

ISSUE BRIEF SDG 16:¹

Human rights and the environmental rule of law



SDG 16:

Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

This Summary Brief deals with Sustainable Development Goal 16, the environmental rule of law and the link between human rights and a clean, healthy, and sustainable environment. Access rights concerning environmental information, public participation and environmental justice are discussed. The brief examines the effects of the COVID-19 pandemic on human rights and the environmental rule of law. There is focus on the role of environmental human rights defenders (EHRDS) in the Asia-Pacific region in promoting avenues for an environmentally sustainable recovery from the COVID-19 pandemic. The brief canvasses good practices and ongoing challenges, including the legal protections needed for environmental human rights defenders. It sets out key messages and a range of recommendations.

KEY MESSAGES

- Environmental rule of law is critical for the protection of the environment, the promotion of the right to live in a healthy environment, and achievement of the SDGs.
- Environmental human rights defenders play an important role in upholding, implementing, and advancing environmental rule of law.
- Legal protection of environmental human rights defenders requires urgent attention throughout the Asia Pacific region.
- Environmental harm disproportionately impacts individuals, groups and peoples already living in vulnerable situations – including women, children, the poor, ethnic, sexual and gender minorities, migrants, Indigenous people, older persons, and persons with disabilities.
- COVID-19 exacerbates already existing inequalities, coupled with a triple environmental crisis: climate change, loss of biodiversity and pollution. The poor and marginalized are among the most impacted by both COVID-19 and environmental harm that threatens their full and effective enjoyment of all human rights, including through adverse effects on access to food and land, water and sanitation, housing, livelihoods, decent work, healthcare, and other basic necessities.

¹ Asia Pacific Issue Brief: SDG16, Human Rights and Environmental Rule of Law, March 2021. This brief received input and peer review through the Asia Pacific regional Issue Based Coalition on Human Rights, Gender Equality and Women's Empowerment. UNEP also acknowledges input provided by OHCHR, UNDP and UN-Women.

Human rights and environmental law dimensions of SDG16

At the core of the 2030 Agenda lies a clear understanding that human rights, peace and security, and development are deeply interlinked and mutually reinforcing. SDG Goal 16 provides a framework for peace, justice for all, and strong institutions, which is fundamental to accelerating progress of all other SDGs. SDG16 thus acts both as an enabler and a precondition for achieving the 2030 Agenda as a whole.

Promoting the rule of law (SDG Target 16.3) is critical to ensuring achievement of fundamental freedoms, access to information, guarantees of civic space and free, independent, plural, and diverse media. It assists in building and supporting public participation, inclusive and peaceful societies, and in holding public institutions and officials responsible for their actions. These key dimensions of SDG16, as well as effective, accountable and transparent institutions, are also preconditions for realising economic, social and cultural rights, including the right to a safe, clean, healthy and sustainable environment, and the objective of 'leaving no-one behind' (LNOB). They embody some of the key elements of the environmental rule of law, critical to the achievement of sustainable development.²

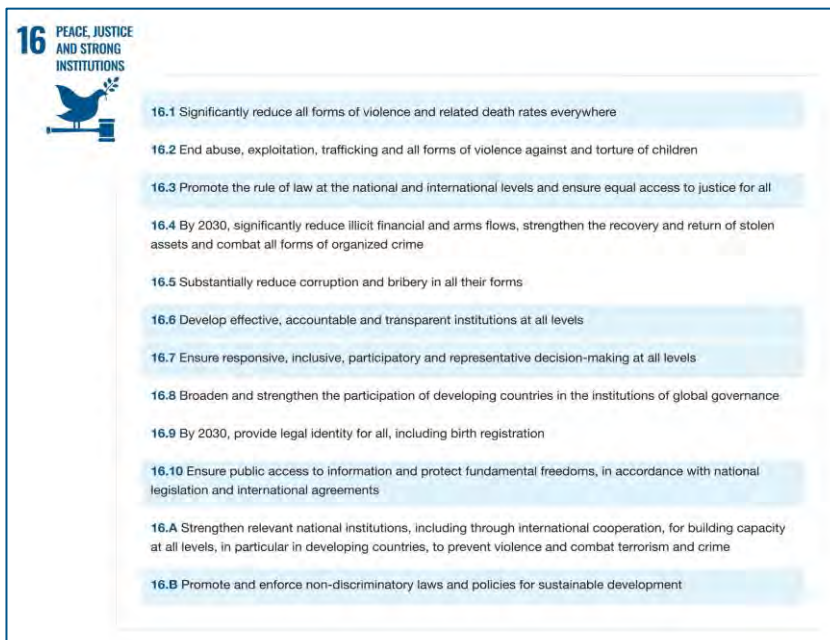


Figure 1: Highlights of SDG16 Targets that are aligned with procedural rights – which are critical for effective governance and environmental rule of law – as well as those targets focused on protecting human rights and environmental defenders exercising

