

Forest Fires and Transboundary Haze

Exploring the United Nations Based Avenues of Advocacy and Redress for Victims
of Transboundary Haze Pollution in Southeast Asia

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This document is part of a series of three memoranda that aim to outline different avenues of redress for those affected by the Indonesian Forest Fires and Haze under regional and international legal systems: addressing the ASEAN system, the UN system, and other international avenues.

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Table of Abbreviations	
ASEAN	Association of Southeast Asian Nations
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CH₄	Methane
CO₂	Carbon dioxide
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of People with Disabilities
CSOs	Civil Society Actors
EIA	Environmental impact assessment
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMRW	International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families
IEL	International environmental law
NHRIs	National Human Rights Institutions
OHCHR	The Office of the High Commissioner on Human Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
UPR	Universal Periodic Review
WALHI	<i>Wahana Lingkungan Hidup Indonesia</i> (Friends of the Earth Indonesia)
<2.5 PM	Particle matter or droplets that are less than 2.5 microns or less in width

1 Introduction

Avenues of redress for communities in Indonesia and Malaysia affected by forest fires and haze

Worldwide, there is an increasing demand for palm oil in different economic sectors, spanning from the food sector and beauty care products to biofuel.¹ **Indonesia** and **Malaysia** are **core palm oil suppliers** meeting this increasing demand, covering 86% of the global palm oil supply.² Yet, palm oil plantations are repeatedly criticized for their **environmental impacts on ecosystems, biodiversity, and people's livelihoods**.

One aspect of palm oil cultivation is their link to **wide-spread forest fires** and the resulting **haze** from these fires. This issue has reached wide-spread attention since 2015, the year with the worst fire and haze record so far, due to its transboundary implications. These fires do not only have **repercussions** on Indonesia's and Malaysia's **biodiversity**, but also on their **economies, education systems, and health care systems**. Additionally, the forest fires and transboundary haze directly affect Indonesia's and Malaysia's **local population**, as further outlined throughout the memoranda.

This report is part of a series of three memoranda that aim to outline different **avenues of redress** for those affected by the Indonesian Forest Fires and Haze under **regional and international legal systems**; divided to examine the **ASEAN system**, the **UN system**, and **other international avenues**.

The memoranda were created through a combination of **legal desk-research** and **semi-structured expert interviews**. The primary sources consulted are the relevant treaties and agreements mentioned throughout the memoranda. The secondary sources consisted of both legal and non-legal documents. These included the official websites of the different avenues of redress, together with policy documents, non-government organisations' (NGO) reports, scholarship, and news articles. The semi-structured expert interviews predominantly had a clarification and guiding purpose. All memoranda were reviewed by (legal) experts in the corresponding fields, who had the opportunity to share their feedback and insights.

The memoranda were written with a **clear hypothetical case study based on real companies in mind** to ensure that the recommendations are practically relevant to civil society organisations (CSOs) in the field. The hypothetical company sells RSPO certified palm oil, owns 150,000 Ha of palm oil plantations and works together with scheme smallholders, contracted smallholders that fall under the company's RSPO certification, and independent smallholders. The hypothetical company has been linked to 1500 fire alerts between August and October 2019, two of which are proven to have sparked large-scale wildfires. A closer analysis of the hypothetical company is not further included in the final memoranda because the majority of avenues of redress that are discussed do not offer case-specific solutions to transboundary haze pollution, but rather encourage long-term advocacy strategies.

¹ Yosuke Shigetomi, Yuichi Ishimura and Yuki Yamamoto, 'Trends in global dependency on the Indonesian palm oil and resultant environmental impacts' [2020] retrieved from <https://www.nature.com/articles/s41598-020-77458-4> on 17 January 2022.

² Schuster Institute for Investigative Journalism at Brandeis University, 'Indonesia's Palm Oil Industry' [n.d.] retrieved from <https://www.schusterinstituteinvestigations.org/indonesias-palm-oil-industry> on 06 February 2022.

Chapters 1, 2 and 3 are common to all the reports so that each memo can be read independently from one another. **Chapter 2** outlines the **thematic background**, focusing the analysis on Indonesia as a hot spot of both palm oil production, forest fires and haze. Chapter 2 also introduces the different **stakeholders** in the production of palm oil and their relationship to the reported forest fires. **Chapter 3** then provides an overview of the **international human rights and environmental obligations** that are applicable in the present scenarios. **Chapter 4** will introduce Indonesia and Malaysia's engagement with international and how the UN system fits into the current issue. After this, **Chapter 5** and **6** will go deeper into the **avenues of redress the UN offers** under the **charter-based** and **treaty-based system** respectively. In conclusion, the main recommendations will be summarised.

2 Thematic background

This chapter focuses on the **effects of forest fires** and the resulting **haze** driven by agricultural and commercial interests. It introduces the **thematic background** of the report, focusing its analysis on Indonesia as the hot spot of both palm oil production and forest fires and haze. As a second step, the different **stakeholders** regarding the production of palm oil are introduced as well as their relationship to reported forest fires.

2.1 Deforestation and forest fires

Due to an **increasing demand for palm oil** on the global market, palm oil plantations in Indonesia are expanding. To do so, large areas of **primary forests** are **cut down** to be replaced with monoculture palm oil plantations. Many palm oil plantations are situated close if not directly next to primary forests and vast ecosystems. Therefore, small man-made **fires originating on plantations** are likely to **spread** over to primary forests and there turn into uncontrollable **wildfires**.

Fires on plantations primarily originate from the usage of the (traditional) method of **'slash-and-burn'** by Indonesian small-holders in their agricultural practices.³ 'Slash-and-burn' describes the method of first cutting forests and then burning remaining vegetation to create fertile agricultural land.⁴ Though this method is in theory **prohibited** under Indonesian law,⁵ it remains a widely used practice due to its **traditional roots**, and **fast** and **(cost-)efficient** nature. Other causes for fires are (illegal) fires started by the plantation company and natural causes.

If the fires are spreading out of control, they can cause **wildfires**.⁶ Different factors interplay to make the spread of forest fires both more likely and more dangerous. First, already mentioned above, is the close **proximity of many plantations to primary forests**. According to a report from 2019, 47% of the reported fire hot spots were located on wood and palm oil plantations as well as logging concessions. The next biggest locations were conservation areas with 31% and community land with 22%.⁷ Second, palm oil plantations create **microclimates that facilitate the spread of fires** by being dryer and hotter than indigenous natural vegetation.⁸ Third, Indonesia experiences a **dry season** from April until the end of October. During this naturally dry time, fires on plantations are more likely to spread over to other vegetation and cause wide scale fires. Correspondingly, forest fires are primarily

³ Marco Tulio Garcia, Gerard Rijk, Profundo Matthew Piotrowski, 'Deforestation for Agricultural Commodities a Driver of Fires in Brazil, Indonesia in 2019' [2020] retrieved from <https://chainreactionresearch.com/wp-content/uploads/2020/05/Deforestation-driven20fires.pdf> on 13 January 2022.

⁴ *ibid.*

⁵ Arief Wijaya, Susan Minnemeyer, Reidinar Juliane, Octavia Payne and Andres Chamorro, 'After Record-Breaking Fires, Can Indonesia's New Policies Turn Down the Heat?' [2016] retrieved from <https://www.wri.org/insights/after-record-breaking-fires-can-indonesias-new-policies-turn-down-heat> on 22 January 2022 and BBC, 'Indonesia haze: Why do forests keep burning?' [2019] retrieved from <https://www.bbc.com/news/world-asia-34265922> on 22 January 2022

⁶ Marco Tulio Garcia, Gerard Rijk, Profundo Matthew Piotrowski, 'Deforestation for Agricultural Commodities a Driver of Fires in Brazil, Indonesia in 2019' [2020] retrieved from <https://chainreactionresearch.com/wp-content/uploads/2020/05/Deforestation-driven20fires.pdf> on 13 January 2022.

⁷ Herry Purnomo, Beni Okarda, B. Shantiko, R. Achdiawan, Ahmad Dermawan, H. Kartodihardjo, A.A. Dewayani, 'Forest and land fires, toxic haze and local politics in Indonesia' [2019] retrieved from <https://www.cifor.org/knowledge/publication/7425> on 13 January 2022.

⁸ Garcia, Rijk, and Piotrowski (n 6).

reported to occur between early-August until mid-November (a period of approximately 14 weeks), peaking in mid-September.⁹

Research figures indicate the scope of the problem of forest fires. Indonesia **lost 1.6 million hectares in 2019** as a result of forest fires.¹⁰ Of this land, approximately 76% has been identified as so-called idle land (*lahan terlantar*), referring to land patches that used to be forested up until a few years ago but had degraded as a result of multiple cycles of fires.¹¹

2.2 Haze

Especially during the dry season with spikes in forest fires, a thick **haze** hovers over areas of Indonesia, sometimes expanding to additionally cover both Malaysia and Singapore (something well-illustrated by Image 1). The haze is the **result of the forest fires** (both natural and man-made). Two main aspects contribute to the increase in haze during the dry season in Indonesia. Firstly, as a result of the increasing scales of forest fires and vaster plantations, there are **more and more widespread forest fires causing haze**. Secondly, the need for more plantations to meet the increasing demand of palm oil has sparked a practice of **converting peatland into plantations**. Differently from mineral soils, fires on peatlands generate more haze, aggravating the overall problem.¹²

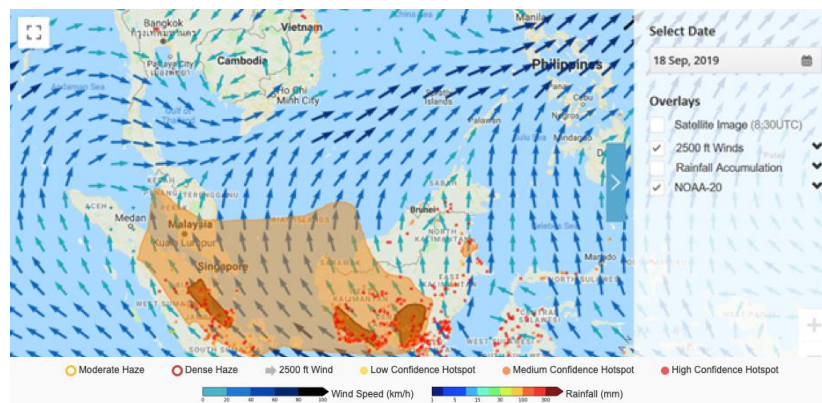


Image 1: The effect of wind on the spread of haze originating from forest fires in Indonesia to Singapore and Malaysia.¹³

⁹ Global Forest Watch, 'Indonesia' [n.d.] retrieved from <https://www.globalforestwatch.org> on 14 January 2022.

¹⁰ ibid.; Reuters Staff, 'Indonesian fires burnt 1.6 million hectares of land this year: researchers' [2019] retrieved from <https://www.reuters.com/article/us-southeast-asia-haze-idUSKBN1Y60VP> on January 2022.

¹¹ The Jakarta Post, 'Fires in Indonesia burn 1.6m ha of land, mostly former forests: Satellite data' [2019] retrieved from <https://www.thejakartapost.com/life/2019/12/02/fires-in-indonesia-burn-1-6m-ha-of-land-mostly-former-forests-satellite-data.html> on 14 January 2022.

¹² Alan Tay, Helena Varkkey and Yew-Jin Lee, 'Indonesia is burning again, covering east Asia with smoke – a special report' [Podcast, 2016] retrieved from <https://www2.cifor.org/fire-and-haze/indonesia-is-burning-again-covering-east-asia-with-smoke-a-special-report/> on 06 February 2022 ; and Fred Stolle, Nigel Sizer, Ariana Alisjahbana, James Anderson, Kemen Austin and Andika Putraditama, 'ASEAN Leaders Can Act to Reduce Fires and Haze' [2013] retrieved from <https://www.globalforestwatch.org/blog/fires/asean-leaders-can-act-to-reduce-fires-and-haze/> on 14 January 2022.

¹³ ASEAN Specialised Meteorological Centre, 'Regional Haze Situation' [n.d.] retrieved from <http://asmc.asean.org/home/> on 15 January 2022 ; Greenpeace Southeast Asia, 'ASEAN Haze 2019: the battle of liability' [2019] retrieved from <https://www.greenpeace.org/southeastasia/press/3221/asean-haze-2019-the-battle-of-liability/> on 14 January 2022.

2.3 Effects of forest fires and haze on the environment and individuals

Substantive Rights and Key Principles Potentially Impacted by Ecosystem Loss

Principles

No harm

Prevention

Precaution

Substantive Rights

Right to a healthy environment

Right to life

Right to an adequate standard of living

Substantive Rights and Key Principles Potentially Impacted by Adverse Human Health Effects

Principles

No harm

Prevention

Precaution

Substantive Rights

Right to a healthy environment

Right to life

Right to an adequate standard of living

Right to development

Right to health

2.3.1 Ecosystem loss

The local Indonesian vegetation has originally been relatively resilient to fires, as they are not uncommon for the ecosystem. In fact, forest fires are a form of a natural disturbance that can allow forests to rejuvenate and ecosystems to diversify.¹⁴ However, the significant increase in forest fires due to the combination of both natural and man-made fires has taken a **big toll on the ecosystem** as its flora and fauna are no longer able to recover. In combination with deforestation and the change of vegetation as a result of monoculture plantations, Indonesia currently experiences great degrees of **ecosystem loss and disturbances**.¹⁵ Whilst the present report focuses on the effects on individuals (as the analysis focuses on the avenues of redress for these communities), the European Commission commissioned an extensive [report on the environmental impact of palm oil consumption](https://www.un.org/esa/forests/wp-content/uploads/2021/08/UNFF16-Bkgd-paper-disasters-forest-fires_052021.pdf).

2.3.2 Human health

On 15 September 2019, the Air Quality Index in the capital of central Kalimantan, Palangkaraya, was 2000.¹⁶ In comparison, hazardous air quality levels are considered to start at 301.¹⁷ The air quality was therefore almost seven times worse than what is considered to be hazardous. The effect of these

dimensions of air pollution effect individuals' health in numerous ways. First, haze can cause **irritation in the eyes and respiratory tract**. Second, in 2015 – seen as a peak year of forest fires and haze in Indonesia – more than 500,000 people were reported to suffer from **respiratory ailments**.¹⁸ Among other factors, this is caused by the fine particular matter in the haze, including substances like Sulphur dioxide and nitrogen dioxide which affect respiratory systems.¹⁹ An estimate assumes that the repercussions of the 2015 health crises in Indonesia may have led to **26,300 to 174,300 premature**

¹⁴ François-Nicolas Robinne, 'Impacts of disasters on forests, in particular forest fires' [2021] Background Paper prepared for the United Nations Forum on Forests Secretariat, page 2. (https://www.un.org/esa/forests/wp-content/uploads/2021/08/UNFF16-Bkgd-paper-disasters-forest-fires_052021.pdf)

¹⁵ Garcia, Rijk, and Piotrowski (n 6) page 6.

¹⁶ BBC (n 5).

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ *ibid.*

adult deaths. Additionally, there were increasing reports of **infant deaths** during this time.²⁰ In both Indonesia and Malaysia, public health emergencies have been declared as a result of haze caused by forest fires.²¹

Substantive Rights and Key Principles Potentially Impacted when Livelihoods, Education, and Financial Sectors are Undermined

Principles

No harm

Prevention

Precaution

Substantive Rights

Right to life

Right to health

Right to a healthy environment

Right to equality and non-discrimination

Substantive Rights and Key Principles Potentially Impacted by Climate Change

Principles

No harm

Prevention

Precaution

Substantive Rights

Right to life

Right to development

Right to health

Right to a healthy environment

Right to equality and non-discrimination

2.3.3 Livelihoods, education and financial impacts

The effects of forest fires and haze on the livelihoods of individuals are considerable. The crisis in 2015 is thought to have **cost** the country **between US\$16bn²² and \$28bn²³** as a result of affected economies, redirected air traffic and similar repercussions. Additionally, **schools** had to **close** as a result of the haze and states of emergency were declared as a result of the health impact of the haze.²⁴ In 2019, \$5.2bn in damages and economic losses were reported, reflecting 0.5% of Indonesia's GDP.²⁵ People's ability to self-sustain is impacted, if they lose their food and cash crops, or their land, forests and other natural ecosystems they depend on for clean water, soil retention, gathering of products, such as due to fire.

2.3.4 Driving force of climate change

The effects of forest fires and haze on contributing to climate change is added as a fourth element, as this both has direct repercussions on the environment, as well as indirect effects on the population of Indonesia and more widely the global population. **Forests and vegetation are carbon-storages.** Therefore, the burning of forests contributes to climate change in two significant ways. Firstly, the **carbon** that has been **stored** in the vegetation **is released into the atmosphere**, contributing to the greenhouse effect. Secondly, the **overall level of**

²⁰ BBC, 'Indonesia haze may have led to 100,000 premature deaths, says report' [2016] retrieved from <https://www.bbc.com/news/world-asia-37404515> on 15 January 2022.

²¹ Jayaprakash Murulitharan and Matthew Ashfold, 'Depoliticising Southeast Asia's forest fire pollution' [2021] retrieved from <https://www.eastasiaforum.org/2021/08/17/depoliticising-southeast-asias-forest-fire-pollution/> on 16 January 2022.

²² BBC (n 20).

²³ L. Kiely, D. V. Spracklen, S. R. Arnold, E. Papargyropoulou, L. Conibear, C. Wiedinmyer, C. Knote and H. A. Adrianto, 'Assessing costs of Indonesian fires and the benefits of restoring peatland' [2021] retrieved from <https://www.nature.com/articles/s41467-021-27353-x> on 16 January 2022.

²⁴ Greenpeace Southeast Asia (n 13).

²⁵ CNBC, 'World Bank says Indonesia forest fires cost \$5.2 billion in economic losses' [2019] retrieved from <https://www.cnbc.com/2019/12/11/world-bank-says-indonesia-fires-cost-5point2-billion-in-economic-losses.html> on 16 January 2022.

vegetation that can capture carbon through photosynthesis is **decreased** as more forests are burned.²⁶

2.4 Stakeholders

2.4.1 Small holders

Most **small holders** use the **'slash and burn'** technique based on traditional techniques, which can indirectly cause forest fires.²⁷ There is not one type of small holder because there are vast differences in the amount of land and capital that small holders can own. Overarchingly, however, small holder farms are understood as small-scale (often less than 5 hectares) family farms.²⁸

Small holders are important stakeholders, representing 93% of Indonesia's total farmers (calculated per individual).²⁹ Small holders can either be **independent or so-called scheme (also: plasma) small holders**. In the case of independent small holders, the small holders cooperate with palm oil corporations by planting their own trees on their own land and selling the fruit of the palms to a corporation of their choice. Differently, scheme small holders often also have their own land with their own trees, they are linked to a specific corporation through a contract to which they much sell their products. In exchange, these small holders receive security and supervision.³⁰

2.4.2 (Multi-)National Companies

The palm oil companies both buy palm oil from small holders as well as produce it themselves on land either owned by the companies or rented from small holders. The biggest players in the palm oil market are **big private enterprises** either registered in Singapore or Indonesia. Most companies have adopted **fire prevention policies and sustainability targets**, and some of the biggest palm oil producing companies are **RSPO certified**. Nevertheless, despite these policies, these companies have often been **linked to forest fires and land burning**. Most companies respond to these accusations by arguing that any fires on their plantations would have been started by small holders and carried to the company's land through strong winds.³¹ Additionally, palm oil companies closely **cooperate with small holders** in sourcing their products, with one major player – Astra Agro Lestari – cooperating with more than 64.000 small holders in 300+ villages that collectively own more than 266,000 Ha of plantation land.³²

2.4.3 Financers

Financers have a **financial stake** in the palm oil companies. Most major companies in Indonesia are either registered on the Singaporean or Indonesia Stock exchange and are related to international

²⁶ Calvin Norman and Melissa Kreye, 'How Forests Store Carbon' (2020) retrieved from <https://extension.psu.edu/how-forests-store-carbon> on 22 April 2022.

²⁷ Garcia, Rijk, and Piotrowski (n 6) page 15.

²⁸ Food and Agriculture Organization of the United Nations, 'Investments to transform smallholders farms and adapt to COVID-19' (n.d.) Retrieved from <https://www.fao.org/land-water/overview/covid19/smallholders/en/> on 7 April 2022.

²⁹ Laura Schenck, 'Small Family Farming in Indonesia - a country specific outlook' [2018] retrieved from <https://www.fao.org/family-farming/detail/en/c/1111082/> on 16 January 2022.

³⁰ Tay, Varkkey and Lee (n 12).

³¹ Indonesia Investments, 'Palm Oil' [n.d.] retrieved from <https://www.indonesia-investments.com/business/commodities/palm-oil/item166> on 16 January 2022.

³² PT Astra Agro Lestari Tbk, 'Company Profile' [n.d.] retrieved from <https://www.astra-agro.co.id/en/milestone/> on 16 January 2022.

investors. Considering the increasing global demand for palm oil, palm oil companies are arguably a **good investment** for financiers. Unfortunately, analysing financiers in the present report would go beyond its scope. Nonetheless, this is an important avenue meriting further exploration. For further information on the role (Dutch) investors play currently, refer to [Miliendefensie's 'deforestation portfolio of the Dutch financial sector' report](#) and [Global Witness's 'Deforestation Dividends' report](#).

2.4.4 Government

The Indonesian government plays a **controversial role** regarding the palm oil industry. On the one hand, it has attempted to both **halt and criminalize deforestation and slash-and-burn techniques** in the past. On the other hand, it aims to **increase the cultivation of palm oil** through, for example, passing the B30 program that started in 2020. This program requires biodiesel to contain a minimum of 30% palm oil (rather than the 20% required previously). This requirement increases the demand for palm oil, **which incentivises more deforestation** and threatens the occurrence of more forest fires. Additionally, the government is criticized for neither incentivizing alternative techniques of land preparation nor enforcing existing laws consistently.³³ This **lack of political will** to (effectively) target the problems arising from oil palm cultivation may be due to the industry's considerable impact on the country's GDP, having been estimated to lie between 1.5% and 2.5%.³⁴

2.4.5 Local population

The role of the local population is twofold as they are both **stakeholders** and **'right-holders'** (such as individual human rights, as well as customary cultural and community rights, further discussed in Chapter 3). In other words, the local population can be both positively and negatively affected by palm oil production, which is one of the main contributors to forest fires and haze. On the one hand, the production of palm oil has the potential to **bring profits** to areas that were previously more cut off from economic opportunities. On the other hand, the **benefits are not evenly distributed** amongst the local population, and they are the **first to feel the adverse effects** of the industry. The adverse impact of the palm oil industry on the local population has already been elaborated on above regarding the effects of forest fires and haze on the environment and individuals (see 2.3). Therefore, this section emphasizes the incentives local farmer have to enter the palm oil industry. For more information about palm oil plantations' environmental and social impacts, refer to an [article written by representatives of the Center for International Forestry Research](#).

