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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Guidelines on access to justice and effective remedies in the context of toxics

**Report of the Special Rapporteur on the implications for human rights
of the environmentally sound management and disposal of hazardous
substances and wastes, Marcos Orellana***

Summary

In the present report, submitted pursuant to Human Rights Council resolution 54/10, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes examines human rights standards on access to justice and effective remedies in the context of toxics. He assesses the obstacles that victims face in accessing justice and remedies, identifies innovative strategies and good practices, and puts forward a set of 24 guidelines for overcoming those obstacles.

* The annex to the present report is reproduced in the language of submission only.



I. Introduction

1. Lack of accountability is aggravating the increasing toxification of our planet and the resulting infringements of human rights such as the rights to life, health and a clean, healthy and sustainable environment. Individuals and groups exposed to hazardous substances and wastes (hereinafter, such substances and wastes are also referred to as “toxics”¹) suffer from reproductive injustices, neurological impairments, and several types of cancer, among other serious health conditions. However, impunity is the norm, rather than the exception, for polluters and for Governments that enable toxic pollution.

2. For millions of people around the world, exposure to toxics means fear, anxiety and anguish, illness, disabilities, or a premature and painful death. However, in their struggle for justice and remedies, victims often encounter heavy obstacles that result in delays and denial of rights. Obstacles such as an unreasonable burden of proof, an inadequate statute of limitations, and financial barriers entrench impunity, exacerbate environmental injustices and undermine the preventive, restorative and compensatory functions of legal systems. These obstacles aggravate the human rights violations resulting from toxic exposures.

3. The present report and the guidelines contained herein are informed by a broad consultative process in which the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes invited and received input from States Members of the United Nations, international organizations, non-governmental organizations, Indigenous Peoples, and academics. The Special Rapporteur also organized two online consultations, held in March 2025, and an in-person consultation, held in Santa Marta, Colombia, in April 2025. The Special Rapporteur is grateful to those who shared their expertise, insights and perspectives.

II. Standards on access to justice and effective remedies

4. Access to justice and effective remedies are cross-cutting norms and essential pillars for protecting human rights and the environment, enabling individuals and communities to challenge decisions, actions or omissions that violate their rights. The General Assembly explicitly noted in 2022 that the right to an effective remedy is vital to protecting the right to a clean, healthy and sustainable environment.² In cases involving risks and harm from toxics, ensuring access to justice requires judicial and administrative mechanisms capable of enforcing rights, providing remedies for damage suffered and preventing future violations.

5. While the right of access to justice relates to the recourse available to challenge violations of rights and seek legal protection before courts, administrative agencies or other competent bodies, the right to an effective remedy relates to the meaningful and enforceable outcomes derived from said legal recourse. Without access to justice, remedies remain out of reach; without effective remedies, access to justice lacks practical impact. Both rights are mutually reinforcing and essential to upholding human rights and preventing impunity. Nevertheless, at times they are used interchangeably in the present report.

6. Guaranteeing effective remedies in toxics cases requires Governments to consider toxics’ specific characteristics and challenges. First, latency periods, that is, the time between exposure to hazardous substances and the onset of clinical manifestation of disease, may be in the order of years, decades or generations. Second, proof of causation, that is, the link between release of a hazardous substance, exposure to it, and an effect resulting from exposure, may be hard to establish with certainty. Third, scientific knowledge, that is,

¹ Consistent with the previous reports of the Special Rapporteur and his predecessors, hazardous substances and wastes are not strictly defined; they include, inter alia, toxic industrial chemicals and pesticides, pollution, contamination, explosive and radioactive substances, certain food additives and various forms of waste. For ease of reference the Special Rapporteur refers to hazardous substances and wastes as “toxics”, but the term as used in the report includes non-toxic but hazardous substances and wastes as well.

² See General Assembly resolution 76/300.

scientific information on exposure to a chemical substance, including associated risks and hazards, may be non-existent, preliminary or hard to access.

7. Guaranteeing effective remedies in toxics cases also requires consideration of the characteristics of human rights obligations. Human rights treaties have established legally binding obligations for the benefit not of contracting parties, but of all individuals subject to their jurisdiction. Accordingly, these international obligations have a collective or *erga omnes* nature, which requires that remedies not only protect victims but serve to deter violations and uphold the legal order that the treaties create.³ Thus, comprehensive remedies in toxics cases will often involve more than compensation, including cessation of releases of pollutants, non-repetition, clean-up of contaminated sites, respect for the inalienable right to truth⁴ and transitional justice mechanisms.⁵

A. International standards

8. The right to an effective remedy has been codified in international human rights treaties. In addition, soft law instruments offer standards and guidance for its implementation.

1. Global treaties

9. The right to an effective remedy is a cornerstone of international human rights law, firmly established in article 8 of the Universal Declaration of Human Rights, which affirms that all persons have the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted them by the constitution or by law.

10. The protection of this right is reinforced by international human rights treaties. The International Covenant on Civil and Political Rights requires States Parties to ensure that any person whose rights have been violated has access to an effective remedy.⁶ This includes that competent authorities determine such remedies and that they are properly enforced.⁷ In *Portillo Cáceres et al. v. Paraguay*, which concerned fumigations with hazardous pesticides and violations of the right to life and the right to private life, family and home, the Human Rights Committee also found a violation of the right to a remedy. The Committee observed that investigations had not made substantive progress and had not led to the redress of the harm suffered by the victims.⁸

11. Similarly, the International Covenant on Economic, Social and Cultural Rights, while not explicitly mentioning remedies, has been interpreted by the Committee on Economic, Social and Cultural Rights as requiring States Parties to integrate Covenant rights into their legal systems and provide appropriate means of redress.⁹ This includes ensuring that individuals have access to effective remedies when their environmental rights are violated, whether through judicial, administrative or other appropriate mechanisms.

12. Other human rights instruments also recognize the right to a remedy for specific groups. The International Convention on the Elimination of All Forms of Racial Discrimination provides for a right to effective protection and remedies against any acts of racial discrimination that violate human rights and fundamental freedoms.¹⁰ The Convention on the Rights of Persons with Disabilities requires that States Parties ensure access to justice.¹¹ The Committee on the Rights of the Child has stated that, for rights to be

³ Dinah Shelton, *Remedies in International Human Rights Law*, 2nd ed. (Oxford, Oxford University Press, 2005), p. 99.

⁴ See [E/CN.4/2005/102/Add.1](https://www.ohchr.org/en/calls-for-input/2025/call-input-access-justice-and-effective-remedies-context-toxics).

⁵ See submission by the Marshall Islands. Submissions received in response to the call for input are available at <https://www.ohchr.org/en/calls-for-input/2025/call-input-access-justice-and-effective-remedies-context-toxics>.

⁶ Art. 2 (3).

⁷ Human Rights Committee, general comment No. 31 (2004), para. 19.

⁸ [CCPR/C/126/D/2751/2016](https://www.ohchr.org/en/docd/ccpr/C/126/D/2751/2016), para. 7.9.

⁹ Committee on Economic, Social and Cultural Rights, general comment No. 9 (1998), para. 2. See also the Committee's general comments No. 3 (1990), No. 20 (2009), No. 24 (2017) and No. 26 (2022).

¹⁰ Art. 6.

¹¹ Art. 13. See also [A/75/327](https://www.ohchr.org/en/docd/a/75/327).

meaningful, “effective remedies must be available to redress violations”¹² and is drafting a general comment on children’s right of access to justice and to an effective remedy.

