



Human Rights & Climate Change

21st Informal ASEM Seminar on Human Rights

16-18 March 2022 | Luxembourg | Online

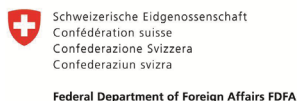


Human Rights and Climate Change

Seminar Proceedings of the
21st Informal ASEM Seminar on Human Rights (ASEMHRS21)

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Executive Summary

The 21st Informal ASEM Seminar on Human Rights discussed the importance of protecting human rights as the world tackles the challenges of climate change. Participants agreed that key guidelines for this are already in place, and it is now time to act. Human rights must be at the heart of all climate action – mitigation, adaptation, and addressing loss & damage. It is an obligation, not an option. The Seminar brought together more than 150 government officials, academics, and civil society experts, representing 47 ASEM Partner countries. It was a hybrid event held over three days in Luxembourg, with some attending physically and others virtually.

BACKGROUND

Climate change caused by human activity is denying or limiting the access of many people to a wide range of human rights. These include the right to adequate housing, food, water, and sanitation, the right to work, and even the right to life. Meanwhile, steps being taken to tackle climate change, such as cutting back on the use of natural resources, can drastically affect people's human rights. The Seminar participants discussed these issues and shared best practices and innovative ideas about how human rights can and should be taken into account in climate change policies and actions.

KEY MESSAGES

- A. Climate change is a pressing global challenge and has serious impact on human rights.
- B. We must address human rights violations that are caused by climate change and the steps taken to deal with it. The most urgent are the issues of loss and damage, and climate change-induced migration and internal displacement.
- C. Human rights treaties and other mechanisms at the national, regional, and international level can be used to monitor and sanction climate change-related human rights violations.
- D. These mechanisms must be strengthened to ensure state and corporate accountability for climate change.
- E. The switch away from fossil fuels and towards net-zero emissions must be managed with human rights in mind to ensure there is a fair and just transition and no one is left behind.

RECOMMENDATIONS

ASEM Member States should:

1. Cooperate to ensure that human rights are taken into consideration in international, regional, and national climate action.
2. Support the recognition of the right to a clean, healthy, and sustainable environment at the national, regional, and international level, including the upcoming recognition by the UN General Assembly.
3. Be alert to the human rights implications of climate policies and measures and ensure that there are no undesirable outcomes in the pursuit of climate objectives.

4. Engage with international **finance bodies** to ensure that their policies and funding criteria fully align with human rights. And scale up climate finance to address human rights violations associated with climate change.
5. Ensure greater accountability of state and **corporate actors** for climate action and train judges and lawyers to support this crucial mission.
6. Ensure that their official **development assistance** is targeted at climate-friendly activities which align with human rights obligations.
7. Note that **nationally determined contributions (NDCs)** submitted under the Paris Agreement contribute to the promotion and protection of human rights. Ensure that NDCs are prepared and implemented in a participatory manner.
8. Ensure that national climate policies and legislation are developed with meaningful and effective **public participation**, especially of vulnerable groups. Use international instruments such as the **Aarhus Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters** to facilitate the sharing of good practices and to protect the right to participate.
9. Recognise and address the entrenched drivers of vulnerability and inequality, and mainstream **gender equality** into climate policies, programmes, and action.
10. Empower **National Human Rights Institutes (NHRIs)** and other similar bodies to address human rights concerns associated with the impacts of climate change and climate change response measures.
11. Support civil society and youth-led initiatives, especially with adequate financing. Make sure civil society and communities participate in climate policymaking and enable them for this with training and capacity building.
12. Protect the rights of **future generations** and empower **youth representatives** in climate change decision-making processes at the national, regional, and international level. Make sure there are official youth delegations at relevant international forums.
13. Protect **environmental human rights defenders (EHRDs)** against harassment and prosecution.
14. Find durable intergovernmental solutions to address climate change-induced human **displacement and migration**. Commit to implementing the **Global Compact for Safe, Orderly and Regular Migration, Global Compact on Refugees**, and the **Nansen Protection Agenda** to address climate displacement.
15. Adopt mechanisms to recognise and integrate the skills of the indigenous communities in climate actions.
16. Engage with the **Special Rapporteur on the protection of human rights in the context of climate change** and support his mandate to promote and exchange views on lessons learned and best practices on human rights-based, gender-responsive, age-sensitive, disability-inclusive, and risk-informed approaches to climate change adaptation and mitigation.

Acknowledgements

In 2021, the United National Human Rights Council officially recognised that access to a healthy environment was a fundamental human right. This achievement, in no small measure, is seen as the culmination of decades-long endeavours by many communities around the world, civil society movements, NGOs, activists, and policymakers who continue to pursue environmental justice – where no individual is made to suffer rights violations as a result of environmental changes beyond their control.

Yet, the repercussions of climate change on the various fundamental rights of people, and how a human rights-based approach to climate change adaptation and mitigation can be implemented, continue to elicit differing opinions from various sectors of the community.

As a means of addressing challenges ensuing from climate change-led human rights violations via informal discourse, nearly 200 delegates gathered to discuss the issue of Human Rights and Climate Change at the 21st Informal ASEM Seminar on Human Rights (ASEMHRS21) held on 16-18 March 2022 as a hybrid event in Luxembourg.

The Seminar assembled an impressive group of experts, academics, and government officials from 47 countries in Asia and Europe. Over the course of three days, they discussed and shared experiences on the most pertinent issues related to this year's Seminar.

The findings and recommendations from the Seminar were invaluable in fostering international cooperation and knowledge-sharing, very much in the spirit of the Asia-Europe Foundation, which are pivotal to addressing the rights violations brought about by environmental degradation, and its impact on social and political stability.

On behalf of the ASEF, I would like to thank each and every participant for making the 21st Informal ASEM Seminar on Human Rights a success. Despite the hybrid nature of the event, we sincerely hope that the Seminar has met its objectives, especially that of providing a forum for exchange and network-building to carry forward the reinforcement of human rights in the course of climate action.

We are especially grateful to our host for ASEMHRS21, the Ministry of Foreign and European Affairs of the Government of the Grand Duchy of Luxembourg, for lending a hand in coordinating and planning the event.

We extend special thanks to our keynote speakers; Ms Michelle BACHELET, United Nations High Commissioner for Human Rights; Dr David R. BOYD, United Nations Special Rapporteur on Human Rights and Environment, and finally; Mr Jean ASSELBORN, Minister of Foreign and European Affairs, Grand Duchy of Luxembourg. Their long-standing commitment to the causes enabled them to lend their expertise to the Seminar, enriching the whole experience.

Our deep gratitude goes to Dr Annalisa SAVARESI for her tireless work as the lead rapporteur and for providing the Seminar with a comprehensive background paper which was instrumental in orienting discussions. We also thank Dr Stellina JOLLY, Dr Linda Yanti SULISTIAWATI and Mr Sebastien DUYCK for their expertise and commitment as rapporteurs and for their contributions to this publication.

