



## Beyond 2020: Chemical safety and human rights

IPEN and Pesticide Action Network

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### Introduction

The Strategic Approach to International Chemicals Management (SAICM) acknowledges there are health and environmental harms caused by chemical exposure and it makes a global political commitment to reform how chemicals are produced and used in order to minimize those harms.<sup>1</sup> The agreement is not legally binding. However, Heads of State at the 2002 World Summit on Sustainable Development in Johannesburg called for the development of SAICM, and the basic texts that define the agreement represent a consensus of Environment Ministers, Health Ministers and other delegates (from more than one hundred governments) to the first International Conference on Chemicals Management (ICCM1), held in Dubai, February 2006.

SAICM has already linked chemical safety to human rights through its Dubai Declaration, Overarching Policy Strategy and emerging policy issues. SAICM's ministerial Dubai Declaration commits all stakeholders to human rights, stating that, "*We commit ourselves to respecting human rights and fundamental freedoms, understanding and respecting ecosystem integrity and addressing the gap between the current reality and our ambition to elevate global efforts to achieve the sound management of chemicals.*"<sup>2</sup> The SAICM Overarching Policy Strategy (OPS) provides important objectives for human rights, including risk reduction, information, illegal international traffic, technical cooperation and good governance, and notes the importance of pollution prevention as the primary means of achieving the SAICM objective. SAICM emerging policy issues have developed to protect those who are particularly vulnerable to advance human rights in specific areas. For example, the issue of chemicals in products centers on the right to information. The elimination of lead paint advances the right of every child to the highest attainable standard of physical and mental health. Initiatives on nanomaterials and electronics are closely linked with the rights of workers to a safe and healthy workplace. The recent Overall Orientation and Guidance (OOG) provides important "elements" and "activity areas" for advancing human rights. For example, human rights bodies have recognized the need for effective legislation, regulation and enforcement, as well as intersectoral and international cooperation, to protect vulnerable groups from human rights abuses by businesses.<sup>3</sup>

In 2015, the 4<sup>th</sup> International Conference on Chemicals Management (ICCM4) agreed to conduct an intersessional process to decide on the sound management of chemicals and wastes beyond 2020. In resolution IV/4, delegates agreed that the process should be informed by Agenda 2030 and, "*develop recommendations regarding measurable objectives in support of the 2030 Agenda for Sustainable*

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<sup>1</sup>SAICM's overall objective, as adopted in 2006, is to: *[A]chieve the sound management of chemicals throughout their life-cycle so that, by 2020, chemicals are used and produced in ways that lead to the minimization of significant adverse effects on human health and the environment.*

<sup>2</sup> UNEP - WHO (2006) Strategic Approach to International Chemicals Management  
[http://www.saicm.org/index.php?option=com\\_content&view=article&id=73&Itemid=475](http://www.saicm.org/index.php?option=com_content&view=article&id=73&Itemid=475)

<sup>3</sup> Committee on the Rights of the Child, General Comment no. 16.

*Development.*<sup>4</sup> This link to Agenda 2030 also connects chemical safety and human rights in the Beyond 2020 process.

Governments adopted the 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals (SDGs) in October 2015. The Agenda 2030 Declaration resolves, “to protect human rights and promote gender equality and the empowerment of women and girls...”<sup>5</sup> The Declaration envisages, “A world where we reaffirm our commitments regarding the human right to safe drinking water and sanitation and where there is improved hygiene; and where food is sufficient, safe, affordable and nutritious” and a world, “of universal respect for human rights and human dignity...”<sup>6</sup> Agenda 2030 calls on businesses to not only innovate but also to protect labor rights, “and environmental and health standards in accordance with relevant international standards and agreements and other ongoing initiatives in this regard, such as the Guiding Principles on Business and Human Rights and the labour standards of the International Labour Organization, the Convention on the Rights of the Child and key multilateral environmental agreements, for parties to those agreements.”<sup>7</sup> Finally, Agenda 2030 reaffirms the importance of the Universal Declaration of Human Rights and other international instruments relating to human rights and international law.

Please see Annex 1 for more information on basic elements of human rights and guiding principles.

