

THE RIGHT TO FOOD AND NUTRITION AS PART OF ENVIRONMENTAL AND CLIMATE JUSTICE

CONCEPTUAL PAPER

OCTOBER 2020



FIAN
INTERNATIONAL



Imprint

Published October 2020 by FIAN International

| Coordinator

Astrud Lea Beringer (FIAN International)

| Authors

Layla Hughes, Sofia Monsalve, Sabine Pabst, Philip Seufert, Alejandra M. Morena, Ana Maria Suarez-Franco, Astrud Lea Beringer (FIAN International)

Marcos Orellana (The George Washington University Law School)

| Photo

Astrud Lea Beringer

FIAN International
Willy-Brandt-Platz 5
69115 Heidelberg
Germany
www.fian.org
contact@fian.org

Disclaimer

Contents of this publication may be quoted or reproduced, provided that the source of information is acknowledged.

FIAN International is a pioneer international human rights organization that advocates the realization of the human right to adequate food and nutrition. It currently operates through its national sections in 20 countries worldwide and has members and partners in more than 60 countries. Since its founding in 1986, FIAN has focused its work on the rights of peasants and other people working in rural areas. FIAN asserts that access to resources – water, land, seeds, biodiversity – is essential to produce food to survive. It believes the right to food and nutrition is indispensable for ensuring a world free from hunger and malnutrition, with sustainable food systems that respect human dignity.

TABLE OF CONTENTS

Table of Contents.....	2
Acronyms	3
Table of Boxes	5
Executive Summary	6
I. Introduction	9
II. Overview of International Environmental and Climate Law.....	11
A. Multilateral Environmental Agreements and the Right to Food and Nutrition	12
1. Biological Diversity.....	13
2. Climate Change.....	17
3. Chemicals and Waste	26
B. Monitoring compliance under Multilateral Environmental Agreements	30
III. International Environmental Principles.....	33
IV. The Relationship between Human Rights Law and Environmental Law	42
A. Environmental Law incorporating Human Rights	42
B. Human Rights Law addressing the Environment and Climate Change.....	43
C. Corporate Accountability.....	47
D. The Rights of Nature and Mother Earth.....	49
Endnotes.....	51

ACRONYMS

AEPF	Asia Europe People's Forum
CAN	Climate Action Network
CBD	Convention on Biological Diversity
CBDR	Common But Differentiated Responsibilities
CDM	Clean Development Mechanism
CEDAW	Committee on the Elimination of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CFS	Committee on World Food Security
CLARA	Climate, Land, Ambition and Rights Alliance
CO₂	Carbon Dioxide
COP	Conference of Parties
CRC	Convention on the Rights of the Child
CSA	Climate Smart Agriculture
CSOs	Civil Society Organizations
ENGO	Environmental Non-Governmental Organization
ESCR	Economic, Social and Cultural Rights
ETOs	Extra Territorial Obligations
FAO	Food and Agriculture Organization
FPIC	Free, Prior and Informed Consent
GC	General Comment
GeCCcO	Geneva Climate Change Consultation Group
GEO	Global Environmental Outlook
GHGs	Greenhouse Gases
HLPF	High-level Political Forum
HRC	Human Rights Council
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCM	International Conference on Chemicals Management
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organization
IPC	International Planning Committee for Food Sovereignty
IPCC	Intergovernmental Panel on Climate Change

ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
LDN	Land Degradation Neutrality
MEAs	Multilateral Environmental Agreements
N2O	Nitrous Oxide
NAPs	National Adaptation Plans
NDCs	Nationally Determined Contributions
NGO	Non-governmental organization
PAN	Pesticide Action Network
PPM	Parts Per Million
RtFN	Right to Adequate Food and Nutrition
SDGs	Sustainable Development Goals
SSF	Small-Scale Fisheries
SAICM	Strategic Approach to International Chemicals Management
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCCD	United Nations Convention to Combat Desertification
UNCLOS	United Nations Convention on the Law of the Sea
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNDROP	United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas
UNEA	United Nations Environment Assembly
UNEP	United Nations Environmental Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNGPs	United Nations Guiding Principles on Business and Human Rights
UPR	Universal Periodic Review
UPOV	International Union for the Protection of New Varieties of Plants
VGGTs	Voluntary Guidelines for Responsible Governance of Tenure of Land, Fisheries and Forests
WHO	World Health Organization

TABLE OF BOXES

Box 1.1	Relevant Treaties per Topic
Box 1.2	Intellectual Property Rights Prevail over Peasants' Rights
Box 1.3	The Tenure Guidelines
Box 1.4	United Nations Climate Change Conference of Parties
Box 1.5	Carbon Market Mechanism
Box 1.6	Focus Areas in NDCs for Adaptation and Mitigation Actions
Box 1.7	Climate-Smart Agriculture
Box 1.8	Agroecology: A Key Proposal to Realize the Right to Food and Nutrition and Regenerate Nature
Box 1.9	Relevant Civil Society Networks in the Environmental and Climate Spaces
Box 2.1	Healthy Environment
Box 2.2	Sustainable Development
Box 2.3	Duty to Prevent Transboundary Harm
Box 2.4	Intergenerational Equity
Box 2.5	Common but Differentiated Responsibilities
Box 2.6	Precautionary Principle
Box 2.7	Access to Information
Box 2.8	Participation in Government Decision-Making
Box 2.9	Remedy for Environmental Harm
Box 2.10	International Cooperation
Box 3.1	United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas
Box 3.2	United Nations Declaration on the Rights of Indigenous Peoples

EXECUTIVE SUMMARY

Environmental degradation and climate change are increasingly jeopardizing the realization of the human right to adequate food and nutrition (RtFN) and related rights such as the rights to water, health, and housing, all of which are essential elements to live a life in dignity. Dramatic changes in temperature and rain patterns reduce essential ecosystem services and cause loss of crops and arable lands. The burden of eco-destruction and climate impacts is shouldered by the people who are already among the most vulnerable and marginalized groups. These include the world's 2.5 billion small-scale farmers, herders, fishers, and forest-dependent people¹ who rely on land, water, and other natural resources for their survival.

The dominant, industrial agro-food production system – as scientific evidence² shows - is a major driver of climate change, harming both the environment and people. This destructive food production model is heavily reliant on 'dirty' fossil fuels, extractivism, agrochemicals, deforestation, and land-use changes. Social movements, old and new, are denouncing this industrial food production system and demand systemic change towards equitable, resilient, and sustainable means of food cultivation and distribution.

The environmental and climate crisis is one of the principal threats to life on the planet. Tackling this crisis using a human rights-based approach becomes essential to restore vital ecosystem services and fight global hunger and malnutrition at the same time. In particular, the RtFN is critical to ensuring a world free from hunger and malnutrition. Realizing the RtFN is indispensable to reshape the prevailing agro-food system towards an alternative model of food production. However, the understanding on, and recognition of, the interconnection of environmental and human rights remains limited at the international policy agenda.

Against this backdrop, this conceptual paper describes and analyses relevant international environmental and climate laws in the context of international human rights laws and vice versa. It attempts to draw on synergies between the two legal landscapes to strengthen the realization of human rights, particularly the RtFN.

FIAN International has been working for over 30 years on cases related to eco-destruction. It has dealt with issues of access to and control over land and other natural resources as a fundamental component of the RtFN. With this paper, FIAN aims to understand the role of food in the climate debate and identify ways to integrate an environmental dimension into its advocacy work.

The paper puts emphasis on three priority areas, these are: i) multilateral environmental agreements (MEAs) that are increasingly including human rights protection, ii) relevant international environmental principles for the realization of the RtFN, and iii) the relationship between human rights law and environmental law. A list of relevant civil society networks operating in environmental and climate spaces complements the paper.

MULTILATERAL ENVIRONMENTAL AGREEMENTS

Within three key areas, i.e., biological diversity, climate change, and chemicals and wastes, a number of MEAs are relevant to realizing the RtFN and ensuring food security.

In the context of addressing conservation and sustainable use of biodiversity (biological diversity), three MEAs are particularly relevant in relation to the RtFN: i) the 1992 Convention on Biological Diversity (CBD), ii) the 2001 International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), and iii) the 1994 United Nations Convention to Combat Desertification (UNCCD). Both the CBD and ITPGRFA are crucial instruments for the right of small-scale producers over seeds, which is an important prerequisite for the realization of the RtFN and essential to ensure a sustainable future. In this regard, the UNCCD is essential, since it is the only legally binding international agreement linking environment and development to sustainable land management.

The UNCCD is also the first binding multilateral agreement that incorporated the Voluntary Guidelines for Responsible Governance of Tenure of Land, Fisheries and Forests (VGGTs or Tenure Guidelines), a central reference document to promote the progressive realization of the RtFN. This development highlights the significance of protecting tenure rights for strategies combating desertification and land degradation.

In the climate sphere, the paper draws particular attention on the 2015 Paris Agreement which represents a crucial milestone for the realization of the RtFN because it turns safeguarding food security and ending hunger into a priority issue at the international policy agenda. A noteworthy result of the agreement in relation to the RtFN are the nationally determined contributions (NDCs). NDCs include mitigation measures that aim to contribute to the agreement's long-term temperature goal. Climate actions such as agroecology could find a more prominent role in the NDCs to foster sustainable food systems.

Agroecology is a major focus of FIAN's advocacy in the field of environmental and climate justice. It promotes agricultural practices that are environmentally sustainable and socially just. Agroecology can help to reverse loss of biodiversity, restore essential eco-system services, and contribute to the realization of the RtFN of rural communities, i.e., peasants, small-scale farmers and fishers, pastoralists, landless people, indigenous peoples, rural workers and other people working in the rural areas. It is also explicitly mentioned in the 2018 United Nations Declaration on the Rights of Peasants and other People Working in the Rural Areas (UNDROP), which underscores the essential role of rural communities in combating eco-destruction and climate change using a human rights lens. The UNDROP has also recognized indigenous peoples as rights-holders. Their inclusion further increases the recognition of their rights they enjoy under the UN Declaration on the Rights of Indigenous Peoples.

Central to the international climate discussions and the promotion of agroecology and sustainable food systems is also the Koronivia Joint Work on Agriculture. The Koronivia is addressing the vulnerability of agriculture to climate change; it is also exploring various approaches towards food security.

In the context of chemicals and wastes, there are several international conventions, regulating the production, use, and/or release of chemicals and wastes, which are also important for the realization of the RtFN. Hazardous chemicals and wastes have a direct impact on the RtFN. In particular, pesticides are relevant to the cultivation of food with serious implications for human health.

INTERNATIONAL ENVIRONMENTAL PRINCIPLES

A number of international environmental principles are relevant to the interaction between human rights and the environment. In particular, the UN Principles on Human Rights and Environment contain significant principles for the realization of the RtFN. The paper highlights the ten most relevant international environmental principles with examples of the sources of the principles in international environmental law and international human rights law.

For example, the principle of common but differentiated responsibilities and respective capabilities is important for FIAN's approach to prioritize the rights and needs of marginalized people. It suggests that Parties from industrialized countries should be the ones to 'take the lead' in tackling climate change and to support the needs of the most affected people by climate-related impacts. The UN 1992 Rio Declaration on Environment and Development recognized this principle for the first time.

RELATIONSHIP BETWEEN HUMAN RIGHTS LAW AND ENVIRONMENTAL LAW

Another key focus of the paper are the mutually reinforcing aspects of the human rights and the environmental law regimes. Environmental laws and policies are increasingly including human rights protections such as access to information and access to justice. Simultaneously, human rights mechanisms more often address the environmental dimensions of human rights, in particular the right to a healthy environment and the right to be free from toxic pollution. For example, Human Rights Council resolutions as well as its special procedures (Special Rapporteurs) make valuable references to the impact of climate change on the RtFN, food security, and agricultural production. The transboundary dimension of international environmental law also gains more importance in supporting the implementation of extraterritorial obligations in the human rights field.

Corporate accountability for environmental harm, that has adverse effects on people's enjoyment of the RtFN, receives special attention in this paper due to its significance for FIAN's casework on the realization of the RtFN. The human rights landscape provides a few tools to claim responsibility from non-state actors. For example, the Tenure Guidelines include a provision that emphasizes the need for states to ensure that business actors – including those operating transnationally – respect human rights. Environmental laws, however, provide more references to non-state actors' accountability, such as the Oslo Principles on Global Climate Change Obligations.

This conceptual paper serves as a resource for environmental and human rights groups, activists, and affected communities to gain a better understanding of the tools provided in the two legal systems - international environmental law and international human rights law - and their interfaces in order to effectively leverage them for casework and advocacy.

I. INTRODUCTION

Throughout its existence, FIAN International has consistently dealt with issues of access to and control over natural resources as a fundamental component of RtFN. Even though the notion of sustainability is a key element of the normative content of the right to food,³ FIAN has not focused on ecological destruction. This creates a gap, given that practically all the cases of violations of the right to land and other natural resources that FIAN has worked on in 35 years involve environmental impacts, and many involve corporate abuse. It is time to address this gap. The deepening of the ongoing ecological crisis leaves us no choice than to actively join the struggles for environmental and climate justice. Otherwise, there may soon be no land, no fertile soils, no clean water, no wild fish stocks, no forests and no pollinators and microorganisms anymore for realizing the right to food and nutrition of current and future generations.

The growing attention to the specific role of food in the current climate debates urges FIAN International to take a clear stance on the matter. Social movements, old and new, are increasingly denouncing how the prevailing industrial, input-intensive, mono-culture agriculture and food production system exacerbates climate change and harms communities and the environment. The 2019 special report of the Intergovernmental Panel on Climate Change (IPCC) makes abundantly clear that the industrial food system itself is a main driver of global warming. Agriculture, forestry, and other land use activities produced an estimated 23 percent of total anthropogenic greenhouse gases (GHGs) emissions during 2007-2016.⁴ The understanding and incorporation of human rights issues in the context of the ecological crises remains, however, limited. Against the industrial attack on food sovereignty, and in the face of the deepening climate crisis, the defense and reaffirmation of the RtFN is indispensable for ensuring equitable, resilient and sustainable means of food cultivation and distribution.

The RtFN as a comprehensive concept is intrinsically linked to the full realization of all human rights, and within the conceptual framework of food sovereignty. Access to resources – water, land, seeds, biodiversity – is necessary to produce food to survive. The RtFN remains indispensable for ensuring a world free from hunger and malnutrition, with sustainable food systems that respect human dignity. It takes a holistic approach which means to analyze the underlying and structural causes of food insecurity and violations of the right to food and nutrition, responding to these in a multi-pronged and coordinated approach, and building policy coherence. It also requires recognizing that all human rights are universal, indivisible, interdependent, and interrelated. Moreover, the realization of the RtFN cannot be achieved in isolation, nor can other human rights be enjoyed when right to food violations persist. In particular, it is increasingly acknowledged that the promotion and protection of women's rights are fundamental to the realization of the right to food.

The global scientific community is sounding the alarm on the dramatic climate changes caused by the increasing concentration of GHGs in the atmosphere. These dramatic changes include: changes in temperature, micro-climates, and rain patterns; new pests and crop diseases; rising sea levels; ocean acidification; and extreme weather and natural events, including cyclones, droughts, floods, and wild fires. These changes are killing livestock, reducing biodiversity and freshwater, causing loss of crops and arable land, reducing the nutrient content of staple food crops, and hampering fisheries

and aquaculture productivity. All this has devastating consequences on the enjoyment of the right to food and nutrition,⁵ and especially on the rights of people already in vulnerable or disadvantaged situations, such as women⁶ and indigenous peoples.

Already in 2001, FIAN International reviewed about 140 of its campaign letters seeking to understand the interconnection and indivisibility of the RtFN and the ecosystems upon which it depends. In this study, a comprehensive overview of violations of the RtFN linked to eco-destruction of topsoil, marine, forests and fresh-water ecosystems as well as of biodiversity was presented.⁷ The study recommended, inter alia, invoking relevant international environmental law in FIAN's work to defend the RtFN; and to identify the synergetic potential of environmental and human rights law to strengthen FIAN's accountability strategies. More recently, FIAN highlighted environmental and climate-related issues in reports to the UN Committee on Economic, Social and Cultural Rights (CESCR), especially but not exclusively in relation to extra territorial obligations (ETOs).

Long overdue, this conceptual paper analyzes the international environmental and climate landscape, with a view to identifying its points of contact with the RtFN as well as opportunities for case work and advocacy.⁸ We expect this analysis will strengthen FIAN's work on the RtFN, as it engages environmental and climate justice issues.

II. OVERVIEW OF INTERNATIONAL ENVIRONMENTAL AND CLIMATE LAW

International environmental law has rapidly evolved since the seminal 1972 UN Conference on the Human Environment in Stockholm. Since then, States have elaborated a large number of MEAs, reformed their constitutions to recognize the right to a healthy environment, and begun to establish environmental regulatory frameworks and institutions.

MEAs, together with certain general principles and rules of customary international law, embody the international community's response to the grave environmental threats confronting the planet. They cover a range of issues relevant to the RtFN, such as climate change, biodiversity, and chemicals and wastes. MEAs, however, are largely piecemeal, addressing dispersed environmental threats without a concerted, coherent approach. At the same time, international customary law and general principles in environmental matters are evolving. Some principles are well recognized through their incorporation into MEAs and their affirmation by international courts and tribunals, such as the principles of prevention and precaution in the face of environmental risk. Other principles have not yet achieved the status of international law in their own right. Several MEAs have established non-confrontational, capacity building-oriented implementation and compliance mechanisms. Unlike treaty bodies in the human rights field, however, civil society generally does not have the right to trigger the initiation of a case and opportunities for public participation.

In a parallel trend, the 1992 UN Conference on Environment and Development in Rio de Janeiro marked the emergence of the sustainable development paradigm. This paradigm emphasizes integration of environmental considerations into other policy areas. Efforts at integration include in particular the 'greening of human rights', which focuses on clarifying the environmental dimensions of the normative content of protected human rights as well as the content of the emergent right to a healthy environment. This body of law at the interface of human rights and the environment relates directly to the RtFN, given the linkages between food, land, territories, and a healthy environment.

