

Environmental Justice

Securing our right to a clean, healthy and sustainable environment



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Summary

We are facing a triple planetary crisis of climate change, biodiversity and ecosystem loss, and pollution. This triple planetary crisis impacts the full enjoyment of human rights (including social, economic and cultural rights as well as civil and political rights) both directly and indirectly. These interlinked crises act as threat multipliers, amplifying conflicts, tensions and structural inequalities, and forcing people into increasingly vulnerable situations. Environmental threats, as they intensify, will constitute one of the greatest challenges to human rights in our era and are already contributing to people being left behind in the quest to achieve sustainable peace and development, increasing environmental injustices. The COVID-19 pandemic has further aggravated this scenario and has exposed deep inequalities in the distribution of wealth and resources, in the delivery of basic services, in the equitable access to justice and security for all, and in the promotion and protection of human rights.

The United Nations Development Programme (UNDP) has considerable experience with rule of law, human rights and access to justice, including legal empowerment and legal aid. This work includes environmental and climate justice issues such as: constitutional reform and support for the right to a clean, healthy and sustainable environment, and other environmental rights; development and implementation of environmental and climate change laws, as well as policies such as Nationally Determined Contributions (NDCs); supporting national human rights institutions (NHRIs) on issues related to the environment; and increasing access to information, public participation and access to justice on environmental matters.

This technical report forms the basis for a new UNDP strategy for engaging in environmental justice as an integrated and collaborative effort that brings together the rule of law, human rights, governance and nature, climate and energy workstreams (and others as relevant). For the purposes of this paper, environmental justice is conceptualized as the goal of promoting justice and accountability in environmental matters, focusing on the respect, protection and fulfilment of environmental rights, and the promotion of the environmental rule of law.

The report presents a comprehensive technical framework for this strategy, and summarizes insights and key findings from an extensive process that included a desk review of existing materials related to environmental justice within UNDP, and interview-based consultations with colleagues across relevant UNDP teams¹ (including Regional Hubs and Country Offices). The interviews focused on identifying current initiatives related to environmental justice as well as entry points and suggestions for further interventions in this area. This paper also summarizes findings on priority areas for programming and policy support to inform an integrated and future-oriented approach to environmental justice.

This report includes three main sections:

- The introduction contextualizes how the global environmental crisis presents challenges for human rights and the rule of law, and conversely how these elements should be key components of any response to addressing this crisis by promoting environmental justice.
- An overview of a three-pronged approach for UNDP's environmental justice work:
 - Establishing legal frameworks at national and international levels, applying innovative and human rights-based approaches (HRBA)² for respecting, protecting and fulfilling environmental rights, notably the right to a clean, healthy and sustainable environment and other human rights affected by the planetary crises.
 - Strengthening people-centred and effective institutions, especially those related to justice and human rights, to ensure they are accessible to all populations within their purview, and are equipped to monitor, enforce and implement environmental law, as well as promote the environmental rights of current and future generations.

1 The primary UNDP teams involved in the consultation process were the Rule of Law, Security and Human Rights Team in the Crisis Bureau, the Governance Team and Nature, Climate and Energy Teams in the Bureau for Policy and Programme Support (BPPS). Others consulted include Country Offices in Africa, Arab Region, Asia and Latin America, as well as colleagues in Regional Hubs in these areas.

2 United Nations Sustainable Development Group, "Human Rights-Based Approach", available at: <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>, accessed December 2021.

- Increasing access to justice and legal empowerment in environmental and climate change matters, so that people can be active players in combatting the planetary crises by enforcing, claiming and defending their environmental rights, and directly contribute to policy change.
- The last section summarizes key entry points and future opportunities which may yield a comprehensive strategic offer for environmental justice work. This includes consolidating best practices and lessons learned from UNDP's ongoing environmental justice work to inform increased support to this portfolio through Phase IV of the Global Programme, and build strategic partnerships with key actors in this and related areas.



Introduction

Scope and aims of this paper

This technical paper forms the basis of a new UNDP strategy for engaging in environmental justice. The paper presents a comprehensive framework for this strategy, and summarizes insights and key findings from an extensive process that included a desk review of UNDP's existing work and materials related to environmental justice, as well as interviews and consultations within the rule of law, human rights, governance and nature, climate and energy workstreams. This paper also reflects regional and country-level perspectives. The interviews focused on identifying current initiatives related to environmental justice, as well as entry points and suggestions for interventions in this area. This paper summarizes findings on areas for priority programming and policy support to inform a future-oriented and integrated approach on environmental justice.

This paper includes three sections: an introduction that contextualizes how the current environmental crisis presents key challenges for human rights and the rule of law, and conversely how these elements should be a key part of the response to such crisis in order to promote environmental justice. The second section presents an overview of UNDP's work on environmental justice thus far. The third and last section summarizes entry points and possible future opportunities for consolidating UNDP's environmental justice offer. The paper proposes thematic areas and activities that can form a technical offer for environmental justice interventions by UNDP Country Offices (COs).

Context: the triple planetary crisis and challenges for human rights



A clean, healthy and sustainable environment is considered a foundation of human life. However, as noted by the United Nations High Commissioner for Human Rights, human action – and inhuman inaction – have brought us to a “triple planetary crisis” of climate change, pollution and nature loss that has a direct and severe impact on a broad range of human rights, including the rights to adequate food, water, education, housing, health, development, and even life itself.³

The pressures humanity exerts on our planet⁴ have become so strong that scientists argue the Earth has entered a new geological epoch, the Anthropocene: the age in which humans have become a dominant force rivaling the forces of nature in the balance of our environment. Scientists warn that we have been crossing all the planetary boundaries that are a precondition for our own survival, raising the question of what are the non-negotiable planetary preconditions that humanity needs to respect in order to avoid the risk of catastrophic environmental change globally?⁵ The Anthropocene calls for just transformations in the way we live, work and cooperate, as well as new social norms, improved incentives and working with nature whilst respecting and promoting human rights.⁶

3 Michelle Bachelet, UN High Commissioner for Human Rights, statement at the 48th session of the Human Rights Council, 13 September 2021.

4 It should be acknowledged that historically, and in part to this day, certain societal groups and countries have contributed to a much greater extent than others to these crises, which constitutes an environmental justice challenge in itself.

5 Stockholm Resilience Centre, “The nine planetary boundaries” (accessed in December 2021). The nine planetary boundaries highlighted are: the climate system, stratospheric ozone depletion, the integrity of the biosphere (including loss of ecosystems and biodiversity), ocean acidification, atmospheric aerosol loading, land-system change, freshwater use, biogeochemical flows (nitrogen and phosphorus flows to the biosphere and oceans) and pollution from ‘novel entities’.

6 United Nations Development Programme, *Human Development Report 2020: Human Development and the Anthropocene* (New York, USA, 2020).

As emphasized in UNDP's Strategic Plan 2022-2025, only development within these planetary boundaries will enable humanity to tackle the central challenges of the Anthropocene, including mitigating and adapting to climate change, protecting biodiversity and ecosystems, addressing pollution and waste, and ensuring just and equitable development which leaves no one behind.⁷

Climate change is a prime example of the consequences that occur when a planetary boundary is crossed. Highlighted as the defining challenge of our time,⁸ climate change poses significant risks and has severe impacts. The Fifth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) noted already in 2014 that the human influence on the climate system is clear, driven largely by economic and population growth since the pre-industrial era, and being extremely likely the dominant cause of the observed warming of the planet since the mid-20th century. The same report warned of the need to keep global warming below 2°C to avoid catastrophic consequences for people and the planet.⁹ In 2021, the IPCC confirmed that there is increasing evidence of human-induced climate change affecting many weather and climate extremes in every region across the globe.¹⁰ Extreme and harsh climatic events already taking place are putting strong pressures on people in every region, forcing millions into misery, hunger and displacement.¹¹ Impacts affect all people, but the

consequences are most acutely felt by populations that are already in vulnerable or marginalized situations. Importantly, a new report from the World Meteorological Organization (WMO) warned that global warming of 1.5°C within the next five years has become extremely likely, jeopardizing the achievement of the goals of the Paris Agreement.¹² This will have devastating consequences, as climate-related risks to health, livelihoods, food security, water supply, human security and economic growth are projected to increase with global warming of 1.5°C.¹³

The interlinked planetary crises act as threat multipliers, amplifying conflicts, tensions and structural inequalities, and forcing people into increasingly vulnerable situations. Indeed, environmental threats, as they intensify, will constitute one of the greatest challenges to human rights in our era.¹⁴ The COVID-19 pandemic further aggravates this scenario, exposing deep inequalities in the distribution of wealth and resources, in the delivery of basic services, in the promotion of justice and security, and in the protection of human rights.¹⁵ Extreme poverty is rising for the first time in two decades, with more than 100 million people having been pushed into poverty due to the COVID-19 pandemic.¹⁶ Recovery measures and poverty reduction efforts are therefore urgent challenges – however, solutions must be pursued within planetary boundaries, and centered on equity and human rights.

7 United Nations Development Programme, *Strategic Plan 2022-2025*, (New York, USA, 2021), p. 3.

8 United Nations, "Secretary-General's remarks on Climate Change", 10 September 2018, available at: <https://www.un.org/sg/en/content/sg/statement/2018-09-10/secretary-generals-remarks-climate-change-delivered>, (accessed December 2021).

