



FIDH contribution on the Draft Guidelines on Human Rights and the Environment

FIDH welcomes the initiative of the Special Rapporteur on human rights and the environment, John Knox, to elaborate Guidelines that summarize the human rights obligations of States relating to the environment, and to call for external comments.

FIDH (International Federation for Human Rights) is an international human rights NGO federating 184 organizations from 112 countries. Since 1922, FIDH has been defending all civil, political, economic, social and cultural rights as set out in the Universal Declaration of Human Rights.

FIDH strongly believes from its experiences with the affected communities that human rights and the environment are intrinsically interlinked and require further attention.

We therefore address the following contribution to the Special Rapporteur on human rights and the environment and we recommend him to include our proposed suggestions. The present contribution follows the structure of the draft Guidelines and is therefore structured into General obligations (1), to then go in more detail on the Procedural obligations (2), and Substantive obligations (3) by referring to existing international law instruments which could help reinforce and add more detail to the proposed draft. Finally, concerning obligations in relation to those who are most vulnerable to environmental harm (4) we suggest some language that could broaden the scope of the such obligations based on existing instruments in international law, in order to guarantee full protection of their rights.

1) General obligations

We consider that sustainable development dimension should be taken into account by adding :

- in paragraph 1 « the full enjoyment of human rights *of all persons from present and future generations* ».
- in paragraph 3 « the enjoyment of a safe, clean, healthy and sustainable environment *of all persons from present and future generations* ».

Further, considering that climate change challenges are an integral part of environmental challenges, we think paragraph 2 should specify that « *Every State has an obligation to respect, protect and fulfill human rights in actions it undertake to address environmental and climate change challenges* ».

Likewise, In order to reflect the full extent of the fact that in international human rights law, States have an obligation to respect, protect and fulfill human rights not only when they *actively address environmental challenges*, but more broadly in all their actions and omissions, we propose to

reformulate paragraph 2 as follows : “Every State has an obligation to respect, protect and fulfill human rights *in all its actions and omission, including in actions* it undertakes to address environmental *and climate change* challenges”.

Besides, we consider that a paragraph should be added in relation to business activities which can have serious negative impacts on environment and human rights¹, providing that “*Every State has an obligation to ensure human rights are respected in actions undertaken by third parties, including business*”.

2) Procedural obligations

We suggest that the obligation expressed in paragraph 4 to provide for the assessment of environmental impacts that may interfere with the full enjoyment of human rights should include a requirement to adopt a differentiated approach that take into account the specific needs of and risks faced by groups that are most vulnerable to environmental harm (indigenous peoples, women, rural communities).

In relation to paragraph 5 on the obligation to provide for public access to environmental information, we highly recommend :

- to add “*full* public access to environmental information”,
- to specify “access to environmental information *prior, during and after the adoption of any legislation, policy, project, granting of any license, contract or concession or any other activity which could potentially interfere with the full enjoyment of human rights.*”
- A new paragraph or sentence in paragraph 5 could be added, specifying that “The limitations on this right should be stated by law, pursue a legitimate aim and meet a high standard of necessity. Grounds for limitations shall always be interpreted narrowly, taking into account the public interest, which should be understood from a human rights perspective.”

Further, our experiences in conducting human rights impact assessment in different countries have revealed major difficulties in access to environmental information. Therefore, it could be useful to specify in paragraph 5 or in a new paragraph that :

- access to environmental information should not be reserved to “affected parties” or made contingent upon a specific interest;
- access should cover all documents including those submitted by companies from the beginning of the process;
- access needs to be responded in a reasonable period of time;
- access should be done through a transparent process.

In relation to paragraph 6, we recommend to add the requirement to facilitate public environmental education and the fact that participation on environmental decision-making should be done without discrimination. It can take this form : “Every State has an obligation to provide for and to facilitate public *environmental education and* awareness, and participation in environmental decision-making

¹ See for instance FIDH reports : (i) [Colombia : The Human Cost of Oil: A Human Rights Impact Assessment on the Activities of Pacific Exploration & Production Corp. in Puerto Gaitan.](#) (ii) [Blyvooruitzicht Mine Village: the human toll of state and corporate abdication of responsibility in South Africa](#)

without discrimination, including by respecting and protecting the rights to freedom of expression and to freedom of peaceful assembly and association”.

