

Mandates of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes ; and the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; pursuant to Human Rights Council resolutions 45/17 and 37/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged violations of human rights related to the pollution, waste, and effects on climate change resulting from the operation of a number of coal powered plants operating or planned to operate in the Federation of Bosnia and Herzegovina.**

According to the information received:

Public and private owners of coal power plants in Bosnia and Herzegovina have signed three Engineering, Procurement and Construction (EPC) contracts with Chinese State-Owned Enterprises ("SEOs") to expand three power plants, known as Stanari, Tuzla 7, and Banovići. The Stanari plant is currently operating and the Tuzla 7 and Banovići plants are under preparation.

Stanari

In 2016 the construction of the Lignite Power Plant in Stanari was completed by the Chinese state-owned manufacturing company Dongfang Electric Corporation.¹ The development of the plant was initiated by the Energy Financing Team, a European electricity trading and investment group for southeast Europe and was financed by the China Development Bank.

¹On the environmental impact assessment conducted prior to the permit by TPP Stanari, see https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewjW06qOke_uAhVfEFkFHQR5DXUQFjAGegQIFhAC&url=https%3A%2F%2Fenergy-community.org%2Fdam%2Fjcr%3Ae28d81d4-3c8a-49af-991a-fa683bbaff99%2FMC102015_ECS_Annual_Report.PDF&usq=AOvVaw0E2Nk_B3ID6sjJobTp_C5

² <https://www.energy-community.org/aboutus/howweare.html>

³ <https://ec.europa.eu/environment/archives/industry/stationary/lcp/legislation.htm>

Civil society organizations brought a complaint to the Energy Community in January 2014,² an international organization which brings together the European Union and neighboring countries to create an integrated pan-European energy market, challenging the environmental permit. The complaint argued that the permit allowed for 2-3 times more air pollution than allowed by the European Large Combustion Plants Directive.³

In 2015, the company received a revised environmental permit, with lower emissions allowances, from the competent ministry in the Republika Srpska of Bosnia and Herzegovina. The Energy Community determined that the authorities conducted a proper environmental impact assessment procedure prior to issuing the permit. Nevertheless, the permit is allegedly outdated, since after it was issued, the Energy Community has developed a stricter application of the European Industrial Emissions Directive.

Tuzla 7

In 2014, Elektroprivreda Bosne and Hercegovine (EPBiH), a publicly owned electricity company with 90.37% of its capital owned by the Federation of Bosnia and Herzegovina, concluded a contract with China Gezhouba Group and Guangdong Electric Power Design for a new unit 7 at the Tuzla Thermal Power Plant. In 2017, EPBiH signed a loan contract with the Export-Import Bank of China. The parliament of Bosnia and Herzegovina approved a guarantee for the planned loan in April 2019. Since 2018, the Energy Community Secretariat has been investigating this loan as an alleged illegal state aid under the Energy Community Treaty.⁴

In July 2009 the Tuzla 7 plant received its first environmental permit, which was renewed in July 2016 despite complaints by civil society during the environmental impact assessment procedure that the plant did not prescribe emission values aligning with the European Industrial Emission Directive.

Since 2019, the Supreme Court of Bosnia and Herzegovina is considering a case brought by Ekotim, the Association for the Protection and Promotion of the Environment, Nature and Health, challenging this permit for procedural irregularities and deficiencies in relation to allegations of violations of procedural rights, including on the right to information and participation.

Additionally, a report commissioned on the health impacts of Tuzla 7 and Banovići by the Center for Ecology and Energy from Tuzla, a Bosnian-Herzegovinan non-governmental organization, found that the health-related costs of the project would amount to 810 million Euros and 39,000 life-years lost between 2015 and 2030.⁵

In 2016, the Cantonal Court in Sarajevo declined three lawsuits brought by Ekotim, challenging the legality of environmental permits issued by the

² <https://www.energy-community.org/aboutus/whoweare.html>

³ <https://ec.europa.eu/environment/archives/industry/stationary/lcp/legislation.htm>

⁴ Treaty: <https://www.energy-community.org/legal/treaty.html>; Secretariat: <https://www.energy-community.org/aboutus/secretariat.html>

Center of Ecology and Energy, Health Impacts of Coal Fired Power Generation in Tuzla, pg. 4, https://www.researchgate.net/publication/284479851_HEALTH_IMPACTS_OF_COAL_FIRED_POWER_GENERATION_IN_TUZLA.