9 IPCC, "Summary for Policymakers", in *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, (World Meteorological Organization, Geneva, Switzerland, 2018), p. 4.

10 IPCC, "Headline Statements from the Summary for Policymakers" in *Climate Change 2021: The Physical Science Basis, Working Group 1 contribution to the for the Sixth Assessment Report*, (Cambridge University Press, 2021).

11 UNHCR, "Climate Change and Disaster Displacement", available at: <https://www.unhcr.org/climate-change-and-disasters.html> (accessed December 2021). The article also notes that hazards resulting from the increasing intensity and frequency of extreme weather events, such as abnormally heavy rainfall, prolonged droughts, desertification, environmental degradation, or sea-level rise and cyclones are already causing an average of more than 20 million people to leave their homes and move to other areas in their countries each year.

12 World Meteorological Organization (WMO), *United in Science 2021: A multi-organization high-level compilation of the latest climate science information*, (WMO, United Nations Environment Programme (UNEP), Intergovernmental Panel on Climate Change (IPCC), United Nations Educational, Scientific and Cultural Organization (UNESCO), Intergovernmental Oceanographic Commission (IOC), Global Carbon Project, 2021).

13 IPCC, "Summary for Policymakers", in: *Global Warming of 1.5°C. An IPCC Special Report, on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, (World Meteorological Organization, Geneva, Switzerland, 2018), p. 9.

14 Michelle Bachelet, UN High Commissioner for Human Rights, statement at the 48th session of the Human Rights Council.

15 United Nations General Assembly, A/76/235. Seventy-sixth session, Item 86: The rule of law at the national and international levels. Strengthening and coordinating United Nations rule of law activities: Report of the Secretary-General, 26 July 2021.

16 United Nations Department of Economic and Social Affairs, "UN report finds COVID-19 is reversing decades of progress on poverty, healthcare and education", (New York, 7 July 2020).

These challenges require the pursuit of environmental justice as a key priority, with the respect, protection and fulfillment of human rights and the promotion of the rule of law¹⁷ as intrinsically intertwined efforts. The United Nations 2030 Agenda and Sustainable Development Goal (SDG) 16 emphasize the need to build peaceful, just and inclusive societies that are based on respect for human rights (including the right to development), on effective rule of law and good governance and on transparent, effective and accountable institutions that provide equal access to justice for all. The United Nations Secretary-General's Call to Action for Human Rights¹⁸ also addresses these issues, with a focus on the rights of future generations, especially related to climate justice. The Call to Action highlights, among other matters, the need to increase UN support for the promotion of the right to a clean, healthy and sustainable environment, and for access to justice and effective remedies for environment-related concerns; protection mechanisms for human rights defenders and environmental activists; and strengthening the UN partnership with the business sector to address environment protection and climate change.

Recent developments have further clarified the critical connection between human rights and environmental protection and justice:

- In October 2021, the Human Rights Council (HRC) adopted a landmark resolution on the human right to a clean, healthy and sustainable environment,¹⁹ providing historical recognition of the right at international level. Of note, the resolution highlights that this right is key to the enjoyment of all other human rights, reaffirms that States have the obligation to respect, protect and promote human rights, including in actions undertaken to address environmental challenges, and encourages cooperation between States, UN agencies and other related stakeholders to promote the implementation of the right.²⁰
- At the United Nations Framework Convention on Climate Change (UNFCCC) COP26 in November 2021, the Glasgow Climate Pact was adopted, finalizing the rulebook of the Paris Agreement. COP26 outcomes included important issues for climate justice such as decisions on gender and climate change, loss and damage, and human rights reporting requirements on matters related to article 6 of the Paris Agreement (e.g. carbon markets and other voluntary cooperative approaches).²¹
- The High-Level Segment of the UN Biodiversity Conference 2020 adopted the Kunming Declaration on 'Ecological Civilization: Building a Shared Future for All Life on Earth'. The declaration emphasized that biodiversity, and the ecosystem functions and services it provides, supports all forms of life on Earth and underpin human and planetary health and well-being, economic growth and sustainable development. Further, the declaration highlighted the commitment of parties to the Convention on Biological Diversity (CBD) to enhance the global environmental legal framework and to strengthen and enforce environmental law at national level, to protect biodiversity and to respect, protect and promote human rights obligations with respect to biodiversity protection measures.²²
- The release of the UN Guidance Note on the Protection and Promotion of the Civic Space, which includes many references to environmental defenders and the critical importance of expanding and protecting the civic space.²³

17 The rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated. The rule of law requires a comprehensive legal framework that is consistent with international human rights norms and standards. United Nations, *Guidance Note of the Secretary General: UN Approach to Rule of Law Assistance*, April 2008.

18 António Guterres, United Nations Secretary-General, *The Highest Aspiration: A Call to Action for Human Rights*, (United Nations publication, 2020).

19 Human Rights Council, Resolution 48/13 on the Human Right to a Clean, Healthy and Sustainable Environment, A/HRC/RES/48/13, October 2021.

20 Other important developments in the field of human rights related to environmental justice include: the establishment of a new Special Rapporteur on Human Rights and Climate Change; HRC Resolution 40/11 which recognizes the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development.

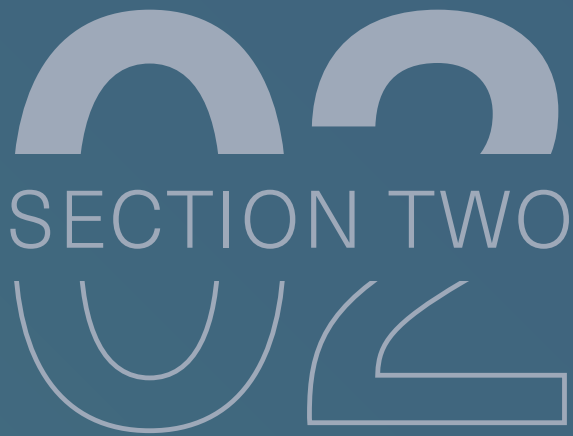
21 United Nations Development Programme, "UN Climate Change Conference 2021 – COP26: UNDP Summary and Analysis" (2021). For a broader summary of discussions on human rights outcomes at COP26, see the Global Network for Human Rights and the Environment (GNHRE), "GNHRE Blog Series: Human Rights at COP26", (29 November 2021).

22 Kunming Declaration from the High-Level Segment of the UN Biodiversity Conference 2020 (Part 1) under the theme: "Ecological Civilization: Building a Shared Future for All Life on Earth", (2021).

23 *United Nations Guidance Note: Protection and Promotion of Civic Space*, (United Nations publication, September 2020).

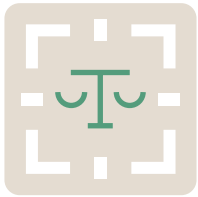
- > At the regional level, the ratification and entry into force of the 'Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean' (the 'Escazú Agreement'), the first environmental human rights treaty in Latin America and the Caribbean and innovative in many ways.²⁴

24 United Nations Guidance Note: Protection and Promotion of Civic Space, (United Nations publication, September 2020). First, it has a specific provision on environmental human rights defenders (HRDs) that is unprecedented in the region; second, it enshrines a rights-based approach toward indigenous peoples and vulnerable populations, with provisions to favour access to information, participation and access to justice by these groups; third, it responds to the spirit of the United Nations' (UN) Guiding Principles on Business and Human Rights regarding companies' specific obligations to respect human rights in the context of their activities. "Escazú: the work of civil society made a huge difference", Civicus, 12 February 2019.



Why strengthening
the rule of law and
human rights matters for
environmental justice?

Current challenges for environmental and climate justice



The environmental justice movement continues to evolve and expand in the context of the planetary crisis. Historically, environmental justice was related to concern that environmental risks and hazards disproportionately

affected societal groups in the most vulnerable and less empowered contexts and countries.²⁵ Traditionally, conceptualizations of environmental justice focus on the “accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs related to the impacts of ecological change on the poor and vulnerable in society”.²⁶ Towards the 1990s the environmental justice movement expanded its focus on social inequalities, such as disparities between environmental conditions experienced by the richest and poorest sectors of society.²⁷ Accordingly, environmental justice is often understood to seek the equitable treatment and involvement of people of all races, cultures, nations, and socioeconomic backgrounds in the development, implementation, and enforcement of environmental programs, laws and policies.²⁸

Our current challenges require a broader conceptualization of environmental justice, with a focus on human rights. Take, for instance, the implications of climate change, which represent one of the biggest global challenges currently faced by humankind. The risks and impacts arising from climate change are already leading to a series of human rights violations

and situations of injustice from generational (intra and inter) and international perspectives:

- The impacts of climate change are disproportional: developing and least developed countries appear to be most affected, despite contributing the least to the causes of climate change. Similarly, disadvantaged and vulnerable groups are hit the hardest having less means to cope and adapt, including children and young people; the elderly; indigenous peoples and local communities (IPLCs); refugees and those displaced by natural disasters; economically disadvantaged people; and women and girls. For example, women are recognized to be more severely affected by climate change (due to factors such as having limited access to natural resources such as land), while often having less ability to access remedies.²⁹
- Climate change has caused (and will increasingly lead to) the loss of livelihoods, housing and jobs, as well as parts of territories in some countries. In many places, climate change has severely affected agriculture and resulted in food insecurity.
- Changing climatic conditions are also linked to internal and cross-border migration;³⁰ and exacerbated conflict over access to natural resources.³¹

