



Special Rapporteur on human rights and the environment

Policy Brief #6

Prioritizing Profits over People and Planet: The Devastating Impacts of Large Businesses on the Right to a Clean, Healthy and Sustainable Environment

A Policy Brief from the UN Special Rapporteur on human rights and the environment

**By David R. Boyd, UN Special Rapporteur on human rights and the environment,
and
Stephanie Keene, Independent Consultant, International Human Rights Lawyer**

*Making peace with nature is the defining task of the 21st century.
It must be the top, top priority for everyone, everywhere.¹*
UN Secretary General Antonio Guterres

¹ <https://unfccc.int/news/un-secretary-general-making-peace-with-nature-is-the-defining-task-of-the-21st-century>.

Special Rapporteur on human rights and the environment

Table of Contents

I.	Introduction.....	3
II.	Business impacts on the substantive elements of the right to a clean, healthy and sustainable environment	4
A.	Clean air	4
B.	A safe climate.....	5
C.	Safe and sufficient water.....	8
D.	Healthy and sustainably produced food	10
E.	Non-toxic environments.....	12
F.	Healthy ecosystems and biodiversity	14
III.	Business impacts on the procedural elements of the right to a clean, healthy and sustainable environment ..	15
A.	Greenwashing and undermining science	16
B.	Lobbying and corporate capture.....	18
C.	Revolving door hiring	20
D.	Corruption	20
E.	Aiding and abetting businesses	21
F.	Using lawsuits to silence debate and intimidate critics	23
IV.	Conclusion and recommendations	23
	Annex 1	28

Special Rapporteur on human rights and the environment

I. Introduction

The right to a clean, healthy and sustainable environment was recognized by the UN Human Rights Council in 2021 and the UN General Assembly in 2022. This right is recognized in law by 161 States, through constitutions, legislation, and regional treaties. Decades of experience at the regional and national levels demonstrate that the right to a healthy environment includes clean air, a safe climate, safe and sufficient water, adequate sanitation, healthy and sustainably produced food, non-toxic environments, and healthy biodiversity and ecosystems.² It also includes access to information, public participation and access to justice.

Unfortunately, environmentally irresponsible business practices, products and services continue to have egregious negative impacts on all of these substantive and procedural elements. Large businesses commonly wage war on nature by polluting air, water and soil, causing and exacerbating the climate crisis, devastating biodiversity and ecosystems, producing and marketing unhealthy and unsustainable food and releasing toxic substances that poison humans, wildlife and ecosystems.

The planetary crisis is the biggest threat to human rights ever faced, because it threatens the rights of everyone alive as well as the rights of future generations. Among the rights being violated are the rights to life, health, food, water, an adequate standard of living, development, the rights of the child, cultural rights and the right to a clean, healthy and sustainable environment. Environmental degradation creates vicious circles, exacerbating water scarcity, food insecurity, resource shortages, displacement, migration, gender inequality, and armed conflict, all of which in turn cause even greater environmental degradation. The most severe consequences of the planetary crisis are disproportionately inflicted on poor and vulnerably situated persons, communities and countries, predominantly in the Global South, who have contributed least to the crisis.

The current business paradigm is based on exploiting people and nature. Among the fundamental flaws of this paradigm are a belief in limitless growth, short-term thinking, a narrow focus on maximizing profits for shareholders, and externalization of social, health and environmental costs onto society. For example, in 2022, fossil fuel companies made hundreds of billions of dollars in profits while their products killed millions of people and exacerbated the climate emergency. Also in 2022, transnational food businesses enjoyed record profits while food prices, hunger and malnutrition spiked upwards. Business as usual clearly is a recipe for climate chaos, millions of premature deaths, forced migration, ecosystem collapse and human rights violations on an unprecedented scale. Transforming the role of big business in the 21st century economy is thus among the paramount challenges in shifting to a just and sustainable future.

Business enterprises have a responsibility to respect human rights, which requires them to avoid causing or contributing to adverse human rights impacts through environmental harm, to address such impacts when they occur and to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships. Normative frameworks intended to address the substantial impacts of businesses on human rights, including the UN Guiding Principles on Business and Human Rights³ and the OECD Guidelines

² A/HRC/40/55, A/HRC/46/28, A/HRC/49/53, A/74/161, A/75/161, A/76/179. All available [here](#).

³ Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. A/HRC/17/31.

Special Rapporteur on human rights and the environment

for Multinational Enterprises on Responsible Business Conduct, are completely inadequate as substitutes for legally binding frameworks, although they may serve as catalysts for such frameworks. States routinely fall far short of complying with their human rights obligations, by completely failing to adequately prevent, regulate, tax and punish the gargantuan climate, environmental and human rights impacts of businesses.

This Policy Brief accompanies the report to the Human Rights Council called “Businesses, Planetary Boundaries and the Right to a Clean, Healthy and Sustainable Environment” (A/HRC/55/43). That report focuses primarily on State obligations to protect the right to a clean, healthy and sustainable environment from harms caused by businesses. It also includes an annex of good practices, whereas this Policy Brief is akin to a report on bad practices—business activities that have caused or contributed to human rights abuses specifically related to the right to a healthy environment.

II. Business impacts on the substantive elements of the right to a clean, healthy and sustainable environment

A. Clean air

Businesses are major drivers of ambient air pollution, which causes more than 4 million premature deaths annually. The fine particles that pollute air mostly come from electricity generation (burning fossil fuels and biomass), transportation, and industrial processes (e.g. mining, oil refining, chemical production, steel, brick and cement manufacturing).⁴ Approximately 22 per cent of premature deaths caused by air pollution are linked to international trade, i.e. production of goods destined for export from low- and middle-income nations to wealthy nations. For example, air pollution caused by producing goods for consumption in Western Europe and the United States is linked to over 100,000 premature deaths annually in China.⁵

Large, environmentally irresponsible businesses primarily based in the Global North commonly engage in predatory tactics that take advantage of lower environmental standards, limited monitoring, and weak enforcement in the Global South, thus reinforcing gross geographical power imbalances and violating the rights of citizens who face immense obstacles in trying to hold transnational corporations accountable. For example, Swiss commodity trading companies have been found to mix fuel for States in Africa with sulphur content over 300 times European legal limits.⁶ The use of this dirty fuel worsens air quality, contributing to deaths, illnesses and human rights violations. In South Africa, Eskom has operated coal-fired power plants for decades without installing widely available technologies to reduce air pollution, contributing to tens of thousands of premature deaths. Lead mining, smelting and recycling have created a horrific legacy of contamination that continues to poison generations of children, causing lifelong adverse impacts

⁴ https://www.unep.org/interactive/air-pollution-note/?gclid=Cj0KCQjwryjBhD0ARIsAMLvnF_whRB8etMv4LgTltxLQ8gJ73Np6ssQQfcJPtVrSeezJSchC13u_WsaAhXTEALw_wcB.

⁵ A/HRC/40/55, para. 36.

⁶ <https://www.publiceye.ch/en/media-corner/press-releases/detail/swiss-commodity-traders-flood-africa-with-toxic-fuel#:~:text=%22Dirty%20Diesel%22%2C%20a%20report,long%20been%20banned%20in%20Europe>.

Special Rapporteur on human rights and the environment

on their neurological development and intelligence in La Oroya (Peru), Owino Uhuru (Kenya), Kabwe (Zambia), and Klity Creek (Thailand), among others. Deadly air pollution caused by businesses is not limited to the Global South, as demonstrated by sacrifice zones (areas where profit and private interests are prioritized over health, human rights, and nature) in Chemical Valley (Canada), Cancer Alley (United States), Taranto (Italy), Bor (Serbia), Skopje (North Macedonia), and Silesia (Poland).⁷

As described below (Part III), large businesses have consistently lied about their contributions to air pollution, attempted to manufacture doubt about the adverse health and environmental impacts of air pollution, misrepresented the costs of reducing pollution, and lobbied against State efforts to improve air quality through stronger laws, regulations and policies.

B. A safe climate

Businesses, including state-owned enterprises, are major contributors to the climate emergency, unleashing a storm of death, malnutrition, water insecurity, socioeconomic decline, biodiversity loss, and ecosystem degradation. The greatest responsibility is shouldered by those enterprises with the largest historical and ongoing greenhouse gas emissions. As of 2017, 100 energy and cement companies were responsible for 71 percent of all industrial greenhouse gas emissions between 1988 and 2015.⁸ During this period, 25 fossil fuel producers caused more than half of global industrial emissions. Among the highest emitting companies since 1988 are public investor-owned companies (e.g. ExxonMobil, Shell, BP, Chevron, Peabody, Total, and Conoco Phillips) and State-owned enterprises such as Saudi Aramco, Gazprom and Lukoil (Russia), National Iranian Oil, Coal India, Pemex (Mexico), China National Petroleum Corporation, Shenhua Group, and China National Coal Group.⁹ More than half of the historical greenhouse gas emissions of fossil fuel companies come from State-owned enterprises.¹⁰ State-owned enterprises in China continue to build new coal-fired power plants, with negative global consequences for the right to a healthy environment.¹¹ The vast majority of major polluters oppose public policies intended to fulfil the commitments made by States in the Paris Agreement.¹²

The world's most polluting businesses are among the world's most profitable enterprises. Six of the world's largest fossil fuel corporations (Saudi Aramco, ExxonMobil, Chevron, Conoco Phillips, BP and Shell) made an unprecedented \$350 billion in windfall profits in 2022, exploiting an energy crisis and exacerbating a climate crisis.¹³ Sales from Chevron, Conoco Phillips, Exxon and Shell collectively amounted to US\$1 trillion in 2022, "a sum greater than the total economic

⁷ A/HRC/49/53.

