

# AFRICAN COURT OF HUMAN AND PEOPLES' RIGHTS

## REQUEST FOR AN ADVISORY OPINION:

### OBLIGATIONS OF STATES

### WITH RESPECT TO THE CLIMATE CRISIS

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#### SUBMISSION OF

AFRICA INSTITUTE FOR ENERGY GOVERNANCE, CONGOLESE ALERT FOR THE ENVIRONMENT AND HUMAN RIGHTS, LEGAL AND HUMAN RIGHTS CENTRE, YOUTH FOR GREEN COMMUNITIES, ZIMBABWE ENVIRONMENTAL LAW ORGANISATION, LAWYERS FOR LAWYERS, BAR HUMAN RIGHTS COMMITTEE OF ENGLAND AND WALES

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#### I. INTRODUCTION

1. These submissions are filed on behalf of Africa Institute for Energy Governance, Congolese Alert for the Environment and Human Rights, Legal and Human Rights Centre, Youth for Green Communities, Zimbabwe Environmental Law Organisation, Lawyers for Lawyers, and the Bar Human Rights Committee of England and Wales, in accordance with Rule 84(2) of the Rules of Court of the African Court on Human and Peoples' Rights ("**the Rules**"). Permission to file these submissions was applied for on 12 November 2025 and granted on 28 November 2025.
2. The above named organisations have experience defending the right to a clean, healthy and sustainable environment and advocating against climate change or in supporting those who advocate on the front line. The organisations' central concern is that the protection of environmental human rights defenders ("**EHRDs**"), who advocate against the degradation of the environment and for the realisation of a healthy and sustainable environment for the enjoyment of all peoples, is critical to the achievement of the rights set out in the African Charter on Human and Peoples' Rights ("**the Charter**").
3. In *Social and Economic Rights Action Center and Center for Economic and Social Rights v Nigeria* ("**SERAC and CESR v Nigeria**"), the African Commission for Human and Peoples' Rights ("**the Commission**") recognised that the degradation of the

environment was inseparably linked to the enjoyment and fulfilment of other rights including the right to life (Article 4), health (Article 16) and economic, social and cultural development (Article 22).<sup>1</sup> This seminal case identified the positive duties on States to protect their citizens.<sup>2</sup>

4. Twenty-four years later, the African Court of Human and Peoples' Rights ("ACtHPR") has a timely opportunity to provide clarity to States on the scope of their positive obligations regarding the climate crisis. The Pan African Lawyers' Union ("PALU") submitted a Request for an Advisory Opinion on "The Obligations of States with Respect to the Climate Change Crisis" ("**the Request**") under Article 4 of the Protocol to the Charter ("**the Protocol**") and Rule 82 of the Rules.
5. The Request points to the increasingly hostile environment for EHRDs and the positive obligation on States under Article 11 to respect, protect and facilitate the right of environmental defenders to assemble freely and without fear of persecution.<sup>3</sup> Cognisant of the increasing threats to EHRDs, the present submission focuses on one issue raised in the request: the scope of States parties' positive obligations under the Charter to protect EHRDs, as a vulnerable population.<sup>4</sup>
6. In considering the issues raised by this question, this submission will address:
  - (a) The facts relevant to EHRDs and their representatives (Section II below);
  - (b) African States' positive obligations to protect EHRDs in the performance of their activities (Section III below);
  - (c) African States' positive duties to facilitate EHRDs' participation in decision-making processes in relation to climate change (Section IV below).

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<sup>1</sup> *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria*, Communication No. 155/96 (27 October 2001) ("**SERAC and CESR v Nigeria**") §§64, 65, 67.

<sup>2</sup> *Ibid.*, §§57-58.

<sup>3</sup> Pan African Lawyers Union (PALU), 'Request for an Advisory Opinion on "The Obligations of States with Respect to the Climate Change Crisis"' (2025) (The Request) 33.

<sup>4</sup> *Ibid.*, §§93 (b), 173 (d).

## **II. THE FACTS RELEVANT TO EHRDs AND THEIR REPRESENTATIVES**

### **A. The role of EHRDs in the response to Climate Change Crisis**

7. EHRDs are defined as “individuals or 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”.<sup>5</sup>
8. The UN Special Rapporteur on Human Rights Defenders has repeatedly stressed that environmental defenders play a “critical role in ensuring accountability for environmental harm and in promoting sustainable development,” urging States to adopt protective measures and refrain from criminalising their work.<sup>6</sup>
9. The Special Rapporteur on Human Rights and the Environment has likewise affirmed that EHRDs are “key actors in the implementation of the right to a clean, healthy and sustainable environment,” and that their protection is a legal obligation under international human rights law.<sup>7</sup>
10. Similarly, the UN Working Group on Arbitrary Detention in the 2023 Annual Report noted that EHRDs are “pivotal actors in protecting and promoting fundamental rights. In addition to defending and upholding the fundamental rights of others, they strive to protect the environment itself.”<sup>8</sup>
11. EHRDs’ work traverses a broad range of activities including: (i) collecting and disseminating environmental information; (ii) participating in decision-making in relation to the environment through public participation procedures and the organisation of peaceful protests; and (iii) engaging in strategic litigation to challenge violations of national law relating to the environment.<sup>9</sup> The freedom to exercise these responsibilities is necessary for EHRDs to realise their ‘critical role’ in ensuring

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<sup>5</sup> UNGA (United Nations General Assembly), ‘Report of the Special Rapporteur on the situation of human rights defenders,’ (3 August 2016) A/71/281 (‘UN SR report on human rights defenders’) §7.

<sup>6</sup> UN HRC (United Nations Human Rights Council), ‘Report of the Special Rapporteur on the situation of human rights defenders’ (1 February 2016) A/HRC/31/55 (‘UN SR report on human rights defenders’) §§9-12.

<sup>7</sup> UNGA, ‘Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment’ (2 Aug 2024) A/79/270 (‘UN SR report on the human right to a healthy environment’) §38.

<sup>8</sup> UN HRC, ‘Report of the Working Group on Arbitrary Detention’ (31 July 2023) A/HRC/54/51 (‘Report of the WGAD’) §57.

<sup>9</sup> UN Special Rapporteur on Environmental Defenders under the Aarhus Convention, Michel Forst, ‘Report on key trends and threats regarding environmental defenders’ (10 September 2025) ECE/MP.PP/2025/20 (‘Report on key trends and threats’) §11.

accountability and progress towards achieving a clean, health and sustainable environment.

## **B. The risks faced by EHRDs and their representatives**

12. Although EHRDs are acting in the public interest, they are frequently obstructed in their work, at great personal cost, by State and private actors. Protests and other forms of interventions by EHRDs have “precipitated reprisals from Governments and businesses supporting the fossil fuel industry”,<sup>10</sup> including in the form of “stigmatization, criminalisation, threats and assassinations.”<sup>11</sup> There have also been trends in restricting the civic space for EHRDs to operate in and to impede their access to information and the courts.<sup>12</sup>
13. A prominent example of the repression of activists has arisen in response to the East Africa Crude Oil Pipeline (“EACOP”) which has affected communities across Tanzania and Uganda. The gravity of the situation led the Commission to adopt a Resolution on the situation of human rights defenders working on environmental issues in Uganda calling on the State to respect Charter rights and expressing concern over the use of “judicial harassment, including arbitrary arrests, unlawful detentions and prosecutions, abductions, use of excessive force, incommunicado detention, torture and other forms of ill-treatment.”<sup>13</sup> The attention of the Commission, other regional bodies,<sup>14</sup> and Special Rapporteurs,<sup>15</sup> has not significantly ameliorated the situation. The number of arrests and detentions of EHRDs in Uganda since March 2023 has increased from 129 in August 2024 to over 200 by the time of these submissions in November 2025.<sup>16</sup>

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<sup>10</sup> UNGA, ‘Report by the Special Rapporteur on promotion and protection of human rights in the context of climate change’ (26 July 2022) A/77/226, §84.

<sup>11</sup> ‘UN SR report on the right to a healthy environment’ A/79/270 (fn 7) §§86-87.

<sup>12</sup> UN SR on Environmental Defenders, ‘Report on key trends and threats’ (fn 9) §§20-78.

<sup>13</sup> The African Commission on Human and Peoples’ Rights (ACHPR), ‘Resolution on the situation of human rights defenders on environmental issues in Uganda’ ACHPR/Res.613 (LXXXI) (6 November 2024).

<sup>14</sup> European Parliament, ‘Resolution of 15 September 2022 on violations of human rights in Uganda and Tanzania linked to investments in fossil fuels projects’ 2022/2826(RSP).

<sup>15</sup> UN Special Procedures mandates have repeatedly sent joint communications on the matter to the Ugandan government: AL UGA 3/2025 (3 July 2025); AL UGA 4/2024 (19 December 2024); AL UGA 3/2023 (24 October 2023); AL UGA 2/2023 (9 August 2023); and AL UGA 1/2020 (20 April 2020). All letters are available in the UN Special Procedures Communications database: <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>16</sup> AL UGA 4/2024 (fn 15); YGC (Youth for Green Communities), ‘Human Rights Implications of Uganda’s Crackdown on Environmental & Climate Activism against the EACOP Pipeline & other Projects’ (*forthcoming*,

14. The following section will address the broad range of risks faced by EHRDs in relation to their work protecting the environment and mitigating the effects of climate change. Many of the facts reported below directly concern the organisations who prepared the present submission or their clients.

### ***Threats to life, enforced disappearances and torture***

15. EHRDs have been killed, abducted or held incommunicado, creating conditions that facilitate physical and psychological abuse without oversight. Lawyers advocating for EHRDs have themselves been subjected to harassment, intimidation, and unlawful detention blocking investigations and accountability.
16. Global Witness’s *Missing Voices* report documented the “violent erasure of land and environmental defenders”, including killing of 116 EHRDs across Africa between 2012 to 2023.<sup>17</sup> In the Democratic Republic of Congo nine EHRDs were killed in 2024, including leaders of civil society organisations, journalists, activists and lawyers all active in defending the environment.<sup>18</sup>

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2025) [Annex 10]; ‘EACOP: 15 activists arrested in renewed anti-oil pipelines protests’ (*Daily Monitor*, 12 November 2024) <[www.monitor.co.ug/uganda/news/national/eacop-15-activists-arrested-in-renewed-anti-oil-pipeline-protests-4820406](http://www.monitor.co.ug/uganda/news/national/eacop-15-activists-arrested-in-renewed-anti-oil-pipeline-protests-4820406)>; Media have reported on escalating repression against EACOP protestors and frequent arrests: ‘11 anti-EACOP protestors charged with common nuisance after protest at EU Mission’ (*Daily Monitor*, 27 February 2025) <[www.monitor.co.ug/uganda/news/national/11-anti-eacop-protesters-charged-with-common-nuisance-after-protest-at-eu-mission-4943894](http://www.monitor.co.ug/uganda/news/national/11-anti-eacop-protesters-charged-with-common-nuisance-after-protest-at-eu-mission-4943894)>; ‘Why police nabbed anti-EACOP activists at Parliament’ (*Daily Monitor*, 19 March 2025) <[www.monitor.co.ug/uganda/news/national/why-police-nabbed-anti-eacop-activists-at-parliament-4971506](http://www.monitor.co.ug/uganda/news/national/why-police-nabbed-anti-eacop-activists-at-parliament-4971506)>; ‘Environmentalists turn heat on local banks over EACOP funding’ (*Daily Monitor*, 2 April 2025) <[www.monitor.co.ug/uganda/news/national/environmentalists-on-stanbic-other-banks-over-eacop-funding-4987958](http://www.monitor.co.ug/uganda/news/national/environmentalists-on-stanbic-other-banks-over-eacop-funding-4987958)> all accessed 28 November 2025. For an overview of cases, see YGC, ‘Summary report for the cases against EHRDs working on EACOP and other oil projects in Uganda’ (tracker – last updated 28 October 2025) [Annex 7].

<sup>17</sup> Global Witness, ‘Missing Voices: The Violent Erasure of Land and Environmental Defenders’ (September 2024) 1, 18-19 <[https://gw.cdn.ngo/media/documents/Missing\\_Voices\\_-\\_Global\\_Witness\\_land\\_and\\_environmental\\_defenders\\_report.pdf](https://gw.cdn.ngo/media/documents/Missing_Voices_-_Global_Witness_land_and_environmental_defenders_report.pdf)>.

<sup>18</sup> ACEDH (Alert Congolaise pour l’Environnement et les Droits de l’Homme), ‘Defending the Rights of Nature: One of the risky activities in the DRC. Monitoring report on the situation of Environmental Land Defenders in the DRC’ (2025) [Annex 1] (‘Defending the Rights of Nature’) 6, 9. During the first half of 2025, ten EDHRs were killed in the DRC in retaliation of their work: ACEDH, ‘2 Ans de la Loi DDH No. 23-027 en RDC, les Défenseurs de l’Environnement et Leaders Locaux. Rapport semestriel de monitoring sur la situation des défenseurs de l’environnement et fonciers en RDC (15 juin 2023-15 juin 2025)’ (2025) [Annex 2] (‘2 Ans de la Loi DDH No.23-027 en RDC’) 10, 17-20.