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- 25 These include, for instance, indigenous and color communities, especially in the context of 1970's in the USA.
- 26 Kishan Khoday and Leisa Perch, “Green Equity: Environmental Justice for more Inclusive Growth”, International Policy Centre for Inclusive Growth, *Research Brief No. 19*, (Bureau for Development Policy, United Nations Development Programme and the Government of Brazil, May 2012, p. 1).
- 27 Carolyn Stephens and Chris Church, “Environmental Justice and Health” in *International Encyclopedia of Public Health*, 2nd Edition, Quah SR and Cockerham WC eds. (Elsevier Inc, 2017, pp. 499-506).
- 28 While there is no binding definition of environmental justice at international level, this definition is taken from the United States Environmental Protection Agency, available at: <https://www.epa.gov/environmentaljustice>, (accessed December 2021).
- 29 UN WomenWatch, “Fact Sheet: Women, Gender Equality and Climate Change”, available at https://www.un.org/womenwatch/feature/climate_change/downloads/Women_and_Climate_Change_Factsheet.pdf, (accessed December 2021).
- 30 Of note, a recent decision by the Human Rights Committee opened the possibility for future refugee claims based on the threat to life posed by climate change. UN Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016 *, **, ***, CCPR/C/127/D/2728/2016, 23 September 2020.
- 31 Leanne McKay, “Beyond the Pandemic: the Justice Emergency”, paper for the UNDP Global Programme on Strengthening the Rule of Law and Human Rights for Sustaining Peace and Fostering Development, [PLACEHOLDER TO HYPERLINK WHEN AVAILABLE], p. 11. The connection between climate change and violent conflict is noted, though, as indirect, multi-dimensional and context-specific.

These issues raise important considerations regarding equality, equity and fairness between and within nations and generations, including (but not limited to):³²

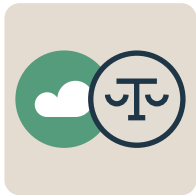
- Intra and intergenerational equity in the environmental context, including the realization that degradation of environmental conditions has been mostly led by industrialized countries, and its impacts more acutely experienced by developing countries which contributed the least to such degradation.
- Distributive environmental justice: the notion that environmental benefits and burdens should be distributed fairly and in a way that does not contribute toward further marginalization of vulnerable groups, from both intra and intergenerational perspectives, within and among nations.
- Corrective justice for environmental harm, including compensation mechanisms, access to justice and effective remedy, and legal empowerment.
- Procedural fairness in environmental issues, requiring open, transparent and inclusive decision making, and access to information at national and international levels.

- The idea of justice for the environment, as something to be protected in its own right.³³
- Finally, the consideration of sustainability as a condition for justice: although justice is primarily a human-centric concept, it must be viewed in a context of ecological sustainability given the interdependence between man and nature.³⁴

The challenges related to addressing environmental justice, including climate justice,³⁵ require equitable solutions and the respect, protection and fulfillment of human rights in the context of climate change mitigation and adaptation, biodiversity conservation and pollution control efforts. Examples include the protection of land and tenure rights of indigenous peoples in efforts to enhance protected areas and forest coverage for climate mitigation purposes;³⁶ rights of youth, children and future generations with regards to climate impacts;³⁷ and ensuring public participation and access to information for all in society with regard to climate change policy and decision making, as well as access to justice for human rights violations caused or triggered by the changing climate and environmental degradation. Another important aspect is the need to promote just transitions to a low emissions and sustainable economy, and equity in reaching global net-zero emissions by the middle of the century, as required by the Paris Agreement (PA). This requires not only an enabling legal framework, but also adherence to the rule of law, and the respect of human rights.³⁸

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- 32 Gabriele Bolte, Andrea Pauli, and Claudia Hornberg, "Environmental Justice: Social Disparities in Environmental Exposures and Health: Overview" in *Encyclopedia of Environmental Health*, Volume 2, Jerome O. Nriagu ed. (Elsevier, 2011, pp. 459-470).
- 33 It should be noted, in this regard, the emergence of concepts such as the rights of nature, and broader conceptions of 'ecological justice' or 'earth law'. On this topic, see Mihnea Tănăsescu *Understanding the Rights of Nature: A Critical Introduction*, (Transcript Publishing, 2022).
- 34 Duncan French, "Sustainable development and the Instinctive Imperative of Justice in the Global Order" in *Global Justice and Sustainable Development*, Duncan French ed. (Brill, Leiden/Boston, 2010, pp. 1-35).
- 35 While there is no internationally binding definition of climate justice, it might be understood to link "human rights and development to achieve a human-centred approach, safeguarding the rights of the most vulnerable people and sharing the burdens and benefits of climate change and its impacts equitably and fairly and based on legally defined standards and thresholds". Mary Robinson Foundation on Climate Justice, "Principles of Climate Justice", available at <https://www.mrfcj.org/principles-of-climate-justice/>, (accessed in December 2021). See also the "Bali Principles of Climate Justice", available at: <https://www.corpwatch.org/article/bali-principles-climate-justice>, (accessed in December 2021).
- 36 Reliefweb, "Human rights must be at the heart of UN plan to save the planet – expert", (Geneva, 19 August 2021). Available at <https://reliefweb.int/report/world/human-rights-must-be-heart-un-plan-save-planet-expert>.
- 37 See High Level Committee on Programs (HLCP), Chair's Paper on HLCP future areas of work, Forty-second session, CEB/2021/HLCP42/CRP.1, 10 September 2021.
- 38 Christina Voigt and Felipe Ferreira, "'Dynamic Differentiation': The Principles of CBDR-RC, Progression and Highest Possible Ambition in the Paris Agreement" in 5 *Transnational Environmental Law*, vol. 5, special issue 2, (October 2016), pp. 285-303.

Elements of an initial UNDP approach for environmental justice



In light of the above, for the purposes of this paper, environmental justice is conceptualized as the goal of promoting justice and accountability in environmental matters,³⁹ focusing on the respect, protection and fulfilment of environmental rights,⁴⁰

and the promotion of the environmental rule of law.⁴¹ Further, this paper proposes a three-pronged approach for engaging in environmental justice:⁴²

- Establishing enabling legal frameworks⁴³ at national and international levels, applying innovative and human rights-based approaches (HRBA)⁴⁴ for respecting, protecting and fulfilling environmental rights, notably the right to a clean, healthy and sustainable environment, but also other human rights affected by the planetary crises.
- Strengthening people-centred and effective institutions, especially those related to justice and human rights, to ensure they are accessible to all populations within their purview, and are equipped to monitor, enforce and implement environmental law, as well as promote the environmental rights of current and future generations.
- Increasing access to justice and legal empowerment in environmental and climate change matters, so that people can be active players in countering the planetary crises by enforcing, claiming and defending their

environmental rights, and directly contribute to policy change.

These three areas of intervention are expanded upon in the following sections and form the basis for a new UNDP strategy for engaging in environmental justice as an integrated and collaborative effort. This effort brings together the rule of law, human rights, governance and nature, climate and energy workstreams (and other components as relevant) of UNDP. In this way, the environmental justice portfolio will align to complement and strengthen UNDP's existing areas of work while strengthening its position as a relevant stakeholder in this sphere.

Establishing enabling legal frameworks for environmental justice

WHY IT MATTERS?



To promote environmental justice and achieve the SDGs and global biodiversity and climate change goals, enabling legal frameworks at national and international levels are of foremost importance.

While policy goals have a relevant role in setting the agenda for environmental justice challenges and solutions, legal frameworks create binding rules and accountability mechanisms for enforcement; create

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- 39 Important to note, in this regard, that today's justice challenges require going beyond the punishment of those who commit 'wrongs', and the making of 'rights', but also accountability and responsibility of all persons to eradicate persisting structures of inequality, and an enabling environment where "societal systems and institutions not only respect the rights of all people, but are responsible for actively ensuring their protection and promotion today and in the future". Leanne McKay, "Beyond the Pandemic – The Justice Emergency", UNDP (forthcoming 2022).
- 40 Environmental rights can be defined as "**rights related** to the environment" and comprise both i) **substantive rights**: those in which the environment has a direct effect on the existence or the enjoyment of the right itself; and ii) **procedural rights**: those that prescribe formal steps to be taken in enforcing legal rights. UN Environment Programme, "What are environmental rights?", available at <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what>, (accessed in December 2021).
- 41 United Nations Environment Programme, *Environmental Rule of Law: First Global Report*, 2019.
- 42 These elements were first explored in United Nations Development Programme, *Environmental Justice: Comparative experiences in legal empowerment*, June 2014.
- 43 A legal framework may include many subsystems, such as formal state laws, customary and traditional practice or laws, religious legal systems or international law. It is understood here to include constitutional and other legislation, strategies and policy, rules and regulations.
- 44 United Nations Sustainable Development Group, "Human Rights-Based Approach", available at: <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>, (accessed December 2021).

the institutions that will enforce and implement such rules; and empower people to seek justice when these frameworks are not upheld. This means a change of perspective – from policy promises which have low accountability, to identified duty bearers and rights holders with greater legal certainty and accountability. Indeed, human rights - including the right to a clean, healthy, and sustainable environment - have a key role to play in increasing enforceability and justiciability of environmental justice claims. Further, legal frameworks are a key element for the ‘environmental rule of law’, holding “all entities equally accountable to publicly promulgated, independently adjudicated laws that are consistent with international norms and standards for sustaining the planet”.⁴⁵

