

**Convention on
Biological Diversity**

Distr.: General
16 September 2024

Original: English

**Conference of the Parties to the
Convention on Biological Diversity
Sixteenth meeting**

Cali, Colombia, 21 October–1 November 2024

Item 26 of the provisional agenda*

Liability and redress (Article 14, paragraph 2)

**Experience in implementing the decisions of the Conference of the Parties
to the Convention related to Article 14, paragraph 2, on liability and
redress**

Note by the Secretariat

I. Introduction

1. In its decision 14/21, the Conference of the Parties to the Convention on Biological Diversity took note of the information that the Executive Secretary had made available on new developments regarding liability and redress for damage to the environment in general, and to biological diversity in particular. It also invited Parties and other Governments to submit to the Executive Secretary information on their experience in implementing the decisions of the Conference of the Parties related to Article 14, paragraph 2, of the Convention, and requested the Executive Secretary to compile that information, as well as information on any recent developments, and make it available for consideration at the present meeting.

2. Accordingly, the present note contains some information on developments in the area of liability and redress that may be relevant to the issues under review in the context of paragraph 2 of Article 14 since the publication of similar information for the fourteenth meeting of the Conference of the Parties, in November 2018.¹

3. In response to the invitation made by the Conference of the Parties, submissions of information on recent developments were received from the European Union, Germany, Spain, the State of Palestine, the United Kingdom of Great Britain and Northern Ireland and Zimbabwe. The full text of the submissions will be made available in an information document,² in the language in which they were submitted.

* CBD/COP/16/1.

¹ See CBD/COP/14/10.

² CBD/COP/16/INF/10.

II. Recent developments

A. Developments at the international level

1. Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress

4. In its decision CP-10/13, the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety requested Parties to the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress, and invited other Governments, to submit information to the Executive Secretary on the measures that they had in place to provide for financial security for damage from living modified organisms, and requested the Executive Secretary to compile the information and submit it for consideration at its eleventh meeting.

5. The Secretariat has prepared an overview of the information received in response to the request above for consideration by the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol at its eleventh meeting.³

2. Programme for the Development and Periodic Review of Environmental Law of the United Nations Environment Programme

6. By its resolution 4/20, the United Nations Environment Assembly of the United Nations Environment Programme adopted the fifth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme V).⁴ The Programme is aimed at promoting the development and implementation of the environmental rule of law, strengthening related capacity at the national level and contributing to the environmental dimension of the 2030 Agenda for Sustainable Development. Under paragraph 6 (b) of the Programme, national focal points are tasked with identifying priority areas for the implementation of the Programme.

7. At the first segment of the first global meeting of national focal points, held from 2 to 4 June 2021, participants considered eight priority areas for the implementation of the Montevideo Programme V up to 2030 that had been identified on the basis of the results of a survey and the requirements of the Programme. The eight priority areas were grouped into three thematic priority areas (climate change, biodiversity and pollution), which were supplemented by five cross-cutting and strategic activity priority areas, including environmental crime and liability, and one initial priority (legal responses to address the air pollution crisis) was set.

8. The second segment of the first global meeting of national focal points was held from 6 to 9 June 2022. Participants considered the status of implementation of the priority areas and the status of funding. They also reviewed in detail the status of implementation of the initial priority area mentioned above. Under priority area 3 (legal responses to combat the biodiversity crisis), the proposal by the secretariat was to support countries, in collaboration with relevant partners and stakeholders, to strengthen, develop or implement appropriate legal instruments and frameworks, and build related capacity, regarding the implementation of relevant goals and commitments under biodiversity-related conventions, including the post-2020 global biodiversity framework.

9. The second global meeting of national focal points under the Montevideo Programme V was held from 3 to 5 June 2024. Participants considered, inter alia, a note on options for clearly defined priority areas to combat the climate crisis⁵ and a note on options for clearly defined priority areas to combat the biodiversity crisis.⁶ In the latter paper, the options for priority areas that were considered in detail related to: supporting developing countries' efforts to strengthen national, subnational and regional biodiversity-related laws to address current biodiversity issues and new global perspectives; building the capacity of various stakeholders to develop and implement biodiversity-related laws and

³ See CBD/CP/MOP/11/11.

