



Guidelines on the Right to Peaceful Environmental Protest and Civil Disobedience^{*}

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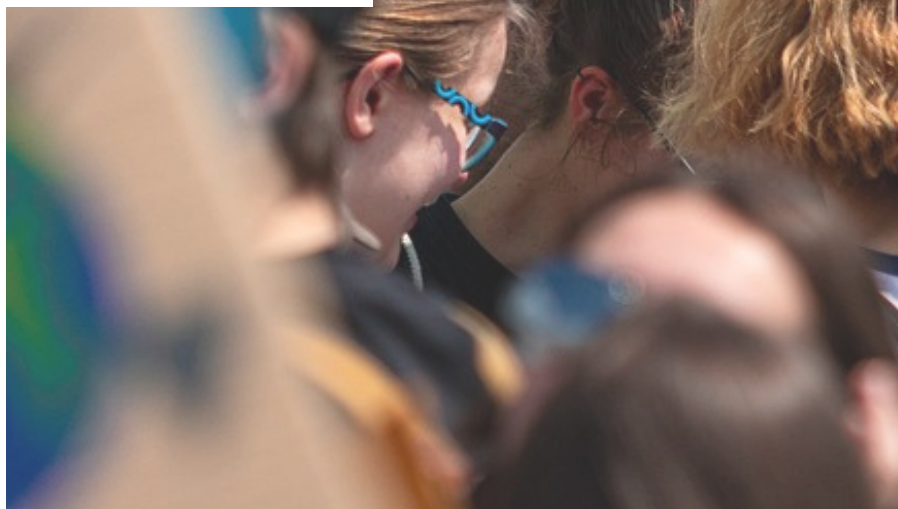


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Introduction

1. Article 3 (8) of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) requires that:

“Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement.”

2. Article 3 (8) applies to all situations in which members of the public seek access to information, public participation or access to justice in order to protect their right to live in an environment adequate to their health or well-being.¹ This includes members of the public organizing or participating in peaceful environmental protest.² The Meeting of the Parties to the Aarhus Convention has recognized that any person exercising his or her rights in conformity with the provisions of the Convention is an “environmental defender”.³
3. Alarmed by the serious situation faced by environmental defenders, including threats, violence, intimidation, surveillance, detention and even killings, at its seventh session (Geneva, 18–21 October 2021), the Meeting of the Parties to the Aarhus Convention adopted, by consensus, decision VII/9 establishing a rapid response mechanism in the form of a Special Rapporteur on environmental defenders.⁴ This is the first rapid response mechanism to protect environmental defenders established within a legally binding international framework.
4. At its third extraordinary session (Geneva, 23–24 June 2022), the Meeting of the Parties elected Mr. Michel Forst, by consensus, as the first Special Rapporteur on environmental defenders under the Aarhus Convention.
5. In connection with article 3 (8) of the Convention, the Special Rapporteur’s mandate is to take measures to:

Protect any person who is either:

- (a) Experiencing persecution, penalization or harassment, or
- (b) At imminent threat of persecution, penalization or harassment

in any way, for seeking to exercise their rights under the Aarhus Convention. Such penalization, persecution or harassment may arise from the acts or omissions of public or private entities or individuals.⁵

¹ Findings and recommendations with regard to communication ACCC/C/2014/102 concerning compliance by Belarus, ECE/MP.PP/C.1/2017/19, para. 66. See also Aarhus Convention, art. 1.

² ECE/MP.PP/C.1/2017/19, para. 96.

³ ECE/MP.PP/2021/2/Add.1, annex, decision VII/9, preambular para. 9; see also Report of the Special Rapporteur on the situation of human rights defenders (A/71/281), para 7.

⁴ Decision VII/9.

⁵ Ibid., annex, para. 1.

6. In addition to his or her work dealing with requests for a rapid response, the Special Rapporteur shall perform a proactive role in raising awareness regarding Parties' obligations under article 3 (8) of the Convention.⁶
7. Decision VII/9 recalls Human Rights Council resolution 40/11 entitled "Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development", which: *"urges all States to take all measures necessary to ensure the rights, protection and safety of all persons, including environmental human rights defenders, who exercise, inter alia, the rights to freedom of opinion, expression, peaceful assembly and association, online and offline, which are essential for the promotion and protection of human rights and the protection and conservation of the environment"*.⁷ Decision VII/9 further specifically encourages the Special Rapporteur to promote synergies with other relevant multilateral agreements.⁸
8. It is within this framework that the Special Rapporteur has prepared the Guidelines on the Right to Peaceful Environmental Protest and Civil Disobedience, which draw on both the Aarhus Convention and international human rights treaties and standards. Such standards include, amongst other things, instruments and guidance that have attained the status of customary international law, as well as the jurisprudence of international courts and tribunals. For the purposes of the Guidelines, "international" is understood to include also regional instruments and jurisprudence.
9. Prior to preparing the Guidelines, the Special Rapporteur released a position paper entitled "State repression of environmental protest and civil disobedience: A major threat to human rights and democracy".⁹ The paper outlines several aspects of repression and concludes with calls to action to States on how to respond to peaceful environmental protest, including civil disobedience, in line with their obligations under the Aarhus Convention and international human rights treaties and standards.
10. The Guidelines, which are voluntary and legally non-binding, operationalize these calls to action ("Guiding Principles") through "Operational Principles". The Guidelines aim to assist Parties and other interested States Members of the United Nations to implement or apply article 3 (8) of the Aarhus Convention, in synergy with other relevant international obligations, in order to ensure that members of the public organizing or participating in peaceful protest to protect their right to live in an environment adequate to their health and well-being are not penalized, persecuted or harassed for their involvement.¹⁰ They provide guidance on:
 - Fulfilling the positive and negative duties to respect and protect, without discrimination,¹¹ the right of members of the public to participate in decision-making, including through the exercise of their rights to the freedoms of expression, peaceful assembly and association.
 - Fulfilling the duty to remedy any violation of these rights.

⁶ Ibid., annex, para. 17.

⁷ Ibid., sixth preambular para.; A/HRC/RES/40/11, para. 3.

⁸ Decision VII/9, para. 15.

⁹ Available at https://unece.org/UNSR_EnvDefenders_Aarhus_Position_Paper_Civil_Disobedience.

¹⁰ Aarhus Convention, art. 1.

¹¹ International Covenant on Civil and Political Rights (ICCPR), art. 26; Aarhus Convention, art. 3 (9).

- Ensuring that other stakeholders act in accordance with international human rights treaties and standards in relation to the exercise of these rights.
11. In addition, the Guidelines include several recommendations for business enterprises and other private legal entities. Parties and other interested Member States are therefore encouraged to disseminate the Guidelines to relevant private legal entities within their jurisdiction.¹² Furthermore, Parties, other interested Member States, international organizations and other interested stakeholders are encouraged to translate the Guidelines into national languages and disseminate them to relevant actors, with an explanation of how to apply them.¹³

¹² ECE/MP.PP/2021/2/Add.1, Decision VII/9, annex, para. 1, second sentence: “Such penalization, persecution or harassment may arise from the acts or omissions of public or private entities or individuals”.

¹³ ECE/MP.PP/2025/21; and ECE/MP.PP/2025/20, para. 95.

Part 1: The right to peaceful environmental protest and civil disobedience

The right to peaceful environmental protest

Peaceful environmental protest is protected under the Aarhus Convention

12. The Aarhus Convention Compliance Committee has held that article 3 (8) applies to all situations in which members of the public seek access to information, public participation or access to justice in order to protect their right to live in an environment adequate to their health and well-being.¹⁴ The Compliance Committee has made it clear that both the organization of, and participation in, peaceful environmental protest constitute a legitimate exercise of the public's right to participate in decision-making as recognized in article 1 of the Convention.¹⁵ The Compliance Committee has held that the penalization, persecution or harassment of members of the public seeking to exercise this right violates article 3 (8) of the Convention.¹⁶ Under the Convention, "the public" is defined as *"one or more natural or legal persons, and ... their associations, organizations or groups"*.¹⁷
13. The Compliance Committee has also held that the wording of article 3 (8) covers penalization, persecution or harassment by any State body or institution, including those acting in a judicial or legislative capacity. It also covers penalization, persecution or harassment by private natural or legal persons that the Party concerned did not take the necessary measures to prevent.¹⁸

The right to peaceful protest under international human rights treaties and standards

14. Peaceful protest – whether individually or as a group – involves the exercise of interconnected rights, including the rights to the freedoms of expression, peaceful assembly and association, and the right to participate in decision-making. Peaceful protest is thus protected under these rights, which are enshrined in legally binding international human rights treaties that establish States' positive and negative obligations regarding the enjoyment of these rights.¹⁹
15. This protection extends to the way in which members of the public express themselves during peaceful protest, in both online and in physical spaces.²⁰ The Human Rights Committee has recognized that the way in which assemblies are conducted and their

¹⁴ Aarhus Convention, art. 1.

¹⁵ ECE/MP.PP/C.1/2017/19, para. 96.

¹⁶ Ibid., para. 109.

¹⁷ Aarhus Convention, art. 2 (4).

¹⁸ ECE/MP.PP/C.1/2017/19, para. 69.

¹⁹ Human Rights Committee, General comments No. 37 on the right of peaceful assembly (article 21) (CCPR/C/GC/37), paras. 21 and 23, and No. 34 on the right to freedom of expression (article 19) (CCPR/C/GC/34), paras. 11–13.

²⁰ CCPR/C/GC/37, para. 10.

context change over time.²¹ Protesters must be able to choose, without unnecessary interference, the mode that they consider most effective to reach the largest audience.²²

16. Under international law, States hold the primary responsibility to protect protesters and to respect and facilitate the exercise of their rights.²³ However, the Human Rights Committee has also made it clear that: *“business enterprises have a responsibility to respect ... the right of peaceful assembly of, for example, communities affected by their activities and of their employees. Private entities and broader society may be expected to accept some level of disruption as a result of the exercise of the right.”*²⁴

Civil disobedience as a protected form of protest

What is civil disobedience?

17. Civil disobedience is a specific form of protest protected under international human rights law.²⁵ It can be characterized by the following four cumulative criteria:
 - a. Deliberate lawbreaking;
 - b. Concerning a matter of public interest (e.g., protection of the environment);
 - c. Conducted publicly;
 - d. Conducted non-violently.