17. The 2025 UN Working Group on Enforced or Involuntary Disappearances Report identified a global pattern of enforced disappearances targeting EHRDs.<sup>19</sup> Prominent examples of enforced disappearances of EHRDs include:
- (a) **In Uganda**, opposition to the EACOP project led to enforced disappearances.<sup>20</sup> For example, Stephen Kwikiriza, an EHRD who documented violations in the Kingfisher Development Area, was subjected to enforced disappearance for five days.<sup>21</sup>
  - (b) **In Sudan**, Khaled Omar Al-Sadiq, a lawyer who represented communities affected by large-scale land acquisitions and environmental damage, was abducted from his home in Khartoum by Rapid Support Forces in December 2024 and has since been declared missing.<sup>22</sup>
  - (c) **In Tanzania** (Dar es Salaam), a South African conversationist named Wyne Lotter was killed on the 16<sup>th</sup> of August 2017 after the taxi was stopped by another vehicle and two men, and he was shot. Prior to that he had received several death threats as a result of being an activist against international ivory trafficking networks.<sup>23</sup> The persons responsible for his death were later sentenced to death by hanging.<sup>24</sup>
  - (d) **In Zimbabwe**, there are documented patterns of abduction, enforced disappearance and ill-treatment of civic and human rights activists, particularly during periods of political sensitivity. Environmental defenders operating in

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<sup>19</sup> EHRDs are described within the report as those who defend land, natural resources and the environment, see §3. UN WGEID (UN Working Group on Enforced or Involuntary Disappearances), ‘Enforced Disappearance in the Context of the Defence of Land, Natural Resources and Environment’ (3 September 2025) UN Doc A/HRC/60/35/Add.4, §§15-17.

<sup>20</sup> Ibid §25.

<sup>21</sup> ACHPR/Res.613 (LXXXI) 2024 (fn 13).

<sup>22</sup> Lawyers for Lawyers, ‘Statement on the Arrest and enforced disappearance of Sudanese lawyer Khaled Omar Al-Sadiq’ (9 May 2025) <[www.lawyersforlawyers.org/38093-2/](http://www.lawyersforlawyers.org/38093-2/)> accessed 29 November 2025.

<sup>23</sup> Magai, J., “Wayne Lotter Murder: 11 Sentenced to Death in Dar es Salaam”, *The Citizen*, (3 December 2022), <[www.thecitizen.co.tz/tanzania/news/national/wayne-lotter-murder-11-sentenced-to-death-in-dar-es-salaam-4041962](http://www.thecitizen.co.tz/tanzania/news/national/wayne-lotter-murder-11-sentenced-to-death-in-dar-es-salaam-4041962)> accessed 12 February 2026.

<sup>24</sup> Republic vs Khalid Amas Mwinyi Banyata and 17 others, Criminal Sessions Case No. 13 of 2021, High Court of Tanzania (Dar es Salaam District Registry).

contested extractive contexts report similar threats, intimidation and surveillance, contributing to a climate of fear and deterrence.<sup>25</sup>

18. Monitoring and accountability mechanisms are necessary but often absent. For example, while the Democratic Republic of Congo legally provides for the protection of EHRDs,<sup>26</sup> it has not established any implementation or monitoring mechanism and cases of violence or harassment against EHRDs are not adequately investigated by authorities.<sup>27</sup>

### ***Criminalisation, arbitrary arrest and detention***

19. The UN Working Group on Arbitrary Detention has documented a steady rise in the criminalisation of EHRDs through arbitrary arrests and detention.<sup>28</sup> Across Africa, EHRDs report being subjected to bans on protests, home raids, and arbitrary arrests and detention.<sup>29</sup> In the Democratic Republic of Congo, EHRDs have been arrested by the military while returning from community gathering or seminars aimed at mobilising Indigenous Peoples to claim their land rights.<sup>30</sup> In Tanzania, Masaai indigenous community leaders opposing forcible removal from Loliondo, were held incommunicado, denied access to legal counsel, and later charged with fabricated offences of “conspiracy to murder”.<sup>31</sup> The subsequent proceedings were marred with due process violations and lack of evidence, with all charges eventually dropped in November 2022.<sup>32</sup> While in Zimbabwe, Neve Tshuma, Deputy Chairperson of Dinde

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<sup>25</sup> International Lawyers Project, Supporting environmental Defenders in Zimbabwe (15 December 2024) <[www.internationallawyersproject.org/post/supporting-environmental-defenders-in-zimbabwe](http://www.internationallawyersproject.org/post/supporting-environmental-defenders-in-zimbabwe)> accessed 20 February 2026.

<sup>26</sup> Law No. 23/027 of 15 June 2023, Democratic Republic of Congo.

<sup>27</sup> ACEDH, ‘Defending the Rights of Nature’ (fn 18) 22 [Annex 1]; ACEDH, ‘2 Ans de la Loi DDH No.23-027 en RDC’ (fn 18) [Annex 2].

<sup>28</sup> ‘Report of the WGAD’ A/HRC/54/51 (fn 8) §§55-56; UNGA, ‘Tipping points: human rights defenders, climate change and a just transition. Report of the UN Special Rapporteur on human rights defenders’ (4 July 2025) UN Doc. A/80/114, §§51-70; John H Knox, ‘Policy Brief: Environmental Human Rights Defenders, a Global Crisis’, (Universal Rights Group, February 2017) 13 <[www.universal-rights.org/urg-policy-reports/environmental-human-rights-defenders-ehrd-risking-today-tomorrow-2/](http://www.universal-rights.org/urg-policy-reports/environmental-human-rights-defenders-ehrd-risking-today-tomorrow-2/)> accessed 28 November 2025.

<sup>29</sup> UN Special Rapporteur on Environmental Defenders under the Aarhus Convention, Michel Forst, ‘Report on regional consultations with environmental defenders’ (September 2025) ECE/MP.PP/2025/19 (‘Report on regional consultations’) 23.

<sup>30</sup> DefendDefenders (East and Horn of Africa Human Rights Defenders Project), ‘The State of Environmental Human Rights Defenders in Tanzania, Uganda, and the Democratic Republic of Congo’ (2023) 35 <<https://defenddefenders.org/wp-content/uploads/2023/11/The-State-of-Environmental-Human-Rights-Defenders-in-Tz-Ug-and-DRC-Final-Report-.pdf>> accessed 28 November 2025.

<sup>31</sup> Amnesty International, ‘Tanzania: “We have lost everything”: Forced evictions of the Maasai in Loliondo’ (5 June 2023) 25-28 <[www.amnesty.org/en/documents/afr56/6841/2023/en/](http://www.amnesty.org/en/documents/afr56/6841/2023/en/)> accessed 28 November 2025.

<sup>32</sup> Ibid, 25-28; LHRC (Legal and Human Rights Centre) submission on ‘Challenges facing environmental human rights defenders in Tanzania’ (November 2025) [Annex 4].

Residents Association and an EHRD opposing extractive projects, was arrested when he called on fellow villagers to oppose a local coal exploration project by Chinese investors Zhongxin Coal Mining Group and Afrochine Smelting.<sup>33</sup>

20. EHRDs are criminalised through prosecution on spurious charges. Existing domestic criminal law, including overly broad or vague legislation, is often misused to sanction peaceful protest and non-violent direct action for climate change mitigation.<sup>34</sup>
- (a) **In Uganda**, peaceful protesters have been charged with vaguely defined offences such as “inciting violence,” “common nuisance,” “obstruction of a police officer,” and “unlawful assembly.”<sup>35</sup>
  - (b) **In Tunisia**, EHRDs partaking in peaceful demonstrations organised by “Stop Pollution” movement have been prosecuted under the Penal Code for “participating in a gathering likely to disturb the public peace”<sup>36</sup>
  - (c) **In Nigeria**, employees of the Rainforest Resource and Development Centre were charged with “promoting inter-communal war”, which carries a life sentence, for their opposition to corporate illegal logging activities in Cross River State.<sup>37</sup>
  - (d) **In Tanzania**, some Tanzanian community members campaigning against EACOP were repeatedly summoned by the police and interrogated but no charges were filed against them. They had their phones confiscated for investigation and they signed statements on their relationship with climate activists. An activist named Richard Senkondo was to be arrested for

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<sup>33</sup> Zimbabwe Environmental Law Association (ZELA) and Africa Institute for Environmental Law (AIEL), ‘Situational & Needs Assessment report in Zimbabwe 2022 on the protection of environmental human rights defenders (EHRDS)’ (2022) 17 [Annex 8].

<sup>34</sup> ‘UN SR report on human rights defenders’ A/HRC/80/114 (fn 25) §§51-54 (table 2).

<sup>35</sup> YGC, ‘EACOP report’ (fn 16) 8-10 [Annex 10]; UN Special Procedures, AL UGA 2/2023 (fn 15).

<sup>36</sup> ICJ, ‘Tunisia must quash guilty verdicts against anti-pollution protesters and investigate alleged torture of human rights activist,’ (8 June 2025) <[www.icj.org/tunisia-must-quash-guilty-verdicts-against-anti-pollution-protesters-and-investigate-alleged-torture-of-human-rights-activist/](https://www.icj.org/tunisia-must-quash-guilty-verdicts-against-anti-pollution-protesters-and-investigate-alleged-torture-of-human-rights-activist/)> accessed 30 November 2025.

<sup>37</sup> Global Witness, ‘Roots of Resistance’ (fn 18) 35-40.

interrogation by the Tanzanian Intelligence and Security Service (TISS), he had to go into hiding ever since.<sup>38</sup>

21. Even when charges are eventually dismissed, the prolonged proceedings cause EHRDs to face reputational harm, disruption of their work and/or education, and significant financial burdens, especially when forced to travel long distances to attend hearings.<sup>39</sup>
22. Legal representatives of EHRDs are also targeted, which affects their ability to represent their clients. In the case of EHRDs protesting the EACOP project, lawyers representing EHRDs were faced with increased pressures and themselves arrested or detained during the course of representing their client. For example, in January 2025, human rights lawyer Eron Kiiza was assaulted and detained whilst attempting to access the military courtroom and represent his client.<sup>40</sup> Mr Kiiza was then charged with contempt of court and sentenced to nine months in prison.

### ***Marginalisation of EHRDs through stigmatisation***

23. Various UN Special Rapporteurs have observed a global trend in stigmatisation of EHRDs through misinformation or smear campaigns.<sup>41</sup> EHRDs across Central and West Africa reported they are increasingly targeted by smear campaigns which stigmatize them as “anti-development” and accuse them of spreading misinformation.<sup>42</sup> These campaigns are initiated or carried out by various actors – ranging from public officials, to corporate actors and media – through traditional and social media.<sup>43</sup>

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<sup>38</sup> Global Witness, “Concerns Grows for Tanzanian Communities Opposing TotalEnergies’ Oil Pipeline”, (18 April 2024) <<https://globalwitness.org/en/press-releases/concern-grows-for-tanzanian-communities-opposing-totalenergies-oil-pipeline/>> accessed 12 February 2026.

<sup>39</sup> UN SR on Environmental Defenders, ‘Report on key trends and threats’ (fn 9) §52; YGC, ‘EACOP report’ (fn 16) 8-9 [Annex 10].

<sup>40</sup> Lawyers for Lawyers and the International Bar Association’s Human Rights Institute, ‘Call for the respect of the rule of law and fair trial guarantees in advocate Eron Kiiza’s proceedings’ (13 January 2025) <[www.lawyersforlawyers.org/call-for-the-respect-of-the-rule-of-law-and-fair-trial-guarantees-in-advocate-eron-kiizas-proceedings/](http://www.lawyersforlawyers.org/call-for-the-respect-of-the-rule-of-law-and-fair-trial-guarantees-in-advocate-eron-kiizas-proceedings/)> accessed 29 November 2025; Civicus Monitor, ‘Repression of Environmental Defenders, and Crackdown on Opposition and Press Intensifies’ (30 April 2025) <<https://monitor.civicus.org/explore/repression-of-environmental-defenders-and-crackdown-on-opposition-and-press-intensifies/>> accessed 29 November 2025.

<sup>41</sup> ‘UN SR report on the right to a healthy environment’ A/79/270 (fn 7) §86; ‘UN SR report on human rights defenders’ A/HRC/31/55 (fn 6) §26; UN SR on Environmental Defenders, ‘Report on regional consultations with environmental defenders’ (fn 26) 23.

<sup>42</sup> UN SR on Environmental Defenders, ‘Report on regional consultations’ (fn 26) 23.

<sup>43</sup> Ibid; UN SR on Environmental Defenders, ‘Report on key trends and threats’ (fn 9) §24.

24. Common narratives include the designation of EHRDs as “enemies of the State”, “foreign agents”, or “dangerous criminals”.<sup>44</sup> While the terminology may differ, all labels intend to portray EHRDs as acting contrary to the interest of the respective country and population, instead acting for private gain or external interests (e.g. pro-Western). The following examples are illustrative of this:
- (a) **In Uganda**, EHRDs opposing EACOP have been subjected to smear campaigns portraying them as “anti-development”.<sup>45</sup>
  - (b) **In Tanzania**, EHRDs questioning the environmental integrity of major investment projects are labelled “opponents of development” or “agents of foreign interests”.<sup>46</sup> In 2018, the Deputy Minister publicly declared that opponents of the Julius Nyerere Hydropower Project would face arrest, likening dissenting voices to “frogs making noise as the elephant drinks water.”<sup>47</sup>
  - (c) **In Zimbabwe**, in opposing some of the big developmental projects on environmental grounds, EHRDs are at the risk of being associated with opposition political parties and being dismissed outrightly as pawns of international actors opposing development.<sup>48</sup>
  - (d) **In South Africa**, environmental lawyers at the Centre for Environmental Rights in South Africa reported that their lawyers were labelled “anti-development”, undermining their credibility.<sup>49</sup> Defamatory news articles regularly imply they are “foreign funded” and accuse them of blocking progress and development.<sup>50</sup>

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<sup>44</sup> UN SR on Environmental Defenders, ‘Report on key trends and threats’ (fn 9) §25.