We would like to express our sincere appreciation to our four moderators, Dr Sabin BIERI, Professor Robert HARMSEN, Ms Caleen C. OBIAS, and Mr Md. Ekhtekharul ISLAM for their adept facilitation of the working groups. We would also like to thank Mr Eamon GILMORE, European Union's Special Representative for Human Rights; Ms Irum AHSAN, Lawyer and environmental and climate rights specialist; Mr Roberto Eugenio CADIZ, Commissioner from the Commission of Human Rights of the Philippines; and Ms Marie-Claire GRAF, Swiss representative of Youth Constituency of the UNFCCC (YOUNGO) for their insightful contributions to the closing discussion. We are also grateful to Ms Carole DIESCHBOURG, Minister for the Environment, Climate and Sustainable Development of Luxembourg, and Mr Achsanul HABIB, Director for Human Rights and Humanitarian Affairs, Ministry of Foreign Affairs of the Republic of Indonesia, for delivering the closing remarks.

Once again, our sincere gratitude goes to the co-organisers of the Seminar series, the Raoul Wallenberg Institute, the French Ministry for Europe and Foreign Affairs, the Philippine Department of Foreign Affairs, the Federal Department of Foreign Affairs Switzerland, and the Ministry of Foreign Affairs of the People's Republic of China, who continue to provide valuable support and assistance at each Human Rights Seminar. We would also like to convey our deep appreciation to our Steering Committee for providing their invaluable commitment and counsel that ensure each Seminar is able to focus on issues at the forefront of human rights.

Finally, I would like to thank my staff from the Asia-Europe Foundation, in particular: Ambassador Leon FABER, Ms Armi Hannele AARNI, Mr Simon PIOLDI, and Ms Elizabeth DY. Their tireless work and dedication in the planning and execution of ASEMHR21 is truly commendable.



Ambassador Toru MORIKAWA
Executive Director
Asia-Europe Foundation (ASEF)

Keynote Address

HUMAN RIGHTS IS AN OBLIGATION, NOT AN OPTION, IN ALL CLIMATE ACTION

Dr David BOYD, United Nations Special Rapporteur on Human Rights and the Environment

(Keynote address at the 21st Informal ASEM Seminar on Human Rights)

Ladies and gentlemen

Good morning! Delighted to be joining you in person for this important conference!

The latest reports from the Intergovernmental Panel on Climate Change (IPCC) confirm that we are living in a climate emergency. Last August's WGI (Working Group I) report on physical climate science described the unexpectedly rapid intensification of impacts, including extreme weather events. The UN Secretary General said this is code red for humanity.

In February, the IPCC's WGII issued a report on adaptation, outlining 127 key risks to human health and well-being. The UN Secretary General described this report as an atlas of human suffering.

On Canada's west coast, where I live, temperatures in a 'heat dome' reached 50 degrees Celsius. More than 600 people died, mainly older persons and persons living in poverty. Two months later we endured an 'atmospheric river' that inflicted unprecedented volumes of rain, destroying infrastructure at a cost of many billions of dollars.

The global climate crisis is also a human rights crisis. The rights to life, health, food, water, cultural rights, the rights of the child and of course the right to a healthy environment are all being jeopardised and violated on a daily basis. The adverse impacts fall disproportionately upon the shoulders of poor, vulnerable, and marginalised populations.

In my role as special rapporteur, I have witnessed the devastation caused by climate change. I visited Vunidogoloa, a village in Fiji that had to be completely relocated because of rising sea levels, storm surges, and saltwater contamination of their drinking water and agricultural lands. I met other Fijians who lost their homes in tropical cyclones. They were living in rough informal settlements, suffering from typhoid fever outbreaks because of flooding exacerbated by climate change.

I've met pastoralists in Kenya whose livestock starved to death because of drought, pushing people into extreme poverty. I met Indigenous Sami people in northern Norway whose traditional culture based on reindeer herding is jeopardised by warm and erratic winter weather.

It is clear that the people of Fiji, Kenya, and other climate-vulnerable nations and Indigenous people have almost zero responsibility in causing climate change. And yet, they are bearing the costs of losing their homes and livelihoods, relocating, and rebuilding their communities. I share these stories because most of the people at this conference are likely from G20 nations, nations that cause 80%

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of emissions today, and an even higher proportion historically. The G20 must lead the way in cutting emissions, and in paying for both adaptation and loss and damage.

In addition to the terrible COVID-19 pandemic, we face a second pandemic whose effects, if you can imagine it, may be even more devastating. I'm referring to the massive increase in mental health problems, particularly afflicting young people. An article published in *The Lancet* in December described a study of 10,000 youths and their attitudes related to the climate crisis. It found 77% are frightened of the future, 56% believe humanity is doomed, and 40% do not want to bring children into the dystopian world they envision.

Three decades ago, governments negotiated the UN Framework Convention on Climate Change, pledging to prevent dangerous anthropogenic interference with the Earth's climate system.

Twenty-six COPs later, this commitment has not been met. The burning of coal, natural gas, and oil have all skyrocketed. Global GHG emissions have jumped more than 65% since 1992. Humanity is nowhere near achieving the promises of the Paris Agreement.

The Achilles heel of international environmental law is a lack of effective compliance and enforcement mechanisms, resulting in a lack of accountability.

The world's leading scientific bodies are calling for rapid, systemic, and transformative changes.

This is where human rights have a potentially powerful role to play. We know from events of recent centuries that human rights can be a catalyst for transformative changes in society. The abolitionists invoked freedom and equality in successfully ending slavery. Women, the civil rights movement, the anti-apartheid movement, and Indigenous peoples have all used human rights to catalyse societal transformations. Human rights are not an instant, easy, or omnipotent solution, but history proves that rights can be powerful game changers.

I am excited to report that last October, the UN Human Rights Council adopted a resolution recognising, **for the first time at the global level**, that everyone, everywhere, has the right to live in a clean, healthy, and sustainable environment, a right that includes a safe climate.

Although not legally binding, this resolution will be a catalyst for more ambitious action at the national level. We can look back at the 2010 UN resolution on the right to water to see what kind of impacts these resolutions have. A number of countries, including Costa Rica, Fiji, Mexico, Slovenia, and Tunisia added the right to water to their constitutions, their highest and strongest laws. Other nations, from Colombia to France, added this right to legislation.

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And most importantly, nations accelerated efforts to fulfil the right to water. Mexico has extended clean drinking water to more than 1,000 rural communities in the past decade. Slovenia has prioritised securing water for Roma communities living in informal settlements. In Canada, safe drinking infrastructure has been built in partnership with 117 Indigenous communities that suffered without clean water for decades.

