**Input**

**on the Right to a Safe, Clean, Healthy and Sustainable Environment**

**(Ukraine)**

***Yelyzaveta Aleksyeyeva***

***Environment-People-Law***

1. Please provide, in detail, examples of laws, regulations, policies and programmes that specifically incorporate the human right to a safe, clean, healthy and sustainable environment (acknowledging that different terms may be used to describe this human right).

Ukraine inherited Soviet legal regime and practices that were irrational and intensive in terms of resource and energy usage. In 90s it developed a regulatory framework aiming at insuring protection of the environment including the framework Law on Environmental Protection (1991), which explicitly grants citizens the right to a safe environment for one’s life and health, the Law on Air Protection (1992), the Water Code (1995), the Law on Ecological Expertise (1995), and Law on Waste (1998), etc.

The Constitution of Ukraine (1996) envisaged the right to an environment safe for life and health and the right to compensation for damage caused by violation of this right (Article 50). Same article also provides for free access to environmental information.

Due to the drop in the economy in 90es the state of the environment improved, but not for long. Already in 00es and 10es it became apparent that enacted legislation combined with ineffective enforcement system and a wide-spreading corruption does not fulfil its objective in safeguarding a safe and healthy environment, and that the progressive rights provided for in the Constitution and environmental laws remain a fiction on paper.

Industry in Ukraine releases polluted waters, heavy metals, organic compounds, and oil-related pollutants. The water supply in some areas of the country contains toxic industrial chemicals up to 10 times the concentration considered to be within safety limits. Air pollution is also a significant environmental problem in the Ukraine. The waste management system is inadequate, over 90% of waste is disposed of at poorly managed landfills or at unsanctioned dumpsites all over the country.

1. Please provide specific examples of good practices in the implementation of the human right to a safe, clean, healthy and sustainable environment. Examples may include practices related to: guaranteeing procedural rights (e.g., access to information, public participation in environmental decision-making and access to justice and remedies); protecting the substantive elements of the right (including: clean air; access to clean water and sanitation; healthy and sustainably produced food; a non-toxic environment in which to live, work, study, and play; a safe climate; and healthy biodiversity and ecosystems); monitoring adverse impacts on the human right to a safe, clean, healthy and sustainable environment; promoting the enjoyment of the right to a safe, clean, healthy and sustainable environment; regulating business activities in accordance with the UN Guiding Principles on Business and Human Rights to protect the right to a safe, clean, healthy and sustainable environment; and remedies that have been provided for victims of violations of the right to a safe, clean, healthy and sustainable environment. These examples may occur at the international, national, sub-national, or local level.

Just recently Ukraine began a real reform of environmental legislation which happened due to a signature of the Association Agreement with the EU. The major accomplishments so far are the adoption of the EIA (2017) and SEA (2018) laws, as well as the set of amendments transposing the EU Water Framework Directive.

The two specific examples of good practices in terms of implementation of the human right to a safe, clean, healthy and sustainable environment would be

1. allowing general public to participate in EIA procedure (not only the public concerned);
2. providing an open and easy access to all documents generated within the EIA procedure.

To avoid misinterpretation of the EIA law in term of who is entitled to participate in the environmental decision-making, the law adopted the widest approach – all and any physical and judicial person has the right to participate in EIA procedure.

In order to facilitate adequate and effective public participation in today’s contemporary world the authors of the law on EIA provided for establishment of an Internet based EIA Register to hold all the documents and materials created in the course of EIA procedure and public participation therein. The law prescribes for the documents in the Register to be publicly open (meaning not limited in access) and the Register itself to be accessible on the Internet 24/7 days to any interested party including the general public.

The EIA Register is not only a database for document originated in the EIA procedure, but also a tool for initiation of and following the appropriate administrative procedures. In the result the Register not only provides for a unified nationwide database of all documents originated within EIA procedures, but also allows to follow in the real time all and any EIA procedures that are being conducted in Ukraine.

1. Please provide evidence related to the effectiveness of the measures identified in your responses to Questions #2. For example, evidence could involve measured decreases in air and water pollution, a growing proportion of the population with access to clean water and adequate sanitation, increased production of renewable energy, declining greenhouse gas emissions, a growing percentage of land in terrestrial and marine protected areas, declining use of pesticides and/or other toxic substances, lower body burdens of toxic substances such as PCBs and lead, and declining rates of deforestation.

