Emerging issues in environmental law: procedural rights and the protection of environmental defenders

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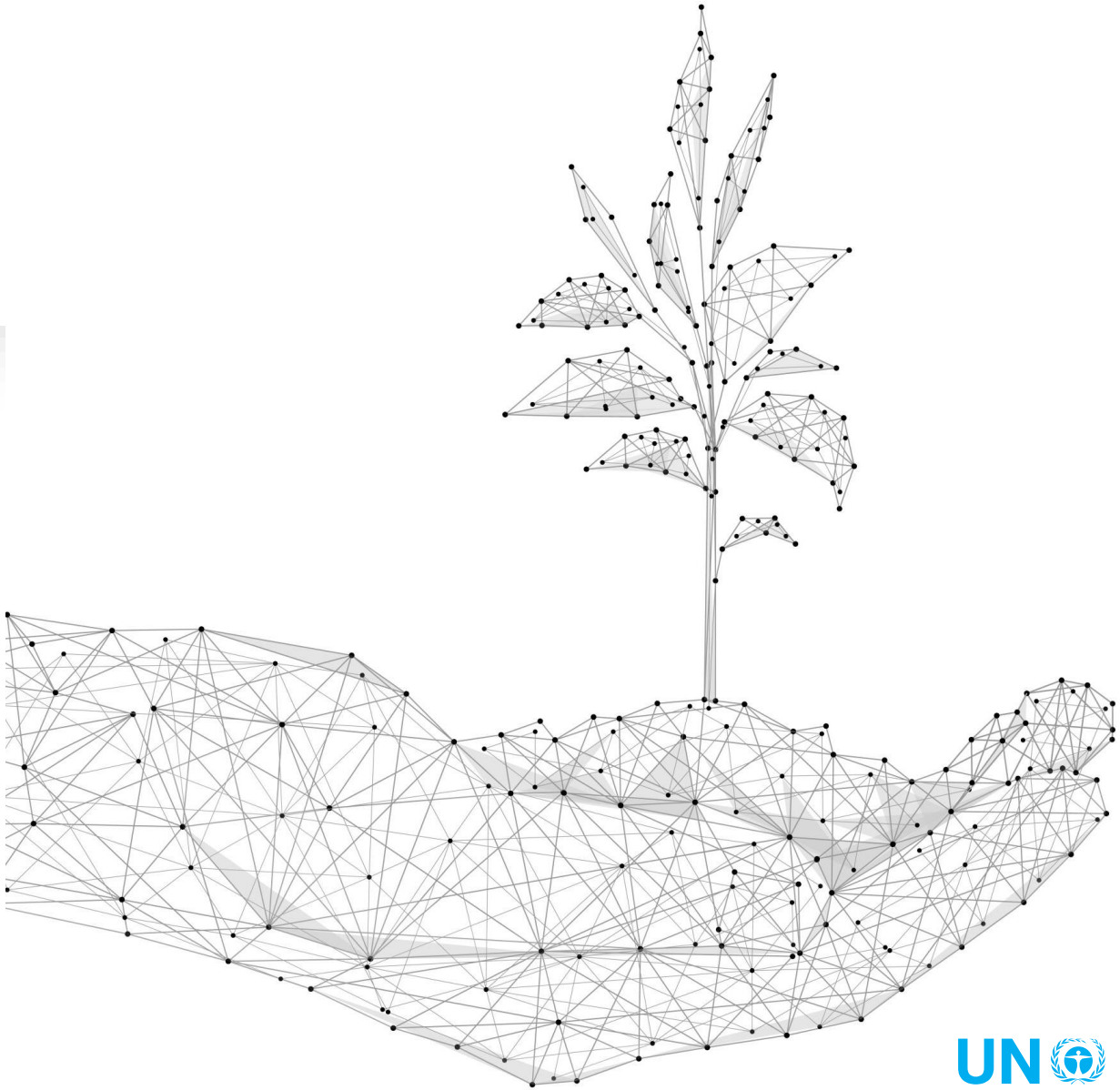
Outline

- Environmental rule of law and procedural rights
- Environmental defenders
- UNEP's work on human rights and the environment



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Environmental rule of law

Recognition of 7 core elements of environmental rule of law, which include:

- **Access to information, public participation and access to justice**
- **Recognition of the relationship with rights**

A healthy environment is necessary for realizing rights to life, property and health as well as cultural, economic and political rights. Constitutional, human and other rights—including both substantive and procedural rights—provide tools for strengthening and enforcing environmental protections.

