

**WOMEN'S HUMAN RIGHTS
AND THE RIGHT TO A CLEAN,
SAFE, HEALTHY, AND
SUSTAINABLE ENVIRONMENT**

Reference Manual for Judges 2019

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TABLE OF CONTENTS

LIST OF ACRONYMS.....	3
TERMINOLOGY	4
INTRODUCTION	5
PURPOSE OF THE MANUAL	5
STRUCTURE OF THE MANUAL.....	6
HOW TO USE THE MANUAL.....	6
CHAPTER 1: INEQUALITIES FACED BY WOMEN AND GIRLS	7
1.1 WOMEN’S UNEQUAL ACCESS TO ECONOMIC RESOURCES	7
1.1.1 Gendered division of labor.....	8
1.1.2 Women’s unequal access to land and property.....	9
1.2 VIOLATIONS OF WOMEN’S RIGHT TO HEALTH	11
1.3 RESTRICTED ACCESS TO EDUCATION AND PARTICIPATION IN DECISION-MAKING	13
1.3.1 Women’s unequal access to education	13
1.3.2 Women’s exclusion from decision-making	15
1.4 VIOLENCE AGAINST WOMEN	19
1.5 UNEQUAL ACCESS TO JUSTICE.....	21
1.6 INTERSECTING FORMS OF DISCRIMINATION.....	23
CHAPTER 2: THE ADVERSE IMPACT OF ENVIRONMENTAL DEGRADATION ON WOMEN	26
2.1 EXTREME WEATHER EVENTS AND NATURAL DISASTERS.....	27
2.2 WATER POLLUTION AND SCARCITY	30
2.3 TOXIC CHEMICALS AND HAZARDOUS SUBSTANCES	32
2.4 AIR POLLUTION.....	33
2.5 FOOD INSECURITY.....	34
2.6 EVICTIONS AND DISPLACEMENT	35
CHAPTER 3: STATES’ HUMAN RIGHTS OBLIGATIONS RELATING TO WOMEN’S RIGHTS AND THE ENVIRONMENT	39
3.1 GENERAL OBLIGATIONS OF STATES UNDER INTERNATIONAL HUMAN RIGHTS LAW	39
3.1.1 Obligations to respect, protect, and fulfill human rights.....	40
3.1.2 Obligation of non-discrimination and the right to equality.....	42
3.1.3 Obligation to provide an effective remedy	43
3.1.4 Role of the judiciary in upholding human rights obligations	44
3.2 STATE OBLIGATIONS IN ELIMINATING DISCRIMINATION AGAINST WOMEN AND GIRLS	45
3.3 SPECIFIC OBLIGATIONS OF STATES RELATING TO THE ENVIRONMENT	46
3.3.1 The emergence of a new human right.....	47
3.3.2 Human rights threatened by environmental degradation	49
3.3.3 States’ obligations to ensure a healthy environment in order to respect, protect, and fulfill human rights	53
3.3.4 States’ obligations to respect, protect, and fulfill procedural rights	56
3.3.5 States’ obligations to ensure equality and non-discrimination against women and girls in the enjoyment of a healthy environment.....	63
ANNEX 1: RESOURCES LOG	73
ANNEX 2: FRAMEWORK PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT....	76
ANNEX 3: BANGKOK GENERAL GUIDANCE FOR JUDGES ON APPLYING A GENDER PERSPECTIVE.....	78
GENERAL CONSIDERATIONS.....	79
BASIC CONCEPTS	80
RECOMMENDATIONS FOR INSTITUTIONAL POLICIES IN THE JUDICIARY	83

LIST OF ACRONYMS

ACHPR	African Commission on Human and Peoples' Rights
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CED	International Convention for the Protection of All Persons from Enforced Disappearance
CEDAW	Convention on the Elimination of Discrimination Against Women
CESCR	UN Committee on Economic, Social, and Cultural Rights
COP	Conference of Parties (to the UNFCCC)
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of People with Disabilities
ECHR	European Court of Human Rights
ESCR	Economic, Social, and Cultural Rights
HRC	Human Rights Council
HRD	Human Rights Defenders
IACHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
ICMW	International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
IPCC	Intergovernmental Panel on Climate Change
OHCHR	UN Office of the High Commissioner for Human Rights
RWI	Raoul Wallenberg Institute of Human Rights and Humanitarian Law
UDHR	Universal Declaration on Human Rights
UNEP	UN Environment Program
UNFCCC	UN Framework Convention on Climate Change
UNGA	UN General Assembly
UNHRC	UN Human Rights Committee
WHO	World Health Organization
WHRD	Women Human Rights Defenders

TERMINOLOGY

Sex: The UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), in the context of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention) defines sex as “*biological differences between men and women.*”¹

Gender: The CEDAW Committee also defines the term “gender” as “*socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favoring men and disadvantaging women.*”²

Gender stereotype: The UN Office of the High Commissioner for Human Rights (OHCHR) defines gender stereotype as “*a generalized view or preconception about attributes, or characteristics that are or ought to be possessed by women and men or roles that are or should be performed by men and women.*”³

CEDAW Committee: Is the UN Committee on the Elimination of Discrimination against Women. It is the body of independent experts that monitors the implementation of the CEDAW Convention.⁴

Direct discrimination against women “*constitutes different treatment explicitly based on grounds of sex and gender differences.*”⁵

Indirect discrimination against women “*occurs when a law, policy, programme or practice appears to be neutral in so far as it relates to men and women, but has a discriminatory effect in practice on women because pre-existing inequalities are not addressed by the apparently neutral measure. Moreover, indirect discrimination can exacerbate existing inequalities owing to a failure to recognize structural and historical patterns of discrimination and unequal power relationships between women and men.*”⁶

¹ UN Committee on the Elimination of Discrimination against Women (CEDAW), *General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/GC/28, 16 December 2010, para. 5 [hereafter: CEDAW, *General Recommendation No. 28*], available at: <https://www.refworld.org/docid/4d467ea72.html>.

² CEDAW, *General Recommendation No. 28*, para. 5.

³ For more information on elements of gender stereotype see: Evalyn G. Ursua for UNWOMEN and the International Commission of Jurists (ICJ), *Gender Stereotypes in Laws and Court Decisions in Southeast Asia*, 2018, Part 1, available at: <http://asiapacific.unwomen.org/en/digital-library/publications/2016/04/gender-stereotypes>.

⁴ For more information on the CEDAW Committee see: <https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>.

⁵ CEDAW, *General Recommendation No. 28*, para. 16.

⁶ CEDAW, *General Recommendation No. 28*, para. 16.

INTRODUCTION

Climate change and environmental degradation are today causing growing concerns for people across the globe. Yet, not everybody is affected in the same way or to the same extent by the effects of these developments. As explained in this manual, women are often, due to gendered social, cultural, and economic structures and beliefs, disproportionately impacted by environmental harms, including those resulting from changes in climate.

In October 2017, the International Commission of Jurists (ICJ) and the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) convened a Judicial Dialogue for Southeast Asian judges to examine links between women's human rights and the environment, and the role of the judiciary in protecting women's human rights to a safe, clean, healthy, and sustainable environment.⁷

Judges and experts in the dialogue discussed how to apply the *Bangkok General Guidance for Judges on Applying a Gender Perspective in Southeast Asia* (Bangkok General Guidance)⁸ to cases related to the protection of the environment. The Guidance had previously been developed, and adopted, by judges from the Philippines, Indonesia, Timor-Leste, and Thailand, in a workshop hosted by the ICJ and UN Women in June 2016. It is a tool for judges to better understand and apply gender equality and non-discrimination principles as they scrutinize and decide cases before them involving or implicating women's rights and interests.

At the end of the Judicial Dialogue, participating judges adopted a series of Action Points that they as individual judges and/or at their respective judicial institutions, may take following these discussions. One of the points agreed upon by the judges was to develop a Reference Manual to help build and strengthen the capacity of judges on women's human rights and the right to a healthy environment. RWI committed to support the drafting of this Reference Manual with technical contributions from ICJ.

The manual is the product of a consultancy conducted by Ms Elisse Tillet-Dagousset in 2018, which included a consultation with South Asian judges in the framework of a Judicial Dialogue for South Asia, organized by RWI and ICJ in Kathmandu 29 September-1 October 2018.

The Judicial Dialogues, and the development of this manual, were organized jointly by RWI and ICJ in the framework of RWI's Regional Asia Programme on Human Rights and Sustainable Development (2017-2021), which is funded by Swedish Development Cooperation.

Purpose of the manual

Judges attending the 2017 Dialogue stressed that they lacked awareness of differentiated impacts of environmental degradation on women and girls, and of the need to adopt a gender perspectives in environmental cases. While conducting research for this manual, it also became evident that too little attention had been dedicated to gender in environmental law and practice. While judges in the dialogue shared cases where gender was a clear factor, they could not identify any judicial decisions on cases involving environmental rights that adopted a gender perspective, or indeed any research or study on the role of the judiciary in addressing the gender dimension of environmental

⁷ To make this manual easier to read, these rights are collectively referred to as the "right to a healthy environment."

⁸ Attached in annex 3.

degradation. This lack of information and resources was also highlighted in interviews conducted with environmental law experts and practitioners.

In light of these factors, this manual not only hopes to build the understanding of judges and judicial officers on the impact of environmental degradation on women and girls, but also seeks to initiate much needed discussion and research on the topic.

The manual has been designed with a view to:

- Helping judges *identify* when gender discrimination occurs in environmental cases, and when acts of environmental degradation have a differential impact on women and girls; and
- Providing judges with *knowledge* of the international human rights law and standards relating to women's rights and a healthy environment so that they can apply these standards when they decide cases before them.

The manual is designed for judges as the primary beneficiaries. However, it may also be useful as a capacity building tool and reference material for all legal professionals and advocates for the protection of human rights relating to environmental degradation.

Structure of the manual

Chapter 1 sets out some existing discriminatory laws, practices, and gender stereotypes that perpetuate women and girls' inequality and explains how it affects all aspects of their lives: including access to resources, labor, health services, education, decision-making and justice. After reading this chapter, judges will be able to understand some of the root causes that put women and girls in a more vulnerable situation when confronted with environmental degradation and climate change.

Chapter 2 will help judges understand the link between women's human rights and the right to a healthy environment. The chapter explains in detail, by way of concrete examples, how women are differentially and sometimes disproportionately impacted by environmental degradation and climate change. This will help judges identify the points where gender discrimination occurs in cases related to environmental rights, and when acts of environmental degradation have a distinct or discriminatory impact on women and girls.

Chapter 3 reviews states' obligations under international human rights law in relation to women's rights and the right to a healthy environment. This is to assist judges in understanding which international standards they can apply to ensure equality before the law and non-discrimination in environmental cases.

How to use the manual

The manual has been drafted as a practical tool so that judges can use it both for official trainings as well as in everyday practice. To this end, a summary of the main learning points has been added at the end of each chapter. In addition, in order to navigate easily through the manual and to ensure judges can quickly find relevant information, the following color-coded boxes have been used for formatting:

-  Box on additional points of laws.
-  Box including example of case law.
-  Box including relevant facts and figures.
-  Box including illustrative examples.

CHAPTER 1: INEQUALITIES FACED BY WOMEN AND GIRLS

“ Discrimination against women remains pervasive in all spheres of life. It may result from laws that are themselves discriminatory. More often, however, the discrimination women face is the result of social norms or customs, linked to certain stereotypes about gender roles. ”

- Olivier De Schutter, Former UN Special Rapporteur on the Right to Food⁹

To understand why and how environmental degradation affects women disproportionately, it is necessary to first recognize the existing discriminatory laws and practices, and gender stereotypes that perpetuate women and girls' inequality. All aspects of women and girls' lives are affected by these inequalities including their access to resources, labor, health services, information, education, participation in decision-making and justice.

Gender stereotypes commonly attribute to women the role of caregivers and mothers and restrict what societies and communities consider “acceptable” behavior for women and girls. This gendered division of social roles often confines women to their households and has had wide-ranging consequences on their political, economic and social status. These and other social and moral attitudes and beliefs, which remain prevalent throughout the world, lie at the heart of discrimination against women and girls. They assist in the production and perpetuation of structural inequalities in society and therefore contribute to maintaining unequal power relations between women and men. This often has the result of placing women under men's authority and control within relationships, families, communities and society at large. This in turns puts women and girls at greater risk of violence within all of these social contexts.

This chapter lays out some of the existing inequalities faced by women and girls in order that judges and judicial officers can better understand why they are more vulnerable when confronted with climate change and environmental degradation.

1.1 WOMEN'S UNEQUAL ACCESS TO ECONOMIC RESOURCES

“Gender-based discrimination limits women's opportunities to gain access to education, decent work, land ownership, credit, inheritance and other economic resources, thus increasing their likelihood of living in extreme poverty.”

- Magdalena Sepúlveda Carmona, Former UN Special Rapporteur on Extreme Poverty and Human Rights¹⁰

⁹ Olivier De Schutter, Report submitted by the Special Rapporteur on the right to food, *Women's rights and the right to food*, A/HRC/22/50, 24 December 2012, para. 2, available at: https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/AHRC2250_English.PDF.

¹⁰ Magdalena Sepúlveda Carmona, *Report of the Special Rapporteur on extreme poverty and human*

1.1.1 Gendered division of labor

Because of gender stereotypes that position women as caregivers and responsible for domestic work, in many societies women continue to be viewed as the primary persons obligated to fulfill home and childcare functions. Yet, housework is largely unpaid and rarely acknowledged as valuable work despite its important contribution to communities' wellbeing and development. The time women and girls spend caring for the home, children and the elderly is often non-remunerated and is time that they cannot spend pursuing education or otherwise building their own capacity, which would facilitate their access to the labor market.¹¹ It also reduces the time available to women for leisure, relaxation and self-care. In some places, these gendered divisions of labor are legally entrenched. Laws may, for instance, require that women are to seek their husband's authorization and consent before seeking paid work outside the household.

Because women and girls are expected to perform cooking and cleaning tasks, they are also often responsible for collecting water and other energy resources such as wood and fuel when they are not provided as basic services by the government or readily available in the proximity of the home. Some women therefore spend hours walking to collect and carry water, which is time they could have spent in school or undertaking income-generating activities.¹²

Even when women enter the labor market, they do so at the outset from a disadvantaged position. Working women continue to spend more time on domestic work than men, restricting their access to full-time employment and giving them less time for further education or training and therefore limiting their opportunities to advance in the labor market.

Furthermore, women in the labor force are typically overrepresented in sectors and occupations that are characterized by low wages and poor working conditions and, conversely, they are underrepresented in sectors and occupations characterized by high wages and good working conditions. For instance, according to the UN Department of Economic and Social Affairs, women are "*significantly underrepresented in decision-making positions such as legislators, senior officials and managers, but are overrepresented as domestic workers, positions that are characterized by low pay, long hours and lack of social protection.*"¹³ Similarly, UN Women notes that, in most countries, rural women who work for wages are more likely than men to hold seasonal, part-time and low-wage jobs.¹⁴

Women's overrepresentation in the informal sector means that they also have less job security, are less likely to have collective representation, and are more susceptible to becoming unemployed especially in times of economic instability. Part-time work, which women do more than men, is also often associated with "*lower hourly wages, less job security and less training and promotion opportunities than full-time employment.*"¹⁵ In addition, across all sectors, on average women earn less than men.

rights, A/65/259, 9 August 2010, para. 49, available at: <https://undocs.org/A/65/259>.

¹¹ Magdalena Sepúlveda Carmona, *Report of the Special Rapporteur on extreme poverty and human rights*, para. 54.

¹² UN Office of the High Commissioner for Human Rights (OHCHR), *The right to water*, Factsheet no. 35, p. 19, available at: <https://www.ohchr.org/Documents/Publications/FactSheet35en.pdf>. See also, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation*, A/HRC/33/49, 27 July 2016, para. 2, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/166/97/PDF/G1616697.pdf?OpenElement>.

¹³ UN Department of Economic and Social Affairs, *The World's Women 2015 - Trends and Statistics*, ST/ESA/STAT/SER.K/20, p. xii [hereafter: *The World's Women 2015*], available at: https://unstats.un.org/unsd/gender/downloads/worldswomen2015_report.pdf.

¹⁴ UN Women, *Facts & Figures – Employment* (Website), available at:

<http://www.unwomen.org/en/news/in-focus/commission-on-the-status-of-women-2012/facts-and-figures>.

¹⁵ *The World's Women 2015*, p. xii.

FACTS AND FIGURES¹⁶

- The rate of participation in the labor force is **63%** for women and girls, compared to 94% for men.
- Women are more likely to be unemployed than men.
- In **18 countries**, husbands can legally prevent their wives from working.
- Globally, women are paid less than men. The gender wage gap is estimated to be **23%**. This means that women earn **77%** of what men earn.
- Women bear disproportionate responsibility for unpaid care and domestic work. Women tend to spend around **2.5 times** more time on unpaid care and domestic work than men.
- Women and girls are responsible for water collection in **80%** of households without access to water on premises.

These gendered divisions of labor and entrenched obstacles in accessing an equal position within the labor market mean that women are often economically dependent on men and more likely to live in poverty. When women are not directly financially contributing to family income, they are also more likely to be excluded from financial and economic decision-making. This unequal power relationship between men and women creates a relationship of dependency, which in turn makes women more vulnerable to gender-based violence.

1.1.2 Women's unequal access to land and property

“Women continue to be denied equal rights to access, use, inherit, control, and own land.”

- Alda Facio, UN Working Group on the Issue of Discrimination against Women in Law and in Practice¹⁷

Access and control over land and property is essential not just to women themselves, but also to their children's survival. Land, especially in rural areas, provides for food and other means of subsistence such as wood and water. As seen in Section 1.1.1, because of traditional divisions of labor that lead women to stay at home and on the family property, they are often responsible for food production as well as the collection of water, wood and other resources necessary for daily survival. According to a UN advisory body, women produce 60% to 80% of the food in developing countries.¹⁸

What is produced from the land also goes into goods that are sold at markets to provide income to families. Land and housing are also the fundamental base on which shelter is established. These are therefore essential to women's economic security and physical safety.

Despite the crucial importance of land, women are often not given ownership rights over the land they cultivate, as “*gender inequalities in land rights are pervasive*.”¹⁹ Even though women constitute 43% of the agricultural labor force in developing countries, they have less access to land ownership than men: “*An international comparison of*

¹⁶ UN WOMEN, *Facts and Figures: Economic Empowerment* (Website), available at: <http://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures>.

¹⁷ Alda Facio, Working Group on the issue of discrimination against women in law and in practice, *Insecure land rights for women threaten progress on gender equality and sustainable development*, July 2017, p. 3, available at: <https://www.ohchr.org/Documents/Issues/Women/WG/Womenslandright.pdf>.

¹⁸ Millennium Project Task Force on Education and Gender Equality, *Taking action: Achieving gender equality and empowering women*, London, Earthscan, 2005, p. 77, available at: <https://www.undp.org/content/dam/aplaws/publication/en/publications/poverty-reduction/poverty-website/taking-action-achieving-gender-equality-and-empowering-women/Taking%20Action-%20Achieving%20Gender%20Equality%20and%20Empowering%20Women.pdf>.

¹⁹ Food and Agriculture Organization of the United Nations (FAO), *Gender and Land Rights – Policy Brief 8*, March 2010, p. 1, available at: <http://www.fao.org/3/al059e/al059e00.pdf>.

agricultural census data shows that less than 20% of landholders are women."²⁰

Even when women do have access to land rights, their parcels are generally of smaller size and lower quality.²¹ As the CEDAW Committee has emphasized: "[as] a result of discriminatory laws and social norms, women have limited access to secure land tenure, and their farmlands tend to be of inferior quality and more prone to flooding, erosion or other adverse climatic events."²²

There are many reasons behind women's restricted access to land and property rights. In some countries, laws and regulations directly discriminate against women, barring them from accessing ownership rights or from inheriting land. In other countries, even where laws allow women to inherit or to have access to property rights, social, cultural and ideological barriers may prevent women's equal access to land.²³ According to a 2015 Survey, "*in nearly a third of developing countries, laws do not guarantee the same inheritance rights for women and men, and in an additional half of countries, discriminatory customary practices against women are found.*"²⁴

For instance, men often prefer to bequeath land to their sons rather than their daughters; marriage privilege means that males are more likely to gain ownership over land; and male bias in land distribution programs and in private housing markets also renders women less likely than men to be successful buyers.²⁵

The consequences for women are wide-ranging and far-reaching. Restricted land rights or the lack of effective control over land can lead to lower productivity, food insecurity, malnutrition and poverty. Indeed, estimates indicate that "*as many as 70% of the world's poor are women.*"²⁶ Some argue that the gender gap in the ownership and control over land is the single most significant contributor to gender differences in terms of the economic wellbeing, social status, and empowerment of women.²⁷

Without control or ownership of housing, land and property, women have little economic autonomy and are therefore reliant on men to access resources and shelter. This, in turn, makes them more vulnerable to abuse and violence perpetrated by men.

Such vulnerability to violence is particularly acute in times of crisis such as during conflicts and after environmental and other disasters. Such situations are characterized by the loss of shelter and economic instability for women in particular. Furthermore, women's reliance on men to access land and housing means that, in case of divorce, widowhood or their husband's migration, they are left without rights to land and are at greater risk of homelessness and poverty.²⁸

Because women have little or no control over land, they are also often excluded from

²⁰ FAO, *Gender and Land Rights* – Policy Brief 8, March 2010, p. 1.

²¹ FAO, *Gender and Land Rights* – Policy Brief 8, March 2010, p. 1.

²² CEDAW, *General Recommendation No. 37 on Gender-related dimensions of disaster risk reduction in the context of climate change*, CEDAW/C/GC/37, 7 February 2018, para. 70 [hereafter: CEDAW, *General Recommendation No. 37*], available at:

https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_37_8642_E.pdf.

²³ OHCHR, *Women and the Right to Adequate Housing*, 2012, p. 44, available at:

https://www.ohchr.org/Documents/Publications/WomenHousing_HR.PUB.11.2.pdf.

²⁴ The World's Women 2015, p. xiv.

²⁵ Carmen Diana Deere and Magdalena Leon, *The Gender Asset Gap: Land in Latin America*, World Development Vol. 31, No. 6, 2003, pp. 925–47, available at:

<https://www.amherst.edu/media/view/92212/original/gender%20asset%20gap.pdf>.

²⁶ OHCHR, *Women and the Right to Adequate Housing*, 2012, p. 35.

²⁷ Bina Agarwal, *Gender and Command Over Poverty: A Critical Gap in Economic Analysis and Policy in South Asia*, World Development, Vol. 22, No. 10, 1994, pp. 1455–78, available at:

http://www.binaagarwal.com/downloads/apapers/gender_and_command_over_property.pdf.

²⁸ OHCHR, *Women and the Right to Adequate Housing*, 2012, p. 38.

discussions and decisions – at the household, community, and national levels – regarding land, property or housing even though all such decisions have an impact on them. This is why the UN expert on the right to food explained that access and control over land is also “*a means of empowerment, as the greater economic independence that results from land ownership enhances the woman’s role in decision-making and allows her to garner more social, family and community support.*”²⁹

FACTS AND FIGURES³⁰

- Less than **20%** of the world’s landholders are women.
- In **39 countries**, daughters and sons do not have equal inheritance rights.³¹
- Almost **one-third** of women’s employment globally is in agriculture, including forestry and fishing. Women farmers have significantly less access to, control over, and ownership of land and other productive assets compared to their male counterparts.
- Women account for only **12.8%** of agricultural landholders in the world.

In Chapter 2, a detailed explanation is provided of the many ways in which unequal access to resources and the traditional division of labor make women more vulnerable to environmental degradation. For instance, women and girls can be exposed to specific types of pollution and health risks because of work they are traditionally expected to undertake. The unequal gender power relationship and lack of access to labor, resources and assets also mean that women and girls are often more at risk during times of crisis, including natural disasters, which deepen gender inequalities. Women are also at a higher risk of homelessness, and their lack of financial and economic independence, coupled with their exclusion from decision-making relating to land, means that they are less equipped to cope with situations when resources such as water and food are scarce.

1.2 VIOLATIONS OF WOMEN’S RIGHT TO HEALTH

“The cumulative impact of women’s multifaceted disadvantages and their devaluation within legal, religious and cultural traditions and socioeconomic systems result in many women being denied health...”

- World Health Organization³²

Women have additional and unique health needs, which are particularly pronounced during their reproductive ages due to menstruation, pregnancy and childbirth. Violations of women’s right to health occur regularly with disastrous consequences. This is particularly prevalent in developing countries where “*complications linked to pregnancy and childbirth, as well as sexually transmitted infections, particularly HIV, continue to take a heavy toll on the lives of adolescent girls and young women.*”³³ For example, according to the UN, “*on average, every day approximately 800 women die from preventable causes related to pregnancy and childbirth.*”³⁴

²⁹ Olivier De Schutter, Report submitted by the Special Rapporteur on the right to food, *Women’s rights and the right to food*, A/HRC/22/50, 24 December 2012, para. 31.

³⁰ UN WOMEN, *Facts and Figures: Economic Empowerment* (Website), available at: <http://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures>.

³¹ United Nations, Sustainable Development Goals - Goal 5: Achieve gender equality and empower all women and girls, *Facts and Figures* (Website), available at: <https://www.un.org/sustainabledevelopment/gender-equality/>.

³² Rebecca J. Cook for the World Health Organization (WHO), *Women’s Health and Human Rights - The Promotion and Protection of Women’s Health through International Human Rights Law*, 1994, Chapter 2, p. 5, available at:

https://apps.who.int/iris/bitstream/handle/10665/39354/9241561661_eng.pdf;jsessionid=314C6EB3C086C304144E884F65BF5368?sequence=1.

³³ The World’s Women 2015, p. x.

³⁴ OHCHR, *Maternal Mortality and Morbidity* - Information Series on Sexual and Reproductive Health

Of course, limited and poor health facilities, in particular in developing countries, can be a major contributing factor in women's lack of access to health services. However, the root causes behind these figures lie in deeply ingrained patriarchal concepts and attitudes that restrict women's physical aptitudes and sexuality to their ability to reproduce. These beliefs can lead to harmful practices for women and girls' health, such as early marriage and pregnancies, repeated pregnancies, female genital mutilation, forced sterilization, and forced abortion.³⁵

Women also face increased difficulties in accessing health services because of gender discrimination. In some instances, women are denied access to services that are uniquely necessary for women, such as contraceptives and family planning services. In other contexts, women are required to obtain the authorization of a third party before receiving certain services. For instance, when the husband's authorization is required to perform a sterilization or when health providers require the authorization of husbands, partners, parents or health authorities because women are unmarried or simply because they are women.³⁶ The fact that many women are financially dependent on men also limits their ability to freely and independently access health services.³⁷

Social taboos, women's limited access to education and poor information on sexual and reproductive rights also contribute to women's health vulnerabilities. As noted by the UN Committee on Economic, Social and Cultural Rights (CESCR): "*The realization of women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health.*"³⁸

In Chapter 2 we will explain how these difficulties are exacerbated in times of crisis, such as natural and weather-related disasters and in subsequent periods of displacement. Often in these situations, the lack of availability of reproductive and maternal care such as family planning services, emergency obstetric services, and pre- and post-natal care services put women at additional risks, including the risk of losing their lives.³⁹

Often because of their unequal access to labor and economic resources (See Section 1.1), women are also more reliant on others in times of crisis to access food, shelter and other basic services. This dependency can result in coercive pressure for women who may not otherwise choose to do so to engage in sex work in exchange for money and services. This in turn increases the risk of contracting HIV and sexually transmitted infections.⁴⁰ In addition, more generally, research shows that in times of conflict, women are likely to provide for their families first and foremost and as a result neglect their own needs, thereby putting them at further risk of malnutrition.⁴¹

Rights, available at:

https://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_MMM_WEB.pdf.

