



Background Paper

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**Human Rights and Climate
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Background Paper on the 21s Informal ASEM Seminar on Human Rights (ASEMHRS21) Human Rights and Climate Change

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LIST OF ACRONYMS

ADB	Asian Development Bank
AICHR	Intergovernmental Commission on Human Rights
ARAIBA	Responsible and Inclusive Business Alliance
ASEAN	The Association of South-East Asian Nations
ASEM	Asia-Europe Meeting
ASEMHRS21	The 21 st Informal ASEM Seminar on Human Rights
BIMSTEC	Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation
CER	Corporate Environmental Responsibility
COE	Council of Europe
COP	Conference of Parties
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EIA	Environmental Impact Assessment
EMP	Environment Management Plan
EU	European Union
G7	Group of Seven
HRC	UN Human Rights Council
ILO	International Labour Organisation
NCP	National Contact Points
NDCs	Nationally Determined Contributions
NGO	Non-Governmental Organisation
NHRIs	National Human Rights Institutions
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner on Human Rights
REDD+	Reducing emissions from deforestation and forest degradation; conservation of forest carbon stocks; sustainable management of forests; enhancement of forest carbon stocks.
SAARC	South Asian Association for Regional Cooperation
SIDS	Small Island Developing States
UN	United Nations
UN-REDD	United Nations REDD Programme
UNEP	UN Environmental Programme
UNFCCC	UN Framework Convention on Climate Change

I. Introduction

a) Background

Human induced climate change¹ affects the enjoyment of a wide range of internationally recognised 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.² For example, the Intergovernmental Panel on Climate Change (IPCC) has listed as the causes of climate-related deaths: extreme weather events, heat waves, floods, droughts, wildfires, water-borne and vector-borne diseases, malnutrition and air pollution.³

At the same time, measures adopted to tackle climate change and its impacts (often called ‘**climate change response measures**’) may themselves negatively affect the enjoyment of human rights.⁴ This is especially the case for measures constraining access to, and use of, natural resources – such as land, water, and forests – which can in turn hinder the enjoyment of rights – such as that to culture, food, access to safe drinking water and sanitation, and that to respect for private and family life.⁵ For example, the Business & Human Rights Resource Centre has identified hundreds of alleged human rights abuses related to renewable energy projects, including: killings, threats, and intimidation; land grabs; dangerous working conditions and poverty wages; and harm to Indigenous Peoples’ lives and livelihoods.⁶

So, while climate change is a major aggravating factor hindering the enjoyment of human rights, at times human rights considerations may be perceived to stand in the way of climate change response measures and projects. And even if in principle there is no incompatibility between action to tackle climate change and the protection of human rights, in practice policy conflicts between the two do emerge.⁷

States and international instruments have increasingly acknowledged this complex relationship between climate change and human rights law. The preamble of the **Paris Agreement** specifies that parties ‘should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights’.⁸

At the same time, international human rights bodies have increasingly devoted attention to the matter of climate change. The **UN Human Rights Council** (HRC) has adopted 11 resolutions on human rights and climate change.⁹ As this paper will show in further detail, these resolutions emphasise the relevance of human rights obligations to climate change action, and the need to systemically interpret States’ obligations and corporate responsibilities in this connection, both at the national and at the international levels.¹⁰

Over the years, the HRC has established first an Independent Expert on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (2012-2015)¹¹ and then a **UN Special Rapporteur on Human Rights and the Environment** (2015-2024).¹² The rapporteur has been tasked to, amongst others, study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and to identify, promote and exchange views on good practices on this matter. As part of their mandate, these rapporteurs have produced two dedicated reports articulating the implications of human rights obligations in relation to climate change.¹³ Rather than formulating new obligations, these reports provide authoritative guidance on

how to interpret existing human rights obligations, vis-à-vis climate change. Specifically, the reports articulate States' *substantive* obligations as follows:

- States have positive duties to adopt adequate measures, including legislation, concerning climate change adaptation and mitigation.
- States have positive duties to enforce said legislation, and to provide redress to those suffering from the impacts of climate change.
- States have negative duties to refrain from authorising activities (such as, for example, oil concessions) and from themselves undertaking activities that contribute to human rights violations associated with climate change and climate change response measures.
- States have duties to cooperate with one another and share resources, knowledge and technology in order to address climate change.¹⁴

The UN Special Rapporteur on Human Rights and the Environment has furthermore articulated States' *procedural* obligations as follows:

- States must assess the impacts both of climate change and of climate change response measures and make such information public.
- States must provide access to remedies for climate-change related human rights violations.
- States must facilitate public participation in decision-making over climate change response measures, especially by those likely to be affected.
- States must protect individuals and groups against abuse by third parties, including business enterprises, by taking steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.¹⁵

Furthermore, in recent years there has been a growing recognition of businesses' human rights responsibilities in relation to climate change. According to the UN Special Rapporteur on Human Rights and the Environment, corporate human rights responsibilities have two main facets. On the one hand, businesses have a responsibility to reduce greenhouse gas emissions – including those produced by their own activities and by their subsidiaries, their products and services – and to minimize emissions from their suppliers – as well as to support, rather than oppose, public policies intended to effectively address climate change. On the other, businesses also have a responsibility to publicly disclose their emissions, climate vulnerability and the risk of stranded assets; and to ensure that people affected by corporate human rights violations have access to effective remedies.¹⁶

As this paper will show, the UN Special Rapporteur on Human Rights and the Environment's authoritative guidance is increasingly influencing state and corporate practice at the national and the regional level.

Simultaneously, the **Office of the High Commissioner on Human Rights (OHCHR)** has undertaken a series of activities to better integrate human rights concerns in international climate negotiations.¹⁷ Its activities include formal submissions on matters under consideration at the negotiations, which have specific human rights implications, like loss and damage¹⁸ and climate finance.¹⁹

In 2021, these UN activities culminated with the adoption of HRC Resolution 48/14, creating a new **UN Special Rapporteur on Human Rights and Climate Change**.²⁰ The mandate holder will be appointed in 2022 and is tasked, amongst others, to develop recommendations on how to address and prevent the adverse effects of climate change on the enjoyment of human rights, and on ways to strengthen the integration of human rights concerns into climate policymaking and legislation. The mandate holder will also develop recommendations concerning the promotion of human rights in the design and implementation of mitigation and adaptation policies, practices, investments and projects. Finally, the Rapporteur will identify good practices, strategies and policies on the matters above, and promote and exchange views on a ‘human rights-based approach to climate change adaptation and mitigation policies.’²¹ Resolution 48/14 has therefore further institutionalised the intergovernmental process to articulate a shared understanding of the interplay between States’ obligations and corporate responsibilities concerning climate change and human rights – see *Textbox 1*.

Textbox 1

Mandate of the UN Special Rapporteur on Human Rights and Climate Change

Human Right Council Resolution 48/14 (2021), *requests* the Special Rapporteur:

- (a) To study and identify how the adverse effects of climate change, including sudden and slow onset disasters, affect the full and effective enjoyment of human rights and make recommendations on how to address and prevent these adverse effects, in particular ways to strengthen the integration of human rights concerns into policymaking, legislation and plans addressing climate change;
- (b) To identify existing challenges, including financial challenges, in States’ efforts to promote and protect human rights while addressing the adverse effects of climate change, and make recommendations regarding respect for, and promotion of, human rights, including in the context of the design and implementation of mitigation and adaptation policies, practices, investments and other projects;
- (c) To synthesize knowledge, including indigenous and local traditional knowledge, and identify good practices, strategies and policies that address how human rights are integrated into climate change policies and how these efforts contribute to the promotion and protection of all human rights and poverty alleviation;
- (d) To promote and exchange views on lessons learned and best practices related to the adoption of human rights-based, gender-responsive, age-sensitive, disability-inclusive and risk-informed approaches to climate change adaptation and mitigation policies, with a view to contributing to the achievement of the Paris Agreement and the United Nations Framework Convention on Climate Change, which could help in the realization of the Sustainable Development Goals, in particular Goals 13 and 14, to address the economic, cultural, environmental and social challenges that climate change poses for the full enjoyment of human rights for all and in particular to support the resilience and adaptive capacities of people in vulnerable situations to respond to the adverse impact of climate change;
- (e) To raise awareness on the human rights affected by climate change, especially of persons living in developing countries particularly vulnerable to climate change, such as least developed countries, small island developing States and landlocked developing States, and encourage increased global cooperation in this regard;
- (f) To seek views and contributions from States and other relevant stakeholders, including international organizations, United Nations institutions, agencies, funds and programmes, regional economic commissions, international and regional financial institutions, regional human rights mechanisms, national human rights institutions, civil society, children and young people, older persons, Indigenous Peoples, local communities, women’s rights organizations, organizations of persons with disabilities, peasants and other people working in rural areas, academia, scientific institutions and non-governmental organizations, in the discharge of the mandate and develop a regular dialogue and A/HRC/RES/48/14 4 consultation on measures at the domestic and international levels on effective and sustainable climate action that respects, promotes and protects human rights;
- (g) To facilitate and contribute to the exchange of technical assistance, capacity building and international cooperation in support of national efforts, actions and measures to address the adverse impact of climate change on the enjoyment of human rights, in collaboration with Governments, international organizations,

civil society, the technical and academic communities, the private sector and all relevant stakeholders, including by using new and emerging digital technologies;

(h) To work in close coordination, while avoiding duplication of efforts, with the Office of the United Nations High Commissioner for Human Rights, other special procedures and other human rights mechanisms of the Human Rights Council, the treaty bodies and other relevant United Nations agencies, funds and programmes, including those related to climate change and the environment; (i) To conduct country visits and to respond promptly to invitations from States;

(j) To participate in, and contribute to, a human rights perspective to relevant international conferences and events with the aim of promoting a systematic and coherent approach to issues pertaining to the mandate;

(k) To integrate a gender-responsive, age-sensitive, disability inclusive and social inclusion perspective throughout the work of the mandate;

(l) To work closely with States and relevant stakeholders, including business enterprises, both transnational and others, to adopt a human rights perspective in accordance with the Guiding Principles on Business and Human Rights to mitigate potential adverse effects of their activities, including investment projects, on human rights in the context of climate change;

(m) To closely coordinate with the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and the Special Rapporteur on the human rights to safe drinking water and sanitation and to consider every possibility to coordinate his or her work with these mandate holders in the most effective way, including through joint undertakings;

(n) To report annually to the Human Rights Council, starting from its fiftieth session, and to the General Assembly at its seventy-seventh session.

b) Informal ASEM Seminar on Human Rights and Climate Change

The 21st Informal ASEM Seminar on Human Rights (ASEMHRS21) provides a platform for various stakeholders working in the area of human rights and climate change across ASEM partner countries with the aim of contributing to a better understanding of the interplay between human rights and climate change and sharing best practices and innovative ideas for better integration of human rights in climate change policies and actions.

ASEMHRS21 will be hosted by the Ministry of Foreign and European Affairs of the Grand Duchy of Luxembourg and is scheduled to take place on 16-18 March 2022. 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. The follow-up activities will also be delivered in 2022.

This paper lays background for ASEMHRS21 to guide discussions during the Seminar's four Working Groups, namely:

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

c) Paper structure

This paper is structured as follows. Part II summarises developments concerning human rights and climate change occurred at the international level, as well as at the regional level, in Europe and in Asia. Part III considers in further detail specific developments concerning the reports' working group themes. Part IV provides suggestions on the way forward, including future prospects for better integration of human rights in climate change action and areas for future collaboration. Part V provides concluding observations and summarises key take away points.

II. International and regional protection

Various intergovernmental processes and bodies have recognised the relevance of human rights obligations to climate change, and the need to mainstream human rights considerations in climate action. This section takes stock of these developments, considering first initiatives undertaken at the international level (a), and then those at the regional level, focussing on Europe (b) and Asia (c), respectively.

a) Human Rights and Climate Change at the International Level

The human rights dimensions of climate change are recognised in a series of resolutions, decisions, and reports, adopted under international climate treaties and by international human rights bodies.²² While it is not possible to exhaustively analyse all these developments in detail here, this section provides a summary of the most salient ones, starting with those occurred under the climate treaties, to then consider those under human rights bodies.

Climate Treaties

The 1992 **UN Framework Convention on Climate Change** (UNFCCC) defines the contours of international climate change cooperation and has been updated and complemented with obligations and procedures established under two subsequent treaties – the 1997 **Kyoto Protocol** and the 2015 **Paris Agreement**. The UNFCCC's overarching objective is to 'stabilise greenhouse gas concentrations at a level that would prevent dangerous human induced interference with the climate system'.²³ The Paris Agreement has specified that this level entails 'holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels'.²⁴ In 2021 Parties to the Agreement decided to pursue efforts to limit the temperature increase to 1.5 °C.²⁵ In order to achieve this temperature goal, all Parties to the Paris Agreement must periodically submit plans – so called '**nationally determined contributions**' (NDCs) – detailing, among others, planned and adopted measures to reduce emissions and adapt to climate change. NDCs therefore provide a yardstick to assess Parties' compliance with the Paris Agreement, and more generally, progress to meet its temperature goal.

While the UNFCCC does not refer to human rights directly, over the years its parties have progressively recognised that States must ensure that their responses to climate change do not themselves violate human rights. The 2010 **Cancún Agreements** were the first UNFCCC decision to refer to human rights explicitly. The Agreements say that Parties 'should, in all climate change related actions, fully respect human rights.'²⁶ Furthermore they mention the rights of Indigenous Peoples and local communities in safeguards for climate change response measures aimed to reduce emissions from the forest sector in developing countries (REDD+).²⁷

While *ex se* not legally binding, these and similar references to human rights in decisions adopted by Parties to the climate treaties have influenced the practice of international organisations.²⁸ For example, programmes established to support, fund, guide, or certify the development and implementation of climate mitigation activities have, to various extents, incorporated human rights standards in their operational rules and safeguards. One of the international agencies facilitating REDD+ activities – the **UN-REDD Programme** – has adopted a human rights-based approach to its work and elaborated guidelines on

the rights of Indigenous Peoples to free, prior, and informed consent.²⁹ Furthermore, standards adopted by climate finance institutions – such as the **Green Climate Fund** – specifically refer to human rights as one of the criteria that States should satisfy to access funding for mitigation and adaptation projects.³⁰ See *further below, under III (c)*.

As noted above, the **Paris Agreement** has given further impetus to the integration of human rights concerns in international climate cooperation. The agreement is the first international environmental treaty to explicitly acknowledge 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.³¹

This preambular reference draws attention to States' human rights obligations as enshrined in national law, as well as in any international law instruments that they have ratified. The operative part of the Paris Agreement furthermore makes implicit reference to human-rights-related considerations, such as gender-responsiveness, public participation, and access to information.³² Timid though they are, these references are an entry point for greater cross-fertilisation between climate change and human rights law, especially in relation to matters with glaring implications for the enjoyment of human rights, such as **loss and damage** associated with the impacts of climate change.³³ See *further below, under III (b)*.

