jane McAdam, *Climate Change, Forced Migration, and International Law* (London, UK: Oxford University Press, 2012).

<sup>246</sup> Jane McAdam and Jonathan Pryke, “Climate Change, Disasters and Mobility: A Roadmap for Australian Action,” *Policy Brief 10*, Kaldor Center for International Refugee Law (2020): 21-20, <https://www.unsw.edu.au/content/dam/pdfs/unsw-ado-be-websites/kaldor-centre/2023-09-policies/2023-09-policy-brief-10.pdf>.

## Tuvalu: Creative Approaches to Climate Mobility

**Pacific Island nations have been at the forefront of advocacy and policy development regarding climate change.** This region is already affected by sea level rise and other impacts of climate change, particularly in low-lying states like Tuvalu, with impacts predicted to increase significantly in the future.<sup>247</sup> While Pacific Islanders have deep, spiritual connections with their lands, the region has been characterized by high levels of both temporary and permanent migration and displacement. As the climate changes and sea levels rise, there are increasing demands on reducing resources, creating the conditions for displacement if these pressures are not relieved in other ways.

A 2017 UN study including 2,807 individuals from Tuvalu found that, while only eight percent of migrants from Tuvalu named climate change as a reason for the migration decision, 97 percent of reported households have been impacted by incremental sea level rise, saltwater intrusion, and drought.<sup>248</sup> Climate-change-specific conditions worsen Tuvaluans' access to material resources like food, housing, education, and the ability to practice their cultural rights.<sup>249</sup>

In November 2023, Tuvalu Prime Minister Natano and Australian Prime Minister Albanese acknowledged Tuvalu's need for support in mitigating the impact of climate change by announcing the Falepili Union. Founded on a recognition of Tuvaluans' desire to remain on their land and their "deep, ancestral connections to land and sea," this Union contains both an agreement to provide Tuvalu citizens with a "mobility pathway" to Australia, along with climate adaptation support for Tuvalu.<sup>250</sup> While there is a need for more detail and the treaty is yet to be ratified, it is a positive development.<sup>251</sup> **If implemented, this Union will take some pressure off Tuvalu's stretched resources, minimizing the risk of displacement and related human rights violations in the future. It has been described as offering a possible model for future agreements and potentially paving the way for a regional agreement in the future.**<sup>252</sup>

<sup>247</sup> Tammy Tabe, "Climate Change Migration and Displacement: Learning from Past Relocations in the Pacific," *Social Sciences* 8, no. 7 (2019), <https://doi.org/10.3390/socsci8070218>; IPCC 2023 Report, 6, A.2.5.

<sup>248</sup> Robert Oakes, et al., "Climate Change and Migration in the Pacific: Links, Attitudes, and Future Scenarios in Nauru, Tuvalu, and Kiribati," *United Nations University Institute for Environment and Human Security* (2017), [https://i.unu.edu/media/ehs.unu.edu/news/11747/RZ\\_Pacific\\_EHS\\_ESCAP\\_151201.pdf](https://i.unu.edu/media/ehs.unu.edu/news/11747/RZ_Pacific_EHS_ESCAP_151201.pdf).

<sup>249</sup> Olivia Yates, et al., "'There's so Much More to That Sinking Island!' – Restoring Migration from Kiribati and Tuvalu to Aotearoa New Zealand," *Journal of Community Psychology* 3, no. 51 (April 2023): 924–44. <https://doi.org/10.1002/jcop.22928>.

<sup>250</sup> Australian Government Department of Foreign Affairs and Trade, *Australia-Tuvalu Falepili Union Treaty*, 9 November 2023, art. 2(1), 2(2)(a), 3(1), <https://www.dfat.gov.au/geo/tuvalu/australia-tuvalu-falepili-union-treaty>; Natasha Frost, "No, 11,200 Climate Refugees Aren't Heading to Australia," *The New York Times*, 11 November 2023, <https://www.nytimes.com/2023/11/11/world/australia/tuvalu-climate.html>.

<sup>251</sup> Jane McAdam, "Submission 3 on the Australia-Tuvalu Falepili Union," *Kaldor Centre for International Refugee Law*, 16 April 2024, <https://www.unsw.edu.au/content/dam/pdfs/law/kaldor/resources/2024-04-submission/2024-04-submission-to-joint-standing-committee-on-treaties-on-the-australia-tuvalu-falepili-union.pdf>.

<sup>252</sup> Jane McAdam, "Statement: Kaldor Centre Welcomes World-First Climate Mobility Treaty Between Australia and Tuvalu," *Kaldor Centre for International Refugee Law*, 10 November 2023 <https://www.unsw.edu.au/news/2023/11/kaldor-centre-welcomes-world-first-climate-mobility-treaty-between-australia-tuvalu>.

## East Africa: Regional Solutions to Rural to Urban Displacement Among Member States of the Intergovernmental Authority on Development (IGAD)

Localized droughts in East Africa—in Djibouti, Eritrea, Ethiopia, Kenya, Somalia, and South Sudan—have influenced population movements both within and across international borders.<sup>253</sup> Drought and variable rainfall across the region have put stress on livelihood systems like pastoralism or subsistence farming, pushing families and communities to leave their homes in search of food, water, and pasture, in addition to economic opportunities in urban areas.<sup>254</sup> Droughts, floods, and failed harvests, compounded by “conflict, displacement and macroeconomic challenges” have also driven widespread food insecurity ranging from crisis to catastrophic levels.<sup>255</sup>

**In recognition of the positive role that migration can play in mitigating the impacts of climate change and disasters** (and in other areas), the countries of the Intergovernmental Authority on Development (IGAD) **in East Africa have developed a treaty permitting the free movement of people between state parties.** This free movement protocol does away with the need to prove refoulement risk,<sup>256</sup> as is required by the international protection framework established by the Refugee Convention and under international human rights law treaties.<sup>257</sup> It specifically allows for movement “in anticipation of, during or in the aftermath of disaster,” and protects people who move due to the (anticipated) impacts of disaster

<sup>253</sup> Ministry of Foreign Affairs of the Netherlands, Climate Change Profile: Greater Horn of Africa (April 2018), <https://www.preventionweb.net/media/92554/download?startDownload=true>; Sagal Abshir, *Climate Change and Security in the Horn of Africa: Can Europe Help to Reduce the Risks?* (Berlin, Germany: Climate Security Expert Network, 2020), [https://www.eip.org/wp-content/uploads/2020/10/csen\\_policy\\_paper\\_climate\\_change\\_and\\_security\\_in\\_the\\_horn\\_of\\_africa.pdf](https://www.eip.org/wp-content/uploads/2020/10/csen_policy_paper_climate_change_and_security_in_the_horn_of_africa.pdf); Tamara Wood, “OPINION: New Pact Paves Way for Innovative Solutions to Climate Change Displacement in Africa,” *Thomson Reuters Foundation News*, 28 February 2020, <https://news.trust.org/item/20200228175003-4k8dq/>; “Sudan Crisis Explained,” United Nations High Commissioner for Refugees, 15 April 2024, <https://www.unrefugees.org/news/sudan-crisis-explained/>; “Assessing the Evidence: Migration, Environment & Climate Change Nexus in Uganda,” United Nations International Organization for Migration (IOM) (March 2022), <https://uganda.iom.int/sites/g/files/tmzbd11376/files/documents/assessing-the-evidence-migration-environment-climate-change-nexus-in-uganda.pdf>.