³⁵ OHCHR, *Harmful Practices especially forced marriage and female genital mutilation* - Information Series on Sexual and Reproductive Health Rights, available at:

https://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_Harm_Pract_WEB.pdf.

³⁶ OHCHR, *Contraception and family planning* - Information Series on Sexual and Reproductive Health Rights, available at:

https://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_Contra_FamPlan_WEB.pdf.

³⁷ OHCHR, *Sexual and Reproductive Health Rights* (Website), available at:

<https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/HealthRights.aspx>.

³⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14 (2000) (art. 12)*, E/C.12/2000/4, 11 August 2000, para. 21, available at:

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en.

³⁹ Anand Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to the UNGA, A/68/297*, August 2013, para. 43, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/422/97/PDF/N1342297.pdf?OpenElement>.

⁴⁰ Anand Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to the UNGA*, para. 45.

⁴¹ Anand Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to the UNGA*, para. 44.

FACTS AND FIGURES⁴²

- **60%** of preventable maternal mortality deaths take place in settings of conflict, displacement and natural disasters.
- Every day, **507 women** and adolescent girls die from pregnancy and childbirth complications in emergency settings.
- Over **a quarter of a million** pregnant women and girls die every year. As many as **98%** of these deaths are estimated to be preventable.

1.3 RESTRICTED ACCESS TO EDUCATION AND PARTICIPATION IN DECISION-MAKING

1.3.1 Women's unequal access to education

“Education continues to be denied to girls as a result of cultural and social norms and practices that perpetuate harmful stereotypes about appropriate roles for women and reinforce the idea that education is ‘wasted’ on girls.”

- UN Office of the High Commissioner for Human Rights⁴³

Quality education is necessary to empower people. It equips people with capacities to transform their lives and claim their rights. This is even truer for those sections of the population who suffer systematic discrimination such as women and girls or people belonging to minorities. For this reason, education is seen as *“the pathway to gender equality and the empowerment of women.”*⁴⁴ As the CEDAW Committee explains, *“education that empowers girls and women equips them with capacities to claim and exercise broader socioeconomic, cultural and political rights, on an equal basis with boys and men in their societies.”*⁴⁵

However, women and girls are disproportionately discriminated against not only in their rights to access education, but also within education systems.⁴⁶ Furthermore, even *“where educational opportunities are available, inequalities persist, preventing women and girls from fully taking advantage of such opportunities.”*⁴⁷

FACTS AND FIGURES⁴⁸

- **1/3 of countries** have not achieved gender parity in primary education.
- **1/2 of countries** have not achieved gender parity in secondary education.
- **2/3 of 757 million** illiterate adults are women.

⁴² UN Women, *Facts and Figures: Humanitarian Action* (Website), available at:

<http://www.unwomen.org/en/what-we-do/humanitarian-action/facts-and-figures>.

⁴³ OHCHR, *Background Paper on attacks against girls seeking to access education*, p. 2, available at:

https://www.ohchr.org/Documents/Issues/Women/WRGS/Report_attacks_on_girls_Feb2015.pdf.

⁴⁴ CEDAW, *General Recommendation No. 36 on the rights of girls and women to education*, CEDAW/C/GC/36, 27 November 2017, para. 1 [hereafter: CEDAW, *General Recommendation No. 36*], available at:

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/36&Lang=en.

⁴⁵ CEDAW, *General Recommendation No. 36*, para. 13.

⁴⁶ CEDAW, *General Recommendation No. 36*, para. 14.

⁴⁷ CEDAW, *General Recommendation No. 36*, para. 2.

⁴⁸ OHCHR, *Right to education*, Infographic, available at:

https://www.ohchr.org/SiteCollectionImages/Issues/Women/WRGS/infographic_5logos_EN.png

There are many reasons that prevent women and girls from accessing education on an equal basis with men and boys, but “*gender stereotypes about the role of women as relegated to the family sphere underpin all obstacles to girls’ equal access to quality education.*”⁴⁹ The stereotypes that see men as breadwinners and women and girls as being in charge of domestic care mean that men’s education is often prioritized. For example, when entry costs and other school expenses, such as textbooks and uniforms, are a concern, parents may have to choose which child to send to school. Because men are still often seen as the most reliable source of income, families will often prioritize boys’ education over girls’ education. In some countries, women and girls’ access to education is even restricted by law.⁵⁰

The distance between school and home, while an issue for all students, is even more of an obstacle to women and girls who are at risk of gender-based violence on their way to school.⁵¹ As the OHCHR notes, “*documented cases of attacks against girls accessing education, in particular in the context of violent extremism, are on the rise around the world.*”⁵²

Those women and girls who are able to attend school face difficulties specific to their experiences. For instance, girls may be unwilling to attend school when their schools do not have the proper sanitation facilities that provide for their particular health and sanitation needs during their menstruation periods.⁵³ Another example is when the curricula, educational materials and/or teachers reinforce gender stereotypes in the classroom and favor boys over girls, or push girls into specific subjects regarded as easier or of a lower status.⁵⁴ The school environment can also expose girls to the risk of being sexually harassed or assaulted by boys and men including fellow students or teachers.⁵⁵

Harmful practices against women deeply rooted in patriarchal social attitudes often limit women’s physical aptitude to that of procreation. Such practices, which include child and/or forced marriage, and female genital mutilation may hinder or even end girls’ education. The CEDAW Committee explains that complications following female genital mutilation procedures can:

*... cause girls to be less focused in school or absent, resulting in poor performance and ultimately premature termination of their studies. In some countries, the high cost associated with the procedure also has an impact on parents’ capacity to subsequently meet school expenses, resulting in girls dropping out of school. Forced marriage after the procedure, considered an initiation into maturity, can also lead to dropout due to pregnancy or a focus on responsibilities in the home.*⁵⁶

In times of crisis, gender inequalities deepen, while the obstacles faced by women and girls in accessing education and other types of care and services are exacerbated due to the collapse of institutions, increased violence, additional care required for the family, and economic instability.⁵⁷

⁴⁹ OHCHR, *Realisation of the equal enjoyment of the right to education by every girl*, para. 10, available at: <https://www.ohchr.org/Documents/Issues/Women/WRGS/ReportGirlsEqualRightEducation.pdf>.

⁵⁰ CEDAW, *General Recommendation No. 36*, para. 37; and OHCHR, *Realisation of the equal enjoyment of the right to education by every girl*, para. 20.

⁵¹ CEDAW, *General Recommendation No. 36*, para. 29; and OHCHR, *Realisation of the equal enjoyment of the right to education by every girl*, para. 25.

⁵² OHCHR, *Realisation of the equal enjoyment of the right to education by every girl*, para. 40. See also for more information OHCHR, *Background Paper on attacks against girls seeking to access education*.

⁵³ CEDAW, *General Recommendation No. 36*, para. 30; and OHCHR, *Realisation of the equal enjoyment of the right to education by every girl*, para. 28.

⁵⁴ CEDAW, *General Recommendation No. 36*, paras. 57, 60, and 64; and OHCHR, *Realisation of the equal enjoyment of the right to education by every girl*, para. 32.

⁵⁵ CEDAW, *General Recommendation No. 36*, para. 67.

⁵⁶ CEDAW, *General Recommendation No. 36*, paras. 53 and 52.

⁵⁷ OHCHR, *Realisation of the equal enjoyment of the right to education by every girl*, para. 47.

Discrimination in accessing and enjoying education has far-reaching consequences for women and girls. In addition to unequal access to resources, a lack of access to education further limits women and girls' personal autonomy. As the CEDAW Committee outlines:

*When girls and women lack access to high-quality education, they ultimately face major difficulties, including lack of personal autonomy and choices, including control over their health and sexual and reproductive decisions, lower-quality health care for themselves and their children, intergenerational poverty and lack of power-sharing and participation on an equal basis with boys and men in both the private and public domains.*⁵⁸

The lack of education also contributes to keeping women in poverty and excluding them from decision-making in both the private sphere (in their relationships with partners and spouses, within families and in communities) and the public sphere.

1.3.2 Women's exclusion from decision-making

"Nobody comes and asks the women what you want or what you need."

- Sarojani Gounder, Fiji local District Councillor⁵⁹

"Men historically have both dominated public life and exercised the power to confine and subordinate women within the private sphere."

- CEDAW Committee, General Recommendation No. 23⁶⁰

Both historically and to this day, women have been largely excluded from participating in decisions in both the private and public spheres, leading them to often have little or no influence on issues that affect their lives.⁶¹ As noted by a 2015 Survey: *"Inequality between women and men tends to be severe and highly visible in power and decision-making arenas. In most societies around the world, women hold only a minority of decision-making positions in public and private institutions."*⁶²

This is also true with regard to environmental policymaking and in discussions about land use, energy plans, use of natural resources, natural disaster preparedness, and most other issues relating to environmental governance. Women's presence is lacking at all levels of decision-making from international fora to national elected bodies, professional organizations (labor and farmers' unions, for instance) and community and family-level discussions.

As an illustrative example, at the highest levels of government, the absence of women is particularly pronounced. A study conducted by the Environment and Gender Index shows that across 881 national environmental ministries from the 193 UN member states, only 12% of Ministers are women.⁶³

Yet, women are not just excluded from international and national fora. They are also excluded from taking part in decisions at the family and community levels. Often when state agencies or private companies purport to consult with communities, in reality they

⁵⁸ CEDAW, *General Recommendation No. 36*, para. 28.

⁵⁹ Irwin Loy, *Fiji's unheralded frontline disaster responders: women*, IRIN, 30 January 2019, available at: <https://www.irinnews.org/news-feature/2019/01/30/fiji-s-unheralded-frontline-disaster-responders-women>.

⁶⁰ CEDAW, *General Recommendation No. 23: Political and Public Life*, Sixteenth session (1997), para. 8 [hereafter: CEDAW, *General Recommendation No. 23*], available at: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_4736_E.pdf.

⁶¹ CEDAW, *General Recommendation No. 23*, para. 9.

⁶² The World's Women 2015, p. xii.

⁶³ Environment and Gender Index (EGI), UN Women, IUCN, *Women's Participation in Global Environmental Decision Making*, August 2015, available at: https://portals.iucn.org/union/sites/union/files/doc/egi_factsheet_desicion_making_web_sept2015.pdf.

only consult with the male members of communities because they either assume or are told that men are the leaders or representatives of the community. This renders women invisible. As explained by the UN Working Group on the issue of discrimination against women in law and practice: “*negotiation by international, regional and State agencies with sectoral or minority groups is negatively influenced by gender stereotyping when conducted solely with the male community leadership, thereby making women’s leadership effectively invisible and further marginalizing women.*”⁶⁴

Furthermore, when women break social and cultural barriers and decide to participate in public discussions and promote their rights, they face additional risks and threats of retaliation. This is particularly true for those women who work to promote and protect environmental rights (See Box 1).

Women’s exclusion is the result of a number of factors including direct discrimination in legislation that excludes them from certain professions or political roles. Gender stereotypes, cultural and social norms also prevent them from taking on leadership roles. Patriarchal social and cultural norms confine women to the private sphere and give leadership and decision-making duties to men.⁶⁵ Women’s economic dependency on men also leads to their exclusion from major decisions related to finance, property, land, and resources in the public and private spheres.

The exclusion of women may also be due to a lack of education, exclusion from training programs, or language and literacy constraints. Women’s limited mobility, on account of traditional cultural norms, further restricts their ability to take part in decision-making forums, while their lack of independent financial resources inhibits women’s ability to participate in the public and community. The amount of time spent on childcare and homecare also prevents women from pursuing other key interests such as education and public and political discussions. As noted by the CEDAW Committee: “*Relieving women of some of the burdens of domestic work would allow them to engage more fully in the life of their communities.*”⁶⁶

In relation to the environment, women’s limited knowledge of environment-related information and data, as well as relevant legal, political, and institutional procedures may also limit their effective participation in decision-making processes.⁶⁷ As a result, most environmental and climate change policies fail to take into consideration women’s specific expertise and perspectives. Such policies also fail to address the gendered impact of environmental degradation.

Women, however, are important agents of change and have a major role to play in environmental policymaking.⁶⁸ Women’s participation would help ensure that they benefit from environmental policy. This is central to achieving gender equality with respect to environmental governance. Women also often have unique expertise and substantive

⁶⁴ *Report of the Working Group on the issue of discrimination against women in law and in practice*, A/HRC/23/50, 19 April 2013, para. 71, available at: <https://undocs.org/A/HRC/23/50>.

⁶⁵ CEDAW, *General Recommendation No. 23*, para. 10.

⁶⁶ CEDAW, *General Recommendation No. 23*, para. 10.

⁶⁷ CEDAW, *General Recommendation No. 34 on the rights of rural women*, CEDAW/C/GC/34, 4 March 2016, para. 53 [hereafter: CEDAW, *General Recommendation No. 34*], available at: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_7933_E.pdf. See also Fondo De Acción Urgente, “Barriers to Women’s Meaningful Participation in Issues Related to the Environment,” in *Extractivism in Latin America*, 2016, p. 37, available at: https://fondoaccionurgente.org.co/site/assets/files/1175/b81245_6cc6d3d7edd447d0ab461860ae1ae64f.pdf.

⁶⁸ For more information see Mary Robinson Foundation Climate Justice, *Women’s Participation: An Enabler of Climate Justice*, First Edition, November 2015, available at: https://www.mrfcj.org/wp-content/uploads/2015/11/MRFCJ-_Womens-Participation-An-Enabler-of-Climate-Justice_2015.pdf. See also Asia Pacific Forum on Women, Law and Development (APWLD), *Women of the Lagoon: confronting climate change in coastal Vietnam* (YouTube), December 2015, available at: <http://apwld.org/watch-women-of-the-lagoon-confronting-climate-change-in-coastal-vietnam-vietnam-on-youtube/>.

knowledge in respect of the management of natural resources such as wood and water, which would benefit energy management policies.⁶⁹

For example, in India, one study shows that women's participation in forest management has led to a decrease in illicit grazing and illicit felling and a corresponding increase in reforestation and regeneration of forests. Women's engagement also resulted in women being more involved in decision-making processes, enjoying more economic independence and higher income.⁷⁰

However, for women's participation to be effective and meaningful, women's representation in discussions and decision-making bodies in terms of numbers is not enough. The capacity of women, as well as their access to networks, knowledge and resources, must be increased in order for them to feel confident to participate fully. Decision-making environments must be designed to be conducive to their participation and women should not be limited to mere participants in environmental forums. Women must also be included in decision-making positions.

BOX 1 ★ WOMEN HUMAN RIGHTS DEFENDERS

“Increased violence, including killing, against environmental human rights defenders around the world points to a situation of global crisis.”

- Michel Forst, UN Special Rapporteur on the Situation of Human Rights Defenders⁷¹

“Women defenders often have to fight a battle on two fronts: the public struggle to protect natural resources, and the hidden struggle to defend their right to speak out within their own organizations and families.”

- Global Witness, “At what cost?”⁷²

Environmental human rights defenders (HRDs) play a crucial role in their communities. They share information about the environment, call for participation in environmental decision-making, and seek remedy in cases of environmental degradation. Their role in protecting the environment is critical.

The UN expert on the situation of HRDs described them 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.*”⁷³

Environmental HRDs face high levels of violence and retaliation:

- In 2015, on average, **three environmental activists were murdered each week.**⁷⁴
- In 2015, 67% of all reported murders of HRDs in Asia were environmental HRDs.⁷⁵

⁶⁹ UN Women, *Factsheet: Women, Gender Equality and Climate Change*, p. 7, available at: https://www.un.org/womenwatch/feature/climate_change/downloads/Women_and_Climate_Change_Factsheet.pdf.

⁷⁰ OHCHR, *The rights of those disproportionately impacted by climate change*, Discussion Paper, 30 September 2016, p. 5, available at: <https://www.ohchr.org/Documents/Issues/ClimateChange/EM2016/DisproportionateImpacts.pdf>.

⁷¹ Michel Forst, *Report of the Special Rapporteur on the situation of human rights defenders to the 71st session of the UNGA, A/71/281*, 3 August 2016, para. 93, available at: <https://undocs.org/A/71/281>.

⁷² Global Witness, “At what cost?” *Irresponsible business and the murder of land and environmental defenders in 2017*, 2018, p. 35, available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/at-what-cost/>.

⁷³ Michel Forst, *Report of the Special Rapporteur on the situation of human rights defenders to the 71st session of the UNGA*, para. 7.

⁷⁴ Global Witness, *On dangerous ground*, 20 June 2016, p. 4, available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/dangerous-ground/>

⁷⁵ Front Line Defenders, *Annual Report 2016*, 14 January 2016, p. 7, available at: <https://www.frontlinedefenders.org/en/resource-publication/2016-annual-report>

- In 2014 and 2015, among the 10 most dangerous countries for environmental HRDs were Brazil, Cambodia, Guatemala, India, the Philippines and Thailand.⁷⁶
- In 2017, **at least 207 environmental HRDs were murdered** – the deadliest year on record.⁷⁷

In addition to the risk of assassination, environmental HRDs also experience targeted threats and harassment – including toward family members – enforced disappearances, illegal surveillance, travel bans, judicial harassment and the use of excessive force to disperse peaceful protests.⁷⁸

While these threats directly impact both male and female environmental defenders, **female environmental HRDs face additional gender-specific threats.**⁷⁹

For example, women often face the additional **threat of sexual violence and sexual harassment.** Part of this harassment may include misogynistic insults such as being called “*whores*” or “*bad mothers*.” For instance, according to the UN expert, some women faced sexual harassment or gender-based threats and insults when they spoke out against projects funded by the World Bank Group.⁸⁰

Women are also the targets of **smear campaigns** and are discredited and stigmatized by state actors, private companies, and their own communities.⁸¹ Smear campaigns often attack women in relation to their sexuality and their roles in the family. For instance, women may be accused of neglecting their children and domestic duties, or rumors may be circulated that their husbands cannot “*control*” them, which can lead to domestic violence. Often gender stereotypes and the roles that women play are also used to divide communities.

By speaking out for their communities, as well as taking on leadership roles about their rights or the rights of their communities, female environmental defenders challenge patriarchal views within their community. They are therefore often **isolated** and do not benefit from the same support that their male colleagues receive. Moreover, their family and children may become the target of threats, in an attempt to stop them from doing their work as female environmental defenders.

For example, in August 2005, **Cleofa Neyra and Elizabeth Cunya, members of the Association of Women Who Protect the Highlands (AMUPPA)**, which opposes the Río Blanco Copper and Molybdenum Mining Project in Peru, were kidnapped along with 26 demonstrators, by the Río Blanco security forces. The kidnapping took place during a five-day non-violent march.⁸²

⁷⁶ Michel Forst, *Report of the Special Rapporteur on the situation of human rights defenders to the 71st session of the UNGA*, para. 36.

⁷⁷ Global Witness, “*At what cost?*” *Irresponsible business and the murder of land and environmental defenders in 2017*, p. 8.

⁷⁸ Michel Forst, *Report of the Special Rapporteur on the situation of human rights defenders to the 71st session of the UNGA*, para. 30.

⁷⁹ See Global Witness, “*At what cost?*” *Irresponsible business and the murder of land and environmental defenders in 2017*, pp. 35–36; Michel Forst, *Report of the Special Rapporteur on the situation of human rights defenders to the 71st session of the UNGA*, paras. 39, 54, and 55; and Association for Women’s Rights in Development (AWID), *Women Human Rights Defenders Confronting Extractive Industries: An Overview of Critical Risks and Human Rights Obligations*, 2017, pp. 13–26, available at: https://www.awid.org/sites/default/files/atoms/files/whrds-confronting_extractive_industries_report-eng.pdf.

⁸⁰ Michel Forst, *Report of the Special Rapporteur on the situation of human rights defenders to the 71st session of the UNGA*, para. 39.

⁸¹ Global Witness, “*At what cost?*” *Irresponsible business and the murder of land and environmental defenders in 2017*, p. 10.

⁸² Fondo De Acción Urgente, *Patterns of Criminalization and Limitations on the Effective Participation of Women Who Defend Environmental Rights, Territory, and Nature in the Americas*, Update 2016, p. 45, available at:

https://fondoaccionurgente.org.co/site/assets/files/1176/2016_update_report_on_patterns_of_criminalization_and_limitations_for_the_effective_participation_of_women_defenders_of_env.pdf.

During the kidnapping, both Cleofo and Elizabeth (who were the only two women in the group) were kept half naked in a small bathroom with black plastic bags over their heads, and their feet and hands tied. Both women were threatened with rape and sexual harassment. Cleofo Neyra explained: *“All of them took pleasure in squeezing my breasts with such force that I thought I would faint. They threatened us all the time with rape, while they talked about their fantasies of what they would do with us.”*

Following the incident, members of their communities, who blamed them for what had happened, further ostracized Cleofo and Elizabeth. Community leaders spread rumors via local radio. Women members of AMUPPA and their families received insults and death threats such as:

- *“Stupid, repugnant old ladies – what do you know about rights, get to cooking and sweeping your houses”*
- *“Bitch of shit, we are going to rape you and cut you in to pieces”*
- *“Real women go back home, they don’t go on with this”*
- *“Let’s see who is going to save you when we get hold of you”*
- *“If you keep screwing around against the mine, we are going to mess you up, unfortunate one.”*

1.4 VIOLENCE AGAINST WOMEN

“Women in all countries, irrespective of status, class, age, caste or religion, experience violence in virtually all spheres of life, whether in the home, at work, on the street, in government institutions, or in times of conflict or crisis. Violence is also present throughout the lifetime of a woman, affecting girls and older women too.”

- UN Office of the High Commissioner for Human Rights⁸³

Violence against women is defined by the UN General Assembly (UNGA) as *“any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”*⁸⁴ Put more simply, the CEDAW Committee explains that gender-based violence is *“violence that is directed against a woman because she is a woman or that affects women disproportionately.”*⁸⁵

Violence against women remains pervasive in all countries with high levels of impunity.⁸⁶ It can affect women of all ages⁸⁷ and takes many forms. For example, it includes all forms of sexual violence such as rape (including marital rape), forced sterilization, forced nudity,

⁸³ OHCHR, *Women’s Rights are Human Rights*, 2014, p. 75, available at: <https://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>.

⁸⁴ Declaration on the Elimination of Violence Against Women, UNGA resolution 48/104, 20 December 1993, Article 1, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ViolenceAgainstWomen.aspx>.

⁸⁵ CEDAW, *General Recommendation No. 19: Violence against Women*, Eleventh session (1992), para. 6, available at: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf.

⁸⁶ CEDAW, *General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, CEDAW/C/GC/35, 26 July 2017, para. 6 [hereafter: CEDAW, *General Recommendation No. 35*], available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CEDAW/C/GC/35&Lang=en.

⁸⁷ UNICEF, *Women in Transition*, The Monee Project CEE/CIS/Baltics Regional Monitoring Report No. 6, 1999, Chapter 5, Table 5.1, p. 78, available at: <https://www.unicef-irc.org/publications/pdf/monee6/chap-5.pdf>.

forced abortions, sexual harassment, and incest. It can also include violence related to witchcraft and dowry, “*honor*” crimes, femicide, domestic violence, and harmful practices such as child and forced marriage and female genital mutilation.⁸⁸ Violence may be committed within a woman’s family or community or by state and non-state agents.

Gender-based violence is rooted in structural discrimination and patriarchal ideologies. Stereotyped gender norms (according to which masculinity is assumed to be tied to physical strength and control over women and that men are entitled to control women) fuel gender-based violence. Traditional attitudes that limit women’s role in families, communities and society to reproduction and care also further contribute to harmful practices against women such as domestic violence, forced marriage, and female circumcision.⁸⁹

Even if social norms are slowly changing in many places, persistent violence against women remains widely perceived as a private matter and/or as socially acceptable. Entrenched patriarchal views mean that, in the majority of cases, violence against women is perpetuated with widespread impunity. According to a 2015 UN Survey: “*In the majority of countries, less than 40% of the women who experienced violence sought help of any sort. Among those who did, most looked to family and friends as opposed to the police and health services ... Women’s reluctance to seek help may be linked to the widespread acceptability of violence against women.*”⁹⁰

Some women are at greater risk of violence due to their race, religion, sexual orientation or because they have certain forms of disability.⁹¹ Women and girls can also be at greater risk of violence in times of crisis; displacement and migration; or when they are being trafficked. As the CEDAW Committee observes: “*Gender-based violence against women is also affected by political, economic and social crises, civil unrest, humanitarian emergencies, natural disasters and the destruction or degradation of natural resources.*”⁹²

Chapter 2 will further develop how it is that when natural disasters or environmental degradation occur, women and girls become even more at risk of gender-based violence. This is particular so in situations of post-disaster and displacement. Conflict and post-conflict situations – and to a similar extent all crisis situations including cases of natural disasters – exacerbate pre-existing patterns of discrimination. This is because of the collapse of state, community and family institutions and increased economic vulnerability. Women and girls are therefore at greater risks of violence including domestic violence, sexual exploitation and trafficking. As explained by a UN expert, in times of mass displacement women “*face a heightened risk of sexual exploitation and trafficking, as well as increased domestic violence and abuse from family members.*”⁹³ Yet, in situations of crisis, often the necessary health and psychological services are not available.

In times of migration and displacement, women and children also become more susceptible to exploitation. In particular, women living in countries without the appropriate visa or required permits are more vulnerable to violence. For instance, if they are detained, they may be at risk of sexual violence by male detainees or guards.⁹⁴ Irregular

⁸⁸ OHCHR, *Violence against Women* - Information Series on Sexual and Reproductive Health and Rights, p. 2, available at:

https://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_VAW_WEB.pdf; and OHCHR, *Women’s Rights are Human Rights*, 2014, p. 76.

⁸⁹ CEDAW, *General Recommendation No. 35*, paras. 11 and 19.

⁹⁰ *The World’s Women 2015*, p. xiii.

⁹¹ OHCHR, *Women’s Rights are Human Rights*, 2014, p. 75.

⁹² CEDAW, *General Recommendation No. 35*, para. 14.

⁹³ Anand Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to the UNGA*, para. 45.

⁹⁴ François Crépeau, *Report of the Special Rapporteur on the human rights of migrants to the 20th session of the HRC, A/HRC/20/24*, 2 April 2012, para. 30, available at:

migration can also push women and girls into situations of unregulated labor where they do not enjoy any organizational or legal protection. When on the move, women and girls are also at risk of sexual violence by smugglers or agents.⁹⁵

FACTS AND FIGURES

- Around **⅓ of women** worldwide have experienced physical and/or sexual violence by an intimate partner or sexual violence by a non-partner at some point in their lives.⁹⁶
- **137 women** across the world are killed by a member of their own family every day.⁹⁷
- Globally, **38%** of all murders of women are committed by their intimate partner.⁹⁸
- More than **70% of women** have experienced gender-based violence in some crisis settings.⁹⁹
- Women and girls account for **71%** of all human trafficking victims, with girls representing nearly 3 out of every 4 child trafficking victims.¹⁰⁰

The effects of gender-based violence against women and girls are wide-ranging. The OHCHR, for example, concludes: “*Violence against women ... impacts women’s health, hampers their ability to participate fully in society, affects their enjoyment of sexual and reproductive health and rights, and is a source of tremendous physical and psychological suffering for both women and their families.*”¹⁰¹

Violence against women is used to perpetuate the subordination of women and deprive them of the equal enjoyment of their human rights.¹⁰² It also has serious health consequences on women and girls. In some cases, it can lead to death, physical injuries, unintended pregnancies, life-threatening sexually transmitted infections including HIV, depression and post-traumatic stress disorder and the use of harmful drugs.¹⁰³

1.5 UNEQUAL ACCESS TO JUSTICE

“Justice systems reflect society’s power imbalances, including those that disadvantage women.”

- UN Office of the High Commissioner for Human Rights¹⁰⁴

The right of women to access justice is essential to the realization of all women’s rights, including rights impacted by environmental degradation and the right to a healthy environment. Accountability for environmental degradation and access to remedy for people affected by environmental degradation are also vital elements of environmental rule of law.

https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-24_en.pdf.

