

## Methodology Notes

This document sets out the methodology for the Environmental Rule of Law questionnaire ('questionnaire'), carried out as part of the United Nations Environment Programme's (UNEP) Second Global Report on the Environmental Rule of Law (EROL Report). UNEP was assisted in the collection of this data by the Cyrus R. Vance Center (Vance Center) for International Justice and the global law firm, White & Case. The data included in the EROL Report reflects responses to a global questionnaire, followed by two review processes.

### The questionnaire

UNEP developed 22 questions to be included in the questionnaire. All questions can be found in **Annex A**. Each question was answered by a lawyer in respect of all 193 UN member states. In most cases, the questionnaire was completed by a lawyer from White & Case<sup>1</sup>. Questionnaires completed by White & Case lawyers were typically completed by either one or two volunteer attorneys, with one Counsel or Partner supervising. Instances where other lawyers completed the questionnaire are noted in **Appendix 1**. Where Questionnaires were completed by lawyers from outside White & Case, the Vance Center provided an initial review of survey responses. All questions were answered in English.

Each question was divided into two parts as follows:

- a. Part A of each question requests a 'yes', 'no' or 'unsure' answer, with some questions providing an additional possible response of 'N/A' (see, for example, question 4A on whether a state's national level environmental agency, if there is one, has a guaranteed allocation of funding); and
- b. Part B of each question asks for a summary of research and sources for each question, indicating the information on which the lawyer relied upon in order to complete the questionnaire.

A copy of the questionnaire can be found at **Appendix 2** below.

It should be noted that the questionnaire responses are time-restrained. Specifically:

- a. The information for each jurisdiction reflects the information publicly available at the time each volunteer completed the research for that jurisdiction. This research was completed for different jurisdictions between approximately November 2020 and June 2021; and

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<sup>1</sup> In total, more than 260 lawyers and other White & Case employees participated in the completion of the questionnaires, from over 35 offices in the White & Case network.

- b. Certain jurisdictions were researched with reference to information applicable at certain periods of time. In particular, the questionnaire for Myanmar contains information applicable to the state of environmental rule of law in Myanmar prior to the political upheaval in early 2021.

## **Review One**

After submission, all questionnaire responses were reviewed twice. The first review was carried out by a review team within White & Case. Changes were made based on the methodology, set out in **Appendix 3**, to ensure consistency in the responses and a meaningful dataset. It was thought that a dataset that comprised numerous 'unsure' responses would produce uncertain results. As the questionnaire responses included a detailed review of publicly available information (which was cited by respondents in Part B of each section), if no information could be found to support a 'yes' response, then the response was recorded as 'no'.

Questions for which it was often particularly difficult to find publicly available information included:

- a. Question 9, on whether any environmental defenders had been killed in the state in 2019-2020 due to their activities connected with environmental protection;
- b. Question 14, relating to whether courts in the state had adjudicated cases on the right to a healthy environment; and
- c. Question 22, on whether judicial training institutes in the state (if there are any) included environmental law in their training in 2019-2020.

In order to create a meaningful dataset despite these difficulties in acquiring data for certain questions, and to minimize 'unsure' answers for each question, the reviewers applied the framework of review set out in Appendix 3.

### Approach to non-binary responses

Three questions included an 'N/A' response option. These questions were:

- a. Question 4, which included the response 'N/A' (there is no national agency);
- b. Question 7, which included the response 'The country does not have a NHRI'; and
- c. Question 18, which included the response 'N/A' (the country did not submit a report to the UN Human Rights Council in 2019 or 2020).

## Data sensitivity

Some responses include sensitive information. For instance, certain answers by volunteers in relation to Question 10 (on whether the country has laws protecting environmental defenders) pointed to human rights abuses perpetrated by state agents in the relevant jurisdiction as a factor suggesting that laws protecting environmental defenders were either not present or not enforced.

In order to address the potential sensitivity of such answers, White & Case conducted a thorough review of all answers submitted by White & Case lawyers. Where volunteers' answers made comments about countries' approaches to particularly sensitive issues, such as human rights breaches, White & Case sought to reword answers so as to ensure that such comments were made by way of reference to independent, third-party sources (where available).

## **Review Two**

Following the review by White & Case, a second review was carried out by the Vance Center under direction (and in consultation with) UNEP staff. This review proceeded in two stages. First, every response to Part A of each questionnaire question was checked against information in Part B. Where discrepancies emerged, the information in Part B was relied upon to update the response to Part A in line with the evidence presented in Part B. This process corrected minor clerical errors, and identified instances where a volunteer may have misunderstood a term used in the question. All amended responses were checked for consistent with the methodology used in Review One and set out at Appendix 3.

Secondly, the responses were cross-checked against existing trusted databases. These included:

- a. For Question 7, the Global Association of National Human Rights Institutes' list of accredited National Human Rights Institutes as of December 2020<sup>2</sup>
- b. For Question 8, the list of state parties to the Aarhus Convention and Escazu Agreement
- c. For Question 9, the 2019 and 2020 reports of the NGO Global Witness
- d. For Question 10, the list of state parties to the Escazu Agreement
- e. For Question 11, the list of state parties to the Aarhus Convention and Escazu Agreement

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<sup>2</sup> Some countries, such as Fiji, have subsequently been accredited to GANHRI, but are not treated as having an NHRI for the purposes of this dataset.