### Abbreviations

ASEAN – Association of Southeast Asian Nations

CEDAW – UN Convention on the Elimination of Discrimination Against Women

CRC – UN Convention on the Rights of the Child

ICESCR – International Covenant on Economic Social and Cultural Rights

ICCPR – International Covenant on Civil and Political Rights

OPS – Overarching Policy Strategy of SAICM

OOG – Overall Orientation and Guidance of SAICM

SAICM – Strategic Approach to International Chemicals Management

SR Toxics - UN Special Rapporteur on the human rights implications of the environmentally sound management and disposal of hazardous substances and wastes

UDHR – Universal Declaration on Human Rights

UNDRIP – UN Declaration on the Rights of Indigenous Peoples

UNGP – UN Guiding Principles on Business and Human Rights

### Human rights most connected to chemical safety

Human rights that are most often implicated by the mismanagement of toxic chemicals during their lifecycle include:

1. **Right to life, liberty and personal security**<sup>8</sup>: Everyone has the right to life, which must be protected by law and must never be “arbitrarily deprived.” States must “adopt positive

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<sup>4</sup> UNEP (2015) IV/4: The Strategic Approach and sound management of chemicals and waste beyond 2020, 4th International Conference on Chemicals Management, Report of the International Conference on Chemicals Management on the work of its fourth session, SAICM/ICCM4.4/15

<sup>5</sup> United Nations (2015) Transforming our world: The 2030 Agenda for Sustainable Development, UN General Assembly, A/RES/70/1 [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E)

<sup>6</sup> United Nations (2015) Transforming our world: The 2030 Agenda for Sustainable Development, UN General Assembly, A/RES/70/1 [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E)

<sup>7</sup> United Nations (2015) Transforming our world: The 2030 Agenda for Sustainable Development, UN General Assembly, A/RES/70/1 [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E)

<sup>8</sup> UDHR art. 3; ICCPR Art. 6; CRC article 6.

*measures . . . [taking] all possible measures . . . to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”<sup>9</sup>*

2. **Right to physical integrity:** This right encapsulates the right of each human being, including children, to autonomy and self-determination over his or her own body.<sup>10</sup> It considers a non-consensual physical or mental intrusion against the body to be a human rights violation. Today, hundreds of toxic chemicals are measured in individuals, including children, with higher amounts measured in minority and low-income communities.
3. **Right to the highest attainable standard of physical and mental health<sup>11</sup>:** States have a duty to improve “*all aspects of environmental and industrial hygiene,*” as well as prevent, treat and control “*endemic, occupational and other diseases.*” The Committee on Economic, Social and Cultural Rights (CESCR) has specifically identified a violation of the obligation to protect where there is a, “*failure to enact or enforce laws to prevent the pollution of water, air and soil by extractive and manufacturing industries.*”<sup>12</sup>

Notably, the Convention on the Rights of the Child (CRC) recognizes the right of every child to the highest attainable standard of health, and the duty of States “*to combat disease and malnutrition ... through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.*”<sup>13</sup>

4. **Right to an adequate standard of living, including food, water and housing<sup>14</sup>:** Article 11 of the ICESCR imposes a positive duty on States to take appropriate steps to provide an adequate standard of living for all people in regard to food and continuous improvement of living conditions. The right to food refers to quantity and *quality* of food. Food should be free of toxic chemicals and States should have protective measures in place to prevent contamination.<sup>15</sup> Similarly, water and housing (including communities) must be safe and adequate, respectively, requiring States to prevent contamination.<sup>16</sup>
5. **Right to information<sup>17</sup>:** “*Everyone has the freedom to seek, receive and impart information and ideas of all kinds.*” Information is essential to protect from human rights abuses. Where human rights are violated due to toxic chemicals, gaining access to information is essential in order to give effect to other rights, such as due process, guarantees to a fair trial and the right to an effective remedy. Information must be (1) available, (2) accessible, and (3) function to protect

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<sup>9</sup> ICCPR, General Comment No. 06 “Right to Life,” (Sixteenth Session, 1982).