<sup>254</sup> Kanta Kumari Rigaud, et. al., *Groundswell: Preparing for Internal Climate Migration* (Washington, DC: World Bank, 2018), <https://openknowledge.worldbank.org/entities/publication/2be91c76-d023-5809-9c94-d41b71c25635>; “In The Face of Climate Change, Migration Offers an Adaptation Strategy in Africa,” *United Nations International Organization for Migration*, 5 September 2022, <https://www.iom.int/news/face-climate-change-migration-offers-adaptation-strategy-africa#:~:text=As%20part%20of%20the%202063,environmental%20pressures%20and%20climate%20change.>

<sup>255</sup> “Widespread Flooding in the Horn and Conflict in Sudan Drive Rising Needs in November,” *Famine Early Warning Systems Network*, December 2023, <https://fews.net/east-africa/key-message-update/december-2023>; For an explanation of food insecurity classification levels, see “Understanding the IPC Scales,” Integrated Food Security Phase Classification (IPC), accessed 3 June 2024, [https://www.ipcinfo.org/fileadmin/user\\_upload/ipcinfo/docs/communication\\_tools/brochures/IPC\\_Brochure\\_Understanding\\_the\\_IPC\\_Scales.pdf](https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/communication_tools/brochures/IPC_Brochure_Understanding_the_IPC_Scales.pdf).

<sup>256</sup> *Non-refoulement* obligations are examined below under “Cross-Border Displacement.”

<sup>257</sup> Such as Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3., Dec. 10, 1984, 1465 U.N.T.S., 85 [hereinafter Convention Against Torture], or under Articles 6 or 7 of the ICCPR.

from being sent home before it is “safe and reasonable to return.”<sup>258</sup> The agreement has four phases of implementation, which are due to be completed by 2037.<sup>259</sup>

**While still in its early stages of implementation, this treaty has significant potential to prevent human rights violations by allowing for movement prior to the risk of displacement materializing. It represents a positive model for regional cooperation that could be emulated in other regions.**

## TARGETING PREVENTIVE SOLUTIONS TO SPECIFIC HUMAN RIGHTS RISKS

### Remaining in Place

For those who want to remain where they are, states should support them to do so where possible.<sup>260</sup> **Arbitrary displacement can be both a human rights violation itself,<sup>261</sup> and it can lead to further human rights violations.<sup>262</sup>** States are under an obligation to “prevent and avoid conditions that might lead to displacement of persons,”<sup>263</sup> giving rise to due diligence obligations to take adequate precautions to protect individuals or communities from foreseeable risks of displacement. As noted by McAdam, “[i]f people cannot live in safety, dignity, and with access to livelihoods, then they may seek to move,”<sup>264</sup> so it is incumbent on states to support community access to these essentials where possible, for example by developing climate-resilient building codes and ensuring known environmental risks are mitigated.

Some may want to move but be unable to do so: “[i]nvoluntary immobility may result from limited resources, capabilities or opportunities.”<sup>265</sup> States are also obliged to ensure those “trapped” individuals and communities remain safe and are not prevented from moving due to discrimination or state (in) action.<sup>266</sup> As will be seen in the examples below, these communities can be at particularly high risk of human rights violations. It is accordingly incumbent on states to minimize the likelihood of communities becoming trapped, by refraining from building settlements in areas of known risk and ensuring that people of all abilities are catered for if displacement becomes necessary.

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<sup>258</sup> Article 16(1), as quoted in Wood, “OPINION: New Pact Paves Way.”

<sup>259</sup> “Annex: The Roadmap for Implementation of the Protocol on Free Movement of Persons in the IGAD Region,” Intergovernmental Authority on Development (IGAD, 2020), <https://environmentalmigration.iom.int/sites/g/files/tmzbd11411/files/event/file/17th%20Nov%202020%20Validated%20Roadmap%20for%20Implementation%20of%20the%20Protocol%20on%20Free%20Movement%20of%20Persons.pdf>.

<sup>260</sup> Kaldor Center Principles, Principles 6 and 7.

<sup>261</sup> Guiding Principles on Internal Displacement, Principle 6.

<sup>262</sup> Guiding Principles on Internal Displacement, Principle 6, ¶ 1.

<sup>263</sup> Guiding Principles on Internal Displacement, Principle 5.

<sup>264</sup> McAdam, “Building International Approaches,” 4.

<sup>265</sup> Kaldor Center Principles, Principle 6.

<sup>266</sup> Kaldor Center Principles, Principle 6.

## Russia: Obligation to Prevent, Act, Warn, and Evacuate

**States can be required to facilitate temporary displacement, by way of evacuation orders, to prevent mass human rights violations occurring as a result of a rapid-onset disaster.** In some circumstances, a violation can arise where a state allows for settlement to take place where a risk of disaster has not been adequately mitigated. Two examples from Russia demonstrate states' obligations to prevent harm.

In July 2000 the town of Tyrnauz, Russia, was inundated by a mudslide, causing widespread destruction, injuries, and at least one death.<sup>267</sup> Mudslides were a known risk in the town as they had occurred repeatedly in the past. After an earlier mudslide destroyed essential protective infrastructure the previous year, the authorities received repeated warnings that there could be “record losses’ and casualties,” if urgent repairs were not made.<sup>268</sup> Recommendations were also made to institute lookouts, who could issue warning and evacuation orders if needed, to protect the town’s inhabitants. Russian authorities implemented neither of these safeguards prior to the mudslide occurring in July 2000. When the mudslide occurred, there was an initial warning, during which residents evacuated their homes. However, after the initial warning, residents appear to have been permitted to return to their homes. A second mudslide the same day caused significantly more harm.

In a similar case arising the following year, Russia again failed to act on prior warnings, which in this instance included refraining from building residential properties in a flood plain without safeguarding residents. A community near Vladivostok suffered a severe storm with heavy rainfall. The local water reservoir was at risk of overflow during the storm, and so released large volumes of water, instantly flooding residents’ properties. Affected residents included a 63-year-old woman with disabilities, a woman with a 21-month-old son, and a 55-year-old woman who could not swim, putting each of their lives at risk.<sup>269</sup> In addition to the planning rules, experts again issued numerous warnings to the authorities regarding the state of the river in previous years, which Russian authorities did not follow.

In both cases, **the European Court of Human Rights held that Russia had infringed residents’ right to life, due to the failure to implement the recommended safety measures.** These findings were based on the fact that authorities built homes in a known risk area, did not take action when they were warned about the risk, and did not enforce an evacuation order by permitting residents to return to their homes prior to the risk subsiding. According to the Court, **the right to life includes an inherent preventive function**, requiring states “to assess all the potential risks inherent in the operation ... and to take practical measures to ensure the effective protection of those whose lives might be endangered

<sup>267</sup> Budayeva v. Russia.

