Submission to the Special Rapporteur on human rights and the environment: "Healthy Ecosystems and Human Rights”

I. INTRODUCTION

1. An ecosystem is a community of living organisms in conjunction with the non-living components of their environment, interacting as a system. The major types of ecosystems are forests, grasslands, freshwater and marine. Humans are part of many ecosystems and they depend of them equally as they influence them. As underlined in a [study prepared for the European Parliament's Subcommittee on Human Rights "Biodiversity as a Human Right"](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_STU(2020)603491), current negative trends in biodiversity and ecosystems will undermine progress towards 80% of the assessed targets for the Sustainable Development Goals related to poverty, hunger, health, water, cities, climate, oceans and land. This submission summarises ClientEarth's experience regarding healthy ecosystems and their correlation with human rights from our Forests, Oceans, Wildlife and Climate Programmes across the world.

II. ECOSYSTEMS DEGRADATION - ADVERSE IMPACTS ON HUMAN RIGHTS (Q 1)

1. Forests cover 31% of emerged lands[[1]](#footnote-1) and provide for the livelihood and needs of 2.4 billion peoples.[[2]](#footnote-2) Tropical forests are particularly critical as they host at least two thirds of the world’s biodiversity.[[3]](#footnote-3) Yet, about 420 million ha of forest were lost between 1990 and 2020.[[4]](#footnote-4) The loss in biodiversity resulting from deforestation and forest degradation particularly affects the rights of local communities and indigenous peoples (LCIPs) causing food insecurity and affecting their right to water and their cultural rights. More detailed descriptions of the correlation between destruction of forest ecosystems and violations of LCIPs' human rights are found in Annex 1 point 1.
2. Marine ecosystems are the largest aquatic ecosystems with oceans and seas covering more than 70 per cent of the Earth’s surface. They are crucial for food security, climate regulation and generation of oxygen.[[5]](#footnote-5) Yet ocean and sea pollution is a well-known fact that contributes to fast and profound degradation of marine ecosystems. There is a direct (although still poorly understood) link between overfishing (both legal and illegal) and violations of the rights of workers (notably the right to be free from slavery, servitude, and forced labour) and the rights of communities whose waters are overfished (food security and traditional way of life). For examples please see Annex 1 point 2.
3. In Europe, degradation of wildlife and habitats contribute to violations of human rights of local populations: rights to private and family life, water, property, and to freedom of association and expression. Big construction projects or industry farming are changing not only the landscape but also the life of local populations, threatening their way of life and livelihoods. For examples please see Annex 1 point 3.
4. Special attention should be paid to the right to health and its relation with healthy ecosystems. Increasing research and data link degradation of ecosystems and zoonotic diseases. The 2014 Ebola outbreak highlighted critical links between biodiversity loss and human health.[[6]](#footnote-6) Researchers are analysing the links between deforestation and malaria outbreaks.[[7]](#footnote-7) Chemical and plastic pollution have obvious impacts on the right to health and right to healthy environment. We have seen this for example in the European Union, where [we have signalled the need for better regulation on food contact materials](https://www.clientearth.org/european-rules-on-chemicals-used-in-the-food-chain-do-not-protect-public-health/) to ensure that chemicals classified as carcinogenic, mutagenic and toxic for reproduction and endocrine disruptors do not leach into people’s food. Please see Annex 1 point 4.
5. The full picture of human rights violations coming from the degradation and destruction of healthy ecosystems would not be complete without pointing to the climate crisis's profound effect on all ecosystems. ClientEarth described these violations in the [case of indigenous Torres Strait Islanders filed with the United Nations Human Rights Committee against Australia](https://www.clientearth.org/human-rights-and-climate-change-world-first-case-to-protect-indigenous-australians/) on 13 May 2019, submission to the UN Special Rapporteur in the field of cultural rights of 1 May 2020 and in Annex 1 point 5.