Through Phase IV of the Global Programme, UNDP works to promote legal frameworks and underlying norms and practices which are inclusive and non-discriminatory. This enables people to have greater agency and opportunities to know and claim their rights, solve disputes and seek redress for rights violations, including on matters related to environmental justice.⁴⁶

PROPOSED AREAS OF INTERVENTION:

1. Supporting the respect, protection and fulfillment of environmental rights

The respect, protection and fulfillment of environmental rights, at national and international levels, is a powerful tool for enhancing the protection of the environment and addressing environmental justice. While the full enjoyment of human rights depends upon a healthy environment, environmental protection is strengthened by the exercise of human rights.⁴⁷ Consideration for the respect, protection and fulfillment of environmental rights and conversely the protection of human rights in environmental conservation policies and measures,⁴⁸ is

UNDP's [Guidance note on constitution making support \(2014\)](#) and forthcoming guidance on fundamental constitutional rights emphasize the importance of environmental rights and justice and include strategies and good practices to constitutionalize environmental rights and establish institutions in a manner most likely to realize the essence of the rights themselves. UNDP also provides support to countries undergoing constitutional reform processes to assist them achieving their stated goals vis-à-vis environmental justice.

of great importance. As an example, failure to prevent and control toxic contamination due to intensive use of pesticides by commercial farms has been recognized by the UN Human Rights Committee as a violation of indigenous people's right to traditional lands.⁴⁹

The right to a clean, healthy and sustainable environment is recognized both at international level by the Human Rights Council (HRC), as well as at national level in more than more than 155 States in some form (e.g. through international or regional agreements, national constitutions, legislation or policies).⁵⁰ At the international level, the human rights implications of environmental degradation and climate change are already being considered by various human rights mechanisms, such as the Universal Periodic Review (UPR). It is expected that the HRC Resolution will make it more straightforward for UN human rights bodies to examine States' compliance with their human rights obligations related to the environment; to provide support and assistance to States in promoting such compliance; and to support environmental human rights defenders, strengthening their legitimacy and putting pressure on States to increase their protection.⁵¹ A noteworthy case related to the human right to water and sanitation demonstrates that such international recognition of human rights can also

45 United Nations Environment Programme, *Environmental Rule of Law: First Global Report*, 2019, p. 8.

46 UNDP Global Programme Phase IV project document.

47 United Nations Human Rights Special Procedures, *Framework Principles on Human Rights and the Environment*, 2018, p. 5. Indeed, it is recognized that while environmental harm interferes with the enjoyment of human rights, the exercise of human rights helps to protect the environment and to promote sustainable development.

48 United Nations Human Rights Special Procedures, *Policy Brief No. 1: Human-rights based approaches to conserving biodiversity: equitable, effective and imperative*, August 2021. Such cases include, e.g., the rights of indigenous peoples and peasants to land and natural resources which might be affected by biodiversity conservation measures such as the establishment of protected areas (or what is considered 'fortress biodiversity conservation').

49 United Nations Human Rights, "Paraguay: Failing to prevent contamination violates indigenous people's right to traditional lands – UN Human Rights Committee", (Geneva, 13 October 2021).

50 Human Rights Council, Resolution 48/13 on the Human Right to a Clean, Healthy and Sustainable Environment, A/HRC/RES/48/13.

51 Currently, UN human rights bodies' involvement in environmental issues depends on the link between environmental impacts and other rights – for example, they could look at whether the right to adequate housing has been violated through deforestation, or whether the right to health is threatened by failure to tackle air pollution. The creation of a Special Procedure on Climate Change and Human Rights is also being considered, formal recognition would also make it easier for the UN to support states in improving their performance on environmental issues.

spark positive developments at national level.⁵²

Further, at national level, the right to a clean, healthy and sustainable environment (in different variations of nomenclature) has had a proven positive environmental impact in many countries where it was legally enshrined in constitutions or legislation.⁵³ It is therefore important to support the harmonization of international law (e.g. the HRC Resolution) and national laws; the effective implementation and enforcement of the right in countries where it is already recognized; and support the recognition of this right by a larger group of countries into their domestic legal frameworks, including through constitutional and legal review and reform.⁵⁴

Moreover, it should be noted that while there is no internationally agreed definition of the contours of right to a clean, healthy and sustainable environment, it is generally understood⁵⁵ to include a set of:

- > **procedural rights:** access to justice, access to information and public participation on environmental matters; and
- > **substantive rights:** related to clean air, a safe climate, healthy ecosystems and biodiversity, safe and sufficient water, healthy and sustainably produced food, non-toxic environments (pollution).

Each of these issues requires an enabling legal framework including the recognition of respective rights (e.g. the right to food or the right to water and sanitation), as well as enabling legislation for the

In **Viet Nam, the UNDP Country Office (CO) provided support to the Government** in the revision of the Environmental Law, in order to include the rights of local communities to participate in Environmental Impact Assessment procedures.

implementation and enforcement of such rights. Supporting the realization of the right to a clean, healthy and sustainable environment includes, therefore, also addressing these underlying issues.

2. Setting innovative approaches for the realization of environmental rights

The consideration of innovative normative approaches as increasingly reflected in constitutions and jurisprudence from various countries and regions, such as:

- > The rights of future generations, which have been enshrined, in some form, in 41 percent of all constitutions worldwide as of 2021;⁵⁶ this includes the rights of future generations to be protected from the harmful impacts of climate change.⁵⁷
- > The rights of nature, which provide an important framework for the protection of the environment, evolving from the traditional view

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- 52 United Nations Human Rights, "10th Anniversary of the Recognition of Water and Sanitation as a Human Right by the General Assembly: Statement by the Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation, Leo Heller", 28 July 2020, accessed in December 2021. In that case, since the recognition of the right through a General Assembly Resolution, several countries have updated their legal frameworks to reflect water and sanitation as human rights, including in national constitutions and legislation; courts in several countries have issued decisions reflecting the recognition of water as a human right; autonomous regulatory bodies for water and sanitation services have been created in several countries; and civil society organizations and grassroots movements have leveraged this recognition to strengthen their efforts in this area.
- 53 Reliefweb, "UN must recognize the right to a healthy environment", (Geneva, 14 September 2021). Available at <https://reliefweb.int/report/world/geneva-un-must-recognize-right-healthy-environment>.
- 54 Grantham Research Institute on Climate Change and the Environment, "The 11 nations heralding a new dawn of climate constitutionalism", 2 December 2021. These studies reveal that while creative judicial action has been driving the use of broad environmental protections in national constitutions in climate litigation, while efforts of constitution-makers to ensure that constitutions drive and reflect the need for climate action still receive less attention.
- 55 Human Rights Council, Right to a healthy environment: good practices – Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/43/53, 30 December 2019.
- 56 Renan Araújo and Leonie Koessler, "The Rise of the Constitutional Protection of Future Generations" in *Legal Priorities Project Working Paper Series No. 7*, (September 30, 2021). In terms of jurisprudence, a landmark case already from 1993 in the Supreme Court of the Philippines recognized future generations as "legal persons".
- 57 Reuters, "Vanuatu to Push International Court for Climate Change Opinion", (25 September 2021). In September 2021, it was reported that Vanuatu would seek an advisory opinion from the International Court of Justice on the rights of present and future generations to be protected against negative impacts of climate change. The Court has yet to respond, and such an opinion would not be legally binding. Should the Court issue a favorable opinion, however, it would represent an important milestone in efforts to link the rights of future generations to climate change.

of its utilitarian value to humanity;⁵⁸ this has important implications, as the full enjoyment of human rights is strongly dependent of a healthy environment as stated above. However, careful consideration is needed to avoid conflicts between human rights and rights of nature, so that these are mutually reinforcing and not conflicting.

3. Enacting laws and regulations for equitable natural resource management

Laws and regulations can enable the equitable and sustainable management of the environment and natural resources, including land, water,⁵⁹ minerals, biodiversity and forests, while ensuring the respect and protection of human rights of populations that depend on these resources. Currently, 176 countries have 'environmental framework laws' that are being implemented by hundreds of agencies and ministries. Other examples include legal instruments in 187 countries that require environmental impact assessments for projects affecting the environment, and legislation in at least half of the countries of the world guaranteeing access to information environmental information.⁶⁰ Further, laws and regulations addressing disaster risk reduction and management, including early warning systems, should also be established as climate and environment-related migration and forced displacement will only increase.

4. Establishing legal and policy frameworks for climate change action

Research has shown that an overarching framework of climate laws and policies can drive more ambitious climate change action.⁶¹ National 'framework climate change legislation',⁶² a trend nowadays,⁶³ share many features such as legally binding greenhouse gas (GHG) emission reduction targets, GHG emission budgets, review systems and independent institutions to support decision making. Notably, to date 39 jurisdictions have enshrined a net-zero GHG emissions target in legislation.⁶⁴ Rights to equitable access to information and inclusive public participation in the formulation and implementation of climate change legal and policy frameworks (including NDCs) should also be encouraged.

UNDP's **Climate Promise** is the world's largest offer of support for the enhancement of countries' climate pledges, supporting Nationally Determined Contributions (NDCs) and working to address climate justice through a rights-based approach, which also focuses on procedural justice, intergenerational equity and gender equality.