- f. For Questions 13 and 14, an existing database on the right to a healthy environment, prepared by the Vance Center to support the Special Rapporteur on human rights and the environment's report A/HRC/43/53 (2020)<sup>3</sup>
- g. For Question 15, the United Nations 'Harmony with Nature' database
- h. For Question 16, the list of state parties to the Escazu Agreement
- i. For Question 17, the World Resources Institute's 'LandMark' database

Following this process, a limited number of questions were amended to add additional response categories, based on information provided in Part B:

- a. Question 8 was amended to divide 'yes' responses into 'Yes – Specific' and 'Yes – General' (to reflect responses which recorded a specific law versus a general law)
- b. Question 11 was amended to clarify countries where the 'Yes' response to this question was a result only of being a state party to the Aarhus Convention ('Yes – Aarhus') or Escazu Agreement ('Yes – Escazu')
- c. Question 14 was amended to add an 'N/A' option, which applied for all countries where a 'No' response was recorded for the predicate Question 13
- d. Question 17 was amended to add an 'FPIC' option, which applied to all countries which specifically identified a 'free, prior and informed consent' law in the Part B response to the question, or in the 'LandMark' database
- e. Question 19 was amended to add an 'NGO' option, which applies to responses which identified that a country had a specific legal provision which permitted certain NGOs to have very broad rights of standing in environmental matters

A full account of all data changes which took place at Review Two can be found at **Appendix 4**.

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<sup>3</sup> The question 14 cross-check against this database was carried out by UNEP personnel.

## Caveats

The collected data have limitations. UNEP does not intend to use this information to evaluate, index, or rank state laws and practices, and the quantitative data must be read together with other factors, including the expert chapters contained in the EROL Report. The following caveats should be borne in mind.

- a. Most of the indicators relate to a set of ‘yes or no’ binary questions. While this ensures simplicity, it also precludes consideration of context and complexity. For example, a country may not have ‘specialized prosecutors for prosecuting environmental offences’ (Question 5), but nevertheless have an effective system of law enforcement which includes generalist prosecutors who are able to effectively prosecute environmental cases. The data also do not reflect instances where some legal systems within a country (such as a subnational state) report the presence of an indicator while others do not; instead, for most questions, responses of this type are coded as ‘yes’ if any subnational jurisdiction meets the question’s criteria.
- b. Most of the indicators relate to formal laws and regulations. Nevertheless, the laws may not be upheld or adhered to in practice, and the data do not attempt to capture this dynamic.
- c. It is very difficult to ensure consistency of responses across so many different languages and legal systems. While all responses were reviewed, UNEP and its partners cannot guarantee whether some questions were interpreted differently, resulting in incommensurate responses. For example, although guidance and methodologies were provided to participating lawyers, different participants may have had different interpretations of what constitutes an ‘independent environmental protection agency’ (indicator 3).
- d. Some of the information required to answer several of the survey questions may not be available in some countries, or be difficult to access.

In sum, the data offers a simple, high-level snapshot of the environmental rule of law. While some of the more contextual detail was captured in survey responses where participants were given space to offer more information in narrative form, it is not captured in the quantitative data. This summary chapter refers to this narrative information only where particularly obvious trends were evident across countries.

Despite these caveats, the data gathered in this survey help to build a picture of the global state of the environmental rule of law in a quantitative form. This data should be read together with the four substantive chapters that assess qualitative trends and offer analysis of the environmental rule of law. Because the purpose of the survey is to provide a global snapshot rather than evaluation of state performance, country level data is not included with the EROL Report.

## Annex A – List of indicators

	Indicators
	<b>Laws</b>
1	Has the country relaxed, removed or suspended environmental protection laws or policies, and/or their enforcement, as a direct response to COVID-19 at national and/or sub-national level?
2	Has the country introduced new laws or policies increasing environmental protection as a direct response to COVID-19 at national and/or sub-national level?
	<b>Institutions</b>
3	Does the country have an independent environmental protection agency/institution or equivalent at the national level?
4	Does the national level environmental agency/ministry, if there is one, have a guaranteed allocation of funding from the national budget?
5	Does the country have specialized public prosecutors for prosecuting environmental offences at the national and/or sub-national level?
6	Do the general enforcement agencies (e.g. police, customs) at the national and/or sub-national level have an explicit legal mandate to enforce environmental legislation?
7	Does the country's National Human Rights Institution (NHRI) have an explicit mandate, policy or work programme relating to the environment?
	<b>Civic Engagement</b>
8	Does the country have provisions in its legal framework at national and/or sub-national level guaranteeing the right of access to information, rights of public participation in decision-making, and/or access to justice in matters concerning the environment?
9	Have any environmental defenders been killed in the country in 2019-2020 due to their activities connected to environmental protection?
10	Does the country have laws at the national level or have obligations set out in regional or international treaties that explicitly protect environmental defenders or promote their activities?
11	Does the country have any legislation or other measures at any level that explicitly prohibits discrimination in environmental decision-making (i.e. not general discrimination prohibition) by public authorities?
12	Is environmental law required by law to be a compulsory subject in law school curriculums?
	<b>Rights</b>
13	Is the right to a healthy environment explicitly recognized in the constitution, held by a court to be implicit in other constitutional rights, or otherwise guaranteed by legislation in some form (e.g. regional treaty obligation) at national and/or sub-national level?

