

Options to Address Gaps

Submission by NGOs

NGOs would like to submit the following options for consideration to address gaps in international environmental legislation, governance and implementation.

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Global Pact for the Environment

“There is no doubt in my mind that global challenges require global solutions. No country can do it alone.” - Tweet from Antonio Guterres, UN Secretary General (January 2019).

We support the development and introduction of a [Global Pact for the Environment](#), which would act as an “umbrella text” to unify, structure and strengthen international environmental law; codifying updated and improved environmental principles in one comprehensive, legally binding document.

This would help to address the problem stressed by the Secretary General’s Gap Report of the general lack of coherence and synergy among the large body of existing sectoral regulatory frameworks. International environmental governance is currently built on more than 500 global and regional instruments, covering topics ranging from the air to land, to marine ecosystems and hazardous chemicals and waste. There is both sectoral and geographic fragmentation of this governance, as well as an overall lack of results (despite some unquestionable achievements). The goal of the draft Global Pact for the Environment (Global Pact) is not to duplicate or usurp these existing measures, but to strengthen the implementation and effectiveness of Multilateral Environmental Agreements (MEAs) and place the environment under jurisdiction as a subject to defend and protect, in the realization that the natural environment is the source of life itself as well as all resources necessary for human beings to survive.

The Gap Report clearly states the need for a global systemic approach (Para 80): “The proliferation of multilateral environmental agreements and the resultant distinct and separate mandates ignore the unity, interconnectivity and interdependence of the Earth’s ecosystem”.

Many of the threats to the Earth’s community of life are global in nature. For example, transboundary pollution of our air, oceans and rivers (including chemicals, marine debris and anthropogenic noise) has adverse and often severe environmental and health impacts

which go beyond national boundaries. To echo the Gap Report, we need to ensure that: “States are required to contribute to the conservation, protection and restoration of the integrity of the Earth’s ecosystem”. We also need a framework that requires Member States to cooperate and coordinate on harmonised measures for monitoring and reporting, which incorporates the latest scientific developments regarding knowledge of Earth Systems.

We feel that the [preliminary draft of the Global Pact](#) contains some excellent and useful provisions, and could form the basis of a working draft to be further elaborated by Member States and other Stakeholders. For the Global Pact to meet its objectives, the general principles must be confirmed and translated into justiciable rights and obligations, and accompanied by guarantees of effective monitoring and implementation. An ambitious Global Pact could incorporate the principles already established, but also new ideas for principles expressed in the 2030 Agenda for Sustainable Development. It is key that civil society as a whole, including indigenous peoples, scientific communities and the private sector play a crucial role in the development of this Global Pact. Without ownership of those stakeholders the Global Pact will be just dead letter.

There would be significant advantages in clarifying the content and status of environmental principles, including those which are already incorporated in MEAs. This would meet the need to address a lack of international consensus concerning environmental principles as observed by international courts and tribunals; and enhance implementation of MEAs at both national and international levels.

However, in line with the principle of non-regression, it is vital that environmental standards and principles are not watered down to the lowest common denominator in a new and legally binding instrument. Indeed, what is needed are notable and substantive environmental principles that make real progress in tackling environmental degradation.

The International Organization for Standardization (ISO) records the [views of Cecile Fruman](#), former World Bank Group Director for Trade and Competitiveness Global Practices, that many benefits would accrue from the adoption of international standards for protecting human health and the natural environment, including the achievement of the SDGs. See the following benefits:

- Support sustainable development and productivity gains
- Help facilitate the adoption of good regulatory practice and create economies of scale that are particularly beneficial for small and medium sized enterprises
- Promote innovation and technology diffusion
- Level the playing field on environmental and societal issues, and codify international agreements
- Provide common ground for understanding and agreement on difficult issues, e.g. social responsibility and accountability
- Help to protect communities and consumers from unsafe and harmful products and practices

Environmental Rights

We support the establishment of specific environmental rights. The most important of these would be:

- The universal right to an ecologically sound environment; which is safe, clean, healthy and sustainable.

This is integral to the full enjoyment of a wide range of human rights, including the rights to life, health, well-being, food, water and sanitation.

- The rights of environmental defenders and environmental media to pursue their work without physical and verbal threats, harassment, criminalisation, victimisation, or damage.

Almost four environmental defenders were killed each week during 2017. Yet international environmental law currently lacks an appropriate legal framework to protect environmental rights defenders. This is integral to the enjoyment of existing human rights, such as:

- *The right to freedom of opinion and expression (which includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers).*
- *The right to life, liberty and security of person.*
- *No one shall be subjected to arbitrary arrest, detention or exile.*

It must also be recognised that human rights to a healthy environment can only exist where these go hand in hand with duties to take care of the environment.