So even though ultimately the reference to human rights is confined to the preamble, parties to the climate treaties have taken concrete steps to turn this broad statement into practice. For example, they established a **Local Communities and Indigenous Peoples Platform** (LCIPP) to strengthen the climate efforts of local communities and Indigenous Peoples, identify and share best practices for doing so, and enhance the engagement of these stakeholders in UNFCCC processes.³⁴ They have furthermore adopted a **Gender Action Plan**, which aims to advance understanding of gender-responsive approaches to climate action, promote gender mainstreaming in the development and implementation of climate policies, and to ensure the full, equal, and meaningful participation of women in the UNFCCC process, as well as in national and local climate processes.³⁵ See *further below, under III (a)*.

The need to adopt a rights-based approach to climate change has been underscored in the context of the debate on the finalisation of the so-called **Paris Agreement's rulebook** – i.e., the set of decisions aimed to operationalise and implement the obligations and governance architecture designed with the Paris Agreement.³⁶ The rulebook was meant to be finished in 2018, but negotiations on contentious matters – such as the so-called market mechanisms, envisioned under Article 6 – dragged on until 2021. The final set of rules adopted in 2021 have attracted some criticism from civil society over the integrity of agreed arrangements and their potential impacts on human rights.³⁷

Finally, some NDCs submitted under the Paris Agreement include information regarding the human and social dimensions of the implementation of climate response measures, and underscore the States' commitment to implement climate change response measures in a rights-based manner.³⁸ Others mention human rights as elements of the legal framework providing the context for the implementation of the NDC.³⁹ In addition, many

NDCs refer to concepts closely related to human rights, such as public participation, food security, gender equality or the participation of women, and Indigenous Peoples and traditional knowledge. Several States therefore already recognise, explicitly or implicitly, the link between climate action and the protection of human rights in their NDCs.⁴⁰

Human Rights Bodies

In 2008, the HRC adopted the first resolution recognising 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.’⁴¹ It has since adopted ten more resolutions that stress, among other things, the importance of adopting a rights-based approach to climate policy-making, the role of international cooperation for protecting human rights in a changing climate, and the disproportionate impacts of climate change on people in vulnerable groups, specifically children, women, migrants, older persons, and persons with disabilities.⁴²

Using various phraseologies, these resolutions clearly state 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’⁴³ – see *Textbox 2*.

Textbox 2

HRC Resolutions on Human Rights and Climate Change

[Resolution 47/24](#) (July 2021): The Council recognized that the rights of people in vulnerable situations were disproportionately affected by the negative impact of climate change. It requested the Secretary-General to prepare a report on the issue and decided that a panel discussion on the topic be held at the 50th Council session. The Council also decided to incorporate into its annual programme of work, beginning in 2023, a panel discussion on different themes related to climate change and human rights. It encouraged continued discussions among States and relevant stakeholders on the possible creation of a new special procedure mandate on climate change and human rights.

[Resolution 44/7](#) (July 2020): The Council recognized that the negative impacts of climate change disproportionately affected the rights of older persons. It requested OHCHR to conduct a study on the issue and decided that a panel discussion on this topic be held at the 47th session of the Council.

[Resolution 42/21](#) (July 2019): The Council recognized that the rights of persons with disabilities are disproportionately affected by the negative impacts of climate change. It requested the Office to prepare an analytical study on the promotion and the protection of the rights of persons with disabilities in the context of climate change and a panel discussion at its 44th session on the same topic.

[Resolution 38/4](#) (July 2018): The Council recognized that the integration of a gender-responsive approach into climate policies would increase the effectiveness of climate change mitigation and adaptation, requesting an analytical study and a panel discussion on the topic.

[Resolution 35/20](#) (July 2017): The Council noted the urgency of protecting and promoting the human rights of migrants and persons displaced across international borders in the context of the adverse impact of climate change. It called for an intersessional panel discussion on the issue as well as a report on human rights protection gaps in the context of migration and displacement of persons across international borders.

[Resolution 32/33](#) (July 2016): The Council urged Parties to integrate human rights in climate change mitigation and adaptation and called for a panel discussion on the adverse impact of climate change on the rights of the child to be held at its 34th session.

[Resolution 29/15](#) (July 2015): The Council emphasized the urgency of continuing to address the adverse consequences of climate change for all and called for a panel discussion and analytical study on the impacts of climate change on the enjoyment of the right to health.

[Resolution 26/27](#) (July 2014): The Council emphasized the need for all States to enhance international dialogue and cooperation to address the adverse impacts of climate change on the enjoyment of human rights including the right to development. It called for dialogue, capacity-building, mobilization of financial resources, technology transfer, and other forms of cooperation to facilitate climate change adaptation and mitigation, in order to meet the special needs and circumstances of developing countries.

[Resolution 18/22](#) (September 2011): The Council affirmed that human rights obligations, standards, and principles have the potential to inform and strengthen international and national policy-making in the area of climate change, promoting policy coherence, legitimacy, and sustainable outcomes.

[Resolution 10/4](#) (March 2009): The Council noted that "climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights ..." and that such effects "will be felt most acutely by those segments of the population who are already in a vulnerable situation"

[Resolution 7/23](#) (March 2008): The Council expressed concern that climate change "poses an immediate and far-reaching threat to people and communities around the world" and requested OHCHR to prepare a study on the relationship between climate change and human rights.

SOURCE: <https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/Resolutions.aspx>

International bodies entrusted to monitor the implementation of UN human rights treaties have also clarified the human rights obligations of States in relation to climate change. For example, in its General Comment on the Right to Life, the **UN Human Rights Committee** – which is the body of independent experts monitoring the implementation of the International Covenant on Civil and Political Rights – asserts that climate change constitutes one of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. The General Comment adds:

Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.⁴⁴

Furthermore, in a 2020 decision over an individual complaint, the Committee concluded that

*without robust national and international efforts, the effects of climate change in receiving States may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the non-refoulement obligations of sending States. Furthermore, given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized.*⁴⁵

Along similar lines, the **Committee of the Rights of the Child** – which is the body of independent experts monitoring implementation of the Convention on the Rights of the Child – has highlighted the impacts of climate change and environmental degradation on children's right to health.⁴⁶ In its first ever decision concerning a complaint associated with

the impacts of climate change on younger generations, the Committee made clear that the Convention gives rise to extra-territorial obligations to address climate change:

when transboundary harm occurs, children are under the jurisdiction of the State on whose territory the emissions originated for the purposes of article 5 (1) [jurisdiction] of the Optional Protocol if there is a causal link between the acts or omissions of the State in question and the negative impact on the rights of children located outside its territory, when the State of origin exercises effective control over the sources of the emissions in question.⁴⁷

The Committee further elaborated that ‘due to the particular impact on children, and the recognition by States parties to the Convention that children are entitled to special safeguards, including appropriate legal protection States have heightened obligations to protect children from foreseeable harm’.⁴⁸ Even though the Committee declared the complaints inadmissible, as domestic remedies had not been exhausted, it left the door open for future complaints concerning the impacts of climate change on children.⁴⁹

The **Committee on the Elimination of Discrimination against Women (CEDAW)** – which is the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women – has specifically highlighted the need to ensure gender responsiveness in climate change, and disaster management, emphasizing women’s participation.⁵⁰ Its General Recommendation on gender-related dimensions of disaster risk reduction in the context of climate change underscores the need for gender responsive climate change mitigation and adaptation policies founded on the principles of non-discrimination, participation and empowerment.⁵¹

This swelling body of international practice well illustrates how climate change concerns are increasingly brought to the attention of international human rights bodies and complaint mechanisms, generating a common understanding of the interplay between human rights and climate change obligations. This common understanding increasingly influences regional and national human rights practice. *See further below, under III (d).*

b) Human Rights and Climate Change at the regional level: Asia

Some Asian countries have reasonably well-developed dedicated climate legislation, like Indonesia, Lao PDR, Nepal, Pakistan, the Philippines, and South Korea with corresponding institutional arrangements.⁵² The majority of Asian countries, however, address climate action via policy response frameworks. For example, India’s international legal commitments are implemented through the National Action Plan on Climate Change. However, these instruments make scant efforts to human rights considerations and provide limited state accountability for failure to meet pledged climate action.

Several regional organisations that represent groups of Asian countries are increasingly focusing on human rights and climate change.

The Association of South-East Asian Nations (ASEAN) brings together ten Southeast Asian States – Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. ASEAN has developed a regional human rights framework. In 2012 ASEAN adopted the Action Plan on Joint Response to Climate Change, with a view to implement the ASEAN Leaders’ Statement on Joint Response to Climate Change. The action plan, however, does not mention human rights.

The **Intergovernmental Commission on Human Rights (AICHR)** was established in 2009 to promote and protect the human rights and fundamental freedoms of the peoples of the ASEAN. The 2012 ASEAN Human Rights Declaration established a framework for cooperation between member countries. Article 28(f) of the Declaration guarantees that ‘every person has the right to an adequate standard of living for himself or herself and his or her family including... the right to a safe, clean and sustainable environment.’⁵³ Though not legally binding, the Declaration can be used as an entry point to address the human rights, environment, and climate change nexus. However, unlike regional institutions in Africa and Europe, the AICHR does not have the power to investigate and consider complaints of human rights violations. The ASEAN also lacks a regional court to adjudicate human rights complaints.

Nevertheless, the AICHR has been active in scoping the human rights implications of climate change by organising a series of workshops.⁵⁴ The first workshop on Environment Human Rights and Climate Change was organised in 2014, with a focus on the development of regional responses to address the relationships between human rights, the environment, and climate change. The workshop noted that a human rights-based approach that encompasses the principles of equality, non-discrimination, participation, accountability, and access to justice is essential to address environmental concerns at international, regional, and national levels.⁵⁵ In 2021, a workshop organised in collaboration with UN agencies highlighted that the implementation of procedural rights of access to information, public participation, and access to justice as the foundation of rights-based approaches to environmental decision-making.⁵⁶

The UN Environmental Programme (UNEP) has adopted principles and policy guidance for promoting and protecting children’s rights to a healthy environment in the ASEAN region. The thirty-three principles include:

- the right to environment,
- right to environmental education,
- children participation in environmental decision making,
- access to child-friendly information strategies,
- protection of children from climate change and damage to the natural environment,
- protection from harmful business activities and
- protection from violence.⁵⁷

The principles are a signpost for governments, civil society, businesses, the media to protect the children from climate change impacts.

Furthermore, many specific climate change programs – including the ASEAN Multi-Sectoral Framework on Climate Change: Agriculture, Fisheries, and Forestry towards Food Security – require member States to formulate and implement rights-based and gender-sensitive policies in different sectors.⁵⁸ In the Joint Statement on Climate Change to the 26th UNFCCC Conference of the Parties, the ASEAN recognised the negative impacts of climate change on human life, including on food, water, energy, clean and green environment, and health.⁵⁹

The Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) was established in 1997 and comprises seven Member States, namely Bangladesh, Bhutan, India, Nepal, Sri Lanka, Myanmar, and Thailand. BIMSTEC is a sector-driven cooperative organisation and has expanded its mandate to climate change. The 4th BIMSTEC Summit has agreed to create an inter-governmental expert group for developing a collective response plan of action to climate change on the basis of common but differentiated responsibilities and respective capabilities, taking into account different national circumstances and equity.⁶⁰ This group could become the entry point for incorporating human rights concerns missing from the BIMSTEC agenda.

The South Asian Association for Regional Cooperation (SAARC) is a geopolitical organisation established in 1985, bringing together Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka. SAARC has facilitated cooperation among its member States to address climate change. SAARC member States have often stressed regional cooperation on climate action, including in the Thimphu Statement on Climate Change.⁶¹ The statement takes note of the adverse effects of climate change and its impact on the lives and livelihoods of the South Asian people. Furthermore, the SAARC Social Charter requires State parties to ‘establish a people-centred framework...to respond to the immediate needs of those who are most affected by human distress’.⁶² These are a few examples of how SAARC countries have cooperated on environmental issues and climate change. However, the human rights angle is missing in SAARC initiatives, and, unlike ASEAN, SAARC has not adopted any specific declaration on human rights.⁶³

The Asian Development Bank (ADB) has played a proactive role in highlighting the linkage between climate change and human rights through numerous reports and capacity-building projects.⁶⁴ In 2020 the ADB’s Law and Policy Reform Program and the UNEP co-organised the ‘Asia Pacific Judicial Conference on Climate Change: Adjudication in the Time of COVID-19’. The conference, supported by the Asian Judges Network on Environment, especially focused on the potential role of climate litigation for elevating the human impacts of climate change to centre stage.⁶⁵

Finally, some corporate social and environmental responsibility initiatives have been undertaken in the region. ASEAN has established a regional network, **Responsible and Inclusive Business Alliance (ARAIBA)**, which promotes responsible, inclusive, resilient, and sustainable enterprises. The network’s code of conduct details that businesses should commit to:

- support the precautionary approach
- undertaking initiatives to promote greater environmental responsibility
- encouraging the development and diffusion of environmentally friendly technologies.⁶⁶

The code also imposes an obligation on businesses to respect internationally proclaimed human rights such as the UN Guiding Principles on Business and Human Rights and ensure that they are not complicit in human rights abuses.⁶⁷

Some countries have adopted corporate social and environmental responsibility measures at the national level. For example, in India it is mandatory for project proponents seeking environmental clearance to specify the cost of Corporate Environmental Responsibility (CER) in addition to the basic cost envisaged for the EIA and Environment Management

Plan (EMP).⁶⁸ Furthermore, the National Guidelines on the Economic, Social and Environmental Responsibilities of Business recognise that environmental responsibility is a prerequisite for economic growth and social wellbeing.⁶⁹ However, these guidelines are only voluntary.⁷⁰

c) Human Rights and Climate Change at the regional level: Europe

In recent years several European institutions and bodies have paid increasing attention to the interplay between human rights and climate law and policy. While it is not possible to exhaustively cover all related initiatives and developments, this section flags those that are most relevant, both at the level of the European Union and of the Council of Europe.

Council of Europe

The Council of Europe (COE) is Europe's leading regional human rights organisation and comprises of 47 Member States. Even though the main COE human rights instrument – the **European Convention on Human Rights** – does not include an explicit reference to the right to a healthy environment, the COE has stepped up its activities in this area in recent years.