In 2012, 20 years after the Rio Earth Summit, the international community once again gathered in Rio de Janeiro at the UN Conference on Sustainable Development (Rio+20) to reaffirm the sustainable development paradigm. The Rio+20 conference also called for the elaboration of sustainable development goals (SDGs) that could allow the international community to measure progress toward sustainable development. The SDGs are policy objectives in 17 areas that are critical for sustainable development, such as food, water, biodiversity and climate change. After a couple of years of negotiations, in 2015, the UN General Assembly (UNGA) adopted the 2030 Agenda for Sustainable Development, which includes 17 SDGs and 169 targets. The Office of the High Commissioner for Human Rights has observed that SDGs are grounded in international human rights law and most of the goals and targets of the SDGs correspond to human rights obligations.⁹

Rio+20 also set out to strengthen the institutional framework for sustainable development. It established the High-level Political Forum (HLPF) on sustainable development to serve as the global platform that follows-up and reviews the 2030 Agenda for Sustainable Development and the SDGs.¹⁰

Despite these intentions, however, the process through which countries assess and present progress made in achieving the SDGs is voluntary.¹¹

This overview of international environmental and climate law includes key MEAs and related SDGs that concern the RtFN. It also addresses the building blocks of the multilateral climate change regime and concludes with a brief note on tools for securing compliance.

A. MULTILATERAL ENVIRONMENTAL AGREEMENTS AND THE RIGHT TO FOOD AND NUTRITION

There are over a thousand MEAs in force.¹² One way these agreements can be broadly understood is according to their regulatory approach.

- *MEAs addressing global commons:* States agree to global standards, such as the reduction and elimination of ozone depleting substances, to protect the commons. These agreements include those that regulate ozone, GHGs, or persistent organic pollutants.
- *MEAs protecting resources that are under the jurisdiction of states, such as biodiversity or the prevention of desertification:* These agreements are mostly aimed at providing incentives to those countries to preserve or protect the resources.
- *MEAs regulating the international movement (or trade) of products that pose a risk to the environment and human health:* These agreements address threats such as trade in hazardous waste and pesticides through a process of prior informed consent, and they can interact with, and even be constrained by, the global trade law regime.

RELEVANT TREATIES PER TOPIC

BOX 1.1

GLOBAL COMMONS

- **Climate change:** UN Framework Convention on Climate Change¹³, Kyoto Protocol¹⁴, and Paris Agreement¹⁵;
- **Ozone layer:** Vienna Convention for the Protection of the Ozone Layer¹⁶ and Montreal Protocol, as amended¹⁷;
- **Oceans:** UN Convention on the Law of the Sea¹⁸, Fish Stocks Agreement¹⁹, and Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter - the 'London Convention'²⁰;

STATES JURISDICTION

- **Biological diversity:** International Treaty on Plant Genetic Resources for Food and Agriculture²¹, Convention on Biological Diversity²², Cartagena Protocol²³, and Nagoya Protocol²⁴;
- **Fresh water:** Convention on the Law of the Non-navigational Uses of International Watercourses²⁵;
- **Desertification:** UN Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa²⁶;
- **Wetlands:** Convention on Wetlands of International Importance especially as Waterfowl Habitat²⁷;
- **World heritage:** World Heritage Convention²⁸;

INTERNATIONAL MOVEMENT OF PRODUCTS

- **Persistent organic pollutants:** Stockholm Convention on Persistent organic Pollutants²⁹;
- **Mercury:** Minamata Convention on Mercury³⁰
- **International trade in pesticides and chemicals:** Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade³¹;
- **Trade and disposal of hazardous wastes:** Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal³²;

Some MEAs specifically refer to threats to food security. The following sections address three key areas: biological diversity, climate change, and chemicals and waste.

1. BIOLOGICAL DIVERSITY

Three main international instruments address the conservation and sustainable use of biodiversity (biological diversity) in relation to the RtFN; these are the CBD, the ITPGRFA, and the UNCCD.

I. CONVENTION ON BIOLOGICAL DIVERSITY

The CBD is one of the three Rio Conventions, adopted in the Earth Summit in 1992. It departs from the earlier approach to conservation, one centered on wildlife and protected areas, as it focuses on the importance of genetic variability among and within species to resilient and healthy ecosystems. The CBD pursues three objectives: the conservation of biodiversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from genetic resources. State Parties pursue these objectives largely through the elaboration of strategic plans, which guide and inform the activities that may have an impact on biodiversity.

The Strategic Plan for Biodiversity 2011-2020 and its Aichi Biodiversity Targets, adopted under the CBD, has been recognized as setting the global framework for priority actions on biodiversity. Numerous SDGs are supportive of this strategic plan.³³

The CBD's preamble refers explicitly to the critical importance of conservation and sustainable use of biological diversity for meeting the food needs of the growing world population.³⁴ It further acknowledges “the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components”³⁵. The CBD also recognizes “the vital role that women play in the conservation and sustainable use of biological diversity and affirm[s] the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation”³⁶. The CBD underscores the critical importance of *in situ* biodiversity conservation, which for agricultural biodiversity means the conservation of biodiversity in peasants' fields.³⁷

In Article 8 (j), the CBD establishes that each state shall “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices”. Concerning the sustainable use of the components of biological diversity, the Convention requires states to “protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements”.³⁸

In sum, the CBD protects the right to biodiversity of indigenous and local communities, including farm communities, and guarantees appropriate access to seeds and other genetic resources as well as to the protection of the traditional knowledge and practices of indigenous and local communities. In practice, however, agriculture and food production have been treated mainly as a *problem* in the context of the CBD, i.e., as a major driver of biodiversity loss. La Via Campesina and the International Planning Committee for Food Sovereignty (IPC) as well as indigenous groups and several non-governmental organizations (NGOs) have challenged this. They have pointed out the small-scale food producers' role as guardians of biodiversity, in particular through agroecological practices.

The development of a new global biodiversity framework, originally planned to be adopted in 2020, opens opportunities to include references to the RtFN and demands by small-scale food producers.³⁹

The CBD has been widely ratified, with 196 Parties as of 2020. However, its provisions on benefit sharing of genetic resources are controversial to some UN members, given their emphasis on trade and intellectual property rights of corporations over plants and genetically modified seeds. The importance of genetic resources for the realization of the RtFN is highlighted by the ITPGRFA.

II. INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Adopted under the auspices of the UN Food and Agriculture Organization in 2001, the ITPGRFA recognizes the access to and use of plant genetic resources for food and agriculture as key elements of food security. It is the most important international treaty relating to the recognition and protection of peasants' rights over seeds. The objectives of the treaty are the conservation and sustainable use of plant genetic resources as well as the fair and equitable sharing of the benefits arising from their use, in order to provide for sustainable agriculture and food security. In addition, the ITPGRFA establishes a multilateral system to facilitate access to seeds and propagating materials and to provide for fair and equitable sharing of the benefits thereof.

A key element of the treaty is the recognition of peasants' rights over seeds.⁴⁰ It also seeks to “draw attention to the unremunerated innovations of peasants that [are] seen as the foundation of all modern plant breeding”.⁴¹ In Article 9, the Parties recognize “the enormous contribution that the local and indigenous communities and peasants of all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world”.⁴² Based on this fundamental past, present, and future contribution by peasants, the treaty recognizes their right to “save, use, exchange and sell farm-saved seed/propagating material”.⁴³

To protect and fulfil these rights, the ITPGRFA requires states to protect “traditional knowledge relevant to plant genetic resources for food and agriculture”⁴⁴, and affirms the right of peasants to “equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture”.⁴⁵ In addition, it guarantees their “right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture.”⁴⁶

INTELLECTUAL PROPERTY RIGHTS PREVAIL OVER PEASANTS' RIGHTS

BOX 1.2

The implementation of peasants' rights as guaranteed by Article 9 of the ITPGRFA faces strong hurdles. In practice, intellectual property rights generally prevail over peasants' rights. The intellectual property system has undergone considerable expansion in recent years, largely due to pressure from industrialized countries, in favor of their industries. Their main argument has centered on allowing plant breeders (often private companies) to recover their investments in research, as a means to encourage innovation.⁴⁷

At the same time, peasants' rights have yet to be realized in practice.⁴⁸ Intellectual property rights thus run counter to peasants' rights and erode their autonomy. The 1991 International Union for the Protection of New Varieties (UPOV) is particularly troubling in that it prohibits the sale of varieties derived from a protected variety (Article 14.5) and prevents peasants from exchanging or selling seeds from the harvest of protected varieties (Article 15). The UPOV obligates states to use all the facilities available to implement these provisions.⁴⁹

The increasingly widespread practice of sequencing the genome of plants, animals and microorganisms and of digitizing them presents a new threat for peasants' and indigenous peoples' rights over seeds. In combination with patents on genetic sequences, so-called 'digital sequence information' or 'DSI' further undermines the rights recognized by the ITPGRFA by extending intellectual property rights to genetic information. Peasant or native seeds may contain protected genetic sequences, thus obliging farmers to pay licensing fees and/or fines to the patent holders.

It needs to be emphasized that thanks to pressure exerted by movements of peasants and other smallholders, the governing body of the ITPGRFA has set in motion a process for the implementation of Article 9. In 2017, it approved the creation of an ad hoc technical expert group on farmer's rights tasked with developing guidelines for implementation, and in 2019, it renewed its mandate. Peasant and indigenous peoples' organizations are trying to seize this opportunity to push for the development of voluntary guidelines for the implementation of peasants' rights at national and regional levels.

III. UNITED NATIONS CONVENTION TO COMBAT DESERTIFICATION

The UNCCD is also of particular interest to FIAN's work as it is the only legally binding international agreement linking environment and development to sustainable land management.⁵⁰ The treaty aims to combat desertification and mitigate the effects of drought, particularly in Africa.⁵¹ An important element of the convention is that states should "protect, promote and use in particular

relevant traditional and local technology, knowledge, know-how and practices [...] with the participation of local populations”⁵² to address desertification and drought.

Under the UNCCD, Parties may set national voluntary land degradation neutrality (LDN) targets, in accordance with the Sustainable Development Goal 15.3.⁵³ Some Parties have specifically included references to agroecology in their LDN targets. For example, among the countries FIAN works with, Bolivia pledges to develop 300,000 hectares of new agricultural land by 2028, “using agroecological management principles, sustainable irrigation, and promoting and supporting agrosilvopastoral systems”.⁵⁴ Additionally, Cambodia aims, by 2030, to ensure that “ecosystems and their services are maintained and enhanced by establishing 23,500 square kilometers of protected forest and 3,900 square kilometers of production forest; and restoring at least eight percent of degraded and depressed protected areas, conservation areas, agroecosystems and forest ecosystems including mangroves”.⁵⁵

In 2019, at the fourteenth Conference of Parties (COP14)⁵⁶ in New Delhi, Parties committed to review development policies, including land use policies and agricultural practices, “to promote ecological regeneration on a large scale”. To this effect, Parties agreed to use the Tenure Guidelines as a key reference “to control the effects of LDN measures on land tenure systems”. This decision marks the first time that the Tenure Guidelines are incorporated into a binding multilateral agreement. However, while the decision clearly recognizes the need to protect tenure rights for strategies to combat desertification and land degradation, its implementation framework places strong emphasis on private finance.

THE TENURE GUIDELINES

BOX 1.3

The Tenure Guidelines⁵⁷ were adopted by the UN Committee on World Food Security (CFS) in 2012 with the overall goal of promoting national food security for all and support the progressive realization of the RtFN. The VGGTs were developed through an inclusive and participatory process, and they provide the first international ‘soft law’ instrument focusing on the application of economic, social and cultural rights in the governance of land, fisheries and forests. The VGGTs are an important and politically legitimate reference to assess the actions and omissions of states and international organizations, with respect to the way they govern land, fisheries and forests in specific situations.⁵⁸

2. CLIMATE CHANGE

As the Earth continues to heat up, the 2018 IPCC Special Report on Global Warming of 1.5 °C forecasts a significant drop in available food and an increased risk to water supply in many parts of the world.⁵⁹ Climate change exacerbates existing resource scarcity, pushing affected people to

inevitably look for solutions to survive. This can include migrating within countries or crossing borders to seek for food, water, and security in other states.

Climate change and the RtFN interact not only in relation to resource scarcity and displacement. Emissions of GHGs are exacerbated by the industrial system for food production, which relies heavily on fossil fuels, pesticides and synthetic fertilizers. At the same time, forest clearing for cattle-ranching and deforestation for monocultures, such as palm oil, and unsustainable agricultural practices, destroy important sources of carbon sinks and further exacerbate climate change.

Climate change is addressed by SDG 13 which commits States to “take urgent action to combat climate change and its impact”.⁶⁰ The SDG’s target 13.2 focusses specifically on the integration of climate change measures into national policies, strategies, and planning, thereby opening opportunities for integration with RtFN considerations. In 2019, the HLPF reviewed the SDG 13 in depth. The UN Secretary-General reported to HLPF that “in 2017, greenhouse gas concentrations reached new highs, with globally averaged mole fractions of CO₂ at 405.5 parts per million (ppm), up from 400.1 ppm in 2015, and at 146 per cent of pre-industrial levels”.⁶¹ The HLPF concluded plainly that “progress on combating climate change and its effects is falling far short of what is needed”.⁶²

The International Climate Change Regime is built on the United Nations Framework Convention on Climate Change (UNFCCC). Numerous decisions, work programmes, and dialogues have enhanced humanity’s understanding of the urgency and magnitude of the climate threat. Under the UNFCCC, the Kyoto Protocol and the Paris Agreement establish building blocks to articulate international climate cooperation and provide channels for the science policy interface. The following sections examine some of these key building blocks.

I. UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

The threat of climate change for food security has been well known at least since the adoption of the UNFCCC in 1992. This instrument is the cornerstone of the international community’s response to climate change, and its Article 2⁶³ defines its objective as follows: “to achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”. The convention’s objective explicitly provides that “such a level should be achieved within a time-frame sufficient [...] to ensure that food production is not threatened”.

UNITED NATIONS CLIMATE CHANGE CONFERENCE OF THE PARTIES

BOX 1.4

The last UNFCCC COP25’s *Chile Madrid Time for Action* decision in December 2019 recognizes “the important advances made through the UNFCCC multilateral process over the past 25 years”.⁶⁴ The same COP decision also “notes with

concern the state of the climate system”, and re-emphasizes “with serious concern the urgent need to address the significant gap between the aggregate effect of Parties’ mitigation efforts [...] and the aggregate emission pathways”⁶⁵ consistent with the Paris Agreement goals.

The UNFCCC provides a framework for cooperation to address climate change, including the negotiation of protocols and other agreements. The UNFCCC sets up a governing body (COP), empowered to take decisions to promote the agreement’s implementation. The UNFCCC has a specific provision entitled ‘principles’, which includes the principle of sustainable development and the principle of Common But Differentiated Responsibilities (CBDR) and respective capabilities. According to this principle, Parties from industrialized countries should ‘take the lead’ in addressing climate change. In that light, the UNFCCC emphasizes the importance of the transfer of financial and technology resources by developed country Parties and the fact that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.⁶⁶

The Parties to the UNFCCC have negotiated two legally binding agreements to further advance towards the convention’s ultimate objective, namely the Kyoto Protocol adopted in 1997 and the Paris Agreement adopted in 2015.

Under the Kyoto Protocol, Industrialized countries committed to binding targets for GHG emissions reductions.⁶⁷ In the protocol’s first commitment period (2008-2012), these targets amount to an average five percent emission reductions compared to 1990 levels. A second commitment period (2012-2020), known as the Doha Amendment, has not entered into force. While some Parties applied the Doha Amendment voluntarily, the Kyoto Protocol, while technically still in force, will largely become non-operational after 2020. The Kyoto Protocol’s top-down approach, binding only industrialized countries to specific targets, was abandoned by the 2015 Paris Agreement.

Negotiated ‘under the convention’⁶⁸, the Paris Agreement recognizes “the fundamental priority of safeguarding food security and ending hunger, and the particular vulnerabilities of food production systems to the adverse impacts of climate change”.⁶⁹ The agreement establishes a global goal on adaptation as well as a global temperature goal. The latter goal commits parties to hold the increase in global average temperature to well below 2°C above pre-industrial levels, and pursue efforts to limit the increase to 1.5°C. It also explicitly commits parties to increase the ability to adapt to the adverse impacts of climate change and foster climate resilience and low GHG emissions development, in a manner that does not threaten food production.⁷⁰ As of May 2020, 189 Parties have ratified the Paris Agreement, out of 197 Parties to the convention.⁷¹

CARBON MARKET MECHANISM

BOX 1.5

The Kyoto Protocol created, among others, the Clean Development Mechanism (CDM), which is a carbon market mechanism. The CDM has been criticized for failing to provide for adequate human rights safeguards, resulting in human rights violations, including forced displacement and the destruction of livelihoods. The Paris Agreement establishes a mechanism that contributes to the mitigation of GHG emissions and supports sustainable development, for use by Parties on a voluntary basis (Sustainable Development Mechanism).⁷² The rationale of the carbon market include reducing emissions where it is cheaper to do so, as well as involving the private sector in climate change mitigation. Modalities and procedures for the carbon market were expected to be adopted by COP25 in December 2019, but no agreement could be reached, thereby pushing the agenda to COP26. One of the key points of the negotiations is whether the mechanism will include human rights and environmental safeguards, and a grievance mechanism open to affected communities.⁷³

The UNFCCC, including its principles and processes, and the instruments under it, engage the RtFN in direct and indirect ways. The following sections examine some of the mechanisms and processes of the climate change regime for the RtFN.

II. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE

Established in 1988, the IPCC, comprising 195 countries, conducts periodic assessments of the state of climate science. The IPCC reports cover the “scientific, technical and socio-economic information relevant to understanding the scientific basis of risk of human-induced climate change, its potential impacts and options for adaptation and mitigation”.⁷⁴ The IPCC provides scientific input to inform UNFCCC Parties in strengthening the global response to the threat of climate change.⁷⁵

The IPCC has addressed food and agriculture in its most recent reports. In 2018, the IPCC issued a special report assessing the impacts of 1.5 °C warming, including on food security, and identifying populations at disproportionately higher risk of the adverse consequences of climate change, including “some indigenous peoples, and local communities dependent on agricultural or coastal livelihoods.”⁷⁶ However, women are not explicitly mentioned in the report as particularly vulnerable to climate change. In the face of ecological calamities, women’s hardship and vulnerability worsens, especially for rural women who are already carrying a double burden as primary family caregivers and food producers.