Civil disobedience is protected under international and regional human rights law

18. As a form of protest, acts of civil disobedience are protected under the right of peaceful assembly in article 21 of the International Covenant on Civil and Political Rights.²⁶ In its General comment No. 37 on the right of peaceful assembly under article 21 of the International Covenant, the Human Rights Committee makes it clear that: *“Collective civil disobedience or direct action campaigns can be covered by article 21, provided that they are non-violent.”*²⁷
19. In the present Guidelines, “peaceful environmental protest” therefore also includes acts of civil disobedience.

²¹ Ibid., para. 10.

²² See, e.g., European Court of Human Rights (ECHR), *Women On Waves and others v. Portugal*, Application No. 31276/05, Judgment, 3 February 2009, para. 38; ECHR, *Sáska v. Hungary*, Application No. 58050/08, Judgment, 27 November 2012, para. 21.

²³ CCPR/C/GC/37, para. 8.

²⁴ Ibid., para. 31.

²⁵ Ibid., para. 16.

²⁶ CCPR/C/GC/37, para. 16.

²⁷ Ibid., para. 16; Organization for Security and Cooperation in Europe–Office for Democratic Institutions and Human Rights (OSCE-ODIHR) and the Venice Commission, *Guidelines on Freedom of Peaceful Assembly: Third Edition* (Warsaw/Strasbourg, 2019), paras. 11 and 228.

Disruption is not violence

20. The Human Rights Committee has clarified that the concept of “violence” *“typically entails the use by participants of physical force against others that is likely to result in injury or death, or serious damage to property.”*²⁸ Therefore: *“Mere pushing and shoving or disruption of vehicular or pedestrian movement or daily activities do not amount to ‘violence’.”*²⁹ In addition, even if some participants resort to acts that might be classified as violent, this does not turn the entire protest into a violent (or non-peaceful) one and does not place the protest outside the scope of protection of article 21 on the right of peaceful assembly of the International Covenant.³⁰
21. The European Court of Human Rights has also held that the right to the freedom of peaceful assembly and association under article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) applies to all gatherings, unless it can be shown that the organizers and participants intended to incite violence or otherwise reject the foundations of a democratic society.³¹ The Court has made it clear that peaceful intentions must be presumed unless there is sufficient and convincing evidence that those organizing or participating in a particular event will themselves use, advocate or incite imminent violence.³²
22. Members of the public who resort to civil disobedience therefore enjoy protection under international human rights law, provided they cannot be shown to have violent intentions.

Civil disobedience, even when disruptive, is protected under international human rights law

23. Peaceful environmental protest, including civil disobedience, may cause different levels of disruption in physical spaces (e.g., occupation of sites, roadblocks), and online spaces (e.g., “email bombing”, “denial of service” attacks). The Human Rights Committee has made it clear that peaceful assemblies are *“a legitimate use of public and other spaces”*, which *“may entail by their very nature a certain level of disruption to ordinary life,”*³³ and are protected *“wherever they take place: outdoors, indoors and online; in public and private spaces”*.³⁴ The Human Rights Committee has stated that *“such disruptions must be accommodated, unless they impose a disproportionate burden”*,³⁵ and where restrictions are imposed *“the authorities must be able to provide detailed justification.”*³⁶

²⁸ CCPR/C/GC/37, para. 15; OSCE-ODIHR/Venice Commission, Guidelines on Freedom of Peaceful Assembly, para. 51.

²⁹ CCPR/C/GC/37, para. 15.

³⁰ Ibid., para. 19.

³¹ ECHR, *Kudrevičius and others v. Lithuania*, Application No. 37553/05, Judgment, 15 October 2015, para. 145.

³² ECHR, *Laurijsen and others v. the Netherlands*, Applications Nos. 56896/17 and others, Judgment, 21 November 2023, para. 58; ECHR, *Christian Democratic People's Party v. Moldova* (No. 2), Application No. 25196/04, Judgment, 2 February 2010, para. 23; ECHR, *Mushegh Saghatelian v Armenia*, Application No. 23086/08, Judgment, 20 September 2018, paras. 230 and 233.

³³ CCPR/C/GC/37, para. 47.

³⁴ Ibid., para. 6, see also paras. 47 and 57.

³⁵ Ibid., para. 47.

³⁶ Ibid., para. 47.

24. Similarly, the European Court of Human Rights has recognized a range of disruptive protest activities as falling within the scope of protection of articles 10 (freedom of expression) and/or 11 (freedom of peaceful assembly and association) of the European Convention on Human Rights, including a demonstration during which a public road was blocked to protest against the retention of a nuclear submarine;³⁷ the physical impediment of activities, including a hunt and the building of an extension to a motorway;³⁸ and the obstruction of commercial whaling.³⁹
25. While the European Court of Human Rights has held that disruptive protests are not “*at the core*” of articles 10 and 11 of the European Convention on Human Rights, it has made it clear that disruptive and obstructive effects of civil disobedience do not deprive protesters of the protection afforded them under these articles.⁴⁰ Moreover, the Court has repeatedly stated that protests obstructing the legal activities of others fall within the scope of protection of articles 10 and 11 of the European Convention,⁴¹ and that the rights under these articles “*should not be interpreted restrictively*”.⁴²
26. Even where protesters intentionally cause disruption, this does not move their acts outside the scope of these rights, provided that there is no intention to incite violence or otherwise reject the foundations of a democratic society.⁴³
27. Therefore, the disruptive nature of a peaceful protest does not deprive it of protection under international and regional human rights law.

Any restrictions on the right to peaceful protest, including civil disobedience, must be strictly limited

28. Any restriction on the exercise of the rights to the freedoms of expression, peaceful assembly and association must: (a) be prescribed by law; (b) pursue one or more legitimate aims; and (c) be necessary, that is to say proportionate to achieve that aim.⁴⁴ These three criteria are often referred to as the “three-part test”.
29. The term “restrictions” includes measures taken before or during the protest, as well as those taken after the protest, such as punitive measures.⁴⁵ Any sanctions imposed following the protest must therefore also meet the above-mentioned three-part test.⁴⁶

³⁷ ECHR, *Lucas v. the United Kingdom*, Application No. 39013/02, Decision, 18 March 2003, p. 9.

³⁸ ECHR, *Steel and others v. the United Kingdom*, Application No. 24838/94, Judgment, 23 September 1998, para. 92.

³⁹ ECHR, *Drieman and others v. Norway*, Application No. 33678/96, Decision, 4 May 2000, pp. 8–9.

⁴⁰ ECHR, *Kudrevičius*, paras. 97–98; ECHR, *Hashman and Harrup v. the United Kingdom*, Application No. 25594/94, Judgment, 25 November 1999, para. 28.

⁴¹ ECHR, *Steel*, para. 92; ECHR, *Drieman*, pp. 8–9; ECHR, *Bryan and others v. Russia*, Application No. 22515/14, Judgment, 27 June 2023, paras. 85–86.

⁴² ECHR, *Kudrevičius*, para. 91. The Court has for instance held that, despite its “disruptive and unauthorized character and the fact that it might have posed a real threat to the maritime traffic”, a protest in Gdansk harbour enjoyed the protection of articles 10–11 (see ECHR, *Friedrich and others v. Poland*, Applications No. 25344/20 and 17 others, Judgment, 20 June 2024, para. 248).

⁴³ ECHR, *Kudrevičius*, paras. 91–98.

⁴⁴ See, e.g., ECHR, *Vyerentsov v. Ukraine*, Application No. 20372/11, Judgment, 11 April 2013, para. 51; ECHR, *Kudrevičius*, paras. 142–143.

⁴⁵ ECHR, *Ezelin v. France*, Application No. 11800/85, Judgment, 26 April 1991, para. 39; ECHR, *Kudrevičius*, para. 100.

⁴⁶ ECHR, *Ekrem Can and others v. Turkey*, Application No. 10613/10, Judgment, 8 March 2022, paras. 90–96; ECHR, *Yezhov and others v. Russia*, Application No. 22051/05, Judgment, 29 June 2021, paras. 31–37.

30. Indeed, the European Court of Human Rights has made it clear that:

*“Any measures interfering with the freedoms of assembly and of expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities – do a disservice to democracy and often even endanger it.”*⁴⁷

31. Regarding the requirement to show the pursuit of a legitimate aim, the European Court of Human Rights has held that there must be sufficient reasons constituting a *“pressing social need”* to justify a restriction in the specific case, that is to say *“compelling consideration relating to public safety, prevention of disorder or protection of the rights of others”*.⁴⁸ The mere *“need to punish unlawful conduct”* is not a sufficient consideration in the absence of any aggravating elements.⁴⁹
32. Concerning the assessment of whether a particular restriction is proportionate to the legitimate aim pursued, the European Court of Human Rights has made it clear that this must be assessed based on the particular facts of each case. This requires striking a balance between the legitimate aim pursued by the restriction and the right to *“free expression of opinions, by word, gesture or even silence by persons”*.⁵⁰ This proportionality assessment includes the nature and severity of the penalties imposed and whether *“there were not any effective, less intrusive measures available”* to attain the legitimate aim pursued.⁵¹ As the Court has held, peaceful demonstrations should, in principle, not be subject to the threat of criminal sanction, and where sanctions imposed are criminal in nature, they require *“particular justification”*.⁵² Moreover, national courts *“must examine with particular scrutiny the cases where sanctions imposed by the national authorities for non-violent conduct involve a prison sentence”*.⁵³
33. Therefore, any restriction, including sanction, imposed on the exercise of the rights to the freedoms of expression, peaceful assembly and association, including in the context of civil disobedience, must follow a strict case-by-case assessment of the proportionality of the restriction to any legitimate aim pursued.⁵⁴

⁴⁷ ECHR, *Kudrevičius*, para. 145.

⁴⁸ ECHR, *Novikova and others v. Russia*, Application No. 25501/07 and others, Judgment, 26 April 2016, para. 199.

⁴⁹ ECHR, *Glukhin v. Russia*, Application No. 11519/20, Judgment, 4 July 2023, para. 56.

⁵⁰ ECHR, *Kudrevičius*, paras. 143–144.

⁵¹ ECHR, *Schwabe and M.G. v. Germany*, Applications Nos. 8080/08 and 8577/08, Judgment 1 December 2011, para. 118.