- 58 Kishan Khoday and Leisa Perch, "Green Equity: Environmental Justice for more Inclusive Growth", International Policy Centre for Inclusive Growth, *Research Brief No.19*, (Bureau for Development Policy, United Nations Development Programme and the Government of Brazil, May, 2012). Available at <https://www.academia.edu/4082133>. See also, in this regard, the 'Universal Declaration on the Rights of Mother Nature'. As examples of jurisprudence, in 2018 a Supreme Court of Colombia's ruling recognized the Amazon as an entity with rights. IUCN, "Colombian Supreme Court Recognizes Rights of Amazon River Ecosystem" (20 April 2018).
- 59 See forthcoming RoLSHR guidance on constitutional rights also address right to water and food.
- 60 United Nations Environment Programme, *Environmental Rule of Law: First Global Report*, 2019, p. 2.
- 61 Shaikh Eskander and Sam Fankhauser, "Reduction in greenhouse gas emissions from national climate legislation" in *Nature Climate Change* 10, pp. 750–756, (13 July 2020).
- 62 Defined as a "law or regulation with equivalent status, which serves as a comprehensive and/or unifying basis for climate change policy, addressing multiple aspects or areas of climate change mitigation or adaptation (or both) in a holistic, overarching manner". Grantham Research Institute on Climate Change and the Environment, Globe (the Global Legislators Organization), and the Inter-Parliamentary Union, *The 2015 Global Climate Legislation Study: A Review of Climate Change Legislation in 99 Countries Summary for Policy-makers*, (2015, p. 12).
- 63 See, for an updated mapping, Grantham Research Institute on Climate Change and the Environment, "Climate Change governance, legislation and litigation", available at: <http://www.lse.ac.uk/GranthamInstitute/research/survey-of-climate-legislation-globe/> (accessed in December 2021).
- 64 Kelly Buchanan, "New Law Library Report Lists Countries with Legislation Establishing a 'Net Zero' Emissions Target", Library of Congress, 2 November 2021. Available at: <https://blogs.loc.gov/law/2021/11/new-law-library-report-lists-countries-with-legislation-establishing-a-net-zero-emissions-target/> (accessed in December 2021).

Another important legal measure is the regulation of the energy and “agriculture, forestry and land use (AFOLU)” sectors,⁶⁵ which account to the majority of GHG emissions globally. Such regulations should include provisions for establishing how relevant sector stakeholders will enable climate change mitigation and adaptation, as well as just transitions to low carbon and greener economies, while respecting human rights.⁶⁶

5. Incorporating legal provisions for gender equality and the protection of vulnerable groups

It is essential to ensure gender equality and equal treatment for all individuals, enshrined in law, including to guarantee equal access to rights and services related to the environment and natural resources, with special attention for vulnerable and disadvantaged groups.⁶⁷ As an example, climate change has uneven impact on women, including on their livelihoods and jobs, while often women have unequal ability to secure tenure of natural resources, particularly access to land and land rights. UNDP estimated⁶⁸ that by the end of 2021, in Southern Asia there would be 118 women aged 25 to 34 living in extreme poverty for every 100 men. By 2030 this number is expected to increase to 121 women living in extreme poverty for every 100 men. With no measures undertaken, this will be further aggravated by pressure and impact of the triple planetary crisis.

Further, the protection of the rights of IPLCs is also of great importance, as they are responsible for the management of a large proportion of natural resources worldwide, but often face severe challenges to have their rights respected. A key aspect, in this regard, is the enactment of equitable and fair rules guaranteeing respect and protection of tenure rights of land and natural resources to all legitimate tenure rights holders⁶⁹, which are important elements leading to more sustainable natural resource management.

6. Strengthening the accountability of the private sector for environmental justice

Regulating business activities as they relate to the environment and human rights is of particular importance. Businesses often have a large environmental footprint – for instance, one hundred businesses⁷⁰ known as “carbon majors” are responsible for 71 percent of GHG emissions since 1988⁷¹ - which has also a strong impact on human rights.

The UN Guiding Principles on Business and Human Rights (UNGPR), endorsed by the Human Rights Council in 2011, provided international recognition that companies are also responsible for their impact on human rights, not only nationally but also in international human rights law. The UNGPR affirm that States are the primary duty bearers and have an obligation to protect human rights from harm by businesses, while businesses have a responsibility to respect human rights. Thus, businesses, their operations and supply chains must be held

UNDP's growing portfolio on business and human rights (BHR) is well placed to expand its scope to include advocacy and programme interventions to encompass environment related violations of human rights committed by businesses. In [Thailand the National Action Plan](#) on BHR includes environmental considerations, e.g. to review, amend, revise and propose laws, regulations and measures regarding land management, water resources and climate that are affected by business operations, and laws that affect community rights through the participation process; and promote the enforcement of laws requiring the undertaking of Environmental Impact Assessments. This work is carried out in collaboration with the Ministries of Agriculture, Natural Resources and Environment and of Industry.

65 Fabiano de Andrade Correa and Christina Voigt, “The Paris Agreement and Net-Zero Emissions: What Role for the Land Sector?” in *Carbon & Climate Law Review*, Volume 15, Issue 1, (2021).

66 The Office of the Special Rapporteur on Human Rights and the Environment is developing new guidelines for human rights-based approaches to recovery, conservation and climate finance, and is working with member States to support a just transition to a sustainable, human rights based economy.

67 The OHCHR includes among these most vulnerable groups: indigenous peoples, women, children, migrants and internally displaced persons, and persons with disabilities. United Nations Human Rights, “Fact Sheet No. 38: Frequently Asked Questions on Human Rights and Climate Change”, (2021).

68 United Nations Development Programme, “COVID-19 will widen poverty gap between women and men, new UN Women and UNDP data shows”, 2 September 2020 (accessed in December 2021).

69 See, in this regard, Food and Agriculture Organization of the United Nations “Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forest in the Context of National Food Security”, 2012.

70 United Nations General Assembly, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, A/74/161, 15 July 2019.

71 Ibid.

accountable for their impact on the environment and climate. For the past ten years, the UNGPs have set expectations and provided a blueprint for businesses' policies and processes. These principles have also guided and defined the efforts of activists, non-governmental organizations (NGOs), lawyers, businesses and States working to ensure corporate consideration of human rights impacts.

As a particularly relevant area, UNGP 17 states that businesses should carry out "human rights due diligence" in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, including in relation to the environment. This should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Mandatory human rights due diligence is increasingly enshrined in legislation at national, regional and international levels. While efforts have mostly emerged in member states of the Organisation for Economic Cooperation and Development (OECD), they are considered promising in regulating business conduct with a global reach. Regulatory options range from disclosure requirements to broader mandates such as those included in the French Law on the Duty of Vigilance of Parent and Outsourcing Companies passed in 2017, the first national measure to legislate corporate human rights due diligence across sectors and issues.⁷²

7. Ensuring implementation and enforcement of environmental legislation

The areas outlined above provide examples of where an enabling legal framework might contribute to increased environmental justice and could be considered for programming. However, the enactment of legislation is not enough. The First Global Report on the Environmental Rule of Law stressed⁷³ that despite the widespread global presence of environmental laws, implementation and enforcement is irregular, incomplete and ineffective. In many instances, the laws that have been enacted are not effectively implemented (for example, by lacking clear standards or the necessary mandates). In some cases, there is no culture of environmental compliance or there is a lack of political will, coupled with a perception that environmental rules will slow down or impede development.

Additionally, the fact that many environmental laws are based on legislation from other countries without accounting for local circumstances and needs presents a challenge. Accordingly, it is critical to not only support enactment, but also the implementation and enforcement of environmental legislation. Robust efforts to raise awareness and disseminate public information about environmental laws, their functions and benefits, and overall contributions to environmental justice should also be made.

Strengthening people-centred and effective institutions to deliver environmental justice

WHY IT MATTERS?



People-centred and effective institutions are key to ensuring the rule of law, the respect, protection and fulfilment of human rights and access to justice also in environmental matters. Institutions provide not only clear and measurable rules and standards but also serve as mechanisms for effective implementation, compliance and enforcement. Independent, effective and transparent institutions can support the fight against corruption and make policy and budget planning transparent and rigorous, while enabling public participation and access to information.⁷⁴

In Lebanon, UNDP implements the '**Environment and Energy (E&E) Programme**', which works with the Government to provide policy support for more effective environment and energy management; this includes projects and activities such as e.g. i) Sustainable Development and Environment to meet the requirements of international environmental conventions such as the Montreal Protocol, the UN Framework Convention on Climate Change and the Convention on Biodiversity; and ii) **strengthening the capacity of the Ministry of Environment** along 3 interrelated building blocks by: (i) environmental policy development in terms of laws, regulations and other policy mechanisms; (ii) mainstreaming SDGs in local development planning and programming; and (iii) MoE institutional strengthening and capacity building with a focus on environmental monitoring.

72 United Nations Human Rights Special Procedures, *Guiding Principles on Business and Human Rights at 10: Tacking Stock of the First Decade*, A/HRC/47/39, June 2021, p. 9.

73 United Nations Environment Programme, *Environmental Rule of Law: First Global Report*, 2019, p. 2-8.

74 Independent Group of Scientists appointed by the Secretary-General, *Global Sustainable Development Report 2019: The Future is Now – Science for Achieving Sustainable Development*, United Nations, New York, 2019, p. 65.

