

## UNEP 2021 Global Report on Environmental Rule of Law

### CONCEPT NOTE – VERSION OF 12 AUGUST 2020

For distribution

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#### Introduction

The United Nations Environment Programme (UNEP) is mandated to lead the United Nations system in the development and implementation of environmental rule of law, as per UNEP’s 2013 Governing Council Decision 27/9 which requested the Executive Director of UNEP to “promote quality information and data exchange among the legal and auditing communities and improve education, capacity-building and technical assistance, including with the aim of strengthening effective national environmental governance systems and improving the effectiveness of rule of law systems.” In 2019, this mandate was reinforced by the United Nations Environment Assembly (UNEA) with the adoption of the Fifth Montevideo Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme V) through resolution 4/20. Montevideo Programme V is a ten-year intergovernmental programme that promotes the development and implementation of environmental law, builds related capacities in countries, and contributes to the environmental dimension of the 2030 Agenda for Sustainable Development.

In support of this mandate, in 2019, UNEP published its First Global Report on Environmental Rule of Law (the First Report). The First Report assessed the global state of environmental rule of law. It examined global trends and country measures against core elements of environmental rule of law, including institutions, civic engagement, rights, and justice. Amongst other key findings, the First Report found that despite a 38-fold increase in environmental laws enacted since 1972, failure to fully implement and enforce these laws remains one of the greatest challenges to mitigating climate change, reducing pollution and preventing widespread species and habitat loss.

Building on the findings of the First Report, UNEP will conduct a periodic and global assessment of environmental rule of law, with biennial global reports on the state of environmental rule of law. This concept note outlines the purpose, scope and methodology for the UNEP 2021 Global Report on Environmental Rule of Law (the Report).

#### Purpose

The UNEP 2021 Global Report on Environmental Rule of Law will go beyond updating the First Report and be scaled up to be one of the flagship reports of UNEP. It seeks to position UNEP as the leading global voice on environmental rule of law by providing a data-informed assessment of the status of and global trends on environmental rule of law, good practices in the implementation of

environmental rule of law, and recommendations for future directions. The Report will help establish benchmarks and opportunities for future action and collaboration. It will also examine the role of environmental laws and institutions in combating zoonotic diseases such as the current global coronavirus pandemic (COVID-19) and how countries can 'build forward better'. COVID-19 will be considered in each relevant chapter of the Report.

## Scope of the report

The Report will be organized in six parts, as outlined below. Each 'substantive' chapter (chapters 2-5) will follow a general outline that will report on: (a) introduction to the substantive issue and its importance to achieving environmental rule of law; (b) global status and key global trends regarding the substantive issue, focusing in particular on updates from the 2019 report; (c) good practices regarding the substantive issue; and (d) conclusions and recommendations for future action:

1. **Introduction:** The introduction will provide an overview of environmental rule of law and the scope and purpose of the report. and elaborate on its purpose. It will also highlight key global trends in environmental rule of law, including those that have emerged since the First Report.
2. **Laws and Institutions:** This chapter will review the critical role of environmental laws and institutions in the development and implementation of environmental rule of law. It will identify key components for effective laws and institutions for achieving environmental rule of law, especially in light of efforts to recover from the effects of the COVID-19 pandemic. Additionally, the chapter will introduce good practices on environmental laws and institutions with a focus on thematic areas such as climate, pollution and nature. The role of courts will be discussed in more detail in Chapter 5 on Justice.
3. **Civic Engagement:** This chapter will explore the legal and practical tools for civic engagement that underpin effective environmental rule of law. The chapter will discuss meaningful ways in which States can provide access to environmental information and enhance public participation in environmental decision making, especially for people who are particularly vulnerable to environmental degradation such as women, children, people living in poverty, indigenous peoples and local communities. The chapter will also investigate the effects of virtual meetings on civic engagement in the context of COVID-19 especially its effects on people living in remote areas or who lack technical capacity. The chapter will assess the global status of environmental defenders – i.e. the types and patterns of violence they face -- highlighting their critical role in protecting the environment and the importance of protecting these defenders, including the effects of COVID-19 on their activities. This chapter will introduce good practices related to civic engagement. It will explore ways in which States and stakeholders can create a safe and enabling environment for civic engagement. The extent of rights discussion in this chapter will be limited to access to information and public participation and the rights of environmental defenders. All other rights issues will be discussed in Chapter 4 (Rights). Access to justice will be addressed in detail in Chapter 5 (Justice).
4. **Rights:** This chapter will review the evolving relationship between environmental rule of law and constitutional, human, and other rights related to the environment. It will also report on key trends regarding legal protection and frameworks provided for indigenous peoples, minorities, migrants, and children, while taking gender into consideration. The chapter will also provide practical guidance on how to apply the approach on the ground. The chapter will explore the trends on the role a right to a healthy environment plays, and how enforcing rights related to the environment facilitate the implementation of environmental rule of law. Other

key trends and emerging issues, including rights of nature and the relationship between the environment and race will also be explored. In addition, the chapter will examine the roles and limitations of relevant human rights mechanisms such as the UN Human Rights Council, Special Procedures and human rights treaty bodies in the promotion and implementation of the environmental rule of law. Rights related to civic engagement will be discussed in more detail in Chapter 3 (Civic Engagement) and the rights of access to remedies will primarily be discussed in Chapter 5 (Justice).

