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**Human Rights Council****Fifty-fifth session**

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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Expert seminar on the responsibility of business enterprises  
to respect the human right to a clean, healthy and sustainable  
environment****Report of the Special Rapporteur on the issue of human rights  
obligations relating to the enjoyment of a safe, clean, healthy and  
sustainable environment, David R. Boyd***Summary*

The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, submits the present report in accordance with Human Rights Council resolution 52/23. On the basis of an expert seminar convened on 24 November 2023, the Special Rapporteur summarizes key points related to systemic problems facing the global economy, promising practices with regard to the responsibility of business enterprises to respect the human right to a clean, healthy and sustainable environment, gaps in the current normative frameworks and the necessary next steps.



## I. Introduction

1. The current global economic system, with its focus on endless growth and corporate profits, is exploitative of both people and the planet, resulting in egregious multidimensional inequalities, exceeding planetary boundaries and impeding the full enjoyment of human rights for billions.
2. The planetary climate and environmental crisis causes roughly 9 million deaths annually through pollution; contributes to the surge in heatwaves, droughts, wildfires, floods and other extreme weather events; and damages the ecosystems and biodiversity that provide the Earth's life support systems. In the *Emissions Gap Report 2022*, the United Nations Environment Programme (UNEP) found that global emissions must be cut by at least 45 per cent by 2030 to avoid global catastrophe.<sup>1</sup> The magnitude of ongoing business activities and their part in contributing to the planetary crisis raises serious concerns about the adequacy of normative standards. Transformative changes appear necessary to modify the global economic system, harness the positive power of businesses and achieve a just transition to ensure the full enjoyment of the right to a clean, healthy and sustainable environment for all.
3. In resolution 52/23, the Human Rights Council requested the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, to organize a one-day expert seminar on the responsibility of business enterprises to respect the human right to a clean, healthy and sustainable environment, and to submit a summary report on the seminar to the Council at its fifty-fifth session. To fulfil that request, the Special Rapporteur hosted a hybrid expert seminar on 24 November 2023, with assistance from the Office of the United Nations High Commissioner for Human Rights (OHCHR) and support from UNEP. Participants in the seminar included representatives from States, business and investor groups and international organizations, including agencies such as the United Nations Development Programme (UNDP) and UNEP, and experts from treaty bodies and special procedure mechanisms, civil society organizations and academia.
4. Informed by the Special Rapporteur's previous reports entitled "The human right to a clean, healthy and sustainable environment: a catalyst for accelerated action to achieve the Sustainable Development Goals"<sup>2</sup> and "Paying polluters: the catastrophic consequences of investor-State dispute settlement for climate and environment action and human rights",<sup>3</sup> the policy brief entitled "Essential elements of effective and equitable human rights and environmental due diligence legislation"<sup>4</sup> and the extensive work of the Working Group on the issue of human rights and transnational corporations and other business enterprises, the seminar was aimed at identifying challenges, barriers, good practices and recommendations related to the task of ensuring that all businesses respect the right to a clean, safe and sustainable environment.
5. The seminar comprised four segments addressing the following areas: (a) setting the context: overshoot, breach of planetary boundaries, climate and environmental crisis, inequality, the increasing recognition of the right to a healthy environment and the contributions of business to the problems and the solutions; (b) assessing the effectiveness of current normative frameworks, including the Guiding Principles on Business and Human Rights,<sup>5</sup> the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises on Responsible Business Conduct, the Principles for Responsible Investment, the International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and the Children's Rights and Business Principles; (c) discussing the potential for incremental improvements,

<sup>1</sup> United Nations Environment Programme (UNEP), *Emissions Gap Report 2022: The Closing Window – Climate Crisis Calls for Rapid Transformation of Societies* (Nairobi, 2022).

<sup>2</sup> [A/77/284](#).

<sup>3</sup> [A/78/168](#).

<sup>4</sup> David R. Boyd and Stephanie Keene, Policy Brief No. 3 (Office of the United Nations High Commissioner for Human Rights (OHCHR), 2022).

<sup>5</sup> [A/HRC/17/31](#), annex.

for example, human rights environmental due diligence, the draft legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, which is being prepared by an intergovernmental working group, and enhanced sustainability disclosure and reporting; and (d) exploring the need for, and possibilities of, systemic and transformative changes to bring the human economy within planetary boundaries while fulfilling the human rights of all.

## II. Setting the context

6. In his opening remarks, the Special Rapporteur drew attention to Human Rights Council resolution 52/23, in which States were called upon to establish, maintain and strengthen effective legal and institutional frameworks to regulate the activities of public and private actors in order to prevent, reduce and remedy harm to biodiversity and ecosystems, taking into account human rights obligations and commitments relating to the enjoyment of a clean, healthy and sustainable environment, and were encouraged to adopt integrated, intersecting and holistic national and local policies and an effective legal framework for the enjoyment of the human right to a clean, healthy and sustainable environment, to foster a responsible private business sector and to encourage corporate sustainability reporting while respecting the Guiding Principles on Business and Human Rights and environmental standards, in accordance with relevant international agreements.

7. The Special Rapporteur emphasized the timeliness of the seminar, which was held in the midst of a planetary environmental crisis that includes the climate emergency, the decline of biodiversity, pervasive toxic pollution, water scarcity, desertification, land degradation and a surge in the emergence of zoonotic diseases. The planetary environmental crisis is also a human rights crisis, disproportionately harming individuals and communities living in situations of vulnerability and marginalization, including people living in poverty, persons with disabilities, children, older persons, women, LGBTQ+ persons, migrants, refugees, members of Indigenous Peoples, persons of African descent and persons experiencing intersecting marginalization and inequality. For the purposes of the seminar, businesses were broadly defined to include public and private corporations (in addition to law firms, accounting firms, public relations firms, consultants and other for-profit entities in the business ecosystem), State-owned enterprises, international financial institutions, development banks and other entities carrying out commercial activities. Those business enterprises are responsible for a devastating litany of human rights abuses. In a previous report to the Human Rights Council,<sup>6</sup> the Special Rapporteur described “sacrifice zones” as extremely contaminated areas, found in all regions of the world, where vulnerable and marginalized groups bear a disproportionate burden of the health, human rights and environmental consequences as a result of exposure to pollution and hazardous substances caused by businesses.

## III. Opportunities, barriers and risks

8. Participants shed light on the impact of the mining, fossil fuel, agricultural, chemical and financial sectors, identifying them as being at the heart of the debate with respect to the inability of billions of people to fully enjoy their human right to a clean, healthy and sustainable environment. Fossil fuels remain the dominant source of energy, with levels of coal, oil and natural gas consumption currently far higher than in 1992, despite the United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement. The latest forecasts indicate that Governments and industry are planning for higher fossil fuel production and consumption levels in 2030 than are consistent with the global commitment to limit global warming to 1.5°C above pre-industrial levels.<sup>7</sup>

<sup>6</sup> A/HRC/49/53.

<sup>7</sup> Stockholm Environment Institute, Climate Analytics, E3G, International Institute for Sustainable Development and UNEP, *The Production Gap: Phasing Down or Phasing Up? Top Fossil Fuel Producers Plan Even More Extraction despite Climate Promises* (2023).

9. One of the challenges identified with existing legal and normative frameworks, such as environmental legislation and the Guiding Principles on Business and Human Rights, was whether they are suitable for the informal economy, which comprises as much as 70 per cent of businesses and jobs in the global South. Much of the discussion continues to be focused on multinational companies and their supply chains. Moreover, certain business models are inherently problematic and potentially incompatible with the responsibility to respect human rights, including the right to a clean, healthy and sustainable environment.