III. THE STATE OBLIGATIONS AND RESPONSIBILITIES OF BUSINESSESS (Q 2)

1. Overexploitation of natural resources is a driving force of the degradation of these ecosystems. States and businesses have decisive roles to play as they shape the landscape in which exploitation of natural resources is taking place. Trade should be a means to achieve better social and environmental standards, rather than an end in itself. Negotiators of trade agreements should therefore ensure that the bilateral or multilateral trade agreements do not put further pressure on the environment, social and human rights, and in particular do not negatively impact the livelihoods of forest communities and forest ecosystems. Independent environmental impact assessment should be recognised as a basic responsibility of the authorities. Environmental assessments are often conducted in an arbitrary manner and do not take into account all possible risks. Authorities tend to steer the results of these assessments and they often commission assessments from experts who will provide desirable conclusions. We have identified such cases in many countries that we work in, including Bulgaria, Hungary and Romania.[[8]](#footnote-8)
2. States have clear obligations to end the overexploitation of natural ecosystems by setting up effective statutory regimes and enforcing those regimes. The European Union has such a regime in theory, under its Common Fisheries Policy. For example, the EU committed in law to end overfishing by 2020 by achieving “maximum sustainable yield” for all fish stocks that year. It did not happen, because of the failure over a period of several years to follow scientific advice when setting catch limits at EU level. Likewise, the EU in theory requires fishing boats to land all catches (i.e. not throw dead fish subject to catch limits back in the sea). Yet these rules are widely flouted. States also have obligations to cooperate to stop overfishing. But one of the reasons that overfishing still occurs in EU waters is the lack of transparency around the process for setting catch limits, which happens in December each year. [The European Ombudsman recently condemned](https://www.ombudsman.europa.eu/en/decision/en/127388) the lack of transparency in the process. Given the billions of dollars spent on fishing subsidies every year, States also have an obligation to ensure those subsidies are spent sustainably and do not drive overfishing (for example, by expanding fleets). States also have obligations to ensure that selective and non-destructive fishing gear is used. Likewise, States are required to have in place legislation and enforcement systems that ensure that seafood that is the result of IUU fishing does not enter their markets, including through imports. Business have obligations as well. An excellent example of businesses formulating and living up to their own obligations are [the Codes of Conduct of the UK-based Sustainable Seafood Coalition](https://www.documents.clientearth.org/wp-content/uploads/library/2015-09-16-sustainable-seafood-coalition-codes-of-conduct-ssc-en.pdf). This kind of pre-competitive cooperation among businesses in the seafood industry is needed to make fishing sustainable.
3. States must put in place regulation to stop the massive overproduction of plastic and ensure the transition to a circular economy ([currently underway in the EU](https://ec.europa.eu/environment/circular-economy/)). They must also regulate so as to ensure that chemicals that are harmful to humans and the environment are not used instead of safe alternatives. The regulation of single-use plastics ([a process currently underway in the European Union](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_19_1873)) is key. One key aspect of the EU regime places responsibilities on business through extended producer responsibility, which requires producers of plastic to cover the costs of dealing with plastic waste.
4. Mandatory due diligence, with no threshold, should be used by all businesses to identify, prevent and mitigate their risks and impacts on the environment and human rights. It should apply across all sectors, supply and investment chains. Any effective due diligence should include access to remedies[[9]](#footnote-9) and complaint mechanism which enable third parties to highlight concerns and seek redress. This would also be in line with [the UN Guiding Principles on Business and Human Rights](https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf). ClientEarth legal experts have teamed up with Global Witness[[10]](#footnote-10) to produce a [briefing for EU policy-makers about mandatory due diligence](https://www.documents.clientearth.org/wp-content/uploads/library/2019-07-23-strenghtening-corporate-responsibility-the-case-for-mandatory-diligence-in-the-eu-to-protect-people-and-the-planet-coll-en.pdf) outlining how greater scrutiny of business will greatly improve protections for people and the planet. Examples of national regulation addressing environmental and human rights (including child labour) due diligence include the [Dutch law on the Child Labour Due Diligence](https://www.lexology.com/library/detail.aspx?g=7ea77664-d4a4-4c0b-b1db-46c40ba630f3) and laws in [France](https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&categorieLien=id%20and%20https://www.business-humanrights.org/en/sherpa-releases-new-guidance-legal-analysis-on-french-duty-of-vigilance-law) and [Finland](https://tem.fi/artikkeli/-/asset_publisher/yritysvastuulain-selvitys-kaynnistyy?_101_INSTANCE_ArnNKA3Xnf7q_languageId=en_US).