Human rights are beginning to spark positive change in climate action:

- Powerful new climate legislation with a HR focus, e.g. in the Philippines, Mexico and Fiji.
- An inspiring fusion of human rights experts and climate experts to develop Uruguay's climate action plan. I note that Uruguay has gone from being primarily dependent on imported fossil fuels for generating electricity to being almost exclusively dependent on domestic renewables.
- A growing number of States incorporating human rights into their Nationally Determined Contributions, including leaders where HR are at the heart of their plans, such as Costa Rica, the Maldives, and the Marshall Islands. I note that Costa Rica generates 99% of its electricity from renewables and prohibits oil and gas development.
- More than 40 nations joining the Powering Past Coal Coalition, pledging to end coal use for electricity by 2030.
- At least 10 states that generate 95-100% of their electricity from renewables – Albania, DRC, Costa Rica, Iceland, Namibia, Norway, Paraguay, Tajikistan, Uruguay, Zambia.
- A growing number of cases where courts have used human rights to hold governments and businesses responsible for taking much more ambitious climate action – in the Netherlands, Germany, Colombia, and more. Two cases in recent month – in Argentina and South Africa – where courts have struck down offshore oil and gas exploration permits as violating the right to a healthy environment because of adverse impacts on whales and other marine mammals.

The bottom line is this. Human rights must be at the heart of all climate action – mitigation, adaptation, and addressing loss & damage. This must be recognised as an obligation, not an option.

We must all seize the moment and use the right to a healthy environment as a battering ram to knock down the walls of resistance that are holding us back from making the rapid, systemic, and transformative changes necessary to address the climate crisis and accelerate progress toward the 2030 Sustainable Development Goals.

The time for talk is over. It's time for action.

Thank you for listening and I hope we can work together in the months and years ahead.

Keynote Address

WE MUST PLACE PEOPLE'S RIGHTS AT THE HEART OF THE RESPONSE TO CLIMATE CHANGE

Michelle BACHELET, UN High Commissioner for Human Rights

(Keynote address at the 21st Informal ASEM Seminar on Human Rights)

Ambassador Morikawa,
Excellencies,
Colleagues and friends,

It is a pleasure to be with you all today. I want to thank the Grand Duchy of Luxembourg, along with the co-organisers, for hosting this seminar, and for your principled leadership to advance international solidarity in our climate crisis.

The ASEM is exactly the kind of multilateral platform that we need at a time when the world is facing multiple human rights challenges, including the triple planetary crises of climate change, pollution, and biodiversity loss.

As the United Nations Secretary-General has outlined in **Our Common Agenda**, multilateralism is key to advancing human rights and sustainable development for all, in a world that is better able to handle interlinked challenges such as climate change, the continuing pandemic, growing hunger, extreme poverty, and injustice.

Environmental degradation is among the greatest threats that humanity faces, and addressing it must be at the core of all policy making. We are running out of time.

In terms of global policymaking, 2021 saw two milestones related to human rights, climate change, and the environment at the Human Rights Council:

The Council recognized that a clean, healthy, and sustainable environment is a universal human right. Its **resolution 48/13** recognised environmental degradation and climate change as interconnected human rights crises, and acknowledged the massive damage inflicted by climate change and environmental destruction on millions of people worldwide.

The Council's resolution 48/14 also created a Special Rapporteur on Human Rights and Climate Change. This will contribute to increased expert knowledge and awareness about the range and severity of human rights impact from climate change. It will support the resilience and adaptive capacities of people in vulnerable situations to respond to these adverse impacts.

Environmental degradation affects a wide range of human rights, including the rights to life, to self-determination, to development, to health, to food, water and sanitation, adequate housing, and cultural rights. It can lead to social tensions and fuel conflict over resources. Its heaviest burdens are shouldered by those who are always least protected from harm – people and communities who are already in vulnerable situations, because of poverty, sex, age, disability, migration status, or any other factor leading to discrimination. This harms all of society.

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Across Asia, Europe and every other region of the world, climate change is already damaging lives, affecting livelihoods, and curtailing rights. In such a context, States have an obligation under international human rights law to take mitigating measures to prevent human rights harms caused by climate change, and to provide people with the means to adapt. They have a responsibility to mobilise the maximum available resources for sustainable, human rights-based development. And they have a duty to support climate action.

Many low-income countries are among the hardest hit – and they cannot do this work alone. International cooperation and assistance for climate change mitigation, adaptation, and loss and damage is essential to address the effects of climate change on those who face its worst impacts.

I therefore welcome recent commitments by a number of States, including Luxembourg, to bolster international climate finance, particularly mitigation and adaptation assistance. Luxembourg's International Climate Finance Strategy for 2021-2025 doubles its international climate funding to 200 million Euro – a significant step in the right direction. In 2020, the European Investment Bank committed 37 per cent of its financing to fight climate change.

At the regional level, the European Climate Law requires all European Union member States to significantly reduce net greenhouse gas emission by 2030 and achieve climate neutrality by 2050. The recently launched ASEAN State of Climate Change Report presents a number of climate action measures needed to move towards the ASEAN 2050 Climate Vision and transit towards net-zero greenhouse gas emissions.

A wide number of countries are taking climate action. In January, the government of Indonesia announced the revocation of 192 palm oil and forestry permits, as part of its efforts to reach its net carbon sink target by 2030.

But far more needs to be done to fulfil existing climate finance commitments, and to meaningfully address the loss and damage that is already being suffered by so many. We are dangerously close to the crucial 1.5° temperature threshold established by the Paris Agreement. If Europe and Asia can work together to meaningfully combat climate change through human rights-based action, they can bring much needed relief to our entire planet.

We need to place people's rights at the heart of the response to climate change, and ensure that no one is left behind. This means prioritising the views, the needs, and the protection of marginalised groups and others in vulnerable situations.

They, like everyone, have a right to meaningful and informed participation in climate policymaking, and to access justice for the harms they suffer. Together with the right to access information about climate change, these are critical elements of the human rights-based approach to policymaking.

According to the Intergovernmental Panel on Climate Change, risks from climate change can be reduced through rights-based approaches that focus on capacity-building, meaningful participation of the most vulnerable groups, and their access to key resources, including financing.

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By empowering the people and communities at the forefront of the climate crisis, human-rights based climate action increases their resilience and effectiveness as agents of change. Women, youth, and indigenous peoples – many of whom act as environmental human rights defenders – are crucial partners in the efforts to protect the environment.

Human Rights Council resolution 40/11 highlighted the critical linkages between the work of environmental human rights defenders and the public's enjoyment of human rights, environmental protection and sustainable development – and it called for States to better protect their lives and rights.