<sup>10</sup> See e.g. Committee on the Rights of the Child, general comment No. 13 (2011) on the right of the child to freedom from all forms of violence. See also UN Special Rapporteur on the human rights implications of the environmentally sound management and disposal of hazardous substances and wastes (SR Toxics), report to the UN Human Rights Council, A/HRC/33/41 (2016) (hereinafter “SR Toxics 2016 report A/HRC/33/41”)

<sup>11</sup> UDHR article 25.1; WHO Constitution; ICESCR Art 12; CRC Article 24 (see also art 17).

<sup>12</sup> CESCR General Comment 14, para 51.

<sup>13</sup> CRC Art. 24(2)(c).

<sup>14</sup> UDHR article 25, and ICESCR article 11.

<sup>15</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 12, The right to adequate food*, UN Doc. E/C.12/1999/5 (12 May 1999), at para. 8 and para. 10.

<sup>16</sup> See e.g. CESCR General Comment 15 (water) and General Comment 4 (housing).

<sup>17</sup> ICCPR Art 19; CRC Art. 17; ILO c.170; See also Rio Declaration principle 10.

the rights of everyone, in particular those who are the most vulnerable (i.e. non-discriminatory).<sup>18</sup> Health and safety information about toxic chemicals should never be confidential.<sup>19</sup>

6. **Right to participation**<sup>20</sup>: Every citizen has the *right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives.*” States have a duty, and businesses have a responsibility, to consult, cooperate, and generally involve local and Indigenous communities in decision-making processes prior to the approval of any project potentially affecting their rights, lands, territories, or other resources.<sup>21</sup>

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) specifically highlights the right of Indigenous Peoples to participate in decision-making in matters that would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions. Furthermore, Indigenous Peoples’ right to free, prior and informed consent has been recognized *“by a number of intergovernmental organizations, international bodies, conventions and international human rights law in varying degrees and increasingly in the laws of State.”*<sup>22</sup>

7. **Right to an effective remedy**<sup>23</sup>: States have a duty to ensure access to an effective remedy for violations of rights, including those due to exposure to toxics.<sup>24</sup> To be effective, remedies should be appropriately adapted for children, taking into account their special needs, risks, and evolving development and capacities.<sup>25</sup> An effective remedy includes (a) the right to equal and effective access to justice; (b) effective and prompt reparation for harm suffered; and (c) access to relevant information concerning violations and reparation mechanism. This includes, inter alia, compensation and satisfaction, rehabilitation and guarantees of non-repetition.<sup>26</sup> The right to an effective remedy requires the remediation of contaminated sites, the cessation of actions or inactions that give rise to impacts, the provision of health care, and the dissemination of information to ensure that parents and children know how to prevent recurrence.<sup>27</sup> Timely reparation to prevent recurrence is essential.<sup>28</sup>

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<sup>18</sup> UN Special Rapporteur on the human rights implications of the environmentally sound management and disposal of hazardous substances and wastes (SR Toxics), report to the UN Human Rights Council, A/HRC/30/40 (2015) (hereinafter “SR Toxics 2015 report A/HRC/30/40”).

<sup>19</sup> SR Toxics 2015 report, A/HRC/30/40. See also Stockholm Convention, Minamata Convention and SAICM.

<sup>20</sup> UDHR article 21; ICCPR article 25; UNDRIP article 18 and OECD Guidelines for Multinational Enterprises. See also Rio Declaration principle 10.

<sup>21</sup> Human Rights Watch, “Submission to the United Nations Special Rapporteur on Toxic Wastes on the issue of the right of access to information with respect to hazardous substances and wastes.” (2015). Available from: <https://www.hrw.org/news/2015/03/27/submission-special-rapporteur-human-rights-and-hazardous-substances-and-wastes>.

<sup>22</sup> United Nations, “An Overview of the Principle of Free, Prior and Informed Consent and Indigenous Peoples in International and Domestic Law and Practices,” Workshop on Free, Prior, and Informed Consent (17-19 January 2005).

<sup>23</sup> ICCPR Article 2. See also UN Guiding Principles on Business and Human Rights, principles 22, 25 and 26. See also Rio Declaration principle 10 (1992).