⁴ For further information on the Montevideo Programme, see www.unep.org/resources/factsheet/montevideo-environmental-law-programme-decade-action-environmental-law.

⁵ UNEP/Env.Law/MTV5/GNFP.2/4.

⁶ UNEP/Env.Law/MTV5/GNFP.2/3.

strengthen institutions; and addressing knowledge gaps, conducting research and promoting tools to provide guidance to stakeholders on biodiversity law.

3. Loss and damage associated with climate change impact

10. In 2022, the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts adopted its second five-year rolling workplan, for the period 2023–2027,⁷ which also served as the overarching framework for its five thematic expert groups.

11. In their decisions 2/CP.27 and 2/CMA.4, respectively, the Conference of the Parties to the United Nations Framework Convention on Climate Change and the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement acknowledged the need to assist developing countries that were particularly vulnerable to the adverse effects of climate change in responding to economic and non-economic loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events. In the same decisions, they established new funding arrangements for assisting such developing countries and a fund for responding to loss and damage, the mandate of which included a focus on addressing loss and damage.

12. In their decisions 1/CP.28 and 5/CMA.5, respectively, the Conference of the Parties to the United Nations Framework Convention on Climate Change and the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement designated the fund mentioned above as an entity entrusted with the operation of the Financial Mechanism of the Convention, which would also serve the Paris Agreement.⁸ The Fund, known as the Loss and Damage Fund, will be accountable to and function under the guidance of the Conference of the Parties to the United Nations Framework Convention on Climate Change and the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement. The Board of the Fund held its first meeting from 30 April to 2 May 2024, and its second meeting from 9 to 12 July 2024.

13. According to the *Global Climate Litigation Report: 2023 Status Review*,⁹ published by the United Nations Environment Programme in cooperation with the Sabin Center for Climate Change Law at Columbia University, climate change litigation is increasing and broadening in geographical range, while the range of legal theories is expanding. As the climate crisis worsens, individuals, youth and women groups, indigenous peoples and local communities, among others, are turning to courts and other adjudicatory bodies to bring actions against Governments and private sector entities for their inaction and failure to meet their mitigation and adaptation targets, in an effort to seek relief for the loss of lives and livelihoods.

4. Ecocide as an international crime

14. A conversation is under way at the global level on whether causing serious harm on vital ecosystems (i.e. mass environmental destruction) should constitute an international crime, known as “ecocide”.¹⁰ In June 2021, the Stop Ecocide Foundation convened an independent expert panel comprised of international lawyers to develop a definition of “ecocide”. The Independent Expert Panel for the Legal Definition of Ecocide defined “ecocide” as “unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts”.¹¹

15. The Prosecutor of the International Criminal Court has also been conducting consultations on how to advance accountability for environmental crimes under the Rome Statute of the International

⁷ FCCC/SB/2022/2/Add.2.

⁸ <https://unfccc.int/loss-and-damage-fund-joint-interim-secretariat>.

⁹ United Nations Environment Programme, *Global Climate Litigation Report: 2023 Status Review (Nairobi, 2023)*.

¹⁰ The idea of ecocide was first proposed in the 1970s during the Viet Nam war by biology professor Arthur W. Galston, in protest against the United States military using the herbicide and defoliant chemical Agent Orange to destroy the foliage cover and crops of enemy troops.

¹¹ See www.stopecocide.earth/legal-definition.

Criminal Court. In February 2024, the Office of the Prosecutor announced a new policy initiative in that regard.¹² The plan is to develop a policy paper on environmental crimes on the basis of the Rome Statute and other regulatory instruments of the Court, as well as on applicable environmental treaties, rules of customary international law and the jurisprudence of other international and national courts, with a view to promoting accountability, transparency and predictability in that area.

B. Developments at the national or regional level

16. As indicated in paragraph 3 above, a small number of Parties submitted information on developments in the area of liability and redress for damage to the environment in general, and biological diversity in particular.