14	If the country recognizes the right to a healthy environment, have the courts adjudicated cases on the right to a healthy environment at national and/or sub-national level?
15	Does the country explicitly recognize rights of nature in its constitution, legislation, regulations, decrees or judicial decisions at national and/or sub-national level?
16	Is the country legally required to take gender considerations into account in any environmental legislation or regulation at national and/or sub-national level?
17	Does the country have provisions in its national and/or sub-national legal framework seeking to protect indigenous rights, including Free, Prior and Informed Consent (FPIC)?
18	Did the country's national report submitted to the Universal Periodic Review of the UN Human Rights Council in 2019 or 2020, if applicable, include consideration of environmental issues?
	<b>Justice</b>
19	Does the country have in its national and/or subnational legal framework 'open standing' for environmental matters (i.e. every person has legal standing with no requirements or restrictions)?
20	Does the country apply the 'loser-pays principle' (i.e. the losing party covers the costs for the opponent) in environmental matters?
21	Does the country have a specialised environmental court or tribunal or environmental 'bench' at national and/or sub-national levels?
22	Does the country have a judicial training institute at national and/or sub-national level(s) that includes environmental law in its judicial training activities for 2019-2020?

## **Appendix 1: Lawyers Completing Questionnaire**

All surveys were completed by lawyers from the firm of White & Case, except for the following jurisdictions:

Albania	Karanovic & Partners
Armenia	Nara Solomonyan
Bosnia & Herzegovina	Karanovic & Partners
Cambodia	Tilleke & Gibbins
Croatia	Matekovic & Partners
Georgia	Dentons
Hungary	United Nations Environment Programme
Lao People's Democratic Republic (Laos)	Tilleke & Gibbins
Montenegro	Karanovic & Partners
Myanmar	United Nations Environment Programme
Netherlands	Jan ven de Venis
North Macedonia	Karanovic & Partners
Serbia	Subikan
Thailand	Tilleke & Gibbins



## **Appendix 2: Questionnaire**

### **Environmental Rule of Law — Indicators Report**

The purpose of this form is to consolidate answers to questions posed as part of the EROL report for UNEP. The questions in this form are based on indicators set by UNEP.

Unless otherwise stated, please provide the following information in response to each question:

1. a binary 'yes/no' answer as to whether the indicator is present in the relevant jurisdiction; and
2. a maximum 1-2 paragraph explanation for your answer, citing the sources you relied upon.

If the question refers to both national and sub-national jurisdictions, and the indicator is present in some sub-national jurisdictions within your jurisdiction (e.g. a state or province) but not at the national level, please answer 'yes' to the binary question. You should then identify the sub-national jurisdiction/s in your longer answer.

Final work product should be completed in English, although you may provide links to non-English sources where relevant.

Important note: Please complete the answers to these questions on a separate document saved to your files before copying and pasting your responses into this document

Thank you for your participation in the UNEP EROL Report!

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**Name:**

**Email Address:**

**Supervising attorney (if relevant):**

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**Your office location:**

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**Name of jurisdiction researched:**

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**Have your responses been checked by a supervising attorney within your office?**

- Yes
- No

### **Section A: Laws & Institutions**

The answers to these questions will contribute to a chapter which will review the critical role of environmental laws and institutions in the development and implementation of environmental rule of law. It will identify key components for effective laws and institutions for achieving environmental rule of law, especially in light of efforts to recover from the effects of the COVID-19 pandemic. Additionally, the chapter will introduce good practices on environmental laws and institutions with a focus on thematic areas such as climate, pollution and nature.

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**1a.** Has the country relaxed, removed or suspended environmental protection laws or policies, and/or their enforcement, as a direct response to COVID-19 at national and/or sub-national level?

- Yes
  - No
  - Unsure
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**1b.** Please provide 1-2 paragraphs describing your answer to question 1a, including citation of sources. If your answer relates to a sub-national jurisdiction, please specify the jurisdiction you have referred to.

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**2a.** Has the country introduced new laws or policies increasing environmental protection as a direct response to COVID-19 at the national and/or sub-national level?

- Yes
  - No
  - Unsure
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**2b.** Please provide 1-2 paragraphs describing your answer to question 2a, including citation of sources. If your answer relates to a sub-national jurisdiction, please specify the jurisdiction you have referred to.

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**3a.** Does the country have an independent environmental protection agency/institution or equivalent at the national level?

- Yes
  - No
  - Unsure
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**3b.** Please provide 1-2 paragraphs describing your answer to question 3a, including citation of sources. If your answer relates to a sub-national jurisdiction, please specify the jurisdiction you have referred to.

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**4a.** Does the national level environmental agency (if there is one) have a guaranteed allocation of funding from the national budget?

- Yes
  - No
  - N/A (there is no national agency)
  - Unsure
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**4b.** Please provide 1-2 paragraphs describing your answer to question 4a, including citation of sources.

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**5a.** Does the country have specialized prosecutors for prosecuting environmental offences at the national and/or sub-national level?