In 2011, 3.7 million people in Indonesia were estimated to work in the palm oil industry,³⁵ a number that can only be considered to have increased over the years. Given the fact that palm oil cultivation brings a higher return per square kilometre than other crops (such as rice or rubber), farmers are said to earn more per square kilometre as well. This has been reported to have significantly contributed to the **welfare of local farmers** as well as local infrastructure.³⁶ According to the ASEAN Post, "the

³³ Garcia, Rijk, and Piotrowski (n 6).

³⁴ Indonesia Investments (n 31).

³⁵ Joshua Levin, 'Profitability and Sustainability in Palm Oil Production' [2012] retrieved from [http://awsassets.panda.org/downloads/profitability_and_sustainability_in_palm_oil_production_update .pdf](http://awsassets.panda.org/downloads/profitability_and_sustainability_in_palm_oil_production_update.pdf) on 16 January 2022.

³⁶ Yosuke Shigetomi, Yuichi Ishimura and Yuki Yamamoto, 'Trends in global dependency on the Indonesian palm oil and resultant environmental impacts' [2020] retrieved from <https://www.nature.com/articles/s41598-020-77458-4> on 17 January 2022.

palm oil industry has helped lift millions of people out of poverty, both in Indonesia and Malaysia”.³⁷ This has been achieved thanks to the creation of **well-paying jobs** and **local ownership of plantations** (through the small holder system).³⁸ Dono Boestami (President Director of the Indonesian Oil Palm Estate Fund) argues that when one assumes that one worker is able to support two to three more people as a result of their work and earnings, the palm oil sector contributes to the livelihoods of 20% of the entire Indonesian population.³⁹

³⁷ Try Ananto Wicaksono, ‘Tackling Indonesia’s Poverty With Palm Oil’ [2021] retrieved from <https://theasianpost.com/article/tackling-indonesias-poverty-palm-oil> on 17 January 2022.

³⁸ Ibid.

³⁹ BPDPKS, ‘Palm Oil Support 20 Percent of Indonesia Population’ [2018] retrieved from <https://www.bpd.or.id/en/palm-oil-support-20-percent-of-indonesia-population> on 17 January 2022.

3 Human Rights and Environmental Obligations

Human rights are universal entitlements that protect the dignity, freedom and equality of all human beings. In 1948, the United Nations (UN) lay the foundations for the universal protection of fundamental rights of every individual and adopted the Universal Declaration of Human Rights (UDHR).⁴⁰ The UDHR is not a legally binding document, however, many of the human rights expressed in it have been widely accepted as forming part of customary international law or found in domestic constitutional law settings.⁴¹ The rights of the UDHR have since been split into two separate categories of rights and provided for in two separate Covenants; civil and political rights (International Covenant on Civil and Political Rights, ICCPR), and economic, social and cultural rights (International Covenant on Economic, Social and Cultural Rights, ICESCR). The three documents combined comprise the Universal Bill of Rights and recognise that all human rights, be they civil and political, or economic, social and cultural, are **indivisible** and **interdependent**. This means that they all apply to individuals in a **fair and equal manner**, without discrimination.⁴²

All human rights impose a spectrum of obligations on States. Broadly speaking, States have an obligation to “respect and ensure rights [of] all individuals”.⁴³ In practice, the UN human rights treaty bodies have adopted a more specific tripartite typology of how State should secure human rights obligations. Namely, the duties to **respect**, **protect**, and **fulfil** human rights. The duty to respect human rights entails a negative obligation upon States not to take any measures that result in a violation of a right.⁴⁴ In other words, the State has a duty to not directly interfere with the enjoyment of human rights. The duty to protect human rights requires States to be more proactive and take measures to prevent third parties (e.g., corporations, individuals) from interfering with the rights of others.⁴⁵ Finally, the obligation to fulfil human rights demands an active role by the State, wherein the State is required to take positive measures to facilitate and provide for the enjoyment of human rights. For example, States are obliged to adopt appropriate laws to implement their international (human rights) obligations.⁴⁶

There are several differences between civil and political rights compared to economic, social and cultural rights in the obligations they impose on States. Although both types of rights imply duties to respect, protect and fulfil, the State obligations relating to economic, social and cultural rights are described as follows in the ICESCR:

Each State Party to the present Covenant **undertakes to take steps**, individually and through **international assistance and co-operation**, especially economic and technical, to the **maximum of its available resources**, with a view to **achieving progressively the full**

⁴⁰ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III).

⁴¹ Eibe Riedel, ‘7. Economic, Social and Cultural Rights’ in Catarina Krause and Martin Scheinin (eds), *International Protection of Human Rights: A Textbook* (2nd, rev. ed., Åbo Akademi University Institute for Human Rights, 2012), 132.

⁴² UN World Conference on Human Rights, Vienna, 14–25 June 1993, UN doc. A/CONF.157/23, adopted by 171 states, Vienna Declaration 1993, Part I, paragraph 5.

⁴³ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976), 993 UNTS 3 (hereafter ICESCR), Article 2.

⁴⁴ Daniel Moeckli, *International Human Rights Law* (3rd edn., Oxford University Press 2017) 97.

⁴⁵ *ibid.*

⁴⁶ *ibid.*, 99.

realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.⁴⁷

This specification acknowledges that not all States currently have the capabilities or the necessary level of development to realise economic, social and cultural rights, and takes time to realise these rights. In that view, this Article introduces two qualifiers for implementation of State obligations on economic, social and cultural rights. The first is **progressive realisation**. This entails that the obligations on States do not require immediate implementation, and rather need to be worked towards.⁴⁸ The second is “to the **maximum of its [the State’s] available resources**”. This phrase indicates that, in achieving progressively the full realisation of the rights, States need to take steps on the basis of their available resources. States with low resource availability need to make serious efforts to improve the fulfilment of economic, social and cultural rights, but States with more available resources can and must protect the rights to a greater degree.⁴⁹ There needs to be progress from the starting position of every individual State, and the Committee on Economic, Social and Cultural Rights (CESCR) assesses whether the steps taken by States are adequate and reasonable.

Although the immediate implementation of economic, social and cultural rights is reduced by these qualifiers, the CESCR has also identified several ‘hard’ obligations relating to economic, social and cultural rights that apply immediately. First, as described above, States have an obligation to take *some* steps towards fulfilment of the rights. This obligation is immediate, although the steps taken do not immediately need to ensure the full realisation of the right. Second, if full realisation of rights is not provided, States need to indicate why they are unable to further ensure this realisation.⁵⁰ Third, there can be no retrogressive measures:⁵¹ the level of rights enjoyment may only be improved, not diminished. Fourth, the requirements of non-discrimination and gender equality in the exercise and enjoyment of rights, to be found in Article 2(2) and Article 3 of ICESCR, are of immediate application. Finally, States are required to protect the ‘minimum core obligations’ of each of the rights.⁵² The ‘minimum core obligations’ are central aspects of each right, defined by the CESCR. This ‘minimum core’ standard sets a universal floor of immediate and full compliance by all States. For more information, see General Comment 3 of the CESCR.

Generally, governments owe human rights obligations to people within their country’s borders, thus entailing a territorial scope, or within their jurisdiction. However, States do not exist in isolation and transboundary haze pollution is an issue that inherently knows no borders. It has been affirmed that States obligations to respect, protect and fulfil human rights can have an **extraterritorial scope** in exceptional circumstances. For example, the UN’s Human Rights Committee⁵³ has confirmed that Article 2(1) of the ICCPR’s reference to ‘jurisdiction’ extends a State’s human rights obligations to “anyone within the power or effective control” of the State, even if they are not within the State’s

⁴⁷ ICESCR (n 43) Article 2(1).

⁴⁸ United Nations Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No.3: The nature of States Parties’ obligations (Art. 2, Para.1, of the Covenant)’ (1990) UN Doc E/1991/23, paragraph 9.

⁴⁹ *ibid*, paragraph 10.

⁵⁰ *ibid*, paragraph 4.

⁵¹ *ibid*, paragraph 9.

⁵² *ibid*, paragraph 10.

⁵³ The Human Rights Committee is a treaty body established in accordance with the ICCPR and is comprised of independent experts tasked with monitoring the implementation of the ICCPR by States.

territory.⁵⁴ This limits the State's extraterritorial responsibility for civil and political rights by the extent to which the State's control impacts an individual's enjoyment of their civil and political rights.

The ICESCR, however, does not include a similar provision. Article 2(1) of the ICESCR instead requires the State to progressively realise economic, social and cultural rights through steps taken individually by the State or through international assistance and cooperation. This implies that States, at minimum, have a requirement to refrain from taking actions that would harm the rights of individuals abroad – States at least have an extraterritorial duty to respect ICESCR rights beyond their borders. This is a general summary of the extraterritorial application of human rights, the subsections will deal with the extraterritorial application of rights where necessary (for example, in regard to the no-harm principle).

Unlike human rights law, **international environmental law does not provide for a 'universal bill of environmental rights'** nor one authoritative document outlining foundational environmental rights and principles. Rather, international environmental law initially focused on the regulation of three categories of environmental issues; namely, the exploitation of certain resources, transboundary harm and the use of shared watercourses.⁵⁵ The 'precedents' of modern international environmental law are thus case law where courts have interpreted existing rules of international law to affirm environmental principles (for example, see the no harm principle). One of the first environmental law treaties was the UN General Assembly on 14 December 1962 of Resolution 1803 (XVII) on 'Permanent Sovereignty over Natural Resources', soon followed by the 1972 Stockholm Declaration on the Human Environment and many other multilateral environmental agreements. Soft law also plays a major role in international environmental law, as demonstrated by the fact that two of the field's founding documents are soft law instruments; the 1972 Stockholm Declaration and the 1992 Rio Declaration. The instruments themselves and the conferences and institutions that create them have an important normative role as catalysts of new international norms.⁵⁶

This chapter outlines some of the main human rights and environmental obligations that have emerged from our research and are particularly prevalent for victims of forest fires and transboundary haze pollution. Different rights and obligations under international law are outlined, which have mostly been derived from the ICESCR, the ICCPR, and relevant multilateral environmental agreements (MEAs) such as the Aarhus Convention, the Rio Declaration, and relevant case law.

Efforts have been made to keep the language as simple and clear as possible, while at the same time remaining legally accurate and faithful to the meaning of the sources of the laws. In instances where technical language is unavoidable, the reader will find concise definitions in an appended glossary (Annex I) as well as in textboxes throughout the memorandum.

3.1 Substantive human rights and State obligations

Substantive human rights comprise civil and political rights as well as economic, social, and cultural rights. With rights come corresponding State obligations to protect individuals against environmental

⁵⁴ HRC, 'General Comment 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant', UN doc. CCPR/C/21/Rev.1/Add.13 (26 May 2004), paragraph 10.

⁵⁵ Pierre-Marie Dupuy and Jorge E. Viñuales, *International Environmental Law* (2nd edn., Cambridge University Press 2018), 4.

⁵⁶ *ibid*, 41.

harm which interfere with human rights, and adopt and implement legal frameworks to that effect.⁵⁷ The following human rights are relevant when discussing transboundary haze pollution.

Right to life

The human right to life is an inherent right of all human beings.⁵⁸ All States have committed to respect, protect, and fulfil the right to life. This entails, at the very least, that States should take effective measures against foreseeable and preventable loss of life.⁵⁹ In their General Comment No. 36, the Human Rights Committee emphasised that **environmental degradation, climate change and unsustainable development constitute serious threats to the right to life** of both present and future generations. In respecting the right to life, States should also consider their obligations under international environmental law. Specifically, the Committee clarifies that States have a positive obligation to take measures to preserve the environment and protect it against harm caused by public and private actors. These measures include environmental impact assessments, consultation and cooperation with other States, providing access to information on environmental hazards and efforts to incorporate the precautionary approach in their activities (see more information on these obligations in the following section).

As a cause and consequence of climate change, transboundary haze pollution exacerbates threats to life. For example, following the haze event of 2015, Indonesia recorded increasing numbers of infant deaths and premature adult deaths. Representatives from Malaysia, Myanmar, Singapore, and Thailand have urged the Association of Southeast Asian Nations' (ASEAN) Member States to acknowledge transboundary haze as a danger to basic human rights, including

[T]he *right to life* and the right to the highest attainable standard of health and an adequate standard of living, which includes the right to a safe, clean and sustainable environment.⁶⁰

To protect the right to life, States have a **positive obligation to take measures to mitigate transboundary haze pollution** and prevent foreseeable loss of life.

Right to health

The human right to health is articulated in Article 12 of the ICESCR which provides that all persons have the right “to the enjoyment of the **highest attainable standard of physical and mental health.**”⁶¹ The impacts of transboundary haze pollution have been highlighted in the previous section and include increasingly high rates of malnutrition, vector-borne diseases, and respiratory disorders.

⁵⁷ Ben Boer, *Environmental Law Dimensions of Human Rights* (Oxford University Press 2015) 3.

⁵⁸ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (hereafter ICCPR), Article 6.

⁵⁹ OHCHR, ‘Understanding Human Rights and Climate Change’ (2015) <<https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf>> accessed 6 January 2022.

⁶⁰ Daniel Dzulkifly, ‘ASEAN human rights body urges member nations to commit to transboundary haze agreement’ *Malay Mail* (Malaysia, 14 October 2019) <https://sg.news.yahoo.com/asean-human-rights-body-urges-025638858.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xllmNvbS8&guce_referrer_sig=AQAAA-BjvZOBMvefF3xahAvI4MRZiRitI9jyuCugt1AFd_nHcphWBkwc_E0CQ3-C8Ww0TfT_DJifvDY_UVPrBQIYsx3wWxIOtnahW6eJy7dCn9CkFus6UEIyf8rrhOZ6_M_OFLHpOCNwCMjZ-GD8iFfxHquZZ8EL8_y5sNn8h3BT035Dt> accessed 2 February 2022. [own emphasis added]

⁶¹ ICESCR (n 43) Article 12.

In their General Comment No. 14, the Committee on Economic, Social and Cultural Rights stated that the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services, and conditions necessary for the realisation of the highest attainable standard of health. This means that the right to health should not be interpreted as the right to be healthy, rather a right to health-care facilities, goods and services that have the following elements;

- Quality: scientifically and medically appropriate and of a good quality.
- Availability: functioning and available in sufficient quantities.
- Accessibility: financially affordable and physically accessible to all, without discrimination.
- Acceptability: respectful of medical ethics and culturally appropriate.

As for all economic, social and cultural rights, States are obliged to **expend maximum available resources for the progressive realization** of the right to health for all persons.⁶² However, States have **minimum core obligations** in realising the right to health, including essential primary health care.⁶³

Right to adequate standards of living

The right to an adequate standard of living is found in Article 25 of the non-binding Universal Declaration of Human Rights and in Article 11 of the legally binding ICESCR;

The States Parties to the present Covenant recognize the right of everyone to **an adequate standard of living for himself and his family**, including adequate food, clothing and housing, and to the continuous improvement of living conditions.⁶⁴

From this right, the rights to food, housing and a healthy environment can be derived. The scope and application of the right to housing is elaborated upon in General Comment No. 4 of the Committee on Economic, Social and Cultural Rights, which states that “the human right to adequate housing... is of central importance for the enjoyment of all economic, social and cultural rights.”⁶⁵ Similarly to the previous right, States are obliged to **expend maximum available resources for the progressive realization** of the right to food and housing for all persons.

Right to a healthy environment

The right to a healthy environment has developed gradually since the 1970s when it was first alluded to by the 1972 Stockholm Declaration Principle 1 of the Stockholm Declaration states, “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a

Legal nature of declarations

Declarations are not legally binding instruments but carry considerable moral weight and provide a clear indication of the aspirations of the international community. An example of this is the Stockholm Declaration or the UDHR.

⁶² Progressive realisation and this specific State obligation will be discussed in further detail in the memo on International Avenues of Redress: UN Bodies.

⁶³ See United Nations Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No. 14: The right to the highest attainable standard of health (article 12)’ (2000) UN Doc E/C.12/2000/4, paragraph 43.

⁶⁴ *ibid*, Article 11.

⁶⁵ United Nations Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No. 4: The right to adequate housing (Art. 11(1) of the Covenant)’ (1991) UN Doc E/1992/23, paragraph 1.

life of dignity and well-being”.⁶⁶ The right has also gained constitutional recognition and protection in more than 150 countries, including the Indonesian Constitution.⁶⁷

The right to a healthy environment has been interpreted to **entail clean air, safe drinking water, and adequate sanitation;**⁶⁸ **to live and work in a nontoxic environment;**⁶⁹ **and to a safe climate to ensure healthy populations.**⁷⁰ The right as found in many national Constitutions entails a State obligation to set clear standards for pollutants, ensure planning for the prevention of pollution, and fairly enforce environmental laws.⁷¹

On 8 October 2021, the UN Human Rights Council adopted a resolution recognizing that the right to a clean, healthy and sustainable environment is a human right. Although not legally binding, its near-unanimous adoption shows consensus on the formulation, content, and importance of this human right.⁷²

Right to equality and non-discrimination

States have a duty to guarantee that **rights will be exercised without discrimination** and ensure that all persons receive **equal and effective protection** against discrimination on any grounds.⁷³ This also means that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law”.⁷⁴

The Intergovernmental Panel on Climate Change (IPCC) has repeatedly stated that people who are socially, economically, politically, institutionally or otherwise marginalized are especially vulnerable to climate change. In regard to transboundary haze pollution, some groups of peoples are affected to a greater extent because they have been denied sufficient resources to adapt to these impacts, including children, adolescents, elderly and women.⁷⁵ The haze therefore implicates the right to non-discrimination. It is important to note that both the ICCPR and the ICESCR include a non-discrimination clause relating to the rights included in the Covenants (Article 2(1) of both Covenants). This clause states that the rights recognised in the Covenant will be respect and ensured “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Any discrimination in the State’s implementation of its obligations to protect, respect and fulfil the rights implicated by the haze is thus not allowed.

Right to development

⁶⁶ UNGA, ‘United Nations Conference on the Human Environment’ (December 1972) UN Doc. A/RES/2994 (hereafter Stockholm Declaration), Principle 1.

⁶⁷ *Undang-undang Dasar Negara Republik Indonesia Tahun 1945* (Constitution of the Republic of Indonesia of 1945, reinstated in 1959, with amendments through 2002) [1945] (hereafter Indonesian Constitution), article 28H.

⁶⁸ Decision Regarding Communication 155/96 (Social and Economic Rights Action Center/Center for Economic and Social Rights v. Nigeria), Case No. ACHPR/COMM/A044/1 (Afr. Comm’n Hum. & Peoples’ Rts. May 27, 2002).

⁶⁹ *Guerra and others v Italy*, Judgment, Merits and Just Satisfaction, App No 14967/89, [1998] ECHR 7, ECHR 1998.

⁷⁰ David Boyd, ‘The Constitutional Right to a Healthy Environment’ (2012) 54 *Environment Science and Policy for Sustainable Development* 3, 6.

⁷¹ Indonesian Constitution (n 67), Article 28H.

⁷² HRC, ‘Resolution adopted by the Human Rights Council on 8 October 2021: The human right to a clean, healthy and sustainable environment’ (2021) UN Doc A/HRC/RES/48/13.

⁷³ ICESCR (n 43) Article 2.

⁷⁴ ICCPR (n 58) Article 26.

⁷⁵ IPCC, *AR6 Climate Change 2022: Impacts, Adaptation and Vulnerability, Summary for Policymakers* (2022), 17.

Pursuant to Article 55 of the UN Charter, States should promote “conditions of economic and social progress and development”.⁷⁶ The ICESCR and the ICCPR also state that all peoples should “freely determine their political status and freely pursue their economic, social and cultural development”.⁷⁷ In particular, States should take steps individually and collectively to **guarantee all persons the ability to enjoy economic, social, cultural and political development**.

Climate change poses an existential threat to people’s enjoyment of this right.⁷⁸ Transboundary haze pollution sparked by agricultural practices that aim to meet the global palm oil demand thereby plays a dual role in this. On the one hand, the transboundary haze pollution is often sparked by agricultural activities which bring income and, arguably, welfare to local farmers. On the other hand, it can have serious effects on the realisation of this right for victims of pollution, especially if governments expenditures are diverted from poverty alleviation measures to emergency response measures dealing with climate change-related disaster events.⁷⁹ All individuals and peoples have a right to development and States have a **positive obligation to take urgent action to prevent transboundary haze pollution** and promote the realisation of the right to development for everyone.

3.2 Procedural Human Rights and State Obligations

In human rights law, procedural rights and obligations prescribe formal steps that must be taken to enforce substantive rights such as the ones elaborated on in the previous section. In international environmental law, procedural obligations are recognised as stand-alone obligations that are not necessarily there to fulfil substantive obligations. This section provides a non-exhaustive list of procedural rights and obligations that can be considered by right-holders when asserting claims of violations against perpetrators.

Access to information

Access to information is the **foundation of public participation and accountability**. The lack of meaningful access to pollution information is a significant problem for local communities, civil societies and individuals or NGOs seeking to hold actors accountable for environmental harm. Information can be released by governments through reactive and proactive disclosure.⁸⁰ Reactive disclosure refers to the process of obtaining environmental information through formal requests of information to the government, whilst proactive disclosure refers to information that is made publicly available by public authorities without a request.⁸¹

⁷⁶ United Nations Charter (adopted 26 June 1945, entered into force 24 October 1945) (1945) 1 UNTS XVI (hereafter UN Charter), Article 55.

⁷⁷ ICESCR (n 43) Article 1; ICCPR (n 58) Article 1.

⁷⁸ OHCHR (n 59) 15.

⁷⁹ Vivek Mukherjee and Faizan Mustafa, ‘Climate Change and the Right to Development’ (2019) 5 Management and Economics Research Journal 1, 4.

⁸⁰ World Resources Institute, ‘A Community Action Toolkit: A roadmap for using environmental rights to fight pollution’.

⁸¹ *ibid*, 17.

