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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Business, planetary boundaries, and the right to a clean, healthy and sustainable environment**

**Report of the Special Rapporteur on the issue of human rights  
obligations relating to the enjoyment of a safe, clean, healthy and  
sustainable environment, David R. Boyd**

### *Summary*

Scientific evidence that humanity is exceeding planetary boundaries calls for an urgent rethinking of the business and economic paradigms that have pushed civilization to the brink of disaster. The Special Rapporteur evaluates the inadequacies of voluntary normative frameworks for ensuring that businesses respect human rights and clarifies State obligations to protect the right to a clean, healthy and sustainable environment from harms caused by businesses. Systemic and transformative changes are needed to achieve a just and sustainable future, including new business models, climate and environmental laws that incorporate planetary limits, fiscal policies that internalize externalities and reduce inequality, and holistic societal goals that replace gross domestic product (GDP) and limitless growth. Extensive recommendations are provided for States.



## I. Planet and society in peril

1. Earth provides a life support system for 8 billion people and millions of other species, but the biosphere is under attack. Large businesses are primarily responsible for the war on nature by polluting air, water and soil, causing and exacerbating the climate crisis, devastating biodiversity and ecosystems, producing and marketing unhealthy and unsustainable food, and releasing toxic substances that poison humans, wildlife and ecosystems. Transforming their role is among the paramount challenges in shifting to a just and sustainable future.

2. The current economic and business paradigms are based on exploiting people and nature. Among the fundamental flaws of these paradigms are a belief in limitless growth, short-term thinking, a narrow focus on maximizing profits for shareholders, and the externalization of social, health and environmental costs onto society. For example, in 2022, fossil fuel companies made hundreds of billions of dollars in profits while their products killed millions of people and exacerbated the climate emergency. Also in 2022, multinational food businesses enjoyed record profits while food prices, hunger and malnutrition spiked upwards. Business as usual clearly is a recipe for climate chaos, millions of premature deaths, forced migration, ecosystem collapse and human rights violations on an unprecedented scale.

3. Led by the ultrarich, with their private jets, yachts, massive mansions, space travel and hyperconsumptive lifestyles, humanity is exceeding Earth's carrying capacity.<sup>1</sup> Humanity's colossal impacts now exceed at least six planetary boundaries (climate change, biodiversity loss, fresh water disturbance, deforestation, excessive fertilizer use, synthetic chemical contamination) and are close to exceeding a seventh (ocean acidification).<sup>2</sup> Scientists warn that these results are Code Red, a "wake-up call to humankind that Earth is in danger".<sup>3</sup> No nation has met the basic needs and human rights of its residents at a globally sustainable level of resource use.<sup>4</sup> The ecological footprints of people in wealthy States are many times larger than the Earth can sustain.<sup>5</sup> If everyone consumed like the average American, we would need another four Earths to supply the resources and absorb the wastes.<sup>6</sup>

4. The planetary crisis is linked to grotesque and growing inequality propelled by the private sector. The richest 1 per cent produce the same total volume of climate-wrecking greenhouse gas emissions as the poorest 66 per cent of humanity.<sup>7</sup> The richest 1 per cent own almost half of the wealth in the world and have captured two thirds of all wealth generated since 2020, while the poorest half of humanity owns less than 1 per cent of global wealth.<sup>8</sup> Executive compensation increased by 1,460 per cent between 1978 and 2021, while workers' pay increased only by 18 per cent.<sup>9</sup>

5. The planetary crisis is the biggest threat to human rights ever faced, because it threatens the rights of everyone alive as well as the rights of future generations. Among the rights being violated are the rights to life, health, food, water, an adequate standard of living, and development, the rights of the child, cultural rights and the right to a clean, healthy and sustainable environment. Environmental degradation creates vicious circles, exacerbating water scarcity, food insecurity, resource shortages, displacement, migration and armed conflict, all of which in turn cause even greater environmental degradation. The most severe

<sup>1</sup> Johan Rockström and others, "Safe and just Earth system boundaries", *Nature*, vol. 619, No. 7968 (6 July 2023), pp. 102–111.

<sup>2</sup> Katherine Richardson and others, "Earth beyond six of nine planetary boundaries", *Science Advances*, vol. 9, No. 37 (15 September 2023).

<sup>3</sup> *Ibid.*, p. 11.

<sup>4</sup> Daniel W. O'Neill and others, "A good life for all within planetary boundaries", *Nature Sustainability*, vol. 1, No. 2 (February 2018), pp. 88–95.

<sup>5</sup> See <https://data.footprintnetwork.org>.

<sup>6</sup> *Ibid.* The estimated ecological footprint of the United States for 2022 was 7.5 hectares per capita compared to a global biocapacity of 1.5 hectares.

<sup>7</sup> Oxfam International, *Survival of the Richest: How We Must Tax the Super-Rich to Fight Inequality* (2023).

<sup>8</sup> *Ibid.*

<sup>9</sup> Josh Bivens and Jori Kandra, "CEO pay has skyrocketed 1,460 per cent since 1978", Economic Policy Institute, 4 October 2022.

consequences of the planetary crisis are disproportionately inflicted on poor and vulnerably situated persons, communities and countries, predominantly in the global South, who have contributed least to the crisis. Remarkably, some of the most courageous environmental human rights defenders battling irresponsible business activity are vulnerably situated persons, such as Indigenous women and girls.

6. It is encouraging that the relationship between human rights and the environment has been clarified, culminating in historic United Nations resolutions recognizing the right to a clean, healthy and sustainable environment.<sup>10</sup> Five decades of environmental laws and policies that regulate businesses have achieved some important successes, such as the protection of the stratospheric ozone layer, the end of acid rain, and the exponential growth of renewable energy. If not for today's regulations, we would be even worse off in terms of climate chaos, toxic pollution, biodiversity loss, water scarcity and deforestation.

7. However, the planetary crisis is getting worse. Environmental progress is overwhelmed by the inexorable growth in production, consumption and population. The Holocene epoch, which provided the stable conditions enabling the emergence and evolution of civilization, is over. Humanity has created a new epoch called the Anthropocene, in which Earth's life support systems are profoundly degraded by human impact. Decades of unbridled business activity in pursuit of profit and growth have exacerbated inequality, left billions behind, and pushed civilization to the precipice of disaster.

8. Annual per capita income in 2022 was \$76,000 in the United States of America, \$88,000 in Qatar and \$106,000 in Norway.<sup>11</sup> The per capita material footprint in high-income States is ten times higher than in low-income States.<sup>12</sup> Unfortunately, it has proven impossible to decouple growth from increased use of energy and materials.<sup>13</sup> Yet even the wealthiest States continue to expand fossil fuel production and relentlessly pursue economic growth, blind to the physical limits of the planet.

9. In contrast, billions of people live in poverty, desperately needing more resources to lift their standard of living to a level where their material needs are met (e.g. food, water, sanitation, electricity and housing) and their human rights fulfilled. Economic growth is imperative in countries where annual per capita income is still extremely low, including Burundi (\$238), Afghanistan (\$364), Pakistan (\$1,597) and Kyrgyzstan (\$1,607). However, for everyone to enjoy the per capita income of today's Americans, Qataris or Norwegians would require a global economy six to eight times larger than today's economy, which is already shattering planetary boundaries. The environmental consequences of such massive economic growth would be cataclysmic, pushing global systems towards tipping points that could trigger self-reinforcing and irreversible changes to Earth systems, and conditions far less hospitable to human civilization.<sup>14</sup>

10. The economic costs of the planetary crisis are staggering, but are externalized by the businesses causing massive harm to the climate and the environment. Air pollution costs the world \$8.1 trillion annually in damage to health and the environment.<sup>15</sup> Industrial food production imposes costs of at least \$10 trillion annually.<sup>16</sup> The annual economic costs of climate-related loss and damage will be between \$290 billion and \$580 billion in developing

<sup>10</sup> General Assembly resolution 76/300 and Human Rights Council resolution 48/13.

<sup>11</sup> See <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD>.

<sup>12</sup> See <https://sdgs.un.org/goals/goal12>.

<sup>13</sup> See <https://eeb.org/library/decoupling-debunked/>.

<sup>14</sup> William J. Ripple and others, "Many risky feedback loops amplify the need for climate action," *One Earth*, vol. 6, No. 2 (17 February 2023), pp. 86–91.

<sup>15</sup> World Bank Group, *The Global Health Cost of PM2.5 Air Pollution: A Case for Action Beyond 2021* (Washington, D.C., 2022).