<sup>45</sup> YGC, ‘EACOP report’ (fn 16) 15 [Annex 10]; UN Special Procedures, AL UGA 2/2023 (fn 15) 3.

<sup>46</sup> LHRC Submission (fn 29) section (vi) [Annex 4].

<sup>47</sup> Ibid; Mwananchi, ‘VIDEO: Lugola Awashukia Wanaopinga Mradi wa Stiegler’s Gorge’ (25 May 2018) <[www.mwananchi.co.tz/mw/habari/kitaifa/video-lugola-awashukia-tena-wanaopinga-mradi-wa-stiegler-s-gorge--2907560](http://www.mwananchi.co.tz/mw/habari/kitaifa/video-lugola-awashukia-tena-wanaopinga-mradi-wa-stiegler-s-gorge--2907560)> accessed 29 November 2025.

<sup>48</sup> ZELA and AIEL, ‘Situational & Needs Assessment report in Zimbabwe 2022’ (fn 30) 9.

<sup>49</sup> Lawyers for Lawyers, ‘Access to Justice under Threat: the Role, Risks, and Rights of Environmental Lawyers’ (June 2025) 18, available at: <[www.lawyersforlawyers.org/wp-content/uploads/2025/06/Access-to-Environmental-Justice-under-Threat-Lawyer-for-Lawyers-single-pages.pdf](http://www.lawyersforlawyers.org/wp-content/uploads/2025/06/Access-to-Environmental-Justice-under-Threat-Lawyer-for-Lawyers-single-pages.pdf)>; Lawyers for Lawyers, ‘Brandon Abdinor and Thobeka Gumede: “it is sometimes easier to engage with communities who are already impacted and that is so unfortunate” (5 July 2023) <[www.lawyersforlawyers.org/dual-interview-with-mr-brandon-abdinor-and-ms-thobeka-gumede-lawyers-at-the-centre-for-environmental-rights-cer-in-south-africa-it-is-sometimes-easier-to-engage-with-communities-who-are-a/](http://www.lawyersforlawyers.org/dual-interview-with-mr-brandon-abdinor-and-ms-thobeka-gumede-lawyers-at-the-centre-for-environmental-rights-cer-in-south-africa-it-is-sometimes-easier-to-engage-with-communities-who-are-a/)> accessed 29 November 2025.

<sup>50</sup> See John Yeld, ‘Twitter Abuse Continues in Mabola Coal Mine Saga’ (*GroundUp*, 29 October 2018) <<https://groundup.org.za/article/twitter-abuse-continues-mabola-coal-mine-saga/>> accessed 29 November 2025.

This practice misinterprets the purpose of legal defence,<sup>51</sup> as lawyers have a duty to effectively represent their clients to the best of their abilities and should not be identified with their clients or their clients' causes.<sup>52</sup>

25. Such stigmatisation is not merely derogatory. It fosters public misconception that EHRDs pose a social or safety threat to others, thereby legitimising abuse and violence against them, laying the ground for further harassment and encouraging impunity and creates a strong chilling effect dissuading others from joining EHRDs.<sup>53</sup>

### *EHRDs activities in the context of shrinking civic space*

26. EHRDs are operating in an increasingly restricted civic space. Recent years have seen environmental issues become more politicised and sensitive, accompanied by legislative measures curtailing freedom of expression, peaceful assembly, and association, as well as the intensified crackdown on independent media.<sup>54</sup> For example in Zimbabwe, EHRDs operate within an increasingly restricted civic space. Legislative and administrative developments have placed growing constraints on freedoms of expression, association and peaceful assembly, while increasing pressure on independent civil society and media actors. The PVO Amendment Act (2025) expands executive regulatory powers over civil society organisations, including risk-based classification mechanisms linked to anti-money laundering and counter-terrorism frameworks, the possibility of suspension or deregistration, and intervention in organisational governance. International human rights mechanisms have raised concern that, absent robust safeguards and effective judicial oversight, these measures may create a chilling effect on legitimate civil society activity, including environmental advocacy and public-interest litigation. In practice, regulatory uncertainty and the prospect of executive intervention may deter organisations and defenders from

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<sup>51</sup> UN HRC, 'Protection of lawyers against Undue Interference in the Free and Independent Exercise of the Legal Profession: Report of the Special Rapporteur on the Independence of Judges and Lawyers, Diego García-Sayán' (22 April 2022) A/HRC/50/36, §77.

<sup>52</sup> United Nations Basic Principles on the Role of Lawyers (adopted on 7 September 1990 during the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba) Principle 18. Available at <[www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers](http://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers)>.

<sup>53</sup> 'UN SR report on the right to a healthy environment' A/79/270 (fn 7) §§86-87; 'UN SR report on human rights defenders' A/HRC/31/55 (fn 6) §§25-26; UN SR on Environmental Defenders, 'Report on key trends and threats' (fn 9) 8.

<sup>54</sup> UN SR on Environmental Defenders, 'Report on key trends and threats' (fn 9) §§20-21; CIVICUS Monitor, 'People Power Under Attack 2024' (December 2024) 25-35 (Africa chapter) <<https://civicusmonitor.contentfiles.net/media/documents/GlobalFindings2024.EN.pdf>>.

engaging in environmental advocacy, community mobilisation and strategic litigation, thereby undermining the enabling environment necessary for the protection of a clean and healthy environment.<sup>55</sup> In Tanzania, the 2019 amendment to the NGO Act abolished the two-tier registration system and eventually led to the deregistration of NGOs such as the Centre for Strategic Litigation.<sup>56</sup>

27. These measures create a chilling effect on EHRDs activities and provide States with a measure of control over EHRDs' activities. For example, the freezing of bank accounts (under different regulatory provisions) of the Tanzania Human Rights Defenders Coalition in August 2020 for allegedly signing contracts without consulting the appropriate authorities, significantly disrupted funding flows for environmental advocacy networks.<sup>57</sup>

### ***The 'weaponisation of the law' by private parties***

28. Corporations and other private actors have increasingly turned to the courts to initiate abusive or vexatious legal proceedings against EHRDs, also known as Strategic Lawsuits Against Public Participation ("SLAPPs").<sup>58</sup> The objective of these suits is to intimidate EHRDs and capture their resources and attention in defending proceedings.
29. For example, in the Democratic Republic of Congo, a member of the Environmental and Agro-rural Civil Society of Congo was summoned by the Kasongo High Court after an unidentified logger who was engaged in deforestation accused him of defamation and death threats, seeking USD 50,000 in damages, following the EHRD's denunciation of illegal redwood trafficking days prior. The court issued a default

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<sup>55</sup> UN Special Procedures, 'UN experts urge President of Zimbabwe to reject bill restricting civic space' (*OHCHR Press Release*, 14 February 2023) <[www.ohchr.org/en/press-releases/2023/02/un-experts-urge-president-zimbabwe-reject-bill-restricting-civic-space](http://www.ohchr.org/en/press-releases/2023/02/un-experts-urge-president-zimbabwe-reject-bill-restricting-civic-space)> accessed 29 November 2025.

<sup>56</sup> *Center for Strategic Litigation (CSL) and Another vs. The Attorney General and Others* (Misc Civil Cause No. 21 of 2019) High Court of Tanzania (Main Registry); LHRC Submission (fn 29) section (vii) [Annex 4].

<sup>57</sup> LHRC Submission (fn 29) section (vii) [Annex 4]; The Citizen, 'Tanzania Human Rights Defenders Temporarily Shuts Down Operations' (18 August 2020) <[www.thecitizen.co.tz/tanzania/news/national/tanzania-human-rights-defenders-coalition-temporarily-shuts-down-operations-2714696](http://www.thecitizen.co.tz/tanzania/news/national/tanzania-human-rights-defenders-coalition-temporarily-shuts-down-operations-2714696)> accessed 29 November 2025.

<sup>58</sup> ACEDH, 'Defending the Rights of Nature' (fn 18) 16-21 [Annex 1]; ACEDH, '2 Ans de la Loi DDH No. 23-027 en RDC' (fn 18) 9 [Annex 2]; UN SR on Environmental Defenders, 'Report on key trends and threats' (fn 9) §§53-64; 'SR report on human rights defenders' A/HRC/80/114 (fn 25) §§51-68; Business & Human Rights Resource Centre, 'SLAPPED but not silenced: defending human rights in the face of legal risks' (June 2021) <[https://media.business-humanrights.org/media/documents/2021\\_SLAPPs\\_Briefing\\_EN\\_v657.pdf](https://media.business-humanrights.org/media/documents/2021_SLAPPs_Briefing_EN_v657.pdf)>.

judgement, sentencing the EHRD to 6 months of imprisonment and a USD 3,500 fine.<sup>59</sup> In November 2025, a defamation claim was brought by Coemya Don De Dieu mining cooperative against four environmental defenders for publishing a report on exploitation of gold and diamonds in Tshoppo Province – the case is ongoing.<sup>60</sup> In South Africa, South African Research Watch received notice of a lawsuit brought by mining companies First Quantum Minerals and Kanshanshi Mining PLC seeking damages for a report published by the NGO on the impact of mines on human rights of local communities.<sup>61</sup>

### *Access to Information*

30. While the completion, and publication of, Environmental Impact Assessments (“EIAs”) are essential measures for the realisation of clean, healthy and sustainable environments, they are often not completed or publicly disclosed.<sup>62</sup> For example:
- (a) **In South Africa**, authorities conducted impact assessments only after affected individuals and communities had initiated legal proceedings.<sup>63</sup>
  - (b) **In Tanzania**, EIA reports remain inaccessible to the public, despite laws providing for public participation in environmental decision-making.<sup>64</sup> They are written in highly technical language and placed behind a pay-wall of the National Environment Management Council.<sup>65</sup> A 2019-amendment to the NGO Act further restricted access to information, following a fast-tracked legislative procedure widely regarded as an attempt to silence civil society.<sup>66</sup> Official

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<sup>59</sup> ACEDH, ‘Defending the Rights of Nature’ (fn 18) 19-20 [Annex 1]; Didier Makal, ‘RD Congo: Un défenseur de l’environnement risque 5 ans de prison’ (*Mongabay*, 21 October 2024) <<https://fr.mongabay.com/2024/10/rd-congo-un-defenseur-de-lenvironnement-risque-5-ans-de-prison/>> last accessed 29 November 2025.

<sup>60</sup> ACEDH, ‘Criminal Prosecutions : A Legitimate but Dangerous Strategy to Stop Climate Defenders and Activists in the DRC’ (February 2026) [Annex 3].

<sup>61</sup> UN Special Procedures communication, AL ZAF 4/2023 (18 October 2023)

<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28443>>.

<sup>62</sup> ZELO (Zimbabwe Environmental Law Organisation – previously ZELA) and AIEL, ‘Submission to African Commission on Human & Peoples’ Rights’ (2025) 4 [Annex 9].

<sup>63</sup> UNGA, ‘Human rights and the environment: Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment, Astrid Puentes Riaño’ (17 July 2025) A/80/187, §11.

<sup>64</sup> LHRC Submission (fn 29) section (iii) [Annex 4]; Regulation 39 of the Environmental Management (Environmental Impact Assessment and Audit) Regulations (Government Notice No. 349) of 2005 (Tanzania).

<sup>65</sup> *Ibid.*

<sup>66</sup> DefendDefenders (fn 27) 21; Amnesty International, ‘Tanzania: Discard new law restricting human rights’ (21 Jun 2019) <[www.amnesty.org/en/latest/press-release/2019/06/tanzania-authorities-rushing-to-pass-bill-to-further-repress-human-rights/](http://www.amnesty.org/en/latest/press-release/2019/06/tanzania-authorities-rushing-to-pass-bill-to-further-repress-human-rights/)> accessed 29 November 2025.

requests for information are rarely approved, especially after the 2019-amendments to the NGO Act, although EHRDs note that high level official are sometimes more cooperative than low level officials in providing specific information.<sup>67</sup>

- (c) **In the Democratic Republic of Congo**, access to information is largely informal rather than institutionalised.<sup>68</sup> While some progress has been made in accessing information from the State, capacity differs across government entities.<sup>69</sup> The vast majority of EHRDs in the DRC lack both adequate access to information and technology, leaving them in a vulnerable position as they are unable to conduct comprehensive risk assessments or benefit from private protection mechanisms.<sup>70</sup>
- (d) **In Zimbabwe**, access to environmental information remains uneven and, in practice, frequently constrained, limiting the ability of EHRDs and affected communities to participate effectively in environmental governance. Although the Constitution guarantees the right of access to information (Section 62) and environmental legislation requires public participation in environmental impact assessment (EIA) processes, significant practical barriers persist.<sup>71</sup> Environmental information is often difficult to obtain in a timely and accessible form, may be disclosed only after key project decisions have been made, or is presented in highly technical formats not readily understandable to affected communities. In some instances, requests for information are delayed or denied, and consultation proceeds without full disclosure of environmental and social risks. These constraints disproportionately affect rural and marginalised communities and impede EHRDs' ability to monitor compliance, assess risks, and pursue administrative or judicial remedies. The resulting information asymmetry undermines meaningful participation, weakens accountability, and

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<sup>67</sup> DefendDefenders (fn 27) 21.

<sup>68</sup> DefendDefenders (fn 27) 38.

<sup>69</sup> ACEDH, 'Defending the Rights of Nature' (fn 18) 3 [Annex 1]; ACEDH, '2 Ans de la Loi DDH No. 23-027 en RDC' (fn 18) 14-15 [Annex 2].

<sup>70</sup> Ibid.