Domestically, the right to access information can be found in national constitutions, thereby directly enforceable by national courts. Administrative laws or environmental regulations will also contain information disclosure requirements, particularly regarding environmental impact assessments.⁸²

The international legal right to access information found in the Aarhus Convention, Article 19 of the ICCPR,⁸³ and Principle 10 of the Rio Declaration, which recognizes the importance of access to environmental information and participation in decision-making about pollution.⁸⁴

Right to public participation

The right to public participation is widely expressed in human rights instruments as part of democratic governance and the rule of law.⁸⁵ Article 25 of the ICCPR specifically provides that citizens have the right, without unreasonable restrictions “to **take part in the conduct of public affairs**, directly or through freely chosen representatives”.⁸⁶ Public participation includes a range of activities and actions that allow people to engage in environmental decision-making around issues that affect them. The right to participate has two components: the **right to be heard** and the **right to affect decisions**.⁸⁷ Participation is not a single event but a process or mechanism that allows local communities to learn about, provide input, and potentially influence government regulatory decisions.⁸⁸ Most recent multilateral and many bilateral agreements contain references to or guarantees of public participation.⁸⁹

The right to access public participation **can also trigger State obligations to carry out environmental impact assessments (EIAs)**. For example, the 1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) requires States parties to notify the public and to provide an opportunity for public participation in relevant environmental impact assessment procedures regarding proposed activities in any area likely to be affected by transboundary environmental harm.⁹⁰

Access to justice and Right to remedy

The right of access to justice, considered broadly, encompasses, amongst others, the right to access courts or tribunals and the right to an effective remedy. International human rights law recognises that

⁸² For example, see *Undang Undang No. 32 tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup* [Law No. 32 of 2009 concerning Protection and Management of Environment] LN. 2009/ No. 140, TLN NO. 5059, LL SETNEG : 71 HLM refers to environmental impact assessments (AMDAL).

⁸³ ICCPR (n 58) Article 19.

⁸⁴ Rio Declaration on Environment and Development (adopted 14 June 1992, entered into force 29 December 1993) UN Doc A/CONF.151/26, Principle 10.

⁸⁵ See UDHR (n 40) Article 21; ICCPR (n 58) Article 25.

⁸⁶ ICCPR (n 58) Article 25.

⁸⁷ Dinah Shelton, ‘Human Rights and the Environment: What specific environmental rights have been recognised?’ (2006) 35 *Denver Journal of International Law and Policy* 129, 139.

⁸⁸ World Resources Institute (n 80), 18.

⁸⁹ See Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution Concerning the Control of Emissions of Volatile Organic Compounds or Their Transboundary Fluxes (adopted 18 November 1991) 31 I.L.M. 568, Article 2(3)(a)(4), Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 37 I.L.M. 22, Article 6(3) and Stockholm Convention on Persistent Organic Pollutants (adopted 22 September 2001) 40 I.L.M. 532, Article 10(1)(d).

⁹⁰ Convention on Environmental Impact Assessment in a Transboundary Context (adopted 25 February 1991, entered into force 2 September 1991) 30 I.L.M., Article 3. Hereafter Espoo Convention.

the respect and protection of human rights can only be guaranteed by the availability of justice and effective judicial remedies.

Article 2(3) of the ICCPR states that, in respecting and ensuring the rights to all individuals, States Parties must also ensure that **individuals whose rights have been violated will have an effective remedy**. Similarly, Article 8 of the UDHR provides that “[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”. In regard to economic, social and cultural rights, the CESCR has affirmed that appropriate measures to implement the ICESCR must include appropriate means of redress, or remedies, made available to any aggrieved individual or group.⁹¹ The provision of domestic legal remedies for violations of Covenant rights is also included under the States’ obligations in Article 2(1) of the ICESCR; in taking all ‘appropriate means’ to realise Covenant rights, States have a positive obligation to complement the rights with judicial remedies.⁹² An **‘effective’ remedy** should lead to the cessation of the violation and to reparations. These **reparations** can include

restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.⁹³

The right to access justice may also entail a **right to access courts**. As a corollary to this, all persons must be seen as **equal before the courts and tribunals**. Furthermore, individuals are entitled to a **fair and public hearing** before a **competent, independent and impartial tribunal established by law**.⁹⁴

3.3 Key Principles and State Obligations in International Environmental Law

The environmental principles discussed in this section do not reflect an exhaustive list of all environmental law principles. The following discussion focuses on those principles with a transnational aspect and thus pertinent to our research on transboundary haze pollution. Furthermore, these principles have been linked in the works of human rights bodies to the realisation of human rights (see the earlier discussion on the right to life and States’ positive obligations to take measures to protect it against harm caused by public and private actors).

No harm principle

The principle of no harm was the first international environmental law principle to emerge and entails a substantive duty under customary law to prevent environmental harm. The principle first appeared in the environmental context in the *Trail Smelter* case, where the arbitration tribunal established for the case by the United States and Canada stated that:

⁹¹ CESCR, ‘General Comment No. 9: The domestic application of the Covenant’ (1998) UN Doc E/C.12/1998/24, paragraph 2.

⁹² *ibid*, paragraphs 2 and 3.

⁹³ HRC, ‘General Comment 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant’, UN doc. CCPR/C/21/Rev.1/Add.13 (26 May 2004), paragraph 16.

⁹⁴ ICCPR (n 58) Article 14.

[N]o State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.⁹⁵

The **customary** nature of this principle was confirmed by the International Court of Justice (ICJ) in the 1949 *Corfu Channel* case.⁹⁶ In both *Trail Smelter* and *Corfu Channel*, no-harm is used as a primary norm to determine State responsibility for damage caused to another State. No-harm also presents a limit to the principle of permanent sovereignty over natural resources;⁹⁷ States have a sovereign right to exploit their own resources, but they are also obliged to ensure that exploitative activities within their jurisdiction or control do not cause damage to the environment of other States.

No-harm is an obligation of **due diligence**. This means that, if the State of origin has exercised full diligence, but harm still occurs, then the principle is not violated. The magnitude of the effect or 'damage' must be assessed based on criteria such as the likelihood of significant harmful effects on the environment or the impact on other States' capacity to use their natural wealth and resources in a similar way. Damage that does not reach the threshold of significance will not breach the no-harm principle, but States will remain bound by the due diligence duty to prevent it (see prevention principle).

Principle of Prevention

The principle of prevention develops the no-harm principle by encompassing protection of the environment *per se* rather than protection of the interests of other States. It is introduced in Principle 21 of Stockholm, which was later confirmed by Principle 2 of the 1992 Rio Declaration⁹⁸ and affirmed by the ICJ as codified customary international law.⁹⁹ The principle of prevention thus provides an **obligation to prevent damage to the environment in general** and is particularly important as environmental damage can be irreversible, as recognised by the ICJ in the *Gabčíkovo-Nagymaros* case:

[I]n the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage.¹⁰⁰

As a corollary to the principle of prevention, States also have a **duty to cooperate** (through notification and consultation) and to **conduct an EIA** where the proposed activity is likely to have a significant adverse impact (these are procedural obligations and discussed in the following subsection).

Principle of Precaution

The lack of scientific certainty about the actual or potential effects of an activity must not prevent States from taking appropriate measures when such effects may be serious or irreversible.

⁹⁵ *Trail Smelter Arbitration*, RIAA, vol. III, pp. 1905–82 (*Trail Smelter*), 1965.

⁹⁶ *Corfu Channel* case (*UK v. Albania*), ICJ Reports 1949, p. 4 (*Corfu Channel*), 22.

⁹⁷ Stockholm Declaration (n 66) Principle 21.

⁹⁸ Rio Declaration (n 84) Principle 2.

⁹⁹ *Legality of the Threat or Use of Nuclear Weapons*, ICJ Reports 1996, p. 226 (*Legality of Nuclear Weapons*).

¹⁰⁰ *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment, ICJ Reports 1997, p. 7 (*Gabčíkovo-Nagymaros Project*), paragraph 140.

The nature of precaution is **still debated in international environmental law**; some see it as a principle,¹⁰¹ whilst others, including the ICJ, argue that it is an approach.¹⁰² Interpreting precaution as **a principle concurs legal consequences upon entities that violate it**, whereas precaution as an approach carries less legal weight. For example, Article 3(3) of the UN Framework Convention on Climate Change (UNFCCC) provides that States Parties “should” take precautionary measures to anticipate, prevent or minimise the causes of climate change and its adverse effects,¹⁰³ whilst Principle 15 of the Rio Declaration provides that States “shall” take a precautionary approach to protect the environment.¹⁰⁴ The Rio Declaration’s use of ‘shall’ signifies an obligatory nature to precaution, whereas the UNFCCC’s Article 3(3) is a strong recommendation to States. Similarly, in *Pulp Mills*, the ICJ observed that “while **a precautionary approach may be relevant in the interpretation and application of the provisions of the Statute**, it does not follow that it operates as a reversal of the burden of proof”.¹⁰⁵ These examples negate the legal weight that precaution would have as a principle, rendering it a recommendatory approach to be taken by States in actions they take to protect the environment.

On the other hand, the European Court of Human Rights (ECtHR) contrasts this finding and recognises the importance of the precautionary principle.¹⁰⁶ The ECtHR’s decision thus establishes a high level of protection to the environment and human health, arguing that the Romanian State had a positive obligation to adopt precautionary, reasonable and sufficient measures to protect the rights of the interested parties to respect for their private lives and their home and, more generally, a healthy, protected environment – the Court found Romania failing to uphold this obligation and in violation of Article 8 (protection of private and family life) of the European Convention on Human Rights (ECHR).¹⁰⁷

Obligation to conduct environmental impact assessments

EIAs are used by most governments to **evaluate the likely environmental impacts of proposed projects**.¹⁰⁸ EIAs are conducted to examine anticipated environmental effects of a proposed project and manage and prevent pollution control.¹⁰⁹ Principle 17 of the Rio Declaration provides that:

¹⁰¹ Dupuy and Viñuales (n 55) 70.

¹⁰² *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Reports 2010, p. 14 (*Pulp Mills*), paragraph 204. This was also confirmed in *Certain activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, *Construction of a road in Costa Rica along the river San Juan (Nicaragua v. Costa Rica)*, Judgment of 16 December 2015 (ICJ) (*Costa Rica/Nicaragua*), paragraph 104.

¹⁰³ UNGA, ‘United Nations Framework Convention on Climate Change’ (1994) UN Doc A/RES/48/189 (UNFCCC), Article 3(3).

¹⁰⁴ Rio Declaration (n 84), Principle 15.

¹⁰⁵ *Pulp Mills* (n 102) paragraph 164.

¹⁰⁶ *Tatar v. Romania*, ECtHR Application No. 67021/01, Judgment (27 January 2009, Final 6 July 2009) (*Tatar v. Romania*), paragraph 120.

¹⁰⁷ *ibid*, paragraph 125.

¹⁰⁸ UNEP, ‘Environmental Impact Assessment and Strategic Environmental Assessment: Towards an integrated approach’ (2004).

¹⁰⁹ Shelton (n 87) 139.

Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a **significant adverse impact on the environment** and are subject to a decision of a competent national authority.¹¹⁰

As aforementioned, the Espoo Convention is an example of treaty law which provides for an obligation to conduct EIAs. Appendix I of the Convention lists certain activities that require EIAs before they can be authorised, on the basis of their significant adverse transboundary impact.¹¹¹ Whilst the Espoo Convention is referred to in this overview to inform readers of the substance of obligations, practically, Indonesia and Malaysia are not bound to the Convention's provisions as they are not signatories to it. Nonetheless, in the *Pulp Mills* case, the ICJ also recognised that the obligation to conduct an EIA has achieved **customary status**:

[I]t may now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource.¹¹²

This was also confirmed by the Arbitral Tribunal in the *South China Sea Arbitration*,¹¹³ which also stated that this applied “to all States with respect to the marine environment in all maritime areas, both inside the national jurisdiction of States and beyond it”.¹¹⁴ In the context of this report, the transboundary consideration of the environmental impact is particularly pertinent to EIAs. Consequently, the obligation to conduct EIAs can be seen to complement the State obligation to prevent transboundary environmental harm (see no-harm principle).

The **content of the EIA is set by domestic law of States**, but customary international law does set some **minimal requirements**:

1. The EIA must be conducted **before the activity is allowed to proceed** and the effects of the EIA must be **consistently monitored**.¹¹⁵
2. As a general matter of **prevention and due diligence**, the contents of the EIA be appropriate to the circumstances of the envisioned activity.¹¹⁶
3. The EIA must meet **international standards required by due diligence and prevention** and its adequacy can be reviewed by an international court and deemed deficient.¹¹⁷

¹¹⁰ Rio Declaration (n 84) Principle 17.

¹¹¹ Espoo Convention (n 90) Article 2(3).

¹¹² *Pulp Mills* (n 102), paragraph 104.

¹¹³ *In the matter of the South China Sea Arbitration before an Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea (Republic of the Philippines v. People's Republic of China)*, PCA Case No. 2013-19, Award (12 July 2016) (*South China Sea Arbitration*), paragraphs 947-8. The *South China Sea Arbitration* did not specifically address EIA in this paragraph, but all obligations under Part XII of the Law of the Sea Convention, which includes Article 206 on EIA.

¹¹⁴ *ibid*, paragraph 940.

¹¹⁵ *Pulp Mills* (n 102) paragraph 205.

¹¹⁶ *ibid*.

¹¹⁷ *Costa Rica/Nicaragua* (n 102) paragraph 157-161.

Regarding whether the customary law on EIAs also entail consultation with potentially affected populations, the issue is unsettled, and it is not yet clear whether an obligation to consult the public exists in general public international law.¹¹⁸

The rules governing EIAs are important to examine because they contain information provided to the regulator that outlines the anticipated environmental effects of a proposed project and the activities that will be used for pollution control. This can include suggestions related to the approval of the siting of the facility and its impact on human health and the environment, the amount and type of the discharge of emissions, the monitoring frequency of specific pollutants in the ambient environment, specific discharges, the frequency of monitoring, as well as rules in emergencies. EIAs also typically include opportunities for public participation (see right to public participation).

¹¹⁸ Dupuy and Viñuales (n 55) 80.

4 Indonesia, Malaysia, and the United Nations Human Rights System

This section will give a brief introduction into Indonesian and Malaysian treatment of international law and the role of the UN human rights system in providing mechanisms of redress. State attitudes towards international law are varied, and therefore important to be aware of when CSOs are trying to use international law in domestic settings.

4.1 Interaction Between Domestic and International Law

The two main approaches to incorporating international law in domestic legal systems are described as monism and dualism. Monism refers to countries that treat international law and domestic law as a single legal system. This system has as a result that international law becomes automatically enforceable in the domestic courts. A dualist system treats the international and domestic systems of law as separate and independent. Dualist systems require the government to take extra steps for international law to be enforceable domestically.

Indonesia's status in this regard is debated. Domestic law does not specify whether all international law automatically applies domestically. Many scholars take the view that Indonesia takes a dualist approach to implementing international treaties. Treaties often lay dormant until they are transformed into domestic law by statute or regulation. Others argue that Indonesia is partially, or full monist and typically point to the Indonesian system being largely based on continental European law, which generally treats international law as directly applicable. Regarding customary law, a decision of in its *Decision Reviewing Law 27 of 2004 on the Truth and Reconciliation Commission* the Indonesian Supreme may be said to have used a monist treatment of international law.¹¹⁹ This decision applied the 1961 Vienna Convention on Diplomatic Relations and referred to “practice and universal customary international law” in coming to its decision.

In Indonesian law, human rights hold a special treatment as Article 7 of Law Number 39 of 1999 on Human Rights prescribes that treaties and provisions regarding international human rights law that are ratified by Indonesia automatically become Indonesian domestic law. Further, individuals have a right to use all domestic remedies to enforce human rights, as well as all international remedies that are consented to by the State.

Malaysian courts consistently take a dualist approach to the application of international treaties. Malaysian treatment of customary international law is less consistent. This reflects the historical roots Malaysian law which partially lie in English common law, which regards customary law to be part of “the law of the land”. Through this medium customary international law has sometimes been directly applied.

Practically speaking, arguing for a monist approach is more beneficial when trying to enforce international law, so CSOs trying to do so may wish to rely on argumentation that supports this approach. Further, it is important to note that regardless of how a State treats international law domestically, international law stays fully applicable in the international sphere. Therefore, especially in situations where domestic enforcement is challenging, the international legal system can be of help.

¹¹⁹ See Dec. 4, 2006, Decision, Reviewing Law 27 of 2004 on the Truth and Reconciliation Commission.

Further, international human rights efforts can influence domestic proceedings when these are available.¹²⁰

Recommendation	Legal/ Advocacy	Impact Potential	Victims' redress?
<p><i>Raise</i> human rights issues both internationally and domestically (for example national human rights commission) where possible.</p> <p><i>Engage</i> internationally to create pressure and international attention for the issues.</p>	Legal/Advocacy	This reflects a broad recommendation to engage with the human rights system internationally as specified in the further recommendations and further raise human rights issues domestically through advocacy and legal action. Domestic action based on human rights obligations may lead to victims' reparation.	Yes

4.2 United Nations and Human Rights

The United Nations engages in a wide variety of actions related to human rights. The Office of the High Commissioner on Human Rights (OHCHR) is the principal UN office on human rights. It can be seen as the coordinating force of the UN's human rights initiatives. Its responsibilities include to assist UN Member States, entities (including CSOs) and individuals with protecting and promoting human rights. It does so through different mechanisms, including setting human rights standards, monitoring human rights and their abuses, and providing support on the ground to ensure human rights are respected.¹²¹

The OHCHR looks at civil society actors for support in the promotion, protection and advancement of human rights¹²² and provides CSOs with information and knowledge about UN Human Rights systems (refer to the [Handbook for Civil Society](#) outlining how civil society actors can cooperate with the UN Human Rights Program, among others). There are, however, very few means for *Friends of the Earth groups* to cooperate with the OHCHR. The only way to contribute to the OHCHR's work would be to respond to their '[calls for input and comments](#)'. At the time of writing, no calls relate to the issues pertaining to this report. Its relevance for the present report is therefore limited to the factual knowledge it can provide about the UN's Human Rights programs.

The UN's two main human rights monitoring and enforcement systems are the treaty-based system and the charter-based system. The UN-based systems are primarily concerned with the regulation of

¹²⁰ This will be illustrated further later

¹²¹ OHCHR, 'What we do: an overview' [n.d.] <<https://www.ohchr.org/EN/AboutUs/Pages/WhatWeDo.aspx>> accessed 18 January 2022.

¹²² OHCHR, 'Civil Society: UN Human Rights resources for NGOs, human rights defenders, and other actors in civic space', [n.d.] <<https://www.ohchr.org/en/resources/civil-society>> accessed 18 January 2022.

State actions. As such there are a lot of procedures which facilitate State-to-State interaction within the system. However, the human rights system also allows for non-state actors to participate in the procedures.

There are several complaints procedures for individuals and groups seeking UN action on a human rights situation of concern to them. The three mechanisms allowing for these complaints to the UN are: the international human rights treaties; the special procedures mechanisms of the Human Rights Council; and the complaint procedure of the Human Rights Council. These procedures are well-used as thousands of people around the world bring human rights concern to the attention of the UN through these mechanisms every year.¹²³ Individual and groups often bring their complaints with the help of civil society actors (including university law clinics).

Under certain circumstances, these different procedures may be complementary and more than one may be used. It is important to consider carefully which complaint procedure is best suited to a particular case. Each has its own strengths, specific requirements, and limitations. They therefore need to be considered in the interests of the victim(s) and of the individual(s) or organisation(s) presenting the complaint. Further they need to be carefully considered in terms of the substance of the complaint.

Next to these specific procedures, the UN human rights system also provides for opportunities for more general advocacy by NGOs. For example, they allow CSOs to give input during their different procedures.

The following chapters will discuss the opportunities of UN Charter-based mechanisms of redresses (Chapter 5) and the UN treaty body-based mechanisms (Chapter 6) and how these can be utilised in the current situation.

Recommendation	Legal/ Advocacy	Impact Potential	Victims' redress?
<i>Stay updated</i> on current calls for input and comments of the OHCHR.	Advocacy	This will allow the spotting of opportunities for advocacy	No
<i>Consult</i> OHCHR guidelines on engagement with the UN but use with caution regarding the time of creation (some information in the guidelines may be outdated at the time of reading).	Advocacy	The OHCHR creates guidelines on the engagement of CSOs with human rights bodies that one can consult for guidance.	No

¹²³ OHCHR, 'Individual Communications, Human Rights Treaty Bodies', retrieved from <<https://www.ohchr.org/en/treaty-bodies/individual-communications>> accessed 23 March 2022.

5 UN Charter-based system

The **UN Charter-based system** includes those mechanisms that were created by UN bodies, most often the UN General Assembly, based on their authority derived from the UN Charter (hence, ‘UN Charter-based systems’). Their main difference from the UN Treaty-based system is that they are not directly linked to one specific treaty, the implementation of which they oversee, but rather more generally support the UN and its different operations.

Predominantly, the UN Charter-based system **does not offer specific avenues of redress for individuals** or communities seeking justice for a human rights violation experienced at the hand of a single company. Nonetheless, they should not be ignored because of their **international significance**. Overall, the UN Charter-based system, and the various mechanisms within it, should be considered by CSOs for **long-term advocacy solutions and achievements**. The specific relevance of each separate system is discussed below. This section explores the UN Human Rights Council, the Universal Periodic Review Mechanism, the Human Rights Council’s Special Procedures, the Human Rights Council Advisory Committee, and its Complaint Procedure.

5.1 Human Rights Council: General Remarks

The **UN Human Rights Council** was established by the UN General Assembly in 2006.¹²⁴ The Human Rights Council is made up of 47 elected UN Member States that convene for a minimum of 10 weeks in total, spread over a minimum of three times per year. The UN General Assembly resolution that established the Human Rights Council specified its functions in its paragraph 5.¹²⁵ These functions primarily include the **promotion and development of, education about, and ensuring compliance with international human rights**. The Human Rights Council achieves its functions through four different means: the Universal Periodic Review mechanism, the Special Procedures mechanism, the Human Rights Council Advisory Committee, and the Complaint Procedure. Each of these means will be separately discussed in the following sub-parts.¹²⁶

5.1.1 Human Rights Council: Universal Periodic Review Mechanism

In the Universal Periodic Review Mechanism (UPR), **all UN Member States** are **reviewed** every 4.5 years based on their **human rights records**. The reviews are based on a combination of **State reports** (especially that of the State under review), **UN sources**, as well as further sources, such as **reports** by NGOs. The unique review is **State driven**, which means that the States under review are expected to take agency over the review process and recommendation implementation by being closely engaged in the review.