<sup>16</sup> Food and Agriculture Organization of the United Nations, *The State of Food and Agriculture 2023: Revealing the True Cost of Food to Transform Agrifood Systems* (Rome, 2023).

countries by 2030.<sup>17</sup> The climate crisis could inflict more than \$2 quadrillion in accumulated damage by the end of the century.<sup>18</sup>

11. Paradoxically, businesses have a critical role to play in supporting society's quest for a just and sustainable future. Some visionary large businesses and many small and medium-sized businesses are: producing or using 100 per cent renewable energy; creating innovative energy storage solutions; changing designs to make products that are durable, reusable, recyclable or compostable; making product repair feasible and affordable; and using regenerative approaches to farming, forestry and fishing. In the shift to a sustainable economy, businesses will create tens of millions of green jobs. Switching to clean energy could generate 18 million new jobs by 2030, with greater gender equality.<sup>19</sup> Developing a circular economy could create 6 million green jobs by 2030.<sup>20</sup> Additional investments in public transport and electric vehicles could yield 15 million jobs.<sup>21</sup> Retrofitting buildings to make them more energy-efficient could also produce millions of green jobs.

12. Transformative changes to economic and business paradigms are urgently needed to reduce humanity's collective impact on nature, but what is scientifically and morally imperative does not necessarily match what is financially profitable or politically expedient. This is illustrated by the egregious failure of States to adequately prevent, regulate, tax or punish the gargantuan climate, environmental and human rights impacts of businesses. The present report attempts to show the path forward towards a fair future for all, within planetary boundaries.

13. A call for inputs was issued in September 2023. Submissions were received from Chile, Colombia, Ecuador, El Salvador, Equatorial Guinea, Guatemala, Italy, Mauritius, Mexico, Montenegro, Serbia and Switzerland, and from youth, civil society organizations and academics. In November 2023, the Special Rapporteur hosted an experts' seminar and attended the Forum on Business and Human Rights. As the present report is the final report of the current Special Rapporteur, annex 1 provides a comprehensive list of the thematic reports, country reports, policy briefs, amicus briefs and other documents published between 2018 and 2024.<sup>22</sup>

## II. Business responsibilities to respect the right to a healthy environment

14. To address the substantial impacts of businesses on human rights, a number of normative frameworks have emerged, including the Guiding Principles on Business and Human Rights,<sup>23</sup> the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, the Principles for Responsible Investment, the International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the Children's Rights and Business Principles. Despite these frameworks, few businesses are implementing the actions required to respect human rights, especially the right to a clean, healthy and sustainable environment, largely because none of these frameworks are legally binding.

15. Although the Guiding Principles on Business and Human Rights make no specific references to climate or the environment, the framework principles on human rights and the environment clarify that the responsibility of business enterprises to respect human rights

<sup>17</sup> David R. Boyd and Stephanie Keene, "Mobilizing trillions for the global South: the imperative of human rights-based climate finance", Policy Brief No. 5 (OHCHR, 2023).

<sup>18</sup> See <https://www.bloomberg.com/opinion/articles/2023-11-13/climate-change-266-trillion-to-fight-global-warming-is-a-no-brainer?embedded-checkout=true>.

<sup>19</sup> International Labour Organization (ILO), *World Employment and Social Outlook 2018: Greening with Jobs* (Geneva, 2018), p. 43.

<sup>20</sup> *Ibid.*, p. 52.

<sup>21</sup> United Nations Economic Commission for Europe and ILO, *Jobs in Green and Healthy Transport: Making the Green Shift* (Geneva, 2020).

<sup>22</sup> See <https://www.ohchr.org/en/special-procedures/sr-environment/annual-thematic-reports>.

<sup>23</sup> Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.

includes the responsibility to avoid causing or contributing to adverse human rights impacts through environmental harm, to address such impacts when they occur and to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships. Businesses should comply with all applicable environmental laws, issue clear policy commitments to meet their responsibility to respect human rights through environmental protection, implement human rights due diligence processes (including human rights impact assessments) to identify, prevent, mitigate and account for how they address their environmental impacts on human rights, and enable the remediation of any adverse environmental human rights impacts they cause or to which they contribute.<sup>24</sup>

16. All businesses, regardless of size or sector, have a responsibility to respect all internationally recognized human rights, including the right to a clean, healthy and sustainable environment, throughout their value chains. This responsibility exists over and above compliance with national laws and regulations protecting human rights and the environment. The responsibility to respect human rights applies not only to businesses whose activities may directly damage the climate and environment, but also to the full array of enterprises supporting these businesses, including financial institutions, law firms, public relations firms, accounting firms, and consultancies.<sup>25</sup> Small and medium-sized enterprises are not absolved of human rights responsibilities, although their size influences the scope of these responsibilities. Even large non-profit organizations, for example those working on biodiversity conservation, may have business-related human rights responsibilities when acting in a commercial capacity.<sup>26</sup>

17. One of the most important contributions to sustainable development that businesses can make, especially large transnational businesses, is to embed respect for human rights across their value chain, including by using various types of leverage to respond to actual and potential risks. Yet, few businesses appear to use their leverage to improve the climate and environmental performance of their value chains.<sup>27</sup> A European Union study found that only 16 per cent of companies monitor human rights and environmental impacts across their entire value chain.<sup>28</sup> The systemic failure of the vast majority of businesses to comply with voluntary human rights guidelines underscores the urgent need for mandatory legislation governing human rights and environmental due diligence in all jurisdictions.

18. Transparency and disclosure regarding the human rights, climate and environmental impacts of business activities should be the norm, not the exception, given their importance to the rights to access to information and public participation.<sup>29</sup> For example, health and safety information about toxic substances should never be regarded as confidential.<sup>30</sup> A recent study on the environmental disclosures of over 18,500 companies revealed that most businesses were not prepared to adequately measure and disclose their environmental performance.<sup>31</sup> Most businesses, including some major polluters, still do not report on climate-related risks in their financial statements.<sup>32</sup> Therefore, regulatory measures are required, such as the European Union's European Sustainability Reporting Standards and the

<sup>24</sup> A/HRC/37/59, para. 35.

<sup>25</sup> A/77/201, para. 63; and A/HRC/29/28, para. 11.

<sup>26</sup> David R. Boyd and Stephanie Keene, "Essential elements of effective and equitable human rights and environmental due diligence legislation", Policy Brief No. 3 (OHCHR, 2022).

<sup>27</sup> OHCHR, "The business and human rights dimension of sustainable development: embedding 'Protect, Respect and Remedy' in SDGs implementation", 30 June 2017.

<sup>28</sup> Lise Smit and others, *Study on Due Diligence Requirements Through the Supply Chain: Final Report* (Luxembourg, Publications Office of the European Union, 2020).

<sup>29</sup> A/71/291, paras. 64 and 65.

<sup>30</sup> A/HRC/39/48 and A/HRC/39/48/Corr.1, para. 28.

<sup>31</sup> CDP, "Scoping out: tracking nature across the supply chain – global supply chain report 2022" (2023).

<sup>32</sup> Mark Wielga and James Harrison, "Assessing the effectiveness of non-State-based grievance mechanisms in providing access to remedy for rights holders: a case study of the Roundtable on Sustainable Palm Oil", *Business and Human Rights Journal*, vol. 6, No. 1 (February 2021).

Securities and Exchange Commission's proposed climate disclosure rules in the United States.<sup>33</sup>

19. Businesses have a responsibility to consult and engage with rights holders and other stakeholders, especially vulnerably situated rights holders, who often bear a disproportionate burden of the adverse impacts of environmental degradation. These rights holders include: Indigenous Peoples, persons of African descent, peasants, women, children, youth, persons with disabilities, racial and ethnic minorities, older persons, refugees, migrants, displaced persons, LGBTQ+ persons, people living in poverty and persons living in armed conflict. Children's right to a healthy environment should be prioritized in due diligence processes, because of their heightened vulnerability to climate-related and environmental harm.<sup>34</sup> Businesses should undertake gender-transformative measures<sup>35</sup> to respect the right to a healthy environment.<sup>36</sup>

20. Businesses must respect the rights of Indigenous Peoples, persons of African descent, and nature-based local communities to consultation and to free, prior and informed consent.<sup>37</sup> Many Indigenous environmental human rights defenders are harassed, attacked and criminalized when defending their territories from business activities. Even where free, prior and informed consent rights are not legally mandatory, this represents a best practice used by a growing number of businesses.<sup>38</sup> Given the disturbing level of violence facing environmental human rights defenders, businesses must ensure that their activities and value chains take a zero-tolerance approach to intimidation, violence, legal harassment or any other form of silencing, stigmatization or criminalization of human rights defenders.<sup>39</sup>

21. As businesses face increasing pressure to divest from industries fuelling the planetary crisis (including coal, oil, gas, and mining), they must exit responsibly in order to avoid and to remedy adverse human rights and environmental impacts. For example, it is irresponsible for businesses to leave behind unremediated contaminated sites that threaten human and ecosystem health, or to decarbonize or detoxify by selling fossil fuel assets or chemical factories to new owners, rather than closing plants and decommissioning assets via just transition processes.