⁵² ECHR, *Kudrevičius*, para. 146.

⁵³ *Ibid.*, para. 146.

⁵⁴ *Ibid.*, para. 143; CCPR/C/GC/37, paras. 54 and 67.

Part 2: Guiding Principles and Operational Principles

The Guidelines are based on the findings of the Aarhus Convention Compliance Committee endorsed by the Meeting of the Parties to the Convention (Meeting of the Parties).

The Aarhus Convention Compliance Committee has held that article 3 (8) applies to all situations in which members of the public seek access to information, public participation or access to justice in order to protect their right to live in an environment adequate to their health or well-being.⁵⁵ The Compliance Committee has made it clear that both the organization of, and participation in, peaceful environmental protest is a legitimate exercise of the public's right to participate in decision-making as recognized in article 1 of the Convention,⁵⁶ and that penalization, persecution or harassment of members of the public seeking to exercise this right violates article 3 (8) of the Convention.⁵⁷ Under the Convention (art. 2 (4)), "the public" is defined as "one or more natural or legal persons, and ... their associations, organizations or groups".

The Compliance Committee has also held that the wording of article 3 (8) covers penalization, persecution or harassment by any State body or institution, including those acting in a judicial or legislative capacity, as well as penalization, persecution or harassment by private natural or legal persons that the Party concerned did not take the necessary measures to prevent.⁵⁸

The Meeting of the Parties has recognized that any person exercising his or her rights in conformity with the provisions of the Convention is an "environmental defender".⁵⁹

In the present Guidelines, "peaceful environmental protest" includes acts of civil disobedience, being a protected form of protest under international human rights treaties and standards.

⁵⁵ Aarhus Convention, art. 1.

⁵⁶ Findings and recommendations with regard to communication ACCC/C/2014/102 concerning compliance by Belarus, ECE/MP.PP/C.1/2017/19, para. 96.

⁵⁷ Ibid., para. 109.

⁵⁸ Ibid., para. 69.

⁵⁹ ECE/MP.PP/2021/2/Add.1, decision VII/9, preambular para. 9; Report of the Special Rapporteur on the situation of human rights defenders (A/71/281), para. 7.

Parties and other interested Member States should:

GUIDING PRINCIPLE 1:

Address the root causes of environmental protest.

The reasons that push a growing number of members of the public into organizing or participating in peaceful environmental protest, both online and offline, should be addressed. A key reason for this increase is the public's perception that their governments are failing to take adequate action, at both the national and international levels, for the protection of the right of present and future generations to live in an environment adequate to their health and well-being and to ensure access to information, public participation in decision-making, and access to justice in environmental matters.⁶⁰

Operational Principles:

1. Governments, parliaments and relevant intergovernmental organizations should:

- 1.1. Conduct an overall assessment of their environmental policies, with a view to ensuring:
 - a. Compliance with the Aarhus Convention;
 - b. Compliance with their obligations under:
 - i. Multilateral environmental agreements;⁶¹
 - ii. International human rights law relevant to environmental matters;
 - c. Fulfilment of the right to a clean, healthy and sustainable environment;⁶²
 - d. A human rights-based approach to the just energy transition.
- 1.2. Ensure meaningful and safe participation of environmental defenders before, during and after meetings of environment-related international forums.⁶³

⁶⁰ Aarhus Convention, art. 1.

⁶¹ E.g.: Paris Agreement; Conference of the Parties to the Convention on Biological Diversity decision 15/4 on the Kunming-Montreal Global Biodiversity Framework (CBD/COP/DEC/15/4).

⁶² Human Rights Council resolutions 48/13 and 76/300 on the human right to a clean, healthy and sustainable environment (respectively, A/HRC/RES/48/13 and A/RES/76/300).

⁶³ Regarding international forums, see: Aarhus Convention, art. 3 (7); ECE/MP.PP/2005/2/Add.5, decision II/4, annex, Almaty Guidelines, paras. 29 and 32.

GUIDING PRINCIPLE 2:

Take immediate action to counter narratives that portray environmental defenders as criminals.

The media and political figures are increasingly frequently portraying environmental defenders negatively, endangering them and delegitimizing their role in environmental decision-making.

The important role environmental defenders play in environmental protection should be recognized and promoted.

It is vital to ensure that the media and political figures do not depict environmental defenders engaging in peaceful protest, including civil disobedience, as criminals or extremists or as posing a threat to society, public order, security, national interest and economic prosperity.

Operational Principles:

2. Governments, parliaments and public authorities at all levels (including subnational and local), should:

- 2.1. Adopt communication policies requiring their political representatives, advisors, officials and staff to refrain from using language, in public speeches or in the media, that labels persons who have organized or participated in peaceful environmental protest as threats to society, public order, security, the national interest and prosperity, or as “eco-criminals”, “eco-terrorists”, “foreign agents” or “enemies of the State”. These policies should include a commitment by the leadership of the relevant authority to formally distance themselves from such statements, and to hold the relevant person(s) accountable.⁶⁴
- 2.2. Provide financial, logistical and other relevant support to educational and awareness-raising activities conducted by, or in partnership with, environmental defenders, including children and youth, to raise awareness about the urgent need to protect their right to live in an environment adequate to their health or well-being.⁶⁵
- 2.3. Ensure that, when reporting on environmental defenders, State-owned media and public service media⁶⁶ convey and disseminate information in a way that ensures maximum adherence to factual accuracy. While adhering to media

⁶⁴ Organization for Security and Cooperation in Europe (OSCE), Guidelines on the Protection of Human Rights Defenders (Warsaw, 2014), paras. 37, 38 and 43; OSCE/United Nations/Organization of American States (OAS)/African Commission on Human and People's Rights (ACHPR), “Joint Declaration on the Climate Crisis and Freedom of Expression” (2024), sect. 2 (b) and (c).

⁶⁵ See Aarhus Convention, art. 1.

⁶⁶ Public service media/broadcasting is defined as being “made, financed and controlled by the public, for the public. It is neither commercial nor State-owned. It is free from political interference and pressure from commercial forces”. See Elizabeth Smith, A Road Map to Public Service Broadcasting (Kuala Lumpur, Asia Pacific Broadcasting Union, 2012), p. 7, see also p. 4.

freedom and pluralism, including ensuring a diversity of voices,⁶⁷ the media should in particular refrain from:

- a. Using derogatory language when referring to environmental defenders, their objectives and activities;
 - b. Disseminating or perpetuating incomplete, inaccurate or distorted information. This includes a failure to reflect the urgency of the climate crisis and other environmental emergencies when reporting on peaceful protest calling for urgent action to address them.
- 2.4. Promote and support the drafting of codes of conduct⁶⁸ by privately owned media (including print and broadcasting media, their associations, and social media service providers) on how to process and convey information in their reporting on environmental defenders in a way that ensures maximum adherence to factual accuracy, as set out in Operational Principle 2.3.
 - 2.5. Promote and support the establishment of an independent and transparent oversight mechanism or procedure for State-owned, public service and privately owned media to ensure the prompt removal from media websites, online platforms and comments sections of any type of speech that constitutes advocacy of hatred that incites hostility, discrimination or violence against environmental defenders.⁶⁹ The oversight mechanism or procedure may be industry-wide or company-specific. Any removal should be accompanied by proper safeguards to ensure respect for freedom of expression, such as notification of the ground for the removal, adequate procedures to contest the removal, and remedies in case of unjustified removal.
 - 2.6. Develop safe, effective, independent and transparent mechanisms for reporting hate speech or incitement of violence against environmental defenders on online platforms and websites. This should include effective tools to address and remedy incidents, through removal and accountability (see Operational Principle 2.5, third sentence, concerning relevant freedom of speech safeguards).
 - 2.7. Promote exchange of good practices on policies and measures to implement Operational Principles 2.1–2.6.

⁶⁷ See e.g., Charter of Fundamental Rights of the European Union (art. 11); Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (art. 10).

⁶⁸ These could be self-regulatory or co-regulatory codes of conduct, or codes of conduct put in place by an independent regulator. E.g., Austrian code on journalism and climate change (available at www.klimajournalismus.at/wp-content/uploads/2023/05/klimakodex_netzwerkklimajournalismusAT-1.pdf). See other examples of self-regulatory codes of conducts for media for processing/conveying information on specific sectors, e.g., Charter of Rome (Italy) for media for processing/conveying information on migrants (available at www.cartadiroma.org/cosa-e-la-carta-di-roma/codice-deontologico/), German Press Council press code (available at www.presserat.de/pressekodex.html?file=files/presserat/dokumente/pressekodex/Pressekodex2017english.pdf&cid=218)

⁶⁹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/74/486, paras. 34 and 39.

3. State-owned, public service and privately owned media (including digital media), as well as their associations and press councils, should:

- 3.1. Actively disseminate and facilitate public access to their codes of conduct and their implementation.⁷⁰
- 3.2. Establish effective oversight mechanisms or procedures to ensure the prompt removal from their websites, online platforms and comments sections, of any type of speech that constitutes advocacy of hatred that incites hostility, discrimination or violence against environmental defenders (see Operational Principle 2.5, third sentence, concerning relevant freedom of speech safeguards).⁷¹
- 3.3. Organize exchanges of good practices with State-owned, public service and privately owned media (including digital media), their associations and press councils from other States on similar codes of conduct and oversight mechanisms or procedures.

4. Internet service providers and social media service providers should:

- 4.1. Adopt, and ensure effective oversight of, codes of conduct to ensure that any advocacy of hatred that incites hostility, harassment, discrimination or violence against environmental defenders is promptly removed and not further disseminated.⁷²
- 4.2. Establish effective oversight mechanisms or procedures to ensure the prompt removal from their websites, online platforms and comments sections of any type of speech or content that constitutes advocacy of hatred that incites hostility, harassment, discrimination, or violence against environmental defenders (see Operational Principle 2.5, third sentence, concerning relevant freedom of speech safeguards).

⁷⁰ OSCE/United Nations/OAS/ACHPR, "Joint Declaration", p. 9.

⁷¹ A/74/486, paras. 32 and 34.

⁷² There is no formal definition of "hate speech" under international human rights law. In line with article 20 (2) of the International Covenant on Civil and Political Rights (ICCPR), which provides that "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.", most United Nations treaties and standards refer to "incitement to discrimination, hostility and violence" (see e.g., United Nations Strategy and Plan of Action on Hate Speech (2019), p. 2.

