

21st Informal ASEM Seminar on Human Rights (ASEMHRS21) “Human Rights and Climate Change” March 2022, Luxembourg

Concept Note

Introduction

“People who are socially, economically, culturally, politically, institutionally, or otherwise marginalized are especially vulnerable to climate change” (IPCC/ AR5¹).

Climate change is a major global issue of common concern to the international community. It is also one of the greatest threats to human rights of our time. The impacts of climate change, the unsustainable management and use of natural resources, the pollution of air, land and water, the unsound management of chemicals and waste, the resulting loss of biodiversity and the decline in services provided by ecosystems, preclude a safe, clean, healthy and sustainable environment which is integral to the full enjoyment of a vast range of human rights, including the rights to life, health, food, water and development. At the same time, the exercise of human rights, including the rights to information, participation, and remedy, is vital to the protection of the environment and for mitigation of the impacts of climate change.

Climate change has a direct and universal negative impact on the full enjoyment of human rights. However, despite no region on the planet being exempt from the impacts of climate change, some countries disproportionately suffer from climate-induced disasters. For instance, there are more coastal cities in Asia than in the rest of the world combined, which are also more populated compared to those outside of the continent. Hence, the repercussions of climate change induced phenomena such as sea level rise, intensified storms, flooding, droughts, biodiversity loss, ocean acidification and coral bleaching, vulnerability to saltwater intrusion and coastal erosion will have a significant direct effect on the lives and livelihoods of billions of human beings. Europe, on the other hand, will also be facing longer lasting droughts, floods and heatwaves that will become more frequent and intense in the years to come.

While climate change affects all human rights, its impact poses a serious and more direct risk to people’s rights to life, to health, to food, to a healthy environment, to a proper education, to water and sanitation, to adequate housing, to development and to self-determination in particular². The World Health Organization (WHO) indicates that between 2030 and 2050, climate change is expected to cause approximately 250,000 additional deaths each year resulting from pollution, malnutrition, scarcity of clean water and heat stress. Furthermore, according the 2015 Lancet Commission on Health and Climate Change, climate crisis is the biggest global health threat of this century and could reverse five decades of progress in global health, particularly as it endangers the right to food.³

The negative impacts of climate change are disproportionately felt by different communities and groups. Women are generally more vulnerable to the effects of climate change than men. This is so, primarily, because women constitute the majority of the world’s poor, whose livelihoods are more dependent on natural resources, themselves threatened by climate change.⁴ United Nations Children’s Emergency Fund (UNICEF), for instance, estimates that, by 2040, almost 600 million children, especially girls, will be living in areas of extremely high-water stress⁵. In 2019, weather-related hazards triggered some 24.9 million displacements in 140 countries. According to the United Nations High Commissioner for Refugees (UNHCR), climate-related disasters could double the number of persons requiring humanitarian

assistance to over 200 million each year by 2050⁶. Climate change also impacts persons in vulnerable situations differently, including indigenous peoples and local communities, persons with disabilities, refugees, and migrants, as well as older adult persons, lesbian, gay, bisexual, transgender and intersex persons (LGBTI) and persons belonging to national ethnic or other minorities⁷.

Besides these concrete examples of direct effects of climate change, it should also be noted that environmental human rights defenders⁸ are increasingly exposed to violence and harassment because of their peaceful work in defense of a healthy and clean environment.⁹ According to the Global Analysis 2020 by the NGO Frontline Defenders, 69% of human rights defenders killed in 2020 worked on land, environmental or indigenous peoples' rights.¹⁰ Furthermore, over the 2002–2018 period, there have been 150 reported killings of women environmental defenders, with a growing proportion of women defenders killed since 2010.¹¹ Most killings remain unpunished. In addition, "COVID-19 restrictions and lockdowns have reduced transparency and monitoring of human rights violations, and have intensified political intimidation and digital surveillance, while limiting access to justice and the abilities of environmental human rights defenders, local actors, indigenous communities and others to effectively participate in decision-making processes"¹². Nevertheless, grassroots environmental activism is on the rise witnessed by international national movement such as Friday for Future, which, in spite of the COVID-19 pandemic, continues unabated in many parts of Asia and Europe.

States have a human rights obligation to prevent the foreseeable adverse effects of climate change and ensure that those affected by it, particularly those in vulnerable situations, have access to effective remedies and means of adaptation to enjoy lives of human dignity. While steps have been taken by the international community to enhance the protection of human right in the face of climate change, the link between human rights and climate change is relatively recent.

The Male' Declaration on the Human Dimension of Global Climate Change, which was adopted by representatives of Small Island Developing States (SIDS) in 2007 stated for the first time in an international agreement that "*climate change has clear and immediate implications for the full enjoyment of human rights [...]*"¹³. One year later, with its landmark resolution 7/23, the Human Rights Council (HRC) acknowledged, for the first time, that "*climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights*"¹⁴. Another resolution (10/4) was adopted in 2009, stating that: "*human rights obligations and commitments have the potential to inform and strengthen international and national policymaking in the area of climate change*"¹⁵. The most recent resolution 41/21 outlines that the impacts of climate change and continued environmental degradation are already negatively affecting "*the effective enjoyment of human rights, including, inter alia, the right to life, the right to adequate food, the right to the enjoyment of highest attainable standard of physical and mental health, the right to adequate housing, the right to self-determination, the rights to safe drinking water and sanitation, the right to work and the right to development*"¹⁶.