IV. GAPS AND BARRIERS TO EMPLY A RIGHTS-BASED APPROACH (Q 6)

1. Gaps and barriers to employing a rights-based approach include range from problems with legal standing and access to justice, and administrative barriers that block transparency, access to information and public participation, to more trivial problems like insufficient knowledge from the authorities that should enforce laws or [insufficient use of the precautionary principle to protect health](https://www.documents.clientearth.org/wp-content/uploads/library/2020-03-27-ce-approaches-to-precaution-ce-en.pdf). Lack of clear recognition of the substantive right to a healthy environment and failures to understand of the interconnection between the environment and human rights is an additional barrier.
2. When working to ensure the enforcement of existing legislation to protect forests and the people who depend on them, challenges we encounter include, but are not limited to: (i) prosecutors’ lack of knowledge of environmental protection legislation, leading to very little litigation in the area; (ii) [incomplete or improper enforcement of existing legislation protecting both forest and timber trade](https://wwf.panda.org/knowledge_hub/?357123/WWF-Enforcement--Review-of-the-EU-Timber--Regulation-EUTR); (iii) lack of resources allocated by states to enforce relevant legislation; (iv) incomplete or inexistent knowledge by civil society of their rights; (v) no clear definition of certain key terminology (i.e. environmental crime) for legal instruments to be fully functional.
3. One of the most persistent barriers is lack of access to information and administrative barriers to ensuring transparency of investment projects. For example, in Romania it took years and involved both administrative and court proceedings to acquire copies of forest management plans.[[11]](#footnote-11) Even when access was granted, the authorities still charges unreasonably high costs for copies of the files. In our case regarding protection of the European bison in Poland, the key administrative decisions were published much later than national law required, which prevented an ecological organisation to join the legal proceedings.
4. The legal requirement for standing is often interpreted too restrictively, creating barriers in access to justice. ClientEarth has seen this clearly in the EU when trying to ensure that fishing catch limits are set at sustainable levels. There is also no clear means under the EU legal order to challenge catch limits set unlawfully high; we are now undertaking litigation at the national level to try to have these catch limits tested. In general, those most affected by overfishing have little access to information or justice to challenge it.
5. Transparency is key to making a rights-based approach work. To give one of many, many examples, maps showing where pesticides are available in some but not all countries or regions.

V. HIGH-INCOME STATES SHOULD ASSIST LOW-INCOME STATES (Q 9)

1. The European Union's responsibility for global deforestation is undeniable. As the 2013 report[[12]](#footnote-12) "The impact of EU consumption on deforestation" revealed, the EU27 imported and consumed 36% of crops and livestock products associated with deforestation in the countries of origin, over the period 1990-2008. The majority of deforestation is happening in low-income tropical and sub-tropical regions. Therefore, providing technical and financial support for better land governance and more sustainable management of tropical and sub-tropical forests is key to addressing this issue. Moreover, producer, often low-income countries, acting alone, will not reduce or halt deforestation. Consumer, often high-income countries must reduce their demand for commodities that drive illegal and unsustainable deforestation and control their market better (for example by mandatory due diligence) by requiring companies and investors to demonstrate that their activities are not associated with illegal and unsustainable forest conversion and violations of communities’ rights. Some guidance can be found in the European Commission [EU Action to Protect and Restore the World’s Forests](https://ec.europa.eu/environment/forests/eu_comm_2019.htm).
2. One key first step is for high-income States to enforce their own laws on fishing boats from their countries which fish in the waters of low-income States (e.g. EU fishing boats operating in the waters of Western African countries) and to strike fair deals with those States for access to their waters. Another is for high-income States to have in place fair and effective rules for ensuring that seafood resulting from IUU fishing does not enter their markets, as in the EU’s [IUU Fishing Regulation](https://ec.europa.eu/fisheries/cfp/illegal_fishing_en). This requires effective traceability systems which also have to be up-to-date.
3. The introduction of a circular economy in high-income States will prevent ecosystem degradation in those States and in low-income States, by ensuring that waste (especially plastics and chemical waste) do not end up in those countries. Another key step would be to eliminate “double standards”: companies based in high-income States should not be allowed to sell harmful substances (e.g. pesticides that harm pollinators) that are forbidden in the rich world to low-income States. High-income States have considerable influence since that is where the largest chemicals companies are based.
4. [Reform of arbitration mechanisms like ISDS](https://www.documents.clientearth.org/wp-content/uploads/library/2019-july-clientearth-uncitral-aligning-phase-3-with-ciimate-change-efforts2.pdf)**[[13]](#footnote-13)** that are embedded in most trade and investment agreements should be considered. These provisions enable big corporations to sideline domestic courts and privately sue governments whose environmental or social policies may affect their investment.[[14]](#footnote-14) It has regulatory chilling effect on environmental laws. They can prevent governments from applying existing environmental laws or from drafting new regulations under the fear of foreign companies’ attacks.

