The Strasbourg Principles of International Environmental Human Rights Law – 2022

CONTEXT

The Strasbourg Principles were drafted by a group of human rights and environmental law experts who were brought together by the Conference ‘Human Rights for the Planet’ held in 2020 at the European Court of Human Right in Strasbourg and by the present Special Issue of the Journal of Human Rights and the Environment.*

The Strasbourg Principles of International Environmental Human Rights Law are a uniform restatement of general principles that have emerged in international human rights law in the context of the environment. They are intended to be used by judges and other legal professionals engaged in international litigation of environmental matters.

PREAMBLE

Deeply concerned by the severe adverse human rights consequences of environmental harm and disasters caused by loss of biological diversity, depletion of natural resources, land system change, environmental pollution, including noise, air, water, soil, chemical and plastic pollution, as well as by climate change;

Recognising that nature has an intrinsic value that does not depend on its utility to humans;

Recognising that the protection of human rights and the rule of law in a democratic society is vital for effective environmental protection;

Considering that every State and international institution, every person, natural or legal, public or private, has the duty to respect and to take care of the environment by contributing with their best efforts to the conservation, protection and restoration of the integrity of the Earth’s climate and ecological systems;

Recognising that, in light of the clear and growing scientific evidence, a state of environmental emergency exists and that urgent action is required of all actors, including national courts and international human rights organs that should expeditiously process environmental claims brought before them;

The following general principles of international environmental human rights law are stated therein to assist courts, lawyers and litigants:

CAUSES AND HUMAN RIGHTS EFFECTS OF ENVIRONMENTAL DEGRADATION AND CLIMATE CHANGE

The following assertions are based, *inter alia*, on rulings of superior national courts, the European Court of Human Rights and the Inter-American Court of Human Rights; on

* The Strasbourg Principles are not a document prepared by the European Court of Human Rights and they do not represent any official position of the European Court of Human Rights or the Council of Europe.

1. Environmental degradation and climate change are having negative impacts on the effective enjoyment of human rights.

2. Exposure to pollution of air, water or soil and exposure to noise can have serious detrimental effects on human health and human well-being, in that pollution can cause various forms of quantifiable harm to physical and/or mental health and/or make humans more vulnerable to physical or mental illness, as well as to social inequalities.

3. The main causes of climate change are anthropogenic emissions of greenhouse gases causing global warming. Climate change has and will continue to have profound adverse environmental and societal impacts. As to its effects on humans, climate change is likely to cause, inter alia, death, injury, harm to physical and mental health, the spread of infectious diseases, an increase in human mobility, including enforced displacements, and to cause disrupted livelihoods, land alterations, property damage, changes in temperature and weather patterns affecting food security, scarcity of natural drinking water, loss of ecologically and culturally relevant fauna, flora, and loss of traditional knowledge.

4. While it is impossible to predict the precise temperatures at which specific effects adverse for humans will occur, the risk of such effects occurring is materially increased as temperatures rise. Once certain tipping points are reached, global warming is potentially irreversible.

5. The main causes of the loss of biological diversity are anthropogenic. These include: climate change; fragmentation and destruction of forests and other habitats; over-exploitation of lands and oceans; chemical and plastic pollution; exposure to hazardous substances; invasion of alien species; as well as over-exploitation of natural resources and species. As to the effects on humans, biodiversity loss is likely significantly to disrupt provisioning, regulating, cultural and supporting ecosystem services, encompassing benefits that humans derive from wild nature and from the managed environment.

HUMAN RIGHT TO A SAFE, CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT

6. A safe, clean, healthy and sustainable environment is a precondition for the full enjoyment of the whole range of civil, political, social, economic, cultural and solidarity rights. All human rights are universal, indivisible and interdependent – based on the recognition of the dignity of the human being.

7. Everyone has a right to a safe, clean, healthy and sustainable environment adequate for their health, well-being, dignity, culture and flourishing (right to a safe, clean, healthy and sustainable environment).