⁸ 2017 Carbon Majors Report, <https://www.cdp.net/en/articles/media/new-report-shows-just-100-companies-are-source-of-over-70-of-emissions>.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Global Energy Monitor, 2023, Boom and Bust Coal 2023: Tracking the Global Coal Plant Pipeline, Executive Summary, available at: <https://globalenergymonitor.org/wp-content/uploads/2023/03/Boom-Bust-Coal-2023.pdf>.

¹² InfluenceMap, CA100+ Company Rankings, <https://ca100.influencemap.org/index.html#3>.

¹³ <https://www.cnbc.com/2023/02/08/big-oil-rakes-in-record-annual-profit-fueling-calls-for-higher-taxes.html> and <https://apnews.com/article/saudi-aramco-2022-financial-earnings-oil-energy-c42b0a0b7b5a70db1f2a0ea732434051>.

Special Rapporteur on human rights and the environment

output of Colombia, South Africa or Switzerland.”¹⁴ Despite these massive sales and profits from products that are primarily responsible for the climate emergency, as of January 1, 2024 not one fossil fuel company has paid one cent of compensation for loss and damage to any individuals, communities or countries that have suffered climate-related loss and damage.

The evidence is clear from internal documents that the biggest fossil fuel businesses have known about the adverse impacts of climate change for decades.¹⁵ Instead of acting responsibly, they have lied, sabotaged climate science, misled the public and deceived policymakers. Similar patterns of behavior and culpability eventually led to the tobacco industry paying hundreds of billions of dollars for their malfeasance. It is only a matter of time before the bill comes due for the fossil fuel industry as well.

Banks and institutional investors are major contributors to business-related climate impacts, yet their environmentally salient activities are often overlooked and largely unregulated. Fossil fuel financing from the world’s 60 largest banks (led by JPMorgan Chase, Citi, Wells Fargo, and Bank of America) totaled \$4.6 trillion in the six years following the adoption of the Paris Agreement in 2015, with \$742 billion in fossil fuel financing in 2021 alone. The largest financial supporters of fossil fuels in Europe, Japan and Canada are RBC, MUFG and Barclays, respectively. The majority of the 161 banks and financial institutions that formed the Glasgow Financial Alliance for Net Zero continue to support coal, oil and natural gas investments.¹⁶

Powerful businesses continue to oppose urgent climate action, yet the Intergovernmental Panel on Climate Change warns that without rapid, deep and sustained mitigation and accelerated adaptation actions, losses and damage will accelerate, disproportionately harming vulnerable populations.¹⁷ The debacle at Dubai, COP28, saw thousands of fossil fuel lobbyists collude with petrostates to undermine science and block the inclusion of ambitious language related to a full and fair fossil fuel phase-out from the Global Stocktake outcome document.¹⁸

To make matters worse, fossil fuel companies are weaponizing investor-State dispute settlement provisions in investment treaties to block climate actions or seek billions of dollars in compensation for government actions intended to address climate change and fulfil human rights.¹⁹ The United Nations Conference on Trade and Development (UNCTAD) reports more than 127 ISDS claims have been filed that seek \$1 billion or more in damages.²⁰ Billion-dollar ISDS claims

¹⁴ <https://www.cbsnews.com/news/exxon-chevron-shell-conocophillips-record-profits-earnings-oil-companies-most-profitable-year/>.

¹⁵ Kathy Mulvey and Seth Shulman, [The Climate Decision Dossiers: Internal Fossil Fuel Industry Memos Reveal Decades of Corporate Disinformation](#), Union of Concerned Scientists, 2015.

¹⁶ <https://reclaimfinance.org/site/wp-content/uploads/2023/01/Throwing-fuel-on-the-fire-GFANZ-financing-of-fossil-fuel-expansion.pdf>.

¹⁷ Intergovernmental Panel on Climate Change, 2023, Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland.

¹⁸ Conference of the Parties to the UNFCCC, 2023, Outcome of the first global stocktake, Draft decision CMA.5, <https://unfccc.int/documents/636608> See also <https://www.theguardian.com/environment/2023/dec/05/record-number-of-fossil-fuel-lobbyists-get-access-to-cop28-climate-talks>.

¹⁹ A/78/161.

²⁰ <https://investmentpolicy.unctad.org/investment-dispute-settlement>.

Special Rapporteur on human rights and the environment

are becoming routine in climate and environmental cases, representing a gold mine for foreign investors and an economic nightmare for low- and middle-income States.²¹

The average claim in fossil fuel arbitrations is \$1.4 billion, double the average claim in non-fossil fuel arbitrations.²² At the merits stage, fossil fuel investors win 72 percent of cases, forcing governments to pay more than \$77 billion in compensation to date.²³ The average award in published fossil fuel arbitrations is \$600 million—five times the average amount awarded in non-fossil fuel arbitrations.²⁴

Italy has faced multiple claims, seeking hundreds of millions of dollars in damages, since its withdrawal from the Energy Charter Treaty (ECT).²⁵ In 2017, in response to the climate crisis, the Italian government banned oil drilling within 12 miles of its shoreline. UK oil company Rockhopper launched an ISDS claim because the prohibition stopped its planned offshore oil drilling project. Italy lost the case and was ordered to pay \$290 million to Rockhopper as compensation.²⁶ The award was calculated using the discounted cash flow method and is approximately six times more than Rockhopper invested. Rockhopper announced it would use this windfall payment of public funds from Italy to finance oil exploration activities off the coast of the Falkland Islands.²⁷

Emissions from coal power plants are a major source of air pollution, yet Germany and the Netherlands face multi-billion-dollar payments because of decisions to phase out coal-fired electricity. Two companies mining and burning lignite (the dirtiest type of coal) in Germany, RWE and LEAG, were given more than \$4.5 billion in compensation for ending coal-fired power generation by 2038.²⁸ Worse yet, if Germany accelerates the coal phase out, as is likely necessary to meet its Paris Agreement commitments, the level of compensation will increase.

The fear of provoking ISDS claims by foreign investors is creating “regulatory chill”, where States are reluctant to enact or implement stronger climate and environmental laws and policies despite their international environmental and human rights obligations. The German finance ministry warned the chancellor’s office in 2019 that using regulation to phase out coal would create an “increased risk of litigation, especially international litigation based on the ECT”.²⁹ A minister from the Netherlands, when asked about accelerating the phaseout of coal-fired power stations, said “further intervention in the coal sector entails major legal risks”.³⁰

²¹ A/78/161.

²² Lea Di Salvatore, 2021, *Investor–State Disputes in the Fossil Fuel Industry*, International Institute for Sustainable Development, at pp. 17-19.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ <https://www.iisd.org/itn/en/2021/06/24/energy-charter-treaty-reform-why-withdrawal-is-an-option/>.

²⁶ <https://www.theguardian.com/business/2022/aug/24/oil-firm-rockhopper-wins-210m-payout-after-being-banned-from-drilling>.

²⁷ <https://rockhopperexploration.co.uk/2022/08/successful-arbitration-outcome/>.

²⁸ Powershift et al. 2022. *Coal ransom: How the Energy Charter Treaty drove up the costs of the German coal phase-out*.

²⁹ <https://www.ft.com/content/b02ae9da-feae-4120-9db9-fa6341f661ab>.

³⁰ Baldon Avocats, 2022, *Summary Note on Regulatory Chill*, p. 25.

Special Rapporteur on human rights and the environment

New Zealand, Denmark and France all backed away from ambitious climate action because of ISDS fears. In 2018, New Zealand banned new offshore oil exploration but did not cancel existing offshore oil permits and left the door open to new onshore oil development. New Zealand chose not to go further because of the danger of costly ISDS claims.³¹ Denmark set a deadline of 2050 for phasing out oil and gas production, which affected only one fossil fuel licensing agreement. Denmark did not set an earlier target of 2030 or 2040 because it could have been forced to pay “incredibly expensive” compensation to foreign fossil fuel companies through ISDS claims.³² In 2017, after France announced bold plans to phase out all fossil fuel extraction by 2040, Vermilion, a Canadian corporation that is the largest oil producer in France, threatened the State with a billion-dollar arbitration claim. France responded by implementing weaker, much less ambitious regulations.³³

C. Safe and sufficient water

Businesses are prodigious contributors to water pollution, water overuse, and degradation of freshwater ecosystems, through deforestation, the damming of rivers, the extracting, transporting and burning of fossil fuels, industrial agriculture, intensive livestock operations, industrial fisheries, the fashion and textile industries, and large-scale mining. Pesticides, chemical fertilizers, and vast volumes of manure from intensive livestock farming contaminate drinking water supplies.³⁴

A tragic example is the long-term chlordecone pesticide contamination of groundwater in Guadeloupe and Martinique.³⁵ France permitted the continued use of chlordecone in these overseas departments for years after it was banned elsewhere. Virtually the entire water supply of these two islands is contaminated, affecting not only the availability of safe drinking water but also the ability to grow food. The highest rates of prostate cancer in the world, linked to pesticide exposure, are found in Guadeloupe and Martinique.³⁶

Large-scale industrial activities use and contaminate massive volumes of water, and generate catastrophic risks, including the collapse of mine tailings dams (e.g. Vale’s Mariana and Brumadinho disasters in Brazil).³⁷ Teck Cominco facilities in Canada contaminated the Columbia River on both sides of the Canada-US border as well as Roosevelt Lake in the United States, provoking enforcement action by the US Environmental Protection Agency.³⁸ Instead of cleaning up the mess, Teck Cominco fought a legal battle in which they argued that they were not subject to American environmental law. Canada is home to more than 1,000 mining companies with assets

³¹ <https://capitalmonitor.ai/institution/government/cop26-ambitions-at-risk-from-energy-charter-treaty-lawsuits/>.

³² Ibid.

³³ https://www.lemonde.fr/accord-commercial-europe-canada-ceta/article/2018/09/04/comment-la-menace-d-arbitrage-a-permis-aux-lobbys-de-detricoter-la-loi-hulot_6005132_4998347.html.

