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### Commentary on Strasbourg Principle no. 11: notion of a 'victim'

The right to bring adversarial proceedings before human rights bodies, including in environmental cases, is predicated on standing and victim status requirements. The exact nature of these requirements depends on both the underlying human rights treaty and its interpretation, and accordingly varies across different human rights courts and bodies. Overall, victim status requirements serve to preclude abstract review of domestic law and policy, i.e. public interest litigation or a so-called '*actio popularis*'. For example, prospective applicants to the European Court of Human Rights (ECtHR) must be able to 'claim to be the victims' of a violation of their human rights (Cordella and Others v. Italy, § 100). While UN treaty bodies have regularly aligned their approaches with that of the ECtHR, the practice of other regional human rights bodies is more permissive of public interest or representative claims (see, in this regard, the commentary on Principle 12).

Principle 11 of the Strasbourg Principles reflects the interpretative standards that shape how victim status requirements are interpreted by their respective bodies, summarizing three well-established interpretative principles of international human rights law. These principles go beyond the rules enshrined in the Vienna Convention on the Law of Treaties, constituting a 'special' interpretative regime for human rights law (Birgit Schlüter). In doing so, Principle 11 clarifies that the standards for interpreting human rights instruments in the face of environmental human rights litigation are the same as those applicable to any other applications before the relevant bodies. These three interrelated principles – namely the autonomy of concepts, the doctrine of dynamic interpretation, and the principle of effectiveness – have been accepted by different human rights bodies, and now form well-accepted interpretative canon.

First, Principle 11 recognizes the principle of autonomous interpretation. This principle concerns the allocation of interpretative authority, and has been

particularly well-developed in the case-law of two regional human rights courts: the ECtHR, which has recognized this principle since the 1970s (Engel and Others v. the Netherlands, § 81) and the Inter-American Court of Human Rights (IACtHR, OC-16/99, § 114; “Mapiripán Massacre” v. Colombia, § 187; Mayagna (Sumo) Awas Tingni Community v. Nicaragua, § 146). Both of these courts have made it clear that the terms of human rights treaties must have autonomous meaning, in that they cannot be understood as equivalent to or dependent on the interpretation of those terms under domestic law (*ibid*; Lambert and Others v. France, § 89). Principle 11 accordingly recognizes that the notion of victim status, like all terms and concepts under human rights treaties, is autonomous of related conceptions under domestic law, including those concerning the interest or capacity to act (Micallef v. Malta, § 48; Report 12/18, 48 Workers Killed in the Explosion at the Pasta de Conchos Mine (Mexico), § 28).

Secondly, Principle 11 refers to the evolving interpretation of victim status rules. Overall, and despite periodic criticism in this regard, human rights bodies have clearly recognized the need to interpret human rights dynamically or evolutively in the face of new challenges (George Letsas; see the Commentary on Principle 28). This means that they are not frozen in time or subject only to the intentions of their drafters, but interpreted in light of present-day conditions (Bayatyan v. Armenia, § 102). For example, the IACtHR has recognized the principle of dynamic interpretation by finding that ‘human rights treaties are live instruments whose interpretation must adapt to the evolution of the times and, specifically, to current living conditions’ (Mayagna (Sumo) Awas Tingni Community v. Nicaragua, § 146). At the ECtHR, this ‘living instrument’ doctrine has decisively shaped its body of case-law since 1978 (Tyrer v. the United Kingdom, § 31). The doctrine’s meaning for environmental cases was clarified in the landmark case, Gorraiz Lizarraga v. Spain, where the Court found in 2004 that ‘like the other provisions of the European Convention on Human Rights, the term ‘victim’ in Article 34 must also be interpreted in an evolutive manner in the light of conditions in contemporary society’ (§ 38). More recently, the UN Committee on the Rights of the Child likewise noted that ‘[u]nprecedented environmental crises’ require a dynamic interpretation of the CRC (General Comment no. 26, § 9).

The third interpretative standard recognized here is the effectiveness principle (Birgit Schlüter). This principle exists both under human rights law and general international law. Various human rights bodies derive this principle from the object and purpose of their respective instruments, i.e. the effective protection of human rights (Velásquez-Rodríguez v. Honduras, § 30; Svinarenko and Slyadnev v. Russia, § 118; Article 31 VCLT). It is particularly well-developed in the case-law of the ECtHR, which has held concerning victim status that ‘any other, excessively formalistic, interpretation of that concept would make protection of the rights guaranteed by the Convention ineffectual and illusory’ (*ibid*). This links the interpretation of the victim status requirement to the ECtHR’s well-established interpretative maxim according to which the Convention must be understood so as to guarantee rights that are ‘practical and effective, not theoretical and illusory’ (M.A. v. Denmark, § 162).