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Call for Inputs: Healthy Ecosystems and Human Rights: Sustaining the Foundations of Life by the Special Rapporteur on human rights and the environment, Dr. David Boyd to inform his thematic report focusing on human rights and associated obligations related to healthy biodiversity and ecosystems to be presented to the General Assembly in October 2020.

Questionnaire

The Special Rapporteur invites and welcomes your answers to the following questions:

1. Please provide examples of ways in which declining biodiversity and degraded ecosystems are already having adverse impacts on human rights. Adversely affected rights could include, among others, the rights to life, health, water, food, culture, non-discrimination, a safe, clean, healthy and sustainable environment, and Indigenous rights.

Degradation of social-ecological systems affects ecosystem services/Nature Contributions to People (NCP) and a good quality of life. The [Supreme Court of Justice of Colombia ruled in favour of 25 kids and youth plaintiffs](#) who argued that deforestation in the Amazon, the increase of the average temperature in the country and associated impacts in the water cycle and capacities of the soil to absorb water, threatened their Constitutional right to a healthy environment, life, health, food, and water.

Like deforestation, pollution also degrades NCP such as possibility to eat healthy food and breath clean. The cumulative impacts of high industrial concentration polluting an area can derive in devastated ecosystem also called “sacrifice zones”. For example, in Quintero Puchuncaví is an example of a “sacrifice zone” where the impacts of highly polluting industries range from water contamination affecting local fishing communities to gases causing massive intoxication - approximately 700 people- particularly children, youth and elder.¹ The [Supreme Court of Chile](#) ruled that in this case Constitutional rights have been violated affecting peoples’ “physical and mental integrity, as well as their health and life, and at the same time violating the right to live in an environment free of contamination”.

2. To protect a wide range of human rights, what are the specific obligations of States and responsibilities of businesses in terms of addressing the main direct drivers of harm to biodiversity and ecosystems (e.g. land conversion, loss and degradation of habitat, climate change, overexploitation, pollution, invasive species) and the indirect drivers (unsustainable production and consumption, rapid human population growth, trade, conflict and inequality)?

An example of a court that has specified obligations to address drivers that harm healthy ecosystems is [Supreme Court of Colombia](#). This court connected these obligations to the principle of solidarity. They include “the duty and co-responsibility of the Colombian State to stop the causes of greenhouse gas emissions caused by the abrupt deforestation of the Amazon, the imperative of

¹ https://www.cnnchile.com/pais/estudio-contaminantes-zona-de-sacrificio-quintero-puchuncavi-riesgo-cancer_20200218/ and <https://es.mongabay.com/2019/11/puchuncavi-quintero-crisis-social-en-chile/>

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adopting immediate mitigation measures, and protecting the right to environmental well-being, both of the petitioners and of other people who inhabit and share the Amazonian territory, not only the national territory, but also abroad, along with all the inhabitants of the globe, including ecosystems and living beings”.

The [Mexico’s National Human Rights Commission](#) (NHRC), in its Recommendation 26/2016 concerning management plans of natural protected areas and their connections with human rights, specifies states’ obligations to address direct drivers affecting biodiversity and indirect drivers concerning conflict and inequality. The obligations entail developing and publicizing Natural Protected Areas management plans in the Federal Official Gazette as well as enabling maximum resources available to comply with these obligations in a framework of legal certainty and with a human rights based approach. These obligations also include to “communicate publicly, in an appropriate, timely and comprehensive manner, the initiatives to formulate or review of management programs, in order to guarantee that interested persons are informed in due time, so that they can participate in the corresponding process.” Among this NHRC’s recommendations to implement the right to a healthy environment is capacity building to governmental officials working in natural protected areas on the right to a healthy environment in general, and of indigenous peoples and local communities rights in particular.

Obligations concerning healthy ecosystems have also been specified at regional levels for example by [Interamerican Court of Human Rights](#). Judges of the Interamerican Court of Human Rights, Trindade, Pacheco Gomez and Abreu Burelli(2001) ², in interpreting Article 21 of the American Convention on Human Rights concerning property rights, considered that the relationships of the the community with their lands need to be acknowledged bearing in mind the facts of the case and inferred that “just as the land they occupy belongs to them, they in turn belong to their land’ (para. 8). They referred both to intertemporal rights and responsibilities that arise from this characterisation of the land by the Mayagna community including the “prevalence that they attribute to the element of conservation over the simple exploitation of natural resources”. These judges also refer to the importance of the: “. . . spiritual and material relationship of the members of the Community with the lands they have occupied, not only to preserve the legacy of past generations, but also to undertake the responsibilities that they have assumed in respect of future generations” (para. 9). Although this case focuses on the relationships between forest ecosystems and a particular indigenous community, certain arguments put forward in human rights mechanisms can help in specifying new understandings of rights and responsibilities beyond cases of indigenous peoples. Specifically, the argument that the right to a healthy environment includes caring for the environment for its own sake and for future generations.³

3. Please provide specific examples of constitutional provisions, legislation, regulations, policies, programs or other measures that employ a rights-based approach to prevent, reduce, or eliminate