<sup>71</sup> O. Bore, 'Access to information on Chinese Investment Contracts in Zimbabwe: The Law v Practice' (15 November 2022) China, Law and Development Research Brief No. 8/2022 (University of Oxford) [Annex 5].

is inconsistent with participatory and transparency obligations under Articles 9, 21 and 24 of the African Charter.

31. The lack of transparency and access to information undermines EHRDs' ability to monitor projects and challenge harmful practices, particularly where governments allow private economic interests to override collective rights to land, health and livelihoods. These barriers disproportionately affect grassroots defenders and community-based organisations, limiting their ability to participate in environmental decision-making and disempowering them from reporting on and contesting environmentally harmful projects.<sup>72</sup>

***Lack of meaningful participation and violations of free, prior and informed consent***

32. Affected communities are frequently excluded from decision-making on environmental and development projects without securing their free, prior and informed consent (“FPIC”):<sup>73</sup>

- (a) **In South Africa**, Khoi and San community leaders have publicly critiqued consultation processes launched only after key approvals, with limited language translations, short notice, and uneven access to information. This underscores how FPIC is sometimes treated as a mere formality rather than genuine engagement.<sup>74</sup>
- (b) **In Zimbabwe**, the absence of a legal requirement for free, prior and informed consent (FPIC), as distinct from procedural consultation, has weakened the protection of marginalised communities in environmental decision-making. In

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<sup>72</sup> LHRC Submission (fn 29) section (iv) [Annex 4]; ZELO and AIEL, ‘Submission to ACHPR’ (fn 57) 4 [Annex 9]; ‘Human rights and the environment: Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment’ A/80/187 (fn 58) §11.

<sup>73</sup> Working Group on Extractive Industries, Environment and Human Rights Violations, ‘Inter-session activity report of Commissioner Solomon Ayele Dersso’ (85<sup>th</sup> Ordinary session of the African Commission on Human and Peoples’ Rights) (26 October 2025) §58 <<https://achpr.au.int/en/intersession-activity-reports/working-group-extractive-industries-850s>>; UN SR on Environmental Defenders, ‘Report on regional consultations with environmental defenders’ (fn 26) §102(a).

<sup>74</sup> Working Group on Indigenous Populations/Communities and Minorities in Africa (WGIPM), ‘Inter-session activity report of Honourable Commissioner Dr. Litha Musyimi-Ogana’ (85<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples’ Rights) (22 October 2025) §18 <<https://achpr.au.int/en/intersession-activity-reports/working-group-indigenous-populationscommunitiesminorities>>. See also, Natural Justice, ‘Traditional and Khoi and San communities have an opportunity to shape the law’ (27 February 2025) <<https://naturaljustice.org/traditional-and-khoi-and-san-communities-have-an-opportunity-to-shape-the-law/>> last accessed 21 November 2025.

practice, mining, conservation and resource-related projects have proceeded despite community opposition, contributing to patterns of dispossession and marginalisation affecting Indigenous groups such as the Tshwa and Doma, whose customary land rights and participatory protections remain insufficiently recognised in domestic law.<sup>75</sup>

- (c) **In Tanzania's** Loliondo area, the government demarcated 1,500 km<sup>2</sup> of Maasai land as the Pololeti Game Controlled Area without securing the FPIC of the community, in breach of the Wildlife Conservation Act, which requires adequate consultation with either local authorities or the Maasai community as rightful landowners.<sup>76</sup> The government notice (GN No. 421 of 2022) was issued in Tanzania on 17 June 2022, under the Wildlife Conservation Act to declare the Pololeti Game Controlled Area. This decision imposed restrictions on traditional livelihoods such as grazing and farming, and has fuelled forced evictions as part of a broader land rights conflict between the Maasai and state-backed conservation and tourism initiatives.<sup>77</sup>

33. Beyond the lack of FPIC, meaningful participation in environmental decision-making is routinely undermined through the waiving of consultations in EIAs processes or by the outright refusal to conduct such assessments. Under Tanzania's Environmental Management Regulations 2005, for example, authorities have discretionary power to waive public hearings during the EIA process.<sup>15</sup> This discretionary authority is often exercised to exclude effective public consultation in projects considered "strategic" or "sensitive."<sup>78</sup>
34. In Zimbabwe, available evidence indicates that in certain instances mining operations have proceeded in advance of the completion or full disclosure of comprehensive environmental impact assessments, or without meaningful community engagement.<sup>79</sup> Such practices undermine participatory safeguards and limit affected communities'

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<sup>75</sup> UNCESCR (United Nations Committee on Economic, Social and Cultural Rights), 'Concluding Observations on the second periodic report of Zimbabwe' (26 September 2025) UN Doc. E/C.12/ZWE/CO/2, §12 [Annex 6]; ZELO and AIEL, 'Submission to ACHPR' (fn 57) 4 [Annex 9].

<sup>76</sup> Wildlife Conservation Act, Cap. 284 R.E. 2022, formally known as Act No. 5 of 2009 (Tanzania), section 16(5).

<sup>77</sup> Amnesty International, "We have lost everything" (fn 28) 11.

<sup>78</sup> LHRC Submission (fn 29) section (iv) [Annex 4].

<sup>79</sup> *Ariston Holdings Limited v Minister of Mines and Mining Development & Others* [2025] HC (14 November 2025).

ability to engage in environmental decision-making. They may also weaken collective support for environmental defenders by framing community-based environmental concerns as isolated objections rather than expressions of broader community interests, thereby increasing defender vulnerability and reducing public accountability.<sup>80</sup> Such waivers or refusals to conduct impact assessments not only undermine participation but deprive EHRDs and rights-holders of public backing by mischaracterising their advocacy as individual dissent rather than legitimate community representation, further exposing them to risks.<sup>81</sup>

35. The lack of competent courts that prioritise environmental protection and conservation, such as specialised tribunals, remain an obstacle to effective legal redress for EHRDs and the communities they defend.<sup>82</sup> In Tanzania, EHRDs seeking to challenge unlawful or inadequate EIAs have no functioning forum to lodge appeals. Although an Environmental Appeals Tribunal was established on paper in 2004,<sup>83</sup> as the primary body for resolving disputes arising from environmental decisions, it was never operationalised.<sup>84</sup>

### ***Concluding observations***

36. The above listed incidents document the nature and extent of barriers that EHRDs face in carrying out their work which is critical to the realisation of a clean, healthy and sustainable environment.

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<sup>80</sup> ZELO and AIEL, 'Submission to ACHPR' (fn 57) 4 [Annex 9].

<sup>81</sup> LHRC Submission (fn 29) section (iv) [Annex 4].

<sup>82</sup> ZELA and AIEL, 'Situational & Needs Assessment report in Zimbabwe 2022' (fn 30) 25 [Annex 8].

<sup>83</sup> Environmental Management Act (EMA) (Act No. 20 of 2004) (Tanzania), section 204.

<sup>84</sup> LHRC Submission (fn 29) section (v) [Annex 4].

### III. AFRICAN STATES' POSITIVE OBLIGATIONS TO PROTECT EHRDs IN THE PERFORMANCE OF THEIR ACTIVITIES

37. The Request invites the Court to opine specifically on States' *positive* obligations to protect (among others) EHRDs.
38. Positive obligations form a core part of States' duties under the Charter. Article 1 of the Charter includes an undertaking by States "to adopt legislative or other measures to give effect to" the rights, duties and freedoms enshrined in the Charter. This language makes clear that States are required to take affirmative action to secure the enjoyment of Charter rights; it is not in all cases sufficient that States refrain from action which would interfere with human rights (although of course such negative duties also form part of the corpus of States' obligations under the Charter).
39. The fact that States bear positive duties under the Charter is consistent with the object and purpose of the Charter, as expressed in the Preamble.<sup>85</sup> Specifically:
  - (a) In the third preambular paragraph, States parties "[r]eaffirm[ed] the pledge" made in the Charter of the Organization of African Unity "to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights". The language of "cooperation" and, in particular, "efforts" connotes a recognition that securing human rights rests on States taking positive action.
  - (b) In the tenth (and final) preambular paragraph, the States parties stated that they were "[f]irmly convinced" of their duty "to promote and protect human and peoples' rights". Again, the words "promote and protect" show that States cannot be purely passive when it comes to securing fundamental rights, and that in certain circumstances they are required to take action to achieve this end.
40. The existence of positive duties under the Charter is firmly established in jurisprudence. In *SERAC and CESR v Nigeria*,<sup>86</sup> the Commission addressed a complaint arising from

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<sup>85</sup> The object and purpose of a treaty is relevant to its interpretation: see Article 31(1) of the Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, which reflects a rule of customary international law.

<sup>86</sup> *SERAC and CESR v Nigeria* (fn 1).

oil production through Nigeria's State oil company, which had caused environmental degradation and health problems. The Commission stated that international human rights obligations "generate at least four levels of duties for a State that undertakes to adhere to a rights regime, namely the duty to respect, protect, promote and fulfil these rights", which the Commission said "universally apply to all rights and entail a combination of negative and positive duties".<sup>87</sup> With respect to each layer:

- (a) First, the obligation to "respect" rights "entails that the State should refrain from interfering in the enjoyment of all fundamental rights".<sup>88</sup> This is therefore a negative duty.<sup>89</sup>
- (b) The second obligation is "to protect right-holders against other subjects by legislation and provision of effective remedies", which "requires the State to take measures to protect beneficiaries of the protected rights against political, economic and social interferences".<sup>90</sup> This "entails the creation and maintenance of an atmosphere or framework by an effective interplay of laws and regulations so that individuals will be able to freely realize their rights and freedoms".<sup>91</sup>
- (c) The protective obligation is "very much intertwined" with the third obligation, which is to "promote the enjoyment of human rights", requiring States to "make sure that individuals are able to exercise their rights and freedoms, for example, by promoting tolerance, raising awareness, and even building infrastructures".<sup>92</sup>
- (d) Finally, the duty to "fulfil" rights "is more of a positive expectation on the part of the State to move its machinery towards the actual realisation of the rights".<sup>93</sup>

41. The Court has subsequently endorsed this fourfold analysis of States' obligations, reiterating the existence of positive obligations, including in relation to acts of third parties which jeopardise the enjoyment of human rights.<sup>94</sup> The Commission reaffirmed

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<sup>87</sup> *SERAC and CESR v Nigeria* (fn 1) §44.

<sup>88</sup> *Ibid*, §45.

<sup>89</sup> See, *Association of Victims of Post Electoral Violence and INTERIGHTS v Cameroon*, Communication No. 272/03 (25 November 2009) §88.

<sup>90</sup> *SERAC and CESR v Nigeria* (fn 1) §46 (emphasis in original).

<sup>91</sup> *Ibid*, §46.

<sup>92</sup> *Ibid*.

<sup>93</sup> *Ibid*.

<sup>94</sup> See, *Ligue Ivoirienne des Droits de L'Homme and others v Côte d'Ivoire*, Application No. 041/2016 (5 September 2023) ("*LIDHO and others v Côte d'Ivoire*") §131.

existence and importance of positive obligations under the Charter in *Zimbabwe Human Rights NGO Forum v Zimbabwe*, stating that “an act by a private individual and therefore not directly imputable to a State can generate responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or for not taking the necessary steps to provide the victims with reparation.”<sup>95</sup>

42. The scope of States’ positive obligations towards EHRDs in relation to the performance of their activities is the focus of the present section of these submissions. The following sub-sections focus on:
- (a) The special duty of protection owed to EHRDs;
  - (b) The rights to life and to freedom from torture and cruel, inhuman and degrading punishment or treatment (Charter, Articles 4 and 5);
  - (c) The rights to freedom of expression, association and assembly (Charter, Articles 9(2), 10(1) and 11); and
  - (d) Rights concerning the rule of law, including in relation to the right to liberty, fair trial rights, and the duty to provide an adequate legal system for the protection of rights (Charter, Articles 3, 6, 7(1) and 16).

**A. The special duty of protection owed to EHRDs**

43. The Court is invited to find that there is a special duty of protection owed towards EHRDs. This duty emanates from the fact that: (i) EHRDs act in the wider public interest, in advocating for the realisation of the right of all people to a satisfactory environment favourable to development (as enshrined in Article 24 of the Charter); and (ii) their advocacy in the public interest makes them vulnerable to infringements of their rights.
44. In its recent Advisory Opinion on *Climate Emergency and Human Rights*, the Inter-American Court of Human Rights (“IACtHR”), noting the “essential work of environmental defenders,” recognised that States have a “special duty of protection”

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<sup>95</sup> *Zimbabwe Human Rights NGO Forum v Zimbabwe*, Communication No. 245/02 (15 May 2006) §143.

towards them.<sup>96</sup> The “special duty of protection” results from obligations to respect and guarantee the right to defend human rights and imposes on the State the duties to:

*“(i) recognise, promote and guarantee the rights of defenders, affirming the relevance of their role in a democratic society and endeavouring to provide them with the means they require to carry out their function satisfactorily....*

*(ii) guarantee a safe and favorable environment in which [EHRDs] are able to conduct their activities freely, without threats, restrictions or risks to their life, their safety or their work. ...*

*(iii) investigate and, as appropriate, punish any attacks, threats or intimidation that defenders may endure while carrying out their task and , eventually, redress the harm that may have been caused...”<sup>97</sup>*

45. In the Latin American context, the IACtHR has considered that in view of the grave situation facing EHRDs, States are obliged to: (i) compile and keep up to date disaggregated data on the number of verified cases of harmful acts against EHRDs; (ii) design and implement policies and strategies to respond to the structural causes of violence against EHRDs and to prevent future incidents; and (iii) adopt adequate measures to promote the recognition and protection of the right to defend EHRDs in all spheres of the State.<sup>98</sup>
46. As the sub-sections below address, there is a substantial body of jurisprudence which recognises States’ positive obligations in a number of spheres of particular relevance to EHRDs. Given the importance of EHRDs’ activities to society at large and their vulnerability to human rights violations, it is appropriate to recognise the special and enhanced duty of protection which is owed to them.