There should also be support and encouragement for progressive moves to legally protect and respect the inherent “Rights of Nature”. Doing so evolves our treatment of nature from being mere “property” to a co-inhabitant of our shared planet - upon which the well-being of all of life ultimately depends. Indigenous peoples across the world have recognised nature's inherent value and rights for millennia. Already, Ecuador and Bolivia recognise Rights of Nature in their Constitutions and at the national level, and dozens of local and regional governments recognise nature's rights, as well. The rights of rivers in particular are being recognised worldwide, including in New Zealand, Columbia, and Mexico City. A listing of such laws along with establishing court cases can be found at: <http://www.harmonywithnatureun.org>

International Environmental Court of Justice

Following on from above, we feel that strong juridical and judicial systems are vital. We favour the establishment of an International Environmental Court of Justice (to ensure the necessary level of impartiality, expertise and competence).

However, if this is not yet politically feasible, then alternative suggestions are to further empower the International Criminal Court and strengthen it so that it may become prepared to deal with environmental crimes or for the International Court of Justice to be further strengthened and directed to focus more on environmental provisions and environmental justice.

Governance

The problem most stressed by the Report of the Secretary General is the fragmentation and a general lack of coherence and synergy among a large body of sectoral regulatory frameworks.

There have been over 700 Multilateral Environmental Agreements (MEAs) negotiated over the past nearly 50 years (ranging from bilateral water treaties to global climate pacts). This shows that UN Environment plays a vital role in the intergovernmental processes. On many issues like ozone, biodiversity and chemicals, and currently plastics, UN Environment is the one and only international body addressing environmental challenges at a global level.

All MEAs have been established with their own governing councils, which weakened the role that UN Environment could be playing as the global advocate for the environment. It is important to cluster and re-structure MEAs in a way that creates synergy, ensures more effective reporting, and provides a clearer picture of the state of the environment. This work was begun under Mr. Steiner, in relation to chemicals and waste and, in part, biodiversity, and should continue in order to increase sectoral coherence and create management efficiencies.

Clustering is one of the most effective ways to address the problem of the existing silos that miss the essential overlap between science sectors, and the importance of finding the appropriate responses while not impacting other areas by mistake.

Clustering should be accompanied by a broader strategic oversight function, considering Earth Systems, using the latest scientific knowledge to provide a holistic analysis and overview of the state of the world's environment.

Each cluster should carefully consider the coverage of existing MEAs, and the need to extend these (either in scope or number) to cover any identified gaps. In particular, careful consideration should be given to any gaps identified in the Secretary General's report, including: protection of land and soil; the use of pesticides; pollution of marine areas by land-based activities; transboundary air pollution; and the prevention of pollution and wastes at source.

There should also be a process of identification of the sectors which cause the most environmental degradation, followed by analysis of root causes/drivers and preventative measures. Where this process identifies new sectoral gaps, then consideration should be given to the development of new conventions/treaties. This should include new and emerging issues of concern, including food and energy security/systems and the impact of new technologies.

Strategic oversight could also facilitate a review of best practice in environmental treaties/conventions, and subsequent consideration for adoption in other areas.

Financial and Economic Measures

The most important thing about financial and economic measures is that these should not just embed the status quo of environmental degradation, with a cost attached. The precautionary principle must be applied, with regulation of the market; preventing contamination and waste of products and food; solving pollution at its source; and banning environmentally damaging products and substances from entering the market in the first place. Technology to green the supply chain, such as using blockchain technology, can help ensure the safety of food, products and other goods, and provide proof of adherence to environmental, health and other relevant standards. If there is no proof of their compatibility with environmental regulation/requirements, then “no data, no market”.

A key driver of environmental destruction and degradation (as well as growing inequality) is the current development paradigm whereby the focus is on economic growth as measured by GDP. Sustainable development is meant to be a “three-legged stool”, with social and environmental concerns of importance. There needs to be significant budgetary reform to support the new development paradigm which has been consistently called for by the NGO Major Group – one which prioritises the flourishing of people, animals and the environment. After all, development is qualitative, not just quantitative.

The [UN reports](#) that the world economy is growing, but the benefits are not reaching those who need them most. We need a new economic system that will place well-being and the environment at the forefront, and return to and stay within our planetary boundaries. This could be a “restorative economy”, with options for financial measures for prevention and change. This would include aspects such as “polluter pays plus” – disincentives for unsustainable or polluting practices/products, incentives for transition to more environmental and sustainable alternatives, the removal of subsidies for unsustainable production, and moves towards a circular economy, decoupling our economy from resource use in absolute terms.