22. Access to justice is critical in order for rights holders to be able to hold business accountable for climate- and environment-related human rights abuses. Businesses must implement – individually or jointly – operational-level grievance mechanisms capable of providing effective remedies to rights holders whose right to a healthy environment they have adversely impacted.<sup>40</sup> Effective remedies may include compensation, restitution, remediation, rehabilitation, and guarantees of non-repetition.<sup>41</sup> Many businesses have not established grievance mechanisms, and even where they have, failure is more common than accountability because rights holders are not placed at the centre of these processes, where they belong.<sup>42</sup>

23. Rights holders face daunting obstacles to obtaining effective remedies, including: power asymmetries; opaque processes; language and literacy barriers; high costs; weaknesses in the rule of law, including corruption, lack of judicial independence and lack of capacity in domestic legal systems; geographic remoteness; and risks of reprisals against victims and their representatives.<sup>43</sup> These challenges are exacerbated when rights holders seek to hold businesses accountable in a State other than that in which the alleged violation occurred, such

<sup>33</sup> See <https://www.sec.gov/securities-topics/climate-esg>.

<sup>34</sup> Committee on the Rights of the Child, general comment No. 26 (2023).

<sup>35</sup> Gender-transformative measures are defined as steps that are capable of changing norms and systems that perpetuate gender inequality, and address the root causes of gender-based discrimination.

<sup>36</sup> See [A/HRC/52/33](#).

<sup>37</sup> Inter-American Court of Human Rights, *Case of the Kaliña and Lokono Peoples v. Suriname*, Judgment, 25 November 2015.

<sup>38</sup> [A/71/291](#), paras. 71 and 74.

<sup>39</sup> See [https://www.ohchr.org/sites/default/files/2022-02/Formatted-version-of-the-guidance-EN\\_0.pdf](https://www.ohchr.org/sites/default/files/2022-02/Formatted-version-of-the-guidance-EN_0.pdf).

<sup>40</sup> Guiding Principles on Business and Human Rights, principles 29–31 and commentary.

<sup>41</sup> [A/72/162](#).

<sup>42</sup> [A/78/160](#), para. 56.

<sup>43</sup> [A/HRC/32/19](#) and [A/HRC/32/19/Corr.1](#).

as in the home State of the business.<sup>44</sup> Marginalized or vulnerably situated groups suffer the most significant human rights abuses but face well-documented challenges in accessing judicial and non-judicial mechanisms when their rights are abused.<sup>45</sup> Environmental human rights defenders, especially women, often face threats and reprisals when pursuing justice. There is room for improvement in the domestic legal systems of every State.<sup>46</sup>

### III. Business impacts on the right to a clean, healthy and sustainable environment

24. The right to a clean, healthy and sustainable environment includes clean air, a safe climate, safe and sufficient water, adequate sanitation, healthy and sustainably produced food, non-toxic environments, and healthy biodiversity and ecosystems. It also includes access to information, public participation and access to justice. Over a decade after the introduction of the Guiding Principles on Business and Human Rights, environmentally irresponsible business practices, products and services continue to have egregious negative impacts on all of these substantive and procedural elements, indicating that many businesses largely ignore or pay lip service to voluntary normative frameworks.<sup>47</sup> The Working Group on business and human rights acknowledged that implementation of the Guiding Principles “has not reached sufficient breadth or depth” to curb human rights abuses.<sup>48</sup>

25. Many large businesses are environmental criminals, recidivists with long rap sheets chronicling convictions that result in slaps on the wrist and no meaningful change in behaviour. Even the largest environmental fines and penalties in history, \$35 billion against Volkswagen for its dirty diesel fraud scandal<sup>49</sup> and \$65 billion against BP for its deadly Deepwater Horizon disaster,<sup>50</sup> resulted in no significant long-term impact on share prices.<sup>51</sup> Businesses also cause forced evictions and displacement of vulnerable and marginalized populations for projects ranging from mines and dams to carbon offsets. The outsourcing of business activities to countries with weaker standards can lead to transnational businesses evading responsibility for climate-related, environmental and human rights harms.<sup>52</sup> Businesses also promote consumerism – driving higher energy and material use – through a relentless barrage of advertisements.

26. A separate policy brief provides additional information on the devastating impacts of businesses on the right to a clean, healthy and sustainable environment.<sup>53</sup> The following are among the most egregious examples:

(a) Deadly air pollution in dozens of sacrifice zones (areas where profit and private interests are prioritized over health, human rights and nature), such as Chemical Valley (Canada), Cancer Alley (United States), La Oroya (Peru), Baotou (China), Kabwe (Zambia), Bor (Serbia) and Taranto (Italy);<sup>54</sup>

(b) Twenty-five fossil fuel producers caused more than half of global industrial emissions between 1988 and 2015;<sup>55</sup>

<sup>44</sup> A/HRC/32/19, paras. 5 and 24.

<sup>45</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 33 (2015), paras. 3, 8–10 and 13.

<sup>46</sup> A/HRC/32/19, para. 30.

<sup>47</sup> A/73/163, para. 25.

<sup>48</sup> A/HRC/50/40/Add.3, para. 7.

<sup>49</sup> See <https://www.reuters.com/sustainability/state-legal-cases-vws-diesel-scandal-2023-06-27>.

<sup>50</sup> See <https://www.theguardian.com/business/2018/jan/16/bps-deepwater-horizon-bill-tops-65bn>.

<sup>51</sup> William McGuire, Ellen Alexandra Holtmaat and Aseem Prakash, “Penalties for industrial accidents: the impact of the Deepwater Horizon accident on BP’s reputation and stock market returns”, *PLoS One*, vol. 17, No. 6 (June 2022).

<sup>52</sup> A/HRC/46/28, para. 81.

<sup>53</sup> David R. Boyd and Stephanie Keene, “Profits over people and planet”, Policy Brief No. 6 (OHCHR).

<sup>54</sup> A/HRC/49/53.

<sup>55</sup> See <https://www.cdp.net/en/articles/media/new-report-shows-just-100-companies-are-source-of-over-70-of-emissions>.

(c) The long-term contamination of groundwater in Guadeloupe and Martinique by the pesticide chlordecone, leading to the world's highest rate of prostate cancer;<sup>56</sup>

(d) Skyrocketing plastic production, most of which ends up in the environment, harming wildlife and contaminating air, water and food;

(e) Oil palm plantations have inflicted brutal impacts (biodiversity loss, water pollution, declining air quality, and loss of sources of food and medicine) on communities in Africa, Asia and Latin America;

(f) Angola, Kenya, Liberia, Uganda, the United Republic of Tanzania, Zambia and Zimbabwe recently sold the rights to the carbon in tens of millions of hectares of forests to a foreign business that intends to sell carbon offsets, posing grave risks to the rights of Indigenous Peoples, local communities, pastoralists and farmers who live on these lands and use them for their livelihoods but were not consulted and are unlikely to receive a fair share of the financial benefits.<sup>57</sup>

27. For decades, large businesses have undermined the procedural elements of the right to a healthy environment, through greenwashing, deceit, denial, fraud, sabotaging science, aggressive lobbying, massive political donations, corruption, manipulating public opinion, revolving-door hiring practices, regulatory capture and other strategies that exploit their disproportionate economic, social and political power.<sup>58</sup> The tobacco industry invented the deceit and denial playbook and continues to have devastating health and environmental impacts. Cigarette butts are a large source of plastic pollution, the growing and curing of tobacco contributes to deforestation, and the industry produces massive greenhouse gas emissions.<sup>59</sup> The automobile industry denied that their vehicles produced air pollution, lied about the availability of technological solutions, lied about the cost of those solutions, and used their political power to sabotage public transportation systems and infrastructure for walking and cycling.<sup>60</sup> Today they lie about the fuel efficiency of gas and diesel vehicles, lie about the pollution caused by those vehicles, and struggle to block the growth of electric vehicles.<sup>61</sup> Experts note that “the world is drowning in corporate fraud ... corrupting politics and markets”, with scant accountability and widespread impunity.<sup>62</sup>

28. The chemical industry denied that their products harmed human health, yet lead added to gasoline poisoned generations of children. Pesticides and other toxic chemicals wreak havoc on the health of humans, wildlife and ecosystems. The fossil fuel industry denied the existence of climate change, knowingly misled the public about climate science, and continues to spread misinformation about the challenges of powering the world with renewables.<sup>63</sup> The food and beverage industry has long lobbied against healthy dietary guidelines, accurate food labels and effective recycling programmes. Asbestos, vinyl, plastic, weapons ... the list of industries that has systematically deceived the public and policymakers goes on and on. These actions make it difficult for rights holders to recognize the climate, environment and human rights harms and injustices caused by businesses; to contribute to,

<sup>56</sup> See communication FRA 7/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26511>; and Dabor Resiere and others, “Chlordecone (Kepone) poisoning in the French territories in the Americas”, *The Lancet*, vol. 401, No. 10380 (18 March 2023).