In 2019, the IPCC produced two special reports, one of which focused on land, including food security. The IPCC⁷⁷ notes that agriculture, forestry and other land use, make with 23 percent, a significant contribution to the total GHG emissions. It also notes the role of land-based biogeophysical processes in carbon sequestration and highlights land degradation as a major cause of

loss of biodiversity and ecosystem services. Moreover, the report identifies the ways in which climate change is affecting food security, such as through the reduced nutritional value of food.⁷⁸

The report quantifies the amount of GHGs that would be reduced from dietary change, as well as the benefits that changed diets can have on health.⁷⁹ The report also outlines various adaptation and mitigation options, including ‘proven agronomic measures’,⁸⁰ increased soil organic matter and erosion control, reductions in nitrogen from fertilizers, and improved cropland and grazing management, among others.⁸¹

The IPCC report notes that some GHG reduction measures can have adverse side effects for adaptation and food security, such as bioenergy⁸² and afforestation with species not suited to local conditions.⁸³ However, the IPCC also asserts that all future scenarios (‘assessed pathways’) that limit warming to 1.5°C require large scale bioenergy.⁸⁴

The IPCC notes that policies that address sustainable land management, climate change, and food security in a coordinated manner will be more successful.⁸⁵ The study specifically highlights the importance of involving the most vulnerable people in decision-making regarding response options will improve governance.⁸⁶ It further notes that compatibility between specific land management practices and socio-economic conditions, including land tenure and gender, is essential.⁸⁷ The IPCC highlights the importance of considering indigenous practices and communal tenure, which are often based on local knowledge.⁸⁸ Although the IPCC underscores the important role of land in the climate system and how sustainably managed land resources can help to address climate change, several problematic issues related to human rights (such as land concentration as well as just redistribution of land and other natural resources) remain unresolved.

III. NATIONALLY DETERMINED CONTRIBUTIONS

The key building block of the Paris Agreement’s mitigation architecture are NDCs. Each party must prepare, communicate and maintain successive NDCs (to the agreement’s long-term temperature goal) that it intends to achieve.⁸⁹ The NDCs typically discuss GHG reduction targets and specific actions to support those targets. Parties are required to submit new NDCs every five years.⁹⁰ Each Party’s successive NDC will represent a progression and reflect its highest possible ambition. In 2015, in order to align NDC cycles, Parties agreed that they will submit new or updated NDCs in 2020.⁹¹

The Paris Agreement establishes two other building blocks to strengthen NDCs, namely the Global Stocktake and the Enhanced Transparency Framework for action and support. The Global Stocktake will assess the collective progress towards achieving the Paris Agreement’s long-term goals. It will take place in 2023 and every five years thereafter, and its outcome shall inform the Parties’ successive NDCs. Under the Enhanced Transparency Framework, each Party commits to providing the information necessary to track progress made in implementing and achieving its NDC.

In the first round of submission of NDCs, most states include agriculture and/or land use within their overall GHG target.⁹² About half of the countries do not provide additional information about concrete actions in agriculture to achieve these targets.⁹³ The level of detail describing the action

varies, ranging from countries that only note the sector or subcategories (e.g., managed soil) to comprehensive descriptions of policies, programs, or projects. Agroecology and related approaches as climate change mitigation strategies are still poorly integrated and need to gain more attention in the NDC revisions in 2020 and beyond. The following box contains illustrative examples:

BOX 1.6

FOCUS AREAS IN NDCs FOR ADAPTATION AND MITIGATION ACTIONS

FISHERIES AND AQUACULTURE

- › About 55 percent of countries mention fisheries and/or aquaculture in their adaptation strategies, focusing on conservation of protected areas, reduction of energy use, and improving technology equipment.⁹⁴
- › For example, Guinea, among a few others, refers to agro-ecological fish farming techniques to conserve and preserve fish-farming products.⁹⁵
- › A number of countries (i.e., Ghana, Kenya, Liberia, Madagascar, and Mauritius) also include climate-smart techniques in the fisheries and/or aquaculture sector.⁹⁶

LAND USE, LAND-USE CHANGE AND FORESTRY

- › One third of the countries mention for land use, land-use change and forestry mitigation policies and measures, either a target and/or specific action.⁹⁷
- › Adaptation actions in forestry include protection and conservation of existing forest areas as well as afforestation and reforestation projects.⁹⁸ 30 countries also mention integrated systems such as agroforestry in their activities.⁹⁹

AGRICULTURE

- › Around two thirds of the NDCs include agriculture in their adaptation measures. In their discussion of adaptation measures, many countries discuss their plans to develop a NAP: 53 countries mention at least one of the agriculture sectors as priority area for adaptation or within their adaptation actions, including, for example, Colombia, Guatemala, Kenya, Uganda, and Zambia.
- › Most of these actions refer to water, soil, and plant management. A few countries quantify these measures, such as Burkina Faso, which specifies the amount of land on which organic fertilizer will be applied.¹⁰⁰
- › Many targets and actions lack sufficient detail to determine whether they would be likely to successfully promote agroecology. One third of all countries refer to wood and/or crop biomass as a source of renewable energy when discussing mitigation measures.¹⁰¹
- › Only over ten percent of the NDCs mention agroecology either explicitly as an adaptation strategy mitigation to climate change or

as an isolated approach.¹⁰² Honduras, for example, has identified the need to develop sustainable systems based on agroecology.¹⁰³

- › Around a quarter of the countries (including 40 percent of the LDCs) refer to climate-smart agriculture (CSA) in their NDCs.¹⁰⁴
- › Nine parties refer to both Climate Smart Agriculture and agroecological approaches.¹⁰⁵

CLIMATE-SMART AGRICULTURE

BOX 1.7

While attention has increased on agroecology in the past years, other ‘approaches’ have also emerged, such as CSA. CSA is one of the 11 Corporate Areas for Resource Mobilization under the Food and Agriculture Organization (FAO)’s Strategic Objectives¹⁰⁶ and strongly promoted by the international agribusiness as a way to secure sustainable food security under climate change. CSA, an ‘intentionally vague term’, allows “policy makers and private corporations to borrow selectively from the repertoire of agroecology, while leaving the door open for conventional practices couched in green packaging”¹⁰⁷. As the term ‘climate-smart’ was only loosely defined, synthetic fertilizers and large-scale agriculture that are harmful to the environment and largely contribute to climate change can be labeled as CSA initiatives.

CSA undermines resilient farming systems and threatens substantial human rights. CSA as a climate strategy is highly contested and opposed by social movements and civil society organizations (CSOs). This is why agroecology advocates are weary and warn: “[w]here CSA fails, from the food sovereignty perspective, is in its failure to embrace the more transformative elements of agroecology and food sovereignty, such as justice, which are central to their framing”.¹⁰⁸

AGROECOLOGY: A KEY PROPOSAL TO REALIZE THE RIGHT TO FOOD AND NUTRITION AND REGENERATE NATURE

BOX 1.8

Agroecology¹⁰⁹, which used to be a term used only by a few, is now being discussed in more spaces and by different actors, who, however, often do not mean the same thing. Agroecology may be defined as a science, a set of practices, and a social movement. At its core, agroecology promotes agricultural practices that are environmentally sustainable and socially just.¹¹⁰ Importantly, it is embedded in the food sovereignty framework; it is political and transformative in

its nature – despite the attempts by some actors to co-opt this term and devoid it of meaning. Agroecology represents a sustainable alternative to the dominant industrial agribusiness model and can help to reverse, for example, species loss and genetic erosion. Agroecology and the realization of the RtFN as well as the protection of the environment are closely linked. The promotion of agroecology may be even understood as a human rights obligation of States.

Agroecology and the principles of the RtFN have a strong conceptual connection, which was elaborated, among others, by the last two UN Special Rapporteurs on the Right to Food, Olivier De Schutter and Hilal Elver. The realization of the RtFN, especially for the most vulnerable groups in different countries and environments, can be substantially supported through agroecology.¹¹¹ In his 2015 report¹¹², De Schutter makes a strong call for transition towards agroecology. He outlines that States should implement public policies supporting the adoption of agroecological practices as part of their obligation to devote the maximum of their available resources to the progressive realization of the RTFN. These policies include national strategies for the realization of the RtFN, measures adopted in the agricultural sector in national adaptation plans of action and in the list of nationally appropriate mitigation actions.¹¹³

Environmental law contains various principles that require States to promote agroecology as a way to protect the environment and mitigate climate change, and therefore is a key component of the NDCs that state parties are required to submit under the Paris Agreement. In 2019 Hilal Elver reinforced the arguments in De Schutter's report. She observes that a strong focus on monitoring and accountability are needed, these being at the “core of the human rights-based approach”, and that it is the “the responsibility of duty-bearers [...] to ensure [that] sustainable agriculture and food systems can really enhance [food security and nutrition]”.¹¹⁴

Agroecology also effectively contributes to the realization of women's rights. Women play a key role in the advancement of agroecology, as a key pillar of food sovereignty. Additionally, there are inextricable linkages between the struggles for feminism and agroecology. Several civil society actors and social movements emphasize the importance of taking a feminist approach to the promotion of agroecology and the realization of the RTFN as the way towards securing just and sustainable food systems.¹¹⁵

IV. KORONIVIA JOINT WORK ON AGRICULTURE

In 2017, the UNFCCC COP23 decided to launch the Koronivia Joint Work on Agriculture.¹¹⁶ This decision builds on the various workshops on issues relating to agriculture that the Subsidiary Body for Scientific and Technical Advice had organized since 2012. The COP's 2017 decision directed the

convention's subsidiary bodies to address agricultural issues, taking into consideration the vulnerabilities of agriculture to climate change and approaches to addressing food security.

The Koronivia work stream is taking place through a series of workshops and expert meetings, as defined by the Koronivia Road Map.¹¹⁷ Parties and observer organizations may submit their views on these topics in advance of the workshops; these submissions are made publicly available.¹¹⁸ Admitted observers may also participate in the workshops.

In June 2019, the Secretariat organized two workshops on *Methods and Approaches for Assessing Adaptation, Adaptation Co-benefits and Resilience*, and on *Improved Soil Carbon, Soil Health and Soil Fertility under Grassland and Cropland as well as Integrated Systems, including Water Management*. Environmental NGOs (ENGOs) submitted a joint paper on soil, which discusses indicators for measuring sustainable agriculture and advocates for the development of policy frameworks to encourage the transformation towards agroecology.¹¹⁹ An ENGO submission regarding adaptation highlighted the importance of participation and agroecology, and how actions to support these can be used as indicators to demonstrate adaptation and resilience.¹²⁰

Two workshops particularly relevant to the RtFN were planned to be scheduled in June 2020 but were postponed due to the Covid-19 pandemic. These workshops would focus on *Improved Livestock Management Systems, including Agropastoral Production Systems and Others*, and on *Socioeconomic and Food Security Dimensions of Climate Change in the Agricultural Sector*.¹²¹ The COP26 is expected to consider the subsidiary bodies' reports on these workshops as well as the outcome of the Koronivia work and any next steps.

V. NATIONAL ADAPTATION PLANS

The planet is already experiencing the impacts of climate change. Sea level rise, draughts, mean-temperature increases and other changes in climate patterns are affecting the enjoyment of RtFN. While mitigation is a central element in the fight against climate change, adaptation measures are also needed to respond to climate impacts and build resilience in society.

Developing countries have been at the forefront in the push towards strengthened adaptation action in the climate regime. In 2010, COP16 established the Cancun Adaptation Framework and the Adaptation Committee. The COP decided that national adaptation plans (NAPs) would aid developing countries in identifying medium and long-term adaptation needs and develop and implementing strategies to address those needs.¹²² To further strengthen this tool, the COP21 in 2015 requested the Green Climate Fund to expedite support for the formulation and implementation of NAPs.

Among FIAN sections, seed groups, and other countries where FIAN works, Brazil, Burkina Faso, Cameroon, Colombia, Guatemala, Kenya, Paraguay, Sri Lanka, and Togo have submitted NAPs.¹²³ In addition, the UN Development Programme (UNDP) and FAO jointly coordinate the Integrating Agriculture in NAPs agriculture programme which helps 11 developing countries (Colombia, Gambia, Guatemala, Nepal, Kenya, the Philippines, Thailand, Uganda, Uruguay, Viet Nam and Zambia)

identify and integrate climate adaptation measures into national planning in the agricultural sector.¹²⁴

The Paris Agreement defines a global goal on adaptation. This goal is to enhance adaptive capacity and resilience and to reduce vulnerability, with a view to contributing to sustainable development. The agreement articulates elements of a rights-based approach to adaptation, as follows:

*Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate.*¹²⁵

The Paris Agreement also provides that each “Party should, as appropriate, submit and update periodically an adaptation communication, which may include its priorities, implementation and support needs, plans and actions.”¹²⁶ This adaptation communication may be submitted as a component of, inter alia, a NDC or a NAP. Accordingly, civil society may scrutinize these adaptation communications under the light of the RtFN.

3. CHEMICALS AND WASTE

Unlike other multilateral environmental regimes anchored in a general framework convention followed by specific protocols and agreements, the chemicals landscape has evolved in a fragmented and piecemeal fashion that includes MEAs and non-binding initiatives. In the absence of a framework convention that could provide a platform for coherent governance and coordination, in recent years multilateral efforts have focused on capturing synergies between relevant conventions. The field, however, is still rather rudimentary in the face of thousands of industrial chemicals and pesticides that industry produces every year. The chemical-by-chemical approach to regulation is proving inadequate to address both the magnitude and risks posed by dangerous substances. The precautionary principle has received lip service in this landscape.

In 2017, the Special Rapporteur on the Right to Food and the Special Rapporteur on Dangerous Substances and Wastes reported that hazardous pesticides are a global human rights concern and proposed the elaboration of a new instrument to phase them out.¹²⁷ That instrument could address the risks posed by a class of dangerous chemicals, rather than relying on the resource intensive and time-consuming chemical-by-chemical approach. It could, for example, ban the export of hazardous pesticides that are banned for use in the country of export. Neither the FAO nor the UN Environmental Programme (UNEP), however, have taken up this proposal (yet), and they may not do so in the absence of sustained civil society pressure. At this time, the Pesticide Action Network (PAN), a global network of over 600 groups worldwide, is mobilizing a global campaign for a legally binding instrument on highly hazardous pesticides.

The RtFN is directly impacted by hazardous chemicals and waste. Pesticides are particularly relevant to the cultivation of food, and they may have serious adverse effects on human health. A number of

instruments regulate hazardous substances, including pesticides, covered by the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer. This section explores the most relevant instruments for the RtFN.

I. THE BASEL, ROTTERDAM, STOCKHOLM AND MINAMATA CONVENTIONS

The 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal was negotiated in response to the transfer of wastes from the industrialized north to developing countries lacking the capacity to handle dangerous waste. The ‘Koko incident’ in Nigeria in 1988 catalyzed international action: Italian businessmen illegally dumped over 2000 drums, sacks, and containers full of hazardous wastes in a small fishing village in southern Nigeria.

The Basel Convention affirms the sovereign right to ban import of hazardous wastes, as it seeks to protect human health and the environment from the adverse effects of wastes, as well as the reduction of generation of waste and its disposal close to source. The Basel Convention rests on the Prior Informed Consent procedure, whereby the state of export notifies relevant states (transit and import) of a shipment of hazardous waste, and it does not allow export until consent has been received from all relevant states. Transfer of waste that does not comply with this procedure is an illegal act, which Parties undertake to criminalize and prosecute.

At the time of negotiations, the African Group sought a total ban on transfers of waste. It argued that the developing world should not become the dumping ground of industrialized countries. The convention, however, adopted a control procedure, not a ban. In response, the African Group in 1991 negotiated the Bamako Convention, which bans the import of hazardous waste into Africa. Nevertheless, the 1995 Basel COP3 eventually adopted the Ban Amendment, which bans the transfer of hazardous wastes from countries members of the Organization of Economic Cooperation and Development to developing countries. Legal debates, as to the number of ratifications needed for the amendment to enter into force, delayed its implementation. A decision adopted at COP10 in 2011 settled the legal interpretation question and enabled the entry into force of the amendment, which ultimately happened in December 2019.

One of the key recent developments in the Basel Convention came about at COP14 in 2019, which amended the convention to ban trade in certain plastics. Environmental and health problems associated to plastics are on the rise, and production of plastics is expected to increase from 335 million tons in 2016 to 1,124 million tons in 2050. There is insufficient capacity for recycling plastic products, and incineration of plastics creates toxic ash that contains dangerous dioxins.

Modelled on Basel’s prior informed consent procedure, the UNEP and the FAO began to apply it to international trade in chemicals in 1989 on a voluntary basis. Subsequently, the UNEP and the FAO mandated negotiations on a new instrument, which resulted in the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. The convention seeks to enable exchange of information to protect health and the environment from hazardous chemicals and pesticides that enter international trade. It rests on the prior informed consent procedure, whereby the state of export must not allow exports of

covered chemicals and pesticides from its territory unless and until the state of import has expressed its consent. The convention includes an annex (III) with covered chemicals, pesticides, and pesticides formulations.¹²⁸ The COP, upon advice of the Chemical Review Committee (a subsidiary body established by the Convention), can amend annex III to list (or delist) covered chemicals. The Rotterdam COPs has adopted several amendments to include hazardous pesticides and pesticides formulations in annex III, and so to subject them to its control procedures.