The UPR is based on a repetition of **5 steps** for each country, illustrated by an [infographic](#) created by the Human Rights Council. These steps are:

1. the **State under review** prepares and submits a **report** on the state of human rights in its own country;

¹²⁴ UNGA Res 60/251 (3 April 2006) UN Doc A/RES/60/251.

¹²⁵ *ibid.*

¹²⁶ For more general information about the Human Rights Council, refer to its website here: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>

2. the reviewed State **appears before the UPR Working Group**;
3. the **UPR Working Group prepares a report** based on the State report as well as further research and sources (based on reports created by both independent UN-internal or -external human rights experts and CSOs);
4. once the UPR working group's report is finalized, it is **adopted by the Human Rights Council**;
5. the State under review is tasked with **implementing the recommendations** included in the final Human Rights Council report, on which the Human Rights Council will follow up.

Currently, the **UPR is nearing the end of its third cycle** (2017 to 2022). This means that by mid-2022, all UN Member States will have been reviewed three times by the Human Rights Council. Over the next four and a half years, new reports about all States will be created. The **first meeting** for the **fourth cycle** (its 41st session) will be held from **7 to 18 November 2022**.

All documents and the final report created for **Indonesia** during the third cycle can be found by following this [link](#) and are summarized (in English) in this [infographic](#). Interestingly, whilst Indonesia has received **225 recommendations**, **none** relate to either the **environment, climate, nature, haze, fire, or forests**. These keywords have additionally not been mentioned in the context relevant to this analysis in the full country report, except for once regarding the murder of an environmental human rights activist.¹²⁷ Similarly, **none of the questions submitted in advance** by other UN Member States **mentioned the keywords** listed above. A similar pattern can be observed regarding the documents for the second cycle.¹²⁸

Regarding the final report for **Malaysia**, a similar pattern emerged. All documents can be found following this [link](#) and an infographic (in English) can be found [here](#). Malaysia has received **268 recommendations**, **none** relate to the keywords **environment, climate, nature, haze, fire, or forest** as understood in the context of this analysis. Additionally, **none** of these terms have been mentioned in any of the **questions** asked by other UN Member States to analyse in the context of Malaysia. The same lack of environmental awareness can be seen when reviewing the documents of the second cycle for Malaysia.¹²⁹

Those environmental issues, such as nature and climate have not been included in either Indonesia's or Malaysia's UPR report should be considered a **grave omission** of the UPR working group, Indonesia and Malaysia in their own reports, as well as the UN Member States that have submitted questions.

In the [fourth cycle](#), **Indonesia's** human rights situation is set to be reviewed during the 41st session. Therefore, it must submit its **national report by 8 August 2022**. **Malaysia** is set to be reviewed during the 45th session (Jan-Feb 2024) and must submit its **national report by October 2023**

¹²⁷ Human Rights Council, 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Indonesia' [2017] A/HRC/WG.6/27/IDN/1, page 18.

¹²⁸ Human Rights Council, 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Indonesia' [2012] A/HRC/WG.6/13/IDN/1.

¹²⁹ Human Rights Council, 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Malaysia' [2015] A/HRC/WG.6/23/MMR/1.

(tentative deadline). The Human Rights Council has created a document for States including [guidance notes](#) on their national reports, which requires States to clearly state which recommendations they have fully or partially implemented, which are still pending, and which it has ‘noted’ (‘noted’ indicates that whilst the State has considered the Human Rights Council’s concern, it has not been followed up further through the implementation of policies to address the issue). At this point it is important to mention that all **recommendations** are **non-binding** on the States. Nonetheless, they can be **incentives** for States to improve their practices through **international political pressure** and they create a **space** where **dialogue** about certain issues take place.

5.1.2 Universal Periodic Review Mechanism: Relevance for CSOs

The UPR is both relevant for CSOs in Malaysia, Indonesia, and other countries. This is because the final country-specific reports can be both influenced through different channels. First, CSOs in Malaysia and Indonesia can **influence** their respective **States** when they are creating their **own reports (step 1 of review cycle)**.¹³⁰ Second, CSOs in other countries can **influence** their national governments to submit relevant **questions** to the UPR working group. Third, CSOs from all countries can directly **influence** the **final country report** by participating in the [Human Rights Council regular session](#), during which all stakeholders (which includes CSOs) may voice their views regarding the final report.¹³¹

The third recommendation refers to the opportunity of **CSOs** to directly **submit written information to the UPR working group**.¹³² An overview of the tentative deadlines for these submissions can be found [here](#). According to this document, the tentative deadline for submissions vis-a-vis Indonesia’s human rights record has already passed, and submissions vis-a-vis Malaysia’s human rights record must be submitted by 29 June 2023 (tentative deadline). An overview of all guidelines regarding the written submissions can be found [here](#). *Milieudefensie* has made one such submission together with the NGOs *Stand Up For Your Rights* and *Wemos* for the UPR for the Netherlands in the third cycle.¹³³

¹³⁰ Sarune Beh and Nurhidayah Abdullah, ‘Democracy in Transition: Civil Society Organisations and the Malaysian Universal Periodic Review’ [n.d.] <<https://macsa.com.my/wp-content/uploads/2021/01/Democracy-in-Transition-Civil-Society-Organisations-and-the-Malaysian-Universal-Periodic-Review.pdf>> accessed 17 January 2022.

¹³¹ Anza Burger, Igor Kovac and Stasa Tkalec, ‘(Geo)Politics of Universal Periodic Review: Why States Issue and Accept Human Rights Recommendations?’ (2021) 17 Foreign Policy Analysis 1.

¹³² Human Rights Council, ‘4th UPR cycle: contributions and participation of "other stakeholders" in the UPR’ [n.d.] <<https://www.ohchr.org/en/hr-bodies/upr/ngos-nhris>> accessed 18 January 2022.

¹³³ Jan van de Venis, ‘joint NGOs’ contribution to the third Universal Periodic Review of the Netherlands by the UN Human Rights Council’ [n.d.] <<https://www.wemos.nl/wp-content/uploads/2016/10/Joint-NGOs%C2%B9-contribution-to-the-third-Universal-Periodic-Review-of-the-Netherlands-Health-and-Environment.pdf>> accessed 17 January 2022.

Recommendation	Legal/ Advocacy	Impact Potential	Victims' redress?
<i>Lobby</i> with national governments outside Indonesia and Malaysia to ask questions relating to the negative human rights implications resulting from environmental factors, such as forest fires and haze.	Advocacy	As there is currently no mention of environmental issues in either Indonesia's or Malaysia's UPRs, raising this issue with the Dutch government, which in turn can include it in its questions to the UPR working group can have significant effects on putting these issues on the radar of human rights bodies . As a result, this may be translated into national policies and greater emphases overall.	No
<i>Engage</i> in the country report drafting stages (especially relating to CSOs in Malaysia, as the deadline for Indonesia's report has passed already by the time this memorandum is published). Although these do not provide avenues for redress, the UPR process does incentivize States to improve their human rights situations because of international political pressure and they create a space for further dialogue.	Advocacy	Similar to the impact potential above, including human rights concerns on the basis of forest fires and transboundary haze pollution in Indonesia's and Malaysia's country reports can increase (inter)national awareness about related ongoing human rights violations and incentivise policies to address these.	No
<i>Participate</i> in the Human Rights Council regular session to voice the concerns about human rights abuses connected to forest fires and haze.	Advocacy	Addressing the effects environmental issues have on human rights is important to underline the relevance of addressing these concerns on a global scale. Greater international awareness is likely to translate into greater national awareness in the long-run.	No

5.1.3 Human Rights Council: Special Procedures

The Human Rights Council's Special Procedures refers to **Special Rapporteurs, independent experts, or working groups** that perform more **specific research into human rights issues**. The focus can either be on a country ([country-specific mandate](#)) or on an overarching issue ([thematic mandates](#)).

The Special Procedures mandate holders operate through **country visits, reviewing individual cases or issues of a common nature**, conducting **studies and expert interviews**, and [more](#). It is often Special Procedures mandate holders that alert the Human Rights Council and international community to specific violations and issues of human rights. Special Procedure mandate-holders can **influence** (and thus advance) **legislative and policy reform, government and judicial processes, awareness and education, support in access to mechanisms of redress, and facilitate dialogues, among others**.

To date, **no country-specific mandate** has existed for either **Indonesia** or **Malaysia**. Regarding the **thematic mandates**, there is one on [the promotion and protection of human rights in the context of climate change](#) from 2021, and one on [human rights and the environment](#) from 2012 relevant to the present analysis. As a result of these mandates, there is a **Special Rapporteur on human rights and climate change** (Ian Fry since 1 April 2022) and a **Special Rapporteur on human rights and the environment** (Prof. David R. Boyd). These two Special Rapporteurs are arguably most relevant to CSOs addressing transboundary haze pollution as this is primarily an environmental problem (though neither have thus far engaged with this topic specifically). Nonetheless, contact and cooperation with relevant special rapporteurs and working groups other than these two is encouraged.¹³⁴

The **most relevant Special Rapporteurs** to engage with are:

- ❖ Special Rapporteur on Human Rights and Climate Change: Dr. Ian Fry
- ❖ Special Rapporteur on Human Rights and the Environment: Prof. David R. Boyd
- ❖ Working Group on Business and Human Rights (chaired by Prof. Elżbieta Karska and Prof. Surya Deva)
- ❖ Special Rapporteur on the Right to Physical and Mental Health: Ms. Tlaleng Mofokeng

Beyond this, the **cooperation** with the following Special Rapporteurs is encouraged as well:

- ❖ Special Rapporteur on the Right to Development: Mr. Saad Alfarargi
- ❖ Special Rapporteur on the Right to Education: Dr. Koumbou Boly Barry
- ❖ Special Rapporteur on the Right to Adequate Housing: Prof. Balakrishnan Rajagopal.

¹³⁴ Special procedures consist of either an individual or a working group consisting of five individuals serving at their personal capacity.

Special Rapporteur	Name	Contact information
Special Rapporteur on Human Rights and Climate Change	Dr. Ian Fry	Ian.Fry@anu.edu.au
Special Rapporteur on Human Rights and the Environment	Prof. David R. Boyd	ohchr-srenvironment@un.org
Working Group on Business and Human Rights	Chairs: Prof. Elzbieta Karska and Prof. Surya Deva	ohchr-wg-business@un.org
Special Rapporteur on the Right to Physical and Mental Health	Ms. Tlaleng Mofokeng	srhealth@ohchr.org
Special Rapporteur on the Right to Development	Mr. Saad Alfarargi	ohchr-srdevelopment@un.org
Special Rapporteur on the Right to Education	Dr. Koumbou Boly Barry	sreducation@ohchr.org
Special Rapporteur on the Right to Adequate Housing	Prof. Balakrishnan Rajagopal	ohchr-srhousing@un.org

5.1.4 Special Procedures: Relevance for CSOs

Special Rapporteurs can be invaluable to CSOs. According to paragraph 133 of its [Manual of Operations](#), cooperation between civil society actors and Special Rapporteurs are crucial to their work. The **civil society actors** assume a **supporting role** by providing information, analysing this information, and helping to shape relevant policies. CSOs can make **submissions** to the special rapporteurs [here](#) by following the [submission requirements](#) outlined by the Human Rights Council. Submissions can concern the **violations of human rights** of individuals (one or more), groups or communities, as well as national laws/bills/policies/etc.

Similar to the UPR Mechanism, the Special Procedures should be considered a **long-term strategy** for CSOs. Whilst a **close cooperation** of the CSO with different Special Rapporteurs is encouraged and CSOs can make use of the submission system to Special Rapporteurs to voice its concerns about the effects of forest fires and transboundary haze, it **cannot hold individual corporations accountable** under this system.

Recommendation	Legal/ Advocacy	Impact Potential	Victims' redress?
<i>Cooperate</i> with relevant special rapporteurs by making submissions, providing information, and further support. Relevant Special Rapporteurs include: UN Special Rapporteur on Human Rights and Climate Change, UN Special Rapporteur on Human Rights and the Environment, UN Special Rapporteur on Business and Human Rights, UN Special Rapporteur on the Right to Physical and Mental Health; and potentially to a lesser extent: UN Special Rapporteur on the Right to Development, UN Special Rapporteur on the Right to Education, UN Special Rapporteur on the Right to Adequate Housing.	Advocacy	Special Rapporteurs are important key figures in the international human rights sphere. Cooperating with them on addressing (the effects of) forest fires and transboundary haze can be influential in raising international awareness and concern about these issues and promoting policies to counter these.	No
<i>Keep in mind</i> that the Special Rapporteurs can use their diplomatic power to expose human rights violations, address the perpetrators directly or/and publicly and exert influence over policy and legal developments.	Advocacy	The Special Procedures include a complaint mechanism which can assess individual cases and provide remedies to victims when successful through the involvement of domestic authorities .	Yes

5.2 Human Rights Council: Advisory Committee

The advisory committee for the Human Rights Council is described as its **think tank** which is predominantly tasked with **conducting studies** and giving **research-based advice**. The Human Rights Council can request the Human Rights Council Advisory Committee to research a topic related to human rights more closely and create a thematic report on this issue.

Currently, **no ongoing or past mandate** relates to the issues discussed in this report. Yet, as an NGO in consultative status with ECOSOC, *Friends of the Earth International* may **submit written statements** to the Human Rights Council Advisory Committee to any future mandate it can contribute to. It can do so following the guidelines created by the Secretariat, which can be found in the [submission form](#).

5.2.1 Human Rights Council Advisory Committee: Relevance for CSOs

The **relevance** of the Human Rights Council's Advisory Committee to the current report is **negligible** as it neither provides an avenue of redress for the affected communities discussed, nor a

platform for CSOs to voice the ongoing issue beyond lobbying at the Human Rights Council to request the Advisory Committee to research the human rights impacts of (transboundary) haze pollution.

5.3 Human Rights Council: Complaints Procedure

The aim of the Complaints Procedure is to “**address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms** occurring in any part of the world and under any circumstances”.¹³⁵ In other words, the complaints procedure evaluates **complaints** that have been **submitted by private individuals, groups or CSOs** regarding grave and well-documented human rights violations. The procedure is **confidential, impartial**, and aims to be **victim oriented**. The Human Rights Council has summarized the most important aspects of the complaint procedure in its [information booklet](#). As the Complaints Procedure is confidential, it is unknown whether a complaint has addressed either Indonesia or Malaysia or surrounds the topic of transboundary haze.

Once a complaint has been submitted, it is **first reviewed based on the admissibility criteria** (paragraphs 85 to 88 of [Resolution 5/1](#)), including whether the submission is objective, based on facts, and submitted in good faith. Additionally, a complaint will only be considered by the Complaints Procedure if **all domestic remedies have been exhausted** or if doing so would be ineffective and unreasonably prolong the process.¹³⁶ For an outline of situations in which exhausting domestic remedies is not necessary, refer to the report ‘[Exhaustion of Domestic Remedies in the United Nations System](#)’ by the International Justice Resources Centre. A **CSO** acting in good faith **may submit a complaint** to the Complaints Procedure through the [complaint procedure form](#). If the complaint meets the outlined criteria, it is forwarded to the State concerned, which may submit its views vis-à-vis the allegations. As a third step, two different working groups further consider the complaint within 24 months and decide whether to forward it to the concern of the Human Rights Council. If a complaint is forwarded to the Human Rights Council and accepted by it as a complaint to consider further, this means that the human rights **violations** will be **directly monitored by appointed experts** and a **cooperation with the relevant State** will be further initiated to stop the human rights violations. Therefore, whilst action initiated through the Complaints Procedure may limit potential future human rights violations, it is **not a system that provides redress** to affected individuals.

5.3.1 Complaints Procedure: Relevance for CSOs

The Complaints Procedure can be relevant to CSOs as it may **submit a complaint** to the Complaints Procedure as a CSO acting in good faith if all domestic remedies have been exhausted or would unreasonably prolong the remedies sought.¹³⁷ However, the *Refugee Council of Australia*, has stated that they do not believe that the Complaint Procedure is an effective way of stopping human rights

¹³⁵ Human Rights Council, ‘Human Rights Council Complaint Procedure’ [n.d.] retrieved from <<https://www.ohchr.org/en/hr-bodies/hrc/complaint-procedure/hrc-complaint-procedure-index>> accessed 18 January 2022, paragraph 1.

¹³⁶ A Conscientious Objector's Guide to the International Human Rights System, ‘Human Rights Council Complaint Procedure’ [n.d.] <<https://co-guide.org/mechanism/human-rights-council-complaint-procedure>> accessed on 18 January 2022.

¹³⁷ *ibid.*

violations because of multiple reasons.¹³⁸ First, the Human Rights Council Complaints Procedure must investigate admissible complaints within 24 months, and therefore is a relatively **slow system**.¹³⁹ Second, the Complaints Procedure **only addresses issues that are not being dealt with by a treaty body or special procedure**, which means that it may be rejected for falling within an already existing mandate.¹⁴⁰ Whilst there is currently no specific treaty body or special procedure engaging with the effects of forest fires and/or transboundary haze, these issues may be seen as falling within the mandate of the Special Rapporteurs discussed above. Third, **already existing mandates** are considered to be **more effective and competent**.¹⁴¹ Due to the confidentiality requirement of the Complaints Procedure, it is hard if not impossible to say which other CSOs have made use of the Complaints Procedure and what their experiences were.

Additionally, as the Complaints Procedure only addresses “**gross and reliably attested violations**”, this must be clearly proven in any complaint. Given the largely uncontrollable nature of forest fires and transboundary haze, as well as difficulties around causation when discussing environmental crimes, this **threshold** may be **difficult to meet**.

Recommendation	Legal/ Advocacy	Impact Potential	Victims’ redress?
<i>Submit a complaint</i> to the Complaint Procedure if national avenues of redress fail. If accepted, the Council will appoint experts for immediate monitoring and work with the relevant state.	Advocacy	Whilst there are high thresholds to get a complaint accepted in the scope of the Complaint Procedure, once it has been accepted the issue will be addressed in cooperation with the State and the Human Rights Council, and reparations may be paid to victims .	Yes

¹³⁸ Refugee Council of Australia, ‘Guide – Engaging with UN Human Rights Procedures’ (2018) <<https://www.refugeecouncil.org.au/wp-content/uploads/2018/12/Guidelines-for-engaging-with-Human-Rights-Council1.pdf>> accessed 15 March 2022, page 5.

¹³⁹ *ibid.*

¹⁴⁰ *ibid.*

¹⁴¹ *ibid.*

6 Human Rights Treaty-Monitoring System

Many human rights instruments have been drafted under the auspices of the UN, of which the following are commonly considered to be core international human rights treaties:

- ❖ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- ❖ International Covenant on Civil and Political Rights (ICCPR)
- ❖ International Covenant on Economic, Social and Cultural Rights (ICESCR)
- ❖ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- ❖ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- ❖ Convention on the Rights of the Child (CRC)
- ❖ International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families (ICMRW)
- ❖ Convention on the Rights of People with Disabilities (CRPD)

The obligations found within the human rights treaties often do not directly include environmental protections. However, the UN treaty bodies all recognize the intrinsic link between the environment and the rights contained in human rights treaties. Environmental harm may impact many of the rights within these treaties, including but not limited to the right to life, health, and adequate standards of living.

The following will outline the treaties that protect the rights of all people and/or of marginalized groups and were ratified in whole or in part by Indonesia and/or Malaysia and have been used to seek environmental redress in the past.¹⁴² They can therefore be considered as the most useful for CSOs dealing with issues connected to the transboundary haze to be aware of, including the avenues of redress their treaty bodies provide.

Concerning the rights of all people:



International Covenant on Civil and Political Rights



International Covenant on Economic Social and Cultural Rights

¹⁴² At the date of the drafting of this report. The current ratification status of all core human rights treaties can be found here: <https://indicators.ohchr.org/>

Concerning the rights of specific marginalized groups:



Convention on the
Elimination of All Forms of
Discrimination against Women



Convention on the Rights of
the Child



International Convention on
the Protection of the Rights
of All Migrant Workers and
Members of Their Families



Convention on the Rights of
Persons with Disabilities

This chapter first provides an explanation on the general functioning of the treaty body system and the role civil society can play in these processes. Subsequently, the chapter gives a treaty-by-treaty overview of the core human rights treaties which could be most beneficial to *Friends of the Earth groups* in furthering their advocacy work. For each treaty, it addresses the extent of its applicability, the different ways in which forest fires and transboundary haze can be connected to its substantive rights, and the procedures available to CSOs.

6.1 Human Rights Treaty Bodies

For each of the core human rights treaties, the UN has established a panel of independent experts, known as a treaty body, that is responsible for monitoring the implementation of the treaty by the state parties that have ratified it. CSOs may play a substantial role in many of the processes of these treaty bodies, often being called on to introduce information. In some cases, CSOs may also submit reports alleging violations of human rights, for confidential consideration.

UN human rights treaty bodies usually take the form of a committee composed of independent experts acting in their individual capacity. The main functions of the treaty bodies are to examine reports submitted by States parties and to consider complaints of human rights violations. Some treaty bodies may also conduct state inquiries. This section introduces the reporting mechanism, complaint procedures, state inquiries, and briefly addresses general comments of treaty bodies.

6.1.1 Reporting Mechanisms

All States parties to the international treaties are required to submit periodic reports stating progress made on the implementation of the rights set forth in the treaties and the problems they still encounter in the realization of rights. The timeframe in which States must submit these reports varies between treaties.

The diagram below offers an overview of the reporting cycle of the treaties discussed in this report.

Treaty	Initial Report after ratification	Periodic Reports	Variations in Periodicity
ICCPR	1 year	Every 4 years	The treaty body sometimes varies periodicity in accordance with follow-up procedure
ICESCR	2 years	Every 5 years	-
CEDAW	1 year	Every 4 years	Or as requested by the treaty body
CRPD	2 years	Every 4 years	-
CRC	2 years	Every 5 years	-
ICRMW	1 year	Every 5 years	Or as requested by the treaty body

Table: Periodicity of core human rights reports

It is valuable to be aware of the reporting cycle of a specific country when considering acting on an issue within this country as CSOs may be able to contribute to the discussion at UN level. All bodies accept communication from CSOs within the reporting process, and some even specifically invite CSOs and UN agencies to submit information.