for the achievement of the SDG16 targets.⁴ It acknowledges that issues of corruption in decision making relating to the environment and natural resources, lack of transparency and inclusivity need to be addressed. Furthermore, sustainable recovery from the pandemic requires strong environmental rule of law and implementation of a rights-based approach in environmental decision-making. Within such approaches, the decision-making process upholds procedural rights, including rights to participation, access to information, and freedom of expression. Free, prior, and informed consent has also become important, particularly concerning Indigenous people. Rights-based decisions promote, protect and respect substantive environmental rights, including rights to life, health, land, access to natural resources, and the right to a safe, clean, healthy, and sustainable environment, particularly for vulnerable groups.⁵

It is increasingly recognized⁶ that environmental human rights defenders (EHRDs) have a vital role to play in stewarding the environment and in supporting governments to achieve the 2030 Sustainable Development Goals and globally agreed environmental commitments. In doing so, they also play an important role in upholding and advancing the environmental rule of law.

However, according to several indicators, people and communities are in fact being left behind. In 2020, Asia and the Pacific saw a decrease in peacefulness due in part to increasing deaths from internal conflict and increasing military expenditure.³ Restrictions on civic space and fundamental freedoms continued to tighten in 2020 across regions, and in particular in the Asia-Pacific. Further, the COVID-19 pandemic has exacerbated existing inequalities and stalled progress on some of the core elements of SDG16. While promising and innovative practices have emerged, much more effort is required on the part of individual countries if the region is to meet the 2030 goals.

This Issue Brief focuses on certain aspects of human rights and environmental rule of law essential

² *Environmental Rule of Law: Critical to Sustainable Development* <https://www.unep.org/resources/report/environmental-rule-law-critical-sustainable-development>

³ *Global peace index 2020: measuring peace in a complex world*, Institute for Economics & Peace, pp. 13-14 https://www.visionofhumanity.org/wp-content/uploads/2020/10/GPL_2020_web.pdf

⁴ *Civics Monitor 2020*, <https://www.civics.org/index.php/state-of-civil-society-report-2020>

⁵ Human rights and the environment are intertwined; human rights cannot be enjoyed without a safe, clean and healthy environment; and sustainable environmental governance cannot exist without the establishment of and respect for human rights. The linkages between human rights and the environment have been recognized in binding legal instruments at the global, regional and national scales. The substantive and procedural rights that connect human rights and the environment are known as the group of 'environmental rights'.

⁶ *Human Rights Council Res 40/11 (2019)*; see also, 'SDGs: Defenders are indispensable to sustainable and inclusive development', <https://www.ishr.ch/news/sdgs-defenders-are-indispensable-sustainable-and-inclusive-development>.

Environmental Rule of Law

Since 2012 UNEP has developed the concept of environmental rule of law as part of its normative agenda.⁷ It is understood as the legal framework of procedural and substantive rights and obligations that incorporates the principles of ecologically sustainable development in the rule of law.⁸ It integrates environmental needs with the essential elements of rule of law, thus providing the basis for improving environmental governance and for environmental dimensions of human rights obligations to be exercised by individuals and communities around the world. Environmental rule of law is built upon three critical components: strong legal frameworks; effective political, administrative, and judicial institutions, access to information and justice.

To ensure that environmental law is more effective in advancing sustainable development, environmental rule of law efforts need to be strengthened. This means that institutions are able and willing to provide access to information, to encourage public participation in environmental decisions, and to facilitate access to justice. Without environmental rule of law and the enforcement of legal rights and obligations, environmental governance may be arbitrary, discretionary, subjective, and unpredictable.⁹

Effective laws and policies and strong regional and national institutions promote the environmental rule of law as the necessary foundation for environmental protection and enforcement. That foundation can in turn promote resilience to environmental crises, lower rates of environmental crime, and reduce the occurrence of pandemics such as COVID 19 arising from environmental mismanagement. The environmental rule of law thus functions to protect human rights concerning the environment, and to advance accountability for all environmental actors and decision makers.