8. The right to a safe, clean, healthy and sustainable environment is an autonomous right. It operates either as an explicit right that is enacted in a legal act, or as an implicit right that can be derived, inter alia, from the following human rights: right to life; right to dignified life; prohibition of degrading and inhuman treatment; right to personal integrity; right to respect for private and family life and for home; right to property; prohibition of discrimination; peoples’ right to self-determination; right to health; right to food; right to water; and right to progressive development.
9. The right to a safe, clean, healthy and sustainable environment has two interconnected dimensions. In its subjective anthropocentric dimension, it recognises that nature has a preconditional utility for humans. In its objective ecocentric dimension, it also acknowledges the intrinsic value of nature, as such.

10. The right to a safe, clean, healthy and sustainable environment comprises substantive and procedural elements. Its substantive element includes, but is not limited to, a right to clean air, to clean water and sanitation, to healthy food, to healthy ecosystems, to safe climate and to a non-toxic environment. In its procedural limb, it comprises the right of access to information, to participation in decision-making processes and of access to justice in environmental matters.

VICTIM

11. For the purposes of international environmental human rights litigation, the notion of a victim of a human rights violation is to be interpreted autonomously and irrespective of domestic rules such as those concerning interest in or capacity to take action. The term ‘victim’ ought to evolve in the light of conditions in contemporary society and be applied without excessive formalism.

12. For the purposes of legal standing, where applicable, the term ‘victim’ denotes the person or persons directly, indirectly or potentially affected by the alleged violation. For the purposes of environmental human rights litigation, direct victims include persons who would have a valid personal – including diffuse – interest in seeing a violation brought to an end. Potential victims are persons to whom the violation would cause harm in a foreseeable and not too distant future.

13. By way of exception to the general rule, if applicable, where the alleged victims of a human rights violation are not in a position to assert on their own, adequately, or in time, their individual rights, a non-governmental organisation for the protection of the environment, is, in principle, entitled to pursue a legal action based on the human rights of those victims.

14. A non-governmental organisation for the protection of the environment is, in principle, entitled to allege a violation of its own civil right to receive and to impart information, its right to participate in decision-making processes and its right to have access to justice in environmental matters.

HARM

15. In the context of environmental harm, the fundamental principles of international environmental law, including, but not limited to, the principles of prevention and precaution, constitute a framework of interpretation for international human rights law.

16. For the purposes of environmental human rights litigation, it is sufficient to show that the harm complained of, whether past, present or future, is such as to produce a tangible effect on the alleged victim’s human rights.

17. For the purposes of environmental human rights litigation, where the harm complained of has not yet materialised, substantial grounds must be shown to the effect that the alleged victim or a group of victims face a real and not too remote risk of having his, her or their human rights tangibly affected. It is enough to establish a sufficiently close
link between the applicant’s individual human rights and the risks of serious harm to the environment and/or of the dangerous effects of an activity or omission.

18. In the event of scientific uncertainty, even in the absence of official documentary support, a sufficiently close link may be established through a combination of indirect evidence or by a presumption drawn from serious, specific and consistent facts and/or based on statistical correlation.

19. For the purposes of environmental human rights litigation, the adverse effects of environmental harm on an alleged individual victim must attain a certain minimum level of severity. The assessment of that minimum must take into account all the circumstances of the situation – taken cumulatively – such as, but not limited to, the intensity and duration of the causal agent, and its physical or mental effects. The general context of the environmental emergency must also be taken into account. The fact that, as it may be, the environmental harm occurs in the context of an environment that is already degraded, must not be seen as diminishing the severity of its adverse effects on a person’s human rights, including on the autonomous right to a safe, clean, healthy and sustainable environment.

20. As regards the right to respect for private and family life, and for home, serious environmental harm may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, even if their health is not endangered. Where it is not established that the victim’s health had deteriorated solely because of his or her exposure to a particular source of pollution, it may be accepted that the pollution in question inevitably made the applicant more vulnerable to various health disorders.

21. As regards the right to life, serious environmental pollution that exceeds domestic or international legal standards in a significant or protracted manner must be understood as endangering life.

22. For the purposes of environmental human rights litigation, there is a presumption that pollution or nuisance that exceeds limits that are binding on the State concerned becomes potentially harmful to the well-being, the health or the lives of those exposed to that pollution or nuisance. The same presumption should apply, even if such limits are not exceeded, where the victim lives within a sanitary, buffer or otherwise designated danger zone, or where domestic authorities order resettlement.