Research demonstrates that strong institutions are correlated with enhanced achievement of sustainability and other development targets.⁷⁵

UNDP's work aims to ensure that institutions are people-centred, more specifically that justice and security systems, services and institutions better understand and respond to people's problems and needs, enabling greater access and inclusion. Further, UNDP works to enhance the independence and efficiency of institutions related to justice and human rights (such as constitutional courts and Ombudsperson Offices), which helps to ensure the ability of these institutions to better discharge their functions. In turn, these efforts build the institutional capacity to protect and fulfill environmental rights and deliver environmental justice.

To promote environmental justice, the capacity of key institutions at national level in environmental and sustainable development matters, including climate change, biodiversity, and natural resources laws and regulations, must be strengthened.⁷⁶ This is of great importance to enhance the ability of these institutions to discharge their functions and achieve better outcomes in protecting environmental rights and delivering environmental justice.

UNDP has a sizable engagement with parliaments. Many initiatives are related to climate finance, mitigating impacts of climate change and renewable energy. UNDP projects have addressed issues (in selected countries) such as creating momentum in preparing the legislative and regulatory framework necessary for promoting the use of renewable energy; ensuring members of parliament are better informed about justice and human rights considerations in climate change legislation. Similarly, UNDP support platforms in several countries for joint engagement between CSOs and parliamentarians.

However, this is a considerable challenge in practice. Institutions enforcing and adjudicating environmental laws often suffer from low capacity and are not well equipped to deal with current environmental justice challenges, neither technically nor organizationally. This

includes line ministries responsible for the environment and agriculture, but also justice sector institutions: both formal, state-authorized courts and customary, informal justice (CIJ) actors that are vitally important for the management of land and other natural resources; prosecutors and the police force, parliamentarians responsible for law making, and customary institutions, particularly in rural settings, that play a significant role in providing redress and resolving disputes of rights related to environment. Legal aid providers and paralegals suffer from similar capacity deficits.⁷⁷ These shortcomings in understanding technical details of environmental challenges and laws often lead to poor environmental justice outcomes in practice.

PROPOSED AREAS FOR INTERVENTION

1. Building legal and judicial capacity of justice sector institutions in environmental matters

It is particularly important to promote approaches to strengthen justice sector capacity in environmental matters, including (but not limited to):

- Promoting judicial independence and capacity building to support courts to become more effective and efficient in terms of access to justice and judicial case management/administration related to environmental matters, which in turn supports the institution's ability to protect/promote human and environmental rights/justice.
- Mainstreaming environmental and climate analysis in justice sector training, planning and evaluation practices.
- Providing support to judicial and oversight bodies to incorporate analysis of climate change and environmental challenges, including on the legal frameworks related to these matters.
- Improving channels of consultation for regular exchange between justice sector institutions and environmental regulatory bodies.⁷⁸
- Establishing or enhancing specialized environmental courts and tribunals which already exist in many countries.⁷⁹

75 United Nations Environment Programme, *Environmental Rule of Law: First Global Report*, 2019, p. 38.

76 Organisation Internationale de Droit du Développement (IDLO), *Doing Justice to Sustainable Development: Integrating the Rule of Law into the Post-2015 Development Agenda.*, (2015), p. 35.

77 See Output 3 of the Global Program Phase IV Project Document.

78 IDLO, *Climate Justice: a rule of law approach for transformative climate action*, (2021), p.12-13.

79 United Nations Environment Programme, *Environmental Rule of Law: First Global Report*, 2019, p. 7.

2. Supporting the engagement of human rights systems in environmental issues

Member states require strong national human rights systems to be able to respect, protect and fulfill human rights obligations. An important element of national human rights systems are independent oversight bodies such as National Human Rights Institutions (NHRIs), which are mandated to support in monitoring and supporting rights-based responses to environment and climate change at country level, including the right to a healthy environment. Practically, this means monitoring and reporting on the human rights impacts of climate change, advising the State and other stakeholders on human rights-based approaches to climate action, supporting communities to participate in decision-making on climate strategies, assisting victims to seek justice and redress, providing education on the human rights impacts of climate change and policies, and engaging businesses and others on their roles and responsibilities.

UNDP has participated with the GANHRI and OHCHR in a strategic **Tripartite Partnership (TPP)** since 2011, which agreed in October 2016 on a vision for scaling up joint support to national human rights institutions. Under this area of work, UNDP provided support to the GANHRI annual conference on Climate Change and its impacts (Dec 2020) and role of NHRIs, which produced a **Joint Statement on Climate Change: The role of NHRIs**; and provides support to NHRIs under the auspices of the Call to Action Thematic Group on Rights of Future Generations. The 2021 Annual conference convened by the Global Alliance on National Human Rights Institutions (GANHRI) has focused on climate change and human rights. UNDP has also partnered with OHCHR and UNEP to develop a **toolkit for collaborations with NHRIs**, which contemplated several environmental issues.

Further, linking human rights and environmental and climate justice to human rights procedures, including the Universal Periodic Review (UPR) and the Special Procedures of the Human Rights Council, can strengthen the enforcement of such rights. The UPR is a peer-to-peer review process which involves an assessment of the human rights records of all UN Member States every four years. The number of recommendations of the UPR related to environmental rights has doubled between its first cycle in 2008 and the second one in 2016, with more than 95 percent of the recommendations supported by States under review. Over 250 individual recommendations on human rights and climate change have been made in the ongoing third cycle (to be completed in 2022). Supporting States' follow up on UPR recommendations is an important opportunity for the UN system to support States in fulfilling their human rights obligations. Supporting the UPR and treaty body recommendations on human rights and climate change in national development policy and in development projects is another important opportunity to strengthen the national human rights system. These projects should aim to further technical cooperation implemented by governments or UN Country Offices.

3. Creating coordination mechanisms with relevant ministries

Creating coordination mechanisms between all relevant sectors is important to ensure environmental justice. Connections should be established not only between justice and human rights institutions, but also with key line ministries, especially those responsible for overseeing agriculture and forestry, environment, water and natural resources, fisheries and marine resources, energy and health. Most governments will need to strengthen coordination mechanisms across these ministries and sectors to address environmental and climate change challenges. An example is the current challenge of designing and implementing efficient and resilient agricultural systems and fisheries that support livelihoods and food security in the face of climate change, biodiversity loss and pollution crisis.⁸⁰

80 Jeffrey Sachs and others, "Six Transformations to achieve the Sustainable Development Goals" in *Nature Sustainability* 2, pp. 805–814 (2019).

Increasing access to justice and legal empowerment in environmental matters

WHY IT MATTERS?



Principle 10 of the Rio Declaration outlines the rights of public participation, access to information and access to justice on environmental matters. These rights are fundamental for sustainable development and environmental justice. However, not all segments of society have such rights respected and enforced. Indigenous peoples, stateless persons, women (including from disadvantaged backgrounds, older women, women from rural areas, minorities and socially excluded groups), people with disabilities, children and youth (particularly from marginalized, ethnic and religious minority groups), LGBTIQ+, older people, are often victims of systemic discrimination.

Further, not all states have conducive environments for flourishing civil society organizations (CSOs), with their key role in human rights monitoring and bringing claims against injustice in environmental matters. Space for civil society is shrinking, and the number of countries with laws in place to restrict CSO engagement and funding is increasing. The annual State of Civil Society Report (2019)⁸¹ highlights an upward trend of attacks on the civic space of excluded groups. The World Justice Report 'Rule of Law' Index 2021⁸² highlights that more countries have declined rather than improved in overall rule of law performance for the fourth consecutive year. For the second year in a row, in every region, a majority of countries slipped backward or remained unchanged in their overall rule of law performance; moreover, during 2020, 82 percent of countries in the Index are reported to have experienced a decline in at least one dimension of civic space (civic participation, freedom of opinion and expression, and freedom of assembly and association).

Human rights defenders (HRDs), including those working in the environmental sphere, face considerable challenges to their efforts. The HRC's Resolution 40/11⁸³ recognizes the contribution of environmental HRDs to the enjoyment of human rights, environmental protection and sustainable development. Yet, in many regions, environmental HRDs are threatened, harassed and even killed, often with complete impunity. A recent report reveals that 227 land and environmental activists were murdered in 2020, the highest number recorded for a second consecutive year,⁸⁴ and that certain groups are at the greatest risk of abuse and violence: indigenous peoples whose rights, traditional knowledge and practices are critical to global efforts to address environmental degradation, and young women and girls who seek to defend environmental rights.⁸⁵

UNDP and other UN agencies play a pivotal role in supporting the rule of law, human rights and access to justice and have been working on legal empowerment around the world for more than two decades. Between 2016 and 2020, more than 31 million people benefited from improved access to justice thanks in part to the support provided by the Global Programme. Increasingly, UNDP's work on access to justice and legal empowerment is focusing on a variety of environmental and climate justice issues. Additionally, UNDP works to expand civic space in the contexts where it is present, including through supporting the alignment of legal frameworks for civic space to international human rights standards.⁸⁶

PROPOSED AREAS FOR INTERVENTION

Environmental and climate justice requires transformative action based on the rule of law and the respect, protection and fulfillment of environmental rights to address inequalities among constituencies. In this regard, access to justice and legal empowerment are critical to ensuring that the most vulnerable people at the forefront of measures to counter the planetary crises are supported to claim and defend their environmental rights.

