

## I. GENERAL DEVELOPMENTS

### 1. Human Rights and the Environment

This report summarizes some of the important work done during the past year mainly by United Nations (UN) human rights bodies, including a few cases in UN human rights treaty bodies as well as the European Court of Human Rights (ECtHR) in the field of the recognition of the inter-relatedness of human rights and environmental issues. Due to limited space, this year's report does not review any cases of the Inter-American Human Rights System. One important item to be mentioned in this respect, however, is that the Inter-American Commission on Human Rights decided in September to bring the case of *La Oroya v Peru* (Case no. 12.718)—the first case of air pollution caused by business activities—to the Inter-American Court of Human Rights ([https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media\\_center/PReleases/2021/274.asp](https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2021/274.asp)).

While reading this report, it should be kept in mind that it by no means provides an exhaustive list of all significant happenings in the field of human rights and the environment. Furthermore, the nature of the report is not an analytical study but merely a descriptive overview of some selected important international developments and new achievements in the field during the past year.

After a long-lasting and persistent push by the international community of human and environmental rights advocates, the past year will be celebrated and remembered as the year when the UN Human Rights Council (OHCHR), for the first time, recognized that having a clean, healthy, and sustainable environment is a human right (Resolution 46/7 on Human Rights and the Environment (Doc. A/HRC/46/L.6/Rev.1 (30 March 2021)). This resolution which is discussed in more detail below, will, no doubt, have many kinds of impacts, not the least being increased national and international litigation on environmental human rights.

Climate change legal actions globally have shown no signs of slowing this year, with more than 1,800 cases completed or in process, increasing from 1,550 last year. While climate litigation cases are increasingly referring to violations of human rights, and judges are making the explicit link between these two, a new legal avenue has opened up for campaigners (<https://chinadialogue.net/en/climate/climate-litigation-up-in-2021-with-private-sector-no-wexposed/#:~:text=The%20global%20urg..e%20in%20legal,up%20from%201%2C500%20last%20year>).

One of the important decisions was made in May by the District Court of The Hague, which held Royal Dutch Shell liable for its contributions to climate change, finding that the massive energy company's ongoing fossil-fuel operations undermine basic guaranteed human rights. The court ordered the company to act immediately to reduce these harms by slashing its global carbon dioxide emissions by 45 percent by 2030 (see *Milieudefensie et al. v Royal Dutch Shell PLC*, Rechtbank Den Haag, Case no. C/09/571932 / HA ZA 19-379

(26 May 2021; English version at <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339>>).

The climate activism of the youth that started several years ago has not shown any signs of decrease. On the contrary, when the twenty-sixth Conference of the Parties (COP-26) of the United Nations Framework Convention on Climate Change (UNFCCC) was held in Glasgow, Scotland, from 31 October to 13 November, thousands of youth from around the world joined together to demand change and responsibility from their leaders. The Global Youth Statement demanded that youth should be actively and meaningfully included in all decision-making processes concerning climate change governance and implementation. The youth also called for an intersectional approach to youth inclusion in environmental governance, acknowledging that the climate crisis affects some communities and social groups disproportionately (<<https://ukcoy16.org/wp-content/uploads/2021/10/Global-Youth-Statement.pdf>>).

In December, UN human rights experts issued an urgent call for greater transparency and rigorous follow up to the outcomes of COP-26 in a statement marking the thirty-fifth anniversary of the Declaration on the Right to Development. The statement of the experts blamed the world's largest and wealthiest economies for failing to make sufficiently strong commitments to keep planetary warming to 1.5 degrees Celsius. The expert call recalled that the Paris Agreement acknowledges that when taking actions to address climate change, countries must respect, promote, and consider their respected obligations on human rights: the right to health, the rights of Indigenous peoples, local communities, migrants, children, persons with disabilities, and people in vulnerable situations, and the right to development, as well as gender equality ("35th Anniversary UN Declaration on the Right to Development" (3 December 2021) <<https://www.ohchr.org/en/press-releases/2021/12/35th-anniversary-un-declaration-right-development>>).

Related to procedural environmental rights, it should be mentioned that, in April, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean came into force (<[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-18&chapter=27&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-18&chapter=27&clang=en)>). This is the first regional agreement focused on environmental democracy that aims to guarantee the full and effective implementation in Latin America and the Caribbean of the rights of access to environmental information, public participation in the environment, and access to justice. The agreement aims to provide inspiration to other regions to develop similar regional frameworks.