2. Regional treaties

13. The Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) explicitly guarantees the right to an effective remedy: “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority.”¹³ The European Court of Human Rights has offered remedies to victims in several cases involving human rights violations resulting from exposure to hazardous substances and wastes.¹⁴ The Court has also addressed the right to a fair trial in cases involving hazardous substances and access to justice. For example, in a case involving asbestos and a statute of limitations, the Court observed that, while a limitation period of 10 years to provide legal certainty is a legitimate aim, there is no scientifically recognized maximum latency period between exposure to asbestos and malignant pleural mesothelioma (pleural cancer).¹⁵ The Court has held that barring claims from persons suffering from diseases that could not be diagnosed until many years after the exposures deprives them of the chance to assert their rights before the courts.¹⁶

14. The American Convention on Human Rights requires States Parties to provide “simple and prompt recourse” for violations of fundamental rights.¹⁷ The Inter-American Court of Human Rights has interpreted this treaty as encompassing the right of access to justice, emphasizing that States must ensure effective judicial remedies and due process for individuals alleging rights violations.¹⁸ In the case of *Inhabitants of La Oroya v. Peru*, the Court addressed the severe environmental and health impacts caused by decades of toxic pollution from a metallurgical complex. It found Peru responsible for violating the right to an effective remedy because of its failure to enforce a 2006 Constitutional Court ruling in which environmental remediation had been ordered.¹⁹ In addition, the Court found that Peru had failed to investigate threats against environmental defenders, violating due process guarantees.²⁰

15. The African Charter on Human and Peoples’ Rights, while not expressly guaranteeing the right to an effective remedy, has been interpreted by the African Court on Human and Peoples’ Rights as providing for this right.²¹ The Court also observed that, in the particular context of damage caused by the dumping of hazardous waste, the obligation to provide an effective remedy under the Charter is restated in article 4 (a) of the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa.²²

3. Aarhus Convention and Escazú Agreement

16. Access to justice in environmental matters has been further developed through key agreements on human rights and the environment. The Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental

¹² Committee on the Rights of the Child, general comment No. 5 (2003), para. 24. See also the Committee’s general comment No. 26 (2023).

¹³ Art. 13.

¹⁴ See, e.g., *Cannavacciuolo and Others v. Italy*, Application No. 51567/14 and three others, Judgment, 30 January 2025.

¹⁵ *Jann-Zwicker and Jann v. Switzerland*, Application No. 4976/20, Judgment, 13 February 2024.

¹⁶ *Ibid.* See also *Howald Moor and Others v. Switzerland*, Applications No. 52067/10 and No. 41072/11, Judgment, 11 March 2014.

¹⁷ Art. 25.

¹⁸ Inter-American Court of Human Rights, Advisory Opinion OC-9/87, 6 October 1987, paras. 23 and 24.

¹⁹ Judgment, 27 November 2023, para. 302.

²⁰ *Ibid.*, para. 319.

²¹ *Harold Mbalanda Munthali v. Republic of Malawi*, Application No. 022/2017, Judgment, 23 June 2022, paras. 101 and 102.

²² *Ligue Ivoirienne des Droits de l’Homme (LIDHO) and Others v. Republic of Côte d’Ivoire*, Application No. 041/2016, Judgment, 5 September 2023, para. 154.

Matters of 1998 sets forth standards on access to justice, allowing individuals and organizations to challenge violations of environmental laws and obtain judicial or administrative remedies.²³ The Protocol on Pollutant Release and Transfer Registers (Kyiv Protocol), negotiated pursuant to the Aarhus Convention, also plays a key role by enhancing transparency and enabling accountability.²⁴

17. The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) of 2018 builds on these principles, focusing on the right to a healthy environment and including protections for environmental defenders.²⁵ The Escazú Agreement also sets out standards on access to justice, including mechanisms for redress.²⁶

4. Declarations and guidance

18. The Rio Declaration on Environment and Development of 1992 articulates the vocabulary for a new, equitable partnership for sustainable development. Its foundational principle 10 provides that: “Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.” The Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (Bali Guidelines)²⁷ of 2010 offer a road map for national legislation to enhance access to justice. The Sustainable Development Goals of 2015 further recognize the importance of providing access to justice for all (Goal 16).²⁸

19. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law of 2005 provide a comprehensive framework for ensuring effective remedies for victims. These principles emphasize that remedies must be adequate, effective, prompt and proportionate to the gravity of the harm.²⁹ While this instrument does not define its scope, many toxics cases should be understood as gross violations of international human rights law, given their scale and impacts. Toxics cases often involve widespread harm that affects whole communities and future generations, causing severe human suffering, including anguish, illness and death.

20. The Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council in 2011,³⁰ require States to provide effective access to remedy for those affected by business-related human rights abuses, through judicial, administrative or other measures. These principles are particularly relevant in the context of toxic pollution, where corporate actors often evade responsibility, leaving affected communities without redress.

21. The Association of Southeast Asian Nations Human Rights Declaration of 2012 provides for the right to an effective remedy for human rights violations.³¹

22. The framework principles on human rights and the environment of 2018 provide that “States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment”.³²

B. Components of access to justice and effective remedies

23. Access to justice in toxics cases guarantees groups and individuals the ability to seek protection of their human rights. To be effective, remedies must be accessible, enforceable

²³ Art. 9.

²⁴ See [A/HRC/57/52](#).

²⁵ Arts. 1, 4 and 9.

²⁶ Art. 8 (3) (g).

²⁷ United Nations Environment Programme (UNEP) Governing Council decision SS.XI/5 A.

²⁸ See General Assembly resolution 70/1.

²⁹ See General Assembly resolution 60/147, annex.

³⁰ Human Rights Council resolution 17/4.

³¹ Art. 5.

³² [A/HRC/37/59](#), annex, framework principle 10.

and capable of addressing the full scope of harm caused by toxic exposure.³³ Remedies must be practical and effective rather than merely theoretical.

1. Attributes

24. An effective remedy must meet several criteria to avoid being illusory: (a) adequacy: it must be capable of achieving its intended purpose; (b) accessibility: it must be both formally and materially accessible, meaning that barriers – such as excessive procedural formalities, geographical constraints, and restrictive legal standing requirements – should be removed; (c) timeliness: delays should not prolong harm or render the remedy ineffective; (d) fair distribution of the burden of proof: the burden of proof should be fairly distributed to avoid an impossible or disproportionate burden on claimants; and (e) enforceability: once a decision is reached, it should be implemented promptly and fully.

2. Interim measures of protection

25. An essential component of an effective remedy in many toxics cases is halting releases of pollutants and preventing further harm during legal proceedings. Precautionary measures, including injunctions, temporary suspensions and emergency relief, are critical tools to protect affected individuals and the environment, especially where serious or irreversible damage may occur. In this context, the precautionary principle plays a fundamental role, requiring protective action even in the absence of full scientific certainty, when there is a risk of serious or irreversible harm.³⁴

3. Due process

26. Due process is an essential component of an effective remedy. Due process requires that legal proceedings afford procedural guarantees to all parties. For example, claims for remedies must be adjudicated by an independent, impartial and competent tribunal, operating with integrity, transparency and diligence.³⁵ Specialized environmental courts can enhance the effectiveness of legal remedies in toxics cases by providing expertise and tailored procedural mechanisms.

27. Due process may also require free and independent legal and technical assistance, in particular for individuals and communities in vulnerable situations.³⁶ This aspect of due process may also involve courts ordering independent scientific and technical studies that can overcome information asymmetries.

4. Comprehensive remedies

28. Effective remedies in toxics cases must go beyond halting ongoing harm; they must provide comprehensive reparations, taking into account the following principles: (a) restitution, to restore victims, when possible, to the conditions that existed before the harm occurred (*restitutio in integrum*); (b) rehabilitation, encompassing medical and psychological care, and clean-up of the contaminated environment; (c) satisfaction, including public acknowledgment of wrongdoing and recognition of the harm inflicted; (d) compensation, to provide financial redress for both pecuniary and non-pecuniary damage; (e) investigation and sanction, to hold accountable those responsible; and (f) guarantees of non-repetition, including institutional reforms, training for public officials, public campaigns and preventive measures.

29. Comprehensive reparations should recognize and address specific situations of vulnerability experienced by women, Indigenous Peoples, children, older persons, and people

³³ United Nations Environment Programme (UNEP), *Environmental Rule of Law: Tracking Progress and Charting Future Directions* (Nairobi, 2023), p. 121.

³⁴ Rio Declaration on Environment and Development, principle 15.

³⁵ See the Bangalore Principles of Judicial Conduct (Economic and Social Council resolution 2006/23, annex).

³⁶ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), art. 8 (5).

living in poverty, among others.³⁷ In addition, toxics cases require an approach that takes into account the interconnection between communities and their ecosystems.³⁸ In this regard, remedies should be context-sensitive and capable of addressing the complexity that each case involves.

30. Human rights treaty bodies and regional human rights courts have elaborated detailed standards on comprehensive reparations, affirming that remedies must be tailored to the specific harm suffered, including in environmental spheres.³⁹ These standards also apply to non-State actors, including the activities of transnational corporations and other business enterprises.