Recommendation	Legal/ Advocacy	Impact Potential	Victims' redress?
<i>Stay up to date</i> on the reporting cycle of countries of interest.	Advocacy	This is a way to conduct general advocacy through the treaty bodies and may serve to pressure the state concerned and work towards new interpretations by the treaty bodies.	No
<i>Raise issues</i> during the reporting cycle on the Indonesian forest haze or on topics that are highly related as a form of general advocacy.			

The reporting cycle and the practices of treaty bodies differ slightly per treaty but all the treaty bodies follow two similar general models. These are referred to as the normal reporting procedure and a simplified reporting procedure that States may opt-in or -out of depending on the treaty body.

6.1.1.1 Normal Reporting Procedure

Under the normal reporting procedure, States will first submit their mandatory **periodic reports**, after which these are examined in the **pre-sessional phase** by the treaty body in light of information received from a variety of sources, including CSOs. The treaty body will then often present the State which submitted its report with a **list of issues** and questions based on the report to which the State may reply. This will lead to a dialogue, mainly between States, on the matters raised, in an open **session** similar to the ones held in the UPR process (outlined in section 5.2). After considering all the information brought forward through this, the treaty body issues **concluding observations** containing recommendations for action by the State party enabling better implementation of the relevant treaty. The treaty bodies often monitor **follow-up** action by the State party on the concluding

observations during examination of the next report submitted. On several occasions, treaty-body recommendations set out in the concluding observations have served as the basis for new technical cooperation projects.

The below diagram illustrates the opportunities for input that may arise within this cycle for NGOs under the normal reporting procedure.

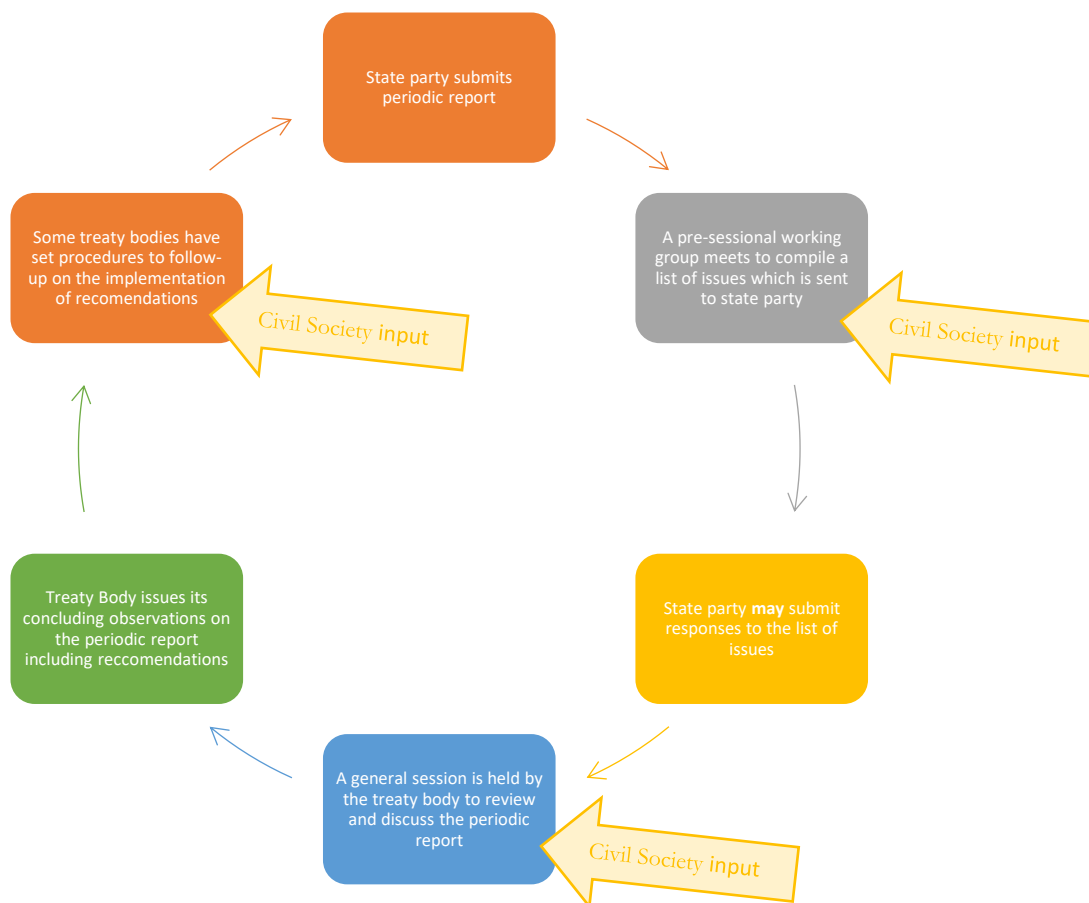


Figure: Overview of the normal reporting cycle and where NGOs can give their input¹⁴³

6.1.1.2 Simplified Reporting Procedure

Under the simplified procedure the parties do not submit a periodic report as such, rather, the Committee prepares and adopts **lists of issues** to be transmitted to State parties. The State party must **reply to this list of issues** which are deemed to constitute the State party's report. The procedure then continues similarly to the normal procedure, with dialogue in an open **session**. After considering all the information brought forward through this, the treaty body issues **concluding observations** containing recommendations for action by the State party enabling better implementation of the

¹⁴³ Adapted version of graphic found in: J. Y. Kallie, et al., 'Searching for the Elusive? Examining the Right to Health's Status in the Pacific' 17 Asia-Pacific Journal on Human Rights and the Law 257 (2016).

relevant treaty. Concluding observations of the previous cycle are generally taken as a starting point in the preparation of the list of issues.

This simplified procedure aims to facilitate the State parties' reporting process, strengthen the State parties' capacity to fulfil their obligations in a timely and effective manner, provide the Committee with more targeted periodic reports, improve the effectiveness of the treaty monitoring system by reducing the need to request supplementary information before considering a report, and to allow the Committee to plan its work in advance.

The below diagram illustrates the opportunities for input that may arise within this cycle for NGOs under the simplified reporting procedure.

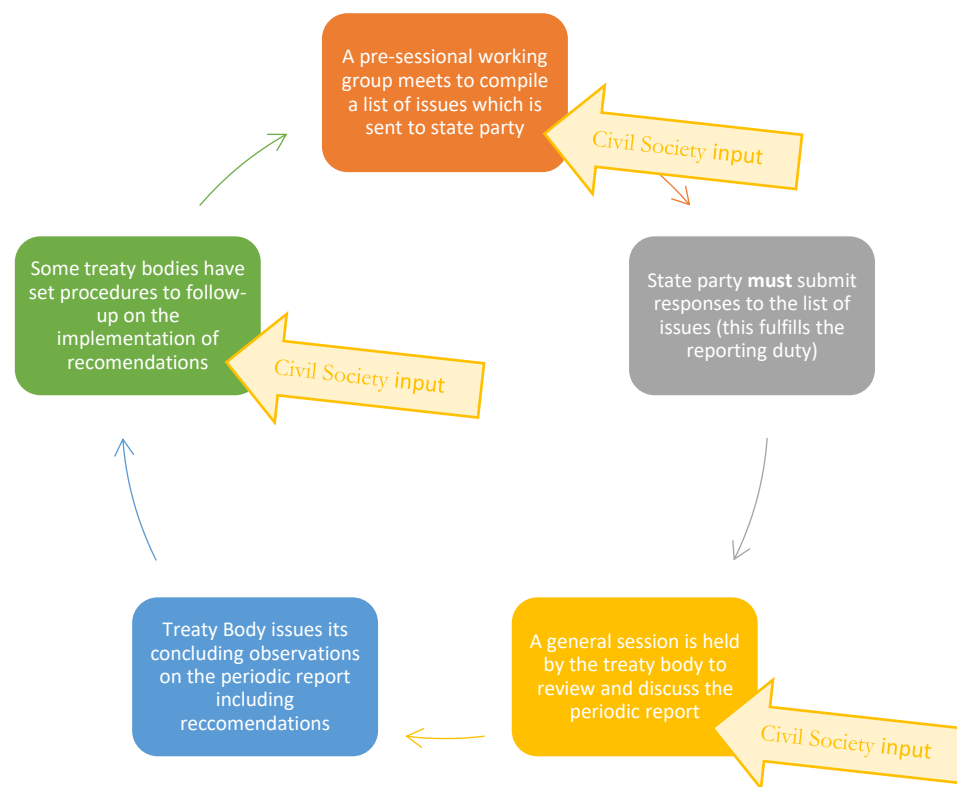


Figure: Overview of the simplified reporting cycle and where NGOs can give their input¹⁴⁴

6.1.2 Complaint Procedures

To submit a complaint to a treaty body, the complainant's case must fall within the scope of application of one of the treaties that allow for individual complaints. Therefore, it is important to make sure the substance of the complaint aligns with the treaty body it is being submitted to as best as possible. Additionally, the State against which the complaint is being brought must be a party to the treaty and must have accepted the competence of the specific human rights treaty body to accept complaints.

¹⁴⁴ Adapted version of graphic found in: J. Y. Kallie, et al. (n 143).

Seven international human rights treaties currently allow for individuals to lodge complaints about alleged violations of rights to their respective treaty bodies. However, these are almost exclusively regulated by Optional Protocols to the treaty or by way of an additional declaration (such as in the case of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, under article 77). This means they require additional State consent, and Indonesia and Malaysia have not ratified any of the Optional Protocols to the core human rights conventions or made declarations permitting the use of these procedures. Therefore, individuals cannot lodge complaints against either Indonesia or Malaysia regarding alleged human rights violations, which limits the availability of this option when seeking redress against actions undertaken by these countries.

CSOs may want to lobby for Malaysia and Indonesia to ratify the optional protocols of the core human rights conventions. When the state accepts the complaints mechanism, the relevant human rights treaty body, through individual complaints, authoritatively determines whether there has been a violation, and the State concerned has an obligation to give effect to the treaty body's findings. This is an important advantage of submitting a complaint to a treaty body that stems from the states obligation under human rights treaties to provide an effective remedy for breaches of the treaty.

Human rights treaty bodies can also issue interim measures in urgent cases to preserve a situation until they make a final decision on the matter. An interim measure is an urgent measure that is put in place until the actual decision has been made to avoid any further (and sometimes irreparable) harm being done until the final decision is made.

Decisions of human rights treaty bodies can also go beyond the circumstances of the individual case and provide proactive guidelines to prevent a similar violation occurring in the future. Especially in cases of redress to environmental harm, this is particularly valuable as it may provide guidelines states have to adhere to in terms of preventing that environmental harm, which is often the greater strategic objective of the individual cases brought, by providing non-binding but authoritative interpretations and through contributing to the trickle-down effect that is explained in detail in section 6.2.7.

When submitting an allegation to a human rights treaty body, several specific requirements must also be met, including specificity of the human rights abuse claimed and the consent or authorization of the victim. If any of these requirements are not met or are missing, the complaint may not be considered.

Recommendation	Legal/ Advocacy	Impact Potential	Victims' redress?
<i>Lobby</i> for Malaysia and Indonesia to ratify the optional protocols of the core human rights conventions.	Advocacy	If successful, the ratification of optional protocols could allow the treaty bodies to engage in state enquiries, investigations into the country's human rights situation. It could also allow the treaty body to hear individual complaints, which would open up the possibility for victims to bring claims before the treaty bodies.	If successful it may open up the possibility

6.1.3 General Comments

Treaty bodies also aid in the interpretation of human rights treaties and therefore influence the interpretation and application of these treaties. They do so by publishing their views on specific complaints and situations, as well as through general observations of comments. General Comments are used to express a committee's considered legal opinion on the scope of a right or obligation contained in one of the provisions of the treaty it supervises; the issuing committee attaches considerable importance to the contents of General Comments, and they are also cited by other global and regional treaty bodies as authoritative statements of human rights law.¹⁴⁵ At present, there is a large body of general comments and recommendations serving as a valuable resource with regard to treaty interpretation.¹⁴⁶ Some that are of particular importance will be mentioned in the treaty-by-treaty overview.

6.2 Treaty-by-Treaty Overview

This section gives a treaty-by-treaty overview of the selected human rights treaties, namely, the ICCPR, ECESCR, CEDAW, CRC, ICMRW, and CRPD. Each section is structured to first introduce the treaty and its treaty body, after which it shall address the substance of the treaty and how it may connect to environmental issues such as the forest haze. Then, the procedures and ways for CSOs to engage in the reporting process and in other processes of the committee are outlined.

6.2.1 International Covenant on Civil and Political Rights

The purpose of the **International Covenant on Civil and Political Rights** (ICCPR) is to recognize the inherent dignity of each individual and promote conditions within states to allow the enjoyment

¹⁴⁵ On the development of general comments, see: Philip Alston, 'The Historical Origins of the Concept of "General Comments" in Human Rights Law' in Laurence Boisson de Chazournes and Vera Gowlland-Debbas (eds.), *The International Legal System in Quest of Equity and Universality* (Brill 2001).

¹⁴⁶ The more than 100 general comments and recommendations are reproduced in the *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, UN Doc HRI/GEN/1/Rev 9.

of civil and political rights for all people. The ICCPR, with its two optional protocols, is part of the **International Bill of Human Rights**, together with the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR, see section 6.5.2). These documents form the core human rights protection at the international level. The ICCPR was ratified by Indonesia in 2006 subject to a declaration not of importance for the current discussion.¹⁴⁷ Malaysia has not currently ratified the ICCPR.

The **Human Rights Committee (HRC)** was established in accordance with the ICCPR.¹⁴⁸ It is composed of 18 members, acting in their personal capacity, who are nominated and elected by States parties to the Covenant for a term of four years. The Committee considers periodic reports of state parties to the Convention. The **First Optional Protocol to the ICCPR** allows the Committee to consider individual communications on violations of the convention with respect to state parties to the Protocol. This Protocol is not ratified by Indonesia and as such this avenue of redress is not available.

The below elaborates on the rights and obligations arising from this treaty and how these may be connected to issues connected to the haze, the reporting mechanism and how CSOs may contribute during this process, and other opportunities for civil society engagement.

6.2.1.1 Rights and Obligations Arising from the Convention

The ICCPR confers a host of civil and political rights. The text of the ICCPR does not explicitly recognize a human right to a healthy environment. However, environmental rights have often been derived from the Convention.¹⁴⁹ The Committee's statements on human rights affected by environmental impacts have most frequently invoked the rights of minorities – and, particularly, indigenous peoples – protected by Article 27 of the ICCPR.¹⁵⁰

Other rights addressed in this context include: the right of peoples to self-determination, protected by Article 1; the right to participate in public affairs under Article 25; the right to equality before the law and equal protection under Article 26; and the right to life, protected by Article 6.¹⁵¹ The Committee has also on occasion suggested that the right to a home free from arbitrary or unlawful interference (Article 17) may also be threatened by environmental harm.¹⁵²

In August 2019, the Human Rights Committee published its landmark decision in a complaint submitted by a family of rural workers against Paraguay, in connection with toxic pollution caused by the agriculture industry.¹⁵³ They found Paraguay responsible for failing to protect individuals from severe environmental contamination by large-scale farms' use of illegal chemicals, in violation of the State's international obligations to protect the rights to life and respect for private and family life and the home. Whilst regional human rights bodies have recognized the link between pollution and

¹⁴⁷ On the right to self-determination

¹⁴⁸ ICCPR (n 58) Article 28.

¹⁴⁹ ICCPR (n 58).

¹⁵⁰ OHCHR, 'Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Individual Report on the International Covenant on Civil and Political Rights' (2013)

¹⁵¹ *ibid.*

¹⁵² *ibid.*

¹⁵³ HRC, Communication No 2751/2016, *Portillo Cáceres v. Paraguay*, UN Doc CCPR/C/126/D/2751/2016.

enjoyment of human rights, this decision marks a first for the Human Right Committee. This opens the door to a wider interpretation of the ICCPR in the context of the haze.

Recommendation	Legal/ Advocacy	Impact Potential	Victims' redress?
Use precedent from the Portillo Cáceres v. Paraguay to argue that environmental harm falls under the ICCPR and does not have to be proven to directly affect the people invoking its protection as long as it is proven to contribute to a general harm. This is easier to prove than a specific harm.	Legal/Advocacy	This is an argument that can be made in legal proceedings or in submissions to strengthen this interpretation.	Yes (When used in legal proceedings)

6.2.1.2 Reporting procedure

States party to the ICCPR must adhere to a reporting procedure. They must submit their first report within 1 year after ratification or accession to the Convention. Subsequent reports must be submitted, as a general rule, every 4 years. However, the Human Rights Committee sometimes varies periodicity of reports in accordance with their follow-up procedure. The Committee has also accepted the submission of periodic reports which combine two overdue reports in a single document.¹⁵⁴ Reports must include information on the measures taken to implement the provision of the Convention, including legal, administrative, and judicial measures, and the difficulties the State encountered in implementing these.

The Committee has been using both the normal reporting procedure and a simplified reporting procedure that States may opt-out of. Below the stages of reporting cycle shall be explained, including how CSOs may participate in these.

Pre-sessional Procedure

The pre-sessional working group shall compile a list of issues. CSOs may **attend** the pre-session working group meetings. Representatives that wish to attend any pre-sessional working group must be registered *two days prior* to the beginning of the respective session. Application and registration are done on the [indico platform](#).¹⁵⁵ This is the event management system used by both the New York and Geneva Offices of the UN.

The Committee finds it highly desirable to receive **written submissions** from CSOs at an early stage of the reporting process, so this may be incorporated into the list of issues.¹⁵⁶ For this purpose, the

¹⁵⁴ Klaus Hübner, 'How to File Complaints on Human Rights Violations: A Manual for Individuals and NGOs' (2010), 59.

¹⁵⁵ Specific links will also be available on the web page of the session you wish to attend.

¹⁵⁶ For the other treaty bodies general requirements for written submissions were available. For this one it was not, however, you will be able to find the requirements for submissions when the body publishes an event as part of the specific event information.

Committee gives advance notice of its reporting schedules and deadlines for such submissions,¹⁵⁷ which can be sent to the [Secretariat](#).

General Session of the Committee

At the general session, the Committee will then consider the report and/or the responses to the list of issues through a public dialogue. State representatives are given the opportunity to introduce the report orally and members then raise questions relating to specific articles of the Convention. Thus, this is an opportunity as well for other State parties to question the implementation of the Convention.

Civil society actors may **follow the public meetings** live on the UN's [broadcasting platform](#). They may also **attend the public meetings** with prior accreditation. CSO representatives who wish to attend any sessions of the Committee must be registered *two days prior* to the beginning of the respective session. Application and registration are done on the [indico platform](#).¹⁵⁸

Civil society actors cannot directly participate in the dialogue between the State party and the Committee, but they may participate in other ways. The Committee welcomes the **submission of alternative reports** to the [Secretariat](#).¹⁵⁹ Furthermore, CSOs may apply to give **oral presentations** during the session. The Committee customarily engages with CSOs during a **formal closed meeting** preceding the examination of the State party's report. This allows CSOs to present their main issues of concern orally and to reply to questions from the members. There are additional opportunities for CSOs to provide the Committee with detailed information during **informal briefings**.

Drafting and Adoption of Concluding Observations

Following consideration, the Committee adopts its comments in a closed meeting making suggestions and recommendations to the respective State party. Comments are issued as public documents at the end of each session of the Committee and included in the annual report to the General Assembly. Concluding observations are generally taken as a starting point in the preparation of the list of issues for the examination of the subsequent report of a State Party.

Follow-Up Procedure

The Committee also introduced a follow-up procedure to the concluding observations: the States parties will be requested to report back to the Committee within a specified period (usually within 12 months) with responses to the Committee's recommendations, indicating what steps have been taken. A Special Rapporteur on Follow-up to Concluding Observations has been assigned to evaluate the information.

The Committee encourages CSOs to contribute to its follow-up procedure and feed into concluding observations. CSOs can provide the Committee with **written information**, including an evaluation of the measures taken by the State party to implement the concluding observations that were selected by the Committee for the follow-up procedure. This information should be submitted at the time the follow-up report of the State party is due (namely one year after the adoption of the concluding

¹⁵⁷ Deadlines can also be found submissions when the body publishes an event as part of the specific event information.

¹⁵⁸ Specific links will also be available on the web page of the session you wish to attend.

¹⁵⁹ For the other treaty bodies general application procedure for oral presentations were available. For this one it was not, however, you will be able to find the requirements when the body publishes an event as part of the specific event information.

observations), or once the State party's follow-up report is made public. The written information should concern only the implementation of recommendations highlighted in the concluding observations for consideration under the follow-up procedure.

6.2.1.3 Other Forms of Civil Society Participation

The Committee regularly devotes one day of its session to a general discussion of a particular right or of a particular aspect of the Covenant. The Committee will generally publish information on these and encourages CSOs, together with other stakeholders, to provide input subject to the specification given for that session.

6.2.1.4 Upcoming Opportunities

This reflects the current cycle the Indonesia is in. Regardless the submission date of the report, the next opportunity for input accurately reflects the position of the country in the current reporting cycle. As there are no dates available for this, CSOs will need to stay updated if they wish to make use of this opportunity.

Country	Cycle	Report Due	Report Submitted	Next Opportunity for Input
Indonesia	II	29 July 2021	29 July 2021	General Session

6.2.2 International Covenant on Economic Social and Cultural Rights

The purpose of the **International Covenant on Economic Social and Cultural Rights** (ICESCR) is to promote the principle of progressive realization of all economic, social, and cultural rights by States to their peoples. The ICESCR is part of the **International Bill of Human Rights**. The ICESCR was ratified by Indonesia in 2006.¹⁶⁰ The treaty was not ratified by Malaysia.¹⁶¹

The **Committee on Economic, Social and Cultural Rights** was established by the **Economic and Social Council** with a view towards carrying out the monitoring functions originally assigned to the latter body under the ICESCR.¹⁶² It is composed of 18 independent experts. The Committee monitors periodic reports of state parties to the Convention. The Committee also issues statements as well as general comments on the substantive rights and obligations under the ICESCR or on other topics relevant to its work. Preceding the publication of a general comment, the Committee may devote part of its session to a discussion on a particular topic with relevant stakeholders from civil society.¹⁶³

The **Optional Protocol to the ICESCR** allows the Committee to consider individual communications, inter-state complaints, and to conduct inquiries into alleged grave or systematic violations with respect to state parties to the Protocol.¹⁶⁴ Both Indonesia and Malaysia have not signed this Optional Protocol; as such, this route of redress is not available.¹⁶⁵

¹⁶⁰ Subject to a declaration not of importance for the current discussion on the right to self-determination

¹⁶¹ The current ratification status of all core human rights treaties can be found [here](#).