One important measure at the European Parliament in May was making a resolution based on the *Report on the Effects of Climate Change on Human Rights and the Role of Environmental Defenders on this Matter* (Committee on the Foreign Affairs, Rapporteur: María Soraya Rodríguez Ramos, UN Doc. 2020/2134(INI) (10 March 2021)). Providing multiple suggestions to improve the situation, the report calls on the Union and its Member States to support, at the UN General Assembly, the global recognition of the right to a safe, clean, healthy and sustainable environment (European Parliament Resolution on the Effects of Climate Change on Human Rights and the Role of Environmental Defenders on This Matter, Doc. 2020/2134(INI) (19 May 2021) <[https://www.europarl.europa.eu/doceo/document/TA-9-2021-0245\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0245_EN.html)>).

## (1) UN

At the beginning of the year, the Universal Rights Group published a policy report entitled *The Time Is Now: The Case for Universal Recognition of the Right to a Safe, Clean, Healthy and*

*Sustainable Development*, by Special Rapporteurs David Boyd and John Knox and Executive Director Marc Limon (<<https://www.universal-rights.org/urg-policy-reports/the-time-is-now-the-case-for-universal-recognition-of-the-right-to-a-safe-clean-healthy-and-sustainable-environment/>>). The aim of the report was to push forward the universal recognition of the right to a safe, clean, and healthy environment in the form of a resolution of the OCHRC and the General Assembly. As noted earlier, the resolution was indeed accepted this year, as will be discussed below.

Supporting the universal recognition of the right to environment and highlighting that transformational change begins with education, the UN Environment Programme's (UNEP) Law Division, the Office of the UN High Commissioner for Human Rights, and the Wikimedia Foundation hosted an online event on 15 April exploring the human right to a healthy environment (<<https://www.unep.org/news-and-stories/story/environmental-rights-here-and-now-working-change-2021>>). Further related to environmental human rights education, among important environmental rights events organized by UN agencies in the past year, one certainly worth mentioning was a joint summer–winter school held on 21–5 June by UNEP with the Global Network for Human Rights and the Environment. This free online school provided varied lessons and debates on human rights and the environment and was led by experts working on the field (<<https://www.unep.org/events/online-event/critical-perspectives-human-rights-and-environment-2021-summerwinter-school>>).

### (A) UN Human Rights Council

At the forty-sixth session of the Human Rights Council (22 February–19 March), the UN special rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, as noted above David R. Boyd, presented the report entitled *Human Rights and the Global Water Crisis: Water Pollution, Water Scarcity and Water-related Disasters* (UN Doc. A/HRC/46/28 (19 January 2021)). In the report, the special rapporteur described safe and sufficient water as one of the substantive components of the right to a safe, clean, healthy, and sustainable environment. The report described the causes and consequences of the global water crisis, focusing on the negative impacts of water pollution, water scarcity, and water-related disasters on the enjoyment of many human rights, with disproportionate effects upon vulnerable and marginalized groups. The procedural and substantive state obligations related to ensuring safe and sufficient water are highlighted in the report, along with good practices that have helped to reduce or prevent water pollution, alleviate water scarcity, reduce risks associated with water-related disasters, and protect or restore aquatic ecosystems (at 1).

On 23 March, OHCHR adopted Resolution 46/7 on Human Rights and the Environment (Doc. A/HRC/46/L.6/Rev.1 (30 March 2021)). The resolution stresses the need for enhanced cooperation among states, UNEP, the UN Development Programme, the Food and Agriculture Organization, the Office of the High Commissioner, the World Health Organization, and other relevant international and regional organizations, agencies, conventions, and programs. In accordance with their respective mandates, this includes regularly exchanging knowledge and ideas and building synergies in the protection of human rights and the protection of the environment, bearing in mind an integrated and multisectoral approach. The resolution also calls upon all states to conserve, protect, and restore healthy ecosystems and biodiversity and to ensure their sustainable management and use by applying a human rights-based approach that emphasizes participation, inclusion, transparency, and accountability in natural resource management. In accordance with OHCHR Resolution 46/7, Special Rapporteur Boyd also presented another report entitled *Healthy and Sustainable Food: Reducing the Environmental Impacts of Food Systems on Human Rights* (UN Doc. A/76/179

(19 July 2021)). The report identified healthy and sustainable food as one of the substantive elements of the right to a safe, clean, healthy, and sustainable environment. The special rapporteur describes the catastrophic environmental and health consequences of industrial food systems, unhealthy diets, and food waste, and the associated consequences for the enjoyment of human rights, with disproportionate adverse effects on vulnerable and marginalized groups. The report highlights procedural and substantive state obligations related to ensuring healthy and sustainable food as well as the responsibilities of businesses.