We believe that paragraph 7 could reinforce the protection of human rights defenders by adding the sentence: “This include an obligation to ensure that they are not penalized, persecuted or harassed, for exercising and defending human and environmental rights.” Human rights defenders play a critical role in society in ensuring corporate respect and accountability for human rights. Nevertheless, they are facing increasing attacks and threats from States and business actors while carrying out their work², in a context where legislation is adopted in many countries to restrict civil society activities. The critical situation of human rights defenders is often compounded by a lack of State action in response to such attacks, which justify the insertion of this specific sentence in the Guidelines.

Finally, we suggest to include in paragraph 8 reference to business activities, by inserting : “Every State has an obligation to provide for effective remedies for violations and abuses of human rights relating to the enjoyment of a safe, clean, healthy and sustainable environment, including violations and abuses of human rights resulting from business activities”

3) Substantive obligations

We recommend to insert in paragraph 9 : “Every State has an obligation to establish, maintain and enforce an effective normative framework for the enjoyment of a safe, clean, healthy and sustainable environment, including but not limited to :”

We suggest to include in paragraph 9 (a) a reference to the precautionary principle, and to specify “relevant international environmental, health and safety norms and standards”.

Further, we think paragraph 9 (b) should specify : “effective legal and institutional mechanisms to regulate and monitor the activities of public and private actors”.

Paragraph 9 (b) could also add precision by specifying :

- that where environmental harm to human rights occurs, including from natural disasters, States are obliged to respond by assisting and providing compensation to the victims;
- that effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.
- That States should consider imposing criminal or administrative sanctions and penalties, as appropriate, where business activities result in abuses of human and environmental rights or where a failure to act with due diligence to mitigate risks allows such infringements to occur;

We recommend to insert in paragraph 10 : “ States have an obligation to cooperate with each other to establish, maintain and enforce effective international environmental and human rights norms”

² The Business and Human Rights Center have documented in 2015 and 2016, 450 attacks across the world. The most common form of attacks are criminalisation, followed by killing, intimidation and threats. For more information see :

We strongly believe that paragraph 11 should be reformulated so that human rights are not only required to be taken into account but are rather at the center of the SDGs, in accordance with Resolution n. 70/1 on the 2030 Agenda for sustainable developments³. It could be stated as following : “States have an obligation to respect, protect and fulfill their human rights obligations and commitments in the implementation of and follow-up to the Sustainable Development Goals, including to human rights relating to the enjoyment of a safe, clean, healthy and sustainable environment”.

Finally, we consider that a reference should be added to instruments such as the ICESCR and its General Comments, which provide guidance regarding “the improvement of all aspects of environmental and industrial hygiene” which includes “the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health” (para.15), and provide that States are required to adopt measures against environmental health hazards, including by formulating and implementing policies “aimed at reducing and eliminating pollution of air, water and soil” (para. 36).

4) Obligations in relation to those who are most vulnerable to environmental harm

We recommend to add in paragraph 14 (b) : “(b) facilitating their access to environmental information, including information on the specific effects of environmental harm on them, *in a form and language that is clear, comprehensive, accessible and understandable*”, in accordance with Rio principle 10⁴ and article 4 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

We also think that paragraph 15 (b) could be reformulated as following : “(b) consulting with them and obtaining their free, prior and informed consent *before taking any decision, action* or approving measures that may affect *their human rights, namely by affecting their* lands, territories, *culture* or natural resources;”

³ See Resolution n. 70/1, « *Transforming our world: the 2030 Agenda for Sustainable Development* », adopted by the General Assembly on 25 September 2015 and in particular the following parts : (Preamble) “**The 17 Sustainable Development Goals and 169 targets [...] seek to realize the human rights of all** and to achieve gender equality and the empowerment of all women and girls” ; (Par.10) “The new Agenda is guided by the purposes and principles of the Charter of the United Nations, including full respect for international law. It is grounded in the Universal Declaration of Human Rights, international human rights treaties, the Millennium Declaration and the 2005 World Summit Outcome” ; (Par. 35) “The new Agenda recognizes the need to build peaceful, just and inclusive societies that provide equal access to justice and that are based on respect for human rights” .

⁴ See Rio Declaration on Environment and Development, A/CONF.151/26, Principle n. 10 : “*At the national level, each individual shall have appropriate access to information concerning the environment*” and Article 4 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities : “*States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law. [...] States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue [...] States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.*”