GUIDING PRINCIPLE 3:

Refrain from using the increase in civil disobedience by members of the public seeking to protect their right to live in an environment adequate to their health or well-being⁷³ as a pretext to restrict the civic space and the exercise of fundamental freedoms.

A growing number of members of the public are resorting to peaceful environmental protest, including civil disobedience. Despite being peaceful, these forms of protest are being met with increasing repression. This includes the use of existing laws and regulations, as well as the adoption of new laws and other measures, to target environmental defenders and restrict the civic space.

In addition to the positive and negative duties to facilitate the public's right to participate in decision-making, and the exercise of the rights to the freedoms of expression, peaceful assembly and association, without discrimination, a safe and enabling environment must be provided, both online and offline, for environmental defenders to promote and protect the right to a clean, healthy and sustainable environment, free from threats or violence.⁷⁴

The role of law enforcement regarding these obligations is addressed under Guiding Principle 4. The roles of prosecutors and courts are addressed under Guiding Principle 5.

Operational Principles:

5. Governments and parliaments at all levels (including national, subnational and local) should:

- 5.1. Conduct a rigorous human rights impact assessment of any legislation used in the context of peaceful environmental protest, including criminal, civil and administrative laws and regulations, to ensure:
 - a. An enabling environment to organize and participate in peaceful environmental protest, both online and offline;⁷⁵
 - b. Existing legislation is not used to suppress peaceful environmental protest, and that any restriction imposed on the exercise of the rights to the freedoms of expression, peaceful assembly and association is clearly

⁷³ Aarhus Convention, art. 1.

⁷⁴ General Assembly resolution 78/216 entitled "Implementing the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms through providing a safe and enabling environment for human rights defenders and ensuring their protection", (A/RES/78/216), para. 11; Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (A/HRC/37/59), para. 11.

⁷⁵ Human Rights Committee, General comment No. 37 on the right of peaceful assembly (art. 21) (CCPR/C/GC/37), para. 24; Human Rights Council resolutions 25/38 on the promotion and protection of human rights in the context of peaceful protests (A/HRC/RES/25/38), para. 3, 47/16 on the promotion, protection and enjoyment of human rights on the Internet (A/HRC/RES/47/16), para. 8 (a), and 56/10 on the promotion and protection of human rights in the context of peaceful protests (A/HRC/RES/56/10), para. 2; OSCE-Office for Democratic Institutions and Human Rights (ODIHR)/Venice Commission, "Guidelines on Freedom of Peaceful Assembly (Third Edition)" CDL-AD(2019)017rev (Warsaw/Strasbourg, 2019), para. 68.

established by law, pursues a legitimate aim and is strictly necessary and proportionate.⁷⁶ This includes the close review of legislation imposing geographic restrictions on freedom of peaceful assembly.⁷⁷ In the context of criminal laws, it must also include review of the proportionality of available sanctions following conviction.

- 5.2. Refrain from proposing or adopting new criminal offences or civil or administrative punitive measures that target environmental defenders organizing or participating in peaceful protest.
- 5.3. Refrain from extending existing powers, and/or granting new powers for law enforcement authorities, to restrict environmental defenders' right to protest, including disruptive protest. Any restriction must be clearly established by law, pursue a legitimate aim and be strictly necessary and proportionate.
- 5.4. Review existing legislation and policies on public order, public security and national security, to ensure that they are in line with international human rights treaties and standards. Such legislation and policies should:
 - a. Prohibit blanket restrictions on peaceful protest based on national security or public;
 - b. Exclude the use of existing concepts under national law, such as the definitions of "terrorism", "extremism", "organized crime" and "public order", or recourse to legislation combating terrorism or organized crime, in a way that unnecessarily and disproportionately restricts peaceful protest, including civil disobedience;⁷⁸
 - c. Ensure that any restrictions on the right to engage in peaceful protest are amenable to prompt, competent, independent and impartial administrative or judicial review and that environmental defenders affected by such restrictions have access to timely and effective remedies, including ensuring that any costs to access justice are not prohibitively expensive;⁷⁹
 - d. Strictly limit any powers that allow for the prior restraint of the right to protest, including through the use of civil injunctions banning protest in certain geographic areas. Where the legal framework allows for such prior restraint, the legal framework should ensure tight control both over the

⁷⁶ See, e.g., European Court of Human Rights (ECHR), *Vyerentsov v. Ukraine*, Application No. 20372/11, Judgment, 11 April 2013, paras. 51–56; ECHR, *Kudrevičius and others v. Lithuania*, Application No. 37553/05, Judgment, 15 October 2015, paras. 142–143.

⁷⁷ ECHR, *Lashmankin and others v. Russia*, Application No. 57818/09 and 14 others, Judgment, 7 February 2017, paras. 426 and 434.

⁷⁸ OSCE-ODIHR/Venice Commission, "Guidelines on Freedom", paras. 72, 94, 96 and 151; Inter-American Commission on Human Rights (IACHR)/Office of the Special Rapporteur for Freedom of Expression, Protest and Human Rights, *Standards on the Rights Involved in Social Protest and the Obligations to Guide the Response of the State* (2019), paras. 366 and 371; Inter-American Court of Human Rights, *Norín Catrimán et al. v. Chile*, Judgment (Merits, Reparations and Costs), 29 May 2014, Series C, No. 279, para. 163.

⁷⁹ CCPR/C/GC/37, para. 29; Aarhus Convention, article 9 (4).

scope of any such bans and effective judicial review to prevent any abuse of power.⁸⁰

- 5.5. Review existing legislation and policies on all forms of overt and covert surveillance used before, during and after the organization of, or participation in, peaceful environmental protest, to ensure that they are in line with international human rights treaties and standards. Such legislation and policies should:
 - a. Prohibit the use of existing or new tools, including digital technologies and artificial intelligence, to silence, arbitrarily or unlawfully surveil, or harass members of the public for having discussed, organized, taken part in or observed, monitored or recorded peaceful environmental protest;
 - b. Prohibit the use of indiscriminate and untargeted (i.e. “mass”) surveillance of environmental defenders;
 - c. Ensure that any “targeted” surveillance of environmental defenders is subject to stringent safeguards, including, but not limited to, ensuring that:
 - i. Any surveillance is authorized only when there is reasonable suspicion that a particular environmental defender has committed or is committing a serious criminal offence, or is engaged in acts amounting to a specific threat to national security. The request for authorization should be based on clear evidence and fully justified, setting out the specific objective pursued by the use of surveillance, evidencing utility, and providing sufficient information to evaluate the potential harm to human rights;
 - ii. The target of surveillance is notified;
 - iii. There is strict judicial oversight;
 - iv. There are protocols to govern the collection during a protest, retention and use of personal data to safeguard individuals’ rights and privacy.⁸¹
- 5.6. Promote effective public participation during preparation of draft legislation implemented in the context of peaceful environmental protest.⁸²
- 5.7. Review the sanction regimes applicable to associations, including environmental movements, groups and organizations, under criminal and administrative law to ensure that they do not disproportionately restrict freedom of association.

⁸⁰ ECHR, *Association Ekin v. France*, Application No. 39288/98, Judgment, 17 July 2001, para. 58.

⁸¹ See, e.g., Impact of new technologies on the promotion and protection of human rights in the context of assemblies, including peaceful protests, Report of the United Nations High Commissioner for Human Rights, A/HRC/44/24, paras. 53 (f) and (j); Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/55/60, para. 71; Human Rights Council resolutions 50/21 on the promotion and protection of human rights in the context of peaceful protests (A/HRC/RES/50/21), para. 28, 50/17 on the rights to freedom of peaceful assembly and of association (A/HRC/RES/50/17), para. 10, and 54/21 on the right to privacy in the digital age (A/HRC/RES/54/21), para. 10; Surveillance and human rights, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/41/35, para. 26.

⁸² See Aarhus Convention, art. 8.

This includes, but is not limited to, ensuring that support for, or involvement in, peaceful environmental protest cannot be used as a reason to withdraw funding, shut down an association's website, freeze bank accounts, call into question or remove its charity status, or otherwise suspend or dissolve the association.

- 5.8. Adopt or amend legislation to establish fully operational, independent national human rights institutions (NHRIs) and ensure that their mandate is in line with international standards.⁸³ Such legislation should:
 - a. Include a mandate to promote the effective implementation, enjoyment and awareness of the rights related to peaceful environmental protest;
 - b. Include a mandate to monitor compliance with these rights, including the necessary powers, expertise and resources to effectively, independently and impartially observe, document, report and monitor peaceful environmental protests;⁸⁴
 - c. Require public authorities, or those acting on their behalf, to fully cooperate with NHRIs and establish sanctions in case of non-compliance with that obligation.⁸⁵
- 5.9. Facilitate the observation, documentation, reporting and monitoring of peaceful environmental protests by NHRIs, independent media, human rights observers, or members of the public.⁸⁶ In particular:
 - a. Adopt or amend legislation and policies on the right to seek, receive and disseminate information to enable effective reporting and monitoring of peaceful environmental protest;
 - b. Facilitate constructive dialogue between environmental protesters and law enforcement authorities, independent media, human rights observers and NHRIs.

⁸³ General Assembly resolutions 48/134 entitled National institutions for the promotion and protection of human rights (A/RES/48/134), annex, and 53/144 entitled Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144), art. 14.

⁸⁴ CCPR/C/GC/37, paras. 29–30; IACHR/Office of the Special Rapporteur for Freedom of Expression, Protest and Human Rights, para. 373.

⁸⁵ See, e.g., Albania, Constitution of Albania, article 63 (4) and Law on the Ombudsman, arts. 22–23, available at www.avokatipopullit.gov.al/en/article/legislation; Austria, Ombudsman Act, art. 6, available at <https://www.ap.tch/sites/default/files/2023-08/Ombudsman%20Act%20%28Austria%29.pdf>; Bosnia and Herzegovina, Law on the Ombudsman, art. 25, available at www.ombudsmen.gov.ba/documents/obmudsmen_doc2013041003342457eng.pdf; Portugal, Constitution of Portugal, art. 23.4, available at www.parlamento.pt/sites/EN/Parliament/Documents/Constitution7th.pdf and Statute of the Ombudsman, arts. 19 and 29, available at www.provedor-jus.pt/en/who-we-are/basic-legislation/statute-of-the-ombudsman/; Argentina, Law on the Ombudsman, art. 24, available at www.dpn.gob.ar/ley24284.php (Spanish only).

