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

Wednesday, 21 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 IMG's workplan, which addresses capacity-building on human rights and the environment and is led by UNEP. Contributing agencies to Focus Area 3 include OHCHR, UNDP, UN Women, UNFFS/DESA, WIPO, FAO, UNFCCC, ILO, ITC, ESCAP, CBD Secretariat, ESCWA, UNICEF and UNECE. This deep dive webinar took place on September 21, 2022 and focused on the right to a healthy environment in the context of biodiversity and nature loss.

2. List of moderator and speakers

Moderator: Angela Kariuki, Programme Management Officer, UNEP; and Member, IMG on Human Rights and the Environment.

First Speaker: Elisa Morgera, Professor of Global Environmental Law, University of Strathclyde, and Director, Strathclyde Centre for Environmental Law and Governance and the One Ocean Hub.

Second Speaker: Benjamin Schachter, Human Rights Officer, OHCHR; and Member, IMG on Human Rights and the Environment.

Third Speaker: Francisco Cali Tzay, Special Rapporteur on the rights of indigenous peoples.

Fourth Speaker: Antonio Q'Apaj Conde Choque, Associate Programme Management Officer, Peoples and Biodiversity Unit, Secretariat of the Convention on Biological Diversity (CBD).

Fifth Speaker: Mrinalini Tina Rai, Director, Women4Biodiversity and Coordinator, UN CBD Women's Caucus.

3. Summary of presentation

Professor Elisa Morgera delivered an insightful and detailed overview of the international recognition of the human right to a healthy environment and its contributions to international biodiversity law focusing on human health, rural women's rights and children's rights. Professor Morgera highlighted the role of a human rights-based approach to biodiversity activities related to oceans and climate, as well as the extractives industry. Professor Elisa Morgera provided some ideas for the UN system to strengthen its approach and efforts on this topic, including:

- Advocacy on the ecosystem approach and human rights-based approaches for systems thinking and sustainable development synergies;
- Awareness raising of less widely understood contributions of biodiversity law to the protection of the right to a healthy environment, such as educating children, educators, multilateral environmental agreements (MEA) Secretariats and non-governmental organisations (NGOs) about the nexus of human rights, biodiversity, climate change and oceans; and
- Training for judiciaries, environmental-impact-assessment consultants, and in relation to regulation of foreign direct investment and national human rights institutions.

The second speaker, Benjamin Schachter, outlined recent UN coordination efforts related to human rights and biodiversity protection, highlighting the IMG's work to compile UN system contributions to Post-2020 Global Biodiversity Framework (GBF). He noted the work of the Special Rapporteurs on human rights and the environment – and particularly the Briefing Note on Human Rights in the Post-2020 GBF – and the work of the Special Rapporteur on the rights of indigenous peoples. He also outlined key resources, including the Key Messages on Human Rights and Biodiversity produced by OHCHR and UNEP, and the UN Common Approach to Biodiversity, which includes human rights as a key pillar. Key resources are listed in the IMG Deep Dive Webinar concept note.

Ben flagged that the IMG is developing a joint strategy for engagement in CBD 15th Conference of Parties (COP 15), involving an event on human rights and the environment. He invited any agency that is interested to join and co-sponsor the event and a set of key messages on human rights and biodiversity.

The third speaker, Francisco Cali Tzay, Special Rapporteur on the rights of indigenous peoples drew attention to Article 29 of the UN Declaration of the Rights of Indigenous Peoples, which provides that indigenous peoples 'have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources', and that 'States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination'. He reminded participants that there are an estimated 476 million indigenous peoples making up approximately 5% of global population, living in more than 80 countries. They protect almost 80% of the world's biodiversity.

The Special Rapporteur emphasized the disproportionate impacts of environmental degradation on indigenous peoples' lives and livelihoods, as well as the value of indigenous knowledge to inform solutions to the triple planetary crisis.

The fourth speaker, Antonio Q'Apaj Conde Choque, presented on the CBD and Post-2020 GBF. Q'Apaj highlighted the role of human rights in implementing the CBD, and vice versa. The loss of biodiversity has a disproportionately adverse impact on people living in vulnerable situations, such as indigenous peoples, women and girls, and children and youth. He noted that while biodiversity is declining, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) report 'Global Assessment Report on Biodiversity and Ecosystem Services' (2019) found that biodiversity being managed by indigenous peoples is declining at a slower rate due to their knowledge and control of the lands. Q'Apaj then provided a summary of

the main ways in which the CBD Secretariat is addressing issues of human rights and biodiversity through working groups, guidelines and other tools/mechanisms.

The fifth and final speaker, Tina Rai, presented on the work of gender responsiveness in the development of the Post-2020 GBF. She provided a short introduction of the work of Women4Biodiversity, and the Women's Caucus to the CBD. She noted gender and women's roles are included in the CBD, Strategic Plan and Aichi Targets, and is emphasized in the CBD Gender Action Plan (2008). She emphasized the importance of including a role for women and girls and protecting the human rights of women and promoting gender quality within environmental governance, sustainable development and biodiversity action. She identified the opportunity for the post-2020 GBF to include a standalone target on women's human rights and gender equality as 'target 22'.