<sup>268</sup> Budayeva v. Russia, ¶ 22.

<sup>269</sup> Kolyadenko and Others v. Russia, ¶ 153-155. This finding was made even though all three survived the flood.



by those risks.”<sup>270</sup> **By failing to take this action, Russia created human rights risks, including an avoidable risk of displacement, and then failed to adequately protect those who remained in place and evacuate them when their lives were at risk.**

These examples offer **clear guidance to states regarding their obligation to prevent mass human rights violations for communities remaining in place in the face of displacement risks**: they must act on warnings of risk, refrain from establishing situations of known risk, and take mitigating action where resources permit. States must also ensure that people do not return to a place of danger before they are confident that the risk has passed. While basic and perhaps obvious, taking such actions has the potential to prevent significant human rights violations.

## Internal Displacement

**Most people displaced in the context of climate change and disasters remain in the same country, becoming internally displaced persons (IDPs).**<sup>271</sup> In 2023, there were 26.4 million internal displacements caused by disasters, with 7.7 million people remaining displaced at the end of the year.<sup>272</sup> The number of internal displacements by disasters has been higher than displacements by conflict since 2008.<sup>273</sup>

**Internal displacement significantly impacts the enjoyment of human rights. The degree to which IDPs are affected is based both on existing vulnerabilities of the affected community and on the state’s capacity, and willingness to provide protection.**<sup>274</sup> The 1998 United Nations Guiding Principles on Internal Displacement provide guidance to states as to how affected communities continue to enjoy the rights and freedoms protected under international human rights law, free from discrimination.<sup>275</sup> **Affected states are obliged to ensure that the rights of at-risk communities are protected.** Rights that are particularly at risk include the right to life, the right to be free from discrimination and ill-treatment, the right to private and family life, the right to culture, and other social and economic rights.<sup>276</sup>

<sup>270</sup> Kolyadenko and Others v. Russia, ¶ 166.

<sup>271</sup> “Climate Change, Displacement, and Human Rights,” United Nations High Commissioner for Refugees (UNHCR) (2022), 2, <https://www.unhcr.org/us/media/climate-change-displacement-and-human-rights>.

<sup>272</sup> *2024 Global Report on Internal Displacement* (Geneva, Switzerland: Internal Displacement Monitoring Centre, Norwegian Refugee Council, 2024), <https://www.internal-displacement.org/global-report/grid2024/>. Note: the 26.4 million figure is individual instances of displacement, and an individual may be counted twice if they experience more than one displacement.

<sup>273</sup> “Global Internal Displacement Database,” Internal Displacement Monitoring Centre, accessed 31 May, 2024, <https://www.internal-displacement.org/database/displacement-data>. Note that displacements due to conflict increased in 2022 due to displacements in Ukraine, although the total number of displacements by disasters continued to be higher than displacements by conflict in 2022 and 2023.

<sup>274</sup> United Nations High Commissioner for Refugees (UNHCR), *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters*, 1 October 2020, <https://www.refworld.org/policy/legalguidance/unhcr/2020/en/123356>.

<sup>275</sup> Guiding Principles on Internal Displacement, Principle 1(1).

<sup>276</sup> Kaldor Center Principles, Principle 6. Regarding the right to be free from ill-treatment, see AC (Eritrea) [2023] NZIPT 802201-202, ¶ 143 (discussed below). Regarding the right to private and family life, see Verein KlimaSeniorinnen Schweiz and Others v. Switzerland. Regarding the right to culture, see Daniel Billy et al. v. Australia, United Nations Human Rights Committee (UNHCR), CCPR/C/135/D/3624/2019, ¶ 3.5, 8.14 (July 21 2022) (“Torres Strait Eight”).

## Cross-Border Displacement

Cross-border displacement in the context of climate change and disasters also occurs, although it is much rarer than internal displacement. International protection under the 1951 Refugee Convention or international human rights law might be sought following direct displacement, or potentially where a disaster has struck in someone's home country while they have been abroad.

Maintaining data on this form of displacement is difficult,<sup>277</sup> given the time lags that might exist between the displacement and a protection finding, and that often there will be multiple reasons underpinning a protection claim. Indeed, some people who would be at risk if they were to return to their country of origin due to the impacts of climate change or disasters might already hold or seek visas unrelated to protection (such as work or study visas, for example). However, **maintaining figures on when climate change and/or disasters featured in protection claims could be a first step in identifying the magnitude of the problem, which in turn would allow for targeted preventive action to take place.**

**It is important not to over-emphasize cross-border displacement in efforts to prevent mass human rights violations.** As noted above, the vast majority of people displaced in the context of climate change and disasters do not cross international borders and preventive efforts should be focused on the greatest need. Cross-border displacement does give rise to unique challenges, however, and thus warrants attention. *Non-refoulement* obligations, that is the obligation not to send someone back to a place where they face a real risk of persecution or other serious harm, are owed under both international refugee law and international human rights law.<sup>278</sup> Where someone is at real risk of such harm, states must not remove people and may owe them certain obligations, such as those found in the 1951 Refugee Convention.<sup>279</sup> The Human Rights Committee has recognized that *non-refoulement* obligations can arise due to the risks that the impacts of climate change can pose to the right to life or the right to be free from ill-treatment.<sup>280</sup> Returning people to a place where they are at real risk of serious harm can lead to mass human rights violations and thus it is important that states comply with their *non-refoulement* obligations.

**People and communities that have already been displaced across international borders** (as well as those displaced internally) **can be at particular risk of further displacement in the context of climate change and disasters.** For those living in displacement camps or other informal settlements, shelter can be precarious, unable to withstand severe weather events.<sup>281</sup> For example, people living in Bangladesh's Cox's Bazar—the world's largest refugee camp housing an estimated one million refugees fleeing violence

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<sup>277</sup> McAdam, "Displacement in the Context of Climate Change and Disasters," 832.

<sup>278</sup> See, e.g., 1951 Refugee Convention, art. 33, which prohibits return to "the frontiers of territories where [one's] life or freedom would be threatened on account of [their] race, religion, nationality, membership of a particular social group or political opinion." See also Article 3 to the Convention against Torture, and implied in Articles 6 and 7 to the ICCPR. See also the discussion of *non-refoulement* as a norm of customary international law in Guy S. Goodwin-Gill, Jane McAdam, and Emma Dunlop, *The Refugee in International Law* (Oxford, UK: Oxford University Press, 2021).

<sup>279</sup> 1951 Refugee Convention, art. 3-4, 7 and chapters II, III and IV.

<sup>280</sup> *Ioane Teitiota v. New Zealand*, ¶ 9.11.