5. Enforcement of decisions

31. Access to justice is meaningless without the effective enforcement of judicial and administrative decisions. Human rights courts have established that, to achieve full effectiveness, enforcement must be complete, thorough, comprehensive, and without delay.⁴⁰ National courts thus should be empowered to oversee compliance with their decisions and impose sanctions for non-compliance and delay.

6. Access to information and public participation

32. Effective remedies require that victims have access to environmental, health and scientific data relevant to toxics cases. Where companies are involved, information on their corporate structures is also critical.

33. Judicial, administrative and other competent bodies must have the power to request, assess and consider scientific evidence,⁴¹ including environmental impact studies, epidemiological data, expert opinions and citizen science. As the authority presiding over the legal process, the judge must have the ability to request and order the production of evidence at the request of a party or *sua sponte*, when necessary to clarify critical facts or protect fundamental rights.⁴²

34. Under human rights law, to avoid interfering with the enjoyment of human rights, States must require prior assessment of the possible environmental impacts of proposed projects and policies.⁴³ Under general international law, States must conduct a transboundary environmental impact assessment when there is a risk that an activity “may have a significant adverse impact in a transboundary context, in particular, on a shared resource”.⁴⁴ Indigenous and tribal peoples may have specific rights with respect to assessments.⁴⁵ Individuals must have access to the information developed in the course of such environmental impact assessments, including information relevant to toxics cases.

35. Similarly, meaningful participation is a critical element in ensuring effective remedies, particularly with regard to measures for satisfaction and non-repetition. Victims should have a voice in the construction of remedies,⁴⁶ and relevant stakeholders should be engaged in monitoring their implementation and enforcement.⁴⁷

³⁷ See [A/HRC/36/41](#). See also Human Rights Committee, general comment No. 31 (2004), para. 15; and Committee on the Rights of the Child, general comment No. 16 (2013), para. 31.

³⁸ See submission by the Commission for Gender Equality.

³⁹ See [CCPR/C/158](#).

⁴⁰ European Court of Human Rights, *Matheus v. France*, Application No. 62740/00, Judgment, 31 March 2005, para. 58; and Inter-American Court of Human Rights, *Mejía Idrovo v. Ecuador*, Judgment, 5 July 2011, para. 105.

⁴¹ Inter-American Court of Human Rights, *Punta Piedra Garífuna Community and its Members v. Honduras*, Judgment, 5 October 2015, para. 17 and annex II.

⁴² Supreme Court of Mexico, *Amparo en revisión* No. 307/2016, Judgment, 14 November 2018.

⁴³ See [A/HRC/25/53](#).

⁴⁴ International Court of Justice, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, *I.C.J. Reports 2010*, p. 14, at para. 204.

⁴⁵ See [A/HRC/24/41](#). See also the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 15.

⁴⁶ See [A/HRC/59/42](#).

⁴⁷ See submission by Dejusticia.

III. Barriers to access to justice and effective remedy

36. Certain legal, procedural, economic, structural and other barriers perpetuate impunity and the denial of redress for individuals and communities adversely affected by hazardous substances and wastes. These barriers can create conditions in which harmful practices are normalized and polluters evade accountability.

A. Inadequate laws

37. In many jurisdictions, legal frameworks are ill equipped to prevent toxic exposures, make polluters pay or remedy toxic harm. Where national standards on environmental quality, emissions and management of hazardous substances and wastes are inadequate, the results are legalized poisoning of people and their inability to seek remedies through legal means. Such standards are inadequate if they do not effectively protect the rights to life, health, and a clean, healthy and sustainable environment, among others.

38. Moreover, national standards are inadequate if they are not based on the best scientific evidence available.⁴⁸ International guidelines enable countries to continuously strengthen their national standards, and their observance forms part of the requisite due diligence of Governments in confronting the risks posed by hazardous substances.

39. National laws are inadequate where they result in double standards, such as industrialized countries producing for export hazardous pesticides that are prohibited for use in their own territories.⁴⁹ In addition, agricultural and rural workers often endure exploitative conditions. In countries such as Brazil and South Africa, many workers are exposed to hazardous pesticides, with no real means to assert their remedy rights through legal channels.⁵⁰

40. Laws are also inadequate if they provide exceptions for environmental and social safeguards, or their enforcement. For example, laws in Peru have exempted miners who register in a formalization process from prosecution for environmental crimes, such as the use of mercury in small-scale gold mining.⁵¹ In addition, the adverse impacts resulting from rapid mining of materials such as lithium, cobalt and rare earth elements, to decarbonize the energy matrix, including for solar and wind energy sources and energy storage technologies, are exacerbated where Governments waive environmental and social safeguards.⁵²

B. Restrictive legal standing rules

41. Restrictive legal standing rules often allow access only to individual victims of toxic exposures. These rules close the doors of justice to collective actions by communities facing systemic harm and to non-governmental organizations (NGOs) and environmental defenders who seek to safeguard diffuse environmental interests. Such restrictive standing laws fail to recognize the collective and latent nature of harm in many toxics cases, where contamination may affect entire ecosystems and populations over long periods of time.

42. Restrictive standing rules often require victims to show a direct causal link between the harm that they suffer and the source of contamination. These rules impose a heavy burden on individuals, which often results in denial of justice. Moreover, this burden is often

⁴⁸ See [A/HRC/48/61](#).

⁴⁹ See communications DEU 2/2021 and OTH 201/2021. All communications mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>. See also [A/HRC/51/35/Add.2](#) and [A/HRC/60/34/Add.2](#).

⁵⁰ See submissions by the African Centre for Biodiversity and the National Forum for Combating the Impacts of Pesticides and GMOs.

⁵¹ See Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, amicus curiae brief submitted to the Constitutional Court of Peru (2024), available from <https://www.ohchr.org/en/special-procedures/sr-toxics-and-human-rights/activities>.

⁵² See [A/HRC/54/25](#).

exacerbated by lack of baseline data, corporate control over environmental information, and disinformation.

43. In *Association Burestop 55 and Others v. France*, the European Court of Human Rights found a violation of the right to a fair trial after domestic courts denied standing to an officially recognized environmental association challenging a nuclear waste storage project.⁵³ The Court ruled that excluding the group's claim, despite its statutory environmental protection mandate, imposed a disproportionate restriction on access to justice, as nuclear risks inherently fall within such advocacy.

C. Lack of specialized judges

44. Lack of specialized judicial bodies or judges capable of handling toxics cases may result in denial of justice to the victims of toxic exposures. Judicial capacity to assess complex scientific evidence, to interpret environmental laws through a human rights-based approach, and to develop a consistent jurisprudence on environmental rights is key to overcoming obstacles to an effective remedy in the context of toxics.

D. Lack of information and limited access to scientific data

45. The lack of access to data on contaminants and contamination levels, exposure pathways and health risks,⁵⁴ combined with the absence of baseline data and independent health assessments, can fatally defeat access to a remedy for victims of toxic exposures. The withholding or manipulation of critical data by powerful actors aggravates this informational barrier.⁵⁵

46. In addition, toxics cases often involve latency periods (see para. 6 above), and lack of information during such periods further obstructs accountability and remedy. In cases involving latency periods, victims may be unaware of their exposure, the risks they face, or the long-term or intergenerational effects.

47. Similarly, lack of information in products, such as inadequate labelling of ingredients in skin-lightening products containing mercury, aggravated by misleading advertising, undermines the ability of consumers to seek accountability.⁵⁶

E. Statutes of limitation

48. Overly short statutes of limitation further obstruct access to justice, particularly in cases where the health effects of exposure take years or decades to manifest. In addition, in certain jurisdictions, limitation periods are calculated to begin from the moment when the injurious act occurs, rather than from the moment when the victims learn about the risks and harms that they have suffered. Thus, victims may be barred from seeking a remedy before they are aware of the toxic exposure and their harm from injuries, including before their birth.⁵⁷

49. In 2024, the European Court of Human Rights addressed limitations in the case of *Jann-Zwicker and Jann v. Switzerland*, involving asbestos exposure. The Court observed that, when it is scientifically proven that it is impossible for a person to know that he or she

⁵³ Application No. 56176/18 and five others, Judgment, 1 July 2021.

⁵⁴ See Amnesty International, *Injustice Incorporated: Corporate Abuses and the Human Right to Remedy* (London, 2014).

⁵⁵ See [A/HRC/30/40](#).

⁵⁶ See submission by the European Environmental Bureau and the Zero Mercury Working Group.