The UN Secretary-General has also called for better protection for environmental human rights defenders, who face increasing threats to their lives and work in numerous countries, often with little hope for accountability. My Office is assisting the development of detailed, practical guidance on this issue. We stand ready to support States in their efforts to address all aspects of the climate crisis through a human rights-based approach.

For example, OHCHR's South-East Asia Regional Office strongly advocates a human rights-based approach in States' climate actions, with a focus on the right to participation. With South East Asia among the world's most lethal regions for environmental human rights defenders, protecting their valuable work is a priority.

Recommendations to be issued by the first dedicated forum for environmental human rights defenders in the Asia-Pacific region – which we were honoured to organise – provide useful guidance regarding accountability for threats or violence against environmental human rights and recognition of the value of their work, among other points.

Children are also profoundly impacted by climate change and environmental damage, and we have partnered with UNEP and UNICEF in publishing **Principles and Policy Guidance on Children's Rights to a Safe, Clean, Healthy and Sustainable Environment in the ASEAN Region**. In May, we will host an Asia Regional Dialogue on Climate Justice for Children, Youth and Future Generations.

Excellencies,

Failure to adopt human rights-based policy to fight climate change will increase people's suffering; fuel greater grievances; undermine development policy; and lead to greater poverty, greater displacement, and higher risks of conflict.

There is a better way. This seminar can make a difference, by contributing to deeper, more meaningful collaboration between Asia and Europe to advance human rights-based environmental action towards our joint goal of stopping the triple planetary crisis.

Please know that my Office is committed to supporting you in this work. I wish you productive and action-oriented discussions.

Thank you.

Keynote Address

RESPECT FOR HUMAN RIGHTS IS VITAL AS WE GET TO GRIPS WITH THE CLIMATE CRISIS

Jean ASSELBORN, Minister of Foreign and European Affairs of the Grand Duchy of Luxembourg
(Keynote address at the 21st Informal ASEM Seminar on Human Rights)

Excellencies,
Ladies and Gentlemen,

It's a great honour for me to welcome you to the Asia-Europe Meeting's 21st Informal Seminar on Human Rights, here in Luxembourg. This gathering of two regions representing 60% of the world's population could not be timelier. In the face of the ongoing war against Ukraine, we must remember that some of the most serious human rights violations are perpetrated during armed conflict. Luxembourg strongly condemns the military aggression against Ukraine and urges Russia to fold back.

While the world has changed over the last two weeks, the geopolitical nature of it has not: Russia remains our neighbour in the East and must therefore ensure a return to peace and stability in the future.

At last year's ASEM Summit, our leaders came together to show their commitment to a strengthened multilateralism between Asia and Europe. They made it clear that no country, no region, can deal with challenges such as the COVID-19 pandemic, protectionism, and climate change alone. This rings particularly true today. Now, more than ever, it is imperative to foster even greater cooperation between our two regions.

While threats to peace and stability and humanitarian crises are undeniably at the top of our agenda, we cannot overlook more underlying concerns. The impacts of climate change continue to have disastrous consequences on people's lives and livelihoods, particularly in Asia. Rising temperatures and changes in the intensity of rainfall, river flow, floods, and droughts are already affecting the livelihoods of millions of people that rely on natural resources. No one is immune to the impact of climate change, pollution, and biodiversity loss.

What is more, climate change is a direct threat to human rights. Last October, the UN Human Rights Council formally recognised the universal human right to a clean, healthy, and sustainable environment, calling on all countries to work together, with all partners involved, to implement this ground-breaking resolution. The Council also established a new Special Rapporteur on Human Rights and Climate change. Luxembourg supported this mandate from the beginning. As we face the drastic effects of the climate crisis, we must consider the protection of every human being's human rights, at any time, in any place.

As a newly elected member of the Human Rights Council, Luxembourg intends to do just that. Along with our three priorities on the support for rule of law, civic space, and human rights defenders; on gender equality and the fight against discrimination; and the protection and promotion of children's

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rights, my country strives to promote sustainable development and climate action based on human rights. Luxembourg is committed to adopting an approach that is guided by solidarity, multilateral cooperation, and adherence to the rights-based international order in all climate action projects.

In that respect, Luxembourg is proud to host this year's Seminar on human rights and climate change. By providing an interregional platform that allows all parties to connect beyond the existing multilateral fora, the ASEM process operates as a backbone to the Human Rights Council's work. Here, we can exchange views and best practices in an informal setting, adopting a whole-of-society approach. This is why I am particularly honoured to welcome delegates from the academic, private, and civil society sectors, who will join the conversation along with State officials and government representatives. Together, they will discuss the resilience of communities through information and public participation and come up with innovative ideas to fight climate change at the international level. They will address the protection of human rights of all persons affected and take a look at the national and international human rights regimes in place to protect against the consequences of climate change.

This cross-sector dialogue is key to the ASEM process. Only through mutual understanding, respect, and cooperation between States and sectors can ASEM's objectives of peace and stability, economic growth, and sustainable partnership be realised.

Luxembourg is a reliable partner on that path. As an outspoken promoter of peace, and through our mandate at the Human Rights Council, we want to ensure that the dialogue happening here results in concrete and concerted actions worldwide, securing benefits for our two regions and beyond.

Ladies and Gentlemen, as the host of this Seminar, Luxembourg wants to highlight the impacts of climate change on human rights. This is a field that remains overlooked even if slowly gaining traction. Indeed, as the lands continue to dry out and the sea levels continue to rise, the inhabitants of the affected regions, often among the poorest on the planet, are increasingly forced to leave their homes. It will be, if it isn't already, a matter of survival – nothing less.

In that regard, Luxembourg is honoured to have been nominated, together with Bangladesh, co-facilitators of the Progress Declaration on the Global Compact for Safe, Orderly and Regular Migration. This Declaration will be an opportunity to assess our achievements so far and to share a vision for the future, embedded in international frameworks such as the 2030 Agenda for Sustainable Development, which will help us to continuously improve the rights and well-being of migrants and host countries. It is therefore with great honour that Luxembourg will present a panel discussion on the situation of human rights in climate change-induced migration later this morning.

Luxembourg is driven by its commitment to protecting human rights, specifically in the area of climate change. As we make our way towards a post-COVID economic recovery, the role of the financial sector is key. It will help channel sustainable investment and finance the green and digital transition. The development of sustainable finance is, therefore, a key priority for Luxembourg.

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In 2017, Luxembourg set up a joint Climate Finance Platform with the European Investment Bank to mobilise and support investment in international climate finance, focusing on climate change mitigation and adaptation. Following in these footsteps, Luxembourg committed €220 million to international climate finance, half of which will go to adaptation to climate change in the most vulnerable countries. This is the highest amount per capita of any country.

Additionally, thanks to the Luxembourg Green Exchange, Luxembourg is the listing centre for half the world's listed green bonds, providing transparency and access to sustainable securities for global investors, accounting for more than 20% of global assets in ESG funds.

