Summary Report for EMG Issue Management Group Deep Dive Webinar 3: The Right to a Healthy Environment in the Context of Pollution

Wednesday, 28 September 2022

1. Introduction to the training

Three deep dive webinar sessions were convened under the UN Environment Management Group Issue Management Group (IMG) on Human Rights and the Environment, which is led by the United Nations Environment Programme (UNEP), the Office of the High Commissioner on Human Rights (OHCHR) and the UN Development Programme (UNDP). The objective of the IMG is to integrate the human right to a healthy environment into the work of the UN, and to ensure a coherent and rights-based approach to environmental action throughout the UN system. The deep dive webinars were convened under Focus Area 3 of the workplan of the IMG, which addresses capacity building on human rights and the environment and is led by UNEP. Contributing Agencies to Focus Area 3 include OHCHR, UN Women, UNDP, UNFFS/DESA, WIPO, FAO, UNFCCC, ILO, ITC, ESCAP, CBD Secretariat, ESCWA, UNICEF and UNECE. This deep dive session took place on September 28, 2022 and focused on the right to a healthy environment in the context of the pollution crisis.

2. List of moderator and speakers

Moderator: Gita Parihar, coordinator (IMG on Human Rights and the Environment).

First Speaker: Patricia Kameri-Mbote, Director (Law Division), United Nations Environment Programme (UNEP).

Second Speaker: Soo-Young Hwang, Legal Officer, Law Division, UNEP.

Third Speaker: Desiree Raquel Narvaez, Environmental Health Specialist and technical lead of UNICEF's Healthy Environments for Healthy Children global framework, United Nations Children's Fund (UNICEF).

Fourth Speaker: Phyllis Omido, Co-Founder and Executive Director, Centre for Justice, Governance and Environmental Action.

3. Summary of presentation

The presentations began with a comprehensive background for the webinar. Patricia Mbote set out both the legal aspects, the human rights aspects, the importance of procedural rights participation, the most impacted groups/companies/countries, what the UN is doing and what the IMG can be doing in the future.

The second speaker, Soo-Young Hwang, explained how the right to a healthy environment is being implemented. She explained that UNEP, together with other UN entities, are producing a narrative on the implementation of this right both at the national and international levels. She also described a short explainer that will be circulated amongst those in the IMG group.

Desiree Raquel Narvaez presented the joint work that UNICEF is focusing on in relation to pollution and the right to a healthy environment. The focus of her presentation was on UNICEF's efforts to address toxic metals, pesticides, air pollution, and other forms of pollution as they relate to the rights of the child. She explained that UNICEF is working on raising awareness of the seriousness of these risks and has developed a set of good practices to help protect the rights of the child to a healthy environment in the face of the pollution crisis.

Next, Phyllis Omido presented her work in Mombasa combating heavy metal pollution, particularly lead pollution from a smelter located next to her community. She talked about her family's experience, specifically the illness her young child went through as a result of lead poisoning, and the subsequent efforts she led, together with the organization she co-founded, to promote environmental protection in communities that reside around high-impact industries and toxic sites in Kenya. She also talked about the development of the right to a healthy environment in Article 42 and Article 69 of the Kenyan Constitution, which regard obligations in respect of the environment, as well as the barriers that still exist.

In the session that followed, participants were invited to contribute to a case study discussion on the topic of pollution and its implications for human rights.

4. Summary of case study discussion

A coal mine is located near a town of 10,000 people, many of whom work at the mine or in services supporting mine workers. The coal mine has a large dam containing mine waste, also called a tailings dam. The tailings dam is kept full of sludge year-round to prevent its content evaporating and blowing around the town. Discharges of tailings or mine waste can contaminate groundwater aquifers, rivers and lakes posing a grave threat to nearby residents, as well as local flora and fauna. This weekend, there is a significant flood warning. While the content of the tailings dam is not public, the local residents worry the dams will be flooded and toxic materials will leak into their water supply. The government is interested in developing a rights-based approach in its national framework regarding mining waste and pollution-control policies, to ensure the right to a healthy environment is realised.

<u>How does the case study implicate human rights, and particularly the right to a healthy environment?</u>

Right to a healthy environment:

- *Substantive elements*: right to safe and sufficient water (e.g. risk of contaminated ground water, or other local water sources); right to breath clean air (e.g. risk of toxic tailings dust); right to healthy and sustainably produced food (e.g. risk of impact to home gardens and local produce farms); safe climate (e.g. risk associated with what is being mined); healthy ecosystems and biodiversity, non-toxic environment to live, work, study and play (e.g. risk of contamination by tailings).
- *Procedural elements*: access to information (e.g. what government and company policies existed regarding mining pollution, flooding, environmental protection, climate change, mine maintenance, etc? what do the tailings contain? what are the risk of flooding? what are the possible impacts of flooding on people and the environment?); involvement in

policy development and decision-making processes by government; access to justice (e.g. flooding appears to be imminent, and the community may want to explore pre-emptive legal action).