23. An activity’s compliance with emissions or other relevant national or international statutory standards should not automatically entail a finding that the minimum threshold of severity was not met.

**BURDEN OF PROOF**

24. For the purposes of environmental human rights litigation, alleged victims must present prima facie evidence that they have either suffered the harm or face a real risk of harm affecting their human rights.

25. Where the cause of the alleged harm is an activity or omission that lies within the responsibility or oversight of a public authority, including activities carried out by private actors, the burden shifts to the State to produce convincing evidence to show that there is no harm to the alleged victim’s human rights. The same applies, *a fortiori*, where pollution or nuisance exceeds the limits which are binding on a State concerned or where the alleged dangerous activity or omission has been found to breach its permit conditions or the statutory regulations applicable in the country in question.
APPLICABILITY OF HUMAN RIGHTS TREATY PROVISIONS

26. In the context of international environmental human rights litigation and the applicability of provisions such as the right to have access to a court, where an enforceable right to a safe, clean, healthy and sustainable environment is recognised – at least on arguable grounds – in national law, physical or legal persons who have sought judicial review of planning, policy or permitting decisions concerning the environment are, in principle, entitled to rely on the right to have access to a court. The same holds true where a right to bring a public-interest court action in an environmental matter, is recognised – at least on arguable grounds – in national law.

27. Where applicable, a non-governmental organisation for the protection of the environment must be able to rely on the protection of human rights where there is a sufficient link between the ‘civil right’ which the association is claiming and its right to enable the public to be informed, to participate in the decision-making process and to have access to justice in environmental matters.

28. Pursuant to the doctrines of dynamic and harmonious interpretation (known also as the principle of systemic integration), human rights treaties must be interpreted in their normative context, in particular in the light of the corpus of international environmental law.

EXTRATERRITORIAL JURISDICTION FOR TRANSBOUNDARY ENVIRONMENTAL HARM

29. The exercise of jurisdiction arises where a State of origin has effective control over the activity that caused or that risks causing transboundary damage to the environment and the consequent human rights harm to persons outside its territory where the alleged harm suffered by the victims was reasonably foreseeable to the State of origin at the time of its acts or omissions.

EXHAUSTION OF DOMESTIC REMEDIES

30. In the context of international environmental human rights litigation, for the purposes of the requirement of exhaustion of domestic remedies, where applicable, public interest litigation by a non-governmental organisation for environmental protection – if recognised under national law as a means of defending the interests of the alleged victims – exempts, in principle, the alleged victims from bringing their own domestic proceedings, if that litigation sufficiently corresponds to their individual situation.

BALANCING OF INTERESTS

31. Protection of the environment constitutes a general interest of a pressing and urgent priority that is fundamental to the protection of core human rights. As such, measures of environmental protection are not subservient to economic interests of a State or of an individual, or, even to certain fundamental rights. A mere reference to the economic well-being of the country must not be accepted as sufficient to outweigh the rights of others affected by environmental harm.
32. In environmental matters, States’ assessment of whether an interference with the rights of others is necessary in a democratic society, must, as a minimum: (i) be informed by appropriate environmental investigations and studies; (ii) ensure the timely and effective participation of the public; (iii) be guided by the principles of intergenerational equity, prevention, precaution and in dubio pro natura (‘when in doubt, in favour of the environment’); (iv) not regress from established standards of environmental protection; and (v) be guided by the recognition of the existing environmental and climate emergency.

33. In environmental matters States have, in principle, a narrow margin of appreciation in determining the steps to be taken to ensure compliance with their human rights obligations.

STATES’ HUMAN RIGHTS OBLIGATIONS

34. Human rights violations by States can occur whether environmental harm or risk of thereof is caused by the State’s own actions or omissions, or by the activities or omissions of private actors where the State has failed to guarantee rights in accordance with its duties to regulate, monitor and, if applicable, sanction those activities.

35. States are under the obligation to ensure, for the benefit of present and future generations, as well as for the benefit of the environment itself, that everyone within their jurisdiction can: (i) enjoy safe, clean, healthy and sustainable environmental conditions adequate for their right to health, well-being, dignity and culture, and (ii) can effectively fulfil a duty to respect and to take care of the environment.