⁸⁶ CCPR/C/GC/37, para. 30; see, e.g., Mexico, Law on the National Human Rights Commission, arts. 38 and 67, available at www.cndh.org.mx/sites/all/doc/conocenos/ley_CNDH.pdf (Spanish only); Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, Report of the United Nations High Commissioner for Human Rights, A/HRC/22/28, paras. 65–66; OSCE/United Nations/OAS/ACHPR, “Joint Declaration”, sects. 2 (d) and 3; IACHR/Office of the Special Rapporteur for Freedom of Expression, Protest and Human Rights, paras. 373–374; OSCE-ODIHR/Venice Commission, “Guidelines on Freedom”, para. 234; ECHR, *Pentikäinen v. Finland*, Application No. 11882/10, Judgment, 20 October 2015, para. 89; French supreme administrative jurisdiction (Conseil d’Etat), *Décision n°461513*, Judgment, 29 December 2023, para. 6.

- 5.10. Establish or designate independent national preventive mechanisms (NPMs) for the prevention of torture at the domestic level, ensuring that they have all the necessary powers to regularly examine the treatment of any environmental defenders held in detention and to protect environmental defenders against torture and other cruel, inhuman or degrading treatment or punishment.⁸⁷ Legislation establishing NPMs should:
- a. Set out their mandate and powers in accordance with the provisions of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and expressly extend their visiting mandate to all places of detention;⁸⁸
 - b. Clearly establish their operational independence and provide guarantees for such independence;
 - c. Require public authorities, or those acting on their behalf, to fully cooperate with the NPM and establish sanctions in case of non-compliance with such obligation;
 - d. Extend their mandate to monitor law enforcement operations in the context of peaceful environmental protests;⁸⁹
 - e. Ensure prompt access for NPMs to environmental defenders deprived of their liberty following organization of or participation in peaceful environmental protest.
- 5.11. Adopt legislation protecting environmental defenders, including those participating in peaceful environmental protest, from manifestly unfounded or abusive court proceedings, also known as “strategic lawsuits against public participation” (SLAPPs).⁹⁰ To this end, the legal system should:
- a. Provide a comprehensive legal framework and a coherent set of structural and procedural safeguards to prevent and minimize the harmful effects of SLAPPs;
 - b. Ensure procedural safeguards allowing for early dismissal of SLAPPs;

⁸⁷ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 1, 3 and 17–23.

⁸⁸ Ibid., art. 4.

⁸⁹ See, e.g., the mandate of the Austrian national preventive mechanism, available at <https://volksanwaltschaft.gv.at/>.

⁹⁰ See, e.g., Human Rights Council resolution 56/7 on freedom of opinion and expression (A/HRC/RES/56/7), para. 8 (o); Council of Europe, Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs); Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (‘Strategic lawsuits against public participation’), Official Journal of the European Union, L series, 2024/1069.

- c. Ensure adequate access to free legal assistance or empower courts to grant the defendant temporary financial assistance at the expense of the claimant;⁹¹
 - d. Ensure that SLAPP claimants are required to bear all costs of the proceedings, including court fees and costs of legal representation incurred by the defendant.
- 5.12. Adopt or amend legislation to ensure access to justice, including adequate and effective remedies, for environmental defenders who are subject to penalization, persecution or harassment for their involvement in peaceful protest.⁹² In addition to judicial remedies, access to other non-judicial remedies, including those provided by NHRIs, should also be provided, as appropriate.⁹³
- 5.13. Adopt legislation prohibiting the use of digital measures or technologies incompatible with the obligation to facilitate peaceful environmental protest. These digital measures and technologies include, but are not limited to, Internet shutdowns or reduction or redirection of Internet traffic, indiscriminate and/or untargeted surveillance, or the use of spyware targeting the digital devices of environmental defenders.⁹⁴
- 5.14. Adopt or amend legislation on the collection, use, storage and sharing of the personal data of environmental defenders to ensure that:
- a. Personal data is never collected for the purposes of general profiling, monitoring or surveillance of persons who have organized or participated in peaceful environmental protest;
 - b. Any personal data of such persons is:
 - i. Collected only when strictly necessary for a legitimate law enforcement purpose clearly established by law;
 - ii. Used only for that specific purpose;
 - iii. Stored only for the time needed for that specific purpose;
 - iv. Shared with other authorities only when strictly necessary for a legitimate purpose clearly established by law.⁹⁵

⁹¹ See, e.g., France, Law No. 2022-401 of 21 March 2022, implementing Directive (EU) 2019/1937 (European Union Whistle-blower Directive), available at www.legifrance.gouv.fr/jorf/id/JORFARTI000045388750, art. 6.

⁹² A/RES/48/134, p. 7.

⁹³ See, e.g., IACHR, *Janet Espinoza Feria et al. v. Peru*, Case 12.404, Admissibility, 10 October 2002, Report No. 51/02, paras. 38 and 46–52.

⁹⁴ A/HRC/44/24, para. 53 (c), (f) and (j); A/HRC/55/60, para. 71; A/HRC/RES/50/21, para. 28; A/HRC/RES/54/21, para. 10 (n); A/HRC/RES/50/17, para. 10; A/HRC/41/35, para. 26; OSCE-ODIHR/Venice Commission, “Guidelines on Freedom”, para. 70; ICCPR, article 19 (3); Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/17/27, paras. 78–79.

⁹⁵ International human rights law for the protection of the right to privacy includes, inter alia: ICCPR, art. 17; American Convention on Human Rights, art. 11; European Convention on Human Rights, art. 8; Charter of Fundamental Rights of the European Union, art. 8; Human Rights Council resolution 28/16 on the right to privacy in the digital age (A/HRC/RES/28/16); Organisation for Economic Co-operation and Development (OECD), OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (Paris, 2001); OAS, Updated Principles on Privacy and

- 5.15. Adopt or amend legislation to ensure that any collection and retention of fingerprints, cellular samples and deoxyribonucleic acid (DNA) of persons who have organized or participated in peaceful environmental protest is strictly necessary, proportionate to achieving a legitimate aim and conducted subject to the necessary safeguards to protect the rights and freedoms of the person concerned.⁹⁶ This includes allowing the person concerned to request the prompt and effective deletion of their biometric or genetic data once the investigation or procedure has been completed.

6. NHRIs, established and mandated for monitoring protests, should:

- 6.1. Send staff to monitor peaceful environmental protests and issue reports on their observations, including on the actions of law enforcement officials⁹⁷ and other authorities before, during and after protests.⁹⁸
- 6.2. Develop and disseminate training and awareness-raising tools on the right to engage in peaceful environmental protest for State agencies, law enforcement officials, private security companies and the public.
- 6.3. Promote ongoing training in mediation techniques and human rights standards relevant to peaceful environmental protest, particularly for law enforcement officials, prosecutors and judges.

7. NPMs, established and mandated in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, should:

- 7.1. Send staff to visit any environmental defenders deprived of their liberty following their organization of or participation in peaceful environmental protest.
- 7.2. Issue reports and recommendations to national authorities, including on the legality of actions taken by national authorities in the context of peaceful environmental protest and the treatment of environmental protesters held in their custody.

Personal Data Protection (Washington D.C., 2022); African Union Convention on Cyber Security and Personal Data Protection (2014), available at <https://au.int/en/treaties/african-union-convention-cyber-security-and-personal-data-protection>; Council of Europe, Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, European Treaty Series No. 108 and Protocols, available at www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=108; Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), Official Journal of the European Union, L 119 (2016), pp. 1–88.

⁹⁶ OSCE-ODIHR/Venice Commission, “Guidelines on Freedom”, para. 219.

⁹⁷ The term “law enforcement officials” refers to all officers of the law, whether appointed or elected, who exercise police powers, as defined in the Code of Conduct for Law Enforcement Officials, A/RES/34/169, annex, art. 1 (a), and A/HRC/55/60, para. 7.

⁹⁸ A/RES/48/134, annex, para. 3 (a); A/HR/22/28, paras. 59 and 65; Office of the United Nations High Commissioner for Human Rights (OHCHR), Directrices para la Observación de Manifestaciones y Protestas Sociales, available at: <https://acnudh.org/directrices-para-la-observacion-de-manifestaciones-y-protestas-sociales/> (Spanish only).

8. Public authorities should:

- 8.1. Ensure that participation in peaceful environmental protest does not subject environmental defenders to administrative or other forms of retribution, such as denial or suspension of social protection schemes or public funding.

9. Public authorities and professional regulatory bodies and associations should:

- 9.1. Ensure that any lawful restrictions on their employees' or members' right to participate in peaceful environmental protest are narrowly interpreted and do not affect the essence of their rights to participate in decision-making and to the freedoms of expression, peaceful assembly and association.
- 9.2. Ensure that their employees or members are not subject to disciplinary sanctions for taking part in peaceful environmental protest or for being affiliated with movements, groups or organizations engaging in peaceful environmental protest.⁹⁹

10. Internet service providers and social media service providers should:

- 10.1. Adopt and ensure effective oversight of codes of conduct on the rights of environmental defenders engaging in peaceful protest. Such codes of conduct should ensure that Internet service providers and social media service providers do not ban users from their platforms or services due to their involvement in the organization of, or participation in, peaceful protest, and do not interfere with their messages through the use of algorithms to carry out profiling. The removal of such messages should only be permitted when they constitute "hate speech" incompatible with international human rights treaties and standards.¹⁰⁰
- 10.2. Respect and protect the privacy of persons organizing or participating in, online or offline, peaceful protest in the digital space and refrain from disclosing information on such persons to any public authorities. Prior to any disclosure of such information, a thorough human rights impact assessment should be undertaken in accordance with international human rights treaties and standards. In case of any disclosure, the subject of the disclosure should be promptly notified.¹⁰¹

11. Business enterprises and State-owned companies should:

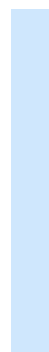
- 11.1. Refrain from taking or seeking any measure that may prevent or restrict members of the public from exercising their right to engage in peaceful environmental protest, including through the use of pre-emptive measures such as civil injunctions. If taken, any such measure should be lawful and strictly necessary and proportionate to achieving a legitimate aim.