Ministry of Environment and Tourism of the Federation of Bosnia and Herzegovina pertaining to:

- the creation of the reservoir “Ramici“ at Banovici municipality with the aim to secure industrial water for the needs of future Thermal Power Plant Banovici 1-350 Mwe.
- the combustion facility of the Block 7 of the Thermal Power Plant Tuzla, installed capacity 450 MW, in Thermal Power Plant Tuzla
- the construction of Thermal Power Plant Banovici, installed capacity 350 MW of electricity, i.e. 790 MW of “thermal energy”.

According to the information received, the Cantonal Court declined to hear the lawsuits because the plaintiff’s address was not in the area of influence of the project. By acting in such manner, it is alleged the court denied access to justice in violation of the Law on Protection of Environment and the Law on Administrative dispute of Bosnia and Herzegovina, as well as the UNECE Convention on access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). In this regard, Article 31, paragraph (1) of the Law on Protection of the Environment, clearly stipulates that "in accordance with the provisions of this Law, the public has access to information, participation in decision-making and protection of rights before administrative and judicial authorities in matters of environmental protection without discrimination on grounds of nationality or place of residence and in the case of legal persons, without discrimination based on their place of registration or center of activity.”

In 2017, the Ombudsman Institution for Human Rights of Bosnia and Herzegovina warned about the formation of a landfill for the disposal of slag and ash from the Tuzla Thermal Power Plant. It asserted that the landfill harmed the re-cultivation of the degraded surface of a former surface mine, which would affect citizens living in the vicinity. Local people successfully resisted this landfill through continued pressure on the Government from 2015 to 2019, which means there is no place for the current plant’s waste to be deposited at.

Banovići

In 2017 the Federal Ministry for Physical Planning of Bosnia and Herzegovina denied a construction permit for the Banovići plant, but the project allegedly continues to move forward.

The project is conducted by RMU Banovići, a company co-owned by the State, which aims to construct and operate a coal fired power plant at the Banovići mine near Tuzla. Furthermore, an engineering, procurement, and construction (EPC) contract signed with Dongfang Electric Corporation and financed by the Industrial and Commercial Bank of China is allegedly expected but has yet not been confirmed.

The site of the Tuzla Thermal Power Plant is close to populated areas and the Banovići plant could have potential negative impacts on water use in the

region. More specifically, the plant would need cooling from the same reservoir, which also provides local people with drinking water, potentially impacting on access and availability of safe drinking water.

Air pollution is already a significant issue in Bosnia and Herzegovina, particularly in areas surrounding existing coal power plants, which affects the health and quality of life of residents. Health impacts associated with emissions from Tuzla power station in 2013 include 231 cases of chronic bronchitis for adults, 1,143 cases of bronchitis in children, 17 hospitalizations for respiratory issues, 157 cases of adult hospitalizations for cardiac issues, and 12,335 cases of child asthma.⁶ The World Bank has also found that the people living in Bosnia and Herzegovina breathe in more toxic particulate air pollution than the population in Western European countries, due in part to a reduction of coal-powered plants in those countries.⁷

It is alleged that Bosnia and Herzegovina is among European countries which are mostly affected by pollution from coal fired power plants. Yet, new coal-fired units are still being planned and constructed, negatively affecting air quality and public health for decades. Emissions from the power plant contribute to ambient concentrations of PM2.5, NO2 and SO2, and increase the risks of both acute and chronic diseases. The impacts extend several hundreds of kilometres from the power plants, affecting air quality in the neighbouring countries, including Croatia, Serbia, Montenegro, Albania, Slovenia and Italy. In the context of the evaluation of the merits of Bosnia and Herzegovina's application for EU membership, in 2020 the European Commission observed that the country needs some level of preparation to take on the obligations of EU membership in the area of environment and climate change.⁸ The European Commission observed that Bosnia and Herzegovina needs to significantly step up the process to align with the EU *acquis* and implement and enforce related legislation. For example, alignment with the EU *acquis* on air quality remains limited; a consistent countrywide strategy for waste management has yet to be developed; and alignment with the EU *acquis* on industrial pollution control and risk management is very limited.

Coal-power plants are one of the three named main sources of volatile organic compounds emissions in Bosnia and Herzegovina, and the European Commission asserts that the State has no accredited bodies monitoring these emissions.

Civil society organizations have raised concerns under the Aarhus Convention and the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) over the transboundary impacts of the coal-powered plants on neighboring countries due to the spread of air pollution. They argue that Bosnia and Herzegovina has failed to notify neighboring countries, as required under the Espoo Convention, about potential

⁶ Center of Ecology and Energy, Health Impacts of Coal Fired Power Generation in Tuzla, pg. 15, https://www.researchgate.net/publication/284479851_HEALTH_IMPACTS_OF_COAL_FIRED_POWER_GENERATION_IN_TUZLA.