<sup>281</sup> "Spotlight: Climate Action — Global Focus," United Nations Refugee Agency (UNHCR), accessed 31 May 2024, <https://reporting.unhcr.org/spotlight/climate-action#:~:text=With%2070%25%20of%20refugees%20and,to%20an%20increasingly%20inhospitable%20environment>, stating that 70 percent of refugees and 80 percent of internally displaced people originate from countries on the front lines of the climate crisis.

in neighboring Myanmar<sup>282</sup>—face a significant human rights risk. Cox’s Bazar is particularly vulnerable to climate-induced sudden and slow-onset disasters and, in the last five years, has faced “heatwaves, groundwater depletion, salinity, waterlogging, and heavy rainfall” that resulted in livelihood and agricultural land loss.<sup>283</sup> These risks are further amplified as the Rohingya refugees “lack legal status and livelihood opportunities, and movements outside the camps are restricted,” thus limiting their personal capacity to reduce the dangers they are exposed to.<sup>284</sup>

**People in these circumstances are particularly vulnerable, as they are outside of their country of nationality and are dependent on a foreign government for assistance and protection.** In these circumstances, there is an **important role for the international community to ensure that people are protected and durable solutions are found.** This would include offering protection in line with *non-refoulement* obligations and assistance in terms of funds as well as resettlement options.

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<sup>282</sup> “Inside the World’s Five Largest Refugee Camps,” United Nations Refugee Agency (UNHCR), 19 July 2023, <https://www.unrefugees.org/news/inside-the-worlds-five-largest-refugee-camps/>.

<sup>283</sup> Muhammad Abdur, Rahaman Zereen, and Saba Mizanur Rahman, *Climate Risk Assessment and Identification of Climate-Smart Livelihood Options in Teknaf* (Dhaka, Bangladesh: Bangladesh Red Crescent Society, 2023); [https://reliefweb.int/attachments/79504747-768d-45a8-965f-403aee59ae4b/Climate%20Risk%20Assessment%20Report\\_Final%20version\\_16.10.2023.pdf](https://reliefweb.int/attachments/79504747-768d-45a8-965f-403aee59ae4b/Climate%20Risk%20Assessment%20Report_Final%20version_16.10.2023.pdf); “UNHCR Bangladesh Operational Update, August 2023,” United Nations Refugee Agency (UNHCR), 20 November 2023, <https://data.unhcr.org/en/documents/details/104910>.

<sup>284</sup> “The Rohingya Refugee Crisis Explained,” United Nations Refugee Agency (UNHCR), 23 August 2023, <https://www.unrefugees.org/news/rohingya-refugee-crisis-explained/#Fires>.

## New Zealand's Approach to Protection Claims Raising Climate Change and Disaster Risks

The New Zealand Immigration and Protection Tribunal (NZIPT) is a global leader in the way that it engages with protection claims where the risk of return includes dangerous impacts of climate change and disasters. It has shown how personal characteristics factor into protection obligations, preventing return to places where climate change would increase applicants' risk of harm.

In the 2022 case of AV (Tuvalu), a disabled man sought protection from deportation from New Zealand based on a number of factors, including the risks that he would face if he were returned to Tuvalu given the impacts of climate change. The NZIPT acknowledged that the applicant, who could not hear or talk, would be inherently “more vulnerable to natural hazards” due to his disabilities: he would not be able to hear warnings of disasters and could not be made aware of them by sign language.<sup>285</sup> He was granted a resident visa due to the combination of these characteristics, the circumstances in his home country, and other factors.

The following year, in the case of AC (Eritrea), the NZIPT found that New Zealand owed protection obligations to an elderly couple from Eritrea under Article 7 of the ICCPR, which prohibits cruel, inhuman, or degrading treatment. According to the Tribunal, the role of climate change in contributing to extreme weather and food insecurity, combined with Eritrea's prioritization of military spending over fulfilling the socioeconomic rights of residents,<sup>286</sup> gave rise to risk. The applicants' particular vulnerability due to “their elderly status and lack of family support,”<sup>287</sup> was also considered, with the Tribunal recognizing that they were protected persons under New Zealand law.<sup>288</sup>

**These cases provide guidance to other decision-making bodies regarding the ways in which the impacts of climate change and disasters can be recognized as risk factors, particularly where these risks interact with applicants' personal characteristics.**

<sup>285</sup> As there was no evidence that people in Tuvalu generally could communicate in sign language. See AV (Tuvalu) [2022] NZIPT 505532 [26].

<sup>286</sup> AC (Eritrea) [2023], ¶ 143.

<sup>287</sup> AC (Eritrea) [2023], ¶ 142.

<sup>288</sup> AC (Eritrea) [2023], ¶ 162.

## Heightened Risks Associated with Particular Characteristics or Vulnerabilities

Individual characteristics, including those connected to gender, sex, race or Indigenous status, age, disability, and/or poverty, can interact with the impacts of climate change and disasters to increase the risk of displacement, and risks arising from displacement. This interaction can be discriminatory if it has the “effect or purpose of impairing or nullifying” the enjoyment of rights.<sup>289</sup> **The human rights risk here is two-fold: discrimination can itself be a human rights violation, and it can also increase the likelihood that further violations may be suffered.**

Some people may be at heightened risk because of certain characteristics or vulnerabilities in relation to the impacts of climate change and disasters, meaning they may become displaced more quickly than the broader community. These characteristics can also mean that people face heightened risk during the displacement journey and on arrival, thereby requiring additional safeguards. For those with limited mobility, for example, displacement may not be possible at all, meaning prevention of mass human rights violations may require state action to support them to remain safely in place.<sup>290</sup>

To avoid mass human rights violations, it is essential that policy makers are aware of how differently people experience both the impacts of climate change and disasters, and displacement in this context.<sup>291</sup> Preventing human rights violations without this awareness will be impossible.

**Women and girls:** Women and girls can be at additional risk due to the impacts of climate change and disasters, both if they remain at home while others leave, or if they are displaced.<sup>292</sup> Crisis can “exacerbate pre-existing gender inequalities and compound the intersecting forms of discrimination against, among others, women living in poverty, Indigenous women,” and women belonging to certain minorities, as well as discrimination on the basis of age, ability, or migration status.<sup>293</sup> When combined with the limited control that some women have over decisions that impact their lives, from the household to the government levels, this can mean that some women are particularly susceptible to the impacts of

**To avoid mass human rights violations, it is essential that policy makers are aware of how differently people experience both the impacts of climate change and disasters, and displacement in this context. Preventing human rights violations without this awareness will be impossible.**

<sup>289</sup> This language can be found in CEDAW, art. 1; see also, International Convention on the Elimination of All Forms of Racial Discrimination, art. 1(1), Dec. 21, 1965, 660 U.N.T.S., 195 [hereinafter CERD], for equivalent language regarding racial discrimination.

<sup>290</sup> Examples of these risks can be found in AV (Tuvalu), AC (Eritrea), and Kolyadenko & Others v Russia, as discussed above.

<sup>291</sup> Convention on the Rights of Persons with Disabilities, art. 11, Dec. 12, 2006, 2515 U.N.T.S. [hereinafter CRPD]; see also CEDAW, art. 14 regarding rural women; Kaldor Center Principles, Principle 7, and references contained there.

<sup>292</sup> Committee on the Elimination of Discriminations Against Women, General Recommendation no. 37 (2018), “On Gender-Related Dimensions of Disaster Risk Reduction in a Changing Climate,” ¶¶ 2, 3, 73–78, CEDAW/C/GC/37 [hereinafter CEDAW General Recommendation 37].