On 8 October, OHCHR adopted Resolution 48/13 on the Human Right to a Clean, Healthy and Sustainable Environment (<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/289/50/PDF/G2128950.pdf?OpenElement>). The groundbreaking resolution, among other things, encourages states to build capacities for the efforts to protect the environment in order to fulfil their human rights obligations and commitments and to adopt policies for the enjoyment of the right to a clean, healthy, and sustainable environment as appropriate, including with respect to biodiversity and ecosystems.

The resolution has been widely celebrated in international human rights arenas. The UN High Commissioner for Human Rights, Michelle Bachelet, called on states to take bold actions to give prompt and real effect to the right to a healthy environment (<https://news.un.org/en/story/2021/10/1102582>).

### (B) UN Human Rights Treaty-monitoring Bodies

In October, in a historic ruling on the harmful effects of climate change on children's rights, the UN Committee on the Rights of the Child found that a state party can be held responsible for the negative impact of its carbon emissions on the rights of children both within and outside its territory (UN Doc. CRC/C/88/D/104/2019 (11 November 2021) (<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27644&LangID=E>)). The communication was filed by sixteen children from twelve countries against Argentina, Brazil, France, Germany, and Turkey in 2019. The authors claimed that, by causing and perpetuating climate change, the state parties have failed to take the necessary preventive and precautionary measures to respect, protect, and fulfil the authors' rights to life, health, and culture. In this case, the committee determined that Argentina, Brazil, France, Germany, and Turkey had effective control over the activities that are the sources of emissions that contribute to the reasonably foreseeable harm to children outside their territories. It concluded that a sufficient causal link had been established between the harm alleged by the sixteen children and the acts or omissions of the five states for the purposes of establishing jurisdiction and that the children had sufficiently justified that the harm that they had personally suffered was significant. The committee, however, found the communication inadmissible for failure to exhaust domestic remedies under Article 7(e) of the Optional Protocol.

A UN-level landmark case of the year was *Los autores y demás integrantes de la Comunidad Indígena de Campo Agua'ẽ v Paraguayi* (CCPR/C/132/D/2552/2015 (12 October 2021)). In the decision, which addresses violations of the International Covenant on Civil and Political Rights, the committee affirmed for the first time that, for Indigenous people, 'home' should be understood in the context of their special relationship with their territories of the ories, including their livestock, crops, and way of life (<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>). The decision stems from a complaint filed more than a decade ago on behalf of 201 Ava Guarani people of the Campo Agua'ẽ Indigenous community, located in the Curuguaty district in eastern Paraguay. The area where they live is surrounded by large commercial farms that produce genetically modified soybeans through fumigation, a process that involves the use of banned pesticides. Fumigation occurred continuously for more than ten years and affected the

Indigenous community's entire way of life, including killing livestock, contaminating waterways, and harming people's health. The damage also had severe intangible repercussions, according to the committee. The disappearance of natural resources needed for hunting, fishing, and foraging resulted in the loss of traditional knowledge. For example, ceremonial baptisms no longer take place as necessary materials no longer exist. Members found that Paraguay did not adequately monitor fumigation and failed to prevent contamination, adding that 'this failure in its duty to provide protection made it possible for the large-scale, illegal fumigation to continue for many years, destroying all components of the indigenous people's family life and home' (<<https://news.un.org/en/story/2021/10/1102922>>). The committee found violations of Article 17 (a right to home) and Article 27 (the right to culture), in conjunction with Article 2.1 (right to equality). The committee recommended that Paraguay complete criminal and administrative proceedings against all parties responsible and make full reparation to the victims. The authorities also urged Paraguay to take all necessary measures, in close consultation with the Indigenous community, to repair the environmental damage and to work to prevent similar violations from occurring in the future (<<https://news.un.org/en/story/2021/10/1102922>>; see also text of the decision (in Spanish): <[https://ccprcentre.org/files/decisions/Benito\\_Oliveira\\_Pereira\\_et\\_al\\_v\\_Paraguay.pdf](https://ccprcentre.org/files/decisions/Benito_Oliveira_Pereira_et_al_v_Paraguay.pdf)>).