EROL report, 2023

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EROL access rights

70% of UN Member States (138 of 193) have legal provisions at the national or subnational level that specificacilly guarantee the right to access to information, rights of public participation and/or access to justice.

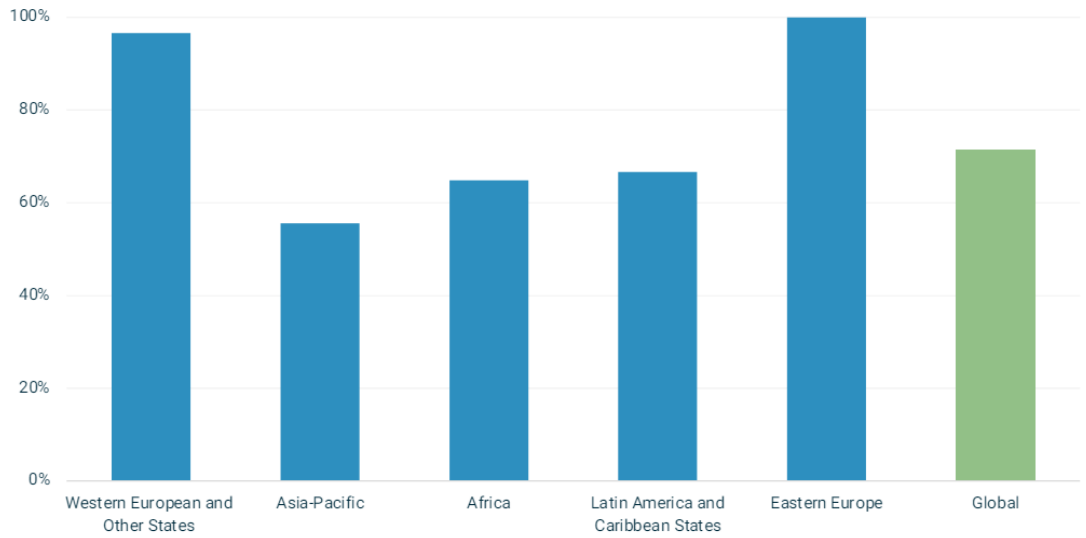

Figure 3.1: Percentage of countries with legal provisions on access to information, participation, and/or access to justice in the environmental context (2021) *(Source: UNEP dataset 20213)*

Civic engagement *is a crucial aspect of environmental rule of law and will continue to be vital in the context of worsening environmental degradation and climate change. A growing number of countries have* ***laws that ensure access to information, rights of public participation and access to justice****. Despite this progress,* ***environmental defenders*** *are faced with arbitrary arrests, violence and death.*

EROL report, 2023

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EROL procedural rights – access to justice

As of 2021, at least **45 states** have adopted laws or procedures that provide for open standing in environmental case.

- Either as provisions of framework environmental statutes or granting open standing in constitutions or established through judicial precedent or court rules.

Many states have liberalized standing laws to allow a wider range of actors to bring claims. At least **24 states** have enacted laws or received judicial decisions that give NGOs special rights of standing in environmental cases.

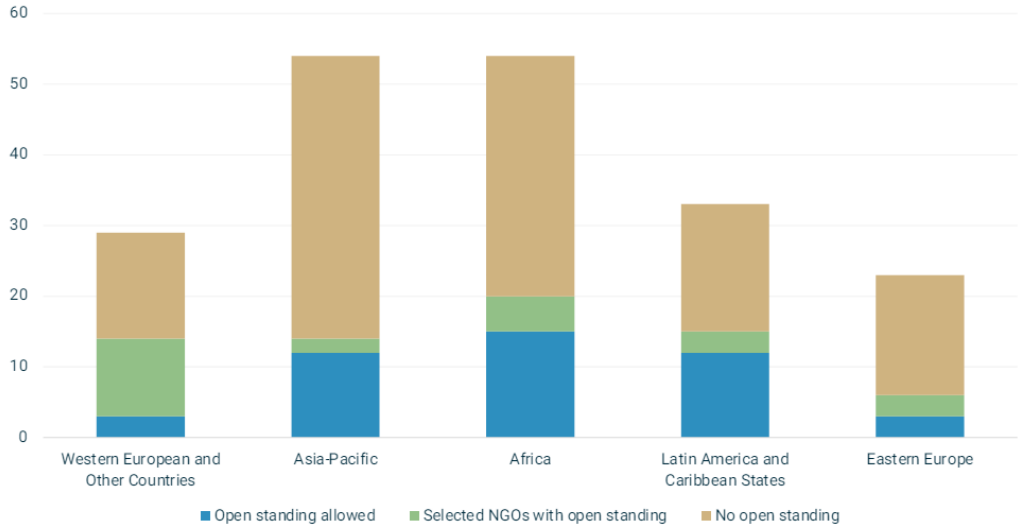

Figure 5.1: Countries with 'open standing' for environmental matters in national or subnational legal frameworks *(Source: UNEP dataset 2021)*