The Final Declaration of the **High-level Conference on Environmental Protection and Human Rights**, held on 27 February 2020, acknowledges that 'climate change, extinction of species, loss of biodiversity, pollution and the overall degradation of the earth's ecosystems have a profound global impact on the enjoyment of human rights and require the widest possible cooperation by all Council of Europe Member States,' and that 'the protection of the environment and the protection of human rights are interconnected: one cannot be achieved without the other, nor at the expense of the other.'⁷¹ The Declaration further notes that the COE 'has a key role to play in mainstreaming the environmental dimension into human rights and pursue a rights-based approach to environmental protection.'⁷²

In September 2021, the **COE Parliamentary Assembly** passed a resolution⁷³ supporting the adoption of an additional protocol to the European Convention on Human Rights to anchor the right to a safe, clean, healthy and sustainable environment in the European human rights system. However, the COE's Committee of Ministers has the final say on this matter. In the meantime, the COE Parliamentary Assembly has since launched a Parliamentary Network for a Healthy Environment, bringing together parliamentarians from 20 COE members to demand the explicit recognition of right to a healthy environment and take other urgent steps to deal with the climate crisis.⁷⁴

The third edition of the **COE Manual on Human Rights and the Environment**, published in February 2022, summarises the principles emerging from the case law of the European Court of Human Rights, as well as the conclusions and decisions on the same matter adopted by the European Committee of Social Rights, concerning the protection of environmental interests, which are framed in terms of human rights concerns.⁷⁵ The manual also includes a summary of best practices aimed at protecting the environment and respecting the obligations stemming from the European Convention on Human Rights and the European Social Charter. These include:

- Embedding environmental rights in the national policy and legal framework;
- Establishing control over potentially harmful environmental activities;
- Requiring environmental impact assessments (EIAs);
- Ensuring public participation and access to information on environmental matters;
- Making environmental rights judiciable and the environment a public concern;

- Providing education on environmental sustainability;
- Protecting environmental activists and whistle-blowers.⁷⁶

Finally, the **European Court of Human Rights (ECtHR)** has recently been asked to hear four complaints, concerning member States' responsibility for human rights breaches associated with climate change.

Duarte Agostinho and Others v Portugal and Others was brought by a group of six Portuguese children and young people against Portugal and another 32 COE member States.⁷⁷ The case was taken directly to the ECtHR, without exhausting domestic remedies. The applicants claim that the respondent States have breached their human rights protected by the ECHR, including the right to life (Article 2), by failing to adopt urgent deep cuts to greenhouse gas emissions which are necessary to comply with the Paris Agreement. They point to the increased temperatures and lethal forest fires in Portugal, and to the impact of climate change on their lives and their physical and mental health. In addition, the applicants argue that the respondent States have failed to take responsibility for their contribution to greenhouse gas emissions overseas, through activities.

Verein Klimaseniorinnen Schweiz and Others v Switzerland was brought by an association of senior women and four individual applicants against Switzerland.⁷⁸ The association has more than 1,800 members, all women over the age of 64. The applicants complained about breaches of the Swiss constitution resulting from inadequate climate policies, which do not adequately address the risk of heat related deaths, which occur more frequently in older people, particularly older women. Their application to the ECtHR follows domestic judicial proceedings, in which the Swiss highest court rejected the applicants' complaint.⁷⁹

Mex M v Austria was lodged by an individual applicant, after an unsuccessful appeal to the Austrian Supreme Court.⁸⁰ The applicant suffers from Uhthoff's syndrome, which affects most sufferers of multiple sclerosis when temperatures rise above 25 degrees Celsius. He alleges that increasing temperatures will severely affect him, and that Austria is failing to take reasonable and appropriate measures to protect his health and wellbeing.

In *Greenpeace Nordic and Others Against Norway*, two organisations and six individuals have challenged the Norwegian authorities' decision to issue new petroleum production licences in the Barents Sea. The applicants allege violations of the right to respect for private and family life and contest the Norwegian authorities' refusal to set aside the licenses. Their application to the ECtHR also follows domestic proceedings, where Norway's highest court rejected the applicants' complaint.⁸¹

All four complaints remain pending at the time of writing and are awaiting the court's decision over their admissibility. At this stage, the court typically considers whether it can go ahead and hear the merits of the case and rejects the vast majority of applications it receives.⁸²

European Union

The European Union (EU) has adopted a large range of measures to address climate change, most recently as part of its so-called '2030 Climate and Energy Framework' for the decade 2020-2030.⁸³ Relatedly, with the so-called European Green Deal, the EU is adopting a set of legislative measures to ensure that sustainability is better embedded into EU corporate governance frameworks.⁸⁴

First, the EU is planning legislation on **mandatory corporate environmental and human rights due diligence**. The legislative proposal published in 2022 has the objectives to

- (1) improve corporate governance practices to better integrate risk management and mitigation processes of human rights and environmental risks and impacts, including those stemming from value chains, into corporate strategies;
- 2) avoid fragmentation of due diligence requirements in the EU single market and create legal certainty for businesses and stakeholders as regards expected behaviour and liability;
- (3) increase corporate accountability for adverse impacts, and ensure coherence for companies regarding obligations under existing and proposed EU initiatives on responsible business conduct;
- (4) improve access to remedies for those affected by adverse human rights and environmental impacts of corporate behaviour;
- (5) complement other measures in force or proposed, which directly address some specific sustainability challenges or apply in some specific sectors, mostly within EU.⁸⁵

The proposal now needs to be scrutinised by other EU institutions, as part of the EU law-making process. Civil society organisations have criticised it for targeting only a small percentage of EU-operating businesses and for restricting victims' access to justice.⁸⁶ In the meantime, a few European States have already passed national legislation on due diligence, including France and Germany, whereas others, including Austria, Belgium and the Netherlands, announced that they would do so.

In 2021 the European Commission also published a legislative proposal to introduce **mandatory due diligence for products sold on the EU market to make sure they are not linked to deforestation or forest degradation**.⁸⁷ The proposed regulation suggests requiring that products sold into the EU internal market comply with labour, environmental and human rights laws applicable in the country of production.

The EU is also considering a **Corporate Sustainability Reporting Directive**, which is set to introduce more detailed reporting, as well as a requirement to report according to mandatory EU sustainability reporting standards.⁸⁸ The proposal published by the European Commission includes requirements to provide information concerning the respect for the human rights, fundamental freedoms, democratic principles and standards established in the International Bill of Human Rights and other UN human rights conventions, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work and the ILO fundamental conventions and the Charter of Fundamental Rights of the European Union.⁸⁹ The proposal furthermore includes sustainability reporting standards specifying the information that undertakings are to disclose about environmental factors, including information about climate change litigation and adaptation.⁹⁰

At the time of writing, the legislative process on this and other initiatives described above remains ongoing. Instead, the already adopted **EU Taxonomy Regulation**⁹¹ harmonises the criteria for determining whether an economic activity qualifies as environmentally sustainable. These criteria include ensuring alignment with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights.⁹²

The Regulation also includes specific criteria to determine the sustainability of corporate contributions to climate change mitigation and adaptation.⁹³

These recently concluded and ongoing legislative initiatives are symptomatic of the EU's increasing efforts to try and regulate corporate activities, so as to better encompass climate and human rights impacts, not only of actors operating in the EU, but also of their value chains. At the time of writing, it is not possible to assess the precise contents and the impacts of said initiatives. It seems however clear that presently there is an appetite in the region to regulate corporate activities, so as to better take into consideration concerns that sit at the interface between climate change and human rights law and policy.

III. Thematic foci

ASEMHRS21 will be articulated around four thematic foci, which were selected by the Seminar host, in consultation with the meeting's Steering Committee. This section lays out the background to guide discussions during the seminar's four Working Groups, providing examples from ASEM countries.

a) Reinforcing socio-ecological resilience of communities through information and public participation

States obligations under human rights law to protect against environmental harm include procedural obligations to provide information, facilitate participation and provide access to remedies.⁹⁴ These procedural obligations require that States assess environmental impacts on new policies and projects, and that they make such information public.⁹⁵ Obligations associated with the right to take part in the conduct of public affairs require that States facilitate public participation in decision-making over environmental matters, especially by those likely to be affected.⁹⁶

At the national level, these procedural obligations are typically associated with the right to a clean environment, which is recognised in the constitutions of more than 150 States.⁹⁷ At the international level, these obligations are derived from the catalogue of human rights enshrined in human rights treaties.

In Europe, the 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (**Aarhus Convention**) provides more specific obligations in this connection.⁹⁸ All States in the world can ratify the Convention, which so far has been joined by 42 COE member States, as well as by the EU and by Guinea Bissau. The Aarhus Convention includes obligations concerning public authorities' duty to share information on environmental matters,⁹⁹ as well as to enable the general public and affected citizens to participate in environmental decision making.¹⁰⁰ These obligations are at the heart of a rich body of regional jurisprudence,¹⁰¹ which, as further illustrated below, is already expanding to cover climate change related concerns.

In Asia, there is no regional instrument concerning access to environmental information. Efforts towards establishing a regional framework for EIA are underway in ASEAN.¹⁰² A 2019 consultation advocated for a rights-based approach to EIA and recommended the establishment of a Task Force to develop an ASEAN Framework for EIA.¹⁰³

Information

Public access to environmental information enables individual and groups to understand how environmental harm may undermine their rights – such as the rights to life and health – and supports the exercise of other rights – such as the rights to freedom of expression and association.

The UN Special Rapporteur on Human Rights and the Environment has clarified that access to environmental information has two dimensions.¹⁰⁴ First, States should regularly collect, update and disseminate environmental information, including information about the quality of the environment; pollution, waste, chemicals and other potentially harmful substances introduced into the environment; threatened and actual environmental impacts on human health and well-being; and relevant laws and policies. In situations

involving imminent threat of harm to human health or the environment, States furthermore have the specific obligation to ensure that all information that would enable the public to take protective measures is disseminated immediately to all affected persons. Second, States should provide affordable, effective and timely access to environmental information held by public authorities, upon the request of any person or association, without the need to show a legal or other interest. Grounds for refusal of a request should be set out clearly and construed narrowly, in light of the public interest in favour of disclosure. States should also provide guidance to the public on how to obtain environmental information.¹⁰⁵

With specific reference to climate change, **States'** human rights obligations require that they assess the impacts of both climate change and of climate change response measures and that they make such information public. At the same time, **businesses** have a responsibility to publicly disclose their emissions, climate vulnerability and the risk of stranded assets.¹⁰⁶

A number of initiatives at the regional and at the national level have been launched to enable greater and better implementation of state obligations and corporate responsibilities in this area. Best practices include the use of **human rights impact assessments** and **due diligence assessments**, the creation of **safeguards** and other mechanisms that prevent tensions and maximise synergies between human rights and climate change response measures, and the adoption of a rights-based approach for developing, implementing, monitoring, and evaluation climate policies and programmes.¹⁰⁷

Public authorities are increasingly asked to publish information concerning the impacts of their activities and policies on climate change. For example, the Philippines National Environmental Education Plan, initiated with the support of the ASEAN Secretariat, established an information center in Manila to facilitate the dissemination of information on climate change.¹⁰⁸

The contours of public authorities' obligations in this connection are being contested through litigation, For example, in *Greenpeace Luxembourg v. Schneider*, the applicants complained that the public authorities had failed to respond to a request for information concerning how the national sovereign pension fund planned to align investments with the objectives of the Paris Agreement and concerning the climate-related risks associated with said investments.¹⁰⁹ Luxembourg's Administrative Court declared that the Minister in question had not respected the obligation to respond to Greenpeace and that the information requested could be considered as environmental information. The Court, however, found that the Minister did not have an obligation to comply with the Paris Agreement or to possess the information requested by Greenpeace.¹¹⁰

At the same time, national legislation increasingly demands that businesses are more transparent about the human rights and the climate impacts of their operations. National Contact Points (NCP) established under the **Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises** are increasingly asked to look into complaints concerning the corporate duty to provide information. In one of these cases, a Polish NGO lamented lack of information concerning corporate emissions and the financial impacts of insuring coal mining. In response, the Polish NCP recommended that the company disclose the relevant non-financial information and adopt policies that respect human rights.¹¹¹ Similar complaints have been recorded also in Asia. For example, a Japanese NGO has complained that three banks have failed to require the sponsors of

coal-fired power plants to disclose information about the projects' emissions and measures to mitigate these.¹¹² The applicants also lament the banks' failure to exercise their leverage to ensure that communities affected by the power stations were adequately consulted during the project development.

Participation

Under human right law, **States** have an obligation to provide for and facilitate public participation in decision- making related to the environment and take the views of the public into account in the decision-making process. The UN Special Rapporteur on Human Rights and the Environment has clarified that all relevant information about proposals and the related decision-making process should be made available to the affected public in an objective, understandable, timely and effective manner.¹¹³ At the same time **businesses** should entertain, 'meaningful consultation' with potentially affected groups and other stakeholders, and also take into account the findings from impact assessments and take appropriate action.¹¹⁴ With specific reference to climate change, States must facilitate public participation in decision-making over climate change response measures and, at the same time, strengthen the capacity of citizens and communities to participate in climate decision-making.¹¹⁵

In Europe, some countries have experimented with different forms of institutionalised participation in climate governance and policy-making. For example, in 2020 UK has organised '**climate assemblies**', where citizens were invited to make recommendations about what the UK should do to get to net zero emissions by 2050. The assemblies' final report¹¹⁶ has informed parliamentary debates and had an influence on the setting of the UK lawmakers' agenda.¹¹⁷ National-level Climate Assemblies have also undertaken in Austria, Denmark, France and Spain and in many other countries at the local and regional level, including with the support of initiatives such as the Global Assembly Project.¹¹⁸ Some countries have also adopted '**future generations legislation**', which requires law- and policy-makers to assess the long-term impact of their decisions, and to prevent problems affecting particularly the youth and the unborn, such as climate change.¹¹⁹

State obligations concerning public participation are increasingly enforced, by means of human rights complaints, as well as formal litigation. For example, the **Aarhus Convention Compliance Committee** has found both the UK and the EU to have breached their obligations, for having adopted renewable energy law and policy without adequate public participation.¹²⁰ As a result, the EU has recently revised its own legislation to allow for better public scrutiny of EU environmental laws,¹²¹ which is however still subject to limitations concerning state aid measures.¹²²

This type of complaints emphasises the importance of safeguarding procedural and substantive rights, and of protecting individuals and groups who are most likely to be adversely affected by climate change response measures or projects. Going forward, greater understanding of this litigation is necessary to appreciate tensions associated with the transition towards zero carbon societies, and ways in which such tensions may be resolved.¹²³

b) Promoting the full enjoyment of human rights by all persons affected by climate change

The Paris Agreement is the first climate treaty to specifically deal with the matter of loss and damage. Article 8 recognises ‘the importance of averting, minimising and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events.’¹²⁴ The Decision adopting the Paris Agreement States that the Parties agree Article 8 ‘does not involve or provide a basis for any liability or compensation’.¹²⁵ As a result, to date the intergovernmental work on loss and damage has focused on technical studies and information gathering, while reporting under the transparency, review and compliance mechanisms of the Paris Agreement remains voluntary.¹²⁶ This means that the Paris Agreement’s 2023 Global Stocktake is unlikely to include a rigorous analysis of actions and commitments with respect to loss and damage and how they stack up.¹²⁷ Equally, there is no dedicated facility for financing loss and damage. In 2021, the Glasgow Dialogue was launched with the specific aim to ‘discuss the arrangements for the funding of activities to avert, minimize and address loss and damage associated with the adverse impacts of climate change’.¹²⁸ With an end date of June 2024, this initiative has been described by some NGOs as ‘grossly insufficient’.¹²⁹ Some countries have made financial pledges specifically to address loss and damage, partnering with the Climate Change and Resilience Fund.¹³⁰

Under human rights law, all States must undertake measures to protect all persons within their jurisdiction, particularly those most endangered by the negative impacts of climate change, such as those living in vulnerable areas. Specifically, the UN Special Rapporteur on Human Rights and the Environment has noted how state human rights obligations entail taking measures to support people to adapt to changes that are foreseeable – such as rising sea levels or increased floods, wildfires, etc. States have positive duties to adopt adequate adaptation measures, including legislation, and to ensure that these measures do not themselves contribute to human rights violations.¹³¹ States furthermore have positive duties to enforce said legislation, and to provide redress to those suffering from the impacts of climate change. Finally, human rights obligations require that States engage in international cooperation to deal with the impacts of climate change.¹³² These obligations are especially crucial to protect individuals and groups most likely to be affected by climate change, such as women, children, the elderly, Indigenous Peoples, persons with disabilities, the poor, and displaced persons and refugees. The UN Special Rapporteur on Extreme Poverty and Human Rights has underscored the risk that in the future ‘the wealthy pay to escape overheating, hunger, and conflict, while the rest of the world is left to suffer’.¹³³

Not dealing with climate loss and damage within the UN climate regime has shifted the burden of treating this thorny matter on other national and international law systems.¹³⁴ This is evident for example in climate litigation in Asia, which well illustrates the glaring gaps of extant arrangements to deal with the human impacts of climate change.