<sup>57</sup> See <https://news.mongabay.com/2023/11/control-of-africas-forests-must-not-be-sold-to-carbon-offset-companies-commentary/>.

<sup>58</sup> A/77/201; Gerald Markowitz and David Rosner, *Deceit and Denial: The Deadly Politics of Industrial Pollution* (Berkeley, California, University of California Press, 2003); and David Michaels, *Doubt is Their Product: How Industry's Assault on Science Threatens Your Health* (New York, Oxford University Press, 2008).

<sup>59</sup> World Health Organization, *Tobacco and Its Environmental Impact: An Overview* (Geneva, 2017).

<sup>60</sup> Jack Doyle, *Taken for a Ride: Detroit's Big Three and the Politics of Pollution* (New York, Four Walls Eight Windows, 2000).

<sup>61</sup> See <https://www.bbc.com/news/business-34324772>.

<sup>62</sup> See <https://www.project-syndicate.org/commentary/the-global-economy-s-corporate-crime-wave-2011-04>.

<sup>63</sup> Naomi Oreskes and Erik M. Conway, *Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming* (New York, Bloomsbury Publishing, 2011).



participate in and support just and effective public policies; and to make green choices to support sustainable businesses.

29. Businesses block the enactment and implementation of laws, regulations and standards needed to protect and fulfil the right to a healthy environment.<sup>64</sup> The oil and gas industry in the United States, including the American Petroleum Institute, spent \$2.5 billion lobbying between 2008 and 2022, successfully blocking federal climate legislation.<sup>65</sup> Businesses in the European Union have lobbied aggressively to weaken human rights and environmental due diligence laws.<sup>66</sup> In exerting undue influence, businesses are aided and abetted by law firms, accounting firms, public relations firms, consultants, banks and other financial institutions whose role is often overlooked but should be highlighted and addressed through regulation. For example, law firms aid and abet oil gas and mining businesses in developing corporate structures that protect assets but divest liabilities for contaminated sites, placing huge financial burdens upon governments (and by extension the taxpaying public). The corporate-owned and compliant media is complicit in downplaying both the planetary crisis and the role of business in creating, perpetuating and exacerbating it.

30. Businesses use lawsuits to silence debate, to intimidate and distract their critics and to exhaust the limited resources of civil society organizations, communities and environmental human rights defenders. Strategic lawsuits against public participation are defined as groundless or abusive lawsuits, disguised as libel or defamation actions or alleged constitutional and/or civil rights violations, that are initiated against human rights defenders, environmental activists or journalists because they criticized a business. A 2023 report identified 820 strategic lawsuits against public participation in 30 European jurisdictions between 2010 and 2023.<sup>67</sup> Research also identified 152 cases in the United States between 2012 and 2022 where the fossil fuel industry had used strategic lawsuits against public participation and other judicial harassment tactics to attempt to silence critics.<sup>68</sup> Another reprehensible business tactic is the use of private security forces for intimidating the public, land-grabbing, denial of customary land rights, and suppressing opposition.<sup>69</sup> Businesses are involved in the unconscionable violence perpetrated against environmental human rights defenders, resulting in hundreds of murders annually, which is the tip of an iceberg of violence, harassment and criminalization.<sup>70</sup>

#### **IV. State obligations to protect the right to a healthy environment from harm caused by businesses**

31. States have a duty to protect human rights from actual and potential harm that may be caused by all businesses within their territory, jurisdiction or control.<sup>71</sup> This requires States to act with due diligence, meaning they must take all reasonable and appropriate measures to

<sup>64</sup> A/77/201.

<sup>65</sup> Kyle C. Meng and Ashwin Rode, “The social cost of lobbying over climate policy”, *Nature Climate Change*, vol. 9, No. 6 (June 2019), pp. 472–476; and see <https://www.opensecrets.org/news/2023/02/oil-and-gas-industry-spent-124-4-million-on-federal-lobbying-amid-record-profits-in-2022/>.

<sup>66</sup> Boyd and Keene, “Essential elements of effective and equitable human rights and environmental due diligence legislation”, Policy Brief No. 3, p. 20; and Beate Sjäffjell, Sarah Cornell and Tiina Häyhä, “Business, sustainability and Agenda 2030”, University of Oslo Faculty of Law Research Paper No. 2023-05, Nordic and European Company Law Working Paper No. 23-08 (2023).

<sup>67</sup> Coalition against SLAPPs in Europe, “SLAPPS: a threat to democracy continues to grow” (2023).

<sup>68</sup> EarthRights International, *The Fossil Fuel Industry’s Use of SLAPPs and Judicial Harassment in the United States* (2022).

<sup>69</sup> Nigel D. White and others, “Blurring public and private security in Indonesia: corporate interests and human rights in a fragile environment”, *Netherlands International Law Review*, vol. 65, No. 2 (July 2018), pp. 217–252.

<sup>70</sup> Global Witness, *Standing Firm: The Land and Environmental Defenders on the Frontlines of the Climate Crisis* (2023).

<sup>71</sup> A/74/198, para. 1.

protect, preserve and achieve human rights, including the right to a healthy environment.<sup>72</sup> As the planetary crisis worsens, it is clear that the dream of voluntary corporate social and environmental responsibility is dead. Unfortunately, States are complicit in the planetary crisis, because they encourage, enable and subsidize destructive business activities. States must free themselves from corporate capture and mandate businesses to respect their climate, environmental and human rights responsibilities. Yet climate, environmental and human rights legislation is often weak, riddled with gaps and loopholes, not implemented, or not enforced in a meaningful way. No State has climate and environmental laws or policies that incorporate the science of planetary boundaries. Few States have adequate regulatory frameworks to control excessive corporate influence on public policy.<sup>73</sup>

32. States must set clear expectations for businesses, by enacting strong climate, environmental and human rights laws, regulations, standards and policies.<sup>74</sup> Then States must supervise and monitor businesses that may foreseeably cause significant environmental harm.<sup>75</sup> Effective enforcement is essential, requiring adequate institutions with the capacity, resources and processes to prevent, investigate, punish and redress climate and environmental impacts on human rights.<sup>76</sup>

33. Instead of complying with these obligations, most States are aiding and abetting irresponsible and environmentally destructive business activities, resulting in widespread human rights violations. Corporate capture is the rule rather than the exception, as illustrated by the debacle at the twenty-eighth Conference of the Parties to the United Nations Framework Convention on Climate Change, where lobbyists and petrostates colluded to block the fossil fuel phaseout needed to meet the Paris Agreement commitment to limit warming to 1.5°C. Few Governments have made the responsibilities set forth in the Guiding Principles on Business and Human Rights binding through legislation. Instead of permitting and promoting environmentally destructive activities, States need to prohibit, penalize and punish pollution and ecological degradation through far stronger laws, comprehensive monitoring and rigorous enforcement.

34. States are turning the polluter pays principle upside down, paying polluters massive subsidies while failing to force them to pay the price for the climate and environmental damage they cause. States spend a staggering \$1.8 trillion annually on subsidies for fossil fuels, industrial agriculture, mining, deforestation, overfishing and other activities that exacerbate the climate crisis, cause pollution or damage nature.<sup>77</sup> Such subsidies are contrary to States' obligation to devote the maximum available resources to fulfil human rights, and should be redirected to provide the financial resources needed to implement rights-based climate and environmental actions.

35. Motivated by widespread support for the normative principles in the Guiding Principles on Business and Human Rights and by the compelling evidence regarding the inadequacy of voluntary measures, several jurisdictions have recently enacted mandatory human rights and environmental due diligence legislation, including the Duty of Vigilance Law in France, the Act on Corporate Due Diligence Obligations in Supply Chains in Germany and the Transparency Act in Norway. Other laws are in development, including the Responsible and Sustainable International Business Conduct Bill in the Kingdom of the Netherlands, the Draft Bill on Human Rights and Environmental Protection for Sustainable Business Management in the Republic of Korea and the Corporate Sustainability Due Diligence Directive in the European Union. These laws establish legally binding rules regarding the due diligence obligations of companies with respect to the actual and potential human rights impacts of their operations, subsidiaries and value chains. The laws establish rules governing liability when obligations are not met and human rights abuses occur.

<sup>72</sup> Inter-American Court of Human Rights, Advisory Opinion OC-23/17, 15 November 2017, paras. 123 and 124.

<sup>73</sup> [A/77/201](#).

<sup>74</sup> Guiding Principles on Business and Human Rights, principles 1–10.

<sup>75</sup> Inter-American Court of Human Rights, Advisory Opinion OC-23/17, para. 119.

<sup>76</sup> Framework principles on human rights and the environment, framework principle 12.