The environmental rule of law can contribute to the implementation of multi-lateral environmental agreements and progress towards internationally agreed global environmental goals. It can also support sustainable pandemic recovery through a just transition to a sustainable economy founded on biodiversity conservation, renewable energy, sustainable resource use, community empowerment and promoting livelihoods with dignity. Developing effective, accountable, inclusive and transparent institutions is critical to promoting the environmental rule of law and the realization of human rights (including the environmental dimensions) while protecting EHRDs from threats, reprisals, and harassment, including enactment of emergency decrees and oppressive legislation.

Good environmental governance and the environmental rule of law are interlinked and complementary. Typically, good environmental governance requires a process whereby institutions conduct their environmental mandate in a manner that is consistent with, and promotes, the rule of law and the realization of human rights (including those linked to the environment) in the environmental decision-making process. The environmental rule of law requires the greater implementation of a gender-responsive and rights-based approach in environmental decision-making. Within such approaches, the decision-making process upholds procedural rights, including rights to participation, access to information, free, prior and informed consent and freedom of expression. Adequate procedural rights are essential in order to promote, protect and respect substantive rights, including rights to land, access to natural resources, and the right to a safe, clean, healthy and sustainable environment, particularly for persons and groups in vulnerable situations, including children. Fundamentally, good environmental governance bolstered by environmental rule of law ensures that decision-making is consultative, and representative, giving diverse stakeholders a sense of ownership, thus providing environmental policies more legitimacy. It also contributes to overcoming historical and structural barriers to participation, including those related to gender, thereby making conservation and sustainable development goals easier to achieve.

Often, Indigenous, and local communities and civil society in general do not have adequate access to information or opportunities to participate in environmental governance. It is thus necessary to advance rights-based approaches, including both procedural rights of access to information and justice and substantive rights to a healthy environment. These are also vital elements of an effective environmental rule of law, thus contributing to the promotion of peaceful and inclusive societies for sustainable development, access to justice for all and the building of effective, transparent, accountable and inclusive institutions, as the basic building blocks for achieving SDG 16.

⁷ <https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report>; see also the UNEA mandate to support countries to strengthen 'environmental rule of law' (GC 27/9 and UNEA.4/20).

⁸ See IUCN World Declaration on the Environmental Rule of Law, <https://www.iucn.org/commissions/world-commission-environmental-law/wcel-resources/wcel-important-documentation/environmental-rule-law>

⁹ UNEP, Environmental Rule of Law, <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-0#:~:text=Environmental%20rule%20of%20law%20is%20central%20to%20sustainable%20development.&text=It%20highlights%20environmental%20sustainability%20by,for%20environmental%20rights%20and%20obligations>.

Environmental rule of law example: ASEAN Human Rights Declaration

In 2009, ASEAN established the ASEAN Intergovernmental Commission on Human Rights. In 2012, the 10 member countries signed the ASEAN Human Rights Declaration. It recognises all civil and political rights and economic, social and cultural rights, as well as the right to development and the right to peace. Article 28 sets out a range of rights often associated with social and environmental matters (food, water, shelter, health) and includes a specific the right to a safe, clean and sustainable environment. Despite the robust substantive provisions of the Declaration, the ASEAN Human Rights Commission has limited power to implement them. Article 39 states that the 'promotion and protection of human rights and fundamental freedoms' will be achieved through, 'inter alia, cooperation with one another as well as with relevant national, regional and international institutions/organisations, in accordance with the ASEAN Charter'. In the light of ongoing violation of the rights of EHRDs in the region, there is a case to be made, especially in situations where national remedies have been exhausted, for the Commission to have the explicit power to directly accept complaints from civil society organisations and aggrieved parties, as well as to investigate human rights violations and recommend appropriate actions to member countries. The 2018 Environmental Defenders Declaration for Southeast Asia, which focused on the Human Rights Declaration, called on ASEAN to formally incorporate input from civil society through regular and consultations, and to 'develop a grievance mechanism that is accessible and equitable and developed in meaningful collaboration with community members and frontline environmental defenders'.¹⁰ An independent Commission with robust inquiry and enforcement provisions would be an important example for other regions in the Asia-Pacific, where such Commissions have not yet been established.