³⁴ A/77/167, para 21.

³⁵ A/74/197, para 26, A/HRC/18/35, para. 31, and A/HRC/36/45/Add.2, para. 58.

³⁶ <https://www.wcrf.org/cancer-trends/prostate-cancer-statistics/>.

³⁷ A/HRC/45/12/Add.2 See also <https://www.scielo.br/j/read/a/CjQDqqkvQvLqXDXnVVfTs9x/?lang=en#>.

³⁸ Ma, Jing, Keith W. Hipel, and Stéphane M. McLachlan. 2013. “Cross-Border Conflict Resolution: Sediment Contamination Dispute in Lake Roosevelt.” *Canadian Water Resources Journal / Revue Canadienne Des Ressources Hydriques* 38 (1): 73–82.

Special Rapporteur on human rights and the environment

worth a total of almost \$300 billion, operating in more than 100 States.³⁹ Canadian mining businesses are globally notorious for committing human rights abuses.⁴⁰ The Marlin mine in Guatemala contaminated water, leading to high levels of heavy metals including arsenic, copper, mercury and zinc in the blood and urine of people living near the mine and downstream.⁴¹

Privatization, commodification and financialization endanger the function and value of water as a resource that supports health, life and human rights.⁴²

Land and water grabbing by businesses in the agriculture, livestock, mining, forestry and tourism industries violates customary and community titles and tenures. These nefarious actions also threaten the availability of water and many natural resources that sustain Indigenous Peoples and rural communities.⁴³ Businesses rarely seek the consent of pre-existing land users in their drive to produce commodities for export (e.g. beef, soybeans, palm oil, rubber, biofuel). As these crops require heavy water consumption, land and water grabbing go hand in hand.⁴⁴

The mining and agribusiness sectors in Chile are exacerbating the catastrophic consequences of a mega-drought that has lasted more than a decade.⁴⁵ In Chile, water was privatized by the 1980 constitution. The 1981 Water Code gave away rights for free, in perpetuity, creating a market that has enabled corporate hoarding of water rights, depriving communities of reliable access to safe and sufficient water. Large-scale mining has devastating impacts on aquatic ecosystems, Indigenous Peoples' territories and drinking water for many communities.⁴⁶ CODELCO, one of the world's largest copper mining companies, uses 5,500 liters of water per second at its Chilean facilities, yet many communities in Chile lack access to safe drinking water, and climate change is exacerbating the crisis.⁴⁷

The cruise ship industry is notorious for dumping waste, untreated sewage and other pollutants into the world's oceans, taking advantage of the difficulty in monitoring their activities over vast areas. Princess Cruise Line, (a subsidiary of Carnival Corporation, the company controlling nearly half of the global cruise ship market⁴⁸) brags about its environmental record⁴⁹ while brazenly polluting marine environments, covering up these crimes, and repeatedly failing to complete

³⁹ Natural Resources Canada. (2023). *Canadian Mining Assets*. (Information Bulletin).

⁴⁰ Salim, L. (2022). Human Rights Abuses by Canadian-Owned Mining Operations Abroad. Human Rights Research Center. <https://www.humanrightsresearch.org/post/human-rights-abuses-by-canadian-owned-mining-operations-abroad>.

⁴¹ Shipton, L. 2017. Canada's Mining Industry in Guatemala and the Right to Health of Indigenous Peoples. *Health and Human Rights Journal*. <https://www.hhrjournal.org/2017/08/canadas-mining-industry-in-guatemala-and-the-right-to-health-of-indigenous-peoples/>.

⁴² A/76/159.

⁴³ A/77/167.

⁴⁴ Ibid at para. 106.

⁴⁵ Special Rapporteur on human rights and the environment, Report on Chile Country Visit, A/HRC/55/43/Add.1 See also <https://www.reuters.com/world/americas/chiles-parched-mines-race-an-increasingly-scarce-commodity-water-2022-05-06/> and <https://www.reuters.com/business/energy/chilean-state-sues-bhp-antofagasta-mines-over-atacama-water-use-2022-04-08/>.

⁴⁶ A/77/167, para 114.

⁴⁷ <https://www.bnamerica.com/en/interviews/how-codelco-plans-to-remain-the-worlds-top-copper-producer>.

⁴⁸ <https://csimarket.com/stocks/competitionSEG2.php?code=CCL>.

⁴⁹ <https://www.princess.com/aboutus/environmental-responsibility/> and <https://www.princess.com/aboutus/environmental-responsibility/environmental-awards/>.

Special Rapporteur on human rights and the environment

remedial requirements despite multiple sanctions. The company reportedly received over 50 citations from Alaskan authorities between 2010 – 2021 for violations of the state’s water pollution standards.⁵⁰ In 2017, Princess plead guilty to seven felony charges in the United States stemming from its deliberate pollution of the oceans and intentional acts to cover it up and received a record-setting \$40 million criminal penalty.⁵¹ In relation to this case, Princess also plead guilty in 2019 and 2022 to multiple violations of its court-imposed probation order, which required the company to remedy its environmental performance by executing an environmental compliance plan.⁵² As observed by the court appointed monitor assigned to oversee the company’s remedial performance, Princess Cruise Line’s persistent refusal to improve its environmental performance “reflects ... a culture that seeks to minimize or avoid information that is negative, uncomfortable, or threatening to the company, including to top leadership (i.e., the Board of Directors, C-Suite executives and Brand Presidents/CEOs).”⁵³

D. Healthy and sustainably produced food

Today’s industrial food systems, dominated by large businesses, are profoundly unsustainable, unhealthy and incompatible with the right to a clean, healthy and sustainable environment. Industrial agriculture employs an export-oriented, exploitative, monoculture-focused business model, with devastating consequences for ecosystems, biodiversity, climate change, human health, and the nature-based livelihoods and cultures of Indigenous Peoples, Afro-descendants, peasants and local communities. The industrial food system decreases agricultural biodiversity, reduces the resilience of food systems and jeopardizes food security. Industrial agriculture also drives land-, ocean-, and resource-grabbing, displacing rural communities and destroying small-scale fishers’ livelihoods.⁵⁴

Global markets for grain, seeds, pesticides, and fertilizers are concentrated in the hands of a small number of massive businesses. Four companies control 60 percent of the global seed market, 70-90 percent of the grain trade, and 75 percent of global pesticide sales.⁵⁵ This high concentration of corporate power allows a small group of businesses to shape markets and influence food policy in ways intended to maximize shareholder profits rather than public interests.⁵⁶ An example is the narrowing of lawfully available seeds, a practice particularly harmful to women, who are the stewards of seed diversity.⁵⁷

Industrial food systems are breeding grounds for pathogens and elevate risks of zoonotic diseases spilling over into humans (e.g. swine flu, avian influenza).⁵⁸ Businesses in the livestock and aquaculture industries account for 70-80 percent of total antibiotic consumption, contributing to

⁵⁰ <https://foe.org/cruise-lines/princess-cruises/d>.

⁵¹ <https://www.justice.gov/usao-sdfl/pr/princess-cruise-lines-pay-largest-ever-criminal-penalty-deliberate-vessel-pollution>.

⁵² <https://www.justice.gov/opa/pr/princess-cruise-lines-pleads-guilty-second-revocation-probation>.

⁵³ Ibid.

⁵⁴ A/76/179, para 45.

⁵⁵ A/HRC/46/33, paras 78-79. <https://www.theguardian.com/environment/2022/aug/23/record-profits-grain-firms-food-crisis-calls-windfall-tax>.

⁵⁶ A/76/237, para. 19.

⁵⁷ A/HRC/31/51, paras. 35-38.

⁵⁸ A/76/237, para. 17. A/75/161.

Special Rapporteur on human rights and the environment

the emergence and spread of antimicrobial resistance.⁵⁹ Today, 700,000 premature deaths annually involve antimicrobial resistance, a figure that could jump to 10 million annually by 2050.⁶⁰

Pesticides used in agriculture have contributed to increased yields but are inadequately regulated and linked to cancer, stroke, congenital anomalies, reproductive health risks, adverse impacts on children's neurological development and neurodegenerative diseases including Parkinson's.⁶¹ Pesticides also cause acute poisoning, especially the category of chemicals known as highly hazardous pesticides, which can cause hospitalization and death. Businesses continue to manufacture and sell highly hazardous pesticides despite major health and environmental risks and the availability of effective, affordable and safer alternatives. In the Global North, businesses continue the unethical practice of exporting pesticides, whose use is banned in the States where they are manufactured, to States in the Global South. In 2018, businesses in the European Union exported more than 81,000 tonnes of pesticides containing substances banned for use in the EU.⁶² From 2021 to 2022, the volume of banned pesticides produced by businesses in Germany and exported to non-EU countries almost doubled.⁶³

Industrial food and beverage businesses produce and promote heavily processed products high in sugar, salt and fat. Excessive production of animal protein and ultra-processed foods, combined with underproduction of whole grains, legumes, and fresh fruits and vegetables, generates poor diets, serious health problems, deforestation, and pollution.⁶⁴ Industrial food systems rely heavily on plastic packaging, with devastating consequences for marine life and adverse health consequences, especially for women and girls.⁶⁵

Industrial fishing has extensive adverse environmental impacts, from the use of polluting fuels (air pollution and climate impacts) to declines in fish populations that affect ecosystem health. The reason that most fish stocks worldwide are being fished at or beyond sustainable rates is because of large transnational fishing fleets. These fleets also have negative consequences for the human rights and livelihoods of small-scale fishers and their communities. Access to species that are vitally important for healthy diets may be reduced or eliminated because of industrial over-fishing, as has occurred on the west coast of Africa.⁶⁶ In the Gambia, a Chinese owned fishmeal plant (Goldmeal Lead) is causing over-fishing of species that are vital to the diets of local communities and is dumping toxic wastewater into the ocean in violation of the law. Although charged by the

⁵⁹ Thomas P. Van Boeckel and others, "Reducing antimicrobial use in food animals", *Science*, vol. 357, No. 6358 (September 2017), pp. 1350–1352.