<sup>77</sup> [A/77/284](#), para. 59.

However, the effectiveness of access to justice mechanisms in these due diligence laws is unclear, as early cases in France have encountered obstacles.<sup>78</sup>

36. Enacting and enforcing comprehensive human rights and environmental due diligence legislation that effectively prevents, mitigates, ceases and remedies adverse human rights and environmental impacts is a State obligation that is essential in order to respect, protect and fulfill the right to a healthy environment.<sup>79</sup> Mandatory human rights and environmental due diligence legislation should: address all business actors; establish comprehensive duties of care to identify, assess, prevent, cease, mitigate and effectively remedy potential and actual adverse impacts to all internationally recognized human rights, including the right to a clean, healthy and sustainable environment; emphasize good governance; highlight the rights of the child; be rights holder-centred; ensure effective remedies for rights holders; protect rights holders from threats, intimidation and reprisals; commit States to monitoring and enforcement; foster cooperation within and between jurisdictions; and require dynamic, responsive and continually improved due diligence practices.<sup>80</sup>

37. Human rights and environmental due diligence legislation is necessary but not sufficient to fulfil States' duty to protect against business abuses of the right to a clean, healthy and sustainable environment, just as environmental impact assessment legislation is only one element of the array of laws needed to protect the environment. The planetary crisis demands transformative changes to societal goals, economic systems, corporate law, tax law, trade and investment law, climate law and environmental law that mandate businesses to operate within planetary boundaries and respect human rights, including the right to a healthy environment. For example, the European Union's Green Deal comprises numerous initiatives intended to complement its Corporate Sustainability Due Diligence Directive, including a regulation on supply chains and deforestation, a batteries regulation, a sustainable products initiative, a zero pollution action plan, non-financial disclosure requirements, and a new law that would establish fines for companies making unsubstantiated environmental claims.<sup>81</sup>

38. The Special Rapporteur has published comprehensive guidance on the steps States must take in order to respect, protect and fulfil the substantive elements of the right to a clean, healthy and sustainable environment:<sup>82</sup>

- (a) Clean air;<sup>83</sup>
- (b) Safe and sufficient water;<sup>84</sup>
- (c) Non-toxic environments;<sup>85</sup>
- (d) A safe climate;<sup>86</sup>
- (e) Healthy ecosystems and biodiversity;<sup>87</sup>
- (f) Healthy and sustainably produced food.<sup>88</sup>

39. These reports are buttressed by the framework principles on human rights and the environment.<sup>89</sup> States must use the best available scientific evidence to develop climate and

<sup>78</sup> Boyd and Keene, "Essential elements of effective and equitable human rights and environmental due diligence legislation", Policy Brief No. 3, p. 25.

<sup>79</sup> Committee on Economic, Social and Cultural Rights, general comment No. 26 (2022), para. 30.

<sup>80</sup> Boyd and Keene, "Essential elements of effective and equitable human rights and environmental due diligence legislation", Policy Brief No. 3.

<sup>81</sup> See [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en).

<sup>82</sup> See <https://www.ohchr.org/en/special-procedures/sr-environment/annual-thematic-reports>.

<sup>83</sup> [A/HRC/40/55](#).

<sup>84</sup> [A/HRC/46/28](#).

<sup>85</sup> [A/HRC/52/33](#).

<sup>86</sup> [A/74/161](#).

<sup>87</sup> [A/75/161](#).

<sup>88</sup> [A/76/179](#).

<sup>89</sup> [A/HRC/37/59](#).

environmental laws, regulations, standards and policies, including integration of planetary boundaries.<sup>90</sup>

40. With respect to extraterritorial obligations, States must use all available means to prevent polluting, environmentally destructive and unsustainable activities under their jurisdiction or control from causing significant harm to the climate, environment and people in other States, or to areas beyond the limits of national jurisdiction.<sup>91</sup> Notably, States may be directly responsible for harms caused directly or indirectly by businesses under certain conditions, including: State-owned enterprises; businesses under public contracts acting on the State's instruction; and businesses empowered by legislation to exercise elements of governmental authority.

41. States have failed to adequately educate businesses and government agencies, departments and other institutions about their human rights obligations. Agencies responsible for climate and the environment, the economy, trade and investment, export credit, natural resource and land management and other areas are often "not sufficiently aware of or equipped to act in conformity with the State's international human rights obligations".<sup>92</sup> States should provide human rights information, training and support to all government officials, and effective guidance to businesses on how to respect human rights, including the right to a healthy environment. Useful resources include the Children's Rights and Business Principles, and Gender Dimensions of the Guiding Principles on Business and Human Rights. National action plans on business and human rights may help but need to be much stronger, with increased reliance on mandatory measures and sufficient resources for capacity-building.

#### **A. Access to information, public participation, and access to justice**

42. To fulfil the right to information, legislation should require mandatory disclosure of businesses' climate and environmental performance, as well as of political activities such as donations and lobbying. The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) establish rights-based standards for access to environmental information, including accessibility, affordability and timeliness. Exceptions to business disclosure should be narrow, reflecting the fact that the right to a healthy environment is more important than commercial confidentiality. The burden of proof to justify any denial of access to information must be borne by the entity from whom the information was requested.

43. States must ensure opportunities for inclusive, equitable and effective public participation in all climate and environmental decision-making processes, and inform the public, especially groups in situations of vulnerability, about these opportunities for participation. Protecting the exercise of the rights to freedom of expression, association and peaceful assembly from interference by businesses is vital. Legislation against strategic lawsuits against public participation is essential in order to protect human rights from business abuses. States must also ensure that persons exercising their right to participate are not subject to any form of retaliation.<sup>93</sup> National action plans on business and human rights, environmental and social impact assessments, and decision-making on business concessions and land tenure should be made with the informed participation of all relevant rights holders. States must ensure that the best interests of children are taken into account in drafting, implementing and enforcing climate, environmental and business-related laws and policies.<sup>94</sup> These measures should also be gender-transformative.<sup>95</sup>

<sup>90</sup> [A/HRC/48/61](#).

<sup>91</sup> Inter-American Court of Human Rights, Advisory Opinion OC-23/17, para. 142.

<sup>92</sup> [A/74/198](#), para. 6.

<sup>93</sup> Committee on Economic, Social and Cultural Rights, general comment No. 26 (2022), para. 21.

<sup>94</sup> Committee on the Rights of the Child, general comment No. 26 (2023).

<sup>95</sup> [A/HRC/52/33](#).

44. Victims and potential victims of business-related human rights abuses have the right of access to justice with effective remedies, yet barriers often seem insurmountable (e.g. high costs, restrictive standing rules, statutes of limitations, burden of proof, lack of legal aid and lack of accessible class action procedures). States and businesses should place rights holders at the centre of judicial and non-judicial processes, in order to ensure that processes are responsive to the diverse experiences and expectations of rights holders, and should ensure that remedies are accessible, affordable, adequate and timely. States must:

(a) Inform individuals of their rights, the processes for asserting and defending those rights, and the full range of available remedies (e.g. apologies, restitution, rehabilitation, compensation, punitive sanctions, and prevention of harm through injunctions or guarantees of non-repetition);

(b) Employ legislation and other measures (e.g. capacity-building) to remove the many substantive, procedural and practical barriers facing victims of business-related abuses of the right to a healthy environment;

(c) Protect the right to a healthy environment by investigating, punishing and effectively remedying abuses by businesses;

(d) Authorize national human rights institutions to monitor State and business obligations, and empower them to receive complaints from victims of business abuses;

(e) Ensure that the political activities of businesses do not unduly influence or corrupt judicial or non-judicial processes.

45. The duty to protect against extraterritorial rights violations by businesses is especially important in cases where remedies available to victims before courts in the State where harms occur are unavailable or ineffective.<sup>96</sup> The duty of international cooperation applies to situations where a business under a State's jurisdiction or control causes or contributes to a violation of the right to a healthy environment impacting persons in another State. In many cases, victims require access to judicial forums in high-income States where alleged harms did not occur, but where the headquarters of the business in question is located.

46. States have obligations to ensure safe and enabling spaces for environmental human rights defenders to do their vital work. In regulating and monitoring businesses, States must protect defenders from threats, intimidation, reprisals and unlawful violations of privacy; promptly and thoroughly investigate any threats or violence; establish severe penalties for failing to take sufficient actions given existing and reasonably attainable leverage to prevent threats, intimidation and reprisals; and strengthen institutions tasked with implementing these actions.<sup>97</sup> States should also publicly recognize the important work being done by environmental human rights defenders, have a zero tolerance policy for threats, intimidation and reprisals, and educate businesses about the importance of respecting human rights defenders.