Certain pesticides are also persistent organic pollutants, which are a class of chemicals that remain intact in the environment for long periods, become widely distributed geographically, accumulate in the fatty tissue of humans and wildlife, and have harmful impacts on human health or on the environment. In the 1990s, UNEP took the lead in assessing the impact of these pollutants and then calling for negotiations. These efforts ultimately resulted in the 2001 Stockholm Convention on Persistent Organic Pollutants, which seeks to protect human health and the environment from these pollutants. The Convention establishes a rather complex regulatory scheme to inter alia ban or restrict production, use, or releases of intentional and unintentional persistent organic pollutants. Following the model of Rotterdam, the Stockholm Convention provides for detailed procedures for the listing of new pollutants in its various annexes. To date, the Stockholm Convention controls several pesticides, including DDT, endosulfan, pentachlorophenol, chlordane, lindane, and dieldrin, among others.¹²⁹

The most recent MEA on chemicals is the 2013 Minamata Convention on Mercury. Also the result of UNEP's efforts, the Convention takes its name from the Japanese town of Minamata, where thousands of villagers developed serious neurological disease after consuming fish and shellfish contaminated with mercury. But that is not the only connection between the Convention and the RtFN. The Convention's preamble, for example, notes "the particular vulnerabilities of Arctic ecosystems and indigenous communities because of the biomagnification of mercury and contamination of traditional foods" and expresses "concern about indigenous communities more generally with respect to the effects of mercury"¹³⁰. The Convention's goal is to protect human health and the environment from anthropogenic emissions and releases of mercury. Major highlights of the Minamata Convention include control measures on emissions to air and on releases to land and water, and the regulation of the informal sector of artisanal and small-scale gold mining.¹³¹ These measures may have direct implications for cleaner soils and waters for food cultivation.

II. RIO+20 AND THE SUSTAINABLE DEVELOPMENT GOALS ON CHEMICALS AND WASTES

In June 2012, just prior to the start of the Rio+20 UN Conference on Sustainable Development, the UNEP released its fifth edition of the Global Environmental Outlook (GEO-5). The report concludes that the scientific evidence shows, earth systems are being pushed towards their biophysical limits. Rio+20 responded to the science with the adoption of the *Future We Want*, which recognized that the sound management of chemicals is crucial for the protection of human health and the environment. The *Future We Want* also reaffirmed the goal of achieving the sound management of chemicals by 2020, which had been proclaimed by heads of State from around the world at the 2002 World Summit on Sustainable Development.

Certain SDGs are particularly relevant to chemicals and wastes. SDG3, for example, is to “[e]nsure healthy lives and promote well-being for all at all ages”, and its Target 3.9 states, “[b]y 2030, substantially reduce the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination”. Similarly, SDG12 is to “[e]nsure sustainable consumption and production patterns,” and its Target 12.4 states, “[b]y 2020, achieve the environmentally sound management of chemicals and all wastes throughout their life cycle, in accordance with agreed international frameworks, and significantly reduce their release to air, water and soil in order to minimize their adverse impacts on human health and the environment”.¹³² The international community, however, is not on the path to achieving this objective, as detailed next.

III. GLOBAL CHEMICALS OUTLOOK

The first Global Chemicals Outlook was published in February 2013 and assembled scientific, technical and socio-economic information on the sound management of chemicals. In 2016, the UN Environment Assembly (UNEA) mandated UNEP to elaborate a second outlook, which UNEP released in April 2019. Global Chemicals Outlook II found that the global goal to minimize adverse impacts of chemicals and waste will not be achieved by 2020. Concerted advocacy by civil society could push UNEA-5 to take action in response to the findings presented by the Global Chemicals Outlook II. Another relevant space at the international level for advocacy on global chemicals and waste is the International Conference on Chemicals Management.

IV. INTERNATIONAL CONFERENCE ON CHEMICALS MANAGEMENT

In 2006, the first International Conference on Chemicals Management (ICCM) was convened by UNEP and other organizations to advance the 2020 goal that had been proclaimed in the Johannesburg summit (see Rio+20 above). The conference produced the UN’s global non-binding chemicals multi-stakeholder platform, the Strategic Approach to International Chemicals Management (SAICM). This approach has advanced the knowledge of chemicals and identified gaps and emerging issues of concern, including nanotechnology and highly hazardous pesticides.¹³³ However, as the Global Chemicals Outlook II finds, the 2020 global goal will not be met. The Fifth International Conference on Chemicals Management (now re-scheduled for July 2021 due to the novel Covid-19 pandemic) is expected to take stock of this fact and propose a way forward for a global strategy on chemicals. Elements of that debate include an enabling framework for coordination of the various international agencies working on chemicals, such as the FAO, UNEP, World Health Organization (WHO), UNDP, International Labour Organization (ILO) and several others.¹³⁴ They also include the opportunity to link and create synergies between chemicals and waste and other international policy areas, such as agriculture and food.¹³⁵

B. MONITORING COMPLIANCE UNDER MULTILATERAL ENVIRONMENTAL AGREEMENTS

MEAs encourage compliance in a variety of ways, typically through non-confrontational, capacity building-oriented mechanisms such as national implementation plans and reporting, monitoring, and verification. Several MEAs also benefit from implementation and compliance mechanisms, which are non-judicial bodies where Parties can bring complaints about individual cases of non-compliance.¹³⁶ In most MEAs that have compliance mechanisms, they cannot be triggered by non-state actors.

Implementation and compliance mechanisms can take certain actions in response to non-compliance, such as providing advice or assistance to the party concerned, making recommendations to the COP regarding the provision of financial and technical assistance, technology transfer, training and other capacity building measures, or requesting or assisting the party concerned to develop a compliance action plan. These measures can help Parties access the support and assistance they may need to adequately implement the MEA. The rationale for this approach is that non-compliance typically stems from a lack of financial or technical resources and that compliance should be facilitated in a cooperative and non-confrontational manner.

The Aarhus Convention, which focuses on the right to information, participation, and access to justice in environmental matters in Europe and Central Asia, establishes a compliance mechanism that is open to communications from individuals and NGOs. The Escazú Agreement in Latin America and the Caribbean establishes a similar non-compliance mechanism, but its modalities and procedures, including whether it may accept communications from individuals or communities, are to be established by its first COP upon its entry into force.

RELEVANT CIVIL SOCIETY NETWORKS IN THE ENVIRONMENTAL AND CLIMATE SPACES

BOX 1.9

CLARA is a group of CSOs following the UNFCCC negotiations in the areas of agriculture, forest, and land issues. CLARA has critiqued some of the fundamental assumptions underlying climate policies, and it advocates for policies that prioritize food security, protecting human rights, and protecting and restoring natural ecosystems.¹³⁷ CLARA has developed a joint position on how these issues should be addressed. For example CLARA calls on UNFCCC parties to ensure food security and human rights; free, prior and informed consent (FPIC) and full and effective participation of indigenous peoples and local communities; stop deforestation and degradation, and protect and restore degraded forests and ecosystems; secure land rights, including collective land rights; count emissions from the burning of biomass; reduce non-CO₂ emissions from industrialized agriculture systems, such as methane (CH₄) and nitrous oxide (N₂O); implement agro-ecological approaches for agricultural adaptation strategies; and scale-up

of climate finance and address the particularly large gap in adaptation finance. CLARA also calls on parties to avoid: the use of terrestrial carbon sinks to offset fossil carbon emissions; unreliable accounting for soil carbon removals; harmful geo-engineering experiments or large-scale land use for Bioenergy with Carbon Capture and Storage; strategies that increase the risk of forced land acquisitions from indigenous peoples and local communities; and counterproductive CSA approaches.¹³⁸

The **Human Rights & Climate Change Working Group** brings together environmental and human rights organizations that exchange information and coordinate their activities to advance human rights, mainly in the climate space.¹³⁹ The working group and its partners prepare submissions, analyses, interventions and publications on various issues concerning human rights and climate, mainly in UNFCCC processes. It also organizes side events, conducts advocacy, and enhances the understanding of how human rights and climate action interact.

The **ESCR-Net Advisory Group on Climate Justice**¹⁴⁰ focuses on environmental destruction and climate change as a threat to the enjoyment of economic, social and cultural rights (ESCR). The network underlines that the meaningful protection of human rights is essential to address the climate crisis. The ESCR-Net is advancing a network-wide project on the environment and ESCR with a priority focus on climate justice. Many of the 35 network members (social movements and NGOs) across the world have joined the advisory group to lead the network's climate justice work. The group aims to deepen connections among members interested to work together on climate; create the space for mutual learning; develop a shared analysis of the structural factors driving the climate crisis and their vision for solutions/alternatives; as well as coordinate member led collective action.

The **Geneva Climate Change Consultation Group (GeCCCo)**¹⁴¹ is an informal roundtable for improved networking and coherence between NGOs working in the field of human rights and climate change. GeCCCo was launched in 2014 by the Friedrich-Ebert-Stiftung, Earthjustice and Ciel. This platform offers exchange opportunities on ongoing processes not only in relation to the UNFCCC COP, but also to the Human Rights Council (HRC) and its Special Procedures.

The **Climate Action Network (CAN)**¹⁴² is a worldwide network of over 1,300 NGOs in more than 130 countries, working to promote government and individual action to limit human-induced climate change to ecologically sustainable levels. The network members aim to achieve this through information exchange and the coordinated development of NGO strategy on international, regional, and national climate issues.

The **Asia Europe People's Forum (AEPF) Cluster on Climate Change and Just Transition** ¹⁴³ holds events that bring together activists and scholars for collaborative campaigns towards systemic change. The AEPF initiates collaborations of civil society in Asia and Europe by organizing People's Forums. The AEPF works in solidarity with key movements in the two regions. The Cluster of Climate Change and Just Transition aims to develop relevant advocacies and disseminate creative ideas.

The **CBD Alliance**¹⁴⁴ is a network of 400 CSO members who are interested in the Convention on Biological Diversity. The alliance aims to increase a general understanding on relevant issues of the CBD and improve the cooperation among different organizations that want to positively influence the CBD.

The **International Planning Committee for Food Sovereignty (IPC) Working Groups** focus on a number of topics relevant for the environmental and climate justice debate (i.e., agricultural biodiversity; agroecology; fisheries; indigenous peoples; land, forest, waters, and territories). The IPC is an autonomous and self-organized global platform of small-scale food producers and rural workers organizations and grassroots/community-based social movements whose goal is to advance the food sovereignty agenda at the global and regional level. The platform counts more than 6,000 organizations and 300 millions of small-scale producers who are self-organized through the IPC and share the principles and the six pillars of food sovereignty as outlined in the Nyeleni 2007 Declaration and synthesis report¹⁴⁵.

PAN¹⁴⁶ is a network of over 600 participating NGOs, institutions and individuals in over 90 countries working to replace the use of hazardous pesticides with ecologically sound and socially just alternatives.

III. INTERNATIONAL ENVIRONMENTAL PRINCIPLES

General principles play an influential role in the development of the field of international environmental law. They have emerged from seminal UN declarations, such as the Declaration of the United Nations Conference on the Human Environment¹⁴⁷ (or 1972 Stockholm Declaration) and the 1992 Rio Declaration on Environment and Development.¹⁴⁸ Various MEAs also articulate these general principles in varying forms. Courts and tribunals, including in the human rights sphere, refer to these principles in determining the scope and content international obligations of States.

In 2017, France proposed a Global Pact for the Environment to codify these principles of international environmental law. In the third and last session of the working group on the pact in Nairobi in May 2019, States decided to elaborate a ‘political declaration’, meaning a non-binding pact, to be adopted in the context of the fiftieth anniversary of the Stockholm Conference.¹⁴⁹ The initiative, however, has not caught sufficient traction and its fate remains uncertain.

Some international environmental principles are particularly relevant to the interaction between human rights and the environment. The Special Rapporteur on Human Rights and the Environment, John Knox, concluded his mandate in 2018 with a set of framework that codify human rights obligations in respect of a clean, safe, healthy and sustainable environment¹⁵⁰. For example, he articulated duties regarding the right to information, public participation and remedies in environmental decision-making.¹⁵¹

The Knox Framework Principles do not include all principles of international environmental law that may have particular relevance to human rights. For example, principles of intergenerational equity, precaution, ‘polluter-pays’, and common but differentiated responsibilities are not included. However, virtually all international environmental principles have some connection to human rights and can be used to support agroecology.

The following charts identify ten relevant international environmental principles (including some principles of the Knox Framework) and provide examples of the sources of these principles in international environmental law and international human rights law, including the RtFN.

HEALTHY ENVIRONMENT

INTERNATIONAL ENVIRONMENTAL LAW

“Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.”¹⁵²

“Climate change have a range of direct and indirect implications for the effective enjoyment of human rights.”¹⁵³

INTERNATIONAL HUMAN RIGHTS LAW

“States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights” and “States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment”.¹⁵⁴

Human rights obligations require states “to adopt and implement legal frameworks to *protect* against environmental harm that may infringe on enjoyment of human rights; and [...] to regulate private actors to *protect* against such environmental harm”.¹⁵⁵

Regional: African Charter: “All peoples have the right to a general satisfactory environment”.¹⁵⁶

Right to a healthy environment under Inter-American Human Rights System.¹⁵⁷

Adequate food implies the absence of toxic substances.¹⁵⁸ Peasants and others have the right not to use or to be exposed to hazardous substances or toxic chemicals, including agrochemicals or agricultural or industrial pollutants.¹⁵⁹

SUSTAINABLE DEVELOPMENT

INTERNATIONAL ENVIRONMENTAL LAW

SDGs¹⁶⁰

Sustainable development that “meets the needs of the present without compromising the ability of future generations to meet their own needs”.¹⁶¹

“ ‘Sustainable use’ means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.”¹⁶²

States and all those engaged in fisheries management should adopt measures for the long-term conservation and sustainable use of fisheries resources and to secure the ecological foundation for food production.¹⁶³

Spatial planning should take duly into account the need to promote diversified sustainable management of land, fisheries and forests, including agro-ecological approaches and sustainable intensification, and to meet the challenges of climate change and food security.¹⁶⁴

INTERNATIONAL HUMAN RIGHTS LAW

General Comment on Sustainable Development and Economic, Social and Cultural Rights

In defining the scope of ‘adequacy’, the CESCR notes that “sustainability is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generations.”¹⁶⁵

Governments have clear obligations “to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources.”¹⁶⁶

International assistance is required to ensure sustainable development pathways in developing countries and enable them to adapt to now unavoidable climate change.¹⁶⁷

Well-designed disaster risk reduction and climate change initiatives that provide for the full and effective participation of women can advance substantive gender equality and the empowerment of women, while ensuring that sustainable development, disaster risk reduction and climate change objectives are achieved.¹⁶⁸

DUTY TO PREVENT TRANSBOUNDARY HARM

INTERNATIONAL ENVIRONMENTAL LAW

Parties will not “take any deliberate measures which might damage directly or indirectly the cultural and natural heritage [...] situated on

INTERNATIONAL HUMAN RIGHTS LAW

States should ensure their conduct as well as the conduct of those corporations registered in their territory do not harm right to food

the territory of other States Parties”.¹⁶⁹

Under customary international law, “[a] State is [...] obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State”.¹⁷⁰

“Under the principles of international law, as well as of the law of the United States, no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.”

¹⁷¹

States have “the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”.¹⁷²

realization abroad.¹⁷³

States have legal obligations to refrain from interfering with the enjoyment of human rights in other countries.¹⁷⁴

States must desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially. The responsibility of States is engaged where such nullification or impairment is a foreseeable result of their conduct. Uncertainty about potential impacts does not constitute justification for such conduct.¹⁷⁵

BOX 2.4

INTERGENERATIONAL EQUITY

INTERNATIONAL ENVIRONMENTAL LAW

“The Parties shall protect the climate system for the benefit of present and future generations of humankind.”¹⁷⁶

These guidelines for securing sustainable small-scale fisheries recognize the need for responsible and sustainable use of aquatic biodiversity and natural resources to meet the developmental and environmental requirements of present and future generations.¹⁷⁷

The environment is not an abstraction but a living space, the quality of life and the very health of human beings, including the unborn generations. The existence of the general obligation of States to ensure that the activities

INTERNATIONAL HUMAN RIGHTS LAW

“The dedication to future generations is visible worldwide and across cultures. It is a universal value shared amongst humanity.”¹⁷⁹

In defining the scope of ‘adequacy’, the CESCR notes that “sustainability is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generations”.¹⁸⁰

Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.¹⁸¹

within their jurisdiction and control respect the environment of other states or of areas beyond national control is now part of the corpus of international law relating to the environment.¹⁷⁸

BOX 2.5

COMMON BUT DIFFERENTIATED RESPONSIBILITIES

INTERNATIONAL ENVIRONMENTAL LAW

Developed countries have different responsibilities with respect to the anthropogenic causes of climate change, as well as a different level of vulnerability to its impacts. As a consequence, developed countries should take the lead in combating climate change and must give full consideration to the specific needs and special circumstances of developing countries, especially those that are particularly vulnerable to the adverse effects of climate change.¹⁸²

Developed countries must provide financial resources to assist particularly vulnerable developing countries with the costs of mitigation and adaptation measures to address climate change.¹⁸³

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.¹⁸⁴

INTERNATIONAL HUMAN RIGHTS LAW

Must distinguish between states' inability to comply with their obligations to respect, protect and fulfill the right to food, and a general unwillingness to do so; States bear the burden of proving that every effort has been made to provide access to food.¹⁸⁵

States are "obliged to take measures towards the full realization of economic, social, and cultural rights *to the maximum extent of their available resources*".¹⁸⁶

States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required.¹⁸⁷

The CBDR principle is particularly important to the interaction between environment and RtFN, given FIAN’s approach to prioritizing the rights and needs of marginalized groups. The principle of CBDR closely relates to the principles of equity in general international law. In the Rio Declaration, which embodied the first expression of this principle in international environmental law, CBDR refers to instances where developed countries have contributed more to the environmental problem at stake and have greater capacity to respond to the environmental challenge. Differential treatment may consist of less stringent obligations (in timing or effort required), and/or international assistance in terms of financing, capacity building, technology transfer, and other means of implementation.

Under the UNFCCC, the Parties recognize that change in the earth’s climate is a common concern of humankind and acknowledge that the global nature of climate change calls for the widest possible cooperation by all countries, in accordance with their common but differentiated responsibilities and respective capabilities. In addition, the convention provides that the extent to which developing country Parties will effectively implement their commitments under the convention will depend on financial assistance and technology transfer provided by developed country Parties. Moreover, the convention explicitly states that “economic and social development and poverty eradication are the first and overriding priorities for developing country Parties”.¹⁸⁸

While CBDR is central to the UNFCCC, the Paris Agreement follows a bottoms-up approach whereby each Party determines its contribution to the global temperature goal. The question of whether there is still a place for CBDR in the Paris Agreement may surface in the Global Stocktake in 2023, which will take place “in the light of equity and the best available science”¹⁸⁹. The CBDR includes commitments for capacity building and financial and technology transfer.