10. In addition, certain industries are inherently problematic from the perspective of human rights, including the fossil fuel, tobacco, motor vehicle, mining, highly hazardous pesticides, chemicals and weapons industries. Those industries have consistently lied, manipulated the science and misled the public and policymakers about the adverse health and environmental consequences of their products.<sup>8</sup> That systemic pattern of deceit has caused millions of premature deaths, billions of illnesses and extensive business-related human rights abuses, including violations of the right to a healthy environment.

11. Incredibly, States continue to subsidize the most destructive business sectors. In 2022, fossil fuel subsidies amounted to \$7 trillion globally, or 7.1 per cent of global gross domestic product (GDP) (comprising \$1.3 trillion in direct subsidies and \$5.7 trillion in indirect subsidies).<sup>9</sup> Those massive, environmentally destructive subsidies are difficult to reconcile with States' obligation to dedicate the maximum of their available resources to fulfilling human rights. Several participants suggested that businesses should be incentivized to comply with the human right to a healthy environment. Other participants considered that incentives are inadequate and that binding regulations are required. A concern was raised that, unless well drafted, implemented and enforced, human rights and environmental due diligence legislation, as recently enacted in several States and pending in other jurisdictions, could be reduced to a box-ticking exercise.

12. While some businesses use the Guiding Principles on Business and Human Rights for guidance, the right to a clean, healthy and sustainable environment is not explicitly mentioned in the Principles, which include a reference to "internationally recognized human rights", understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the ILO Declaration on Fundamental Principles and Rights at Work. It was recommended that an annex be added to the Guiding Principles and that the right to a healthy environment be specifically included therein. It was pointed out that many businesses, in particular small- and medium-sized enterprises, are not aware of the existence of the Guiding Principles or their responsibilities related to respect for the right to a healthy environment.

13. The rapidly growing but deeply troubled carbon offsetting industry is viewed by some States and businesses as a key contributor in the anticipated transition to a net zero economy. The voluntary carbon offset market is expected to grow from \$2 billion in 2020 to \$250 billion by 2050.<sup>10</sup> However, as noted by one participant, many such projects have been found to be highly problematic, whether because they are fraudulent, consistently overestimate impacts or contribute to human rights violations. Under the guise of creating carbon credits, Indigenous Peoples and other forest-dependent communities have been forcibly displaced and evicted.<sup>11</sup> In one study that examined 50 major carbon offset projects, 39 were categorized as worthless owing to their failure in reducing emissions.<sup>12</sup> A project in Zimbabwe, led by a Swiss business, generated 20 million carbon credits worth hundreds of

<sup>8</sup> David Michaels, *Doubt is Their Product: How Industry's Assault on Science Threatens Your Health* (New York, Oxford University Press, 2008).

<sup>9</sup> Simon Black and others, "IMF fossil fuel subsidies data: 2023 update", Working Paper No. 23/169 (Washington, D.C., International Monetary Fund (IMF), 2023).

<sup>10</sup> Morgan Stanley, "Where the carbon offset market is poised to surge", 11 April 2023.

<sup>11</sup> See Rights and Resources Initiative and McGill University, "Status of legal recognition of Indigenous Peoples', local communities' and Afro-descendant peoples' rights to carbon stored in tropical lands and forests", Rights and Resources Initiative, 23 July 2021. See also <https://rightsandresources.org/blog/carbon-markets-could-protect-nature-and-the-planet-but-only-if-the-rights-of-those-who-live-there-are-recognized-too>.

<sup>12</sup> Nina Lakhani, "Revealed: top carbon offset projects may not cut planet-heating emissions", *The Guardian*, 19 September 2023.

millions of dollars but is currently under investigation following allegations of fraud. A business based in the United Arab Emirates has purchased carbon credit rights covering more than 80 million hectares of Africa, including 20 per cent of Zimbabwe, 10 per cent of Liberia and land in Angola, Kenya, the United Republic of Tanzania and Zambia.<sup>13</sup> Concerns have been raised about the concurrent eviction of Indigenous Ogiek people from the Mau Forest in Kenya, despite a decision of the African Court on Human and Peoples' Rights clarifying that they are entitled to live there.<sup>14</sup>

14. There is a need to make a distinction between global and local harms. As the discussion progressed, key questions emerged about the extent of the State's jurisdiction and the level of responsibility that can be assigned to a parent company with an extensive supply chain consisting of small- and medium-sized enterprises. The extraterritorial responsibilities of States in which large multinational businesses are domiciled was raised as an issue requiring additional clarification. Participants noted difficulties related to access to justice in cases in which large multinationals are involved in human rights abuses, owing to power asymmetries, a fear of reprisals and legal and financial obstacles.<sup>15</sup>

15. Several participants mentioned shrinking civic space as a significant concern. Other participants mentioned trends towards weaker environmental regulations, often in response to the undue influence of businesses, that enable businesses to evade their environmental and human rights responsibilities. Businesses are required to go above and beyond mere compliance with national legislation, if necessary, in order to fulfil their human rights responsibilities. Environmental human rights defenders are especially at risk in countries with authoritarian or semi-authoritative regimes. In those difficult national contexts, the Guiding Principles on Business and Human Rights are not sufficient to influence business behaviour.

16. Several participants noted that rights holders and local communities need to be placed at the centre of State and business planning and licensing processes. An example was provided from the context of Thailand: the Chatree gold mine, owned by the Australian business Kingsgate Consolidated, caused extensive pollution that resulted in the heavy metal poisoning of local residents, inconsistent with their right to a healthy environment. The Government of Thailand took steps to fulfil its human rights obligations by closing the mine. That led Kingsgate Consolidated to threaten to file an investor-State dispute settlement arbitration claim.<sup>16</sup> Fearing that it might be forced to pay a huge sum of money in compensation to the foreign investor, the Government reversed course and approved the reopening of the mine.

17. The impact of recognizing the right to a clean, healthy and sustainable environment will depend to some extent on country-specific contexts, including how a specific State sets environmental standards. For example, according to the World Health Organization (WHO) global air quality guidelines,<sup>17</sup> levels of fine particulate matter should not exceed 5 micrograms per cubic metre ( $\mu\text{g}/\text{m}^3$ ). However, that target is far from achievable for some heavily polluted States in the short term, leading WHO to establish interim targets. Some States still lack air quality standards, while in others, such as India, standards for fine particulate matter are very weak ( $60 \mu\text{g}/\text{m}^3$ ). Such weak standards may not be consistent with States' obligations related to the right to a healthy environment.<sup>18</sup>

<sup>13</sup> Patrick Greenfield, "The new 'scramble for Africa': how a UAE sheikh quietly made carbon deals for forests bigger than UK", *The Guardian*, 30 November 2023. See also Alexandra Benjamin, "Control of Africa's forests must not be sold to carbon offset companies", *Mongabay*, 17 November 2023.

<sup>14</sup> Claire Marshall, "Kenya's Ogiek people being evicted for carbon credits – lawyers", *BBC News*, 9 November 2023.

<sup>15</sup> Ebony Birchall, Surya Deva and Justine Nolan, *The Impact of Strategic Human Rights Litigation on Corporate Behaviour* (The Freedom Fund, 2023).

<sup>16</sup> See <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/825/kingsgate-v-thailand>.

<sup>17</sup> See World Health Organization (WHO), "New WHO Global Air Quality Guidelines aim to save millions of lives from air pollution", 22 September 2021.

<sup>18</sup> See [A/HRC/40/55](#).