<sup>24</sup> Committee on the Rights of the Child, general comments No. 5 and No. 16; and International Covenant on Civil and Political Rights, art. 2 (3). A narrow interpretation of the right to remedy is for those rights that are civil and political in nature and contained in the ICCPR, as IESCR does not explicitly contain the right to an effective remedy.

<sup>25</sup> Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 15; see also Committee on the Rights of the Child, general comment No. 16, para. 31.

<sup>26</sup> See General Assembly resolution 60/147, and Convention on the Rights of the Child, art. 39.

<sup>27</sup> SR Toxics report to Human Rights Council on the rights of the child, A/HRC/33/41 (2016).

<sup>28</sup> Committee on the Rights of the Child, general comment No. 16, para. 31.

8. **Right to a safe, clean and healthy environment**<sup>29</sup>: Human rights are interrelated, indivisible, and interconnected. An unhealthy environment implies exposure to hazardous substances and implicates many—and often all—of the rights discussed above. While there is not global recognition of this right, and the right has not been implemented adequately by States that do recognize it, there is growing recognition of the right and its importance.

Certain groups are afforded special attention (and in some cases protections) due to an elevated likelihood of human rights abuses by State and/or non-State actors. For example, children, women, Indigenous Peoples, workers (especially migrant workers) and the elderly, as well as low income and minority communities, are indisputably recognized as being at grave risk of human rights abuses. These are also the groups that suffer the greatest impacts from toxic threats.

### **Rights of the child and chemical safety**

Today, children are born “pre-polluted”<sup>30</sup> with representative studies measuring at least dozens, if not hundreds, of toxic and otherwise hazardous chemicals in children before birth through their mother’s exposure. Pediatricians note a “silent pandemic” of disease and disability associated with exposure to toxics and pollution during childhood, many of which do not manifest themselves for years or decades. States have a duty to prevent children from being exposed to toxics and pollution, and businesses a corresponding responsibility.<sup>31</sup>

The UN Convention on the Rights of the Child (CRC) is the most widely ratified and monitored treaty in the world. The best interests of the child must be a “*primary consideration*” of States in the interpretation and implementation of the rights enshrined in the Convention. State Parties must integrate and apply this guiding principle when designing, implementing and enforcing public health, environmental and labor laws to protect children from toxics and pollution.

The duty of States and responsibility of business to prevent childhood exposure to toxics lies at the intersection of several rights enshrined in the CRC and other human rights treaties.<sup>32</sup> Each of these rights has either been interpreted to require that States prevent exposure to hazardous substances, or requires such an inference for its realization. Indeed, the best interests of the child are best served by preventing exposure to toxic chemicals and pollution, including those substances whose risks are not well understood.

The Committee on the Rights of the Child outlined a framework to ensure that businesses respect the right of children to be protected from human rights abuses, including from toxic threats.<sup>33</sup> This framework consists of effective legislation, regulation and enforcement; requiring businesses to conduct human rights due diligence; ensuring access to an effective remedy for violations; monitoring, coordinating, and

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<sup>29</sup> Stockholm Declaration of the UN Conference on the Human Environment (1972); ICESCR Art 12.2; and various regional human rights and environmental conventions, including: Aarhus Convention (1998), African Charter on Human and Peoples Rights (1981) and its Protocol on the Rights of Women (2003), Additional Protocol to the American Convention on Human Rights (1998), Arab Charter on Human Rights, and the ASEAN Human Rights Declaration. The right or its corresponding duty on the State is also reflected in over 140 national constitutions.

<sup>30</sup> National Cancer Institute (United States), “Reducing environmental cancer risk” (2010).

<sup>31</sup> SR Toxics 2016 report A/HRC/33/41.

<sup>32</sup> See SR Toxics 2016 report (These rights include the right to life, survival and development; the right to physical and mental integrity; the right to an effective remedy; the right to the highest attainable standard of health; the right to a healthy environment; the right to be heard; the right to safe food, safe water and adequate housing; the right to non-discrimination; the right to be free from the worst forms of child labour; and the right to information).