² Inter-American Court of Human Rights (2001) I/A Court H.R., Case of the Mayagna (Sumo) Awas Tingni community v. Nicaragua. Merits, Reparations and Costs. Judgment of 31 August 2001. Series C No. 79. The Court’s judgment was made in 2001 and the case was closed in 2008. All documents referring to the Court’s judgment including the opinion of the judges are available at <<http://www.corteidh.or.cr/cf/Jurisprudencia2/index.cfm?lang=en>> accessed 16 July 2016. For the monitoring of compliance with the judgment, see A Court H.R., Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of 3 April 2009 <<http://www.corteidh.or.cr/cf/Jurisprudencia2/index.cfm?lang=en>>

³ Ituarte-Lima, C., (2017) Transformative biodiversity law and 2030 Agenda: mainstreaming biodiversity and justice through human rights in Butter, B. Risk, Resilience, Inequality and Environmental Law, Edward Elgar Publishing

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harm to biodiversity and ecosystems or to restore and rehabilitate biodiversity and ecosystems.

The 2010 Kenyan Constitution recognises everyone's right to a clean and healthy environment including the protection of the environment "for the benefit of present and future generations through legislative and other measures..." (Article 42).⁴ In specifying the content of State's obligations, this Constitution refers explicitly to biodiversity: "State shall protect genetic resources and biological diversity" (Article 69(e)) and that "the State shall encourage public participation in the management, protection and conservation of the environment"(Article 69(d)).

The 2013 Constitution of Viet Nam recognizes the right to a healthy environment under Article 43, which states: 'Everyone has the right to live in fresh environment and has the duty to protect the environment.' and also specifies state's obligation concerning healthy ecosystems and biodiversity. Substantive state obligations include 'protect the environment; manage, and effectively and stably use natural resources; protect nature and biodiversity; take initiative in prevention and resistance against natural calamities; and respond to climate change.' (Article 63 (1)). Procedural obligations include to hold accountable organisations and individuals causing harm to the environment, provide remedy and compensation for damage (Article 63 (3)).

4. If your State is one of the 156 UN Member States that recognizes the right to a safe, clean, healthy and sustainable environment,⁵ has this right contributed to protecting, conserving and restoring biodiversity and healthy ecosystems? If so, how? If not, why not?

One of the benefits of the recognition of the right to a healthy environment in for example Colombia and Mexico is that judicial mechanisms and quasi-judicial mechanisms have then applied it to specific cases weaving together Constitutional law and relevant international treaties for healthy ecosystems and biodiversity.

The Supreme Court of Colombia elaborates the content of the Constitutional right to a healthy environment (Article 79) with reference to [biocultural rights and weaving together national law and Convention on Biological Diversity](#), among other international instruments.

The Mexican National Human Rights Commission (26/2016) recognises that the human right to a healthy environment in Mexico is founded on Constitutional provisions (Article 4) and the international treaties on human rights to which the Mexican State is a party. This NHRI also argues that this right is developed through other international treaties that Mexico is party, UN Convention on Biological Diversity, Ramsar Convention and UN Framework Convention on Climate Change that "broaden its scope of protection in terms of protection of [cultural heritage, biological diversity, adaptation to climate change and protection of hydrological regimes](#)

5. Please provide specific examples of good practices in preventing, reducing, or eliminating harm to biodiversity and ecosystems, or restoring and rehabilitating biodiversity and ecosystems. These examples may occur at the international, national, sub-national, or local level. Where possible, please provide evidence related to the implementation, enforcement, and effectiveness of the good practices (e.g. measurable outcomes such as increases in terrestrial and marine protected areas, increases in Indigenous and Community Conserved Areas, declining rates of deforestation and poaching, or progress in the recovery of species that were previously threatened or endangered).

⁴ See more Angela Mwenda and Thomas N. Kibutu, 'Implications of the New Constitution on Environmental Management in Kenya', 8/1 Law, Environment and Development Journal (2012), p. 76, available at <http://www.lead-journal.org/content/12076.pdf>

⁵ See, A/HRC/43/53, Annex II.

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In 2020, the UN Secretary General António Guterres issued the [UN Global Call for Action on Human Rights](#). Under the ‘rights of future generations’ theme, it calls for universal recognition of ‘the right to a safe, clean, healthy and sustainable environment,’ and for increasing the focus on protecting the rights and supporting the work of environmental human rights defenders. Youth and women are among those courageously undertaking the role of environmental human rights defenders, particularly in the Global South.

In multilateral environmental fora, youth are active in the international Convention on Biological Diversity negotiations, notably through the [Global Youth Biodiversity Network \(GYBN\)](#), an interconnected and interdisciplinary network of young people from every region of the world, who share the common goal of preventing and halting the loss of biodiversity.

The Chilean Constitution (Article 19) recognises the right to a pollution-free environment and its [National Human Rights Plan](#), developed by the Ministry of Justice and Human Rights, includes healthy ecosystems measures such as green infrastructure development in urban, and territorial planning including territorial equity and the right to live in safe zones.

