

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

ADVISORY OPINION ON THE OBLIGATIONS OF STATES

WITH RESPECT TO THE CLIMATE CHANGE CRISIS

Amicus Brief on Environmental Human Rights Defenders

submitted by Dr. Claudia Ituarte-Lima, Issabell Pope, Dr. Maria Andrea Nardi, Dr. Ana Maria Vargas Falla, Angeline Mbaria, Drishti Alagh, Emelie Andersson, Erin Gourley, Lathika Venkatapathy, and Meri Karhunen

Transnational Legal Clinic Defending a Living Earth (Defendbio Legal Clinic) at the Raoul Wallenberg Institute of Human Rights and Humanitarian Law and Sociology of Law Lund University

March 31, 2026

Table of Contents

I.	Executive Summary.....	4
a.	English Version	4
b.	Translated French Version	8
c.	Translated Portuguese Version	13
II.	Introduction.....	18
III.	Who are Environmental Human Rights Defenders?	19
IV.	States positive obligations to protect environmental human rights defenders from the impacts of climate change in line with relevant treaties (Para 93, Question b)	22
a.	Duty to protect with regards to EHRDs in the climate crisis.....	23
b.	State obligations to protect EHRDs from business violating their rights	26
c.	States duty to prevent significant environmental harm and human rights violations	28
V.	Specific issues raised by the Advisory Opinion Request of special relevance to defenders	31
a.	Environmental Impact Assessments and Responsibilities of African States (Para 173(h))	31
b.	Delineating the right to free, prior and informed consent of environmental human right defenders. (Para 128)	34
VI.	Heightened Obligations of States towards marginalised groups as EHRDs	36
a.	Children and Youth	37
b.	Women and Girls	39
c.	Indigenous Peoples and local communities	42
VII.	Contextualising human rights obligations of States concerning EHRDs in Africa	43
a.	African Charter and African Court’s jurisprudence.....	43
b.	African non-binding instruments guiding interpretation of State obligations towards in EHRDs	47

VIII. Insights from Comparative Law	48
a. American Convention on Human Rights: Advisory Opinion on Climate Emergency and Human Rights 32/25 (2025)	48
b. The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement)	49
IX. Special Measures that States should consider for implementing their positive human rights obligations concerning Environmental Human Rights Defender's right to a clean, healthy and sustainable environment	51
a. States should recognise that EHRDs have the right to access information of States and businesses operating at various scales as well as right to generate and share their own ground-up information.....	52
b. States should be proactive in placing measures that enable EHRDs to participate in an effective, meaningful, open and inclusive way throughout each stage of environmental decision making and from the local to the national, regional and international level	54
c. States should put into place measures that enable EHRDs to have access to justice in the form of effective, timely and independent investigations and remedies when environmental law and human rights laws have been breached as well as to prevent the abuse of the law aiming to silence defenders	57
d. States should interpret procedural rights of EHRDs in connection with the right to a healthy environment substantive elements so public institutions support their role in Earth stewardship and rethinking economic, social and cultural rights in a way that are aligned with sustainability pathways	59
X. Conclusion	61

I. Executive Summary

a. English Version

This brief presents the submission of the Defendbio Legal Clinic with respect to the Request for an Advisory Opinion on African States human rights obligations in addressing the climate crisis submitted to the African Court of Human and Peoples Rights on May 2, 2025, by the Pan African Lawyers Union and others.

Dr Claudia Ituarte-Lima, in representation of the Transnational Legal Clinic Defending a Living Earth (Defendbio Legal Clinic), was granted leave to appear as *amici curie* by the African Court on 28th November 2025. The Coordinating Authors of the amicus brief are Dr. Claudia Ituarte-Lima, the thematic lead for the Environment and Human Rights and senior researcher at the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, and Issabell Pope who specialises on international human rights law and the intersection with the environment. Our Defendbio research team also included Dr. Maria Andrea Nardi (Human Geography), Dr. Ana Maria Vargas Falla (Sociology of Law), Angeline Mbaria (Law), Drishti Alagh (international human rights law), Emelie Andersson (Sociology of Law), Erin Gourley (international human rights law), Lathika Venkatapathy (Natural Sciences), Meri Karhunen (Sociology of Law) . Members of the Defendbio Legal Clinic, hosted by the Raoul Wallenberg Institute and Lund University, have significant experience working with environmental human rights defenders and their rights, both at an international and regional level. Their expertise spans legal empowerment, human rights education, and legislative and policy research, and strengthening capacities initiatives with a range of actors and institutions.

Clara Barbosa and Clemence Velon-Bazzana were responsible for the Portuguese and French translations of the executive summary. Gilford Kimathi (RWI Africa Hub) provided valuable comments.

This brief and the observations provided focus on addressing questions in paragraph 93(b) in the request before the court makes explicit reference to Environmental Human Rights Defenders (EHRD). Specifically, Part IV discusses the positive obligations of African states towards EHRD in the context of climate change. This is all within the context of the international human rights law framework, outlining and clarifying the obligations under the

relevant international human rights treaties and authoritative interpretations. Part VI contextualises human rights obligations concerning EHRD in Africa; Part VIII provides insights into the InterAmerican System of Human Rights, understanding how the Inter-America Court of Human Rights (IACtHR) has understood rights and obligations. This part also includes reference to the Escazu Agreement on access to information, public participation and access to justice in Latin America and the Caribbean, the first plurilateral treaty to recognise explicitly the rights of EHRDs. Complementary to this, we also provide inputs for the Court clarify two specific issues raised by the Advisory Opinion request, namely environmental impact assessments and free prior informed consent. Finally, we specify measures concerning the rights of Environmental Human Rights Defenders that States should consider for implementing their positive human rights obligations in the context of the planetary social-ecological crises.

The overarching argument provided in this amicus brief is the need to approach states obligations towards EHRD through a lens that recognises them as a marginalised group who needs protection but also, as agents of change who are actively contributing to ecosystems' stewardship and climate action. Recognising the significance of the work of EHRD in contributing to climate action and environmental protection allows for greater protection of the rights of EHRD and mitigating the stigma attached to EHRD that exists in the region, and beyond. Protecting the rights and preventing human rights violations of EHRD is needed to ensure that climate action and environmental protection is effective within the African region.

We urge the court to reinforce States obligations to protect the human rights of EHRD, focusing on their duty to protect and prevent, in the context of climate crisis ensuring that obligations reflect the intersectional identities of defenders characterising them both a vulnerable group and agents of change.

The Court should recognise that EHRDs intersecting identities places them in a context of increased risks but also those same identities allow them to have a particularly grounded and valuable contribution to ecosystems and biodiversity stewardship, and climate adaptation and mitigation.

In outlining who are EHRD and their role within wider environmental protection, it is clear that in the African region EHRD have played an important role in protecting land and ecosystems from unsustainable projects and practices. The work of defenders takes several

forms spanning from individuals attending protests against climate change to communities actively protecting local ecosystems and biodiversity. The right to a clean, healthy, and sustainable environment provides an important entry point for understanding the interconnection between the work of defenders and the need to protect their human rights. The interdependency of the procedural and substantive elements of the right recognises that effective environmental protection requires human rights to be upheld.

We call on the African Court to clarify that work of EHRD is strongly interconnected to wider environmental protection, and therefore the protection of EHRDs' rights emerges from state's wider climate obligations than simply those emerging from specialised climate treaties, inter alia procedural and substantive obligations specified in international and regional human rights treaties and other Multilateral Environmental Agreements.

The Court should guide states on the content of the right to a clean, healthy and sustainable environment's procedural and substantive elements:

Recognise that EHRDs have the right to access information of States and businesses operating at various scales as well as right of generate and share their own ground-up information

Clarify that proactive measures are needed to enable EHRDs to participate in an effective, meaningful, open and inclusive way throughout each stage of environmental decision making and from the local to the national, regional and international level

Specify that States should put into place measures that enable EHRD to have access to justice in the form of effective, timely and independent investigations and remedies when environmental law and human rights laws have been breached as well as prevent the abuse of the law to silence defenders

Interpret procedural rights of EHRD in connection with right to a healthy environment's substantive elements so public institutions support their role in Earth stewardship and in rethinking economic, social and cultural rights in a way that are aligned with sustainability pathways

When looking to the positive obligations of African states under international human rights law regarding EHRD there is a need to view states tripartite duties as a whole. For the most part there has been a focus on the duty to respect, yet this often overlooks states obligations to protect and prevent human rights violations. We decided to focus on the duty to protect and prevent human rights violations as these duties when combined allow for more rounded protection of EHRD that aligns more with the reality faced by EHRD including the role that private actors play in the violations of EHRD rights. EHRD face a number of challenges and risks as a result of their work from multiple different actors both states and private actors. Such risks are violations of their human rights and often prevent them from undertaking their work, or limit their effectiveness. The duty to prevent, stemming from both international human rights law and international environmental law, has become an important framing for states obligations towards EHRD. Preventing mass environmental destruction, will in turn prevent other mass human rights violations.

The Court should clarify that States have obligations to take deliberate measures to prevent violations of rights from private actors. Extending beyond from just refraining from harm, States should ensure that defenders can exercise their rights in environment matters in a safe manner without fear of retaliation from public and private actors.

The Court should also highlight that States have obligations to prevent, mitigate and adapt to the climate crisis, but also obligations to prevent human rights violations when States or non-State actors undertake climate-related actions.

In light of the two 2025 Advisory Opinions pertaining to States obligations in addressing climate change by the IACtHR and the International Court of Justice (ICJ). This submission builds upon the Courts approaches and seeks to outline how the African Court is to align with the ICJ Advisory opinion and further clarify and complement the approaches taken regarding EHRD in the context of Africa while considering comparative regional developments. The IACtHR took a strong stance on the role and protection of EHRD within the Advisory Opinion, affirming that the right to defend rights is an autonomous right, and also highlighting the importance of EHRD work in promoting democracy and rule of law while also protecting the environment was throughout this Advisory Opinion. Looking to the African Courts own jurisprudence it is clear that an African framework exists for the Court to take a progressive interpretation of State obligations towards EHRD.

The Court should take a strong and explicit approach to the protection of the rights of EHRD, building on the previous Advisory Opinions and going further in highlighting the specific obligations of States regarding EHRDs and contextualising them to the African region.

We urge the African Court to utilise its own jurisprudence and provisions of the African Charter on Human and Peoples Rights which provide a strong basis for which to ground states obligations under the duty to protect and prevent regarding both public and private actors' actions towards EHRD; and also for the court to provide guidance to States on how to implement their heightened obligations in relation to a diversity of groups who act as EHRD and contribute to Earth stewardship for present and future generations.

b. Translated French Version

Ce *amicus curiae* présente la position de la Clinique Juridique Defend-Bio concernant la demande d'avis consultatif sur les obligations des États africains en matière de droits de l'Homme face à la crise climatique, soumise à la Cour Africaine des droits de l'Homme et des peuples le 2 mai 2025 par l'Union panafricaine des avocats ainsi que d'autres parties.

Le 28 novembre 2025, la Cour Africaine a autorisé Dr Claudia Ituarte-Lima, au nom de la Clinique juridique transnationale pour la défense d'une planète vivante (Defend-Bio Legal Clinic), à intervenir en tant *qu'amici curie*. Les auteurs coordinateurs du mémoire d'amicus curiae sont le Dr Claudia Ituarte-Lima, responsable thématique pour l'environnement et les droits de l'Homme et chercheuse senior à l'Institut Raoul Wallenberg des droits de l'Homme et du droit humanitaire, et Issabell Pope, spécialisée dans le droit international des droits de l'Homme et ses interactions avec l'environnement. Notre équipe de recherche Defend-Bio comprenait également le Dr Maria Andrea Nardi (géographie humaine), le Dr Ana Maria Vargas Falla (sociologie du droit), Angeline Mbaria (droit), Drishti Alagh (droit international des droits de l'Homme), Emelie Andersson (sociologie du droit), Erin Gourley (droit international des droits de l'Homme), Lathika Venkatapathy (sciences naturelles) et Meri Karhunen (sociologie du droit). Les membres de la clinique juridique Defend-Bio, hébergée par l'Institut Raoul Wallenberg et l'Université de Lund, possèdent une expérience significative dans le travail avec les défenseurs des droits humains environnementaux (DDH-E) et la promotion de leurs droits, tant au niveau international que régional. Leur expertise couvre l'autonomisation juridique, l'éducation aux droits humains, la recherche législative et

politique, ainsi que les initiatives de renforcement des capacités auprès d'un large éventail d'acteurs et d'institutions.

Le présent *amicus curiae* et les observations qui y sont formulées visent principalement à répondre aux questions posées au paragraphe 93(b) de la requête, avant que la Cour ne fasse explicitement référence aux défenseurs des droits humains environnementaux. Plus précisément, la partie IV examine les obligations positives des États africains envers les DDH-E dans le contexte du changement climatique. Tout cela s'inscrit dans le cadre du droit international des droits de l'Homme, en exposant et en clarifiant les obligations découlant des traités internationaux pertinents en matière de droits de l'Homme et des interprétations faisant autorité. La partie VI replace dans leur contexte les obligations en matière de droits humains concernant les DDH-E en Afrique ; Partie VIII elle apporte un éclairage sur le Système Interaméricain des droits de l'Homme, en expliquant comment la Cour Interaméricaine des droits de l'Homme (Cour IDH) a interprété ces droits et obligations. Cette partie fait également référence à l'Accord d'Escazú sur l'accès à l'information, la participation du public et l'accès à la justice en Amérique latine et dans les Caraïbes, premier traité plurilatéral à reconnaître explicitement les droits des DDH-E. En complément, nous fournissons également des éléments permettant à la Cour de clarifier deux questions spécifiques soulevées par la demande d'avis consultatif, à savoir les études d'impact environnemental et le consentement libre, préalable et éclairé. Enfin, nous précisons les mesures concernant les droits des défenseurs des droits humains environnementaux que les États devraient envisager pour mettre en œuvre leurs obligations positives en matière de droits humains dans le contexte des crises socio-écologiques planétaires.

L'argument principal avancé dans ce *amicus curiae* est la nécessité d'aborder les obligations des États envers les défenseurs des droits humains environnementaux en les considérant non seulement comme un groupe marginalisé ayant besoin de protection, mais aussi comme des acteurs du changement qui contribuent activement à la gestion des écosystèmes et à l'action pour le climat. Reconnaître l'importance du travail des DDH-E dans la contribution à l'action climatique et à la protection de l'environnement permet de mieux protéger leurs droits et d'atténuer la stigmatisation dont ils font l'objet dans la région et au-delà. Il est nécessaire de protéger les droits des DDH-E et de prévenir les violations de ces droits pour garantir l'efficacité de l'action climatique et de la protection de l'environnement en Afrique.

Nous exhortons la Cour à renforcer les obligations des États en matière de protection des droits humains des défenseurs de l'environnement, des droits humains et du développement, en mettant l'accent sur leur devoir de protection et de prévention, dans le contexte de la crise climatique, et en veillant à ce que ces obligations tiennent compte des identités intersectionnelles des défenseurs, qui font d'eux à la fois un groupe vulnérable et des acteurs du changement.

La Cour devrait reconnaître que les identités croisées des défenseurs des droits environnementaux et des droits humains les exposent à des risques accrus, mais que ces mêmes identités leur permettent également d'apporter une contribution particulièrement solide et précieuse à la gestion des écosystèmes et de la biodiversité, ainsi qu'à l'adaptation au changement climatique et à l'atténuation de ses effets.

