Human Rights Watch submission
to the UN Special Rapporteur on human rights and the environment

"Biodiversity and Human Rights"

November 2016

Human Rights Watch welcomes the opportunity to provide comments as you prepare your upcoming report on biodiversity and human rights that you will present at the 34th session of the Human Rights Council.

This submission highlights some of our research in Kenya, Malawi, and Cote d'Ivoire that has focused on climate change, the environmental impact of the extractive industries and other large scale development efforts, and conservation efforts that have affected the realization of human rights. While this research did not address biodiversity per se, Human Rights Watch believes that several of our findings may be relevant to the Special Rapporteur's report.

Through field research in the above-mentioned countries we found that governments have not done enough to implement legislation, policies, and practices to combat environmental degradation in their countries, which in turn impacts the realization of the rights to life, health, food, livelihood, water, and housing. We have also found instances in which environmental conservation measures can threaten the human rights of communities residing on or near protected lands. Groups that face entrenched discrimination such as women and indigenous communities are often at heightened risk of negative impacts with less access to redress.

We have outlined for your consideration: challenges in integrating human rights in biodiversity-related matters; examples for the need to protect the rights of those who are at particular risk when biodiversity is threatened; and some good practices in the adoption and implementation of biodiversity-related legislation, policies, and programs that incorporate human rights obligations.

1. Challenges and obstacles in integration and protection of human rights

Environmental degradation and human rights

Environmental degradation and climate change can pose a major challenge to protecting human rights. While projects such as hydropower plants, uranium and coal mining, and oil and gas extraction provide opportunities for economic growth and development, development projects can also have serious environmental consequences, including the loss of biodiversity. A decrease of variability of species in ecosystems can impact the livelihoods and rights of local communities. For example, the extractive industries can impact water and soil quality, which may have consequences for ecosystems in rivers and other water sources. Climate change, with rising temperatures and changing weather patterns, can affect the natural distribution of water and reduce fresh water levels in lakes, which can in turn impact the health and abundance of fish and other animals. Consequently, local communities are often struggling to access clean water and food, and can face heightened security concerns as populations vie for a shrinking number of resources.

Human Rights Watch believes that the human rights impacts of large scale development projects become more severe in the absence of access to information and meaningful participation of impacted communities. When governments and companies do not adequately assess environmental impacts of their activities, communities are not able to raise concerns about possible impacts on the natural environment that they depend on for the realization of their rights.

In Ethiopia and Kenya, development plans for dams, water-intensive irrigated cotton and sugar plantations, and other infrastructure in Ethiopia's Omo River Basin may dramatically reduce the water levels of Lake Turkana, which could impact biodiversity and livelihoods around Lake Turkana.[1] These projects, while aimed at growing Ethiopia's economy and promoting broader development, are predicted to dramatically reduce the water supply of Lake Turkana, the largest desert lake in the world. The lake and its surroundings are a vital source of livelihood, food, and water for local communities and are breeding grounds for a number of different species, including 350 recorded species of birds and the largest colony of crocodiles in the world. Parts of the lake also comprise the Lake Turkana National Parks, a protected UNESCO World Heritage Site.[2]

Text

[1] Human Rights Watch, *"There Is No Time Life": Climate Change, Environmental Threats, and Human Rights in Turkana County, Kenya*, October 2015, https://www.hrw.org/report/2015/10/15/there-no-time-left/climate-change-environmental-threats-and-human-rights-turkana.

[2] World Heritage Committee, "Lake Turkana National Parks," http://whc.unesco.org/en/list/801, (accessed October 11, 2016).

Climate change, with increased temperatures and reduced precipitation during the long rainy season, has already exacerbated water shortages in historically drought-stricken Turkana county, Kenya. Hydrologists predict that Ethiopia's development projects will compound the harmful impact of climate change on Lake Turkana and could reduce the lake into two small pools.[3] Dramatic reductions in freshwater input from the Omo River into Lake Turkana will increase levels of salinity in the lake and raise water temperatures. Higher air temperatures will increase rates of evaporation, further increasing salinity while reducing biological productivity. These impacts will reduce fish stocks and impact spawning, which may reduce biodiversity within the lake. A reduction in fish stocks would yield fewer catches and have devastating impacts on the fishery, impacting the livelihoods of local communities. These impacts are also likely to further reduce livestock numbers and impact their health; impact human health; reduce access to clean drinking water, food, and livelihoods; and exacerbate security issues.