COVID-19 and the Environmental Rule of Law

The COVID-19 pandemic continues to present a grave threat to public health. At the same time, emergency measures adopted to combat COVID-19 can have harmful, discriminatory effects, limiting freedom of movement and association. Since the outbreak of COVID-19 and accompanying lockdowns, data and reports from frontline workers indicate that all types of violence against women and girls, particularly intimate partner violence, have intensified, with a reduction in access to life-saving services and support.

COVID-19 has also caused significant complications for justice systems (SDG Target 16.3) and actions that can be regarded as contrary of the environmental rule of law. Emergency measures introduced in some countries have seen the establishment of decision-making structures on pandemic-related issues that by-pass parliamentary structures. Unless such measures are accountable, proportionate, and time-restricted, they will increase concerns about participation and transparency (SDG Target 16.7), as well as increasing the risk of corrupt practices with respect to environmental decision-making.

COVID-19 exacerbates already existing inequalities due to environmental degradation and climate change. The poor and marginalized are among those worst impacted by both COVID-19 and environmental harms that threaten full and effective enjoyment of all human rights.

Access to information is critical in the context of the pandemic. Emergency measures have introduced a range of restrictions on fundamental freedoms, including on peaceful assembly and freedom of expression (SDG Target 16.10). The UN Special Rapporteur report on the promotion and protection of the right to freedom of opinion and expression in 2020 noted that some governments' efforts to combat the COVID-19 pandemic may be failing to meet the standards of legality, necessity and proportionality.¹¹

Some of the laws and regulations enacted to help control the spread of the disease have also adversely affected human rights and environmental governance within the region. The rights of freedom of assembly, association and expression may be curtailed, for instance, by restrictions placed on gatherings in public and private spaces, as well as by efforts to combat misinformation about the pandemic. It is thus important to examine and determine the implications that legislation enacted during the pandemic can directly or indirectly have on the human rights situation and the protection of the natural environment in these countries.¹² Environmental protection agencies and law enforcement authorities faced new and unprecedented constraints in their freedom to manoeuvre due to the emergency lockdown measures and disruptions to information flows, shifting policy attention and resources away from environmentally and socially harmful or illicit activities (e.g., illegal logging, poaching and wildlife smuggling) across the region during 2020, and these continue into 2021.

¹⁰ https://docs.google.com/forms/d/12b42cx-7GkO6IS0d3By6uBkAq14y-JMsawOoY6clv4Y/viewform?edit_requested=true

¹¹ A/HRC/44/49, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 'Disease pandemics and the freedom of opinion and expression' (23 April 2020).

¹² COVID-19 and Impacts on Environmental Human Rights Defenders and Environmental Protection in Southeast Asia: A regional analysis of legislative and political trends in 2020 (draft).

Legal protection of environmental human rights defenders (EHRDs)

The UN defines EHRDs as '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'.¹³ Land and environmental rights are interlinked and are often inseparable.¹⁴ In 2019, the UN Human Rights Council unanimously adopted a strong consensus resolution recognising the contribution of EHRDs to the enjoyment of human rights, environmental protection and sustainable development.¹⁵ Through their actions, EHRDs can also play an important role in upholding and advancing the environmental rule of law. The resolution underlined the positive, important and legitimate role of EHRDs in the promotion and protection of human rights as they relate to the enjoyment of a safe, clean, healthy and sustainable environment, in supporting States to fulfil their obligations under the 2015 Paris Agreement and in realizing the 2030 Agenda for Sustainable Development, including the pledge that 'no one will be left behind' and to reach the furthest behind first. It also called on States to 'respect, protect and fulfil human rights, including in all actions undertaken to address environmental challenges', and 'to adopt laws or policies ensuring the right to take part in the conduct of public affairs and in cultural life, the freedom to seek, receive and impart information and equal access to justice, including to an effective remedy, in the field of the environment'. The Resolution also encouraged all business enterprises, as part of their human rights' due diligence (in accordance with the Guiding Principles on Business and Human Rights), to share and exchange best practices, and to communicate in an accessible form on how they address their adverse human rights impacts, particularly when concerns are raised concerning affected stakeholders, including by EHRDs.