<sup>33</sup> UN Committee on the Rights of the Child, General Comment no. 16. See also SR Toxics 2016 report A/HRC/33/41.

awareness-raising measures; and international cooperation to address what is unquestionably a global problem.

## **Business obligations on human rights and chemical safety**

Businesses have been involved in human rights abuses in many countries. One example includes businesses involved in the pesticide industry. The 2011 Permanent People’s Tribunal<sup>34</sup> Session on Agrochemicals and Transnational Corporations (TNCs)<sup>35</sup> found “*the six TNCs prima facie responsible for gross, widespread and systematic violations of the right to health and life, economic, social and cultural rights, as well as of civil and political rights, and women and children’s rights*”; and “*that their systematic acts of corporate governance have caused avoidable catastrophic risks, increasing the prospects of extinction of biodiversity, including species whose continued existence is necessary for reproduction of human life.*” The Tribunal further found that “*three States, where six corporations are registered and headquartered, have failed to adequately regulate, monitor and discipline these entities by national laws and policy*”; and that “*The concerned States have unjustifiably promoted a double standard approach prohibiting the production of hazardous chemicals at home while allowing their own TNCs an unrestrained license for these enterprises in other States, especially of the Global South*”. Lastly, it also found that “*Some of the policies especially of the WHO, FAO and ILO are not fully responsive to the urgency of regulation and redress, as articulated by suffering peoples, and human rights and social movement activist groups and associations. A more proactive role is especially indicated in the field of hazardous agrochemical and agribusiness TNCs.*”

The UN Guiding Principles on Business and Human Rights, endorsed by the UN Human Rights Council in 2011, clarified that: (1) States have an obligation to protect against human rights abuses due to business activities, including abuses arising from toxic chemicals and wastes<sup>36</sup>; (2) businesses have a responsibility to respect human rights implicated by toxic chemicals; and (3) businesses and States have a shared responsibility to realize an effective remedy for human rights abuses.

States “*should*”: enforce laws<sup>37</sup>; ensure laws do not constrain businesses from respecting human rights<sup>38</sup>; guide businesses on how to respect human rights<sup>39</sup>; “*encourage*” or “*require*” businesses to communicate how they address human rights impacts<sup>40</sup>; expect businesses operating abroad to respect human rights<sup>41</sup>; have heightened responsibilities for state-owned enterprises<sup>42</sup>; exercise oversight when privatizing services<sup>43</sup>; ensure policy coherence<sup>44</sup>; and maintain domestic policy space.<sup>45</sup>

Businesses “*should*” respect human rights.<sup>46</sup> At a minimum, this includes those rights contained in the International Bill of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.<sup>47</sup> Respecting human rights “*requires*” that businesses avoid “*causing or contributing to*” adverse

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<sup>34</sup> <http://permanentpeopletribunal.org/?lang=en>

<sup>35</sup> The Permanent People’s Tribunal Session on Agrochemical Transnational Corporations: Indictment and Verdict. <http://www.agricorporateaccountability.net/en/page/general/17>

<sup>36</sup> Principle 1.

<sup>37</sup> Principle 3

<sup>38</sup> Principle 3

<sup>39</sup> Principle 3

<sup>40</sup> Principle 3

<sup>41</sup> Principle 2

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<sup>43</sup> Principle 5

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<sup>45</sup> Principle 9

<sup>46</sup> Principle 11.

<sup>47</sup> Principle 12.

human rights impacts through their activities and address such impacts when they occur.<sup>48</sup> Businesses should “*prevent or mitigate*” impacts “*directly linked*” to operations, products or services by their business relationships, even if they have not contributed to those impacts.<sup>49</sup>

Businesses should have: (1) A policy statement acknowledging their responsibility to respect human rights;<sup>50</sup> a human rights due diligence process to identify, prevent, mitigate and account for how they address impacts on human rights;<sup>51</sup> and a process to enable the remediation of any adverse human rights impacts they cause or contribute to.<sup>52</sup>

## **Chemicals agreements and human rights**

International agreements for chemical safety<sup>53</sup> reflect and advance a number of human rights and the principles on which they are based. For example, the right to information is implicitly the foundation of the Rotterdam Convention, and is also reflected in the Stockholm, Basel and Minamata Conventions, as well as in SAICM. These agreements also advance the rights to life, health, food, water and others to varying degrees. The Basel Convention’s protocol on liability and compensation advances the right to a remedy, and its compliance mechanism advances accountability, although shortcomings exist in both regards.