⁵⁷ See, e.g., High Court of South Africa, *Various Parties on Behalf of Minors v. Anglo-American South Africa Limited and Others*, Case No. 2020/32777, Judgment, 14 December 2023, para. 157 (under appeal).

suffers from a certain illness, such a circumstance should be taken into account in setting the limitation period.⁵⁸

50. In 2019, Swedish courts applied limitations in the case of *Arica Victims KB v. Boliden Mineral AB* and dismissed the victims' claims.⁵⁹ This case concerns approximately 20,000 tons of hazardous waste containing arsenic, lead and mercury shipped from Sweden and dumped near low-income housing in Chile in 1984 and 1985, causing serious health impacts.⁶⁰ The Swedish courts calculated limitations to begin from the date of export rather than from the emergence of health effects.⁶¹

F. Burden of proof

51. In many toxics-related cases, victims are required to independently establish key elements of their claims. These elements include proving the source and existence of contamination, the risks or harm suffered and the causal link between toxic exposure and bodily or other harm, among others. Such requirements are frequently impossible for victims to meet due to limited access to information, including scientific data, and other obstacles.

52. For example, in Colombia, in many cases involving glyphosate poisoning, courts have demanded costly and inaccessible technical evidence from the claimants and ultimately dismissed 96.5 per cent of complaints due to an alleged lack of proof of causation and irreversible harm.⁶² In Texas, United States of America, even when communities organize against new petrochemical plants and expansions and secure legal representation, state laws place the burden of proof on residents to demonstrate that a permit application is deficient.⁶³

G. Excessive financial burdens and litigation costs

53. Many legal systems impose financial barriers that, in practice, become significant obstacles to accessing justice in toxics cases. The prohibitive costs of litigation, including court filing fees,⁶⁴ expenses for legal representation, evidence collection and expert testimony, often impede victims from pursuing justice.⁶⁵ In addition, the practice of "loser pays" in certain jurisdictions increases financial risk, as claimants not only face the possibility of losing their case, but also of covering the opposing party's legal costs. This structural disadvantage is exacerbated by the stark inequality of arms in litigation, as corporate defendants benefit from well-funded legal teams, while victims struggle to secure adequate legal representation.

54. For example, in the *Arica* case, involving the illegal transfer and dumping of hazardous wastes from Sweden to Chile, some of the victims created a legal entity to pursue the claims of almost 800 victims before Swedish courts. Having found the victims' claims to be time-barred, this legal entity was ordered to pay the company's extensive legal costs and went bankrupt. This deprived the victims of toxic exposure from seeking a remedy for the violation of the right to a fair trial, as interpreted by the European Court of Human Rights in asbestos-related cases.⁶⁶

⁵⁸ See European Court of Human Rights, *Jann-Zwicker and Jann v. Switzerland*, Judgment, 13 February 2024. See also *Howald Moor and Others v. Switzerland*, Judgment, 11 March 2014.

⁵⁹ Court of Appeal of Upper Norrland, Case No. T 294-18, Judgment, 27 March 2019.

⁶⁰ See communication SWE 2/2021.

⁶¹ See submission by Jonas Ebbesson.

⁶² See submission by Center for Reproductive Rights.

⁶³ See submission by Fenceline Watch.

⁶⁴ See submission by Centre for Health Science and Law.

⁶⁵ See submission by Haiti.

⁶⁶ See European Court of Human Rights, *Jann-Zwicker and Jann v. Switzerland*, Judgment, 13 February 2024. See also *Howald Moor and Others v. Switzerland*, Judgment, 11 March 2014.

H. Undue delay

55. Prolonged legal proceedings, administrative inaction and intentional stalling tactics frequently result in undue delay, depriving victims of timely access to justice and effective remedy. These delays prolong suffering, erode evidence and undermine the credibility of judicial and reparatory processes. They can also make courts responsible for denial of justice.

56. In the case of the Bhopal disaster in India, which involved a catastrophic gas leak at a pesticide plant owned partly by Union Carbide Corporation, a United States-based company, circa 15,000 claims from children affected by the disaster were not registered until years later, following intervention by the Supreme Court of India. Even though children were among the most severely affected by the gas leak, they automatically received the lowest compensation amounts.⁶⁷ Similarly, while over 40 years have passed since the catastrophic gas leak in Bhopal, Union Carbide has evaded criminal prosecution, allegedly with the support of the Government of the United States, which has failed to effectively cooperate with India.⁶⁸

I. Geographical distance and linguistic barriers

57. Geographical and linguistic barriers further restrict access to justice. Many affected individuals live in remote areas, making legal recourse costly and time-consuming. Forced displacement from lands that they occupy often deprives communities of their homes and livelihoods and removes them from their places of habitual occupation, exacerbating obstacles to seeking justice or reparations. Indigenous Peoples often face additional barriers due to the lack of legal services in their languages.⁶⁹

J. Lack of recognition of extraterritorial (transboundary) obligations

58. Victims of pollution caused by a transnational corporation may seek remedies in the company's home State for a variety of reasons, such as the impossibility for class action lawsuits in the State where the damage occurred or lack of sufficient assets of the company in that jurisdiction. However, the home State of the company may not recognize extraterritorial obligations in respect of entities incorporated in its jurisdiction. This may result in barriers for transnational litigation or inter-State judicial cooperation.

59. Human rights bodies have called for recognition and implementation of extraterritorial obligations as a means to end impunity in cases where the Government of the home State is in a position to control or influence entities established pursuant to its legal system.⁷⁰ For example, in 2012, the Committee on the Rights of the Child urged Canada to adopt regulations to prevent human rights abuses against children by Canadian mining and oil companies operating abroad and to ensure access to remedies and sanctions for those responsible.⁷¹ Canada has yet to do so.

K. *Forum non conveniens*

60. Jurisdictional barriers such as the *forum non conveniens* doctrine frequently obstruct access to justice by shielding corporate and State actors from accountability. *Forum non conveniens* allows a court to decline to exercise jurisdiction where it considers that another court may be better suited to hear a case. This doctrine is part of an architecture of impunity where victims face either indefinitely delayed proceedings or are entirely deprived of a remedy.

⁶⁷ Amnesty International, *Injustice Incorporated*, p. 50.

⁶⁸ See <https://www.ohchr.org/en/press-releases/2024/12/bhopal-lingering-legacy-contamination-and-injustice>.

⁶⁹ See A/77/183.

⁷⁰ See the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights of 2011.

⁷¹ See CRC/C/CAN/CO/3-4.

61. In the Bhopal case, despite compelling evidence as to how the United States-based corporation Union Carbide supplied technology and conducted oversight of the Bhopal plant, courts of the United States effectively denied justice to the victims of the gas leak and of the ongoing environmental contamination by applying *forum non conveniens* and declining to exercise jurisdiction.⁷²

L. Sovereign immunity

62. Sovereign immunity excludes lawsuits against a sovereign State without its consent. When unqualified or abused, this doctrine leads to impunity and denial of justice.

63. Residents of Vieques, Puerto Rico, exposed to toxic contamination from military activities of the United States Navy were denied access to remedies due to the application of sovereign immunity, which barred claims against the Government of the United States. Combined with lack of State oversight and judicial mechanisms, this left victims without accountability or redress.⁷³

M. Corporate capture and corruption

64. Corporations often exploit their economic and political power to shape regulations in their favour, weaken enforcement and evade accountability.⁷⁴ Where this happens, the State apparatus is captured and placed at the service of business interests, to the detriment of the public interest.

65. Corruption further compounds corporate capture. Corruption unravels society's confidence in the judiciary and State institutions, undermining the rule of law. Corruption is thus a frontal assault on good governance and human rights, perpetuating impunity for toxic harms.

66. These corporate-State entanglements manifest in tactics such as weakening of environmental regulations and standards, selective enforcement of environmental and labour protections, illegitimate claims of trade secrecy to withhold critical toxicological data and mechanisms that shift responsibility along the supply chain.⁷⁵ Other tactics include restrictions on workers' rights, discouraging unionization and collective action that could expose hazardous conditions.

N. Strategic lawsuits against public participation

67. Strategic lawsuits against public participation are used to intimidate communities, activists, expert witnesses and legal advocates, while some companies go as far as attempting to criminalize legal actions against them in foreign courts.⁷⁶ Their goals are to entangle environmental and human rights defenders in costly proceedings that divert their attention and deplete their resources.⁷⁷ While some jurisdictions have statutes protecting against strategic lawsuits against public participation, their use is spreading.