BOX 2.6

PRECAUTIONARY PRINCIPLE

INTERNATIONAL ENVIRONMENTAL LAW

In case of doubt about the existence of an environmental impact, although there were “no scientific evidence of the damage, the State shall adopt effective and timely measures of protection”.¹⁹⁰

Prevention should come before reparations.¹⁹¹

Where there are threats of serious or irreversible damage, the lack of full scientific certainty should not be used as a reason for postponing precautionary measures.¹⁹²

INTERNATIONAL HUMAN RIGHTS LAW

States parties should therefore ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment, provide notification to other States concerned about natural disasters and emergencies and cooperate with them, provide appropriate access to information on environmental hazards and pay due regard to the precautionary approach.¹⁹³

ACCESS TO INFORMATION

INTERNATIONAL ENVIRONMENTAL LAW

“At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities [...]. States shall facilitate and encourage public awareness and participation by making information widely available”.¹⁹⁴

Environmental impact assessment is a practice that has become an obligation of general international law.¹⁹⁵

INTERNATIONAL HUMAN RIGHTS LAW

The human right to freedom of expression including the right to receive information.¹⁹⁶

Guiding Principles on Human Rights Impacts Assessment of Trade and Investment Agreements.¹⁹⁷

The FAO PANTHER framework.¹⁹⁸

“[A] human rights-based approach [...] includes certain key principles: the need to enable individuals to realize the right to take part in the conduct of public affairs, the right to freedom of expression, and the right to seek, receive, and impart information, including in relation to decision-making about policies on realizing the right to adequate food.”¹⁹⁹

PARTICIPATION IN GOVERNMENT DECISION-MAKING

INTERNATIONAL ENVIRONMENTAL LAW

“Environmental issues are best handled with participation of all concerned citizens, at the relevant level.”²⁰⁰

INTERNATIONAL HUMAN RIGHTS LAW

The right to take part in public affairs.²⁰¹

“*Participation* means that every person and all peoples are entitled to active, free and meaningful participation in and contribution to decision-making processes that affect them.”²⁰²

FAO PANTHER framework.²⁰³

“[A] human rights-based approach [...] includes certain key principles: the need to enable individuals to realize the right to take part in the conduct of public affairs, the right to freedom of expression, and the right to seek, receive, and impart information, including in relation to decision-making about policies on

realizing the right to adequate food.”²⁰⁴
States shall consult and cooperate in good faith with peasants and other people working in rural areas.²⁰⁵

BOX 29

REMEDY FOR ENVIRONMENTAL HARM

INTERNATIONAL ENVIRONMENTAL LAW

“Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”²⁰⁶

INTERNATIONAL HUMAN RIGHTS LAW

“*Accountability* requires that elected representatives, government officials and other duty-bearers be held accountable for their actions through judicial procedures or other mechanisms, ensuring effective remedies where rights are violated.”²⁰⁷

States should adopt right to food framework laws that include recourse measures as part of accountability, and victims of violation of right to food should have access to justice.²⁰⁸

Those who suffer human rights violations are entitled to access effective remedies, including for human rights violations related to climate change.²⁰⁹

FAO PANTHER framework.²¹⁰

BOX 210

INTERNATIONAL COOPERATION

INTERNATIONAL ENVIRONMENTAL LAW

“States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem.”²¹¹

States shall co-operate on a global and regional basis in formulating and elaborating international rules, standards and recommended practices and procedures for

INTERNATIONAL HUMAN RIGHTS LAW, INCLUDING THE RTFN SPECIFICALLY

Parties must “take steps, individually *and through international assistance and co-operation*, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means”²¹⁶

“States parties should recognize the essential role of international cooperation and comply

the protection and preservation of the marine environment²¹²

Developed countries have the obligation to provide substantial financial resources and other forms of support to assist affected developing country Parties.²¹³

Commitment of developed countries to take the lead in climate mitigation.²¹⁴

States have a duty to cooperate to prevent transboundary harm.²¹⁵

with their commitment to take joint and separate action to achieve the full realization of the right to adequate food [...] States parties should, in international agreements whenever relevant, ensure that the right to adequate food is given due attention and consider the development of further international legal instruments to that end.”²¹⁷

Extraterritorial obligations encompass obligations of a global character that are set out in the Charter of the United Nations and human rights instruments to take action, separately, and jointly through international cooperation, to realize human rights universally.²¹⁸

IV. THE RELATIONSHIP BETWEEN HUMAN RIGHTS LAW AND ENVIRONMENTAL LAW

Although international human rights law and environmental law have evolved in separate realms. There are mutually reinforcing aspects of both regimes and each has begun to incorporate principles, standards and concepts from the other.

A. ENVIRONMENTAL LAW INCORPORATING HUMAN RIGHTS

Environmental laws and policies increasingly include human rights protections, including specific procedural rights such as access to information and access to justice. In that regard, human rights mechanisms have highlighted the key role of human rights obligations in strengthening environmental protection measures.

The HRC, for example, affirmed, “human rights obligations and commitments have the potential to inform and strengthen international, regional and national policymaking in the area of environmental protection” and urged States “to take human rights into consideration when developing their environmental policies”.²¹⁹ The UN CESCR urged State parties to implement “strategies to combat global climate change that do not negatively affect the right to adequate food and freedom from hunger, but rather promote sustainable agriculture, as required by Article 2 of the United Nations Framework Convention on Climate Change”.²²⁰

One key area where the influence of human rights on environmental laws is highly visible concerns access rights. The rights of access to information, participation, and justice in environmental matters find their roots in human rights as well as principles of democratic inclusion. Principle 10 of the Rio Declaration enshrines these rights and declares that environmental issues are best handled with the meaningful participation of the people concerned.²²¹ Access rights have influenced the trajectory of MEAs,²²² the adoption of international instruments specifically tailored to give them effect (such as the Escazú Agreement in Latin America and the Caribbean and the Aarhus Convention in Europe and Central Asia),²²³ and the passing of numerous laws on access rights at the national level.

A landmark in the reception of human rights by MEAs is to be found in the Paris Agreement.²²⁴ Its preamble acknowledges that climate change is a common concern of humankind, and “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights.”²²⁵ The function of human rights in the preamble of the Paris Agreement is relevant to the actual implementation of its various constituent elements.²²⁶ This includes the agreement’s key building block for the reduction of GHG emissions: NDCs. In that context, human rights obligations are relevant to the NDCs procedural and substantive dimensions. On process, human rights call for NDCs to be prepared in a participatory and informed approach, substantiating options, and accounting for the position of vulnerable groups in society. On substance, human rights can help to determine the sufficiency of the NDC’s level of ambition.

Another important dimension of the environmental law incorporating human rights can be found in the recent work of the Special Rapporteur on Human Rights and the Environment. In 2018, the Human Rights Council expanded the mandate's reporting to include the UNGA. The Special Rapporteur's first report to the UNGA in September 2018 recommended that the Assembly recognize the human right to a safe, clean, healthy, and sustainable environment.²²⁷ The Special Rapporteur has also focused on clarifying the content of the right, including not only its procedural dimensions on access to information, participation, and justice, but also its substantive dimensions-- clean air, a safe climate, clean water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems.²²⁸ In March 2020, the Special Rapporteur presented a report on good practices of environmental laws incorporating a rights-based approach to the Council.

Some environmental laws provide liability and compensation, thereby implicitly recognizing rights to property and health.²²⁹ For example, the Convention on Civil Liability for Oil Pollution refers to the need to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from a ship.²³⁰ The Convention provides that owners, with some exceptions, shall be liable for any pollution caused by the ship, regardless of fault.²³¹

While environmental laws are increasingly receptive to rights-based approaches, much remains to be done. Environmental agreements and processes could benefit from an explicit focus on the drivers of environmental destruction, which are closely related to the causes of human rights violations (such as the unequal distribution and control over resources). They could also be strengthened by requiring states to address these root causes as part of their obligations in fulfilling the objectives of the agreement.

In addition, international environmental law could be strengthened through an adoption of the human rights distinction between rights holders, duty bearers, and third parties. This distinction sets a clear framework for accountability, based on the distinct role of states and intergovernmental institutions (duty bearers), communities and people (rights holders), and other actors, such as corporations and philanthropic foundations (third parties). While the actions of other actors, such as the private sector, have an enormous impact on the climate and the environment, their role in addressing harm must be clearly embedded in public regulation, monitoring, and accountability.

Given the weaknesses in international environmental compliance mechanisms, international environmental law could also benefit from lessons learned in human rights treaty bodies. For example, individuals should be recognized the right to present communications that could trigger the operation of implementation and compliance mechanisms.

B. HUMAN RIGHTS LAW ADDRESSING THE ENVIRONMENT AND CLIMATE CHANGE

Although the fundamental texts of the UN Human Rights Framework, such as the UDHR, ICCPR, and ICESCR, remain silent on nature and environmental issues, human rights bodies and mechanisms

increasingly address the environmental dimensions of human rights, including the rights to life, health, water, food, freedom from racial or gender discrimination, and the emerging right to a healthy environment.

The human rights field is also increasingly attentive to the transboundary dimension of international environmental law. Indeed, much of international law concerning the environment relates to duties of states regarding control over activities under their jurisdiction, with a view to preventing damage to the environment of other states or to areas common to humanity, such as the oceans and the atmosphere. In that sense, the transboundary dimension of the environmental field supports the implementation of extra-territorial obligations in the human rights field.

The following sections provide an overview on how global human rights bodies and mechanisms have approached environmental issues.

I. HUMAN RIGHTS COUNCIL RESOLUTIONS

Over the past ten years, the UN HRC has increasingly engaged the inter-relations between human rights, climate change and the environment. These resolutions, while not legally binding, express the normative expectations of the international community. They can thus be used by civil society in advocacy at the national and international levels. For example, the resolutions on climate change (explored immediately below) influenced the UNFCCC COP to recognize the climate change and human rights linkage, which in turn influenced the preamble language on human rights of the Paris Agreement (examined above).

The HRC has issued a number of resolutions related to climate change, which typically note that the right to food is one of the rights affected by climate change.²³² The resolutions also note the connection between climate change, the right to food, and the specific theme that the resolution is addressing.²³³ Resolutions have also acknowledged the work of HRC experts addressing climate change and food.²³⁴

Conversely, the HRC resolutions on the right to food over the past ten years have addressed the relationship between food and climate change, noting the contribution of climate change to food insecurity²³⁵ and also the threatened agricultural production caused by climate change.²³⁶ HRC resolutions on the right to food have supported agroecology²³⁷ and agrobiolgy as a means of tackling climate change and realizing the right to food.²³⁸

In addition, an HRC resolution on the rights of the child also notes the connection between food and climate change.²³⁹

II. SPECIAL PROCEDURES

Special procedures of the HRC, a group of independent human rights experts, are tackling the links between human rights and the environment, including the right to food. The Special Rapporteurs on the Right to Food discuss climate change and the right to food in various reports²⁴⁰ and explicitly

recognize the key role of agroecology in creating sustainable food systems.²⁴¹ Reports of the Special Rapporteur on Minority Issues also point to the impacts of climate change on food.²⁴²

The Special Rapporteur on Human Rights and the Environment is focusing on the international recognition of the right to a healthy and sustainable environment. The Rapporteur called on the Council and/or General Assembly to recognize this right.²⁴³ The Special Rapporteur is also articulating the substantive components of the right to a healthy environment, including clean air, a safe climate, access to safe water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems. For example, the Rapporteur's 2019 report focuses on air pollution and notes the impacts of air pollution on the right to food.²⁴⁴

This effort builds on the previous Environment Rapporteur's reports addressing the human rights obligations related to climate change. This work discusses the connection between climate and food, such as the 2016 climate change report²⁴⁵ and the 2018 report on children's rights and the environment.²⁴⁶ Similarly, the Special Rapporteur's 2017 report on biodiversity discusses the connection between the environment and food.²⁴⁷ Following special rapporteurs and their work are worth considering as well: Special Rapporteur on Hazardous Substances and Wastes²⁴⁸, Special Rapporteur on Health²⁴⁹, Special Rapporteur on the Rights of Indigenous Peoples²⁵⁰, Special Rapporteur on the Human rights to Safe Drinking Water and Sanitation²⁵¹.

In the coming years, the Special Rapporteur will dedicate one of its reports to healthy and sustainably produced food. This presents an important opportunity to advocate for agroecology as a response to the climate and food crisis.

In 2017, the Special Rapporteur on the Right to Food and the Special Rapporteur on Hazardous Substances and Wastes pointed in a report to the harmful impact of pesticides for the environment as well as the adverse effects on the enjoyment of human rights, in particular the right to adequate food and the right to health.²⁵² They emphasized the denials of the agroindustry of the hazards of certain pesticides and proposed the elaboration of a new instrument to phase out highly hazardous pesticides.

III. HUMAN RIGHTS TREATY BODIES

UN human rights treaty bodies are also examining the connections between food, the environment, and the climate. The UN CESCR found that a healthy environment is an underlying determinant of the right to health.²⁵³ In its concluding observations and lists of issues, the CESCR has mentioned climate change impacts on rights more frequently.²⁵⁴ Moreover, the CESCR has recommended that Parties reduce GHG emissions and take measures to mitigate the adverse consequences of climate change, which impact on the right to food and nutrition for indigenous peoples.²⁵⁵

CESCR is currently drafting a General Comment on Sustainable Development and Economic, Social, and Cultural Rights. The General Comment will provide guidance for addressing environmental issues, such as considering environmental resource constraints in interpreting the maximum of a

State's available resources and progressive realization. The General Comment may also discuss common but differentiated responsibilities, the protection of communities from harmful conservation measures, the right to a healthy environment, and the rights of future generations.

The Convention on the Rights of the Child (CRC) specifically recognizes a child's right to enjoy the highest attainable standard of health in order to combat disease and malnutrition through, *inter alia*, "the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution".²⁵⁶ The Committee on the Rights of the Child explains that, "States should take measures to address the dangers and risks that local environmental pollution poses to children's health", and that States should "regulate and monitor the environmental impact of business activities that may compromise children's right to health, food security and access to safe drinking water and sanitation". The Committee also comments on human rights duties concerning climate change, noting that Parties should "put children's health concerns at the centre of their climate change adaptation and mitigation strategies".²⁵⁷

The Committee on the Elimination of Discrimination against Women (CEDAW) recommended that state parties ensure the inclusion of a gender perspective in decision-making related to climate change, food security, and disaster response and risk reduction.²⁵⁸ In 2016 CEDAW adopted General Recommendation 34 on the rights of rural women. The Committee recommends that state parties address, alleviate and mitigate "specific threats posed to rural women by climate change, natural disasters, land and soil degradation, water pollution, droughts, floods, desertification, pesticides and agrochemicals, extractive industries, monocultures, bio-piracy and the loss of biodiversity, in particular agro-biodiversity". The Committee also calls on Parties to ensure that "rural women enjoy a safe, clean and healthy environment".²⁵⁹

IV. UNIVERSAL PERIODIC REVIEW

The Universal Periodic Review (UPR) is one of the key activities of the HRC. UPR recommendations have also addressed the linkages between climate change, environment and the right to food. For example, UPR has formulated these specific recommendations (emphasis added):

- › to improve access to food by adopting a national strategy to protect agriculture against the effects of climate change and natural disasters,²⁶⁰
- › to seek technical assistance in implementing the right to food (and others) in relation to climate change,²⁶¹
- › to continue to take into consideration the adverse impacts of climate change on people's access to food and clean water, particularly the most vulnerable sectors of society,²⁶²
- › to adopt a long-term sustainable policy approach to crises such as climate change and food security,²⁶³ and,
- › to continue and intensify programs aimed at mitigating climate change negative impacts on food.²⁶⁴

C. CORPORATE ACCOUNTABILITY

FIAN case work has made evident that RtFN violations connected to environmental destruction are frequently produced, totally or partially, by corporations or linked to an economic model designed to maximize corporate profit. Some of the most recent cases FIAN has been supporting in this regard are in Matopiba (Uganda)²⁶⁵, Brumadinho (Brazil)²⁶⁶ and Posco²⁶⁷.

The realization of the RtFN in the context of environmental and climate destruction requires that states, individually or jointly, hold corporations accountable for environmental harm that impairs people's enjoyment of their RtFN. This imperative for accountability applies not only within the State's territory, but also beyond its borders in certain cases.²⁶⁸ Similarly, states are obliged to adopt measures to prevent corporate harm.

The allocation of liability to corporations violating (the technical term is 'abusing') human rights and destroying the climate and the environment requires that states implement their obligation to protect. This requires states to regulate and monitor corporate conduct, investigate alleged violations, sanction perpetrators and ensure a remedy for the affected individuals or communities.

Furthermore, states must implement their obligation to respect. This includes, inter alia, the duty to abstain from adopting legal frameworks that enable environmental and climate destruction as well as the duty to abstain from any kind of complicity with corporations that abuse human rights and the environment.

Regulatory measures adopted nationally or internationally to protect the people and the environment from corporate violations (technically called abuses) require that states, nationally or internationally, establish business responsibilities and enforcement measures. Such regulations should have territorial and extraterritorial impact and provide joint liability for all businesses that contributed to the environmental harm, along the value chain. Furthermore, regulatory measures should also include preventive measures and effective sanctions in cases of abuse.