36. States have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

37. Ensuring the quality of the environment which is adequate for everyone’s health, well-being, dignity, culture and flourishing is a shared international responsibility. It follows that every State has an obligation of international cooperation to ensure a safe, clean, healthy and sustainable environment, including avoiding dangerous interference with the climate system.

38. States that are not parties to existing international legal frameworks on environmental protection must urgently become Parties to such frameworks, as well as elaborate and implement corresponding national legal measures to the fullest extent of their capacity to do so. Parties to international environmental treaties and agreements must take all the necessary measures to ensure timely and effective compliance of their national environmental laws with international environmental treaties and agreements.

39. States’ positive obligations, whether to ensure the right to a safe, clean, healthy and sustainable environment or other human rights, must include appropriate and adequate measures of mitigation of and adaptation to climate change; measures of effective protection, preservation, improvement and restoration of the environment; as well as measures of sustainable use of natural resources.

40. The standard of conduct of a State in the context of environmental human rights obligations is one of ‘due diligence’. Public authorities must act with due diligence to avoid a real and foreseeable risk to the enjoyment of human rights, resulting from environmental degradation or climate change of which they have or ought to have knowledge. A State is obliged to use due diligence to avert foreseeable impacts and, in so far as it is impossible to avert them completely, to do everything reasonable to limit the impacts.
41. Where there is a risk of serious or irreversible impacts on human rights, States cannot rely on scientific uncertainty as a reason for postponing the adoption of effective and proportionate measures to prevent environmental degradation or to mitigate or adapt to climate change.

42. States’ actions and decisions that affect the environment must ensure environmental justice and cannot result in discrimination or inequality.

43. States must ensure the timely and effective participation of the public in planning, policy, permitting and regulatory decisions concerning environmental matters. States must respect the public’s procedural and participatory rights as provided for by international treaties or as derived, inter alia, from the autonomous right to a safe, clean, healthy and sustainable environment, as well as from the right to freedom of expression, the right to freedom of assembly, the right to life, the right to personal integrity, the right to respect for private and family life and home, and the right to property. The public’s procedural and participatory rights comprise the right of access to information, the right to participate in decision-making and the right to have access to justice in environmental matters. They also include the right not to be persecuted, penalised or harassed for seeking to exercise these rights. States must combat impunity by conducting prompt, impartial and independent investigations and pursuing accountability for all attacks and threats by State and non-State actors against any environmental human rights defender or any person affiliated with any such defender.

44. In order to inform the views of the public as to whether States’ laws, plans and policies regarding the environment are to be considered effective and appropriate, States are under a duty to draw up and to make publicly available at an early stage the drafts of such laws, plans and policies for the public’s comments. Policies and plans must have a sufficient degree of specificity, that is to say, they must give real and sufficient detail as to how they are intended to achieve the national goals in relation to climate change and environmental protection.

45. States must take all necessary measures to ensure that independent environmental impact assessments are conducted prior to any decisions to authorise or to engage in a project, an activity, a plan, or a programme likely to have an adverse impact on the environment within and, if relevant, beyond the national territory. Environmental impact assessments, which should contain accessible, gender-responsive and disability-inclusive information, must contain a non-technical summary so as to ensure sufficient accessibility to the public.

46. Where environmental harm is caused by a State or non-State actor, States must ensure, by all means at their disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to a healthy environment and related human rights is properly implemented and any breaches of those rights are curtailed and punished.

47. Where lives were lost or endangered by environmental harm and in the particular context of dangerous activities, States must carry out an official criminal investigation capable of establishing the complex phenomena that might have caused an incident and of identifying and prosecuting those responsible.

REDRESS

48. In the event of a violation of human rights in the context of environmental damage, a State responsible for the violation is under an obligation: (i) to cease the act or omission giving rise to a violation, if such act is continuing; and (ii) to implement guarantees of non-repetition, if circumstances so require.
49. The responsible State is under an obligation to make reparation in accordance with its obligations under the human rights treaty in question, which may take the form of restitution (ie restoration, ecological remediation), compensation and measures of satisfaction, either singly or in combination.

50. The preferred and principal measures of redress (rehabilitation and restitution) ordered by courts should be: (i) preventive measures – in the event of risk of damage and (ii) ecological remediation and restoration – in the event of past damage.