¹⁶² Under ECOSOC Resolution 1985/17 of 28 May 1985; ICESCR (n 43) part IV.

¹⁶³ Committee on Economic, Social and Cultural Rights, 'General Discussion Days'

¹⁶⁴ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

¹⁶⁵ The current ratification status of all core human rights treaties can be found [here](#).

The below elaborates on the rights and obligations arising from this treaty and how these may be connected to issues connected to the haze, the reporting mechanism and how NGOs may contribute during this process, and other opportunities for civil society engagement.

6.2.2.1 Rights and Obligations Arising from the Convention

By ratifying the ICESCR, states commit to take steps individually and through international cooperation and assistance, to the maximum of their available resources, with a view to progressively achieving the full realization of the economic, social, and cultural rights within.¹⁶⁶ A number of specific rights protected by the ICESCR include the right to health, adequate housing, education, water, food, and culture.¹⁶⁷

The obligation towards the “progressive realisation” of the rights found within the Convention is based on the rhetoric that not all States currently have the capability to realise these rights and that it also takes them time to fully realise these rights. However, in recent years, the Committee has clarified that the ICESCR also conveys several core minimum rights. This is the essential level to which every State party must at minimum protect those under its jurisdiction. It is important to note that the content of these minimum core standards is still heavily disputed, by scholars and in the international community. States rarely use the terminology in their reports to the Committee. National courts rarely, but occasionally reference the “minimum core” concept but are not always consistent in their interpretation with the Committee.

The Committee adopted a public statement specifically focused on climate change in 2018 describing the implications of climate change for economic, social, and cultural rights and States’ obligations under the ICESCR in that context, including obligations owed to populations outside their territories.¹⁶⁸ It underlines that “a failure to prevent foreseeable harm to human rights caused by climate change, or a failure to mobilize the maximum available resources in an effort to do so, could constitute a breach of this obligation”.¹⁶⁹ The Statement also highlights States’ obligations to dedicate the maximum available resources to the adoption of measures that could mitigate climate change and further emphasizes the duty of States to regulate private actors to ensure that their activities do not worsen climate change. Including by “[adopting] policies that can channel modes of production and consumption towards a more environmentally sustainable pathway”.¹⁷⁰ The CESCR also joined with four other human rights treaty bodies in adopting a landmark joint Statement on human rights and climate change in September 2019.¹⁷¹

The impacts of the forest haze may be more concretely connected to certain rights within the Convention, such as the right to education, as children are unable to go to school due to the haze.¹⁷² Further, the haze, apart from being a contribution to climate change, directly adversely impacts the health of many individuals. Article 12 of the ICESCR recognizes “the right of everyone to the

¹⁶⁶ ICESCR (n 43) Article 2.

¹⁶⁷ ICESCR (n 43).

¹⁶⁸ The Centre for International Environmental Law and The Global Initiative for Economic, Social and Cultural Rights, ‘Economic, Social, and Cultural Rights Obligations of States in the Context of Climate Change’ (updated 2020)

¹⁶⁹ *ibid.*

¹⁷⁰ *ibid.*

¹⁷¹ [Joint Statement on "Human Rights and Climate Change"](#)

¹⁷² ICESCR (n 43) Article 13(2)(a).

enjoyment of the highest attainable standard of physical and mental health.”¹⁷³ State parties have a duty to take measures to secure the right to health and to establish a system of health protection which provides for equal opportunity for everyone to enjoy the highest attainable level of health.¹⁷⁴ The minimum core of the right to health includes positive actions that must be taken by the State such as ensuring access to the minimum essential food, water, basic shelter, and sanitation; providing essential drugs (as listed by WHO); ensuring equitable distribution of health facilities, goods and services; and creating a national public health strategy with benchmarks and indicators.

The Committee has also specifically addressed obligations regarding the regulation of corporations. The committee has considered the issue of the growing impact of business activities on the enjoyment of specific Covenant rights relating to health, housing, food, water, social security, the right to work, the right to just and favourable conditions of work and the right to form and join trade unions. In addition, the Committee has addressed the issue in concluding observations on States parties’ reports, and in its first decision on an individual communication. In 2011, it adopted a statement on State obligations related to its commitment to the full realization of corporate responsibilities in the context of the Covenant rights.¹⁷⁵ This led to the adoption of General Comment 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities.¹⁷⁶ This General Comment emphasises the duty of the State to regulate the behaviour of business entities. Mainly the State must not arbitrarily prioritise the interest of business entities over the right held within the covenant.¹⁷⁷ This includes rights of indigenous peoples.

States Parties also have a positive duty to adopt a legal framework requiring business entities to exercise human rights due diligence in order to identify, prevent and mitigate the risks of violations of Covenant rights, to avoid such rights being abused, and to account for the negative impacts caused or contributed to by their decisions and operations and those of entities they control on the enjoyment of Covenant rights.¹⁷⁸ This includes an obligation to ensure that businesses undertake human rights impact assessments and that, where appropriate, the impacts of business activities on indigenous peoples specifically (in particular, actual or potential adverse impacts on indigenous peoples’ rights to land, resources, territories, cultural heritage, traditional knowledge and culture) are incorporated into these impact assessments.¹⁷⁹

In addition, the General Comment refers to the international standards found in the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework under which business entities are expected to respect Covenant rights regardless of whether domestic laws exist or are fully enforced in practice.¹⁸⁰

¹⁷³ *ibid*, Article 12(1).

¹⁷⁴ *ibid*, Article 12(2).

¹⁷⁵ See E/C.12/2011/1, paragraph 7.

¹⁷⁶ CESCR, General Comment 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities (E/C.12/GC/24).

¹⁷⁷ *ibid*, paragraphs 7-9.

¹⁷⁸ *ibid*, paragraphs 14-22.

¹⁷⁹ CESCR General Comment 24 (n 176) paragraphs 14-22.

¹⁸⁰ United Nations, ‘Guiding Principles on Business and Human Rights’ [2011] retrieved from https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf on 14 February 2022, Principle 11 and Commentary.

Recommendation	Legal/ Advocacy	Impact Potential	Victims' redress?
<i>Lobby</i> governments to start mentioning minimum core rights in their reports.	Advocacy	Lobbying governments to start mentioning these more will bring greater recognition and pressure states into adhering to these minimum core rights so they can include a positive report.	No
<i>Reference</i> minimum core rights in domestic cases, to advance this approach to the ICESCR.	Legal/Advocacy	Referencing these rights in domestic cases will help develop them as well as potentially bring redress. It is worth mentioning them even in cases unrelated to the haze due to the advocacy potential.	Yes (When used in domestic cases)
<i>Advocate and bring action</i> both domestically and internationally on the basis of State obligations to regulate the behaviour of corporations	Legal/Advocacy	Referencing these obligations in domestic cases will help develop them as well as potentially bring redress. It is worth mentioning them even in cases unrelated to the haze due to the advocacy potential.	Yes (When used in domestic cases)
<i>Utilise</i> the obligations of corporations under the ICESCR to strengthen domestic cases	Legal	This is an argument that can be made in legal proceedings or in submissions to strengthen this interpretation and as an avenue for redress if successful.	Yes
<i>Make written submissions</i> relating to the frameworks of business responsibility by Indonesia and Malaysia to contribute to the list of issues or contribute in the form of a shadow report to the ICESCR committee's procedures	Advocacy	Specific example of an area in which general advocacy might be particularly useful to pressure Indonesia and Malaysia into reporting on these issues.	No

6.2.2.2 Reporting Procedure

States parties submit their first report within two years of becoming parties to the Covenant. Subsequent reports must be submitted at least every five years thereafter or whenever the Committee so requests. Reports must include information on the measures taken to implement the provision of the Covenant, including legal, administrative, and judicial measures, and the difficulties the State encountered in implementing these.

Below the stages of reporting cycle shall be explained, including how CSOs may participate in these.¹⁸¹

Pre-sessional Procedure

A list of issues is made at the pre-sessional meeting. Civil society actors may **attend the pre-sessional meeting** with prior accreditation. CSO representatives who wish to attend any sessions of the Committee or pre-session working group must be registered *at least 10 days prior* to the beginning of the session. Application and registration is done on the [indico platform](#).¹⁸²

The Committee welcomes **written information**, which should be submitted, preferably *10 weeks prior* (and latest *8 weeks prior*) to the beginning of the pre-session, to the Secretariat through the [CESCR's online submissions system](#). The submissions should adhere to the following requirements:

- ❖ Be submitted in English, French or Spanish. (Preferably English);
- ❖ Submissions should be as concise as possible, and should not exceed 10 pages, or max 15 pages for coalition submissions;
- ❖ Paragraphs in submissions should preferably be numbered for ease of reference;
- ❖ Submissions should be as specific, reliable and objective as possible, from international, regional, national and local organizations as well as national human rights institutions;
- ❖ Reports for the pre-session should focus on information relevant to the adoption of the list of issues.

General Session of the Committee

Under both reporting procedures, at the general session, the Committee will consider the report and/or the responses to the list of issues through a public dialogue. State representatives are given the opportunity to introduce the report orally and members then raise questions relating to specific articles of the Convention. Thus, this is an opportunity as well for other State parties to question the implementation of the Convention.

Civil society actors may **follow the public meetings** live on the UN's [broadcasting platform](#). Civil society actors may also **attend the public meetings** with prior accreditation. CSO representatives who wish to attend any sessions of the Committee must be registered *at least 10 days prior* to the beginning of the respective session. Application and registration is done on the [indico platform](#).¹⁸³

Civil society actors cannot directly participate in the dialogue between the state party and the Committee, but they may participate in other ways.

¹⁸¹ All the requirements and procedures outlined are accurate at the time of writing but occasionally updated, for more current information please consult the information page of the treaty body and/or meeting you wish to attend.

¹⁸² Specific links will also be available on the web page of the session you wish to attend.

¹⁸³ Specific links will also be available on the web page of the session you wish to attend.

The Committee welcomes **written information**, preferably *6 weeks prior* (and latest *4 weeks prior*) the beginning of the session, to the Secretariat through the [CESCR's online submissions system](#). The submissions should adhere to the following requirements:

- ❖ Be submitted in English, French or Spanish. (Preferably English);
- ❖ Submissions should be as concise as possible, and should not exceed 10 pages, or max 15 pages for coalition submissions;
- ❖ Paragraphs in submissions should preferably be numbered for ease of reference;
- ❖ Submissions should be as specific, reliable and objective as possible, from international, regional, national and local organizations as well as national human rights institutions.

Organizations that have submitted reports to the Committee may deliver an **oral statement** at a public meeting dedicated to civil society or organize an informal lunchtime briefing. To apply to attend or speak at a public briefing and/or lunchtime briefings, CSOs should contact the [Secretariat](#) at the time of submission of reports. Representatives of organizations that are unable to travel to Geneva can engage with the Committee via video message, teleconference or videoconference. This should be indicated when applying.

Drafting and Adoption of Concluding Observations

Following the consideration of the States parties' reports, CESCR adopts concluding observations in a closed meeting that will assist the State parties in the implementation of the Covenant. These concluding observations outline positive aspects, principal subjects of concern and the Committee's recommendations on how to address challenges faced by the States parties. Once adopted, the concluding observations are posted on the CESCR webpage under the relevant session.

6.2.2.3 Other Forms of Civil Society Participation

The Committee usually devotes one day of its regular sessions to a general discussion on a specific right or particular article of the Covenant in order to develop a greater depth of understanding on the issue, such as human rights education, the rights of elderly persons, the right to health and the right to housing. The discussion, in which representatives of international organizations and CSOs participate, is normally announced in advance. All interested parties, including CSOs, are invited to make written contributions.

6.2.2.4 Upcoming Opportunities

This reflects the current cycle the Indonesia is in. Regardless the submission date of the report, the next opportunity for input accurately reflects the position of the country in the current reporting cycle. As there are no dates available for this, CSOs will need to stay updated if they wish to make use of this opportunity.

Country	Cycle	Report Due	Report Submitted	Next Opportunity for Input
Indonesia	II	30 May 2009	30 July 2021	General Session ¹⁸⁴

¹⁸⁴ Pre-sessional Meeting scheduled 7-11 March 2022.

6.2.3 Convention on the Elimination of All Forms of Discrimination against Women

The **Convention on the Elimination of All Forms of Discrimination against Women** (CEDAW) aims to eliminate all forms of discrimination against women and achieve substantive gender equality.¹⁸⁵ The human rights and fundamental freedoms protected by CEDAW include the civil and political as well as economic, social, and cultural rights of women. The CEDAW was ratified by Indonesia in 1984 and Malaysia in 1997.¹⁸⁶ Both countries have ratified this treaty subject to certain conditions or restrictions. Indonesia has made reservations to the inter-state dispute settlement clause. Malaysia has acceded subject to the understanding that the Convention does not conflict with the provisions of the Islamic Sharia' law and the Federal Constitution of Malaysia. They also have reservations to several articles; however, these are not of relevance to environmental disputes.¹⁸⁷

The **Committee on the Elimination of Discrimination against Women** was established in accordance with the CEDAW, to monitor the implementation of the Convention. The Committee is composed of 23 experts acting in their personal capacity, who are nominated and elected by the States parties to the Convention for a four-years term. The Committee oversees State reporting. They further oversee the two additional procedures established by the **Optional Protocol** to the CEDAW: an individual communications procedure which will allow communications to be submitted by or on behalf of individuals or groups of individuals claiming to be victims of a violation of any of the rights set out in the Convention; and a procedure which will allow the Committee to enquire into grave or systematic violations by a State party of those rights.¹⁸⁸ Malaysia is not party to this protocol, and Indonesia has signed the protocol in 2000 but not formally ratified or acceded to it.¹⁸⁹ As such, the procedures within it are not available as an avenue of redress.

The below elaborates on the rights and obligations arising from this treaty and how these may be connected to issues connected to the haze, the reporting mechanism and how NGOs may contribute during this process, and other opportunities for civil society engagement.

6.2.3.1 Rights and Obligations Arising from the Convention

Under the Convention, State parties have a general obligation to eliminate all forms of discrimination against women.¹⁹⁰ This includes both direct and indirect discrimination. State parties must undertake a variety of measures to do so: this includes abolishing laws, practices, and customs that discriminate against women or lead to the discrimination of women, as well as taking positive measures to protect women. Specific rights under the convention include access to education, employments, health care services and equality in economic and social life, including a right to family benefits, a right to financial credit, and a right to take part in sports and cultural life.

The Committee on the Elimination of Discrimination against Women considered the impact of climate change and in its **General Recommendation No. 37**:

Women, girls, men and boys are affected differently by climate change and disasters, with many

¹⁸⁵ Convention on the Elimination of Discrimination against Women (1981) 1249 U.N.T.S. 13.

¹⁸⁶ The current ratification status of all core human rights treaties can be found [here](#).

¹⁸⁷ Reservations were made to articles 9(2), and 16(1)(a), (c), (f), and (g). These articles are all concerned with martial and family rights.

¹⁸⁸ Optional Protocol to the Convention on the Elimination of Discrimination against Women (1981) 1249 U.N.T.S. 13.

¹⁸⁹ The current ratification status of all core human rights treaties can be found [here](#).

¹⁹⁰ Convention on the Elimination of Discrimination against Women (n 185) Article 2.

women and girls experiencing greater risks, burdens and impacts. Situations of crisis exacerbate pre-existing gender inequalities and also compound intersecting forms of discrimination against, inter alia, women living in poverty, indigenous women, women belonging to ethnic, racial, religious and sexual minorities, women with disabilities, women refugees and asylum seekers, internally displaced, stateless and migrant women, rural women, single women, adolescents and older women, who are often affected disproportionately compared to men or other women.¹⁹¹

Therefore, the CEDAW is considered to extend its protection to women's rights at all stages of climate change and disaster prevention and may be used to further rights of women affected by forest fires and/or transboundary haze.¹⁹²

6.2.3.2 Reporting

States party to the CEDAW must adhere to a reporting procedure. The State must submit its first report within one year after it has ratified or acceded to the Convention. Subsequent reports must be submitted at least every four years or whenever the Committee so requests. The Committee may request a report whenever it is particularly concerned about the status of implementation of the Convention. Reports must include information on the measures taken to implement the provisions of the Convention, including legal, administrative, and judicial measures, and the difficulties the State encountered in implementing these.

Below the different stages of the reporting cycle shall be explained, including how CSOs may participate in these.

Pre-sessional Procedure

A list of issues is created at the pre-sessional meeting. CSOs may **attend** the pre-session working group. Representatives who wish to attend any pre-sessional working group must be registered *two days prior* to the beginning of the respective session. Application and registration are done on the [indico platform](#).¹⁹³ NGOs wishing to make **written submissions** for consideration by the pre-sessional working group may do so until *two weeks prior* to the beginning of the session. These should be submitted to the [Secretariat](#). The submission must adhere to the following criteria:

- ❖ Be submitted in Word format
- ❖ Not exceed 3,300 words (6,600 words in case of NGO coalitions)
- ❖ Be written in one of the working languages of the Committee (English, French or Spanish)
- ❖ Indicate the full name of the NGO submitting the report
- ❖ Indicate the State party scheduled for consideration to which the information relates;
- ❖ Highlight priority concerns and suggest possible country-specific recommendations, with a view to facilitating the work of the Committee
- ❖ Ensure that any alleged victims, witnesses and perpetrators are referred to in the report by their initials only and that no photographs of alleged victims, witnesses or perpetrators are included
- ❖ Indicate whether or not the submission can be posted on the CEDAW website for public information purposes or should remain private

¹⁹¹ CEDAW, General Recommendation No. 37, paragraph 2.

¹⁹² *ibid.*

¹⁹³ Specific links will also be available on the web page of the session you wish to attend.

The Committee sets aside time for **oral statements** from CSOs and NHRIs during the meetings. An organisation must apply for this *two weeks prior* through email to the [Secretariat](#). The disadvantage of oral statements is that the time allocated is incredibly scarce; therefore, it would be advisable for an organisation to combine this with a written submission in which all the information it wishes to be considered is included.

General Session of the Committee

At the general session, the Committee considers the report through a public dialogue. State representatives are given the opportunity to introduce the report orally and members then raise questions relating to specific articles of the Convention. Thus, this is an opportunity as well for other State parties to question the implementation of the Convention. The discussions will generally focus on the actual position of women in society to understand the true extent of the problem of discrimination. The Committee will accordingly request specific information on the position of women from a variety of sources. These sources include communications received by civil society actors.

Civil society actors may **follow the public meetings** live on the UN's [broadcasting platform](#). They may also **attend the public meetings** with prior accreditation. CSO representatives who wish to attend any sessions of the Committee must be registered *two days prior* to the beginning of the respective session. Application and registration are done on the [indico platform](#).¹⁹⁴

Civil society actors cannot directly participate in the dialogue between the state party and the Committee.¹⁹⁵ However, they may make written submissions and apply to give an oral statement during the session, as well as participate in and organize informal briefings outside of the formal sessions, as outlined below.

CSOs wishing to make **written submissions** to CEDAW for the main session may do so until *two weeks prior* to the beginning of the session. These should be submitted to the [Secretariate](#). The submission must adhere to the following criteria:

- ❖ Be submitted in Word format
- ❖ Not exceed 3,300 words (6,600 words in case of NGO coalitions)
- ❖ Be written in one of the working languages of the Committee (English, French or Spanish)
- ❖ Indicate the full name of the NGO submitting the report
- ❖ Indicate the State party scheduled for consideration to which the information relates;
- ❖ Highlight priority concerns and suggest possible country-specific recommendations, with a view to facilitating the work of the Committee
- ❖ Ensure that any alleged victims, witnesses and perpetrators are referred to in the report by their initials only and that no photographs of alleged victims, witnesses or perpetrators are included
- ❖ Indicate whether or not the submission can be posted on the CEDAW website for public information purposes or should remain private

Informal briefings are also organized between meetings to give CSOs a possibility to provide additional information to the Committee and to comment on the issues and comments that the state

¹⁹⁴ Specific links will also be available on the web page of the session you wish to attend.

¹⁹⁵ OHCHR, 'Working with The UN Human Rights Programme: A Handbook for Civil Society' (2008), 52.

has raised during the dialogue. CSOs wishing to organize such a side-event can apply to do so *four weeks prior*, by sending an email to the [Secretariat](#).

Drafting and Adoption of Concluding Observations

After this session, the Committee will privately draft and adopt concluding observations. These observations are intended to guide the State Party towards better implementation of the Convention in the preparation of its next report. The Committee considers information received by civil society actors in their recommendations. The Comments enter the public domain once adopted. They are immediately sent to the State party and included in the annual report to the General Assembly. The report is also submitted to the Commission on the Status of Women, which is the principal global intergovernmental body exclusively dedicated to the promotion of gender equality and the empowerment of women.

Follow-Up Procedure

Finally, the implementation of the concluding observations will be subject to follow-up monitoring. The Committee may identify, in their concluding observations, areas on which the state should submit further information. For specific recommendations or “priority concerns” that are rapidly implementable the Committee may request States to report back to the country rapporteur or follow-up rapporteur within one or two years on the measures taken in response. The rapporteur then reports back to the Committee. For other issues, the Committee will ask the State to further report on an issue in its next periodic report.

The follow-up procedure allows for the consideration of information from other organizations, National Human Rights Institutions and CSOs. CSOs may make **written submission** *four weeks prior* to the beginning of the session during which the State party’s follow-up report is scheduled to be assessed.¹⁹⁶ The submissions should be made the [Secretariat](#) and adhere to the following criteria:

- ❖ Electronic submissions should be Word format
- ❖ Submissions should be as concise as possible and not exceed a maximum length of 3,500 words.
- ❖ Submissions should indicate whether they are confidential, as those submission that are not confidential will be made public on the webpage of the Committee.

6.2.3.3 Other Forms of Civil Society Participation

Civil society may participate in the thematic debates, organized by the Committee. Such debates bring together the Committee’s members, State parties and civil society actors in a day of debate on an issue that the Committee considers particularly relevant. The input provided during the thematic debate often leads to a publication by the Committee of a general recommendation on the interpretation of a particular substantive provision from the Convention or on the work of the Committee.