- Yes
  - No
  - Unsure
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**5b.** Please provide 1-2 paragraphs describing your answer to question 5a, including citation of sources. If your answer relates to a sub-national jurisdiction, please specify the jurisdiction you have referred to.

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**6a.** Do the general enforcement agencies (e.g. police, customs) at the national and/or sub-national level have an explicit legal mandate to enforce environmental legislation?

- Yes
  - No
  - Unsure
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**6b.** Please provide 1-2 paragraphs describing your answer to question 6a, including citation of sources. If your answer relates to a sub-national jurisdiction, please specify the jurisdiction you have referred to.

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**7a.** Does the country's National Human Rights Institution (NHRI) have an explicit mandate, policy or work programme relating to the environment? A list of NHRIs accredited with the UN Office of the High Commissioner on Human Rights can be found at

<https://www.ohchr.org/Documents/Countries/Cooperation/StatusAccreditationChart.pdf>.

- Yes
  - No
  - Unsure
  - The country does not have a NHRI
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**7b.** Please provide 1-2 paragraphs describing your answer to question 7a, including citation of sources. If your answer relates to a sub-national jurisdiction, please specify the jurisdiction you have referred to.

## Section B: Civic Engagement

The indicators in this section will contribute toward a chapter that will explore the legal and practical tools for civic engagement that underpin effective environmental rule of law. The chapter will discuss meaningful ways in which States can provide access to environmental information and enhance public participation in environmental decision making, especially for people who are particularly vulnerable to environmental degradation such as women, children, people living in poverty, indigenous peoples and local communities. The chapter will also investigate the effects of virtual meetings on civic engagement in the context of COVID-19 especially its effects on people living in remote areas or who lack technical capacity. The chapter will assess the global status of environmental defenders—i.e. the types and patterns of violence they face—highlighting their critical role in protecting the environment and the importance of protecting these defenders, including the effects of COVID-19 on their activities. This chapter will introduce good practices related to civic engagement. It will explore ways in which States and stakeholders can create a safe and enabling environment for civic engagement. The extent of rights discussion in this chapter will be limited to access to information and public participation and the rights of environmental defenders.

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**8a.** Does the country have provisions in its legal framework at the national and/or sub-national level guaranteeing the right of access to information, rights of public participation in decision-making, and/or access to justice in matters concerning the environment? If the country has ratified any relevant international treaty (e.g. the Aarhus Convention), please answer ‘yes’ and provide details of ratification in question 8b.

- Yes
  - No
  - Unsure
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**8b.** Please provide 1-2 paragraphs describing your answer to question 8a, including citation of sources. If your answer relates to a sub-national jurisdiction, please specify the jurisdiction you have referred to. If your answer to question 9a relates to the ratification of an international treaty, please specify the treaty and status of ratification in domestic law.

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**9a.** Have any environmental defenders been killed in the country in 2019-2020 due to their activities connected to environmental protection?

- Yes
  - No
  - Unsure
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**9b.** Please provide 1-2 paragraphs describing your answer to question 9a, including citation of sources.

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**10a.** Does the country have laws at the national level or have obligations set out in regional or international treaties that explicitly protect environmental defenders or promote their activities?

- Yes
  - No
  - Unsure
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**10b.** Please provide 1-2 paragraphs describing your answer to question 10a, including citation of sources. If your answer relates to an international or regional treaty, please identify the treaty and its effect in domestic law.

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**11a.** Does the country have any legislation or other measures at any level that explicitly prohibits discrimination (i.e., not general discrimination prohibition) in environmental decision-making by public authorities?

- Yes
  - No
  - Unsure
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**11b.** Please provide 1-2 paragraphs describing your answer to question 11a, including citation of sources. If your answer relates to a sub-national jurisdiction, please specify the jurisdiction you have referred to.

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**12a.** Is environmental law required by law to be a compulsory subject in law school curriculums?

- Yes
- No
- Unsure

**12b.** Please provide 1-2 paragraphs describing your answer to question 12a, including citation of sources. If your answer relates to a sub-national jurisdiction, please specify the jurisdiction you have referred to.

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### **Section C: Rights**

The indicators in this section will be used to produce a chapter which will review the evolving relationship between environmental rule of law and constitutional, human, and other rights related to the environment. It will also report on key trends regarding legal protection and frameworks provided for indigenous peoples, minorities, migrants, and children, while taking gender into consideration. The chapter will also provide practical guidance on how to apply the approach on the ground. The chapter will explore the trends on the role a right to a healthy environment plays, and how enforcing rights related to the environment facilitate the implementation of environmental rule of law. Other key trends and emerging issues, including rights of nature and the relationship between the environment and race will also be explored. In addition, the chapter will examine the roles and limitations of relevant human rights mechanisms such as the UN Human Rights Council, Special Procedures and human rights treaty bodies in the promotion and implementation of the environmental rule of law.

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**13a.** Is the ‘right to a healthy environment’ explicitly recognized in the constitution, held by a court to be implicit in other constitutional rights, or otherwise guaranteed by legislation in some form (e.g. regional treaty obligation) at the national and/or sub-national level? In answering this question, you should consider the findings of the UN Special Rapporteur on Human Rights and the Environment in his report to the 43rd Session of the UN Human Rights Council, available at:

<https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/AnnualReports.aspx>

- Yes
- No
- Unsure

**13b.** Please provide 1-2 paragraphs describing your answer to question 13a, including citation of sources. If your answer relates to a sub-national jurisdiction, please specify the jurisdiction you have referred to.