En décrivant qui sont les défenseurs des droits environnementaux et humains et leur rôle dans le cadre plus large de la protection de l'environnement, il apparaît clairement que, dans la région africaine, les DDH-E ont joué un rôle important dans la protection des terres et des écosystèmes contre les projets et les pratiques non durables. Le travail des défenseurs prend plusieurs formes, allant de la participation d'individus à des manifestations contre le changement climatique, à l'action de communautés protégeant activement les écosystèmes locaux et la biodiversité. Le droit à un environnement propre, sain et durable constitue un point d'entrée important pour comprendre l'interconnexion entre le travail des défenseurs et la nécessité de protéger leurs droits humains. L'interdépendance des éléments procéduraux et substantiels de ce droit reconnaît que la protection efficace de l'environnement passe par le respect des droits humains.

Nous appelons la Cour Africaine à préciser que le travail des défenseurs des droits environnementaux et des droits humains est étroitement lié à la protection de l'environnement au sens large, et que, par conséquent, la protection des droits de ces défenseurs découle des obligations climatiques plus larges des États, au-delà de celles qui émanent des traités climatiques spécialisés, notamment les obligations procédurales et matérielles spécifiées dans les traités internationaux et régionaux relatifs aux droits humains et dans d'autres accords multilatéraux sur l'environnement.

La Cour devrait fournir des orientations aux États sur les éléments procéduraux et substantifs du droit à un environnement propre, sain et durable :

Reconnaître que les DDH-E ont le droit d'accéder aux informations détenues par les États et les entreprises opérant à différentes échelles, ainsi que le droit de produire et de partager leurs propres informations recueillies sur le terrain

Clarifier que des mesures proactives sont nécessaires pour permettre aux DDH-E de participer de manière efficace, significative, ouverte et inclusive à chaque étape du processus décisionnel en matière d'environnement, du niveau local au niveau national, régional et international

Spécifier que les États devraient mettre en place des mesures permettant aux DDH-E d'avoir accès à la justice sous la forme d'enquêtes et de recours efficaces, rapides et indépendants en cas de violation du droit de l'environnement et des droits humains, ainsi que de prévenir l'utilisation abusive de la loi pour réduire les défenseurs au silence

Interpréter les droits procéduraux des DDH-E en lien avec les éléments substantiels du droit à un environnement sain, afin que les institutions publiques soutiennent leur rôle dans la gestion responsable de la planète et dans la redéfinition du droit à l'environnement d'une manière qui s'aligne sur les voies de la durabilité

Lorsque l'on examine les obligations positives des États africains en vertu du droit international en matière de défense des DDH-E, il est nécessaire d'envisager les obligations tripartites des États dans leur ensemble. Jusqu'à présent, l'accent a principalement été mis sur l'obligation de respecter ces droits, ce qui a souvent conduit à négliger les obligations des États à protéger et prévenir les violations des droits de l'Homme. Nous avons décidé de nous concentrer sur les devoirs de protection et de prévention des violations des droits de l'Homme, car, combinés, ces devoirs permettent une protection plus complète des défenseurs des droits environnementaux et humains, ce qui correspond davantage à la réalité à laquelle ils sont confrontés, y compris le rôle que jouent les acteurs privés dans les violations de leurs droits. Les DDH-E sont confrontés à un certain nombre de défis et de risques découlant de leur travail, provenant de multiples acteurs différents, tant étatiques que privés. Ces risques constituent des violations de leurs droits humains et les empêchent souvent d'exercer leur travail, ou limitent leur efficacité. Le devoir de prévention, découlant à la fois du droit

international des droits de l'Homme et du droit international de l'environnement, est devenu un cadre important pour les obligations des États envers les DDH-E. Prévenir la destruction massive de l'environnement permettra, à son tour, de prévenir d'autres violations massives des droits humains.

La Cour devrait préciser que les États ont l'obligation de prendre des mesures délibérées pour prévenir les violations des droits commises par des acteurs privés. Au-delà de la simple abstention de nuire, les États devraient veiller à ce que les défenseurs puissent exercer leurs droits en matière d'environnement en toute sécurité, sans craindre de représailles de la part d'acteurs publics ou privés.

La Cour devrait également souligner que les États ont l'obligation de prévenir, d'atténuer et de s'adapter à la crise climatique, mais aussi l'obligation de prévenir les violations des droits de l'Homme lorsque des États ou des acteurs non étatiques mènent des actions liées au climat.

À la lumière des deux avis consultatifs rendus en 2025 par la Cour Interaméricaine des droits de l'Homme et la Cour Internationale de Justice (CIJ) concernant les obligations des États en matière de lutte contre le changement climatique, la présente contribution s'appuie sur les approches adoptées par ces deux cours et vise à exposer comment la Cour Africaine doit s'aligner sur l'avis consultatif de la CIJ, tout en clarifiant et en complétant les approches adoptées concernant le droit à la défense des DDH-E dans le contexte africain, en tenant compte des évolutions régionales comparatives. La CIDH a adopté une position ferme sur le rôle et la protection des DDH-E dans son avis consultatif, affirmant que le droit de défendre les droits est un droit autonome, et soulignant tout au long de cet avis l'importance du travail de défense des DDH-E pour promouvoir la démocratie et l'État de droit tout en protégeant l'environnement. Au regard de la jurisprudence des cours africaines, il est clair qu'il existe un cadre africain permettant à la Cour d'adopter une interprétation progressiste des obligations des États en matière de défense des DDH-E.

La Cour devrait adopter une approche ferme et explicite en matière de protection des droits des défenseurs des droits humains environnementaux, en s'appuyant sur ses avis consultatifs antérieurs et en allant plus loin pour mettre en évidence les obligations spécifiques des États à l'égard de ces défenseurs et les replacer dans le contexte de la région africaine.

Nous exhortons la Cour Africaine à s'appuyer sur sa propre jurisprudence et sur les dispositions de la Charte Africaine des droits de l'Homme et des peuples, qui constituent une base solide sur laquelle fonder les obligations des États au titre du devoir de protection et de prévention concernant les actions des acteurs tant publics que privés à l'égard des DDH-E; nous invitons également la Cour à fournir des orientations aux États sur la manière de mettre en œuvre leurs obligations renforcées à l'égard d'une diversité de groupes qui agissent en tant que DDH-E et contribuent à la gestion responsable de la planète pour les générations actuelles et futures.

c. Translated Portuguese Version

Este *amicus curiae* apresenta a submissão da Clínica Jurídica Defendbio a respeito do Pedido de Parecer Consultivo sobre as obrigações de direitos humanos dos Estados Africanos no enfrentamento da crise climática, submetido ao Tribunal Africano dos Direitos Humanos e dos Povos em 2 de maio de 2025 pela União Pan-Africana de Advogados e outros.

À Dra. Claudia Ituarte-Lima, em representação da Transnational Legal Clinic Defending a Living Earth (Defendbio Legal Clinic), foi concedida autorização para atuar como *amicus curiae* pelo Tribunal Africano em 28 de novembro de 2025. As autoras coordenadoras do memorial de *amicus curiae* são a Dra. Claudia Ituarte-Lima, líder temática de Meio Ambiente e Direitos Humanos e pesquisadora sênior do Instituto Raoul Wallenberg de Direitos Humanos e Direito Humanitário, e Issabell Pope, que se especializa em direito internacional dos direitos humanos e sua interseção com o meio ambiente. Nossa equipe de pesquisa da Defendbio também inclui a Dra. Maria Andrea Nardi (Geografia Humana), a Dra. Ana Maria Vargas Falla (Sociologia do Direito), Angeline Mbaria (Direito), Drishti Alagh (Direito Internacional dos Direitos Humanos), Emelie Andersson (Sociologia do Direito), Erin Gourley (Direito Internacional dos Direitos Humanos), Lathika Venkatapathy (Ciências Naturais) e Meri Karhunen (Sociologia do Direito). Os membros da Defendbio Legal Clinic, vinculada ao Instituto Raoul Wallenberg e à Universidade de Lund, possuem experiência significativa no trabalho com defensores de direitos humanos ambientais e com a proteção de seus direitos, tanto em nível internacional quanto regional. Sua expertise abrange empoderamento jurídico, educação em direitos humanos, pesquisa legislativa e de políticas públicas, bem como iniciativas de fortalecimento de capacidades junto a uma ampla variedade de atores e instituições.

Este *amicus curiae* e as observações apresentadas concentram-se em responder às questões constantes do parágrafo 93(b) do pedido submetido ao Tribunal, que faz referência expressa aos Defensores de Direitos Humanos Ambientais (Environmental Human Rights Defenders – EHRD). Especificamente, a Parte IV discute as obrigações positivas dos Estados africanos em relação aos EHRD no contexto da mudança do clima. Tudo isso se insere no marco do direito internacional dos direitos humanos, delineando e esclarecendo as obrigações decorrentes dos tratados internacionais de direitos humanos pertinentes e de suas interpretações autorizadas. A Parte VI contextualiza as obrigações de direitos humanos relativas aos EHRD na África; a Parte VIII também oferece uma perspectiva sobre o Sistema Interamericano de Direitos Humanos, compreendendo de que modo a Corte Interamericana de Direitos Humanos (Corte IDH) tem entendido os direitos e as obrigações. Esta parte também inclui referência ao Acordo de Escazú sobre acesso à informação, participação pública e acesso à justiça na América Latina e no Caribe, o primeiro tratado plurilateral a reconhecer expressamente os direitos dos EHRD. De forma complementar, também apresentamos elementos para que o Tribunal esclareça duas questões específicas suscitadas no pedido de parecer consultivo, a saber, as avaliações de impacto ambiental e o consentimento livre, prévio e informado. Por fim, especificamos medidas relativas aos direitos dos Defensores de Direitos Humanos Ambientais que os Estados devem considerar para implementar suas obrigações positivas em matéria de direitos humanos no contexto das crises socioecológicas planetárias.

O argumento central apresentado neste memorial de *amicus curiae* é a necessidade de abordar as obrigações dos Estados em relação aos EHRD a partir de uma perspectiva que os reconheça como um grupo marginalizado que necessita de proteção, mas também como agentes de mudança que contribuem ativamente para a tutela dos ecossistemas e para a ação climática. Reconhecer a importância do trabalho dos EHRD para a promoção da ação climática e da proteção ambiental permite maior proteção de seus direitos e a mitigação do estigma que lhes é associado na região e para além dela. A proteção dos direitos dos EHRD e a prevenção de violações de direitos humanos contra eles são necessárias para assegurar que a ação climática e a proteção ambiental sejam efetivas na região africana.

Sustentamos que o Tribunal deve reforçar as obrigações dos Estados de proteger os direitos humanos dos EHRD, com enfoque em seu dever de proteger e prevenir, no contexto da crise climática, assegurando que tais obrigações reflitam as identidades interseccionais dos

defensores, caracterizando-os tanto como um grupo vulnerável quanto como agentes de mudança.

O Tribunal deve reconhecer que as identidades interseccionais dos EHRD os colocam em um contexto de riscos acrescidos, mas que essas mesmas identidades também lhe permitem oferecer uma contribuição particularmente situada e valiosa para a tutela dos ecossistemas e da biodiversidade, bem como para a adaptação e a mitigação climáticas.

Ao delinear quem são os EHRD e qual é o seu papel no âmbito mais amplo da proteção ambiental, fica explícito que, na região africana, os EHRD têm desempenhado papel importante na proteção das terras e dos ecossistemas contra projetos e práticas insustentáveis. O trabalho dos defensores assume diversas formas, desde indivíduos que participam de protestos contra a mudança do clima até comunidades que protegem ativamente ecossistemas locais e a biodiversidade. O direito a um meio ambiente limpo, saudável e sustentável oferece um importante ponto de entrada para compreender a interconexão entre o trabalho dos defensores e a necessidade de proteger seus direitos humanos. A interdependência entre os elementos procedimentais e substantivos desse direito reconhece que a proteção ambiental efetiva exige a observância dos direitos humanos.

Sustentamos que o Tribunal Africano deve esclarecer que o trabalho dos EHRD está fortemente interligado à proteção ambiental em sentido mais amplo e, portanto, que a proteção dos direitos dos EHRD decorre das obrigações climáticas mais amplas dos Estados, e não apenas daquelas oriundas de tratados climáticos especializados, inter alia, das obrigações procedimentais e substantivas especificadas em tratados internacionais e regionais de direitos humanos e em outros Acordos Ambientais Multilaterais.

O Tribunal deve orientar os Estados quanto ao conteúdo dos elementos procedimentais e substantivos do direito a um meio ambiente limpo, saudável e sustentável:

Reconhecer que os EHRD têm o direito de acessar informações dos Estados e das empresas que operam em diferentes escalas, bem como o direito de gerar e compartilhar suas próprias informações produzidas a partir da base

Esclarecer que são necessárias medidas proativas para permitir que os EHRD participem de maneira efetiva, significativa, aberta e inclusiva em cada etapa da tomada de decisões ambientais, do nível local ao nacional, regional e internacional

Especificar que os Estados devem adotar medidas que permitam aos EHRD ter acesso à justiça sob a forma de investigações e reparações efetivas, tempestivas e independentes quando o direito ambiental e o direito dos direitos humanos tenham sido violados, bem como prevenir o abuso do direito para silenciar os defensores

Interpretar os direitos procedimentais dos EHRD em conexão com os elementos substantivos do direito a um meio ambiente saudável, de modo que as instituições públicas apoiem seu papel na tutela da Terra e na reformulação dos direitos econômicos, sociais e culturais de forma alinhada com trajetórias de sustentabilidade

Ao examinar as obrigações positivas dos Estados africanos, no âmbito do direito internacional dos direitos humanos, em relação aos EHRD, há necessidade de considerar de forma conjunta os deveres tripartites dos Estados. Em grande medida, houve concentração no dever de respeitar; contudo, isso frequentemente negligencia as obrigações dos Estados de proteger e prevenir violações de direitos humanos. Optamos por centrar a análise no dever de proteger e prevenir violações de direitos humanos, pois esses deveres, quando combinados, permitem uma proteção mais abrangente dos EHRD, mais condizente com a realidade por eles enfrentada, inclusive no que se refere ao papel desempenhado por atores privados nas violações de seus direitos. Os EHRD enfrentam uma série de desafios e riscos em razão de seu trabalho, provenientes de múltiplos atores, tanto estatais quanto privados. Tais riscos constituem violações de seus direitos humanos e frequentemente os impedem de realizar seu trabalho, ou limitam sua efetividade. O dever de prevenir, decorrente tanto do direito internacional dos direitos humanos quanto do direito internacional do meio ambiente, tornou-se um importante enquadramento das obrigações dos Estados em relação aos EHRD. A prevenção da destruição ambiental em massa, por sua vez, prevenirá outras violações massivas de direitos humanos.

Recomenda-se que o Tribunal esclareça que os Estados têm a obrigação de adotar medidas deliberadas para prevenir violações de direitos praticadas por atores privados. Indo além da mera abstenção de causar danos, os Estados devem assegurar que os defensores possam

exercer seus direitos em matéria ambiental de forma segura, sem temor de retaliação por parte de atores públicos e privados.

O Tribunal deveria também destacar que os Estados têm obrigações de prevenir, mitigar e adaptar-se à crise climática, mas também obrigações de prevenir violações de direitos humanos quando Estados ou atores não estatais empreendem ações relacionadas ao clima.