⁹⁵ OHCHR, *Women’s Rights are Human Rights*, 2014, p. 87.

⁹⁶ The World’s Women 2015, p. xiii.

⁹⁷ United Nations on Drugs and Crime (UNODC), *Global Study on Homicide – gender-related killings of women and girls*, 2018, p. 10, available at: https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18_Gender-related_killing_of_women_and_girls.pdf.

⁹⁸ OHCHR, *Violence against Women - Information Series on Sexual and Reproductive Health and Rights*, p. 1.

⁹⁹ UN Women, *Facts and Figures: Humanitarian action* (Website), available at: <http://www.unwomen.org/en/what-we-do/humanitarian-action/facts-and-figures>.

¹⁰⁰ UNODC, *Global Report on Trafficking in Persons*, 2016, Figure 1, p. 23, available at: https://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf.

¹⁰¹ OHCHR, *Violence against Women - Information Series on Sexual and Reproductive Health and Rights*, p. 1.

¹⁰² CEDAW, *General Recommendation No. 35*, para. 11.

¹⁰³ WHO, *Violence against Women - the Health Sector Responds*, 2013, p. 4, available at: https://www.who.int/violence_injury_prevention/publications/pvl_infographic.pdf.

¹⁰⁴ OHCHR, *Women’s Rights are Human Rights*, 2014, p. 110.

Women's access to justice is inhibited by a number of factors. Some are social barriers such as women's lack of education and information about their rights, or reliance on men for assistance.¹⁰⁵ Other issues are more practical such as *"the centralization of courts and quasi-judicial bodies in the main cities, their non-availability in rural and remote regions, the time and money needed to access them."*¹⁰⁶ More important is the perpetuation of gender discrimination and gender stereotypes by both judges and judicial officers and, as a result, inadequate and discriminatory justice system procedures.

Judges may adopt certain ideas and beliefs – often rooted in patriarchy – about what they consider to be appropriate behavior for women and make rulings based on those preconceived ideas rather than on the relevant facts.¹⁰⁷

In addition, prevalent gender stereotypes within justice systems may also be found in gender-biased criminal rules of evidence and procedure such as the beliefs or presumptions that:

- *"Proof of physical violence is required to show that there was no consent;*
- *Women are likely to lie, therefore evidence should be accepted only if corroborated;*
- *Women can be assumed to be sexually available;*
- *Women who remained silent can be inferred to be consenting to sex even if forced, threatened or coerced;*
- *Previous sexual experience predisposes women to be sexually available, or to automatically consent to sex;*
- *Women bear the responsibility for sexual attacks or invite them by being out late or in isolated places or by dressing in a particular manner;*
- *It is impossible to rape a sex worker;*
- *Raped women have been dishonored or shamed or are guilty rather than victimized."*¹⁰⁸

Unequal access to justice and gender stereotyping by judges has wide-ranging consequences for women. As noted by the CEDAW Committee: *"In all areas of law, stereotyping compromises the impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice, including the revictimization of complainants."*¹⁰⁹

COUNCIL OF EUROPE TRAINING MANUAL FOR JUDGES AND PROSECUTORS ON ENSURING WOMEN'S ACCESS TO JUSTICE

The Council of Europe summarizes the type of obstacles women face in accessing justice in the following terms:

- Discriminatory legal frameworks;
- Problematic interpretation and implementation of the laws;
- Ineffective or problematic legal procedures (lack of gender-sensitive procedures in the legal system);
- Underrepresentation of women among legal professionals;
- Gender stereotyping and bias by judges and judicial officers;

¹⁰⁵ OHCHR, *Women's Rights are Human Rights*, 2014, p. 110.

¹⁰⁶ CEDAW, *General recommendation No. 33 on women's access to justice*, CEDAW/C/GC/33, 3 August 2015, para. 13 [hereafter: CEDAW, *General Recommendation No. 33*], available at: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf.

¹⁰⁷ CEDAW, *General Recommendations No. 33*, para. 26.

¹⁰⁸ Gabriela Knaul, *Report of the Special Rapporteur on the independence of judges and lawyers to the 66th session of the UNGA*, A/66/289, 10 August 2011, para. 48, available at: <https://undocs.org/A/66/289>.

¹⁰⁹ CEDAW, *General Recommendations No. 33*, para. 26.

- Lack of awareness of legal rights, legal procedures, and how to access legal aid (which can stem from gender differences in educational levels, access to information, etc.);
- Lack of financial resources (including the means to pay for legal representation, legal fees, judicial taxes, transportation to courts, child care, etc.);
- Unequal and gendered distribution of tasks within the family and communities; and
- Gender stereotypes and cultural attitudes towards women.¹¹⁰

These difficulties may be exacerbated in situations of disasters and by the climate change crisis. In addition, in the context of environmental law, the research conducted for this manual demonstrates that judges and other judicial officers often largely fail to address or even consider women's experiences of environment-related human rights violations. As noted by the UN Special Rapporteur on human rights and the environment, in many countries: "*the judiciary is failing absolutely and completely to apply a gender perspective in environmental cases.*"¹¹¹

As noted earlier, research for this manual found that there is little or no case law in domestic legal regimes that has adequately addressed women's rights in environmental cases. The reasons for such a gap in environmental justice are manifold. One of the primary reasons, however, is the general lack of awareness and education of judges and judicial officers on the gendered dimensions of environmental degradation and gender more generally. Compounding the absence of knowledge on the part of judges, women may also have limited knowledge of their rights or lack the legal and social standing to contribute effectively to the initiation, articulation and adjudication of environmental rights cases.

1.6 INTERSECTING FORMS OF DISCRIMINATION

Women and girls face discrimination and inequalities because of their sex and gender. However, it is also important to understand that while there are differences between men and women, there are also differences among women themselves. Crucially, some women and girls face multiple, intersecting and compounding forms of discrimination. As the CEDAW Committee explains:

*Discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men.*¹¹²

States are obliged under international law to legally recognize and prohibit such **intersecting forms of discrimination** and their compounded negative impact on women and girls.

For example, girls are more susceptible to discrimination in areas such as access to basic education, trafficking, maltreatment, exploitation, and violence. "*All these situations of discrimination are aggravated when the victims are adolescents.*"¹¹³

¹¹⁰ Council of Europe, *Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice – General Part*, September 2017, p. 13, available at: https://www.ohchr.org/Documents/Issues/Women/WRGS/TrainingManualAccessJustice_EN.pdf.

¹¹¹ Phone interview with David R. Boyd, UN Special Rapporteur on human rights and the environment, January 2019.

¹¹² CEDAW, *General Recommendation No. 28*, para. 18.

¹¹³ CEDAW, *General Recommendation No. 28*, para. 21.

In the context of environmental degradation and the climate crisis, indigenous women, older women, rural women, disabled women, migrant women, women from minorities, and young girls are especially exposed to a full range of human rights violations. For instance, women from indigenous communities will be simultaneously confronted by discrimination as a result of their gender and because of their social and legal status as indigenous persons. These women therefore require additional protection and consideration in determining how to prevent disproportionate impacts on their rights as a consequence of environmental degradation.¹¹⁴

In Switzerland, in light of older women's particular vulnerability to climate change, a group of older women formed the association **KlimaSeniorinnen Schweiz** (Senior Women for Climate Protection Switzerland).¹¹⁵

In 2016, the association filed a legal request with the Swiss authorities, claiming that the Swiss authorities' "*inadequate*" climate policies and mitigation measures are failing to protect them.

After establishing the links between climate change and recent heat waves in Europe, they based their legal action on the fact that studies have shown that deaths related to the 2003 heat wave disproportionately impacted older persons and women more than men. This is an example of the intersecting discrimination faced by older women and the disproportionate impact that climate change will have on such women as a result of their intersectional vulnerabilities.

In 2017, the Federal Department of Environment, Transport, Energy and Communication dismissed the request. The association appealed the decision. The appeal decision is still pending.

¹¹⁴ Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, *Individual Report on the United Nations Convention on the Elimination of All Forms of Discrimination against Women, Report No. 4*, December 2013, paras. 61–76, available at: <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/MappingReport.aspx>.

¹¹⁵ Klimaseniorinnen, *Notre action en justice*, English Summary (Website), available at: <https://ainees-climat.ch/english/>.

SUMMARY OF CHAPTER 1

- Discriminatory laws and practices, and gender stereotypes perpetuate women and girls' inequality affecting all aspects of their life: including access to resources, labor, health services, education, decision-making and justice.
- Gender stereotypes and patriarchal social and cultural norms often attribute to women the exclusive role of caregiver and mother, confining them to their households and contributing to maintaining unequal power relations between women and men.
- Unequal access to the labor market and land and tenure rights ensures that women often remain in a relationship of economic dependency with male spouses or family members. This makes them more vulnerable to violence and poverty, and excludes them from important decision-making processes.
- Patriarchal attitudes that reduce women's physical capabilities to their sexual, reproductive roles and domestic duties lead to many types of violations of women and girls' right to health.
- Women and girls are disproportionately discriminated against not only in their rights to access education, but also within the education systems. This limits women's ability to further their own empowerment and enjoy economic independence.
- Women remain largely excluded from participating in decisions in both private and public spheres, leading them to often have little or no say on issues that affect their lives.
- Violence against women remains pervasive in all countries with high levels of impunity. It can affect women of all ages and takes many forms. It perpetuates the subordination of women and deprives them of the equal enjoyment of their human rights.
- Women often face specific barriers in accessing justice. Gender stereotyping held and applied either directly or indirectly by judges and judicial officers leads to miscarriages of justice and widespread denials of women's right to an effective remedy.
- Gender inequalities are exacerbated in times of crisis, making women and girls even more vulnerable to discrimination and violence.
- Some women and girls face multiple, intersecting and compounding forms of discrimination simultaneously. Indigenous women, older women, rural women, disabled women, migrant women, women from minorities, and young girls are especially vulnerable to

CHAPTER 2: THE ADVERSE IMPACT OF ENVIRONMENTAL DEGRADATION ON WOMEN

“ *The impact of environmental degradation is not just different for women than men, it is disproportionate.* ”

- Ms. Nahla Haidar, Member of the CEDAW Committee¹¹⁶

While acts of environmental degradation or climate change affect everyone, some groups of people are more vulnerable to their effects and as a consequence adversely impacted in more severe ways than the rest of the population. The UN Human Rights Council (HRC) has repeatedly highlighted that the human rights implications of environmental damage “*will be felt most acutely by those segments of the population who are already in a vulnerable situation.*”¹¹⁷ The Inter-governmental Panel on Climate Change (IPCC) also notes that “*people who are socially, economically, culturally, politically, institutionally or otherwise marginalized are especially vulnerable to climate change and also to some adaptation and mitigation responses.*”¹¹⁸

Women and girls are vulnerable in this way because of discriminatory laws and practices and gender stereotypes that keep them in unequal power relationships with men within their families and communities. Such unequal power relationships limit their autonomy and their access to resources, labor, education, health, decision-making and justice (See Chapter 1). As a result, women and girls are more susceptible to environmental degradation, the climate crisis and violence. They are also largely excluded from decision-making procedures relating to environmental governance whether at the international, national, community, or family levels (See Section 1.3). Women are thus less equipped to design and adopt, or contribute to assisting and designing, coping strategies that can effectively ameliorate environment-related harms.

This chapter explains how the existing inequalities described in Chapter 1 put women and girls in a more vulnerable situation in the face of environmental degradation and the climate crisis. The chapter will help judges identify women’s discrimination in environmental cases and understand how environmental degradation may have a different – and in some respects disproportionate – impact on women. This, in turn, establishes why judges should adopt a gendered perspective and approach to the handling of environmental cases.

¹¹⁶ Phone Interview, 4 March 2019.

¹¹⁷ UN Human Rights Council (HRC), *Human rights and the environment*, Resolution 37/8, A/HRC/37/L.19, 16 March 2018, Preamble p. 2, available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/37/L.19.

¹¹⁸ Inter-governmental Panel on Climate Change (IPCC), *Fifth Assessment Report (AR5), Synthesis Report (SYR)*, p. 54 [hereafter AR5SYR], available at: https://www.ipcc.ch/site/assets/uploads/2018/02/SYR_AR5_FINAL_full.pdf.

2.1 EXTREME WEATHER EVENTS AND NATURAL DISASTERS

“The gender inequalities that define [women’s] lives prior to a disaster are really what put them at such greatly increased risk after a disaster.”

- Kavita Ramdas, Global Fund for Women¹¹⁹

The pre-existing vulnerabilities and inequalities experienced by women and girls, as described in Chapter 1, are further heightened in disaster and post-disaster situations. This increases the severity of the impact on women and girls at all stages of weather-related disasters: from the disaster preparedness stage, to the emergency stage when the disaster occurs, and the recovery stage during reconstruction.¹²⁰

Natural disasters and extreme-weather events kill more women than men, and kill women at a younger age.¹²¹ There is some evidence to suggest that women and children are 14 times more likely than men to die during natural disasters.¹²²

Gendered social, economic, and cultural norms and practices explain why women and girls are more vulnerable than men during natural disasters and extreme-weather events. For instance, cultural and social norms may require women and girls to wear traditional garments that inhibit movement, making it difficult for them to move quickly and seek safety. Women are also less likely, in many contexts, to have strong climbing and swimming skills, which are traditionally taught to males. Women and girls may also be lacking in physical strength because of prolonged nutritional deficiencies.

The traditional division of labor explained in Section 1.1.1 can also put women at a disadvantage. For instance, when the tsunami hit Indonesia, many women were at home while men were out at sea fishing. Because the waves gathered height and strength when they approached the shore, the most fatal impact was at the coast where many women were located.¹²³

Because patriarchal social norms allocate the responsibility for caregiving to women, it is women who often stay behind during disasters to look after children and elderly relatives.¹²⁴

¹¹⁹ International Museum of Women: Exhibiting Change, *Swept Away: Women and Natural Disasters*, 2009, available at: <http://www.imow.org/wpp/stories/viewStory?storyid=1237>. See also The Global Fund for Women, *Caught in the Storm: The Impact of Natural Disasters on Women*, December 2005, available at: <https://www.globalfundforwomen.org/wp-content/uploads/2006/11/disaster-report.pdf>.

¹²⁰ For more information see: International Federation of the Red Cross and Red Crescent Societies, *A Practical Guide to Gender-Sensitive Approaches for Disaster Management*, available at: <https://www.ifrc.org/PageFiles/96532/A%20Guide%20for%20Gender-sensitive%20approach%20to%20DM.pdf>; and Zoe Elena Trohanis, Zuzana Svetlosakova, and Helene Carlsson-Rex for the World Bank, *Making Women’s Voices Count in Natural Disaster Programs in East Asia and the Pacific*, East Asia and Pacific Social Development Notes – Innovations, Lessons and Best Practices, available at: <http://documents.worldbank.org/curated/en/256721468247266798/pdf/679770BRI00PUB0a10Development0Notes.pdf>.

¹²¹ E. Neumayer and T. Plümper, *The Gendered Nature of Natural Disasters: The Impact of Catastrophic Events on the Gender Gap in Life Expectancy, 1981–2002*, p. 6, available at: <http://ssrn.com/abstract=874965>.

¹²² UN Population Fund (UNFPA), *Women at the Forefront – A resource kit on Climate, Population and Gender*, 2009, p. 2, available at: <https://www.unfpa.org/publications/overview-women-forefront>.

¹²³ Oxfam International, *The tsunami’s impact on women*, Oxfam Briefing Note, March 2005, p. 3, available at: <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/115038/bn-tsunami-impact-on-women-250305-en.pdf;jsessionid=39DB71BA94257DE7BA5617035F5222E2?sequence=1>.

¹²⁴ Rhona MacDonald, *How Women Were Affected by the Tsunami: A Perspective from Oxfam*, Essay, 28 June 2005, available at: <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.0020178>. See also UNIFEM, *Contribution to request by UN High Commissioner for Human Rights for information on human rights and climate change*, pp. 2 and 3.

In societies where male status and roles are seen as more valuable than those of women, rescue efforts might also favor and prioritize saving and assisting men over women.¹²⁵

FACTS AND FIGURES

Illustrative examples include the following devastating and disproportionate consequences of natural disasters for women in Asia alone:

- In Indonesia, Sri Lanka and India in 2004, Oxfam estimates that four times as many women than men were killed in the Tsunami.¹²⁶ More than **70%** of the dead were women.¹²⁷
- In the Philippines in 2013, Typhoon Haiyan resulted in the deaths of 6,300 people of whom **64%** were women.¹²⁸
- In Myanmar in 2008, **61%** of the deceased from Cyclone Nargis were women.¹²⁹

Women are less equipped to prepare for natural disaster: The difference in the death toll between women and men during natural disasters can also be explained due to the weak integration of gender in disaster management and post-reconstruction strategies.

For instance, women might have less access to public information on impending disasters, early warning systems, or weather forecasts due to illiteracy or lack of access to sources of information such as newspapers, TV, and radio. Men are also more likely to attend preparedness training than women, who, because of the traditional sexual division of labor, are frequently expected to stay home to look after children and relatives.

National institutions that manage disaster risk reduction are also often male-dominated. Because women are largely excluded from decision-making processes at all levels (See Section 1.3.2), their needs are often not taken into account. Women's restricted access to property and ownership rights also excludes them from land discussions relating to environmental decisions and disaster preparedness.¹³⁰ As stated by the World Bank: *"While they carry a disproportionate burden of a disaster, women's voices are often excluded from decision making processes about how to manage disaster risks and the recovery process, and their particular needs are often overlooked."*¹³¹

In some societies, women might also be reluctant to relocate to safer areas without consent from male family members (e.g., fathers, husbands or brothers). They might also be less likely to have the financial support to do so. Private and undervalued spaces such as homes and markets that are most used by women are also often the last to receive infrastructure support in high-risk areas.¹³²

Women remain at risk in post-disaster situations: Studies have documented how women in post-disaster situations are at heightened risk of rape, sexual exploitation, domestic violence and sexual harassment. An increased level of stress, loss of property and livelihood, post-traumatic stress disorder, the destruction of traditional social networks, the breakdown of state institutions and law enforcement, the cessation of social programs, and disruption of the economy all contribute to increased occurrences of

¹²⁵ E. Neumayer and T. Plümper, *The Gendered Nature of Natural Disasters: The Impact of Catastrophic Events on the Gender Gap in Life Expectancy*, pp. 10–11.

¹²⁶ Rhona MacDonald, *How Women Were Affected by the Tsunami: A Perspective from Oxfam*.

¹²⁷ UNFPA, *Women at the Forefront – A resource kit on Climate, Population and Gender*, p. 2.

¹²⁸ OHCHR, *The rights of those disproportionately impacted by climate change*, p. 4.

¹²⁹ OHCHR, *The rights of those disproportionately impacted by climate change*, p. 4.

¹³⁰ Alda Facio, Working Group on the issue of discrimination against women in law and in practice, *Insecure land rights for women threaten progress on gender equality and sustainable development*, p. 1.

¹³¹ Zoe Elena Trohanis, Zuzana Svetlosakova, and Helene Carlsson-Rex for the World Bank, *Making Women's Voices Count in Natural Disaster Programs in East Asia and the Pacific*, East Asia and Pacific Social Development Notes – Innovations, Lessons and Best Practices, p. 4.

¹³² UNIFEM, *Contribution to request by UN High Commissioner for Human Rights for information on human rights and climate change*, p. 2.

gender-based violence in post-crisis settings.¹³³ The unequal power relationship that women and girls have with men is also exacerbated in such situations, placing them at greater risk.

For example, increased levels of stress and post-traumatic stress disorder can lead men to increased alcohol consumption, which results in higher instances of violence against women. As noted by the International Federation of the Red Cross: “*domestic violence also tends to increase (in post-disaster settings) as men are under greater stress than usual and women are easy targets.*”¹³⁴

The World Health Organization (WHO) further explains: “*Women who were living in a violent relationship before the disaster may experience violence of increasing severity post-disaster, as they may be separated from family, friends, and other support systems that previously offered them some measure of protection.*”¹³⁵

Prolonged situations of vulnerability can also lead to coping strategies that may have negative effects on women. For example, women can be pressured into early marriage,¹³⁶ or become more susceptible to sex trafficking or exploitation in exchange of employment, food or shelter. The WHO notes:

*In areas where human trafficking is widely prevalent, disasters may result in conditions that provide opportunities for traffickers (e.g. large numbers of unaccompanied children). Sexual exploitation may increase in situations where women’s options for employment are diminished ... In cultures with traditions of early marriage and dowry, adolescent girls may face an increased risk of early and forced marriage because of poverty.*¹³⁷

FACTS AND FIGURES

- After the 2004 Tsunami in Sri Lanka and Somalia, women reported **incidents of rape** and molestation during rescue operations as well as in temporary shelters. Women volunteers in Aceh also reported **harassment** and intimidation.¹³⁸
- In the Philippines, **12%** of villages reported an increase in sexual violence since Typhoon Haiyan. 40% reported that children under 14 were most often targeted by sexual violence and 96% said that more girls than boys were affected by sexual violence.¹³⁹ UNFPA estimated that **5,000 women were victims of sexual violence** in the month following Typhoon Haiyan.¹⁴⁰
- Natural disasters in Bangladesh such as flooding, river erosion, and cyclones are pushing families further into poverty. A Human Rights Watch research project found that a direct consequence of this was an **increase in cases of girl child marriage** since girls are seen as an additional financial burden on the family.¹⁴¹

¹³³ WHO, *Violence and Disasters*, 2005, p. 1, available at:

https://www.who.int/violence_injury_prevention/publications/violence/violence_disasters.pdf.

¹³⁴ International Federation of the Red Cross and Red Crescent Societies, *A Practical Guide to Gender-Sensitive Approaches for Disaster Management*, p. 19.

¹³⁵ WHO, *Violence and Disasters*, 2005, p. 1.

¹³⁶ Rhona MacDonald, *How Women Were Affected by the Tsunami: A Perspective from Oxfam*.

¹³⁷ WHO, *Violence and Disasters*, 2005, p. 1.

¹³⁸ UNIFEM, *Contribution to request by UN High Commissioner for Human Rights for information on human rights and climate change*, pp. 8–9.

¹³⁹ Lina V. Castro, Interim Deputy National Statistician, Philippines Statistics Authority – Republic of the Philippines, *Assessing Vulnerabilities of Women and Children, Exposed to Disaster: The Philippine Experience*, Fifth Global Forum on Gender Statistics Aguascalientes, Mexico, 3–5 November 2014, p. 14, available at: https://unstats.un.org/unsd/gender/mexico_nov2014/Session%207%20Philippines%20ppt.pdf.

¹⁴⁰ OHCHR, *The rights of those disproportionately impacted by climate change*, p. 5.

¹⁴¹ Human Rights Watch, *Marry before your house is swept away: child marriage in Bangladesh*, 9 June 2015, available at: <https://www.hrw.org/report/2015/06/09/marry-your-house-swept-away/child-marriage-bangladesh>.

Women also face specific health risks in post-disaster situations. Limited access to health services (especially sexual and reproductive health care), clean water, and hygienic care can be particularly detrimental to menstruating, pregnant, or nursing women. Anemia and low body weight also increase women's risk of poor health.¹⁴² As the CEDAW Committee notes, lack of adequate sanitation increases women's risk of ill health.¹⁴³ For instance, in cases of unplanned pregnancy, the absence of services can prompt women to turn to unsafe abortion services.¹⁴⁴

In the Philippines, 59% of villages reported an increase in early pregnancy since Typhoon Haiyan and 87.8% of women expressed concerns relating to their lack of access to feminine hygiene products.¹⁴⁵

In addition, because women have unequal access to resources and assets, and restricted rights over shelter, they face increased food insecurity and risk of poverty in post-disaster situations.¹⁴⁶ As noted previously, studies indicate that women are likely to first provide for their families and therefore neglect their own needs, putting them at further risk of malnutrition.¹⁴⁷ In some areas men are in charge of collecting money, emergency supplies, and goods as they are seen as the head of household.¹⁴⁸

FACTS AND FIGURES

- A study has found that climate-related disasters have a greater negative effect on food security in female-headed households.¹⁴⁹
- An estimated **87%** of unmarried women and 100% of married women lost their main source of income when Cyclone Nargis hit Myanmar in 2008.¹⁵⁰

2.2 WATER POLLUTION AND SCARCITY

“Women and girls will often be disproportionately affected by the adverse impacts of climate change upon the rights to water and sanitation.”

- The UN Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation¹⁵¹

Changes in precipitation cycles, melting snow and ice, ocean acidification, and sea level rise all have an impact on both the quantity and the quality of water resources. Terrestrial

¹⁴² UNIFEM, *Contribution to request by UN High Commissioner for Human Rights for information on human rights and climate change*, p. 3.

¹⁴³ CEDAW, *General Recommendation No. 37*, para. 83.

¹⁴⁴ Anand Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to the UNGA*, A/68/297, August 2013, para. 43.

¹⁴⁵ Lina V. Castro, Interim Deputy National Statistician, Philippines Statistics Authority – Republic of the Philippines, *Assessing Vulnerabilities of Women and Children, Exposed to Disaster: The Philippine Experience*, p. 11.

¹⁴⁶ UNIFEM, *Contribution to request by UN High Commissioner for Human Rights for information on human rights and climate change*, p. 2.

¹⁴⁷ Anand Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to the UNGA*, para. 44.

¹⁴⁸ Rhona MacDonald, *How Women Were Affected by the Tsunami: A Perspective from Oxfam*.

¹⁴⁹ UNIFEM, *Contribution to request by UN High Commissioner for Human Rights for information on human rights and climate change*, p. 3.

¹⁵⁰ British Red Cross, *Myanmar Cyclone Nargis: One Year on Enormous Challenges to Recovery Remain*, 30 April 2019, available at: <https://reliefweb.int/report/myanmar/myanmar-cyclone-nargis-one-year-enormous-challenges-recovery-remain-0>.

¹⁵¹ The Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, *Climate Change and the Human Rights to Water and Sanitation*, Position Paper, 2010, p. 24, available at: https://www.ohchr.org/Documents/Issues/Water/Climate_Change_Right_Water_Sanitation.pdf.

and freshwater sources and certain marine species and biodiversity are at risk of extinction and will reduce the provision of water and fisheries. Sea level rise will also put coastal systems and low-lying areas at further risk of submergence, flooding and erosion.¹⁵² Environmental degradation and pollution can also contaminate waters.

Water scarcity: Because women and girls are often the ones in charge of cooking, cleaning and domestic work, they are often responsible for water management at the household level (See Section 1.1.1). According to the UN, women and girls are responsible for water collection in 80% of households without access to water on premises.¹⁵³

When water is scarce, female members of the household have to travel longer distances to find clean or sufficient sources of water. These longer journeys have direct consequences on their health and safety. Carrying water containers for long distances can cause fatigue, pain and spinal and pelvic injuries, which may lead to problems during pregnancy and childbirth.¹⁵⁴

Longer travel distances also put women at greater risk of physical and sexual assault.¹⁵⁵ The long hours spent searching for water leave less time for education, income-earning activities, political participation, and rest, which affects women's overall wellbeing and perpetuates the cycle of disempowerment.¹⁵⁶ Despite their major role in collecting water, women are often excluded from decision-making procedures on water and sanitation.¹⁵⁷

This is similarly true for other energy resources. As the CEDAW Committee notes, women and girls are often primarily responsible for the collection of energy biomass and are its principal consumers. They are therefore likely to be more directly affected by cost increases or resource scarcity.¹⁵⁸ For example, deforestation means that wood – one of the most used sources of fuel – is located further away and thus puts women at further health and physical risks.¹⁵⁹

A reduction in water availability will also impact the accessibility of safe and private sanitation facilities. Because of their specific hygiene routines and requirements, including those relating to menstruation, this will put women and girls through a humiliating, stressful and uncomfortable daily routine that can be detrimental to their health.¹⁶⁰

Water pollution: As women and girls are mainly responsible for fetching water, when sources of water are polluted, they are at greater risk of exposure to environmental contaminants. However, the impact of water pollution for women extends well beyond the direct health and physical consequences.