O. Changes in corporate form and divestment

68. Companies often change their corporate structure, sell assets or divest their shares in their subsidiaries. These changes pose additional obstacles for victims of toxic exposures

⁷² See Jayanth K. Krishnan, "Bhopal in the federal courts: how Indian victims failed to get justice", *Rutgers University Law Review*, vol. 72, No. 3 (Spring 2020).

⁷³ See submission by the International Human Rights Clinic at Santa Clara University School of Law.

⁷⁴ See [A/77/201](#).

⁷⁵ See [A/HRC/33/41](#).

⁷⁶ See submission by the Alliance for Land, Indigenous and Environmental Defenders.

⁷⁷ See [A/79/362](#).

seeking remedies. At times, these changes respond to market forces and commercial decisions; at other times, they serve to evade accountability.

69. For example, local communities have raised concerns behind the creation by DuPont of Chemours, denouncing the spin-off as an attempt to evade liability for the perfluoroalkyl and polyfluoroalkyl substances contamination in North Carolina, United States. That state's Attorney General has filed a lawsuit to void certain corporate transactions between DuPont, Chemours and related companies that, it argues, are designed to shield billions of dollars in assets from the state and others whom the companies knew were damaged by their conduct.⁷⁸ Similarly, divestment by multinational oil companies active in the Niger Delta – such as Shell, Eni, TotalEnergies and ExxonMobil – of their onshore oil assets or local subsidiaries, without ensuring environmental clean-up and financial provisions for future liabilities, is aggravating water contamination, leaving oil spills unaddressed, and causing lasting harm to individuals and communities, thus obstructing and perhaps even preventing remedies for toxic pollution.⁷⁹

P. Limitations in scope of remedies

70. In many toxics-related cases, the scope of available remedies is often too limited to address the full extent of the harm caused. Legal systems often prioritize monetary compensation while overlooking essential forms of reparation, such as rehabilitation, environmental remediation and guarantees of non-repetition. Where remedies do exist, they frequently fail to respond to the long-term and collective impacts of toxic exposure, particularly for marginalized groups. Moreover, the amounts of compensation ordered by human rights courts in toxics cases has been low, considering the scale of the damage.

71. For example, in a mass tort case against Trafigura, victims of toxic pollution in Côte d'Ivoire received limited remedies through class action settlements.⁸⁰ Compensation was restricted to modest per capita payments, with no measures for environmental remediation, long-term healthcare, or disclosure of critical information. A significant portion of the settlements was also absorbed by legal fees.⁸¹

Q. Lack of enforcement

72. Weak enforcement or non-enforcement of judicial decisions and systemic impunity remain critical barriers to justice in toxics cases. Governments, whether due to lack of capacity or political will, frequently fail to enforce decisions, weakening the effectiveness and integrity of redress mechanisms. Many countries lack adequate mechanisms to implement domestic or international rulings. Even when victims secure favourable judgments, compliance with them is often evaded through delay tactics, appeals or outright refusal to act.

73. For example, in August 2023, it was decided by a popular consultation organized under the Constitution of Ecuador that the oil in Block 43 of the Yasuní National Park should be left in the ground indefinitely. This decision was given a final compliance deadline of August 2024 by the Constitutional Court. Despite the ruling, hydrocarbon extraction in Yasuní National Park has continued.⁸²

⁷⁸ See communication USA 26/2023.

⁷⁹ See, e.g., submission by Amnesty International; and Amnesty International, "Tainted sale? Why Shell's divestment from the Niger Delta must not harm human rights" (2023).

⁸⁰ See A/HRC/12/26/Add.2.

⁸¹ Court of Appeal of England and Wales (Civil Division), *Yao Essaié Motto and Others v. Trafigura Limited and Trafigura Beheer BV*, Judgment No. [2011] EWCA Civ 1150.

⁸² Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, amicus curiae brief submitted to the Constitutional Court of Ecuador, January 2025, available from <https://www.ohchr.org/sites/default/files/documents/issues/toxicwastes/activities/unsr-toxics-yasuni-Amicus-20250127.pdf>.

74. From 1999 to 2013, during and after the Kosovo⁸³ conflict, the United Nations housed displaced Romani, Ashkali and Egyptian communities in lead-contaminated camps. However, the Secretary-General has refused to afford an effective remedy to the victims, despite the findings of responsibility from the Human Rights Advisory Panel of the United Nations Interim Administration Mission in Kosovo.⁸⁴

R. Structural and intersectional discrimination

75. The harms caused by toxic exposure are not distributed equally. Historically marginalized groups are more likely to be exposed to toxic substances due to structural discrimination based on race, ethnicity, gender, disability, age, caste, social origin or economic, legal or migratory status. Laws that are discriminatory in themselves, or have disproportionate impacts, along with unequal access to information, legal representation and participation in decision-making processes, limit these groups' and their members' ability to obtain redress and perpetuate impunity and environmental injustice.

76. People living in poverty are disproportionately affected by toxic sacrifice zones, understood to be places where residents suffer devastating physical and mental health consequences and human rights violations as a result of living in pollution hotspots and heavily contaminated areas.⁸⁵ The siting of pollution sources near informal settlements and Indigenous communities often results in intolerable levels of pollution. The export of hazardous wastes and polluting industries from the global North to countries with limited environmental capacities or oversight reinforces patterns of global environmental injustice.⁸⁶

77. Indigenous Peoples experience disproportionate and differentiated impacts from barriers to justice in cases involving toxic exposure, which threaten not only their health but also their cultural integrity, territorial rights and traditional livelihoods.⁸⁷ Systemic disregard for Indigenous knowledge systems, laws and justice mechanisms, and restrictions on collective legal standing, further compound the obstacles.⁸⁸ Without procedures tailored to Indigenous Peoples' rights, languages and world views, effective redress remains largely inaccessible.

78. Women encounter specific legal and practical barriers in access to remedies that are rooted in gender inequality.⁸⁹ Female reproductive health is highly sensitive to and adversely affected by toxics, including the overwhelming quantities and variations of endocrine-disrupting chemicals found in a huge range of products. However, women and girls typically face discrimination in all spheres of their lives, frequently starting within their families and communities, which limits their capacity to seek remedy. Poverty and patriarchy together often result in fewer girls and women having access to education. This limits girls' and women's knowledge and ability to protect themselves and advocate for safer working conditions. Women also face uniquely challenging evidentiary burdens in cases involving prenatal harm and impacts on reproductive health.⁹⁰

79. Children face specific barriers in access to justice in cases of toxic exposure.⁹¹ These barriers include limited ability to exercise their rights to information and participation; the

⁸³ References to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999).

⁸⁴ See the conference room paper of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, entitled "The human right to an effective remedy: the case of lead-contaminated housing in Kosovo", 4 September 2020, available at <https://www.ohchr.org/en/documents/thematic-reports/ahrc45crp10-human-right-effective-remedy-case-lead-contaminated-housing>.

⁸⁵ See A/HRC/49/53.

⁸⁶ See Samuel Schlaefli, "Namibia's sacrificial zone: a case study of arsenic poisoning in Tsumeb", *Namibian Journal of Social Justice*, vol. 4 (November 2024).

⁸⁷ See A/77/183.

⁸⁸ See submission by the Collective Interest Legal Clinic of the Bolivian Catholic University San Pablo.

⁸⁹ See A/79/163.

⁹⁰ See submission by Mesa Técnica de Salud Ambiental y Humana.

⁹¹ See A/HRC/33/41.

absence of child-sensitive approaches to protection and reparation, taking into account their evolving capacities and best interests; inadequate access to legal representation; and lack of standing and effective mechanisms to ensure accountability and compensation from polluters, including for extraterritorial abuses.⁹²

80. In the context of toxic exposure, persons with disabilities face distinct barriers to timely and effective legal remedies.⁹³ These include restrictions on the exercise of legal capacity, such as guardianship regimes and other limitations on autonomy and self-determination; lack of accessible information and physical and communication barriers; and high evidentiary thresholds to establish a causal link between exposure and harm.⁹⁴

IV. Good practices and innovative strategies

81. Innovative strategies are being tested to overcome the barriers that impede access to justice in toxics cases. They address issues of evidence and the burden of proof, standing, specialized capacity and legal assistance, and the scope and kind of remedies available, among others. The examples below illustrate tools and trends.