47. Fulfilling Indigenous Peoples' rights includes preventing forced evictions and protecting their lands, territories and resources from illegal or unjust exploitation by businesses. The Inter-American Court of Human Rights has ruled that Indigenous Peoples who have lost possession of their lands without their free, prior and informed consent after a lawful transfer to third parties "are entitled to restitution thereof or to obtain other lands of equal extension and quality".<sup>98</sup> Restitution of land is often the most important remedy for Indigenous Peoples.<sup>99</sup> States must enact and implement laws protecting Indigenous Peoples' rights, including land and resource rights, from business encroachment.

<sup>96</sup> Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017), para. 30.

<sup>97</sup> Committee on Economic, Social and Cultural Rights, general comment No. 26 (2022), para. 55.

<sup>98</sup> *Sawhoyamaya Indigenous Community v. Paraguay*, Judgment, 29 March 2006, para. 128.

<sup>99</sup> Committee on Economic, Social and Cultural Rights, general comment No. 26 (2022), para. 60.

## B. The State-business nexus

48. States should take additional steps to protect against human rights abuses by businesses that are owned or controlled by the State, or that receive substantial support from State agencies. State-owned and State-controlled enterprises are some of the worst polluters in the world, and frequently commit human rights abuses related to environmental damage, forced evictions, land rights violations, and the intimidation of human rights defenders.<sup>100</sup> State-owned enterprises also lag behind in adopting and implementing human rights due diligence.<sup>101</sup> This appalling track record is indefensible. States must improve their oversight of these businesses in order to fulfil their own human rights obligations. States should not ask less of companies that are closely associated with them than they ask of private businesses, nor grant them immunity for human rights abuses and environmental degradation. To the contrary, States should expect more, given the closeness of the relationship and the level of control.<sup>102</sup>

49. State economic policies must be aligned with human rights obligations. Business-led megaprojects supported by export credit agencies and development agencies have caused forced displacement of local populations, significant environmental harm, suppression of the rights to freedom of expression and of association, and the destruction of cultural sites. Prominent examples include large dams, pipelines, coal and nuclear power plants, chemical facilities, mining projects, and forestry and plantation projects. When States provide export, trade and investment assistance to businesses, they have obligations to conduct their own human rights and environmental due diligence in order to ensure that the businesses being supported are not engaged in actual or potential abuses of the right to a healthy environment.<sup>103</sup> States can promote responsible trade by restricting the flow of goods in supply chains that may involve serious business-related human rights abuses. For example, States should require smartphone and electric vehicle manufacturers to prevent the horrific human rights abuses occurring in the cobalt mining industry in the Democratic Republic of the Congo.<sup>104</sup> Worldwide, government purchasing accounts for more than \$1 trillion per year.<sup>105</sup> States commonly award contracts to the lowest bidder, while failing to require recipients to carry out human rights and environmental due diligence and establish operational-level grievance mechanisms to remedy adverse impacts. Special economic zones often weaken environmental standards and fail to respect human rights, violating State obligations, and may turn into sacrifice zones where profits and private interests are prioritized over human rights, health and nature, as in the Prospera case in Honduras.<sup>106</sup>

50. States must maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives, for instance through investment treaties or contracts. Unfortunately, investor-State dispute settlement mechanisms in trade and investment treaties are undermining State sovereignty, constraining policymaking, and making it difficult for States to fulfill their climate, environmental and human rights obligations.<sup>107</sup> Investor-State dispute settlement mechanisms prioritize the interests of foreign investors over human rights, human health, the environment and good governance. Foreign investors have filed more than 150 cases challenging State actions to address the climate and environmental crisis, seeking hundreds of billions of dollars in compensation. Comparable challenges are found with State-investor contracts, which commonly involve foreign investors, domestic partners and the State, and may involve environmentally impactful transactions. For example, a British business sued Nigeria for failing to fulfil contractual obligations related to a gas processing plant and was awarded \$6.6

<sup>100</sup> See <https://blogs.lse.ac.uk/businessreview/2023/05/23/state-owned-firms-must-address-their-co2-problem-here-is-how/>.

<sup>101</sup> [A/74/198](#), para. 27.

<sup>102</sup> *Ibid.*, para. 26.

<sup>103</sup> *Ibid.*, para. 29.

<sup>104</sup> Siddharth Kara, *Cobalt Red: How the Blood of the Congo Powers Our Lives* (New York, St. Martin's Press, 2023).

<sup>105</sup> [A/74/198](#), para. 23.

<sup>106</sup> See <https://www.brettonwoodsproject.org/2023/07/honduras-threatens-icsid-withdrawal-over-11-billion-neo-colonial-special-economic-zone-claim/>.

<sup>107</sup> [A/78/168](#).

billion in damages.<sup>108</sup> Similarly, when entering into public-private partnerships with businesses, States must emphasize that human rights, not profits, come first.

## V. Systemic and transformative changes

51. It is clear from the breach of multiple planetary boundaries and the climate, environment and human rights crisis that humanity needs to shrink its collective ecological footprint, yet billions of people in the global South need to expand their material footprint to achieve a comfortable standard of living and full enjoyment of their human rights. Society can no longer bury its head in the sand about this profound paradox. Wealthy States must take the lead in reducing their footprints and financing green growth in the global South to meet everyone's needs within planetary limits. This will require a transformation of societal goals, business models, energy, economic and legal systems, and development paradigms.

52. The human rights obligations of States and businesses must be re-evaluated in the context of the planetary crisis, particularly given scientific evidence about breaching multiple planetary boundaries. Despite decades of promises, pledges and public relations rhetoric, few businesses have made the changes needed to make their operations and supply chains environmentally sustainable and respectful of human rights. There is no time left to rely on incremental changes or hope for voluntary transformations. Overcoming systemic problems requires systemic solutions.

53. The recent recognition of the right to a clean, healthy and sustainable environment, which integrates human rights law and environmental law, offers game-changing potential if States and businesses comply with their obligations. Transformative changes required to fulfil the right to a healthy environment include: replacing GDP with societal goals that go beyond economic growth; rewriting climate and environmental laws and policies to incorporate planetary limits; implementing fiscal policies that internalize externalities and reduce inequality; and enacting legal reforms that compel businesses to adopt new purposes, legal forms, and types of public and political engagement.

### A. Replacing GDP and the pursuit of endless growth

54. The conventional goal of unlimited economic growth, measured by GDP, must be replaced by holistic objectives based on sufficiency, sustainability and human rights. Many alternative measures are already available, including the genuine progress index, the index of sustainable economic welfare, the happy planet index, the human development index, and the OECD Better Living Index. Bhutan pioneered the concept of gross national happiness. Bolivia (Plurinational State of) and Ecuador articulated the goal of living a good life in harmony with nature. All States should cooperate in developing a shared understanding of what constitutes appropriate levels of sufficiency. According to the Intergovernmental Panel on Climate Change, sufficiency is an approach that limits (and in some cases reduces) demand for energy, materials, land and water while delivering human well-being for all within planetary boundaries.<sup>109</sup> A focus on sufficiency would recognize that overconsumption causes extensive social, economic and environmental problems.<sup>110</sup>

55. The successor to the Sustainable Development Goals must shift the agenda away from growth for all towards green growth for less wealthy States and post-growth for wealthy States. The concept of "contraction and convergence" refers to a reduction of material and energy use in rich nations and by rich people and a concurrent increase in poor nations. Contraction can be planned or it will be imposed by nature. Models indicate that planned contraction of the physical economy in high-income nations is plausible and could not only improve environmental quality but also social conditions – strengthened community,

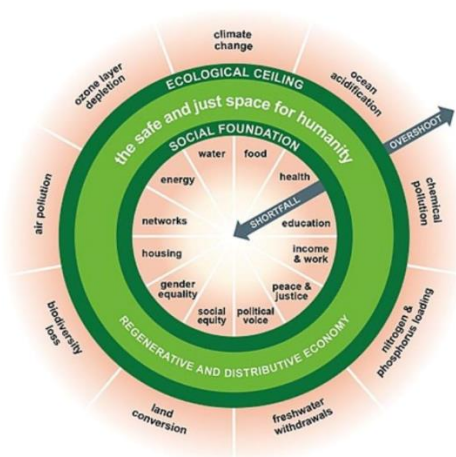
<sup>108</sup> The award was overturned because of bribery. See <https://www.reuters.com/business/energy/nigeria-wins-bid-overturn-11-billion-bill-collapsed-gas-deal-2023-10-23/>.

<sup>109</sup> Intergovernmental Panel on Climate Change, "Climate change 2022: mitigation of climate change – summary for policymakers", para. C.7.3.