17. In its submission, the European Union referred to the Environmental Liability Directive as its framework to prevent and remedy damage. It also referred to the guidelines developed by the European Commission in March 2021 to clarify the scope of the term “environmental damage”. It stated that the second evaluation of the Environmental Liability Directive was under way, with a view of making it available in the third quarter of 2024.

18. In its submission, Germany highlighted the relevant provisions of the Act on Nature Conservation and Landscape Management of July 2009.

19. In its submission, the Government of Spain refers to Law 26/2007 on Environmental Liability and its regulation approved through Royal Decree 2090/2008, which transposed the European Union Environmental Liability Directive and needed to be interpreted and applied in conjunction with Law 42/2007 on Natural Heritage and Biodiversity. The submission also contained links to additional information.

20. In its submission, the State of Palestine indicated that a draft decree on the environment that included liability and redress mechanisms was under preparation. Sanctions and penalties had also been implemented to guarantee culpability and redress systems.

21. In its submission, the United Kingdom made reference, as a recent development, to Environment Act 2021, which set a legal framework for environmental protection and governance at the national level. It stated that the act set long-term targets for improving air quality, biodiversity, water and waste reduction, as well as for resource efficiency. It also set that a minister of the Crown must, when making policy, have due regard to five environmental principles, including the principle of preventative action to avert environmental damage; the principle that environmental damage should, as a priority, be rectified at the source; and the polluter pays principle. In the light of those principles, the United Kingdom asserted that the Environment Act ensured that any new national policy sought to avoid environmental damage from the outset.

22. In its submission, Zimbabwe stated that several liability and redress principles were covered under chapter 14.31 of the National Biotechnology Authority Act (No. 3 of 2006).

Corporate liability for environmental damage

23. In recent years, efforts have been made by some countries (mostly developed countries) to address environmental damage and human rights violation resulting from the actions of multinationals. An increasing number of measures, including regulatory measures intended to address the adverse effects of transnational economic activities on the environment and consumers, have been adopted, such as the Duty of Vigilance Act of 2017 in France, the Supply Chain Due Diligence Act in Germany, which came into effect in January 2023, Regulation (EU) 2023/1115 of the European Parliament and of the Council on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest

¹² Office of the Prosecutor of the International Criminal Court, “The Office of the Prosecutor launches public consultation on a new policy initiative to advance accountability for environmental crimes under the Rome Statute”, statement, 16 February 2024.

degradation and repealing Regulation (EU) No 995/2010, the Transparency Act in Norway, which came into force on 1 July 2022, and the Child Labour Due Diligence Act of 2019 in the Netherlands.¹³

III. Suggested draft decision

24. The Conference of the Parties may wish to consider adopting a decision along the following lines:

The Conference of the Parties,

Recalling its decision 14/21 of 29 November 2018,

Recalling also the Kunming-Montreal Global Biodiversity Framework,¹⁴ in which it established the mission of the Framework as, among other things, being to take urgent action to halt and reverse biodiversity loss,

Noting that the compilation of submissions and information on recent developments in the area of liability and redress for damage to the environment in general, and biological diversity in particular, submitted at the sixteenth meeting of the Conference of the Parties¹⁵ revealed an increased awareness among Parties of the need for adopting and implementing appropriate policy and legal or administrative measures to avoid or mitigate such damage,

1. *Invites* Parties to continue to take appropriate measures to address damage to biological diversity, including response measures;

2. *Decides* to review the topic of liability and redress in the context of Article 14, paragraph 2, of the Convention on Biological Diversity¹⁶ at its eighteenth meeting, taking information on relevant developments into account, including progress in the implementation of the Kunming-Montreal Global Biodiversity Framework.

¹³ Peter Gailhofer and others, eds., *Corporate Liability for Transboundary Environmental Harm: an International and Transnational Perspective* (Switzerland, Springer, 2023), p. 4.

¹⁴ Decision 15/4, annex.

¹⁵ CBD/COP/16/INF/10.

¹⁶ United Nations, *Treaty Series*, vol. 1760, No. 30619.