18. Participants noted the importance of clarifying the extent and nature of extraterritorial obligations in the context of the right to a healthy environment. Primary responsibility lies with both home and host States (where the business is domiciled and where it is operating, respectively) to develop frameworks for business operations and the monitoring of business activities. One example of a difficult challenge was provided from Costa Rica and West Africa, where huge trawlers from Asia are engaged in overfishing within the exclusive economic zone of coastal States, with devastating impacts on marine ecosystems and the human rights of coastal communities, including their rights to food and a livelihood, cultural rights and the right to a healthy environment.

19. It was pointed out that, even within enterprises, the teams looking at human rights and environmental issues are siloed. Consequently, having the right to a healthy environment recognized as a human right is crucial for practitioners. The right to a healthy environment must be explicitly included in human rights and environmental due diligence legislation and other business sustainability legislation in order to confirm and clarify business responsibilities in that regard. Financial institutions provide extensive support to businesses that cause climate, environmental and human rights-related harms, yet they have been excluded or are proposed for exclusion from some human rights and environmental due to diligence legislation.

20. The right to a healthy environment is a fairly recent right, dating back to the 1970s, but it combines attributes of both civil and political and economic, social and cultural rights. It was recommended that Governments invest in public education and awareness regarding the right to a healthy environment and the interdependence of all human rights in policymaking and practice. The concept of a “human rights economy”<sup>19</sup> was mentioned as an innovative approach that could potentially foster improved business compliance with States’ human rights responsibilities.

#### **IV. Evaluating existing business and human rights frameworks**

21. The second segment of the seminar was aimed at evaluating the adequacy of existing normative frameworks in outlining the responsibilities of businesses insofar as they relate to human rights, including the right to a clean, healthy and sustainable environment. Those frameworks include the Guiding Principles on Business and Human Rights, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct and the Children’s Rights and Business Principles.

22. The Guiding Principles on Business and Human Rights include a reference to “internationally recognized human rights”. Since the right to a healthy environment is now an internationally recognized human right, in accordance with Human Rights Council resolution 48/13 and General Assembly resolution 76/300, it should be included within the scope of the rights covered by the Guiding Principles on Business and Human Rights. In practice, that is poorly understood, and more work is needed to educate the full range of government departments and agencies as well as businesses. Mere awareness is not sufficient, as businesses need to understand the nature of their human rights responsibilities and how best to fulfil them. States and businesses will both need to build internal capacity related to the nexus between climate, environment and human rights. The concept of “doing no harm” as a guiding principle for business enterprises may no longer be fit for purpose in the twenty-first century, when a whole-of-society effort is needed to achieve the Sustainable Development Goals. In addition, small- and medium-sized enterprises are often not aware of requirements relating to human rights and environmental due diligence and need resources and support from larger businesses and Governments.

23. In some cases, the Guiding Principles on Business and Human Rights, the OECD Guidelines and other normative frameworks have been reduced to capacity-building projects, which contain major gaps in view of what is actually happening on the ground, where environmentally destructive activities and human rights abuses continue. A legally binding

<sup>19</sup> OHCHR, “Building economies that place peoples’ human rights at the center”, 6 April 2023.

instrument on business and human rights at the global level, if comprehensive and well drafted, could improve legislation and implementation at the national level. All participants supported the explicit inclusion of the right to a clean, healthy and sustainable environment in the draft legally binding instrument. It was included in an earlier version of the draft but was dropped from the most recent one, to the consternation of many experts and States.

24. There was an extended discussion regarding whether the current emphasis on non-binding guidelines aimed at influencing business behaviour related to human rights is sufficient. The consensus among participants was that stronger approaches are needed, including legislation that makes human rights and environmental due diligence mandatory. Several participants emphasized that such legislation should apply to the full range of businesses, whether large, medium or small, albeit with differing and proportionate requirements.

25. Another point raised was the failure of the “free market” to internalize the costs of harm to the climate, the environment, human health and human rights caused by business products, services and activities. Participants identified pollution taxes as a mechanism that could be used to address the problem of externalities, noting that policies would need to be carefully tailored to avoid having regressive effects on low-income households. Win-win situations are possible, where “polluter pays” policies both decrease adverse climate and environmental impacts and reduce inequality. Given that the richest 1 per cent generate total greenhouse gas emissions equal to the poorest 66 per cent,<sup>20</sup> comprehensive climate pollution taxes with progressive rebates for low- and middle-income households could have positive impacts on the right to a healthy environment and the right to an adequate standard of living.

26. States have an obligation to regulate, monitor and control industry conduct, which includes not only adverse climate, environmental and human rights impacts but also greenwashing, undue influence on political, regulatory and policy processes, misuse of investor-State dispute settlement mechanisms, strategic lawsuits against public participation and other forms of behaviour intended to maximize the profits accruing to shareholders while externalizing costs onto society. In a 2023 report on strategic lawsuits against public participation, a total of 820 cases in 30 European jurisdictions were identified between 2010 and 2023; the targets were journalists, human rights defenders, activists, editors of media outlets and civil society organizations.<sup>21</sup> A proposal has been made for a new European Union directive to address strategic lawsuits against public participation with transboundary implications.<sup>22</sup> Protecting procedural rights – access to information, public participation and access to justice with effective remedies – is essential, as those rights play a vital role in contributing to the full enjoyment of the right to a healthy environment.

27. One participant drew attention to the fossil fuel industry’s continued influence in prominent forums such as the twenty-eighth session of the Conference of the Parties to the Framework Convention on Climate Change, at which thousands of representatives from the coal, oil and gas industries were present. The WHO Framework Convention on Tobacco Control was mentioned as a good practice in preventing corporate capture, but that precedent has yet to be emulated in international negotiations related to climate change, biodiversity, chemicals, food or desertification and land degradation.

28. The effectiveness of laws, regulations and policies depends on institutions and processes that incorporate human rights principles. Grievance mechanisms, for example, in some instances tend to revictimize the affected persons or communities. In its general comment No. 12 (2009) on the right of the child to be heard, the Committee on the Rights of the Child, in line with article 12 (3) of the Convention on Rights of the Child, recognizes that States must regularly hear from children when developing national- and local-level business-related laws and policies.<sup>23</sup> With regard to remedies, reparations and other measures

<sup>20</sup> Oxfam International, *Climate Equality: A Planet for the 99%* (Oxford, United Kingdom of Great Britain and Northern Ireland, 2023).

<sup>21</sup> Coalition against SLAPPs in Europe, “How SLAPPs increasingly threaten democracy in Europe – new CASE report”, 23 August 2023.

<sup>22</sup> European Parliament, “Strategic lawsuits against public participation (SLAPPs)”, briefing note, July 2023.

<sup>23</sup> General comment No. 12 (2009), para. 21.



taken to promote recovery after harm has been caused or a contribution to harm made, it is mentioned in the Committee's general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights that States have an obligation to establish child-sensitive mechanisms – whether criminal, civil or administrative – that are “known by children and their representatives” and are “prompt, genuinely available and accessible”.<sup>24</sup>

29. One participant suggested that environmental impact assessments could help to bridge the silos between human rights and the environment, contributing to the protection of the right to a clean, healthy and sustainable environment. It was recommended that enforcement authorities and agencies conducting environmental impact assessments work across sectors and ministries. A good practice in that regard comes from Kenya, where the national human rights institution enjoys the legal authority to participate in environmental assessments. Concerns were raised regarding conflicts of interest in the implementation of environmental impact assessments. In many States, when government departments analyse and approve a project, they do so on the basis of information provided by the business proposing it (or consultants hired by the business). That creates a conflict of interest, raising the danger that the adverse climate, environmental and human rights impacts of a proposed project may remain hidden from the public and policymakers or may be underestimated. A second problem with certain laws on environmental impact assessments is that the State may designate certain projects as being of “national interest”, thus fast-tracking the process, minimizing the availability of information and public participation, providing swift approvals and foreclosing prospects of successful judicial remedies.