Although many sceptics feared a halt in development due to wide participatory rights, nothing like this happened in reality. The EIA register became operational on December 18th 2017 – on the day the Law of Ukraine on EIA became effective. Already on December 24th 2017 two proponents submitted to the Register the two first notifications – one concerning the storage facility for hazardous wastes and other – a wind farm. Within the first year over seventeen hundred EIA procedures were initiated throughout Ukraine. None of them initiated outside of the Register.

Moreover, having all this information available freely and online provided for a development of further user-friendly internet tools. MENR together with a non-governmental initiative developed the first ‘eco bot’ – a computer program that among other things allows to follow updates of information on a specific EIA procedure or track new EIA procedures initiated in a selected region on your PC or smartphone. Using the data from the Register MENR issues a monthly digest on the scheduled public hearings, which provides a detailed information on date, time and venue of public hearings along with the links to the EIA cases on the Register’s web-page.

MENR is currently considering development of a similar tool for the SEA.

1. Please specify any challenges your Government, business, or organization has experienced in fulfilling its obligations relating to the human right to a safe, clean, healthy and sustainable environment.
* Low level of environmental awareness among population and officials;
* prioritizing economic interests over environmental;
* focus on "end-of-pipe" emission/effluent treatment measures rather than on the analysis of the production process as it is and pollution prevention through improvement of technology;
* current environmental permitting system in Ukraine is based on a medium-specific approach with separate regulations related to air, water and waste management, integrated pollution prevention instruments are not implemented yet;
* inefficiency of environmental control and enforcement system;
* nonexistent or low penalties for environmental violations both for industry and population;
* corruption.
1. How are the rights of those who may be particularly vulnerable to violation of their right to a safe, clean, healthy and sustainable environment (e.g. women, children, persons living in poverty, members of Indigenous peoples and traditional communities, older persons, persons with disabilities, displaced persons, and national or ethnic, religious and linguistic minorities), through either environmental degradation (e.g. air and water pollution, exposure to toxic substances, climate change impacts) or lack of access to environmental amenities (e.g. safe drinking water, adequate sanitation, waste management services, access to natural spaces), provided with heightened protection?

The issue of particular vulnerability to violation of their right to a safe, clean, healthy and sustainable environment through environmental degradation or lack of access to environmental amenities of specific groups (e.g. women, children, persons living in poverty, members of Indigenous peoples and traditional communities, older persons, persons with disabilities, displaced persons, and national or ethnic, religious and linguistic minorities) has not been studied enough. Therefore, the legislation does not provide these categories with heightened protection.

1. How do you ensure that the rights of environmental human rights defenders are protected? What efforts has your Government, business or organization made to create a safe and enabling environment for them to freely exercise their rights without fear of intimidation, violence or reprisal?

Ukraine has a progressive Law on non-governmental organizations. The registration process is easy and free of charge. In general, legal framework allows environmental human rights defenders to freely exercise their rights. The public institutions acknowledge the value of the civil society organizations and groups, individual activists. There is no intimidation or violence from public offices towards the activists acting within the law. On the other hands, the government is not very effective on investigating the incidents of intimidation and violence towards the activists committed by the third parties.

The defamation cases aiming at intimidating and destructing environmental defenders happened in the past. However, national legislation together with the case-law of the ECHR (which is considered a part of national legislation) were used to win respective court cases in most of the instances. A series of trainings for both environmental defenders and judges as to the freedom of speech issues were conducted (organized by the NGOs and funded by the international donors), which also lead to a decrease in defamation and other SLAPP[[1]](#footnote-1) suits in Ukraine.

1. What are ways in which high-income States should assist low-income States in respecting, protecting, and fulfilling the human right to a safe, clean, healthy and sustainable environment?

By supporting democratic and environmental reforms in terms of expert and financial recourses, by supporting NGOs in low-income States, by educating young politicians, professionals and activists.

1. For businesses, what policies or practices are in place to ensure that your activities, products, and services (extraction/sourcing, manufacturing, distribution, sale, and end-of life management) respect and protect the human right to a safe, clean, healthy and sustainable environment?

Not from business

Submission of responses

We encourage you to please send your responses to the questionnaire in Word format by email to srenvironment@ohchr.org

We kindly request that your submission be concise and limited to a maximum of 5 pages (or 2,500 words), not including appendices or attachments.

Due to a limited capacity for translation, we also request that your inputs be submitted in English, French, or Spanish.

To avoid unnecessary duplication: if you have recently replied to other questionnaires from UN human rights mechanisms (or other international bodies) with information that would be relevant to this request as well, we welcome your directing us to those replies.

1. SLAPP – strategic litigation against public participation [↑](#footnote-ref-1)