⁷ World Bank, Report – AQM in Bosnia and Herzegovina, p. 1, <http://documents1.worldbank.org/curated/en/117281576515111584/pdf/Air-Quality-Management-in-Bosnia-and-Herzegovina.pdf>.

European Commission, Bosnia and Herzegovina 2020 Report, Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, pg. 100.

transboundary pollution from the coal power plants planned for construction.

While we do not wish to prejudge the accuracy of these allegations, we express serious concern at the alleged violations of human rights of the people of Bosnia and Herzegovina. We express particular concern in respect of the human health and the environment of people living in vicinity of the coal-powered plants. Specifically, we express concern regarding the threats to human rights to a healthy environment, life, health, bodily integrity, safe drinking water and sanitation, and the failure to provide adequate information, access to justice and effective remedies to the alleged health conditions resulting from the construction and operation of the coal fired power plants. We further express concern that these conditions exacerbate the already dangerous conditions of climate change by adding, and failing to reduce, emissions of greenhouse gases.

We wish to appeal to your Excellency's Government to take all necessary measures to ensure that those affected by construction and operation of coal-powered plants, including people affected by air pollution and waste, have access to timely, effective and adequate remedies and reparation.

Serious concern is expressed at reports that your Excellency's Government is failing to meet its international human rights obligations to protect the aforementioned human and environmental rights. This is underscored by the obligation under the international human rights framework for your Excellency's Government to protect against human rights abuse within its territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps in relation to business enterprises to prevent, investigate, punish, and redress such abuse through effective policies, legislation, regulations, and adjudication.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate measures taken by your Excellency's Government to ensure the coal-powered plants comply with applicable legislation in Bosnia and Herzegovina as well as international environmental laws and human rights standards, including the right to life, health, the right to a safe, clean, and healthy environment, safe drinking water and sanitation, and the rights to bodily integrity and information.
3. Please indicate measures taken by your Excellency's Government to harmonize the environmental permitting and regulation systems and implement national, regional and international environmental standards, including through the conduct of environmental human rights impact assessment, for business to create a comprehensive and

consistent standard throughout the State.

4. Please provide further information on any bodies monitoring volatile organic compound emissions and their effect on people's health and the environment in Bosnia and Herzegovina, their accreditation, any findings, and any changes resulting from those findings.
5. Please provide more information on the impacts and damages of the coal-powered plants on the health of citizens through pollution and waste, particularly in areas around these plants and how you ensure access to effective remedy.
6. Please provide information on any monitoring programs of the health conditions of affected population.
7. Please advise about the steps taken by your Excellency's Government to collaborate with the investigation on illegal State aid under the Energy Community Treaty.
8. Please provide information on training programs for relevant authorities to build their capacity to organize effective public participation procedures and comply fully with obligations under the Aarhus Convention and Espoo Convention.
9. Regarding all of the above, please provide information on any specific measures that have been put in place to prevent similar human rights and environmental outcomes, such as the enforcement of the polluter pays principle.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please be informed that a letter on the same subject has also been sent to the Government of China.

Please accept, Excellency, the assurances of our highest consideration.

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Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

David R. Boyd

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. These include the:

- Universal Declaration of Human Rights;
- International Covenant on Economic, Social and Cultural Rights;
- International Covenant on Civil and Political Rights;
- Convention on the Rights of the Child;
- UNECE Convention on access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)
- UN Framework Principles on Human Rights and Environment
- UN Guiding Principles on Business and Human Rights

We would like to particularly bring your Excellency's attention to the human rights obligations under international human rights instruments and under customary international law binding on Bosnia and Herzegovina.

We wish to draw the attention of your Excellency's Government to obligations under international human rights instruments, to which Bosnia and Herzegovina is party, recalling Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), which Bosnia and Herzegovina acceded to on 1 September 1993, which guarantee the right of every individual to life, liberty and security. The UDHR proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance. As highlighted by the Human Rights Committee in General Comment no. 36, duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity, including degradation of the environment (para 26). Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors (para 62). In addition, Article 6 of the Convention on the Rights of the Child (CRC) recognizes that every child has the inherent right to life and requires States parties ensure to the maximum extent possible, the survival and development of the child. It further requires State parties to take all effective and appropriate measures to diminish infant and child mortality.