A. Evidence and the burden of proof

82. To achieve meaningful access to justice in cases involving toxic substances, laws and courts are experimenting with changes in the burden of proof and requisite evidence. These innovations are confronting the asymmetries between victims and polluters, and they are proving crucial when evidence is controlled by corporations or States.

83. In 2023, the Inter-American Court of Human Rights rendered its judgment in *Inhabitants of La Oroya v. Peru*. The Court reasoned, under the right to health, that it is not necessary to prove a direct causal link between the victims' acquired diseases and their exposure to pollutants in cases where the evidence shows that: certain pollutants pose a significant risk to human health; people have been exposed to such pollutants; and the State is responsible for failing to prevent environmental pollution.⁹⁵

84. Similarly, in 2025 the European Court of Human Rights rendered its judgment in *Cannavacciuolo and Others v. Italy*, a case concerning widespread pollution caused by illegal burning and dumping of wastes. The Court reasoned, under the right to life, that the evidence of pollution and the residence of the applicants in an affected area over a considerable period of time established a serious, real, imminent risk to life, which, in turn, triggered the duty of the authorities to act. The Court did not consider it "necessary or appropriate to require that the applicants demonstrate a proven link between the exposure to an identifiable type of pollution or even harmful substance and the onset of a specific life-threatening illness or death as a result of it".⁹⁶

85. Another innovation is the reversal of the burden of proof. In the 1996 case of *Vellore Citizens Welfare Forum v. Union of India and Others*, concerning public interest litigation and pollution of water sources, the Supreme Court of India considered that the burden of proof is on the developer to show that its action is environmentally benign.⁹⁷ This reversal of the burden of proof has also guided the work of the national green tribunals of India.

86. Another innovation is the dynamic burden of proof, which adjusts burden requirements according to which party is better placed to furnish evidence. The Escazú Agreement requires Parties to adopt measures to facilitate the production of evidence of

⁹² See submission by Child Rights International Network.

⁹³ See [A/HRC/44/30](#).

⁹⁴ See submission by Nancy Marangu.

⁹⁵ Judgment, 27 November 2023, para. 204.

⁹⁶ Judgment, 30 January 2025, para. 390.

⁹⁷ 1996 AIR SCW 3399, Judgment, 28 August 1996.

environmental damage, such as the reversal of the burden of proof and the dynamic burden of proof.⁹⁸

87. Evidentiary tools, including satellite imagery, geospatial technology and on-site inspections, may be critical for demonstrating toxics harm. In the 2015 case of *Punta Piedra Garifuna Community and its Members v. Honduras*, the Inter-American Court of Human Rights analysed satellite images (taken from 1993 to 2013) to document progressive deforestation, combined with field visits that confirmed contamination.⁹⁹ This integrated approach helps to overcome evidentiary asymmetries, in particular when affected communities lack access to technical evidence or face challenges proving long-term or visually imperceptible damage.

B. Precautionary principle

88. Several human rights bodies have considered and applied the precautionary principle in their jurisprudence. For example, the Inter-American Court of Human Rights has noted that “the precautionary approach is an integral part of the general obligation of due diligence”.¹⁰⁰ The International Tribunal for the Law of the Sea, in its 2024 advisory opinion on climate change, observed that the precautionary “approach is implicit in the very notion of pollution of the marine environment, which encompasses potential deleterious effects”.¹⁰¹

89. The application of the precautionary principle by national tribunals has enabled preventive action despite scientific uncertainty. For example, the precautionary principle proved decisive in the Sterlite plant closure of 2018 in India, with public health being prioritized amid heavy metal contamination, despite conflicting studies.¹⁰² The Supreme Court of Mexico applied the principle to halt a landfill project located too close to a community, without requiring proof of actual environmental harm.¹⁰³ In a 2017 case in Colombia, the Constitutional Court suspended aerial glyphosate spraying, emphasizing that the precautionary principle must guide any activity posing significant threats to human health.¹⁰⁴

C. *In dubio pro natura*

90. The *in dubio pro natura* doctrine guides decisions toward maximum environmental protection. The Supreme Court of Argentina applied *in dubio pro natura* in a 2021 case, requiring proof of no harm for oil operations in protected areas, favouring less damaging alternatives when doubts exist.¹⁰⁵

D. Expanded legal standing

91. The recognition of broad legal standing has become a crucial tool in combating impunity in toxic pollution cases. For example, general comment No. 26 (2023) of the Committee on the Rights of the Child highlights the importance of adjusting the rules of standing to enable children to access justice in environmental matters.

⁹⁸ Escazú Agreement, art. 8 (3) (e).

⁹⁹ Judgment, 5 October 2015, para. 128.

¹⁰⁰ Inter-American Court of Human Rights, Advisory Opinion OC-23/17, 15 November 2017, para. 177. See also European Court of Human Rights, *Tătar v. Romania*, Application No. 67021/01, Judgment, 27 January 2009, paras. 109 and 120.

¹⁰¹ International Tribunal for the Law of the Sea, *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion, Case No. 31, para. 213.

¹⁰² Government of Tamil Nadu, Government Order G.O. (Ms.) No. 72, Environment and Forests Department, 28 May 2018.

¹⁰³ See submission by Mexico.

¹⁰⁴ Judgment No. T-236/17, 21 April 2017.

¹⁰⁵ *Saavedra, Silvia Graciela and Another v. National Administration of National Parks, the State and Others*, Judgment, 25 February 2021.

92. In the Americas, the Inter-American Court of Human Rights applied broad legal standing in *Inhabitants of La Oroya v. Peru* in 2024, providing remedies for the whole community exposed to hazardous pollutants.¹⁰⁶ In Colombia, the Constitutional Court has emphasized that allowing any member of an Indigenous community to file legal actions helps to overcome barriers rooted in geographical isolation, poverty and cultural diversity.¹⁰⁷ The Escazú Agreement requires States Parties to ensure broad legal standing for the defence of the environment, in accordance with national legislation.

93. The Aarhus Convention ensures that NGOs that promote environmental protection and meet national law requirements have standing to access administrative or judicial procedures to challenge the outcomes of public participation procedures or breaches of environmental laws.¹⁰⁸

94. Public interest litigation and *actio popularis* have become key mechanisms for overcoming barriers to justice in toxic exposure cases. These legal tools enable communities and civil society to confront systemic or widespread toxic pollution. For example, in the case of *Ligue Ivoirienne des Droits de L'homme (LIDHO) and Others v. Republic of Côte d'Ivoire*, involving the importation and dumping of hazardous wastes in Abidjan, the African Court on Human and Peoples' Rights dismissed an objection based on lack of locus standi, observing that "NGOs are entitled to take legal action as long as they act in the public interest".¹⁰⁹

95. Similarly, class actions are also enabling victims to confront toxic pollution. In Canada, the Superior Court of Justice of Ontario certified a class action for glyphosate exposure.¹¹⁰ Dalit organizations in Nepal have similarly mobilized to challenge environmental racism in industrial zones.¹¹¹ Other notable precedents include class actions in the United States, such as on perfluoroalkyl and polyfluoroalkyl substances and DuPont¹¹² and glyphosate and Monsanto.¹¹³

E. Transboundary justice

96. Cross-border litigation may also be essential to offer remedies to victims of toxic contamination with transnational impacts, such as those caused by extractive and other industries. For example, in 2021, a Dutch court of appeal held the Nigerian subsidiary of Royal Dutch Shell liable for oil spills and found that the parent company owed a duty of care to affected communities.¹¹⁴ Litigation in the United Kingdom of Great Britain and Northern Ireland also led to compensation for residents of Abidjan following the dumping of toxic chemicals by the multinational Trafigura.¹¹⁵

¹⁰⁶ Judgment, 27 November 2023, paras. 58 and 324.

¹⁰⁷ *Centre for Social Justice Studies et al. v. Presidency of the Republic et al.*, Judgment No. T-622/16, 10 November 2016.

¹⁰⁸ Aarhus Convention, arts. 9 (2) and (3). See also Economic Commission for Europe, *Digest of Selected Findings and Advice of the Aarhus Convention Compliance Committee* (March 2025), pp. 145–162.

¹⁰⁹ Judgment, 5 September 2023, para. 69.