However, it was only with the **Paris Agreement to the United Nations Framework Convention on Climate Change (UNFCCC)**, adopted in 2015, that human rights became integrated into the field of climate change. The Paris Agreement is also the first legally binding international treaty on climate change to urge States to abide by international human rights obligations. The Preamble states that

*"Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity"*¹⁷.

However, the **Katowice "rulebook"**, agreed at the 24th Conference of the Parties (UNFCCC COP24) held in December 2018 and developed to guide the implementation of the Agreement, omitted any reference to human rights. The continuing negotiations of the rulebook¹⁸, however, offer an opportunity to remedy

this and integrate human rights protections more firmly into the climate commitments. It remains to be seen what role will the next conference, COP26, - scheduled to take place in November 2021 - play in encouraging the interrelation of environment, climate change and human rights.

However, “addressing the climate crisis cannot be done solely through the UNFCCC, as this effort is connected to other goals, including poverty eradication and sustainable development. Increasing synergies across international agendas, such as the Sustainable Development Goals, can help countries individually and collectively achieve both their development and climate goals”¹⁹.

The **53 Asia-Europe Meeting (ASEM) members** have called for ways to “to build more inclusive, fair and resilient societies where economic recovery goes hand-in-hand with social justice and decent work”²⁰ in the post-pandemic recovery. They also drew attention to the need to put human rights and climate change at the center of international cooperation and effective multilateralism in their recent ministerial statement on COVID-19.²¹

About the Seminar

The **Asia-Europe Meeting (ASEM)** is an inter-governmental forum for dialogue and cooperation established in 1996 to deepen relations between Asia and Europe on the interpersonal and governmental levels. It addresses political, economic and socio-cultural issues of common concern.

The **Informal ASEM Seminar on Human Rights series** was launched in 1997 to strengthen relations between civil society actors and governments in Asia and Europe on human rights issues. The Seminar series is co-organised by the Asia-Europe Foundation (ASEF), the Raoul Wallenberg Institute (nominated by the Swedish Ministry of Foreign Affairs), the French Ministry for Europe and Foreign Affairs, the Philippine Department of Foreign Affairs, the Swiss Federal Department of Foreign Affairs, and the Ministry of Foreign Affairs of the People's Republic of China. By providing a platform for discussion among relevant stakeholders, including government officials from ASEM partners, academic experts and members of civil society, the **21st Informal ASEM Seminar on Human Rights (ASEMHRS21)** aims at contributing to a better understanding of the interplay between human rights and climate change and to jointly formulate and put forward recommendations for better integration of human rights in climate change policies and actions.

The 21st Informal ASEM Seminar on Human Rights (ASEMHRS21) will be hosted by the Ministry of Foreign and European Affairs of the Grand Duchy of Luxembourg and is scheduled to take place in March 2022 in Luxembourg. The Seminar will be followed by outreach and capacity-building activities to disseminate the outcomes of the Seminar and to improve the knowledge and capacity of relevant actors in Asia and Europe on the theme of the Seminar. The follow-up activities will also be delivered in the same year.

Working Groups

Participation in the 21st Informal ASEM Seminar on Human Rights will take place in 4 simultaneous working group discussions (on Day 2) on the 4 following topics:

1. **Reinforcing socio-ecological resilience of communities through information and public participation**
2. **Promoting the full enjoyment of human rights by all persons affected by climate change**
3. **Green, equitable and inclusive: Innovative ideas on international cooperation to address the impacts of climate change on human rights**
4. **Taking stock of national and international human rights regimes to protect against the consequences of climate change**

In addition to the guiding questions specific to each working group, there are cross-cutting questions which are valid across all the 4 working groups. The cross-cutting questions and the working group questions are the following:

Cross-cutting questions:

1. In light of a possible global recession due to the COVID-19 pandemic, how can the principle of **non-regression of human rights and environmental obligations** be implemented, and delays or changes of states' commitments best be avoided? How can we ensure that human rights protections and climate commitments will not become COVID-19 collateral?
2. How can we ensure the meaningful **participation of women** with diverse backgrounds in relevant decision-making processes and the integration of a gender perspective into climate related policies and programmes in order to guarantee that the rights of women and girls – including their Sexual and Reproductive Health and Rights (SRHR) – are respected? What about **other vulnerable groups**, including indigenous peoples and local communities?
3. What is the role of **human rights education** (what, how and to whom) in ensuring transparency and accountability in climate change related policies?
4. How would you assess the current **dialogues** on the interlinkages between human rights and climate change between regions (Europe, Asia, SIDS etc.)? Where do you see potential to further strengthen these dialogues? What role can the **Asia-Europe Meeting (ASEM)** play in advancing the respect of human rights in climate actions?
5. How can the **obligations of States** in the context of climate change and other environmental harms be extended to all rights holders?