<sup>293</sup> CEDAW General Recommendation 37, ¶ 2.

climate change, disasters, and displacement, both in terms of access to essentials for daily living and also from a structural perspective.<sup>294</sup> Among other risks, displaced women and girls can be at increased risk of being exposed to gender-based violence (including sexual violence), and have inadequate access to sexual and reproductive health services, education, and livelihood opportunities.<sup>295</sup> Women and girls can also be at increased risk of trafficking when they are displaced.<sup>296</sup>

Women's roles as caregivers can also mean that, where a woman suffers these negative outcomes, their families are often impacted as well. Caring responsibilities may mean that women are less mobile,<sup>297</sup> or have additional needs (for example, during pregnancy and when nursing infants, or supporting elderly family members). Female-headed households can face significant obstacles, for example where aid distribution is limited to a male head of household. Discriminatory land title laws can also mean that women have greater difficulty proving their entitlement to particular land or property, potentially forcing them and their families into poverty and/or insecure housing or sheltering situations.<sup>298</sup>

**Age and Disability:** People are affected differently by displacement in the context of climate change depending on their age and ability. Babies and children have bodies that are vulnerable to environmental extremes and may be at the greatest risk of injury or death as a result of weather events or disasters. Children's education can also be impacted by displacement, particularly when a displacement is not adequately planned for or lasts for longer than anticipated.

Elderly people are similarly vulnerable to environmental extremes, and/or may have mobility issues that makes it more difficult for them to move, if necessary.<sup>299</sup> Their ability to work to support themselves may also be compromised, which can be of particular relevance when displacement is from or to a place where the only means of support might involve physical labor, such as subsistence farming.<sup>300</sup>

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<sup>294</sup> CEDAW General Recommendation 37, ¶ 3; "Gender, Displacement, and Climate Change," United Nations Refugee Agency (UNHCR), November 2022, <https://www.unhcr.org/us/media/gender-displacement-and-climate-change>; CARE Climate Change and Resilience Platform (CCRP), *Evicted By Climate Change: Confronting the Gendered Impacts of Climate-Induced Displacement* (The Hague, The Netherlands: CCRP, 2020), [https://www.care-international.org/sites/default/files/files/CARE-Climate-Migration-Report-v0\\_4.pdf](https://www.care-international.org/sites/default/files/files/CARE-Climate-Migration-Report-v0_4.pdf).

<sup>295</sup> "Gender, Displacement, and Climate Change," United Nations Refugee Agency.

<sup>296</sup> "UN Women Submission to the Upcoming Report of the Special Rapporteur on Contemporary Forms of Slavery, Including its Causes and Consequences: 'The Nexus between Forced Displacement and Contemporary Forms of Slavery'," United Nations Women (2021), [https://www.ohchr.org/sites/default/files/Documents/Issues/Slavery/SR/ReportHRC48/UN\\_Agencies/UN\\_Women.docx](https://www.ohchr.org/sites/default/files/Documents/Issues/Slavery/SR/ReportHRC48/UN_Agencies/UN_Women.docx).

<sup>297</sup> In *Kolyadenko and Others v. Russia*, for example, one woman was forced to swim through treacherous flood waters with her baby. The Court found that, in her case, Russia had violated her right to life as, even though she had survived, its failure to adequately warn her of the risk put her at foreseeable risk of death.

<sup>298</sup> United Nations Department of Global Communications, "Securing Women's Land Rights for Increased Gender Equality, Food Security and Economic Empowerment," *UN Chronicle*, 17 June 2023, <https://www.un.org/en/un-chronicle/securing-women's-land-rights-increased-gender-equality-food-security-and-economic#:~:text=Owing%20to%20discriminatory%20practices%2C%20such,land%20management%20is%20often%20blocked>.

<sup>299</sup> Risks associated with both ends of the age spectrum were examined in *Kolyadenko and Others v Russia*, where the mobility of a mother with a baby, and of an elderly person each gave rise to additional obligations on Russia to fulfill its human rights obligations.

<sup>300</sup> In *AC (Eritrea)* [2023], the Tribunal considered it relevant that the couple seeking protection was elderly and would not be able to farm the land in their home country. Combined with other factors, this supported the Tribunal's finding that the couple was owed protection, as to return them to Eritrea in circumstances where they would not be able to support themselves would amount to ill-treatment in contravention of Article 7 of the ICCPR.

People with disabilities can also face additional risks arising from displacement in the context of climate change and disasters. According to the 2006 Convention on the Rights of Persons with Disabilities, states should take “all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk including... natural disasters.”<sup>301</sup> Where disability gives rise to limited mobility, states must ensure that this is catered for to the maximum extent possible, within a reasonable resource commitment.<sup>302</sup> Disability can also mean that people have additional needs regarding warnings, for example for persons who are deaf or hard of hearing.<sup>303</sup>

**Indigenous Communities:** Indigenous Peoples and communities, and others with deep cultural connections to land, are uniquely harmed by displacement from their traditional lands and waters.<sup>304</sup> The Inter-American Court of Human Rights has recognized the health impacts that being separated from traditional lands can have on Indigenous communities, noting that the state is obliged to cater to cultural needs when fulfilling their human rights obligations to these communities.<sup>305</sup> Displacement can also represent a violation of their right to culture and property.<sup>306</sup>

**Poverty:** People living in poverty may be less able to protect themselves from the impacts of climate change and disasters, as well as being at heightened risk of displacement in this context. During Hurricane Katrina in 2005 in Louisiana, USA, for example, evacuation plans assumed residents would have access to private transport. This meant that those without cars (generally, Black people of low socioeconomic status) were not taken into account in plans to keep the community safe.<sup>307</sup> The result was weeks of chaos and unrest, as people were forced to shelter in an unsafe emergency shelter, where there were reports of multiple deaths and a lack of basic supplies.<sup>308</sup>

This cohort may also be at greater risk due to reduced housing options. People living in camps, slums, or insecure housing are likely to be much more vulnerable to the impacts of climate change or disasters, due to the temporary nature of their housing. Housing may also be cheaper in climate-vulnerable areas.

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<sup>301</sup> CRPD, art. 11. See also “Sendai Framework Terminology on Disaster Risk Reduction: Disaster,” United Nations Office for Disaster Risk Reduction.

<sup>302</sup> Resourcing obligations are regularly referred to by regional courts when finding that a violation of a positive human rights obligation has occurred. See, for example, *Budayeva v. Russia*; *Kolyadenko and Others v. Russia*; *Sawhoyamaxa Indigenous Community v. Paraguay*, Inter-American Court of Human Rights, Merits, Reparations and Costs, IACHR Series C No 146, IHRL 1530 (IACHR 2006), 29 March 2006, ¶ 155; *N. v. The United Kingdom*, European Court of Human Rights, Application No. 26565/05, 27 May 2008.

<sup>303</sup> See *Kolyadenko and Others v. Russia*. Similarly, this case examined the circumstances of a woman with limited mobility who could not evacuate during a severe flood. Again, the Court held that Russia has additional obligations toward this woman due to her limited mobility; *AV (Tuvalu)*.

<sup>304</sup> Kaldor Center Principles, Principle 8.