81 Civicus, *State of Civil Society Report 2019: the year in review*, 2019.

82 World Justice Project, *Rule of Law Index 2021*, (2021).

83 Human Rights Council, *Resolution Adopted by the Human Rights Council on 21 March 2019: Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development*, A/HRC/RES/40/11, 2 April 2019.

84 Global Witness, "Global Witness reports 227 land and environmental activists murdered in a single year, the worst figure on record", 13 September 2021.

85 See, on adapting human rights defenders guidance to children, the Child Human Rights Defenders (CHRD) Implementation Guide, <https://chrds.childrightsconnect.org/>. (accessed February 2022).

86 United Nations Development Programme, *Legal Frameworks for Civic Space; a practical toolkit*, 2021.

1. Increasing access to justice for environmental matters

Coupled with enhanced institutional capacity and enabling legal frameworks that balance environmental issues against social and economic imperatives, access to justice mechanisms, including the provision of free legal aid, can provide people with a powerful tool to protect the environment and promote environmental rights.⁸⁷

Supporting CSOs and activists by providing strategic guidance and legal aid is a key component of this approach. This includes supporting the work of legal professionals including community paralegals in environmental matters, whose primary role is to work directly with the communities they serve using mediation, organization, education and advocacy.⁸⁸ Additionally, undertaking capacity building efforts with CSOs that are close to communities affected by environmental and climate challenges can allow them to be stronger agents of change and advocate for community needs.

Promoting public interest litigation is another approach that serves as a powerful tool to fulfill human rights, promote environmental protection and enable more ambitious climate action. Public interest litigations are filed to protect the interests of a section of the public or the natural environment. Overtime these types of litigation have proven to be a useful tool to advance rights. Climate change litigation continues to grow as a tool for advancing effective action on climate change. Globally, the number of climate change-related cases has more than doubled since 2015, with more than 1,000 cases brought in the last six years. Importantly, litigation aligned with climate goals is increasingly successful, and the number of cases challenging government inaction or the lack of ambition in climate goals and commitments is rising. In 2021 there were 37 ‘systemic mitigation’ cases – or those with a holistic approach to government action – identified around the world. Several important wins have recently occurred.⁸⁹

For example:

- A case filed by a group of minors in the Philippines resulted in judgments upholding environmental rights of future generations. More recent judgements have been made by the Dutch Supreme Court⁹⁰ and the Appeal Court of United Kingdom⁹¹. These cases represent important milestones towards an upward trend in advancing environmental rights.
- The United Nations Commission on the Rights of the Child (CRC) has recently handed down a historic ruling on the harmful effects of climate change on children’s rights, the first of its kind by an international body. The ruling examined a petition filed by 16 children from 12 countries against Argentina, Brazil, France, Germany and Turkey in 2019. While the CRC did not rule on whether the States had violated their obligations to the Convention on the Rights of the Child, it found that a State party can be held responsible for the negative impact of its carbon emissions on the rights of children both within and outside its territory. The CRC’s ruling opens new perspectives for rights-based litigation.⁹²

Providing technical and financial assistance to ensure follow up actions to such rulings, as well as providing support for public interest litigation using creative means, can be useful ways to furthering environmental justice globally.

2. Empowering people to understand and claim their rights related to the environment

Legal empowerment approaches focus on enabling people to “understand, use and shape the law” to realize their rights, resolve disputes, achieve redress for rights violations, and advance broader changes to laws and governance systems.⁹³ Legal empowerment and accountability for the enforcement of environmental

87 See, in this regard, the Hague Institute for the Innovation of Law – HiiL, *Poverty and Access to Justice*, 2021. The report presents relevant conclusions on the particular legal challenges faced by the poorer and disadvantaged in society, with important implications for environmental justice.

88 See, in this regard, the work of Namati and the Legal Empowerment Network, available at: <https://namati.org/what-we-do/grass-roots-legal-empowerment/paralegals/> (accessed in December 2021).

89 Grantham Research Institute on Climate Change and the Environment, “Global trends in climate litigation: 2021 snapshot”, 2021.

90 Isabella Kaminski, “Dutch Supreme Court upholds landmark ruling demanding climate action”, *The Guardian*, 20 December 2019.

91 Damian Carrington, “Heathrow third runway ruled illegal over climate change”, *The Guardian*, 27 February 2020.

92 United Nations Human Rights, “UN Child Rights Committee rules that countries bear cross-border responsibility for harmful impact of climate change”, 11 October 2021.

93 See, for instance, Namati and the work under the Legal Empowerment Network: <https://namati.org/what-we-do/>. (Accessed February 2022)

laws starts with public participation, supported by access to information and access to justice.⁹⁴ The capacity of and opportunity for people to understand and participate in relevant processes are crucial to influencing environmental laws and policies. Legal empowerment signifies a bottom-up approach that, when coupled with top-down work focused on structural and institutional change, can truly effect change. This approach should be more fully utilized in efforts to increase environmental justice.⁹⁵

UNDP has been working to support public participation, access to information, and access to justice on environmental matters, which are fundamental for sustainable development and environmental justice. For instance, in Latin America UNDP Panama supports government entities, municipalities and civil society to implement the Escazu Agreement, having provided training on the Agreement to the Judiciary and the Attorney General's Office.

Key groups that can benefit from legal empowerment include:

- Marginalized and disadvantaged groups, as well as those who have their human rights more severely impacted by the planetary crises including climate change, such as women, IPLCs, children and youth, those whose land tenure rights are already insecure, and persons with disabilities. These groups should benefit from the support to their participation in local, national and global climate and other environmental events and negotiations, as well as in international, national and local environmental policy and decision-making processes.
- Climate migrants and others displaced by climate change should benefit from the established and utilized specific justice pathways. Research found that global warming has very likely exacerbated global inequality and will very likely increasingly induce climate migration, showing that by 2050 climate change could lead millions of people in six regions to migrate within their own countries.⁹⁶ This becomes even more challenging if migration is international, given that migrants will face significant challenges receiving support and protection for their rights whether in their own countries, in transit or in other countries of destination. As an example, the Office of the UN High Commissioner for Refugees (UNHCR) assisted more than 20 million refugees in 2020, but twice that number were internally displaced and not eligible for protection under its current mandate.⁹⁷

94 Organisation Internationale de Droit du Développement (IDLO), *Doing Justice to Sustainable Development: Integrating the Rule of Law into the Post-2015 Development Agenda*, (2015), p. 39.

95 Leanne McKay, "Beyond the Pandemic: the Justice Emergency".

96 Viviane Clement and others, "Groundswell Part 2 : Acting on Internal Climate Migration". (World Bank, Washington, DC, 2021).

97 New Lines Institute for Strategy and Policy, "The Coming Crisis of Climate Displacement", 29 September 2021.



SECTION THREE



Entry points and
future opportunities for
UNDP's environmental
justice offer



UNDP is well-positioned to be a convener and a strategic stakeholder in the promotion of the rule of law and human rights for environmental justice, including chiefly the right to a clean, healthy and sustainable environment.

UNDP has a mandate to end poverty, build democratic governance, rule of law, and inclusive institutions. Further, UNDP has a considerable comparative advantage to deliver on these matters, as the UN largest operational and programmatic development agency. Within UNDP, there is strong capacity to operationalize these issues through comprehensive programmatic offers on the ground, not only through deep technical expertise, but also through its wide network of regional and country offices.

Based on the three-pronged approach outlined above, this section summarizes possible entry points that can assist in programmatic efforts to implement an overarching environmental justice strategy.⁹⁸ It also presents future opportunities to further develop and enrich this work over time.

Establishing enabling legal frameworks for environmental justice:

- Promote the further integration of the right to a clean, healthy and sustainable environment in national constitutions and legal frameworks, as well as within international frameworks and global norms and standards as they evolve. This includes:
 - At international level, continuing to engage in advocacy and multilateral fora on this matter;
 - At national level, assisting with constitutional and legal reform processes which incorporate provisions for environmental rights and environmental protection, as well as enforcement and implementation of environmental laws; and support government partners to harmonize national standards and rules related to environmental issues with those recognized at the international level.
- Increase specific support to implementation and enforcement of environmental rights already incorporated in national legal frameworks.
- Implement targeted measures to support the realization of rights of access and tenure of natural resources, such as water, minerals and land, as well as increase gender equality related to environmental issues.
- Incorporate key international issues such as disaster risk reduction and migration/displacement into environmental legal frameworks.
- Promote legal and judicial reform which incorporates environmental justice measures, including those which increase access to environmental justice especially for the most vulnerable and marginalized, for instance establishing or strengthening environmental courts.
- Advocate and support the further integration and consideration of human rights in Multilateral Environmental Agreements (MEAs) and their implementation mechanisms and instruments, such as NDCs (Paris Agreement) and NBSAPs (CBD).
- Advocate for the increased recognition and protection of the rights of future generations, especially as they relate to environmental and climate justice.
- Strengthen the Business and Human Rights programming area to increase the accountability of businesses for environmental justice through measures such as:
 - Encourage and support States to create and enforce rules on the environmental and climate impact of regulate business activity, to hold businesses to account for environmental abuses, including illegal dumping and land use violations.
 - Support passing laws mandating environmental and human rights due diligence.
 - Conduct studies on the impact of criminal defamation on environmental activists and advocate for law reform.
 - Integrate rights-based environmental justice approaches and principles into private sector governance and decisions, corporate transparency, access to information and public participation.
 - Increase transparency through mandated sustainability reporting, with an emphasis on accuracy and liability.