For example, in 2015 a group of national and international civil society organisations and individuals – led by Greenpeace – complained before the Human Rights Commission of the Philippines about the role of the world’s largest corporate emitters – so-called ‘Carbon Majors’ – in triggering climate change-induced human rights violations.¹³⁵ The petition was filed following the widespread loss of life and harm to property and persons associated with increasingly extreme weather events in the Philippines. Seven years on, the Commission is yet to release its findings.

The issue of human displacement associated with climate change has also been at the centre of a high-profile complaint to the UN Human Rights Committee. In *Teitiota v. New Zealand*,¹³⁶ the applicant claimed that New Zealand should not return him to his country of origin, Kiribati, as the impacts of climate change put him at risk of being exposed to life-threatening events and living conditions. The Committee rejected Mr Teitiota's complaint, finding that the applicant had not sufficiently substantiated his claims that he faced a real risk to life if deported to Kiribati.¹³⁷ Nevertheless, the Committee made additional important observations, clarifying 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'.¹³⁸ It furthermore stated that conditions 'may become incompatible with the right to life with dignity before the risk is realized', which suggests that one should not need to wait for high rates of mortality or generalised violence for the *non-refoulement* obligation to kick in.

These considerations might influence the Committee's decision of another pending complaint lodged by a group of islanders, in relation to climate-induced rising seas, tidal surges, coastal erosion, and inundation of the Torres Strait Islands, North Australia.¹³⁹ The applicants claim that Australia's failure to reduce emissions, combined with the absence of adequate climate adaptation measures, has violated their human rights to life and culture. They claim that climate change will forcibly displace them to mainland Australia, away from their ancestral land, to which their culture is inextricably linked.¹⁴⁰

Finally, the disproportionate impacts of climate change on women have been recognised in *BELA v. Bangladesh*, where a national court explicitly noted the impact of salinity intrusion resulting from climate change on women's access to natural resources.¹⁴¹

These complaints well exemplify how human rights obligations potentially enable applicants to link climatic harms to state obligations and corporate responsibilities. By highlighting principles of universality and non-discrimination, the rights of future generations and of those living outside a state's territory, human rights give a voice to the voiceless. In this connection, human rights often provide the only means to complain about harm produced by climate change and bridge the climate accountability gap left by the Paris Agreement.¹⁴²

This is, however, an area where human rights also present clear limitations. Human rights remedies provide declaratory relief to name and shame abusers, but this makes little difference, if it is not followed by action to prevent further harm and remedy the harm caused. Similarly, human rights remedies offer little, if any, compensatory relief for the impacts of climate change, and limited means to deter further harm and emissions. As in other cases of environmental harm, the viability of litigation reliant on human rights concerning climate change depends on both 'legal and social variables'.¹⁴³ It requires that rules about standing be interpreted in a way to enable individuals or groups to be heard, and an independent and sympathetic judiciary. As section III(d) will discuss in greater detail, while some significant climate litigation milestones have been set, but much more needs to be done to address the plight of those most vulnerable to the impacts of climate change.

While human rights law is limited in its capacity to redress human rights abuses and address their structural roots, it is nevertheless an important complement to counter the significant shortfalls in the treatment of loss and damage in national and international law.

It emphasises States' obligation to adopt legislation, enforce it properly and provide access to adequate remedies and sanction corporate misbehaviour. Given the climate accountability gap left by the Paris Agreement, human rights law and remedies represent an 'essential term of reference' to address justice and equity questions arising in the context of climate change.¹⁴⁴

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

Human rights principles and standards help to clarify the steps that States and corporations must take to ensure not only that climate measures are effective but also that they work for all persons, without discrimination, and that they contribute to fulfil their rights, rather than undermining them.

The concept of a 'just transition' was originally conceived as a programme of support for workers who lost their jobs due to environmental protection policies. Over time, the term has been used by trade unions and intergovernmental organisations more broadly to refer to deliberate efforts to plan for and invest in a transition to environmentally and socially sustainable jobs, sectors and economies. A just transition away from fossil-fuel based economies is faced with challenges, associated with economic restructuring, resulting in the displacement of workers and possible job losses; the need for enterprises, workplaces and communities to adapt to climate change to avoid loss of assets and livelihoods and involuntary migration; and the adverse effects on the incomes of poor households from higher energy and commodity prices.

The **International Labour Organisation (ILO)**'s 'Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All' provide a framework for a systemic and whole-of-economy approach to sustainability that addresses environmental, social and economic issues together¹⁴⁵ - see *Textbox 3*.

Textbox 3

ILO Guidelines for a just transition towards environmentally sustainable economies and societies for all

The following principles should guide the transition to environmentally sustainable economies and societies:

- (a) Strong social consensus on the goal and pathways to sustainability is fundamental. Social dialogue has to be an integral part of the institutional framework for policymaking and implementation at all levels. Adequate, informed and ongoing consultation should take place with all relevant stakeholders.
- (b) Policies must respect, promote and realize fundamental principles and rights at work.
- (c) Policies and programmes need to take into account the strong gender dimension of many environmental challenges and opportunities. Specific gender policies should be considered in order to promote equitable outcomes.
- (d) Coherent policies across the economic, environmental, social, education/training and labour portfolios need to provide an enabling environment for enterprises, workers, investors and consumers to embrace and drive the transition towards environmentally sustainable and inclusive economies and societies.
- (e) These coherent policies also need to provide a just transition framework for all to promote the creation of more decent jobs, including as appropriate: anticipating impacts on employment, adequate and sustainable social protection for job losses and displacement, skills development and social dialogue, including the effective exercise of the right to organize and bargain collectively.
- (f) There is no "one size fits all". Policies and programmes need to be designed in line with the specific conditions of countries, including their stage of development, economic sectors and types and sizes of enterprises.
- (g) In implementing sustainable development strategies, it is important to foster international cooperation among countries. In this context, we recall the outcome document of the United Nations Conference on Sustainable Development (Rio +20), including section VI on means of implementation.

NGOs, like Amnesty International, have expressed support for the ILO Guidelines and consider just transition as a central aspect of human rights- consistent climate action.¹⁴⁶ They emphasise the need to ensure that the transition to decarbonised economies and resilient societies is just and fair for all, in line with States' human rights obligations, and create opportunities to combat existing inequalities both within and between countries, including promoting gender, racial, ethnic, disability and intergenerational equality.

In Europe, some countries have created institutions - like Scotland's **Just Transition Commission** – providing scrutiny and advice on the national government's transition plans, engaging with those groups most likely to be impacted by the transition, and advising on how to ensure these can shape and contribute to just transition planning.¹⁴⁷

Similarly, parties to the UNFCCC have progressively referred to the notion of a just transition. At UNFCCC COP24, 55 heads of state and government adopted the **Solidarity and Just Transition Silesia Declaration**. At UNFCCC COP25, the UN Secretary-General and the ILO Director-General launched the **Climate Action for Jobs Initiative**. This initiative is designed to support countries in implementing their national climate action commitments, while ensuring that jobs, well-being and a just transition remain at the heart of climate responses.

In 2021, ILO's General Conference adopted resolution '**Global Call to Action for a Human-centred Recovery from the COVID-19 Crisis**'. The resolution commits members to enhanced international and regional cooperation, global solidarity and policy coherence across the economic, social, environmental, humanitarian and health domains. The objective is that of enabling States to overcome the crisis and expedite progress towards the achievement of the 2030 Agenda, the Paris Agreement of the United Nations Framework Convention on Climate Change and the Addis Ababa Action Agenda of the Third International Conference on Financing for Development.¹⁴⁸ Yet, an analysis by the International Trade Union Confederation (ITUC) has found that most NDCs submitted by governments under the Paris Agreement lack sufficient ambition, just transition plans and social dialogue.¹⁴⁹

At the same time, international development finance institutions are being increasingly called on to better mainstream human rights consideration in their activities. For example, human rights and development NGOs have called on the **European Investment Bank** to adopt concrete steps to ensure that its funding respects human rights and leads to social and environmental justice, especially in the context of the EU economic recovery plans and the implementation of the European Green Deal.¹⁵⁰ Similarly, in its comments on the review and update of the **Asian Development Bank's** Safeguard Policy Statement, the OHCHR has underscored how a human rights lens and routine access to human rights information can strengthen ADB's due diligence and clients' risk management practices.¹⁵¹

In this context, the EU has launched a **Just Transition Platform**. The platform consists of a single access point and helpdesk providing technical and advisory support, including opportunities, relevant regulatory updates or sector specific initiatives. The Platform also promotes the exchange of best practices among stakeholders involved, including through regular physical and virtual gatherings.¹⁵²

The **C40 Coalition** – an international network of mayors of nearly 100 world-leading cities collaborating to deliver climate action with numerous members in Asia and Europe¹⁵³ –

has adopted a Green and Just Recovery Agenda focusing on addressing climate change and economic and social inequality and on promoting a just transition from fossil fuels to build equitable and sustainable economies.

At the same time, a wave of so-called ‘**just transition litigation**’ has materialised all over the world. This term has recently been used in the literature to describe the growing number of human rights complaints objecting to the way in which climate change response measures are implemented and to their impacts on the enjoyment of human rights.¹⁵⁴

International human rights bodies have received complaints challenging climate change response measures. For example, already in 2009 the UN Committee on the Elimination of Racial Discrimination criticised proposed legislation to reduce forest emissions in Indonesia, cautioning against breaches of human rights associated with traditional land uses, culture, as well as the rights of Indigenous Peoples.¹⁵⁵ The Committee’s observations led to the revision of the proposed legislation.¹⁵⁶

More recently, the **Business & Human Rights Resource Centre** has launched a ‘Human Rights Benchmark of Renewable Energy Companies’.¹⁵⁷ Its investigations reveal that none of the energy companies analysed are currently fully meeting their responsibility to respect the human rights of communities and workers in their operations and supply chains, as defined by the UN Guiding Principles on Business and Human Rights.

For example, Indigenous peoples and civil society organisations have filed a lawsuit relying on French due diligence legislation, asking that energy company Electricité de France (EDF) be ordered to suspend the building of a wind farm in Mexico.¹⁵⁸ In Norway Indigenous Peoples have successfully challenged the decision to approve wind farms on traditional reindeer herding sites, alleging violations of their right to enjoy their own culture.¹⁵⁹ As a result, Norwegian courts have ordered public authorities to reconsider their decision.

This litigation emphasises the importance of safeguarding human rights, and of protecting individuals and groups from the arbitrary and unjust decisions of governments and corporations in the context of the energy transition. Human rights bodies have already underscored the need to give voice to vulnerable groups who are most likely to be adversely affected by climate policies or projects, and, as a result, risk becoming victims of ‘climate apartheid’.¹⁶⁰

- d) Taking stock of national and international human rights regimes to protect against the consequences of climate change

The UN Special Rapporteur on Human Rights and the Environment has underscored how States' human rights obligations require that they ensure the effective enforcement of environmental law against public and private actors.¹⁶¹ In particular, States should also implement training programmes for law enforcement and judicial officers and take effective steps to prevent corruption from undermining the implementation and enforcement of environmental laws. States must regulate business enterprises to protect against human rights abuses resulting from environmental harm and provide for remedies for such abuses¹⁶² – see *Textbox 4*.

Textbox 4

Human Rights Remedies and Corporate Responsibilities

Under the UN Guiding Principles on Business and Human Rights, the corporate responsibility to respect human rights includes that to identify, prevent, mitigate and account for how they address environmental impacts, and enable the **remediation** of any adverse environmental human rights impacts they cause or to which they contribute.¹⁶³ However, in 2019 the UN Working Group on the issue of human rights and transnational corporations and other business enterprises noted how individuals or communities seeking to obtain remedy continue to face significant challenges stemming from multiple and concurrent factors including 'fragmented, poorly designed or incomplete policy and legal regimes on accountability for business-related human rights abuses, a lack of awareness of the scope and operation of accountability regimes and a lack of enforcement'.¹⁶⁴ The Committee further noted how both **judicial and non-judicial institutions** should possess the necessary powers, expertise and resources to be able to provide a 'bouquet of remedies' (preventive, redressive and deterrent) for victims of business-related human rights abuses.

Ongoing UN negotiations on a Legally Binding Instrument to Regulate the Activities of Transnational Corporations and Other Business Enterprises provide an opportunity to bridge this accountability gap. The treaty is meant to complement and go beyond the UN Guiding Principles on Business and Human Rights. It also provides an opportunity to mainstream businesses' human rights and corporate responsibilities.¹⁶⁵ In this context, NGOs have specifically highlighted the widespread direct and indirect human rights abuses associated with the operations of fossil fuel companies.¹⁶⁶

Non-judicial mechanisms – such as national human rights institutions and the national contact points in States that adhere to the OECD Guidelines for Multinational Enterprises, seen under III (a) and (c) – are increasingly used as an avenue to provide access to remedies against corporate human rights abuses. However, these mechanisms are faced with challenges, such as inadequate policy coherence, insufficient funding, a lack of independence and inadequate personnel training. In recognition of the limitations faced by national contact points, in 2019 the labour and employment ministers of the G7 committed to stepping up efforts to strengthen mechanisms providing access to remedies.¹⁶⁷

With specific regard to climate change, **States** must provide access to remedies for climate-related human rights violations. States must furthermore protect individuals and groups against abuse by third parties, including **business enterprises**, by taking steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.¹⁶⁸

Litigation all over the world has become a complementary tool to address climate concerns and put pressure on governments to adopt adequate climate change response measures.¹⁶⁹ On 31 May 2021, the world's most established climate litigation databases¹⁷⁰ listed 112 lawsuits that relied in whole or in part on human rights.¹⁷¹ To put this data in perspective, on the same date the same databases reported 1,841 cases

raising questions of law or fact regarding climate science, climate change mitigation or adaptation, which were brought before international or domestic judicial, quasi-judicial and other investigatory bodies.¹⁷² While both databases are admittedly incomplete, the data they report suggests that presently rights-based climate litigation remains comparatively rare, but have increased dramatically in recent years.