¹¹⁰ *DeBlock v. Monsanto Canada ULC*, Judgment No. 2023 ONSC 6954, 8 December 2023.

¹¹¹ See submission by Global Forum of Communities Discriminated on Work and Descent.

¹¹² Communication USA 26/2023. See also Robert Bilott, *Exposure: Poisoned Water, Corporate Greed, and One Lawyer's Twenty-Year Battle against DuPont* (New York, Atria, 2019).

¹¹³ United States District Court for the Northern District of California, *In re Roundup Products Liability Litigation*, MDL No. 2741.

¹¹⁴ See Court of Appeal of The Hague, *Oguru, Efanga and Milieudefensie v. Royal Dutch Shell Plc. and Shell Petroleum Development Company of Nigeria Ltd.* (commonly referred to as *Four Nigerian Farmers v. Shell*), ECLI:NL:GHDHA:2021:132, 29 January 2021, available at: <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:GHDHA:2021:132>.

¹¹⁵ Court of Appeal of England and Wales (Civil Division), *Yao Essaie Motto and Others v. Trafigura Limited and Trafigura Beheer BV*, Judgment No. [2011] EWCA Civ 1150.

F. Legacy pollution

97. In 2025, the High Court of Justice of England and Wales ruled that claims by the Bille and Ogale communities of Nigeria against Shell for clean-up of legacy oil pollution could constitute an ongoing breach of their legal duties and should proceed to trial, even if the spills happened years previously.¹¹⁶ The Court held that “a new cause of action will arise each day that oil remains on a claimant’s land”,¹¹⁷ which in essence means that polluters cannot rely on limitation to avoid legacy pollution claims.

98. Certain States are reforming their rules on limitation in cases of environmental harm. For example, under the General Environmental Framework Act of Chile, the relevant time is calculated to begin from the “evident manifestation” of harm, instead of from the injurious act.¹¹⁸

G. Specialized environmental courts and ombudspersons

99. A growing number of countries are establishing specialized environmental courts and tribunals and green benches in general courts. In 2021, the United Nations Environment Programme documented their presence in 67 countries.¹¹⁹ These specialized environmental courts enhance expertise and capacity to effectively address toxics cases in a timely manner, and they thus promote access to justice and the environmental rule of law. Specialized judges are also more familiar with the scientific underpinnings of toxics cases, the need for innovative procedures and the importance of comprehensive remedies.

100. The environmental mobile court model of Nepal, which involves holding hearings directly within affected communities, brings justice to rural areas impacted by industrial pollution while enabling direct participation by vulnerable populations.¹²⁰

101. Ombudspersons have also proven effective in toxics cases. The Ombudsperson of Colombia documented diverse forms of contamination in a case concerning the Wayúu territories in 2015 and the glyphosate cases.¹²¹ The Future Generations Ombudsman of Hungary has taken preventive action to protect the River Danube from environmental harm, including through chemical monitoring visits and public advocacy.¹²² The environmental commissioner of Ontario highlighted the disproportionate pollution burden in areas such as “chemical valley” in Ontario. These models provide investigative powers and, in some cases, legal representation for victims.

H. Legal and technical assistance

102. Access to free or affordable legal and technical assistance is crucial for communities facing toxic exposure. Some NGOs and networks specialize in providing such assistance, and national human rights institutions could do the same. These efforts play a vital role in empowering vulnerable populations to seek justice and hold polluters accountable. Similarly, technical expertise is crucial in toxic exposure cases. For example, the Environmental Law

¹¹⁶ High Court of Justice of England and Wales, *Alame and Others v. Shell PLC and Another*, Judgment No. [2025] EWHC 1539 (KB), 20 June 2025.

¹¹⁷ *Ibid.*, para. 77.

¹¹⁸ Art. 63.

¹¹⁹ See UNEP, *Environmental Courts and Tribunals 2021: A Guide for Policymakers* (Nairobi, 2022).

¹²⁰ See submission by Medani Bhandari.

¹²¹ See, e.g., Office of the Ombudsperson, *Resolución defensorial* No. 065 of 3 February 2015; <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2Fdocuments%2Fissues%2Ftoxicwastes%2Fcfis%2Fmilitary-activities%2Fsubm-military-activities-toxics-aca-23-killen-newton-hamilton.docx&wdOrigin=BROWSELINK>; and submission by the Office of the Ombudsperson of Colombia.

¹²² See <https://nemzetisegijogok.hu/web/ajbh-en/-/statement-of-the-ombudsman-for-future-generations-on-international-danube-day>. See also Office of the Commissioner for Fundamental Rights, “Report on the Activities of the Commissioner for Fundamental Rights of Hungary and his Deputies: 2021” (2022), p. 12.

Alliance Worldwide brings together lawyers and scientists to support communities with scientific evidence in legal claims.

I. Tailored and effective remedies

103. Effective remedies in toxics cases require a comprehensive approach that extends beyond monetary compensation to include remedies tailored to the kind and extent of risks and harm to persons and nature. Public apologies, site rehabilitation and guarantees of non-repetition are essential to remedy toxic harms. Furthermore, as highlighted by the Inter-American Court of Human Rights in its advisory opinion on the climate emergency and human rights, remedies should be based on the best available science and local, traditional and Indigenous knowledge and designed and implemented in full respect of the human rights of individuals and communities involved.¹²³

104. In *Inhabitants of La Oroya v. Peru*, the Inter-American Court of Human Rights ordered a broad range of remedies, including compensation, environmental remediation, specialized, free-of-charge healthcare, including an assistance fund, stronger air quality standards informed by World Health Organization guidelines, environmental monitoring, an alert system, compliance with national laws and international environmental standards, a training programme for the judiciary, an information system containing data on air and water quality, and a resettlement plan, among other remedies.¹²⁴ However, compliance with these measures has been slow due to a lack of clarity over national competences and budgetary lines, and the restarting of the facility's operations.¹²⁵

105. In *Cannavacciuolo and Others v. Italy*, the European Court of Human Rights adopted the pilot judgment procedure, which allows it to identify structural problems and indicate measures to remedy them. Given the widespread, large-scale pollution phenomenon and the large number of people affected, the court identified general measures to address the systemic toxics problem, including a comprehensive strategy, an independent monitoring system, and an information platform, to be implemented within two years.¹²⁶

106. In *Ligue Ivoirienne des Droits de L'homme (LIDHO) and Others v. Republic of Côte d'Ivoire*, the African Court of Human Rights ordered pecuniary and non-pecuniary reparations, including a victim compensation fund and medical and psychological assistance, investigations and criminal prosecutions, amendments to laws to ensure responsibility of corporate entities, legislative reforms to prevent future importation and dumping of hazardous wastes, and training programmes for public officials on human rights and the environment.¹²⁷

107. The Supreme Court of the Philippines, as part of a set of specialized rules intended to expedite environmental cases, created a new remedy called the “writ of kalikasan” to protect the right to a healthy environment, which has been used to protect people and ecosystems from toxic substances.¹²⁸

J. Opinion tribunals

108. Civil society-led “opinion tribunals”, such as the International Monsanto Tribunal of 2017 in The Hague, the international rights of nature tribunals, and the South African People's Tribunal on AgroToxins of 2025, have gathered evidence and articulated principles of toxics justice. Although their decisions are non-binding, these opinion tribunals contribute to raising awareness and elevating the voices of victims.

¹²³ Advisory Opinion OC-32/25, 29 May 2025, para. 559.

¹²⁴ Judgment, 27 November 2023, paras. 346–355.

¹²⁵ See submission by Asociación Interamericana para la Defensa del Ambiente and Asociación pro Derechos Humanos.

¹²⁶ Judgment, 30 January 2025, paras. 493–501.

¹²⁷ See Judgment, 5 September 2023.

¹²⁸ A.M. No. 09-6-8-SC, 13 April 2010, rule 7.

V. Conclusions and recommendations

109. The growing toxification of the planet is undermining the effective enjoyment of human rights for millions of people. It is imperative that States and businesses prevent, reduce and, where possible, eliminate exposures. However, where exposures to toxics continue to inflict harms, daunting barriers often impede access to justice and effective remedies for victims of toxic exposures. These barriers include inadequate laws, lack of information, limited legal standing, lack of legal assistance, inadequate statutes of limitation, disproportionate evidentiary burdens, prohibitive litigation costs, and lack of enforcement of judicial decisions. These barriers to justice undermine accountability and perpetuate impunity in toxics cases.