⁹⁹ CCPR/C/GC/37, para. 63; ECHR, *Rekvényi v. Hungary*, Application No. 25390/94, Judgment, 20 May 1999, para. 41; ECHR, *Trade Union of the Police in the Slovak Republic and Others v. Slovakia*, Application No. 11828/08, Judgment, 25 September 2012, paras. 65 and 67; ECHR, *Demir and Baykara v. Turkey*, Application No. 34503/97, Judgment, 12 November 2008, paras. 97 and 109.

¹⁰⁰ ICCPR, art. 20 (2).

¹⁰¹ OSCE-ODIHR/Venice Commission, "Guidelines on Freedom", paras. 69 and 73.

- 11.2. Refrain from taking or seeking any measure that penalizes members of the public for having exercised their right to engage in peaceful environmental protest, including by making disproportionate claims for damages and costs in the context of civil or criminal proceedings against any persons who have organized or engaged in peaceful environmental protest.



GUIDING PRINCIPLE 4:

Comply with the international obligations related to fundamental freedoms in law enforcement's response to environmental protest and civil disobedience and refrain from using unnecessary or disproportionate force or measures against environmental defenders.

In line with the positive and negative duties to facilitate protest, especially through law enforcement, ensure that members of the public can take part in peaceful environmental protest without discrimination or abuse, including from non-State actors. Law enforcement officials must protect and facilitate protesters' rights and actively communicate with the organizers of and participants in an environmental protest as an essential part of their positive obligation to facilitate the exercise of the organizers' and participants' rights.¹⁰²

Any restrictions on the right to protest must meet the strict requirements of legality, legitimacy, necessity, proportionality and non-discrimination and may be imposed only for the shortest time possible.¹⁰³ Any such restrictions should not impair the essence of the rights to participate in decision-making and to the freedoms of expression, peaceful assembly and association or cause a "chilling effect".¹⁰⁴

Arrest or detention for the legitimate exercise of these rights is arbitrary and therefore in violation of international human rights treaties and standards.¹⁰⁵

Operational Principles:

12. Law enforcement authorities should:

Prohibition of torture and ill-treatment

- 12.1. Ensure strict compliance with the absolute prohibition of torture and other ill-treatment before, during and after peaceful environmental protest.¹⁰⁶

Use of force

- 12.2. Ensure strict compliance with international human rights treaties and standards on the use of force before, during and after peaceful environmental protest. Any use of force must be strictly in accordance with the principles of legality, necessity, proportionality and non-discrimination, and force must be used only as a last resort and when all other methods have proved ineffective. In particular, law enforcement authorities should:
- a. Ensure that the commanders of law enforcement operations concerning peaceful environment protest plan and control operations to ensure a

¹⁰² CCPR/C/GC/37, para. 24.

¹⁰³ Ibid., para. 36.

¹⁰⁴ Ibid., para. 36.

¹⁰⁵ Human Rights Committee, General comment No. 35 entitled "Article 9 (Liberty and security of person)" (CCPR/C/GC/35), para. 17; ECHR, *Frumkin v. Russia*, Application No. 74568/12, Judgment, 5 January 2016, paras. 139–141.

¹⁰⁶ A/HRC/55/60, para. 26.

consistent approach to the use of force by all law enforcement officials, including ensuring that force is used only as a last resort and strictly in accordance with the principles of legality, necessity, proportionality and non-discrimination;¹⁰⁷

- b. Ensure that their law enforcement officials exercise restraint at all times and that any force used during a peaceful environmental protest is the minimum necessary to attain the lawful objective;
 - c. Ensure that the use of all public order tactics and equipment, including less lethal weapons (e.g., water cannons or teargas), is lawful and strictly necessary and proportionate to achieving a legitimate aim. All decisions to deploy and use such equipment should be taken by law enforcement officials who are accredited public order commanders and have received training on how to assess the risk and legality of the use of such equipment;¹⁰⁸
 - d. Ensure that the threat of use, or actual use, of law enforcement techniques deliberately inflicting pain (e.g., pain grips, rubber bullets or tasers) on peaceful environmental protesters is strictly prohibited, investigated and punished;¹⁰⁹
 - e. Refrain from using (potentially) lethal force, unless absolutely necessary in self-defence or in the defence of others against the threat of death or serious injury;
 - f. Record all instances of individual and collective use of force, to ensure responsibility and accountability;
 - g. Ensure that any decision regarding the use of force that may affect persons who may be in situations of vulnerability takes into account the implications of their status, including the potentially greater impact of force on them.
- 12.3. Ensure that only law enforcement officials trained in the facilitation of peaceful protest, including communication with protesters, de-escalation techniques and applicable human rights standards, are deployed to police peaceful environmental protests.¹¹⁰
- 12.4. Ensure the protection of environmental protesters from violence or interference by non-State actors, including counterdemonstrators.

¹⁰⁷ A/RES/34/169, art. 3; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, available at www.ohchr.org/sites/default/files/firearms.pdf, paras. 2, 3 and 5.

¹⁰⁸ OHCHR, United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, HR/PUB/20/1 (New York and Geneva, 2020), para. 4.3; OSCE-ODIHR/Venice Commission, "Guidelines on Freedom", para. 185.

¹⁰⁹ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, para. 6; OSCE-ODIHR/Venice Commission, "Guidelines on Freedom", paras. 182, 185, 238.

¹¹⁰ CCPR/C/GC/37, para. 78; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, paras. 18–20; Swedish National Police Board, Recommendations for policing political manifestations in Europe: GODIAC – Good Practice for Dialogue and Communication as Strategic Principles for Policing Political Manifestations in Europe Project (Stockholm, 2013), p. 36.

Restrictions on, and dispersal of, protest

- 12.5. Ensure that any restrictions imposed by law enforcement during peaceful environmental protest are kept to the minimum and are reasonable, necessary and proportionate.¹¹¹
- 12.6. Refrain from using policing practices that severely restrict peaceful environmental protesters' freedom of movement, such as "kettling", unless strictly necessary and proportionate.
- 12.7. Refrain from dispersing peaceful protest except as a last resort. The disruptive nature of a peaceful protest is insufficient to justify its dispersal, unless the disruption is serious and sustained.¹¹² If compelling reasons for dispersal can be shown (e.g., where there is an imminent wide-ranging threat of violence and serious injury), law enforcement rules on the use of force must be strictly followed, and, where any force is used, it should be the minimum necessary in the circumstances, without disrupting the essence of the protest (see Operational Principle 12.2).¹¹³
- 12.8. Require law enforcement officials involved in any decision to disperse a peaceful protest to prepare a public report documenting the circumstances of, and legal justification for, that decision, including why it was not possible to take alternative measures.¹¹⁴

Investigative measures, search, arrest and detention

- 12.9. Refrain from using digital measures or technologies incompatible with the obligation to facilitate the right to protest. These digital measures and technologies include, but are not limited to, hindering or limiting Internet access, imposing Internet shutdowns or the reduction or redirection of Internet traffic, using spyware or other forms of equipment interference targeting the digital devices of persons organizing or participating in peaceful environmental protest.¹¹⁵
- 12.10. Ensure that the use of all forms of targeted covert or overt surveillance measures or technologies against persons organizing or participating in peaceful environmental protest is subject to stringent safeguards, including, but not limited to, ensuring that:
 - a. Digital technologies are used only in accordance with the requirements of legality, necessity and proportionality, decided on a case-by-case basis;¹¹⁶

¹¹¹ ICCPR, art. 9 (2); CCPR/C/GC/35, para. 12.

¹¹² CCPR/C/GC/37, para. 85.

¹¹³ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, para. 13; A/HRC/55/60, para. 76.

¹¹⁴ A/HRC/55/60, para. 51 (b).

¹¹⁵ A/HRC/44/24, para. 53 (f); A/HRC/51/17, para. 19; CCPR/C/GC/37, para. 34.

¹¹⁶ CCPR/C/GC/37, para. 74; Human Rights Committee, Communication No. 1948/2010, CCPR/C/108/D/1948/2010, *Turchenyak et al v. Belarus*, 10 September 2013, para. 7.4; ECHR, *Big Brother Watch and others v. the United Kingdom*, Applications Nos. 58170/13, 62322/14 and 24960/15, Judgment, 25 May 2021, paras. 348–364; A/HRC/55/60, paras. 39–

- b. Facial recognition technologies and other biometric systems are not used to identify individuals peacefully participating in a protest;¹¹⁷
 - c. Any surveillance is requested and authorized only when there is reasonable suspicion that a particular member of the public has committed or is committing a serious criminal offence, or is engaged in acts amounting to a specific threat to national security. The request for authorization should be based on clear evidence and fully justified, setting out the specific objective pursued by the use of digital technologies, evidencing utility, and providing sufficient information to evaluate the potential harm to human rights. Surveillance based on affiliation to a particular environmental movement or group does not provide sufficient grounds;
 - d. The subject of the surveillance is promptly notified.
- 12.11. Refrain from using covert or overt surveillance measures or technologies, of any form, for the indiscriminate and untargeted (i.e. “mass”) surveillance of persons organizing or participating in peaceful environmental protest.
- 12.12. Ensure that personal data is never collected, used, stored or shared for the purposes of general profiling or monitoring or surveillance of persons organizing or participating in peaceful environmental protest.¹¹⁸ Any personal data of such persons should be:
- a. Collected only when strictly necessary for a legitimate law enforcement purpose clearly established by law;
 - b. Used only for that specific purpose;
 - c. Stored only for the time needed for that specific purpose;
 - d. Shared with other authorities only when strictly necessary for a legitimate purpose clearly established by law.¹¹⁹
- 12.13. Ensure that any identity checks of environmental protesters before, upon arriving at, during, or after a protest, are not conducted in an arbitrary, discriminatory or abusive way.¹²⁰

40; Special Rapporteur on the rights to freedom of peaceful assembly and of association, “Human rights compliant uses of digital technologies by law enforcement for the facilitation of peaceful protests”, available at www.ohchr.org/sites/default/files/2024-03/Toolkit-law-enforcement-Component-on-Digital-Technologies.pdf, para. 20.