For example, in Bangladesh, some people who were exposed to water contaminated with high levels of arsenic developed skin lesions and other health issues. For women, it also led to further social exclusion. In some cases women were shunned, excluded or

¹⁵² AR5SYR, pp. 60 and 67.

¹⁵³ UN WOMEN, *Facts and Figures: Economic Empowerment* (Website), available at: <http://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures>.

¹⁵⁴ Paul Hunt, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to the UNGA 62nd session, A/62/214*, 8 August 2017, para. 74(a), available at: <http://undocs.org/A/62/214>.

¹⁵⁵ UN Women, *Factsheet: Women, Gender Equality and Climate Change*, p. 2.

¹⁵⁶ UN Women, *Factsheet: Women, Gender Equality and Climate Change*, p. 2.

¹⁵⁷ Special Rapporteur on the human right to safe drinking water and sanitation, *Report to the HRC 33rd session, A/HRC/33/49*, 27 July 2016, para. 73, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/166/97/PDF/G1616697.pdf?OpenElement>.

¹⁵⁸ CEDAW, *General Recommendation No. 34*, para. 84.

¹⁵⁹ UN Women, *Factsheet: Women, Gender Equality and Climate Change*, p. 2.

¹⁶⁰ Paul Hunt, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to the UNGA 62nd session*, para. 74(a).

stigmatized because of their physical appearance. Single women with skin lesions were also less likely to get married.¹⁶¹

The deterioration of water availability and quality may also have the indirect effect of increasing the costs to operate water and sanitation systems and increase the price of water and sanitation services. Services might therefore become unaffordable for low-income and marginalized households, exacerbating discrimination against certain parts of the population including poor people and women, particularly in rural areas.¹⁶²

2.3 TOXIC CHEMICALS AND HAZARDOUS SUBSTANCES

“Determined by social roles, women, men, and children are exposed differently to toxic chemicals in daily life. The differences include the kinds of chemicals encountered as well as the level and frequency of such exposures. In addition men, women, and children vary in their physiological susceptibility to the effects of exposure to toxic chemicals.”

- UN Development Program, Environment and Energy Group¹⁶³

Men and women’s vulnerability to toxic chemicals varies on account of their physiological differences as well as the traditional division of labor and familial roles (See Section 1.1.1).¹⁶⁴

Physiologically, women are more likely to store more environmental pollutants because of their generally higher amount of body fat. During pregnancy, lactation, and menopause, women are also more susceptible to health damage from toxic chemicals. Pesticides can cause miscarriages, premature births, birth defects, and low birth weight.¹⁶⁵ For instance, the UN expert on hazardous substances expressed serious concerns at the discovery of elevated inorganic mercury levels in the breast milk of mothers in several countries. Due to its harmful effects on female reproduction, he called on states to put in place preventive measures and programs to protect women of childbearing age.¹⁶⁶

As a result of gender stereotypes and the traditional division of labor, men and women often perform different types of labor or tasks, with women and girls spending more time in charge of domestic and agricultural work. As a consequence, women’s exposure to

¹⁶¹ Louise Russell, *Reducing arsenic poisoning in Bangladesh*, UNICEF, 11 September 2006, available at: https://www.unicef.org/wash/bangladesh_35701.html.

¹⁶² The Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, *Climate Change and the Human Rights to Water and Sanitation*, Position Paper, 2010, p. 23.

¹⁶³ UN Development Program (UNDP) Environment and Energy Group, *Chemicals and Gender - Energy & Environment Practice Gender Mainstreaming Guidance Series, Chemicals Management*, February 2011, p. 3, available at: <http://www.undp.org/content/dam/aplaws/publication/en/publications/environment-energy/www-ee-library/chemicals-management/chemicals-and-gender/2011%20Chemical&Gender.pdf>.

¹⁶⁴ Baskut Tuncak, *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes to the UNGA 73rd session*, A/73/45821, 18 October 2018, para. 96, available at: <http://www.srtoxics.org/resources/thematic-reports/>.

¹⁶⁵ UNDP Environment and Energy Group, *Chemicals and Gender*, p. 5.

¹⁶⁶ Calin Georgescu, *Report of the Special Rapporteur on the human rights obligations related to environmentally sound management and disposal of hazardous substances and waste to the HRC 21st session*, A/HRC/21/48, 2 July 2012, para. 31, available at: <https://documents-ddsny.un.org/doc/UNDOC/GEN/G12/149/26/PDF/G1214926.pdf?OpenElement>; and Baskut Tuncak, *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes to the HRC 39th session*, A/HRC/39/48, 3 August 2018, paras. 32 and 33, available at: <https://documents-ddsny.un.org/doc/UNDOC/GEN/G18/239/70/PDF/G1823970.pdf?OpenElement>.

toxic chemicals is also different from that of men. For example:

- **Home exposure:** At home, many chemical products are contained in cleaning, personal care, and pest control products. Because women and girls are often in charge of household maintenance they are more likely to be exposed to those chemicals.¹⁶⁷
- **Medical exposure:** Women are also more present in the health care sector, meaning that they are more likely to be exposed to chemical agents used in medical procedures.¹⁶⁸
- **Labor exposure:** Rural women represent an important percentage of the farming labor force. Women are also more likely to undertake seasonal jobs.¹⁶⁹ This exposes them to increased health risks from improper and extensive use of fertilizers and pesticides. As noted by the CEDAW Committee, these risks are further compounded by women's under-representation in agricultural cooperatives, farmers' and producers' organizations.¹⁷⁰

The CEDAW Committee also expresses specific concerns about the impact of industrial and nuclear accidents on women's health. For example, it expressed concerns about the increased incidence of breast cancer in areas contaminated by the Chernobyl nuclear accident in Belarus.¹⁷¹

2.4 AIR POLLUTION

“It is unacceptable that over 3 billion people – most of them women and children – are still breathing deadly smoke every day from using polluting stoves and fuels in their homes.”

- Dr. Tedros Adhanom Ghebreyesus, Director-General of the World Health Organization¹⁷²

The WHO estimates that air pollution kills 7 million people worldwide every year. Its data shows that 9 out of 10 people breathe air containing high levels of pollutants. Polluted air is made of fine particles that penetrate deep into the lungs and the cardiovascular system, causing diseases such as stroke, heart and pulmonary diseases, lung cancer and respiratory infections. One third of deaths from stroke, lung cancer and heart disease are due to air pollution.¹⁷³

There are two main types of air pollution:

- Ambient air pollution (outdoor pollution); and
- Household (or indoor) air pollution from the combustion of polluting fuels (such as coal, wood or kerosene) for cooking, heating and lighting in poorly ventilated spaces.

¹⁶⁷ UNDP Environment and Energy Group, *Chemicals and Gender*, p. 5.

¹⁶⁸ UNDP Environment and Energy Group, *Chemicals and Gender*, p. 5.

¹⁶⁹ UN Women, *Facts & Figures – Employment* (Website), available at: <http://www.unwomen.org/en/news/in-focus/commission-on-the-status-of-women-2012/facts-and-figures>.

¹⁷⁰ CEDAW, *General Recommendation No. 34*, para. 49.

¹⁷¹ CEDAW, *Concluding observations of the Committee on the Elimination of Discrimination against Women – Belarus*, CEDAW/C/BLR/CO/7, 6 April 2011, para. 38, available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/BLR/CO/7&Lang=en.

¹⁷² WHO, *9 out of 10 people worldwide breathe polluted air, but more countries are taking action*, News Release, 2 May 2018, available at: <https://www.who.int/news-room/detail/02-05-2018-9-out-of-10-people-worldwide-breathe-polluted-air-but-more-countries-are-taking-action>.

¹⁷³ WHO, *Air Pollution* (Website), available at: <https://www.who.int/airpollution/en/>. See also for more information, David R. Boyd, *Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, Report of the Special Rapporteur to the 40th HRC Session, 8 January 2019, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/002/54/PDF/G1900254.pdf?OpenElement>.

According to the WHO, household air pollution kills 4 million people a year. It is the leading environmental health risk. New evidence also links household air pollution with other health issues including low birth weight and stillbirths.¹⁷⁴

Women and children are the most affected by household air pollution, accounting for more than 60% of all premature deaths resulting from it.¹⁷⁵ Because women spend more time in close proximity with combusting polluting fuels for cooking and while carrying out domestic activities, they are more exposed to household air pollution. They are also often responsible for collecting and producing fuel for the household (See Section 1.1.1).

Despite this, the WHO notes that there is little data and research on the gender dimension of household air pollution, limiting the possibilities to develop adequate policies for clean and safe household energy.¹⁷⁶

2.5 FOOD INSECURITY

“When food is scarce, women are the first to go short, or even go without.”

- Care International, Website¹⁷⁷

Environmental degradation and climate change are having a dramatic impact on the availability and accessibility of food. Climate change will reduce marine biodiversity and availability of fisheries. The production of certain crops such as wheat, rice, and maize is likely to decrease in some regions. The reduction and pollution of water sources will also affect food production. The IPCC warns: “*All aspects of food security are potentially affected by climate change, including food production, access, use and price stability.*”¹⁷⁸ All humans will be impacted by such changes. However, this will be especially true for women.

Water and food scarcity, and changes in agricultural methods and crop productions, will mainly affect the poor, especially those living in rural areas.¹⁷⁹ Yet, women constitute the majority of the world’s poor and are more dependent than men on natural resources for their livelihood.¹⁸⁰ Women also constitute 80% of farm workers worldwide¹⁸¹ and perform 60 to 80% of the agricultural labor in developing countries.¹⁸² More women will therefore be directly impacted by the loss of harvest and therefore food and income.

Furthermore, women are more susceptible to poor nutrition as food distribution within families is often determined by gender. Women have also been found to suffer more than men from undernourishment and malnutrition in times of food scarcity, food shortages and crisis.¹⁸³

¹⁷⁴ WHO, *Burning Opportunity: Clean Household Energy for Health, Sustainable Development, and Wellbeing of Women and Children*, 2016, p. ix, available at:

https://apps.who.int/iris/bitstream/handle/10665/204717/9789241565233_eng.pdf?sequence=1.

¹⁷⁵ Dr. Flavia Bustreo, Assistant Director-General of the WHO, *Household air pollution is a gender issue*, available at: <https://www.who.int/life-course/news/household-air-pollution/en/>.

¹⁷⁶ WHO, *Burning Opportunity: Clean Household Energy for Health, Sustainable Development, and Wellbeing of Women and Children*, 2016, pp. ix and xi.

¹⁷⁷ Care International, *Food and Nutrition Security & Climate Change* (Website), available at: <https://www.care-international.org/what-we-do/food-and-nutrition-security-climate-change>.

¹⁷⁸ AR5SYR, p. 69.

¹⁷⁹ AR5SYR, p. 69.

¹⁸⁰ UN Women, *Factsheet: Women, Gender Equality and Climate Change*, p. 1.

¹⁸¹ OHCHR, *The rights of those disproportionately impacted by climate change*, p. 5.

¹⁸² FAO, *Women in Agriculture, Closing the gender gap for development*, 2010–11, The State of Food and Agriculture, Footnote No. 3, available at: <http://www.fao.org/3/a-i2050e.pdf>.

¹⁸³ UNIFEM, *Contribution to request by UN High Commissioner for Human Rights for information on human*

However, women are also less equipped to cope with food shortages and loss of income because they:

- Account for only 12.8% of agricultural landholders in the world and often have restricted land and property rights (See Section 1.1.2);¹⁸⁴
- Are reliant on men to access resources and are financially dependent (See Section 1.1);
- Are generally excluded from decision-making in relation to access to and the use of land and resources (See Sections 1.1.2 and 1.3.2);¹⁸⁵
- Have less access to technology to adapt to climate change (such as watering technology, climate appropriate and resilient seed varieties, and fertilizers).¹⁸⁶

Food insecurity due to environmental degradation and changes in climate has also been found to increase instances of girl child marriage. As examples:

- In Bangladesh's disaster-prone areas, a study found that girls are viewed as an economic burden, an additional pressure on the family's food supply, and a threat to ongoing food security and availability. The study concludes: "*climate challenges are resulting in forced marriages of very young girls, resulting in many dropping out of school, and in many cases experiencing violence.*"¹⁸⁷
- In 2018, Afghanistan went through an extremely severe drought. According to UNICEF, the drought exacerbated the practice of child marriage affecting at least 161 children (155 girls and 6 boys) as a consequence of the loss of assets and livestock.¹⁸⁸

2.6 EVICTIONS AND DISPLACEMENT

"The migratory consequences of environmental factors result in higher death rates for women in least developed countries, as a direct link to their socioeconomic status, to behavioral restrictions and poor access to information."

- UN Women¹⁸⁹

Large-scale development projects with major environmental impact, such as mining, dams or other large-scale energy projects, are often associated with forced evictions and population displacement.¹⁹⁰ Climate change will also increasingly result in displacement and migration.

As UNIFEM has indicated: "*Desertification, sea level rise, loss of arable land and even*

rights and climate change, p. 3. See also: Anand Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to the UNGA*, para. 44; and CEDAW, *General Recommendation No. 37*, para. 69.

¹⁸⁴ UN WOMEN, *Facts and Figures: Economic Empowerment* (Website), available at:

<http://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures>; see also OHCHR, *The rights of those disproportionately impacted by climate change*, p. 5.

¹⁸⁵ UN Women, *Factsheet: Women, Gender Equality and Climate Change*, p. 2.

¹⁸⁶ UNIFEM, *Contribution to request by UN High Commissioner for Human Rights for information on human rights and climate change*, p. 3.

¹⁸⁷ Margaret Alston, Kerri Whittenbury, Alex Haynes, Naomi Godden, "Are climate challenges reinforcing child and forced marriage and dowry as adaptation strategies in the context of Bangladesh?," *Women's Studies International Forum* 47 (2014) 137–44, pp. 141, 142, 143, available at: <https://pdfs.semanticscholar.org/2bd1/086bd608cfbf8fc72cec509d3fb5936dc3db.pdf>.

¹⁸⁸ Alison Parker UNICEF Chief of Communication in Afghanistan, *Geneva Palais briefing note on the situation of children in Afghanistan*, 27 November 2018, available at: <https://www.unicef.org/press-releases/geneva-palais-briefing-note-situation-children-afghanistan>.

¹⁸⁹ UN Women, *Factsheet: Women, Gender Equality and Climate Change*, p. 5.

¹⁹⁰ CESCR, *General Comment No. 7: The right to adequate housing (art. 11(1) of the Covenant): Forced evictions*, Sixteenth session (1997), para. 7, available at:

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11.

conflict over access to resources are expected to add environmental refugees to already well-worn migration corridors."¹⁹¹

In a joint statement with various other UN human rights bodies, the CEDAW Committee acknowledged how the *"increasing frequency and intensity of extreme weather events and environmental degradation ... are likely to lead to significant population displacement both within countries and across borders.*"¹⁹²

While displacement – whether due to forced evictions or climate change – affects all people, women and girls face particular risks. Because of their limited rights on property – including home ownership – women are at a greater risk of homelessness and poverty and are more commonly left with no legal grounds to seek redress in case of eviction (See Section 1.1.2).¹⁹³

In addition, when women and girls are confronted with situations of displacement and migration, they often also face deepening of inequalities and an increased risk of gender-based violence (See Section 1.4).

As stated by the UN Committee on Economic, Social, and Cultural Rights (CESCR) in relation to forced evictions: *"Women in all groups are especially vulnerable given ... their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless."*¹⁹⁴ The CESCR has also noted that investment-linked evictions had particular impacts on women and girls: *"Investment-linked evictions and displacements often result in physical and sexual violence against, and inadequate compensation and additional burdens related to resettlement for, women and girls."*¹⁹⁵ Women and girls can also be at risk of sexual harassment and assault as the forced eviction is taking place.¹⁹⁶

The CEDAW Committee has also observed that women migrants face higher rates of gender-based violence, human trafficking, and other forms of discrimination in transit, in camps, at borders and in destination countries. They are also confronted with a lack of adequate sexual, reproductive and mental health services and face discrimination in accessing employment, social security, education, housing, legal documents such as birth or marriage certificates, and justice.¹⁹⁷

¹⁹¹ UNIFEM, *Contribution to request by UN High Commissioner for Human Rights for information on human rights and climate change*, p. 7.

¹⁹² CEDAW, *General Recommendation No. 37*, para. 73, and Joint Statement by CMW, CEDAW, UN Women and OHCHR, *Addressing Gender Dimensions in Large-Scale Movements of Migrants and Refugees*, 19 September 2016, available at: https://www.ohchr.org/Documents/HRBodies/CEDAW/JointStatement_CEDAW-CMW_AsAdopted19.09.pdf.

¹⁹³ OHCHR and UN Habitat, *Forced Evictions*, Factsheet No. 25 Rev. 1, 2014, pp. 16–17, available at: <https://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf>.

¹⁹⁴ CESCR, *General Comment No. 7: The right to adequate housing (art. 11(1) of the Covenant): Forced evictions*, Sixteenth session (1997), para. 10, available at: <https://www.refworld.org/docid/47a70799d.html>.

¹⁹⁵ CESCR, *General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, E/C.12/GC/24, 10 August 2017, para. 9 [hereafter: CESCR, *General Comment No. 24*], available at: <https://www.refworld.org/docid/5beaeca4.html>.

¹⁹⁶ OHCHR and UN Habitat, *Forced Evictions*, Factsheet No. 25 Rev. 1, 2014, pp. 16–17.

¹⁹⁷ CEDAW, *General Recommendation No. 37*, para. 75.

BOX 2★ THE MULTIDIMENSIONAL IMPACT OF ENVIRONMENTAL DEGRADATION ON WOMEN¹⁹⁸

Large-scale development projects that contribute to environmental degradation, such as projects involving extractive industrial activity, have a multidimensional impact on the lives of women and girls.

A study carried out by ActionAid on coal mining in South Africa's Mpumalanga Province illustrates the multifaceted consequences of environmental degradation on women. Mining activities result in rivers and groundwater contamination, air pollution and land degradation. In Mpumalanga Province, 60% of the land is mined. For many women, this has meant that:

- They have had to travel further to find sources of water.
- They had to find alternative income sources after farming lands were degraded.
- They had to engage in dangerous artisanal mining in abandoned mine pits exposing themselves to toxins and dust.
- They have been subjected to sexual harassment and abuse. For instance, some women have been asked to provide sexual favors to gain access to the abandoned mines.
- They had to take care of the people who have fallen ill as a result of the pollution, spending less time on income-generating activities.
- They had to run single parent households because of the increase in alcohol abuse linked to high rates of unemployment.
- They had to engage in sex work to earn an income.

¹⁹⁸ ActionAid Netherlands, ActionAid Kenya, ActionAid South Africa, Both ENDS Netherlands, Centre for International Environmental Law (CIEL), Forest Peoples Programme (FPP), Dhaatri (Adivasi Resource Centre for Women and Children) and Keystone Foundation, "Coal mining threatens people's access to water in Mpumalanga, South Africa," in *Upholding Human Rights: Bridging the Gender-Environment Divide*, December 2016, available at: https://www.bothends.org/uploaded_files/document/1digital_water_case.pdf.

SUMMARY OF CHAPTER 2

- Because of discriminatory laws and practices, and gender stereotypes, women are more vulnerable to environmental degradation, climate change and violence and human rights violations related to environmental issues. The impacts of environmental harm on women are disproportionate to those on men.
- Intersecting discrimination against poor and rural women in particular compounds the negative impact of environmental degradation.
- Women's exclusion from decision-making relating to the environment – whether at the international, national, community or family level – means that they are less equipped to design, adopt, and benefit from coping strategies.
- Women and girls are more severely affected during all stages of a weather-related disaster: from the disaster preparedness stage, the emergency stage when the disaster occurs, and the recovery stage during reconstruction.
- Water scarcity will put women and girls at greater risk of violence, injuries and illnesses.
- The traditional division of labor based on patriarchal social expectations, coupled with physiological differences, puts women at particular risk of air pollution and pollution by toxic substances and chemicals.
- Women are disproportionately affected by food insecurity due to a lack of autonomy in accessing resources, their major role in agricultural production, and gendered divisions of food production, distribution and consumption within households.
- Women are at greater risk of and from homelessness, poverty, violence and trafficking in situations of displacement either due to forced evictions or climate-related migration.
- There is therefore a need for justice actors to understand, consider and directly address the gendered dimensions of environmental degradation and climate change.

CHAPTER 3: STATES' HUMAN RIGHTS OBLIGATIONS RELATING TO WOMEN'S RIGHTS AND THE ENVIRONMENT

“ Judges, prosecutors and lawyers perhaps have the single most important role to play in applying national and international human rights law. Their work constitutes the chief pillar of the effective legal protection of human rights...”

- UN Office of the High Commissioner for Human Rights and the International Bar Association, *Human Rights in the Administration of Justice*¹⁹⁹

This chapter introduces some key obligations of states with regard to women and the environment in terms of international human rights law. The chapter aims to equip judges with knowledge about the relevant international standards, which must be applied in environmental cases in order to ensure equality before the law and non-discrimination of women and girls.

Adequate knowledge of international human rights law and standards will allow judges to apply them when participating in environmental cases. This is crucial if states – including judicial, executive, legislative and administrative actors – are to be held fully accountable to their human rights obligations towards women and girls in environmental cases. Equipped with this knowledge, judges and other judicial officers will be able to apply a gender-perspective when adjudicating environmental cases.

Section 3.1 briefly outlines states' general obligations under international human rights law before proceeding to set out in greater detail states' specific human rights obligations relating to women and girls (Section 3.2) and the environment (Section 3.3).

3.1 GENERAL OBLIGATIONS OF STATES UNDER INTERNATIONAL HUMAN RIGHTS LAW

Among the principal sources of international human rights law are international treaties

¹⁹⁹ OHCHR in cooperation with the International Bar Association, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors, and Lawyers*, Professional Training Series No. 9, 2003, Chapter 1.5 The Role of the Legal Profession in the Implementation of Human Rights, p. 25.

and conventions.²⁰⁰ Two of these key conventions are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). These treaties have been widely signed and/or ratified: 172 states are party to the ICCPR and 169 are party to the ICESCR.²⁰¹ Because of their influence and their broad ratification worldwide, the two Covenants and their protocols, along with the Universal Declaration on Human Rights (UDHR), are often referred to as the International Bill of Rights.

Other major international human rights treaties include:

- The CEDAW Convention. The manual will examine states' obligations under CEDAW in Sections 3.2 and 3.3.5;
- The International Convention on the Elimination of all Forms of Racial Discrimination (ICERD);
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT);
- The Convention on the Rights of the Child (CRC);
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW);
- The International Convention for the Protection of All Persons from Enforced Disappearance (CED); and
- The Convention on the Rights of Persons with Disabilities (CRPD).

By becoming parties to these international human rights treaties, states accept a number of obligations with which they must comply. These obligations are categorized as obligations to respect, protect and fulfill the human rights enshrined in those treaties (Section 3.1.1). These obligations must be undertaken without discrimination (Section 3.1.2). To ensure the actual enjoyment of these obligations, international human rights law also requires states to ensure access to effective remedies in case of violations of human rights and as a result of states' failure to fulfill their corresponding obligations (Section 3.1.3).

For the purposes of understanding human rights obligations placed on states in terms of international human rights law, states must be understood as referring to all branches of government (executive, legislative and judicial), all public or governmental authorities and organs of state, at whatever level – national, regional (state or provincial) and local.²⁰² Private entities (such as companies) performing the obligations of states as, for example, contracted service providers to the state also take on the human rights obligations of states.

3.1.1 Obligations to respect, protect, and fulfill human rights

The obligation to **respect** human rights requires states themselves to refrain from interfering with or restricting the enjoyment of human rights. For example, states should refrain from illegally restricting the right to peaceful assembly or the right to vote. States, including courts and executive officials such as police officers, should also not directly interfere with the right to housing by unlawfully undertaking forced evictions.²⁰³

²⁰⁰ Statute of the International Court of Justice, Article 38. For further reading on legal sources of international law see: OHCHR in cooperation with the International Bar Association, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors, and Lawyers*, Professional Training Series No. 9, 2003, Chapter 1.2.4 The sources of law, p. 6.

²⁰¹ State parties for each international human rights treaty and convention are listed at: <http://indicators.ohchr.org/>.

²⁰² UN Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add. 13, 29 March 2004, paras. 4 and 6 [hereafter CCPR, *General Comment No. 31*], available at: <https://undocs.org/CCPR/C/21/Rev.1/Add.13>.

²⁰³ CESCR, *General Comment No. 4: The right to adequate housing (art. 11(1) of the Covenant)*,

The obligation to **protect** human rights requires states to protect individuals and groups of people against human rights abuses perpetrated by third parties which do not form part of the state, broadly defined. States must therefore protect individuals and groups of people not only from human rights violations committed by its agents, but also those committed by private persons and entities, including businesses.²⁰⁴ For example, states must ensure that employers pay to their employees the minimum wage set by the state. States must also ensure that neither parents nor employers prevent girls from going to school. In general, the duty to protect requires states to take measures to regulate the conduct of private entities. Such regulatory measures often include legislative and policy measures.

The obligation to **fulfill** human rights requires states to take positive action and adopt legislative, judicial, administrative, educative and other appropriate measures to facilitate, provide and promote the enjoyment of human rights.²⁰⁵ The obligation to fulfill generally requires states to provide access to goods and services required for the enjoyment of human rights where individuals are not capable of procuring such goods and services themselves. The obligation therefore requires, for example, the provision of educational facilities (such as schools and universities), health care facilities (such as hospitals and clinics) and may also include state provision of affordable social housing.

Human rights law recognizes that the full realization of economic, social, and cultural rights requires resources and time. As a consequence, the ICESCR establishes that state parties to the Covenant must “*take steps*” “*to the maximum of its available resources*” to achieve “*progressively the full realization of economic, social and cultural rights*.”²⁰⁶ For example, states must take steps to ensure that all persons are progressively connected to a safe drinking water supply.

Despite this acknowledgment of the progressive nature of economic, social, and cultural rights (ESCR) obligation, the CESCR has clearly affirmed that some ICESCR obligations are immediate.²⁰⁷ Such immediate obligations include:

- The obligation of non-discrimination in the performance of all state obligations relating to ESCR, which will be examined in Section 3.1.2;
- The obligation to prevent retrogressive measures which reduce existing access to ESCR;
- The obligation to ensure the provision and protection of the minimum essential level or “minimum core” of each ESCR; and
- The obligation to immediately take steps towards the progressive realization of all aspects and components of each ESCR.

Many of the ESCR are required to be immediately realized and do not require significant resources. Such rights include, as examples: the right to form trade unions and the right to strike (Article 8); the right of children to protection from economic and social

E/1992/23, 13 December 1991, available at: <https://www.refworld.org/docid/47a7079a1.html>; and CESCR, *General Comment No. 7: The right to adequate housing (art. 11(1) of the Covenant): Forced evictions*, Sixteenth session (1997), available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11

²⁰⁴ CCPR, *General Comment No. 31*, para. 8.

²⁰⁵ CCPR, *General Comment No. 31*, para. 7; and CESCR, *General Comment No. 3: The nature of States parties' obligations (art. 2, para. 1, of the Covenant)*, Fifth session (1990), E/1991/23, paras. 3–7 [hereafter: CESCR, *General Comment No. 3*], available at: <https://www.refworld.org/pdfid/4538838e10.pdf>.

²⁰⁶ International Covenant on Economic, Social, and Cultural Rights (ICESCR), Article 2. For a detailed review of states' obligations under the ICESCR see: ICJ, *Adjudicating Economic, Social, and Cultural Rights at National Level*, Practitioners Guide No. 8, August 2014, available at: <https://www.icj.org/wp-content/uploads/2015/07/Universal-ESCR-PG-no-8-Publications-Practitioners-guide-2014-eng.pdf>.