⁶⁰ Interagency Coordination Group on Antimicrobial Resistance, *No Time to Wait: Securing the Future from Drug-Resistant Infections, report to the Secretary-General of the United Nations* (April 2019).

⁶¹ A/76/179, para. 38. See also <https://enveurope.springeropen.com/articles/10.1186/s12302-022-00638-8>.

⁶² Business & Human Rights Resource Centre, *Banned in Europe: How the EU exports pesticides too dangerous for use in Europe*, 10 September 2020: <https://www.business-humanrights.org/en/latest-news/banned-in-europe-how-the-eu-exports-pesticides-too-dangerous-for-use-in-europe/>.

⁶³ Tagesschau, *Ban on pesticide exports – with loopholes*, 29 June 2023:

<https://www.tagesschau.de/investigativ/monitor/pestizide-exporte-100.html>.

⁶⁴ A/76/179.

⁶⁵ UNEP, *From Pollution to Solution: A Global Assessment of Marine Litter and Plastic Pollution* (2021).

⁶⁶ Geall, S., Gruber, C., Lam, R., Shea, L., Shlieman, L., Sumaila, R., & Yozell, S. (2023). *Charting a Blue Future for Cooperation between West Africa and China on Sustainable Fisheries*. Washington D.C., USA: The Stimson Center.

Special Rapporteur on human rights and the environment

National Environment Agency in 2017, and fined \$25,000, the company is apparently continuing the practice of illegal discharges with no further enforcement action.⁶⁷

E. Non-toxic environments

Non-toxic environments where people live, work, learn and play are a fundamental element of the right to a clean, healthy and sustainable environment yet hundreds of millions of tons of toxic substances are released into air, water and soil annually by businesses. A staggering nine million people die prematurely every year because of exposure to pollution and toxic substances.⁶⁸ Production of chemicals doubled between 2000 and 2017, and is expected to double again by 2030 and triple by 2050.⁶⁹ The likely result of this growth will be increased toxic exposure and worsening impacts on human and environmental health.

Some of the most extreme human rights abuses take place in “sacrifice zones” where residents of poor and marginalized communities suffer devastating physical and mental health consequences as a result of living in pollution hotspots.⁷⁰ Among the most egregious culprits are businesses operating coal-fired power plants, mines, smelters, oil and gas operations, chemical plants, petroleum refineries, steel plants, garbage dumps, hazardous waste incinerators, factory farms, industrial aquaculture operations and monoculture plantations. Sacrifice zones exist in States rich and poor, North and South, as described in more than 60 recently documented examples. In the United States, the highest cancer rates afflict predominantly Black communities in Louisiana’s “Chemical Alley”, home to more than 150 refiners and petrochemical plants, including the world’s largest producer of Styrofoam. Large polluting industrial facilities in the US are disproportionately located in communities with the highest percentages of persons of African descent, the lowest household incomes, and the highest proportion of residents who did not graduate from high school.⁷¹

Chemical accidents have catastrophic consequences on the rights to life, health and a healthy environment, as demonstrated by the Bhopal disaster in 1984 that killed thousands immediately and left tens of thousands to suffer from chronic diseases linked to the toxic exposure.⁷² More

⁶⁷ Manneh, M. (2022). Seaweed blooms caused by fishmeal plants hurt Gambian coastal communities. Retrieved from China Dialogue Ocean: <https://chinadialogueocean.net/en/fisheries/seaweed-blooms-caused-by-fishmeal-plants-hurt-gambian-coastal-communities/>.

⁶⁸ Pollution and health: a progress update - The Lancet Planetary Health

[https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(22\)00090-0/fulltext](https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(22)00090-0/fulltext).

⁶⁹ United Nations Environment Programme (UNEP), *Global Chemicals Outlook II: From Legacies to Innovative Solutions – Implementing the 2030 Agenda for Sustainable Development* (Nairobi, 2019).

⁷⁰ A/HRC/49/53; Annex 1 to A/HRC/49/53; David R. Boyd and McKenna Hadley-Burke (2022), *Sacrifice Zones: 50 of the Most Polluted Places on Earth*.

⁷¹ A/HRC/49/53, para. 44.

⁷² McCord GC, Bharadwaj P, McDougal L, Kaushik A, Raj A. Long-term health and human capital effects of in utero exposure to an industrial disaster: a spatial difference-in-differences analysis of the Bhopal gas tragedy. *BMJ Open*. 2023 Jun 13;13(6):e066733. See also Sharma DC. Bhopal: 20 years on. *Lancet*. 2005 Jan 8-14;365(9454):111-2.

Special Rapporteur on human rights and the environment

recently, the 2020 ammonium nitrate explosion in Lebanon killed 220 people, injured 6,500, left 300,000 people homeless and caused \$7 billion dollars in damages.⁷³

Extraction of oil from the tar sands in northern Alberta (Canada)—largely by Imperial Oil Limited, Suncor Energy, Cenovus Energy, and Canadian Natural Resources Limited—causes the discharge of immense volumes of air, water and climate pollution, endangering the health of humans, wildlife and ecosystems.⁷⁴ Disproportionate impacts are borne by local Indigenous Peoples.⁷⁵ An egregious example occurred in 2022 when Imperial Oil (majority owned by ExxonMobil) caused a major spill of contaminated water (containing naphthenic acids, arsenic, and other toxic substances) that entered the Athabasca River. Imperial Oil failed to notify the Chipewyan First Nation or environmental regulators for nine months, exposing Indigenous Peoples to toxic chemicals in a clear case of environmental racism.⁷⁶

The production of virgin polymers used in producing single-use plastics is dominated by fossil fuel and chemical giants, including Exxon Mobil, Saudi Aramco, Petrochina, Dow and INEOS.⁷⁷ Single-use plastics, from production through disposal, also create massive volumes of greenhouse gas emissions, equivalent to the UK's emissions in 2021.

Businesses fail to inform governments, workers or consumers about the toxic risks of their products, using illegitimate claims of confidentiality, hiding or falsifying the results of internal studies, paying scientists to publish friendly articles, and even creating their own pseudo-scientific journals with names similar to authentic peer-reviewed journals.⁷⁸ One worker dies every 15 seconds from toxic exposure at work, and about 160 million cases of occupational disease are reported annually (70% of which are cancers).⁷⁹ Women and children are often especially vulnerable to toxic chemical exposure at work, with women of reproductive age facing some of the most pronounced risks.⁸⁰

Instead of adopting measures to respect workers' rights affected by toxic substances, production is shifted to States with lower standards of environmental, worker and consumer protection. For example, chemical-intensive manufacturing once largely located in the highly industrialized countries are now steadily expanding into the Global South through the globalization of supply chains.⁸¹ Businesses in the Global North continue to irresponsibly export hazardous materials such

⁷³ <https://www.ohchr.org/en/press-releases/2020/08/un-human-rights-experts-call-justice-and-accountability-response-beirut>. See also Beirut Ammonium Nitrate Blast: Analysis, Review, and Recommendations <https://www.frontiersin.org/articles/10.3389/fpubh.2021.657996>.

⁷⁴ Way, N. & Flanagan, F. (2017). *The Right to a Healthy Environment: Documenting the need for environmental rights in Canada. Regional impacts of oilsands development in northern Alberta*. Pembina Foundation.

⁷⁵ Westman, C.N., & Joly, T.L. (2019). Oil Sands Extraction in Alberta, Canada: A Review of Impacts and Processes Concerning Indigenous Peoples. *Human Ecology* 47, 233–243.

⁷⁶ Bulowski, N. (2023). *Alberta oilsands spill hidden from First Nation an audacious act of 'environmental racism'*. National Observer. <https://www.nationalobserver.com/2023/03/03/news/alberta-oilsands-spill-hidden-first-nation-act-environmental-racism>.

⁷⁷ <https://www.minderoo.org/plastic-waste-makers-index>.

⁷⁸ A/HRC/30/40, A/HRC/39/48, para 63.

⁷⁹ A/HRC/39/48, para 3-4.

⁸⁰ A/HRC/52/33.

⁸¹ A/HRC/39/48, para 59.

Special Rapporteur on human rights and the environment

as pesticides, plastic waste, electronic waste, used oil and derelict vehicles, along with the associated health and environmental risks, to low- and middle-income countries. Businesses make paint with no lead or low concentrations of lead for sale in wealthy States and target the States in the Global South lacking regulatory limits with paints containing concentrations of lead thousands of times higher, jeopardizing children's health and neurological development.⁸²

F. Healthy ecosystems and biodiversity

All human rights ultimately depend on a healthy biosphere, yet businesses are a major contributor to the destruction of ecosystems and the loss of biodiversity, through deforestation, land-grabbing, extracting, transporting and burning fossil fuels, industrial agriculture, intensive livestock operations, industrial fisheries, large-scale mining and the commodification of nature.

Indigenous Peoples' and traditional communities' lands and territories have high environmental values – in terms of biodiversity, carbon retention, water quality, forest cover, and overall ecological health.⁸³ Business activities that adversely impact on the land, tenure and resource rights of Indigenous Peoples and traditional communities, or that dispossess them, violate their right to a clean, healthy and sustainable environment. Large-scale agriculture, mining, oil and gas, and infrastructure sectors, as well as the finance for these activities, are among the most problematic industries for Indigenous Peoples. Communities in Cameroon, Indonesia, Peru, Colombia, Liberia and elsewhere have experienced dispossession and devastating environmental impacts (biodiversity loss, water pollution, and declining air quality), as well as loss of sources of food and medicine, to make way for oil palm plantations.