¹¹⁷ A/HRC/44/24, para. 53 (f); A/HRC/55/60, para. 71; Special Rapporteur on the rights to freedom of peaceful assembly and of association, “Human rights compliant uses of digital technologies”, para. 37.

¹¹⁸ OSCE-ODIHR/Venice Commission, “Guidelines on Freedom”, para. 163.

¹¹⁹ International human rights law for the protection of the right to privacy include, inter alia: ICCPR, art. 17; American Convention on Human Rights, art. 11; European Convention on Human Rights, art. 8; Charter of Fundamental Rights of the European Union, art. 8; A/HRC/RES/28/16, sixteenth preambular para.; OECD, OECD Guidelines on the Protection of Privacy, part one, para. 7; OAS, Updated Principles on Privacy, pp. 12–15; African Union Convention on Cyber Security and Personal Data Protection, art. 13; Council of Europe, Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, European Treaty Series No. 108 and Protocols, art. 5; Regulation (EU) 2016/679, para. 111.

¹²⁰ OSCE-ODIHR/Venice Commission, “Guidelines on Freedom”, para. 219.

- 12.14. Ensure that any search and seizure conducted on environmental protesters is prescribed by law, strictly necessary and proportionate, and respects human dignity. To this end, law enforcement authorities should develop protocols to provide guidance as to when such measures are legal and appropriate and how they should be implemented.
- 12.15. Refrain from arresting or detaining environmental protesters for the exercise of their rights to participate in decision-making and to the freedoms of expression, peaceful assembly and association. In addition:
- a. Environmental protesters who have engaged in peaceful civil disobedience should only be arrested where the deprivation of their liberty is in accordance with international human rights treaties and standards;
 - b. Law enforcement should refrain from conducting preventive arrests and detention of environmental defenders, such as before or during major events or forums (e.g. sports events, conferences).
- 12.16. In the case of the arrest of an environmental protester, ensure strict compliance with international human rights treaties and standards on the treatment of persons in police custody. This includes, but is not limited to, refraining from engaging in any kind of abusive treatment during police custody, such as: detention exceeding the legally authorized duration; unnecessary or undocumented body searches; denial of access to toilets, basic hygiene necessities, doctors or medication; or any kind of threat or harassment.
- 12.17. Ensure that any investigative measures carried out regarding peaceful environmental protest, including overt or covert surveillance operations, are compliant with international human rights treaties and standards and that the use of such measures is always subject to due process and amenable to judicial review. This includes, but is not limited to, seizure of telephone records, wiretaps, interception of electronic communications, and search and seizure of telephones, computers and other digital devices.
- 12.18. Provide effective redress mechanisms to environmental protesters who have experienced misconduct by law enforcement officials, including excessive use of force or other human rights violations.

Record-keeping, accountability for misconduct

- 12.19. Develop a transparent and auditable record-keeping system of, provide effective access to, and actively disseminate information on, techniques used for the surveillance of peaceful environmental protest, including through the publication of regular public reports.¹²¹

¹²¹ See, e.g., ECHR, *Big Brother Watch*, para. 314; Court of Justice of the European Union, *Tele2 Sverige AB v Post-och telestyrelsen and Secretary of State for the Home Department v Tom Watson and others*, Joint cases C-203/15 and C-698/15, Judgment, 21 December 2016, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62015CJ0203>, para. 100.

- 12.20. Develop an auditable record-keeping system for all decisions, actions and orders made by law enforcement officials on police operations relating to peaceful environmental protest. In particular:
- a. Require all law enforcement officials responsible for planning and commanding public order operations to record all strategic, tactical and operational decisions relating to those operations;
 - b. Require all uniformed officials to wear a visible and recognizable form of identification at all times;¹²²
 - c. In the event that the legality of a public order operation relating to a peaceful environmental protest is challenged, provide oversight and/or judicial authorities with access to the decision logs of law enforcement officials responsible for planning and commanding the public order operation;
 - d. Ensure that such decisions, actions or orders are made available upon request to any environmental protester directly affected by them.
- 12.21. Ensure a post-event debriefing of law enforcement officials participating in public order operations relating to peaceful environmental protest, to address concerns relating to the law enforcement response, including measures taken before, during and after the protest, such as human rights, health and safety considerations, and risk assessments. The organizers of the protest and relevant human rights monitoring and/or oversight bodies should be invited to attend the post-event debriefing.¹²³
- 12.22. Establish effective mechanisms for law enforcement officials to report any misconduct by fellow law enforcement officials against environmental protesters. Such mechanisms should ensure the protection of the reporting official(s) against reprisals.
- 12.23. Entrust an effective, independent and transparent oversight mechanism to promptly investigate and report to the relevant authorities any misconduct by law enforcement officials, including excessive or inappropriate use of force and human rights violations, in the context of peaceful environmental protest.¹²⁴ Independent administrative or prosecutorial authorities should be given the authority to exercise jurisdiction over any identified misconduct.¹²⁵

Media workers and monitors

- 12.24. Ensure that law enforcement officials respect, protect and facilitate the rights of journalists and other observers, including media workers, NHRIs, monitors and other members of the public, to observe, monitor and film peaceful

¹²² CCPR/C/GC/37, para. 89.

¹²³ OSCE-ODIHR/Venice Commission, "Guidelines on Freedom", para. 162.

¹²⁴ CCPR/C/GC/37, paras. 29 and 90; OSCE-ODIHR/Venice Commission, "Guidelines on Freedom", paras. 219, 234 and 235.

¹²⁵ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, para. 22.

environmental protests.¹²⁶ Environmental protesters should also be entitled to film their own protest. Any violation of these rights, including harassment or detention, should be promptly investigated and those responsible held to account.

Establishment and implementation of clear frameworks

- 12.25. Ensure that law enforcement policies and standard operating procedures in the context of peaceful environmental protest facilitate the public's rights to participate in decision-making and to the freedoms of expression, peaceful assembly and association, while protecting the rights to life and humane treatment at all times.
- 12.26. Establish or review, and make publicly accessible, protocols, guidelines and policies for law enforcement officials on:
 - a. How to respond lawfully and proportionately to civil disobedience by environmental protesters, recognizing it as a protected form of protest under international human rights treaties and standards;
 - b. The collection during a protest, retention and use of personal data, in accordance with a commitment to safeguard protesters' rights and privacy;¹²⁷
 - c. Overt and covert surveillance to ensure that any surveillance complies with international human rights treaties and standards.¹²⁸
- 12.27. Regularly review policing practices regarding children and youth involved in peaceful environmental protest to ensure that their rights to participate in decision-making and to the freedoms of expression, peaceful assembly and association are facilitated and protected, including through the adoption and implementation of measures tailored to the specific needs and rights of children.¹²⁹

Training

- 12.28. Regularly review training policies and organize effective training for law enforcement officials on facilitating peaceful environmental protest, including civil disobedience, in accordance with international human rights treaties and standards. In addition to the requirements covered by Operational Principles 12.1–12.18, this should also include, as a minimum, training on how to:

¹²⁶ CCPR/C/GC/37, para. 30; A/HRC/55/60, para. 17, OSCE-ODIHR/Venice Commission, "Guidelines on Freedom", para. 34; French supreme administrative jurisdiction (Conseil d'Etat), *Décision n° 461513*, para. 58.

¹²⁷ See, e.g., A/HRC/44/24, paras. 53 (f) and (j); OSCE-ODIHR/Venice Commission, "Guidelines on Freedom", para. 172; A/HRC/55/60, paras. 60 (a) and 70 (c).

¹²⁸ OSCE-ODIHR/Venice Commission, "Guidelines on Freedom", para. 172.

¹²⁹ Convention on the Rights of the Child, art. 15; United Nations Children's Fund (UNICEF), *Free and Safe to Protest: Policing Assemblies Involving Children* (New York, 2023), sect. 5.4 xii., xiii., xxiii. and xxiv.

- a. Ensure the protection of peaceful environmental protesters, including from violence or interference by non-State actors, such as counterdemonstrators or other members of the public;¹³⁰
- b. Take specific measures to facilitate the right to protest of individuals who may be in situations of vulnerability, subject to discrimination, or face particular challenges when participating in peaceful protest;¹³¹
- c. Respond lawfully and proportionately to acts of civil disobedience by environmental protesters, in accordance with international human rights treaties and standards.

¹³⁰ A/HRC/55/60, paras. 14 and 18.

¹³¹ CCPR/C/GC/37, para. 80.

GUIDING PRINCIPLE 5:

Ensure that the courts' approach to peaceful environmental protest, including any sanctions imposed, does not contribute to the restriction of the civic space.

While respecting judicial independence, any civil or criminal court proceedings relating to peaceful environmental protest should be conducted consistently with the positive and negative duties to respect and protect, without discrimination, the rights to participate in decision-making and to the freedoms of expression, peaceful assembly and association, as well as to remedy any violation of these rights.

Environmental defenders should not be prosecuted for the exercise of the right to protest.¹³² Any prosecution or sanctions should be strictly confined to the prosecution or sanctioning of lawbreaking. Where, due to lawbreaking, criminal or administrative sanctions are imposed on organizers of or participants in a peaceful environmental protest, any such sanctions must be proportionate, non-discriminatory in nature and must not be based on ambiguous or overbroadly defined offences, or suppress the exercise of the right to protest.¹³³

Operational Principles:

13. Public prosecutors should:

- 13.1. Ensure that any decision to investigate or prosecute persons who have organized or participated in peaceful protest is clearly established by law, pursues a legitimate aim, and is strictly necessary and proportionate.¹³⁴
- 13.2. Ensure that any criminal investigation against any person for organizing or participating in a peaceful environmental protest is not arbitrary and is subject to guarantees of due process. This includes ensuring that any request for seizure of equipment such as telephones or computers or other digital devices is prescribed by law, strictly necessary and proportionate.
- 13.3. Ensure that any public statements or communications by prosecutors, at any stage of an investigation or prosecution, regarding persons who have organized or participated in peaceful environmental protest are based on objective information, without prejudging any ongoing or potential prosecution, and do not portray those persons as threats to society or public order.
- 13.4. Ensure that any charge brought against a person who has organized or participated in peaceful environmental protest pursues a legitimate aim and is necessary and proportionate to achieving that aim. Any charge should be based on that person's individual conduct only, and not the conduct of others.¹³⁵

¹³² Ibid., paras. 23, 67, 71; A/HRC/22/28, para. 15; OSCE-ODIHR/Venice Commission, "Guidelines on Freedom", para. 226; ECHR, *Gün and others v. Turkey*, Application No. 8029/07, Judgment, 18 June 2013, para. 83.