À luz dos dois pareceres consultivos de 2025 relativos às obrigações dos Estados no enfrentamento da mudança do clima, emitidos pela Corte Interamericana de Direitos Humanos (Corte IDH) e pela Corte Internacional de Justiça (CIJ), esta submissão baseia-se nas abordagens adotadas por essas Cortes e procura delinear de que modo o Tribunal Africano deve alinhar-se ao parecer consultivo da CIJ, bem como esclarecer e complementar, no contexto africano e à luz de desenvolvimentos regionais comparados, as abordagens referentes aos EHRD. A Corte IDH adotou uma posição firme quanto ao papel e à proteção dos EHRD no parecer consultivo, afirmando que o direito de defender direitos é um direito autônomo, e também destacando, ao longo de todo o parecer, a importância do trabalho dos EHRD na promoção da democracia e do Estado de Direito, bem como na proteção do meio ambiente. Considerando a própria jurisprudência do Tribunal Africano, é claro que já existe um marco africano que permite ao Tribunal adotar uma interpretação progressiva das obrigações dos Estados em relação aos EHRD.

O Tribunal deve adotar uma abordagem firme e explícita para a proteção dos direitos dos EHRD, construindo sobre os pareceres consultivos anteriores e avançando ainda mais ao destacar as obrigações específicas dos Estados em relação aos EHRD e contextualizá-las à região africana.

Sustentamos que o Tribunal Africano deve utilizar sua própria jurisprudência e as disposições da Carta Africana dos Direitos Humanos e dos Povos, que fornecem uma base sólida para fundamentar as obrigações dos Estados, no âmbito do dever de proteger e prevenir, em relação tanto às ações de atores públicos quanto privados contra os EHRD, bem como para fornecer orientação aos Estados sobre como implementar suas obrigações reforçadas em relação à diversidade de grupos que atuam como EHRD e contribuem para a tutela da Terra para as gerações presentes e futuras.

II. Introduction

The focus of this brief is environmental human rights defenders. Specifically, in response to the advisory opinion request, this brief addresses the questions (a) the delineation of the rights of marginalised groups and setting out the nuances relating to environmental human rights defenders (EHRDs)? (b) what are the positive obligations of African states towards vulnerable populations that includes environmental human rights defenders from the impacts of climate change in line with the relevant treaties?

The arguments presented in this brief showcase the interdependence that exists between the work of EHRDs and climate action, both actions that are framed as climate specific as well as other with the protection of ecosystems and biodiversity that is safeguarded by EHRDs. In addition, the obligations of African states towards EHRDs should be reflective of this, with the duty to protect rights of EHRDs and prevent violations of human right in the context of climate change being significant to ensuring that EHRDs are provided with a safe and enabling environment to carry out their work in.

This brief provides an analysis of the rights and obligations found in the international human rights law framework, with a specific focus on building on International Court of Justice (ICJ) Advisory Opinion on Climate Change. A comparative approach with the Inter-American System will also be applied, detailing the way in which the region has dealt with the rights and obligations toward EHRDs. With a focus on the Inter-America Court of Human Rights. In light of the two Advisory Opinions that were issued in 2025, this submission builds upon how the African Court is able to complement the approaches taken regarding EHRDs.

It should be noted that we believe the discussions around obligations and rights found within the Aarhus Convention are relevant as while most of the ratifying states are European and Central Asian countries, the Convention is not regionally bound and in 2023 Guinea-Bissau ascended to the Convention. For this reason, we have included it in our discussion of the obligations of states under the international human rights law framework.

In addressing the above questions, we urge the Court to reinforce State obligations to protect the human rights of EHRDs, focusing on their duty to protect and prevent, in the context of

the climate crisis. The court should also recognise the significance of the work of EHRDs in contributing to climate action and protection of healthy ecosystem and biodiversity.

III. Who are Environmental Human Rights Defenders?

In 2016 the UN Special Rapporteur on the situation of human right defenders provided a definition of who are EHRDs. With them being defined as “Individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna.”¹ In 2023 the UN General Assembly recognised the contribution of EHRDs to the enjoyment of human rights, environmental protection and sustainable development, which acknowledges the importance of the work of EHRDs and the fact that they are often the most exposed and at-risk human rights defenders.² Many different terms have been used to refer to EHRDs at the international level, such as environmental and land defenders, climate defenders, and biosphere defenders.³ There is a recognition that environmental defenders are “on the front lines in the fight against environmental violations in their communities, cities, and countries, and the driving force behind efforts to address the triple planetary crisis of pollution, biodiversity loss and climate change”.⁴ While the term EHRDs is broad and encompass many individuals and groups there need to be the recognition that some EHRDs are more exposed and vulnerable such as Indigenous People, women and girls, and youth.⁵

The last ten years has witnessed an increasing number of collective protests relating to environmental conflicts in the African continent as shown by academic and grey literature, news articles and reports. These conflicts have exposed local communities struggles against environmental destruction and land and natural resources dispossession resulting from large-

¹ M. Forst, Situation of human rights defender’s A/71/281 (3 August 2016) 7

² UNGA, Resolution adopted by the Human Rights Council: Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development A/HRC/RES/40/11 (21 March 2019)

³ C. Ituarte-Lima, et al, *Environmental human rights defenders: new developments and their implications for the European Union and the European Parliament* (European Parliament 2025)

⁴ M. Lawlor et al, Time to protect environmental defenders and ensure their safe participation in international forums relating to the environment and climate change, A joint statement by international and regional human rights experts, in the context of COP29 (29 October 2024)

⁵ M. Forst, Situation of human rights defender’s A/71/281 (3 August 2016)

scale extractive projects in various regions (e.g., fossil fuel, water, agribusiness) and biodiversity fortress conservation, renewable energy parks or waste pollution.⁶

According to Natural Justice, “African Environmental Defenders play an important role in protecting their lands and ecosystems from unsustainable industrial development, logging and extractive projects”,⁷ defenders work “across the spectrum of industry-government-community conflict zones – and these activists take various forms. They can be the youth holding up the placards in the marches, the women organizing themselves against big agriculture, and the human rights lawyers and journalists who are more inclined to desk work than protests”⁸. In North Africa, they take the form of environmental movements and organizations but also communities and women collectives, usually conceptualized as ‘environmentalist’. According to Choucair Vizoso⁹ there is a rise of mobilizations in the region against environmental destruction and degradation, such as anti-fracking protests in Algeria,¹⁰ waste mismanagement mobilizations in Tunisia, water mismanagement in Morocco or land use conflicts in Egypt, adding that “in some instances, environmental issues have triggered

⁶ Angela van der Berg, 2025, South African environmental groups push to block Shell’s new wells – how world court opinion might help, in *The Conversation*, <https://theconversation.com/south-african-environmental-groups-push-to-block-shells-new-wells-how-world-court-opinion-might-help-263972>. Karol Boudreaux and Scott Schang, 2019, Threats of, and Responses to, Agribusiness Land Acquisitions in *Business and Human Rights Journal* 4(2):365-371. doi:10.1017/bhj.2019.13. Lara Domínguez & Colin Luoma, 2020, Decolonising Conservation Policy: How Colonial Land and Conservation Ideologies Persist and Perpetuate Indigenous Injustices at the Expense of the Environment in *Land* 9(3): 65. <https://doi.org/10.3390/land9030065>. Leonara Haag, 2022, *Environmental colonialism in the Maghreb?*

Harnessing green energy on indigenous peoples’ land Swedish Institute of International Affairs, Stockholm. <https://www.ui.se/globalassets/ui.se-eng/publications/ui-publications/2022/ui-brief-no.-10-2022.pdf>

⁷ African Environmental Defenders website, 2025. <https://envirodefenders.africa/>

⁸ Claire Martens, 2024, Reflecting on African Environmental Defenders in 2024, in *Natural Justice* website <https://naturaljustice.org/reflecting-on-african-environmental-defenders-in-2024/>.

⁹ Julia Choucair Vizoso, 2025, Environmental Struggles in the Middle East and North Africa: a research agenda, *Arab Reform Initiative*. <https://s3.eu-central-1.amazonaws.com/storage.arab-reform.net/ari/2025/05/09155001/ENGLISH-Environmental-Struggle-in-the-Middle-East-and-North-Africa-A-Research-Agenda.pdf>

¹⁰ Business & Human Rights Resource Centre, 2015. Algeria: Citizens protest fracking plans over environmental and health concerns, <https://www.business-humanrights.org/en/latest-news/algeria-citizens-protest-fracking-plans-over-environmental-and-health-concerns/>. Nesrine Zribi, 2023, Tunisia activists appeal jail terms over pollution protests, *AlJazeera*, <https://aje.io/9gpjm1>. Ilhem Rachidi, 2025, Figuig: The rebellious oasis town fighting water privatisation in Morocco, *The New Arab*, <https://www.newarab.com/features/figuig-and-fight-against-water-privatisation-morocco>

mass protests at the national level or become intertwined with broader demands for socioeconomic and political change”.¹¹

In West Africa (but also elsewhere in the continent)¹² fortress conservation has displaced communities from their ancestral land at time entangling with structural violence and armed conflict, such in the Democratic Republic of Congo.¹³ According to Natural Justice, “The Mano River Union Civil Society Natural Resource Rights and Governance Platform has been working on the West African Front line Grassroots Defenders Directory. The West African Directory will¹⁴ endeavor to bridge the data gap in Africa by collecting and documenting attacks against environmental defenders in West Africa”.¹⁵

Like in other subregions in Africa, in East Africa, environmental defenders have been outspoken about land dispossession and environmental destruction. Environmental and land defenders in Uganda and Tanzania for example, have raised concerns and protested against the environmental impacts (oils spills and pollution) and social consequences (land dispossession, community fragmentation) that the 1443 kms long East Africa Crude Oil Pipeline (EACOP) -the largest in the world – will bring to local communities whose livelihoods directly depend on the environment.¹⁶ Kenya is celebrating the recent victory of Lamu Community’s struggles for over a decade against Amu Power Company Ltd for the proposed 1,050 MW Lamu Coal Fire Power Plant, as the Environment and Land Court from Malindi

¹¹ Julia Choucair Vizoso, ‘Environmental Struggle in the Middle East and North Africa: A Research Agenda’ (Arab Reform Initiative, 9 May 2025) <https://www.arab-reform.net/publication/environmental-struggle-in-the-middle-east-and-north-africa-a-research-agenda/>

¹² Simon Counsell, 2022, Fortress conservation is heading for a crisis that can’t come soon enough, *African Arguments*, <https://africanarguments.org/2022/07/fortress-conservation-is-heading-for-a-crisis-that-cant-come-soon-enough/>

¹³ Oakland Institute, 2024, *From abuse to power: Ending fortress conservation in the Democratic Republic of Congo*. The Oakland Institute, Oakland, US. <https://reliefweb.int/attachments/38770554-195d-4f64-b5c4-7e22939e7c23/from-abuse-to-power.pdf>

¹⁵ Mano River Union Civil Society Natural Resource Rights and Governance Platform (MRU-CSO Platform) website <https://mrucsoplatform.org/about/>

¹⁶ Human Rights Watch, 2023, “Working On Oil is Forbidden” Crackdown against Environmental Defenders in Uganda. <https://www.hrw.org/report/2023/11/02/working-oil-forbidden/crackdown-against-environmental-defenders-uganda>. In 2023 the African Environmental Defenders Initiative released the documentary *Protecting Tomorrow: Documenting the Courage and Resilience of Environmental Defenders in Africa* showcasing this case.

revoked the Environmental Impact Assessment (EIA) license granted to the company: “The Court found that the public participation process was inadequate and failed to meaningfully include the voices of affected communities. The judgment reaffirmed the importance of the precautionary principle, emphasizing that courts must not hesitate to apply it in environmental decision-making”.¹⁷

The African Environmental Defenders Initiative, institutionalized in 2019 by Natural Justice and various partners has the overall objective “to enhance respect for the work of African Environmental Defenders and advocate for and secure their human rights. The Initiative aims to minimize or manage the risks faced by Defenders in Africa by offering support to enhance their resilience in terms of protection against threats. Through the Initiative, Natural Justice established the African Environmental Defenders Fund. This is a joint program by Natural Justice and the various partners which provides emergency funding to land, and environmental Defenders based in Africa whose lives are under threat due to their activism or actions” according to Natural Justice.¹⁸

The importance of understanding who EHRDs are and their role broadly within environmental protection and climate action in Africa relates to the need to conceptualize the ways in which individuals and communities can be viewed as an EHRDs. The diversity of who an EHRDs is and the type of work/activism that is undertaken by them needs to be reflected in the positive obligations of states and the delineation of EHRDs rights. Such understanding makes up important context for the Court to provide a holistic and accurate account of African States obligations towards EHRDs.

IV. States positive obligations to protect environmental human rights defenders from the impacts of climate change in line with relevant treaties (Para 93, Question b)

¹⁷ Natural Justice & Save Lamu, 2025, Historic Victory for Lamu Community and Environmental Justice, Natural Justice website, <https://naturaljustice.org/historic-victory-for-lamu-community-and-environmental-justice/>

¹⁸ African Environmental Defenders Initiative, Natural Justice website, <https://naturaljustice.org/human-rights-defenders-fund/>

Under para 93(b) of the Advisory Opinion request the Court was asked to delineate the positive obligations of African States in protecting vulnerable populations from the impacts of climate change, explicitly mentioning EHRDs: “Given the unique and significant implications of the responsibilities and duties to vulnerable individuals and populations, whether State parties to the African Charter on Human and Peoples' Rights (the Charter) have positive obligations to protect vulnerable populations including *environmental human rights defenders*... from the impact of climate change in line with the relevant treaties?” (*emphasis added*)

States obligations under international human rights law are understood as comprising of the duty to respect, protect and fulfil human rights of individuals and groups. In the context of EHRD the duty to respect, refraining from interfering with the rights of individuals, has been the focus of state obligations. An increase attention on implementing measure for State duties to protect human rights from violations of non-State actors with a specific focus on businesses, as well as the duty to prevent human rights violations and environmental degradation will help facilitate an environment for EHRD which is safe and enabling for their work that benefits not only their communities but society and other living beings more broadly.

a. Duty to protect with regards to EHRDs in the climate crisis

The obligation to protect under international human rights law encompasses the states’ duty to take active, positive steps to prevent violations of rights by private actors, corporations, or non-state actors.¹⁹ It extends beyond just refraining from harm and ensures that defenders can exercise their rights to freedom of expression, association, and participation in environmental matters in a safe manner without a fear of retaliation. This duty has been reaffirmed by the UN Human Rights Committee which outlined that States must exercise due diligence to prevent, investigate, punish, and redress any harm inflicted on human rights defenders.²⁰ With respect to EHRDs, this obligation becomes enhanced, given environmental defenders’ vulnerability to threats, criminalization, and violence pertaining to environmental

¹⁹ UN Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13, para 8; see also Committee on Economic, Social and Cultural Rights, General Comment No. 24 on State Obligations under the ICESCR in the Context of Business Activities (10 August 2017) UN Doc E/C.12/GC/24, paras 14–16.