Other human rights: rights to life, to health, to safe food and water, to adequate housing, and to safe and healthy working conditions.

- *Other possible human rights*: rights to be free from discrimination, to liberty of movement, to family, to education, to property, and to participate in public life.
- Human/labour rights-related issues involved in a just transition, including promotion of climate-safe jobs.

What would a rights-based approach to pollution in this context involve?

Rights-based approach to pollution:

- Domestic recognition of the right to a healthy environment and other relevant human rights
- Access to justice
- Effective remedies (restitution, alternative water sources, fair compensation for property damage, ability to relocate with family if needed)
- Public participation in decision making
- Collection of information (analysis of tailings, analysis of risks to tailings dam, protective measures for tailings dam)
- Information sharing (content of tailings, risks associated with tailings dam, protective measures, opportunities for public participation, climate change impacts and risks, flood risks, government policies, laws and regulations)
- Development of a rights-based approach should involve consultation with affected communities or groups

What are the benefits of a rights-based approach? What barriers may exist to adopting a rights-based approach?

Benefits:

- Most UN member States already recognise the right to a healthy environment (156 States)
- Human rights are a catalyst for transformative change
- Opportunity to forward-plan to mitigate and avoid damage
    - Substantive rights are critical for mitigation and adaptation planning
    - Procedural rights are critical for ensuring the community can provide creative, practical, nature-based solutions to issues.
- Community-consultation often identifies more sustainable long-term solutions.

- Helps to rectify absence of effective enforcement mechanisms and resulting lack of accountability
- Improves corporate social responsibilities (promotes the UN Guiding Principles on Business and Human Rights)

Barriers: opposition from big business; no recognition of human rights; lack of scientific or independent information; ineffective or inaccessible public participation requirements; justice mechanisms are inaccessible (physically, geographically, linguistically, culturally, financially, temporally, socially); ineffective remedies.

What tools can the UN offer or develop to overcome these barriers? How can the UN work together to support the adoption of a rights-based approaches to pollution?

There are a number of instruments in the **UN's toolbox which include**:

- Training –
    - IMG webinars; technical training in lead-up to negotiations, such as on integrating a rights-based approach in the plastic pollution treaty, for example.
    - Training courses on human rights the environment, environmental defenders, protection of people or groups living in vulnerable situations, public participation in decision, and other relevant issues (see list of available courses in concept note)
- Funding – UNEP's Environment Fund and Adaptation Fund; Green Climate Fund; Global Environmental Fund
- Developing guidelines –
    - UN Guiding Principles on Business and Human Rights
    - Framework Principles on Human Rights and the Environment
- Maintaining momentum and attention –
    - Special Procedures – special rapporteur reports
    - Publishing reports on activities and upcoming work
- Improving coordination –
    - IMG and other working groups
    - inter-entity and internal discussions to share knowledge and develop coordinated actions and plans
    - Identifying gaps through consultation with communities, Member States and other UN entities

Other tools, resources and related training courses are listed in the concept note.

5. **Annex of participants**

Amie Figueiredo Andrina Beaumond Angela Kariuki

Arnaud Conchon

Bemjamin Ojoleck

Brock Williams

Claudia ten Have

Bernard Combes

Nigel Thomas Crawhall

Georgina Lloyd

Gita Parihar

Baogen Gu

Desiree Raquel Narvaez

Isabela Marchi

Jackline Wanjiru

Jacqueline Alvarez

Fabiano de Andrade Correa

Laetitia Zobel

Liazzat Rabbiosi

Lyn Greer

Marie-Lara Hubert-Chartier

Marina Maiero

Maria Cristina Zucca

Kakuko Nagatani-Yoshida

Naomi Hoogervorst

Pascale Unger

Patrcia Mbote

Rami Sabella

Maud Barcelo Martinez

Megha Rathi

Richard Miesen

Sara Daniel

Seynabou Ndao

Sheilagh Louise Henry

Sofía Gutiérrez

Soo-Young Hwang

Sophie Lloyd

Soraya Smaoun

Sylvia Bankobeza

Therese Arnesen

Tiffany Collard

Sandra Averous-Monnery

Paula Pennanen-Rebeiro-Hargrave