In Malawi, the government has promoted private investment in the extractive industries to diversify its mostly agriculture-based economy. Existing and potential future extraction sites are located on the shores and tributaries of Lake Malawi, a fragile ecosystem in northern Malawi and a protected UNESCO World Heritage Site. In 2014, UNESCO published a monitoring report warning of the risks to Malawi's ecosystem and biodiversity, raising particular concern over oil exploitation within the lake and noting the "potentially devastating impact" that this could have on the lake's ecology.[4] With regard to mining, the report recommends that the government "[p]revent[s] pollution of the lake and its inflowing rivers through effective regulation and control of mining effluents, other industrial and domestic pollution and agrochemicals."[5] The government of Malawi has not yet responded to the UNESCO monitoring report.

With the appearance of several mines in Karonga district, on the western shores of Lake Malawi, local residents interviewed by Human Rights Watch contend that there is decreased crop productivity, changes in water clarity and quality, and increased particulate matter in the air. They are concerned that these changes may be due to nearby mining activities and are concerned about the health and environmental impact of that activity. However, in the absence of effective environmental laws and monitoring, it remains difficult to assess the true impact of the extractive industries on the environment, water sources, and the lake's biodiversity. In particular, our

[3] Human Rights Watch, *"There Is No Time Left."*
[4] UNESCO and IUCN, "Reactive Monitoring Mission to Lake Malawi National Park (Malawi) - 30 March to 4 April 2014," May 2014, http://whc.unesco.org/en/documents/129870 (accessed April 26, 2016).
[5] Ibid.

research found that residents of mining communities were often unable to access information on the impact that mining may have on their health and the environment.[6]

Conservation at the expense of human rights

Human Rights Watch found that conservation efforts themselves can also threaten human rights if not designed and implemented in a way that considers communities living near or within protected areas.

In Côte d'Ivoire, 231 protected forests—home to a range of threatened species—have been devastated by deforestation, with more than half of the country's four million hectares of protected forest cut down for farmland. As part of its efforts to combat climate change, the Ivorian government in September 2016 restated its intention to restore protected forests as part of a broader commitment to return at least 20 percent of its territory to forest.[7] Protecting biodiversity is a one of the anticipated benefits of restoration of protected forests.[8]

However, the Ivorian government has faced challenges integrating the rights of communities that live or work in protected forests. Human Rights Watch and the Ivorian human rights group Le Rassemblement des Acteurs Ivoriens des Droits Humain (RAIDH) documented how, in several forests in western Côte d'Ivoire, agents of the Ivorian Forestry Development Agency (Société de Développement des Forêts, SODEFOR) regularly evict farmers from protected forests. Community leaders and aid workers said that SODEFOR frequently failed to notify families in advance of the planned evictions, including where evictions involved the intentional destruction of homes, and often failed to ensure that evicted families have access to adequate alternative housing or productive land, as required by international law. In several cases, farmers were beaten and humiliated during eviction operations. Farmers frequently said that they were not given the opportunity to remove their personal belongings before their houses were set alight during

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[6] Human Rights Watch, *"They Destroyed Everything": Mining and Human Rights in Malawi*, September 2016, https://www.hrw.org/report/2016/09/27/they-destroyed-everything/mining-and-human-rights-malawi.

[7] Republique de Côte d'Ivoire, Contributions Prévues Déterminées au niveau National (INDC) pour l'Accord Global Post 2020 sur le Changement Climatique, pp. 6-7, http://www4.unfccc.int/submissions/INDC/Published%20Documents/C%C3%B4te%20d'Ivoire/1/Document_INDC_CI_22092015.pdf (accessed October 6, 2016); The 20 percent committed is contained in Côte d'Ivoire's 2014 Forestry Code, see Le Nouveau Code Forestier Ivoirien (the Forestry Code), *Republique de Côte d'Ivoire*, no. 2014-427, July 2014, http://www.gouv.ci/doc/Code%20forestier%20ivoirien.pdf, art. 2.

[8] Ibid.

evictions. Many community leaders and farmers also said that SODEFOR officers regularly used the threat of eviction to solicit money or other "gifts," including livestock.[9]

2. Examples of how the rights of those who may be particularly vulnerable to the loss of biodiversity, including but not limited to indigenous peoples, are (or are not) provided with heightened protection.

Marginalized populations including indigenous peoples and women are particularly vulnerable to climate change, environmental degradation, and biodiversity loss and face distinct threats to their human rights. In some countries where Human Rights Watch conducted research, there are non-discriminatory policies that provide greater protections for the rights of vulnerable populations to water, food, livelihood, and security. However, in practice, these policies often do not translate into governmental mechanisms that effectively protect rights, including those of indigenous peoples and women.

Indigenous Peoples

Indigenous peoples live in some of the most resource-rich and bio-diverse ecosystems in the world. These ecosystems are also often the most vulnerable to climate change and industrial and agricultural development projects such as fresh water lakes, rainforests, and floodplains. Given that indigenous communities rely heavily on their natural environment, threats to biodiversity can pose serious risks to their ability to access food, water, and livelihood.