Participation in territorial planning can help restore biodiversity in urban setting. For example, a [child-friendly city initiative](#) in Boulder, Colorado, US, found that one of the benefits of including children in city planning was their emphasis on direct contact with nature, leading to designs for communities and common spaces that incorporate water, fruit trees, flowers and animals. By listening to the children’s proposals, all in the city have benefited, particularly those facing heightened challenges, such as mental health issues, or poverty. [Exposure to biodiversity](#), from [bird or frog sounds](#) to [wildflower smells](#), can lead to mental restoration, calm and creativity. Neuroscience research shows that [natural-enriched environments](#) that prompt movement and engagement help keep our brains healthy, and make us happier. The science backs up what indigenous peoples and local communities around the world have highlighted for a long time.

Many people and organizations have call for weaving human rights, biodiversity and SDGs in the post-2020 global biodiversity framework including integrating the rights-based approach across all targets and as a stand-alone target. Among the proposals for a stand alone target include by 2030 ensure the respect, protection and fulfillment of the human right to a safe, clean healthy and sustainable environment and safeguard ecosystems for present and future generations, through effective laws, policies and institutions that implement the three CBD objectives, including full and meaningful participation in decision-making, access to information and justice, in compliance with international human rights law.⁶

6. Please identify specific gaps, challenges and barriers that your government, business, or organization has faced in attempting to employ a rights-based approach to preventing, reducing, or eliminating harm to biodiversity and ecosystems.

From violent conflict to climate-related migration, children, women and men displaced from their lands lose [vital connections with territories of life](#), interfering with their enjoyment of healthy ecosystems and biodiversity, and therefore their right to a healthy environment.

⁶ Ituarte-Lima, C., and Schultz, M., (eds.) 2019. Human right to a healthy environment for a thriving Earth: Handbook for weaving human rights, SDGs, and the post-2020 global biodiversity framework, SwedBio/Stockholm Resilience Centre, International Development Law Organization, Office of the High Commission of Human Rights-Special Procedures, UN Environment and Natural Justice.

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The [global unsustainable natural resource extraction that degrades the ecosystems on which humanity relies is now combined with COVID-19](#). Indigenous people and local communities living in relatively remote areas, for example where the [100 isolated indigenous groups](#) in Brazil are highly vulnerable to COVID-19 not only individually but collectively.

In 2019, [Global Witness](#) found that more than three people were murdered each week, as a direct consequence of their actions to defending their land and our environment. Risks increase that life-sustaining ecosystems are sacrificed in the name of supporting the economy without due diligence on environmental and social impacts for example in the case of “sacrifice zones” in Chile mentioned earlier.

7. Please specify ways in which additional protection is provided (or should be provided) for populations who may be particularly vulnerable to declining biodiversity and degraded ecosystems (e.g. women, children, persons living in poverty, members of Indigenous peoples and local communities, older persons, persons with disabilities, ethnic, racial or other minorities and displaced persons). How can these populations be empowered to protect and restore declining biodiversity and degraded ecosystems?

Effective collective action on healthy ecosystems by the current generation may have exponential benefits for future generations, while the cost of inaction may be catastrophic not only for the current generation but also for future generations and other living beings. Jamison Ervin from the UN Development Programme (UNDP) [highlights the importance of preventive action](#) and considering tipping points to address both the nature crises and COVID-19, “Early actions have exponential benefits, late actions are exponentially more difficult, and actions beyond the point of no return may have little or no benefit at all”.

The Convention on the Rights of the Child and legal tools such as amicus briefs can help specify how healthy ecosystems and biodiversity are interconnected with the rights of children. For example, UNICEF in its amicus brief concerning the National Inquiry on climate change and the "Carbon Majors" by the Philippines National Human Rights Commission specifies [commitments for intergenerational equity](#). UNICEF acknowledges that the Convention on the Rights of the Child "articulates the fundamentally interdependent nature of the relationship between environmental and child rights protection – a relationship that has been overlooked for too long by both States and other actors, but which is at last the subject of increasing recognition at both international and national levels". It highlights that the UN Convention on the Rights of the Child is one of the few human rights instruments to explicitly recognize the importance of a healthy environment and places specific obligations on States in this respect, specifically on Article 24(2) on the right of the child to the enjoyment of the highest attainable standard of health provides that: “States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: [...] to combat disease and malnutrition [...] taking into consideration the dangers and risks of environmental pollution.” Article 29(1) on the aims of education states that: “States Parties agree that the education of the child shall be directed to: [...] the development of respect for the natural environment.”

8. How do you safeguard the rights of individuals and communities working on biodiversity issues (potentially identified as environmental human rights defenders or land defenders)? What efforts has your Government made to create a safe environment for them to freely exercise their rights without fear of violence, intimidation, or reprisal?

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Among [environmental human rights defenders](#) are youth and children who have a transformative role to play - not only as the future generation that will inherit an Earth in crisis, but also as today's agents of change that can help re-imagine ways to restore and sustain healthy ecosystems and biodiversity for all. See examples above.