As ASEM comes together today, we must continue our common commitment to ambitious climate goals, underlining the strong link between sustainable development, the fight against climate change, and respect for human rights. Especially today, ASEM takes on new importance in creating a bridge of dialogue, solidarity, and trust between our two regions.

Thank you.

SEMINAR REPORT

**THE GUIDELINES TO PROTECT
HUMAN RIGHTS IN CLIMATE
CHANGE ACTION ARE IN PLACE:
IT IS NOW TIME TO ACT**

(Report of the 21st Informal ASEM Seminar on Human Rights)

Introduction

Human induced climate change affects the enjoyment of a wide range of internationally recognised human rights – including the right to life, the right to adequate food, the right to the enjoyment of the highest attainable standard of physical and mental health, the right to adequate housing, the right to self-determination, the right to safe drinking water and sanitation, the right to work, and the right to development. 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. 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 the right to culture, food, access to safe drinking water and sanitation, and to respect for private and family life. 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.

The 21st Informal ASEM Seminar on Human Rights engaged with the topical theme of ‘Human Rights and Climate Change’. The Seminar was organised by the Asia-Europe Foundation (ASEF), the Raoul Wallenberg Institute (nominated by the Swedish Ministry of Foreign Affairs), the French Ministry for Europe and Foreign Affairs, the Philippine Department of Foreign Affairs, the Swiss Federal Department of Foreign Affairs, and the Ministry of Foreign Affairs of the People’s Republic of China. The Seminar brought together over 150 official government representatives and civil society experts, representing 47 ASEM Partner countries, to discuss and share best practices and innovative ideas to better integrate human rights in climate change policies and actions.

The Seminar was held in hybrid format on 16-18 March 2022 and was hosted by the Ministry of Foreign and European Affairs of the Grand Duchy of Luxembourg. A background paper for the Seminar was prepared by Dr Annalisa SAVARESI (University of Eastern Finland).

Participants heard from a number of speakers who reflected on the importance of focusing on human rights when dealing both with the impacts of climate change and of climate change response measures. These included:

- o Ms Michelle BACHELET, United Nations High Commissioner for Human Rights
- o Dr David R. BOYD, United Nations Special Rapporteur on Human Rights and the Environment
- o Mr Jean ASSELBORN, Minister of Foreign and European Affairs, Grand Duchy of Luxembourg
- o Mr Eamon GILMORE, European Union’s Special Representative for Human Rights
- o Ms Irum AHSAN, Lawyer and environmental and climate rights specialist
- o Mr Roberto Eugenio CADIZ, Commissioner, Commission of Human Rights of the Philippines
- o Ms Marie-Claire GRAF, Swiss representative of Youth Constituency of the UNFCCC (YOUNGO)
- o Ms Carole DIESCHBOURG, Minister for the Environment, Climate and Sustainable Development, Grand Duchy of Luxembourg

The Seminar included a hybrid panel discussion on the theme Migration, Human Rights and Climate Change with the following expert speakers:

- o Professor Vitit MUNTARBHORN, Chulalongkorn University
- o Dr Sara VIGIL, Stockholm Environment Institute (SEI)
- o Ms Maria Theresa LAURON, Rosa Luxemburg Stiftung
- o Mr Atle SOLBERG, Platform on Disaster Displacement (PDD)
- o Moderator: Ms Elissa JOBSON, International Crisis Group

The Seminar also convened four working groups, each of which discussed a number of cross-cutting questions and a specific thematic topic.

This report summarises and synthesises the Seminar presentations, discussions, and conclusions. The report includes reports by the four rapporteurs assigned to each of the Seminar working groups:

- o Mr Sébastien DUYCK: Reinforcing socio-ecological resilience of communities through information and public participation
- o Dr Stellina JOLLY: Promoting the full enjoyment of human rights by all persons affected by climate change
- o Dr Linda Yanti SULISTIAWATI: Green, equitable and inclusive: Innovative ideas on international cooperation to address the impacts of climate change on human rights
- o Dr Annalisa SAVARESI: Taking stock of national and international human rights regimes to protect against the consequences of climate change

Key Messages

There is an urgent need to address human rights violations associated with the impacts of climate change, particularly loss and damage, and climate change-induced migration and internal displacement.

- 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.
- There is a need to bolster mechanisms to ensure state and corporate accountability for climate change at the international, regional, and national level.
- There is a need to ensure just transitions away from fossil fuels and towards net-zero emission societies in line with human rights.
- Climate change is a pressing global challenge in the areas of development and the environment and has serious impact on human rights.

General Recommendations

ASEM Member States should:

- Cooperate to ensure that human rights are taken into consideration in **international, regional, and national climate action**
- Support the recognition of the **right to a clean, healthy, and sustainable environment** at the national, regional, and international level, including the upcoming recognition by the UN General Assembly
- Be vigilant of the **human rights implications of climate policies and measures**, ensuring that there are no undesirable outcomes in the pursuit of climate objectives
- Engage with international **finance bodies** to ensure that their policies and funding criteria fully align with human rights. Furthermore, scale up **climate finance** to address human rights violations associated with the impacts of climate change
- Ensure greater accountability of state and **corporate actors** for climate action and train judges and lawyers to support this crucial mission
- Ensure that their official **development assistance** targets climate-friendly activities, which align with human rights obligations
- Note that **nationally determined contributions (NDCs)** submitted under the Paris Agreement contribute to the promotion and protection of human rights. Ensure that NDCs are prepared and implemented in a participatory manner
- Ensure that national climate policies and legislation are developed with meaningful and effective **public participation**, especially of vulnerable groups. Make use of international instruments such as the **Aarhus Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters** to facilitate the sharing of good practices and to protect the right to participate
- Recognise and address the entrenched drivers of vulnerability and inequality, and mainstream **gender equality** into climate policies, programmes, and action
- Empower **National Human Rights Institutes (NHRIs)** and other similar bodies to address human rights concerns associated with the impacts of climate change and climate change response measures
- Support civil society and youth-led initiatives, including with adequate financing, and foster the ability for civil society and communities to participate in climate policymaking through **training and capacity building** for civil society advocates, community leaders, civil servants, and policymakers
- Protect the rights of **future generations** and empower **youth representatives** in climate change decision-making processes at the national, regional, and international level – including through official youth delegate programmes in relevant international forums
- Protect **environmental human rights defenders (EHRDs)** against harassment and prosecution. Facilitate protection for individuals and groups in accordance

General Recommendations

with the **United Nations Environment Programme's (UNEP)** guidelines for defending environmental rights and for solutions to mitigating abuses related to environmental rights

- Find durable intergovernmental solutions to address climate change-induced human **displacement and migration**. Commit to implementing the **Global Compact for Safe, Orderly and Regular Migration**, **Global Compact on Refugees**, and the **Nansen Protection Agenda** to address climate displacement
- Adopt mechanisms to recognise and integrate the **traditional knowledge** and skills of the Indigenous communities in climate actions
- Engage with the **Special Rapporteur on the protection of human rights in the context of climate change** and support his mandate to promote and exchange views on lessons learned and best practices on human rights-based, gender-responsive, age-sensitive, disability-inclusive, and risk-informed approaches to climate change adaptation and mitigation.