⁹⁸ These entry points are further elaborated in the 'Guidance Note' on environmental justice which is another component of the work undertaken to prepare the present technical paper.

- Standardize the Environmental, Social and Governance (ESG) taxonomy.
- Explore connections between businesses and land rights abuses and environmental degradation, as well as accountability for fossil-fuel and mining exploitation.
- Engage with the renewable energy sector.
- Support the adjudication of claims seeking justice against environmental harm caused by businesses.

Strengthening people-centred institutions to deliver environmental justice:

- Facilitate capacity building measures within the justice sector on climate change and environmental matters, including for judges, police force, customary and informal justice systems where present, as well as with parliamentarians, building on existing UNDP engagement.
- Develop the capacity of judicial actors to protect environmental human rights defenders.
- Engage with NHRIs to further promote the review and enforcement of human rights obligations related to the environment.
- Support implementation of environment-related human rights recommendations stemming from the UPR, HRTBs and special procedures.
- Encourage and assist government partners to establish coordination mechanisms between relevant sectors and line ministries, including human rights and the judiciary/justice sector, and those responsible for overseeing agriculture and forestry, environment, water and natural resources, fisheries and marine resources, energy and health areas.

Increasing access to justice and legal empowerment in environmental matters:

- Strengthen mechanisms that increase access to justice and provide free legal aid relevant to environmental matters.
- Support CSOs and legal professionals, including community paralegals, to further advocate for and support communities and those affected by environmental degradation and climate change. This includes promoting capacity development

in community and civil society organizations, community paralegal services that help protect the vulnerable and marginalized from environmental injustice and enhance access to and benefit sharing from natural resource use.

- Support the further use of public interest litigation, including on 'systemic mitigation' to address environment and climate issues in a holistic manner.
- Facilitate legal empowerment on environmental issues, particularly for vulnerable and marginalized groups such as women, ILPCs, and those displaced by environmental disasters.
- Promote inclusion and the right to access information, and the imperative to create and disseminate information that is accessible to different groups, such as children (child-friendly information) and people with disabilities.

Additional entry points for future programmatic engagement may include:

- Advocate for the adoption of international standards on corporate filings, including on non-financial risks related to the environment.
- Support legal empowerment specifically for environmental justice leaders, human rights defenders and CSOs through the establishment of local and global networks of dialogue, expertise and knowledge sharing.
- Establish, promote and support conflict resolution mechanisms relating to environmental issues, for instance access to natural resources such as land and water, which combine justice, human rights and security perspectives.

Finally, the following strategic measures would further underscore UNDP's consolidated offer on environmental justice moving forward.

1. Increasing support for pilot programmes and knowledge management

The text boxes throughout this document highlight a few ongoing pilot programmes that have helped to lay the groundwork for an overarching strategic approach to environmental justice in UNDP. Key issues within these pilot programmes, which highlight activity across different regions, can provide case studies, yielding

best practices and lessons learned to inform future projects. To add to UNDP's environmental justice portfolio, 'seed programmes' could be supported both technically and financially through Phase IV of the Global Programme. In addition, efforts in the areas of knowledge management, as well as monitoring and evaluation, should be enhanced to better understand what has and hasn't worked. Lessons learned from previous and ongoing efforts can inform a more strategic approach to environmental justice in other contexts, especially in terms of programme strategy and design. UNDP should undertake additional research in key areas that will help advance environmental justice. This is especially true for areas which remain unexplored or underdeveloped, such as the interlinkage between insecurities derived from environmental and climate change impacts and access to justice.

Notably, UNDP's environmental justice work at country level is often integrated and involves either the contributions of multiple teams to the environmental justice portfolio or is carried out by a singular team holding multiple mandates (for instance, rule of law and governance). This model of programmatic integration needs to be explored at the global level, so that UNDP's support to environmental justice is conducted in a more systematic way. Moving forward, there are clear opportunities to harness country-level expertise to support environmental justice initiatives and goals at all levels more strategically.

2. Building partnerships

In addition to building internal collaboration across teams and between global and country level, UNDP should promote strategic partnerships on environmental justice, including with:

- Government entities and justice sector stakeholders: UNDP is the partner of choice and enjoys access and trust with the government and justice sector stakeholders in many countries. All national and regional indicative activities will require UNDP to work jointly with government, particularly justice institutions.
- The United Nations Environmental Programme (UNEP) is the leading global environmental authority and an agency driving the global environmental agenda. Of particular interest for this paper, UNEP implements a global intergovernmental programme on environmental rule of law, the [Montevideo Environmental Law Programme](#), adopted by member states at the United Nations Environmental Assembly (UNEA4). The Programme supports countries to strengthen environmental legal frameworks and their implementation. UNDP may seek to establish a strategic partnership with UNEP in areas related to environmental justice such as international policy advocacy, national and international policy formulation, law making, measuring effectiveness of laws and enforcement of environment laws, especially at the national level where UNDP has a more robust in-country presence.
- The Office of the High Commission of Human Rights (OHCHR) has continued to expand its work in the [environmental sector and climate change](#). Further, the work of the [Special Rapporteur on Human Rights and the Environment](#) has been seminal to further these issues. Joint ventures with OHCHR may include research initiatives, international policy advocacy and policy formulations.
- Of note, OHCHR, UNDP and UNEP have partnership with respect to co-leading on the United Nations Secretary-General's Call to Action on Human Rights, in particular the rights of future generations, climate justice. Established in 2020 and led by OHCHR, UNDP and UNEP, the [UN Environmental Management Group - Issue Management Group \(EMG IMG\)](#) on Human Rights and the Environment, which aims to facilitate, among other goals: the integration of the human right to a healthy environment in the work of UN country teams, human rights treaty-bodies and MEAs; improve protection for environmental human rights defenders; and further a better understanding of the interdependence of human rights, especially linkages between the right to a healthy environment and other human rights.
- The International Development Law Organization's (IDLO) new Strategic Plan 2021-2024 includes a dedicated Strategic Objective (SO5) focused on climate justice and the sustainable use of natural resources. Within this framework, IDLO has committed to supporting the realization of environmental rights and climate justice, promoting climate resilient development and increased access to land and natural resources, and strengthening food security for marginalized and vulnerable groups. In 2021, IDLO published a policy briefing on [Climate Justice: A Rule of Law Approach to Transformative Climate Action](#), and is finalizing a climate justice operational strategy to support program, research and policy implementation in this area.

- > The Global Alliance for National Human Rights Institutions, as well as individual NHRIs and their regional networks, have **climate change** and human rights as a key area. Building on **the TPP**, UNDP enjoys a high level of trust with almost all these entities which are the ideal partners to drive international and national advocacy efforts on human rights and the environment.
- > The **Global Judicial Institute on the Environment (GJIE)**, led by IUCN in partnership with UNEP and other organizations, aims to support the role of judges, courts, and tribunals to respond to pressing environmental crises.
- > Non-governmental organizations (including CSOs and advocacy networks), think tanks, and the private sector. UNDP's partnership with these actors exists in many sectors covering programme implementation, policy development and advocacy. Interventions related to environmental justice can benefit from existing and new partnerships in all three areas. UNDP should also build on the network of in-country partnerships with the private sector.

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Annex 1 – Summary of Consultations

To develop this technical paper, extensive consultations were undertaken between July and October 2021 with colleagues across the ROLSHR, NCE and Governance teams in UNDP's Global Policy Network, as well as with the UNDP Country Offices in countries of Africa, Arab Region, Asia and Latin America. Further, a discussion webinar on environmental justice was held online on 26 October 2021, which gathered colleagues across the above mentioned workstreams as well as representatives of the COs in Viet Nam and Panama, to discuss and provide feedback on the findings of the consultations and a preliminary version of this technical paper. A summary of the webinar outcomes can be consulted [here](#).

These consultations identified workstreams across several areas related to environmental justice which could be leveraged to strengthen a dedicated and targeted offer for developing countries in this area.

This work includes:

- > Supporting, at the international level, the recognition of right to a clean, healthy and sustainable environment.
- > Support for constitutional reform that touches upon issues related to the environment.
- > Supporting countries to fulfill their human rights obligations including following up on recommendations from human rights mechanisms which have a growing focus on the human rights implications of climate change.

UNDP also works extensively with NHRIs around the globe and other key institutions at national and international levels on human rights, accountability and environmental issues.

- > Supporting the development and implementation of legal and policy frameworks that are key to environmental justice, such as environmental and climate change laws, laws related to the management of natural resources and biodiversity, as well as policies such as NDCs.
- > Increasing access to justice, including legal empowerment and legal aid on environmental related matters. UNDP works at national and sub-national levels and engages and facilitates the work of CSIs that represent some of the most affected and marginalized populations directly impacted by climate change and provides training and capacity development to a variety of stakeholders from the justice sector, including on environmental matters.
- > Engaging with the business sector and member states to implement the UN Guiding Principles on Business and Human Rights, including on environmental matters.

A list of the projects and programmes identified through the consultations and a short summary of materials and publications produced by the different teams across UNDP can be consulted [here](#).



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