<sup>110</sup> Thomas Princen, *The Logic of Sufficiency* (Massachusetts Institute of Technology Press, 2005).

increased security, and greater possibilities for meaningful lives.<sup>111</sup> As noted by the Special Rapporteur on extreme poverty and human rights, “where the economy still needs to grow – where poverty reduction depends on the further creation of wealth – it should do so in ways that maximize poverty alleviation while minimizing its ecological impacts”.<sup>112</sup>

56. Additional promising concepts are a human rights-based economy, a doughnut economy and a well-being economy. A human rights economy would guarantee the material, social and environmental conditions necessary for all people to live with dignity on a flourishing planet. It seeks to address root causes and structural barriers to equality, justice and sustainability by prioritizing investment in, and respect for, economic, social, cultural and environmental rights. A doughnut economy identifies the safe and just operating space for humanity that meets the needs of all, fulfils human rights and stays within planetary limits.<sup>113</sup> Core principles of a well-being economy include dignity, fairness, nature, participation, purpose and long-term thinking.<sup>114</sup>



The doughnut economy (Kate Raworth, *Doughnut Economics: Seven Ways to Think Like a 21st-Century Economist*)

## B. Rights-based climate and environmental laws that respect planetary limits

57. Today’s climate and environmental laws do not account for planetary limits. International cooperation is needed to negotiate a just phaseout of fossil fuels within the global carbon budget for limiting global warming to 1.5°C, with wealthy, high-emitting States leading the way and compensating developing States for loss and damage and for keeping coal, oil and natural gas in the ground. The traditional approach to pollution, based on nature’s assimilative capacity, is being overwhelmed by the volume of toxic substances being released into the environment and does not work for forever chemicals because ecosystems cannot assimilate these substances. The conventional approach to managing renewable resources (e.g. forests) was to prevent harvest rates from exceeding regeneration rates. This approach overlooks the growing impacts of fire, insects, and deforestation (for agriculture and urbanization), as well as tipping points that may radically shift forests into other types of ecosystems, such as grasslands.

58. A new generation of climate and environmental laws and policies is needed to recognize the fact that human activities have breached planetary limits. Laws regulating business activities must be sufficiently rigorous to enable States to respect, protect and fulfil

<sup>111</sup> Peter A. Victor, *Escape from Overshoot: Economics for a Planet in Peril* (Canada, New Society Publishers, 2023).

<sup>112</sup> A/75/181/Rev.1, para. 44.

<sup>113</sup> Kate Raworth, *Doughnut Economics: Seven Ways to Think Like a 21st-Century Economist* (White River Junction, Vermont, United States, Chelsea Green Publishing, 2017).

<sup>114</sup> See <https://weall.org/what-is-wellbeing-economy>.



the right to a clean, healthy and sustainable environment. The implementation of State obligations should be guided by the principles of prevention, precaution, equality and non-discrimination, non-regression, and polluter pays. These measures must be rigorously implemented through supervision, monitoring and enforcement, which will require strengthening public institutions and the environmental rule of law.

59. False solutions must be rigorously avoided. In climate lawsuits, several Supreme Courts have ruled that States and businesses should not rely on “speculative” and unproven carbon-offset technologies and programmes because doing so would be an “irresponsible risk” that would “run counter to the precautionary principle”.<sup>115</sup> The Supreme Court of the Kingdom of the Netherlands has found that there is no feasible technology to generate negative emissions on a sufficiently large scale.

60. A failure to prevent foreseeable human rights harms caused by exceeding planetary boundaries, or a failure to mobilize the maximum available resources in an effort to do so, could constitute a breach of State human rights obligations.<sup>116</sup> States are already cooperating through international treaties to address the breaches of planetary boundaries related to climate change and biodiversity. However, international agreements addressing toxic chemicals are piecemeal and there is a lack of concerted international effort to address planetary limits related to fresh water, forests and fertilizers.

61. States must satisfy their obligations regarding the right to a clean, healthy and sustainable environment and the obligation to prevent business abuses in a gender-transformative manner. Because gender-blind measures perpetuate discrimination against women, discriminatory or gender-blind laws, policies, action plans, and measures at the intersection of environmental and business issues must be replaced by gender-transformative measures.<sup>117</sup>

62. Incorporating Indigenous laws and worldviews into climate and environmental laws and policies would further the full enjoyment of the right to a healthy environment for all people and contribute to transforming business behaviour. While Indigenous laws are unique to each culture, in general, Indigenous legal traditions reflect holistic, long-term perspectives and “reflect a set of reciprocal relationships and a coexistence with the natural world. Balanced relationships are sought between humans and other entities in the natural world (animals, plants, birds, forests, waters etc.) as well as with the ancestors and future generations.”<sup>118</sup>

### C. Fiscal reforms

63. The failure to price environmental externalities is among the free market’s greatest failures, causing trillions of dollars in damage annually. Taxing environmentally destructive behaviour should be the norm, rather than the exception, and should address all types of air, water, soil and climate pollution and entail comprehensive liability for contaminated sites. The military must not be exempted. Proposed levies on air travel, air freight, maritime shipping and cruise ships should be implemented. An Earth-damage tax should be applied to all luxury goods, which would have the triple benefit of discouraging their consumption, reducing inequality, and generating revenue for climate and environmental action. Applying the polluter pays principle could generate the financial flows from global North to global South needed for climate-related loss and damage, adaptation and mitigation.<sup>119</sup> A suite of

<sup>115</sup> Supreme Court of the Kingdom of the Netherlands, *State of the Netherlands v. Stichting Urgenda*, case No. 19/00135, Judgment, 20 December 2019, para. 7.2.5; and Supreme Court of Hawaii, *In re Hawaii Electric Light Company, Inc.*, case No. SCOT-22-0000418, 13 March 2023.

<sup>116</sup> Committee on Economic, Social and Cultural Rights, “Climate change and the International Covenant on Economic, Social and Cultural Rights”, statement, 8 October 2018; and [E/C.12/2018/1](#).

<sup>117</sup> [A/HRC/52/33](#), para. 76.

<sup>118</sup> Deborah McGregor, “Indigenous environmental justice and sustainability”, in Sumudu A. Atapattu, Carmen G. Gonzalez and Sara L Seck, eds., *The Cambridge Handbook of Environmental Justice and Sustainable Development* (Cambridge, United Kingdom, Cambridge University Press, 2021), p. 65.

<sup>119</sup> David R. Boyd and Stephanie Keene, “Mobilizing trillions for the global South: the imperative of human rights-based climate finance”, Policy Brief No. 5.

related tax reforms is required: a crackdown on tax evasion and avoidance; broadening the tax base; raising corporate taxes; treating capital gains equitably with income; and imposing or increasing wealth and estate taxes. Environmentally destructive subsidies must be phased out, taking care to avoid regressive impacts.

#### D. New business paradigms

64. The market-driven system that prioritizes the short-term maximization of shareholder returns must be replaced. Legal reforms should prioritize: reorienting the purpose of businesses in society; changing irresponsible business models; and going beyond doing no harm.<sup>120</sup> States need laws to ensure that businesses respect all internationally recognized human rights, including the right to a healthy environment, pay living wages, provide safe working conditions, shift to a circular approach, and achieve gender equality. Laws must limit political donations from businesses and wealthy individuals, prohibit lobbying by industries that cause significant harm to the climate, the environment or human rights, restrict revolving-door hiring practices and prevent corporate capture. Stronger laws are also needed to govern product sustainability, advertising, and marketing.

65. Businesses and their value chains must operate within planetary boundaries, fulfil their human rights responsibilities, and contribute to achieving the Sustainable Development Goals so that every person on Earth is able to meet their needs. Legislation should require businesses:

- (a) To be responsible for all climate, environmental and human rights impacts;
- (b) To work for the long-term benefit of society;
- (c) To create positive outcomes for rights holders, shareholders and other stakeholders.

66. Legislation governing benefit corporations demonstrates the possibility of a radically different corporate model. Benefit corporations and community interest corporations are legally required to contribute to the public good, generating sustainable prosperity while simultaneously seeking to provide good returns to their investors. Thousands of benefit corporations are flourishing. Other alternative business models that strive to benefit a broader range of rights holders and stakeholders include flexible purpose corporations, employee-owned businesses, and cooperatives.

67. Of paramount importance is replacing the system of shareholder primacy with the objective of sustainable value creation.<sup>121</sup> Sustainable value addresses environmental, social and economic imperatives by:

- (a) Ensuring the long-term stability and resilience of the ecosystems that support life, by staying within or returning to planetary boundaries;
- (b) Facilitating respect for, and promotion of, human rights and good governance;
- (c) Generating wealth and work in a way that meets people's needs and contributes to stable, equitable and resilient societies.<sup>122</sup>

## VI. Good practices

68. Due to space limitations, good practices related to States, businesses, planetary limits and the right to a healthy environment are contained in annex 2.<sup>123</sup>

<sup>120</sup> A/78/160, para. 68.

<sup>121</sup> Janina Grabs, "Business accountability in the Anthropocene", *Environmental Policy and Governance*, vol. 33, No. 6 (December 2023), pp. 615–630.