Rights-based climate cases have been predominantly filed in Europe, followed by North America, Latin America, the Asia-Pacific and Africa. Roughly 13% of rights-based complaints have been lodged before international and regional human rights bodies. The vast majority of these lawsuits targeted states, with only 16 cases filed against businesses.¹⁷³

These human rights complaints are typically formulated in two main ways:

- Applicants complain that failure to take adequate climate change response measures has resulted in human rights violations (e.g. a failure to adopt and/or enforce climate change legislation)
- Applicants may complain that certain actions (e.g. permits or licenses to extract fossil fuels or log forests) have led to human rights violations

In most cases applicants and courts rely on states' *substantive* human rights obligations, either to take climate action or to avoid harmful activities, such as oil concessions and logging concessions. As already seen in section III(b), individuals and groups around the world increasingly rely on human rights law and institutions to complain about harms associated with the impacts of climate change.¹⁷⁴

Most rights based climate cases remain pending at the time of writing, but a few have been successful. One of the most notable examples is the famous case *Urgenda Foundation v The State of the Netherlands*,¹⁷⁵ where a group of individuals and NGOs relied in part on human rights law to challenge the Dutch government's inadequate legislation on climate change. The applicants argued that substantive obligations associated with human rights enshrined in international law – namely, the rights to life and to respect for family life – impose upon States a *positive* duty to adopt legislation and other measures to *mitigate* climate change. The Dutch courts heavily relied on substantive obligations under the European Convention of Human Rights to set the contours of the Dutch state's duty of care, finding that it had fallen short. The case resulted in the adoption of new climate law in the Netherlands and has been followed by another 37 cases building on similar litigation strategies in other countries.¹⁷⁶

In Asia too, national courts increasingly rely on constitutional rights to reach similarly important far-reaching decisions, questioning the adequacy of climate change response measures, in light of the State's obligation to respect, protect and fulfil human rights. For example, in *Shrestha v. Office of the Prime Minister et al.*¹⁷⁷ the applicant alleged that the government's failure to address climate change had violated his right to life and the right to healthy environment, as enshrined in the Nepalese Constitution, as well as Nepal's international obligations under the UNFCCC and the Paris Agreement. The Court ordered the government to enact a new climate change law, specifying that the absence of climate legislation infringed the right to a clean environment. Like in the Netherlands, the lawmakers subsequently passed legislation which sets out the institutional arrangements for climate responses in Nepal.¹⁷⁸

Similarly, in *Ashgar Leghari v. Federation of Pakistan et al*, a farmer claimed that the lack of enforcement of existing national policies and strategies concerning climate change adaptation was in breach of the right to life.¹⁷⁹ The court relied on established caselaw recognising the right to a healthy environment in Pakistani law, and specifically applied to climate change related concerns. The Lahore High Court similarly relied on the unwritten Right to a Healthy Environment as recognised by the Pakistani Supreme Court as arising from Article 9 of the Constitution (right to life and liberty) in a climate related case.¹⁸⁰ The Court said that the right to a healthy environment was included in the right to life, as enshrined in the Constitution of Pakistan.¹⁸¹ The court ordered the creation of a Climate Change Commission, with representatives from government, NGOs and experts, tasked to monitor the appropriate implementation of the National Climate Change Policy.¹⁸² The court subsequently required regular update reports from the committee and only terminated it when the government had achieved 66% of the priority items within Pakistan's climate policy framework.

These milestone judgements do not only concern state, but also corporate responsibility for climate action. In *Milieudefensie et al v Royal Dutch Shell*,¹⁸³ a group of activists and NGOs successfully argued that the multinational oil company Shell should reduce its emissions and align with the temperature goal enshrined in the Paris Agreement.¹⁸⁴ The Dutch court construed the corporate duty of care and due diligence under tort law on the basis of human rights obligations associated with the protection of the right to life and the right to privacy, as enshrined in the ECHR. The court found that Shell has a specific duty to prevent the serious risks caused by the emissions they generate.¹⁸⁵ The Court specifically cited 'the widespread international consensus that human rights offer protection against the impacts of dangerous climate change and that corporations must respect human rights'.¹⁸⁶ The Court went as far as saying that the responsibility of business enterprises to respect human rights 'is a global standard of expected conduct for all business enterprises wherever they operate'.¹⁸⁷ These findings are pathbreaking, given that Shell does not have formal obligations under international human rights law.¹⁸⁸ Unlike *Urgenda*, however, this judgement is presently under appeal and may be reversed.

In the meantime, however, similar judicial cases against businesses have been brought elsewhere. For example, in *Notre Affaire à Tous and Others v. Total*, the applicants requested French courts to issue an injunction ordering Total to prevent environmental damage, which they linked to corporate human right duties under French due diligence legislation.¹⁸⁹

IV The way forward

a) Future prospects for better integration of human rights in climate change action

This paper has shown that there are a number of initiatives to mainstream human rights considerations into climate action.

At the **international level**, the creation of a new *UN Special Rapporteur on Human Rights and Climate Change* represents an important milestone. As noted above, the Rapporteur will build on extant work, defining the contours of a human rights-based approach to the race to net zero emissions, and to the complex justice questions associated with it. ASEM partner countries should seize the opportunity to engage with the mandate holder and take heed of the guidance that he/she will develop. At the same time, ongoing UN negotiations on a *Legally Binding Instrument to Regulate the Activities of Transnational Corporations and Other Business Enterprises* potentially provide an important avenue to remedying corporate environmental harms. ASEM partner countries should engage vigorously with this process and support its successful completion. Partners should also continue to engage with *international financial institutions*, ensuring that they build human rights considerations in the allocation and distribution of climate finance.

At the **regional level**, ongoing law- and policy-making initiatives - and most saliently those by ASEAN, the COE and the EU - provide crucial opportunities to mainstream climate change into the work of established human rights bodies and institutions. At the same time, ongoing climate litigation before the ECtHR might establish important benchmarks guiding the development of regional practice on human rights and climate change, fleshing out the contents of state obligations under the ECHR. Similarly, ongoing EU efforts to better integrate and regulate environmental and human rights due diligence might establish new benchmarks and practices to ensure that businesses mainstream climate change and human rights concerns in their operations. Again, ASEM partner countries should engage with these efforts and support ambitious outcomes.

At the **national level**, the initiatives described in this paper - like climate assemblies and just transition commissions - might be replicated and become the focus of capacity building activities in ASEM partners. At the same time, established institutions and processes, like OECD NCPs and national human rights institutions, could be used more systematically to detect and address the human rights impacts of climate change and of climate change response measures. ASEM partner countries should support these bodies in becoming institutionalised pathways to monitor and sanction human rights violations associated with climate change, and with the implementation of climate change response measures. Finally, ASEM partner countries should ensure that their NDCs adequately factor in human rights considerations and ensure that they are prepared in a participatory manner.

b) Recognising new human rights

The right to a clean, healthy and sustainable environment is formulated with various phraseologies in the law of more than 150 States, in regional human rights treaties¹⁹⁰ and in 'sectoral' treaties concerning access to information, justice and public participation in environmental matters.¹⁹¹ A growing body of national and international caselaw and practice has delineated the content and scope of this right and its relationship with other human rights. This practice has been amply reported and analysed by academic literature and has been thoroughly mapped by the Independent Expert on Human Rights and the Environment.

After reviewing a substantial body of this evidence, the UN Special Rapporteur on Human Rights and the Environment has concluded that the right to a clean, healthy and sustainable environment contributes to improved implementation and enforcement of environmental laws.¹⁹² When applied by the judiciary, this right helps to provide a safety net to protect against gaps in statutory laws and creates opportunities for better access to justice.¹⁹³ In numerous ASEM partners, especially in Asia, the right is already frequently invoked to ask for remedies to address the violation of constitutional rights.

At the **international level**, in 2021 the HRC adopted a resolution recognising 'the right to a clean, healthy and sustainable environment' as important for the enjoyment of all human rights.¹⁹⁴ The resolution corroborates the idea that the right to a healthy environment should be universally protected and may therefore embolden progressive judges in the adjudication of environmental disputes all over the world. The UN Special Rapporteur on Human Rights and the Environment has recommended that the HRC *support the recognition of the right in a global instrument, such a UN General Assembly Resolution*.¹⁹⁵ ASEM partner countries should support such a resolution and international efforts towards its adoption and, more generally, support international cooperation and capacity-building for the implementation of the right.

At the **regional level**, while the ASEAN Declaration already recognises the right to a healthy environment, the European Convention on Human Rights does not. ASEM partner countries should therefore support ongoing efforts concerning the adoption of an *additional protocol to the European Convention on Human Rights* to anchor the right to a safe, clean, healthy and sustainable environment in the European human rights system. They should furthermore share good practices in fulfilling human rights obligations relating to the enjoyment of a clean, healthy and sustainable environment, including by exchanging knowledge and ideas, building synergies between the protection of human rights and the protection of the environment.

At the national level, ASEM partner countries should continue to recognise the right to a healthy environment in their domestic laws. Countries that already recognise this right, should adopt policies to support its implementation and protect, respect and fulfil this right when in law- and decision-making processes concerning climate change and climate change response measures.

c) Areas for future collaboration

While there is growing recognition of the importance of human rights in relation to climate change, there is a chasm between the invocation of rights and their actual influence on the substance of climate laws and policies.

At the **international level**, many NGOs have criticised the design and implementation of international cooperation mechanisms designed to facilitate the reduction of emissions and the transfer of climate finance, for excluding Indigenous Peoples and local communities and encroaching on their land rights. As this paper has reported, these criticisms have been levelled also at the mechanisms that meant to enable state parties to Paris Agreement to cooperate in the mitigation of greenhouse gas emissions, while supporting sustainable development. Loss and damage is another area of the multilateral cooperation that would significantly benefit from greater alignment with human rights norms and principles. ASEM partner countries should cooperate at the climate negotiations, to ensure that human rights considerations are mainstreamed into international climate cooperation, ensuring that no perverse outcomes are engendered in the pursuit of climate objectives.

At the **regional level**, ASEM partner countries should be vigilant of the human rights implications of climate policies and measures that are adopted by regional organisations. They should support the mainstreaming of human rights in regional climate action, and they should engage with bodies, like the ADB and the EIB, to ensure that their policies concerning climate finance fully align with human rights concerns.

At the **national level**, ASEM partner countries should ensure that their official development assistance targets climate friendly activities, which align with human rights obligations. They should furthermore be vigilant about extraterritorial human rights violations associated with climate change response measures, and support initiatives aimed to assist those groups that are particularly affected by the impacts of climate change.

V Conclusion

This paper has shown that by now it is widely recognised that human rights obligations, standards and principles have the potential to inform and strengthen international, regional and national law policy making on climate change and their enforcement. Human rights obligations and remedies are increasingly used to put pressure on state and businesses to take more ambitious climate action and to remedy harm caused by climate change. These developments have recently culminated with the creation of a new UN Special Rapporteur on Human Rights and Climate Change, entrusted, amongst others, to delineate the contours of a **human-rights based approach to climate change**.

The primary advantages for adopting such a human-rights based approach are:

- it provides an analytical focus on the human impacts of climate change and of climate change response measures.
- it emphasises that certain segments of the population are disproportionately affected by climate change, especially women, children, the elderly, Indigenous Peoples, minorities, and persons with disabilities.
- it emphasises the importance of public participation, access to information, and access to justice to ensure that climate decision-making processes are fair, transparent, and inclusive.
- it seeks to ensure that climate law and policy realize human rights and abide by relevant international and domestic obligations and standards.
- it translates climate change concerns in terms of obligations owed directly to individuals and communities and provides access to remedies that may not otherwise be available.
- By highlighting principles of universality and non-discrimination, the rights of future generations and of those living outside of a state's territory, a human rights-based approach can contribute to engendering momentum to deal with climate change in more inclusive and equitable way.

Much more could be done going forward. Human rights mechanisms at the national, regional and international level can be used as institutionalised pathways to monitor and sanction human rights violations associated with climate change, and with the implementation of climate change response measures.

The practice reported in this paper shows ways in which the relationship between human rights and climate action may be furthered. ASEM partner countries should ensure greater efforts towards capacity building and knowledge sharing on the matters covered this paper. The global energy transition away from fossil fuels and the race toward net zero emissions by 2050 require mutual learning and cooperation in sharing what works and what does not, including the sharing of lessons learnt through the innovative practices shared in this paper.