<sup>305</sup> *Yakye Axa Indigenous Community v. Paraguay*, Inter-American Court of Human Rights, Merits, Reparations and Costs, IACHR Series C no 125, IHRL 1509 (IACHR 2005), 17 June 2005, ¶ 168; *Sawhoyamaxa Indigenous Community v. Paraguay*, *Sawhoyamaxa Indigenous Community of the Enxet-Lengua people v. Paraguay*, ¶ 159.

<sup>306</sup> See *Billy v. Australia*, ¶ 3.5, 8.14. The UNHRC found that the authors’ community’s right to culture under Article 27 of the ICCPR had been violated by the State Party’s failure to adopt timely adaptation measures to protect their “collective ability to maintain their traditional way of life, to transmit to their children and future generations their culture and traditions and use of land and sea resources.” While the community raised the risk of displacement in their claim under Article 27, this was not directly addressed by the Committee in its findings, however it can be inferred as a component of the violation that was found due to the initial arguments of the authors and the relevance of land and sea to the finding of the violation.

<sup>307</sup> Curtis, “Criminalizing Non-Evacuation Behavior.”

<sup>308</sup> Julian Borger, “It Reminds me of Baghdad in the Worst of Times,” *The Guardian*, 3 September 2005, <https://www.theguardian.com/world/2005/sep/03/hurricanekatrina.usa6>.

During floods in Australia in 2017, for example, it was the poorer areas of towns that were often inundated with water, destroying homes and belongings and causing widespread displacement.<sup>309</sup>

## CONCLUDING REMARKS

**Displacement in the context of climate change and disasters poses significant human rights risks, while also offering enormous potential to prevent human rights violations. Ensuring the focus is on affected communities in all responses is key to prevention.** This applies where people and communities remain in place as the climate changes, where they are displaced internally, or where they are displaced across international borders. This chapter seeks to offer some tools for the toolbox to prevent violations, building on scholarship and legal developments that have come before.

It is clear what states can do to fulfill their obligations and prevent violations. They must act where a risk to rights is known, minimizing or eliminating risk where they can. Where displacement does occur, affected states must ensure that the needs of affected communities are met, including where members of the communities have disabilities or limited mobility. Cross-border displacement can be a time of particular risk, and receiving states must ensure they fulfill their protection obligations where they arise. International and regional agreements that relieve pressure and allow for movement between states can alleviate pressure and act as an important release valve, preventing what might otherwise become a situation conducive to rampant human rights violations.

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<sup>309</sup> “Floods Expose Social Inequalities, and Potential Mental Health Epidemic in its Wake,” *Sydney University News*, 23 March 2022, <https://www.sydney.edu.au/news-opinion/news/2022/03/23/floods-expose-social-inequities--and-potential-mental-health-epi.html>.



## RECOMMENDATIONS

- Stakeholders should take an affected-communities-centered approach, informed by human rights, to all policy and legal developments. This includes identifying and consulting with affected communities in efforts to avoid and respond to displacement and implementing their preferences and priorities to the maximum possible extent. For this purpose, states should gather disaggregated data on all affected communities, including trapped communities, to better craft prevention policy.
- States must ensure that existing and emerging rights and obligations are interpreted in a manner that maximizes protection for affected communities and takes into account differential impacts on marginalized groups, such as women and girls, youth, elderly people, people with disabilities, Indigenous Peoples, and those living in poverty. In policy-making, states should engage with and make use of Indigenous wisdom, acknowledging that Indigenous Peoples have a long-standing connection to their land and are often holders of knowledge that can improve environmental resilience and enhance preventive policy.
- States should ensure that policy is also contextualized to the circumstances affecting a particular community, whether they are choosing to remain in place, internally displaced, or displaced across state borders. This would ensure better protection of affected communities and lead to better policy outcomes overall.
- States must support affected communities who choose to remain in place, where it is safe to do so, including by engaging in adaptation measures or facilitating movement with dignity for communities and individuals who seek to move or are compelled to move.
- States, international organizations, and other stakeholders should enhance regional cooperation and inter-state cooperation for the protection of affected communities. In particular, states should ensure that affected states are supported in catering to internally displaced people, and ensure that individuals and communities that are displaced across state borders are offered protection and necessary resources to fulfill their rights and meet their needs, in cooperation with the affected state where appropriate.
- States should actively prevent and mitigate displacement pressures by acting on warnings of displacement risk in a timely fashion and develop regular migration pathways for communities currently impacted by climate change and disasters.



# Conclusions

**W**e are living in extraordinary times that require us to be bold in our approach and accelerate the pace of transitioning away from harmful systems and practices that are destroying the planet and the possibility of life in it. The core of this endeavor must be ensuring the protection of human rights and the prevention of mass human rights violations. While many strides have been made over the decades to advance fundamental human rights, we are now facing intersecting crises which threaten the foundations of everything we have struggled and strived for. **In a world already divided on the basis of inequality, race, and identities, the impacts of the climate crisis exacerbate existing divisions and heighten the risk of conflict.** This is especially true if states and other key stakeholders do not promote and ensure comprehensive legislation, policy, and guidelines to address the risk of human rights violations in the context of the work of environmental human rights defenders; if they do not ensure a *just* transition—that is, one that is rights-compliant—away from fossil fuels, non-stop deforestation, and our dependency on plastic products and other pollutants; and if they do not guarantee human rights in the context of climate-related displacement.

The newly recognized human right to a clean, healthy, and sustainable environment, as articulated in General Assembly Resolution 76/300, creates a pathway for greater interconnectedness between people and the rest of nature. It reinforces the ancient wisdom from Indigenous and other communities, showing us how we can live sustainably on the planet by respecting the rights of all and protecting the environment and ecosystems we live in.

**By focusing on upstreamed and downstreamed prevention strategies, this report has highlighted the necessity of safeguarding environmental human rights defenders, ensuring a *just* transition to a green economy, and mitigating the impacts of climate-related displacement.** Through the lenses of gender, youth and future generations, Indigenous wisdom, and structures of inequality and poverty, this report has brought attention to the unique vulnerabilities and strengths of distinct groups. Women and girls, youth, Indigenous communities, and impoverished populations face disproportionate impacts from environmental degradation, and their voices and experiences are crucial in shaping effective preventive measures. These perspectives enrich the understanding of how environmental policies can be more inclusive and just through the incorporation of a human-rights-based approach.

**This report has also underscored the preventive dimension of the right to a healthy environment, emphasizing its critical role in the broader human rights landscape.** The right to a healthy environ-

ment is foundational, impacting a wide array of civil, political, economic, social, and cultural rights. The right is key to addressing immediate harms and grievances and to implementing preventive measures to avoid future violations.

