

UNEP 2021 Global Report on Environmental Rule of Law

CONCEPT NOTE – VERSION OF 13 JULY 2020

Contents

Introduction	1
Purpose	1
Scope of the report	2
Methodology and drafting process.....	3
Timeline	3
Annex A – List of indicators.....	4

Introduction

The United Nations Environment Programme (UNEP) is mandated to lead the United Nations system in the development and implementation of environmental rule of law, as per UNEP’s 2013 Governing Council Decision 27/9 which requested the Executive Director of UNEP to “promote quality information and data exchange among the legal and auditing communities and improve education, capacity-building and technical assistance, including with the aim of strengthening effective national environmental governance systems and improving the effectiveness of rule of law systems.” In 2019 this mandate was reinforced by the United Nations Environment Assembly (UNEA) with the adoption of the Fifth Montevideo Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme V) through resolution 4/20. Montevideo Programme V is a ten-year intergovernmental programme that promotes the development and implementation of environmental law, builds related capacities in countries, and contributes to the environmental dimension of the 2030 Agenda for Sustainable Development.

In support of this mandate, in 2019 UNEP published its First Global Report on Environmental Rule of Law (the First Report). The First Report assessed the global state of environmental rule of law. It examined global trends and country measures against core elements of environmental rule of law, including institutions, civic engagement, rights, and justice. Amongst other key findings, the First Report found that despite a 38-fold increase in environmental laws enacted since 1972, failure to fully implement and enforce these laws remains one of the greatest challenges to mitigating climate change, reducing pollution and preventing widespread species and habitat loss.

Building on the findings of the First Report, UNEP will conduct a periodic and global assessment of environmental rule of law, with biennial global reports on the state of environmental rule of law. This concept note outlines the purpose, scope and methodology for the UNEP 2021 Global Report on Environmental Rule of Law (the Report) to be published in June 2021.

Purpose

The UNEP 2021 Global Report on Environmental Rule of Law will go beyond updating the First Report and be scaled up to be one of the flagship reports of UNEP. It seeks to position UNEP as the leading

global voice on environmental rule of law by providing a data-informed assessment of global trends on environmental rule of law, gap analysis, and recommendations for future directions. The Report will help establish benchmarks and opportunities for future action and collaboration. It will also examine the role of environmental rule of law in combating zoonotic diseases such as the current global coronavirus pandemic (COVID-19) and how countries can 'build back better'. This will be considered in each relevant chapter of the Report.

Scope of the report

The 2021 report will build on the structure of the first report and be organized in six parts, as follows:

1. **Introduction:** The introduction will provide an overview of the report and elaborate on the purpose of the report. It will also highlight key global trends in environmental rule of law, including those that have emerged since the First Report.
2. **Laws and Institutions:** This chapter will review the critical role of laws (e.g. existence of framework environmental law, laws relating to environmental impact assessments) and institutions (e.g. government agencies, courts). It will examine how laws provide the basis for enforcement of environmental rule of law and in building strong institutions, and how strong institutions contribute to the observance of environmental rule of law. It will also identify key opportunities for making laws and environmental institutions more effective, especially in light of efforts to recover from the effects of the COVID-19 pandemic. The report will capture the global trends of states' responses to COVID-19 regarding environmental laws and their enforcement.
3. **Civic Engagement:** This chapter will explore the legal and practical tools for civic engagement that underpin effective environmental rule of law. The chapter will discuss meaningful ways in which States can provide access to environmental information and enhance public participation in environmental decision making. The chapter will also assess the trends of the global status of environmental defenders highlighting their critical role in protecting the environment and the importance of protecting these defenders, including the effects of COVID-19 on their activities.
4. **Rights:** This chapter will review the evolving relationship between environmental rule of law and constitutional, human, and other rights related to the environment. It will also report on key trends regarding legal protection and frameworks provided for indigenous peoples, minorities, migrants, women, children while taking gender into consideration. The chapter will explore trends on the role a right to a healthy environment plays, and how enforcing the rights are necessary for environmental rule of law. Other key and emerging trends, including rights of nature and environment and race will also be explored.
5. **Justice:** This chapter will assess global trends over how a fair, transparent justice system that efficiently resolves environmental disputes is critical in establishing environmental rule of law. The chapter will survey the trends of environmental adjudication, barriers in finding legal justice and examine key components of effective remedies. It will also report and reflect on how Courts in different jurisdictions have navigated environmental proceedings during COVID-19.

6. **Future Directions/recommendations:** Based on the above chapters, the concluding chapter will provide a set of recommendations for future directions.

Methodology and drafting process

Indicators: The Report will utilize a set of indicators (see **Annex A** for the list of proposed indicators) to help inform key trends in environmental rule of law at the global level. The indicators will be high level and the outputs will be binary (yes/no) to facilitate manageable and realistic data collection and analysis, as best as possible. UNEP will collect the data through a public ‘researchathon’ to engage with a wide range of stakeholders. The data collection will be complemented by additional research conducted in partnership with universities and research institutes. Contributors will be explicitly acknowledged in the report, if they consent. UNEP will work closely with the contributors for data collection and chapter authors to ensure integration of data analysis in each chapter, as appropriate. To ensure data integrity and accuracy, UNEP will engage with Montevideo national focal points to vet the data before finalization. These have been identified to align, as far as possible, with relevant Sustainable Development Goal indicators. It is important to note that the UNEP 2021 Global Report will not rank countries based on these indicators. The indicators are for background information only to help identify key global trends. They are to be understood as informative only in examining global trends, and UNEP expects there to be some gaps in the data collected. They will not represent a comprehensive snapshot of all environmental rule of law issues.