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**14a.** If the country recognizes the right to a healthy environment in its constitution or legislation, have the courts adjudicated cases on the right to a healthy environment at the national and/or sub-national level?

- Yes
  - No
  - Unsure
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**14b.** Please provide 1-2 paragraphs describing your answer to question 14a, including citation of sources. If your answer relates to a sub-national jurisdiction, please specify the jurisdiction you have referred to.

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**15a.** Does the country explicitly recognize 'Rights of Nature' in its constitution, legislation, regulations, decrees or judicial decisions at national and/or sub-national level? In answering this question, you should consider the UN 'Harmony with Nature' database at <http://www.harmonywithnatureun.org/rightsOfNature/>.

- Yes
- No
- Unsure

**15b.** Please provide 1-2 paragraphs describing your answer to question 15a, including citation of sources. If your answer relates to a sub-national jurisdiction, please specify the jurisdiction you have referred to.

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**16a.** Are public authorities in the country legally required to take gender considerations into account in any environmental legislation or regulation at the national and/or sub-national level?

- Yes
  - No
  - Unsure
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**16b.** Please provide 1-2 paragraphs describing your answer to question 16a, including citation of sources. If your answer relates to a sub-national jurisdiction, please specify the jurisdiction you have referred to.

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**17a.** Does the country have provisions in its national and/or sub-national legal framework seeking to protect indigenous rights, including Free, Prior and Informed Consent (FPIC)?

- Yes
  - No
  - Unsure
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**17b.** Please provide 1-2 paragraphs describing your answer to question 17a, including citation of sources.

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**18a.** Did the country's national report submitted to the Universal Periodic Review of the UN Human Rights Council in 2019 or 2020, if applicable, include consideration of environmental issues? You should consult the UN Human Rights Council database at <https://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>

- Yes
  - No
  - N/A (the country did not submit a report to the UN Human Rights Council in 2019 or 2020)
  - Unsure
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**18b.** Please provide 1-2 paragraphs describing your answer to question 18a, including citation of sources. If your answer relates to a sub-national jurisdiction, please specify the jurisdiction you have referred to.

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## **Section D: Justice**

The indicators in this section will help produce a chapter which will assess how a fair, inclusive, transparent justice system that efficiently resolves environmental disputes is critical in establishing environmental rule of law. The chapter will survey key global trends, including regarding the establishment of specialized environmental courts and tribunals, including indigenous courts, and examine their effectiveness in adjudicating environmental issues. It will also identify barriers in environmental justice and examine key components of effective remedies. It will also report and reflect on how both regular and specialized courts in different jurisdictions have navigated environmental proceedings during COVID-19.

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**19a.** Does the country have in its national and/or subnational legal framework 'open standing' for environmental matters (i.e. every person has legal standing with no requirements or restrictions)?

- Yes
  - No
  - Unsure
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**19b.** Please provide 1-2 paragraphs describing your answer to question 19a, including citation of sources. If your answer relates to a sub-national jurisdiction, please specify the jurisdiction you have referred to.

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**20a.** Does the country apply the 'loser-pays principle' in environmental matters (i.e. the losing party covers the litigation costs of the opponent)?

- Yes
  - No
  - Unsure
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**20b.** Please provide 1-2 paragraphs describing your answer to question 20a, including citation of sources. If your answer relates to a sub-national jurisdiction, please specify the jurisdiction you have referred to.

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**21a.** Does the country have a specialized environmental court or tribunal, or environmental 'bench', at the national and/or sub-national level?

- Yes
  - No
  - Unsure
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**21b.** Please provide 1-2 paragraphs describing your answer to question 21a, including citation of sources. If your answer relates to a sub-national jurisdiction, please specify the jurisdiction you have referred to.

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**22a.** Does the country have a judicial training institute at the national and/or sub-national level that included environmental law in its judicial training activities in 2019-2020?

- Yes
  - No
  - Unsure
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**22b.** Please provide 1-2 paragraphs describing your answer to question 22a, including citation of sources. If your answer relates to a sub-national jurisdiction, please specify the jurisdiction you have referred to.

## Appendix 3: Review One Methodology

Question	If response is 'unsure'
<p><b>1a.</b> Has the country relaxed, removed or suspended environmental protection laws or policies, and/or their enforcement, as a direct response to COVID-19 at national and/or sub-national level?</p>	<p>If no information was publicly available suggesting that the answer should be 'yes', then we have assumed 'no'.</p> <p>However, if answer was 'unsure' because the suspended laws or policies (or ancillary laws or policies, such as general requirements to attend court in person) were not related to the environment, then we have changed to 'no'.</p>
<p><b>2a.</b> Has the country introduced new laws or policies increasing environmental protection as a direct response to COVID-19 at the national and/or sub-national level?</p>	<p>We have changed answer to 'no' if the response was unsure based on whether country has implemented such laws/policies.</p> <p>We have also changed responses to 'no' where original volunteer responses were unsure because the suspended laws or policies that were changed (or ancillary laws or policies, such as general requirements to attend court in person) are not related to the environment.</p>
<p><b>3a.</b> Does the country have an independent environmental protection agency/institution or equivalent at the national level?</p>	<p>We found some volunteer responses answered 'yes' to this question if there was an environmental ministry. However, in the methodology we have applied, an environmental ministry is <i>not</i> an 'independent agency' for the purposes of this Indicator.</p> <p>In determining whether an agency is an 'independent agency' for the purposes of this Indicator, we have applied the following methodology:</p> <ul style="list-style-type: none"> <li>• For a 'yes' answer, the body must be an agency in its own right (the agency cannot be a department or office within another body, such as the Ministry for the Environment).</li> <li>• However, if the agency falls within the 'scope' of the Ministry for the Environment (for example, if the body refers to itself as part of the Ministry, or if it reports to the Ministry), but is a separate body in its own right (for example if it has its own organisational structure, directors or</li> </ul>