110. Addressing the barriers to justice needs to account for the characteristics of toxics cases. Latency periods may be in the order of years or decades. Proof of causation may be hard to establish with certainty. Specific scientific knowledge on pollutants or exposure pathways may be non-existent or hard to access. Toxics cases often involve widespread harm that affects whole communities and even the rights of future generations, and concern severe human suffering, including anguish, illness and death.

111. International human rights instruments at the global and regional levels establish obligations and standards on access to justice and effective remedies. They provide that an effective remedy must be adequate, accessible, timely and enforceable. They also underline the role of interim measures of protection, due process, and comprehensive remedies, which involve more than compensation, including cessation of pollution and clean-up of contaminated sites. However, these obligations and standards are too often honoured in the breach, leaving countless individuals and communities, who suffer from toxic exposures, without a remedy.

112. Still, Governments are experimenting with innovative strategies to overcome the barriers to justice in toxics cases. Broadened standing, dynamic burden of proof, collective actions, accessible legal and technical assistance, cross-border litigation, specialized courts, and comprehensive remedies demonstrate that tools exist to improve access to justice. Promoting and adapting these tools and practices to national contexts is essential to uphold human rights of victims of toxic exposures.

113. The Special Rapporteur puts forward the following set of guidelines on access to justice and effective remedies in the context of toxics:

- (a) Guideline 1. States should fully implement their international human rights obligations pertaining to access to justice and effective remedies in the context of toxics;
- (b) Guideline 2. States should adopt or strengthen national standards on environmental quality, emissions and management of hazardous substances and wastes, in line with international standards and the best available scientific evidence;
- (c) Guideline 3. States should ensure that victims and their representatives have access to all the information needed to present claims for human rights violations resulting from toxic exposures, including requisite health and scientific information;
- (d) Guideline 4. States should ensure that their courts are empowered to request, receive and consider independent scientific evidence, including epidemiological data and expert opinions, and amicus curiae briefs;
- (e) Guideline 5. States should ensure that victims and their representatives have access to accessible and culturally appropriate legal services that can assist them in seeking justice for toxic wrongs and related human rights violations;
- (f) Guideline 6. States should ensure that victims, their representatives and NGOs enjoy broad legal standing to pursue cases involving hazardous substances and wastes;
- (g) Guideline 7. States should guarantee an enabling environment to victims and environmental defenders in their work in defence of human rights, free from

threats, violence and harassment. Courts should identify and dismiss strategic lawsuits against public participation quickly, and impose appropriate sanctions on claimants in such lawsuits;

(h) Guideline 8. States should relieve victims from the burden of proving a causal connection between exposure to hazardous substances and resulting risks or harm, in cases where evidence shows people have been exposed to hazardous substances capable of resulting in deleterious effects;

(i) Guideline 9. States should ensure that their courts apply a dynamic burden of proof, placing the onus of proving a fact on the party that is better placed to do so or possesses the relevant information;

(j) Guideline 10. States should ensure that their legal systems allow for collective actions, class actions, actions on behalf of children and future generations and other tools that can address widespread or long-term toxic impacts;

(k) Guideline 11. States should ensure that any statute of limitations does not impede access to justice and effective remedies or result in impunity. This may involve making statutes of limitations inapplicable in cases involving toxic exposures, calculating the time as beginning from the moment a victim learns or should have learned of the harm or risk, and extending the amount of time prior to claims being barred;

(l) Guideline 12. States should establish specialized environmental courts or tribunals, or green benches in general courts;

(m) Guideline 13. States should implement training programmes on human rights and the environment for judges and others involved in the administration of justice;

(n) Guideline 14. States should ensure that their judicial institutions are free from conflict of interest and corporate capture;

(o) Guideline 15. States should recognize and implement their extraterritorial obligations and control or influence the overseas conduct of businesses registered or domiciled in their jurisdiction, such as through legislation requiring due diligence and enabling transboundary remedies;

(p) Guideline 16. States should cooperate to enable transnational access to justice, including with respect to gathering and admitting evidence and enforcing decisions;

(q) Guideline 17. States should apply the *forum non conveniens* doctrine in a manner that does not risk impeding access to justice;

(r) Guideline 18. States should establish monitoring mechanisms on the implementation of judicial and administrative decisions in toxics cases and ensure their effective, prompt and full enforcement;

(s) Guideline 19. States should ensure that their courts have the ability to offer comprehensive remedies, including restitution, compensation, satisfaction, investigation, rehabilitation, cessation and guarantees of non-repetition, in cases involving toxic exposures;

(t) Guideline 20. States should ensure that their courts are equipped to offer remedies based on the best available science and local, traditional and Indigenous knowledge;

(u) Guideline 21. States should ensure that victims and their representatives have a voice in the construction of remedies and engage relevant stakeholders in monitoring their implementation and enforcement;

(v) Guideline 22. States should ensure that their courts address cases involving toxic exposures in a prompt manner, disallowing dilatory and other tactics that result in undue delay;

(w) **Guideline 23.** States should ensure that their courts prioritize prevention of toxic harms and apply the precautionary principle in cases involving scientific uncertainty;

(x) **Guideline 24.** States should ensure that their courts account for intersectional vulnerabilities and discrimination in granting remedies to victims of toxic exposures.

Annex

United Nations documents cited in the report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana, entitled “Guidelines on access to justice and effective remedies in the context of toxics”

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- Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, “Extractive industries and indigenous peoples” ([A/HRC/24/41](#))
- Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, “Mapping report” ([A/HRC/25/53](#))
- Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Başkut Tuncak, on the right to information on hazardous substances and wastes ([A/HRC/30/40](#))
- Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, on the impacts of toxics and pollution on children’s rights ([A/HRC/33/41](#))
- Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes ([A/HRC/36/41](#))
- Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, on the framework principles on human rights and the environment ([A/HRC/37/59](#))
- Report of the Office of the United Nations High Commissioner for Human Rights, “Analytical study on the promotion and protection of the rights of persons with disabilities in the context of climate change” ([A/HRC/44/30](#))
- Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana, “Right to science in the context of toxic substances” ([A/HRC/48/61](#))
- 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, with the collaboration of Marcos Orellana, “The right to a clean, healthy and sustainable environment: non-toxic environment” ([A/HRC/49/53](#))
- Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana, “Visit to Italy” ([A/HRC/51/35/Add.2](#))
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Marcos Orellana, “The toxic impacts of some proposed climate change solutions” ([A/HRC/54/25](#))

- Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana, “Pollution information portals: strengthening access to information on releases of hazardous substances” ([A/HRC/57/52](#))
- Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Elisa Morgera, “The imperative of defossilizing our economies” ([A/HRC/59/42](#))
- Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana, “Visit to Samoa” ([A/HRC/60/34/Add.2](#))

II. General comments of the human rights treaty bodies

- Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States Parties’ obligations
- Committee on Economic, Social and Cultural Rights, general comment No. 9 (1998) on the domestic application of the Covenant
- Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights
- Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities
- Committee on Economic, Social and Cultural Rights, general comment No. 26 (2022) on land and economic, social and cultural rights
- Committee on the Rights of the Child, general comment No. 5 (2003) on general measures of implementation of the Convention
- Committee on the Rights of the Child, general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights
- Committee on the Rights of the Child, general comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change
- Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States Parties

III. Other United Nations documents

- General Assembly resolution 60/147, entitled “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”, of 16 December 2005
- General Assembly resolution 70/1, entitled “Transforming our world: the 2030 Agenda for Sustainable Development”, of 25 September 2015
- General Assembly resolution 76/300, entitled “The human right to a clean, healthy and sustainable environment”, of 28 July 2022
- Economic and Social Council resolution 2006/23, entitled “Strengthening basic principles of judicial conduct”, of 27 July 2006
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- Note by the Secretary-General, transmitting the report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana, entitled “Gender and hazardous substances” ([A/79/163](#))
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- Human Rights Committee, “Guidelines on measures of reparation under the Optional Protocol to the International Covenant on Civil and Political Rights” ([CCPR/C/158](#))
- Human Rights Committee, *Portillo Cáceres et al. v. Portugal* ([CCPR/C/126/D/2751/2016](#))

IV. Communications¹

- DEU 2/2021
- SWE 2/2021
- OTH 201/2021
- USA 26/2023

¹ All communications mentioned in the present annex are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.