5. **Justice:** This chapter will assess how a fair, inclusive, transparent justice system that efficiently resolves environmental disputes is critical in establishing environmental rule of law. The chapter will survey key global trends, including regarding the establishment of specialized environmental courts and tribunals, including indigenous courts, and examine their effectiveness in adjudicating environmental issues. It will also identify barriers in environmental justice and examine key components of effective remedies. It will also report and reflect on how both regular and specialized courts in different jurisdictions have navigated environmental proceedings during COVID-19.
6. **Conclusions and recommendations:** Based on the above chapters, the concluding chapter will provide a set of recommendations for future directions.

## Methodology and drafting process

**Indicators:** The Report will utilize a set of indicators (see **Annex A** for the list indicators) to help inform conclusions on the status and key trends of environmental rule of law. The indicators will be high level and the outputs will be binary (yes/no) to facilitate manageable and realistic data collection and analysis, as best as possible. UNEP will partner with appropriate entities to collect data. UNEP will work closely with partner entities and chapter authors to ensure integration of data analysis in each chapter, as appropriate. To ensure data integrity and accuracy, UNEP will engage with Montevideo national focal points to vet the data before finalization. The indicators have been identified to align, as far as possible, with relevant Sustainable Development Goal indicators. The UNEP 2021 Global Report will not rank countries.

**Good practices:** UNEP will solicit examples of good practices through a public “researchathon” to engage with a wide range of stakeholders. Contributors will be explicitly acknowledged in the report, if they consent.

**Consultation and external review process:** UNEP will consult environmental law stakeholders including governments, UN organizations, Multilateral Environmental Agreement (MEA) Secretariats, civil society, indigenous people’s organizations, the private sector and academics at key stages of the drafting of the report.

**Authors:** technical authors will be identified for each chapter (chapters two to five). Authors will be selected on the basis of their recognized expertise and disciplinary, geographic, and gender balance criteria through a UNEP selection process. The authors will be selected and remunerated, subject to applicable UN rules and regulations and UNEP policies and procedures. UNEP will issue a call for applications to select most suitable authors for chapters 2 - 5 in due course.

## Tentative timeline

The Report is tentatively proposed to be launched in June 2021, subject to final internal consultations and the time needed for adequate research and data collection, report writing and editing,

consultation and internal/external review processes, translation, and communications support. A more detailed timetable will be shared with chapter authors and data collectors in due course.

## Annex A – List of indicators

	Indicators
	<b>Laws</b>
1	Does the country require human rights impacts to be assessed as part of its environmental assessment law(s) at national and/or sub-national level?
2	Do any environmental laws in the country include specific provisions to facilitate monitoring or auditing of the status of implementation, compliance, and/or enforcement? (aligned to SDG 17.16.1)
3	Has the country removed or suspended environmental protection laws or policies, and/or their enforcement, as a direct response to COVID-19?
4	Has the country introduced new laws or policies increasing environmental protection as a direct response to COVID-19?
	<b>Institutions</b>
5	Does the country have a dedicated environmental ministry, an independent environmental protection agency/institution or equivalent at the national level?
6	Does the national level environmental agency/ministry, if there is one, have a guaranteed allocation of funding from the national budget?
7	Does the country have specialized public prosecutors for prosecuting environmental offences at the national and/or sub-national level?
8	Do the general enforcement agencies (e.g. police, customs) at the national and/or sub-national level have explicit competences relating to the enforcement of environmental legislation?
9	Does the country's National Human Rights Institution (NHRI) have an explicit mandate, policy or work programme relating to the environment (aligned to SDG 16.a.1)?
	<b>Civic Engagement</b>
10	Does the country have provisions in its legal framework at national and/or sub-national level guaranteeing the right of access to information, rights of public participation in decision-making, and/or access to justice in matters concerning the environment? (aligned to SDG 16.10.2)
11	Have any environmental defenders been killed in the country in 2019-2020 due to their activities connected to environmental protection? (aligned to SDG 16)
12	Does the country have laws at the national level or have obligations set out in regional or international treaties that explicitly protect environmental defenders or promote their activities? (aligned to SDG 16.10.1)
13	Does the country have any legislation or other measures at any level that explicitly prohibits discrimination in environmental decision-making (i.e. not general discrimination prohibition) by public authorities? (aligned to SDG 16.7.2)
14	Is environmental law required by law to be a compulsory subject in law school curriculums?
	<b>Rights</b>

15	Is the right to a healthy environment explicitly recognized in the constitution, held by a court to be implicit in other constitutional rights, or otherwise guaranteed by legislation in some form (e.g. regional treaty obligation)?
16	If the country recognizes the right to a healthy environment, has it been applied by the courts at national and/or sub-national level?
17	Does the country explicitly recognize rights of nature in its constitution, legislation, regulations, decrees or judicial decisions at national and/or sub-national level?
18	Is the country legally required to take gender considerations into account in any environmental legislation or regulation at national and/or sub-national level? (aligned to SDG 5.1.1)
19	Does the country explicitly protect indigenous rights, including Free, Prior and Informed Consent (FPIC), in its constitution or national law?
20	Did the country's national report submitted to the Universal Periodic Review of the UN Human Rights Council in 2019 or 2020, if applicable, include consideration of environmental issues?
<b>Justice</b>	
21	Does the country have in its national and/or subnational legal framework a requirement that 'every person' has legal standing for environmental matters?
22	Does the country apply the "loser-pays principle" (i.e. the losing party covers the costs for the opponent) in environmental matters?
23	Does the country have a specialised environmental court or tribunal or environmental 'bench' at national and/or sub-national levels?
24	Does the country have a judicial training institute at national and/or sub-national level(s) that includes environmental law in its judicial training activities for 2019-2020?