1. Reinforcing socio-ecological resilience through information and public participation

There is widespread consensus that climate action cannot be dealt with by governments alone but that decision-making processes need to be transparent and inclusive in order to scale up efforts and support actions to reduce greenhouse gas emissions, build resilience and decrease vulnerability to the harmful effects of climate change. Meaningful public participation in decision-making is a human right and as such forms an important element of the **United Nations Declaration of the Right to Development**²² and a procedural element of human rights obligations concerning a healthy environment.²³

Stakeholders' consultation in the climate change process is fundamental and it is not new. Many countries have set up National Councils for Sustainable Development (NCSDs) or other bodies serving a similar purpose following the first Rio Summit in 1992. Chapter 10 of the **Rio Declaration** in particular, promotes public participation in environmental decision-making and access to information and justice in environmental matters:

“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”²⁴

A few years later in 1998, the **United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters** was adopted in the Danish city of Aarhus (Århus) with the aim of empowering the role of citizens and civil society organisations in environmental matters. The Aarhus Convention, as it came to be known, establishes a number of rights of the public with regard to the environment and obligates parties to the convention to make the necessary provisions so that public authorities at a national, regional or local

level will contribute to these rights to become effective. While originally a European agreement, the Aarhus Convention is now open for global signature and has several Central Asian nations as parties. Around the beginning of the 21st century, the debate on sustainable development appeared to lose momentum, and in many countries, the NCSDs were losing traction and influence. However, it was with the launch of the 2012 UN Conference on Sustainable Development and the adoption of the **2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs)** that started to put inclusive and sustainable development and climate change back on the international agenda. After the adoption of the 17 SDGs with stand-alone goal number 13 focusing exclusively on climate action, the international community came to a historic agreement with the adoption of the Paris Agreement in 2015. Article 7 places a special accent on a “participatory and fully transparent approach”:

“Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate.”²⁵

It has long been established that participation enables the advancement of all human rights. With the climate agenda encountering a renewed global interest, an active and meaningful participation of all stakeholders also became a key tool for climate action. In this working group we will discuss three principles that are essential to addressing climate change and strengthening human rights by means of participation: **1. Participation and special care for persons in vulnerable situations; 2. Freedom of expression, association and access to information; and 3. Knowledge sharing.**

First, special care should be taken in terms of the **participation of persons in vulnerable situations and indigenous peoples** in decision-making processes in order to enhance positive environmental outcomes and comply with relevant human rights obligations. Meaningful participation with vulnerable sectors will help to ensure that climate adaptation and mitigation efforts address the specific vulnerabilities of each group and do not adversely impact their basic human rights. Indigenous peoples and local communities, for instance, are disproportionately affected by climate change, as they often live in fragile ecosystems that are particularly exposed to extreme weather events. The 2030 Agenda and the Paris Agreement have recognised the unique and important role of indigenous peoples and local communities as key actors in achieving their goals. The same is often true for women who do not merely bear the greatest burden of climate change induced effects but additionally have to face multiple and intersecting forms of discrimination, gender-based violence and marginalisation due to, inter alia, a lack of educational and professional opportunities. A study by the Office of the United Nations High Commissioner for Human Rights (OHCHR) found that the “inclusion of women with diverse backgrounds in climate action and decision-making processes was critical for meaningful, effective and informed action that respected women’s rights”²⁶. As among those most affected by climate change, persons with disabilities, through their representative organisations, must also be actively included in shaping climate policies and actions. Youth are generally under-represented in political institutions, but children and young persons should also play an important role in climate justice. The Fridays for Future movement for example has shown that young people want to have a say in the decision-making pertaining to environment, climate change and human rights. These are just four examples that need particular attention in decision making related to climate change.

Second, **the right to freedom of expression and association in general and access to reliable and accessible information** on climate change are fundamental for all, including journalists writing science-based articles to fight climate change denial, smallholder farmers relying on access to weather forecast information, and for environmental human rights defenders. The latter in particular have been experiencing a dramatic shrinking of their civic space worldwide, which was further accelerated by the onset of the COVID-19 pandemic. In recent years, several governments across all continents have imposed unnecessary and disproportionate restrictions on the right to protest, freedom of speech, access

to information and freedom of association - an action that disproportionately affects human rights defenders, including those who are working on environmental and land issues. Moreover, women activists suffer from gender-specific forms of violence and intimidation which are a source of grave concern.²⁷

Third, **knowledge transfer and sharing** are increasingly recognised as means of mobilising the knowledge and capacities needed to respond to complex and changing realities, such as the challenges posed by climate change. Improved access to internet and new technologies such as web-based platforms and social media allow for increased access to data. However, information must be easy to understand and tailored to specific needs of stakeholders to strengthen adaptation action and decision-making. Public participation must also provide opportunity for affected persons to voice their concerns.

The International Court of Justice (ICJ) and a number of regional human rights courts have argued that “states have an obligation to assess and disclose foreseeable environmental risks as part of their positive duties to protect, respect, and fulfill various human rights”²⁸. The UNFCCC also states in Article 6 the need for the assessment and disclosure of information related to climate change and hence to promote and facilitate “public access to information on climate change and its effects”²⁹.