## **B. The rights to life and to freedom from torture and cruel, inhuman and degrading punishment or treatment**

47. Article 4 of the Charter enshrines the right to life. This has been described as “the most fundamental of all human rights”,<sup>99</sup> “the cornerstone on which the realisation of all

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<sup>96</sup> IACtHR, *Climate Emergency and Human Rights* (Advisory Opinion requested by the Republic of Chile and the Republic of Colombia) AO-32/35 (29 May 2025) (“**IACtHR Advisory Opinion**”) §566.

<sup>97</sup> *Ibid*, §566(i)-(iii).

<sup>98</sup> *Ibid*, §575.

<sup>99</sup> *SERAC and CESR v Nigeria* (fn 1) §67.

other rights and freedoms depend”,<sup>100</sup> “the supreme right of the human being”,<sup>101</sup> and “the bedrock of all other rights and freedoms”.<sup>102</sup>

48. Article 5 of the Charter ensures “the right to respect of the dignity inherent in a human being”. One aspect of this right is a prohibition on “torture, cruel, inhuman or degrading punishment and treatment”. The prohibition has likewise been recognised as “one of the cardinal rules in international law”<sup>103</sup> and as “one of the most fundamental values of democratic societies”.<sup>104</sup>
49. The Request highlights that EHRDs face grave risks to their life, physical integrity and basic dignity as a result of their activities.<sup>105</sup> It records high numbers of reported killings of and physical attacks against EHRDs, including as reprisals for their activities to protect the environment and their communities, noting that the true numbers may be higher still. Section II of the present submissions highlight similar facts at §§15-18.
50. It is self-evident that Articles 4 and 5 impose on States parties negative duties to refrain from killing EHRDs, as well as engaging in any conduct that undermines their personal integrity or dignity, including torture and other forms of serious ill-treatment.<sup>106</sup>
51. In addition, and of particular relevance to the focus of the Request, numerous *positive* obligations which are relevant to EHRDs arise under Articles 4 and 5. Positive duties have played a significant role in seminal cases. For example:
  - (a) In *SERAC and CESR v Nigeria* (addressed above), the Commission held that the right to life had been violated through the conduct of the Government of Nigeria as well as the conduct of “private actors”. Notably, the Commission included

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<sup>100</sup> *African Commission on Human Rights v Republic of Kenya*, Application No. 006/2012, Judgement (Merits) (26 May 2017) §152.

<sup>101</sup> *Sudan Human Rights Organisation and Centre on Housing Rights and Evictions (COHRE) v Republic of Sudan*, Communication Nos. 279/03-296/05 (27 May 2009) §146.

<sup>102</sup> *LIDHO and others v Côte d’Ivoire* (fn 87) §129.

<sup>103</sup> *Deng and Others v Republic of Sudan*, Communication No. 470/14 (13 May 2022) §147.

<sup>104</sup> *Abdel Hadi, Ali Radi and Others v Republic of Sudan*, Communication No. 368/09 (5 November 2013) §69.

<sup>105</sup> PALU, ‘The Request’ (fn 3) §§80-85.

<sup>106</sup> For a finding of a violation of such negative obligations, including in respect of human rights activists, see *Amnesty International and Others v Republic of Sudan*. Communication Nos. 48/90-50/91-52/91-89/93 (15 November 1999) §§47-50. In *Sudan Human Rights Organisation and COHRE v Republic of Sudan* (fn 94), the Commission stated that Article 4 encompasses the “prohibition of arbitrary killing by agents of the State and to strictly control and limit the circumstances in which a person may be deprived of life by State authorities”: §147. As regards Article 5, the Commission has stated that it “deplores the abusive use of means of State violence against demonstrators”: *Movement burkinabé des droits de l’Homme et des peuples v Burkina Faso*, Communication No. 204/97, (7 May 2001) §43.

conduct of private actors “following [the Government’s] clear blessing or not”, indicating that the State could be held liable either where it had actively endorsed the private actors’ conduct or had simply failed to prevent it. This chimed with the Commission’s observation that the Government had, as well as actively participating in killings and other attacks, failed to investigate the attacks or punish the perpetrators.<sup>107</sup>

(b) In *Ivoirienne des Droits de L’Homme and Others v Côte d’Ivoire*, the Court expressly recognised that “the right to life imposes on States the obligation to go beyond mere commitment to refrain from infringing on life to include the obligation to prevent and deter infringements of this right by third parties.”<sup>108</sup>

52. The extent of States’ due diligence obligations are to be assessed in light of the rights which are in question; given the gravity of the rights in Articles 4 and 5 and their non-derogable nature, “the positive obligations of States ... go further than in other areas”.<sup>109</sup>

53. Six specific positive obligations arising under Articles 4 and 5 of the Charter are addressed here.

54. **First**, States are under a positive duty to prevent threats to life and serious ill-treatment by having in place systems to protect those rights.<sup>110</sup> For example:

(a) In *Ligue Ivoirienne des Droits de L’Homme and Others v Côte d’Ivoire*, the Court stated that a State must take “appropriate measures”, including “legislative and other measures”, to protect against arbitrary deprivations of life by actors other than the State itself.<sup>111</sup>

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<sup>107</sup> *SERAC and CESR v Nigeria* (fn 1) §§7, 67.

<sup>108</sup> *LIDHO and others v Côte d’Ivoire* (fn 87) §133.

<sup>109</sup> *Zimbabwe Human Rights NGO Forum v Zimbabwe* (fn 88) §155.

<sup>110</sup> *Ibid*, §159.

<sup>111</sup> *LIDHO and others v Côte d’Ivoire* (fn 87) §135.

- (b) As a bare minimum, States must ensure that torture and other forms of ill-treatment are criminalised under their domestic law to deter the commission of such offences.<sup>112</sup>
- (c) States should also ensure that they are parties to relevant international and regional human rights instruments which aim to suppress torture and other serious ill-treatment, and ensure that those instruments are fully implemented in domestic law.<sup>113</sup>
- (d) Having a functional and effective police force is critical to protecting individuals from unlawful violence.<sup>114</sup>
- (e) Equally, it is an essential precondition to other positive obligations addressed below that States ensure that there is a functioning legal system and profession that enables individuals to enforce their rights under Articles 4 and 5. The Commission has emphasised that effective remedies (addressed further below) are to be delivered “under a transparent, independent and efficient legal system”.<sup>115</sup> It has also stated that, in connection with the “[b]uilding blocks of a proper State system for the protection of the right to life”, States must have in place “a competent, independent and impartial judiciary and legal profession based on the rule of law”.<sup>116</sup>
- (f) The Commission has also spoken more generally about the existence of “government programmes to prevent and protect victims of violence”.<sup>117</sup> This includes civil society education and empowerment.<sup>118</sup>

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<sup>112</sup> ACHPR, ‘Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa’ (17-23 October 2002) (“**Robben Island Guidelines**”) Part I.C, §4; ACHPR, ‘Resolution on the Prevention and Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ ACHPR/Res.105(XXXI)07 (30 May 2007) §§2, 3. For the same principle in relation to the right to life, see *Sudan Human Rights Organisation and COHRE v Republic of Sudan* (fn 94) §147.

<sup>113</sup> Robben Island Guidelines (fn 105) Part I.A, §1.

<sup>114</sup> *Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt*, Communication No. 323/06 (12 October 2013) §274.

<sup>115</sup> *Amnesty International and others v Republic of Sudan* (fn 99) §56.

<sup>116</sup> ACHPR, General Comment No. 3 on the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4) (18 November 2015) §10.

<sup>117</sup> *Zimbabwe Human Rights NGO Forum v Zimbabwe* (fn 88) §159.

<sup>118</sup> Robben Island Guidelines (fn 105) Part II.A, §§47-48.

55. Given the escalation of threats against EHRDs in the context of the climate crisis, it is important that States' systems, measures and programmes address specifically the prevention of violence against EHRDs.
56. **Second**, States are under a further positive duty to prevent threats to life and serious ill-treatment by responding to reasonably foreseeable threats to life.<sup>119</sup> For example, in relation to Article 4, the Commission has held that, where an individual's life is under threat as a result of non-State actors, the State must "take preventive operational measures" to protect the individual.<sup>120</sup> This is especially pertinent to EHRDs given the evidence of specific threats made against them, including by private actors. States must respond with appropriate diligence to reports of all threats made against EHRDs which could endanger their lives, physical integrity or personal dignity.
57. **Third**, where there is a report of a violation of the rights protected by Articles 4 or 5, whether by State or private actors, the State bears a positive duty to investigate.<sup>121</sup> In relation to EHRDs, this duty is "subject to the standard of enhanced due diligence"<sup>122</sup> because of the special duty to protect addressed above (see Section III(A)). Investigations must be prompt, impartial and effective.<sup>123</sup> For example:
- (a) In *Amnesty International and Others v Republic of Sudan* (a case concerning widespread killings, including against human rights activists), the Commission stated that, even where extrajudicial killings had not been established to have been carried out by State actors, the State was required to conduct investigations "carried out by entirely independent individuals, provided with the necessary resources" whose findings "should be made public".<sup>124</sup>
  - (b) The case of *Elgak, Hummeida and Suliman v Republic of Sudan* concerned serious ill-treatment of three human rights defenders for their alleged collaboration with the International Criminal Court. The Commission

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<sup>119</sup> *Zimbabwe Human Rights NGO Forum v Zimbabwe* (fn 88) §157. In one case, violations of Article 5 arose because Sudan "did not act diligently to protect the civilian population in Darfur against the violations perpetrated by its forces, or by third parties": *Sudan Human Rights Organisation and COHRE v Republic of Sudan* (fn 94) §168.

<sup>120</sup> *Sudan Human Rights Organisation and COHRE v Republic of Sudan* (fn 94) §147.

<sup>121</sup> *Zimbabwe Human Rights NGO Forum v Zimbabwe* (fn 88) §§159-160; *Sudan Human Rights Organisation and COHRE v Republic of Sudan* (fn 94) §147.

<sup>122</sup> IACtHR Advisory Opinion (fn 89) §581.

<sup>123</sup> Robben Island Guidelines (fn 105) Part I.F, §19.

<sup>124</sup> *Amnesty International and Others v Republic of Sudan* (fn 99) §51.

recognised that, where torture is allegedly inflicted and this is brought to the attention of the State, the State is “under an obligation to initiate a prompt, impartial and effective investigation in order to determine the veracity of the allegations”, as well as to “bring the perpetrators to justice” and “afford redress to the victims”.<sup>125</sup> An investigation must therefore be capable of supporting all of these objectives.

58. The Commission has repeatedly stressed the need for investigators to be impartial and independent, connoting not only a lack of hierarchical or institutional connection but also a “practical independence”.<sup>126</sup> Further, under Article 5, the threshold for investigations is low; it arises following “*all allegations* of torture or ill-treatment”.<sup>127</sup>
59. The duty to investigate should be tailored to the specific position of EHRDs. As the IACtHR has noted, a State’s investigating authorities “should take into account the context of the facts and the [EHRD’s] activities to identify the interest that could have been affected and, on this basis, establish and exhaust lines of investigation that take into account the defender’s work, determine the reason for the crime, and identify the perpetrators”.<sup>128</sup>
60. **Fourth**, as a corollary of the duty to investigate, States are under a positive obligation to prosecute and punish arbitrary deprivations of life and instances of ill-treatment.<sup>129</sup> This is crucial to combating impunity surrounding egregious human rights violations, whether by State or non-State actors.<sup>130</sup> In *Amnesty International and Others v Republic of Sudan* (referred to above), the Commission stated that, following investigations, “prosecutions [should be] initiated in accordance with the information uncovered”.<sup>131</sup> It also identified the “[p]unishment of torturers” as a positive obligation under Article 5.<sup>132</sup>

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<sup>125</sup> *Elgak, Hummeida and Suliman v Republic of Sudan*, Communication No. 379/09 (14 March 2014) §§96-101.

<sup>126</sup> *Sudan Human Rights Organisation and COHRE v Republic of Sudan* (fn 94) §150.

<sup>127</sup> *Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt* (fn 107) §203 (emphasis added).

<sup>128</sup> IACtHR Advisory Opinion (fn 89) §585.

<sup>129</sup> *Zimbabwe Human Rights NGO Forum v Zimbabwe* (fn 88) §§159-160. Again, this duty is subject to the enhanced due diligence standard in relation to EHRDs: IACtHR Advisory Opinion (fn 89) §§581-583, 585.

<sup>130</sup> Robben Island Guidelines (fn 105) Part I.E, §16.

<sup>131</sup> *Amnesty International and others v Republic of Sudan* (fn 99) §51.

<sup>132</sup> *Ibid.*, §56.