²⁰⁷ CESCR, *General Comment No. 3*, para. 1.

exploitation (Article 10(3)); the right to equal remuneration for work of equal value without distinction of any kind (Article 7(a)(i)); and the obligation to respect the freedom indispensable for scientific research and creative activity (Article 15(3)).²⁰⁸

Another obligation that states must immediately comply with is the obligation to take “*deliberate, concrete and targeted*” steps towards the full realization of the rights.²⁰⁹ While the full realization of economic, social, and cultural rights might have to be progressive, states cannot remain inactive no matter what resources or other constraints they may face. They must “*move as expeditiously and effectively as possible*” to take steps to implement these rights.²¹⁰

The obligation to move as expeditiously and effectively as possible creates an obligation to not take a step back in the realization of the rights. This is often referred to as an obligation of not taking any “*retrogressive measures*” that would deteriorate the existing protection of the rights.²¹¹ An example of such a move would be to introduce school fees in secondary education when it had formerly been free of charge.

In addition, states have a core obligation to satisfy the minimum essential level of each of the rights enshrined in the ICESCR. Though a state’s compliance with its obligation to provide the minimum essential level of each right will be assessed in light of the resources available – financial and others – a very high standard of scrutiny will be applied in determining whether states have in fact taken all possible measures within the *maximum* of their available resources to fulfill such minimum requirements. Such immediate minimum core obligations, which are spelled out in the CESCR General Comments on specific rights, require states to, as examples:

- Ensure access to the minimum essential food that is nutritionally adequate and safe, to ensure freedom from hunger to everyone;
- Ensure access to basic shelter, housing and sanitation, and an adequate supply of safe drinking water;
- Provide essential drugs as defined under the WHO Action Programme on Essential Drugs; and
- Ensure free and compulsory primary education to all.²¹²
-

3.1.2 Obligation of non-discrimination and the right to equality

“*Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.*”

- UN Human Rights Committee, 1989²¹³

²⁰⁸ OHCHR, *Frequently Asked Questions on Economic, Social, and Cultural Rights*, Factsheet No. 33, December 2008, p. 15, Box 7, available at: <https://www.ohchr.org/Documents/Issues/ESCR/FAQ%20on%20ESCR-en.pdf>.

²⁰⁹ CESCR, *General Comment No. 3*, para. 2.

²¹⁰ CESCR, *General Comment No. 3*, para. 9.

²¹¹ CESCR, *General Comment No. 3*, para. 9 and OHCHR, *Frequently Asked Questions on Economic, Social, and Cultural Rights*, Factsheet No. 33, December 2008, p. 16.

²¹² OHCHR, *Frequently Asked Questions on Economic, Social, and Cultural Rights*, Factsheet No. 33, December 2008, p. 17, Box 8. In addition, a table listing states’ core obligations can be found in ICJ, *Practitioners Guide No. 8*, pp. 42–44.

²¹³ CCPR, *General Comment No. 18 non-discrimination*, Thirty-seventh session (1989), para. 1, [Hereinafter CCPR, *General Comment No. 18*], available at:

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f6622&Lang=en.

“Non-discrimination and equality are fundamental components of international human rights law and essential to the exercise and enjoyment of economic, social and cultural rights.”

- UN Committee on Economic, Social, and Cultural Rights, 2009²¹⁴

At all times and in all circumstances, states have an obligation to ensure human rights are guaranteed to all without discrimination.²¹⁵ The obligation of non-discrimination is immediate and non-derogable even in times of public emergency.²¹⁶ The obligation of non-discrimination also includes the obligation to eliminate discrimination both in law (in order to ensure formal equality) and in practice (in order to ensure substantive equality).²¹⁷

Discrimination is defined as any distinction, exclusion, restriction, preference or other differential treatment that is directly or indirectly based on grounds such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,²¹⁸ which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of all rights and freedoms.²¹⁹ In addition, both the ICCPR and the ICESCR emphasize gender equality by specifically imposing separate and additional obligations on states to ensure equal rights between men and women.²²⁰

It is important to keep in mind that equality and non-discrimination do not necessarily mean identical treatment in all instances.²²¹ Sometimes the principle of equality requires states to adopt “special measures” (sometimes referred to as “affirmative action”) to eliminate or attenuate de facto discrimination. These special measures are legitimate as long as they are reasonable, objective, and proportionate means to redress discrimination. They are “temporary” in the sense that they should no longer be required when substantive equality has been achieved.²²²

The obligation to ensure non-discrimination and substantive equality of women and girls is enshrined in CEDAW. This manual will review states’ obligations in terms of CEDAW in Section 3.2.

3.1.3 Obligation to provide an effective remedy

“A right without a remedy raises questions of whether it is in fact a right at all.”

- UN Office of the High Commissioner for Human Rights²²³

The right to remedy when a human rights violation occurs is well established under international human rights law.²²⁴ The obligation to provide an effective remedy, without

²¹⁴ CESCR, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/20, 2 July 2009, para. 2 [hereafter: CESCR, *General Comment No. 20*], available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11.

²¹⁵ International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 2.

²¹⁶ CCPR, *General Comment No. 18*, para. 2; CESCR, *General Comment No. 20*, para. 7.

²¹⁷ CCPR, *General Comment No. 18*, para. 9; CESCR, *General Comment No. 20*, para. 8.

²¹⁸ For example, the CESCR has interpreted “*other status*” as including disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence and economic and social situation. See *General Comment No. 20*, paras. 27–35.

²¹⁹ CCPR, *General Comment No. 18*, para. 7; and CESCR, *General Comment No. 20*, para. 7.

²²⁰ ICCPR and ICESCR Article 3. For more information see: CCPR, *General Comment No. 28*, CCPR/C/21/Rev.1/Add.10; and CESCR, *General Comment No. 16*, E/C.12/2005/4.

²²¹ ICCPR, Article 10(3).

²²² CCPR, *General Comment No. 18*, para. 10; CESCR, *General Comment No. 20*, para. 9.

²²³ OHCHR, *Frequently Asked Questions on Economic, Social, and Cultural Rights*, Factsheet No. 33, December 2008, p. 31.

²²⁴ Among them are: Article 8 of the Universal Declaration on Human Rights (UDHR); Article 2 of the

discrimination, in case of a rights violation is true for all human rights including economic, social, and cultural rights. The CESCR has stated as a general principle of international law that individuals whose rights have been violated must have available effective remedies and that providing judicial remedies is part of a state's obligations.²²⁵

For a remedy to be effective it must be “*prompt, accessible, available before an independent body, and lead to reparation and, where applicable, to cessation of the wrongdoing.*”²²⁶

In Practitioners' Guide No. 2 on the right to an effective remedy, the ICJ has clearly laid out the requirements of a remedy under international human rights law. For a remedy to comply with the requirements of international human rights law, it must be:

- Effective, prompt and accessible;
- Before an independent authority, whether such authority is judicial, administrative or of any other nature;
- Ensure the victim of a violation has access to legal counsel and, if necessary, to free legal assistance;
- Be capable of leading to relief, including reparation and compensation;
- Include a prompt, effective and impartial investigation;
- Be expeditious and enforceable by the competent authorities; and
- Include ultimately access to a judicial remedy, notwithstanding the desirability, of non-judicial remedies in some cases.²²⁷

3.1.4 Role of the judiciary in upholding human rights obligations

Before considering in more detail states' specific obligations in relation to women's rights and the environment, it is important to recall the unique role that the judiciary can play in ensuring states uphold their human rights obligations.

While not the only means available, courts play a major role in ensuring that states comply with their human rights obligations, that victims of human rights abuses obtain effective remedies, and that perpetrators of human rights abuses are brought to justice in a fair trial.

The judiciary can review whether states' actions are consistent with their human rights obligations including under international human rights law. This also includes monitoring and reviewing the progressive realization of economic, social, and cultural rights.²²⁸

The judiciary also has a role to play in clarifying and elaborating on the content of human rights at the national level. For example, when there are gaps in the national legislation or treaties, the judiciary can resolve issues of interpretation and reinforce human rights. Such interpretative process can be usefully and productively informed by detailed standards set out in international human rights law, which are binding on judges in the execution of their judicial functions.

ICCPR; Article 6 of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD); Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT); and Article 29 of the Convention on the Rights of the Child (CRC).

²²⁵ CESCR, *General Comment No. 9*, E/C.12/1998/24, 3 December 1998, paras. 2 and 3, available at: <https://www.refworld.org/docid/47a7079d6.html>.

²²⁶ ICJ, *The Right to a Remedy and Reparation for Gross Human Rights Violations*, A Practitioners' Guide No. 2, Revised Edition 2018, p. 65 [hereafter: ICJ, Practitioners' Guide No. 2], available at: <https://www.icj.org/wp-content/uploads/2018/11/Universal-Right-to-a-Remedy-Publications-Reports-Practitioners-Guides-2018-ENG.pdf>.

²²⁷ ICJ, Practitioners' Guide No. 2, p. 83.

²²⁸ ICJ, Practitioners' Guide No. 8, p. 31; and OHCHR, *Frequently Asked Questions on Economic, Social, and Cultural Rights*, Factsheet No. 33, December 2008, pp. 30–31.

3.2 STATE OBLIGATIONS IN ELIMINATING DISCRIMINATION AGAINST WOMEN AND GIRLS

There is a comprehensive international human rights legal framework which guarantees that every person enjoys all human rights and which aims to eliminate all forms of discrimination against women on the basis of sex and gender.²²⁹ In addition to the general prohibition of discrimination in human rights law, both the ICCPR and the ICESCR contain a provision that specifically creates the obligation for states to ensure equality between men and women.²³⁰

In 1981, the CEDAW Convention came into effect and it has since become the cornerstone of the legal framework relating to the elimination of discrimination against women and girls. The objective of the Convention is “*to eliminate all forms of discrimination against women with a view to achieving women’s de jure and de facto equality with men in the enjoyment of their human rights and fundamental freedoms.*”²³¹ 189 states are parties to the CEDAW Convention and therefore have the obligation to comply with the rights contained therein.²³²

Under the Convention, states must “*pursue by all appropriate means*” a policy of eliminating discrimination against women and girls and ensure that there is neither direct nor indirect discrimination against women whether such discrimination was committed by public authorities, the judiciary, organizations, enterprises or **private individuals, in the public and private spheres.**²³³

The CEDAW Committee, which is tasked with interpreting the Convention, established that state obligations under the CEDAW Convention include **obligations to “respect, protect, promote, and fulfill” women’s right to non-discrimination and to the enjoyment of equality with men.**²³⁴

- The obligation to **respect** requires states to abstain from performing, sponsoring or condoning any practice, policy or measure that violates women’s equal enjoyment of their civil, political, economic, social, and cultural rights.
- The obligation to **protect** requires states to take steps to prevent, prohibit, and punish violations of the Convention by third parties, including in the home, within families, in communities and workplaces. States must also ensure that provision is made for reparation to the victims of such violations.
- The obligation to **promote** requires states to foster wide knowledge about and support for its obligations and for women and girls’ rights under the CEDAW Convention.
- The obligation to **fulfill** requires states to adopt temporary special measures that achieve de jure and de facto sex non-discrimination and gender equality in practice. Temporary special measures are aimed at accelerating de facto equality

²²⁹ For instance: UDHR, Article 7; ICCPR, Articles 2(1) and 26; ICESCR, Article 2(2); ICERD, Articles 2 and 5; CEDAW, Article 2; CRC, Article 2; Convention on the Rights of Persons with Disabilities (CRPD), Article 5. See also CEDAW, *General recommendation No. 28*.

²³⁰ ICCPR and ICESCR, Article 3.

²³¹ CEDAW, *General Recommendation No. 25 on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*, Thirtieth session (2004), para. 4, available at:

https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3733_E.pdf.

²³² For the list of states parties to the CEDAW Convention see <http://indicators.ohchr.org/>.

²³³ CEDAW, *General Recommendation No. 28*, paras. 16, 17, and 20.

²³⁴ CEDAW, *General Recommendation No. 28*, para. 37.

between men and women. Such measures, however, are temporary in the sense that they will no longer be required when the objectives of women and girls' equality have been achieved.²³⁵

It is important to note that the obligations of states under the CEDAW Convention do not cease in periods of armed conflict or in states of emergency resulting from political events or natural disasters.²³⁶ In addition, in line with states' general obligations under international human rights law, states have the obligation to ensure that women and girls have access to an effective remedy.²³⁷

One additional concept that is important to understand in relation to discrimination against women and girls is that of **intersectionality**. Judicial officers must understand and be aware of both the differences between men and women, as well as differences among women themselves. Some women and girls face multiple grounds of discrimination.

As the CEDAW Committee explains:

*Discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men.*²³⁸

States must legally recognize and prohibit such **intersecting forms of discrimination** and their compounded negative impact on women and girls (See Section 1.6).

Members of the judiciary play an essential role in combating gender-based discrimination. The *Bangkok General Guidance for Judges on Applying a Gender Perspective* (See Annex 3) explains the unique role of the judiciary in eliminating gender-based discrimination:

*Through their decisions, judges can help modify practices or customs that reinforce gender stereotypes; establish interpretation criteria to prevent direct and indirect discrimination; determine procedures that demonstrate and maintain respect for the dignity and equality of women within the system of the administration of justice; establish rules for the application of laws to conform to the universal principles of equality and non-discrimination against women; and influence lawmakers enacting laws that violate the principles of equality and non-discrimination against women.*²³⁹

3.3 SPECIFIC OBLIGATIONS OF STATES RELATING TO THE ENVIRONMENT

“Human beings are part of nature, and our human rights are intertwined with the environment in which we live. Environmental harm interferes with the enjoyment of human rights, and the exercise of human rights helps to protect the environment and to promote sustainable development.”

- John H. Knox, Former UN Special Rapporteur on Human Rights and the Environment²⁴⁰

²³⁵ CEDAW, *General Recommendation No. 28*, para. 20.

²³⁶ CEDAW, *General Recommendation No. 28*, para. 11.

²³⁷ CEDAW, *General Recommendation No. 28*, para. 36.

²³⁸ CEDAW, *General Recommendation No. 28*, para. 18.

²³⁹ ICJ, *Bangkok General Guidance for Judges on Applying a Gender Perspective in Southeast Asia*, para. 5 [hereafter: *Bangkok General Guidance*], available at: <https://www.icj.org/wp-content/uploads/2018/06/Southeast-Asia-Bangkok-Guidance-Advocacy-2016-ENG.pdf>.

²⁴⁰ John H. Knox, Former UN Special Rapporteur on human rights and the environment, *Framework*

International human rights law does not explicitly refer to the right to a healthy environment. However, in light of substantive state practice and legal basis, there have been growing calls for the global recognition of such right (Section 3.3.1).

Despite the lack of global recognition of a right to a healthy environment, states still have a number of obligations under international human rights law in relation to the enjoyment of a healthy environment:

- Because environmental harm threatens the enjoyment of existing human rights (Section 3.3.2), states must ensure a healthy environment in order to respect, protect, and fulfill all human rights (Section 3.3.3).
- States must respect, protect, and fulfill certain procedural rights, which support better environmental policymaking (Section 3.3.4).
- States must ensure equality and non-discrimination including through specific obligations towards women and girls (Section 3.3.5).

3.3.1 The emergence of a new human right

In 2012, the UN appointed an Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment.²⁴¹ In 2015, the UN extended the mandate of the expert but renamed the position as UN Special Rapporteur.²⁴²

Over the years, the Independent Expert and Special Rapporteurs have undertaken an important review and mapping exercise of national legislation, regional instruments, court decisions, UN mechanisms, and international human rights bodies that had recognized the right to a healthy environment or applied human rights to environmental issues. What the review revealed is the existence of a set of coherent human rights obligations relating to the environment that reflect the emergence of a new human right: the right to a safe, clean, healthy, and sustainable environment (healthy environment).²⁴³

The right to a healthy environment has gained widespread legal recognition across the world. According to the UN experts, over 100 states have granted constitutional recognition to the right to a healthy environment.²⁴⁴ For example:

- Portugal's Constitution establishes the "*right to a healthy and ecologically balanced human environment.*"²⁴⁵
- The Constitution of South Africa states that "*everyone has the right: (a) to an environment that is not harmful to their health or well-being; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation, promote conservation and secure ecologically sustainable*

Principles on Human Rights and the Environment, 2018, p. 5 [hereafter: Framework Principles on Human Rights and the Environment], available at: <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/FrameworkPrinciplesUserFriendlyVersion.pdf>.

²⁴¹ HRC, *Human rights and the environment*, Resolution 19/10, A/HRC/19/L.8/Rev.1, 20 March 2012, available at: <https://documents-dds-ny.un.org/doc/RESOLUTION/LTD/G12/123/51/PDF/G1212351.pdf?OpenElement>.

²⁴² HRC, *Human rights and the environment*, Resolution 28/11, A/HRC/28/L.19, 24 March 2015, available at: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G15/062/01/PDF/G1506201.pdf?OpenElement>.

²⁴³ David R. Boyd and John H. Knox, *Report of the UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment to the UN General Assembly, A/73/188*, 19 July 2018, para. 28 [hereafter: UNSR, Global Recognition Report], available at: <https://undocs.org/A/73/188>.

²⁴⁴ UNSR, Global Recognition Report, paras. 30–32.

²⁴⁵ UNSR, Global Recognition Report, para. 30.

*development and use of natural resources, while promoting justifiable economic and social development.*²⁴⁶

Over 100 states have also enacted national legislation that recognizes the right to a healthy environment. For example:

- The National Environment Protection Act of Bhutan of 2007 states that “a person has the fundamental right to a safe and healthy environment with equal and corresponding duty to protect and promote the environmental well-being of the country.”
- The Environmental Code of France refers to “the individual’s right to a healthy environment,” “the recognized right of all to breathe air which is not harmful to health” and rights related to environmental information, public participation, and access to justice.²⁴⁷

The right to a healthy environment has also been incorporated into regional human rights agreements and regional environmental treaties.²⁴⁸ For example:

- The African Charter on Human and Peoples’ Rights provides that “all peoples shall have the right to a general satisfactory environment favourable to their development.”²⁴⁹
- The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) states: “everyone shall have the right to live in a healthy environment.”²⁵⁰

Regional human rights commissions and courts, such as the African Commission on Human and Peoples’ Rights (ACHPR), the Inter-American Court of Human Rights (IACHR), and the European Court of Human Rights (ECHR), have also issued a number of decisions that have helped to define the scope of the right to a healthy environment.²⁵¹ For example:

In the case **Tătar v. Romania**, in which the plaintiffs alleged that the use of sodium cyanide for gold mining in an area nearby their home represented a threat to their right to life, the ECHR found that the state’s failure to take positive steps to prevent an environmental disaster violated the rights to life, private and family life, and, more generally, to the enjoyment of a healthy and protected environment.²⁵²

In addition, an important number of international human rights bodies such as treaty bodies²⁵³ like the UN Human Rights Committee (UNHRC) or the CESCR, and Special Procedures²⁵⁴ have recognized how environmental degradation affects human rights such as the rights to health, life, food, water, etc. (See Section 3.3.2 for more information on human rights threatened by environmental damage).

This review of international and national sources of law relating to the environment has

²⁴⁶ Constitution of the Republic of South Africa, 1996 - Chapter 2: Bill of Rights, Article 24.

²⁴⁷ UNSR, Global Recognition Report, para. 32.

²⁴⁸ UNSR, Global Recognition Report, paras. 33–34.

²⁴⁹ African Charter on Human and Peoples’ Rights, Article 24.

²⁵⁰ The 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), Article 11(1).

²⁵¹ UNSR, Global Recognition Report, para. 35.

²⁵² European Court of Human Rights (ECHR), *Affaire Tătar c. Romania*, No. 67021/01, 6 Juillet 2009, para. 107, available (in French) at:

<https://hudoc.echr.coe.int/eng#%7B%22fulltext%22%3A%5B%22No.%2067021%2F01%22%2C%22documentcollectionid%22%3A%22GRANDCHAMBER%22%2C%22CHAMBER%22%2C%22itemid%22%3A%22001-90909%22%7D>.

²⁵³ For more information on human rights Treaty Bodies see:

<https://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>.

²⁵⁴ For more information on Special Procedures see:

<https://www.ohchr.org/en/hrbodies/sp/pages/welcomepage.aspx>.

helped the UN Special Rapporteur draw up a set of coherent human rights obligations that states must uphold under international human rights law in relation to the environment. These obligations were compiled in the form of 16 Framework Principles on Human Rights and the Environment, (See Annex 2 for the full list of the 16 Framework Principles). These 16 Framework Principles “do not create new obligations. Rather, they reflect the application of existing human rights obligations in the environmental context.”²⁵⁵

FRAMEWORK PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT

Principle 1: States should ensure a safe, clean, healthy, and sustainable environment in order to respect, protect, and fulfill human rights.

Principle 2: States should respect, protect, and fulfill human rights in order to ensure a safe, clean, healthy, and sustainable environment.

Principle 3: States should prohibit discrimination and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy, and sustainable environment.

According to the current UN Special Rapporteur, these 16 Framework Principles are “a reflection of actual or emerging international human rights law” which is consistent with domestic legal regimes and practices worldwide. He thus stated during the UNGA in July 2018 that: “The time has come for the United Nations to formally recognize the human right to a safe, clean, healthy and sustainable environment, or, more simply, the human right to a healthy environment.”²⁵⁶

According to the UN Environment Program (UNEP), a global recognition of the right to a healthy environment “strengthens environmental rule of law by encouraging stronger environmental statutes, filling gaps in existing law, providing procedural protections, and highlighting the importance of environmental law in society.”²⁵⁷

The manual proceeds to explain how environmental harm threatens existing human rights before detailing states’ obligations as set out in the Framework Principles on Human Rights and the Environment and international human rights law.

3.3.2 Human rights threatened by environmental degradation

International human rights bodies have recognized that environmental degradation threatens a number of human rights. Below is a non-exhaustive list of human rights whose enjoyment has been recognized as threatened by environmental degradation and which international human rights law requires states to respect, protect, and fulfill.

The right to life is enshrined in Article 3 of the UDHR, and Article 6 of the ICCPR and the CRC. It is considered as the “supreme right” which is “basic to all human rights.” It is a right from which no derogation is permitted even in times of public emergency.²⁵⁸ Environmental degradation and climate change directly threaten the right to life, which is particularly acute for women and girls especially in situations of natural disasters and

²⁵⁵ Framework Principles on Human Rights and the Environment, para. 8.

²⁵⁶ UNSR, Global Recognition Report, para. 37.

²⁵⁷ UN Environment Program (UNEP), *Environmental Rule of Law – First Global Report*, 2019, p. 156 [hereafter: UNEP, Environmental Rule of Law], available at: <https://www.unenvironment.org/resources/assessment/environmental-rule-law-first-global-report>. See also: Marcos A. Orellana, Human Rights Watch Environment and Human Rights Program Director, *Earth Matters: The Case for the Right to a Healthy Environment*, World Policy, 1 March 2018, available at: <https://worldpolicy.org/2018/03/01/case-right-healthy-environment/>.

²⁵⁸ CCPR, *General comment No. 36 (2018) (art. 6)*, CCPR/C/GC/36, 30 October 2018, para. 2, available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f36&Lang=en.

extreme weather events (See Section 2.1). The impact of environmental degradation and climate change on the right to life has been recognized by a range of UN entities. For example:

- In 2015, 27 UN experts highlighted how mortality will increase with climate change due to tropical cyclones, heat waves, drought, disease, and malnutrition.²⁵⁹
- In 2018, the UNHRC issued a commentary in which it recognized that environmental degradation, climate change, and unsustainable development constitute some of the most serious threats to the ability of present and future generations to enjoy the right to life. As a consequence, the Committee explained that for states to respect and ensure the right to life, they must take measures to preserve the environment and protect it against harm, pollution, and climate change. The Committee is clear that states' obligations in terms of international environmental law "*inform the content*" of the right to life, and the content of the right to life similarly informs states' "*obligations in terms of international environmental law.*"²⁶⁰

In the case **Öneryıldız v. Turkey** the applicants alleged that the Turkish authorities were responsible for the death of a man and for the destruction of their property as a result of a methane explosion in 1993 at a municipal rubbish tip. The ECHR found that the obligation of states to safeguard the right to life applied in the context of industrial activities such as waste-collection sites because of their inherently harmful nature and that this obligation applied whether the action was carried out by public authorities themselves or by private companies.²⁶¹

The right to the highest attainable standard of physical and mental health (the right to health) can be found in Article 12 of the IESCR, Articles 12 and 14.2(b) of CEDAW, and a number of other international instruments.²⁶² The right implies the enjoyment of – and equal access to – appropriate health care and goods, services, and conditions, which enable a person to live a healthy life.²⁶³

Environmental degradation and climate change have a direct impact on people's health. The IPCC projects that climate change will impact human health mainly by exacerbating existing health problems.²⁶⁴ Environmental degradation and climate change also adversely impact women and girls' right to health, as explained in Sections 2.2, 2.3, and 2.4. This has been recognized by a range of UN entities interpreting the right to health. For example:

- The UN expert on the adverse effects of toxic and dangerous products and wastes on human rights explained that the improper disposal of toxic wastes could lead to respiratory illness, skin infections, and stomach disease.²⁶⁵
- The CESCR established that a healthy environment and environmental safety were among the determining factors of health. It further stated that radiations –

²⁵⁹ 27 UN Special Procedures, Joint statement by UN Special Procedures on the occasion of World Environment Day, *Climate change and human rights*, 5 June 2015, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16049&LangID=E>.

²⁶⁰ CCPR, *General comment No. 36 (2018) (art. 6)*, paras. 26 and 62.

²⁶¹ ECHR, *Öneryıldız v. Turkey*, 30 November 2004, 48939/99, para. 71, available at: https://www.informea.org/sites/default/files/court-decisions/Oneryildiz_v_Turkey_2004.pdf.

²⁶² CRC, Article 24; ICERD, Article 5(e)(iv); CRPD, Articles 16.4, 22.2, and 25; and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), Articles 43.1(e), 45.1(c), and 70.

²⁶³ CESCR, *General comment No. 14 (2000) (art. 12)*, paras. 9 and 35.

²⁶⁴ AR5SYR, p. 15.

²⁶⁵ Ms. Fatma-Zohra Ouhachi-Vesely, *Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights*, E/CN.4/2004/46, 15 December 2003, para. 31, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/172/11/PDF/G0317211.pdf?OpenElement>.

among other harmful chemicals – are detrimental to human health and called on states to adopt measures against “*environmental and occupational health hazards*” including by formulating and implementing “*national policies aimed at reducing and eliminating pollution of air, water and soil, including pollution by heavy metals such as lead from gasoline.*”²⁶⁶

In *International Federation for Human Rights (FIDH) v. Greece* (2013), the FIDH alleged that the dumping of waste in the River Asopos and the subsequent harmful effects of large-scale environmental pollution on the health of the people violated their right to protection of health. In its finding, the European Committee of Social Rights found that Greece had indeed violated the right to health by failing to take appropriate measures to address large-scale water pollution of the Asopos river.²⁶⁷

The right to food is explicitly mentioned in Article 11 of the ICESCR, Article 14.2(h) of CEDAW and a number of other international human rights treaties.²⁶⁸ It requires the availability of adequate food for all individuals under the jurisdiction of a state and for states to take necessary actions to alleviate hunger, even in times of natural or other disasters.²⁶⁹

Environmental degradation threatens food quality and availability with a disproportionate impact on women and girls’ right to food (See Section 2.5.) According to the IPCC, redistribution of marine species and decline of marine biodiversity will challenge the provision of fisheries productivity. Rural areas will also experience shifts in the production of food and crops.²⁷⁰ The World Bank estimates that a 2 degree (Celsius) increase in average global temperature would put between 100 and 400 million more people at risk of hunger and over 3 million people could die from malnutrition each year.²⁷¹

UN rights bodies have recognized the impact of environmental harm on the right to food. For instance:

- The UN Special Rapporteur on the right to food identified oil spills, agricultural and industrial run-off, pollution from aquaculture and the enormous accumulation of plastic debris in water, as well as climate change, as major challenges to the oceans’ continued provision of healthy quantities of fish.²⁷²
- According to the CESCR, for states to fulfill their obligations under the right to food, they must adopt appropriate economic, environmental, and social policies at the national and international levels. They must also prevent contamination of foodstuff through bad environmental hygiene.²⁷³
- The CESCR also expressed concerns in its concluding observations to Russia about the threats posed to the right to food by the contamination of domestically produced food products. The contamination was the result of the inappropriate use of pesticides and environmental pollution and the improper disposal of heavy metals and oil spills.²⁷⁴

²⁶⁶ CESCR, *General comment No. 14 (2000) (art. 12)*, paras. 4, 9, 11, 16, 35, and 36.