Guiding questions

1. What are the lessons learned of **public participation** since the Rio Summit in 1992 and how can we capitalise on them now that there is an increased global awareness on climate change?
2. The precise standard of what constitutes “**adequate**” or “**effective**” **public participation** is not always clear. What should “adequate” public participation in relation to discussion on climate change be at a minimum? Can you share any examples of good practices of inclusive public participation in climate change action?
3. Given that **persons in vulnerable situations** face greater risk and threats from climate change, it is particularly important that the right to meaningful and informed participation in decisions contributes to the full enjoyment of human rights and survival is respected. How is this being realised in relation to e.g., **indigenous peoples? Local communities? Marginalised communities living in coastal areas or geographically isolated and disadvantaged areas (GIDA)? Youth? Future generations?**
4. The United Nations Framework Convention on Climate Change, through its Article 6 on **Education, Training and Public Awareness**, calls on governments to implement educational and training programmes on climate change to educate, empower and engage all stakeholders. What are some of the actions that governments could and should take in order to provide further opportunities for **youth and child participation**? What are the best practices that can be emulated to ensure the **most marginalised** and those with no formal education are consulted, or informed enough to develop resilience to the effects of climate change?
5. How can government policies build better on demands from **grassroots movements**?
6. Are there initiatives undertaken in your country or region to support and protect **environmental human rights defenders** and to fight impunity? Are the current programmes to support and protect them, and especially **women** environmental human rights defenders, effective enough to have a real impact on the ground?
7. What are your experiences with **knowledge sharing platforms** and networks in your country or region? Have new technologies given a new momentum to the creation of these instruments and hence to the sharing of climate relevant information?

2. Promoting the full enjoyment of human rights by all persons affected by climate change

Social vulnerability in the context of climate change response is an important factor because some populations may have less capacity to prepare for, respond to, and recover from climate-related hazards and effects. Climate change is slowing down economic growth, eroding food security and creating new poverty traps, particularly in urban, coastal and agricultural areas. The effects of slow-onset disasters tend to have gradual impacts on livelihoods and health, including through declining agricultural yields. Sudden-onset disasters have immediate adverse impacts in terms of injury, death, displacement and damage to assets. Vulnerability to climate change is not just determined by external, climatic factors alone but also by factors such as marginalisation, social status, livelihood situation, revenue, social coverage and access to insurances.

Research indicates that the impacts of climate change and natural disasters for **women and girls**, in particular, are far-reaching as the majority of the world's poor are women. According to the WHO, "globally, natural disasters such as droughts, floods and storms kill more women than men, and tend to kill women at a younger age"³⁰. Most of the time, women play a key role in family care, children's education and food production and provision, as well as in the spreading of grassroots knowledge on food and nutrition. Due to climate change, however, food production becomes less predictable and family revenues less secure. Water and food collection also become difficult, and as women will need to walk further distances, they may become more exposed to physical dangers and sexual violence. Also, women and girls tend to have less access to or control over assets, including the resources necessary to cope with hazardous events, such as information, education, health and wealth. Other climate-sensitive health impacts, such as undernutrition and malaria, also show important gender differences.³¹ Besides, climate change leads to more violence against women and girls³² as crises and resource scarcity increases the risk that women and girls will be victims of violence or forced marriage. But while the impacts of climate change may disproportionately affect women and girls, women and girls are also important agents and leaders of change and often possess particular skills and knowledge useful for climate change adaptation. According to the OHCHR, "promoting women's education, participation in decision-making are among the most effective ways of reducing future emissions of carbon dioxide"³³. While there is a greater global commitment³⁴ and understanding of the need to incorporate gender perspectives into climate change policy, there are still considerable gender-based barriers across the major pillars of international and national policy processes on climate change.³⁵

According to Internal Displacement Monitoring Centre (IDMC), an average of 25.3 million **displacements** have been recorded each year since 2008 by sudden-onset disasters alone³⁶. The Intergovernmental Panel on Climate Change (IPCC) has argued that the greatest impact of climate change could be on human migration and has predicted that 200 million people will have migrated from their place of origin by 2050 for this reason³⁷. It should be recognised that climate is just one of the factors influencing migration, the consequences of climate change for human population distribution being unclear and unpredictable and the people most vulnerable to climate change are not necessarily the ones most likely to migrate. In some cases, however, climate change can be the sole factor prompting migration. Even though climate migration and displacement remain mostly internal, there are some countries that are at risk of completely disappearing, and whose residents are in danger of displacement. Some of these examples can be found in Small Island Developing States (SIDS). However, there is considerable resistance to the idea of expanding the definition of political refugees – as outlined in the Geneva Conventions - to incorporate "climate refugees".³⁸

Informal sector workers are playing an important role in climate change mitigation. For instance, the International Labour Organization (ILO) estimates that 15 million persons worldwide earn their living from recycling waste³⁹. According to the NGO Women in Informal Employment: Globalizing and Organizing (WIEGO), around 1% of the urban workforce in developing countries is engaged in recycling. While

recycling is one of the cheapest, fastest ways to reduce greenhouse gas emissions, it is also a labour-intensive model of waste management. In addition, the carbon footprint of informal workers and enterprises is often smaller than that of their formal counterparts, but they are at significant risk from the increased impacts of climate change effects.⁴⁰

According to OHCHR, “**persons with disabilities** - an estimated 1 billion individuals worldwide - [...] are often among those most adversely affected in an emergency, sustaining disproportionately higher rates of morbidity and mortality, and are among those least able to access emergency support”⁴¹. Cross-cutting forms of discrimination based on gender, age, displacement, indigenous origin or minority status can further heighten the risks of persons with disabilities, even more so for persons with invisible disabilities, suffering from the negative impacts of climate change. Today, there is little research on their exacerbated vulnerabilities in disaster situations and their limited access to knowledge about the effects of climate change. In addition, climate change is also a driver of disabilities.