In Kenya, indigenous peoples at Lake Turkana are struggling to access water, food, livelihood, and security and are specifically vulnerable to threats to Lake Turkana. Population growth, climate change, and development projects in the Lower Omo Valley have put increased pressure on water resources and reduced grazing lands in the Turkana community. This has decreased fish stocks and made livestock weaker and more prone to disease, thereby diminishing two of the main sources of food and livelihood for indigenous Turkana. Shrinking access to grazing lands and water also drives conflict between pastoralist communities, putting livestock herders at greater risk.[10]

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[9] For more information, see Human Rights Watch, *The Human Cost of Environmental Protection in Côte d'Ivoire*, September 15, 2016, https://www.hrw.org/news/2016/09/15/human-cost-environmental-protection-cote-divoire; Human Rights Watch, *Côte d'Ivoire: Arbitrary Evictions in Protected Forests*, June 13, 2016, https://www.hrw.org/news/2016/06/13/cote-divoire-arbitrary-evictions-protected-forests.

[10] For more information, see Human Rights Watch, *"There is No Time Left."*

Women

Women in rural areas face particular impacts of environmental degradation. Women and girls often bear the brunt of obtaining food and water, which can take hours each day, sometimes involving long journeys that negatively impact time for education, employment, or personal safety. They often face greater challenges in situations of resettlement due to exclusion from consultation processes, legal and customary discrimination in ownership and control over land, and barriers to information about environmental and health risks due to gender norms (such as restrictions on mobility). Women's needs and recommendations are often left out of resettlement plans.

In Malawi, it has been especially difficult for women in mining communities to access information about mining and its risks including threats to the natural environment around Lake Malawi. For example, meetings with companies or the government were not typically announced ahead of time, and women would often be busy working in their field or at home when meetings were convened. Even when women were present, they were sometimes unable to engage due to gender norms that restrict women participation in public gatherings or because meetings were conducted in languages that some rural women did not speak.[11]

3. Good practices in the adoption of biodiversity-related legislation, policies, and programs that incorporate human rights obligations.

While implementation varies, Human Rights Watch has identified examples of good practices that governments, businesses, and international organizations, including international donors, can follow to better incorporate human rights when developing and adopting biodiversity-related legislation, policies, and programs.

Government should ensure that all legislation, policies, and programs related to climate change are in accordance with obligations under the United Nations Framework Convention on Climate Change and international human rights and include specific plans on how to protect rights to food, water, livelihood, security, and culture. In implementing these obligations, they should ensure full consultation and participation of marginalized groups, including women and indigenous communities.

In Côte d'Ivoire, SODEFOR is in the process of formulating legislation that would set out a strategy for the restoration of protected forests. It is considering a range of different options, including a

[11] See Human Rights Watch, *"They Destroyed Everything."*

"contractualization" approach through which farmers would sign contractual agreements that would require them to replant trees while allowing them to continue to farm portions of forest. Human Rights Watch supports this approach, and is hopeful that SODEFOR's ultimate strategy will respect the rights of farmers currently living in protected forests. The existing criminalization of the farming or occupation of protected forests denies small-scale farmers adequate safeguards against evictions that occur without adequate notice or which involve violations of other rights.[12]

Governments should ensure access to information, in accordance with international best practices, about environmental impacts of projects and programs that could impact biodiversity. Companies engaged in industrial or agricultural initiatives should improve access to information by strengthening communication with local and national civil society and with affected communities.

In Malawi, the government is in the process of preparing and negotiating an Access to Information Bill, which may impact the mining sector in terms of information disclosure and transparency. Government officials who spoke to Human Rights Watch said that the bill would make it easier for communities to access environmental health information. However, the draft bill does not provide for the establishment of an independent oversight body; compromises the principle of maximum disclosure by avoiding retroactive application; and gives the minister of information the power to determine "fees payable for processing request for information," which can discourage poor people from requesting information.[13]

In cases involving third parties, including businesses, governments should maintain oversight over development projects and should develop policies for corporate social responsibility consistent with the UN Guiding Principles on Business and Human Rights and its "Protect, Respect, and Remedy" framework. Companies should establish a thorough due diligence process, including regular monitoring, and an effective grievance mechanism. Donors should undertake due diligence for proposed development, climate change, and conservation projects to ensure that they are not contributing to or exacerbating human rights violations, either directly or by association.

[12] See, for example, the Forestry Code, art. 134.

[13] Access to Information Bill, *Parliament of Malawi*, 2016, on file with Human Rights Watch; for more information, see Human Rights Watch, *"They Destroyed Everything."*