VI. PROTECTION OF VULNERABLE POPULATIONS (Q 7)

1. Plastic and chemical pollution affect children’s development. Endocrine-disruptive chemicals have particular impacts on women’s reproductive rights; and poor people (such as [Roma in Europe](https://eeb.org/library/pushed-to-the-wastelands-environmental-racism-against-roma-communities-in-central-and-eastern-europe/)) are particularly exposed to these forms of pollution. At present, there do not appear to be additional protections; anti-discrimination laws in the European Union, for example, do not recognise the notion of environmental racism. Greater transparency around pollution and regulation will empower these populations to take action.
2. The populations most vulnerable to declining biodiversity and degraded ecosystems are the people whose livelihoods depend most on their being enough fish and fish species left in the sea: low-income people working in or otherwise dependent on the industry; and people dependent on fish for food. Billions of dollars in subsidies could be redirected to protect them, including by ensuring that fishing gear is more selective (as opposed to increasing fishing capacity), more enforcement takes place, and that money is directed (through social security systems or otherwise) to wage replacement instead of to industry subsidies. (See, for example, [the recommendations of a group of NGOs about covid-19 recovery](https://our.fish/publications/covid-19-blue-recovery/)).

VII. RECOMMENDATIONS AND GOOD PRACTICES

1. In our practice, we see repetitive obstacles across jurisdictions and legal frameworks that hamper effective protection of ecosystems and human rights. To improve the situation we think it is imperative to ensure:

* independent environmental impact assessment of investment of every size,
* mandatory due diligence without thresholds across all supply chains,
* reform of the international trade and investment system including the reform of arbitration mechanisms such as ISDS,
* improve transparency and public participation by enforcing access to information rules and expand legal standing rules to ensure effective access to justice to protect environment and human rights, particularly to civil society,
* improve application of the precautionary principle to situations of scientific uncertainty in order to protect human health,
* to recognize the right to the healthy environment on a global level.

1. Some good practices to protect Forest ecosystems include empowering LCIP populations. There is mounting evidence that decentralised forest management as well as increased rights recognition contribute to protecting and restore degraded ecosystems.[[15]](#footnote-15) Yet, only 10% of the world’s land is legally owned by LCIPs, and in the Congo Basin, the world’s second largest rainforest, less than 1% of land is legally owned by LCIPs.[[16]](#footnote-16) Additional protection should be provided with easier, shorter and less costly land titling procedures in order to effectively allow LCIPs to formalise their customary land rights. Anchoring land and forest tenure in law is critical because it offers legal certainty and provides an avenue for accountability. As such it empowers communities to preserve their forests and invest in them.
2. Pre-competitive cooperation among seafood industry members to ensure that their products are the result of lawful, sustainable fishing practices is a good practice that is bringing results. This involves industry actors getting together and agreeing to sustainability standards that go above and beyond the law. One particularly successful example is [the Sustainable Seafood Coalition](https://www.sustainableseafoodcoalition.org/) in the UK. Among many other commitments, the members in 2018 recognised the risk of modern slavery in their supply chains and committed to have policies related to social and ethical challenges in their supply chains. The model is being applied elsewhere, including in [Hong Kong](https://www.sustainableseafoodcoalition.org/uk-support-helps-new-hong-kong-sustainable-seafood-coalition-to-launch/).
3. Although not enough is being done at to enforce EU fisheries laws, some of the main innovations brought in over the past decade to the EU’s Common Fisheries Policy have significantly improve protection of biodiversity in EU waters. For example, the EU committed in law in 2013 to make fishing sustainable by 2020. They did not do so, but they have increasingly set catch limits in accordance with scientific advice.
4. The European Chemicals Agency has taken a strong stance recently to prevent harmful substances degrading the environment and protecting human health. This includes, for example, the decision by the agency last year to label GenX chemicals (replacing the now-notorious PFOAs in the production of Teflon) as “substance of very high concern”, which was very innovative in terms of its legal basis (based on its mobility and persistence in the environment).