New Zealand is moving towards a new [economic system based on well-being](#). This is based on what the Maori language calls “kaitiakitanga”, or guardianship. This looks beyond the usual short – three or four year – electoral cycles, towards a kinder and more sustainable future. It is based on the acceptance that the race to grow our economies makes us all poorer if it comes at the cost of our environment, or leaves our people behind.

One of the identified gaps in the UN Secretary General’s report for the Global Pact for the Environment was corporate responsibility for environmental damage. This has been spoken about for decades, with no significant action as yet. There is now an urgent need to introduce measures to ensure that corporations all along the supply chain respect environmental rights. In this regard, close cooperation would be needed with the intergovernmental working group on transnational corporations and other business enterprises and human rights, which was established at the 26th session of the Human Rights Council (26th June 2014). Whilst not detracting from the need for firm regulation as core protection, it is vital that such measures should include “a supportive and open international economic system ... to better address problems of environmental degradation” (as per the Rio Declaration). Other economic measures need to be carefully considered to provide strong disincentives to environmental degradation and incentives to

support the development of environmentally-friendly and sustainable systems, methods and technologies. For example, taxes such as Pigouvian Taxes, which are levied on actions that degrade or deplete the environment. Through such taxes, products that pollute or degrade would become uneconomical, and business would be inclined to steer away from them, and develop more sustainable alternatives.

Where there has already been pollution/degradation of the environment, then where possible the person or entity responsible should be required to bring it back to its original state. This should either be in the form of restorative actions, or reparations. Governments should be responsible for the introduction of effective preventative measures, and where they fail to do so, it should clearly be their responsibility to protect human health and the environment.

Preventative action is particularly important in the case of cross-boundary impacts.

Maxwell Gomera, a Director of the Biodiversity and Ecosystem Services Branch at UN Environment has made this case in a [recent article](#). He stressed that our food systems need an overhaul. Agriculture emits more greenhouse gases than all our cars, trucks, trains, and airplanes combined. It consumes a whopping 70 percent of all freshwater on earth. Runoff from fertilisers, pesticides, antibiotic residues and heavy metals pollutes lakes, rivers, and coastal ecosystems, and enters the food chain. Also, effluents from the meat and dairy industry create an enormous toxic burden which contaminates groundwater and surrounding waterways. Agriculture also causes approximately 80 percent of forest loss, which together with burning of crop residues significantly contributes to climate change. With human population growing and life expectancy increasing, these impacts are set to worsen.

But these impacts are not inevitable. They result from the failings of our economic development process. In pursuit of wealth creation, promoting excessive material consumption and economic growth, we are ironically destroying the very nature that underpins our survival and existence.

Solutions will only come when we confront the economic system that is enabling this and change the way we produce our food, products and services.

Globally, the Convention on Biological Diversity has called for the world to commit to a “New Deal for Nature” in Beijing in 2020. This New Deal attempts to ensure that everyday economic choices do not undermine nature. It will guide policy by measuring and accounting for nature’s contributions to our economic systems, an approach that was recently championed by UN Environment’s Inclusive Wealth Report and the UN Statistical Division’s System of Environmental-Economic Accounting. This approach attempts to measure nature’s previously invisible benefits, taking a first step towards managing nature for both its own good and for human welfare. However, such steps need to be very carefully considered, to ensure that they do not degrade the importance and intrinsic value of nature by monetising this. At the end of the day, we need to aim for the recreation of a widespread respect and reverence for nature, not commoditisation.

World Leaders should be developing new solutions to transform our relationship with nature before 2020. These should include the transition to sustainable sources of protein, improved agricultural productivity, the elimination of unnecessary and harmful subsidies, and the use of incentives for citizens to eat and live more sustainably. Other measures could include:

- Implementing legal strategies to incentivise limiting the total environmental impact of our production system, such as Integrated and Extended Producers Responsibility schemes, by making the manufacturer responsible for the entire supply chain and life-cycle of the product and especially for funding the take-back, recycling and final disposal.
- Redefining the shareholder value law/regulation to avoid production based on 'maximised profit' and instead to promote production based on 'societal benefit and environmental benignity'.
- Internalising social and environmental costs (at the source) and the application of fair pricing.
- Using financial instruments: tax shift from income tax towards environmental use/global taxes such as the border adjustment tax to tax products from those countries that are causing climate change.