30. In the context of the domestic legal framework of India, courts generally interpret guidelines to be advisory in nature and not enforceable. It was recommended that guidelines be replaced with legally enforceable measures, such as regulations, standards or executive decisions.

31. As the discussion progressed towards solutions, an example was brought up from the context of Colombia. In 2018, 25 plaintiffs between the ages of 7 and 25, including Indigenous young persons, filed a case on the basis of a legal mechanism, the *acción de tutela*, enshrined in article 86 of the 1991 Constitution of Colombia, for the immediate judicial protection of their human rights.<sup>25</sup> In the lawsuit, they challenged the increase in deforestation in the Amazon rainforest. Ruling in favour of the plaintiffs, the Supreme Court of Justice of Colombia determined that increased deforestation in the Amazon violated the fundamental human rights of current and future generations to a healthy environment, life, food and water. In its historic judgment, the Court applied the principle of intergenerational equity and highlighted that the right to a healthy environment of present and future generations needs to be protected. The Court recognized the Colombian Amazon itself as a subject of rights, entitled to protection, conservation, maintenance and restoration by the State and local bodies.<sup>26</sup> In its judgment, the Court required the State to form a governing body comprising scientists, young people and government representatives to oversee actions intended to eliminate deforestation.

32. While participants called for strong legislation on access to information that provides for proactive and mandatory disclosure of information relating to the public interest, it was recommended that the burden of proof be reversed in cases in which communities or affected persons do not receive the relevant information from businesses and other parties involved in potential harm to the climate, the environment and human rights. In Costa Rica, there is a provision in the Biodiversity Act that shifts the burden of proof from affected persons and communities to those in possession of the relevant information. The Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement) contains a provision on the reversal of the burden of proof in certain contexts. It was recommended that such a provision be routinely included in environmental and human rights legislation.

<sup>24</sup> General comment No. 16 (2013), para. 30.

<sup>25</sup> See <https://leap.unep.org/sites/default/files/court-case/Colombia%2520-%2520Futur.pdf> (in Spanish).

<sup>26</sup> Ibid.



33. Participants highlighted that the prevention and precautionary principles, which are widely recognized in international law, should also be part of national environmental legislation. In many cases, climate and environmental damage are easily foreseeable and may be irreparable. That is true for the well-known impacts of air, water and soil pollution caused by various industrial activities. In those cases, prevention must be prioritized. In other cases, there is uncertainty about the timing, magnitude and nature of adverse climate and environmental impacts. However, where the potential risks are substantial, precautionary action is well warranted. Examples include unknown tipping points in the climate system related to the melting of ice sheets in Greenland and Antarctica, the melting of permafrost in northern peatlands, which could release vast volumes of the powerful greenhouse gas methane, and the slowdown of the Atlantic Ocean conveyor belt responsible for moderating cold temperatures in Europe.

34. Public procurement was identified as one of the areas that should be strengthened. Businesses should be required to comply with international human rights standards to be eligible to tender as part of public procurement processes. Moreover, companies could be invited to provide examples of good practices with regard to the implementation of the Guiding Principles on Business and Human Rights and the OECD Guidelines for the purpose of determining their eligibility or preferred status for public contracts.

35. In his concluding remarks, the Special Rapporteur reiterated participants' concerns about the removal of an explicit reference to the right to a clean, healthy and sustainable environment from the latest version of the draft legally binding instrument on business and human rights. He noted the mainstreaming of the right to a healthy environment into other international forums, including the Kunming-Montreal Global Biodiversity Framework, general comment No. 26 (2023) of the Committee on the Rights of the Child on children's rights and the environment, with a special focus on climate change, general comment No. 26 (2022) of the Committee on Economic, Social and Cultural Rights on land and economic, social and cultural rights, the outcome documents of the twenty-seventh and twenty-eighth sessions of the Conference of the Parties and the Bonn Declaration for a Planet Free of Harm from Chemicals and Waste. The Special Rapporteur pointed out the role of law, accounting, public relations and management consulting firms, which assist businesses in dodging environmental liabilities, greenwashing their reputations and otherwise enabling and facilitating climate, environmental and human rights harms. For example, law firms in Canada have assisted oil and gas companies in creating new corporate entities that assume environmental clean-up and remediation liabilities for oil and gas properties but have no assets (or have liabilities that far exceed their assets). When the new business entities go bankrupt, the liabilities are not passed back to the parent corporation but to the public, meaning that taxpayers are forced to pay the costs of clean-up and remediation, rather than the business.

## V. Areas of potential incremental improvement

36. The third segment focused on the short-term actions that States could take to prevent business enterprises from abusing the right to a clean, healthy and sustainable environment and included extensive discussions about the potential effectiveness of the draft legally binding instrument on business and human rights and recent examples of due diligence legislation at the regional and national levels. The segment shed light on the specific actions needed to protect the right to a healthy environment of potentially vulnerable populations (e.g. women and girls, children, members of Indigenous Peoples, people of African descent, peasants and other members of local communities, persons with disabilities, migrants, persons living in poverty and environmental human rights defenders). Earlier in 2023, OHCHR, UNEP and UNDP published a joint information note entitled "What is the right to a healthy environment?", which outlines how diverse stakeholders can play an active role in making that right a reality for all.<sup>27</sup>

<sup>27</sup> See <https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf>.

37. UNDP, in consultation with the Working Group on the issue of human rights and transnational corporations and other business enterprises, has started to develop a guide for businesses on how to carry out human rights and environmental due diligence to identify, prevent, mitigate and account for (potential) adverse impacts on the right to a clean, healthy and sustainable environment, in line with the Guiding Principles on Business and Human Rights.<sup>28</sup> Participants mentioned that some businesses view human rights discourse as an impediment to maximizing short-term profits for their shareholders and that others view human rights as a distraction from the actions needed to achieve net zero greenhouse gas emissions by 2050.

38. According to the 2023 *Global Climate Litigation Report*, the total number of climate change-related lawsuits has more than doubled, from 884 in 2017 to 2,180 as at 31 December 2022. Those lawsuits were filed in 65 jurisdictions, including with international and regional courts or tribunals, quasi-judicial bodies and other adjudicatory bodies, including arbitration tribunals.<sup>29</sup> Only a small minority of the lawsuits involve human rights arguments, although a growing number of cases are focused on breaches by corporate actors and States of human rights obligations and/or commitments to reduce greenhouse gas emissions.<sup>30</sup>

39. At a practical level, even with progressive legislation such as the proposed corporate sustainability due diligence directive of the European Union, huge gaps remain. The proposed directive, for example, is not fully aligned with the Guiding Principles on Business and Human Rights and does not include a reference to the right to a healthy environment. The text is weak on business responsibilities related to climate change and, as currently drafted, will not apply to financial institutions, creating a huge loophole. In October 2023, OHCHR issued an appeal to align the directive with all the essential elements of the Guiding Principles.<sup>31</sup>

40. Several participants suggested that all jurisdictions should incorporate the right to a healthy environment into their constitutional and legislative frameworks. Specific mention was made of the need for an additional protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) recognizing the right to a clean, healthy and sustainable environment, since Europe is the only region in the world whose human rights regime does not include the right to a healthy environment. States should strengthen the effectiveness of national human rights institutions through stronger legislation, increased financial support and an enhanced capacity to effectively monitor and evaluate business activities. In addition, it was recommended that the draft legally binding instrument on business and human rights be translated into other languages. Its availability in other languages will be valuable for communities that have been negatively affected by business operations.