Indigenous peoples, even though they contribute the least to greenhouse gas emissions, are among the first to face the direct consequences of climate change, due to their dependence upon, and close relationship, with the land, ocean, and natural resources. Given the scale of the risks they face, which include specific threats to their livelihoods, cultures and ways of life, their situation is different from what the poor, or those in vulnerable situations experience.⁴² According to the International Labour Organisation (ILO), “indigenous peoples must be seen as powerful agents of change, accorded access to decent work opportunities and the ability to participate in the development, implementation and evaluation of sustainable policies and measures aimed at combating climate change”⁴³.

Climate change also affects **young people** in all aspects of their lives. “Young people between 10 and 24 years constitute over 1.5 billion people in the world, of which 70 percent live in developing countries”⁴⁴ while growing up in parts of the world where the impacts of climate change will hit hardest. Due to climate change, more children, and young girls in particular, will have a lack of access to education and to the labor market later on. Moreover, children born today will face a lifetime of climate change-related health problems everywhere in the world.

As the impacts of climate change disproportionately affect those who are already marginalised across the world, this is also true for **LGBTIQ communities**. People identifying as LGBTIQ are more likely to be socially isolated and face discrimination in settings such as emergency shelters. Moreover, in the aftermath of natural disasters, members of the LGBTIQ communities are more likely to be excluded from response, relief, and recovery efforts.⁴⁵ They are also more likely to have trouble crossing borders to escape conflict and disaster. It is therefore important that humanitarian organisations make their disaster prevention and response activities accessible to the LGBTIQ communities.

Older persons who may be physically, financially and emotionally less resilient to deal with a changing climate are also in a vulnerable situation. At the same time, the world’s population is ageing and by 2050, over 21% of the global population will be 60 or over. According to HelpAge International, “growing proportions of older people are increasingly exposed to risks, especially in low- and middle-income countries, which are the most vulnerable to the impacts of climate change”⁴⁶. Older persons are also more vulnerable to the effects of extreme temperature rises and have a significantly higher mortality risk in extreme weather events. At the same time, and as pointed out by OHCHR, it needs to be recognised that older persons have an abundance of knowledge, experience and resilience, making their participation, inclusion, and leadership key to human rights-based global efforts to adapt to and mitigate the adverse effects of climate change.⁴⁷

In the face of global climate change, persons in vulnerable situations must have their rights protected, be able to live in safety and dignity, obtain access to measures of adaptation and resilience, and receive the support of the international community. At the same time, it must be recognised that persons in

vulnerable situations are active participants in society and agents of their own rights, whose meaningful participation must be ensured.

Guiding questions

1. What can be done to ensure that **forced climate migrants** do not fall through the cracks of international refugee and immigration policy? Can initiatives such as the Nansen Initiative⁴⁸ be revitalised?
2. How can the **health and welfare of workers in the informal sector** be protected in view of their increased exposure to climate change impacts?
3. How can meaningful integration of **persons with disabilities** in climate-related education, training, public awareness and public participation be ensured?
4. Being on the front line of climate change, how can the capacities of **indigenous peoples** be built? How can they become agents of change, while making best use of their traditional knowledge in the fight against climate change?
5. Are there initiatives undertaken in your country or region to support and protect **environmental human rights defenders** and to fight impunity?
6. How can humanitarian organisations **make services accessible to those most in need**, including LGBTIQ persons, and make sure that protection measures are integrated in their relief operations?
7. How can the engagement and **participation of young and older persons** on climate change issues be enhanced?

3. Green, equitable and inclusive: Innovative ideas on international cooperation to address the impacts of climate change on human rights

International cooperation is critical to the success of addressing climate change. International human rights instruments, such as the International Covenant on Economic, Social and Cultural Rights⁴⁹ impose on States the duty to cooperate in order to ensure the realisation of all human rights. Climate change requires a global response as impact has cross-border consequences. Hence, states should share resources, knowledge and technology in order to address climate change. In Madrid in December 2019, ASEM Foreign Ministers underlined “that priority challenges for enhanced **ASEM cooperation** include the need for ambitious climate action”⁵⁰.

The Rio Conventions, the Convention on Biological Diversity (CBD), the United Nations Convention to Combat Desertification (UNCCD), and **the United Nations Framework Convention on Climate Change (UNFCCC)**, which all derive from the 1992 Earth Summit, are all important legally binding international agreements that establish framework for international cooperation on environmental and sustainable development issues. Of the three conventions, the UNFCCC is the primary framework for international climate change cooperation, and it has been updated by subsequent agreements including the **1997 Kyoto Protocol** and the **2015 Paris Agreement**. Its overarching objective is to stabilise greenhouse gas concentrations at a level that would prevent dangerous human induced interference with the climate system. While the UNFCCC Convention does not refer to human rights directly, it has recognised, by extension, that states must ensure that their responses to climate change do not themselves violate human rights. The international community took a historic step in 2011 when it adopted the **Cancun Agreements**, which explicitly call on Parties to respect human rights when taking actions to address climate change. It also states the need for enhanced “international cooperation, [...] innovation and the transfer of appropriate technologies”⁵¹. In 2015, the Paris Agreement also highlighted the need for the respect for human right and for international cooperation on adaptation efforts by the parties. In the

same year, 18 countries⁵² signed the **Geneva Pledge for Human Rights in Climate Action** in order to facilitate, amongst others, “the exchange of expertise and best practice between our human rights and climate experts to build our collective capacity to deliver responses to climate change”⁵³.