<sup>122</sup> Beate Sjøfjell and Mark B. Taylor, "Clash of norms: shareholder primacy vs. sustainable corporate purpose", *International and Comparative Corporate Law Journal*, vol. 13, No. 3 (2019), pp. 40–66.

<sup>123</sup> See <https://www.ohchr.org/en/special-procedures/sr-environment/annual-thematic-reports>.

## VII. Conclusions and recommendations

69. Humanity faces a three-pronged fork in the road. The path of business as usual will accelerate environmental catastrophe, worsen inequality, and inflict inhumane suffering on billions of people. The path of incremental change leads to slightly less catastrophic environmental consequences and slightly less extreme inequality, but still results in widespread suffering. The third path, hard to see through the fog of obfuscation spread by businesses, is a future of transformative changes so that everyone lives a fulfilling life in harmony with nature and within planetary limits. Only the third path leads to justice, sustainability and the full enjoyment of human rights for all. Only the third path can pull civilization back from the edge of the cliff. It will not be easy but it is necessary, and it is required by States' human rights obligations. Society has the right to insist that Governments put human rights ahead of shareholder profits, communities ahead of companies, and children ahead of chief executive officers.

70. Rather than driving the systemic destruction of nature and exploitation of people, businesses must contribute to transformative changes including: reforming supply chains to reduce climate, environmental and human rights impacts; reducing humanity's overall environmental footprint via decreased material consumption by wealthy nations and individuals; a rapid clean energy transition; scaling up ecosystem conservation and restoration; and shifting to a rights-based circular economy founded on principles of sufficiency, equality and regeneration. The purpose of business should be to solve the problems of people and the planet profitably, not to profit by causing problems for people and the planet. States are obliged to transform legal regimes governing businesses – for example corporate law, tax law, property law, trade and investment agreements, and climate, environmental and human rights laws – to ensure that businesses respect human rights, benefit society and contribute to a sustainable future. Robust regulatory frameworks require comprehensive monitoring and stringent enforcement, implemented by independent and empowered agencies overseen by national human rights institutions and judiciaries.

71. To ensure that businesses respect the right to a clean, healthy and sustainable environment, States should:

- (a) Strengthen legal recognition of this right in constitutions, legislation and treaties;
- (b) Enact mandatory human rights due diligence legislation and mandatory environmental due diligence legislation;
- (c) Ensure that the proposed legally binding instrument on business and human rights explicitly incorporates the right to a clean, healthy and sustainable environment and includes environmental and climate change impact assessments in the required due diligence measures;
- (d) End subsidies to climate-damaging, polluting and environmentally destructive businesses;
- (e) Phase out fossil fuels in a fast, full and fair way;
- (f) Impose windfall taxes on the profits of fossil fuel businesses;
- (g) Require performance bonds or other financial assurances that reallocate the risk of environmental harm onto businesses;
- (h) Prevent the creation of new sacrifice zones, clean up existing sacrifice zones and compensate residents for the terrible health and environmental impacts they have suffered;
- (i) Criminalize significant environmental pollution and destruction, with substantial fines and penalties and jail sentences for directors and senior executives;
- (j) Crack down on superpolluters (businesses that pollute disproportionately high volumes compared to competitors in the same sector);

(k) **Strengthen enforcement of climate, environmental and human rights laws by increasing the capacity, resources and independence of relevant government agencies, and authorizing the public to enforce environmental laws where government agencies fail to do so;**

(l) **Pursue zero pollution and the elimination of toxic substances, rather than merely trying to minimize, reduce and mitigate exposure to these hazards;**

(m) **Enact and enforce laws that stop deforestation;**

(n) **Heavily tax or ban private jets, yachts and other environmentally destructive luxury products;**

(o) **Accelerate processes of legally recognizing the land and resource rights of Indigenous Peoples, communities of African descent (including *quilombolas*) and other nature-based communities that are vulnerable to land- and resource-grabbing, emphasizing the rights of women within these communities;**

(p) **Prevent the further privatization, financialization and commodification of water, biodiversity, carbon and other elements of nature, and reverse these processes where possible;**

(q) **Replace industrial agriculture with a rights-based approach that champions agroecology and the traditional knowledge of Indigenous Peoples, local communities, Afrodescendent communities, and peasants (including smallholder farmers);**

(r) **Revise international agreements – for example, trade, investment, finance, agriculture, development cooperation and climate change agreements – to be consistent with their domestic and extraterritorial human rights obligations.**

72. **To ensure that businesses respect the procedural elements of the right to a clean, healthy and sustainable environment, States should improve public access to information, public participation and access to justice by:**

(a) **Requiring transparent and accurate disclosure of climate, environmental and human rights performance by businesses;**

(b) **Strengthening laws governing public participation in climate-related and environmental decision-making;**

(c) **Legislating Indigenous Peoples' right to free, prior and informed consent;**

(d) **Reducing obstacles to accessing justice and effective remedies, such as high costs, lengthy delays, language barriers, gender bias and lack of legal aid;**

(e) **Enact legislation providing tools for the rapid dismissal of strategic lawsuits against public participation, penalties for businesses bringing such cases, and sanctions for lawyers representing those businesses;**

(f) **Adopt whistle-blower legislation that provides substantial monetary rewards for information about serious climate, environmental and human rights harms.**

73. **To safeguard the integrity of democratic institutions and reduce the excessive and harmful political power of large businesses, States should:**

(a) **Enact and enforce laws that limit or prohibit lobbying, political donations and revolving-door hiring practices;**

(b) **Ban lobbying against laws, regulations, standards, policies or other measures intended to address the planetary crisis, both domestically and in international forums;**

(c) **Restrict or prohibit the marketing or advertising of goods and services that harm the climate, the environment or the right to a healthy environment (e.g. fossil fuels, pesticides);**

(d) **Criminalize greenwashing and other deceptive marketing practices;**

- (e) **Make business pay taxes where they use and extract resources;**
- (f) **Use competition law to prevent concentrated ownership in key sectors, including the media and the energy and food sectors, and require divestment where excessive concentration already harms the public interest;**
- (g) **Strengthen anti-corruption measures, including independent investigators, prosecutors and judges.**

74. **To catalyse transformative changes, States should:**

- (a) **Replace GDP with holistic development indicators;**
- (b) **Shift from a linear to a circular economy, through strong extended producer responsibility legislation, banning planned obsolescence, minimum standards for recycled content, and reduced production of plastic, forever chemicals and other products incompatible with a circular economy;**
- (c) **Transform management of natural resources by enforcing the highest environmental standards, maximizing State revenue from royalties and taxes (at least 75 per cent combined), and ensuring that local communities receive a fair share of the benefits;**
- (d) **Revise corporate law to expand business accountability beyond shareholders to rights holders, workers, other stakeholders, and nature;**
- (e) **Establish sovereign wealth funds with a portion of revenues from non-renewable resources to share with future generations;**
- (f) **Eliminate investor-State dispute settlement mechanisms from international trade and investment treaties;**
- (g) **Reduce tax evasion and avoidance;**
- (h) **Ensure that successors to the Sustainable Development Goals emphasize the need for wealthy States to reduce energy and material consumption.**

75. **Because of their disproportionate contributions to the planetary crisis, wealthy States should take steps to:**

- (a) **Prohibit new fossil fuel exploration, exploitation and infrastructure, while phasing out coal, oil and natural gas;**
- (b) **Maximize human well-being while reducing energy and material consumption to globally sustainable levels;**
- (c) **Replace the culture of consumerism with a culture of well-being;**
- (d) **Start public dialogues about the benefits of human rights-based, post-growth economies.**

76. **The role of the United Nations:**

- (a) **The Summit of the Future should focus on transformative changes related to human rights-based economies, sufficiency, and living in harmony with nature;**
- (b) **The Human Rights Council and the treaty bodies should address planetary boundaries in the universal periodic review and in country reports on States of the global North;**
- (c) **The United Nations Environment Programme and the United Nations Development Programme should develop policy guidance on incorporating planetary boundaries within climate and environmental laws and policies;**
- (d) **The United Nations Children’s Fund should engage children and youth to discuss the intergenerational impacts of exceeding planetary boundaries.**

77. **The Intergovernmental Panel on Climate Change warns that: “There is a rapidly closing window of opportunity to secure a livable and sustainable future for all ... The choices and actions implemented in this decade will have impacts now and for**

thousands of years.”<sup>124</sup> **In the darkness that envelops today’s world, the right to a clean, healthy and sustainable environment is like a star in the night sky, offering light and direction towards a brighter future where everyone, everywhere, lives a fulfilling life in harmony with nature and humanity flourishes within planetary limits.**

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<sup>124</sup> “Climate change 2023: synthesis report – summary for policymakers” (Geneva, Intergovernmental Panel on Climate Change, 2023), para. C.1.