References

ACT Alliance EU, 'NGOs Urge the EIB to Raise the Bar on Human Rights' <<https://actalliance.eu/news-post/ngos-urge-the-eib-to-raise-the-bar-on-human-rights/>> accessed 12 February 2022

ADB, 'A Region at Risk: The Human Dimensions of Climate Change in Asia and the Pacific' (Asian Development Bank 2017) <<https://www.adb.org/publications/region-at-risk-climate-change>> accessed 2 March 2022

—, 'Climate Change, Coming Soon to a Court Near You: National Climate Change Legal Frameworks in Asia and the Pacific' (Asian Development Bank 2020) <<https://www.adb.org/publications/national-climate-change-legal-frameworks-asia-pacific>> accessed 11 February 2022

—, 'Climate Change, Coming Soon to a Court Near You: Climate Litigation in Asia and the Pacific and Beyond' (Asian Development Bank 2020) <<https://www.adb.org/publications/climate-litigation-asia-pacific>> accessed 19 April 2021

AICHR, 'Report of the Workshop on Human Rights, Environment and Climate Change Organised by the ASEAN Intergovernmental Commission on Human Rights' (2014)

—, 'Report of the Workshop on Rights-Based Approach to Regional Management Strategy for an Effective Environmental Impact Assessment Organised by the ASEAN Intergovernmental Commission on Human Rights' (2017) <https://aichr.org/wp-content/uploads/2019/04/Report-AICHR-3rd-Environment-Workshop_Yangon_2017.pdf>

—, 'The ASEAN Intergovernmental Commission on Human Rights Annual Report 2021'

Amnesty International, 'Just Transition towards Greener Economies: Submission to the UN Special Rapporteur on Extreme Poverty and Human Rights' (2020) <<https://www.amnesty.org/en/documents/ior40/2503/2020/en/>> accessed 11 February 2022

Anderson MR, 'Human Rights Approaches to Environmental Protection: An Overview' in A Boyle and MR Anderson (eds), *Human rights approaches to environmental protection* (Oxford University Press 1998)

ARAIBA, 'Code of Conduct' <<https://www.araiba.org/code-of-conduct>> accessed 2 March 2022

ASEAN, 'ASEAN Multi-Sectoral Framework for Climate Change: Agriculture and Forestry towards Food and Nutrition Security and Achievement of SDGs (Proposed Integrated Framework for AFCC Component 4)' (2018) <<https://asean.org/wp-content/uploads/2012/05/ASEAN-Multisectoral-Framework-for-climate-change.pdf>>

—, 'ASEAN Joint Statement on Climate Change to the 26th Session of the Conference of the Parties to the United Nations Framework Convention on Climate Change' (2021) <<https://asean.org/wp-content/uploads/2021/10/10.-ASEAN-Joint-Statement-to-COP26.pdf>>

—, ‘Summary of Recommendations Prepared for ASEAN Intergovernmental Commission on Human Rights -United Nations Joint Expert Meeting on Human Rights and the Environment June 2021’ (2021) <<https://www.unescap.org/sites/default/d8files/event-documents/ESCAP%20Summary%20Assessment%20of%20Access%20Rights%20ASEAN.pdf>>

BIMSTEC, ‘Fourth BIMSTEC Summit Declaration, Kathmandu, Nepal (August 30-31, 2018)’ (2018) <https://mea.gov.in/bilateral-documents.htm?dtl/30335/Fourth_BIMSTEC_Summit_Declaration_August_3031_2018> accessed 2 March 2022

Business & Human Rights Resource Centre, ‘Renewable Energy & Human Rights Benchmark’ (Elsevier 2009) <<https://linkinghub.elsevier.com/retrieve/pii/B9780080449104090040>> accessed 9 September 2021

—, ‘Renewable Energy & Human Rights Benchmark’ (2021) <<https://www.business-humanrights.org/en/from-us/briefings/renewable-energy-human-rights-benchmark/>>

—, ‘EU Corporate Accountability Draft Directive: Driver of Business Respect for People & Planet or Missed Opportunity?’ (*Business & Human Rights Resource Centre*, 2022) <<https://www.business-humanrights.org/en/blog/eu-corporate-accountability-draft-directive-driver-of-business-respect-for-people-planet-or-missed-opportunity/>> accessed 2 March 2022

CEDAW, ‘Statement of the CEDAW Committee on Gender and Climate Change’ (2009)

—, ‘General Recommendation No. 37: Gender-Related Dimensions of Disaster-Risk Reduction in the Context of Climate Change’ (2018)

CIEL, ‘At COP26, A Failure of Vision, Action, Equity and Urgency’ (*Center for International Environmental Law*) <<https://www.ciel.org/news/at-cop26-a-failure-of-vision-action-equity-and-urgency/>> accessed 24 January 2022

ClientEarth, ‘“Hard-Won Victory” - European Parliament Opens EU Courts to Environmental Defenders’ <<https://www.clientearth.org/latest/press-office/press/hard-won-victory-european-parliament-opens-eu-courts-to-environmental-defenders/>> accessed 8 February 2022

COE, ‘Final Declaration by the Georgian Presidency of the Committee of Ministers’ (2020) <<https://www.coe.int/en/web/human-rights-rule-of-law/final-declaration-by-the-presidency-of-the-committee-of-ministers>> accessed 2 March 2022

—, ‘Combating Inequalities in the Right to a Safe, Healthy and Clean Environment’ (2021) <<https://pace.coe.int/en/files/29523>> accessed 2 March 2022

—, ‘Manual on Human Rights and the Environment’ (2022) <<https://rm.coe.int/manual-environment-3rd-edition/1680a56197>> accessed 4 February 2022

—, ‘PACE Launches a New Network of Parliamentarians to Press for a Healthy Environment’ (2022) <<https://pace.coe.int/en/news/8598/pace-launches-a-new-network-of-parliamentarians-to-press-for-a-healthy-environment>> accessed 2 March 2022

Doelle M and Seck SL (eds), *Research Handbook on Climate Change Law and Loss & Damage* (2021)

—, ‘COP26: Climate Loss & Damage’ (*Global Network on Human Rights and the Environment*) <<https://gnhre.org/climate-change-2/cop26-climate-loss-damage/>> accessed 12 February 2022

Duyck S and others, ‘Human Rights and the Paris Agreement’s Implementation Guidelines: Opportunities to Develop a Rights-Based Approach’ (2018) 12 *Carbon & Climate Law Review* 191

European Center for Constitutional and Human Rights, ‘Case Report: Wind Farm in Mexico - French Energy Firm EDF Disregards Indigenous Rights’ (2020) <https://www.ecchr.eu/fileadmin/Fallbeschreibungen/20201013_Case_report_EDF_EN.pdf> accessed 6 February 2021

European Court of Human Rights, ‘Practical Guide on Admissibility Criteria’ 2021 109

Greenpeace Luxembourg, ‘Administrative judge rules partly in favour of Greenpeace Luxembourg in dispute over the climate-damaging investments of Luxembourg’s sovereign pension fund’ (2019) <<https://www.greenpeace.org/luxembourg/fr/en-press-release/6144/administrative-judge-rules-partly-in-favour-of-greenpeace-luxembourg-in-dispute-over-the-climate-damaging-investments-of-luxembourgs-sovereign-pension-fund/>> accessed 2 March 2022

Hartmann J and Savaresi A, ‘Corporate Actors, Environmental Harms and the Draft Un Treaty on Business and Human Rights: History in the Making?’ [2021] QIL QDI <<http://www.qil-qdi.org/corporate-actors-environmental-harms-and-the-draft-un-treaty-on-business-and-human-rights-history-in-the-making/>> accessed 15 August 2021

‘Human Rights Abuses by Fossil Fuel Companies’ (350.org 2020) <<https://350.org/climate-defenders/>>

Humphreys S, ‘Competing Claims: Human Rights and Climate Harms’, *Human Rights and Climate Change* (Cambridge University Press 2010)

International Labour Organisation, ‘ILO Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All’ (2015) <https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_432859.pdf> accessed 11 February 2022

—, ‘Global Call to Action for a Human-Centred Recovery from the COVID-19 Crisis’ (2021) <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_806092.pdf> accessed 12 February 2022

IPCC, ‘Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change’ (Cambridge University Press 2014)

ITUC, ‘Scorecards: NDCs – Just Transition for Climate Ambition’ <<https://www.ituc-csi.org/scorecards-ndcs>> accessed 12 February 2022

Jodoin S, *Forest Preservation in a Changing Climate: REDD+ and Indigenous and Community Rights in Indonesia and Tanzania* (Cambridge University Press 2017)

Jodoin S, Savaresi A and Wewerinke-Singh M, 'Rights-Based Approaches to Climate Decision-Making' (2021) 52 *Current Opinion in Environmental Sustainability* 45

Knox JH, 'Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment. Individual Report on Global and Regional Environmental Agreements' (Office of the United Nations High Commissioner for Human Rights 2013)
<<http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/MappingReport.aspx>> accessed 14 December 2015

—, 'Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment. Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment Focus Report on Human Rights and Climate Change' (Human Rights Council 2014)
<<https://www.ohchr.org/Documents/Issues/Environment/Mappingreport/ClimateChangeMapping15-August.docx>>

Lewis B, 'Balancing Human Rights in Climate Policies' in Ottavio Quirico and Mouloud Boumghar (eds), *Climate Change and Human Rights: An International and Comparative Law Perspective* (Routledge 2016)

Maher Sattar, Yap Swee Seng, Sarah Muzart, 'SAARC and Human Rights: Looking Back and Ways Forward' (SAARC 2012) <<http://library.nhrc.or.th/ULIB/dublin.php?ID=5934>> accessed 2 March 2022

Markell D and Ruhl JB, 'An Empirical Assessment of Climate Change in The Courts: A New Jurisprudence or Business as Usual?' (2012) 64 *Florida Law Review* 15

Ministry of Corporate Affairs, 'National Guidelines on the Economic, Social and Environmental Responsibilities of Business', (2018)
<https://www.mca.gov.in/Ministry/pdf/DraftNationalGuidelines2018_20062018.pdf>

Ministry of Environment, Forestry and Climate Change, 'Office Memorandum, Corporate Environmental Responsibility, F.No.22-65/2017, IA.III' (2018)
<http://environmentclearance.nic.in/writereaddata/public_display/circulars/OIEBZXVJ_CER%200M%2001052018.pdf>

Mountford H and others, 'COP26: Key Outcomes from the UN Climate Talks in Glasgow' (WRI, 17 November 2021) <<https://www.wri.org/insights/cop26-key-outcomes-un-climate-talks-glasgow>> accessed 3 March 2022

Nolan A, 'Children's Rights and Climate Change at the UN Committee on the Rights of the Child: Pragmatism and Principle in *Sacchi v Argentina*' (*EJIL: Talk!*, 20 October 2021) <<https://www.ejiltalk.org/childrens-rights-and-climate-change-at-the-un-committee-on-the-rights-of-the-child-pragmatism-and-principle-in-sacchi-v-argentina/>> accessed 24 January 2022

Office of the United Nations High Commissioner for Human Rights, 'Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between

Climate Change and Human Rights’ (Office of the United Nations High Commissioner for Human Rights 2009) A/HRC/10/61

—, ‘Memorandum Comments on the Review and Update of the ADB Safeguard Policy Statement’ (2021)

<https://www.ohchr.org/Documents/Issues/Development/DFI/ADB_SPS_29April2021.pdf> accessed 12 February 2022

Pedersen OW, ‘The Janus-Head of Human Rights and Climate Change: Adaptation and Mitigation’ (2011) 80 *Nordic Journal of International Law* 403

SAARC, ‘Thimphu Statement on Climate Change, Sixteenth SAARC Summit (28-29 April 2010)’ (2010) <https://mea.gov.in/Uploads/PublicationDocs/3808_30th-april-2012-bil.pdf>

Saini K, ‘Corporate Environmental Responsibility: An Uncharted Territory in the Indian Environmental Landscape’ (*Bar and Bench*, 2020)

<<https://www.barandbench.com/apprentice-lawyer/corporate-environmental-responsibility-an-uncharted-territory-in-the-indian-environmental-landscape>> accessed 2 March 2022

Savaresi A, ‘The Human Rights Dimension of REDD’ (2012) 21 *Review of European Comparative & International Environmental Law* 102

—, ‘Climate Change and Human Rights: Fragmentation, Interplay and Institutional Linkages’ in Sébastien Duyck, Sébastien Jodoin and Alyssa Johl (eds), *Routledge Handbook of Human Rights and Climate Governance* (Routledge, Taylor & Francis Group 2018) <<https://ssrn.com/abstract=2902662>>

—, ‘Human Rights and the Impacts of Climate Change: Revisiting the Assumptions’ (2021) 11 *Oñati Socio-Legal Series* 231

Savaresi A and Hartmann J, ‘Using Human Rights Law to Address the Impacts of Climate Change: Early Reflections on the Carbon Majors Inquiry’ in Jolene Lin and Douglas Kysar (eds), *Climate Change Litigation in the Asia Pacific* (Cambridge University Press 2020) <<https://papers.ssrn.com/abstract=3277568>> accessed 28 August 2019

Savaresi A and Setzer J, ‘Rights-Based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers’ (2022) 13 *Journal of Human Rights and the Environment* 7

Savaresi A and Wewerinke-Singh M, ‘Friends of the Earth (Netherlands) v Royal Dutch Shell: Human Rights and the Obligations of Corporations in the Hague District Court Decision –’ (31 May 2021) <<https://gnhre.org/2021/05/31/friends-of-the-earth-netherlands-v-royal-dutch-shell-human-rights-and-the-obligations-of-corporations-in-the-hague-district-court-decision/>> accessed 4 June 2021

Setzer J and Higham C, ‘Global Trends in Climate Litigation: 2021 Snapshot.’ (London London School of Economics and Political Science School of Economics 2021) <https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2021/07/Global-trends-in-climate-change-litigation_2021-snapshot.pdf>

UN Special Rapporteur on Extreme Poverty and Human Rights, 'Climate Change and Poverty' (2019) A/HRC/41/39

UN Special Rapporteur on Human Rights and the Environment, 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' (OHCHR 2016) A/HRC/31/52 <<https://undocs.org/A/HRC/31/52>>

—, 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' (OHCHR 2018) A/HRC/37/59

—, 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' (2019) A/74/161 <<https://undocs.org/A/74/161>>

UNEP, 'Principles and Policy Guidance on Children's Rights to a Safe, Clean, Healthy and Sustainable Environment in the ASEAN Region' (2021) <<http://www.unep.org/resources/publication/principles-and-policy-guidance-childrens-rights-safe-clean-healthy-and>> accessed 2 March 2022

United Nations and Regional Environmental Center for Central and Eastern Europe (eds), *The Aarhus Convention: An Implementation Guide* (Second edition, United Nations 2014) <https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf>

UN-REDD Programme, 'Guidelines on Free, Prior and Informed Consent' (2013) <http://www.un-redd.org/Launch_of_FPIC_Guidelines/tabid/105976/Default.aspx> accessed 25 May 2015

Westminster Foundation for Democracy, 'How Has the UK Climate Assembly Impacted Parliament?' (*Westminster Foundation for Democracy*) <<https://www.wfd.org/commentary/how-has-uk-climate-assembly-impacted-parliament>> accessed 8 February 2022

Wewerinke-Singh M, *State Responsibility, Climate Change and Human Rights under International Law* (Hart Publishing 2019)

Endnotes

¹ The 1992 UN Framework Convention on Climate Change (UNFCCC), Article 1, defines climate change as: 'a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.'

² Office of the United Nations High Commissioner for Human Rights, 'Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights' (Office of the United Nations High Commissioner for Human Rights 2009) A/HRC/10/61 16.

³ IPCC, 'Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change' (Cambridge University Press 2014) 811.

⁴ UN Special Rapporteur on Human Rights and the Environment, 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' (2016) A/HRC/31/52 paras 65–68.

⁵ *ibid* 50–64.

⁶ Business & Human Rights Resource Centre, 'Renewable Energy & Human Rights Benchmark' (2021) <<https://www.business-humanrights.org/en/from-us/briefings/renewable-energy-human-rights-benchmark/>>.

⁷ Ole W Pedersen, 'The Janus-Head of Human Rights and Climate Change: Adaptation and Mitigation' (2011) 80 *Nordic Journal of International Law* 403; Barbara Lewis, 'Balancing Human Rights in Climate Policies' in Ottavio Quirico and Mouloud Boumghar (eds), *Climate Change and Human Rights: An International and Comparative Law Perspective* (Routledge 2016); Annalisa Savaresi, 'Climate Change and Human Rights: Fragmentation, Interplay and Institutional Linkages' in Sébastien Duyck, Sébastien Jodoin and Alyssa Johl (eds), *Routledge Handbook of Human Rights and Climate Governance* (Routledge, Taylor & Francis Group 2018).