In the session that followed, participants were invited to contribute to a case study discussion on the topic of biodiversity loss, its implications for human rights and rights-based solutions to biodiversity loss issues.

4. Summary of case study discussion

Case study: A pulp-making factory has been logging an old-growth forest for decades. A drinking-water reservoir for a nearby town is located within the forest. Recently, a fire broke out in the factory and spread quickly throughout the forest. The fire killed a large number of animals and contaminated the reservoir with ash, debris, and fire retardants. Indigenous peoples living in the area are concerned that due to logging and the fire, forest ecosystems are almost destroyed, on which they rely for their livelihoods, food, water, medicine and cultural practices. The government wishes to develop a rights-based approach in its national framework to ensure the right to a healthy environment is integrated into its biodiversity policies.

Right to a healthy environment:

- *Substantive elements*: right to safe and sufficient water (risk of contaminated reservoir and other local water sources); right to breath clean air (risk of toxic fumes from fire); right to healthy and sustainably produced food (risk of impact to home gardens and local produce farms); safe climate (risk associated with loss of carbon capture); healthy ecosystems and biodiversity, non-toxic environment to live, work, study and play (risk of environmental contamination, loss of habitat for animals, destruction of flora, exposure of flora and fauna to weather that they would normally have shelter from, lack of food for fauna, and resulting loss of biodiversity).
- *Procedural elements*: access to information (e.g., what government policies existed to protect the forest, the reservoir and indigenous peoples and were they followed? what fire prevention policies were required at the factory and were they followed? what fire retardants were used? And how much of it was used? Is the reservoir contaminated and how badly? How will contamination impact animals as well as humans? What animals have died? Will ecosystem recover from fire? What seeds are stored in local seedbank to replant the area if necessary?); involvement in policy development and decision-making processes by government (e.g., whether all affected people, including indigenous

peoples and local communities were fairly consulted in policy relating to the protection of the forest and the positioning of the pulp mill, and the type of fire retardant that was used); access to justice (whether there are accessible legal systems to facilitate justice regarding violated human rights; where there are effective remedies, such as replanting the ecosystem if necessary)

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

- *Other possible human rights*: rights to be free from discrimination, to adequate housing, to liberty of movement, to family, to education, to property, and to participate in public life.

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

Rights-based approach to biodiversity loss:

- Domestic recognition of the right to a healthy environment and other relevant human rights
- Domestic creation of national or jurisdictional human rights institutions (e.g., Ombudsman, human rights commissioner(s), anti-corruption organisations)
- Access to justice (such as removal of linguistic, cultural, financial, geographical and other barriers for accessing justice)
- Effective remedies (such as restitution of forest, alternative water sources for humans and animals, alternative food sources for humans and animals (if appropriate), fair compensation for property damage, ability to relocate with family)
- Public participation in decision making that will or may impact the environment (such as policies relating to forest protection, positioning of water sources, location of industry, protection of biodiversity)
- Collection of information (such as analysis of biodiversity and ecosystems (and particularly threatened species), analysis of risks to water sources and habitat from local industry, protective measures for water sources)
- Information sharing (e.g. risks of industrial activities, accessible information about local biodiversity, information about the impacts of biodiversity loss on local communities, opportunities for public participation)
- Development of a rights-based approach should involve consultation with affected communities and 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 biodiversity loss
    - 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)
- May assist to prevent escalation of human rights violations leading to migration and displaced people

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

<u>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?</u>

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

Alexandra Said
Andrea Brusco
Andrew Rudd
Angela Kariuki
Anjum Khan
Ann Cathrin Pedersen
Antonio Q"Apaj Conde Choque
Arnaud Conchon
Aynalem Getie
Benjamin Schachter
Bernard Combes
Brock Williams
Charles Akol
Cinthya Zorrilla
Claudia ten Have
Coline DamieuxVerdeau
Daphne Bukirwa
Deka Moussa Ragueh
Diana Salvemini
Fatin Atif Tawfig
Federica Pietracci
Florence Descroix-Comanducci
Fredrika Sweno
Gita Parihar
Ilaria Sisto
Isabella Marras
Ivan Ramirez
Jackline Wanjiru
Jan Kamau Maina
Jennifer Chege
Julia Nakamura
Kristin Meyer
Lais Paiva Siqueira
Lara Geadah
Liazzat Rabbiosi
Lilia Petrosyan
Madori Paxton
Margaret Oduk
Maria Jose Baptista
Maria Purificacion Neira
Marianna Bolshakova
Marie Lara HubertChartier
Maud Barcelo Martinez
Patrick John O'Farrell
Reem Nejdawi
Rose Oloo
Rouba Abou-Atieh
Sofía Gutiérrez
Soo-Young Hwang
Sophie Lloyd
Srilakshmi Menon
Sylvia Bankobeza
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Tiffany Collard
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Umberto Gallo Orsi
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Yeweinshet Desta
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