Progress is slow among businesses whose supply chains place forests at risk. An assessment of 350 large companies linked to deforestation found that 117 businesses had no commitments to address deforestation in their operations and supply chains, 134 had partial commitments, and only 99 had comprehensive commitments. For many companies with commitments, evidence of implementation was lacking.⁸⁴ Among the 150 financial institutions most exposed to deforestation through their lending, 93 have no deforestation policy, and those institutions provide \$2.6 trillion in finance to businesses with the highest deforestation risks. Few of the surveyed financial institutions recognize the human rights risks linked to deforestation.⁸⁵

An example of Indigenous Peoples struggling to protect their lands and waters is the longstanding resistance of the Dongria Kondh against a massive open-pit bauxite mine proposed by Vedanta in the highly biodiverse Niyamgiri Hills of India. In 2013, the Dongria Kondh won a historic legal battle in the Supreme Court of India. In the *Orissa Mining Corporation Ltd vs Ministry of Environment & Forest* case, the court recognised their cultural, religious and spiritual rights to the

⁸² David O'Connor, Deyi Hou, Jing Ye, Yunhui Zhang, Yong Sik Ok, Yinan Song, Frederic Coulon, Tianyue Peng, Li Tian, 2018, Lead-based paint remains a major public health concern: A critical review of global production, trade, use, exposure, health risk, and implications, *Environment International*, 121,1: 85-101.

⁸³ Julia E Fa and others, 'Importance of Indigenous Peoples' Lands for the Conservation of Intact Forest Landscapes' (2020) 18 *Frontiers in Ecology and the Environment* 135; Christopher J O'Bryan and others, 'The Importance of Indigenous Peoples' Lands for the Conservation of Terrestrial Mammals' (2021) 35 *Conservation Biology* 1002.

⁸⁴ https://forest500.org/sites/default/files/forest500_2022report_final.pdf at p. 14.

⁸⁵ *Ibid.*

Special Rapporteur on human rights and the environment

Niyamgiri Hills, over Vedanta Company's claim to exploit the hills for bauxite. The Supreme Court ordered a referendum to be held amongst the affected communities to obtain consent on the project, and the proposed mine was soundly rejected.⁸⁶

Water is also essential to healthy ecosystems, yet many businesses are responsible for pollution and over-consumption of water, including industrial agriculture, textiles, thermal and nuclear power plants, refineries, mines and chemical manufacturing facilities. In Iran, huge industrial parks known as "industrial cities" use water recklessly and dump waste into water bodies, harming ecosystems and threatening human health.⁸⁷

III. Business impacts on the procedural elements of the right to a clean, healthy and sustainable environment

In order to fully enjoy their right to a healthy environment, people need timely access to reliable information, opportunities to meaningfully participate in decision-making, and access to justice with effective remedies when their right is threatened or violated. Access to information, participation, access to justice, and freedom of speech, assembly and association are human rights in and of themselves, but are particularly important in the climate and environmental contexts, as reflected in the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement). A major concern is the growing level of intimidation and violence facing environmental human rights defenders who oppose business activities in their communities that are contributing to the planetary environmental crisis. Over the past decade, thousands of defenders have been murdered, largely due to their vocal opposition to mining, logging, agribusiness and fossil fuel industries.⁸⁸

Businesses undermine the procedural elements of the right to a healthy environment through greenwashing, sabotaging science, aggressive lobbying, massive political donations, corruption, manipulating public opinion, revolving door hiring practices, regulatory capture and other strategies that exploit their disproportionate economic, social and political power.⁸⁹ In exerting undue influence, businesses are aided and abetted by law firms, accounting firms, public relations firms, consultants, banks and other financial institutions whose role is often overlooked but should be highlighted and addressed through regulation. The corporate-owned and compliant media is

⁸⁶ <https://www.downtoearth.org.in/blog/governance/niyamgiri-10-years-since-india-s-first-environmental-referendum-88850>.

⁸⁷ Imam Juma M., Tari K., Jamali H.A., Kariab H. and Hossein Khani M. (2015). Evaluating the quality of the effluent from the wastewater treatment plant of Alvand Industrial Area of Qazvin for discharging into the environment and reusing it. *Journal of Mazandaran University of Medical Sciences* 26(145), 283-292.
Rabbaniha H., Kabiri, Sh., Nazari, B., Analouei, R. (2023). Risk assessment of using Alborz industrial town's treated wastewater for restoration of Allahabad Qazvin wetland using the Bayesian network, *Iranian Journal of Soil and Water Research*, 53 (12), 2825-2837.

⁸⁸ <https://www.globalwitness.org/en/press-releases/almost-2000-land-and-environmental-defenders-killed-between-2012-and-2022-protecting-planet/>

⁸⁹ A/77/201 paras. 6, 12. See also OECD (2021), *Report on the Implementation of the OECD Recommendation on Principles for Transparency and Integrity in Lobbying*, OECD/LEGAL/0379.

Special Rapporteur on human rights and the environment

complicit in downplaying both the planetary crisis and the role of business in creating, perpetuating and exacerbating it.

A. Greenwashing and undermining science

Greenwashing refers to a business misrepresenting its activities as more environmentally friendly and sustainable than they truly are, exaggerating its accomplishments, and downplaying its negative climate, environmental and human rights impacts. For decades, major industries have lied about the health and environmental impacts of their products including tobacco, fossil fuels, lead, asbestos, plastic, flame retardants, pesticides, per- and polyfluoroalkyl substances (known as forever chemicals because they do not break down), and other chemicals. For example, the beef industry rejects clear scientific findings that wealthy nations must reduce meat consumption to reach Paris Agreement goals.⁹⁰ Businesses undermine science by creating false critiques of legitimate science, attempting to discredit or intimidate scientists,⁹¹ publishing misinformation (usually without disclosing conflicts of interest), cherry-picking data, and using sophisticated public relations campaigns to mislead the public.⁹²

These actions make it difficult for rightsholders to understand the causes and consequences of the planetary crisis, undermining their ability to: recognize the climate, environment and human rights harms and injustices caused by businesses; contribute to, participate in, and support just and effective public policies; and make green and healthy choices that support sustainable businesses. Greenwashing also misleads policymakers, sabotaging the enactment and implementation of laws, regulations and standards needed to protect and fulfil the right to a healthy environment.

The fossil fuel industry is notorious for the scope, brazenness and immense consequences of their decades-long disinformation campaigns about the climate crisis and their disproportionate role in causing it. Internal industry documents released through lawsuits, freedom of information requests and whistleblowers reveal that the biggest companies (e.g. BP, Chevron, Conoco Phillips, Exxon Mobil, and Shell) and their industry associations (e.g. American Petroleum Institute) knew they were causing climate change and that this would have catastrophic consequences.⁹³ These businesses hid their knowledge, deliberately distorted scientific evidence and vigorously denied that the climate was changing, that fossil fuels were responsible, and that there were any viable alternatives. The deceit and deception continue, with broken promises to invest in renewables, promotion of false carbon capture solutions, and bogus commitments to net-zero emissions.⁹⁴

BP, one of the world's largest greenhouse gas emitters, spent millions on a failed effort to rebrand itself as "Beyond Petroleum", caused one of the worst environmental disasters in history (the Deepwater Horizon blowout in 2010), and recently reversed commitments to reduce fossil fuel

⁹⁰ <https://www.theguardian.com/environment/2023/may/03/beef-industry-public-relations-messaging-machine>.

⁹¹ <https://www.ucsusa.org/resources/syngenta-harassed-scientist-who-exposed-risks-its-herbicide-atrazine>.

⁹² Andreas Schäffer, Ksenia J. Groh, Gabriel Sigmund, et al. 2023, "Conflicts of Interest in the Assessment of Chemicals, Waste, and Pollution" Environmental Science and Technology, DOI: 10.1021/acs.est.3c04213. D. Michaels Doubt is their Product,

⁹³ N. Oreskes and T. Conway, *Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming* (2011)

⁹⁴ <https://newclimate.org/sites/default/files/2022/02/CorporateClimateResponsibilityMonitor2022.pdf>.

Special Rapporteur on human rights and the environment

production, reduce greenhouse gas emissions, and shift resources to renewable energy. An independent investigation into the Deepwater disaster concluded that the blowout was preventable, but both BP and the US government had prioritized income over safety.⁹⁵ BP's Human Rights Policy pays lip service to the UN Guiding Principles on Business and Human Rights but makes no mention of BP's contributions to climate change, pollution and biodiversity loss.⁹⁶

The chemical industry also has an extensive track record of deceit and denial. Despite a legal requirement to disclose all studies, the pesticide industry withheld a substantial number of critical developmental neurotoxicity studies from EU authorities reviewing the registration of glyphosate.⁹⁷ Businesses continue to obstruct the inclusion of toxic substances such as asbestos and paraquat on the list of hazardous substances governed by the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, despite clear recommendations by the scientific body of the Convention.