41. Some participants argued that the Guiding Principles on Business and Human Rights should be considered as the floor and not the ceiling in the context of discussions about human rights and environmental due diligence legislation. The absence of the right to a healthy environment in some domestic legal systems and the latest version of the draft legally binding instrument on business and human rights could jeopardize the just transition. Participants suggested that the texts of such laws should go beyond environmental harm to include liabilities and reparation.

42. Some participants commented on how criminal legislation should not be forgotten as part of the remedies and liabilities because some types of business impacts on the climate, the environment and human rights are simply too grave. One example was the collapse of the auxiliary dam of the Xe Pian Xe Namnoy hydropower project in the Lao People's Democratic Republic in 2018, which left 71 dead and displaced thousands more through destructive levels

<sup>28</sup> See <https://www.undp.org/rolhr/consultation-hrddpluse>.

<sup>29</sup> UNEP, *Global Climate Litigation Report: 2023 Status Review* (Nairobi, 2023).

<sup>30</sup> See <https://www.lse.ac.uk/granthaminstitute/news/a-first-global-mapping-of-rights-based-climate-litigation-reveals-a-need-to-explore-just-transition-cases-in-more-depth/>.

<sup>31</sup> OHCHR, "Final call for alignment of the EU Corporate Sustainability Due Diligence Directive with the UN Guiding Principles on Business and Human Rights", October 2023.

of flooding.<sup>32</sup> It was noted during the discussion that none of those affected received any compensation, nor has there been any accountability for the parties responsible. Another example involved the breaches of two tailings dams in Brazil at mines owned by Vale in Mariana and Brumadinho. A third example was the Bhopal tragedy in India,<sup>33</sup> where a leak of a deadly pesticide caused thousands of deaths and many more illnesses. The 2008 European Union directive on protection of the environment through criminal law is being replaced following an evaluation in 2019 and 2020. A proposal has been put forward by the European Commission to establish stronger rules regarding environmental crimes.<sup>34</sup>

43. It must be recognized that individual and collective rights holders, including communities, may face threats, intimidation, harassment, violence, criminalization and even murder for trying to defend their lands, waters and human rights, including the right to a healthy environment. In India, there has been a systematic crackdown on civil society and independent voices whenever harmful practices by multinational businesses have been highlighted. There has to be an effective grievance redress mechanism that provides access to justice and effective remedies. In many States, there is a need for legislation to protect environmental human rights defenders from intimidation, violence and reprisals. In many African and Asian countries, Indigenous Peoples are not recognized, resulting in systematic violations of their rights, including their right to give their free, prior and informed consent. There is a need to acknowledge Indigenous Peoples, other nature-dependent communities and communities of African descent (e.g. Quilombolas) as vital guardians of the environment, including oceans, forests and other essential ecosystems.

44. States have duties to respect, protect and fulfil human rights, including the obligation to regulate, monitor and control the activities of business enterprises. However, when States enact legislation and regulations and monitor activities and projects, their actions to protect the climate, the environment and human rights can provoke foreign investors into misusing international mechanisms such as the investor-State dispute resolution process. In the mining and oil and gas sectors in particular, there has been an exponential growth in the number of cases being filed, the quantum of damages being sought and the magnitude of damages being awarded to foreign investors by arbitration tribunals.<sup>35</sup> That process is deeply and irrevocably flawed and ignores or minimizes the importance of human rights. When taking the strong climate or environmental actions needed to fulfil the right to a healthy environment, States are being forced to pay hundreds of millions or billions of dollars. When contemplating the advantages and disadvantages of taking the strong climate or environmental actions needed to fulfil the right to a healthy environment, States assess the risks of investor-State dispute settlement cases and sometimes back down. That phenomenon is known as regulatory chill. Denmark, France and New Zealand have all admitted to backing away from strong climate policies for fear of being sued by foreign investors. It is therefore imperative that States take action to extricate themselves from the potential liability created by investor-State dispute settlement provisions in bilateral and multilateral trade and investment agreements.

45. Participants observed that environmental justice cannot be separated from racial, economic and gender justice. Existing inequalities may prevent people with multiple, intersecting vulnerable identities from accessing any form of assistance or redress. While South-East Asia has seen a failure of national business and human rights action plans and a low uptake of voluntary measures, there have been some positive regional developments such as the Escazú Agreement in Latin America. The Agreement establishes a right of access to information and rights to participation and decision-making in environmental matters. It requires States to respect and protect environmental human rights defenders. Similar

<sup>32</sup> OHCHR, “Lao dam disaster: UN rights experts call for justice two years on”, press release, 29 April 2020, and “Lao dam disaster: UN experts decry lack of progress for survivors four years on”, press release, 22 July 2022.

<sup>33</sup> Judah Passow and Tim Edwards, “The long, dark shadow of Bhopal: still waiting for justice, four decades on”, *The Guardian*, 14 June 2023.

<sup>34</sup> Council of the European Union, “Environmental crime: Council and European Parliament reach provisional agreement on new EU law”, press release, 16 November 2023.

<sup>35</sup> See [A/78/168](#).

agreements are being considered in Africa and South-East Asia and would be positive developments for environmental democracy and human rights in those regions.

46. To ensure consistency among regions, it is important to have mandatory human rights and environmental due diligence and environmental impact assessments that are aligned with the Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. Those assessments should be intersectional and feminist and place Indigenous Peoples and other rights holders at the centre. Environmental legislation must be based on the best available scientific evidence and draw on the traditional knowledge of Indigenous Peoples and other nature-dependent communities. A recommendation was made to establish an independent body, potentially the national human rights institution, to oversee the implementation of human rights and environmental due diligence in a comprehensive manner.

47. The majority of actors working on the rights of the child use the Children's Rights and Business Principles, jointly developed by the United Nations Children's Fund, the United Nations Global Compact and Save the Children. Nearly 1 billion children are at extremely high risk of being affected by the climate crisis.<sup>36</sup> In Bangladesh, the garment sector is one of the main contributors to water scarcity and water pollution, in particular in urban areas. Inadequately treated industrial effluent contaminates surface water, affecting children and communities. According to ILO, "in the capital of Dhaka, the Government of Bangladesh has declared three rivers biologically 'dead' due to the untreated effluent entering into them".<sup>37</sup> One of the conclusions of the 10-year anniversary review of the Children's Rights and Business Principles was that businesses often focus on child labour to the exclusion of other important issues. Companies tend to focus on issues that are more visible to the public. That is not necessarily informed by evidence or any comprehensive due diligence regarding children's rights. The second conclusion was that States need to take steps to strengthen the accountability of businesses through legislation, as the Guiding Principles on Business and Human Rights alone do not provide sufficient mechanisms or assurances of accountability.

48. To improve food security in schools in Brazil, Act No. 11,947 of 2009 requires that a minimum investment of 30 per cent of the funds for the National School Feeding Programme be used to purchase food from family farmers.<sup>38</sup> It was recommended that, as a good practice, public procurement contracts for school meals and hospitals should be sourced from producers that practise agroecology and from Indigenous Peoples. That would reduce the adverse health and environmental impacts of ultraprocessed food produced and marketed by large agribusinesses.