Responsibilities of non-state actors are more prominently developed in environmental law than in the human rights field. These are based on a range of concepts, including stewardship and accountability. For example, the Protocol on Water and Health (to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes) provides that as a "counterpart to their rights and entitlements to water under private law and public law, natural and legal persons and institutions, whether in the public sector or the private sector, should contribute to the protection of the water environment and the conservation of water resources."²⁶⁹

The SSF Guidelines provide that "all non-state actors including business enterprises related to or affecting small-scale fisheries have a responsibility to respect human rights".²⁷⁰

The Tenure Guidelines include the same provision, underlining the need for states to ensure that business actors – including those operating transnationally – respect human rights.²⁷¹ Both sets of guidelines further emphasize the responsibilities and duties that accompany tenure rights, and the need for states and other actors to "support the long-term conservation and sustainable use of

resources and the maintenance of the ecological foundation for food production” and for small-scale fisheries to use “fishing practices that minimize harm to the aquatic environment and associated species and support the sustainability of the resource”.²⁷²

The Oslo Principles on Global Climate Change Obligations also outline the responsibilities of non-state actors with respect to human rights and climate change.²⁷³

In the field of international human rights regulations on corporate accountability for human rights and the environment are still very weak. In the UN Human rights system, these include the UN Guiding Principles on Business and Human Rights (UNGPs)²⁷⁴ and some general comments of treaty bodies, which interpret human rights obligations of states under the human rights treaties to regulate business. The most prominent General Comment (GC) is the GC 24 of the CESCR.²⁷⁵

A big sector of civil society has criticized the UNGPs due to their ambiguity, their voluntary character, and consequent lack of enforceability and the fact that the third pillar on accountability rests on grievance mechanisms, in which the companies are judge and party. The UNGPs have also been criticized for their lack of specificity on access to remedy in the formal judicial system.

GC 24 of the CESCR²⁷⁶ refers to environmental or climate-related issues in several paragraphs. For example, the CESCR clarifies that “[t]here are also a large number of domestic laws designed to protect specific economic, social and cultural rights, that apply directly to business entities, such as in the areas of non-discrimination, health-care provision, education, the environment”.²⁷⁷ The CESCR also recalls that “[c]ustomary international law also prohibits a State from allowing its territory to be used to cause damage on the territory of another State, a requirement that has gained particular relevance in international environmental law”.²⁷⁸

Following the demands of civil society organizations, the HRC created in 2014 an Open-Ended Intergovernmental Working Group²⁷⁹ mandated to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises. Civil society’s call to hold companies accountable for environmental damage has been constant along the negotiations. The current treaty draft²⁸⁰ refers to environmental rights (preamble), environmental remediation (Article 5.4 b), protection of environmental and human rights defenders (Article 4.9), environmental and human rights impacts assessments as preventive measures that business shall adopt as part of their human rights due diligence (Article 5) and the obligation of business to report on the application of environmental standards.

Even if the process of building up an international legal framework to hold transnational companies and other business enterprises accountable for human rights violations and environmental harm is still incipient, this is one of the new emerging areas in international law. Its progressive development opens an opportunity to secure the effective protection of the RtFN. Simultaneously, making the cases of corporate violations of human and environmental rights more visible is key to guide standard-setting in the field, in order to strengthen the tools for protection of communities and securing corporate accountability for abuses.

D. THE RIGHTS OF NATURE AND MOTHER EARTH

Some scholars have argued that the protection of the environment requires a legal basis that goes beyond the understanding of humans at the center.²⁸¹ In 1972, Christopher Stone made the first major proposal “to give legal rights to forest, oceans, rivers and other so-called natural objects’ in the environment – indeed, to the natural environment as a whole”.²⁸²

This idea has gained increasing acceptance in legislation²⁸³ and constitutions²⁸⁴ recognizing the rights of non-humans. People’s summits have also elaborated on this idea, such as the Universal Declaration of the Rights of Mother Earth resulting from the 2010 World People’s Conference on Climate Change and the Rights of Mother Earth.²⁸⁵ National courts are also receptive to the rights of nature and the rights of mother earth. In 2016 the Constitutional Court of Colombia ruled that the Atrato River basin possesses rights to protection, conservation, maintenance, and restoration. Another landmark development was the 2017 settlement between the Māori tribe and the Government of New Zealand in respect of the legal personality of the Whanganui River.²⁸⁶

The rights of nature may be in some tension with the human-centered approach of human rights law and of many international environmental laws.²⁸⁷ The rights of nature may also be viewed in tension with the principle of sovereignty over natural resources, a concept affirmed in both international environmental law²⁸⁸ and international human rights law.²⁸⁹ At the same time, the rights of nature and mother earth may also synergize with human rights. It should come as no surprise that the strongest proponents of this concept are indigenous peoples whose spiritual worldview is integrated to their lands, territories and environments.

UNITED NATIONS DECLARATION ON THE RIGHTS OF PEASANTS AND OTHER PEOPLE WORKING IN RURAL AREAS

BOX 3.1

The 2018 UNDROP²⁹⁰ could play a prominent role in combating escalating environmental destruction and climate change. The UNDROP recognizes the rights of peasants, small-scale farmers and fishers, pastoralists, landless people, rural workers and other people working in the rural areas (hereafter: rural communities in the international human rights system). These people represent almost half of the world’s population and are among those who suffer most from climate change impacts. The UNDROP increases the visibility of their human rights that are already recognized in international law and those that are new rights, such as the right to land, seeds, food sovereignty and compensation for losses.²⁹¹ Given the existing gender inequalities in the food production system, peasant women and women working in rural areas suffer even greater hardship from climate shocks. Their rights receive particular attention in the UNDROP. Likewise, the UNDROP attributed importance to the collective nature of the livelihoods of rural communities, pointing to the challenges rural communities confront as a group. The UNDROP also provides protection to small-scale, family-

owned farms against the pressures from large, agro-industrial farms and, as important, from the devastating effects of climate change.

Moreover, agroecology is explicitly mentioned in the UNDROP, outlining that “States shall stimulate sustainable production, including agroecological and organic production, whenever possible” (Article 16.4), and “take measures aimed at the conservation and sustainable use of land and other natural resources used in their production, including through agroecology” (Article 17.7). The intrinsic relationship of rural communities with their natural environment and the need of their engagement in climate policy negotiations receives notably recognition in the declaration. Against this backdrop, the UNDROP puts the pivotal convergence of human rights and climate action in the right perspective.

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

BOX 3.2

The 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP)²⁹² is the most comprehensive international human rights instrument on the rights of indigenous peoples. The UNDRIP emphasizes in particular indigenous people’s participation in all decisions that affect their lives, reaffirms indigenous peoples’ right to self-determination and recognizes subsistence rights and rights to lands, territories and resources. Due to their dependence upon and close relationship to the environment and its resources, indigenous peoples are among the most affected groups by environmental degradation and climate change. However, they also play, in the same way as non-indigenous rural people, a central role in combatting climate change through their traditional and sustainable land use management practices and knowledge. Although international law has solidified the existence of indigenous peoples’ rights, there is still space to develop and enhance their rights, in particular given their vulnerability to climate-related impacts and eco-destruction. The UNDROP, for example, has also recognized indigenous peoples as rights-holders. Their inclusion further increases the recognition of their rights and does not undermine the protection they enjoy under the UNDRIP.

ENDNOTES

¹ FAO, IFAD, UNICEF, WFP and WHO. *The State of Food and Nutrition in the World 2018. Building climate resilience for food security and nutrition*. 2018.

² IPCC. “Summary for Policymaker”, in Shukla, P.R. et al., eds. *Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, and Greenhouse Gas fluxes in Terrestrial Ecosystems*. IPCC, 2019. Available at: https://www.ipcc.ch/site/assets/uploads/sites/4/2020/02/SPM_Updated-Jan20.pdf.

³ CESCR General Comment No. 12 on the Right to Adequate Food, *E/C.12/1999/5*, § 7. For more information on the Right to Adequate Food and Nutrition, please see: CSM. *Civil Society Report on the Use and Implementation of the Right to Food Guidelines*. Rome: FAO, CSM and CFS, 2018. Available at: <http://www.csm4cfs.org/wp-content/uploads/2018/10/EN-CSM-LR-2018-compressed.pdf>.

⁴ Supra note 2.

⁵ For more information, please see: Report of the Special Rapporteur on the Right to Food, 2018, *A/HRC/37/61*, § 11; Right to Food Note by the Secretary-General, 2014, *A/69/275*, § 45, 46; Right to Food Note by the Secretary-General, 2015, *A/70/287*, § 7-11; FAO. *Climate Change and Food Security: a Framework Document*. Rome: FAO, 2008. Available at: <http://www.fao.org/3/k2595e/k2595e00.htm>.

⁶ FIAN International. “Women’s Power in Food Struggles, Supplement”. *Right to Food and Nutrition Watch* (2019), 5. Available at: <https://www.righttofoodandnutrition.org/supplement-right-food-and-nutrition-watch-0>.

⁷ Künnemann, R. and S. Epal-Ratjen. “Starving the Future: Eco-Destruction and the Human Right to Food”. *FIAN International Study* (2019). Available at: https://www.fian.org/fileadmin/media/publications_2015/Starving-the-Future-2001.pdf;

For more information on the impact of environmental degradation and climate change in reducing food availability, accessibility, adequacy, and sustainability), please see the Report of the Special Rapporteur on Human Rights and the Environment, 2016, *A/HRC/31/53*; CEDAW General Recommendation 37 on the Gender-Related Dimensions of Disaster Risk Reduction in the Context of Climate Change, 2018, *CEDAW GR 37*, § 69; Schutter, Oliver de. “Report submitted by the Special Rapporteur on the Right to Food Oliver”, 2010, *A/HRC/16/49*, § 8; Right to Food Note by the Secretary-General, 2012, *A/67/268*, § 16; Right to Food Note by the Secretary-General, 2015, *A/70/287*; Report of the Special Rapporteur on the Right to Food, 2015, *A/HRC/31/51*, § 56;; Report of the High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights, 2009, *A/HRC/10/61*, § 25-27; Human Rights Council Resolutions 10/4 (A/HRC/RES/10/4, March 25, 2009, 18/22 (A/HRC/RES/18/22, October 17, 2011), 26/27 (A/HRC/RES/26/27, July 15, 2014), 29/15 (A/HRC/29/L.21, 2 July, 2015).

⁸ FIAN Germany started working on this interlinkage already in 2018. For further information, please see: FIAN Germany. *Klimawandel und Menschenrechte. Die Folgen des Klimawandels für das Recht auf Nahrung und das Recht auf Wasser. Anforderungen an die internationale, europäische und deutsche Klimapolitik*. Köln: FIAN Germany, 2018.

⁹ For further information on Human Rights and the 2030 Agenda for Sustainable Development, please see: <https://www.ohchr.org/EN/Issues/SDGS/Pages/The2030Agenda.aspx>.

¹⁰ For more information on SDGs, please visit: <https://sustainabledevelopment.un.org/hlpf>.

¹¹ For more information on SDGs, please visit: <https://sustainabledevelopment.un.org/vnrs/>.

¹² For more information on environmental agreements, a database can be used to search by country or subject, among other parameters, please visit: <https://iea.uoregon.edu>.

¹³ United Nations Framework Convention on Climate Change, 1771 U.N.T.S. 107 (June 5, 1992).

¹⁴ Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1997, *FCCC/CP/1997/L.7/Add.1*.

¹⁵ United Nations Paris Agreement, 2015, *FCCC/CP/2015/10/Add.1*.

¹⁶ Vienna Convention for the Protection of the Ozone Layer, 1513 U.N.T.S. 293 (Mar. 22, 1985).

¹⁷ Montreal Protocol on Substances that Deplete the Ozone Layer, 1522 U.N.T.S. 3 (Sept. 16, 1987). The Kigali Amendment to the Montreal Protocol entered into force in 2019, and provides for the global phase-out of hydrofluorocarbons due to their greenhouse gas effects.

¹⁸ United Nations Convention on the Law of the Sea, 1833 U.N.T.S. 397 (Dec. 10, 1982).

¹⁹ Fish Stocks Agreement, adopted at the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995, *A/CONF.164/37*.

²⁰ Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1046 U.N.T.S. 120 (Dec. 29 1972).

²¹ International Treaty on Plant Genetic Resources for Food and Agriculture, 2009. Available at: <http://www.fao.org/3/a-i0510e.pdf>.

²² United Nations Convention on Biological Diversity, 1760 U.N.T.S. 79 (June 5, 1992).

²³ Cartagena Protocol on Biosafety to the Convention on Biological Diversity, 2226 U.N.T.S. 208 (Jan. 29, 2000).

²⁴ Nagoya Protocol to the Convention on Biological Diversity on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (Oct. 29, 2010).

- ²⁵ Convention on the Law of the Non-navigational Uses of International Watercourses, 36 I.L.M. 700 (May 21, 1997).
- ²⁶ United Nations Convention to Combat Desertification in those Countries Experiencing Drought and/or Desertification, Particularly in Africa, 1954 U.N.T.S. 3 (Oct. 14, 1994).
- ²⁷ Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat, 996 U.N.T.S. 245 (Feb. 2, 1971).
- ²⁸ Convention for the Protection of World Cultural and Natural Heritage, 1037 U.N.T.S. 151 (Nov. 16, 1972).
- ²⁹ Stockholm Convention on Persistent Organic Pollutants, 2256 U.N.T.S. 119 (May 22, 2001).
- ³⁰ Minamata Convention on Mercury (Oct. 10, 2013). For more information, please visit: www.mercuryconvention.org.
- ³¹ Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade 2244 U.N.T.S. 337 (Sept. 10, 1998).
- ³² Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1673 U.N.T.S. 57 (Mar. 22, 1989).
- ³³ CBD. “Biodiversity and the 2030 Agenda for Sustainable Development”. *Technical Note*. Available at: <https://www.cbd.int/development/doc/biodiversity-2030-agenda-technical-note-en.pdf>.
- ³⁴ *Supra* note 22, preamble.
- ³⁵ *Ibid.*
- ³⁶ *Ibid.*
- ³⁷ *Ibid.*, preamble and art. 8(d). Article 9 of the CBD contains provisions on ex situ biodiversity conservation, which includes gene banks.
- ³⁸ *Ibid.*, art. 10(c).
- ³⁹ In parallel, the FAO has created a biodiversity platform, which has developed – for the first time in the history of the FAO – a comprehensive strategy on biodiversity.
- ⁴⁰ For more information, please see: Monsalve Suárez, S., Rahmanian, M. and A. Onorati. “Seeds and Agricultural Biodiversity: The Neglected Backbone of the Right to Food and Nutrition”. *Right to Food and Nutrition Watch: Keeping Seeds in Peoples’ Hands* (2016). FIAN International. Available at: <https://www.righttofoodandnutrition.org/seeds-and-agricultural-biodiversity>.
- ⁴¹ Farmers’ Rights. “The History of Peasants’ Rights in the FAO: First use of Peasants’ Rights”. Available at: http://farmersrights.org/about/fr_history_part1.html.
- ⁴² *Supra* note 21, art. 9.1.
- ⁴³ *Ibid.*, preamble and art. 9.3.
- ⁴⁴ *Ibid.*, art. 9.2(a).
- ⁴⁵ *Ibid.*, art. 9.2(b).
- ⁴⁶ *Ibid.*, art. 9.2(c).
- ⁴⁷ Golay, Christophe. “Legal analysis on the rights of peasants and other people working in rural areas”. *The Right to Seeds and Intellectual Property Rights* (2016): 14-15. Available at: [https://www.geneva-academy.ch/joomlatools-files/docman-files/Publications/Other%20publications/The%20rights%20of%20peasants%20and%20other%20people%20working%20in%20rural%20areas%20-%20Legal%20Analysis%20-%20Right%20to%20Seeds%20and%20IPRs%20-%20C_%20Golay%2019_5_2016%20\(FINAL%20TO%20BE%20PUT%20ON%20WEBSITES\).pdf](https://www.geneva-academy.ch/joomlatools-files/docman-files/Publications/Other%20publications/The%20rights%20of%20peasants%20and%20other%20people%20working%20in%20rural%20areas%20-%20Legal%20Analysis%20-%20Right%20to%20Seeds%20and%20IPRs%20-%20C_%20Golay%2019_5_2016%20(FINAL%20TO%20BE%20PUT%20ON%20WEBSITES).pdf).
- ⁴⁸ *Ibid.*, 18.
- ⁴⁹ *Ibid.*, 17.
- ⁵⁰ Accredited observers can participate in the COPs and technical meetings. For more information, please visit: <https://www.unccd.int/convention/stakeholders/civil-society-organizations/conferences-and-cso-accreditation>.
- ⁵¹ *Supra* note 26, art. 2.
- ⁵² *Ibid.*, arts. 18.2, 17.1(c).
- ⁵³ *Ibid.* “Land Degradation Neutrality (LDN) Target Setting Building Block Two – Assessing LDN”. Available at: <https://knowledge.unccd.int/knowledge-products-and-pillars/ldn-target-setting-building-blocks/land-degradation-neutrality-ldn-0>.
- ⁵⁴ UNCCD. “Bolivia (Plurinational State of). Overview of LDN Targets”. Available at: <https://knowledge.unccd.int/home/country-information/countries-having-set-voluntary-ldn-targets/bolivia-plurinational-state>.
- ⁵⁵ UNCCD. “Cambodia. Overview of LDN Targets”. Available at: <https://knowledge.unccd.int/home/country-information/countries-having-set-voluntary-ldn-targets/cambodia>.
- ⁵⁶ UNCCD. “Official Documents COP14, New Delhi, India, 2019”. Available at: <https://www.unccd.int/official-documents/cst-14-new-delhi-india-2019>.
- ⁵⁷ CFS. *Voluntary Guidelines for Responsible Governance of Tenure of Land, Fisheries and Forests*. Rome: FAO, 2012. Available at: <http://www.fao.org/3/i2801e/i2801e.pdf>.