Regional cooperation is also crucial to advance the climate and human rights agendas. On the 1st of December 2020, the EU and ASEAN elevated their longstanding relationship to a strategic partnership. The current ASEAN-EU Plan of Action contains multiple references to international cooperation in the fields of human rights and climate change under 1.7 (“Promote cooperation on human rights and good governance”) and 3.5 (“Address regional and global environmental challenges and promote sustainable development”)⁵⁴. Also, during the 3rd Human Rights Policy Dialogue in November 2019, the EU and ASEAN discussed issues related to women’s rights, children’s rights, impact of climate change on human rights as well as to business and human rights.

Bilateral and multilateral providers of development co-operation are still the major contributors to international climate change mitigation and adaptation programming. For their outcomes to be sustainable, however, cooperation on adaptation and human rights programmes must be based on principles of equality and non-discrimination. Furthermore, pursuant to relevant human rights principles, **climate assistance** should be adequate, effective and transparent, it should be administered through participatory, accountable and non-discriminatory processes, and it should be targeted toward persons most in need.

According to the Organisation for Economic Co-operation and Development (OECD), although “some providers are already working towards embedding stronger climate action in their mandates, strategies and operations, evidence shows that, overall, they have yet to fully accomplish this”⁵⁵. It concludes that development co-operation providers are not yet adequately set up to address the climate emergency and that a broader scope is needed if development co-operation providers are to align all of their activities, including policy support and capacity development, with the objectives of the Paris Agreement.⁵⁶ Disaster risk reduction, transfer of technology and research collaborations are also important aspects of development cooperation as they are crucial in the fight against climate change and the promotion of human rights and fundamental freedoms.

The UN Guiding Principles on **Business and Human Rights** (UNGPR) confirm that businesses also have human rights responsibilities. They reaffirm that “all responsible actors should be held accountable for the negative impacts of their activities and that all actors share responsibility for remedying these impacts”⁵⁷. While the Guiding Principles do not address climate change directly, they are relevant to the climate mitigation efforts of states, businesses and other stakeholders. There is growing consensus that all states have a duty to protect against human rights abuse by business within their territory and/or jurisdiction, including with respect to climate change. In parallel, companies are encouraged to implement due diligence practices across their supply chains to identify, prevent and address human rights-related risks of their activities and business relationships. In 2011, the European Parliament adopted a resolution on corporate due diligence with recommendations to the European Commission setting out principles on mandatory corporate due diligence for human rights, environmental and governance impacts through value chains. At the same time, an increasing number of countries in Asia are in the process of developing policy frameworks to implement the UNGPR.⁵⁸

In order to mobilise resources, knowledge and innovation for addressing climate change and promoting green growth, the engagement with the private sector is critical. While companies play an increasingly important role in driving green growth in both developing and developed countries by promoting greener behavior across their supply chains, “there are no concrete instruments within the Paris Agreement that hold state and corporate actors accountable for their impact on climate change and the exercise of human rights”⁵⁹. While a set of implementation guidelines – initially described as the ‘Paris Rulebook’,

(partially) adopted⁶⁰ at the 24th Conference of the Parties (COP24) in Katowice 2018, are critical in enhancing accountability, trust, and compliance, as well as ensuring that the Paris Agreement contributes to mitigating the impacts of climate change on the enjoyment of human rights⁶¹, it remains unclear to what extent are non-state actors accountable and expected to contribute to the achievement of the objectives of the Agreement.⁶² The role of non-state actors is part of the continuing negotiations on Article 6 concerning a creation of cooperation framework for the implementation of international emissions trade. The negotiations on Article 6, which are expected to continue at the COP26 in 2021, offer an opportunity to integrate human rights protections such as stakeholder consultations, environmental and social safeguards, and an independent redress mechanism which allows communities to seek remedy when projects under the mechanism cause harm.

Transitioning from the current development pathway to a low-carbon, climate-resilient one will require significant **investment and innovation**. At the Climate Change Summit in Copenhagen in 2009, a clear promise was made to provide financial support to developing countries. The so-called \$100 billion target was adopted at that moment. However, **climate finance** is a type of support that still lacks an agreed upon definition despite some international initiatives. A human rights-based approach to⁶³ climate finance would mean “respect for human rights, as well as human rights-based principles such as non-discrimination and participation, must be maintained at every stage of climate-related efforts and processes”⁶⁴. It would also entail that international assistance for climate change mitigation and adaptation should be additional to existing **Official Development Assistance (ODA)** commitments. However, climate finance and green technologies promised in 2009 under the Paris agreement have not met their agreed targets, and as raised at the recent UN-ECOSOC Development Cooperation Forum, the current levels of funding available for climate actions in developing countries are not sufficient nor geared towards meeting the goals of the Paris Agreement.⁶⁵

At the same time, “the immense public funds committed to support the economic recovery from the COVID-19 pandemic present an unprecedented opportunity to design and invest in a just recovery that is Paris-aligned, environmentally sound, and human rights-compatible”.⁶⁶

The need for innovative solutions in the areas of climate change mitigation and adaptation is an opportunity for companies to develop new products and services and serve new markets. In addition, investors and banks are potential sources of investment for clean infrastructure. **Green and sustainable finance** are innovative solutions that take into account environmental, social and governance (ESG) considerations and include climate change mitigation and adaptation, as well as human rights issues. In this respect, initiatives such as the International Platform on Sustainable Finance (IPSF) aim at strengthening international cooperation and scaling up the mobilisation of private capital towards environmentally sustainable investments.