While mutually reinforcing elements exist between chemical safety agreements and human rights laws, international treaties and agreements leave numerous protection gaps. Thousands of toxic chemicals are unregulated throughout their lifecycle at the global level, implicating a myriad of human rights. The continued emission of pollutants, and failures to remediate tens of thousands of contaminated sites, question the adequacy of States to realize the right to an effective remedy. Businesses have a responsibility to respect human rights. The shortcomings through the human rights lens are numerous, whether viewed from accountability, the right to life and health, the right to water or other perspectives.

Some of these protection gaps are best addressed at the national level; but others are best addressed through international cooperation under regional or global frameworks, a principle of international human rights law. Irrespective of whether national, regional or global approaches are deemed most effective and efficient for chemical safety, States have an obligation to respect, protect and fulfill human rights implicated by toxic chemicals.

### **> Outcomes for chemical safety and human rights**

1. The Beyond 2020 Declaration builds on the Dubai Declaration by affirming support for protecting, respecting and fulfilling human rights implicated by chemicals and wastes, including the rights to life, health, physical integrity, information, meaningful participation, an effective remedy, and safe food, housing and water, among others.

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<sup>48</sup> Principle 13.

<sup>49</sup> Principles 13 and 19.

<sup>50</sup> Principles 15 and 16.

<sup>51</sup> Principles 15 and 17-21.

<sup>52</sup> Principles 15, 22, and 24.

<sup>53</sup> These include the Basel, Minamata, Rotterdam and Stockholm Conventions and the Strategic Approach to International Chemicals Management. For the purposes of this report, the Vienna Convention and its Montreal Protocol on Ozone Depleting Substances, the UN Framework Convention on Climate Change and other international agreements that directly or indirectly address “chemical safety” are not considered.



2. The Beyond 2020 Declaration affirms that businesses conduct human rights due diligence for their activities linked to toxic chemicals and waste, including the rights to life, health, an adequate standard of living (housing, food and water), non-discrimination, and physical integrity, as well as the rights of vulnerable groups, such as women, children and workers.
3. The Beyond 2020 Declaration affirms the need to prioritize the prevention of exposures by women, children, the elderly, workers, the poor, Indigenous Peoples, migrants, minorities and groups that are most vulnerable.
4. Retain the participatory approach of SAICM in the Beyond 2020 framework, in line with the right to meaningful participation.
5. UN Environment and the World Health Organization facilitate the exchange of expertise and best practices between human rights and chemical experts with the SAICM process to build collective capacity to prevent adverse impacts of hazardous substances and wastes by 2025 and report regularly on progress to meetings of the International Conference on Chemicals Management.
6. UN Environment operationalizes a national periodic monitoring, reporting and evaluation mechanism within SAICM by 2030 that provides synergistic information exchange about progress toward chemical safety with UN human rights treaty bodies, Special Procedures, and other human rights mechanisms. This review mechanism should use human rights indicators and participatory processes, paying particular attention to those most vulnerable such as women, children, workers, minorities, the poor, Indigenous Peoples and others.
7. Office of the High Commissioner on Human Rights strengthens collaboration between national, regional and international human rights mechanisms and environmental, health, labor and other related authorities on the implications of hazardous substances for human rights by 2025 and reports regularly on progress to the chemicals conventions COPs and meetings of the International Conference on Chemicals Management.
8. Inter-Organization Programme for the Sound Management of Chemicals and Global Environment Facility activities and projects include a requirement for disaggregated information on risks to vulnerable groups from hazardous substances and wastes by 2030 to help realize the rights to information and meaningful participation.
9. Establish a global mechanism within SAICM by 2030 to protect environmental and human rights defenders and include a procedure for reporting reprisals.
10. UN Environment collaborates with the Office of the High Commissioner on Human Rights to establish a grievance mechanism by 2030 for victims of hazardous substances who allege a denial of access to justice and/or their right to an effective remedy.
11. SAICM Secretariat establishes links and reports on activities of the international working group to elaborate an international legally binding instrument on Transnational Corporations and Other Business Enterprises with respect to human rights.