²⁰ Ibid.

protection or due to opposition against extractive or carbon-intensive projects.²¹ The UN Special Rapporteur on Human Rights Defenders has further elaborated on EHRDs essentiality to the protection of ecosystems and realization of rights to life, health, food, and water.²²

The obligation of states to protect with respect of EHRDs entails a three-fold mechanism, including preventive, procedural and remedial obligations. In this context, preventive obligations revolve around drafting and implementing legislations that provide recognition and protection of the work of EHRDs, ensuring corporate accountability, addressing structural risks like impunity, corruption, and land insecurity.²³ Procedural obligations - access to information, public participation and access to justice - on the other hand ensure the involvement of defenders in environmental decision-making, for instance in environmental impact assessments and climate policies, and access to information in line with the principles and rights of the Aarhus Convention.²⁴ Finally, remedial obligations are inclusive of prompt and impartial investigation and full reparation in case of violation of the rights of defenders.²⁵

In terms of the ICJ's recent Advisory Opinion on Climate Change (23 July 2025)²⁶, although this AO in itself does not expressly mention the States' duty to protect environmental human rights defenders, it nevertheless strengthens the legal foundations of States' positive obligations that are directly relevant to their protection. These obligations can therefore be positively interpreted and leveraged in the context of EHRDs rights. The Court reaffirms in its opinion that States have a customary international law duty to prevent significant harm to the environment and the climate system, and that due diligence is the applicable standard governing this obligation.²⁷ Due diligence, as articulated by the Court, requires States to regulate the conduct of private actors, including activities related to production, consumption, licensing and permitting, within their jurisdiction or control.²⁸ Furthermore, where a State fails

²¹ Universal Rights Group, *Protecting the Frontline: Good Practices for Recognising and Supporting Environmental Human Rights Defenders* (2023) <https://www.universal-rights.org/urg-policy-reports/protecting-the-frontline-good-practices-for-recognising-and-supporting-environmental-human-rights-defenders>

²² UNGA, A/80/114 – Tipping Points: Human Rights Defenders, Climate Change and a Just Transition (2025), para 15.

²³ Ibid paras 35-38.

²⁴ UNECE, Convention on Access to Information, *Public Participation in Decision-making and Access to Justice in Environmental Matters* (Aarhus Convention, 1998), arts 4–9.

²⁵ Inter-American Court of Human Rights, Advisory Opinion OC-23/17 (2017), para 120, 236.

²⁶ International Court of Justice, *Advisory Opinion on the Obligations of States in respect of Climate Change* (23 July 2025).

²⁷ Ibid., para 132.

²⁸ Ibid., para 280.

to take all reasonable measures within its power to prevent such harm, it may incur international responsibility.²⁹ Importantly, in the context of the duty to protect, while the Court acknowledges the inherent causal complexity of climate change, its cumulative and diffusive nature, it simultaneously affirms the possibility of attribution to States based on a sufficiently direct and certain causal nexus.³⁰ These findings, in line with the States' duty to protect in the sphere of climate change, are highly relevant to EHRDs because defenders are often revealing how private actors degrade ecosystems and violate environmental law and human rights. By proposing ways to regulate the conduct of private actors and hold them accountable for their negative impacts. Moreover, the Court's affirmation, in the advisory opinion, of the State duties of prevention, regulation, cooperation, and accountability supports a broader interpretation of the duty to protect defenders. Ensuring that EHRDs can safely report environmental harm, participate in decision-making, and monitor climate-related activities becomes essential for States to fulfil their own due diligence obligations.

The obligation to protect also differs from the obligation to respect for states because while the former requires positive action, the latter demands State abstention from actions that directly or indirectly interfere with the rights of the defenders.³¹ This involves abstaining from harassment, surveillance, arbitrary detention, or delegitimization of EHRDs. In a broader sense, the protection of EHRDs is inseparable from the overall framework of climate justice and environmental democracy. Considering this, the States' positive obligations extend to integrating defender protection into climate governance³² and guaranteeing against discrimination and intersectional protection of women, the rights of Indigenous people, and youth defenders. Failure to fulfil such obligations by the states would constitute a violation of international human rights law, specifically the rights to life, liberty, security, and the right to defend human rights of these groups.³³

The positive obligations of States under international law for the protection of environmental defenders imply a duty to provide safe conditions in which defenders can act, take preventive

²⁹ Ibid., para 208, 409.

³⁰ Ibid., para 436.

³¹ OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Guidelines on the Protection of Human Rights Defenders* (OSCE 2014).

³² Supra at Note 4

³³ UN Human Rights Council, "Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment" (7 April 2016) UN Doc A/HRC/31/53.

measures to avoid harm by non-state actors, and ensure accountability for violations. Such a commitment on the part of states provides the legal framework for a rights-based approach to environmental governance, consistent with sustainable development, intergenerational equity, and environmental justice.

b. State obligations to protect EHRDs from business violating their rights

The obligation to protect under international human rights law requires states to adopt necessary measures to protect individuals and groups – including EHRDs – from acts committed by private persons or entities such as businesses that may violate their rights.³⁴ As the International Court of Justice has noted, regulation of the activities of private actors is one aspect of States’ obligations to respond to climate change and should take due regard of human rights.³⁵ The role of businesses in violating the rights and freedoms of EHRDs was detailed above, ensuring that EHRDs are protected from business actors should be a top priority for states.

While businesses do not have direct obligations under international human rights law, States are obliged to protect against violations of human rights by private entities.³⁶ This has been described as “part of the very foundation” of the international human rights regime.³⁷ The duty requires states to take appropriate steps – including through policy, legislation, regulation and adjudication – to protect against abuse of human rights by businesses.³⁸ The duty to protect spans across borders, and applies regardless of whether the State is concerned with

³⁴ Human Rights Committee, “General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant” (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add. 13, para. 8; see also Committee on Economic and Social Rights, “General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities” (10 August 2017) UN Doc E/C.12/GC/24, para. 14.

³⁵ *Obligations of States in respect of Climate Change* (Advisory Opinion) [2025] ICJ 187, para. 403.

³⁶ See, for example, Margaret Sekaggya, “Report of the Special Rapporteur on the situation of human rights defenders” (30 December 2009) UN Doc A/HRC/13/22, para. 43.

³⁷ John Ruggie, “Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises” (19 February 2007) UN Doc A/HRC/4/35, para. 18.

³⁸ John Ruggie, “Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework” (21 March 2011) UN Doc A/HRC/17/31, Principle 1.

the actions of multinational entities or local businesses.³⁹ In relation to EHRDs, the duty to regulate business enterprises should include protections for access to information, participation and remedy.⁴⁰

Businesses implement many of the activities that clash with the rights of EHRDs, and local communities and states may be complicit in attacks by businesses on EHRDs.⁴¹ A key challenge for the rights of all human rights defenders, but especially EHRDs, is the widespread impunity for violators of their rights.⁴² Business who violates the rights of EHRDs are often not held accountable. The Human Rights Committee has framed the obligation as requiring states to take “all measures necessary to ensure the rights, protection and safety of all persons, including EHRDs” when exercising a range of rights – including freedom of opinion, expression, peaceful assembly and association, which are essential for protection and conservation of the environment.⁴³

The Guiding Principles on Business and Human Rights require States to protect against human rights abuses in their territories by “third parties, including business enterprises”, through “appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication”.⁴⁴ States are also obliged to provide remedies for human rights abuses caused by corporations, and corporations themselves have a responsibility to respect human rights.⁴⁵ According to the Guiding Principles on Business and Human Rights, States should ensure the legitimate activities of human rights defenders are

³⁹ Committee on Economic and Social Rights, “General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities” (10 August 2017) UN Doc E/C.12/GC/24, para. 14.

⁴⁰ UN Human Rights Committee, “The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises” (2021) UN Doc. A/ HRC/47/39/Add.2, para. 42.

⁴¹ Protecting the Frontline report at 26; Mary Lawlor, “Report of the Special Rapporteur on the situation of human rights defenders” (16 July 2020) UN Doc A/75/165, para. 35.

⁴² Michel Forst, “Report of the Special Rapporteur on the situation of human rights defenders” (23 July 2018) UN Doc A/73/215, para. 20.

⁴³ Human Rights Council, “Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development” (2 April 2019) UN Doc A/HRC/RES/40/1; see also John H. Knox, “Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment” (24 January 2018) UN Doc A/HRC/37/59, Framework Principle 5.

⁴⁴ John Ruggie, “Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework” (21 March 2011) UN Doc A/HRC/17/31, Principle 1.

⁴⁵ Guiding Principles on Business and Human Rights No. 11 and 25

not obstructed. This implies obstruction and harassment should be prosecuted.⁴⁶ Furthermore, the Guiding Principles recognise that defenders play an important role as watchdogs with knowledge of their communities.⁴⁷ Framework Principle 18 requires businesses to identify and access actual or potential adverse human rights involved with their activities. The process should involve drawing on internal and/or independent external human rights expertise, meaningful consultation with potentially affected groups.⁴⁸ Commentary on the Guiding Principles explicitly recognises the expertise and importance of human rights defenders in consultation processes.⁴⁹

States obligations towards EHRDs should not only be reactive, but states should also take preventive measures to guarantee the rights of EHRDs by addressing the root cause of violations by businesses.⁵⁰ Addressing the issue of impunity and violations by businesses is not simply a matter of regulation, but of developing a safe and enabling environment for human rights defenders. States should recognise the legitimacy and utility of the action of EHRDs in relation to business and private actors, this can help facilitate a safe and enabling environment for EHRDs to work in.⁵¹

c. States duty to prevent significant environmental harm and human rights violations

Complementary to being a governing principle that operates in the context of the climate crisis, prevention is also a duty of states.⁵² The duty to prevent is a duty that is found within international environmental law and international human rights law, but it remains abstract in terms of what is required of states.⁵³ In 2025 the International Court of Justice in its Advisory

⁴⁶ Guiding Principle on Business and Human Rights No. 26.

⁴⁷ Guiding Principles on Business and Human Rights No. 18.

⁴⁸ *ibid*

⁴⁹ Guiding Principles on Business and Human Rights. Implementing the United Nations’ Protect, Respect, and Remedy” Framework (OHCHR 2011)

⁵⁰ *Ibid*.

⁵¹ Michel Forst, “Report of the Special Rapporteur on the situation of human rights defenders” (23 July 2018) UN Doc A/73/215, para. 22.

⁵² P. Moodely et al, A Healthy Earth for All: Catalyzing the Work of Environmental Human Rights Defenders Through Prevention, *in* Preventing Mass Human Rights Violations in the Context of the Climate Crisis. The Prevention Project (2024) <https://app.box.com/s/4rx8ulon5z01stonnp7lyc66fk5rdzlh>

⁵³ Leslie-Anne Duvic-Paoli, *The Prevention Principle in International Environmental Law* (Cambridge, UK: Cambridge University Press, 2018)

Opinion on Climate Change clarified states duty to prevent climate related risks and harms. Here the ICJ make clear that the duty to prevent significant harm to the climate system and other part of the environment is an obligation that requires states to avoid activities that will cause significant damage to the environment, and to act with due diligence. Due diligence was understood to incorporate appropriate and precautionary measures that account for technological information, as well as the rules and international standards. Through the recognition of the right to a healthy environment in 2022 by the UN, the interconnectedness of the protection of environment and human rights was solidified at the international level. It has become an unequivocal fact that climate change and environmental degradation negatively impact the enjoyment of human rights.⁵⁴ States need to take measure to prevent, mitigate and adapt to the climate crisis under their protection obligations in international environmental law.⁵⁵ But this also calls for the prevention of human rights violations in the context of actions to address climate change e.g. in the context of transitional minerals. Preventing mass environmental destruction of ecosystems and biodiversity loss, will in turn prevent other mass human rights violations.

States positive obligations under international human rights law towards EHRDs should also be understood as including the duty to prevent human rights violations towards EHRDs⁵⁶. In protecting the environment, states also need to protect the rights of those who defend it. As early as 1998, the need to protect the rights of EHRDs alongside the importance of their work in protecting the environment and biodiversity has been widely recognised⁵⁷. The protection of rights of EHRDs have focused on the public manifestation of physical threat and violence against defenders; for this reason, short term redress for violations of EHRDs rights has dominated the way in which states obligations have manifested themselves⁵⁸. While there is of course a need for attention towards redress for such violations, this cannot result in ignoring

⁵⁴ International Court of Justice 'Obligations of States in Respect of Climate Change (Advisory Opinion)' I.C.J. Reports 2025, 23 July, General List No.187 Para 386

⁵⁵ D. Boyd, Good practices on the right to a safe, clean, healthy and sustainable environment, A/HRC/43/53 (30 December 2019)

⁵⁶ UN Environmental Programme, Protecting the Frontline: Good Practices for Recognising the Supporting Environmental Harm Rights Defenders (2024)

⁵⁷ UNGA, Resolution adopted by the Human Rights Council: Recognising the Contributions of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development A/HRC/RES/40/11 (21 March 2019)

⁵⁸ UN Environmental Programme, Protecting the Frontline: Good Practices for Recognising the Supporting Environmental Harm Rights Defenders (2024)

the more systematic and long-term action that is needed to prevent mass violations against EHRDs. The risk facing EHRDs are often contingent on the nature of the threats, intersecting vulnerability of the individual, and their capacity to counter the specific threats⁵⁹ Prevent strategies typically focus on reducing vulnerability and bolstering the capabilities of EHRDs. Such prevention methods go hand in hand with the prevention of significant environmental harm; preventing human rights violations of EHRDs who often act as environmental stewards and protectors of ecosystems will in turn feed into state duty to prevent under international environmental law.⁶⁰

Preventive approaches towards EHRDs and their rights provides an opportunity to help overcome the hindrances that EHRDs face in reaching their full potential in the stewardship of biodiversity and healthy ecosystems. Narratives around EHRDs and their work often revolve around them being “anti-development” and a hindrance to progress, this increases the risk that they face.⁶¹ This is often viewed as a root cause behind the threats faced by EHRDs, the disempowered narrative around their work facilitates an environment whereby tactics that threaten to limit and silence the work of EHRDs are normalised. Policy makers and legislators have a role in changing rather than reinforcing the toxic narratives that portray EHRDs as anti-development. Preventative focused approaches to EHRDs provide for more room for the systemic issues faced by EHRDs to be tackled, prevention allows for the development of a safe and welcoming environment for defenders to work in.⁶²

States duty to prevent significant harm to the environment cannot be separated from states duty to prevent mass human rights violations occurring in the context of climate change. The duty to prevent human rights violations serves both to protect EHRDs and the environment itself from harm. The recognition of a right to a healthy environment in 2022 by the UN was a key milestone in the intersection between the environment and human rights.

⁵⁹ E.Eguren et al, New Protection Manual for Human Rights Defenders (Protection International 2022)

⁶⁰ P. Moodely, A Healthy Earth for All: Catalyzing the Work of Environmental Human Rights Defenders Through Prevention, *in* Preventing Mass Human Rights Violations in the Context of the Climate Crisis. The Prevention Project (2024)

⁶¹ Global Witness, Enemies of the State? (London, UK: Global Witness, 2019) www.globalwitness.org/en/campaigns/environmental-activists/enemies-state/

⁶² P. Moodely et al, A Healthy Earth for All: Catalyzing the Work of Environmental Human Rights Defenders Through Prevention, *in* Preventing Mass Human Rights Violations in the Context of the Climate Crisis. The Prevention Project (2024)

Protection of the rights of EHRDs through a lens of independence and indivisibility of human rights as a whole can provide an approach that provides for systematic preventive action. In ensuring the realisation of a full spectrum of EHRDs rights, prevention can become a powerful strategy to foster active engagement of defenders in political activities, empowering them to contribute to the stewardship of biodiversity and ecosystems.⁶³ Allowing for narratives to shift towards recognising the public interest value of EHRDs work both environmentally and socially.

V. Specific issues raised by the Advisory Opinion Request of special relevance to defenders

a. Environmental Impact Assessments and Responsibilities of African States (Para 173(h))

Human rights are intertwined with the environment, and therefore the environmental degradation and unsustainable development are among the most pressing threats to the effective enjoyment of all human rights by present and future generations.⁶⁴ EHRDs are key actors in the protection of ecosystems⁶⁵, and as established above, this calls for States to integrate defender protection into climate governance.⁶⁶ Hence, addressing any actual and potential human rights impacts resulting from proposed activities that may harm the environment becomes an essential part of safeguarding the rights of EHRDs. Indeed, states have an obligation to “enact clear, robust regulations mandating environmental, social and human rights impact processes before licensing any public or private activity”.⁶⁷

⁶³ Ibid

⁶⁴ UNGA, Resolution adopted by the General Assembly: The human right to a clean, healthy, and sustainable environment A/RES/76/300 (28 July 2022), para 16-17, International Court of Justice, ‘Obligations of States in respect of Climate Change (Advisory Opinion)’ I.C.J. Reports 2025, 23 July, General List No. 187 para 372.