Question	If response is 'unsure'
	<p>employees), it will still be a 'yes' for the purposes of Indicator 3.</p> <ul style="list-style-type: none"> <li>• In determining whether the agency is 'independent', we have <u>not</u> considered the Ministry for the Environment or government's degree of control over the agency, for example by way of: <ul style="list-style-type: none"> <li>○ express requirements for the agency to implement government policy;</li> <li>○ requirements for agency's board or directors to include Ministers or their delegates (or other government officials); or</li> <li>○ requirements for the agency to follow the directions of the Ministry/government.</li> </ul> </li> </ul> <p>Specifically with regard to 'unsure' answers, we have applied the following methodology:</p> <ul style="list-style-type: none"> <li>• If it is not clear whether the country has an agency for the purposes of Indicator 3, we have assumed that it does not have such an agency.</li> <li>• However, if the country has an agency and there is equal evidence suggesting it is or is not independent for the purposes of the indicator (according to the criteria outlined above), we have assumed it is not independent for the purposes of the Indicator.</li> </ul>
<p><b>4a.</b> Does the national level environmental agency (if there is one) have a guaranteed allocation of funding from the national budget?</p>	<p>The answer to this question is not independent of the response to question 3. That is to say, the 'national level environmental agency' in this question 4 must be an 'independent' agency as determined in the response to question 3. As a result, if question 3 was answered 'no', then this question has <i>always</i> been answered 'N/A (there is no national agency)'.</p> <p>If this question was answered 'N/A (there is no national agency)' because the answer to question 3 is 'no', we have nevertheless retained information regarding the funding of the relevant agency/ministry.</p>

Question	If response is 'unsure'
	<p>With regard to 'unsure' answers, we have applied the following methodology:</p> <ul style="list-style-type: none"> <li>• If it is not clear whether there is guaranteed funding, we have assumed that there is not guaranteed funding.</li> <li>• If it is apparent that the agency receives regular government funding (e.g. receives regular and consistent funding or annual funding), but there is no express statutory requirement for this funding to be provided, we have nevertheless assumed that there is not guaranteed funding.</li> </ul>
<p><b>5a.</b> Does the country have specialized prosecutors for prosecuting environmental offences at the national and/or sub-national level?</p>	<p>If no information was publicly available suggesting that the answer should be 'yes', then we have assumed 'no'.</p>
<p><b>6a.</b> Do the general enforcement agencies (e.g. police, customs) at the national and/or sub-national level have an explicit legal mandate to enforce environmental legislation?</p>	<p>If no information was publicly available suggesting that the answer should be 'yes', then we have assumed 'no'.</p>
<p><b>7a.</b> Does the country's National Human Rights Institution (NHRI) have an explicit mandate, policy or work programme relating to the environment?</p>	<p>If no information was publicly available suggesting that the answer should be 'yes', then we have assumed 'no'.</p> <p>Where the country has an NHRI, but one of the NHRI's work programmes included environmental issues only in a very ancillary way, the question has been answered 'no'.</p>
<p><b>8a.</b> Does the country have provisions in its legal framework at the national and/or sub-national level guaranteeing the right of access to information, rights of public participation in decision-making, and/or</p>	<p>If the answer explains that these rights exist generally in the country's legal system, but not specifically in relation to the environment, we have assumed that these rights <i>do</i> apply in environmental matters, unless there is any suggestion in publicly available information otherwise.</p>

Question	If response is 'unsure'
<p>access to justice in matters concerning the environment? If the country has ratified any relevant international treaty (e.g. the Aarhus Convention), please answer 'yes' and provide details of ratification in question 8b.</p>	
<p><b>9a.</b> Have any environmental defenders been killed in the country in 2019-2020 due to their activities connected to environmental protection?</p>	<p>If no information was publicly available suggesting that the answer should be 'yes', then we have assumed 'no'.</p>
<p><b>10a.</b> Does the country have laws at the national level or have obligations set out in regional or international treaties that explicitly protect environmental defenders or promote their activities?</p>	<p>If no information was publicly available suggesting that the answer should be 'yes', then we have assumed 'no'.</p> <p>We have interpreted this question to mean that a general law protecting whistle-blowers is insufficient – the law must apply specifically in the environmental context.</p> <p>If the country has supported or made statements or declarations generally supporting environmental defenders, but does not have any laws at the national level or has not signed up to (or ratified) international treaties explicitly protecting environmental defenders, we have noted the answer as 'no' (one such example is Liechtenstein).</p>
<p><b>11a.</b> Does the country have any legislation or other measures at any level that explicitly prohibits discrimination (i.e., not general discrimination prohibition) in environmental decision-making by public authorities?</p>	<p>We have interpreted this question to mean that:</p> <ul style="list-style-type: none"> <li>• the legislation or other measure must be <i>explicitly</i> related to the environment; and</li> <li>• a general prohibition on discrimination (i.e. not in the context of environmental decision-making) is not sufficient for a 'yes' answer to this question.</li> </ul>