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EHRDs

- **Individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna.**

Situation of Human Rights Defenders (A/71/281)

1998:
Declaration on Human Rights Defenders (A/RES/53/144)

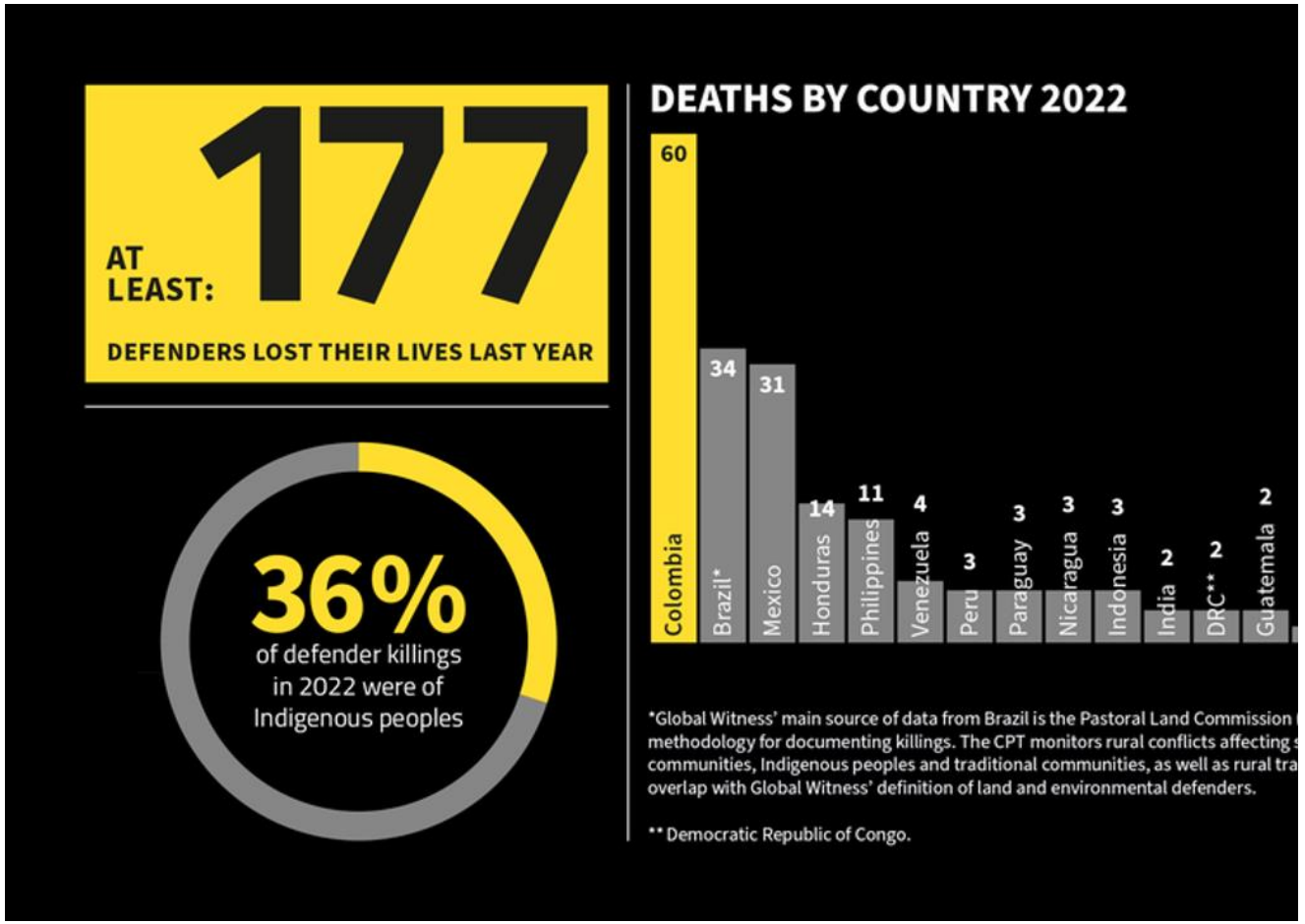
Implementing the Declaration on Human Rights Defenders (A/RES/78/216 & A/RES/76/174)