⁶⁵ UNGA, Tipping Points: Human Rights Defenders, Climate Change and a Just Transition A/80/114 (4 July 2025), para 15.

⁶⁶ Inter-American Court of Human Rights, Advisory Opinion OC-23/17 (2017), para 120, 236.

⁶⁷ A. Puentes Riaño, Report of the Special Rapporteur on the human right to a clean, healthy, and sustainable environment A/80/187 (17 July 2025) para 33.

To fulfil their duty to protect EHRDs and prevent human rights violations towards them, States should carry out environmental impact assessments (EIA) as a preventative measure. EIAs refer to national procedures used to evaluate the likely impact of a proposed activity on the environment.⁶⁸ This includes, among others, cumulative⁶⁹ impact on human health and safety, flora, fauna, soil, and water.⁷⁰ EIA is a proactive management tool that seeks to minimise environmental damage and enhance sustainable development by supporting more environmentally informed decision-making.⁷¹ The significance of carrying out EIAs and related risk assessments was first recognised in the Rio Declaration in 1992. Since then, EIA has become an important tool in environmental protection and enhancing the connection between environmental and human rights. In the International Court of Justice Climate Change Advisory Opinion, the Court affirmed that the requirement to undertake an EIA is an expression of the more general rule of due diligence under international environmental law.⁷²

There are prevailing challenges regarding EIAs, such as the misconception that environmental, social and human rights impacts are not interrelated; project fragmentation that excludes fundamental parts of an activity to avoid thorough assessments; and avoidance of impact assessment through arbitrary exemption.⁷³ Additionally, highly technical documents have been deemed as inaccessible and ineffective tools of engagement of defenders including Indigenous people and local communities, often leading to superficial engagement.⁷⁴ It is vital, then, to consider how EIAs can be best utilised to ensure the enjoyment of human rights of

⁶⁸ UNECE, Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), (25 February 1991)

⁶⁹ International Court of Justice, 'Obligations of States in respect of Climate Change (Advisory Opinion)' I.C.J. Reports 2025, 23 July, General List No. 187 para 276

⁷⁰ UNECE, Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), (25 February 1991)

⁷¹ UNEP, Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach (2004), pp. 7-8.

⁷² International Court of Justice, 'Obligations of States in respect of Climate Change (Advisory Opinion)' I.C.J. Reports 2025, 23 July, General List No. 187 para 299

⁷³ A. Puentes Riaño, Report of the Special Rapporteur on the human right to a clean, healthy, and sustainable environment A/80/187 (17 July 2025), para 16-17.

⁷⁴ I. Khan. Sustainable development and freedom of expression: Why voice matters, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression A/HRC/53/25 (19 April 2023), para 80.

EHRDs who often potentially affected communities are or who are supporting those potentially affected to prevent environmental harm.

Rather than being a one-time assessment, EIAs are ongoing processes that involve meaningful consultation with potentially affected communities.⁷⁵ Engaging with potentially affected communities in environmental decision-making “increases public support, promotes sustainable development and helps to protect the enjoyment of rights that depend on a safe, clean, healthy and sustainable environment”.⁷⁶ Meaningful engagement, here, refers to public participation that is open to all members of the potentially affected groups and requires States to provide information about the proposal and decision-making process in an objective, understandable, timely and effective manner.⁷⁷ More specifically, when the activity is proposed to take place on, or likely to have an impact on, lands, waters, and sacred sites traditionally occupied or used by Indigenous and local communities, they should be invited to participate in “all stages of the assessment and development process, including planning and implementation”.⁷⁸

EHRDs are key actors for ensuring the involvement and participation of local communities in EIA processes.⁷⁹ To participate adequately, Indigenous people, local communities and those of afro-decedents have a right to receive reliable information, which calls for conducting independent and impartial impact studies on the full spectrum of rights that could be affected.⁸⁰ Furthermore, States are obligated to inform the potentially affected groups of their

⁷⁵ UNHRC, Report of the Human Rights Council on its forty-sixth session A/HRC/46/35 (24 December 2020), para 34.

⁷⁶ UNHRC, Report of the Human Rights Council on its thirty-seventh session A/HRC/37/59 (24 January 2018), para 23.

⁷⁷ UNHRC, Report of the Human Rights Council on its thirty-seventh session A/HRC/37/59 (24 January 2018), para 24.

⁷⁸ Secretariat of the Convention on Biological Diversity, Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities, (2004) para 12.

⁷⁹ Secretariat of the Convention on Biological Diversity, Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities, (2004), para 16

⁸⁰ UNGA, Rights of Indigenous Peoples: Report of the Special Rapporteur on the rights of indigenous peoples A/HRC/45/34, (18 June 2020), para 58.

opportunities to participate in decision-making, provide them with relevant information, and offer the opportunity to express their views.⁸¹ As EHRDs are continuously acknowledged as central figures in advancing sustainability and protecting human rights in relation to a safe, clean, and healthy environment, States should take appropriate steps to ensure that EHRDs' knowledge is incorporated into EIA processes.⁸² This engagement would help minimize the possible negative impact of the proposed activities on human rights and maximize opportunities for EHRDs to advance their own rooted initiatives for a clean, healthy and sustainable environment.

b. Delineating the right to free, prior and informed consent of environmental human right defenders (Para 128)

In paragraph 128 the request for an Advisory Opinion invites the Court to delineate the rights of marginalised groups, and the nuances attached to EHRDs. The request explicitly mentioned the right to free, prior and informed consent (FPIC). The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) requires States to obtain the free, prior and informed consent of indigenous peoples, who constitute a majority of EHRDs, before implementing legislations and projects that may impact them.⁸³ FPIC builds on the principle of self-determination, or the right to autonomy and self-government over territories and natural resources, which is essential for development.⁸⁴ This requires consultation with affected communities when designing and implementing measures.⁸⁵

Free refers to voluntary consent obtained without bias, coercion, conditions, manipulation or intimidation.⁸⁶ Prior implies consent must be sought before projects and legislations are authorised or initiated. Informed means information provided while seeking consent must be

⁸¹ UNGA, 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/37/59 (24 January 2018), para 23-24.

⁸² UNGA, Resolution adopted by the Human Rights Council: Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development A/HRC/RES/40/11 (21 March 2019)

⁸³ United Nations, United Nations Declaration on the Rights of Indigenous People (2007); OHCHR, Free, Prior and Informed Consent of Indigenous Peoples (2013); M. Forst, Situation of human rights defenders A/71/281 (3 August 2016)

⁸⁴ I. Khan, Sustainable development and freedom of expression: why voice matters A/HRC/53/25 (19 April 2023); A. Mayor, Presentation: Guiding principles of indigenous peoples' autonomy and self-governance rights (2021)

⁸⁵ J.H. Knox, 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/37/59 (24 January 2018)

⁸⁶ FAO, Free Prior and Informed Consent Manual (2017)

clear, accessible, transparent, and accurate. Consent sought in this manner can always be withheld or revoked at any stage of the process.⁸⁷ The UNDRIP, International Labour Organization Convention 169 (ILO 169), and Convention on Biological Diversity (CBD) provide the normative framework for FPIC and self-determination in international law. While the UNDRIP enshrines FPIC, it is not legally binding on member States.⁸⁸ Article 16 of ILO 169 – a binding mechanism – prohibits the relocation and removal of indigenous peoples for development projects without free and informed consent.⁸⁹ The CBD explicitly calls for prior informed consent to be obtained before access to indigenous resources.⁹⁰ The Aarhus Convention is another legally binding international environmental instrument which guarantees the right to access environmental information and participate in environmental decision-making processes.⁹¹ Other legally binding instruments include the African Charter on Human and Peoples’ Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR).⁹² Resolution 224 of the ACHPR calls on States to “ensure independent social and human rights impact assessments that guarantee free prior informed consent”.⁹³ Though the ICCPR does not explicitly mention FPIC, the UN Human Rights Committee frequently interprets its provisions as including States’ obligation to obtain consent.⁹⁴

Preserving indigenous traditions and ways of life is crucial for the restoration and management of ecological systems.⁹⁵ Combating climate change thus requires guaranteeing EHRDs rights of self-determination and access to information to ensure effective participation in implementing the sustainable development goals (SDGs) and achieving meaningful climate

⁸⁷ IAITPTF & IPF, Handbook on Free, Prior and Informed Consent For Practical Use by Indigenous Peoples’ Communities (2021)

⁸⁸ United Nations Permanent Forum on Indigenous Issues, Frequently Asked Questions: Declaration on the Rights of Indigenous Peoples (n.d.)

⁸⁹ Indigenous and Tribal Peoples Convention No. 169 (adopted 27 June 1989, entered into force 5 September 1991) ILO Convention No. 169 (Article 16)

⁹⁰ Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79 (Article 15)

⁹¹ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447

⁹² FAO, Free Prior and Informed Consent Manual (2017)

⁹³ African Commission on Human and Peoples’ Rights, ‘Resolution on a Human Rights-Based Approach to Natural Resources Governance’ (adopted 2 May 2012) ACHPR Res 224

⁹⁴ FAO, Free Prior and Informed Consent Manual (2017);
UN-REDD Programme, Guidelines on Free, Prior and Informed Consent (2013)

⁹⁵ UNDP, Nationally Determined Contributions in Asia: Are Governments recognizing the rights, roles and contributions of Indigenous Peoples? (2022)

action.⁹⁶ The Special Rapporteur on the situation of human rights defenders notes that ensuring EHRDs' rights to access information is essential for protecting the environment and environment-related rights. The report also underscores the duty of States to protect these rights.⁹⁷ The 2030 Agenda for Sustainable Development in SDG 16 calls for ensuring public access to information in accordance with international agreements.⁹⁸ The right to freedom of opinion and expression in the Universal Declaration of Human Rights and Article 19 of the ICCPR includes the rights to access information and public participation.⁹⁹ In the context of sustainable development, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression notes that these rights require "proactive disclosure of information by duty bearers" and "full and active participation in the development process" of rights holders in order to fulfil the promise of leaving no one behind.¹⁰⁰ The report also notes that FPIC is required to enable effective and meaningful participation of EHRDs.

VI. Heightened Obligations of States towards marginalised groups as EHRDs

States have heightened obligations towards certain groups of EHRDs, the risks faced by EHRDs are varied and context related. EHRDs have intersecting identities that create additional vulnerabilities.¹⁰¹ An intersectional approach to the protection of EHRDs rights is necessary to ensure that such situation is recognised and addressed. The intersectional identities of EHRDs also bring unique knowledge, life experience and agency, such considerations should also contribute to the realisation and implementation of the rights of EHRDs.¹⁰²

⁹⁶ I. Khan, Sustainable development and freedom of expression: why voice matters A/HRC/53/25 (19 April 2023)

⁹⁷ M. Forst, Situation of human rights defenders A/71/281 (3 August 2016)

⁹⁸ UNGA, Transforming our world: the 2030 Agenda for Sustainable Development A/RES/70/1 (21 October 2015)

⁹⁹ I. Khan, Sustainable development and freedom of expression: why voice matters A/HRC/53/25 (19 April 2023); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (Article 19)

¹⁰⁰ I. Khan, Sustainable development and freedom of expression: why voice matters A/HRC/53/25 (19 April 2023)

¹⁰¹ S. Nazrul Islam and J. Winkel, Climate Change and Social Inequality (DESA Working Paper No 152, United Nations Department of Economic and Social Affairs, October 2017)

¹⁰² P. Moodley et al, A Healthy Earth for All: Catalyzing the Work of Environmental Human Rights Defenders Through Prevention, *in* Preventing Mass Human Rights Violations in the Context of the Climate Crisis, The Prevention Project, June 2024 <https://app.box.com/s/4rx8ulon5z01stonnp7lyc66fk5rdzlh>

a. Children and Youth

The planetary crisis poses an urgent threat to children and youth, particularly in their capacity as defenders.¹⁰³ Globally and in Africa, children and youth are increasingly engaging in collective action to demand far-reaching reforms on pressing global concerns, including climate justice and the pursuit of a healthier planet.¹⁰⁴ Identified by the General Comment 26 of the Convention on the Rights of the Child (CRC), as essential agents of change, child and youth EHRDs have a longstanding record of shaping significant human rights and environmental developments.¹⁰⁵

However, when children and young people exercise their rights to freedom of expression or participate in environmental activism, they “often face threats, intimidation, harassment and other serious reprisals”.¹⁰⁶ These risks are often linked to structural and societal barriers rooted in entrenched ageism and discriminatory biases, resulting in a lack of credibility and recognition from intergovernmental bodies, government institutions, adult-led organizations, and society at large.¹⁰⁷ They face practical obstacles, including, but not limited to, a lack of access to legal support, a lack of economic support, exclusion from decision-making spaces, and potential academic sanctions for their legitimate human rights activism.¹⁰⁸

States have heightened obligations regarding the protection of child and youth EHRDs, stemming from the special status of children and their increased vulnerability to environmental harms. These obligations require States to take deliberate, comprehensive, and systemic actions across legislative, judicial, and political spheres. The CRC emphasizes the need to formally recognize their status as children and ensure that their calls for urgent

¹⁰³ A. Puentes Riaño, Human Rights and the Environment A/80/187 (17 July 2025), 2

¹⁰⁴ M. Lawlor, “We are not just the future”: Challenges faced by child and youth human rights defenders A/HRC/55/50 (17 Jan 2024), 2

¹⁰⁵ Committee on the Rights of the Child, General Comment No.26 on children’s right and the environment, with a special focus on climate change CRC/C/GC/26 (22 August 2023), 1

¹⁰⁶ Committee on the Rights of the Child, General Comment No.26 on children’s right and the environment, with a special focus on climate change CRC/C/GC/26 (22 August 2023), 6

¹⁰⁷ M. Lawlor, “We are not just the future”: challenges faced by child and youth human rights defenders A/HRC/55/50 (17 Jan 2024), 6-8

¹⁰⁸ Ibid.

action on global environmental challenges are taken seriously.¹⁰⁹

The principle of best interest of the child applies in the context of child defenders in the climate crisis. In all actions concerning children, the CRC affirms that, “the best interests of the child shall be primary consideration”.¹¹⁰ This principle applies specifically to the adoption and implementation of all decisions pertaining to environmental matters, “including laws, regulations, policies, standards, guidelines, plans, strategies, budgets, international agreements and the provision of development assistance”.¹¹¹ In this context, it is imperative not only to formulate and implement targeted policies and legislative measures that enhance the protection of young EHRDs but also to protect the rights of their families. This necessity arises from the critical role that familial support systems play in enabling these activists to effectively engage in their work. Families provide vital financial resources and material support, as well as emotional and psychological backing, which are instrumental in empowering children and youth to champion human rights.¹¹² States have a duty to guarantee children’s EHRDs rights to freedom of expression, association, and peaceful assembly. Reports from young EHRDs indicate they often face academic penalties for their advocacy, such as threats from educators, unjust expulsions, or the denial of academic opportunities. Such sanctions not only constitute a violation of the fundamental right to education but also foster an atmosphere of intimidation that deters wider youth engagement in activism.¹¹³ International human rights law includes robust protections for child human rights defenders within educational contexts. According to Article 28(2) of the CRC, States are obligated to ensure that school discipline respects children’s dignity and aligns with the Convention. Under Article 29(1)(b) of the Convention, education should foster respect for

¹⁰⁹Committee on the Rights of the Child, General Comment No.26 on children’s right and the environment, with a special focus on climate change CRC/C/GC/26 (22 August 2023), 1

¹¹⁰Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3

¹¹¹Committee on the Rights of the Child, General Comment No.26 on children’s right and the environment, with a special focus on climate change CRC/C/GC/26 (22 August 2023), 3

¹¹² M. Lawlor, “We are not just the future”: challenges faced by child and youth human rights defenders A/HRC/55/50 (17 Jan 2024), 9

¹¹³ M. Lawlor, “We are not just the future”: challenges faced by child and youth human rights defenders A/HRC/55/50 (17 Jan 2024), 7

human rights and fundamental freedoms.¹¹⁴ It is imperative that states create a safe and enabling environment that allows child and youth EHRDs to exercise their right without the risk of threats, harassment, intimidation, or violence.¹¹⁵ This commitment not only underscores the importance of safeguarding their rights but also that fosters a family and education support system conducive to their advocacy and activism.