Question	If response is 'unsure'
<p><b>12a.</b> Is environmental law required by law to be a compulsory subject in law school curriculums?</p>	<p>If no information was publicly available suggesting that the answer should be 'yes' (in particular if no legislative instrument mandating environmental law as a compulsory subject was able to be located), then we have assumed 'no'.</p>
<p><b>13a.</b> Is the 'right to a healthy environment' explicitly recognized in the constitution, held by a court to be implicit in other constitutional rights, or otherwise guaranteed by legislation in some form (e.g. regional treaty obligation) at the national and/or sub-national level?</p>	<p>If no information was publicly available suggesting that the answer should be 'yes', then we have assumed 'no'.</p> <p>Some questionnaires interpreted the right to life as including the right to a healthy environment within its scope. We have accepted this as a 'yes' answer only where a court in the jurisdiction had ruled in favour of this interpretation, or where examination of the legislation and surrounding legislative context strongly indicates that such a right encompasses the right to a healthy environment.</p>
<p><b>14a.</b> If the country recognizes the right to a healthy environment in its constitution or legislation, have the courts adjudicated cases on the right to a healthy environment at the national and/or sub-national level?</p>	<p>If no such cases were publicly available (and no commentary on such cases was available), then we have assumed 'no'.</p>
<p><b>15a.</b> Does the country explicitly recognize 'Rights of Nature' in its constitution, legislation, regulations, decrees or judicial decisions at national and/or sub-national level?</p>	<p>If no information was publicly available suggesting that the answer should be 'yes', then we have assumed 'no'.</p>
<p><b>16a.</b> Are public authorities in the country legally required to take gender considerations into account in any environmental</p>	<p>We have taken this question to mean that if the country has a <i>general</i> requirement for gender considerations to be taken into account by public authorities, but there is no such requirement in</p>



Question	If response is 'unsure'
<p>legislation or regulation at the national and/or sub-national level?</p>	<p>environmental legislation or regulations, then the answer to the question is 'no'.</p> <p>If the country has signed or ratified an international instrument requiring gender-considerations to be taken into account in environmental matters, but this has not been enacted into national/sub-national legislation then we have answered 'no'.</p> <p>If no information was publicly available suggesting that the answer should be 'yes', then we have assumed 'no'.</p>
<p><b>17a.</b> Does the country have provisions in its national and/or sub-national legal framework seeking to protect indigenous rights, including Free, Prior and Informed Consent (FPIC)?</p>	<p>If no information was publicly available suggesting that the answer should be 'yes', then we have assumed 'no'.</p> <p>If the country has signed up to or ratified international instruments relating to the protection of Indigenous rights, including FPIC, but has not implemented this in national or sub-national law, then we have answered 'no'. If there was no information suggesting that the country has implemented the international instrument into national or sub-national law, then we have answered 'no'.</p>
<p><b>18a.</b> Did the country's national report submitted to the Universal Periodic Review of the UN Human Rights Council in 2019 or 2020, if applicable, include consideration of environmental issues?</p>	<p>If the country's report was submitted in 2021, or in 2018 or before, then we have answered 'no' even if it considered environmental issues.</p> <p>We have taken the view that a relatively minor or passing mention of environmental matters in the relevant national report means that this question should be answered as 'yes'. However, the presence of the word 'environment' does not necessarily mean a 'yes' answer. For example, a reference to 'social and legislative environment' would not mean a 'yes' answer by itself.</p>

Question	If response is 'unsure'
<p><b>19a.</b> Does the country have in its national and/or subnational legal framework 'open standing' for environmental matters (i.e. every person has legal standing with no requirements or restrictions)?</p>	<p>If no information was publicly available suggesting that the answer should be 'yes', then we have assumed 'no'.</p>
<p><b>20a.</b> Does the country apply the 'loser-pays principle' in environmental matters (i.e. the losing party covers the litigation costs of the opponent)?</p>	<p>If there is a general 'loser pays principle' that is applied within the jurisdiction, and there was no information suggesting that this principle does <i>not</i> apply in environmental matters, then we have assumed the answer to this question is 'yes'.</p>
<p><b>21a.</b> Does the country have a specialized environmental court or tribunal, or environmental 'bench', at the national and/or sub-national level?</p>	<p>If no information was publicly available suggesting that the answer should be 'yes', then we have assumed 'no'.</p>
<p><b>22a.</b> Does the country have a judicial training institute at the national and/or sub-national level that included environmental law in its judicial training activities in 2019-2020?</p>	<p>If no information was publicly available suggesting that the answer should be 'yes', then we have assumed 'no'.</p>