²⁶⁷ The European Committee of Social Rights, *International Federation for Human Rights (FIDH) v. Greece* (2013), Complaint No. 72/2011, 23 January 2013, paras. 158–60, available at: [https://hudoc.esc.coe.int/eng/#f{%22ESCDclidentifier%22:\[%22cc-72-2011-dmerits-en%22\]}](https://hudoc.esc.coe.int/eng/#f{%22ESCDclidentifier%22:[%22cc-72-2011-dmerits-en%22]}).

²⁶⁸ CRC, Article 24(c), and CRPD, Article 25(f) and 28.1.

²⁶⁹ CESCR, *General comment No. 12 (1999) (art. 11)*, E/C. 12/1999/5, 12 May 1999, para. 6, available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5&Lang=en.

²⁷⁰ AR5SYR, p. 13.

²⁷¹ The World Bank, *Development and Climate Change – World Development Report 2010*, 53007, p. 5, available at: <https://openknowledge.worldbank.org/handle/10986/4387>.

²⁷² Olivier De Schutter, UN Special Rapporteur on the right to food, *The right to food Interim Report to the UNGA*, A/67/268, 8 August 2012, Chapter III: Current Challenges, available at: <http://undocs.org/A/67/268>.

²⁷³ CESCR, *General comment No. 12 (1999) (art. 11)*, paras. 4 and 10.

²⁷⁴ CESCR, *Concluding Observations – Russian Federation*, E/C.12/1/Add.13, 20 May 1997, para. 24,

The right to water and sanitation is not explicitly entrenched in the ICESCR but is considered to be implicit in Article 11 on the right to an adequate standard of living and Article 12 on the right to health. It is also implied in Article 14.2(h) of CEDAW.²⁷⁵ It is understood as the right of everyone to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses.²⁷⁶

Climate change will increase competition for water resources. Changing precipitations, melting snow and glaciers are projected to increase and to negatively affect water availability in terms of quantity and quality. Weather extremes, such as drought and flooding, will also impact water supplies.²⁷⁷ The World Bank estimates that with a 2 degree (Celsius) increase in average global temperature, 1 to 2 billion more people may no longer have enough water to meet their needs.²⁷⁸

Water pollution and scarcity also threaten women and girls' human rights as explained in Section 2.2. UN human rights bodies have established the link between environmental degradation, climate change, and the right to water. For example:

- According to a joint statement of UN Special Rapporteurs, about 8% of the global population will see a severe reduction in water resources with a 1 degree (Celsius) rise in global mean temperature. This will compound the problem of access to safe drinking water.²⁷⁹
- The Special Rapporteur on hazardous substances and wastes has noted that unsound management of hazardous substances and waste from extractive industries affected the right to water.²⁸⁰
- The CESCR also observed that in order to ensure environmental hygiene, states should take steps to prevent unsafe and toxic water conditions. The CESCR goes on to give the example that natural water resources should be protected from contamination by harmful substances.²⁸¹

The right to adequate housing is enshrined in the ICESCR as an element of the right to an adequate standard of living as well as in CEDAW Article 14.2(h).²⁸² It is "*the right to live somewhere in security, peace and dignity.*"²⁸³ According to the CESCR, the right to adequate housing requires that housing should not be built on polluted sites or in proximity to pollution sources that threaten the inhabitants' right to health. The right to adequate housing also requires a certain degree of security of tenure, which guarantees legal protection against forced eviction.²⁸⁴ Yet, forced evictions are often associated with major development and infrastructure projects with important environmental impacts such as mining, dams or other large-scale energy projects, or the clearing of land for agricultural purposes.²⁸⁵

available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1%2fAdd.13&Lang=en.

²⁷⁵ See also: CRC, Article 24.2(c); and CRPD, Article 28.2(a).

²⁷⁶ CESCR, *General comment No. 15 (2003) (art. 11 and 12)*, E/C.12/2002/11, 20 January 2003, paras. 10–12, available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2002%2f11&Lang=en.

²⁷⁷ AR5SYR, pp. 6, 13, and 15.

²⁷⁸ The World Bank, *Development and Climate Change – World Development Report 2010*, 53007, p. 5.

²⁷⁹ 27 UN Special Procedures, Joint statement by UN Special Procedures on the occasion of World Environment Day, *Climate change and human rights*, 5 June 2015.

²⁸⁰ Calin Georgescu, *Report of the Special Rapporteur on the human rights obligations related to environmentally sound management and disposal of hazardous substances and waste to the 21st session of the HRC, A/HRC/21/48*, 2 July 2012, para. 39, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/149/26/PDF/G1214926.pdf?OpenElement>.

²⁸¹ CESCR, *General comment No. 15 (2003) (art. 11 and 12)*, paras. 6 and 8. See also para. 22.

²⁸² See also: UDHR, Article 25; CRC, Article 14.2(h); ICERD, Article 5(e)(iii); CRPD, Articles 9.1(a), 28.1, and 2(d); and ICRMW, Article 43.1(d).

²⁸³ CESCR, *General comment No. 4 (art. 11(1))*, 1 January 1992, paras. 7–8.

²⁸⁴ CESCR, *General Comment No. 4 (art. 11(1))*, paras. 8(a) and 8(f).

²⁸⁵ CESCR, *General Comment No. 7: The right to adequate housing (art. 11(1) of the Covenant): Forced*

The CESCR has also recognized the impact of climate change on the right to housing. According to the Committee, “*Both sea level rise and extreme weather events, such as hurricanes and floods, shall impact human settlements, especially in urban and coastal areas where there is a higher density of human settlements, and especially for those already in vulnerable situations.*”²⁸⁶

The impacts of climate change on the right to adequate housing are such that the UN expert on the right to adequate housing has dedicated a full report to it. In particular, he emphasizes the impact of climate change on housing in urban settlements, on human mobility and migration, and on the impact of sea level rise on housing in small islands and low-lying coastal areas.²⁸⁷

In a 2009 report, the OHCHR explained that, in the context of climate change, the right to adequate housing guarantees:

- Adequate protection of housing from weather hazards (habitability of housing);
- Access to housing away from hazardous zones;
- Access to shelter and disaster preparedness in cases of displacement caused by extreme weather events; and
- Protection of communities that are relocated away from hazardous zones, including protection against forced evictions without appropriate forms of legal or other protection, including adequate consultation with affected persons.²⁸⁸

The right to self-determination: Common Article 1, paragraph 1, of the ICESCR and the ICCPR states that “*all peoples have the right of self-determination,*” by virtue of which “*they freely determine their political status and freely pursue their economic, social and cultural development.*”²⁸⁹ The right to self-determination is also enshrined in the UN Charter, the UN Declaration on the Right to Development, and the UN Declaration on the Rights of Indigenous Peoples.

The right to self-determination of people living in low-lying island states is clearly threatened in the longer term by rising sea levels and extreme weather events. The right to self-determination of indigenous peoples is also threatened by climate change as changes in climate might deprive them of their traditional territories and sources of livelihood.

3.3.3 States’ obligations to ensure a healthy environment in order to respect, protect, and fulfill human rights

The section above describes how environmental harm threatens the enjoyment of many human rights, and in particular economic, social, and cultural rights. **States’ obligations to respect, protect, and fulfill human rights therefore include an obligation to ensure a healthy environment in order to protect individuals against environmental harm that would interfere with the enjoyment of their human rights** (See Section

evictions, para. 7.

²⁸⁶ CESCR, *Climate change and the International Covenant on Economic, Social and Cultural Rights*, Statement, 8 October 2018, para. 4, available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23691&LangID=E>.

²⁸⁷ Raquel Rolnik, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context to the 64th session of the UNGA*, A/64/255, 6 August 2009, pp. 6–10, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/446/64/PDF/N0944664.pdf?OpenElement>.

²⁸⁸ OHCHR, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights to the 10th session of the HRC*, A/HRC/10/61, 15 January 2009, para. 38, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/103/44/PDF/G0910344.pdf?OpenElement>.

²⁸⁹ See also: Charter of the United Nations, Articles 1 and 55; UN Declaration on the Right to Development, Article 1.2; and the UN Declaration on the Rights of Indigenous Peoples, Articles 3 and 4.

3.1.1 for more information on the obligations to respect, protect, and fulfill). One way that states can fulfill this obligation is by, for instance, adopting and implementing legal and institutional frameworks that protect human rights against environmental harm.²⁹⁰

Otherwise, the content of **states' specific obligations to protect against environmental harm will depend on the content of their obligations under the particular rights threatened by the harm.**²⁹¹ For example, if a chemical factory's operation threatens the right of the local population to access safe and acceptable water, states' obligation to protect against environmental harm will be determined by states' obligations under the right to water and sanitation.

In practice, for judges and courts this means that they might have to decide **whether the state, through its acts or omissions, failed to protect individuals against predictable risks to human rights due to environmental degradation.** As the CESCR stated in 2018: "*A failure to prevent foreseeable human rights harm caused by climate change, or a failure to mobilize the maximum available resources in an effort to do so, could constitute a breach of this obligation*" (referring to the obligations to respect, protect, and fulfill human rights).²⁹²

For instance, in the case ***Budayeva and Others v. Russia***, six Russian nationals alleged that the national authorities were responsible for the death of a relative, for putting their lives at risk, and for the destruction of their property, as a result of their failure to mitigate the consequences of a mudslide. The ECHR ruled that Russia did indeed violate the right to life by failing to implement land-planning and emergency relief policies while knowing of a heightened risk of a large-scale mudslide.²⁹³

The obligation to protect human rights from environmental harm does not, however, prohibit all activities that may cause any environmental degradation. **States have an obligation to strike a balance between environmental protection and other issues**, including economic development. This is a particularly important balance to be considered in the context of developing countries.

For instance, in the case ***Hatton and Others v. United Kingdom*** – where the applicants alleged that government policy on night flights at Heathrow Airport violated their right to a private life – the ECHR found that the state must strike a "*fair balance*" between environmental protection and other issues important to society, such as economic development and the rights of others.²⁹⁴

However, the balance cannot be unreasonable, or result in infringements of human rights.

For instance, in the case known as ***Ogoniland*** the applicants alleged that the Nigerian government had been directly involved in oil production through the state-owned Nigerian National Petroleum Company and that these operations have caused environmental degradation and health problems resulting from the contamination of the environment among the Ogoni People. In this instance, the ACHPR found that while the Government

²⁹⁰ John H. Knox, *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment to the 25th session of the HRC*, A/HRC/25/53, 30 December 2013, paras. 47–57 [hereafter: UNIE, 2013 Mapping Report], available at: <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Annualreports.aspx>.

²⁹¹ UNIE, 2013 Mapping Report, para. 44.

²⁹² CESCR, *Climate change and the International Covenant on Economic, Social and Cultural Rights*, Statement, 8 October 2018, para. 6.

²⁹³ ECHR, *Budayeva and Others v. Russia*, No. 15339/02, 20 March 2008, paras. 158–60, available at: <https://www.eufje.org/images/docConf/buc2016/CASE%20OF%20BUDAYEVA%20AND%20OTHERS%20v.%20RUSSIA.pdf>.

²⁹⁴ ECHR, *Hatton and Others v. United Kingdom*, No. 36022/97, 8 July 2003, para. 98, available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-61188%22%7D>.

of Nigeria had the right to produce oil (the income from which could be used to fulfill the economic and social rights of Nigerians) it had not taken the “*care that should have been taken*” to protect the rights to health and to a general satisfactory environment of the victims.²⁹⁵

In the case *López Ostra v. Spain* the applicant claimed that Spain’s failure to take any measures against the smell, noise, and contaminating smokes originating from a solid and liquid waste treatment plant located a few meters away from her home violated her rights to physical integrity and to respect for the home and private life. In its decision the ECHR found that Spain failed to find an adequate balance between its interest to promote the city’s economic development and the effective enjoyment of the complainant’s right to respect for the home and private life.²⁹⁶

In addition, particularly relevant to the environmental context is states’ obligations to **regulate private actors to protect against environmental harm**.²⁹⁷ As explained in Section 3.1.1, states have obligations to protect individuals and groups against human rights violations committed by its agents but also by private persons and entities. As John Ruggie, former Special Representative of the UN Secretary-General on business and human rights, explained: “*The state duty to protect against non-state abuses is part of the very foundation of the international human rights regime.*”²⁹⁸ The obligation to protect, which includes an obligation to ensure appropriate legal regulation, has been reiterated by a number of international bodies and instruments in relation to the environment and climate change. For example:

- The UN Guiding Principles on Business and Human Rights endorsed by the HRC in 2011 say that:²⁹⁹ (1) States are required to “*protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises,*” including by “*taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication;*” (2) States have an obligation to provide for remedies for human rights abuses caused by corporations; (3) Corporations themselves have a responsibility to respect human rights.
- Due to the growing impact of business activities on the enjoyment of human rights relating to, for instance, health, housing, food, and water, the CESCR issued in 2017 a General Comment entirely dedicated to explaining states’ obligations in terms of ICESCR in the context of business activities.³⁰⁰
- In a statement on climate change, the CESCR also explained that: “*Complying with human rights in the context of climate change is a duty of both State and non-State actors. This requires ... protecting human rights, by effectively regulating private actors to ensure that their actions do not worsen climate change.*”³⁰¹

²⁹⁵ African Commission on Human and People’s Rights (ACHPR), 155/96: *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria*, 27 October 2001, paras. 53–54, available at:

http://www.achpr.org/files/sessions/30th/comunications/155.96/achpr30_155_96_eng.pdf.

²⁹⁶ ECHR, *López Ostra v. Spain*, No. 16798/90, 9 December 1994, para. 58, available at: <https://www.eschr-net.org/caselaw/2008/lopez-ostra-vs-spain-application-no-1679890>.

²⁹⁷ UNIE, 2013 Mapping Report, para. 46.

²⁹⁸ John Ruggie, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Business and human rights: mapping international standards of responsibility and accountability for corporate acts*, A/HRC/4/35, 19 February 2007, para. 18, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/108/85/PDF/G0710885.pdf?OpenElement>.

²⁹⁹ HRC 17th session, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, A/HRC/17/31, 21 March 2011, Principles 1, 11, and 25, available at: https://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf. The Guiding Principles do not create new legal obligations for states, but merely summarize existing state obligations. Moreover, the guidelines are non-binding and voluntary.

³⁰⁰ CESCR, *General comment No. 24*, paras. 11 and 27.

³⁰¹ CESCR, *Climate change and the International Covenant on Economic, Social and Cultural Rights*,

- The UNHRC also clarified that states' obligations include an obligation to “*preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.*”³⁰²

Finally, transboundary environmental harm has caused many threats to human rights such as to the right to water and food. As such, strong arguments have been put forward to claim that **states have the obligation – especially in relation to social, economic, and cultural rights – to protect human rights from the extraterritorial environmental effects of actions taken within their territory.** This includes at the very minimum an obligation of **international cooperation** to protect and fulfill human rights of persons within their territories as well as extraterritorially.³⁰³ For example:

- The CESCR, in relation to the right to water, has indicated that states must “*refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries.*”³⁰⁴ It also noted that this included an obligation to prevent third parties from such interference.³⁰⁵
- More recently, the CESCR explained in detail states' extraterritorial obligations in the context of business activities and reiterated that “*States parties' obligations under the Covenant did not stop at their territorial borders.*” According to the CESCR, states are required to take steps necessary to prevent human rights violations abroad by corporations domiciled in their territory and/or jurisdiction and should not allow their territory to be used to cause damage on the territory of another state.³⁰⁶ For example, the CESCR recommended that Norway establish safeguards to protect children from the negative impact of fossil fuels, both in Norway as well as abroad.³⁰⁷
- The Framework Principles 12 and 13 on Human Rights and the Environment reiterate these obligations towards private actors and transboundary environmental harm.

FRAMEWORK PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT

Principle 12: States should ensure the effective enforcement of their environmental standards against public and private actors.

Principle 13: States should cooperate with each other to establish, maintain and enforce effective international legal frameworks in order to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights.

3.3.4 States' obligations to respect, protect, and fulfill procedural rights

“The exercise of human rights, including the freedom to seek, receive and impart information, to participate effectively in the conduct of government and public affairs and the right to an effective remedy, is vital to the protection of a clean, healthy, safe and sustainable environment.”

- UN Human Rights Council, 2018³⁰⁸

Statement, 8 October 2018, para. 9.

³⁰² CCPR, *General Comment No. 36 (2018) (art. 6)*, para. 62.

³⁰³ See ICESCR, Article 2(1), Charter of the United Nations, Articles 55 and 56, and Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, January 2013, available at: https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23.

³⁰⁴ CESCR, *General Comment No. 15*, para. 31.

³⁰⁵ CESCR, *General Comment No. 15*, para. 33; and *General Comment No. 14*, para. 39.

³⁰⁶ CESCR, *General Comment No. 24*, paras. 11, 26, and 27.

³⁰⁷ CESCR, *Concluding observations on the combined fifth and sixth periodic reports of Norway*, CRC/C/NOR/CO/5-6, 4 July 2018, para. 27, available at:

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fNOR%2fCO%2f5-6&Lang=en.

³⁰⁸ HRC, *Human rights and the environment*, Resolution 37/8, Preamble.

International human rights law imposes on states an obligation to respect, protect, and fulfill procedural human rights. In the environmental context, emphasis has been put on the obligations of states to respect, protect, and fulfill the rights to:

- Access information;
- Public participation, including the rights to freedom of expression and association; and
- Access to remedies.³⁰⁹

When respected, these procedural obligations ensure the development of better environmental laws and policies. These rights are sometimes also referred to as “access rights.”³¹⁰ They are the necessary basis for the protection of both the emerging right to a healthy environment and other substantive human rights. They are guaranteed by a number of international human rights treaties and have also been specifically enshrined in the environmental context. In particular:

- In 1992, [Principle 10 of the Rio Declaration](#) – which was adopted during the Rio de Janeiro Conference on Environment and Development³¹¹ – established the three “access rights” in environmental matters. It has since formed the basis for the adoption of specific regional agreements on procedural obligations in environmental matters.
- For instance, 46 states from Europe and Central Asia and the European Union are parties to the Convention on access to information, public participation in decision-making, and access to justice in environmental matters, known as the [Aarhus Convention](#).
- In March 2018, Latin American and Caribbean states also adopted the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, known as the [Escazú Convention](#).
- [The UN Framework Convention on Climate Change](#) (UNFCCC) also recognizes these rights in the specific context of climate change.

PRINCIPLE 10 OF THE RIO DECLARATION:

“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

States’ obligations to respect, protect, and fulfill these procedural rights are interrelated with the obligation to respect, protect, and fulfill substantive rights (See Section 3.3.3). As explained by the former UN Independent Expert, John H. Knox, making this connection can create a “*virtuous circle*”:

*Strong compliance with procedural duties produces a healthier environment, which in turn contributes to a higher degree of compliance with substantive rights such as rights to life, health, property and privacy. The converse is also true. Failure to meet procedural obligations can result in a degraded environment, which interferes with the full enjoyment of other human rights.*³¹²

³⁰⁹ UNIE, 2013 Mapping Report, para. 29

³¹⁰ UNEP, *Environmental Rule of Law*, Section 1.3.2, p. 21.

³¹¹ United Nations Conference on Environment and Development, Rio Declaration on Environment and Development, A/CONF.151/26, 14 June 1992, Principle 10.

³¹² John H. Knox, *Report of the Independent Expert on the issue of human rights obligations relating to the*

Below we will review states' obligations under each of these procedural rights in an environmental context. Specific obligations relating to women and girls' procedural rights in relation to the environment will be detailed in Section 3.3.5.

States' obligations to guarantee access to environmental information

The right to access information is well established under international human rights law. It is included in Article 19 of the UDHR and the ICCPR which state that the right to freedom of expression includes the freedom to “*seek, receive and impart information.*” In order for the right to access to information to be effective, the following key elements must be met:

- Information must be accurate and complete;
- Information must be updated as it changes;
- Information must be easily available;
- Information must be readily understandable; and
- There must be clear and narrow grounds for denying requests for information.³¹³

The right to information has consistently been acknowledged by UN human rights bodies in relation to the environment³¹⁴ and is enshrined in the Aarhus and Escazú Conventions as well as the UNFCCC.³¹⁵ For example:

- The CESCR has established that in relation to certain ESCR that could be threatened by environmental degradation, states have an obligation to make information accessible, and to conduct informational and educational campaigns relating to human rights. For instance, in its interpretation of the right to water, the CESCR stated that “*individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.*”³¹⁶ In addition, it established the right to health-related education and information accessibility as key determinants of the right to health and clarified that states have an obligation to carry out information campaigns.³¹⁷
- The UNHRC also stated that in order to respect the right to life, states should – among other things – conduct environmental impact assessments and provide appropriate access to information on environmental hazards.³¹⁸
- Principles 6, 7, and 8 of the Framework Principles on Human Rights and the Environment clearly establish states' obligations in relation to public information and impact assessment.

FRAMEWORK PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT

Principle 6: States should provide for education and public awareness on environmental matters.

Principle 7: States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request.

enjoyment of a safe, clean, healthy and sustainable environment to the 22nd HRC session, Preliminary Report, A/HRC/22/44, 24 December 2012, para. 42, available at: http://ap.ohchr.org/documents/dpage_e.aspx?m=199.

³¹³ UNEP, *Environmental Rule of Law*, Figure 3.5: Key Elements of Effective Access to Information, p. 99.

³¹⁴ UNIE, 2013 Mapping Report, paras. 30–35.

³¹⁵ Aarhus Convention, Articles 4 and 5; Escazú Convention, Article 5; and UN Framework Convention on Climate Change (UNFCCC), Article 6(a).

³¹⁶ CESCR, *General Comment No. 15*, para. 48.

³¹⁷ CESCR, *General Comment No. 14*, paras. 11, 12(b)(iv), and 36.

³¹⁸ CCPR, *General Comment No. 36*, para. 62.

Principle 8: To avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, states should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights.

Regional and national courts have also upheld these obligations in an environmental context.

The ECHR, in the case of ***Guerra and Others v. Italy***, ruled that the Italian State had violated the claimants' right to information and to respect of their private and family life by failing to provide information about the risks and how to proceed in the event of a major accident at a nearby chemical factory.³¹⁹

In the case of ***Öneryildiz v. Turkey*** about a methane explosion at a municipal rubbish tip, the ECHR ruled that to safeguard the right to life in the context of dangerous activities, states should take preventative measures and in particular place special emphasis on the public right to information.³²⁰

In another case against Turkey, ***Taşkin v. Turkey***, 10 Turkish nationals alleged that the operating permits issued for a gold mine and the related decision-making process had violated their rights to life and to respect for their private life. In its ruling, the ECHR stated that the state's decision-making about issues of environmental policy should involve a study of the impact of those activities. It further stated: "*The importance of public access to the conclusions of such studies and to information which would enable members of the public to assess the danger to which they are exposed is beyond question.*"³²¹

In the above-mentioned case of ***Ogoniland*** the ACHPR also explained that the Government of Nigeria, in order to protect the rights to health and to a general satisfactory environment, should have:

- Carried out independent scientific monitoring of threatened environments;
- Required and publicized environmental and social impact studies prior to any major industrial development;
- Undertaken appropriate monitoring and provided information to those communities exposed to hazardous materials and activities; and
- Provided meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities.³²²

In South Africa, in the case ***Company Secretary of ArcelorMittal South Africa/ArcelorMittal South Africa Ltd v. Vaal Environmental Justice Alliance***, ArcelorMittal twice denied a request for information from the NGO Vaal Environmental Justice Alliance. The information request related to ArcelorMittal's operational and strategic approach to the protection of the environment in areas where it operates a major steel plant. In its decision the Supreme Court of Appeal found that corporations operating within South Africa, whether local or international, "*must be left in no doubt that in relation to the environment in circumstances such as those under discussion, there is no room for secrecy.*"³²³

³¹⁹ ECHR, *Case of Guerra and Others v. Italy*, No. 116/1996/735/932, 19 February 1998, para. 47, available at: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-58135%22%7D>).

³²⁰ ECHR, *Case of Öneryildiz v. Turkey*, No. 48939/99, 30 November 2004, para. 90, available at: https://www.informea.org/sites/default/files/court-decisions/Oneryildiz_v_Turkey_2004.pdf.

³²¹ ECHR, *Case of Taşkin v. Turkey*, No. 46117/99, 30 March 2005, para. 119, available at: <https://hudoc.echr.coe.int/webservices/content/pdf/001-67401?TID=soudeazyxk>.

³²² ACHPR, *155/96: Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria*, 27 October 2001, para. 53.

³²³ Supreme Court of Appeal of South Africa, *Company Secretary of ArcelorMittal South Africa/ArcelorMittal South Africa Ltd v. Vaal Environmental Justice Alliance*, Case No. 69/2014, 26 November 2014, para. 82, available at: <http://www.saflii.org/za/cases/ZASCA/2014/184.pdf>.

States' obligations to facilitate public participation in environmental decision-making

Article 21 of the UDHR guarantees the right of individuals to take part in the government of their country and Article 25 of the ICCPR their right to take part in the conduct of public affairs. These rights have been interpreted as implying the right to participation in decision-making.

For public participation to be effective, it must meet the following key requirements:

- The public must be informed early on;
- Avenues to participate must be clear and explained;
- Multiple methods of engagement must be used;
- The methods of engagement must be culturally relevant and inclusive of vulnerable and traditionally marginalized populations such as women;
- Public contributions and comments must be documented and responded to; and
- The capacity of civil society, local communities, and those charged with implementing public participation mechanisms must be built to ensure meaningful participation in the process.³²⁴

Human rights bodies and international environmental instruments and treaties have further elaborated the states' duty to facilitate public participation in environmental decision-making.³²⁵

For instance:

- The UN Special Rapporteurs on hazardous substances and wastes and on the situation of HRDs have both stated that governments have a duty to facilitate the right to information and to participation in environmental decision-making.³²⁶
- The CESCR has also explained that before any action is carried out which interferes with an individual's right to water, states should provide an opportunity for "*genuine consultation with those affected*."³²⁷
- The CESCR also recommended that Bangladesh's strategies and action plans on climate change and disaster response and risk reduction be formulated and implemented on the basis of human rights and "*with the meaningful participation of affected communities and civil society*."³²⁸
- As mentioned above, the ACHPR in the *Ogoniland case* ruled that states should provide meaningful opportunities for individuals to be heard and to participate in the decisions affecting their communities.³²⁹
- Principle 9 of the Framework Principles on Human Rights and the Environment directly relates to the right to public participation.

³²⁴ UNEP, *Environmental Rule of Law*, Figure 3.11: Key elements of effective public participation, p. 116.

³²⁵ UNIE, *2013 Mapping Report*, paras. 36–38 and Aarhus Convention, Articles 6–8; Escazú Convention, Article 7; and UN Framework Convention on Climate Change (UNFCCC), Article 6(a).