According to greenwashing from chemical giant DuPont, "From the beginning DuPont has set an example for the chemical industry in waste reduction, pollution control and environmental conservation". The truth is that DuPont is responsible for manufacturing and dumping immense quantities of extremely toxic substances, with devastating impacts on human health and environmental quality. DuPont was a major manufacturer of PFASs, including PFOA (the toxic 'forever chemical' used to make Teflon until 2013), and has paid hundreds of millions of dollars to settle lawsuits alleging that exposure to PFOA caused cancer, birth defects and other adverse health effects. DuPont knowingly caused extensive health and environmental damage by disposing of PFOA used to make Teflon at a facility in West Virginia. By 1984, DuPont knew PFOA was very dangerous, but senior management decided that the profits outweighed the risks, even though abating the risks could have been done very cheaply. A review of internal DuPont documents revealed that "The harmful pollution was a rational decision: under reasonable probabilities of detection, polluting was ex ante optimal from the company's perspective, albeit a very harmful decision from a societal perspective."⁹⁸ Corporations avoid and reduce legal liability related to adverse health and environmental impacts by suppressing and distorting information. DuPont used revolving door strategies, lobbied, pressured media and academics not to publish critical articles, and shredded documents that might have contributed to liability.⁹⁹

Volkswagen's "Clean Diesel" campaign is an egregious example of greenwashing that contributed to deadly air pollution. Volkswagen eventually admitted equipping its diesel engines with sophisticated "defeat devices" designed to alter engine performance during emission tests.¹⁰⁰ In reality, 11 million "clean diesel" vehicles manufactured by Volkswagen emitted as much as 40

⁹⁵ National Commission on the BP Deepwater Oil Spill, 2011, *Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling*.

⁹⁶ <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-human-rights-policy.pdf>.

⁹⁷ Mie, A.; Rudén, C. Non-disclosure of developmental neurotoxicity studies obstructs the safety assessment of pesticides in the European Union. *Environ. Health* 2023, 22, 44 DOI: 10.1186/s12940-023-00994-9.

⁹⁸ Shapira, R., & Zingales, L. (2017). *Is pollution value-maximizing? The DuPont Case* (CEPR Discussion Paper, DP12323).

⁹⁹ See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28341>.

¹⁰⁰ <https://www.bbc.com/news/business-34324772>.

Special Rapporteur on human rights and the environment

times the US legal limit for nitrogen oxide pollutants.¹⁰¹ Many other major vehicle manufacturers were guilty of similar deceit regarding tailpipe emissions and fuel efficiency.

For decades, the plastic industry has promoted the idea that consumers are responsible for plastic pollution rather than the producers and the inherent properties of plastic.¹⁰² Coca Cola is one of the world's worst plastic polluters, producing three billion kilograms of plastic annually, breaking decades of promises to shift to using recycled plastic for its bottles, and lobbying against national deposit-refund systems for plastic beverage containers.¹⁰³ The bottled water industry is a climate and environmental disaster, generating vast volumes of greenhouse gas emissions and plastic waste, as the majority of bottles ends up in garbage dumps, in the environment, or being burned. Nestle's Canadian subsidiary ran false advertisements claiming "Bottled water is the most environmentally responsible consumer product in the world."

The fashion industry uses almost 80 trillion liters of water per year (10,000 liters for every person on the planet) and causes 20 percent of all industrial water pollution.¹⁰⁴ A study found that 96 percent of the sustainability claims made by H&M, one of the world's largest fashion companies, were false or misleading.¹⁰⁵

The evidence that businesses deliberately distort science is damning. Industry sponsored studies about pesticides are unlikely to find any adverse health or environmental effects, whereas 84 percent of independent studies find toxic effects.¹⁰⁶ The Organization for Economic Co-operation and Development found that the "relationship between soft drink consumption and negative health outcomes is four to five times weaker in studies funded by the food and beverage industry than in non-industry funded studies."¹⁰⁷ Large businesses in the industrial meat, ultra-processed food, and beverage industries whose products are linked to environmental degradation and non-communicable diseases have used lobbying to block public policies intended to protect health, human rights and the environment.

B. Lobbying and corporate capture

Corporate or regulatory capture refers to situations where undue business influence compromises a government's ability to independently regulate, implement and enforce laws and policies.¹⁰⁸ For example, chemical industry pressure led the government of the United States to replace

¹⁰¹ Ibid.

¹⁰² da Costa, J. P. Micro-consumerist bollocks in the fight against plastic pollution: when good intentions - and regulatory initiatives - go awry. *Water Emerg. Contam. Nanoplastics* 2023, 2 (1), 7.

¹⁰³ Talking Trash, The Corporate Playbook of False Solutions to the Plastics Crisis, https://talking-trash.com/wp-content/uploads/2021/01/TalkingTrash_FullVersion.pdf.

¹⁰⁴ Global Fashion Agenda and The Boston Consulting Group (2017). Pulse of the Fashion Industry Report. http://globalfashionagenda.com/wp-content/uploads/2017/05/Pulse-of-the-Fashion-Industry_2017.pdf.

¹⁰⁵ https://changingmarkets.org/wp-content/uploads/2021/07/SyntheticsAnonymous_FinalWeb.pdf.

¹⁰⁶ Rocha, G. M. and Grisolia, C. K. Why pesticides with mutagenic, carcinogenic and reproductive risks are registered in Brazil. *Dev. World Bioeth.* 2019, 19 (3), 148–154

¹⁰⁷ A/77/201, para. 56.

¹⁰⁸ Working Group on business and human rights, Corporate influence in the political and regulatory sphere: Ensuring business practice in line with the Guiding Principles on Business and Human Rights, A/77/201.

Special Rapporteur on human rights and the environment

independent scientists on a key advisory committee about the impact of lead on children's health with lead industry consultants.¹⁰⁹

Excessive business influence and the resulting corporate capture have limited the disclosure of important environmental information, such as climate-related risks.¹¹⁰ The oil and gas industry, including the American Petroleum Institute, spent \$2.5 billion lobbying the federal government in the US between 2008 and 2022, successfully blocking climate legislation.¹¹¹ Throughout the world, fossil fuel industry lobbying has been linked to efforts to roll back climate regulations.¹¹² Shell delayed the announced deadline for the end of gas flaring activities following a high-level meeting between the president of Nigerian President, Shell's CEO and the Prime Minister of the Netherlands during the World Economic Forum meeting at Davos in Switzerland.¹¹³ In the US, fossil fuel and mining companies successfully lobbied for the repeal of an anti-corruption safeguard that required oil, gas and mining companies to disclose their tax and royalty payments in every country where they operate.¹¹⁴

The livestock industry lobbied sub-national governments in Canada and the United States to enact laws banning criticism of certain food products or large-scale animal agriculture (known as ag-gag or veggie libel laws). Courts have struck down a number of these laws for violating constitutional rights to freedom of expression. Infamous cases include lawsuits brought by McDonald's against two British activists, Texas Beef Group against Oprah Winfrey, and Beef Products, Inc. against ABC News (the pink slime case).¹¹⁵

Corporate political donations and lobbying often pay off with massive returns on investment. For example, the oil, gas, and coal industry donated millions of dollars to Republican political campaigns in 2016 in the United States and then spent millions more on lobbying, resulting in unprecedented rollbacks of environmental regulations and tax cuts that produced billions of dollars in benefits to those businesses.¹¹⁶ Excessive business influence can also undermine UN processes, such as the 2021 Food Summit which largely overlooked human rights (the rights to food and a healthy environment).¹¹⁷ In the United States, the fossil fuel industry formed a secret alliance with state attorneys general to fight federal environmental regulation.¹¹⁸ Major vehicle manufacturers continue to lobby ferociously against climate regulations, such as binding targets for electric

¹⁰⁹ D. Michaels et al. 2002, "Advice without dissent", *Science* 298(5594): 703.

¹¹⁰ <https://www.unpri.org/pri-blog/time-must-be-called-on-negative-climate-lobbying/8259.article>.

¹¹¹ Meng, K.C., Rode, A. The social cost of lobbying over climate policy. *Nat. Clim. Chang.* **9**, 472–476 (2019). <https://www.opensecrets.org/news/2023/02/oil-and-gas-industry-spent-124-4-million-on-federal-lobbying-amid-record-profits-in-2022/>.

¹¹² A/77/201, para 39.

¹¹³ *Injustice Incorporated* at p. 181.

¹¹⁴ <https://icar.squarespace.com/news/2018/4/25/end-the-corporate-hijacking-its-time-to-separate-oil-state>.

¹¹⁵ *McDonald's Corporation v Steel & Morris*, 1997 EWHC 366 (QB). Steel and Morris subsequently won a case at the European Court of Human Rights, finding a breach of their right to a fair trial.

¹¹⁶ <https://icar.squarespace.com/news/2018/4/25/end-the-corporate-hijacking-its-time-to-separate-oil-state>.

¹¹⁷ A/76/237.

¹¹⁸ https://www.nytimes.com/2014/12/07/us/politics/energy-firms-in-secretive-alliance-with-attorneys-general.html?_r=1.

Special Rapporteur on human rights and the environment

vehicle sales.¹¹⁹ In recent years, businesses in the European Union have lobbied aggressively to weaken human rights and environmental due diligence laws.¹²⁰

C. Revolving door hiring

Revolving door hiring occurs when executives move back and forth between businesses and government, creating conflicts of interest where private interests are prioritized in policy making. The practice creates information asymmetries and inappropriate incentives (e.g. lucrative positions in the private sector as rewards for biased decision-making). This unethical practice is widespread, including in the EU decision-making processes related to the fossil fuel industry¹²¹ and within the chemical sector in the United States.¹²²

D. Corruption

Undue corporate influence and corruption are inextricably linked, creating a major obstacle to the protection and enjoyment of human rights.¹²³ Experts note that “the world is drowning in corporate fraud ... corrupting politics and markets” with scant accountability and widespread impunity.¹²⁴ Halliburton, a business based in the United States, paid \$35 million to Nigeria to settle a case involving allegations of bribery to secure a contract to build a \$6 billion liquified natural gas plant.¹²⁵ In a case involving the same facts, Halliburton’s subsidiary pled guilty to charges under the United States Foreign Corrupt Practices Act and paid \$402 million in criminal fines.¹²⁶ SNC Lavalin, a Canadian business, paid millions of dollars to government officials in Bangladesh, Canada and Libya to secure lucrative construction contracts.¹²⁷

Indigenous peoples experience increasing impacts from so-called “green” businesses, as their customary and communal land and tenure rights are often ignored. Recent examples include deals in Angola, Kenya, Liberia, Tanzania, Uganda, Zambia and Zimbabwe selling the rights to the carbon in tens of millions of hectares of forests to foreign businesses that intend to sell carbon offsets.¹²⁸ These deals, which may be illegal, pose a grave risk to the human rights of Indigenous Peoples, local communities, pastoralists and farmers who currently live on these lands and use

¹¹⁹ <https://www.nytimes.com/2023/06/28/climate/epa-electric-cars-auto-industry-criticism.html>.