61. In relation to EHRDs, the IACtHR has emphasised that such procedures should be conducted “expeditiously, avoiding unjustified delays, obstructions or hindrances that may result in a lack of justice or make it difficult to obtain and preserve evidence”.<sup>133</sup>
62. **Fifth**, States also have a positive duty to provide remedies to EHRDs who have suffered a violation of their Article 4 and/or 5 rights, including in the form of compensation. This arises from “the intangible principle of the right to reparation for the harm suffered as a result of the violation of the provisions of the Charter”.<sup>134</sup> Under Article 4, it has been found that the family members of a person arbitrarily deprived of their life must be “satisfactorily compensate[d]”;<sup>135</sup> reparations must be “proportional to the gravity of the violations and harm suffered”.<sup>136</sup> In relation to Article 5, it has been stated that “the right to redress encompasses the right to an effective remedy and to adequate, effective and comprehensive reparation”.<sup>137</sup>
63. Notably, the Commission has stated that, when it comes to remedies and reparations, “there should also be recognition that families and communities which have also been affected by the torture and ill-treatment received by one of its members can also be considered as victims”.<sup>138</sup> This matter may require special consideration in relation to the mistreatment of EHRDs, where an entire community may be harmed by a serious interference with the primary victims’ work to protect the local environment.
64. **Sixth**, States have a positive obligation to facilitate the establishment of the truth following arbitrary deprivations of life and instances of torture or other serious ill-treatment, including when the victims are EHRDs. The Commission has stated that a key aspect of accountability for violations of Article 4 is “making the truth known”.<sup>139</sup> The same must be true for violations of Article 5. The IACtHR has a well developed jurisprudence surrounding the right to truth: it has found that not only is a victim entitled

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<sup>133</sup> IACtHR Advisory Opinion (fn 89) §583.

<sup>134</sup> See, for example, *Groupe de Travail sur les Dossiers Judiciaires Stratégiques v Democratic Republic of Congo*. Communication No. 259/02, (24 July 2011) §88.

<sup>135</sup> *Noah Kazingachire, John Chitsenga, Elias Chemvura and Batanai Hadzisi (represented by Zimbabwe Human Rights NGO Forum) v Zimbabwe*, Communication No. 295/04 (2 May 2012) §134.

<sup>136</sup> ACHPR General Comment No. 3 (fn 109) §19.

<sup>137</sup> ACHPR, ‘General Comment No. 4 on the African Charter on Human and Peoples’ Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5)’ (4 March 2017) §8.

<sup>138</sup> Robben Island Guidelines (fn 105) Part III, §50.

<sup>139</sup> ACHPR General Comment No. 3 (fn 109) §17.

to discover the facts relating to a serious violation of their rights,<sup>140</sup> but society as a whole has a right to know the truth.<sup>141</sup> The obligation to establish the truth has a particular salience in relation to EHRDs, given the compelling interest which entire communities and society as a whole have in their work. As the IACtHR recently stated, “threats and attacks on the integrity and life of [EHRDs], and the impunity of those responsible for such actions” have an impact on not only the individual victims but also a collective interest if “society is prevented from learning the truth”.<sup>142</sup>

### C. Freedom of expression, association and assembly

65. EHRDs’ rights to freedom of expression, association and assembly are protected under Articles 9(2), 10(1) and 11 of the Charter, respectively. The enjoyment of these rights is not absolute, but any restrictions must be prescribed by law, serve a legitimate interest and be necessary in a democratic society.<sup>143</sup>
66. The provisions of Article 9 are supplemented by the Declaration on Principles on Freedom of Expression in Africa which underscores its import providing that “freedom of expression is a fundamental and inalienable human rights and an indispensable component of democracy.”<sup>144</sup>
67. The rights to freedom of expression, association and assembly are vital to EHRDs’ ability to defend environmental rights.<sup>145</sup> EHRDs’ activities often include organising and attending peaceful protests, advocacy and awareness-raising through campaigns, strategic litigation, the mobilisation of local community groups, and participation in decision-making as experts on environmental matters in local and national fora.<sup>146</sup>

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<sup>140</sup> *Flores Bedregal et al. v Bolivia* (Preliminary Objections, Merits, Reparations, and Costs, Judgement) IACtHR Series C No. 467 (17 October 2022) §137.

<sup>141</sup> *Gomes Lund et al. (“Guerrilha do Araguaia”) v Brazil* (Preliminary Objections, Merits, Reparations, and Costs) IACtHR Series C No. 219 (24 November 2010) §200.

<sup>142</sup> IACtHR Advisory Opinion’ (fn 89) §580.

<sup>143</sup> Article 11(2) of the Charter expressly provides that the exercise of the right to assembly shall be subject only to “necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.” See *Law Office of Ghazi Suleiman v Sudan*, Communication 228/99 [2003] ACHPR 47 (29 May 2003) §65; *Jennifer Williams and others v Zimbabwe*, Communication 446/13 (25 February 2021) §169.

<sup>144</sup> The Commission cited the Declaration with approval in *Jennifer Williams and others v Zimbabwe* (fn 136) §172.

<sup>145</sup> UN HRC, ‘Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment’ (24 January 2018) UN Doc. A/HRC/37/59, §4.

<sup>146</sup> UN SR on Environmental Defenders, ‘Report on key trends and threats’ (fn 9) §11.

68. These are some of the activities EHRDs commonly use to raise concern about environmental risk and decline, to educate and inform others about such risk, to defend indigenous territories, and to call for action.<sup>147</sup> However, many EHRDs in Africa have faced interferences with these rights, as a result of the conduct of both State and non-State actors as set out in Section II above at §§19-27.
69. The Commission has recognised the chilling effect of unlawful interferences with Article 10 and 11, observing in *Law Offices of Ghazi Suleiman v Sudan* that State actions may “have a seriously discouraging effect on others who might also contribute to promoting and protecting human rights”.<sup>148</sup>
70. A number of international instruments and bodies have emphasised the positive obligation upon States to create an enabling environment for EHRDs to exercise their right to freedom of expression and association, including under Articles 9(2), 10(1) and 11 of the Charter. For example:
- (a) States must create conducive conditions for EHRDs and civil society organisations to exist and operate within the law in accordance with Article 12(3) of the African Charter on Democracy Elections and Governance.<sup>149</sup>
  - (b) The Commission, alongside a number of Special Rapporteurs, signed a Joint Declaration on the Climate Crisis and Freedom of Expression interpreting the responsibilities of States under Article 19 of the UDHR and ICCPR as requiring States to create “the conditions which support free expression and civic participation” and enable “environmental journalism”.<sup>150</sup>

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<sup>147</sup> Paulina Macías Ortega, Ezihe Chikwere, Nefeli Pouloupati, ‘Defending Environmental Human Rights Defenders: Legal Frameworks’, (*Robert F. Kennedy Human Rights*, 7 November 2025) <<https://rfkhumanrights.org/our-voices/defending-environmental-human-rights-defenders-legal-frameworks/>> accessed 29 November 2025.

<sup>148</sup> *Law Offices of Ghazi Suleiman v Sudan* (fn 136) §65.

<sup>149</sup> African Union, The African Charter on Democracy Elections and Governance (adopted on 30 January 2007, entered into force 15 February 2012), Article 12(3).

<sup>150</sup> Joint Declaration on the Climate Crisis and Freedom of Expression, The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Organisation for Security and Co-Operation in Europe (OSCE) Representative on Freedom of the Media, the Organisation of American States (OAS), Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples’ Rights (ACHPR), Special Rapporteur on Freedom of Expression and Access to Information in Africa. <<https://efaidnbmnnnibpcajpcgclefindmkaj/https://www.ohchr.org/sites/default/files/documents/issues/expression/statements/20240503-statement-freedom-expression-climate-change-EN.pdf>> accessed 30 November 2025.

- (c) The UN Special Rapporteur on Environmental Defenders under the Aarhus Convention has published “Guidelines on the Right to Peaceful Environmental Protest and Civil Disobedience”.<sup>151</sup> These voluntary guidelines aim to assist State members of the United Nations in the realisation of Article 3(8) of the Aarhus Convention requiring states to ensure that persons exercising their rights under the Convention are not penalised, persecuted or harassed. The guidelines note that under international law, “states hold the primary responsibility to protect protestors and to respect and facilitate the exercise of their rights”.<sup>152</sup>

71. States’ positive duty to create an enabling environment are realised through various overlapping and interrelated measures:

- (a) First, the exercise of EHRDs’ rights to freedom of expression, association and assembly must never be met with the use of excessive or indiscriminate force, or the threats of such acts.<sup>153</sup> Even if individuals act unlawfully to advance political objectives, States have a duty to guarantee the rights to freedom of assembly, while maintaining law and order as long as there is no potential harm to the public.<sup>154</sup> The Commission has emphasised that “no political situation justifies the wholesale violation of human rights; indeed general restrictions on rights such as the right to free expression and to freedom from arbitrary arrest and detention serve only to undermine public confidence in the rule of law”.<sup>155</sup>
- (b) Second, States are under a positive obligation to introduce domestic legislation to improve the rights to freedom of expression, association and assembly of environmental defenders on their territory.<sup>156</sup> Where sanctions are provided for, they may never be so severe as to interfere with the exercise of the right to

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<sup>151</sup> UN Special Rapporteur on Environmental Defenders under the Aarhus Convention, Michel Forst, *Guidelines on the Right to Peaceful Environmental Protest and Civil Disobedience* (October 2025)

<[https://unece.org/sites/default/files/2025-](https://unece.org/sites/default/files/2025-10/Aarhus_SR_EnvDef_Guidelines_Right%20to%20Peaceful%20Environmental%20Protest_Civil%20Disobedience_ENG_0.pdf)

[10/Aarhus\\_SR\\_EnvDef\\_Guidelines\\_Right%20to%20Peaceful%20Environmental%20Protest\\_Civil%20Disobedience\\_ENG\\_0.pdf](https://unece.org/sites/default/files/2025-10/Aarhus_SR_EnvDef_Guidelines_Right%20to%20Peaceful%20Environmental%20Protest_Civil%20Disobedience_ENG_0.pdf)> accessed 29 November 2025.

<sup>152</sup> *Ibid.*, §16.

<sup>153</sup> *Mgwanga Gunme v Cameroon*, Communication 266/2003 [2009] ACHPR 99 (27 May 2009) §138.

<sup>154</sup> *Jennifer Williams and Others v Zimbabwe* (fn 136) §165; *Mgwanga Gunme v Cameroon* (fn 146) §138.

<sup>155</sup> *Article 19 v Eritrea*, Communication 275/03 [2007] ACHPR 79 (30 May 2007) §108.

<sup>156</sup> *Media Rights Agenda, Constitutional Rights Project v Nigeria*, Communication No. 105/93-128/94-130/94-152/96 [1998] ACHPR 3 (31 October 1998) §64; *Article 19 v Eritrea* (fn 148) §105; *Lohé Issa Konaté v Burkina Faso* (Application No. 004/2013) [2013] ACtHPR 39 (4 October 2013) §165; *Jennifer Williams and others v Zimbabwe* (fn 136) §239 (iv).

freedom of expression.<sup>157</sup> In the application of those laws, public figures will be expected to face a “higher degree of criticism...otherwise public debate may be stifled altogether”.<sup>158</sup>

- (c) Third, law enforcement officials must be able to distinguish between peaceful and non-peaceful demonstrators and take appropriate measures to de-escalate tensions.<sup>159</sup> The Commission has cited with approval the Commission’s Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa which gives detailed and clear guidelines on what is expected of police officials in dispersing protests.<sup>160</sup> To that end, States bear a positive duty to ensure that there is an appropriate legislative framework in line with the the Commission’s Guidelines and that their law enforcement officials are properly trained on their international legal obligations and standards on the rights of environmental defenders in order to facilitate peaceful protests.<sup>161</sup>
- (d) Fourth, States must protect the exercise of rights to freedom of expression, association and assembly from interference by private actors, including private companies and private security enterprises.<sup>162</sup>
- (e) Fifth, States must investigate and prosecute the perpetrators of violations of EHRDs’ rights to freedom of expression, association and assembly.<sup>163</sup>

72. The measures above are designed to further protect and uphold EHRDs’ rights to freedom of expression, association and assembly. They respond to the grave situation in which EHRDs find themselves in across Africa.

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<sup>157</sup> See the ACHPR, ‘Resolution on the Adoption of the Declaration of Principles on Freedom of Expression in Africa’ ACHPR/Res.62(XXXII)02 (2002), Principle XII(1) cited with approval in *Lohé Issa Konaté v Burkina Faso* (fn 149) §§151-152; *Media Rights Agenda, Constitutional Rights Project v Nigeria* (fn 149) §69.

<sup>158</sup> *Media Rights Agenda, Constitutional Rights Project* (fn 149) §74.

<sup>159</sup> *George Kajikabi v Arab Republic of Egypt*, Communication 344/07 [2021] ACHPR 528 (20 October 2021), §233.

<sup>160</sup> *Ibid*, §§227-229.

<sup>161</sup> *Ibid*, §256 (vii)(3).

<sup>162</sup> ‘UN SR on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment’ A/HRC/37/59 (fn 138) §14.

<sup>163</sup> See, for example, *Jennifer Williams and others v Zimbabwe* (fn 136) §§236-237, 239 (iii).

73. The rights to freedom of expression, association and assembly are crucial to EHRDs' activities. They are fundamental rights; violating them undermines the very essence of democracy.

**D. Ensuring respect for the rule of law**

74. Ensuring respect for EHRDs rights is contingent on the rule of law and an independent, legal system. The creation and maintenance of an effective legal system is one of the “measures” referred to in Article 1 of the Charter to give effect to the rights, duties and freedoms enshrined in the Charter.<sup>164</sup> This grounding Article should be read with Article 2 (recognising the right to non-discrimination), Article 3 (recognising individuals' equality before the law), Article 7 (recognising the right to have a cause heard) and Article 26 (recognising that States parties should guarantee the independence of the courts) in relation to the duty to ensure EHRDs' access to an independent legal system.
75. The Commission has long recognised the “crucial contribution” of human rights defenders in “promoting human rights, democracy and the rule of law in Africa.”<sup>165</sup> African States have reaffirmed that interrelationship between respect for human rights as a necessary measure to realise sustainable development on a number of occasions:
- (a) At the Grand Bay (Mauritius) Declaration and Plan of Action 1999, States acknowledged that “observance of human rights is a key tool for ... sustainable development” and emphasised that respect for human rights is “indispensable ... and that it constitutes one of the fundamental bedrocks on which development efforts should be realised”.<sup>166</sup>
  - (b) The Kigali Declaration, 2003, at the 1<sup>st</sup> African Union (AU) Ministerial Conference on Human Rights in Africa meeting on 8 May 2003 affirmed that respect for human rights “constitutes the fundamental bedrock for sustainable development.”<sup>167</sup>

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<sup>164</sup> *Legal Resource Foundation v Zambia*, Communication 211/98 [2001] ACHPR 31 (7 May 2001).