Guiding questions

1. Having been recognised as a ‘common’ concern’ of humanity since the late 1980s⁶⁷, climate change is an issue in respect of which all States have common concerns and shared obligations. Going forward, how can the recognition of the **link between climate change and human rights in the Paris Agreement be strengthened** in order to give human rights concerns greater weight within the United Nations Framework Convention on Climate Change (UNFCCC) negotiating process? What is the best way to convince the UNFCCC to develop guidelines on how to integrate the human rights dimensions into Nationally Determined Contributions (NDCs)?
2. Are the existing frameworks conducive to encourage international cooperation on combined action regarding climate change and human rights? Is there a common interest to revitalise the **Geneva Pledge for Human Rights in Climate Action**?

3. Given many countries have to respond to the adverse effects of climate change at the local and national levels, what are the implications for **regional and international cooperation** (institutions and resources) for both human rights and climate change concerns? How can the strategic **partnership between Europe and Asia** be strengthened in terms of cooperation on human rights and climate change?
4. Given their broad and flexible mandate, National Human Rights Institutes (NHRIs) are well placed to seek remedies to human rights violation concerns resulting from the adverse impacts of climate change and national climate change related frameworks. One good example being the inquiry by the Commission on Human Rights of the Philippines (CHR) calling for an investigation into the responsibility of 47 fossil fuel companies, “the Carbon Majors” for fuelling catastrophic climate change resulting in human rights violations⁶⁸. **How can the role of NHRIs as an interface between civil society, government, the private sector, and the international community be strengthened and supported?** Can you share other good examples of NHRI collaborations in promoting and protecting human rights in relation to climate change?
5. How can **international development cooperation** providers better integrate the **climate imperative** into their mandate and systems for the purpose of ensuring inclusive and sustainable development, while respecting a human rights-based approach? Are there any flagship projects promoted by international cooperation relevant to climate action and human rights that could be highlighted here?
6. How can a **principle-oriented approach** in climate action and human rights-based programming be ensured?
7. In view of a **post-COVID economic recovery**, what can be done to build back greener and fairer while taking into account the need to enhance **due diligence in supply chain processes**?
8. **Scaling up funding for sustainable programmes** and involving the **private sector** is not an easy task. However, there are increasingly more pilot projects that lead the way. Which are the major flagship projects in this respect to be highlighted in the ASEM region? What are the main existing hurdles for the private sector involvement?
9. Is there a way to spur international and regional initiatives to better define **climate finance** and its relationship with human rights?

4. Taking stock of national and international human rights regimes to protect against the consequences of climate change

Climate change threatens the future of human rights and risk undoing the last fifty years of progress in development, global health and poverty reduction. The Intergovernmental Panel on Climate Change and the Human Rights Council (Resolution 41/21) highlighted that climate change has an impact on, among others, the rights to life, self-determination, development, health, food, water and sanitation, adequate housing and a range of civil and political rights. Along with other international organisations and experts, the UN is therefore calling for the global recognition of the right a healthy, sustainable and safe environment as a universal right.

There is the widespread view that climate change should be considered an emergency, that governments should act accordingly and that human rights experts could play an important role in clarifying access to justice and the legal requirements around climate action and holding states accountable for their actions.

As the principal United Nations intergovernmental body responsible for promoting and protecting human rights, the **Human Rights Council (HRC)** has addressed the issue of the impact of climate change on human rights. Its resolution 44/7, adopted in 2020, clearly states that “human rights obligations, standards and principles have the potential to inform and strengthen international, regional and national

policymaking in the area of climate change, thereby promoting policy coherence, legitimacy and sustainable outcomes”⁶⁹. The Council has contributed to raising awareness on the links between climate change and human rights by adopting a number of resolutions since 2008, with the most recent one recognising the disproportionate impacts of climate change on older persons.⁷⁰

Since 2008, the **UN special procedures mandates**, i.e. independent human rights experts, have reported on human rights from a geographical or a thematic perspective. Several of them have been actively involved in addressing the impacts of climate change on human rights. For example, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment in its 2016 report wrote that “states have obligations to adopt legal and institutional frameworks that protect against, and respond to, environmental harm that may or does interfere with the enjoyment of human rights”⁷¹. The appointment of a UN Special Rapporteur specifically focused on human rights and climate change has been a longstanding request from various civil society organisations (CSOs), but this has gained momentum among states in the past two years. During the 46th session of the Human Rights Council (HRC) in March 2021, a cross-regional group of 56 States joined Bangladesh in a statement that called upon Council members to consider creating this new mandate and to establish a new Special Rapporteur on human rights and climate change at the 47th session of the Human Rights Council.⁷²

The **human rights treaty bodies**, on the other hand, have addressed climate change and human rights in a number of statements, concluding observations and general comments. Out of all the treaty bodies, the **Committee on Economic, Social and Cultural Rights (CESCR)** has produced the most extensive and focused account to date and affirmed in 2018 that the “failure to prevent foreseeable human rights harm caused by climate change, or a failure to mobilise the maximum available resources in an effort to do so, could constitute a breach of its legal obligations”⁷³. In the same year, 42% of the Committee’s Concluding Observations on States’ reports addressed climate change⁷⁴.