The Human Rights Council stresses that the killings, human rights violations against and abuse of EHRDs may violate international law, and undermine sustainable development at the local, national, regional, and international levels. It is important to recognize and account for the compounding risks faced by EHRDs who experience multiple and intersecting forms of discrimination, including women and Indigenous EHRDs.

UN Agencies, national governments, non-government organisations, the private sector and the general community must understand the vital role of EHRDs in supporting States to realize the 2030 Agenda for Sustainable Development, and SDG 16 in particular. The initiatives of government, the private sector and UN agencies must be further explored to support EHRDs' involvement in environmental decision-making, implementation, monitoring and follow-up and review of the 2030 Agenda for Sustainable Development. The positive and negative impacts of COVID 19 on environmental governance and EHRDs must also be understood, along with the role of EHRDs in strengthening resilience and recovery from COVID-19. The contributions made by EHRDs need to be duly recognized, encouraged, and promoted so as to provide a safe environment for them, accelerate their participation and inclusion in the decade of action and delivery for sustainable development.

In March 2018, UNEP launched its Environmental Rights Initiative at the 37th Session of the Human Rights Council in Geneva. The Initiative works to 'bring environmental protection nearer to the people by assisting state and non-state actors to Promote, Protect and Respect Environmental Rights.' This Initiative includes support to environmental defenders who strive to protect and promote human rights relating to the environment.¹⁶

¹³ <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/who>

¹⁴ Report of the Special Rapporteur on the situation of human rights defenders, A/72/281 (2016).

¹⁵ Human Rights Council Res 40/11 (2019) Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development.

¹⁶ What is the Environmental Rights Initiative? <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what-1>

SDG16.10: Access to information and protection of fundamental freedoms

Principle 10 of the Rio Declaration on Environment and Development states that 'environmental issues are best handled with the participation of all concerned citizens' and that everyone shall have appropriate access to information, the right to participate in decision-making, and effective access to justice. These 'access rights' have since been adopted in various international and regional instruments and treaties. In 2015, they were also included in SDG16 and reflected in SDG16's targets.

Access to information	SDG 16.10	Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.
Public participation	SDG 16.7	Ensure responsive, inclusive, participatory, and representative decision making at all levels.
Access to justice	SDG 16.3	Promote the rule of law at the national and international levels and ensure equal access to justice for all.

The protection of fundamental freedoms under SDG Target 16.10 includes freedom of opinion and expression, freedom of assembly, access to information, civic space and free, independent, pluralistic and diverse media. These are all critical to building and supporting inclusive and peaceful societies, civic participation, the rule of law, and in holding accountable the public institutions and officials as well as the private sector. Defenders of environmental rights are particularly at risk, subject to harassment, arbitrary arrests, detentions, threats, and killing. Access rights are fundamental to the environmental rule of law. However, unless they are adequately implemented and enforced at national level, the targets set out in other parts of the SDGs will be much more difficult to reach.

SDG Target 16.10 immediately raises the plight of environmental human rights defenders. According to a global analysis by Frontline Defenders, world-wide, at least 331 human rights defenders were killed in 2020.¹⁷ With respect to violence and death suffered by environmental human rights defenders, the statistics in the Asia Pacific region are not encouraging: in 2019, 53 land and environmental defenders were killed.¹⁸ Offline and online harassment of women journalists, and other gender-specific threats are also widespread. Many of the violations are related to land and land grabs, environment, and Indigenous issues. Violent attacks against human rights defenders, journalists, trade unionists and others have a direct negative impact on the exercise of fundamental freedoms, on public participation and for accountability of the state and other actors. The following table focuses mainly on data related to EHRDs, concerning the number of killings, kidnappings, enforced disappearance, arbitrary detention, and torture of human rights defenders, journalists, and trade unionists in the region.

Target	Indicator	Status of Indicator	Latest data available	Comments
16.10 Ensure public access to information and protect	16.10.1 Number of verified cases of killing, kidnapping, enforced disappearance	Tier I United Nations	Number of killings of journalists: 20 killings of journalists and media workers were recorded in Asia and the Pacific in 2020	ESCAP regional data at 31 Dec 2019: Killings of human rights defenders, journalists, and trade unionists; in 2019: 76;

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