49. States should invest in human rights awareness programmes for businesses. In terms of education, Governments could introduce the topic of human rights and the role of business enterprises in schools and universities (e.g. undergraduate business programmes and masters of business administration programmes) to develop human rights consciousness among future workers and founders of businesses.

50. As an upstream strategy to strengthen accountability, an obligation on businesses to respect the human right to a healthy environment and the full range of economic, social and cultural rights should be incorporated into constitutions and legislation in every jurisdiction. Public finance, including subsidies and other forms of incentives provided to business enterprises, must be aligned with the right to a healthy environment to discourage environmentally harmful practices. Phasing out fossil fuel subsidies could provide greater fiscal space for States to take the steps needed to make a just transition from coal, oil and gas

<sup>36</sup> United Nations Children's Fund (UNICEF), *The Climate Crisis is a Child Rights Crisis: Introducing the Children's Climate Risk Index* (New York, 2021).

<sup>37</sup> Samantha Sharpe, Monique Retamal and María Cristina Martínez-Fernández, "Assessing the impact: environmental impact assessment in the textile and garment sector in Bangladesh, Cambodia, Indonesia and Viet Nam", Working Paper No. 51 (International Labour Organization (ILO), 2022), p. 13.

<sup>38</sup> Pedro Martinez, Maria de Lourdes Saturnino Gomes and Fillipe Silveira Marini, "Public policies strengthen the relationship between family farming and food security in Brazilian schools – a case study of Paraíba state", *Heliyon*, vol. 9, No. 10 (October 2023).

to renewable energy. Several studies have shown the adverse climate, environmental and human rights impacts of financing from multilateral development banks and institutions, including the International Monetary Fund and the World Bank.<sup>39</sup> All financial flows, whether public or private, domestic or cross-border, must be made compliant with human rights obligations and responsibilities, in particular with the right to a healthy environment, as set forth in article 2 (1) (c) of the Paris Agreement.

51. Human rights focal points should be established within ministries responsible for the environment, climate change, the economy, natural resources, health and other areas. Climate finance negotiations in the context of the Conference of the Parties to the United Nations Framework Convention on Climate Change have revealed a consistent lack of understanding about the impact on human rights of financial flows, project financing, debt burdens and the difference between loans and grants.<sup>40</sup>

52. It was recommended that a connection be made between the rights of future generations and the right to a clean, healthy and sustainable environment in the context of the Summit of the Future. The call for “solidarity between people, countries and generations”<sup>41</sup> needs to go beyond mere rhetoric to include tangible actions by States and businesses to ensure the rights of future generations. An example would be revising climate and environmental laws and policies in the global North to drive reductions in energy and material use so that humanity can operate within planetary boundaries.

53. There was consensus on the need to recognize the nexus between rising inequality and businesses. For example, the average pay of a chief executive officer has risen 1,460 per cent since 1978, while the average increase for workers has been only 18 per cent.

54. Participants raised concerns about corporate impunity for environmental offences. There is evidence that businesses evaluate the probability of being caught and sanctioned against the costs of taking preventive action to reduce pollution or other adverse environmental impacts. Because the likelihood of prosecution and the size of environmental penalties are both small in most States, businesses are not motivated to reduce their impacts on the climate, the environment and human rights. In a case involving the discharge of an extremely toxic substance from a chemical manufacturing facility owned by DuPont in the United States of America, a review of internal company documents revealed that “the harmful pollution was a rational decision: under reasonable probabilities of detection, polluting was ex-ante optimal from the company’s perspective, albeit a very harmful decision from a societal perspective”.<sup>42</sup> In 2015, Volkswagen pled guilty to rigging diesel-powered vehicles through software programmed to cheat government emissions testing. However, the penalties levied on the company and executives charged with white-collar crimes were not sufficiently high to change the behaviour of the business.<sup>43</sup> Such corporate impunity points to the dangerous gaps in compliance with and the enforcement of human rights and environmental protection provisions.

## VI. Systemic and transformative changes: next steps

55. The last segment of the seminar was focused on the reforms that need to be made to the current global economic and business systems to shift their focus away from endless economic growth and maximizing shareholder profit while externalizing trillions of dollars in environmental, social and health costs. Participants tackled questions around systemic

<sup>39</sup> Isabel Ortiz and Matthew Cummins, *Austerity: The New Normal – A Renewed Washington Consensus 2010–24* (Initiative for Policy Dialogue, International Confederation of Trade Unions, Public Services International, European Network on Debt and Development and Bretton Woods Project, 2019).

<sup>40</sup> David R. Boyd and Stephanie Keene, “Mobilizing trillions for the Global South: the imperative of human rights-based climate finance”, Policy Brief No. 5 (OHCHR, 2023).

<sup>41</sup> See <https://www.un.org/sites/un2.un.org/files/our-common-agenda-summit-of-the-future-what-would-it-deliver.pdf>.

<sup>42</sup> See [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3042636](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3042636).

<sup>43</sup> United States of America, Department of Justice, “Former CEO of Volkswagen AG charged with conspiracy and wire fraud in diesel emissions scandal”, press release, 3 May 2018.

issues and whether incremental improvements are enough to ensure that everyone is going to be able to fully enjoy their right to a clean, healthy and sustainable environment.

56. The climate crisis is increasingly recognized as a human rights crisis. According to the *Adaptation Gap Report 2023*, annual financing gaps for adaptation needs are between \$194 billion and \$366 billion.<sup>44</sup> Annual loss and damage associated with the climate crisis is expected to be between \$290 billion and \$580 billion in developing countries by 2030. Obviously, there is an urgent, significant and increasing need to address the financing requirements of countries in the global South, and funding needs to come from the global North because wealthy, high-emitting States have caused the climate crisis and have the financial and technological capacity to address it.

57. In his latest policy brief, the Special Rapporteur expressed concern that 59 out of the 63 countries most vulnerable to the climate crisis were already in a situation of debt distress or were at risk of significant debt distress.<sup>45</sup> Regarding the role of the private sector, the Special Rapporteur explained that, in 2021, the share of external public debt owed to private creditors by low- and middle-income countries was 62 per cent.<sup>46</sup> At least 14 African countries spent more per capita on debt servicing than on education, health care and social protection combined.<sup>47</sup> After nearly three years of negotiating a debt restructuring agreement, efforts made by Zambia have hit an impasse, as official creditors, including China, rejected a proposed \$4 billion restructuring with private sector bondholders for not being in line with the principle of “comparability of treatment”.<sup>48</sup> That example highlights the problematic role of the private sector in debt relief efforts and the weakness of the Group of 20 Common Framework for Debt Treatments beyond the Debt Service Suspension Initiative. States are being forced to make unbearably difficult choices between their human rights obligations and debt servicing commitments.

58. Participants referred to the draft resolution entitled “Promotion of inclusive and effective international tax cooperation at the United Nations”,<sup>49</sup> tabled by Nigeria on behalf of the Group of African States, which had recently been adopted by the Second Committee at the seventy-eighth session of the General Assembly, albeit with substantial opposition from States members of OECD. The need to develop a United Nations framework convention on international tax cooperation was emphasized in the draft resolution. Participants identified that as a positive development towards curbing illicit financial flows, limiting tax avoidance and eliminating tax evasion in order to mobilize financial resources for urgent climate action fulfilling the right to a healthy environment. The need for robust processes for preventing and resolving tax disputes in an effective manner, keeping in mind that developing countries have limited resources to handle costly international dispute settlement processes, was also recognized in the draft resolution.