## (2) SELECTED ENVIRONMENTAL CASES IN THE ECtHR

Following the 2020 case of *Duarte Agostinho and Others v Portugal and 32 Other States* (ECtHR, Application no. 39371/20 (13 November 2020), Application communicated to the defending governments, pending application), a new climate change-related case was forwarded this year: a pending application communicated to the Swiss government on 17 March (*Verein Klimasenioren Schweiz et autres contre la Suisse introduite*, Application no. 53600/20 (16 July 2021), <<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-209313%22%5D%7D>>). The applicants are, on the one hand, an association under Swiss law for the prevention of climate change and of which hundreds of elderly women are members, and on the other, four elderly women (between the ages of seventy-eight and eighty-nine) who complain of health problems that undermine their living conditions during heatwaves. The court gave notice of the application to the Swiss government and put questions to the parties under the head of the positive obligations arising from Articles 2 (right to life), 8 (right to respect for private and family life and the home) and Articles 6 (right to a fair trial – access to a court), and 13 (right to an effective remedy) of the European Convention for Human Rights (ECHR) (ECHR Factsheet: Environment and the ECHR at 2 <[https://www.echr.coe.int/documents/fs\\_environment\\_eng.pdf](https://www.echr.coe.int/documents/fs_environment_eng.pdf)>).

Another pending application is *Greenpeace Nordic and Others v Norway* (ECtHR, Application no. 34068/21 (15 July 2021). The application was communicated to the government of Norway on 16 December. The applicants are two organizations (Greenpeace Nordic and Young Friends of the Earth (Nature and Youth)) and six individuals who are affiliated with one of them. In 2013, the Norwegian Parliament consented to open the south-east Barents Sea under section 3.1 of the Petroleum Act with a view to granting petroleum production licenses. In their application to the Court, the applicants are relying on Articles 2 (right to life) and 8 (right to respect for private and family life), Article 13 (right to an effective remedy) in conjunction with Articles 2 and 8, and Article 14 (prohibition of discrimination) in conjunction with Articles 2 and 8 of the ECHR (at 3).

The case of *Kapa and Others v Poland* was also decided by the ECtHR (Application nos. 75031/13, 75282/13, 75286/13, and 75292/13 (14 October 2021)). This case concerned the

rerouting of traffic by the applicants' house during the construction of a motorway, and the applicants' attempts to rectify the situation via the authorities. The traffic increase allegedly led to noise and other forms of pollution. The court held that there had been a violation of Article 8 (right to respect for private and family life) of the ECHR. It found, in particular, that the authorities had knowingly ignored the problem since 1996 and had continued developing the motorway project with total disregard for the well-being of local residents. Overall, the court found that the diverting of traffic by the applicants' house and the lack of an adequate response by the authorities had harmed their peaceful enjoyment of their home (at 21).

*Rovshan Hajiye v Azerbaijan* (Application nos. 19925/12 and 47532/13 (9 December 2021)) is another successful case that was decided by the ECtHR. The applicant, a journalist, complained, in particular, of the authorities' refusal to give him access to information of public interest on the environmental and health impact of a former Soviet military radar station. He submitted that the court judgments in this connection had not been adequately reasoned. In this case, the court was satisfied, in particular, that the information requested by the applicant, which had been ready and available, constituted a matter of public interest. Access to this information had been instrumental for the applicant, as a journalist, to exercise his right to receive and impart information. In the present case, the court held that there had been a violation of Article 10 (freedom of expression) of the ECHR, finding that the interference with the applicant's rights was not 'prescribed by law' (at 26).

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doi:10.1093/yiel/yvac005

Advance access publication 29 September 2022

## 3. Transboundary Environmental Cooperation

### *A. Prior Information / Consultation / Environmental Impact Assessment*

#### **(1) SIGNIFICANCE OF EUROPEAN PRACTICE: THE UN ECONOMIC COMMISSION FOR EUROPE (UNECE) CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT (ESPOO CONVENTION) AND THE PROTOCOL ON STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA PROTOCOL) TO THE CONVENTION AS AN ADVANCED FRAMEWORK**

Prior information, consultation, and environmental impact assessment (EIA) are important tools for managing transboundary environmental risk. The Espoo Convention, adopted by