WORKING GROUP REPORTS



Working Group 1 Report

Reinforcing socio-ecological resilience of communities through information and public participation¹

The first working group considered the role of public participation and inclusion in strengthening local and national responses to environmental crises such as climate change. The working group participants attempted to identify lessons learned and good practices across a wide range of countries and reviewed the opportunities offered by cross-regional cooperation in these matters.

The topics discussed during the session included:

- Standards for truly effective and meaningful public participation
- The inclusion of all in participatory processes, including that of persons in vulnerable situations
- Linkages between participation and education / awareness-raising as well as the role of youth and children
- Principles and mechanisms for the effective protection of environmental

human rights defenders

- The benefits but also the limits of new technologies in supporting effective participation.

The discussions were informed by cross-cutting questions that participants sought to reflect upon across their responses. The discussions were rooted in the need to address, through public participation, specific vulnerabilities of local communities as well as to respect the rights of all women and of Indigenous Peoples. Participants were also encouraged to reflect upon the consequences of the COVID-19 pandemic. The discussions considered the added value of human rights and the role of States' obligations with regard to participation. The potential role of cross-regional cooperation and forums such as the Asia-Europe Meeting (ASEM) was considered throughout the discussions.

¹ Rapporteur: Sébastien DUYCK, Senior Attorney, Center for International Environmental Law (CIEL)

Lessons learned with regard to public participation and opportunities to capitalise on them in the context of increased global public awareness of climate change

While the importance of public participation has been recognised internationally for decades, including through international frameworks, participants noted that the track record of governmental practices demonstrates mixed commitments and results. Often, an initial commitment from decision-makers to inclusive decision-making is undermined by the lack of sufficient planning and the perceived need to take rapid and decisive action.

In the European context, for instance, discussions related to future policy frameworks have included significant participatory components, for instance in the context of the **European Green Deal** and the conference on the future of Europe. In practice, however, the extent to which these participatory processes are meaningful in shaping final policy outcomes remains questionable. Civil society actors often have the feeling that participation is approached more like a box-ticking exercise. Discussants highlighted that where public participation is mandatory, the impact of these processes is often difficult to discern. The outcome of participatory processes must have policy or legal implications so that decision-makers are compelled to review policies according to the outcomes of consultations.

Effective and meaningful public participation requires implementing some common standards, for instance, the participation of a variety of stakeholders. Also, for public participation to be meaningful, the public must have access to information so they are made aware of projects

in which they will have a stake. The information must be communicated in a timely manner and in the language appropriate for the communities affected. Finally, the ability for members of the public to access legal recourse offers a very strong incentive for decision-makers to respect the right to public participation.

In this context, international legally binding instruments can play a crucial role in protecting the right to public participation. The **UNECE Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters** (Århus Convention) contributes to laying out key principles and standards for effective participation and to sharing relevant experiences across governments in Europe and Central Asia. This convention has demonstrated the added value for governments and stakeholders of such instruments and States in other regions should consider the opportunity to adopt similar regional frameworks.

While the exchange of expertise and experiences across regions is important, one must also consider socio-cultural factors. The participants noted that cultural bias might play a role in facilitating or hindering the ability of members of local communities to interact proactively with governmental representatives. In some countries, decision-makers may be seen as being less appreciative of the expertise and experiences of local communities.

In Europe, several countries have experimented with innovative approaches to addressing the need for consultations with regard to climate policy, such as the **climate assembly** established in **France**. The **Luxembourgish Klimabiergerrot** (Luxembourg Civil Society Climate Council) is another example of such an ad-hoc consultative structure. In this case, the

participants were selected across demographic and socio-economic factors. Participants noted, however, that the outcome of these ad-hoc processes did not always result in significant policy changes. When such mechanisms rely on the random selection of participants, there might not be representation of segments of society with specific vulnerability. In that context, the focus should not necessarily be on securing a large number of participants in consultative processes but on ensuring their diversity and guaranteeing that the right individuals can participate.

Across Asia, there are also many models of experimentation regarding community engagement in climate responses and climate resilience. These practices are increasingly seeking to foster dialogue and mutual recognition between local governments and stakeholders at the community level. Such practices have a particularly important role to play with regard to resilience against risks associated with climate impacts. In **Bangladesh, City Budget Monitoring**

Committee offers one form of participation in local governance fostering the accountability of decision-makers. The participation of young people in such mechanisms is particularly encouraged.

Some good practices can be drawn from both regions with regard to the participation of Indigenous peoples in decision-making. The case of specific requirements regarding the respect of Indigenous peoples' **Free, Prior and Informed Consent (FPIC)** in the context of the extractive industry in **Finland** was highlighted as an example. The model of the **Sámi Council** in **Finland** was highlighted as a strong precedent to ensure the institutionalisation of the representation of Indigenous peoples and the protection of their right to participate in decisions affecting their environment.

Even the existence of consultative mechanisms does not preclude challenges for members of the public seeking to participate effectively in decision-making. In many instances, consultative

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mechanisms are designed to support the participation of stakeholders who are already empowered or involved in decision-making processes, and they do not provide adequate opportunities to lift the voices and perspectives of grassroots representatives or to bridge across social classes. Lack of adequate resources and linguistic barriers might also further hinder the effective participation in existing participatory mechanisms. Furthermore, corruption and the lack of accountability for corporate actors in many countries means that laws providing a legal basis for public participation are not adequately implemented and it can even be dangerous for individuals to claim such rights.

In many instances, CSOs have a critical role to play to enable the effective participation of communities' representatives in decision-making. Participants discussed the example of networks established in **Bangladesh** to lift and amplify the voices of the 60% of the population living in areas particularly vulnerable to climate impacts. The experience of **Chinese** NGOs acting as enablers of public participation through a **VIP Model** (Voices, Ideas, Policy) was mentioned as another example of participatory practice.

Participation in many high-level policy processes is out of reach for many representatives from the communities most impacted – for instance, rural communities – owing to a lack of understanding of the processes as well as to barriers related to accreditation.

The 26th Conference of the Parties to the UN Framework Convention on Climate Change (COP26) was highlighted as one example of these challenges. It was noted that, despite public commitments to ensuring an inclusive process, representatives of civil society faced many hindrances to their meaningful participation at the conference and that the transparency of the

process had been undermined as a result. In such an environment, NGOs have an important role to play to facilitate contact between climate decision-makers and representatives from local communities. Policymakers participating in these forums seldom have the opportunity to be confronted directly with these perspectives. In such governance spaces, it is important for NGOs to rely on the participation of local staff who can actively participate and channel the testimony of the most vulnerable.