## Appendix 4: Review Two Methodology

Question	Data following Review One	Data following Review Two	Net change	Methodology
1	Y=46 N=147	Y=46 N=147	Zero	No changes were made.
2	Y=41 N=152	Y=41 N=152	Zero	No changes were made.
3	Y=7 N=186	Y=91 N=102	Y+84 N-84	This question was thoroughly revisited by UNEP, White & Case and the Vance Center after the initial Review One. It appeared that it had been interpreted in several different ways. Consequently, a protocol for interpreting the question was agreed upon and applied in a further review by White & Case. That protocol is recorded for Question 3 in Appendix 3.
4	Y=7 N=186	Y=39 N=52 N/A=102	Y+32 N-133 N/A+101	This question was thoroughly revisited by UNEP, White & Case and the Vance Center after the initial Review One. It appeared that it had been interpreted in several different ways. Consequently, a protocol for interpreting the question was agreed upon and applied in a further review by White & Case. That protocol is recorded for Question 4 in Appendix 3.
5	Y=72 N=121	Y=72 N=121	Zero	No changes were made.
6	Y=125 N=68	Y=125 N=68	Zero	No changes were made.
7	Y=48 N=145	Y=46 N=70 N/A=77	Y-2 N-75 N/A+77	Changes made following review of answers against paragraph explanations, as well as review of which countries have NHRIs accredited to GANHRI as of January 2021 ( <a href="https://ganhri.org/wp-content/uploads/2021/01/Status-Accreditation-Chart-as-of-20-01-2021.pdf">https://ganhri.org/wp-content/uploads/2021/01/Status-Accreditation-Chart-as-of-20-01-2021.pdf</a> ), including NHRIs with a 'C' accreditation.

8	Y=154 N=39	YS=138 YG=24 N=31		<p>'Yes' responses were broken down into those that cite specific environmental legislation ('YS'), and those which only refer to general information, participation, or access to justice laws ('YG').</p> <p><i>Ratification</i> (but not merely signing) the Aarhus Convention or Escazu Agreement was treated as 'YS'; so too was evidence of an environmental impact assessment law which provided for formal consultation or participation processes. Laws which functionally amounted to rights, but did not include the word 'right', were treated as 'yes' responses for this question. Recognition of the right to a healthy environment, without further details of procedural rights, were not included as 'Yes' responses for this question.</p>
9	Y=23 N=170	Y=34 N=159	Y+11 N-11	Changes reflect general review of answers and cross-references to the 2019 and 2020 reports of Global Witness.
10	Y=48 N=145	Y=48 N=145	Zero	No changes were made.
11	Y=19 N=174	Y=15 YA=42 YE=10 N=126		New coding to reflect countries whose <i>only</i> 'yes' response to this question comes from being a state party to the Aarhus Convention or Escazu Agreement.
12	Y=9 N=184	Y=9 N=184	Zero	No changes were made.
13	Y=136 N=57	Y=159 N=34	Y+23 N-23	Changes reflect general review of answers, and cross-referencing with Vance Center database prepared for the Special Rapporteur on human rights and the environment's 'Good Practices' 2020 Report (A/HRC/43/53). All state parties to the Arab Charter, African Charter, San Salvador Protocol, Aarhus Convention and Escazu Agreement were coded 'yes' for this question.

14	Y=63 N=130	Y=76 N=83 N/A=34	Y+13 N-47 N/A+34	Changes reflect cross-reference with the Vance Center database established for David Boyd 'Best Practices' Report; cross-check performed by UNEP staff and reviewed by the Vance Center.
15	Y=22 N=171	Y=17 No=176	Y-5 N+5	Changes reflect review of information provided in Part B answers, as well as cross-reference to UN 'Harmony with Nature' database.
16	Y=21 N=172	Y=31 N=162	Y+10 N-10	Changes reflect incorporation of all countries which have ratified the Escazu Agreement. To be coded 'Yes', responses must refer to specifically <i>environmental</i> legislation or regulation which makes reference to gender considerations.
17	Y=67 N=126	Y=49 FPIC=12 No=132	Y-6 N+6	Review followed a cross-check against Part B responses, which excluded laws that simply made passing references to Indigenous peoples. The review also included data from the LandMark database. FPIC can be counted together with 'Yes', giving a total of 61. Mere endorsement of the United Nations Declaration on the Rights of Indigenous Peoples; or ratification of ILO Convention 169 (without implementing legislation); was not sufficient to be coded 'Yes' for this question.
18	Y=57 N=136	Y=46 N=33 N/A=114	Y-11	Cross-check against Part B answers, as well as review of dates to ensure that reports were <i>submitted</i> (rather than <i>considered</i> ) in relevant time period. 'N/A' response added to reflect countries that did not submit a report to the Human Rights Council in 2019-2020.
19	Y=74 N=119	Y=45 NGO=24 N=124	Y-29 N+4	Changes reflect thorough review of answers against concept of 'open standing' (i.e., no restrictions on plaintiff standing in environmental matters), as well as creation of new 'NGO' category to reflect countries where NGOs have

				special rights of standing. This review relied on information provided in Part B of question responses.
20	Y=125 N=68	Y=128 N=65	Y+3 N-3	Changes based on thorough review of Part B responses.
21	Y=43 N=150	Y=42 N=151	Y-1 N+1	Changes based on thorough review of Part B responses.
22	Y=39 N=154	Y=39 N=154	Zero	No changes made.