¹³³ CCPR/C/GC/37, para. 67; OSCE-ODIHR/Venice Commission, "Guidelines on Freedom", paras. 36 and 128–135.

¹³⁴ ECHR, *Kudrevičius*, para. 100.

¹³⁵ United Kingdom of Great Britain and Northern Ireland, House of Lords, *R v. Jones*, Case [2006] UKHL 16, Judgment, 29 March 2006, para. 89; United Kingdom of Great Britain and Northern Ireland, Court of Appeal (England and Wales), *Cuadrilla Bowland Ltd and others v. Lawrie and others*, [2020] EWCA Civ 9, Judgment, 23 January 2023, paras. 98–99.

- 13.5. Refrain from using investigative measures or initiating prosecution under criminal laws on countering violent extremism, organized crime and terrorism against persons who have organized or participated in peaceful environmental protest.
- 13.6. Refrain from requesting or imposing bail conditions or, following a conviction, requesting sanctions or licence conditions, that ban any person who has organized or participated in peaceful environmental protest, from:
- a. Entering or leaving certain geographic areas;
 - b. Having contact or associating with other environmental defenders;
 - c. Exercising their right to engage in peaceful environmental protest in the future;
 - d. Exercising their right to engage in public life¹³⁶ (e.g., bans on Internet posts, public interviews, taking part in the activities of civil society organizations, or publicly expressing support for other persons engaging in peaceful environmental protest).
- 13.7. Ensure that any request for preventive and administrative or pre-trial detention of persons who have organized or participated in peaceful environmental protest strictly complies with international human rights treaties and standards and guarantees of judicial due process. In particular:
- a. Preventive and administrative detention should always be considered unnecessary and disproportionate when it is punitive in character;¹³⁷
 - b. Administrative detention, which generally presents severe risks of constituting arbitrary detention, may be used only in exceptional circumstances where a person presents a present, direct and imperative threat that cannot be addressed by other effective measures.¹³⁸
- 13.8. Refrain from requesting custodial sentences for persons who have organized or participated in civil disobedience. Any request for a custodial sentence should be provided for by law, necessary, proportionate, comply with the prohibition against arbitrariness and be subject to guarantees of judicial due process.¹³⁹

¹³⁶ ICCPR, art. 25; Human Rights Committee, General comment No. 25 (1996), CCPR/C/21/rev.1/Add.7, annex V, para. 8.

¹³⁷ CCPR/C/GC/35, para. 38; ECHR, *S., V. and A. v. Denmark*, Applications Nos. 35553/12, 36678/12 and 36711/12, Judgment, 22 October 2018, para. 80.

¹³⁸ CCPR/C/GC/35, para. 15.

¹³⁹ ICCPR, art. 9; CCPR/C/GC/35, para. 17; Human Rights Committee, General comment No. 34 on Article 19: freedoms of opinion and expression (article 19) (CCPR/C/GC/34), paras. 9, 22–24 and 47; ECHR, *Belpietro v. Italy*, Application No. 43612/10, Judgment, 24 September 2013, paras. 43–45, and *Case of Sallusti v. Italy*, Application No. 22350/13, Judgment, 7 March 2019, paras. 58–59.

- 13.9. Promptly investigate and initiate proceedings against law enforcement officials for any unlawful conduct in the context of peaceful environmental protest, including:
- a. Unnecessary or disproportionate use of force;
 - b. Unlawful dispersal of the protest;
 - c. Failure to protect environmental protesters from violence or interference by non-State actors, such as other members of the public or counterdemonstrators;¹⁴⁰
 - d. Use of surveillance measures or technologies for the indiscriminate and untargeted (i.e. “mass”) surveillance of environmental protesters.
- 13.10. Periodically report publicly on the status and outcomes of investigations regarding any unnecessary or disproportionate use of force by law enforcement officials or failure to protect the rights of environmental protesters.¹⁴¹

14. Prosecutorial oversight bodies, at the national, regional and international levels, should:

- 14.1. For jurisdictions where there is prosecutorial discretion whether to prosecute, develop guidelines on the factors to be taken into account when deciding whether it is in the public interest and proportionate to prosecute any lawbreaking that has occurred in the context of a peaceful environmental protest. Once these guidelines are adopted, the prosecutorial oversight body should:
- a. Ensure that the guidelines are readily accessible to the public;
 - b. Require regular reporting on the guidelines’ implementation;
 - c. Ensure that the reports on the guidelines’ implementation are made public.
- 14.2. Provide training to prosecutors on how to conduct investigations and prosecutions in accordance with the rights and protections applicable to peaceful environmental protest.
- 14.3. Hold regular exchanges of good practices and lessons learned with other public prosecutors and/or their associations, including from other States, on the facilitation and protection of the rights to engage in peaceful environmental protest.

15. The judiciary should:

- 15.1. Refrain from imposing pre-trial detention on persons who have organized or participated in peaceful environmental protest, unless there are substantial

¹⁴⁰ A/HRC/55/60, paras. 14 and 18.

¹⁴¹ OSCE-ODIHR/Venice Commission, “Guidelines on Freedom”, paras. 40 and 233–235.

reasons to believe that, if released, they would abscond, commit a serious offence, interfere with the course of the investigation or pose a serious threat to public order, and that those concerns could not be addressed by less restrictive, alternative measures.

- 15.2. Require that any bail conditions imposed on persons who have organized or participated in peaceful environmental protest are not arbitrary and strictly comply with all guarantees of due process and the rule of law.
- 15.3. Exercise strict judicial oversight over any criminal investigation and/or prosecution of persons who have organized or participated in peaceful environmental protest, take appropriate steps to report or sanction any misconduct by investigators or the prosecution, and award compensation for any unfounded or abusive investigation and/or prosecution.
- 15.4. Ensure that SLAPPs against persons who have organized or participated in peaceful environmental protest are promptly dismissed, and that the claimant is ordered to bear all costs of the proceedings, including court fees and costs of legal representation incurred by the defendant.
- 15.5. Refrain from applying to the right to engage in peaceful protest any precondition requiring that the environmental defender prove that they have first undertaken other forms of civil or political engagement.
- 15.6. In accordance with the right to a free trial,¹⁴² refrain from preventing persons who have organized or participated in peaceful environmental protest from putting forward particular defences that would otherwise be available. This includes any limitation on making submissions on those persons' motivations for engaging in peaceful environmental protest.
- 15.7. Ensure that any assessment of whether to convict a person who has organized or participated in peaceful environmental protest for any lawbreaking relating to the protest is based solely on the facts of the specific case. Should the assessment result in conviction, any sanction should likewise be based on the facts of the specific case and whether it would be a proportionate interference with the right to protest in the given circumstances.¹⁴³ Collective participation in civil disobedience should not be considered an aggravating factor.
- 15.8. Refrain from imposing bail conditions or, following a conviction, imposing sanctions or license conditions that ban any persons who have organized or participated in peaceful protest from:
 - a. Entering or leaving certain geographic areas;
 - b. Having contact or associating with other environmental defenders;

¹⁴² ICCPR, art. 14.

¹⁴³ ECHR, *Perinçek v. Switzerland*, Application No. 27510/08, Judgment, 15 October 2015, para. 275.

- c. Exercising their rights to engage in peaceful environmental protest in the future;
 - d. Exercising their right to engage in public life¹⁴⁴ (e.g., bans on Internet posts, public interviews, taking part in the activities of civil society organizations, or publicly expressing support for other persons engaging in peaceful environmental protest).
- 15.9. Ensure the most careful scrutiny of any use of prior restraint on the right to protest, such as civil injunctions banning protest in certain geographic areas, to ensure strict compliance with international human rights treaties and standards and prevent any abuse of power.¹⁴⁵ This includes ensuring that any sanction imposed in case of breach of the restraint is clearly established by law, pursues a legitimate aim and is strictly necessary and proportionate. This applies equally to any orders on fees and costs imposed in the proceedings on persons who have organized or participated in peaceful environmental protest. Moreover, any orders regarding fees and costs imposed on such persons should not be prohibitively expensive.¹⁴⁶
- 15.10. Ensure that any sanction imposed on a person who has undertaken an act of civil disobedience to protect their right to live in an environment adequate to their health and well-being¹⁴⁷ is clearly established by law, pursues a legitimate aim and is strictly necessary and proportionate.¹⁴⁸ The decision on an appropriate sanction should take into account the following factors:
- a. The nature of and motivation for the acts of civil disobedience;
 - b. An environmental protester who has engaged in civil disobedience should never face a harsher punishment than someone who has engaged in identical acts without any political or expressive intention or with a different intention, or someone who engages in violent acts;¹⁴⁹
 - c. Custodial sentences for civil disobedience are arbitrary and are likely to constitute a disproportionate restriction of the rights to the freedoms of expression, peaceful assembly and association, and therefore should not be imposed.¹⁵⁰

16. Judicial oversight bodies and training institutions should:

- 16.1. Provide regular training to the judiciary on applicable international human rights treaties and standards on the right of peaceful protest.

¹⁴⁴ ICCPR, art. 25; Human Rights Committee, General comment No. 25 (1996), CCPR/C/21/rev.1/Add.7, annex V para. 8.

¹⁴⁵ ECHR, *Hashman and Harrup v. the United Kingdom*, Application No. 25594/94, Judgment, 25 November 1999, para. 32, and *Association Ekin*, para. 58.

¹⁴⁶ Aarhus Convention, art. 9 (4); see ECE.MP.PP.2025.66, para. 69.

¹⁴⁷ Aarhus Convention, art. 1.

¹⁴⁸ ECHR, *Kudrevičius*, paras. 100–102.

¹⁴⁹ OSCE-ODIHR/Venice Commission, “Guidelines on Freedom”, para. 228.

¹⁵⁰ CCPR/C/GC/35, para. 17.

- 16.2. Provide guidance and promote judicial exchanges on good practices and lessons learned, including between jurisdictions, on how to review and sanction the failure by law enforcement officials to respect, protect and promote the right to peaceful environmental protest, in accordance with international human rights treaties and standards.