Facilitating the participation of those most vulnerable while guaranteeing participatory processes inclusive of all voices

Civil society organisations have an especially important role to play in mobilising the participation of segments of the population in particularly vulnerable situations. This role must be recognised and supported by governments. To guarantee inclusive participatory processes, specific groups of stakeholders should be identified, and measures put in place to consider their constraints and to facilitate their engagement. In relation to the participation of women, for instance, this might require offering opportunities for participation during times compatible with the care work that remains disproportionately undertaken by women. Quotas of representatives from different constituencies would help to ensure balanced representation.

Local media has an important role to play in raising awareness and informing communities about decision-making opportunities. Journalists, including those in community-based media, should be considered key actors with a role to play in promoting public participation.

Non-formal education and youth-led programmes have an essential role to play to complement the information provided through formal education. Limited resources are often the main obstacle to the scaling up of youth-led initiatives promoting climate literacy and empowerment. Access to financial support must be made available for young people so as to favour bottom-up initiatives over top-down approaches.

Promoting the empowerment of the most vulnerable raises the question of who is in a position to act as their representative. Additionally, engaging in consultative processes is more challenging for those struggling on a daily basis. The most marginalised may not feel sufficiently empowered to share their opinions openly with decision-makers. Decision-makers and civil servants often use a semantic language different from that used by communities, further hampering effective exchanges. Consequently, the role of capacity building for both those consulted and those leading the consultation is essential. In particular, decision-makers and civil servants must recognise the added value of 'citizens science' and sometimes 'unlearn' some of their processes and values in order to conduct truly inclusive and participatory processes.

Linkages between public participation and climate education, opportunities to strengthen youth and child participation

The importance of the participation of children and youth in climate-related decision-making is recognised by many governments. In fact, **article 6 of the UN Framework Convention on Climate Change** provides an obligation for States to promote climate education, awareness-raising and public participation with a particular focus on young people. While some governments have worked to integrate systematically climate change in the educational curricula across age groups, several participants mentioned that many countries had yet to make progress towards greater climate literacy through the public education system. This can be done most effectively when climate information is mainstreamed across all relevant education subjects. In this context, due account must be taken of additional mental health hazards related to the burden of eco-anxiety among youths.

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Public participation of children and young people in climate-related decision-making may be appealing to decision-makers but it raises methodological challenges. To avoid any tokenism in interactions between decision-makers and the youth, processes must ensure some accountability to guarantee that input provided by younger generations is being considered. Encouraging the participation of young people and guaranteeing that those who engage can see the impact of their interventions is important to empower new generations of citizens. This calls for capacity building for decision-makers about the effective participation of young people in decision-making.

Fostering cooperation between youth across countries is also essential to increase their personal commitment and understanding of the issues at stake. Exchange programmes between Indian, Nepali and Luxembourgish students were mentioned as particularly impactful, as were web-based partnerships between classes in France and in Bangladesh.

Support and protection of environmental human rights defenders, especially women environmental human rights defenders, and the fight against impunity

Mitigating threats faced by those seeking to exercise their right to public participation and protecting the rights of environmental human rights defenders should be a key priority to strengthen the civil society space. While there is a wide difference between individual countries in Europe and in Asia, harassment of environmental advocates happens on both continents. Women and Indigenous peoples are among those most at risk of being targeted when speaking up for the right of their community to healthy ecosystems and a toxic-free environment. Activism in defence of the environment is often stigmatised and individuals run higher risks as a consequence of being targeted. This is particularly the case when individuals exercise their rights to freedom of expression and of assembly to oppose development projects supported by local governments and corporate actors.

Effective mechanisms must be put in place to end impunity and to provide adequate protection measures for those who are targeted because of their engagement for the environment. **The Rapid Response Mechanism** established under **the Aarhus Convention** is an example. It allows an individual to reach out to governments through the bilateral channel and also to potentially raise public awareness in relation to specific cases. **The European Union Agency for Fundamental Rights**, meanwhile, is seeking to protect more proactively environmental activists who might be exposed to threats. There is, however, no such regional mechanism for the protection of environmental defenders in Asia.

To respond to immediate threats, **foreign embassies** can play an important role in protecting environmental defenders, including by intervening with the government to raise concerns. To promote more long-term changes and address systemic issues, fact-finding missions can prove impactful. The first line of defence for environmental activists targeted because of their engagement remains, however, with civil society networks. Adequate financial support of civil society organisations is therefore essential.

New information technologies, knowledge-sharing platforms, and their impact on public participation

As demonstrated since the beginning of the pandemic, new information technologies can facilitate interactions between stakeholders who might otherwise not be able to interact directly. These technologies can enable a wider range of stakeholders to engage in public participation processes remotely.

But it is essential to recognise the limits of such technologies. Internet literacy and

the generational gap associated with such technologies limit the ability of many to be fully empowered through such approaches to consultative processes. In this context, community centres and grass-roots structures can play an important role in promoting the sharing of know-how that is a prerequisite for the use of new technologies for public participation. To promote the use of technology for public participation, governments can work with established ‘influencers’ – the example of the **mobilisation of YouTubers** by the government in **Pakistan** was, cited as an example.

While new technologies should be used, this could lead to the further marginalising of the views of traditional knowledge holders. Avoiding this requires full recognition of the value of such knowledge among other forms of science, and to use new technologies in support of the diffusion and respect of traditional knowledge. There should be community-led initiatives to respect the rights of traditional knowledge holders.

Other aspects of new technology have to be considered, such as weak internet connectivity in some areas. There is also the danger of misinformation, which means people need to be educated about identifying reliable information.

Finally, the use of the internet raises important privacy and confidentiality risks in many countries. When safe use of the internet cannot be guaranteed, new technologies do not offer a credible alternative to other forms of public participation.

Recommendations

Empowering civil society requires the promotion of meaningful and effective participation.

- Legal standards for public participation must be respected to ensure meaningful

and effective participation – including, for example, a reasonable timeline for input, and an inclusive process taking into account linguistic requirements of the groups affected.

- International instruments such as the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Århus Convention) have an important role to play in facilitating the sharing of good practices among States and protecting the right to participate through an intergovernmental process.
- Meaningful participation requires identifying how civil society input will be fed into the decision-making process and what modalities are in place to ensure that it is meaningfully taken into consideration.
- Participation in decision-making must be meaningful and not considered a symbolic process to validate decisions already made.
- To ensure accountability and to strengthen the confidence of the public in participatory processes, governments should communicate how input provided through such processes was duly taken into consideration and how it actually informed decision-making, for instance by responding to comments provided and highlighting what alternative policy options or information might have been considered as a result.
- Community-led budget monitoring can serve as an example of a mechanism to ensure accountability.