6.2.3.4 Upcoming Opportunities

This reflects the current cycle the Indonesia and Malaysia are in. Regardless the submission date of the report, the next opportunity for input accurately reflects the position of the countries in the current reporting cycle. As there are no dates available for this, CSOs will need to stay updated if they wish to make use of this opportunity.

¹⁹⁶ The schedule of these procedures can be found [here](#).

Country	Cycle	Report Due	Report Submitted	Next Opportunity for Input
Indonesia	VIII	1 July 2016	22 October 2020	Wait until next reporting Cycle
Malaysia	VI	19 March 2022	-	Pre-session

6.2.4 Convention on the Rights of the Child

The **Convention on the Rights of the Child** (CRC) aims to provide a comprehensive protection for all children, with the interests of the child the primary consideration of all actions or policies involving children.¹⁹⁷ The CRC was ratified by Indonesia in 1990, without reservations, and by Malaysia in 1991, subject to reservations to certain articles which the declared to only be applicable if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia.¹⁹⁸ Of interest is the reservation made to Article 28(1)(a) on the right to education (though Malaysia has since declared it has made primary education compulsory for all children since 2002).¹⁹⁹ The Convention has two substantive Optional Protocols which are not of particular relevance to the present case and thus will not be discussed.²⁰⁰

The **Committee on the Rights of the Child** was established in accordance with the CRC, to monitor the implementation of the Convention.²⁰¹ It comprises 10 independent members, elected for a four-year term. The main function of the Committee is to monitor the implementation of the Convention on the Rights of the Child based on examination of State reports in close cooperation with the UN Children's Fund (UNICEF), specialized agencies and other competent bodies (including CSOs). The Committee also devotes one or more meetings of its regular sessions to general discussion on a particular Article of the Convention or on specific issues that arise. The Committee may also request further information relevant to the implementation of the Convention at any time. Such additional information may be requested from governments if there are indications of serious problems. The **Third Optional Protocol** to the CRC provides a mechanism for individual complaints, inter-state complaints, and an inquiry procedure.²⁰² This Protocol has been neither signed nor ratified by Indonesia and Malaysia.²⁰³ Therefore, the procedures within it are not available as an avenue of redress.

The Committee encourages civil society and individual participation in its procedures. The below elaborates on the rights and obligations arising from this treaty and how these may be connected to issues connected to the haze, the reporting mechanism and how CSOs may contribute to this process, as well as other opportunities for civil society engagement.

¹⁹⁷ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, Articles 2 and 3.

¹⁹⁸ The current ratification status of all core human rights treaties can be found [here](#).

¹⁹⁹ The other reservations are to article 2 on the prohibition of discrimination; article 7 on the right to a name and nationality; article 14 on the freedom of thought, conscience, and religion; and article 37 on the prohibition of subjecting children to cruel, inhuman or degrading treatment or punishment. These are of less relevance.

²⁰⁰ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

²⁰¹ Convention on the Rights of the Child (n 197).

²⁰² Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

²⁰³ The current ratification status of all core human rights treaties can be found [here](#).

6.2.4.1 Rights and Obligations Arising from the Convention

The CRC concerns the comprehensive protection of rights for all children. Children are considered to be all people below the age of 18 years, unless in a particular State party the age of majority is reached before that age.²⁰⁴ Although the age of majority differs throughout various legal instruments in Indonesia, they have submitted to the Committee on the Rights of the Child to define a child as “every human being under the age of eighteen, including those still in the womb”.²⁰⁵ Malaysia defines a “child” as anyone under the age of 18, and this is also their age of majority.²⁰⁶

State parties have an obligation to consider the best interest of the child in any and all actions and policies that concern children.²⁰⁷ This also includes an obligation to adequately regulate private actors, such as farmers and corporations using harmful “slash-and-burn” practices contributing to the haze which disproportionately affects children.²⁰⁸ Furthermore, state parties have to respect the rights of the child without any discrimination and provide for their various civil as well as economic, social and cultural rights.²⁰⁹ With respect to children’s economic, social and cultural rights, states have a duty to realize these rights to the maximum extent of their available resources.²¹⁰

The Committee on the Rights to the Child has recently held that State Parties are responsible for taking the necessary preventive measures to protect and fulfil children’s rights to life and health, and all other rights enumerated in the Convention relating to the impact of carbon emissions on the rights of children inside and outside its territory, despite the collective nature of such harm.²¹¹ Arguably, this could extend to the harmful impacts of the haze as a mass production of carbon, as well as other harmful substances, which have a similar man-made nature.

Forest fires and transboundary haze may impact several rights granted under the Convention on the Rights of the Child. Most notably the Convention provides for the right of the child to the enjoyment of the highest attainable standard of health care, the right to benefit from social security, the right to a standard of living adequate for the child’s physical, mental, spiritual, moral, and social development, and the right to education.²¹² The child should also have a right to rest and leisure and to engage in play and recreational activities.²¹³ These rights may all be affected by the health hazard caused by the haze, which also leads to children being unable to go outside without risk to their health and the right

²⁰⁴ Convention on the Rights of the Child (n 197) Article 1.

²⁰⁵ Overview of the differing ages of majority *found at:* <https://www.youthpolicy.org/factsheets/country/indonesia/>; The definition of “Child” refers to Article 1 paragraph (1) of Law No. 23 of 2002 regarding Child Protection *as communicated in* Committee on the Rights of the Child, ‘Third and fourth periodic reports of the State Party Indonesia’ (2012), UN. Doc. CRC/C/IDN/3-4, *available at:* https://www.youthpolicy.org/wp-content/uploads/library/Indonesia_2012_CRC_Periodic_Report.pdf

²⁰⁶ Malaysian Child Act No. 611 of 2001, Article 2(1).

²⁰⁷ Convention on the Rights of the Child (n 197) Article 3(1).

²⁰⁸ Convention on the Rights of the Child (n 197) Article 3.

²⁰⁹ Convention on the Rights of the Child (n 197) Article 2.

²¹⁰ Convention on the Rights of the Child (n 197) Article 4.

²¹¹ OHCHR, ‘UN Child Rights Committee rules that countries bear cross-border responsibility for harmful impact of climate change’ (OHCHR, 11 October 2021)

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27644&LangID=E>.

²¹² Convention on the Rights of the Child (n 197) Articles 6, 24, 26, 27, and 28.

²¹³ Convention on the Rights of the Child (n 197) Article 31.

to education is also affected as schools close due to health concerns.

The right to life and health are especially affected by both the general health implications of the haze and those specific to children. Children breathe more quickly, are more likely to get chest infections and find it harder to recover. Children under the age of five are especially vulnerable to haze-induced health issues due to their pulmonary vulnerability. Children with a pre-existing medical condition such as asthma, allergic rhinitis and allergic conjunctivitis, hypertension and heart disease may experience a flare of their medical condition, which they are also especially vulnerable. Children with asthma may suffer an asthma attack that requires emergency medical attention or hospitalization, or children with hypertension may experience a sudden rise in blood pressure.

Further, prolonged exposure to haze conditions (e.g., over months to years) especially in very young children has been linked to increased risk of lung disease such as reduced lung development, reduced lung function and chronic lung conditions; as well as increased cardiovascular, metabolic and CNS.

Further, whilst N95 masks are not a perfect remedy to the health effects of the haze, they may be used to protect the user from inhalation of the fine particulate matter (PM <2.5) which is the predominant cause of the ill health effects of haze. Most of the available N95 masks, however, do not fit well on the face of a younger child so these may not be as effective as when used in older children and adults. Therefore, accessibility of mask that will fit small children should also be a point of attention for the governments in affected countries.

6.2.4.2 Reporting Procedure

States party to the CRC must adhere to a reporting procedure. The State must submit its first report within two years after it has ratified or acceded to the Convention. Subsequent reports must be submitted at least every five years. The reports elaborate on measures taken to give effect to the rights in the Convention and on the progress made in the enjoyment of children's rights. Including relevant legal, administrative, and judicial measures as well as possible difficulties the state has encountered in implementing the above measures.

The Committee encourages participation of CSOs, as well as adult individuals and children.²¹⁴ Below the stages of reporting cycle shall be explained, including how CSOs may participate in these.

Pre-sessional Procedure

The pre-sessional working group compiles a list of issues. Civil society actors may follow the public meetings live on the UN's broadcasting platform. They may also attend the public meetings with prior accreditation. CSO representatives who wish to attend any pre-session working group must be registered two days prior to the beginning of the respective session. Application and registration is done on the indico platform.²¹⁵ CSOs may submit **written submissions** to be considered by the pre-sessional working group, in accordance with the deadlines (specific to whether the normal or simplified procedure is used) found [here](#), through [this form](#). The submission must adhere to the following criteria:

²¹⁴ CSOs could consider aiding affected communities/children to engage in this process. More information on the participation of children in the Committee's reporting process is also available [here](#). A schedule of upcoming sessions can be found [here](#).

²¹⁵ Specific links will also be available on the web page of the session you wish to attend.

Must be submitted in word format only

- ❖ Must adhere to the following word limits. A maximum of 10.000 words for comprehensive reports or a maximum of 3.000 words thematic reports.
- ❖ Organizations should clearly indicate whether their report is confidential or if they wish the Committee to make it public.²¹⁶
- ❖ Information provided should ideally be clear, precise, accurate, and objective, and any problems or human rights violations should be substantiated with evidence as well as accompanied by recommendations for their remedy.

The pre-sessional working group holds confidential, interactive meetings between the Committee and UN bodies and specialized agencies, CSOs, NHRIs and children. CSOs which submit reports to the Committee may **request to participate** in these meetings. Requests should be submitted through the Child Rights Connect website, *when submitting the report or at least two months prior* to the beginning of the pre-sessional working group concerned. Based on the submissions and requests received, the Committee will make a selection of organisations which it will invite to participate in the pre-sessional working group. The selected organizations will also be invited to **orally present** on their report and any other relevant facts to the members of the Committee.

General Session of the Committee

At the general session, the Committee considers the report through a public dialogue. State representatives are given the opportunity to introduce the report orally and members then raise questions relating to specific Articles of the Convention. Thus, this is an opportunity as well for other State parties to question the implementation of the Convention.

Civil society actors may **follow the public meetings** live on the UN's [broadcasting platform](#). They may also **attend the public meetings** with prior accreditation. CSO representatives who wish to attend any sessions of the Committee must be registered *two days prior* to the beginning of the respective session. Application and registration are done on the [indico platform](#).²¹⁷

Civil society actors cannot directly participate in the dialogue between the State party and the Committee. Select civil society actors may be invited to give **oral statements**.

Drafting and Adoption of Concluding Observations

On the last day of a session, the Committee adopts the Concluding Observations for all States reviewed during that session. These Concluding Observations point out the progress achieved, the main areas of concern, and recommendations for how States can improve their compliance and implementation of the CRC and the Optional Protocols by States. The Concluding Observations are adopted in closed session, but the documents are made publicly available on the website of the Committee soon after the session, and sent to both the State party and the UN General Assembly.²¹⁸

²¹⁶ Reports that are submitted for publication on OHCHR's website should not contain names, personal details, photos, or any other information that might identify an individual child

²¹⁷ Specific links will also be available on the web page of the session you wish to attend.

²¹⁸ The first publication is done in English. However, they are then translated into French and Spanish (the other 2 working languages of the Committee), and Arabic, Chinese or Russian if one of these languages is more relevant for the reviewed State.

Follow-Up Procedure

The Committee's follow-up procedure often does not request the State party to provide information on follow-up measures taken within a specified time after the concluding observations are transferred to the state.²¹⁹ Rather, the Committee assumes that its concerns, as expressed in the concluding observations, will be addressed in a detailed manner by the State party in its next report.

It may, however, transmit to the specialized agencies, funds or programs of the UN, or to other organizations, any request from States for technical assistance.²²⁰ Further, the Committee does recommend civil society actors to engage in further follow-up actions on an independent basis, and considers that civil society actors have an important role in working together with the state to achieve the implementation of the concluding observations and in raising awareness amongst the public of the Committee's recommendations.²²¹ For this reason, the Committee also organizes, together with the OHCHR, workshops on the implementation of its concluding observations with CSOs and NHRIs.²²²

6.2.4.3 Other Forms of Civil Society Participation

Besides direct participation in the state reporting procedure, civil society is often able to influence the work of the Committee more generally.

The Committee on the Rights of the Child specifically conducts **thematic discussions** on various topics, relevant to the interpretation and implementation of the CRC and the publication of general comments and statements. These debates bring together the Committee's members, state parties and civil society in a day of debate on an issue that the Committee considers particularly relevant. The Committee will often also specifically call for written submissions for these thematic discussions. The input provided during the thematic debate often leads to a publication by the Committee of a general comment or a decision on the interpretation of a particular substantive provision from the Convention or on the work of the Committee.

6.2.4.4 Upcoming Opportunities

This reflects the current cycle the Indonesia and Malaysia are in. Regardless the submission date of the report, the next opportunity for input accurately reflects the position of the countries in the current reporting cycle. As there are no dates available for this, CSOs will need to stay updated if they wish to make use of this opportunity.

Country	Cycle	Report Due	Report Submitted	Next Opportunity for Input
Indonesia	V-VI	7 October 2019	21 January 2021	Wait until next reporting Cycle
Malaysia	II-IV	19 March 2012	5 Augustus 2021	Pre-session

²¹⁹ Committee on the Rights of the Child, 'Working Methods'.

²²⁰ Committee on the Rights of the Child, 'Rules of procedure', rule 78.

²²¹ OHCHR, 'Working with The UN Human Rights Programme: A Handbook for Civil Society' (2008), 54–5.

²²² Committee on the Rights of the Child, 'Follow-up to Concluding Observations'

The Committee is currently working toward a general comment on Children and the Environment. This is a great opportunity for *Friends of the Earth groups* to advocate about haze related issues. The project started in December 2021 and will last until December 2023. The Committee will be holding consultations on the draft. Information about consultations can be found [here](#).

Recommendations Systems	UN-Based	Legal/Advocacy	Impact Potential	Victims' redress?
Engage in the drafting process of General Comment 26. on Children's Rights and the Environment with a Special Focus on Climate Change.		Advocacy	As the Committee on the Rights of the Child is currently in the process of drafting a general comment on the rights of the Child and climate change, this is a great opportunity for CSOs to engage and contribute. If contributions are adopted into the final general comment this can feed into future legal strategies.	No

6.2.5 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The purpose of the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** (ICRMW) is to reaffirm and establish basic norms for the comprehensive international protection of the rights of all migrant workers and members of their families.²²³ The Convention aims to protect migrant workers and members of their families throughout the entire migration process, from the “preparation for migration, departure, transit and the entire period of stay and remunerated activity” in the host state, to the return to the state of origin or permanent residence.²²⁴ The Convention was ratified by Indonesia in 2012. Malaysia has not ratified the treaty.

The **Committee on the Protection of the Rights of All Migrant Workers and Members of their Families** (CMW) was established in accordance with the ICRMW to monitor the implementation of the Convention.²²⁵ The Committee is composed of 14 independent experts who are persons of high moral character, impartiality and recognized competence in the field covered by the Convention. The Committee considers periodic reports of State parties to the Convention. The Committee may also hear inter-State communications where parties have declared to accept the competence of the Committee to do so under **Article 76 of the ICRMW**. Indonesia has not made a declaration to this

²²³ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3, Preamble.

²²⁴ *ibid*, Article 1(2).

²²⁵ *ibid*, Article 72.

effect.²²⁶ The Committee will also be able to receive individual complaints on violations of the convention where parties have declared to accept the competence of the Committee to do so under **Article 77 of the ICRMW**, once this mechanism enters into force, when 10 such declarations have been made.²²⁷ Indonesia has not made a declaration to this effect.

The below elaborates on the rights and obligations arising from this treaty and how these may be connected to issues connected to transboundary haze, the reporting mechanism and how CSOs may contribute to this process, and other opportunities for civil society engagement.

6.2.5.1 Rights and Obligations Arising from the Convention

The Convention is a comprehensive international treaty focusing on the protection of migrant workers' rights. It emphasizes the link between migration and human rights—a policy topic that is drawing increasing attention worldwide. Like all other international human rights instruments, the Convention sets standards for the laws and the judicial and administrative procedures of individual States. Governments of States that ratify or accede to the Convention undertake to apply its provisions by adopting the necessary measures. They also undertake to ensure that migrant workers whose rights have been violated may seek an effective remedy.

6.2.5.2 Reporting Procedure

States party to the ICRMW must adhere to a reporting procedure. The State must submit its first report within 1 year after it has ratified or acceded to the Convention. Subsequent reports must be submitted every 5 years. The Committee may also request a report whenever it is particularly concerned about the status of implementation of the Convention. Reports must include information on the measures taken to implement the provisions of the Convention, including legal, administrative, and judicial measures, and the difficulties the State encountered in implementing these.

The Committee has been using both the normal reporting procedure and a simplified reporting procedure that States may opt-in to. Below the stages of reporting cycle shall be explained, including how CSOs may participate in these.

Pre-sessional Procedure

The pre-sessional working group establishes a list of issues. Civil society actors may **follow the public meetings** live on the UN's [broadcasting platform](#). They may also **attend the public meetings** with prior accreditation. CSO representatives who wish to attend any pre-session working group must be registered two days prior to the beginning of the respective session. Application and registration are done on the [indico platform](#).²²⁸

General Session of the Committee

At the general session, the Committee will consider the report through a public dialogue. State representatives are given the opportunity to introduce the report orally and members then raise questions relating to specific articles of the Convention. Thus, this is an opportunity as well for other State parties to question the implementation of the Convention.

²²⁶ Find an overview of the declarations made under this treaty [here](#).

²²⁷ The current ratification status of all core human rights treaties can be found [here](#).

²²⁸ Specific links will also be available on the web page of the session you wish to attend.

Civil society actors may **follow the public meetings** live on the UN’s [broadcasting platform](#). They may also **attend the public meetings** with prior accreditation. CSO representatives who wish to attend any sessions of the Committee must be registered *two days prior* to the beginning of the respective session. Application and registration are done on the [indico platform](#).²²⁹ Civil society actors cannot directly participate in the dialogue between the State party and the Committee. However, the Committee welcomes **alternative written reports** to States parties’ reports. These reports should adhere to the following requirements:

- ❖ Reports should be brief, generally not more than 10 pages;
- ❖ Reports should provide country-specific information on priority issues for the State party concerned regarding the Convention;
- ❖ Reports should include information on the implementation of some or all of the provisions of the Convention or specific themes focusing on gaps in the implementation of the Convention or the Committee’s concluding observations;
- ❖ Include suggested questions and/or specific recommendations to the State party for consideration by the Committee.

CSOs may apply to give **oral presentations during the public informal meetings** the Committee customarily schedules during the first day of the session. There are additional opportunities to provide information to the Committee during **private briefings**.

Drafting and Adoption of Concluding Observations

Following consideration, the Committee adopts its comments in a closed meeting making suggestions and recommendations to the State party. Comments are issued as public documents at the end of each session of the Committee.

6.2.5.3 Upcoming Opportunities

This reflects the current cycle the Indonesia is in. Regardless the submission date of the report, the next opportunity for input accurately reflects the position of the country in the current reporting cycle. As there are no dates available for this, CSOs will need to stay updated if they wish to make use of this opportunity.

Country	Cycle	Report Due	Report Submitted	Next Opportunity for Input
Indonesia	II	1 October 2022	-	Pre-session

6.2.6 Convention on the Rights of Persons with Disabilities

The purpose of the **Convention on the Rights of Persons with Disabilities** (CRPD) is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. Indonesia ratified the Convention in 2011 without reservation.²³⁰ Malaysia also ratified the convention in 2011, subject to the declaration that the application and interpretation of the Federal Constitution of Malaysia pertaining to the principles of non-discrimination and equality of opportunity shall not be treated as

²²⁹ Specific links will also be available on the web page of the session you wish to attend.

²³⁰ The current ratification status of all core human rights treaties can be found [here](#).

contravening articles of the Convention which relate to discrimination or equality.²³¹ Malaysia recognizes the participation of persons with disabilities in cultural life, recreation and leisure as provided in Article 30 of the Convention and interprets that the specific rights in this regard are a matter for domestic law. Malaysia has further reservations which are not relevant to environmental protections.

The **Committee on the Rights of Persons with Disabilities** was established in accordance with the CRPD. The Committee is composed of 18 independent experts who are persons of high moral standing and recognized competence and experience in the field covered by the Convention.²³² The Committee considers periodic reports of State parties to the Convention. It also holds thematic discussions on issues arising from the CRPD

The **Optional Protocol to the Convention on the Rights of Persons with Disabilities** allows the Committee to consider individual communications or to conduct inquiries into alleged grave or systematic violations with respect to state parties to the Protocol. This Protocol is not signed by Indonesia or Malaysia and as such this avenue of redress is not available.²³³

The below elaborates on the rights and obligations arising from this treaty and how these may be connected to issues connected to forest fires and transboundary haze, the reporting mechanism and how CSOs may contribute during this process, and other opportunities for civil society engagement.

6.2.6.1 Rights and Obligations Arising from the Convention

State parties to the CRPD have a general obligation to “ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.”²³⁴ Under the Article 4(2) of the Convention, state parties have a duty provide for economic, social and cultural rights to the maximum extent of their available resources.²³⁵

The definition of persons with disabilities under the Convention includes all those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Ecosystem degradation and the haze in particular affects those with weakened respiratory or cardio-vascular systems.²³⁶ As such, this treaty may offer an opportunity to extend protection to those people who are most affected by the haze due to their pre-existing health conditions.

²³¹ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3, Articles 3(b), 3(e), and 5(2).

²³² Convention on the Rights of Persons with Disabilities (n 231) Articles 34(2) and 34(3).

²³³ The current ratification status of all core human rights treaties can be found [here](#).

²³⁴ Convention on the Rights of Persons with Disabilities (n 231) Article 4(1).

²³⁵ *ibid*, Article 4(2).

²³⁶ *See* Chapter two for more detail on the health ramifications.

Recommendations	Legal/Advocacy	Impact Potential	Victims' redress?
<i>Engage</i> with existing research initiatives on health impacts of the haze on people with disabilities.	Advocacy	Whilst not being direct advocacy it may yield useful results if for CSOs if they were to engage with existing research initiatives on the haze, to further build argumentation.	No
<i>Partner</i> with an NGO or other organisation that has more knowledge about the medical consequences of the haze.	Advocacy	Whilst not being direct advocacy it may yield useful results if for CSOs if they partner with other NGOs that have a more comprehensive understanding of the full range of medical impacts of the haze, to further build argumentation.	No

6.2.6.2 Reporting Procedure

States parties are obliged to submit to the Committee within two years of the ratification of the Convention, and every four years thereafter, a report on the implementation of the Convention in the State party concerned.²³⁷ Since 2014, the Committee on the Rights of Persons with Disabilities has been using both the normal reporting procedure and a simplified reporting procedure that States may opt-in to using. Below, the stages of reporting cycle shall be explained, including how CSOs may participate in these.