59. International investor-State dispute settlement mechanisms are increasingly used to threaten States and punish them for taking strong climate and environmental protection measures.<sup>50</sup> For example, an arbitration panel established pursuant to the bilateral international investment agreement between Australia and Pakistan ruled in favour of Tethyan Copper, a foreign investor, in its case against Pakistan for refusing to provide a mining licence for the development of a copper-gold mine in the Province of Balochistan.<sup>51</sup>

<sup>44</sup> UNEP, *Adaptation Gap Report 2023: Underfinanced. Underprepared. Inadequate Investment and Planning on Climate Adaptation Leaves World Exposed* (Nairobi, 2023).

<sup>45</sup> Boyd and Keene, “Mobilizing trillions for the Global South”.

<sup>46</sup> *Ibid.*

<sup>47</sup> See Bob Libert Muchabaiwa, “The looming debt crisis in Eastern and Southern Africa: what it means for social sector investments and children”, UNICEF Eastern and Southern Africa Regional Office, 2021. See also United Nations, Inter-Agency Task Force on Financing for Development, *Financing for Sustainable Development Report 2022* (United Nations publication, 2022), p. 16.

<sup>48</sup> Rachel Savage and Karin Strohecker (Reuters), “Zambia dealt major setback as official creditors object to bond deal”, 20 November 2023.

<sup>49</sup> The resolution was subsequently adopted as General Assembly resolution 78/230 of 22 December 2023.

<sup>50</sup> [A/78/168](#).

<sup>51</sup> See <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/463/tethyan-copper-v-pakistan>.



Pakistan was ordered to pay Tethyan Copper \$5.8 billion in damages, an amount that is virtually equal to all the foreign assistance in the form of loans that Pakistan received after the devastating climate-related floods in 2022. In another example, three Australian companies are seeking \$37 billion in damages from the Republic of the Congo in connection with mining projects rejected for environmental reasons. The increasing number of cases challenging States' climate and environmental actions and the magnitude of damages that countries are having to pay to foreign investors through international arbitration mechanisms is immensely worrying. Fortunately, a growing number of States, in particular in Europe and North America, are withdrawing from investment treaties and renegotiating them without investor-State dispute settlement mechanisms. States may unilaterally withdraw consent to arbitrate.<sup>52</sup>

60. According to the former Chief Executive Officer of Unilever, for businesses to be net positive, they should be responsible for all climate, environmental and human rights impacts.<sup>53</sup> Moreover, businesses should work for the long-term benefit of society. Lastly, they should create positive outcomes not only for shareholders but for all rights holders and a much greater spectrum of stakeholders. Those three elements could be achieved through revisions to corporate law. Some jurisdictions have passed legislation to enable businesses to be designated as benefit corporations, which must have a positive societal purpose and seek to generate significant benefits for a broad range of constituencies beyond shareholders. Other promising business models include cooperatives, community benefit corporations and social enterprises.

61. Social protection should be available to all individuals and communities, including informal workers, to shield them from the worsening cost-of-living crisis and from livelihood loss due to climate change-related impacts.<sup>54</sup> When implementing just transition strategies, States should ensure that the reform of environmentally harmful subsidies incorporates protection programmes for low-income households, in order to avoid regressive impacts.<sup>55</sup> There is a need for a radical transformation of international financial institutions such as the International Monetary Fund and the World Bank, which continue to prescribe harmful austerity measures as a condition of receiving loans. Policies such as cuts to government programmes, privatization of essential services (e.g. water and sanitation) and investor-friendly mining codes imposed by international financial institutions as conditions for receiving loans have been detrimental to populations in the global South.

62. The availability of concessional rates for development and climate finance are usually based on per capita GDP, which has been devastating for some small island developing States, in which a small number of wealthy individuals have pushed per capita GDP above the eligibility thresholds. The United Nations has developed a multidimensional vulnerability index,<sup>56</sup> which is a superior tool for determining whether concessional finance should be available to a particular State.

63. Participants mentioned that, because six planetary boundaries are already being breached, there is a need to shift the focus away from promoting endless economic growth for all, which should not have been included as a target of Sustainable Development Goal 8. Economic models can no longer operate on the false assumption that the Earth can continue to provide unlimited natural resources and assimilate limitless volumes of pollution and waste. There is a need to re-evaluate the prevailing economic paradigm, as has been called for by the Secretary-General and many experts. The right to development should be reconciled with the goal of achieving just transition within and between nations. GDP cannot be the only indicator used to measure progress and development but must be supplemented by more holistic measures focused on human well-being.

64. Participants engaged in an active discussion about whether States need to rethink economic growth in order to reduce the size of the global economy to fit within planetary

<sup>52</sup> A/78/168, para. 66.

<sup>53</sup> Paul Polman and Andrew Winston, *Net Positive: How Courageous Companies Thrive by Giving More Than They Take* (Boston, Massachusetts, Harvard Business Review Press, 2021).

<sup>54</sup> See A/HRC/47/36.

<sup>55</sup> See <https://www.social-protection.org/gimi/ShowProject.action?id=3046>.

<sup>56</sup> See <https://www.un.org/ohrls/mvi>.



ecological limits. The Special Rapporteur pointed out the staggering wealth gap between States such as Norway, which has an annual per capita income of \$106,000, and States such as Burundi, which has an annual per capita income of \$234, and asked how further economic growth in Norway and other wealthy States could be reconciled with ecological limits. He recalled the discussions in the 1990s in the context of climate change about “contraction and convergence”. That refers to reduced energy and material use in wealthy States and increased energy and material use in low-income States. There were contrasting views on the issues of degrowth, post-growth and steady-state economies among participants.

65. One participant noted that ongoing discussions about funding for climate-induced loss and damage are critically important and reflected on whether businesses that have caused large volumes of greenhouse gas emissions should be compelled to contribute to the newly established loss and damage fund, which received hundreds of millions of dollars in State pledges at the twenty-eighth session of the Conference of the Parties. The proposals that emerged from the fifth meeting of the transitional committee under the United Nations Framework Convention on Climate Change on the operationalization of the new funding arrangements for responding to loss and damage did not include any role for businesses.

66. The deep connections between the climate crisis, environmental degradation and human rights require States and businesses to rethink corporate governance. While business operations can have direct environmental impacts at the local level, affecting the human rights of individuals and communities living in a particular area, they can also contribute to cumulative impacts at the global level. For example, in the context of climate change and greenhouse gas emissions, a business located in Europe can contribute to drought, food insecurity and water scarcity facing households located in another region. States and businesses need guidance on how to prevent and address not only the visible local impacts on human rights resulting from environmental harms but also transnational impacts. Future revisions to climate and environmental law should establish both collective and individual liability for environmental harms. Two approaches to liability that allow for shared accountability are “contribution to risk (where multiple defendants contribute to the risk of harm but no single defendant can be proven to be the necessary cause)” and “market share liability (where responsibility is allocated according to the defendant’s share of global emissions)”.<sup>57</sup>

67. A question was raised regarding how businesses can identify rights holders and meaningfully engage with them in their human rights and environmental due diligence processes. It is crucial to note that the time-horizon for environmental impacts tends to be equal or longer than for human rights impacts and may therefore endanger the rights of future generations. Soil degradation, for example, may not be recoverable during a human lifespan. Business mistreatment of soil threatens the capacity of future generations to meet their most basic needs, including their right to food.

68. Participants agreed that corporate accountability cannot stop at due diligence. Some participants noted that due diligence was but one tool to compel businesses to prevent harm to the climate, the environment and human rights. For example, the consequences of corporate capture and the current international arbitration system cannot be addressed through due diligence requirements but require systemic and transformative changes to legislation and international investment treaties. Other wide-ranging proposals for taxing polluters and cancelling unsustainable debt were explored as solutions during the seminar.