We must take a step-wise path moving towards a Circular Economy, that must be toxic-free and fossil-free (absolute decoupling from/efficiency towards sufficiency), and measured and enabled through:

- Energy and resource management at all levels of production.
- Sector strategies associated with targets for resource productivity and circularity.
- Avoiding exploiting geographic externalities: in weaker economies with weaker standards, lower labour costs should not be disproportionately burdened by environmental harm.
- The circular economy cannot be used as rationale for externalising costs of proper waste management by export to weaker economies for unsustainable or sham recycling.
- Standardising products, setting up basic/minimal environmental criteria for products, including information on the products and the implementation of the right to know.
- Including mainstream resource efficiency and eco-innovation in national Small and Medium sized Enterprises' (SMEs') support strategies and programmes, including financing mechanisms.

Monitoring and Implementation

UN Environment's major limitation is its lack of implementation and enforcement powers at the national level. Real inroads could be made into the current environmental crisis simply by implementing all existing MEAs and UNEA resolutions. However, experience has shown that this is not going to happen without clear legal frameworks and responsibilities, national regulation and rule of law, government and corporate accountability, backed up by an obligatory reporting system, monitoring and openness/transparency.

This would take the development of considerable political will. Also, to be successful, it would necessitate a peoples- and nature centred approach, which measures and prioritises the indications coming from people and nature itself. Scientists have developed a set of [nine planetary boundaries](#) that must be respected if the Earth System is to be maintained in a stable state that is hospitable for human societies to survive and thrive. This model should be incorporated in any environmental monitoring system. Modelling and monitoring the system is needed, as a whole rather than reductionist or sectoral practices, since nature consists of many subsystems that are all interconnected. Lifecycle analysis of products and practices further enables greater visibility into the root causes of the threats to planetary boundaries.

We have already exceeded four of these planetary boundaries, and action needs to be taken to ensure that we return to and live within all the boundaries. Such action could include [defining and quantifying national-level targets, indicators and benchmarks for management of natural resources](#).

To ensure effective monitoring and analysis, we would need:

- Vigorous reporting requirements.
- Strengthened scientific technical analysis capacity.
- Mapping of existing conventions/treaties – against planetary boundaries framework.
- In-depth analysis of crisis areas: Which aspects are not yet adequately covered.
- Analysis of other aspects which are not currently covered.

Education and Awareness

One of the most effective tools in the armoury of prevention against environmental damage and resource depletion is the development of respect and reverence for Nature. This can be developed through education and awareness; providing effective methods and messaging are used, and an action-oriented approach adopted.

There needs to be a stronger commitment to ensuring that effective environmental education is taught to members of the younger generation, and education and awareness campaigns directed to adults, in order to inspire all individuals with the sense of responsibility and action-orientation needed to protect and improve the environment. This would mean new obligations for member states, and new ways of working for UN Environment.

As regards adult education and awareness, this should include the provision of clear environmental information on consumer products to enable informed choice; the development of assessment tools to compare the environmental impacts of product and lifestyle choices; targeted information and awareness campaigns; and the dissemination by mass media of information of an educational nature on ecosystems and on the need to protect and preserve the environment.

As regards school education, there is already a Sustainable Development Goal (SDG) on education, and this requires (Target 4.7.) all learners to acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles, etc. Education for sustainable

development and global citizenship education are to be mainstreamed at all levels of education policies, curricula, teacher education and student assessment.

As [UN Environment recognises](#), environmental education – including learning, research and innovation – is fundamental to sustainable development. Environmental education and training promote attitudes and value systems that influence environmentally ethical behaviour. It also empowers people to build societies that are both ecologically sustainable and socially just. Likewise, awareness-raising and training are essential to UN Environment’s mission to “inspire, inform and enable” nations and peoples to live more sustainably.

The main problem is that most of the targets of SDG4 are drafted based on traditional educational content and methodology. A much more progressive, holistic and developmental education is needed to transform students to deal with an increasingly complex, interlinked, rapidly-changing global world - with more emphasis on participatory pedagogy (as opposed to the traditional imparting of facts and figures). This is particularly true given that the next generation will need to address a world where human actions are rapidly destroying our environment, degrading human rights, and causing immense suffering and wholesale extinctions of animals. Much more is needed than just learning about sustainable development. We need a new generation with very different values, and an adaptive and “solutionary” approach to earth’s many problems.

The decade 2005-2014 was the Decade of Education for Sustainable Development (DESD), and UNEP had a full [strategy for Environmental Education and Training](#). However, when you travel to schools in various continents and countries, you still see lack-lustre environmental education, which deals only with environmental problems, rather than developing respect and reverence for nature. This simply causes learners to “switch-off”, instead of firing them to action that leads to more systemic change.