⁸ Paris Agreement, Preamble.

⁹ See A/HRC/Res/7/23 (2008); A/HRC/Res/10/4 (2009); A/HRC/Res/18/22 (2011); A/HRC/Res/26/27 (2014); A/HRC/Res/29/15 (2015); A/HRC/RES/32/33 (2016); A/HRC/34/20 (2017); A/HRC/RES/38/4 (2018); A/HRC/42/21 (2019); A/HRC/Res/44/7 (2020); A/HRC/Res/47/24 (2021).

¹⁰ Savaresi, 'Climate Change and Human Rights: Fragmentation, Interplay and Institutional Linkages' (n 7) 42.

¹¹ A/HRC/RES/19/10 (2012).

¹² A/HRC/RES/28/11 (2015); A/HRC/RES/37/8 (2018); and A/HRC/RES/46/7 (2021).

¹³ UN Special Rapporteur on Human Rights and the Environment (n 4); UN Special Rapporteur on Human Rights and the Environment, 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' (2019) A/74/161.

¹⁴ UN Special Rapporteur on Human Rights and the Environment (n 4) paras 16–18; UN Special Rapporteur on Human Rights and the Environment (n 13) paras 17–18.

¹⁵ UN Special Rapporteur on Human Rights and the Environment (n 4) paras 16–15.

¹⁶ UN Special Rapporteur on Human Rights and the Environment (n 13) paras 71–72.

¹⁷ More information concerning these OHCHR activities is available at <<https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/UNFCCC.aspx>>

¹⁸ See for example the OHCHR 2020 submission on the Warsaw International Mechanism for Loss and Damage, available at <<https://unfccc.int/sites/default/files/resource/OHCHR%20Input.pdf>>

¹⁹ See for example the OHCHR 2017 submission on the Terms of reference of the Independent Redress Mechanism of the Green Climate Fund, available at <<https://www.ohchr.org/Documents/Issues/ClimateChange/GCF2Feb2017.pdf>>

²⁰ A/HRC/RES/48/14 (2021).

²¹ *Ibid.*, at 2.

²² Sébastien Jodoin, Annalisa Savaresi and Margaretha Wewerinke-Singh, 'Rights-Based Approaches to Climate Decision-Making' (2021) 52 *Current Opinion in Environmental Sustainability* 45.

²³ UNFCCC, article 2.

²⁴ Paris Agreement, article 2.1(a).

²⁵ Glasgow Climate Pact (unreported, 2021), at 21.

²⁶ The Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-Term Cooperative Action Under the Convention, Decision 1/CP.16, UN Doc. FCCC/CP/2010/7/Add.1 (15 March 2011), at 8.

²⁷ *Ibid.* Appendix, at 2(c).

²⁸ See the review of practice in Savaresi, 'Climate Change and Human Rights: Fragmentation, Interplay and Institutional Linkages' (n 7); Jodoin, Savaresi and Wewerinke-Singh (n 22).

-
- ²⁹ UN-REDD Programme, 'Guidelines on Free, Prior and Informed Consent' (2013) <http://www.un-redd.org/Launch_of_FPIC_Guidelines/tabid/105976/Default.aspx> accessed 25 May 2015.
- ³⁰ See e.g., Adaptation Fund, Environmental and Social Policy (2013) 15; and Green Climate Fund, Guiding Framework and Procedures for Accrediting National, Regional and International Implementing Entities and Intermediaries, Including the Fund's Fiduciary Principles and Standards and Environmental and Social Safeguards, GCF/B.07/02 (2014) 1.7.
- ³¹ Paris Agreement, Preamble.
- ³² Paris Agreement, articles 7(5), 11(2), and 12.
- ³³ Annalisa Savaresi and Jacques Hartmann, 'Using Human Rights Law to Address the Impacts of Climate Change: Early Reflections on the Carbon Majors Inquiry' in Jolene Lin and Douglas Kysar (eds), *Climate Change Litigation in the Asia Pacific* (Cambridge University Press 2020); Annalisa Savaresi, 'Human Rights and the Impacts of Climate Change: Revisiting the Assumptions' (2021) 11 *Oñati Socio-Legal Series* 231.
- ³⁴ Decision 1/CP.21, Adoption of the Paris Agreement (2016) FCCC/CP/2015/10/Add.1, 135–136; and Report of the Conference of the Parties on its Twenty-second Session, Held in Marrakech from 7 to 18 November 2016 (2017) FCCC/CP/2016/10, 135.
- ³⁵ Decision 3/CP.23, Establishment of a Gender Action Plan (2018) FCCC/CP/2017/11/Add.1.
- ³⁶ Sébastien Duyck and others, 'Human Rights and the Paris Agreement's Implementation Guidelines: Opportunities to Develop a Rights-Based Approach' (2018) 12 *Carbon & Climate Law Review* 191.
- ³⁷ See for example CIEL, 'At COP26, A Failure of Vision, Action, Equity and Urgency' (*Center for International Environmental Law*) <<https://www.ciel.org/news/at-cop26-a-failure-of-vision-action-equity-and-urgency/>> accessed 24 January 2022.
- ³⁸ See e.g. the NDCs of Bolivia, Brazil, Chad, Chile, Costa Rica, Ecuador, Georgia, Guatemala, Guyana, Honduras, Malawi, Marshall Islands, Mexico, Morocco, Philippines, South Sudan, and Uganda.
- ³⁹ See e.g. the NDCs of Cuba, El Salvador, Indonesia, Nepal, Venezuela, Yemen, and Zimbabwe.
- ⁴⁰ Duyck and others (n 36).
- ⁴¹ A/HRC/Res/7/23, p. 1
- ⁴² Note 9 above.
- ⁴³ A/HRC/Res/44/7, p. 2.
- ⁴⁴ General Comment No. 36 (2018) CCPR/C/GC/36, para 61.
- ⁴⁵ Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016 (2020) CCPR/C/127/D/2728/2016, 9.11 (emphasis added).
- ⁴⁶ General Comment No.15 (2013) CRC/C/GC/15
- ⁴⁷ Decisions adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communications No. 104-108/2019 CRC/C/88/D/104-108/2019 (2021).
- ⁴⁸ *Ibid.*
- ⁴⁹ Aoife Nolan, 'Children's Rights and Climate Change at the UN Committee on the Rights of the Child: Pragmatism and Principle in *Sacchi v Argentina*' (*EJIL: Talk!*, 20 October 2021) <<https://www.ejiltalk.org/childrens-rights-and-climate-change-at-the-un-committee-on-the-rights-of-the-child-pragmatism-and-principle-in-sacchi-v-argentina/>> accessed 24 January 2022.
- ⁵⁰ CEDAW, 'Statement of the CEDAW Committee on Gender and Climate Change' (2009).
- ⁵¹ CEDAW, 'General Recommendation No. 37: Gender-Related Dimensions of Disaster-Risk Reduction in the Context of Climate Change' (2018).
- ⁵² ADB, 'Climate Change, Coming Soon to a Court Near You: National Climate Change Legal Frameworks in Asia and the Pacific' (Asian Development Bank 2020) <<https://www.adb.org/publications/national-climate-change-legal-frameworks-asia-pacific>> accessed 11 February 2022.
- ⁵³ ASEAN Human Rights Declaration, 2012, Art 28(f).
- ⁵⁴ AICHR, 'Report of the Workshop on Human Rights, Environment and Climate Change Organised by the ASEAN Intergovernmental Commission on Human Rights' (2014).
- ⁵⁵ *Ibid.*, 6.
- ⁵⁶ AICHR, 'The ASEAN Intergovernmental Commission on Human Rights Annual Report' (2021).
- ⁵⁷ UNEP, 'Principles and Policy Guidance on Children's Rights to a Safe, Clean, Healthy and Sustainable Environment in the ASEAN Region' (2021) <<http://www.unep.org/resources/publication/principles-and-policy-guidance-childrens-rights-safe-clean-healthy-and>> accessed 2 March 2022.
- ⁵⁸ ASEAN, 'ASEAN Multi-Sectoral Framework for Climate Change: Agriculture and Forestry towards Food and Nutrition Security and Achievement of SDGs (Proposed Integrated Framework for AFCC Component 4)' (2018) <<https://asean.org/wp-content/uploads/2012/05/ASEAN-Multisectoral-Framework-for-climate-change.pdf>>.
- ⁵⁹ ASEAN, 'ASEAN Joint Statement on Climate Change to the 26th Session of the Conference of the Parties to the United Nations Framework Convention on Climate Change' (2021) <<https://asean.org/wp-content/uploads/2021/10/10.-ASEAN-Joint-Statement-to-COP26.pdf>>.

-
- ⁶⁰ BIMSTEC, 'Fourth BIMSTEC Summit Declaration, Kathmandu, Nepal (August 30-31, 2018)' (2018) <https://mea.gov.in/bilateral-documents.htm?dtl/30335/Fourth_BIMSTEC_Summit_Declaration_August_3031_2018> accessed 2 March 2022.
- ⁶¹ SAARC, 'Thimphu Statement on Climate Change, Sixteenth SAARC Summit (28-29 April 2010)' (2010) <https://mea.gov.in/Uploads/PublicationDocs/3808_30th-april-2012-bil.pdf>.
- ⁶² SAARC Social Charter (2004), article I.3.
- ⁶³ Maher Sattar, Yap Swee Seng, Sarah Muzart, 'SAARC and Human Rights: Looking Back and Ways Forward' (SAARC 2012) <<http://library.nhrc.or.th/ULIB/dublin.php?ID=5934>> accessed 2 March 2022.
- ⁶⁴ ADB, 'A Region at Risk: The Human Dimensions of Climate Change in Asia and the Pacific' (Asian Development Bank 2017) <<https://www.adb.org/publications/region-at-risk-climate-change>> accessed 2 March 2022.
- ⁶⁵ ADB, 'Climate Change, Coming Soon to a Court Near You: Climate Litigation in Asia and the Pacific and Beyond' (Asian Development Bank 2020) <<https://www.adb.org/publications/climate-litigation-asia-pacific>> accessed 19 April 2021.
- ⁶⁶ ARAIBA, 'Code of Conduct' <<https://www.araiba.org/code-of-conduct>> accessed 2 March 2022.
- ⁶⁷ *ibid.*
- ⁶⁸ Ministry of Environment, Forestry and Climate Change, 'Office Memorandum, Corporate Environmental Responsibility, F.No.22-65/2017, IA.III' (2018) <http://environmentclearance.nic.in/writereaddata/public_display/circulars/OIEBZXVJ_CER%200M%2001052018.pdf>.
- ⁶⁹ Ministry of Corporate Affairs, 'National Guidelines on the Economic, Social and Environmental Responsibilities of Business', (2018) <https://www.mca.gov.in/Ministry/pdf/DraftNationalGuidelines2018_20062018.pdf>.
- ⁷⁰ Kunal Saini, 'Corporate Environmental Responsibility: An Uncharted Territory in the Indian Environmental Landscape' (*Bar and Bench*, 2020) <<https://www.barandbench.com/apprentice-lawyer/corporate-environmental-responsibility-an-uncharted-territory-in-the-indian-environmental-landscape>> accessed 2 March 2022.
- ⁷¹ COE, 'Final Declaration by the Georgian Presidency of the Committee of Ministers' (2020) <<https://www.coe.int/en/web/human-rights-rule-of-law/final-declaration-by-the-presidency-of-the-committee-of-ministers>> accessed 2 March 2022.
- ⁷² *ibid.*
- ⁷³ COE, 'Combating Inequalities in the Right to a Safe, Healthy and Clean Environment' (2021) <<https://pace.coe.int/en/files/29523>> accessed 2 March 2022.
- ⁷⁴ COE, 'PACE Launches a New Network of Parliamentarians to Press for a Healthy Environment' (2022) <<https://pace.coe.int/en/news/8598/pace-launches-a-new-network-of-parliamentarians-to-press-for-a-healthy-environment>> accessed 2 March 2022.
- ⁷⁵ COE, 'Manual on Human Rights and the Environment' (2022) <<https://rm.coe.int/manual-environment-3rd-edition/1680a56197>> accessed 4 February 2022.
- ⁷⁶ *ibid.* 183-228.
- ⁷⁷ *Duarte Agostinho and Others v Portugal and 32 other States* (Application no 39371/20) was lodged on 7 September 2020, given priority and communicated to the respondent States on 13 November 2020. For more information, see <<https://youth4climatejustice.org/>> accessed 10 April 2021.
- ⁷⁸ *Verein Klimaseniorinnen v Switzerland* was lodged on 26 November 2020, given priority and communicated to the respondent States on 6 April 2021. For more information and submissions, including submissions, see <<https://klimaseniorinnen.ch>> accessed 6 October 2021.
- ⁷⁹ Swiss Federal Court, Verein KlimaSeniorinnen Schweiz gegen Eidgenössisches Departement für Umwelt, Verkehr, Energie und Kommunikation, Generalsekretariat, Doc 1C_37/2019 (5 May 2020).
- ⁸⁰ *Mex M v Austria* was lodged on 12 April 2021. For more information and the submission see <<https://klimaklage.fridaysforfuture.at/>> accessed 6 October 2021.
- ⁸¹ Norway's Supreme Court, HR-2020-2472-P, (case no. 20-051052SIV-HRET) Appeal against Borgarting Court of Appeal's judgment, 22 December 2020.
- ⁸² European Court of Human Rights, 'Practical Guide on Admissibility Criteria' (2021) 109.
- ⁸³ For more information, see <https://ec.europa.eu/clima/eu-action/climate-strategies-targets/2030-climate-energy-framework_en>.
- ⁸⁴ EU Commission Communication, The European Green Deal, COM/2019/640 Final.
- ⁸⁵ Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937.
- ⁸⁶ Business & Human Rights Resource Centre, 'EU Corporate Accountability Draft Directive: Driver of Business Respect for People & Planet or Missed Opportunity?' (*Business & Human Rights Resource Centre*,

2022) <<https://www.business-humanrights.org/en/blog/eu-corporate-accountability-draft-directive-driver-of-business-respect-for-people-planet-or-missed-opportunity/>> accessed 2 March 2022.

⁸⁷ Proposal for a Regulation on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010

⁸⁸ Proposal for a Directive amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting COM/2021/189 final.

⁸⁹ Ibid. Article 19b.

⁹⁰ Ibid.

⁹¹ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment and amending Regulation (EU) 2019/2088.

⁹² Ibid. Article 18.1

⁹³ Ibid. Articles 10 and 11.

⁹⁴ UN Special Rapporteur on Human Rights and the Environment, 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' (OHCHR 2018) A/HRC/37/59 para 3.

⁹⁵ Ibid., 63

⁹⁶ Ibid., 59

⁹⁷ Ibid., footnote 1.

⁹⁸ The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted in Aarhus, Denmark, on 25 June 1998) was elaborated within the United Nations Economic Commission for Europe (UN/ECE).