¹²⁰ Policy Brief 3 at p. 20, Beate Sjøfjell, Sarah Cornell and Tiina Häyhä, 2023, Business Sustainability and Agenda 2030, Nordic and European Company Law, LSN Research Paper Series, No. 23-08.

¹²¹ <https://corporateeurope.org/sites/default/files/2021-10/final%20layout%20RD%20FFP%20background%202021.pdf>.

¹²² <https://beyondpesticides.org/dailynewsblog/2017/10/ever-revolving-door-industry-epa/>.

¹²³ General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights, para 20.

¹²⁴ <https://www.project-syndicate.org/commentary/the-global-economy-s-corporate-crime-wave-2011-04>.

¹²⁵ <https://star.worldbank.org/asset-recovery-watch-database/2010-halliburton-nigeria-bribery-settlement-agreement-us325-million>.

¹²⁶ <https://www.justice.gov/opa/pr/kellogg-brown-root-llc-pleads-guilty-foreign-bribery-charges-and-agrees-pay-402-million>.

¹²⁷ <https://www.osler.com/en/blogs/risk/january-2020/turning-the-page-snc-pleads-guilty-to-fraud-relating-to-libya-work-former-executive-sentenced-for> See also <https://www.nytimes.com/2019/12/18/world/canada/snc-lavalin-guilty-trudeau.html>.

¹²⁸ <https://news.mongabay.com/2023/11/control-of-africas-forests-must-not-be-sold-to-carbon-offset-companies-commentary/>.

Special Rapporteur on human rights and the environment

them for their livelihoods but were not consulted and are unlikely to receive a fair share of the financial benefits. Indeed, soon after negotiating a carbon credit deal with Blue Carbon, a business based in the United Arab Emirates, Kenya began unlawfully evicting Indigenous Ogiek people from the Mau forest.¹²⁹ Carbon offset scams in Peru, Guyana, and Zimbabwe attempt to exploit carbon stored on Indigenous peoples' land without their free, prior and informed consent or fair and equitable benefit sharing.¹³⁰

E. Aiding and abetting businesses

Law firms aid and abet businesses in developing corporate structures that protect assets but divest liabilities, often placing huge financial burdens upon governments and by extension the tax-paying public. Examples include corporate maneuvers that restructure oil and gas firms to protect assets but escape billions of dollars in liability for contaminated sites, and restructuring chemical companies to evade liability for health and environmental damages caused by their toxic products and negligence. Law firms in the US alone facilitate trillions of dollars in fossil fuel transactions and help oil, gas and coal companies avoid liabilities through litigation and lobbying services.¹³¹ The majority of the work done by law firms exacerbates, rather than mitigates, the climate crisis. An industry coalition including Canada's three largest plastic producers (Dow, NOVA, and Imperial Oil) recently won a lawsuit against the federal government that undermines Canada's plastic regulations.¹³² The large number of high-powered law firms representing the most environmentally damaging sectors in comparison to these same firm's support of renewables and environmental public interest work is a clear indication that law firms are not satisfying their human rights responsibilities to respect the right to a healthy environment.¹³³

A key strategy in avoiding accountability and limiting liability is the creation of subsidiaries.¹³⁴ For example, Chevron has over 1,500 subsidiaries, including Chevron Canada.¹³⁵ Chevron Canada is a seventh level wholly-owned subsidiary of Chevron Corp. Chevron Corp. owns 100% of the shares of each descending subsidiary, which in turn owns 100% of the next descending subsidiary. None of the intermediary subsidiary companies carries on business. In general, parent companies are not held legally responsible for the acts, omissions or liabilities of their subsidiaries, creating

¹²⁹ Amnesty International, Survival International and Minority Rights Group International, 15 December 2023, Joint statement urging immediate halt to Ogiek evictions in Kenya's Mau Forest: protecting indigenous rights and biodiversity, <https://reliefweb.int/report/kenya/joint-statement-urging-immediate-halt-ogiek-evictions-kenyas-mau-forest-protecting-indigenous-rights-and-biodiversity>.

¹³⁰ Chan T, Ford L, Higham C, Pouget S and Setzer J (2023) Corruption and integrity risks in climate solutions: an emerging global challenge. London: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science. See also <https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe>.

¹³¹ The Guardian, Oct. 9, 2021, "Fossil Fuel Companies Paying Top Law Firms Millions to "Dodge Responsibility".

¹³² <https://www.reuters.com/sustainability/boards-policy-regulation/canada-court-overturms-government-ruling-that-some-plastics-are-toxic-2023-11-16/>.

¹³³ Law Students for Climate Accountability, 2022, The 2022 Law Firm Climate Change Scorecard <https://www.ls4ca.org/climate-scorecard>.

¹³⁴ A/76/237, para. 20-21.

¹³⁵ Yaiguaje v Chevron Corporation, 2017 ONSC 135 (CanLII), <<https://canlii.ca/t/gx2x6>>, retrieved on 2023-11-03, para 22.

Special Rapporteur on human rights and the environment

problems when a subsidiary has been dissolved, is insolvent or lacks sufficient resources to meet a legal claim for damages.¹³⁶

The ongoing support of financial institutions, institutional investors and management consultants for environmentally destructive businesses is inconsistent with their responsibility to respect the right to a clean, healthy and sustainable environment. The most egregious actions included continued finance for coal projects and fossil fuel expansion projects in the global North.¹³⁷ For example, one of the world's top management consultancies, McKinsey & Company, used its position as a key advisor to the UN's COP 28 climate talks to push the interests of its big oil and gas clients, undermining efforts to accelerate the phaseout of fossil fuels, according to multiple sources, including whistleblowers and leaked documents.¹³⁸ Financial institutions whose actions contribute to climate and environmental harms are responsible for contributing to remedies, yet legislation on human rights due diligence too often excludes them or water down provisions applicable to them.¹³⁹

Businesses facing potential legal liability through litigation use their power to lobby for government protection. Dow Chemical Company reportedly lobbied Indian officials to terminate all legal action by the Government against it in India in relation to the Bhopal gas disaster.¹⁴⁰ Shell and Rio Tinto reportedly engaged in similar lobbying with the UK government, seeking support to dismiss allegations of human rights abuses in Nigeria and Papua New Guinea, respectively.¹⁴¹

The lack of accountability and access to justice and effective remedies were highlighted by several submissions as a troubling reality across all regions. Victims in Arica, a city in northern Chile, sued Boliden Mineral AB in a Swedish Court for dumping toxic waste in their region that allegedly caused widespread illness. In 2019, after six years of litigation, the case was dismissed as time barred (too late), leaving the victims to pay more than \$3.2 million in litigation costs.¹⁴² In December 2023, a court in South Africa dismissed a class action lawsuit by children in Kabwe, Zambia who are suffering from devastating lead poisoning from a mine that operated in their community from 1904 to 1994. The mine and smelter produced enormous volumes of lead pollution that has never been clean up or properly remediated, poisoning generations of Zambian children with some of the highest blood lead levels in the world. These cases illustrate the widespread challenge of holding businesses accountable in transboundary contexts, where victims of environmental degradation in the global South face almost insurmountable legal, financial, power, information and other obstacles.

¹³⁶ A/HRC/32/19, paras 21-23.

¹³⁷ Bloomberg NEF, 2023, *Financing the Transition: Energy Supply Investment and Bank Financing Activity, Comparing low-carbon and fossil fuel activity Summary Report*, <https://assets.bbhub.io/professional/sites/24/BNEF-Bank-Financing-Report-Summary-2023.pdf>.

¹³⁸ <https://www.france24.com/en/live-news/20231107-top-consultancy-undermining-climate-change-fight-whistleblowers> See also <https://www.nytimes.com/2021/10/27/business/mckinsey-climate-change.html>.

¹³⁹ Office of the United Nations High Commissioner for Human Rights (2022), *Remedy in Development Finance: Guidance and Practice*. OHCHR Benchmarking Study.

¹⁴⁰ A/77/201, para 70.

¹⁴¹ A/77/201, para 70.

¹⁴² Ebony Birchall, Surya Deva and Justine Nolan, 2023, *The Impact of Strategic Human Rights Litigation on Corporate Behaviour*, https://freedomfund.org/wp-content/uploads/LitigationImpactReport_2023.pdf.

Special Rapporteur on human rights and the environment

F. Using lawsuits to silence debate and intimidate critics

Businesses use lawsuits to silence debate, intimidate and distract their critics, and exhaust the limited resources of civil society organizations, communities and environmental human rights defenders. Strategic lawsuits against public participation (SLAPPs) are defined as groundless or abusive lawsuits, disguised as libel or defamation actions or alleged constitutional and/or civil rights violations, that are initiated against human rights defenders, environmental activists or journalists because they criticized a business, project, or policy. A 2022 report identified 570 SLAPPs in thirty European jurisdictions between 2010 and 2021.¹⁴³ Research also identified 152 cases in the United States between 2012 and 2022 where the fossil fuel industry used SLAPPs and other judicial harassment tactics to attempt to silence critics.¹⁴⁴

IV. Conclusion and recommendations

In a just and sustainable society, there will be no future for businesses whose activities undermine justice and sustainability. This includes large corporations as well as consulting firms, banks, law firms, and other enabling enterprises that, at present, largely receive a pass when they aid and abet businesses in violating the right to a healthy environment.