**Ultimately, the findings and recommendations in this report stress the importance of a holistic approach to human rights and environmental protection. A robust framework for the right to a healthy environment would not only address immediate environmental harms but also foster long-term resilience and justice.** The report offers a compelling example of the preventive potential of human rights; it shows that far from being only *ex post* redress mechanisms, human rights can function as *ex ante*, anti-grievance, and problem-solving mechanisms. While protecting the rights of all is important and obligatory in its own terms, protecting the rights of environmental human rights defenders also secures their contributions to positive environmental outcomes; protecting the rights of those that are affected by the shift towards a new economy and a more sustainable relationship with nature opens up an easier path towards such goals, among other things by keeping the topic away from the vortex of polarization that devours discussions about virtually all topics today; and protecting the rights of those displaced for reasons related to environmental crises will mitigate the possibility of conflicts. The same, at a significantly higher scale, will happen if we find—as we must—fair ways of distributing the costs that a *just* transition will involve globally.

One of the key opportunities presented by Resolution 76/300 is its potential to galvanize international and national efforts to prevent mass human rights violations. **By promoting environmental health, the resolution can help mitigate the adverse effects of climate change, biodiversity loss, and environmental degradation—factors that often lead to large-scale human rights abuses.** By fostering international collaboration, promoting the adoption of national legislation, and encouraging engagement with diverse stakeholders, the right to a healthy environment can become a powerful instrument for ensuring sustainable development and protecting the well-being of present and future generations.

The prevention of mass human rights violations, particularly those involving environmental human rights defenders (EHRDs), necessitates a holistic and systemic approach, shifting the focus from mere redress of violations to robust preventive measures. This approach not only addresses immediate threats but also tackles the underlying systemic issues that contribute to such violations. Recognizing the interdependence and indivisibility of EHRDs' rights is crucial to fostering collaborative actions among authorities, who need to take greater ownership of the challenges of protecting the rights of EHRDs. This proactive stance enhances the role of EHRDs in advocating for sustainable solutions and acting as agents of positive change, thereby enabling their contributions to environmental stewardship and human rights advocacy.

The just transition to a “green” economy is unequivocally necessary to stave off some of the catastrophic effects of global reliance on fossil fuels, plastics, and other pollutants, and modes of agriculture that call for unceasing deforestation, which will predictably aggravate the climate crisis. With equal certainty, the transition will have human rights effects on workers, Indigenous and local communities, and others,

given the magnitude of the changes required. For this transition to be just, it must use human rights as a preventive mechanism. Adopting a comprehensive, human-rights-based approach to the transition can allow states, corporations, and other stakeholders to avoid exacerbating existing inequalities by ensuring the equitable distribution of the costs and benefits of the transition. This approach must pay particular attention to those individuals and communities most affected and marginalized by the transition, ensuring that their human rights are adequately protected. For individuals, workers, and Indigenous and local communities, a preventive human rights framework must ensure that they participate meaningfully in all phases of the transition's lifecycle, allowing them the fullest realization of their rights and an opportunity to seek agency and ownership over the transition process. Only by embedding human rights at the core of our efforts can we ensure that just transitions are equitable, inclusive, and truly *just* for all.

As the climate crisis accelerates, its impacts—ranging from extreme weather events to rising sea levels—are increasingly driving human displacement and migration. These movements of people pose significant challenges, often leading to violations of human rights, particularly for the most marginalized communities. Addressing climate-induced involuntary displacement requires a holistic approach that integrates human rights at every stage. By focusing on preventive measures and ensuring that existing human rights obligations are met, states can mitigate some of the adverse effects of climate change on displaced populations. Such an approach involves not only addressing the root causes of climate change but also building on existing frameworks to protect the rights of displaced individuals and leaving space for affected communities to participate in decision-making, ultimately fostering resilience and stability.

**In conclusion, the struggle to address the effects of the climate crisis, biodiversity loss, and environmental destruction is inherently a fight for human rights and environmental justice. By adopting a comprehensive approach that takes human rights to be a preventive, anti-grievance, problem-solving mechanism, we can protect the most marginalized and affected, prevent mass human rights violations, and ensure that the transition to a “greener” economy is just and inclusive. This holistic approach is essential for safeguarding the dignity, security, and well-being of all individuals in the face of a rapidly changing world. Ultimately it is the struggle for survival of humanity.**

# Consolidated Recommendations

## CHAPTER I

### The Preventive Potential of the Right to a Clean, Healthy, and Sustainable Environment

- Mechanisms for the prevention of mass human rights violations in the environmental context are enshrined in international, regional, and domestic law. These existing mechanisms would provide a strong foundation for prevention—if they were fulfilled adequately. States and other stakeholders know what needs to be done, yet their willingness to implement these measures differs greatly. This report, and the recommendations below, serve to highlight the benefits of a preventive perspective on the intersection of human rights and the environment and the urgent need to implement existing obligations fully.
- States should codify the right to a healthy environment in their national legislation and constitutions to strengthen the legal framework supporting the right. Whether through domestic implementation or discussions in international fora, all stakeholders should seek to define the scope and protections afforded by the right to a healthy environment explicitly.
- Future iterations and interpretations of the right to a healthy environment should directly address the groups most affected by the climate crisis and related human rights violations—namely, women and girls, Indigenous Peoples, environmental human rights defenders, elderly people, people with disabilities, and youth and future generations. Existing legal instruments and safeguards should be complemented by new policy strategies capable of robust prevention, greater protection of affected groups, and deeper involvement by all stakeholders.

## CHAPTER II

### A Healthy Earth for All: Catalyzing the Work of Environmental Human Rights Defenders Through Prevention

- States should ensure that existing legislation regarding the rights of environmental human rights defenders is consistent with international standards, or develop such legislation where it is lacking. Specifically, states should identify and reform rules of civil, administrative, and criminal procedure that limit the ability of defenders to exercise their rights. This includes developing legislation that protects defenders against abuse of the law in judicial or quasi-judicial processes initiated by the state or by businesses for intimidation purposes.
- Measures for achieving justice in response to attacks on environmental human rights defenders must include accountability and actual consequences for individuals and entities that fail to support and protect these defenders, including measures to prevent the recurrence of violations. Practical policy measures would include immediately canceling or suspending state or private projects where defenders have been threatened and preventing further threats before allowing such projects to proceed.
- In order for these measures to be implemented effectively, rather than remain as mere text, states should ensure they are institutionalized and endowed with adequate human and financial resources.

Addressing corruption within government and by corporate entities will also contribute to the effective implementation of preventive measures while enhancing accountability and the rule of law.

- States should provide and guarantee an enabling environment for environmental human rights defenders and their organizations. Policy must be contextualized to account for the intersectional identities of defenders. Noting, especially, the central role taken by women and Indigenous defenders, who face heightened risks for violations of human rights, but also their extensive knowledge and specialized wisdom.
- The most profound impacts of environmental human rights defenders' work extends across generations. Thus, states must interpret the rights of defenders through the lens of intergenerational equity. To achieve this, states must recognize the crucial role of defenders as agents of positive change for the rights of present and future generations to a healthy environment. This recognition should be reflected in legislation and comprehensive guidelines in order to foster an environment that empowers environmental human rights defenders.
- Decision-making processes related to environmental policies must involve environmental human rights defenders, potentially affected communities, Indigenous Peoples, and other rights holders. Participation and inclusion must be guaranteed in every stage of the decision-making process, in line with the heightened obligations of states toward particularly affected groups, and taking into account their rights and needs.
- Participation and inclusion must be meaningful and genuine. States can achieve this goal by creating platforms that facilitate the participation of particularly affected groups in a manner that honors their specific characteristics and lived experiences, ensuring preventive and proactive open access to information and promoting local legal empowerment.
- Adopting a comprehensive policy focused on prevention calls for a holistic multi-pronged approach. States and environmental human rights defenders can benefit from using a variety of policy measures and activism tools, as well as engagement with a broad range of stakeholders, to catalyze the highest level of protection and fulfillment of human rights.
- Human rights defenders are often underfunded and under-supported in their work. Funding defenders directly to support their initiatives, including through legal empowerment, and technical support for "learning by doing", peer-to-peer, regional, and cross-regional learning, is crucial. In order to fulfill human rights obligations and prevent violations, states and donors should make international aid and investment in projects conditional on the respect of defenders' rights.