Consultation and external review process: UNEP will consult environmental law stakeholders including governments, UN organizations, civil society and academics at key stages of the drafting of the report (e.g. concept development, data collection, data verification, review of drafts, etc.). UNEP will also actively engage with the Montevideo national focal points as well as the Steering Committee of the Montevideo Programme, once established.

Authors: technical authors will be identified for each chapter (chapters two to five). Authors are selected on the basis of their recognized expertise and disciplinary, geographic, and gender balance criteria through a UNEP selection process. The authors will be selected and remunerated subject to UNEP policies and procedures. UNEP will issue a call for applications to identify authors for chapters 2 - 5 in due course.

Tentative timeline

The Report is tentatively proposed to be launched in June 2021, subject to final internal consultations. The tentative timeline for each stage is described below:

July 2020

- Concept note including detailed methodology finalized for external review
- Commence consultation with experts, networks and stakeholders (e.g. authors, universities, reviewers, contents, methodology, etc.) prior to launching the project
- Terms of reference and call for applications issued for technical authors for four chapters (chapters two to five) issued
- Call for submissions for indicator data-collection issued

August - September 2020

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- Authors for each chapter selected
- Partnership universities/institutions for indicators established and data collection for indicators started (to complement the public call for submission).
- External reviewers identified

October - November 2020

- Annotated outline of each chapter from chapter authors received
- First round of data collection and analysis completed
- Authors receive feedback from and UNEP

December 2020

- Review of data collection and analysis by UNEP and external reviewers

February 2021

- First draft version of chapters received by authors
- Draft chapters shared with external reviewers for feedback
- Chapter authors received feedback on the draft chapters
- Draft introduction and conclusions chapters ready by UNEP
- Outreach and communication strategy developed and confirmed
- Data for indicators sent to Montevideo national focal points for vetting
- Brief member states on the report
- Feedback on the indicators received from Montevideo national focal points)

March 2021

- Chapter authors send (revised) final versions of the chapters to UNEP
- Edit final versions of chapters, references, annexes and indicators for consistency, integrity, style and language
- Figures and infographics completed
- Executive Summary completed and edited

April – May 2021

- Report sent for production (layout and print)
- Report sent for translation into Spanish and French, subject to resources
- Implement communication strategy

June 2021

- Launch the report
- Outreach (e.g. events, webinar series, etc.)

Annex A – List of indicators

Indicators
Rights
Is the right to a healthy environment explicitly recognized in the constitution, held by a court to be implicit in other constitutional rights, or otherwise guaranteed by legislation in some form?

Does the country explicitly recognize rights of nature in its constitution, legislation, or judicial decisions at national and/or sub-national level?
Is the country legally required to take gender considerations into account in any environmental legislation at national and/or sub-national level? (aligned to SDG 5.1.1)
Does the country have laws at the national level or have obligations set out in regional or international treaties that explicitly protect environmental defenders or promote their activities? (aligned to SDG 16.10.1)
Does the country have any legislation at any level that explicitly prohibits discrimination in environmental decision-making (i.e. not general discrimination prohibition) by public authorities? (aligned to 16.7.2)
Laws
Does the country have a framework environmental law at the national level?
Does the country require social impacts to be assessed as part of environmental or environmental and social impact assessment requirements in law at national and/or sub-national level?
Does the country have strategic environmental assessment requirements in law at national and/or sub-national level?
Do environmental laws in the country include specific provisions to facilitate monitoring or auditing of the status of implementation, compliance, and/or enforcement? (aligned to SDG 17.16.1)
Has the country removed or temporarily suspended environmental protection laws or policies, and/or their enforcement, as a direct response to COVID-19?
Institutions
Does the country have a dedicated environmental ministry at the national level)?
Does the country have a stand-alone or independent environmental protection agency/institution or equivalent at the national level?
Does the country have a specialised environmental court or tribunal at national and/or sub-national level?
Does the national level environmental agency/ministry, if there is one, have a guaranteed allocation from the national budget?
Does the country have an institution in place (e.g. Sustainable Development Commission or Body) to enhance policy coherence of sustainable development? (aligned to SDG 17.14.1)
Civic Engagement
Do public interest environmental law clinics/organizations receive obligatory funding from the state?
Have any environmental defenders been killed in the country in 2019-2020 due to their activities connected to environmental protection? (aligned to SDG 16. 10.1)
Does the country have provisions in its legal framework guaranteeing access to information concerning the environment that is held by public authorities? (aligned to SDG 16.10.2)
Does the country impose any criminal restrictions on the exercise of civil and political rights taken by individuals or groups to protect or defend the environment?
Has the country's responses to COVID-19 included any forms of restriction in law on civic engagement in environmental matters?
Is environmental law required by law to be a compulsory subject in law school curriculums?
Justice
Do courts have mandatory alternative dispute resolution procedures to be applied to environmental matters? (aligned to SDG 16.3.3)

Does the country have in its national and/or subnational legal framework a requirement that every person has legal standing for environmental matters?

Does the country apply the "loser-pays principle" (i.e. the losing party covers the costs for the opponent) in environmental matters?