69. Power imbalances regularly play out in public international law. Some States, despite voting in favour of recent resolutions of the Human Rights Council and the General Assembly, continue to deny that the right to a healthy environment is an internationally recognized human right. For example, the United Kingdom of Great Britain and Northern Ireland and the United States have stated that United Nations resolutions do not change the status of public international law. There is always debate about how the existence of a customary rule of international law is defined and recognized. The reality is that not only has the right to a clean, healthy and sustainable environment been recognized in a recent

<sup>57</sup> Meinhard Doelle and Sara Seck, “Loss and damage from climate change: from concept to remedy?“, *Climate Policy*, vol. 20, No. 6 (2020), p. 676.

Council resolution and a recent General Assembly resolution, with zero votes against either, but 161 States have also recognized that right in law through constitutions, legislation or regional human rights treaties.<sup>58</sup> An additional 15 small island developing States support that right, bringing the total to 91 per cent of States members of the United Nations (176 out of 193).

70. The power differentials involved in how public international law has been constituted cannot go unseen, with investor-State investment law developing on one track and human rights law developing on another. One participant mentioned that access to justice and enforceability mechanisms in international human rights law, given that domestic remedies must be exhausted, are far weaker than the mechanisms available to foreign investors, who can go directly to international arbitration tribunals, where remedies appear to be much stronger than in human rights litigation, given their enforceability in most States. Another huge structural gap in international arbitration is the failure to incorporate human rights, including rights related to public participation, access to justice and the rights of Indigenous Peoples.

71. Some participants noted that even meetings involving business representatives and civil society convened by United Nations agencies reflect power asymmetries. Furthermore, some United Nations agencies involved in various projects and plans, such as national action plans for business and human rights, which only refer to voluntary measures, must be careful not to undermine the legally binding nature of human rights obligations and responsibilities.

72. Participants expressed solidarity with Indigenous Peoples, persons of African descent, including Quilombolas, peasants and other nature-dependent local communities and environmental human rights defenders who are subjected to threats, harassment and violence and are unfairly criminalized and put in jail for resisting land grabs, water grabs and other unjust and unsustainable business activities.

73. In his concluding remarks, the Special Rapporteur urged wealthy States to begin serious conversations about post-growth economics. While there has to be economic growth that benefits the people who need advances in their material standard of living in the global South, the planet cannot afford further growth in countries such as Norway, Qatar and Switzerland, where per capita incomes are very high and ecological footprints exceed the Earth's carrying capacity. The theoretical concept of decoupling, which focuses on economic growth without increasing any material footprint has proven to be an illusion over the 50 or so years since the publication of the original study.<sup>59</sup> While there are examples of relative decoupling, where increases in energy and material use per unit of economic output are lower than in the past, there are no examples of absolute degrowth, where economic growth is accompanied by reductions in overall energy and material use.<sup>60</sup>

74. Regarding development paradigms, the Special Rapporteur cited the example of Norway as a good practice, on the basis of three key priorities established when petroleum production began decades ago. Norway put in place the highest environmental standards for the oil and gas industry, imposed the highest combined royalty and income tax rates in the world for natural resource extraction and took steps to ensure that, where environmental impacts occurred, local communities received substantial benefits from oil and gas development. That approach ensured that the majority of the benefits from petroleum development were realized by the people of Norway rather than by foreign investors. That is not the case in many States, where large extractive projects inflict devastating environmental harms on nearby communities, which receive little, if any, benefits. Having accrued enormous wealth from oil and gas, Norway now needs to lead the just transition from fossil

<sup>58</sup> See [A/HRC/43/53](#), according to which 156 States recognize that right in law. Moreover, it has recently been recognized in law by Antigua and Barbuda, Belize, Canada, Grenada and Saint Lucia.

<sup>59</sup> Donella H. Meadows and others, *The Limits to Growth: A Report for the Club of Rome's Project on the Predicament of Mankind* (New York, Universe Books, 1972).

<sup>60</sup> Tim Parrique and others, *Decoupling Debunked: Evidence and Arguments against Green Growth as a Sole Strategy for Sustainability* (European Environmental Bureau, 2019).

fuels rather than continuing to search for more oil and gas to export in today's carbon-constrained world.<sup>61</sup>

## VII. Conclusion and recommendations

75. The Special Rapporteur expresses his deep appreciation to everyone who contributed to the seminar and the present report. The following are the concrete recommendations that emerged from the seminar. States should:

- (a) **Recognize and protect the right of present and future generations to a clean, healthy and sustainable environment in constitutional, environmental and human rights law;**
- (b) **Replace non-binding normative frameworks on business and human rights with legally enforceable human rights and environmental due diligence legislation for business enterprises, including mandatory climate and environmental assessments throughout their supply chains consistent with the right to a clean, healthy and sustainable environment, with differing and proportionate requirements according to the size of the firm;**
- (c) **Explicitly include the right to a clean, healthy and sustainable environment in the draft legally binding instrument on business and human rights;**
- (d) **Increase resources dedicated to fulfilling their obligation to regulate, monitor and control industry conduct to protect human rights, including the rights of access to information and access to justice and the rights to participation, freedom of expression, association and assembly and a clean, healthy and sustainable environment;**
- (e) **Enhance strong access to information legislation that provides for the proactive and mandatory disclosure of climate, environmental, human rights and other information relating to the public interest;**
- (f) **Enact legislation on strategic lawsuits against public participation to prevent the judicial harassment of human rights defenders, journalists and others by business enterprises;**
- (g) **Ensure that all grievance mechanisms, whether judicial or non-judicial, incorporate human rights principles. States are obligated to establish child-sensitive criminal, civil and administrative mechanisms that are available, accessible and known by children and their representatives, owing to the impact of business activities and operations on the rights of the child;**
- (h) **Strengthen regional and national legal mechanisms to protect Indigenous Peoples (in line with the United Nations Declaration on the Rights of Indigenous Peoples), nature-dependent communities and environmental human rights defenders;**
- (i) **Strengthen the effectiveness of national human rights institutions through stronger legislation, increased financial support and an enhanced capacity to effectively monitor and evaluate the climate and environmental impacts of business activities on the rights of their populations;**
- (j) **End environmentally harmful subsidies for businesses, in particular fossil fuel subsidies, and repurpose those funds, along with pollution taxes, for climate and environmental action, while taking steps to prevent regressive impacts on low-income households and protect their right to an adequate standard of living;**
- (k) **Incorporate the prevention and precautionary principles into domestic environmental legislation;**
- (l) **Require businesses to comply with internationally recognized human rights standards in order to be eligible to tender as part of public procurement processes;**

<sup>61</sup> [A/HRC/43/53/Add.2](#).

(m) **Take legislative action to constrain law, accounting, public relations and management consulting firms from assisting other businesses in dodging environmental liabilities, greenwashing their reputations and otherwise enabling climate, environmental and human rights harms;**

(n) **Use the Summit of the Future to discuss the transformative changes needed to remedy the systemic problems facing today's economic system and business paradigm;**

(o) **Acknowledge that peace is a fundamental prerequisite for the universal fulfilment of human rights and achievement of sustainable development.**

76. **In order to fulfil their human rights obligations, States and businesses should build internal capacities related to climate, environmental and human rights due diligence.**

77. **Ensuring that businesses respect the right to a clean, healthy and sustainable environment is among the most important challenges facing States in the twenty-first century. States should take a rights-based approach to all climate and environmental actions, recognizing that there is no other way to achieve a just and sustainable future for all.**

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