While recognizing that today's economic system is based on the exploitation of people and nature, large transnational businesses have the power and resources to make the changes to their products, services and activities that are needed to fulfil their human rights responsibilities, especially regarding the right to a clean, healthy and sustainable environment. Businesses that lead the transition will enjoy a first mover's advantage over their competitors, while State intervention in the form of regulations and policies that internalize social and environmental externalities will be needed to ensure that all businesses make the necessary transformations.

In order to fulfil their responsibilities related to the right to a clean, healthy and sustainable environment, businesses should:

- (a) Adopt and support the implementation of human rights-based approaches to addressing the planetary climate and environmental crises, and refrain from using their influence to oppose or undermine new or stronger climate and environmental laws, policies or programmes;
- (b) Reduce energy use and accelerate their transition from fossil fuels to renewables and energy storage;
- (c) Contribute to and support efforts to shift towards the goal of a pollution-free circular economy;
- (d) Reduce adverse impacts on ecosystems and biodiversity from their own activities, products, services, subsidiaries and suppliers;

¹⁴³ European Parliament, 2023, Strategic Lawsuits Against Public Participation.

¹⁴⁴ EarthRights International, The Fossil Fuel Industry's Use of SLAPPs and Judicial Harassment in the United States (September 2022).

Special Rapporteur on human rights and the environment

- (e) Ensure that all investments, projects and policies are intentionally aligned with accelerating progress towards the Sustainable Development Goals;
- (f) Carry out comprehensive and ongoing human rights and environmental due diligence prior to commencing new projects, developing new products or entering new markets, with particular attention to gender equality and the rights of children, youth, Indigenous Peoples, Afro-descendant communities, local communities and other groups that are vulnerable to climate-related and environmental injustices;
- (g) Employ a zero-tolerance approach to threats, harassment, violence and criminalization of environmental human rights defenders;
- (h) Avoid the use of heavy-handed legal tactics including strategic lawsuits against public participation and investor-State dispute settlement mechanisms;
- (i) Provide prompt and effective remedy for all adverse impacts on the right to a healthy environment that their activities have caused or contributed to, restore ecosystems they have damaged, and provide restitution and financial compensation to rightsholders adversely impacted; and
- (j) Ensure that all operational-level grievance mechanisms are unbiased, accessible, and consistent with human rights standards, including the UN Guiding Principles on Business and Human Rights.¹⁴⁵

In order to ensure that businesses fulfil their responsibilities related to the right to a clean, healthy and sustainable environment, States should:¹⁴⁶

- (a) Take steps to catalyze transformative changes in the economic system by:
 - (i) Replacing GDP with holistic development indicators;
 - (ii) Shifting from a linear to a circular economy, through strong extended producer responsibility legislation, banning planned obsolescence, minimum standards for recycled content, and reduced production of plastic, forever chemicals and other products incompatible with a circular economy;
 - (iii) Transforming management of natural resources by enforcing highest environmental standards, maximizing State revenue from royalties and taxes (at least 75 percent

¹⁴⁵ See related recommendations in Annex of Recommendations to Policy Brief 3: Essential elements of effective and equitable human rights and environmental due diligence legislation, David R. Boyd and Stephanie Keene
<https://www.ohchr.org/sites/default/files/documents/issues/environment/srenvironment/activities/2022-07-01/20220701-SR-Environment-Annex-HREDD-Recommendations.pdf>.

¹⁴⁶ For additional details, please see the report of the Special Rapporteur on human rights and the environment, 2024, “Business, planetary boundaries and the right to a clean, healthy and sustainable environment”, A/HRC/55/43.

Special Rapporteur on human rights and the environment

combined), and ensuring that Indigenous Peoples, Afro-descendant communities and other local communities receive a fair share of the benefits;

(iv) Revising corporate and criminal laws to expand business accountability beyond shareholders to rightsholders, workers, other stakeholders, and nature;

(v) Establishing sovereign wealth funds with a portion of revenues from non-renewable resources to share with future generations;

(vi) Eliminating investor-State dispute settlement mechanisms from international trade and investment treaties;

(vii) Reducing tax evasion and avoidance; and

(viii) Ensuring successors to the SDGs emphasize the need for wealthy States to reduce energy and material consumption.

(b) Safeguard the integrity of democratic institutions and reduce the undue, excessive and harmful political influence of large businesses by:

(i) Enacting and enforcing laws that limit or prohibit lobbying, political donations, revolving door hiring practices;

(ii) Banning lobbying against laws, regulations, standards, policies or other measures intended to address the planetary crisis, both domestically and in international forums;

(iii) Restricting or prohibiting marketing or advertising of goods and services that harm the climate, the environment or the right to a healthy environment (e.g. fossil fuels, pesticides);

(iv) Criminalizing greenwashing and other deceptive marketing practices;

(v) Making business pay taxes where they use and extract resources;

(vi) Using competition law to prevent concentrated ownership in key sectors, including media, energy and food, and requiring divestment where excessive concentration already harms the public interest;

(vii) Strengthening anti-corruption measures, including independent investigators, prosecutors, and judges; and

(viii) Removing obstacles to accessing justice and effective remedies for individuals and groups whose right to a healthy environment has been violated by a business enterprise.

(c) Ensure businesses respect the right to a clean, healthy and sustainable environment by:

(i) Strengthening legal recognition of this right in constitutions, legislation and treaties;

Special Rapporteur on human rights and the environment

- (ii) Enacting mandatory human rights and environmental due diligence legislation;
- (iii) Ensuring that the proposed legally binding instrument on business and human rights explicitly incorporates the right to a clean, healthy and sustainable environment and includes environmental and climate change impact assessments in the required due diligence measures;
- (iv) Ending subsidies to climate-damaging, polluting and environmentally destructive businesses;
- (v) Phasing out fossil fuels in a fast, full and fair way;
- (vi) Imposing windfall taxes on the profits of fossil fuel businesses;
- (vii) Requiring performance bonds or other financial assurances that reallocate the risk of environmental harm to businesses;
- (viii) Preventing the creation of new sacrifice zones, clean up existing sacrifice zones and compensating residents for the terrible health and environmental impacts they have suffered;
- (ix) Criminalizing significant environmental pollution and destruction, with substantial fines and penalties and jail sentences for directors and senior executives;
- (x) Cracking down on super-polluters (businesses that pollute disproportionately high volumes compared to competitors in the same sector);
- (xi) Strengthening enforcement of climate, environment and human rights laws by increasing capacity, resources and independence, and authorizing the public to enforce environmental laws where government agencies fail to do so;
- (xii) Pursuing zero pollution and the elimination of toxic substances, rather than merely trying to minimize, reduce and mitigate exposure to these hazards;
- (xiii) Enacting and enforcing laws that stop deforestation;
- (xiv) Heavily taxing or banning private jets, yachts, and other environmentally destructive luxury products;
- (xv) Accelerating processes of legally recognizing the land and resource rights of Indigenous Peoples, communities of African descent (including Quilombolas), and other nature-based communities that are vulnerable to land- and resource-grabbing, emphasizing the rights of women within these communities;
- (xvi) Preventing the further privatization, financialization and commodification of water, biodiversity, carbon and other elements of nature, and reversing these processes where possible;

Special Rapporteur on human rights and the environment

- (xvii) Replacing industrial agriculture with a rights-based approach that champions agro-ecology and the traditional knowledge of Indigenous Peoples, local communities, Afro-descendant communities, and peasants (including smallholder farmers); and
 - (xviii) Revising international agreements—e.g. trade, investment, finance, agriculture, development cooperation and climate change—to be consistent with their domestic and extraterritorial human rights obligations.
- (d) Ensure businesses respect the procedural elements of the right to a clean healthy and sustainable environment (access to information, public participation in decision-making, and access to justice) by:
- (i) Requiring comprehensive, transparent, prompt, and accurate disclosure of climate, environmental and human rights performance by businesses;
 - (ii) Strengthening laws governing public participation in climate and environment decision-making;
 - (iii) Recognizing and upholding Indigenous Peoples' right to free, prior and informed consent;
 - (iv) Reducing obstacles to access to justice and effective remedies such as high costs, lengthy delays, language barriers, gender bias, and lack of legal aid;
 - (v) Enacting legislation providing tools for rapid dismissal of SLAPP cases, penalties for businesses bringing such cases, and sanctions for lawyers representing those businesses;
 - (vi) Adopting whistleblower legislation that provides substantial monetary rewards for information about serious climate, environmental and human rights harms; and
 - (vii) Safeguarding the activities of human rights and environmental defenders, and providing protection against threats, intimidation and reprisals for those who seek remedy for business violations of the right to a healthy environment.

Special Rapporteur on human rights and the environment

Annex 1

Contributors to research for this Policy Brief

Tarkan Alisoltani, University of Tehran, Iran
Luciana Dias Bauer, Univali Law School Brazil/ Widener Law School USA
Prof. Behzad Ghiasi, University of Tehran, Iran
Renée Kolentine, University of Toronto, Canada
Lauren Moody, University of British Columbia, Canada
Katelyn Mountjoy, McMaster University, Canada
Allegra Nesbitt-Jerman, University of Toronto, Canada
Alexandra Newbiggin, University of Toronto, Canada
Lita Wanjiru Ngure, University of Toronto, Canada
Melania Nhavira, Nelson Mandela University, South Africa
Rafaela Santos Martins da Rosa, Unisinos/Brazil
Lisa Say, Université Laval, Canada
Dorothy Settles, Sciences Po, France
Lauren Shea, University of British Columbia, Canada
Dalal Tubeishat, University of British Columbia, Canada
Dr. Ricardo Stanzola Vieira, Santa Catarina Federal University Brazil
Lilah Williamson, University of Toronto, Canada
Prof. Stepan Wood, University of British Columbia, Canada