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### Commentary on Strasbourg Principle no. 12: victim status requirement and legal standing

International human rights law distinguishes itself from other areas of international law by granting legal subjectivity – and, accordingly, the ability to initiate proceedings against States on the regional and international level – to individuals. However, as discussed in the Commentary on Principle 11, most human rights bodies apply victim status requirements that preclude the introduction of public interest cases. These standards preclude ‘complaints of a general nature without identifiable victims’ (Pérez Guartambel v. Ecuador, § 6.2) or prevent individuals from being able to ‘in the abstract, by way of an *actio popularis*, challenge a law or practice’ (G. v. Australia, § 6.4). As a result, victim status requirements directly regulate access to human rights bodies.

For the purposes of environmental human rights litigation, Principle 12 establishes that ‘victim’ status can apply to those who are ‘directly, indirectly or potentially affected’ by an alleged violation of human rights, and goes on to clarify the notions of both direct and potential victimhood. As concerns direct victims, it reflects the rule that only those affected in their own human rights can lay claim to victim status and, accordingly, initiate human rights litigation. Although the terminologies differ, this is in line with the jurisprudence of different human rights bodies. For example, the UN Human Rights Committee has stated that ‘a person can only claim to be a victim in the sense of article 1 of the Optional Protocol if he or she is actually affected’ (Teitiota v. New Zealand, § 8.4). And in its first-ever climate case, the UN Committee on the Rights of the Child accepted that the authors of the Communication before it had victim status given that they had ‘*prima facie* established that they have personally experienced a real and significant harm in order to justify their victim status’ (Sacchi et al. v. Argentina et al., § 10.14).

Among regional human rights bodies, approaches to victim status vary. The ECtHR’s approach is the most restrictive, and it generally interprets the victim status requirement enshrined in Article 34 ECHR as requiring that ‘a person must be directly affected by the impugned measure’ (Burden v. the United Kingdom, § 33). While also recognizing the victim status of potential and indirect victims, its approach does not allow claims brought in the interest of the environment itself (Strasbourg Principles nos. 6-10; Cordella and Others v. Italy), and may pose a potential hurdle to litigants

contesting widespread, diffuse or impending environmental harms (Helen Keller and Corina Heri). By contrast, the practice of other regional human rights bodies is more permissive. As concerns environmental litigation, recognition of the right to a healthy environment in both the African (Article 24, ACHPR) and the Inter-American systems (Article 11, Protocol of San Salvador; OC-23/17) facilitates the demonstration of victim status both in substantive and temporal ways (Elena Cima). Overall, it should be noted that before the African Commission on Human and Peoples' Rights and its Court, victim status can be collective, and entire communities may be recognized as having victim status (Yusra Suedi and Marie Fall). In addition, Communications in this system may be submitted in the public interest (*ibid*). Likewise, victim status requirements in the Inter-American system are more permissive than before the ECtHR (Article 44, ACHR; Rule 23 Rules of Procedure of the IACmHR), with the Inter-American Commission of Human Rights – which identifies the victims for the purposes of proceedings in this system (Valle Jaramillo et al. v. Colombia, § 188) – accepting petitions from '[a]ny person or group of persons or nongovernmental entity legally recognized in one or more of the Member States (...), on their behalf or on behalf of third persons' (Rule 23, Rules of Procedure of the IACmHR) while also accepting applications on behalf of indigenous communities (Report no. 51/18, Kaqchikuel Maya Indigenous Peoples of Sumpango and others (Guatemala), § 21). However, there is likewise an *actio popularis* rule in the Inter-American system, precluding public interest applications on behalf of 'abstract victims' (Report no. 79/12, Ivete Jordani Demeneck and others (Brazil), § 20).

Principle 12 also reflects the fact that human rights bodies allow petitions from so-called potential victims, whose victim status is recognized to avoid irreparable harm and ensure the effective protection of human rights from impending risks. As defined in Principle 12, '[p]otential victims are persons to whom the violation would cause harm in a foreseeable and not too distant future' (Daniel Billy et al. v. Australia, § 7.9; G. v. Australia, § 6.4). Although terminologies again vary, many human rights bodies employ comparable definitions. For example, the UN Human Rights Committee allows Communications from persons who have not yet faced detrimental effects of a given law or practice if it applies to them and their risk of being affected is 'more than a theoretical possibility.' Similarly, before the ECtHR, potential victim status applies to those who risk suffering a rights violation in the future and who can produce 'reasonable and convincing evidence of the likelihood that a violation affecting them personally will occur' (Valentin Câmpeanu v. Romania, § 101).

While both direct and potential victim status attaches to the person who has suffered – or, in the case of potential victim status, will suffer – a human rights violation, cases may also be brought *on behalf of* these victims. The recognition of indirect victim status allows representative applications, i.e. cases brought on behalf of direct or potential victims who are not able to litigate themselves. While such applications may be brought by the next-of-kin of deceased applicants, under certain circumstances they may also be brought by non-governmental organisations (for more on this, see the Commentary on Principles 13 and 14).

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