2019:
Human Rights Council Resolution 40/11 on Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development

2020:
Secretary-General Call to Action on Human Rights – Thematic Area Five: Rights of Future Generations

Threats against Environmental Human Rights Defenders

- At least 177 EHRDs killed globally in 2022.
- At least 1,910 EHRDs killed globally since 2012.
- Increasingly, non-lethal strategies such as criminalization, harassment and digital attacks are also being used to silence defenders.
- The worsening climate crisis and the ever-increasing demand for agricultural commodities, fuel and minerals will only intensify the pressure on the environment – and those who risk their lives to defend it.



Global Witness (2023). *Standing firm - The Land and Environmental Defenders on the frontlines of the climate crisis.*

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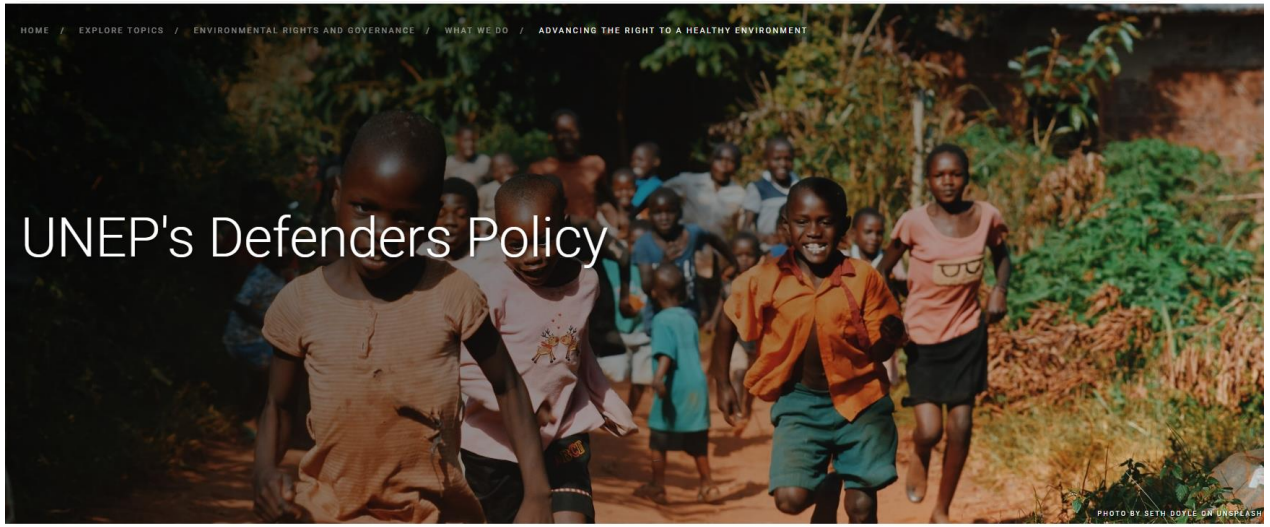