<sup>165</sup> ACHPR, ‘Resolution on the Protection of Human Rights Defenders in Africa’, ACHPR/Res.69 (XXXV)03 (4 June 2004).

<sup>166</sup> Grand Bay (Mauritius) Declaration and Plan of Action, African Union (AU) First Ministerial Conference on Human Rights (adopted and entered into force 16 April 1999).

<sup>167</sup> Kigali Declaration (adopted and entered into force 8 May 2003).

76. States' hold positive duties in the maintenance of an independent legal system which both protects and ensures the realisation of EHRD's rights under the Charter. These positive duties are threefold: (i) ensure equal protection before the law and safeguard EHRDs from arbitrary excesses of state power; (ii) facilitate EHRDs' access to the courts; and (iii) prevent abuse by third parties of the courts to restrain EHRDs legitimate activities.

***Equal protection before the law***

77. As set out above in Section II at §§19-22, EHRDs are vulnerable to excesses of State power including arbitrary arrests, detentions, torture, enforced disappearances and in some cases killings. There has also been a documented "climate of criminalisation" of EHRDs as a means to deligitimise the work of EHRDs.<sup>168</sup>
78. The Commission has long held that the Charter requires States to introduce "laws, policies and practices" which ensure the respect of Charter rights. In *Amnesty International & Others v Sudan*, the Commission considered a complaint against Sudan that hundreds of members of opposition groups had been unlawfully arrested, detained and subjected to torture.<sup>169</sup> The Commission held:
- (a) Articles 5 (freedom from torture and inhuman and degrading treatment), 6 (right to liberty) and 7 (the right to be heard before the Courts) are "mutually dependent" and "where the right to be heard is infringed, other violations may occur".<sup>170</sup>
  - (b) Dismissal of more than one hundred judges thereby depriving the courts of qualified personnel to ensure their impartial operation "denies the right to individuals to have their case heard" in violation of Articles 7(1)(d) and 26.<sup>171</sup>
  - (c) The Charter contains "no derogation clause" permitting the restriction of human rights in response to national difficulties, conversely "the legitimate exercise of

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<sup>168</sup> 'UN SR report on human rights defenders' A/71/281 (fn 5) §30.

<sup>169</sup> *Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v Sudan*, Communications 48/90-50/91-52/91-89/93 [2018] ACHPR 11 (15 November 2018) ("Amnesty International and Another v Sudan").

<sup>170</sup> *Ibid*, §62.

<sup>171</sup> *Ibid*, §69.

human rights does not pose dangers to a democratic state governed by the rule of law”.<sup>172</sup>

79. The Commission concluded that there were many violations of the Charter which would require the State to amend “many laws, policies and practices” but the Commission emphasised that “the people of Sudan deserve no less”.<sup>173</sup> The Commission returned to this issue in 2009 in *Abdel Hadi and others v Sudan* finding that States hold obligations under Article 1 to “put in place an adequate legislative framework to protect the physical integrity of individuals” within its jurisdiction.<sup>174</sup>
80. Within this broader framework, States hold a positive duty under Article 2 read with Article 3 to prohibit discrimination, ensure all persons are protected by the law and are equal before the law.<sup>175</sup>
81. In *Jennifer Williams and others v Zimbabwe*, the Commission found a violation of Articles 1 and 3(2) of the Charter in circumstances where State authorities had not taken any measures to prevent repeated arrests and detentions of the complainants by the police due to their political views.<sup>176</sup> The Commission emphasised that the States have an affirmative duty to prohibit discrimination and ensure that all persons are protected by the law and equal before the law.<sup>177</sup>

***Access to the courts and effective and satisfactory remedies***

82. The right to have one’s cause heard by competent (national) courts is guaranteed under Article 7(1) of the Charter.<sup>178</sup> Article 7 imposes obligations upon States to guarantee the independence of the judiciary and legal representatives and to respect the decisions of the courts. Further, a joint reading of Articles 1 and 7(1)(a) guarantees the right to a remedy which the Court has held is in line with the general principle of law that a remedy must be afforded when rights are breached.<sup>179</sup>

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<sup>172</sup> *Amnesty International and Another v Sudan* (fn 162) §79.

<sup>173</sup> *Amnesty International and Another v Sudan* (fn 162) §83.

<sup>174</sup> *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, Communication 368/09 (5 November 2013) §92.

<sup>175</sup> *Egyptian Initiative for Personal Rights & Interrights v Egypt* (fn 107) §175.

<sup>176</sup> *Jennifer Williams and others v Zimbabwe* (fn 136) §231.

<sup>177</sup> *Ibid.*, §§231, 237.

<sup>178</sup> *Beneficiaries of Late Norbert Zongo and Others v Burkina Faso*, Application No. 013/2011, [2013] ACtHPR 123 (21 June 2013) §§9-11.

<sup>179</sup> *Munthali v Republic of Malawi*, Application No. 022/2017 [2022] ACtHPR 14 (23 June 2022) §§101-102.

83. Article 9 of the UN Declaration of Human Rights Defenders specifically requires States to ensure access to justice, effective remedies and accountability for violations and abuses against human rights defenders. The Special Rapporteur on Human Rights Defenders has acknowledged that those who defend land rights, the right to natural resources and the right to the environment (i.e. EHRDs) fall under the protection of the UN Declaration of Human Rights Defenders.<sup>180</sup>
84. The Commission has emphasised the importance of the independence of the judiciary and legal representatives on a number of instances:
- (a) In *Zimbabwe Lawyers for Human Rights (“ZLHR”) and Institute for Human Rights and Development in Africa (on behalf of Andrew Barclay Meldrum) v Zimbabwe* the Commission considered a complaint that, amongst other matters, the State had refused to comply with court decisions. The Commission held that “[i]t is impossible to ensure the rule of law, upon which human rights depend, without guaranteeing that Courts and Tribunals resolve disputes of both a criminal and civil character free of any form of pressure or interference”.<sup>181</sup> Further it was a “vital requirement” that court decisions are respected by the State as well as individuals.<sup>182</sup>
  - (b) In *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v Zimbabwe*, the Commission considered a complaint from a newspaper that they were forcibly closed, prevented from operating by the passage of unlawful legislation and the Supreme Court of Zimbabwe had refused to hear their complaint. The Commission considered the role of the judiciary and held that “where the judiciary cannot function properly the rule of law must die”.<sup>183</sup>
  - (c) In *Okiring and another v Republic of Uganda*, the Complainants complained that the State had not complied with rulings of its Constitutional Court on the

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<sup>180</sup> UN HRC, ‘Implementation of General Assembly Resolution 60/251 of March 2006 entitled “Human Rights Council”, Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani’ (24 January 2007) A/HRC/4/37, §45.

<sup>181</sup> *Zimbabwe Lawyers for Human Rights and Institute for Human Rights and Development in Africa (on behalf of Andrew Barclay Meldrum) v Zimbabwe*, Communication 294/04 [2009] ACHPR 98 (3 April 2009) §§118-119.

<sup>182</sup> *Ibid.*

<sup>183</sup> *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v Zimbabwe*, Communication 284/2003 [2009] ACHPR 97 (3 April 2009) §89.

lawfulness of detention of the complainants. The Commission found a violation of Article 7(1)(c) right to defence by counsel in circumstances where the victims lawyers were violently assaulted while attending court.<sup>184</sup> The Commission held that States have an obligation to ensure “that lawyers are able to carry out their profession freely, independently and without fear of bodily or mental harm” and that the assault of a lawyer on court premises constitutes a “severe threat to the rule of law.”<sup>185</sup>

85. In respect of adequate remedies, the Court has provided guidance in *LIDHO & Others v Republic of Côte d’Ivoire*.<sup>186</sup> In this case, the Court held that Côte D’Ivoire violated Article 1 read with 7(1)(a) when the State entered into a settlement with the private company which had dumped toxic waste, preventing the victims from bringing a civil claim.<sup>187</sup> Specifically, the Court observed:

“...in line with settled international human rights jurisprudence, the right to a remedy includes not only access to institutional remedies, but also restitution, compensation, non-repetition and rehabilitation. The essence of the right to an effective remedy is that individuals must have access to domestic mechanisms that can be used to remedy an alleged human rights violation. To be effective, these national mechanisms must be able to respond fully to allegations of human rights violations. Recalling its jurisprudence, the Court notes that to be effective, a remedy must be, at the very least, available, effective and satisfactory.”<sup>188</sup>

86. In *African Commission v Republic of Kenya*, the Court held that not only must remedies be available, effective and satisfactory, they must also be afforded within a reasonable time period.<sup>189</sup> The applicants in that case, an indigenous minority ethnic group, the Ogieks, in Kenya had challenged eviction notices requiring them to leave the Mau Forest. As a preliminary issue, the Court found the the applicants had exhausted domestic remedies due to the community having litigated cases and some were still pending 10-17 years later.<sup>190</sup>

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<sup>184</sup> *Okiring and another v Republic of Uganda*, Communication 339/2007 [2018] ACHPR 133 (28 April 2018).

<sup>185</sup> *Ibid.*

<sup>186</sup> *LIDHO and others v Côte d’Ivoire* (fn 87) §§145,153.

<sup>187</sup> *Ibid.*

<sup>188</sup> *LIDHO and others v Côte d’Ivoire* (fn 87) §153.

<sup>189</sup> *African Commission on Human and Peoples’ Rights v Republic of Kenya*, Application No. 006/2012 [2019] ACtHPR 22 (4 July 2019) §§95-97

<sup>190</sup> *Ibid.*

### ***Recognition of EHRDs' standing in national and local courts***

87. The fundamental right of access to a court is effective only if there are appropriate rules on standing to ensure that communities' and/or societal interests can be adequately advanced by organisations acting in the public interest, and rules of standing are crucial to that end.
88. *Locus standi*, or legal standing, refers to who is entitled to bring a case before a court. Courts have defined it as the legal capacity to institute proceedings in a competent court of law or tribunal without let or hindrance from any person or body whatsoever.<sup>191</sup>
89. To be entitled to bring a case before court, common law jurisdictions typically require that the claimant must have a legitimate interest that is or may be adversely affected by state action or corporate activities impacting the environment and residents' living environment. In many cases, the area of dispute, and sometimes, of conflicting decisions has been whether or not on particular facts and situations the claimant has sufficient interest or injury to accord him a hearing.<sup>192</sup>
90. For EHRDs and civil society organisations, such requirements can be a significant barrier, as they often act on behalf of affected communities or the broader public interest. For this reason, access to justice for human rights defenders is specifically protected by several (international) instruments that recognise the need to remove such barriers and ensure effective remedies for those defending environmental and human rights.
91. Other international instruments explicitly recognise the importance of broad access to justice in environmental matters, such as:
  - (a) Article 1 and 9(2) of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (*Aarhus Convention*) (in Europe);<sup>193</sup> and

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<sup>191</sup> *Centre for Oil Pollution Watch (COPW) v. Nigerian National Petroleum Corporation (NNPC)*, SC 319/2013; (2019) 5 NWLR 1666 (Supreme Court of Nigeria).

<sup>192</sup> *ibid*; *Owodunni v. Reg. Trustees of C.C.C.* (2000) 10 NWLR (Pt. 675) 315.

<sup>193</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447 (*Aarhus Convention*).

- (b) Article 1 and Article 8(3)(c) of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (*Escazú Agreement*)<sup>194</sup> (in Latin America and the Caribbean).

92. Historically, African courts have adopted a more restrictive approach to the issue of *locus standi*. In recent times, however, courts have applied more liberal tests, and the trend has shifted away from the restrictive and technical approach to questions of *locus standi*. Current practice focuses on determining whether the plaintiff has a genuine grievance, as illustrated by the following case law:<sup>195</sup>

- (a) In *Socio-Economic Rights & Accountability Project (SERAP) v Federal Republic of Nigeria*, the ECOWAS Court has established broad standing for civil society organisations and human rights defenders to bring cases concerning socio-economic and environmental rights.<sup>196</sup>
- (b) In *Center for Public Interest Law and Another v Tema Oil Refinery*, the Ghanaian High Court adopted a liberal interpretation of standing for public interest litigants, recognising that public interest litigation is essential to ensure that marginalised or poorer communities – who may lack the means or knowledge to litigate – can still seek justice through organisations acting on their behalf.<sup>197</sup>
- (c) In *Centre for Oil Pollution Watch (COPW) v NNPC*, the Supreme Court of Nigeria held that *locus standi* in environmental public interest litigation should be interpreted liberally, allowing non-governmental organisations to pursue claims when they demonstrate a genuine interest and represent affected communities, especially where statutory agencies fail to act.<sup>198</sup>

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<sup>194</sup> Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (adopted 4 March 2018, entered into force 22 April 2021) UNST 195 [2018] (*Escazú Agreement*).

<sup>195</sup> *Centre for Oil Pollution Watch (COPW) v. NNPC* (2018) (fn 184).