-
- ⁵⁸ For more information, please see: FIAN International and TNI. “Using the Tenure Guidelines for Action Research. A Primer”. Available at: http://www.fian.org/fileadmin/media/publications_2017/Reports_and_Guidelines/WEB_Tenure_Guidelines.pdf.
- ⁵⁹ IPCC. “Summary for Policymakers”, in Masson-Delmotte, Valérie *et al.*, eds. *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*. Geneva: World Meteorological Organization, 2018.
- ⁶⁰ SDG 13 also acknowledges that the UN Framework Convention on Climate Change is the primary international, intergovernmental forum for negotiating the global response to climate change.
- ⁶¹ Report of the Secretary-General. “Special edition: progress towards the Sustainable Development Goals”, 2019, [E/2019/68](#), § 34.
- ⁶² Report of the High-Level Political Forum on Sustainable Development Convened under the Auspices of the Economic and Social Council at its 2019 session, [E/HLPF/2019/7](#): 1.
- ⁶³ *Supra* note 13, art. 2.
- ⁶⁴ UNFCCC, Decision1/CP.25 (13 Dec. 2019).
- ⁶⁵ *Ibid.*
- ⁶⁶ *Ibid.*, art. 4(7).
- ⁶⁷ Kyoto Protocol to the UNFCCC, 2303 U.N.T.S. 148 (Dec. 11, 1997).
- ⁶⁸ UN Paris Agreement, decision 1.CP/21.
- ⁶⁹ *Supra* note 15, preamble.
- ⁷⁰ *Ibid.*, art. 2(1).
- ⁷¹ UN Paris Agreement - Status of Ratification. Available at: <https://unfccc.int/process/the-paris-agreement/status-of-ratification>.
- ⁷² *Supra* note 15, art. 6.4.
- ⁷³ For more information, please see: CIEL. “Integrating Human Rights in the Modalities Related to Carbon Markets Established under Article 6 of the Paris Agreement”. *Climate Governance Note* (2019). Available at: https://www.business-humanrights.org/sites/default/files/documents/CIEL%20BriefingNote_RightsInArticle6.pdf.
- ⁷⁴ Principles Governing IPCC Work, 1998, as amended.
- ⁷⁵ UN Paris Agreement, decision 1.CP/25.
- ⁷⁶ IPCC. “Summary for Policymakers”, in Masson-Delmotte, Valérie *et al.*, eds. *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*. Geneva: World Meteorological Organization, 2018: 9.
- ⁷⁷ IPCC. “Summary for Policy Makers”, in Shukla, Priyadarshi *et al.*, eds. *Climate Change and Land: an IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, and Greenhouse Gas fluxes in Terrestrial Ecosystems*. In press. Available at: https://www.ipcc.ch/site/assets/uploads/sites/4/2020/02/SPM_Updated-Jan20.pdf.
- ⁷⁸ *Ibid.*, 19.
- ⁷⁹ *Ibid.*, 22; 24; 30.
- ⁸⁰ *Ibid.*, 20.
- ⁸¹ *Ibid.*, 22.
- ⁸² *Ibid.*, 23-24.
- ⁸³ *Ibid.*, 23.
- ⁸⁴ *Ibid.*, 24.
- ⁸⁵ *Ibid.*, 30.
- ⁸⁶ *Ibid.*
- ⁸⁷ *Ibid.*, 21, 29 (C1.2).
- ⁸⁸ *Ibid.*, 24 (C4.4).
- ⁸⁹ *Supra* note 15, arts. 4.2, 4.8, 4.9, 4.12.
- ⁹⁰ *Ibid.*, art. 4.9.
- ⁹¹ UNFCCC, COP25, 1/CMA.2 preamble; UN Paris Agreement, decision 1.CP/21, § 23, 24.
- ⁹² For more information, please visit a database summarizing NDCs: <https://pub.iges.or.jp/pub/iges-ndc-database>.
- ⁹³ Strohmaier, R. *et al.* “The agriculture sectors in the Intended Nationally Determined Contributions: Analysis”. *Environment and Natural Resources Management Working Paper No. 62* (2016): 13. Available at: <http://www.fao.org/3/a-i5687e.pdf>.
- ⁹⁴ *Ibid.*, 32-34.
- ⁹⁵ *Ibid.*, 34.
- ⁹⁶ *Ibid.*

- ⁹⁷ Ibid, 17.
- ⁹⁸ Ibid., 31-32.
- ⁹⁹ Ibid., 15.
- ¹⁰⁰ Ibid., 28.
- ¹⁰¹ Ibid., 18.
- ¹⁰² Biovision. *The Potential of Agroecology to Hedge Against Climate Change and Build Resilient and Sustainable Livelihoods and Food Systems*. Rome: FAO, 2019. Available at: <https://www.agroecology-pool.org/climatechangereport/>
- ¹⁰³ Ibid., 39.
- ¹⁰⁴ Ibid., 39.
- ¹⁰⁵ R. Meryl et al. "How countries plan to address agricultural adaptation and mitigation". 2015. Available at: <https://archive.globallandscapesforum.org/glf-2015/wp-content/uploads/sites/9/2015/12/CCAFS-INDC-info-note-Final.pdf>.
- ¹⁰⁶ FAO. "Climate-Smart Agriculture". Available at: www.fao.org/climate-smart-agriculture/en.
- ¹⁰⁷ Chappell, M. Jahi. "Looking back from Paris to Senegal: What the FAO Regional Agroecology Meeting had to say on Climate-Smart Agriculture". IATP Blog. December 22, 2015. Available at: www.iatp.org/blog/201512/looking-back-from-paris-to-senegal-what-the-fao-regional-agroecology-meeting-had-to-say-
- ¹⁰⁸ Pimbert, Michel. "Agroecology as an Alternative Vision to Conventional Development and Climate-Smart Agriculture". *Development* 58:2-3 (2015): 286-298; Borras, Saturnino Jr. and Jennifer Franco. "The challenge locating land-based climate change mitigation and adaptation politics within a social justice perspective: towards the idea of agrarian climate justice". *Third World Quarterly* (2018).
- ¹⁰⁹ For more information, please see FIAN Briefing on Agroecology and the Right to Food and Nutrition. In process.
- ¹¹⁰ For more information on a definition of agroecology from the perspective of social movements, please see: Declaration of the International Forum for Agroecology. Nyéleni, Mali, February 27, 2015. Available at: www.foodsovereignty.org/wp-content/uploads/2015/02/Download-declaration-Agroecology-Nyeleni-2015.pdf.
- ¹¹¹ Schutter, Oliver de. "Report submitted by the Special Rapporteur on the Right to Food Olivier". 2010, [A/HRC/16/49](http://www.unhcr.org/refugees/16/49).
- ¹¹² Ibid.
- ¹¹³ Ibid., § 44.
- ¹¹⁴ Elver, Hilal. *Comments on the Zero draft of the HLPE Report 'Agroecological approaches and other innovations for sustainable agriculture and food systems that enhance food security and nutrition'*: 1. Available at: www.fao.org/fsnforum/cfs-hlpe/sites/default/files/discussions/contributions/UNSR_cmts0Draft_AgroEco_HLPE.pdf.
- ¹¹⁵ For further information, please see: Seibert, Iridiani Graciele et al. "Without Feminism, There is No Agroecology". *Right to Food and Nutrition Watch* (2019). Available at: www.righttofoodandnutrition.org/without-feminism-there-no-agroecology/; CSM. "Paper on Feminism and Agroecology". Available at: www.csm4cfs.org/csm-paper-feminism-agroecology/.
- ¹¹⁶ UNFCCC, 4/CP.23. Available at: <https://unfccc.int/documents/65126>.
- ¹¹⁷ For more information on the Koronivia Road Map, please visit: <http://www.fao.org/climate-change/our-work/what-we-do/koronivia/kjwa-road-map/en/>.
- ¹¹⁸ For more information on submissions, please visit: <http://www4.unfccc.int/sites/submissionportal/Pages/Home.aspx>.
- ¹¹⁹ Lickel, Sara. "ENGO Views". Presentation on Koronivia Road Map at the Climate Change Conference, Bonn, June 19, 2019. Available at: https://unfccc.int/sites/default/files/resource/2%20KJWA%20-%20Soil%20carbon%20soil%20health%20and%20soil%20fertility_final.pdf.
- ¹²⁰ Anderson, Teresa. "Adaptive Capacity, People's Participation & Agroecology". Presentation at the Climate Change Conference, Bonn, June 19, 2019. Available at: https://unfccc.int/sites/default/files/resource/5%20Adaptation%20participation%20%20agroecology_Teresa_KJWA_ENGO.pdf.
- ¹²¹ For more information on the schedule of meetings for the Koronivia Road Map, please see annex I to the SBSTA 48 report: <https://unfccc.int/documents/180332>.
- ¹²² UNFCCC. "Overview - National Adaptation Plans". Available at: <https://unfccc.int/topics/resilience/workstreams/national-adaptation-plans/overview>.
- ¹²³ UNFCCC. "National Adaptation Plans. NAPs from developing countries". Available here: <https://www4.unfccc.int/sites/NAPC/Pages/national-adaptation-plans.aspx>.
- ¹²⁴ FAO. "Integrating Agriculture in National Adaptation Plans". Available at: <http://www.fao.org/in-action/naps/en/>.
- ¹²⁵ *Supra* note 15, art. 7.5.
- ¹²⁶ Ibid., art. 10.
- ¹²⁷ Report of the Special Rapporteur on the Right to Food, 2017, [A/HRC/34/48](http://www.unhcr.org/refugees/34/48).
- ¹²⁸ *Supra* note 31. The chemicals listed in Annex III include pesticides and industrial chemicals that have been banned or severely restricted for health or environmental reasons by two or more Parties and which the Conference of the Parties has decided to subject to the PIC procedure. There are a total of 52 chemicals listed in Annex III, 35 pesticides (including 3

severely hazardous pesticide formulations), 16 industrial chemicals, and 1 chemical in both the pesticide and the industrial chemical categories.

¹²⁹ *Supra* note 29.

¹³⁰ *Supra* note 30, preamble.

¹³¹ *Supra* note 30.

¹³² Target 12.5 reads, “[b]y 2030, substantially reduce waste generation through prevention, reduction, recycling and reuse”.

¹³³ While SAICM mentions that it promotes agroecologically based alternatives, there is not much information on this point. For further information, please visit:

<http://www.saicm.org/Implementation/EmergingPolicyIssues/HighlyHazardousPesticides/tabid/5479/language/en-US/Default.aspx>

¹³⁴ For more information on the Inter-Organization Programme for the Sound Management of Chemicals, please visit: <https://www.who.int/iomc/en/>.

¹³⁵ For more information, please see: UNEP. “Global Chemicals Outlook II”. 2019: 9. Available at:

<https://wedocs.unep.org/bitstream/handle/20.500.11822/28113/GCOII.pdf?sequence=1&isAllowed=y>.

¹³⁶ Examples of these non-compliance procedures are those in the Montreal Protocol, the Basel Convention, the Cartagena Protocol, and the ITPGRFA.

¹³⁷ Dooley, Kate and Doreen Stabinsky. “Missing Pathways to 1.5°C. The role of the land sector in ambitious climate action”, *CLARA Report* (2019). Available at: <https://www.climateandambitionrightsalliance.org/report>.

¹³⁸ CLARA. “Climate Action in the Land Sector: Treading Carefully”. *Briefing* (April 2017). Available at: https://klima-der-gerechtigkeit.de/files/2017/04/CLARA_Action-in-the-land-sector_final.pdf.

¹³⁹ For more information on the Human Rights & Climate Change Working Group, please visit:

<https://climaterights.org/about/>.

¹⁴⁰ For more information on the ESCR-Net Advisory Group on Climate Justice, please visit: <https://www.escr-net.org/news/2020/escr-net-members-take-collective-work-climate-justice>.

¹⁴¹ For more information on Friedrich-Ebert-Stiftung, please visit: <http://library.fes.de/pdf-files/bueros/genf/11132/hr-2016-01.htm>.

¹⁴² For more information on CAN, please visit: <http://climatenetwork.org/about/about-can>.

¹⁴³ For more information on the AEPF Cluster on Climate Change and Just Transition, please visit:

<https://aepf.info/ecological-justice-just-transition/>.

¹⁴⁴ For more information on the CBD Alliance, please visit: <http://cbd-alliance.org/en/about>.

¹⁴⁵ Nyeleni. *Declaration and synthesis report*. 2009 Available at: https://nyeleni.org/DOWNLOADS/Nyeleni_EN.pdf.

¹⁴⁶ For more information on PAN, please visit: <http://pan-international.org/>.

¹⁴⁷ Declaration of the United Nations Conference on the Human Environment, 11 I.L.M. 1416 (Jun. 16, 1972).

¹⁴⁸ Rio Declaration on Environment and Development, 31 I.L.M. 874 (Jun. 13, 1992). Available at:

https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_2_6_Vol.I_Declaration.pdf.

¹⁴⁹ Global Pact for the Environment. “Third session of the working group on the pact in Nairobi”. 2019. Available at:

<https://globalpactenvironment.org/en/third-session-of-the-working-group-on-the-pact-in-nairobi>.

¹⁵⁰ Human Rights Council Thirty-Seventh session, 26 February–23 March 2018, Agenda item 3, promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. For more information, please see: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 2018, [A/HRC/37/59](https://www.unhcr.org/refugees/pdf/a/hrc/37/59).

¹⁵¹ For more information, for example, on the commitment of the industrialized countries, please see Article 4 (3, 4) of the Framework Convention on Climate Change, underlining to assist the countries of the Global South financially and technologically in reducing emissions and adapting to climate change.

¹⁵² Stockholm Declaration on the Human Environment, principle 1.

¹⁵³ UNFCCC, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, 2011, [UNFCCC/CP/2010/7/Add.1](https://unfccc.int/essential/implementation/items/64): 2. (quoting Human Rights Council Resolution 10/4, 25 March 2009, [A/HRC/RES/10/4](https://www.unhcr.org/refugees/pdf/a/hrc/res/10/4))

¹⁵⁴ Knox Framework Principles for the Environment, principle 1, 2, 7. For further information, please see: Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, 2019, [A/74/161](https://www.unhcr.org/refugees/pdf/a/hrc/37/59).

¹⁵⁵ Knox, John H. “Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment”. *Mapping Report* (2013), [A/HRC/25/53](https://www.unhcr.org/refugees/pdf/a/hrc/25/53), § 46.

¹⁵⁶ African Charter on Human and Peoples’ Rights, art. 24.

¹⁵⁷ The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity – Interpretation and Scope of arts. 4.1 and 5.1 of the American Convention on Human Rights). For more information, please see: Advisory Opinion OC-23/18, Inter-Am. Ct. H.R., (ser. A) No. 23 (Nov. 15, 2017), § 62-63. Available at: http://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf.

- ¹⁵⁸ *Supra* note 127.
- ¹⁵⁹ UNGA, Declaration on the Rights of Peasants and other People Working in Rural Areas, 2018, [A/RES/73/165](#), arts. 24, 18.
- ¹⁶⁰ For more information, please see: UNGA, Transforming our World: The 2030 Agenda for Sustainable Development, Resolution, 2015, [A/RES/70/1](#).
- ¹⁶¹ UN. *Report of the World Commission on Environment and Development (Brundtland Report): Our Common Future*. 1987, Chap. 3(27). Available at: <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>. For more information, please also see: *supra* note 148.
- ¹⁶² CBD, art. 2.
- ¹⁶³ FAO. *Voluntary guidelines for securing sustainable small-scale fisheries in the context of food security and poverty eradication*. Rome: FAO, 2015, art. 5.13. Available at: <http://www.fao.org/3/a-i4356en.pdf>.
- ¹⁶⁴ *Ibid.*, art. 20.5.
- ¹⁶⁵ *Supra* note 3, § 7.
- ¹⁶⁶ African Commission on Human and Peoples' Rights, *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v. Nigeria*, Comment No. 155/96 (2001), § 52.
- ¹⁶⁷ UNGA, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General, 2009, [A/HRC/10/61](#), § 99.
- ¹⁶⁸ CEDAW, General Recommendation No. 37 on the Gender-Related Dimensions of Disaster Risk Reduction in the Context of Climate Change, 2018, [CEDAW/C/GC/37](#), § 7.
- ¹⁶⁹ *Supra* note 28, art. 6.3.
- ¹⁷⁰ Pulp Mills case, I.C.J. Reports 2010 (I), p. 56, § 101.
- ¹⁷¹ Trail Smelter Case, Arbitral Trib., 3 U.N. Rep. Int'l Arb. Awards 1905 (1941), 1965. Available at: https://legal.un.org/riaa/cases/vol_III/1905-1982.pdf.
- ¹⁷² *Supra* note 151, principle 21.
- ¹⁷³ Ziegler, Jean. "The Right to Food: Report of the Special Rapporteur on the Right to Food". 2005, [E/CN.4/2005/47](#), § 60(f). For more information, please also see: Ziegler, Jean. "The Right to Food: Report of the Special Rapporteur on the Right to Food". 2006, [E/CN.4/2006/44](#), § 52(f), (h) and (i); CSM. *Civil Society Report on the Use and Implementation of the Right to Food Guidelines*. Rome: FAO, CSM and CFS, 2018, 17. Available at: <http://www.csm4cfs.org/wp-content/uploads/2018/10/EN-CSM-LR-2018-compressed.pdf>.
- ¹⁷⁴ OHCHR, 2009, § 84-88; CESCR General Comment No. 3, [E/1991/23](#), § 14.
- ¹⁷⁵ Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, principle 13.
- ¹⁷⁶ *Supra* note 13, art. 3.1.
- ¹⁷⁷ FAO. *Voluntary guidelines for securing sustainable small-scale fisheries in the context of food security and poverty eradication*. Rome: FAO, 2015, art. 5.1. Available at: <http://www.fao.org/3/a-i4356en.pdf>.
- ¹⁷⁸ ICJ, Legality of the Threat or Use of Nuclear Weapons, § 29.
- ¹⁷⁹ UNGA, Report of the Secretary-General on Intergenerational Solidarity and the Needs of Future Generations, 2013, [A/68/322](#), § 3.
- ¹⁸⁰ *Supra* note 3, § 7.
- ¹⁸¹ HRC, General Comment on the Right to Life No. 36, 2018.
- ¹⁸² *Supra* note 13, art. 3.
- ¹⁸³ *Ibid.*, art. 4.3.
- ¹⁸⁴ *Supra* note 148, principle 7.
- ¹⁸⁵ *Supra* note 3, § 2.1
- ¹⁸⁶ CESCR General Comment No. 3, 1-2.
- ¹⁸⁷ *Supra* note 3, § 36.
- ¹⁸⁸ *Ibid.*, art. 4.7.
- ¹⁸⁹ *Supra* note 15, art. 14.1. For more information, please see: Okereke, Chukwumerije. "Equity and Justice in Polycentric Climate Governance", in Jordan, Andrew *et al.*, eds. *Governing Climate Change*. Cambridge University Press, 2018.
- ¹⁹⁰ Georgetown University & Center for Latin American Studies Program, Translation of the Constitution of the Republic of Ecuador, Article 396, Political Database of the Americas, 2011, Available at: <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>.
- ¹⁹¹ FAO. *Voluntary guidelines for securing sustainable small-scale fisheries in the context of food security and poverty eradication*. Rome: FAO, 2015, art. 3.10. Available at: <http://www.fao.org/3/a-i4356en.pdf>.
- ¹⁹² *Supra* note 13, art. 3.
- ¹⁹³ *Supra* note 181, § 62.
- ¹⁹⁴ *Supra* note 148, principle 10. For more information, please see *supra* note 18, the CBD and the Convention on Environmental Impact Assessment in a Transboundary Context.
- ¹⁹⁵ *Supra* note 170. For more information, please see: *Supra* note 31, art. 15; *Supra* note 29, art. 10; UNFCCC, art. 6(a).