Pre-sessional Phase

The pre-sessional working group shall compile a list of issues. Civil society actors may **follow the public meetings** live on the UN's [broadcasting platform](#). They may also **attend the public meetings** with prior accreditation. CSO representatives who wish to attend any pre-session working group must be registered *two days prior* to the beginning of the respective session. Application and registration is done on the [indico platform](#).²³⁸

In case a CSO wishes make **a written submission** for consideration in the drafting of the list of issues under the normal procedure this should be made as early as possible, and up to *three weeks prior* to the opening of the session under the normal reporting procedure. If the simplified reporting procedure is used, submissions need to be received by the Secretariat up to *four months prior* to the beginning of the session in which the list of issues will be adopted. Written submissions should be submitted to the [Secretariate](#). Submissions should meet the following requirements:

²³⁷ Convention on the Rights of Persons with Disabilities (n 231) Article 35(1).

²³⁸ Specific links will also be available on the web page of the session you wish to attend.

- ❖ Be no longer than 10,700 words in the case of alternative reports to the State Party reports and 5,350 words for other submissions.
- ❖ Preferably abiding by the following structure:
 - Identification of the submitting organization, brief description of its activities at international and/or national level, their mission/vision statement and what role persons with disabilities play in the organization, and level of inclusiveness and participation of persons with disabilities in the drafting of the submission. (not included in aforementioned length limit)
 - Executive summary, no longer than one page (not included in aforementioned length limit)
 - Refer to specific articles of the Convention addressed in the submission
 - Propose recommendations
- ❖ Provided in accessible digital or electronic formats, for example, word or text formats
- ❖ Written one of the Committee's working languages, preferably with an executive summary in English where this is not the primary language of the report
- ❖ Clearly indicate so if the organisation wishes the submission to remain confidential (as submissions will be posted automatically to the website of the treaty body, when there is no such indication)

General Session of the Committee

At the general session, the Committee will consider the report and/or the responses to the list of issues through a public dialogue. State representatives are given the opportunity to introduce the report orally and members then raise questions relating to specific Articles of the Convention. Thus, this is an opportunity as well for other State parties to question the implementation of the Convention.

Civil society actors may **follow the public meetings** live on the UN's [broadcasting platform](#). They may also **attend the public meetings** with prior accreditation. CSO representatives who wish to attend any sessions of the Committee must be registered *two days prior* to the beginning of the respective session. Application and registration are done on the [indico platform](#).²³⁹ Civil society actors cannot directly participate in the dialogue between the State party and the Committee, but they may participate in other ways. They may make **written submissions** which should be submitted to the [Secretariate](#). Submissions up to *three weeks prior* the opening of the session shall be considered. Written submissions should adhere to the following requirements:

- ❖ Be no longer than 10,700 words in the case of alternative reports to the State Party reports and 5,350 words for other submissions.
- ❖ Preferably abiding by the following structure:
 - Identification of the submitting organization, brief description of its activities at international and/or national level, their mission/vision statement and what role persons with disabilities play in the organization, and level of inclusiveness and

²³⁹ Specific links will also be available on the web page of the session you wish to attend.

participation of persons with disabilities in the drafting of the submission. (not included in aforementioned length limit)

- Executive summary, no longer than one page (not included in aforementioned length limit)
- Make reference to specific articles of the Convention addressed in the submission
- Propose recommendations
- ❖ Be provided in accessible digital or electronic formats, for example, word or text formats
- ❖ Be written one of the Committee's working languages, preferably with an executive summary in English where this is not the primary language of the report
- ❖ Clearly indicate so if the organisation wishes the submission to remain confidential (As submissions will be posted automatically to the website of the treaty body, when there is no such indication)

Civil society may also **request briefing time about particular themes** on which they may wish to raise the Committee's attention and **participate in**, and apply to, **give oral statements in briefings**. Application to give oral statements should be submitted to the [Secretariate](#) up to *four weeks prior* to the session and specify:

- ❖ The name of the organisation: coalitions are encouraged to make a brief description of their comprising organisations, their mission/vision statement and what role persons with disabilities play in the organisation;
- ❖ Name and function of the speaker(s);
- ❖ The title of the briefing event;
- ❖ Brief description of the topics that will be addressed during the country-specific briefing;
- ❖ Indicate the preferred date and time of the briefing event (the only possible times available for briefings are from 9:00 to 10:00 am, and from 13:45 to 14:45 pm during sessional weeks);
- ❖ Indicate the preferred modality for the briefing (it is possible to hold the briefing **remotely** using communications technology, but organisations must indicate this modality of presentation *four weeks prior* to the date of the briefing, and the necessary communications technology they will provide);
- ❖ Indicate whether translations, captioning, sign language interpretation, Braille documentation, easy-to-read text and/or other accessibility tools will be provided.

Speakers are further requested to submit statements of their interventions to the Secretariat up to *one day* prior to the briefing event.

Drafting and Adoption of Concluding Observations

In its concluding observations, the Committee may identify certain problematic areas. The Committee may then ask the State to submit, within a deadline, additional information on the issues identified. Furthermore, the Committee may designate one or more of its members as rapporteur(s) to follow-up with the State's implementation of the Committee's recommendations and suggestions. The rapporteur(s) assess the implementation and may request the state party to provide additional written information.

Follow-Up Procedure

The aim of a follow-up procedure is both to monitor the implementation of the Committee's

recommendations as well as to assist the state in efficiently implementing any measures requested by the Committee.²⁴⁰ The CRPD very seldomly engages in a follow-up procedure and has no set procedure for receiving civil society contributions but welcomes it if organizations wish to raise any issue. (As elaborated on in section 5.2.2.7.)

6.2.6.3 Other Forms of Civil Society Participation

The Committee may cooperate with the States parties by undertaking activities that may contribute to the better understanding of the provisions in the CRPD and the means to accelerate their implementation. For this purpose, CSOs may always draw the Committee's attention to specific areas regarding which a State Party may require such support from the Committee.

Furthermore, CSOs are welcome to be present as observers during the session of the Committee in which general comments will be read or adopted and to submit written submissions to the Committee, with relevant information that contributes to enhance the interpretation of the matter.

The Committee also holds days of general debate during which CSOs are welcome to make submissions with relevant information that contributes to the analysis of the topic of the day of general debate. Speakers representing disabled persons organisations and CSOs, may also request speaking time for oral presentations *up to two days prior* to the day of general debate. The application for oral presentations shall include:

- ❖ The name of the organizations they represent;
- ❖ The mission/vision statement and what role persons with disabilities play in the organisation;
- ❖ The name and function of the speaker;
- ❖ Speakers are also requested to submit a statement of their intervention (during application, or separately up to *two days prior*).

6.2.6.4 Upcoming Opportunities

This reflects the current cycle the Indonesia and Malaysia are in. Regardless the submission date of the report, the next opportunity for input accurately reflects the position of the countries in the current reporting cycle. As there are no dates available for this, CSOs will need to stay updated if they wish to make use of this opportunity.

Country	Cycle	Report Due	Report Submitted	Next Opportunity for Input
Indonesia	I	30 December 2013	8 March 2019	General Session
Malaysia	I	19 Augustus 2012	-	Pre-session

6.2.7 Relevance for CSOs

In summary, at present the treaty body system only allows for indirect or general forms of advocacy regarding forest fires and transboundary haze given that Indonesia and Malaysia have not ratified any of the additional procedures. Therefore, no complaints can be brought before any of the international human rights treaty bodies, and this is not a viable legal strategy for CSOs. Any advocacy strategy

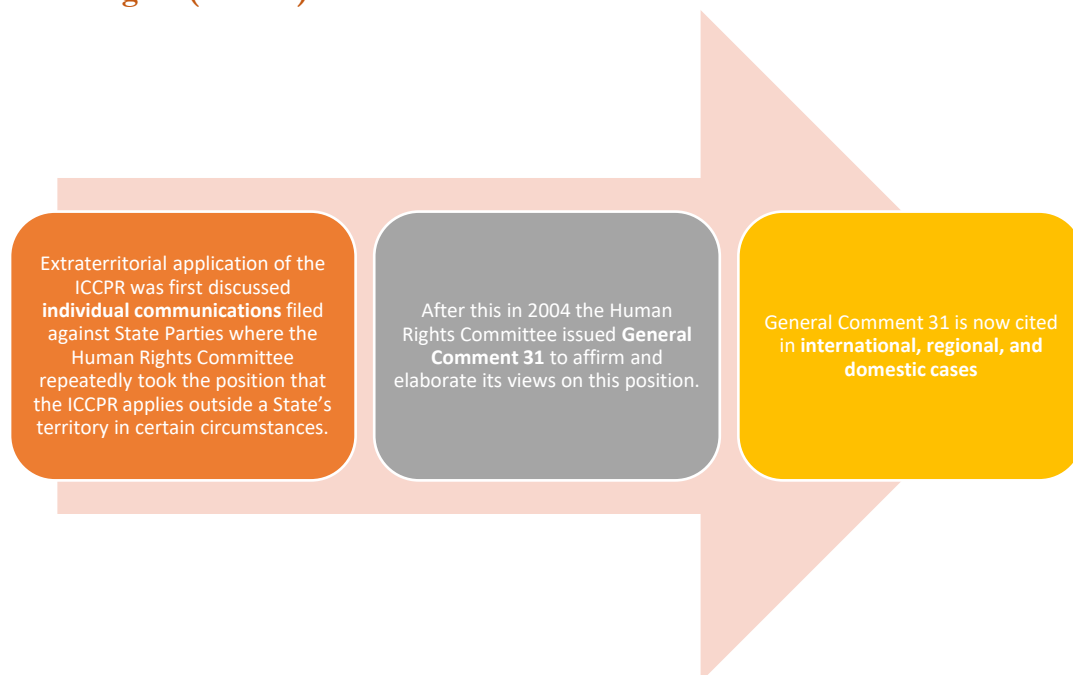
²⁴⁰ OHCHR, 'Working with The UN Human Rights Programme: A Handbook for Civil Society' (2008), 41.

concerning the treaty bodies is at most useful as a supplement to more focused, domestic approach to legal redress.

CSOs can work with other partners to advocate through the treaty-body system. They can submit CSO observation reports to the relevant committees and take part in consultation sessions with the various treaty bodies. CSOs might find that raising issues in the UN setting is a helpful way to direct international attention to the issues of forest fire and transboundary haze and exert external pressure on States.

Due to interplay between UN observations on State reports, general reports, and complaint procedures general advocacy may influence treaty bodies in more than one way. Especially, the possibility of feeding into general comments of treaty bodies is very valuable. General comments can and often do spill over into court interpretations of human rights in international, regional, and domestic cases. *The Human Rights Council has additionally asked State Parties to refer to General Comments in their periodic reports and some States do, therewith further emphasising the importance of General Comments.*

Example: The Extraterritorial Application of the International Covenant on Civil and Political Rights (ICCPR)



Therefore, general comments facilitate the spreading of treaty interpretation concerning issues brought forward to both domestic and international spheres through general discussion, reporting, or complaints mechanisms. Bringing forward interpretations that may broaden the scope of interpretation of a treaty to the forest haze is a useful tactic to aid in the overall comprehensive application of a treaty. As such this can be a helpful way to build a better base for future legal action.

There are limited studies into the effectiveness of this process available, though one can look at the Article, “The domestic effectiveness of international human rights monitoring in established democracies. The case of the UN human rights treaty bodies” authored by Jasper Krommendijk. CSOs may also want to conduct research or engage with law clinics or universities to conduct research on the effectiveness of this trickle down process.

Recommendations Systems	UN-Based	Legal/Advocacy	Impact Potential	Victims' redress?
<p><i>Engage</i> internationally, through general advocacy to the treaty bodies with human rights issues domestic lawyers and CSOs would like to raise.</p> <p><i>Make tactical contributions</i> that are aimed at solving or making easier specific issues with domestic lawyers are encountering when using human rights within the domestic legal system.</p>		Legal/Advocacy	On the international level, the main opportunities are found in general advocacy. General advocacy has the most potential when it is part of a long-term strategy that is specifically tailored to human rights issues that domestic lawyers may wish to raise and issues that they run up against. This is because international advocacy may have a trickle-down effect (which is described in more detail in the full memorandum).	Yes
<i>Contribute</i> to general comments of the treaty bodies		Advocacy	Contributions to general comments are more likely to create a trickle-down effect as explained above.	No
<i>Contribute</i> during the different phases of the reporting cycle of international human rights treaties		Advocacy	Contributions made in the reporting mechanism are more likely to put pressure on the states being targeted.	No

7 Conclusion

To conclude, there are different mechanisms under international law that can be utilised by CSOs as avenues of redress and advocacy. With regards to UN systems, there are two core mechanisms to consider, namely the UN Charter-based system and the UN Treaty-based system. The UN Charter-based system predominantly provides avenues of advocacy rather than redress for individual cases. Advocacy before the relevant bodies – most importantly of which the Universal Periodic Review and the Special Procedures (including UN Special Rapporteurs) – is important to raise international awareness for and strengthen policies against the adverse human rights impacts of forest fires and transboundary haze pollution. The UN Treaty Bodies may additionally provide various avenues of redress and advocacy. State enquiries and individual complaints are not available for action against Indonesia or Malaysia due to the ratification status of the additional protocols needed for this. There is, however, ample opportunity for general advocacy by CSOs during the reporting cycle of States and in other processes of the treaty bodies. Such general advocacy may raise awareness for issues and further feed into general comments of the treaty bodies which can in turn be relied upon in domestic proceedings on the human rights issues raised by Indonesian forest fires and transboundary haze.

8 Recommendations

This table reflects an overview of all the recommendations found within the current memorandum.

Recommendations UN-Based Systems	Legal/Advocacy	Impact Potential	Victims' redress?
<p><i>Raise</i> human rights issues both internationally and domestically (for example national human rights commission) where possible.</p> <p><i>Engage</i> internationally to create pressure and international attention for the issues.</p>	Legal/Advocacy	This reflects a broad recommendation to engage with the human rights system internationally as specified in the further recommendations and further raise human rights issues domestically through advocacy and legal action. Domestic action based on human rights obligations may lead to victims' reparation.	Yes
<p><i>Engage</i> internationally, through general advocacy to the treaty bodies with human rights issues domestic lawyers and CSOs would like to raise.</p> <p><i>Make tactical contributions</i> that are aimed at solving or making easier specific issues with domestic lawyers are encountering when using human rights within the domestic legal system.</p>	Legal/Advocacy	On the international level, the main opportunities are found in general advocacy. General advocacy has the most potential when it is part of a long-term strategy that is specifically tailored to human rights issues that domestic lawyers may wish to raise and issues that they run up against. This is because international advocacy may have a trickle-down effect (which is described in more detail in the full memorandum).	Yes
<i>Contribute</i> to general comments of the treaty bodies	Advocacy	Contributions to general comments are more likely to create a trickle-down effect as explained above.	No
<i>Contribute</i> during the different phases of the reporting cycle of international human rights treaties	Advocacy	Contributions made in the reporting mechanism are more likely to put pressure on the states being targeted.	No
<i>Stay updated</i> on current calls for input and comments of the OHCHR.	Advocacy	This will allow the spotting of opportunities for advocacy	No

<i>Consult</i> OHCHR guidelines on engagement with the UN but use with caution regarding the time of creation (some information in the guidelines may be outdated at the time of reading).	Advocacy	The OHCHR creates guidelines on the engagement of CSOs with human rights bodies that one can consult for guidance.	No
<i>Lobby</i> with national governments outside Indonesia and Malaysia to ask questions relating to the negative human rights implications resulting from environmental factors, such as forest fires and haze.	Advocacy	As there is currently no mention of environmental issues in either Indonesia's or Malaysia's UPRs, raising this issue with the Dutch government, which in turn can include it in its questions to the UPR working group can have significant effects on putting these issues on the radar of human rights bodies. As a result, this may be translated into national policies and greater emphasises overall.	No
<i>Engage</i> in the country report drafting stages (especially relating to CSOs in Malaysia, as the deadline for Indonesia's report has passed already by the time this memorandum is published). Although these do not provide avenues for redress, the UPR process does incentivize States to improve their human rights situations because of international political pressure and they create a space for further dialogue.	Advocacy	Similar to the impact potential above, including human rights concerns on the basis of forest fires and transboundary haze pollution in Indonesia's and Malaysia's country reports can increase (inter)national awareness about related ongoing human rights violations and incentivize policies to address these.	No
<i>Participate</i> in the Human Rights Council regular session to voice the concerns about human rights abuses connected to forest fires and haze.	Advocacy	Addressing the effects environmental issues have on human rights is important to underline the relevance of addressing these concerns on a global scale. Greater international awareness is likely to translate into greater	No

		national awareness in the long-run.	
<i>Cooperate</i> with relevant special rapporteurs by making submissions, providing information, and further support. Relevant special rapporteurs include: UN Special Rapporteur on Human Rights and Climate Change, UN Special Rapporteur on Human Rights and the Environment, UN Special Rapporteur on Business and Human Rights, UN Special Rapporteur on the Right to Physical and Mental Health; and potentially to a lesser extent: UN Special Rapporteur on the Right to Development, UN Special Rapporteur on the Right to Education, UN Special Rapporteur on the Right to Adequate Housing.	Advocacy	Special Rapporteurs are important key figures in the international human rights sphere. Cooperating with them on addressing (the effects of) forest fires and transboundary haze can be influential in raising international awareness and concern about these issues and promoting policies to counter these.	No
<i>Keep in mind</i> that the Special Rapporteurs can use their diplomatic power to expose human rights violations, address the perpetrators directly or/and publicly and exert influence over policy and legal developments.	Advocacy	The Special Procedures include a complaint mechanism which can assess individual cases and provide remedies to victims when successful.	Yes
<i>Submit a complaint</i> to the Complaint Procedure if national avenues of redress fail. If accepted, the Council will appoint experts for immediate monitoring and work with the relevant state.	Advocacy	Whilst there are high thresholds to get a complaint accepted in the scope of the Complaint Procedure, once it has been accepted the issue will be addressed in cooperation with the State and the Human Rights Council, and reparations may be paid to victims.	Yes
<i>Raise issues</i> during the reporting cycle on the Indonesian forest haze or on topics that are highly related as a form of general advocacy.	Advocacy	This is a way to conduct general advocacy through the treaty bodies and may serve to pressure the state concerned and work towards new	No

		interpretations by the treaty bodies.	
<i>Lobby</i> for Malaysia and Indonesia to ratify the optional protocols of the core human rights conventions.	Advocacy	If successful, the ratification of optional protocols could allow the treaty bodies to engage in state enquiries, investigations into the country's human rights situation. It could also allow the treaty body to hear individual complaints, which would open up the possibility for victims to bring claims before the treaty bodies.	If successful it may open up the possibility
<i>Use</i> precedent from the Portillo Cáceres v. Paraguay to argue that environmental harm falls under the ICCPR and does not have to be proven to directly affect the people invoking its protection as long as it is proven to contribute to a general harm. This is easier to prove than a specific harm.	Legal/Advocacy	This is an argument that can be made in legal proceedings or in submissions to strengthen this interpretation.	Yes (When used in legal proceedings)
<i>Lobby</i> governments to start mentioning minimum core rights in their reports.	Advocacy	Lobbying governments to start mentioning these more will bring greater recognition and pressure states into adhering to these minimum core rights so they can include a positive report.	No
<i>Reference</i> minimum core rights in domestic cases, to advance this approach to the ICESCR.	Legal/Advocacy	Referencing these rights in domestic cases will help develop them as well as potentially bring redress. It is worth mentioning them even in cases unrelated to the haze due to the advocacy potential.	Yes (When used in domestic cases)
<i>Advocate and bring action</i> both domestically and internationally on the basis of State obligations to regulate the behaviour of corporations	Legal/Advocacy	Referencing these obligations in domestic cases will help develop them as well as potentially bring redress. It is worth	Yes (When used in domestic cases)

		mentioning them even in cases unrelated to the haze due to the advocacy potential.	
<i>Utilise</i> the obligations of corporations under the ICESCR to strengthen domestic cases	Legal	This is an argument that can be made in legal proceedings or in submissions to strengthen this interpretation and as an avenue for redress if successful.	Yes
<i>Make written submissions</i> relating to the frameworks of business responsibility by Indonesia and Malaysia to contribute to the list of issues or contribute in the form of a shadow report to the ICESCR committee's procedures	Advocacy	Specific example of an area in which general advocacy might be particularly useful to pressure Indonesia and Malaysia into reporting on these issues.	No
<i>Engage</i> in the drafting process of <u>General Comment 26. on Children's Rights and the Environment with a Special Focus on Climate Change.</u>	Advocacy	As the Committee on the Rights of the Child is currently in the process of drafting a general comment on the rights of the Child and climate change, this is a great opportunity for CSOs to engage and contribute. If contributions are adopted into the final general comment this can feed into future legal strategies.	No
<i>Engage</i> with existing research initiatives on health impacts of the haze on people with disabilities.	Advocacy	Whilst not being direct advocacy it may yield useful results if for CSOs if they were to engage with existing research initiatives on the haze, to further build argumentation.	No
<i>Partner</i> with an NGO or other organisation that has more knowledge about the medical consequences of the haze.	Advocacy	Whilst not being direct advocacy it may yield useful results if for CSOs if they partner with other NGOs that have a more comprehensive understanding of the full range of medical impacts	No

		of the haze, to further build argumentation.	
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8.1 Legal jargon

Term	Definition
Monism	Referring to the system of treatment of international law by countries which is usually characterised as either monist or dualist. Monist refers to the treatment of international law and domestic law as a single legal system. This mean international law is automatically domestically enforceable.
Dualism	Referring to the system of treatment of international law by countries which is usually characterised as either monist or dualist. Dualist refers to the treatment of international law and domestic law as separate. This requires the government to take extra steps for international law to be enforceable domestically.
Precedent	Precedent refers to a decision that is considered as authority for deciding subsequent cases involving identical or similar fact, or similar legal issues.
Good faith	Acting in good faith means acting honestly and fairly during an agreement, for example by not misleading or cheating one's contract partner.