<sup>196</sup> *Socio-Economic Rights & Accountability Project (SERAP) v. Federal Republic of Nigeria*, Communication No. 9338/2007 [2010] ACHPR 109 (24 November 2010).

<sup>197</sup> *Center for Public Interest Law and Another v. Tema Oil Refinery*, Application No. E12/91/07 (20 September 2007) High Court of Tema, Ghana (Judgement).

<sup>198</sup> *Centre for Oil Pollution Watch (COPW) v. NNPC* (2018) (fn 184).

(d) In *Aiah Fengai & ORS v. Ocea Ltd*, the Court of Appeal of Sierra Leone also adopted a less formal and more accessible interpretation of *locus standi*.<sup>199</sup> By prioritising access to justice and minimising technical barriers, the Court affirmed the appellants’ right to appeal a lower court decision. This judgment highlights the ongoing trend towards a generous and inclusive understanding of *locus standi*, ensuring that individuals and groups can effectively seek judicial protection and remedies.<sup>200</sup>

93. Recent developments across African courts demonstrate a clear trend towards a more liberal and inclusive interpretation of *locus standi*, particularly in cases involving environmental and human rights. This approach reflects that granting standing to individuals, NGOs, and civil society organisations is a crucial means of ensuring that barriers to justice are minimised and effective remedies are accessible, in accordance with States’ obligations, including under the Charter.

#### ***Protecting EHRDs from vexatious litigation***

94. In *SERAC and CESR v Nigeria*, the Commission emphasised that States have a duty to protect citizens from “damaging acts that may be perpetrated by private parties.”<sup>201</sup> This duty arguably extends to creating a legislative framework to respond to the increased risk of EHRDs’ activities being curtailed by SLAPPS.

95. EHRDs are increasingly at risk globally and in southern Africa from SLAPPS, defined by the South African High Court as “meritless or exaggerated lawsuits intended to intimidate civil society advocates, human rights defenders, journalists, academics and individuals as well as organisations acting in the public interest”. The concern is that EHRDs are “litigated into silence by corporations”, meaning that SLAPPS “turn the justice system into a weapon”.<sup>202</sup>

96. In South Africa, the High Court considered whether there was a defence to a SLAPP in the absence of specific legislative mechanisms in *Mineral Sands Resources (Pty) Ltd*

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<sup>199</sup> *Aiah Fengai and 73 Others & Marginalised Affected Property Owners v Ocea Limited, The manager Ocea Limited et al* (CivAPP 73\_23) [2024] SLCA 2 (29 February 2024).

<sup>200</sup> *Aiah Fengai and Others v Ocea Limited* (fn 192).

<sup>201</sup> *SERAC and CESR v Nigeria* (fn 1) §57.

<sup>202</sup> *Mineral Sands Resources (Pty) Ltd and Another v Reddell and Others* [2021] ZAWCHC 22, §§39-40.

*and others v Clarke*.<sup>203</sup> The High Court held that “the interests of justice should not be compromised due to a lacuna or the lack of legislative framework.” Finding that there was a common law power to “stop frivolous and vexatious proceedings when they amount to an abuse of its processes,”<sup>204</sup> the High Court dismissed the defamation suit against the Claimants on the basis that it was “not genuine and *bona fide*.”<sup>205</sup>

97. The South African Constitutional Court affirmed that there was a “SLAPP type of defence” under the doctrine of abuse of process but upheld the appeal against the High Court decision on the basis that the environmental activists would need to prove that the defamation suit: (i) is an abuse of process of court; (ii) is not brought to vindicate a right; (iii) amounts to the use of court process to achieve an improper end and to use litigation to cause the individuals prejudice in order to silence them; and (iv) violates or is likely to violate the right to freedom of expression in a material way.<sup>206</sup>
98. The Special Rapporteur has called on States to “enact laws and policies to discourage and deter frivolous and vexatious legal actions (strategic lawsuits against public participation) against journalists and human rights defenders.”<sup>207</sup>
99. The increase in SLAPPS against EHRDs places pressure upon States to ensure there is an adequate legal framework in place to respond to those threats.

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<sup>203</sup> Ibid, §65.

<sup>204</sup> *Mineral Sands Resources v Reddell and Others* (fn 195) §28.

<sup>205</sup> Ibid, §66.

<sup>206</sup> *Mineral Sands Resources (Pty) Limited and others v Christine Rendell and others* [2022] ZACC 37, §96.

<sup>207</sup> UN HRC, ‘Sustainable development and freedom of expression: why voice matters’, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, (19 April 2023) A/HRC/53/25, §105.

**IV. AFRICAN STATES' POSITIVE DUTIES TO FACILITATE EHRDs' PARTICIPATION IN DECISION-MAKING PROCESSES IN RELATION TO CLIMATE CHANGE**

100. The right to participate in environmental decision-making is fundamental to the protection of the right to a satisfactory environment, as follows from Articles 16 and 24 of the Charter. States have a positive duty to promote the ability of every individual (or group of individuals) to participate in environmental decision-making processes. This means that EHRDs (and their communities) should be able to participate freely at all levels of the institutions and administrative bodies responsible for policies and programmes that affect them. More specifically, it also means that Indigenous Peoples should be consulted whenever consideration is being given to legislative or administrative measures which may affect them directly. To ensure such meaningful participation in any environmental decision making process, EHRDs should be recognized as stakeholders with standing before national and local courts to challenge decisions and seek remedies for environmental harm.
101. As set out in Section II of this submission, in particular at §§30-35 many EHRDs face significant obstacles when seeking to fulfil their responsibilities in the decision-making process.
102. Considering the above, States are required to adopt measures to strengthen the position of EHRDs, so that EHRDs' important role in the promotion of a sustainable development and the protection of the environment may be fully realised.
- A. The inclusion of EHRDs and communities in the planning, implementation and monitoring of climate change programmes and developments which impact the environment**
103. States are under a duty to take proactive steps to empower EHRDs to participate meaningfully in government decision-making and related processes. The Working Group on Arbitrary Detention has called on States to take all necessary measures to protect *and empower* EHRDs to participate in activities related to the protection and promotion of environmental human rights.<sup>208</sup>

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<sup>208</sup> 'Report of the WGAD' (fn 8).

104. Such measures should include the promotion of access to information. It is critical that EHRDs and the communities they represent are able to give FPIC<sup>209</sup> for projects affecting them and their territories. EHRDs should therefore be provided with timely and accessible information about processes, data, projects, and decisions related to the environment that may affect them and their communities, including development and infrastructure projects.
105. In addition, EHRDs should receive training and acquire knowledge about human rights and the environment, including available resources and international mechanisms and public officials should be trained to consult and cooperate with Indigenous Peoples (and Indigenous EHRDs) through their representative institutions, in order to obtain their FPIC for proposed measures that may affect them.
106. States should ensure that the participation of EHRDs and their communities in any environmental programme is meaningful, inclusive and effective. Appropriate measures would be:
- (a) The involvement of EHRDs and affected persons in the design, implementation, monitoring, and evaluation of climate-related projects and policies;
  - (b) The creation of safe spaces for EHRDs to participate in decision-making processes; and
  - (c) The development of policies or regulations to ensure that public officials respect, protect, and fulfil human rights, including the rights to participation.
107. The right of EHRDs and their communities to be involved in decision-making in the ways described above has been confirmed by various courts and other public institutions. The Human Rights Committee has observed that the enjoyment of rights may require positive legal measures by States to ensure the effective participation of members of minority communities in decisions that affect them.<sup>210</sup> Also, the African Commission has confirmed that affected communities have the right to receive

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<sup>209</sup> Free, prior and informed consent (“FPIC”).

<sup>210</sup> UN Human Rights Committee, ‘General Comment No. 23: Article 27 (Rights of Minorities)’ CCPR/C/21/Rev.1/Add.5 (8 April 1994) §7.

information and should be involved in decision-making (*SERAC and CESR v Nigeria*).<sup>211</sup>

108. The Environment and Land Court of Malindi (Kenya) has upheld a ruling that revoked the environmental licence for a power plant, effectively halting the project and finding the project's environmental and social impact assessment inadequate and public participation deficient. The Court underscored that meaningful public participation is central to effective environmental governance and impact mitigation (*Amu Power Company Limited v Save Lamu & 6 others*).<sup>212</sup>

**B. The requirement to consult Indigenous Peoples over traditionally owned land**

109. It is widely recognised that there will be no just environmental transition without the effective participation of Indigenous Peoples, including their right to give or withhold their FPIC for projects affecting them and their territories.<sup>213</sup> States must therefore ensure that EHRDs, including Indigenous Peoples and (other) affected communities, are meaningfully consulted in all decisions that may impact their environment and livelihoods.
110. This duty is well established, including by the Human Rights Committee where it says that the enjoyment of rights by the Indigenous Peoples may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions that affect them.<sup>214</sup>
111. In addition, various regional and international decisions have likewise recognised and emphasised States' obligations to include the Indigenous Peoples in decision-making processes:
- (a) The African Commission (*Centre for Minority Rights Development (Endorois) v Kenya*) has confirmed that States have a duty not only to consult with the

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<sup>211</sup> *SERAC and CESR v. Nigeria* (fn 1).

<sup>212</sup> *Amu Power Company Limited v. Save Lamu & 6 others* (Civil Appeal 6 of 2019) [2002] KEELC 29999 (KLR) (26 May 2022) (Ruling).

<sup>213</sup> 'SR report on human rights defenders' A/HRC/80/114 (fn 25) §91.

<sup>214</sup> UN Human Rights Committee, 'General Comment No. 23' (fn 203).

community, but also to obtain their FPIC, according to their customs and traditions, with respect to traditionally owned land and resources.<sup>215</sup>

- (b) The IACtHR (*Ángela Poma Poma v Peru*) emphasised the requirement of FPIC for projects affecting indigenous territories and the environment, and the need for such consultation to be effective, culturally appropriate, and in good faith.<sup>216</sup>
- (c) The Human Rights Committee found that Australia (*Daniel Billy and others v Australia*) had failed to adopt timely adequate adaptation measures to protect the Indigenous group collective ability to maintain their traditional way of life, and urged the State to engage in meaningful consultations with the Indigenous communities in order to conduct needs assessments for sufficient mitigation initiatives against climate change.<sup>217</sup>

### ***Concluding observations***

- 112. The special duty of protection owed to EHRDs gives rise to a number of positive duties which mirror the breadth of EHRDs work in protecting the environment. The realisation of these rights necessitates a robust legislative framework with complementary guidance, policies and strategies to ensure the implementation of the measures enacted in law.

## **V. CONCLUSION**

- 113. These submissions are provided with the hope of assisting the Court in its grave task of providing an advisory opinion of matters of fundamental importance to our present as well as future.
- 114. EHRDs play an indispensable role in the realisation of a healthy, sustainable environment for the benefit of all peoples and should be afforded the protection they are due so they may carry out their work unhindered.

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<sup>215</sup> *Centre for Minority Rights Development (Endorois) v Kenya*, Communication 276/03 [2009] ACHPR 102 (25 November 2009) §291.

<sup>216</sup> *Kichwa Indigenous People of Sarayaku v Ecuador* (Merits and Reparations) IACtHR Series C No. 245 (27 June 2012) §177.

<sup>217</sup> UN Human Rights Committee, *Daniel Billy et al v. Australia* (Decision on Merits) UN Doc. CCPR/C/135/D/3624/2019 (21 July 2022) §§8, 11 and 14.

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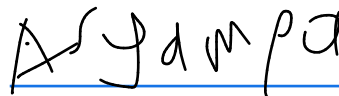
Legal and Human Rights Centre



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Youth for Green Communities



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[9] March 2026

## ANNEXES

- Annex 1** ACEDH, ‘Defending the Rights of Nature: One of the risky activities in the DRC. Monitoring report on the situation of Environmental and Land Defenders in the DRC, January to December 2024’ (2025)
- Annex 2** ACEDH, ‘2 Ans de la Loi DDH No. 23-027 en RDC, les Défenseurs de l’Environnement et Leaders Locaux. Rapport semestriel de monitoring sur la situation des défenseurs de l’environnement et fonciers en RDC (15 juin 2023-15 juin 2025)’ (2025)
- Annex 3** ACEDH, ‘Criminal Prosecutions : A Legitimate but Dangerous Strategy to Stop Climate Defenders and Activists in the DRC’ (February 2026)
- Annex 4** LHRC, ‘Challenges facing environmental human rights defenders in Tanzania’ (2025)
- Annex 5** Obert Bore (ZELO) ‘Access to Information on Chinese Investments Contracts in Zimbabwe: The Law vs Practice’ (15 November 2022) China, Law and Development Research Brief No.8/2022 (University of Oxford) available at: <https://cld.web.ox.ac.uk/files/finalrbborepdf>
- Annex 6** UN Human Rights Committee, ‘Concluding Observations on the second periodic report of Zimbabwe’ (26 September 2025) UN Doc. E/C.12/ZWE/CO/2
- Annex 7** YGC, ‘Summary report for the cases against EHRDs working on EACOP and other oil projects in Uganda’ (tracker – last updated 28 October 2025)
- Annex 8** ZELO and AIEL, ‘Situational & Needs Assessment Report in Zimbabwe 2022, on the protection of environmental human rights defenders (EHRDs)’ (2022)
- Annex 9** ZELO and AIEL, ‘Zimbabwe Environmental Law Organisation and Africa Institute of Environmental Law submissions to African Commission on Human & People’s Rights’ (2025)
- Annex 10\*** YGC, ‘Human Rights Implications of Uganda’s Crackdown on Environmental & Climate Activism against the EACOP Pipeline & other Projects’ (*forthcoming*, 2026)

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\*Annex 10 has been shared with the Court on a confidential basis.