States must establish mechanisms to guarantee that children and youth EHRDs are afforded meaningful and effective opportunities to engage in decision-making processes. States should formulate specific national policies that ensure the systematic and substantive involvement of child and youth EHRDs in these processes.¹¹⁶ Such policies should aim to enhance not only participation but also the influence of young individuals in shaping decisions that affect their rights and well-being. In accordance with this principle, young EHRDs must be afforded the right to access accurate and reliable environmental information. This encompasses their entitlement to obtain information pertinent to assessment processes, which should be provided in age-appropriate, child-friendly formats. Such accessibility is essential for enabling their meaningful participation in decision-making processes, and access to justice mechanisms, in a manner that is both safe and developmentally appropriate.¹¹⁷

b. Women and Girls

The global environmental crisis, coupled with entrenched gender-based discrimination, patriarchal structures, and socioeconomic disparities, imposes distinct and disproportionate harms on women and girls.¹¹⁸ Specifically, as EHRDs, women and girls, particularly those belonging to Black, Indigenous, or other racially marginalized groups, face heightened

¹¹⁴ M. Lawlor, “We are not just the future”: challenges faced by child and youth human rights defenders A/HRC/55/50 (17 Jan 2024), 7

¹¹⁵ Committee on the Rights of the Child, General Comment No.26 on children’s right and the environment, with a special focus on climate change CRC/C/GC/26 (22 August 2023), 5-6

¹¹⁶ Committee on the Rights of the Child, General Comment No.26 on children’s right and the environment, with a special focus on climate change CRC/C/GC/26 (22 August 2023), 5;

¹¹⁷ Ibid

¹¹⁸ D. Boyd, Women, girls and the right to a clean, healthy and sustainable environment A/HRC/52/33 (5 Jan 2023), 1-3

vulnerabilities to violations concerning environmental rights and advocacy.¹¹⁹ This intersection of environmental degradation and systemic inequities exacerbates the risks and adversities experienced by these populations, underscoring the urgent need for an inclusive and equitable approach to environmental governance.

Women and Girls confront not only the risks associated with their activism but also endure gender-specific abuses, including intimidation, sexual violence, harassment, forced displacement, attacks on reputation, and threats directed at their families.¹²⁰ Additionally, women and girls are often marginalized in environmental decision-making processes and face stigmatization for advocating for environmental justice.¹²¹ The precariousness of their situation is intensified by factors such as restricted land and tenure rights, persistent poverty, and systematic marginalization from decision-making processes.¹²²

The obligations States have regarding the heightened protection of women and girls EHRDs are extensive, requiring systemic, gender-transformative, and immediate action to address the compounded risks they face. In accordance with the United Nations General Assembly resolution focused on the “protection of women human rights defenders,”¹²³ there is a clear delineation of state obligations regarding the treatment of these individuals in relation to the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹²⁴ The resolution urges states to champion gender equality, enhance women’s empowerment, and foster their autonomy. Additionally, it calls for the promotion and safeguarding of women’s equal participation, comprehensive engagement, and leadership roles within societal frameworks, while encouraging the implementation of effective

¹¹⁹ D. Boyd, Women, girls and the right to a clean, healthy and sustainable environment A/HRC/52/33 (5 Jan 2023), 12

¹²⁰ Promotion of the Declaration on the Right p2; P. Moodley et al, Preventing Mass Human Rights Violations in the Context of the Climate Crisis, The Prevention Project, June 2024, 24

¹²¹ D. Boyd, Women, girls and the right to a clean, healthy and sustainable environment A/HRC/52/33 (5 Jan 2023), 12-13

¹²² Ibid

¹²³ United Nations General Assembly, Resolution 68/181, Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: Protecting Women Human Rights Defenders A/68/181(18 December 2013)

¹²⁴ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 14

protective measures tailored to these ends.¹²⁵

In accordance with CEDAW, the principle of non-discrimination must be implemented immediately, requiring States to evaluate both the legal and actual conditions faced by women and girls in policy formulation, implementation, and monitoring.¹²⁶ This necessitates the enactment of legislative measures and policy frameworks that ensure substantive equality. Achieving this requires the integration of gender-responsive assessments and transformative initiatives in all endeavours with environmental implications, promoting equitable access to a healthy environment. Additionally, the principle of non-discrimination requires states to implement an intersectional approach that acknowledges the diverse experiences of women, girls, and individuals within the LGBTQ+ community.¹²⁷ Such measures enable States to effectively address the complexities of inequality faced by EHRDs and advance a more inclusive framework for environmental rights.

States must undertake comprehensive reforms of discriminatory laws, encompassing customary, religious, civil, and family statutes, that limit women's rights to inherit or own land and property.¹²⁸ It is imperative that legal frameworks recognize and uphold equal rights to land tenure and ownership.¹²⁹ This recognition is crucial, as the absence of ownership and control over land significantly contributes to poverty and impedes women's capacity to act as EHRDs with agency.¹³⁰ States have a fundamental responsibility to ensure that women and girls have equitable access to environmental and climate-related information. This access is frequently hindered by technological constraints and educational barriers, which can exacerbate existing inequalities¹³¹. Ensuring access to pertinent information is essential for

¹²⁵ United Nations General Assembly, Resolution 68/181, Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: Protecting Women Human Rights Defenders A/68/181(18 December 2013)

¹²⁶ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 14

¹²⁷ United Nations General Assembly, Resolution 68/181, Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: Protecting Women Human Rights Defenders A/68/181(18 December 2013)

¹²⁸ D. Boyd, Women, girls and the right to a clean, healthy and sustainable environment A/HRC/52/33 (5 Jan 2023), 17

¹²⁹ Ibid

¹³⁰ Ibid

¹³¹ Ibid

empowering women and girls and fostering informed participation in environmental decision-making processes.

c. Indigenous Peoples and local communities

Indigenous peoples and local communities are among the most vulnerable populations when it comes to environmental degradation and injustice, suffering disproportionately from the impacts of climate change.¹³² Their heightened vulnerability stems from both their susceptibility to environmental hazards and the recurrent violations of their human rights. This dynamic is characterized by the interplay between the exposure to environmental threats and the capacity to withstand and adapt to such challenges.¹³³

These peoples, in which a substantial segment of the population depends directly on nature for their sustenance and livelihoods¹³⁴, facing increasing pressures from governmental authorities and commercial interests seeking to exploit these essential resources.¹³⁵ Such pressures frequently lead to their exclusion from critical decision-making processes, resulting in the marginalization of their voices and the systematic disregard and violation of their rights.¹³⁶ These risks not only amplify the vulnerabilities experienced by the indigenous and local groups, but also place EHRDs from these communities in a particularly precarious position. The activism of these defenders further exposes them to heightened threats, including harassment, stigmatization, attacks, criminalization, and killings.¹³⁷

States have heightened obligations toward Indigenous peoples, as delineated in various international human rights treaties, notably the International Labour Organization's Indigenous and Tribal Peoples Convention of 1989 (No. 169) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Among these is, the right to free, prior, informed consent which requires states to obtain the informed and prior consent of

¹³² J. Knox, Framework Principles on Human Rights and the Environment, A/HRC/37/59 (2018), 16-17

¹³³ J. Knox, Framework Principles on Human Rights and the Environment, A/HRC/37/59 (2018), 16

¹³⁴ P. Moodley et al, A Healthy Earth for All: Catalyzing the Work of Environmental Human Rights Defenders Through Prevention, *in* Preventing Mass Human Rights Violations in the Context of the Climate Crisis, The Prevention Project, June 2024, 7

¹³⁵ J. Knox, Framework Principles on Human Rights and the Environment, A/HRC/37/59 (2018), 17

¹³⁶ Ibid

¹³⁷ D. Boyd, Business, planetary boundaries, and the right to a clean, healthy and sustainable environment A/HRC/55/43 (2 Jan 2024)

indigenous peoples before implementing legislation or projects that will have an impact on them.¹³⁸ Free refers to voluntary consent obtained without bias, coercion, conditions, manipulation or intimidation.¹³⁹ Prior implies consent must be sought before projects and legislations are authorised or initiated. Informed means information provided while seeking consent must be clear, accessible, transparent, and accurate. Consent sought in this manner can always be withheld or revoked at any stage of the process.¹⁴⁰ Preserving indigenous traditions and ways of life is crucial for the restoration and governance of ecological systems.¹⁴¹

Former Special Rapporteur John Knox emphasizes that traditional, or local communities, who do not identify as Indigenous may still possess significant relationships with their ancestral lands and rely on natural resources for their material sustenance and cultural practices.¹⁴² As such, it is essential that States make the connection to traditional communities and individuals within their role of EHRDs with the same obligations above, and an enabling environmental to exercise their rights.

VII. Contextualising human rights obligations of States concerning EHRDs in Africa

a. African Charter and African Court's jurisprudence

Although Africa lacks a binding regional instrument specifically protecting environmental human rights defenders, there are relevant instruments that serve to interpret obligations concerning EHRDs. The African Charter on Human and Peoples Rights (The African Charter), jurisprudence and approaches of the African Court and Commission in respect to States duty to protect provides a useful starting point for framing African States positive obligations

¹³⁸ UNGA, Resolution adopted by the General Assembly United Nations Declaration on the Rights of Indigenous Peoples 61/295 (13 September 2007)

¹³⁹ FAO, Free Prior and Informed Consent Manual (2017)

¹⁴⁰ IAITPTF & IPF, Handbook on Free, Prior and Informed Consent For Practical Use by Indigenous Peoples' Communities (2021)

¹⁴¹ UNDP, Nationally Determined Contributions in Asia: Are Governments recognizing the rights, roles and contributions of Indigenous Peoples? (2022)

¹⁴² J. Knox, Framework Principles on Human Rights and the Environment, A/HRC/37/59 (2018)

towards EHRDs. The African Charter recognizes the right to a clean, healthy, and sustainable environment as a fundamental human right, making it the first international instrument in the region to recognize environmental rights as fundamental human rights.¹⁴³ Article 24 of The African Charter guarantees “the right to a generally satisfactory environment favorable to [human] development.” African jurisprudence has given profound meaning to this right, including for indigenous peoples who act as EHRDs. In *African Commission on Human and Peoples’ Rights v. Kenya (Ogiek)*, the African Court affirmed that a state’s failure to protect ancestral lands violates a spectrum of rights, including land, culture, and development. The Court underscored that, for Indigenous people cultural identity, community development, and collective well-being are inseparable from their environment. Accordingly, states must adopt effective legislative, administrative, and practical measures to secure communal land tenure, prevent environmental degradation, and ensure that development or conservation initiatives do not undermine the cultural survival of such communities.¹⁴⁴ Such obligations are echoed at the international level through the right to a healthy environment. The Ogiek case provides a useful basis for which to ground states positive obligations towards EHRDS, while there is no explicit mention of EHRDS, the court aligns itself strongly with the notion that protection of communities and individuals is inseparable from the overall framework of climate justice. Furthermore, the African Court here clarified that the right to reparations for the breach of human rights obligations is a fundamental principle of international law. Measures surrounding reparations must be meaningful, enforceable, comprehensive remedies that address the harm suffered, and can contribute to non-repetition of new violations in the future.¹⁴⁵ The acknowledgement of non-repetition elements is significant for EHRDS and understanding states’ obligations towards them, focusing not just on short term relief for violations but ensuring that more systematic protections exist.

The African Commission has consistently emphasized that state obligations to ensure access to information, public participation, and transparency are fundamental procedural components of environmental protection. In *SERAC v. Nigeria*, the Commission found Nigeria

¹⁴³ Organization of African Unity, African Charter on Human and Peoples Rights (adopted 27 June 1981, entered into force October 1986) 21 I.L.M. 58 (1982) [African Charter].

¹⁴⁴ Application 006/2012 - The African Commission on Human and Peoples’ Rights vs Republic of Kenya

¹⁴⁵ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

in violation of its Charter obligations for withholding crucial information on the environmental and health impacts of oil operations in Ogoniland.¹⁴⁶ In its reasoning, the Commission articulated that the substantive rights to health (Article 16) and a satisfactory environment (Article 24) of The African Charter to impose positive obligations on the state, which inherently include the procedural duties to inform the public and facilitate its participation.¹⁴⁷ Such obligations relate strongly to the duty to protect in ensuring that EHRDS is involved in decision making processes. Aligning itself with the requirement on states to provide safe conditions in which defenders can work.

The African Charter in Art 21(5) obliges states to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies.¹⁴⁸ This provides a strong basis for which to ground states obligations under the duty to protect and prevent regarding the corporations' actions towards EHRDS.

The African human rights regional system is unique in its recognition of collective rights. Article 21 and 22 of the African Charter recognise the collective element of human rights in connection to economic, social, and cultural rights.¹⁴⁹ Attacks on EHRDS not only violate the individual rights of defenders but also their collective and development rights. EHRDS cannot just be understood as individuals working alone, but also as a collective group. Individual defenders are often linked to communities or groups and the violation of the rights of one EHRDS impacts the community as a whole.¹⁵⁰ Entrenching the rights of EHRDS in Article 21 and 22 of the African Convention provides the Court with an entry point to recognise the collective dimension of EHRDS and the realities which they face. The collective dimension of the rights of EHRDS is significant in understanding the nuances of African EHRDS and the way in which their rights should be realised.

The African region is one that has a plethora of traditional, local and indigenous knowledge related to the environment and biosphere, such knowledge is helpful in the development of

¹⁴⁶ Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria (Communication No. 155/96) (Communication 155 of 1996) [2001] ACHPR 35 (27 October 2001)

¹⁴⁷ Ibid

¹⁴⁸ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217 Article 21(5)

¹⁴⁹ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217 Article 21 and Article 22.