Much more progressive thought and political will is needed to ensure school curriculums which will be fit for future global society and future world problems and crises. The development of human capital is the root intervention for future sustainability. But many education authorities are carrying on as if “business as usual” is an option.

One new innovation has been the effective development of “[Humane Education](#)”, which is a process that encourages an understanding of the need for compassion and respect for people, animals and the environment and recognises the interdependence of all living things”.

This is particularly valuable in our increasingly interdependent and interconnected world. Furthermore, Humane Education has been found to have a raft of positive benefits including the development of compassion and empathy, emotional intelligence and tolerance, pro-social attitudes, ethics and values. It can play an important role in creating a compassionate and caring society which would take benign responsibility for ourselves, each other, our fellow animals and the earth - new “solutionaries”

Capacity Building and International Development

There is still much work that UN Environment must do to strengthen capacity building around the environment for developing countries. This should be undertaken within the

new development framework as pioneered by the Secretary General by working with the UN family and the UN country teams to address the needs that developing countries have identified, but should also be accomplished by more effectively identifying and working closely with stakeholders. For example, many NGOs are already working to support environmental development.

There is also much more that could be done in environmental capacity building and ecological development in international development work. Some countries' (and NGOs') international development work continues to focus on resource depleting or environmentally degrading practices. This cannot continue. We need new policy approaches, and constant monitoring, to ensure that development is sustainable and ecological.

Such capacity building should include technical assistance and support for the implementation of existing MEAs and UNEA resolutions. It is also very important that civil society groups have sound knowledge of the existing MEAs and the outcomes of UNEAs, so they can push for national implementation and enforcement.

As stated in the Rio Declaration, "States shall cooperate in a spirit of global partnership to **conserve, protect and restore** the health and integrity of the Earth's ecosystem". We agree with the draft Global Pact for the Environment (Article 20) that "the special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special attention." However, we are concerned about the reference to "common but differentiated responsibilities and respective capabilities, in light of different national circumstances." We do not feel that there should be double standards between developed and developing countries. The crisis we are facing calls for ambitious reform, not political "opt-outs". There is a clear moral responsibility for the developed countries that have caused resource depletion and environmental degradation to help and support developing countries to meet their obligations, and moreover to stop having lifestyles that have negative social and environmental spillovers to resource-rich developing countries.

Member States Commitments

Lack of political will is probably the single largest barrier to the environmental reform that is needed to save the planet. Member States should make commitments with tangible and measurable deliverables, including:

- Introduce **effective** environmental legislation (as per the Rio principles) and enforcement mechanisms, including environmental impact assessment (which puts the onus of proof on the applicant).
- Include the agreed environmental principles/rights of nature in their constitution (where a written constitution exists).
- Include the agreed environmental principles in their national legislation, implementation and enforcement mechanisms, and environmental impact assessments.
- Mainstream the agreed environmental principles across all government policies and programmes.

- Prioritize actions that prevent and control pollution at its source
- Fully implement all international environmental agreements to which they are parties.
- Give access to civil society groups and citizens to information, participation and justice (principle 10)

There should also be a requirement for the appointment of an international and national ombudsman for the protection of the environment and future generations.

There needs to be express recognition of the need for **governments** to take action to reduce human impacts on the natural environment, to protect the environment from future damage, and to remediate past impacts.

Stakeholders and Partnerships

A 21st century governance structure is needed for all environmental measures, whereby civil society has a “seat at the table”, rather than token and cursory consultation as an add on to authenticate proceedings. Civil society/NGO participation/partnerships should be included in all MEAs. The approaches we now see in the Committee for Food Security and UNAIDS, should be adopted, where Major Groups and Other Stakeholders are actually part of the governance structure.

The process towards the Global Pact should be based on majority voting, and not the consensus model, even if this requires a longer road to universalisation. Space for civil society in any process towards the Global Pact should be guaranteed, and should mean meaningful procedural and substantive engagement throughout.

Other suggestions for improved stakeholder engagement include:

- Capacity building of civil society to ensure they can make informed and effective contributions.
- The establishment of an Environment Multi-Stakeholder Group to address pressing issues related to environmental reporting.

There should be a main role for **Stakeholder Groups that defends the environment, nature and animals**. The majority of the current Stakeholder Groups represent economic and social interests, and one group represents private interests, but there is no sole representation on behalf of environment, nature and animals: These cannot represent their own interests, and need voices to speak on their behalf.

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