We would like to remind your Excellency's Government of the explicit recognition of the human right to safe drinking water by the UN General Assembly

(resolution 64/292) and the Human Rights Council (resolution 15/9), which derives from the right to an adequate standard of living, protected under, inter alia, article 25 of the Universal Declaration of Human Rights, and article 11 of International Covenant on Economic Social and Cultural Rights (ICESCR), succeeded to by Bosnia and Herzegovina on 1 September 1993. In its General Comment No. 15, the Committee on Economic, Social and Cultural Rights (CESCR) clarified that the human right to water means that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

We would also like to draw your attention to Article 12 of the ICESCR. The Article enshrines the right to the highest attainable standard of physical and mental health, which is also guaranteed as a part of the UDHR, Article 25 read in terms of the individual's potential, the social and environmental conditions affecting the health of the individual, and in terms of health care services. In its General Comment No. 14, the Committee on Economic, Social and Cultural Rights (CESCR) interprets the right to health as "an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information". Accordingly, States have a duty to adopt measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data. Furthermore, Article 24 of the CRC recognizes the right of the child to the enjoyment of the highest attainable standard of physical and mental health, and the concomitant duty of the State to provide adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.

Moreover, the CESCR stated that "corporate activities can adversely affect the enjoyment of Covenant rights", including through harmful impacts on the right to health, standard of living, the natural environment, and reiterated the "obligation of States Parties to ensure that all economic, social and cultural rights laid down in the Covenant are fully respected and rights holders adequately protected in the context of corporate activities" (E/C.12/2011/1, para. 1).

We would like to recall the duty of all States to prevent exposure to hazardous substances and wastes, as detailed in the 2019 report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes to the UN General Assembly (A/74/480). This obligation derives implicitly, but clearly, from any number of rights and duties enshrined within the global human rights framework, under which States are obligated to respect and fulfil recognized human rights, and to protect those rights, including from the implications of exposure to toxics. Those rights include the human rights to life, health, safe food and water, adequate housing, and safe and healthy working conditions. The duty to prevent exposure is further reinforced by the national and regional recognition of the right to a safe, clean, healthy and sustainable environment, including clean air (see A/HRC/40/54). The existence of the State's duty to prevent exposure is reinforced by the right to full respect for the bodily integrity of the person, which helps to provide context to the extent to which every person should have the right to control what happens to their body (see A/HRC/39/48). Read together, international human rights clearly establish a duty of the part of your Excellency's Government to prevent exposure to hazardous substances and wastes.

We would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) following years of consultations involving Governments, civil society and the business community. The Guiding Principles have been established as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. These Guiding Principles are grounded in recognition of:

- a. “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

The obligation to protect, respect, and fulfill human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, General Comment no. 31 para. 8). In accordance with these legal obligations, Guiding Principle 1 reiterates that the State has a duty “to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.” Moreover, Guiding Principle 3 reiterates that States must take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.” In addition, this requires, *inter alia*, that a State should “provide effective guidance to business enterprises on how to respect human rights throughout their operations”. Lastly, in accordance with the right recognized in treaty and customary international law (see for example ICCPR Article 2 (3)), the Guiding Principles reiterate that States must ensure that victims have access to effective remedies, also in instances where adverse human rights impacts linked to business activities occur.

In addition, we would like to highlight the guarantees and standards of the UNECE Convention on access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), especially of its Article 2 para. 5, Article 3 para. 9, and Article 9 para. 2 of the Aarhus Convention. This Convention guarantees the right of access to justice in environmental matters and secures legal and judicial standing to non-governmental organizations promoting environmental protection and meeting any requirements under national law. Specifically, Article 2 para 5 of the Convention states that “The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest. Moreover, Article 3 para 9 of the Convention states that “the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.” Furthermore Article 9 of

the convention on access to justice states that “each Party shall, within the framework of its national legislation, ensure that members of the public concerned (a) Having a sufficient interest or, alternatively, (b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention. What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above. The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.”

The UN Guiding Principles on business and human rights also clarify that business enterprises have an independent responsibility to respect human rights. Principles 11 to 24 and Principles 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts. The commentary of Guiding Principle 13 notes that business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties.(...) Business enterprise’s “activities” are understood to include both actions and omissions; and its “business relationships” are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services”.

Business enterprises, in turn, are expected to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their impacts on human rights. Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Similarly, where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible (commentary to Guiding Principle 19). Moreover, where business enterprises “identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes” (Guiding Principle 22).

Furthermore, business enterprises should remedy any actual adverse impact that they cause or to which they contribute. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to

influence the outcome (commentary to Guiding Principle 25).

Finally, the Framework Principles on Human Rights and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. More specifically, principle 12, provides that States should ensure the effective enforcement of their environmental standards against public and private actors. As per principle 14, States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.