³²⁶ Okechukwu Ibeanu, *Report of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights to the 7th session of the HRC, A/HRC/7/21*, 18 February 2008, paras. 31–65, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/107/15/PDF/G0810715.pdf?OpenElement>; and Margaret Sekaggya, *Report of the Special Rapporteur on the situation of human rights defenders to the 68th session of the UNGA, A/68/262*, 5 August 2013, paras. 23 and 61–69, available at: <https://undocs.org/A/68/262>.

³²⁷ CESCR, *General Comment No. 15 (2002)*, para. 56.

³²⁸ CESCR, *Concluding observations on the initial report of Bangladesh, E/C.12/BGD/CO/1*, 18 April 2018, para. 14, available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fBGD%2fCO%2f1&Lang=en.

³²⁹ ACHPR, *155/96: Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria*, 27 October 2001, para. 53.

FRAMEWORK PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT

Principle 9: States should provide for and facilitate public participation in decision-making related to the environment, and take the views of the public into account in the decision-making process.

National courts have upheld the right to participation in matters relating to the environment, and helped to define the meaning of genuine consultation. In particular, courts have held states accountable to their obligations towards indigenous peoples. Indigenous peoples – because of their relationship to land and natural resources – are particularly vulnerable to environmental harm and require special protection. International human rights law therefore not only requires that they are consulted but that their free, prior, and informed consent is obtained with regard to extractive projects that may affect their land.³³⁰

In the case *Amparo No. 631/2012 (Independencia Aqueduct)*, traditional representatives of the Yaqui tribe in Mexico sought protection against alleged violations of their human rights to territory, to consultation, and to a safe environment in relation to a project that planned to carry 60 million cubic meters of water from a dam on the Yaqui river into another river basin to supply a nearby city. In its decision, the Supreme Court of Mexico ruled that the project had to be halted until the state had conducted a proper consultation with the Yaqui tribe. In addition, the court clarified that the consultation needed to be culturally appropriate, informed, and conducted in good faith.³³¹

In the case *Baleni and Others v. Minister of Mineral Resources and Others*, “customary communities” opposed the mining of titanium of their land by an Australian Company, alleging that they had not given their consent to the mining operations. In its decision, a High Court of South Africa – relying on international, regional, and national laws – held that the communities had informal rights to the land and therefore had the “right to decide what happens with their land. As such they may not be deprived of their land without their consent.” The community must be able to “take a communal decision in terms of their custom and community on whether they consent or not to a proposal to dispose of their rights to their land.”³³²

States’ obligations to provide access to legal remedies

Individuals’ right to remedy is a cornerstone of international human rights law and is established in the UDHR and most other human rights agreements onward (See Section 3.1.3). This right has also been applied in the case of rights infringed by environmental harm and is enshrined in Article 9 of the Aarhus Convention and Article 8 of the Escazú Convention,³³³ and the Framework Principles on Human Rights and the Environment.

FRAMEWORK PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT

Principle 10: States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment.

³³⁰ UN Declaration on the Rights of Indigenous Peoples, Articles 29(2) and 32(2). See also: UN Committee on the Elimination of Racial Discrimination, *General Recommendation No. 23: Indigenous Peoples*, 18 August 1997, para. 5; CESCR, *General comment No. 21: Right of everyone to take part in cultural life (art 15, para. 1(a))*, E/C.12/GC/21, 21 December 2009, paras. 36 and 37; and CCPR, Communication No. 1457/2006, CCPR/C/95/D/1457/2006, 24 April 2009, para. 7.6.

³³¹ Supreme Court of Justice of Mexico, *Amparo No. 631/2012 (Independencia Aqueduct)*, 8 May 2013, pp. 83 and 86. English summary available at: <https://www.escri-net.org/caselaw/2013/amparo-no-6312012-independencia-aqueduct>.

³³² High Court of South Africa, Gauteng Division, Pretoria, *Baleni and Others v. Minister of Mineral Resources and Others*, Case No. 73768/2016, para. 83, available at: <http://www.saflii.org/za/cases/ZAGPPHC/2018/829.pdf>.

³³³ UNIE, *2013 Mapping Report*, paras. 41–43.

For instance, the ECHR, in the case *Taşkin v. Turkey*, stated that individuals “*must also be able to appeal to the courts against any decision, act or omission where they consider that their interests or their comments have not been given sufficient weight in the decision-making process.*”³³⁴

In the case *SERAP v. Nigeria*, the plaintiff alleged that the rights to health, adequate standard of living, and economic and social development of the people of the Niger Delta were violated by the failure of the Government of Nigeria to enforce laws and regulations to protect the environment and prevent pollution from oil spills. The Court of Justice of the Economic Community of West African States found that the Government of Nigeria had a duty to hold accountable those who violate human rights through oil pollution and to ensure that adequate reparation is provided for the victims.³³⁵

BOX 3★ STATES’ OBLIGATIONS TOWARDS ENVIRONMENTAL HUMAN RIGHTS DEFENDERS

Environmental HRDs are often the target of retaliatory campaigns by both state and non-state actors. Some have been killed, disappeared, harassed, criminalized, or the victims of smear campaigns (See Box 1).

States’ human rights obligations, however, include a duty to respect the right of everyone to promote and protect a healthy environment and to protect against violation of this right from both state and non-state actors. These obligations include a duty to:

- Protect environmental defenders’ rights to seek information, to expression, association, peaceful assembly, and to participate in decision-making processes;
- Protect environmental defenders’ rights to life, liberty, and security;
- Conduct prompt and impartial investigations into alleged violations of environmental defenders’ rights; and
- Ensure access to a remedy for environmental defenders whose rights have been violated.

These obligations stem from international human rights law including the UDHR and the ICCPR, and were reiterated in 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](#) (known as the HRD Declaration).

In March 2018, for the first time an international environmental agreement included provisions relating directly to environmental HRDs. The Escazú Convention both recognizes the particular contribution made by environmental defenders in “*strengthening democracy, access rights and sustainable development*” but also bounds state parties to guarantee them a safe and enabling environment; to take adequate and effective measures to recognize, protect, and promote all their rights; and to prevent, investigate, and punish attacks, threats or intimidations against them.³³⁶

These obligations were also reiterated in the **Framework Principles on Human Rights and the Environment**:

³³⁴ ECHR, *Case of Taşkin v. Turkey*, No. 46117/99, 30 March 2005, para. 119.

³³⁵ Court of Justice of the Economic Community of West African States, *SERAP v. Nigeria*, Judgment No.

ECW/CCJ/JUD/18/12, 14 December 2012, para. 97, available at:

http://www.courtecowas.org/site2012/pdf_files/decisions/judgements/2012/SERAP_V_FEDERAL_REPUBLIC_OF_NIGERIA.pdf.

³³⁶ Escazú Convention, Article 9.

Principle 4: States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.

Principle 5: States should respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters.

International and regional jurisprudence also reiterated states' obligations towards environmental HRDs. For instance, in the case of *Kawas Fernández v. Honduras*, the IACHR held that a state's failure to adopt the necessary measures to protect from killing a human rights defender who denounced environmental contamination, illegal logging, and forest degradation, violated her freedom of association. The court then required that the state take a number of important exemplary measures, including to:³³⁷

- Compensate her relatives in relation to her death;
- Initiate criminal proceedings into her death;
- Publish the IACHR's judgment in the national gazette;
- Publicly acknowledge its responsibility;
- Construct a monument in her memory;
- Provide free-of-charge psychological and/or psychiatric care to her relatives; and
- Carry out a national awareness and sensitivity campaign regarding the importance of the work performed by environmentalists in Honduras and their contribution to the defense of human rights.

3.3.5 States' obligations to ensure equality and non-discrimination against women and girls in the enjoyment of a healthy environment

“While the human rights implications of environmental damage are felt by individuals and communities around the world, the consequences are felt most acutely by those segments of the population that are already in vulnerable situations.”

- UN Human Rights Council, 2018³³⁸

The prohibition of discrimination and the protection of the right to equality (See Section 3.1.2) apply to human rights relating to a healthy environment and therefore impose obligations on states to:

- Protect against environmental harm that results from or contributes to discrimination;
- Protect individuals against discrimination associated with environmental harms caused by third parties including businesses by all appropriate means including regulation;
- Provide for equal access to environmental benefits; and
- Ensure that state actions relating to the environment do not themselves discriminate.³³⁹

To comply with these obligations, states must pay specific attention to members of groups particularly vulnerable to environmental harm. People are more vulnerable to environmental harm either because they are more susceptible to certain types of environmental harm and/or because they are denied their human rights and thus limited in their capacity to cope with the harms.

³³⁷ Inter-American Court of Human Rights (IACHR), *Case of Kawas-Fernández v. Honduras*, Judgment of 3 April 2009, pp. 63–64, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_196_ing.pdf.

³³⁸ HRC, *Human rights and the environment*, Resolution 37/8.

³³⁹ Framework Principle on Human Rights and the Environment No. 3, Commentary, A/HRC/37/59, para. 7.

FRAMEWORK PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT

Principle 14: States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.

Those people who have been identified as being at greater risk from environmental harm include women, children, persons living in poverty, rural persons, members of indigenous peoples and traditional communities, older persons, persons with disabilities, national, ethnic, religious or linguistic minorities and displaced persons.³⁴⁰ States' specific obligations to ensure equality of and non-discrimination against women and girls, bearing in mind the importance of recognizing the intersections between different forms of discrimination, is the focus of this manual.

While the CEDAW Convention does not explicitly recognize a human right to a healthy environment, the CEDAW Committee has found that environmental degradation threatens the enjoyment of many of the human rights protected under the CEDAW Convention (See Chapter 2 for examples of how women's human rights are disproportionately affected by environmental degradation).³⁴¹

The Committee has thus developed specific guidance to states on their obligations under the Convention to address discrimination against women and girls in the field of environmental harm.

More specifically, the CEDAW Committee in 2018 published general recommendations to states on their obligation in relation to disaster risk reduction in the context of climate change.³⁴² These specific obligations are detailed below.

INTERNATIONAL ENVIRONMENTAL LEGAL FRAMEWORK AND GENDER

In addition to the [CEDAW](#), other international frameworks relating to a healthy environment address gender equality. For instance:

- In 1992, [the Rio Declaration](#) emphasized the vital role of women in environmental management and development and the importance of ensuring their full participation.³⁴³
- 20 years later, the follow-up UN Conference on Sustainable Development in its outcome document [The Future We Want](#) recognized the vital role of women and the need for their full and equal participation and leadership in all areas of sustainable development and explicitly refers to states' commitments under the CEDAW.³⁴⁴
- [The Beijing Declaration and Platform for Action](#), which was adopted following the fourth World Conference on Women in 1995, recognizes the essential role women have to play in creating sustainable development and lays out a number of actions for states to address the situation of women and the environment.³⁴⁵

³⁴⁰ Framework Principle on Human Rights and the Environment No. 14, Commentary, A/HRC/37/59, para. 40.

³⁴¹ Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, *Individual Report on the United Nations Convention on the Elimination of All Forms of Discrimination against Women, Report No. 4*, December 2013, para. 18.

³⁴² CEDAW, *General Recommendation No. 37*.

³⁴³ United Nations Conference on Environment and Development, Rio Declaration on Environment and Development, A/CONF.151/26, 14 June 1992, Principle 20.

³⁴⁴ UN General Assembly (UNGA), Resolution 66/288, *The Future We Want*, A/RES/66/288, 27 July 2012, paras. 31, 45, and 236.

³⁴⁵ The Fourth World Conference on Women, *Beijing Declaration and Platform for Action*, 15 September 1995, in particular Chapter IV. K.

- The 2018 [Escazú Convention](#) is guided by the principle of non-discrimination and calls on states to take a number of specific measures to address the needs of the most vulnerable groups and persons.³⁴⁶
- The 2015, the [Paris Agreement](#) adopted by the 21st Conference of the Parties (COP) to the [UNFCCC](#) (known as COP21) states that when taking action to address climate change, parties should respect, promote, and consider gender equality and women's empowerment. It also states that capacity building for mitigation and adaptation actions should be gender-responsive, participatory, and fully transparent, taking into consideration vulnerable groups, communities, and ecosystems.³⁴⁷
- The 2014 COP also adopted the [Lima Work Programme on Gender](#), which established a two-year work program for “*promoting gender balance and achieving gender-responsive climate policy*” to enhance the effective participation of women in the bodies established under the Convention.³⁴⁸
- In 2017, the COP agreed on the [Bonn Gender Plan of Action](#) to advance gender mainstreaming into all elements of climate action.³⁴⁹
- The [Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#), adopted by the African Union, states that women shall have “*the right to live in a healthy and sustainable environment*” and “*the right to fully enjoy their right to sustainable development.*”³⁵⁰

States' obligations to enact non-discriminatory environmental law, policies, and measures

States have an obligation to enact laws, policies, and procedures in response to environmental harm that are gender-responsive and non-discriminatory and that afford equal protection to women. In concrete terms, this means, as examples, that:

- In relation to health, states must adopt sound environmental policy aimed at protecting the health of women and children.³⁵¹
- In the context of disaster risk reduction and climate change, states must adopt programs where quality infrastructure and critical services are available, accessible, and culturally acceptable for all women and girls.³⁵² For instance, the CEDAW Committee indicated that Indonesia was required to take “*appropriate measures to eliminate all forms of discrimination against women with respect to access to housing and food aid in emergency and natural disaster situations and to ensure that women in these situations are adequately protected from violence.*”³⁵³
- In relation to hazardous substances and wastes, states must put in place preventive measures and programs to protect women of childbearing age because of the harmful effects of mercury on female reproduction.³⁵⁴

³⁴⁶ Escazú Convention, Preamble.

³⁴⁷ UNFCCC, Paris Agreement, 2015, Preamble, Articles 7(5) and 11(2).

³⁴⁸ Conference of the Parties, Decision 21/CP.22 Gender and Climate Change, FCCC/CP/2016/10/Add.2.

³⁴⁹ Conference of the Parties, Decision 3/CP.23 Establishment of a Gender Action Plan, FCCC/CP/2017/11/Add.1.

³⁵⁰ The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Articles 18 and 19.

³⁵¹ CEDAW, *Report of the Committee on the Elimination of Discrimination against Women Twenty-fourth session (15 January–2 February 2001) Twenty-fifth session (2–20 July 2001)*, A/56/38, paras. 106 and 186, available at:

[https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2F56%2F38\(SUPP\)&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2F56%2F38(SUPP)&Lang=en).

³⁵² CEDAW, *General Recommendation No. 37*, para. 31(b).

³⁵³ CEDAW, *Report of the Committee on the Elimination of Discrimination against Women Thirty-seventh session (15 January–2 February 2007) Thirty-eighth session (14 May–1 June 2007) Thirty-ninth session (23 July–10 August 2007)*, A/62/38, para. 295, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N07/415/16/PDF/N0741516.pdf?OpenElement>.

³⁵⁴ Calin Georgescu, *Report of the Special Rapporteur on the human rights obligations related to*

- In relation to land rights, states must eliminate discrimination in women's ownership and inheritance of land and take measures to change both the laws and social norms and practices, which impose barriers to women's right to own and access to land.³⁵⁵ Ensuring women's equal access to land rights is necessary to guarantee women's equal rights to a healthy environment, access to decision-making and remedy. It would also enhance women's capacity to adapt to environmental damage and climate change (See Section 1.1.2).

In addition, the CEDAW Committee has indicated that the CEDAW Convention requires that such policies and programs must be:

- Effective and coherent;
- Coordinated both across sectors (such as trade, development, housing, and health) and at different levels of governance (local and sub-national, national, regional, and international); and
- Adequately resourced.³⁵⁶

An example of how environmental laws and regulations can be amended to be more gender-sensitive is given by the 2018 draft amendment to the Canadian Impact Assessment Act and the Canadian Energy Regulator Act.³⁵⁷ The Bill requires that “*the intersection of sex and gender with other identity factors*” is taken into account when conducting impact assessment and when deciding on pipeline certificates.

In the Preamble of the draft Bill, the Government of Canada also expresses its commitment to assessing how groups of women, men, and gender-diverse people may experience policies, programs, and projects.

States' obligations to engage in further research on the adverse impacts of certain environmental harms

The gender dimensions of environmental damage, disaster risk reduction, and the impacts of climate change are often not well understood due to the lack of gender impact assessment and data disaggregated by sex and age. Without this information it is particularly complicated to develop and design sound gender-responsive environmental policies and programs. Therefore, states also have the obligation to research and seek information on the adverse impacts of environmental harm on women and girls. For example:

- The CEDAW Committee called on Australia to ensure all large-scale development and extractive industry projects are preceded by a thorough gender impact assessment involving rural and indigenous women.³⁵⁸
- The CEDAW Committee called on Belarus to conduct further research on the connection between the radiation found in areas contaminated by the Chernobyl nuclear accident and the increased incidence of breast cancer.³⁵⁹

environmentally sound management and disposal of hazardous substances and waste to the HRC 21st session, A/HRC/21/48, 2 July 2012, para. 33, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/149/26/PDF/G1214926.pdf?OpenElement>.

³⁵⁵ Alda Facio, Working Group on the issue of discrimination against women in law and in practice, *Insecure land rights for women threaten progress on gender equality and sustainable development*, July 2017, p. 4; and CEDAW, Articles 5(a), 15(2), and 16(h).

³⁵⁶ CEDAW, *General Recommendation No. 37*, paras. 41–42 and 43–46.

³⁵⁷ The latest version of the draft Bill is available at: <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-69/third-reading>.

³⁵⁸ CEDAW, *Concluding observations on the eighth periodic report of Australia*, CEDAW/C/AUS/CO/8, 25 July 2018, para. 30(a), available at:

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5.

³⁵⁹ CEDAW, *Concluding observations of the Committee on the Elimination of Discrimination against*

- Mozambique was requested by the CEDAW Committee to research the specific impact of environmental degradation on rural women and take the findings into account when structuring solutions and policies.³⁶⁰
- Paraguay was requested by the CEDAW Committee to undertake a comprehensive study on the probable negative causes of the misuse of agro toxic products, so that the government could implement the necessary measures to eradicate their impact on the health of rural women and their children.³⁶¹
- Because of the specific impact of environmental degradation on rural women in Mongolia, the CEDAW Committee requested the state to include in its next report to the Committee sex-disaggregated data and information on the de facto position of rural women.³⁶²
- In relation to disaster risk reduction and climate change, the CEDAW Committee has also explained that states should “*collect, analyze, manage and apply sex, age, disability, ethnicity and regionally disaggregated data. Such data should be made publicly available and used to inform gender responsive national and regional disaster risk and climate resilience legislation, policies, programmes and budgets.*”³⁶³

States’ obligations to provide environmental information and education

The CEDAW Convention expressly requires states to “*promote*” the rights of women. For instance, this means that states should ensure women have access to information about their rights and are able to effectively promote and claim them.³⁶⁴ States are also required to promote education about women’s rights throughout the education system and in communities.³⁶⁵ Therefore, states should not only ensure that information is available, but also proactively engage in programs to raise awareness about women’s rights.

This obligation also applies to women’s rights relating to a healthy environment. As explained in Section 3.3.4, international human rights law imposes on states the obligation to provide access to environmental information as a way to reduce and mitigate risks linked to environmental damage. This evidently includes women. However, women often face specific barriers in accessing information and education about environmental degradation and its impact (See Section 1.3).

States therefore have an obligation to take positive actions to overcome these obstacles and to provide gender-specific information such as sex-disaggregated data. The CEDAW Committee has reiterated the importance of this obligation to states on a number of occasions. For example:

- Concerned by the impact of arsenic poisoning of waters, the CEDAW Committee recommended to Bangladesh that it “*launch an awareness campaign and proactive health, nutrition and social programs for affected rural women, their families and the local communities.*”³⁶⁶

Women – Belarus, CEDAW/C/BLR/CO/7, 6 April 2011, para. 38, available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/BLR/CO/7&Lang=en.

³⁶⁰ CEDAW, *Report of the Committee on the Elimination of Discrimination against Women Thirty-seventh session (15 January–2 February 2007) Thirty-eighth session (14 May–1 June 2007) Thirty-ninth session (23 July–10 August 2007)*, A/62/38, para. 196.

³⁶¹ CEDAW, *Concluding observations of the Committee on the Elimination of Discrimination against Women – Paraguay*, CEDAW/C/PRY/CO/6, 21 October 2011, para. 33, available at: <https://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-PRY-CO-6.pdf>.

³⁶² CEDAW, *Concluding observations of the Committee on the Elimination of Discrimination against Women*

– *Mongolia*, CEDAW/C/MNG/CO/7, 7 November 2008, paras. 35 and 36, available at:

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMNG%2fCO%2f7&Lang=en.

³⁶³ CEDAW, *General Recommendation No. 37*, para. 40.

³⁶⁴ CEDAW, *General Recommendation No. 28*, para. 27.

³⁶⁵ CEDAW, *General Recommendation No. 28*, para. 36.

³⁶⁶ CEDAW, *Report of the Committee on the Elimination of Discrimination against Women Thirtieth session*

- In light of the widespread famine and natural disasters that have affected the Democratic Republic of Korea in the past, the CEDAW Committee found that the state had not provided sufficient explanation on the impact of those phenomena on women, in particular women from rural areas. It further stressed its concern that this might have led to women becoming more vulnerable to trafficking and other forms of exploitation.³⁶⁷

States' obligations to ensure women's participation in environmental decision-making

As explained in Section 3.3.4, international human rights law imposes on states an obligation to respect, protect, and fulfill the right to public participation in environmental decision-making. Yet, women are often excluded from decision-making processes because of existing inequalities and social constructs (See Section 1.3.2). States therefore have an obligation to pay particular attention to women and girls' right to participate in environmental decision-making in order to ensure equality and non-discrimination. More specifically:

- The CEDAW Committee has explicitly stated that the participation of girls and young women is essential to disaster risk reduction and climate change policy, and that states have an obligation to ensure that they are provided with equal opportunities to participate in, lead, and engage in decision-making.³⁶⁸ For instance, the Committee called on Tuvalu to "*develop disaster management and mitigation plans in response to the potential displacement and/or statelessness arising from environmental and climatic change and that women, including women in the outer islands, be included throughout the planning processes and adoption of such strategies.*"³⁶⁹
- It has also requested Mauritius to ensure that women are meaningfully involved in the development of its law on climate change and the mitigation actions for its low carbon island development strategy project.³⁷⁰
- The CEDAW Committee also recommended that Australia should ensure that all large-scale development and extractive industry projects are implemented with the prior informed consent of the local women affected.³⁷¹
- The UN expert on the right to health explicitly explained that "*even though women bear a disproportionate burden in the collection of water and disposal of family wastewater, they are often excluded from relevant decision-making processes,*" and therefore he called on states to "*take measures to ensure that women are not excluded from decision-making processes concerning water and sanitation management.*"³⁷²

In addition, the Philippines Magna Carta of Women provides a good illustration of national

(12–30 January 2004) *Thirty-first session (6–23 July 2004)*, A/59/38, Bangladesh, paras. 259–60.

³⁶⁷ CEDAW, *Report of the Committee on the Elimination of Discrimination against Women for the Thirty-second and Thirty-third sessions*, A/60/38(SUPP), 31 August 2005, Democratic People's Republic of Korea, para. 59.

³⁶⁸ CEDAW, *General Recommendation No. 37*, paras. 32 and 36.

³⁶⁹ CEDAW, *Concluding observations of the Committee on the Elimination of Discrimination against Women – Tuvalu*, CEDAW/C/TUV/CO/2, 7 August 2009, para. 56, available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/TUV/CO/2&Lang=en.

³⁷⁰ CEDAW, *Concluding observations on the eighth periodic report of Mauritius*, CEDAW/C/MUS/CO/8, 14 November 2018, para. 36, available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMUS%2fCO%2f8&Lang=en.

³⁷¹ CEDAW, *Concluding observations on the eighth periodic report of Australia*, CEDAW/C/AUS/CO/8, 25 July 2018, para. 30(a).

³⁷² Paul Hunt, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to the UNGA 62nd session*, A/62/214, 8 August 2007, para. 84, available at: <http://undocs.org/A/62/214>.

legislation requiring women's participation. The Act states that the Philippines shall *“undertake temporary special measures to accelerate the participation and equitable representation of women in all spheres of society particularly in decision-making and policy-making processes in government and private entities to fully realize their role as agents and beneficiaries of development.”*³⁷³

For women's participation to be effective, it must be appropriately facilitated. As such, the CEDAW Committee notes that states must allocate necessary resources to ensure that diverse groups of women have opportunities to participate effectively. States must also support women's technical capacity to participate effectively by providing them with adequate resources. For instance:

- States must ensure that early warning information about weather-related events is provided using technologies that are timely, culturally appropriate, accessible, and inclusive, and which take into account the needs of diverse groups of women.³⁷⁴
- The CEDAW Committee recommended that the Marshall Islands ensured women's equal access to training opportunities on climate change mitigation and adaptation.³⁷⁵
- The Philippines Magna Carta on Women requires the state to ensure women's right to adequate food, by promoting women-friendly technology, to strengthen access to accurate and substantial information on resources, and to ensure equal rights of women to be members of farmers' organizations.³⁷⁶

States' obligations to provide access to remedy

“The recognition of legal capacity identical to that of men and equal between different groups of women, including women with disabilities and indigenous women, as well as equal access to justice are essential elements of disaster and climate change policies and strategies.”

- CEDAW Committee, General Recommendation No. 37³⁷⁷

The right to access to justice for women and girls is essential to the realization of all the rights protected under the CEDAW. Yet, women and girls often face specific barriers in accessing justice that may be exacerbated in situations of disaster and instances of environmental degradation (See Section 1.5). States must therefore take specific measures to ensure women and girls have equal access to justice.

States' obligations to ensure women and girls' access to justice have been detailed by the CEDAW Committee in a 2015 report. It explains that for justice systems to be accessible to women and girls, the following elements must be guaranteed:

- **Justiciability:** requires the unhindered access by women to justice, including through courts, for the violation of all human rights, as well as their ability and empowerment to claim their rights;
- **Availability:** requires the establishment of courts and other quasi-judicial or other bodies across the state;
- **Accessibility:** requires that all justice systems are secure, affordable, and physically accessible to women, and are adapted and appropriate to the needs of women;

³⁷³ Republic Act No. 9710, *An Act Providing for the Magna Carta of Women*, Section 11.

³⁷⁴ CEDAW, *General Recommendation No. 37*, para. 54.

³⁷⁵ CEDAW, *Concluding observations on the combined initial to third periodic reports of the Marshall Islands*, CEDAW/C/MHL/CO/1-3, 14 March 2018, para. 45(c), available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMHL%2fCO%2f1-3&Lang=en.

³⁷⁶ Republic Act No. 9710, *An Act Providing for the Magna Carta of Women*, Section 20(b).

³⁷⁷ CEDAW, *General Recommendation No. 37*, para. 37.

- **Good quality of justice systems:** requires that all components of the system adhere to international standards of competence, efficiency, independence, and impartiality, and provide, in a timely fashion, appropriate and effective remedies that are enforced and that lead to sustainable gender-sensitive dispute resolution for all women;
- **Provision of remedies:** requires the ability of women to receive from justice systems viable protection and meaningful redress for any harm that they may suffer; and
- **Accountability:** requires that justice systems remain accountable through the monitoring of the functioning of independent justice systems.³⁷⁸

More specifically, in General Recommendation No. 37, the CEDAW Committee expanded on what states' obligations entail in the context of disasters and climate change. States should:³⁷⁹

- Ensure that legal frameworks are non-discriminatory;
- Conduct a gender impact analysis of current laws to assess their effect on women and adopt, repeal or amend laws, norms and practices accordingly;
- Increase women's awareness of available legal remedies and dispute resolution mechanisms as well as their legal literacy by providing them with information on their rights related to disaster risk reduction and climate change;
- Ensure affordable or, if necessary, free access to legal services, including legal aid, as well as to official documents such as birth, death, and marriage certificates and land registration documents/deeds;
- Dismantle barriers to women's access to justice by ensuring that formal and informal justice mechanisms, including alternative dispute resolution mechanisms, are available and accessible to enable women to claim their rights;
- Develop measures to protect women from reprisals when making rights claims;
- Develop response plans that provide for the deployment of mobile or specialized reporting mechanisms, investigative teams and courts to minimize disruptions to legal and justice systems that may result from disasters and climate change.