In its general comment No. 36 (2018) on the right to life, the United Nations **Human Rights Committee** broke important new ground by recognising that “environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life”⁷⁵. A case brought by Torres Strait Islanders against Australia, accusing the government of failing to take action to reduce emissions or pursue adaptation measures, was submitted to the Committee in 2019. Furthermore, in its first ruling on a complaint by an individual seeking asylum from the effects of climate change, the Committee concluded in 2020 that countries may not deport individuals who face climate change-induced conditions that violate the right to life under article 6 of the International Covenant on Civil and Political Rights (ICCPR).⁷⁶

In its general recommendation No. 37, issued in 2018, the **Committee on the Elimination of Discrimination Against Women (CEDAW)** highlighted the steps needed to mainstream gender in the prevention of and response to climate change and environmental disasters. It also underscored the key principles of non-discrimination and equality, participation and empowerment, accountability and access to justice. For its part, the **Committee of the Rights to the Child (CRC)** has highlighted in its general comment No.15 the impacts of climate change and environmental degradation on children’s right to health.

However, despite these important remarks and observations, an “in-depth analysis of the three most engaged treaty bodies (CESCR, CRC, CEDAW) shows that just 9% of references to climate change since 2008 have dealt with mitigation, the issue of greatest importance for reversing the current trajectory”⁷⁷.

An increasing number of national courts in the EU hold member states accountable for the climate crisis. At the **regional level**, the **European Court of Human Rights** has clearly established that various types of

environmental degradation can result in violations of substantive human rights, such as the rights to life, private and family life, and the peaceful enjoyment of the home, and the prohibition of inhuman and degrading treatment⁷⁸. The European Court of Human Rights is currently, for example, considering a case initiated by four Portuguese children and two young adults against 33 governments - all EU states as well as Norway, Russia, Switzerland, Turkey, Ukraine, and the United Kingdom, on the grounds that heat waves and forest fires interfere with their right to life and harm their physical and mental wellbeing. While the lawsuit is in its early stages, and no decision on its admissibility or substance has been made yet, the court has decided to fast-track the case, recognising the “importance and urgency of the issues raised.”⁷⁹

Climate litigation is an emerging phenomenon. Indeed, according to the United Nations Environment Programme (UNEP) more than 850 climate change cases have been filed in 24 countries and “as of 1 July 2020, the number of cases has nearly doubled with at least 1,550 climate change cases filed in 38 countries”⁸⁰.

Climate litigation is compelling governments and corporate actors to pursue more ambitious climate change mitigation and adaptation goals as was the case in *Urgenda Foundation v. State of Netherlands*, whereby a group of Dutch citizens successfully challenged the Dutch Government for not taking sufficiently ambitious action to reduce greenhouse gas emissions based on tort and human rights law arguments. Besides the overall increase in the number of climate litigation cases, human rights arguments are being used as support in an increasing number of cases⁸¹. At the time of writing, the Grantham Research Institute on Climate Change and the Environment at the London School of Economics lists a total of 33 climate litigation cases in Asia and Europe that make some reference to human rights.⁸²

As citizens are increasingly turning to courts in order to access justice and exercise their right to a healthy environment, it becomes clear that the justice system has an essential role to play in addressing the climate crisis.

Despite the number of climate change litigation cases increasing, it seems that the United Nations as well as the human rights institutions have not yet fully explored the advantages of a human rights-based approach to climate change. By approaching climate change from a human rights perspective, the discussion moves from the political arena to the area of legally binding instruments under international law.

Guiding questions

1. What ways are there to promote the **adoption, strengthening and implementation of legislation** aligned with a comprehensive human rights-based approach to climate action? What are the key challenges in this regard?
2. How can one ensure that **measures** of climate change mitigation and adaptation are **ambitious, non-discriminatory and compliant with fundamental human rights obligations**?
3. Is there a need for an international authority within the UN system – to regulate and provide coordinated focus on climate change issues? Would e.g. appointing a **UN Special Rapporteur on Human Rights and Climate Change** ensure greater consistency in the way human rights and climate change are addressed, as has been suggested by civil society organisations⁸³?
4. The independence of **National Human Rights Institutes (NHRI)** can enable them to pursue human rights cases that might be overlooked by government bodies or the prosecution due to e.g. political or bureaucratic complacency. **How can the role of NHRIs in planning and implementing national climate commitments, laws and policies be further strengthened?** Any examples of good practices of NHRI involvement on climate change that could be highlighted here?

5. Are there viable initiatives in your country/ region that push for the recognition of the **right to a healthy and safe environment as a universal right**? What lessons can be learned from the environment-related cases and the jurisprudence developed by constitutional courts in some countries?
6. To what extent have **climate litigation** cases been effective in bringing about change in attitudes of courts and lawmakers, and providing remedies where other areas of law do not?
7. The principle of equity, including intergenerational equity, is recognised in the UNFCCC which calls for all parties to “*protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities*”. Is the current human rights and climate change framework adequate in protecting the rights of **future generations** from climate change related threats? What can be done to encourage more countries to recognise their rights?

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ENDNOTES

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