¹⁵⁰ International Service for Human Rights, Declaration on Human Rights Defenders +25, (19 June 2024)

environmental policy development but also for understanding how the African Human Rights System views evidence of environmental destruction/degradation.¹⁵¹ As stated above, EHRDs are developing environmental information based on their own local and traditional practices and knowledge. Such traditional knowledge is integral to the environmental protection and sustainable development of local ecosystems and lands, such as the use of flowering of certain tress and changes in winds and clouds.¹⁵² Grounding this in Article 22 of The African Charter as well as the existing jurisprudence of the Court,¹⁵³ the Court should recognize the significance of traditional and local environmental knowledge as a form of evidence equivalent to traditional scientific evidence. This would allow the court to recognise that while EHRDs are a vulnerable group, they are also active agents of change who are actively involved in the development of environmental information and evidence collection e.g. ecosystem degradation. Grounding this in Article 22 of the African Charter as well as the existing jurisprudence of the Court.¹⁵⁴

The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem (IPBES) recognises the wealth of indigenous and local knowledge that Africa has as a strategic asset for sustainable development within the region; such knowledge is at the forefront of biological conservation.¹⁵⁵ These knowledge systems are at risk of being lost for this reason the IPBES calls for the promotion of indigenous and local knowledge in the governance of biological diversity.¹⁵⁶ Indigenous and local knowledge should be integrated alongside “traditional science” when it comes to environmental and biodiversity protection.¹⁵⁷ The right to science is recognised in Article 15 of the International Covenant of Economic, Social and Cultural Rights as the right to access to and participate in science.¹⁵⁸ Such right has been strongly linked to the right to take part in cultural life, with the right to science encompassing all scientific

¹⁵¹ UNESCO, Expert Meeting on Indigenous Knowledge and Climate Change in Africa, Nairobi, Kenya, (27-28 June 2018)

¹⁵² UNESCO, Expert Meeting on Indigenous Knowledge and Climate Change in Africa, Nairobi, Kenya, (27-28 June 2018)

¹⁵³ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217 Article 22

¹⁵⁴ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217 Article 22

¹⁵⁵ IPBES, The regional assessment report on BIODIVERSITY AND ECOSYSTEM SERVICE FOR AFRICA (2018)

¹⁵⁶ IPBES, The regional assessment report on BIODIVERSITY AND ECOSYSTEM SERVICE FOR AFRICA (2018)

¹⁵⁷ IPBES, The regional assessment report on BIODIVERSITY AND ECOSYSTEM SERVICE FOR AFRICA (2018)

¹⁵⁸ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 Article 15

approaches.¹⁵⁹ This strongly relates to the idea that intersectional approaches and heightened obligations are not just limited to violations of human rights; but also contributes to our environmental knowledge and protection.

The African Commission articulated a clear standard for state obligations under Article 24, which includes the duties to conduct environmental and social impact assessments, ensure access to information on environmental and health risks, and establish effective, independent oversight mechanisms. It further held that a state's failure to take these measures in response to harm caused by non-state actors constitutes a breach of its Charter obligations. Subsequently, in the Endorois case, the African Commission elevated this standard by affirming the state's obligation to secure Free, Prior, and Informed Consent (FPIC) of affected communities. It emphasized that participation must not be symbolic or a mere procedural formality, but must be meaningful, effective, and capable of enabling communities to give informed or withhold their consent.¹⁶⁰ While the commission decisions are recommendatory, they are still relevant for EHRDS's to exercise their rights and help clarify obligations of states.

b. African non-binding instruments guiding interpretation of State obligations towards in EHRDs

Complementary to binding instruments such as the African Charter, soft-law instruments like the Kigali Declaration recognizes the important role of human rights defenders and calls upon Member States to protect them,¹⁶¹ alongside the African Commission's Resolution on the Situation of Human Rights Defenders, which strongly condemns violence and reprisals against defenders and urgently calls for their release from arbitrary detention, an end to harassment, and independent investigations into violations of their rights, affirm clear obligations to safeguard individuals and communities challenging environmental harm.¹⁶² Taken together, these African regional instruments, which also include the African Commission's Guidelines on Freedom of Association and Assembly, echo the right to healthy environments focus on

¹⁵⁹ A. Xanthaki, Right to participate in science A/HRC/55/44 (21 February 2024)

¹⁶⁰ Centre For Minority Rights Development and Another v Kenya (Communication 276 of 2003) [2009] ACHPR 102 (25 November 2009)

¹⁶¹ Kigali Declaration, 2003

¹⁶² Resolution on the Situation of Human Rights Defenders in Africa - ACHPR/Res.345(LVIII)2016

enabling rights holders to meaningfully participate in environmental governance and ensuring state responsibility for their protection.

VIII. Insights from Comparative Law

The Inter-American Human Rights System is the first regional human rights system to issue an advisory opinion on climate change and the respective human rights obligations that states have. This can provide a valuable reference point in contextualising human rights obligations concerning climate change for a specific region. The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), is the first international convention that makes explicit reference to EHRDS. These developments can provide relevant insights to the African Court on Human and Peoples Rights.

a. American Convention on Human Rights: Advisory Opinion on Climate Emergency and Human Rights 32/25 (2025)

In 2025 the Inter-American Court of Human Rights (IACtHR) issued its advisory opinion on climate emergency and human rights. This is the first time a regional court has issued an advisory opinion on climate change; the IACtHR found both States to have obligations rooted in international human rights law to address the causes and consequences of climate change.¹⁶³ The court affirmed the right to defend rights, including environmental right as an autonomous right that protects “exercising freely, without limitations or risks of any kind, different activities and tasks aimed at the advancement, monitoring, promotion, dissemination, education, defence, claim for or protection of the universally recognized human rights and fundamental freedoms”.¹⁶⁴ It notes that EHRDs work is significant in promoting democracy and rules of law while also protecting the environment, due to the “the urgency, gravity, and complexity of the measures required to address it”.¹⁶⁵

¹⁶³ CIEL, Climate Justice and Human Rights: Legal Standards and Tools from the Inter-American Court’s Advisory Opinion 32/25, (Oct 2025)

¹⁶⁴ Inter-American Court of Human Rights, Advisory Opinion OC-32/25 (The Climate Emergency and Human Rights) (29 May 2025) (IACtHR) Para 561

¹⁶⁵ Ibid Para 563

States have a special duty of protection which entails recognizing, promoting and guaranteeing EHRDs rights; guaranteeing a safe and enabling environment where they can act freely without threats or restriction; and investigating and punishing attacks, threats or intimidation that EHRDs may suffer as a result of their work.¹⁶⁶ Such duty calls on states to implement “public policy instruments, and to adopt the pertinent domestic legal provisions and practices to ensure the free and safe exercise of the activities of human rights defenders”.¹⁶⁷ States also have obligations to apply enhanced due diligence to investigate, prosecute and punish crimes committed against EHRDs.¹⁶⁸ Such obligation must account for lethal and non-lethal attacks against defenders such as threats, defamation and harassment. Such obligations of states should be reflective of the intersectional nature of EHRDs identities, considering the specific risks faced by women, indigenous, Afro-descendant, and peasant EHRDs.¹⁶⁹ States should adopt the necessary measures to combat patterns of impunity in cases of violence and harassment.¹⁷⁰

The IACtHR highlighted that states have a duty to prevent with regards to the criminalisation of EHRDs, and misuse of the law in restricting their work. Preventive measures should ensure that legal, institutional and policy frameworks don’t enable or facilitate criminalisation. This requires the identification and repeal/amendment of laws that are not compatible with the American Convention, develop procedure that allows for the rapid dismissal of judicial or administrative action intended to intimidate or silence defenders.¹⁷¹

b. The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement)

The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement) is the first

¹⁶⁶ Ibid Para 566

¹⁶⁷ Ibid Para 567

¹⁶⁸ Ibid

¹⁶⁹ Ibid Para 585

¹⁷⁰ Ibid Para 586

¹⁷¹ Ibid Para 587

international agreement which expressly refers to EHRDs as a distinct group. This regional agreement goes beyond protecting procedural rights and recognises States Parties' obligations to provide a safe and enabling environment for EHRDs, by promoting human rights and preventing threats.

The recognition of human rights defenders in environmental matters within the Escazú Agreement aligns with the approach taken by the Inter-American Court of Human Rights in its recent Advisory Opinion. The overarching obligation was framed by the IACHR as a "special duty of protection" towards EHRDs.¹⁷² The protections in the Escazú Agreement also build on the obligation to protect recognised in the UN Declaration on Human Rights Defenders.¹⁷³

The Escazú Agreement focuses on three core rights: access to information, public participation, and access to justice, which also constitutes the procedural elements of the right to a healthy environment.¹⁷⁴ However, it also goes further than these procedural rights, by adding obligations to promote the human rights of environmental human rights defenders and prevent threats to environmental human rights defenders in the exercise of their rights. The recognition of a duty to prevent harm, which requires proactive action from states to guarantee rights including where the rights of environmental defenders' conflict with the rights of private companies, is a significant development.

There are interconnected obligations on states in relation to environmental human rights defenders.¹⁷⁵ First, the broad obligation is contained in Article 9 of the agreement, setting out that States must "guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, so that they are able to act free from threat, restriction and insecurity".¹⁷⁶ There are two more specific paragraphs which outline positive obligations on states to guarantee these rights. Firstly, there is a positive obligation that States Parties must adopt adequate and effective measures both to "recognise, protect and promote" the human rights of environmental human rights

¹⁷² *Climate Emergency and Human Rights* IACtHR AO-32/25 (29 May 2025), para. 581.

¹⁷³ UN General Assembly, "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms" (8 March 1999) UN Doc A/RES/53/144, Art. 2.

¹⁷⁴ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) (adopted 4 March 2018), Arts. 6, 7, and 8.

¹⁷⁵ Article 9.

¹⁷⁶ Article 9(1).

defenders.¹⁷⁷ Secondly, there is a positive obligation for states to “prevent, investigate and punish” threats, intimidation and attacks against environmental human rights defenders.¹⁷⁸ While the first obligation is about protecting human rights, the second obligation is broader and requires states to address the causes of abuse against EHRDs. The dimension of prevention has been described by the Inter-American Court of Human Rights as a “duty of enhanced due diligence” in the investigation of acts which harm defenders.¹⁷⁹ It is a positive obligation on the states to prevent, investigate and punish abuse of EHRDs.¹⁸⁰

Discussions held by the States Parties to the Escazú Agreement led to the 2024 Action Plan on Human Rights Defenders in Environmental Matters, adopted at the Third Conference of the Parties.¹⁸¹ The plan identified specific actions that states could take to improve the recognition of rights of EHRDs. The Action Plan covered the years 2024 to 2030 and was prepared by a Working Group with significant public participation from indigenous and local communities. The 2024 Action Plan focused on knowledge creation, recognition, capacity building and cooperation, and follow-up and review. It is not only focused on the legal aspects of ensuring respect for the rights of EHRDs but also strengthening recognition of their contributions through increased information and acknowledgment of their work.

IX. Special Measures that States should consider for implementing their positive human rights obligations concerning Environmental Human Rights Defender's right to a clean, healthy and sustainable environment

The measures required to implement the rights of EHRDs are specified in a variety of existing international human rights law instruments, and the principles and authoritative interpretations of these rights are rapidly evolving. Like other human rights defenders, EHRDs

¹⁷⁷ Article 9(2).

¹⁷⁸ Article 9(3).

¹⁷⁹ *Climate Emergency and Human Rights* IACtHR AO-32/25 (29 May 2025), para. 566.

¹⁸⁰ Escazú Agreement, Art. 9(3).

¹⁸¹ COP3 on Escazú Agreement, “Action Plan On Human Rights Defenders In Environmental Matters In Latin America And The Caribbean – Proposal by Chile, Ecuador and Saint Kitts and Nevis” (28 February 2024).

are entitled to the rights and protections set out in the Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.¹⁸² As such, rather than providing an exhaustive analysis of all sources of law, the focus here will be on a selected instruments that are of use when understanding the rights of EHRDs. The analysis of rights will build upon the framework developed in a right to a clean, healthy and sustainable environment (right to healthy environment), looking at way, the procedural elements of the right has been interpreted in light of EHRDs' rights. Moreover, the significance of economic, social and cultural rights will be discussed and the need to ensure the interdependence of rights remain. The realisation and access to human rights for EHRDs is fundamental to their ability to carry out their work as defenders.

Made up of the right to public participation, right to access information, and the right to access justice. Substantive elements of the right to a healthy environment are often recognised through the work and action of EHRDs, the substantive and procedural elements of the right are interdependent on each other.

- a. States should recognise that EHRDs have the right to access information of States and businesses operating at various scales as well as right to generate and share their own ground-up information

Right to freedom of expression and opinion includes the right to access information held by states institutions and business. As for the latter, it includes the responsibility of businesses to accurately report and disclose their climate impacts in an accessible manner, that is also sufficient to showcase efforts made in preventing climate change related human rights harms. Such information should be made available prior to starting projects.¹⁸³ The work of EHRDs often revolves around the actions of business towards the environment; access to business reports and information is key in enhancing the ability of EHRDs to challenge the actions and

¹⁸² J. Knox, Framework Principles on Human Rights and the Environment", A/HRC/37/59 (24 January 2018)

¹⁸³ E. Morgera, Access to information on climate change and human right A/79/176 (18 July 2024)

decisions of businesses that cause harm to ecosystems and impact people's health and livelihoods.

Enabling EHRDs to understand how environmental harms affect them and the ecosystems at various scales, in turn empowers EHRDs to challenge or develop approaches at a national level, and beyond. The right to access information becomes more important for EHRDs when accounting for the fact that EHRDs are often accidental human right defenders, than professionally trained in human rights and the environment. There is often an isolation that exists between EHRDs and avenues of information; increased attention is needed on ensuring that access to information is possible for all EHRDs no matter the situation they are in, their level of formal education and whether they live in urban, rural or other settings.

The importance of the right to access information has also been recognised in the Rio Declaration, Principle 10 states: 'At the national level, each individual shall have appropriate access to information concerning the environment'.¹⁸⁴ Such right is intricately connected to the right to public participation, with access to environmental information facilitating defenders' ability to participate effectively to address the drivers of ecosystems' degradation at interacting scales. Adequate access to information on states climate change and environmental policy/legislation allows for meaningful participation from the public.¹⁸⁵ Access to information requires that individuals and communities have affordable, effective and timely access to information both upon request but also as a proactive measure of the State to advance transparency and environmental education of the public.

Access to information applies extraterritorially to the activities outside the states territory that are within the states influence; information on international cooperation on climate change and human rights.¹⁸⁶ In the context of potential environmental harm, states should provide for the assessment of environmental impacts that may interfere with the enjoyment of human rights such as in Environmental Impact Assessments¹⁸⁷ and account for the systemic

¹⁸⁴ REPORT OF THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT (Rio Declaration Principle) A/CONF.151/26 1992 Principle 10

¹⁸⁵ C. Nyaletsossi Voule, Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice A/76/222 (23 July 2021).

¹⁸⁶ Ibid

¹⁸⁷ E. Morgera, Access to information on climate change and human right A/79/176 (18 July 2024)

assessment of such impacts such as the dynamics of downstream impacts and cumulative impacts.

Right to access information encompasses a broader right to voice, requiring the voices of EHRDs not only to be acknowledged but also actively heard, empowering such communities to generate and share their ground-up generated environmental information. In this context the right to voice is the right to share information and ideas.¹⁸⁸ EHRDs need access to information about human rights and environment; but are also the ones who are developing information related to environmental protection and stewardship. This connects the right to access information to other participatory rights of EHRDs. Being actively heard calls for access to information, which in turn allows for genuine participation in public policy and decisions making processes.¹⁸⁹ Understanding the right to information as encompassing the broader right to voice enhances the influence that EHRDs have, seeing them as active agents of change within environmental and ecosystem protection. It is in the public interest, more robust environmental protection policy and legislation, to interpret the right to information of EHRDs as including the development and sharing of information itself.