In addition, states must pay particular attention to cases of gender-based violence, sexual abuse and trafficking of women and girls. As the CEDAW Committee highlighted, situations of disaster and the degradation and destruction of natural resources are factors that affect and exacerbate gender-based violence against women and girls (See Section 2.1). Sexual violence, the CEDAW explains, is also "*common in humanitarian crises and may become acute in the wake of a national disaster. In a time of heightened stress, lawlessness and homelessness, women face an increased threat of violence.*"³⁸⁰

States therefore must follow the [CEDAW Committee recommendations on gender-based violence against women](#)³⁸¹ and, in particular, all judicial bodies should:

- Refrain from engaging in any act or practice of discrimination or gender-based violence against women and girls;
- Strictly apply all criminal law provisions punishing gender-based violence; and
- Ensure all legal procedures are impartial and fair, and unaffected by gender stereotypes or discriminatory interpretation of legal provisions.

³⁷⁸ CEDAW, *General recommendation No. 33*, para. 14.

³⁷⁹ CEDAW, *General Recommendation No. 37*, para. 38.

³⁸⁰ CEDAW, *General Recommendation No. 37*, paras. 55 and 56.

³⁸¹ CEDAW, *General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*.

GUIDING REFERENCES FOR THE JUDICIARY

A number of manuals and guidance on how judges and judicial officers can ensure equality and non-discrimination in women's access to justice have already been developed. Judges and other judicial officers should familiarize themselves with the following:

- [CEDAW's General Recommendation on women's access to justice](#),³⁸²
- [Council of Europe Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice](#),³⁸³
- [ICJ, Bangkok General Guidance for Judges on Applying a Gender Perspective in Southeast Asia](#),³⁸⁴
- [UN WOMEN, Manual on Gender Stereotypes in Laws and Court Decisions in Southeast Asia](#),³⁸⁵

States' obligations to eliminate discrimination by non-state actors

Under the CEDAW Convention, the obligation to protect requires that states parties protect women from discrimination by private actors.³⁸⁶ States must therefore take measures to eliminate discrimination against women by any person, organization or enterprise.³⁸⁷ Such measures include the effective regulation of non-state actors including legislative and policy measures prohibiting discrimination against women and girls, as well as guidelines for non-state actors on how to prevent such discrimination.

In the context of disaster risk reduction and climate change, the CEDAW Committee demonstrates that states have the obligation to adopt regulatory measures to protect women from human rights violations caused by private business actors. It also calls on states to ensure that their own activities, including those conducted in partnership with the private sector and civil society, respect and protect human rights. States must also ensure that effective remedies are available in the event of human rights violations related to the activities of non-state actors. These measures should be applied to activities occurring both within and outside of the territory of the state party.³⁸⁸

For example, in 2018 the CEDAW Committee called on Australia to “*establish a specialized mechanism to investigate violations of women's human rights by corporations that are based or registered in the State party or receive subsidies from it.*”³⁸⁹

³⁸² CEDAW, *General Recommendation No. 33*.

³⁸³ Council of Europe, *Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice – General Part*, September 2017.

³⁸⁴ *Bangkok General Guidance*.

³⁸⁵ UNWOMEN and the ICJ, *Gender Stereotypes in Laws and Court Decisions in Southeast Asia*, 2018.

³⁸⁶ CEDAW, *General Recommendation No. 28*, para. 9.

³⁸⁷ CEDAW, *General Recommendation No. 28*, para. 13.

³⁸⁸ CEDAW, *General Recommendation No. 37*, para. 51(d).

³⁸⁹ CEDAW, *Concluding observations on the eighth periodic report of Australia*, CEDAW/C/AUS/CO/8, 25 July 2018, para. 30(b).

SUMMARY OF CHAPTER 3

Under international human rights law:

- States have an obligation to respect, protect, and fulfill all human rights, without discrimination.
- States have an obligation to provide an effective remedy in case of human rights violations.
- States have obligations to ensure substantive equality between men and women and to eliminate all forms of discrimination against women and girls.
- The enjoyment of human rights such as the right to life, health, water, food, adequate housing and self-determination are threatened by environmental degradation. States must therefore ensure a healthy environment in order to respect, protect, and fulfill human rights.
- States must respect, protect, and fulfill procedural rights to support better environmental policymaking. This includes the rights to participate in environmental matters, to access environmental information and remedies.
- States have additional obligations towards individuals and groups of persons particularly vulnerable to environmental degradation including women and girls, having regard to the intersecting and compounding discrimination experienced by women and girls who are subject to other forms of discrimination (e.g. rural women, disabled women, indigenous women and women from ethnic and religious minorities).
- States' obligations regarding women and girls include obligations to:
 - (1) Protect women and girls against environmental harm that results from or contributes to discrimination;
 - (2) Protect women and girls against discrimination associated with environmental harms caused by third parties including businesses by all appropriate means including regulation;
 - (3) Provide women and girls with equal access to environmental benefits;
 - (4) Ensure that their actions relating to the environment do not themselves discriminate against women and girls.
- Though the judiciary plays a unique role in ensuring that states uphold these human rights obligations, all state entities including judicial, executive, legislative, and administrative entities are bound by these obligations in the execution of their constitutional mandates.

ANNEX 1: RESOURCES LOG

1. Case Law	
European Court of Human Rights	<i>López Ostra v. Spain</i> , No. 16798/90, 9 December 1994
European Court of Human Rights	<i>Guerra and Others v. Italy</i> , No. 116/1996/735/932, 19 February 1998
European Court of Human Rights	<i>Hatton and Others v. United Kingdom</i> , No. 36022/97, 8 July 2003
European Court of Human Rights	<i>Öneriyildiz v. Turkey</i> , 48939/99, 30 November 2004
European Court of Human Rights	<i>Taşkın v. Turkey</i> , No. 46117/99, 30 March 2005
European Court of Human Rights	<i>Budayeva and Others v. Russia</i> , No. 15339/02, 20 March 2008
European Court of Human Rights	<i>Tătar c. Romania</i> , No. 67021/01, 6 July 2009
The European Committee of Social Rights	<i>International Federation for Human Rights (FIDH) v. Greece</i> , Complaint No. 72/2011, 23 January 2013
African Commission on Human and Peoples' Rights	<i>Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria</i> , 27 October 2001
Court of Justice of the Economic Community of West African States	<i>SERAP v. Nigeria</i> , Judgment No. ECW/CCJ/JUD/18/12, 14 December 2012
Inter-American Court of Human Rights	<i>Kawas-Fernández v. Honduras</i> , Judgment of 3 April 2009
Supreme Court of Appeal of South Africa	<i>Company Secretary of ArcelorMittal South Africa/ArcelorMittal South Africa Ltd v. Vaal Environmental Justice Alliance</i> , 26 November 2014
High Court of South Africa Gauteng Division Pretoria	<i>Baleni and Others v. Minister of Mineral Resources and Others</i> , Case No. 73768/2016, 22 November 2018
Supreme Court of Justice of Mexico	<i>Amparo No. 631/2012 (Independencia Aqueduct)</i> , 8 May 2013

UN BODIES	
CEDAW Committee	<i>General Recommendation No. 19: Violence against Women</i> , 1992
CEDAW Committee	<i>General Recommendation No. 23: Political and Public Life</i> , 1997
CEDAW Committee	<i>General Recommendation No. 28 on the core obligations of States parties under article 2 of the CEDAW</i> , 16 December 2010
CEDAW Committee	<i>General Recommendation No. 33 on women's access to justice</i> , 3 August 2015
CEDAW Committee	<i>General Recommendation No. 34 on the rights of rural women</i> , 4 March 2016
CEDAW Committee	<i>General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19</i> , 14 July 2017
CEDAW Committee	<i>General Recommendation No. 36 on the rights of girls and women to education</i> , 16 November 2017
CEDAW Committee	<i>General Recommendation No. 37 on gender-related dimensions of disaster risk reduction in the context of climate change</i> , 7 February 2018
Working Group on the issue of discrimination against women in law and in practice	<i>Insecure land rights for women threaten progress on gender equality and sustainable development</i> , July 2017
UN Special Rapporteur on human rights and the environment	<i>Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment</i> , 30 December 2013
UN Special Rapporteur on human rights and the environment	<i>Individual Report on the United Nations Convention on the Elimination of All Forms of Discrimination against Women, Report No. 4</i> , December 2013

UN Special Rapporteur on human rights and the environment	<i>Compilation of good practices</i> , 3 February 2015
UN Special Rapporteur on human rights and the environment	<i>Framework Principles on Human Rights and the Environment</i> , 24 January 2018
UN Special Rapporteur on human rights and the environment	<i>Report of the UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment to the UN General Assembly</i> , 19 July 2018
OHCHR	<i>Frequently Asked Questions on Economic, Social, and Cultural Rights</i> , Factsheet No. 33, 2008.
OHCHR	<i>Women's Rights are Human Rights</i> , 2014
OHCHR	<i>Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights to the 10th session of the HRC</i> , 15 January 2009
OHCHR	<i>The rights of those disproportionately impacted by climate change</i> , Discussion Paper, 30 September 2016
UNEP	<i>Environmental Rule of Law: First Global Report</i> , 2019
UNDP	<i>Chemicals and Gender – Energy & Environment Practice Gender Mainstreaming Guidance Series</i> , Chemicals Management, February 2011
UN Women	<i>Factsheet: Women, Gender Equality and Climate Change</i> , 2009
UNIFEM	<i>Contribution to request by UN High Commissioner for Human Rights for information on human rights and climate change</i>

INTERNATIONAL DECLARATIONS AND TREATIES

Universal Declaration of Human Rights	1948
International Covenant on Economic, Social and Cultural Rights	1966
International Covenant on Civil and Political Rights	1966
International Convention on the Elimination of Racial Discrimination	1969
Convention on the Elimination of All Forms of Discrimination Against Women	1979
Convention on the Rights of the Child	1989
International Convention on the Rights of All Migrant Workers and Members of their Families	1990
Convention on the Rights of Persons with Disabilities	2006
Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights	2003
UN Guiding Principles on Business and Human Rights	2011
The Declaration of the UN Conference on the Human Environment	1972
Rio Declaration on Environment and Development	1992
UN Framework Convention on Climate Change	1994
Beijing Declaration and Platform for Action	1995
Aarhus Convention	2001
The Future We Want	2012
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	2003
Lima Work Programme on Gender	COP 20, 2014
Paris Agreement	COP 21, 2015
Establishment of a gender action plan	COP 23, 2017
Escazú Convention	2018

MANUALS/PRACTITIONERS' GUIDES

UNEP	<i>Judicial Handbook on Environmental Law</i> , 2005
UNEP	<i>Environmental Courts and Tribunals, A Guide for Policy Makers</i> , 2016
UN Women	<i>Gender Stereotypes in Laws and Courts Decisions in Southeast Asia, A Reference for Justice Actors</i> , 2016
ICJ	<i>Bangkok General Guidance for Judges on Applying a Gender Perspective in Southeast Asia</i> , 2016
ICJ	<i>Adjudicating Economic, Social, and Cultural Rights at National Level, Practitioners' Guide No. 8</i> , 2014.
ICJ	<i>The Right to a Remedy and Reparation for Gross Human Rights Violations, A Practitioners' Guide No. 2, Revised Edition</i> , 2018

Council of Europe	<i>Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice</i> , September 2017
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WEBSITES	
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Environmental Rights Database – Good practices in the use of human rights to protect the environment	http://environmentalrightsdatabase.org/
ECOLEX – The gateway to environmental law	https://www.ecolex.org/
ELAW – Legal & Scientific Resources	https://www.elaw.org/resources

ANNEX 2: FRAMEWORK PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT

The 16 Framework Principles were developed by the UN expert on human rights and the environment and set out basic **obligations of states under human rights law** as they relate to the enjoyment of a safe, clean, healthy and sustainable environment.

- 1) States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfill human rights.
- 2) States should respect, protect and fulfill human rights in order to ensure a safe, clean, healthy and sustainable environment.
- 3) States should prohibit discrimination and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy and sustainable environment.**
- 4) States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.
- 5) States should respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters.
- 6) States should provide for education and public awareness on environmental matters.
- 7) States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request.
- 8) To avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights.
- 9) States should provide for and facilitate public participation in decision-making related to the environment, and take the views of the public into account in the decision-making process.
- 10) States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment.
- 11) States should establish and maintain substantive environmental standards that are non-discriminatory, non-retrogressive and otherwise respect, protect and fulfill human rights.

12) States should ensure the effective enforcement of their environmental standards against public and private actors.

13) States should cooperate with each other to establish, maintain and enforce effective international legal frameworks in order to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights.

14) States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.

15) States should ensure that they comply with their obligations to indigenous peoples and members of traditional communities, including by:

- (a) Recognizing and protecting their rights to the lands, territories and resources that they have traditionally owned, occupied or used;
- (b) Consulting with them and obtaining their free, prior and informed consent before relocating them or taking or approving any other measures that may affect their lands, territories or resources;
- (c) Respecting and protecting their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories and resources;
- (d) Ensuring that they fairly and equitably share the benefits from activities relating to their lands, territories or resources.

16) States should respect, protect and fulfill human rights in the actions they take to address environmental challenges and pursue sustainable development.

ANNEX 3: BANGKOK GENERAL GUIDANCE FOR JUDGES ON APPLYING A GENDER PERSPECTIVE

PREAMBLE

Whereas the Universal Declaration of Human Rights recognizes that all human beings are born free and equal in dignity and rights;

Whereas the Declaration on the Elimination of Violence against Women recognizes that all women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms including: the right to equality, the right to equal protection under the law and the right to be free from all forms of discrimination;

Whereas the International Covenant on Civil and Political Rights (ICCPR) affirms that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law; and that the law must prohibit discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, including sex or gender;

Whereas the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) establishes that all States Parties must ensure the effective protection of women against any act of discrimination through competent national tribunals and other public institutions;

Whereas the empowerment of women contributes to the growth and development of a free and just society;

Whereas women throughout Southeast Asia still face multiple obstacles in achieving gender equality because of discrimination and stereotyping on the basis of their sex and gender, including within the justice systems of their countries;

Whereas every person is entitled to equal treatment before the law and equal access to justice;

Whereas the Beijing Statement of Principles on the Independence of the Judiciary in the LAWASIA Region affirms that in the selection of judges there must be no discrimination on the basis of race, color, gender, religion, political or other opinion, national or social origin, marital status, sexual orientation, property, birth or status;

Whereas the Regional Judicial Dialogue on Judging with a Gender Perspective was convened in Jakarta, Indonesia from 5 to 6 October 2015 in an effort to strengthen judicial decision-making based on gender equality and freedom from discrimination;

Whereas the participants at the Judicial Dialogue identified the urgent need to develop a set of general principles on how to judge with a gender perspective in order to fight discrimination against women and to ensure equal access to justice for all women;

Recalling General Recommendation No. 33 of the CEDAW Committee recognizing the obligation of States to ensure that women have access to justice and to guarantee that women are free from discrimination within the legal system;

Recalling the words of the Special Rapporteur on the Independence of Judges and Lawyers that a gender-sensitive judicial system is a prerequisite for the full and non-discriminatory realization of human rights for all human beings and the achievement of gender equality on the ground;

Recalling the Southeast Asia Regional Judicial Colloquium on Gender Equality, Jurisprudence and the Role of the Judiciary in Promoting Women's Access to Justice held on 4 and 5 September 2013 at which the participating judges reaffirmed that culture, customary rules, religion and traditional practices should not be invoked as justification for violations of the rights and freedoms of women;

Recognizing that women are not only victims or clients of the justice system, but also key actors in the administration of justice, as judges, lawyers, law enforcers, prosecutors, mediators, correctional authorities, legal professionals, and other stakeholders;

Recognizing that the elimination of gender inequality and discrimination against women and empowering of women are critical steps in the eradication of violence against women;

We, the judges from Southeast Asia, participating at the 2016 Judicial Workshop on Judging with a Gender Perspective, held in Bangkok, Thailand, from 24 to 25 June 2016, adopt this General Guidance for Judges on Applying a Gender Perspective in Southeast Asia:

GENERAL CONSIDERATIONS

1. The present Guidance aims to:
 - (a) Provide assistance for judges in the understanding and application of gender equality and non-discrimination principles;
 - (b) Assist justice sector professionals such as court officers, police officers, prosecutors, mediators, arbitrators, facilitators, lawyers, social workers, medical practitioners and civil society representatives in the identification of situations where same and/or differentiated treatment can lead to discrimination against women; and
 - (c) Contribute to the implementation of a judicial system that guarantees the right of women to equal access to fair and gender-sensitive court proceedings, mediation processes, adjudication and enforcement of judgments.
2. This Guidance was elaborated taking into consideration, and in some instances directly tracking the language of international law and standards recognized in the CEDAW and other pertinent international instruments, recommendations issued by the Special Rapporteur on the independence of judges and lawyers and the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) and comparative national law and standards, good practices, and experiences shared by the participants during the Workshop on Judging with a Gender Perspective held in Bangkok, Thailand on 24 and 25 June 2016.
3. This Guidance constitutes one of the many efforts of Southeast Asian justice sector stakeholders to eliminate the existing arbitrary and discriminatory treatment of women based on sex or gender that affects women in every aspect of their lives, especially when accessing the justice system.
4. This Guidance is directed to the members of the judiciary regardless of their level and

area of expertise and to judicial training institutions. The applicability of the Guidance should not be limited to cases related to family law or criminal law, but should be applied in all areas of law.

5. Members of the judiciary play an essential role in combating gender-based discrimination. Through their decisions, judges can help modify practices or customs that reinforce gender stereotypes; establish interpretation criteria to prevent direct and indirect discrimination; determine procedures that demonstrate and maintain respect for the dignity and equality of women within the system of the administration of justice; establish rules for the application of laws to conform to the universal principles of equality and non-discrimination against women; and influence lawmakers against enacting laws that violate the principles of equality and non-discrimination against women.

BASIC CONCEPTS

6. For the purpose of this Guidance, the following terms are defined as follows:
 - (a) “Sex” refers to a person’s physical, physiological and biological status, usually characterized as male, female or intersex, while the term “gender” refers to the social or cultural distinctions associated with a person’s biological sex. This categorization shapes expectations, responsibilities and opportunities ascribed to women and may result in power hierarchies and discrimination.
 - (b) Formal or *de jure* equality requires that men and women must be treated the same and guaranteed equality of opportunity where they are equally situated. Equality of opportunity means that everyone should, at the outset, have the same opportunities so that they can realize their capabilities and participate in all areas of economic, social, political and cultural life as equals.
 - (c) Substantive or *de facto* equality consists of ensuring women “equality of results,” which means that progress towards equality must bring about concrete outcomes or long-term changes in gender relations.
 - (d) Discrimination is a difference in treatment based on certain grounds such as race, color, language, religion, belief, caste, employment, political opinion, nationality, social origin, disability, age, location, region, indigenous and minority status, sex, gender, sexual orientation, gender identity, or other status, which has the effect of nullifying or impairing the enjoyment or exercise of rights.

Discrimination may be:

- i. Direct, when the act or law explicitly authorizes differentiated treatment which adversely affects the enjoyment of rights of one group in particular; or
- ii. Indirect, when the act or law seems to be neutral, but its consequences adversely affect the enjoyment of rights of one or more groups in particular.

A person or group of people may be discriminated against based on more than one ground. Discrimination is not usually an isolated occurrence; rather, intersectional forms of discrimination often occur in the context of discriminatory assumptions, norms and practices.

- (e) A distinction may be an objective and reasonable difference in treatment, which may serve a legitimate purpose, and does not adversely affect or restrict the enjoyment of rights.

- (f) Stereotyping is taking a generalized view or preconception of qualities possessed by or the roles that should be performed by members of a particular group. Stereotyping ignores a particular person's circumstances, abilities, needs and demands.
 - (g) Gender stereotypes are a particular subset of generalizations regarding the characteristics of men and women. They can be descriptive, based on a view or perception of what men or women are like, or they can be prescriptive, based on an ideology of what they should be like. These gender stereotypes often provide the basis for related generalized assumptions as to how men or women should or will behave in a range of circumstances.
7. Equality, equal protection of the law, and non-discrimination are fundamental principles of domestic and international human rights law. These principles prohibit disadvantageous treatment based on the idea of the inferiority or superiority of either of the sexes or on rules rooted in gender stereotypes. Guarantees of equality must ensure formal and substantive equality.
8. Applying a gender perspective will assist judges to:
- a) Be conscious of the gender norms that shape expectations, responsibilities and opportunities as they pertain to women;
 - b) Identify the sources of differentiated treatment based on sex or gender with the law, legal systems and practices;
 - c) Determine whether differentiated treatment upholds equal protection and advances equality of opportunity and outcome or if it is discriminatory;
 - d) Identify and expose the consequences the categorization based on sex and/or gender creates, such as: violation of rights, unequal power relations and differences in rights and opportunities, among others; and
 - e) Identify the legal principles and procedures in domestic and international law, including restorative justice principles and procedures, that judges/mediators/arbitrators can apply in the conduct of court proceedings/mediations/arbitrations and in the evaluation of facts and evidence in adjudication/mediation/arbitration to ensure gender equality, equal protection and non-discrimination.

Judging with a gender perspective would allow equal opportunity, equal access and equal outcome in the dispensation of justice to those persons whose rights are at risk of not being recognized due to their sex or gender.

GENERAL GUIDANCE FOR THE APPLICATION OF A GENDER PERSPECTIVE IN JUDICIAL DECISION-MAKING

9. Unequal gender relations and norms are socially constructed and must be changed through law, policy and practice.
10. Judges should carefully consider the facts of every case and the context surrounding the facts to determine if one of the persons involved is in an unequal power relationship or if one is adversely affected by unequal treatment, unequal legal protection or discrimination, because of sex or gender, including where sex or gender are one among multiple grounds of discrimination. Judges should be acutely conscious of any such inequalities while continuing to hear and determine the case.

Judges should be aware of intersecting forms of discrimination and exclusion based on race, color, language, religion, belief, caste, employment, political opinion, nationality, social origin, disability, age, location, region, indigenous and minority status, sex, gender, sexual orientation, gender identity, or other status. Cases involving intersecting

forms of discrimination or exclusion should be carefully reviewed, especially for the purpose of establishing reparation measures.

11. When hearing and adjudicating cases, judges should be careful to avoid using gender stereotypes.

Some common stereotypes judges should take care to avoid are:

- Women are physically weak;
- Women cannot make decisions on their own;
- Men are the head of the household and must make all the decisions related to family;
- Women should be submissive and obedient;
- Good women are sexually chaste;
- Every woman wants to be a mother;
- Women should be the ones in charge of their children;
- Being alone at night or wearing certain clothes make women responsible for being attacked;
- Women are emotional and often overreact or dramatize hence it is necessary to corroborate their testimony;
- Testimonial evidence provided by women who are sexually active may be suspect when assessing “consent” in sexual offense cases; and
- Lack of evidence of physical harm in sexual offense cases means consent was given.

12. When determining which law to apply to a particular case, judges should:

- a) Evaluate if the law is based on a stereotype or a sexist view of a person;
- b) Evaluate the purported gender neutrality of the law and the consequences of its application, including whether the law may lead to indirect discrimination and discriminatory impacts;
- c) Consider whether there are reasonable constructions and interpretations of the law that better guarantee substantive equality, equal protection and non-discrimination and, where appropriate, apply such an interpretation;
- d) Consider the domestic application of international treaties to which their State is a party and adopt an interpretation that is consistent with the application of any such applicable treaties; and
- e) If their State is not a party to CEDAW or the ICCPR or is a party but has not adequately incorporated CEDAW or the ICCPR in domestic law, judges may resort to these and other applicable international law treaties to resolve ambiguities present in domestic law and fill gaps in domestic law. These standards may also serve as an interpretative guide and as a source of definitions that judges might not find in their domestic legal systems.

13. When deciding on the merits of a case or whether a case merits judicial review, judges should:

- a) Apply domestic law in accordance with international law and standards;
- b) Apply human rights principles of accountability, equality, universality, indivisibility, interdependence, interrelatedness, and inalienability;
- c) Identify any international standards that have been applied and explain their application;
- d) Identify and take into account the existence of any unequal power relation or structural discrimination, as well as any stereotype or gender bias detected in the facts or in the legal process;
- e) Give a reasoned explanation as to why they are applying a particular law to the

case;

- f) Explain why applying a particular standard would cause illegitimate differentiated treatment;
 - g) Incorporate meaningfully the gender analysis; and
 - h) Take care to avoid re-victimization.
14. It should be recalled that under international law, any person who has suffered a human rights violation, including as a result of gender discrimination, has a right to an effective remedy and reparation for harm suffered. If reparation measures are necessary or appropriate, judges should apply measures that:
- a) Are consistent with the principles and standards of international human rights law;
 - b) Are free from gender stereotypes;
 - c) Effectively redress the disproportionate harm, based on sex or gender, caused to the victim;
 - d) Take into consideration the situation and needs of the victims and enable their meaningful participation where possible;
 - e) Adhere to the principles of restorative justice in criminal cases; and
 - f) Contribute to efforts to address unequal power relations and structural discrimination.

Judges should, to every extent possible, use inclusive or gender-neutral and gender-sensitive language in court proceedings, decision-making, mediation and other court issuances.

15. Women who have suffered from domestic violence should have access to legal aid and be exempted from payment of docket and other legal fees.
16. Appropriate accommodations, including the provision of medical services and social welfare, should be made in the legal process for women in special situations, including adolescents, the elderly and women who are pregnant or lactating.

RECOMMENDATIONS FOR INSTITUTIONAL POLICIES IN THE JUDICIARY

17. Developing a gender-sensitive and gender-responsive judicial system means not only including gender considerations in rules for adjudication of cases and mediation, but more generally in the administration of justice.
18. Gender equality should be a principle that guides judicial appointments. Women and men must be equally represented on the bench as they bring a diversity of perspectives, approaches and life experiences to adjudication, which influence the

interpretation and application of laws. To that end, legislative, administrative and judicial authorities responsible for appointments and promotions should move expeditiously and progressively to achieve gender parity.

19. Women judges should not be assigned only to cases involving family law or sexual violence, but to any other area that falls within their legal expertise. Women judges should be made eligible and considered for any level of the judiciary.

If necessary, temporary affirmative measures – like quotas, which should be consistent with requirements of integrity and high competency – should be implemented in order to assure that women are adequately represented in the judiciary. Evaluation procedures for the appointment and promotion of judges should be merit-based and considered with a gender perspective to avoid rules and situations that might place women at a disadvantage in judicial appointments and promotions.

20. Evaluation panels for the appointment and promotion of judges should be composed of men and women. Gender stereotypes should never be a factor, express or implicit, in the evaluation of judges for appointment or promotion. One criterion for the evaluation of candidates should be demonstrated commitment to human rights and gender equality.
21. All judges and other justice sector personnel shall be entitled to the same remuneration for work of equal value.
22. Judges and, in general, all judicial staff should be adequately trained to apply a gender perspective in their daily work. Judicial training institutions should include courses on gender mainstreaming and women's human rights.
23. It is advisable to establish a gender office, unit, or working group in the judiciary in order to effectively promote the inclusion and institutionalization of a gender perspective in the administration of justice and monitor compliance thereto.
24. The commitment to gender sensitivity and gender equality of individual judges should be recognized and endorsed to encourage other judges to follow suit and to boost morale in general.
25. The judiciary should endeavor to actively engage with the other branches of government to ensure the implementation of the above-mentioned general guidance.