## Annex 1: Basic elements of human rights

Everyone is born with and possesses the same rights, regardless of where they live, or their race, gender, religion, age, ethnic or cultural background, or other status. These rights cannot be taken away, but may be subject to certain limitations (e.g. national security).

All rights are equal in importance; none can be fully enjoyed without the others. In other words, human rights are universal, inalienable, indivisible and interdependent.<sup>54</sup>

### Duties of States

The fact that individuals hold rights imposes duties upon others.<sup>55</sup> Within the human rights framework, governments are the principal duty bearers. As duty bearers, States have an obligation to (1) respect, (2) protect and (3) fulfill human rights.<sup>56</sup>

The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses.<sup>57</sup> This obligation includes actions by the private sector and other non-state actors.<sup>58</sup> The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights.

A State may be held responsible for human rights violations by private actors, and may be considered to have breached their international obligations when human rights violations are either attributable to the State, or where the State failed to take appropriate steps to prevent, investigate, punish, and redress private actors' violations.<sup>59</sup>

### Human rights principles

Key principles of international law underpin human rights. These include:

1. Non-discrimination<sup>60</sup>: All individuals are equal as human beings and by virtue of the inherent dignity of each human person. No one, therefore, should suffer discrimination on the basis of race, colour, ethnicity, gender, age, language, sexual orientation, religion, political or other opinion, national, social or geographical origin, disability, property, birth or other status as established by human rights standards.
2. Participation and Inclusion<sup>61</sup>: All people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being. Human rights-

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<sup>54</sup> Universal Declaration on Human Rights (UDHR), Art. 1; Vienna

<sup>55</sup> <http://humanrightshistory.umich.edu/accountability/obligationr-of-governments/>

<sup>56</sup> UN Office of the High Commissioner for Human Rights, *International Human Rights Law* (webpage, last accessed Nov. 22, 2016), available at: <http://www.ohchr.org/en/professionalinterest/Pages/InternationalLaw.aspx>

<sup>57</sup> International Law Commission, 53rd Session. "Articles on Responsibility of States for Internationally Wrongful Acts." United Nations, 2001. (Adopted by the International Law Commission and submitted to the UN General Assembly in 2001), available at: [http://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf)

<sup>58</sup> UN Guiding Principles on Business and Human Rights

<sup>59</sup> United Nations, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework." 3 (2011). Available from: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>60</sup> UDHR Articles 2 and 7; ICCPR Article 26; CEDAW Article 2; CRC Article 2

<sup>61</sup> UDHR Article 21; ICCPR Article 25; UNDRIP Article 18; OECD Guidelines for Multinational Enterprises. Regarding the Right to Free Prior and Informed Consent, see UDHR Article 19; ILO c.169 Articles 6, 7, 16 and 22; and the Rotterdam Convention.

based approaches require a high degree of participation by communities, civil society, minorities, women, young people, Indigenous Peoples and other identified groups.

3. Accountability and Rule of Law: States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in international human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.
4. Non-regression<sup>62</sup>: Requires that norms that have already been adopted by States not be revised, if this implies lowering of standards of protection of collective and individual rights. Once a human right is recognized it cannot be restrained, destroyed or repealed. Thus, States should not seek to achieve economic gain to the detriment of health and other human rights.
5. Responsibility of businesses to undertake human rights due diligence: The commentary to Principle 11 of the UNGP elaborates on this concept, stating that “[t]he responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate.” Further, “[t]he responsibility to respect human rights] exists independently of States’ abilities and/or willingness to fulfill their own human rights obligations, and does not diminish those obligations.”

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<sup>62</sup> UDHR, Article 30 (1948); Article 5 of ICESCR (1966); and Article 5 of ICCPR (1966).