- b. States should be proactive in placing measures that enable EHRDs to participate in an effective, meaningful, open and inclusive way throughout each stage of environmental decision making and from the local to the national, regional and international level*

The International Covenant on Civil and Political Rights recognises the right of every citizen “to take part in the conduct of public affairs”, public affairs including “all aspects of public administration, and the formulation and implementation of policy at international, national and regional and local levels”.¹⁹⁰ Such right makes up the procedural element of the right to a healthy environment; recognizing the significance of ensuring that individuals have the

¹⁸⁸ I. Khan, Sustainable Development and Freedom of Expression: Why Voice Matters, A/HRC/53/25 (19 April 2023)

¹⁸⁹ Ibid

¹⁹⁰ *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 Article 25

opportunity to participate in environmental decision-making processes at all levels.¹⁹¹ The importance of EHRDs participation at the international level has been recognised within the international human rights law community.¹⁹² Safe participation of EHRDs at international forums is crucial, given that many EHRDs are on the front lines against the fight against environmental rights violations and the driving force behind effort to address climate change, biodiversity loss and, ecosystems' degradation.¹⁹³ In order for EHRDs to challenge states or private actions in which human rights or environmental protections have not been upheld, they must have a seat at the table in the development of law, policies, regulations and guidelines that govern development activities.¹⁹⁴ There is also the need for them to be able to challenge such legal and policy instruments that do not align with environmental, biodiversity and human rights protection standards.

Participation needs to go beyond consultations; it requires free active and meaningful participation of the public and affected groups on matters related to the environment.¹⁹⁵ The work of defenders is strongly attached to them being Earth stewards, developing their own safeguards and protections that account for collective needs of community and the local knowledge systems that exist. These knowledge systems and strategies have been recognised as useful to the development and shaping of legislation and policy at a national, regional and international level.¹⁹⁶ Often the right to participate in environmental decision making is lacking for EHRDs, due to limited time frames for participation and requirement of extensive technical and specialised knowledge.¹⁹⁷ The right of EHRDs to participate means effective, meaningful, open and inclusive participation throughout each stage of environmental decision

¹⁹¹ OHCHR, Information Notes: What is the Right to a Healthy Environment? (2023)

¹⁹² Michelle Bachelet, former UN High Commissioner for Human Rights, "Global update at the 42nd session of the Human Rights Council", (Statement, 9 September 2019). Available at <https://www.ohchr.org/en/statements/2019/09/global-update-42nd-session-human-rights-council>.

¹⁹³ UNGA, Resolution adopted by the Human Rights Council: Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development A/HRC/RES/40/11 (21 March 2019)

¹⁹⁴ Michelle Bachelet, former UN High Commissioner for Human Rights, "Global update at the 42nd session of the Human Rights Council", (Statement, 9 September 2019). Available at <https://www.ohchr.org/en/statements/2019/09/global-update-42nd-session-human-rights-council>.

¹⁹⁵ Ibid

¹⁹⁶ C. Ituarte-Lima, Biosphere Defenders Leveraging the Human Right to Healthy Environment for Transformative Change (2023) Environmental Policy and Law 53

¹⁹⁷ A. Puentes Riano, Framework for environmental, social and human rights impact assessments and the right to a clean, healthy and sustainable environment A/80/187 (17 July 2025)

making, especially environmental impact assessments to ensure preventive measures are enacted before damage to people and ecosystems has occurred.

The right to access and communicate with international bodies is a subsection of the right to public participation. The reality of EHRDs is that often there is little dialogue between the defenders themselves and international bodies. EHRDs often find themselves in the position of a defender accidentally and without realising they fall into the category of EHRDs. Such right is expressed in the Declaration of Human Rights Defenders Article 5(c), with the Special Rapporteur on human rights defenders stating such right is essential for defenders to carry out their work and alert to the international community human rights violations and bring attention to cases.¹⁹⁸ Communication with international bodies is crucial for the work of EHRDs, increasing the recognition of EHRDs and their knowledge around discussions on climate, biodiversity, water and pollution. While also bring attention to the interconnectedness of humans and the environment, EHRDs displaying the ways in which individuals and communities protect the environment and provide environmental stewardship.¹⁹⁹

Participation right of defenders encompass a range of rights including the right to freedom of expression, freedom of assembly, freedom of information, and non-discrimination. The right to public participation cannot be seen in a vacuum. EHRDs right to peaceful assembly, freedom of expression and opinions are often restricted upon by states and business actors. Such rights are crucial to the work of EHRDs. According to the Special Rapporteur on human rights defenders, “The right to peaceful assembly is essential for defenders; without the guarantee of this right and protection against its violation... the ability of defenders to fulfil their role in the protection and promotion of human rights is severely restricted”.²⁰⁰ Participation of EHRDs does not look one certain way, rather, participation includes a range of actions and omissions – protests, strikes, environmental impact assessments, involvement in decision making

¹⁹⁸ M. Sekaggya, Report of the Special Rapporteur on Human Rights Defenders, A/HRC/19/55 (21 December 2011) para. 36

¹⁹⁹ M. Forst, State repression of environmental protest and civil disobedience: a major threat to human rights and democracy (February 2024)

²⁰⁰ M. Sekaggya, Report of the Special Rapporteur on Human Rights Defenders, A/HRC/19/55 (21 December 2011) para. 21.

processes – for this reason right to participation cannot be separated out from other participatory rights such as freedom of expression, and peaceful assembly.

- c. States should put into place measures that enable EHRDs to have access to justice in the form of effective, timely and independent investigations and remedies when environmental law and human rights laws have been breached as well as to prevent the abuse of the law aiming to silence defenders

The right to access to justice materialises itself within the international human rights law system as the right to effective remedies and access to judicial or administrative authorities when rights have been violated.²⁰¹ The right to access to justice can be found in the Declaration on Human Rights Defenders; there is a recognition within the Declaration of the multi-faceted way in which access to justice materialises itself for defenders and their work.²⁰² While in the most basic sense access to justice includes access to effective remedies and access to judicial/administrative authorities when rights have been violated, the right to justice for defenders encompasses the ability to: complain about policies and actions of governments and individuals regarding environmental and human rights violations; offer and provide professionally qualified legal assistance and other assistance in defending the environment and human rights; and petitions to states to conduct prompt and impartial investigations when rights have been violated.²⁰³ While this has been understood in the context of human rights defenders generally, the rights within the Declaration equally apply to EHRDs. Supporting EHRDs to access justice is identified as a key strategy in addressing the underlying causes of violence and aggression against EHRDs, while also securing the

²⁰¹ M. Sekaggya, Report of the Special Rapporteur on the situation of human rights defender's A/65/223 (4 August 2010)

²⁰² Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms A/RES/53/144 (Adopted 9 Dec 1998) Article 9

²⁰³ M. Sekaggya, Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms 2011

realisation of their human rights and supporting their ability to do advocacy work to protect the environment.²⁰⁴

Access to justice measures contribute to the implementation and enforcement of human rights and environmental law; court and other administrative bodies are able to help develop a safe and enabling safe for EHRDs.²⁰⁵ In the context of environment and climate change there has been a recognition that access to justice includes that EHRDs and impacted persons generally should be able to challenge the legality of permits and environmental decisions, have legal standing to seek interim measures to suspend activities and orders for environmental restoration and the enforcement of monitoring and redress conditions.²⁰⁶

EHRDs exist in an environment where they face increased levels of violence, threats and reprisals at the hands of both governmental and non-state actors; alongside this there is often a lack of response by authorities to their situation. This has resulted in impunity for those abusing their right, there is a lack of due diligence towards examining cases of abuse against defenders.²⁰⁷ As such, access to justice in the form of effective, timely and independent investigations of human rights violations against EHRDs is necessary. Access to justice also materialises itself through providing pro-bono legal assistance, legal defend funds, and financial support such as grants in order to cover costs associated with reprisals and threats, to enhance EHRDs ability to navigate the complex legal landscape that they face.²⁰⁸ Access to justice for EHRDs provides a safe environment in which they are able to carry out their work free from threats and reprisals. Ensuring adequate and effective responses from authorities towards violations of EHRDs rights is a necessity for the realisation of the rights of EHRDs. Support for addressing reprisals and accountability for EHRDs in regard to environmental issues is crucial to the right to access to justice for EHRDs.²⁰⁹ Access to justice in this sense also includes protection from reprisals such as anti-strategic litigation against public participation

²⁰⁴ UN Environment Programme, Protecting the Front line: Good practice for the Recognition and Supporting Environmental Human Rights Defenders (February 2024)

²⁰⁵ Ibid

²⁰⁶ A. Puentes Riano, Framework for environmental, social and human rights impact assessments and the right to a clean, healthy and sustainable environment A/80/187 (17 July 2025)

²⁰⁷ D. Boyd, Right to a healthy environment: good practices A/HRC/43/53 (30 December 2019)

²⁰⁸ UN Environment Programme, Protecting the Front line: Good practice for the Recognition and Supporting Environmental Human Rights Defenders (February 2024)

²⁰⁹ UNDP, Guidance Note. Promoting environmental justice, Securing our right to a clean healthy and sustainable environment through UNDP programming (2022)

(SLAPP) measures. SLAPPs are lawsuits or threats of legal actions which use abusive litigation tactics with the aim of suppressing public participation and critical reporting on public interest matters. Most often SLAPPs are targeted towards defenders, specifically EHRDs and environmental campaigns have been the target of SLAPPs. Ensuring the right to access to justice for EHRDs creates a safe and enabling environment for EHRDs thereby securing the implementation of relevant laws and policy, whether this be regarding their own rights or developing environmental policy and practices.²¹⁰

Right to access to justice makes up part of the procedural elements of the right to a healthy environment, within this context there is a need to ensure that the right to access justice includes environmental and climate justice. The concepts of environmental and climate justice for EHRDs are significant as defenders themselves facilitate environmental justice, while also providing a framework in which remedies and redress for environmental and human rights violations can be viewed. Environmental justice encompasses accountability in environmental matters, and a focus on respecting, protecting and fulfilling environmental rights and the promotion of environmental rule of law.²¹¹ The work of EHRDs through public interest litigation to address environment and climate issues, including environmental harms caused by businesses, is one way in which EHRDs facilitates environmental justice themselves.²¹² Ensuring that EHRDs have sufficient access to justice that aligns with their work is a public interest matter and allows for the development and realisation of environmental justice for communities and society.

- d. States should interpret procedural rights of EHRDs in connection with the right to a healthy environment substantive elements so public institutions support their role in Earth stewardship and rethinking economic, social and cultural rights in a way that are aligned with sustainability pathways

The right to a healthy environment is essential in protecting human life, wellbeing and dignity because it provides a comprehensive approach in protecting the society and other living

²¹⁰ UN Environment Programme, Protecting the Front line: Good practice for the Recognition and Supporting Environmental Human Rights Defenders (February 2024)

²¹¹ OHCHR, Information Notes: What is the Right to a Healthy Environment? (2023)

²¹² UNDP, Guidance Note. Promoting environmental justice, Securing our right to a clean healthy and sustainable environment through UNDP programming (2022)

beings against a range of environmental harms. The ICJ affirmed this, recognising the right to a healthy environment is a precondition for the enjoyment of other human rights such as the right to life and adequate standard of living.²¹³ Substantially the right is made up of clean air, safe climate, healthy ecosystems and biodiversity, safe and sufficient water, healthy and sustainable food, and non-toxic environment.²¹⁴ Good practices under the right to a healthy environment requires the realisation of both the procedural and substantive elements; ensuring that there is interdependency of two elements.²¹⁵ For example, the right to access information is essential for people to be able to protect and defend their human rights from environmental harms.²¹⁶ The realisation of the substantive elements cannot be disconnected from the realisation of procedural rights; procedural rights enhance the likelihood in which the substantive elements will materialise. EHRDs play a key role in the realisation of the substantive elements of the right; utilising procedural rights in ensuring that environmental protection and stewardship exist.²¹⁷ The rights of EHRDs set out above provide leverage points for the realisation of the right to a healthy environment's substantive elements. EHRDs are taking practical and innovate steps in ecosystem and environmental protection; utilising traditional and legal mechanism to facilitate the substantive elements of a healthy environment to be realised.²¹⁸

The conversation around the rights of EHRDs often focuses on civil and political rights, with relatively little focus being given to the economic, social and cultural rights of defenders. Discussions focus on their right to personal integrity, freedom of expression, and peaceful assembly and association, specially as the rights that are violated the most. The Office of the UN High Commissioner for Human Rights makes it clear that when analysing the content of rights thoroughly, categories such as 'civil and political rights' or 'economic, social and cultural rights' make little sense; rather rights should be understood as interdependent and

²¹³ International Court of Justice, 'Obligations of States in respect of Climate Change (Advisory Opinion)' I.C.J. Reports 2025, 23 July, General List No. 187 Para 393

²¹⁴ UNGA, Resolution on The human right to a clean, healthy and sustainable environment A/HRC/43/53 (1 August 2022)

²¹⁵ D. Boyd, Right to a healthy environment: good practices A/HRC/43/53 (30 December 2019)

²¹⁶ Ibid

²¹⁷ UN Environmental Programme, Protecting the Frontline: Good Practices for Recognising the Supporting Environmental Harm Rights Defenders (2024)

²¹⁸ C. Ituarte-Lima, Biosphere Defenders Leveraging the Human Right to Healthy Environment for Transformative Change (2023) Environmental Policy and Law 53

indivisible.²¹⁹ A broad spectrum of EHRDs rights should be used when interpreting their right to a healthy environment and other interdependent rights. The importance of the indivisibility of rights was recognised also in the 2019 UNGA Resolution on EHRDs.²²⁰ It cannot be forgotten that the economic, social and cultural rights of EHRDs are also violated by both state and private actors; there is a strong interconnectedness between environment degradation and climate change by state institutions and businesses, and violations of the right to health, food and water. These rights are strongly attached to the right to a healthy environment; this is strongly linked to the section above on the substantive elements of the right to a healthy environment. In ensuring that EHRDs rights are fully realised and the work of defenders is sufficiently respected, protected, facilitated and promoted, economic rights cannot be separated or left out.²²¹

X. Conclusion

African States are clearly under obligations to respect, protect and fulfil the rights of EHRDs specified on international human rights law and African instruments. EHRDs rights in the context of the climate crises are strongly interconnected to wider environmental protection, and therefore the protection of EHRDs' rights emerge from state's wider climate obligations than simply those emerging from specialised climate treaties. Implementing the positive obligation to protect requires deliberate measures to preventing violations of human rights and enabling an environment in which EHRDs can act without fear of retaliation or abuse of the law from public and private actors. Recognising the intersectional identities of EHRDs in State's implementing their substantive and procedural obligations helps tackle systemic patterns of marginalisation and catalyses defenders' critical role on climate adaptation and mitigation as well as on safeguarding ecosystems and biodiversity. Building on the previous

²¹⁹ OHCHR, 'Key concepts on ESCRs - Are Economic, Social and Cultural Rights Fundamentally Different From Civil and Political Rights?' <https://www.ohchr.org/en/human-rights/economic-social-cultural-rights/escr-vs-civil-political-rights>

²²⁰ UNGA, Resolution adopted by the Human Rights Council: Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development A/HRC/RES/40/11 (21 March 2019)

²²¹ UNGA, Implementing the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms through providing a safe and enabling environment for human rights defenders and ensuring their protection A/RES/78/216 (22 December 2023)

Advisory Opinions and going further in highlighting the specific obligations of States regarding EHRDs and contextualising them to the African region, the African Court of Human and People's Rights has a critical opportunity to contribute to Earth stewardship for present and future generations to thrive.

Respectfully submitted:



Dr. Claudia Ituarte-Lima
Defendio Legal Clinic,
Thematic Lead and Senior researcher,
Raoul Wallenberg Institute of Human Rights
and Humanitarian Law,
Stora Gråbrödersgatan 17 B
P.O. Box 1155
SE-221 05 Lund, Sweden
claudia.ituarte-lima@rwi.lu.se



Issabell Pope
Defendio Legal Clinic