|  |
| --- |
|  |

Annex 1 - mapping cases

ClientEarth is a charity that uses the power of the law to protect people and the planet. We are international lawyers who believe the law is a tool for positive change. We work on laws throughout their lifetime, from the earliest stages to implementation.

1. FAO (2020) ‘Global Forest Resources Assessment 2020 – key findings’. [↑](#footnote-ref-1)
2. FAO (2018) ‘The state of the world’s forests’. [↑](#footnote-ref-2)
3. Raven PH (1988) ‘Our diminishing tropical forest’. [↑](#footnote-ref-3)
4. FAO (2020) ‘Global Forest Resources Assessment 2020 – key findings’. [↑](#footnote-ref-4)
5. <https://www.unenvironment.org/explore-topics/oceans-seas/about-oceans-seas> [↑](#footnote-ref-5)
6. <https://www.iucn.org/content/ebola-outbreak-highlights-critical-links-between-biodiversity-loss-and-human-health-says-iucns-wildlife-health-specialist-group> [↑](#footnote-ref-6)
7. <https://www.the-scientist.com/news-opinion/deforestation-tied-to-changes-in-disease-dynamics-65406> [↑](#footnote-ref-7)
8. Bankwatch on the situation of Kresna Gorge in Bulgaria: <https://bankwatch.org/blog/european-commission-complicit-in-eu-nature-law-violations-in-bulgaria-s-kresna-gorge> and ClientEarth’s intervention in Romania: <https://www.clientearth.org/press/commission-urged-to-protect-europes-last-natural-forests-from-illegal-logging/>. [↑](#footnote-ref-8)
9. The recent 2018 OECD Due Diligence Guidance for Responsible Business Conduct (RBC) describes in its chapter on remediation the relationship between remediation and due diligence <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf> [↑](#footnote-ref-9)
10. <https://www.clientearth.org/eu-can-better-protect-environment-by-strengthening-corporate-responsibility/> and legal briefing: <https://www.documents.clientearth.org/wp-content/uploads/library/2019-07-23-strenghtening-corporate-responsibility-the-case-for-mandatory-diligence-in-the-eu-to-protect-people-and-the-planet-coll-en.pdf> [↑](#footnote-ref-10)
11. The problem with access to environmental information in Romania was confirmed by the Commission when it opened infringement proceedings against the country on February 12, 2020. See: <https://ec.europa.eu/commission/presscorner/detail/en/inf_20_202> [↑](#footnote-ref-11)
12. <https://ec.europa.eu/environment/forests/pdf/1.%20Report%20analysis%20of%20impact.pdf> [↑](#footnote-ref-12)
13. See ClientEarth submission to the United Nations Commission on International Trade Law (UNCITRAL) Working Group [↑](#footnote-ref-13)
14. <https://www.clientearth.org/investor-state-dispute-settlement-must-go-to-protect-our-environment/> [↑](#footnote-ref-14)
15. Intergovernmental Panel on Climate Change (IPCC) (2019) ‘Special Report on Climate Change and Land’ FAO (2016) ‘Forty years of community-based forestry’ Climate and Land Use Alliance (2014) ‘Evidence linking community-level tenure and forest condition: an annotated bibliography’ WWF Netherlands(2010) ‘Can community Forestry contribute to livelihood improvement and biodiversity? Steps on how to improve community forestry programmes, lessons from work in 11 countries and communities’ CIFOR (2016) Community rights to forest in the tropics: progress and retreat on tenure reforms’ [↑](#footnote-ref-15)
16. RRI (2015) ‘Who owns the world’s land? A global baseline of formally recognized indigenous and community land rights’. [↑](#footnote-ref-16)