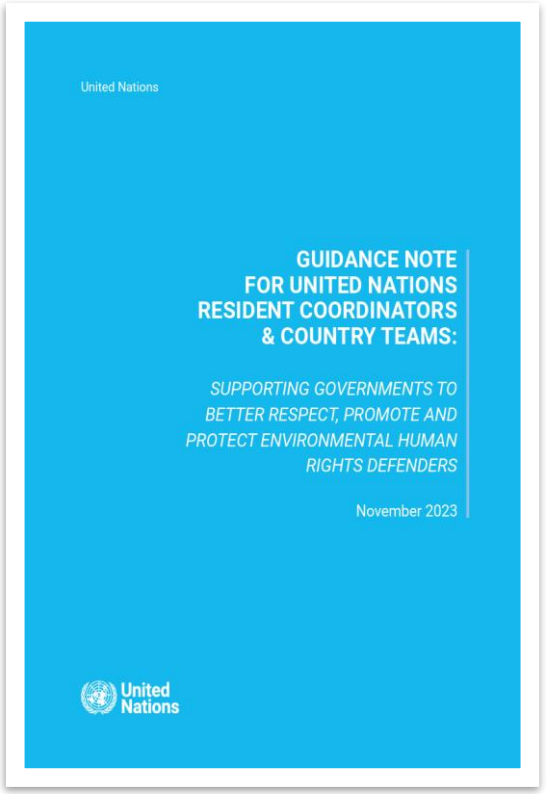

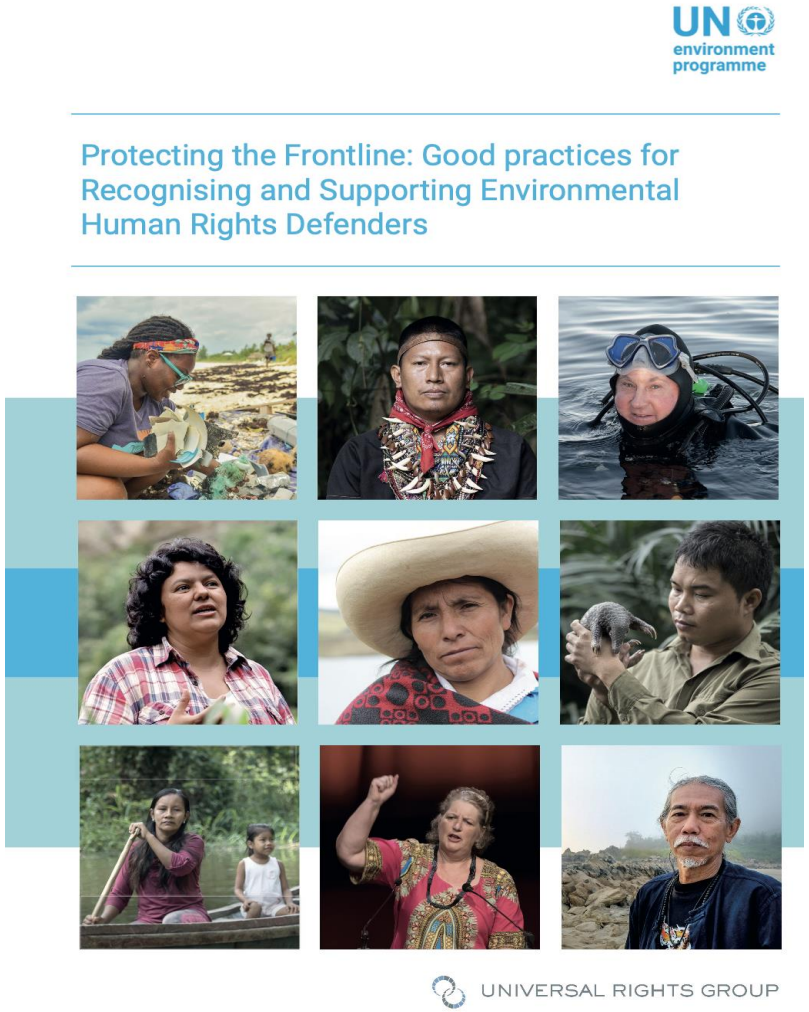

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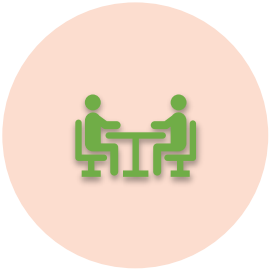
UNEP-OHCHR Memorandum of Understanding

Mainstreaming human rights and the environment into UN systems and processes

Advocating for the universal recognition and advancement of the human right to a healthy environment

Supporting rights-based environmental action on the ground

Developing targeted awareness raising and knowledge materials



Working with relevant stakeholders, including States, other UN entities, civil society, among others

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UNEP's pledge:

1. Advance the right to a healthy environment
2. Support Environmental Human Rights Defenders (EHRDs)
3. Support Member States in protecting the rights of Indigenous Peoples
4. Commit to the principles of equity, nondiscrimination, equal participation, accountability and access to justice
5. Commit to work with partners, including OHCHR and UNDP.

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CPR Subcommittee meeting

Requests by Member States included:

- Support to **EHRDs**
- Support to implementation of the **KMGBF**, including through a rights-based approach
- Explore and deepen the links between **environmental justice** and **racial discrimination**
- Need for **capacity-building** on the human rights-environment nexus
- Continue work in the context of **UNEP Bali Guidelines** for the Development of National Legislation on Access to Information, Public Participation, and Access to Justice in Environmental Matters (adopted by the Governing Council in 2010)

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Thank you!

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