## CHAPTER III

### A Prevention Approach to a *Just* Transition

- In considering the question of fair distribution in the context of the transition to a “green” economy, states and other stakeholders should focus on the need to avoid the generation and exacerbation of conflict and grievance that would result from continued inequitable distribution. For this purpose, stakeholders may avail themselves of the experience and lessons learned from human rights mechanisms of reparation and restitution.
- Policy facilitating climate action must avoid achieving mitigation benefits at the expense of human rights. To promote this goal, *just* transition principles should be embedded in national climate policies, including Nationally Determined Contributions (NDCs) and adaptation plans, thus supporting regulatory frameworks and effective nationally-led implementation. Additionally, *just* transition policy should take a decentralized approach through integration across governmental ministries and agencies to enhance collaboration. This is particularly important with regard to economic planning and finance policy.
- *Just* transition policies must take seriously the impact on, and resulting human rights risks for, those most affected by the transition—workers, local communities, Indigenous Peoples, and marginalized groups—and tailor policies to local needs and conditions. This should include providing practical solutions to workers affected by the transition, such as training and reskilling programs and assurances of adequate working conditions, as well as integrating models of equity sharing for affected communities.
- An effective *just* transition requires meaningful engagement with all stakeholders throughout all policy stages—from the policy creation stage, planning stages, environmental and human rights risk assessments, and the implementation of an environmental plan or project. Promoting engagement, inclusiveness, and participation can lead to more successful and equitable outcomes.
- Effective community engagement must be inclusive, transparent, culturally appropriate, and continuous. Participation of affected groups, individuals, and communities, should be a required stage of environmental, human rights, and investment assessments, as well as contract negotiation processes for both state and privately-led programs. To ensure effective engagement, states should provide independent technical and legal support to empower communities to participate in complex investment processes.
- A preventive human-rights-based approach to the *just* transition can benefit affected communities, states, and also corporations. Mandatory implementation of existing corporate responsibility guidelines, such as the UN Guiding Principles on Business and Human Rights, into domestic legislation and corporate policy can serve to promote human rights compliance in the transition process as well as better governance outcomes overall.

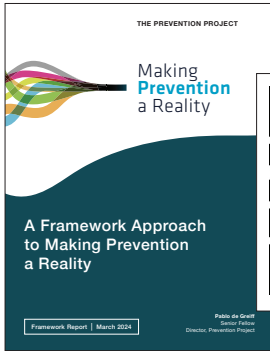


## CHAPTER IV

### Displacement in the Context of Climate Change and Climate Disasters

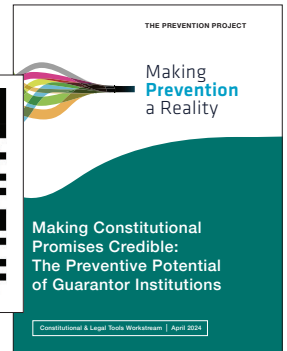
- Stakeholders should take an affected-communities-centered approach, informed by human rights, to all policy and legal developments. This includes identifying and consulting with affected communities in efforts to avoid and respond to displacement and implementing their preferences and priorities to the maximum possible extent. For this purpose, states should gather disaggregated data on all affected communities, including trapped communities, to better craft prevention policy.
- States must ensure that existing and emerging rights and obligations are interpreted in a manner that maximizes protection for affected communities and takes into account differential impacts on marginalized groups, such as women and girls, youth, elderly people, people with disabilities, Indigenous Peoples, and those living in poverty. In policy-making, states should engage with and make use of Indigenous wisdom, acknowledging that Indigenous Peoples have a long-standing connection to their land and are often holders of knowledge that can improve environmental resilience and enhance preventive policy.
- States should ensure that policy is also contextualized to the circumstances affecting a particular community, whether they are choosing to remain in place, internally displaced, or displaced across state borders. This would ensure better protection of affected communities and lead to better policy outcomes overall.
- States must support affected communities who choose to remain in place, where it is safe to do so, including by engaging in adaptation measures or facilitating movement with dignity for communities and individuals who seek to move or are compelled to move.
- States, international organizations, and other stakeholders should enhance regional cooperation and inter-state cooperation for the protection of affected communities. In particular, states should ensure that affected states are supported in catering to internally displaced people, and ensure that individuals and communities that are displaced across state borders are offered protection and necessary resources to fulfill their rights and meet their needs, in cooperation with the affected state where appropriate.
- States should actively prevent and mitigate displacement pressures by acting on warnings of displacement risk in a timely fashion and develop regular migration pathways for communities currently impacted by climate change and disasters.

# Read the Full Reports



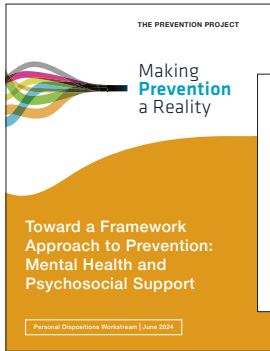
## FRAMEWORK REPORT

A Framework Approach to Making Prevention a Reality



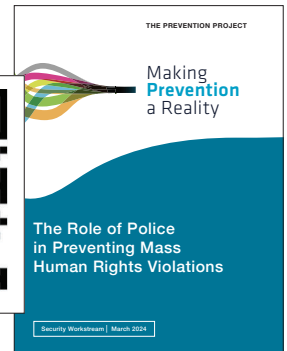
## CONSTITUTIONAL & LEGAL TOOLS WORKSTREAM

Making Constitutional Promises Credible: The Preventive Potential of Guarantor



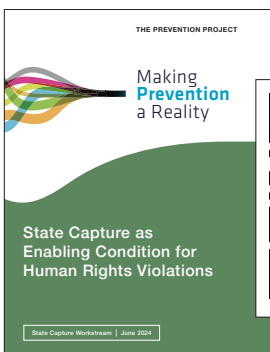
## PERSONAL DISPOSITIONS WORKSTREAM

Toward a Framework Approach to Prevention: Mental Health and Psychosocial Support



## SECURITY WORKSTREAM

The Role of Police in Preventing Mass Human Rights Violations



## STATE CAPTURE WORKSTREAM

State Capture as Enabling Condition for Human Rights Violations



**THE PREVENTION PROJECT:**  
**A Framework Approach to Making Prevention a Reality**

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Making  
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