⁹⁹ Aarhus Convention, Articles 4 and 5.

¹⁰⁰ Aarhus Convention, articles 6-8.

¹⁰¹ United Nations and Regional Environmental Center for Central and Eastern Europe (eds), *The Aarhus Convention: An Implementation Guide* (Second edition, United Nations 2014) <https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf>; COE (n 75).

¹⁰² AICHR, 'Report of the Workshop on Rights-Based Approach to Regional Management Strategy for an Effective Environmental Impact Assessment Organised by the ASEAN Intergovernmental Commission on Human Rights' (2017) <https://aichr.org/wp-content/uploads/2019/04/Report-AICHR-3rd-Environment-Workshop_Yangon_2017.pdf>.

¹⁰³ ASEAN, 'Summary of Recommendations Prepared for ASEAN Intergovernmental Commission on Human Rights -United Nations Joint Expert Meeting on Human Rights and the Environment June 2021' (2021) <<https://www.unescap.org/sites/default/d8files/event-documents/ESCAP%20Summary%20Assessment%20of%20Access%20Rights%20ASEAN.pdf>>.

¹⁰⁴ UN Special Rapporteur on Human Rights and the Environment (n 94) para 17.

¹⁰⁵ Ibid.

¹⁰⁶ UN Special Rapporteur on Human Rights and the Environment (n 4) paras 13–15.

¹⁰⁷ Jodoin, Savaresi and Wewerinke-Singh (n 22).

¹⁰⁸ National Environmental Education Action Plan 2018-2040, Philippines http://eeid.emb.gov.ph/wp-content/uploads/2020/07/National_Environmental_Education_Action_Plan__NEEAP_.pdf

¹⁰⁹ Greenpeace Luxembourg v. Schneider (2016).

¹¹⁰ Greenpeace Luxembourg, 'Administrative judge rules partly in favour of Greenpeace Luxembourg in dispute over the climate-damaging investments of Luxembourg's sovereign pension fund' (2019) <<https://www.greenpeace.org/luxembourg/fr/en-press-release/6144/administrative-judge-rules-partly-in-favour-of-greenpeace-luxembourg-in-dispute-over-the-climate-damaging-investments-of-luxembourgs-sovereign-pension-fund/>> accessed 2 March 2022.

¹¹¹ *Development YES – Open-Pit Mines NO v. Group PZU S.A.* (2016).

¹¹² *Market Forces v. Sumitomo Mitsui Banking Corporation, Mitsubishi UFJ Financial Group and Mizuho Financial Group* (2018).

¹¹³ UN Special Rapporteur on Human Rights and the Environment (n 94) paras 23–24.

¹¹⁴ UN Guiding Principles on Business and Human Rights, 18–19

¹¹⁵ Jodoin, Savaresi and Wewerinke-Singh (n 22).

¹¹⁶ For more information, see: <<https://www.climateassembly.uk/>>

¹¹⁷ Westminster Foundation for Democracy, 'How Has the UK Climate Assembly Impacted Parliament?' (*Westminster Foundation for Democracy*) <<https://www.wfd.org/commentary/how-has-uk-climate-assembly-impacted-parliament>> accessed 8 February 2022.

¹¹⁸ For more information, see: <<https://globalassembly.org/about-2>>

¹¹⁹ Well-being of Future Generations (Wales) Act 2015.

-
- ¹²⁰ Findings and recommendations with regard to communication ACCC/C/2012/68 concerning compliance by the United Kingdom and the European Union (2013) ECE/MP.PP/C.1/2014/5.
- ¹²¹ Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies PE/63/2021/REV/1 OJ L 356, 8.10.2021, p. 1–7
- ¹²² ClientEarth, “Hard-Won Victory” - European Parliament Opens EU Courts to Environmental Defenders’ <<https://www.clientearth.org/latest/press-office/press/hard-won-victory-european-parliament-opens-eu-courts-to-environmental-defenders/>> accessed 8 February 2022.
- ¹²³ Annalisa Savaresi and Joana Setzer, ‘Rights-Based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers’ (2022) 13 *Journal of Human Rights and the Environment* 7.
- ¹²⁴ Paris Agreement, Article 8.
- ¹²⁵ Decision 1/CP.21 (FCCC/CP/2015/10/Add.1)
- ¹²⁶ Meinhard Doelle and Sara L Seck, ‘COP26: Climate Loss & Damage’ (*Global Network on Human Rights and the Environment*) <<https://gnhre.org/climate-change-2/cop26-climate-loss-damage/>> accessed 12 February 2022.
- ¹²⁷ *ibid.*
- ¹²⁸ Glasgow Climate Pact 25, paras 73-74
- ¹²⁹ Helen Mountford and others, ‘COP26: Key Outcomes from the UN Climate Talks in Glasgow’ (*WRI*, 17 November 2021) <<https://www.wri.org/insights/cop26-key-outcomes-un-climate-talks-glasgow>> accessed 3 March 2022.
- ¹³⁰ For more information see <<https://www.cjrfund.org/>>
- ¹³¹ UN Special Rapporteur on Human Rights and the Environment (n 4) paras 16–18; UN Special Rapporteur on Human Rights and the Environment (n 13) paras 17–18.;
- ¹³² UN Special Rapporteur on Human Rights and the Environment (n 4) paras 13–15.
- ¹³³ UN Special Rapporteur on Extreme Poverty and Human Rights, ‘Climate Change and Poverty’ (2019) A/HRC/41/39 51.
- ¹³⁴ Margaretha Wewerinke-Singh, *State Responsibility, Climate Change and Human Rights under International Law* (Hart Publishing 2019); Savaresi, ‘Human Rights and the Impacts of Climate Change’ (n 33); Meinhard Doelle and Sara L Seck (eds), *Research Handbook on Climate Change Law and Loss & Damage* (2021).
- ¹³⁵ Re Greenpeace Southeast Asia and Others *Petition Requesting Investigation of the Responsibility of the Carbon Majors for Human Rights Violations*, 2015
- ¹³⁶ Human Rights Committee (HRC), *Ioane Teitiota v New Zealand* UN Doc CCPR/C/127/D/2728/2016 (24 October 2019)
- ¹³⁷ *ibid* para 9.14.
- ¹³⁸ *ibid* para 9.4.
- ¹³⁹ *Billy et al v Australia*, Communication No. 3624/2019.
- ¹⁴⁰ *Ibid.*
- ¹⁴¹ *BELA v. Bangladesh*, WP No. 57 of 2010, D-/01-02-2012; Asian Development Bank, *Climate Change, Coming Soon to a Court Near You: National Climate Change Legal Frameworks in Asia and the Pacific* (2020).
- ¹⁴² Savaresi, ‘Human Rights and the Impacts of Climate Change’ (n 33).
- ¹⁴³ MR Anderson, ‘Human Rights Approaches to Environmental Protection: An Overview’ in A Boyle and MR Anderson (eds), *Human rights approaches to environmental protection* (Oxford University Press 1998) 21.
- ¹⁴⁴ Stephen Humphreys, ‘Competing Claims: Human Rights and Climate Harms’, *Human Rights and Climate Change* (Cambridge University Press 2010) 45.
- ¹⁴⁵ International Labour Organisation, ‘ILO Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All’ (2015) <https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_432859.pdf> accessed 11 February 2022.
- ¹⁴⁶ Amnesty International, ‘Just Transition towards Greener Economies: Submission to the UN Special Rapporteur on Extreme Poverty and Human Rights’ (2020) <<https://www.amnesty.org/en/documents/ior40/2503/2020/en/>> accessed 11 February 2022.
- ¹⁴⁷ For more information, see: <<https://www.gov.scot/groups/just-transition-commission/>> accessed 11 February 2022.
- ¹⁴⁸ International Labour Organisation, ‘Global Call to Action for a Human-Centred Recovery from the COVID-19 Crisis’ (2021) <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_806092.pdf> accessed 12 February 2022.
- ¹⁴⁹ ITUC, ‘Scorecards: NDCs - JustTransition for ClimateAmbition’ <<https://www.ituc-csi.org/scorecards-ndcs>> accessed 12 February 2022.
- ¹⁵⁰ ACT Alliance EU, ‘NGOs Urge the EIB to Raise the Bar on Human Rights’ <<https://actalliance.eu/news-post/ngos-urge-the-eib-to-raise-the-bar-on-human-rights/>> accessed 12 February 2022.

¹⁵¹ Office of the United Nations High Commissioner for Human Rights, 'Memorandum Comments on the Review and Update of the ADB Safeguard Policy Statement' (2021) <https://www.ohchr.org/Documents/Issues/Development/DFI/ADB_SPS_29April2021.pdf> accessed 12 February 2022.

¹⁵² For more information see: <https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal/finance-and-green-deal/just-transition-mechanism/just-transition-platform_en>

¹⁵³ For more information see: <https://www.c40.org/?gclid=CjwKCAiA9aKQBhBREiwAyGP5IToMXfto8NLIjh5h2dZs3lzZ4IYYUp82tsKGrUUEXwYyKWdqvPm5XxoCAmUQAvD_BwE>

¹⁵⁴ Savaresi and Setzer (n 123).

¹⁵⁵ See for example Concluding Observations of the Committee on the Elimination of Racial Discrimination: Indonesia, CERD/C/IDN/CO/3, as adopted in Report of the Committee on the Elimination of Racial Discrimination Seventieth session (19 February-9 March 2007) and Seventy-first session (30 July-17 August 2007) General Assembly Official Records, Sixty-second session, Supplement No. 18 (A/62/18).

¹⁵⁶ As reported in Annalisa Savaresi, 'The Human Rights Dimension of REDD' (2012) 21 Review of European Comparative & International Environmental Law 102; Sébastien Jodoin, *Forest Preservation in a Changing Climate: REDD+ and Indigenous and Community Rights in Indonesia and Tanzania* (Cambridge University Press 2017).

¹⁵⁷ Business & Human Rights Resource Centre, 'Renewable Energy & Human Rights Benchmark' (Elsevier 2009) <<https://linkinghub.elsevier.com/retrieve/pii/B9780080449104090040>> accessed 9 September 2021.

¹⁵⁸ European Center for Constitutional and Human Rights, 'Case Report: Wind Farm in Mexico - French Energy Firm EDF Disregards Indigenous Rights' (2020) <https://www.ecchr.eu/fileadmin/Fallbeschreibungen/20201013_Case_report_EDF_EN.pdf> accessed 6 February 2021.

¹⁵⁹ HR-2021-1975-S, (sak nr. 20-143891SIV-HRET), (sak nr. 20-143892SIV-HRET) og (sak nr. 20-143893SIV-HRET)

¹⁶⁰ UN Special Rapporteur on Extreme Poverty and Human Rights (n 133) para 51.

¹⁶¹ UN Special Rapporteur on Human Rights and the Environment (n 94) para 34.

¹⁶² Ibid.

¹⁶³ Ibid, 35

¹⁶⁴ A/74/198, 41.

¹⁶⁵ Jacques Hartmann and Annalisa Savaresi, 'Corporate Actors, Environmental Harms and the Draft UN Treaty on Business and Human Rights: History in the Making?' [2021] QIL QDI <<http://www.qil-qdi.org/corporate-actors-environmental-harms-and-the-draft-un-treaty-on-business-and-human-rights-history-in-the-making/>> accessed 15 August 2021.

¹⁶⁶ See for example Savaresi and McVey 'Human Rights Abuses by Fossil Fuel Companies' (350.org 2020) <<https://350.org/climate-defenders/>>.

¹⁶⁷ A/74/198, 41, 42.

¹⁶⁸ UN Special Rapporteur on Human Rights and the Environment (n 4) paras 13-15.

¹⁶⁹ ADB, 'Climate Change, Coming Soon to a Court Near You' (n 65).

¹⁷⁰ These databases may be accessed at <<http://climatecasechart.com/>> and <<http://www.climate-laws.org>>.

¹⁷¹ Savaresi and Setzer (n 123).

¹⁷² This definition of climate litigation relies on that provided in the widely cited article David Markell and JB Ruhl, 'An Empirical Assessment of Climate Change in The Courts: A New Jurisprudence or Business as Usual?' (2012) 64 Florida Law Review 15.

¹⁷³ Savaresi and Setzer (n 123).

¹⁷⁴ Ibid.

¹⁷⁵ *Urgenda Foundation v The State of the Netherlands* C/09/456689 / HA ZA 13-1396 (2015).

¹⁷⁶ Joana Setzer and Catherine Higham, 'Global Trends in Climate Litigation: 2021 Snapshot.' (London School of Economics and Political Science School of Economics 2021) <https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2021/07/Global-trends-in-climate-change-litigation_2021-snapshot.pdf>.

¹⁷⁷ *Shrestha v. Office of the Prime Minister et al*

¹⁷⁸ Environment Protection Act 2019 (2076).

¹⁷⁹ *Ashgar Leghari v Federation of Pakistan et al.*, Lahore High Court, W.P. No. 25501/2015, Order of 4 September 2015.

¹⁸⁰ *Sheikh Asim Farooq v. Federation of Pakistan*, Writ Petition No.192069 of 2018, Lahore High Court, Judgement of 30 August 2019.

¹⁸¹ *Ashgar Leghari v Federation of Pakistan et al.*, para. 7.

¹⁸² Ibid., para. 11.

¹⁸³ See e.g., *Milieudefensie et al v Royal Dutch Shell plc*, Hague District Court, C/09/571932 / HA ZA 19-379, 2021.

¹⁸⁴ *Friends of the Earth Netherlands et al v Royal Dutch Shell PLC*

¹⁸⁵ Ibid at 4.4.37.

¹⁸⁶ ibid para 4.1.3.

¹⁸⁷ ibid para 4.4.13.

¹⁸⁸ Annalisa Savaresi and Margaretha Wewerinke-Singh, 'Friends of the Earth (Netherlands) v Royal Dutch Shell: Human Rights and the Obligations of Corporations in the Hague District Court Decision -' (31 May 2021) <<https://gnhre.org/2021/05/31/friends-of-the-earth-netherlands-v-royal-dutch-shell-human-rights-and-the-obligations-of-corporations-in-the-hague-district-court-decision/>> accessed 4 June 2021.

¹⁸⁹ *Notre Affaire à Tous and Others v. Total*, 2.4 and 2.3.2.

¹⁹⁰ See Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 14 November 1988, 28 ILM 161, Article 11 of the; African Charter on Human and Peoples' Rights, 27 June 1981, 1520, UNTS 447, Article 24; ASEAN Human Rights Declaration, 18 November 2012, Article 28.

¹⁹¹ Aarhus Convention, Article 1; Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean Escazú, 4 March 2018, LC/CNP10.9/5, particularly Articles 1 and 4; and Convention on the Rights of the Child, 20 November 1989, 1577 UNTS, 3 Article 24.2.(c).

¹⁹² Ibid.

¹⁹³ A/HRC/37/59 para 13.

¹⁹⁴ A/HRC/RES/48/13.

¹⁹⁵ Ibid.