- ¹⁹⁶ ICCPR, art. 19.
- ¹⁹⁷ Schutter, Oliver De. “Report of the Special Rapporteur on the Right to Food”. 2011, [A/HRC/19/59/Add.5](#).
- ¹⁹⁸ FAO. *Guide on Legislating for the Right to Food*. Rome: FAO, 2009: 29. Available at: <http://www.fao.org/3/a-i0815e.pdf>.
- ¹⁹⁹ FAO. *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*. Rome: FAO, 2004: 19, 24.
- ²⁰⁰ *Supra* note 194.
- ²⁰¹ *Supra* note 196, art 25. Right to access to information in an environmental context is derived from the right of freedom of expression. For more information, please see: *Claude-Reyes v. Chile*, inter-Am. Ct., (ser. C) No. 151 (Sept. 19, 2006).
- ²⁰² Schutter, Oliver De. “From Charity to Entitlement: Implementing the Right to Food in Southern and Eastern Africa”. *Briefing Note 5*, 2012, 6. For more information, please see: CSM. *Civil Society Report on the Use and Implementation of the Right to Food Guidelines*. 2018: 17.
- ²⁰³ *Supra* note 198.
- ²⁰⁴ *Supra* note 199.
- ²⁰⁵ UNDROP, art 2.3, 9, 10 and 11.
- ²⁰⁶ *Supra* note 194.
- ²⁰⁷ *Supra* note 202.
- ²⁰⁸ *Supra* note 3, § 29, 32. For more information, please see: CSM. *Civil Society Report on the Use and Implementation of the Right to Food Guidelines*. 2018: 17.
- ²⁰⁹ Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 2016, [A/HRC/31/52](#), § 62.
- ²¹⁰ *Supra* note 198.
- ²¹¹ *Supra* note 148, principle 7.
- ²¹² *Supra* note 18, art. 197.
- ²¹³ *Supra* note 26, art. 6(a), 20, 21, art. 5 (annex I).
- ²¹⁴ *Supra* note 13, art 4.
- ²¹⁵ *Lac Lanoux, France v. Spain*, XII Int’l Arb Awards 281 (1957), reprint 53 AJIL 156 (1959). Available at: <https://www.ecolex.org/details/court-decision/lake-lanoux-arbitration-france-v-spain-b09cb956-2cb5-479e-ba3a-bbfd4f7b68fc/>.
- ²¹⁶ ICESCR, art. 2.
- ²¹⁷ *Supra* note 3, § 36.
- ²¹⁸ *Supra* note 175, principle 8.
- ²¹⁹ UNGA, Resolution Adopted by the Human Rights Council, 2011, [A/HRC/RES/16/11](#): 2-3.
- ²²⁰ CESCR Statement on the World Food Crisis, [E/C.12/2008/1](#), § 13.
- ²²¹ *Supra* note 148: 5.
- ²²² For more information, please see: Ognibene, Lara and Angela Kariuki. “Standards in the Procedural Rights of Multilateral Environmental Agreements”, in Turner, Stephen *et al.*, eds. “Environmental Rights: The Development of Standards”. Cambridge University Press (2019): 174-194.
- ²²³ Peña, Natalia Gomez and David B. Hunter. “The Hard Choices in Promoting Environmental Access Rights”, in Bradlow, Daniel and David Hunter, eds. “Advocating Social Change through International Law”. Brill Publishers (2020): 110-137.
- ²²⁴ Mayer, Benoit. “Human Rights in the Paris Agreement”. *Climate Law* 6 (2016): 109, 117. Available at: <http://www.benoitmayer.com/files/Human%20rights%20in%20the%20Paris%20Agreement.pdf>; Rajamani, Lavanya. “Human Rights, in the Climate Change Regime”, in Knox, John H. and Ramin Pejan, eds. “The Human Right to A Healthy Environment”. Cambridge University Press (2018): 236-251.
- ²²⁵ *Supra* note 148, preamble.
- ²²⁶ Knox, John H. “The Paris Agreement as a Human Rights Treaty”, in Akande, Dapo *et al.*, eds. “Human Rights and 21st Century Challenges: Poverty, Conflict, and the Environment”, Oxford University Press (2018).
- ²²⁷ Knox, John H. and David Boyd. “Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable”. 2018, [A/73/188](#).
- ²²⁸ Boyd, David R. “Right to a Healthy Environment: Good Practices. Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment”. 2019, [A/HRC/43/53](#).
- ²²⁹ UNEP and CIEL. “UNEP Compendium on Human Rights and the Environment: Selected International Legal Materials and Cases”. Available at: http://www.ciel.org/Publications/UNEP_Compendium_HRE_Mar2014.pdf.
- ²³⁰ Convention on Civil Liability for Oil Pollution, 973 U.N.T.S. 3 (Nov. 29, 1969), preamble.
- ²³¹ *Ibid.*, art. 3.
- ²³² For more information, please see HRC Resolution: 2009, [A/HRC/RES/10/4](#); 2011, [A/HRC/RES/18/22](#); 2014, [A/HRC/RES/26/27](#); 2015, [A/HRC/RES/29/15](#); 2016, [A/HRC/RES/32/33](#); 2017, [A/HRC/RES/35/L.32](#); 2018, [A/HRC/RES/38/4](#); 2014, [A/HRC/RES/25/21](#); 2018, [A/HRC/RES/37/8](#).

- ²³³ For more information, please see HRC Resolution: 2016, [A/HRC/RES/32/33](#) (notes threat to the right of children to adequate food); 2017, [A/HRC/RES/35/L.32](#) (notes threat of CC to the right of migrant children to adequate food); 2018, [A/HRC/RES/38/L.5](#) (notes disproportionate impact to women re food).
- ²³⁴ For more information, please see HRC Resolution: 2018, [A/HRC/RES/38/L.5](#).
- ²³⁵ For more information, please see HRC Resolution: 2019, [A/HRC/RES/40/7](#); 2018, [A/HRC/RES/37/10](#); 2017, [A/HRC/RES/34/12](#); 2016, 2016, [A/HRC/RES/31/10](#); 2015, [A/HRC/RES/28/10](#); 2014, 2014, [A/HRC/RES/25/14](#); 2013, [A/HRC/RES/22/9](#); 2012, [A/HRC/RES/19/7](#); 2011, [A/HRC/RES/16/27](#); 2010, [A/HRC/RES/13/4](#).
- ²³⁶ For more information, please see HRC Resolution: 2019, [A/HRC/RES/40/7](#).
- ²³⁷ For more information, please see HRC Resolution: 2016, [A/HRC/RES/31/10](#), § 19; 2015, [A/HRC/RES/28/10](#), § 18.
- ²³⁸ For more information, please see HRC Resolution: 2019, [A/HRC/RES/40/7](#); 2018, [A/HRC/RES/37/10](#); 2017, [A/HRC/RES/34/12](#);
- ²³⁹ For more information, please see HRC Resolution: 2018, [A/HRC/RES/37/20](#).
- ²⁴⁰ For more information, please see HRC Resolution: 2012, [A/HRC/22/50/Add.2](#); 2011, [A/HRC/16/49/Add.2](#); 2010, [A/HRC/13/33/ADD.5](#).
- ²⁴¹ For more information, please see: *Supra* note 111; Schutter, Olivier De. “Interim Report of the Special Rapporteur on the Right to Food”. 2012, [A/67/268](#); Schutter, Olivier De. “Final Report: The Transformative Potential of the Right to Food, Annex: Overview of Key Recommendations”. 2014, [A/HRC/25/57](#); Elver, Hilal. “Right to Food”. 2015, [A/70/287](#), § 87, 89(l); Elver, Hilal. “Right to Food”. 2016, [A/71/282](#), § 99(h); *Supra* note 127, § 106(c), 107(o).
- ²⁴² For more information, please see: Izsák, Rita. “Report of the Special Rapporteur on Minority Issues”. 2015, [A/HRC/28/64/Add.2](#).
- ²⁴³ For more information, please see: *Supra* note 227, 19.
- ²⁴⁴ Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, 2019, [A/HRC/40/55](#).
- ²⁴⁵ *Supra* note 209.
- ²⁴⁶ Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, 2018, [A/HRC/37/58](#).
- ²⁴⁷ Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, 2017, [A/HRC/34/49](#).
- ²⁴⁸ For more information, please visit: <https://www.ohchr.org/EN/Issues/Environment/ToxicWastes/Pages/SRToxicWastesIndex.aspx>.
- ²⁴⁹ For more information, please visit: <https://www.ohchr.org/EN/Issues/Health/Pages/SRRightHealthIndex.aspx>.
- ²⁵⁰ For more information, please visit: <https://www.ohchr.org/EN/Issues/IPeoples/SRIIndigenousPeoples/Pages/SRIPeoplesIndex.aspx>.
- ²⁵¹ For more information, please visit: <https://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/SRWaterIndex.aspx>.
- ²⁵² *Supra* note 127.
- ²⁵³ CESCR, General Comment No. 14 “The Right to the Highest Attainable Standard of Health”.
- ²⁵⁴ CIEL. *States’ Obligations under the Covenant on Economic, Social and Cultural Rights, in the Context of Climate Change*. Available at: <http://www.ciel.org/wp-content/uploads/2018/01/HRTBs-synthesis-report.pdf>.
- ²⁵⁵ CESCR, 2009, [E/C.12/AUS/CO/4](#).
- ²⁵⁶ CRC, art. 24.2(c).
- ²⁵⁷ CRC General Comment No. 15, 2013, [CRC/C/GC/15](#), § 49, 50. For more information, please see: CRC. “Concluding Observations on the Combined Third to Fifth Periodic Reports of Kenya”. 2016, [CRC/C/KEN/CO/3-5](#).
- ²⁵⁸ For more information, please see: CEDAW. “Concluding Observations on the Seventh Periodic Report of Burkino Faso”, 2017, [CEDAW/C/BFA/CO/7](#), § 43(b); CEDAW. “Concluding Observations on the Combined Third and Fourth Periodic Reports of the Niger”, 2017, [CEDAW/C/NER/CO/3-4](#), § 37(A).
- ²⁵⁹ CEDAW, General Recommendation No. 34, [CEDAW/C/GC/34](#), § 12.
- ²⁶⁰ UNGA. “Report of the Working Group on the Universal Periodic Review: Haiti”, 2016, [A/HRC/34/14](#), § 115.
- ²⁶¹ UNGA. “Report of the Working Group on the Universal Periodic Review: Marshall Islands”, 2015, [A/HRC/30/13/Add.1](#), § 11.
- ²⁶² UNGA. “Report of the Working Group on the Universal Periodic Review: Kiribati”, 2015, [A/HRC/29/5](#), § 84.107.
- ²⁶³ UNGA. “Report of the Working Group on the Universal Periodic Review: Lesotho”, 2015, [A/HRC/29/9](#), § 113.120.
- ²⁶⁴ UNGA. “Report of the Working Group on the Universal Periodic Review: Guyana”, 2010, [A/HRC/15/14](#), § 69.24.
- ²⁶⁵ For more information, please see: FIAN International. “Judicial Processes in Uganda but Safety Concerns Remain”. Available at: <https://fian.org/en/press-release/article/judicial-process-progresses-in-uganda-but-safety-concerns-remain-2279>.
- ²⁶⁶ The Brazilian Brumadinho case concerns a dam collapse of an iron ore mine under control of Vale S.A., located close to the Ferro-Carvão river. The dam collapse led to severe environmental damage and several human rights abuses. In 2019, one of the two dams broke, sending approximately 12 million cubic meters of mining waste down the river. The waste

buried the river along with more than 130 hectares of vegetation, houses, plantations, animals, and a hotel. The sludge advanced 220 km along the Paraopeba River, irreversibly damaging aquatic life, affecting local municipalities' ability to supply water to residents and leading to a ban in the use of water including for irrigation and cattle. The consequences on the human rights of workers and the local community were devastating. As of September 2019, 272 people, including employees, contractors and community members, had been confirmed or were presumed dead. Many more people were injured. Many families lost their only source of income and saw their way of life and economic stability totally disrupted. The German engineering company Tüv-Süd through its Brazilian affiliate Bureau de Projetos e Consultoria Ltda., was contracted as an external auditor to oversee Vale's actions to increase the safety of the dam. Despite the company's concerns about the safety (the dam failed to achieve the safety factor of 1.3), Tüv-Süd signed the declaration of stability and explained that the safety factor of 1.09 would be satisfactory as it is above 1.05 (acceptable minimum safety factor). This case demonstrates the serious consequences for human safety of an auditing industry that lacks independence from its corporate clients and puts its business interests ahead of professional integrity. At the same time, it shows very clearly that having a license or permit from government authorities does not always guarantee responsible behavior, and should therefore not be used to automatically exempt a company from liability. For more information, please contact FIAN IS.

²⁶⁷ For more information, please see: FIAN International. "Corporate Takeover Proceeds Despite Illegalities". Available at: <https://www.fian.org/en/news/article/corporate-takeover-proceeds-despite-illegalities-2270>; FIAN International. "FIAN International Stands with Villagers in Odisha India". Available at: <https://www.fian.org/en/press-release/article/fian-international-stands-with-villagers-in-odisha-india-2198>.

²⁶⁸ *Supra* note 175.

²⁶⁹ Protocol on Water and Health, art. 5(m).

²⁷⁰ FAO. *Voluntary guidelines for securing sustainable small-scale fisheries in the context of food security and poverty eradication*. Rome: FAO, 2015, art. 3.1.1. Available at: <http://www.fao.org/3/a-i4356en.pdf>.

²⁷¹ *Supra* note 57, art. 3.2.

²⁷² *Supra* note 270, art. 5.14.

²⁷³ Expert Group on Global Climate Obligations. "Oslo Principles on Global Climate Change Obligations", 27-30. Available at: <https://globaljustice.yale.edu/sites/default/files/files/OsloPrinciples.pdf>.

²⁷⁴ UNHR Office of the High Commissioner. "Guiding principles on Business and Human Rights". Available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf.

²⁷⁵ CESCR, General Comment No. 24, 2017, *E/C.12/GC/24*. For more information of the IGWG on TNCs and OBs with respect to human rights, please visit: <https://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOnTNC.aspx>

²⁷⁶ *Ibid*.

²⁷⁷ CESCR, General Comment No. 24, 2017, *E/C.12/GC/24*, § 4, 27, 54.

²⁷⁸ *Ibid.*, § 27. For more information, please see: *Supra* note 171; Reports of International Arbitral Awards, Vol. 3 (1941), 1965; ICJ, Corfu Channel Case (Merits) (United Kingdom of Great Britain and Northern Ireland v. Albania), ICJ Reports, Vol. 4 (9 April 1949), § 22; ICJ, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Reports (8 July 1996), § 29; Report of the International Law Commission, 2006, *A/61/10*; International Law Commission. "Draft Principles on the Allocation of Loss in the Case of Transboundary Harm arising out of Hazardous Activities". 2006. Available at: https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_10_2006.pdf; *Supra* note 175.

²⁷⁹ For more information on the IGWG on TNCs and OBEs, please visit: <https://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOnTNC.aspx>.

²⁸⁰ OEIGWG Chairmanship Revised Draft. Available at: https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraft_LBI.pdf.

²⁸¹ Stutzin, G. "Should We Recognize Nature's Claim to Legal Rights?", *Environmental Policy and Law* 2 (1976): 129. For more information, please see: Berry, Thomas. *The Great Work: Our Way into the Future*. Broadway Books, 2000. Concluding that the main cause of the planet's destruction could be found in a 'mode of consciousness' that had bestowed all rights only to humans to the detriment of non-humans.

²⁸² Stone, C. "Should Trees Have Standing? – Toward Legal Rights for Natural Objects". *Southern California Law Review* 45:2 (1972): 456.

²⁸³ Universal Declaration of Rights of Mother Nature (Ley de Derechos de la Madre Tierra), Bolivia, (Dec. 10, 2010).

²⁸⁴ For more information, please see: Constitution of Ecuador (Constitución de la República del Ecuador) (Oct. 20, 2008).

²⁸⁵ Universal Declaration of Rights of Mother Earth (April 22, 2010), World People's Conference on Climate Change and the Rights of Mother Earth. Available at: <https://therightsofnature.org/wp-content/uploads/FINAL-UNIVERSAL-DECLARATION-OF-THE-RIGHTS-OF-MOTHER-EARTH-APRIL-22-2010.pdf>.

²⁸⁶ Roy, Eleanor A. "New Zealand River Granted Same Legal Rights as Human Being". *The Guardian*, March 16, 2017. Available at: <https://www.theguardian.com/world/2017/mar/16/new-zealand-river-granted-same-legal-rights-as-human-being>.

²⁸⁷ For more information, please see: *Supra* note 148.

²⁸⁸ For more information, please see: *Supra* note 22, art. 3, 15.

²⁸⁹ For more information, please see: *Supra* note 196, art. 1(2).

²⁹⁰ *Supra* note 159.

²⁹¹ UNHRC. “Final Study of the Advancement of the Rights of Peasants and Other People Working in Rural Areas”, 2012, [A/HRC/19/75](#).

²⁹² United Nations Declaration on the Rights of Indigenous Peoples, 2007. Available at: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>.