Working with – and strengthening – civil society is key to socio-ecological resilience through grassroots and community-based participation

- To guarantee effective participation of the public, governments should rely on existing independent civil society structures.
- A vibrant civil society sector is a prerequisite for public participation. Consequently, governments should ensure that civil society benefits from adequate resources – both at the domestic level and in third countries through development assistance.
- National and cross-national civil society networks can play a key role in the sharing of good practices among organisations.
- Training and capacity building is essential both for communities and for decision-makers. Civil servants need to learn how to conduct inclusive consultations.

Ensuring inclusive public participation requires an intersectional approach, including the participation of all through a gender lens, the respect for the rights of indigenous peoples, and a focus on the participation of children and youth.

- The full recognition of the value of traditional knowledge and the knowledge of women is a prerequisite for effective participation so that input provided is not unfairly discarded.
- The application of a gender lens at every stage of the process is essential to guarantee the meaningful participation of women.
- Community and youth-led initiatives, as well as independent media and formal

and non-formal education, are essential to overcome age and socio-cultural barriers to participation.

- Youth-led initiatives and structures should be recognised and supported, including through independent national youth council and youth delegate programmes.

New technologies provide opportunities to strengthen public participation, but their limits should also be recognised.

- Addressing the digital divide is a prerequisite to enabling technologies to play a more inclusive role and support public participation. Doing so requires ensuring adequate and reliable access to networks but also promoting internet literacy across segments of society.
- Safety and privacy issues must be recognised and solved adequately so that new technologies can play a role in further promoting public participation without undermining trust in the process and creating new risks for those participating.

The effective protection of environmental human rights defenders – in particular that of Indigenous and women environmental defenders – is imperative in both regions.

- States must uphold as a matter of priority their duty to protect defenders against threats from corporate actors.
- Regional protection mechanisms such as the newly established Rapid Response Mechanism of the Aarhus Convention are essential and should be considered.
- Respect for civil society and accountability for abuses are key to deterring threats to defenders.

- Protecting and strengthening the civil society space is key to enabling NGOs and civil society networks to contribute to the effective protection of defenders.



Promoting the full enjoyment of human rights by all persons affected by climate change²

This working group addressed the questions and the cross-cutting issues in the concept note relating to protecting the vulnerable segments of populations in climate change. These are young and older people, disabled people, the LGBTIQ community, and informal sector workers.

The discussions covered these topics:

- Addressing forced climate migration/displacement
- Promoting indigenous peoples' rights in the fight against climate change
- Protecting environmental rights defenders
- Advancing the interests of populations vulnerable to the effects of climate change

The group discussed three focal areas:

- Implementation gaps in national/regional/international policies and programmes concerning climate vulnerability
- Best practices examples of reducing climate vulnerability and promoting the rights of affected people

- Priorities and recommendations for concrete actions.

Addressing Forced Climate Migration and Revitalisation of International Law

The participants noted the extent and challenges of climate displacement and migration and their impact on the vulnerable and marginalised populations in various jurisdictions. The discussion concentrated on understanding the challenges faced by the climate migrants, the measures taken to slow down the migration, and, finally, the steps for facilitating a dignified relocation. The group members acknowledged the gap in migration governance consisting of bilateral agreements and refugee laws.

Participants pointed to the many challenges that climate-displaced populations face, citing examples from various jurisdictions. For instance, the challenges faced by the Philippines

² Rapporteur: Dr Stellina JOLLY, Associate Professor at the Faculty of Legal Studies, South Asian University (SAU)

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to deal with at least 20 typhoons each year. Sixty percent of the population lives in coastal areas, which exacerbates the Philippines' vulnerability. There is a need for more effective measures, like permanent relocation with adequate protection of human rights. In the absence of permanent relocation with sufficient livelihood options, the affected population would return to their place of origin once the disaster subsided, repeating the cycle of displacement.

Participants also stressed the need to differentiate the types of migration (internal or cross-border), mainly because most migrations currently are internal and temporary. The categorisation is also crucial due to the different protective frameworks. They emphasised the need to evolve robust strategies considering regions' specific and unique vulnerabilities like coastal and mountainous terrains.

Some members highlighted that socio-economic factors influence climate displacement, and

the risk of climate migration contributes to the trafficking of human beings; hence policy responses should be multipronged.

The key strategies and messages discussed focused on the need for more empirical work to gather the lived experience and testimonies of the people about relocation. The participants felt that the examples of resilience shown by nations like **India, the Philippines, and Indonesia** to address climate change challenges offer a rich model which supports the arguments for public participation in decision-making to minimise and manage migration. The group highlighted that the policymakers should consider that most people prefer to stay in their homes linked to their social and cultural identity. Participants also pointed to the need to scale up climate finance by banks and other institutions to provide short-term and long-term loans to assist with relocation and the purchase of land.

Participants observed that adequate

Similarly, the Regional Mobility Framework with dedicated displacement and relocation policies and standard operating procedures operating in the Pacific is an excellent template for scaling up across regions. Another leading initiative in this regard is the Action Plan dealing with the impact of climate change on mobility in the Pacific adopted by the New Zealand Parliament. It has increased the financial support in research, building upon critical actions of averting, delaying, and preparing for such mobility.

opportunities exist in human rights law where countries can consider scenarios in which States cannot return migrants. Measures to secure and protect human rights would also directly protect migrants within a changing climate by affecting their reasons to migrate and enabling migration 'with a human face'. A regional refugee convention can also be leveraged to ensure protection for climate migrants. **The Cartagena Declaration on Refugees (1984)** operating in Latin America, and **Kampala Convention in Africa** are examples that can serve as templates for other regional organisations to craft legal instruments

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Finally, the very complex causes of migration warrant attention. The effort should be to avoid simple-sounding solutions that might lead to harm. The point was discussed in the context of land-sparing initiatives, based on the assumption that human beings are a threat to the environment. Considering the close relationship and dependence of forest communities and Indigenous people on natural resources, such an assumption could be problematic. One participant noted that the drive for profit dominates the socio-economic system. Unless there is a fundamental change in the way

economic structures are addressed, the problem of climate change and migration will not go away. Hence, the need is to address the causes of disasters, not only to reduce the threat from natural elements but also to target and combat marginalisation and inequality. Though there is no magic formula, adequate attention should be paid to analysing the interplay between climate actions and loss and damage.

While acknowledging the governance gap in global legal frameworks on migration and refugees, some members felt that the policy instruments listed in the Global Compact offer a possibility to protect and assist people displaced across boundaries, whether as a result of sudden onset or slow onset of climate-induced disasters and catastrophes. The **Global Compact** adopted by the United Nations General Assembly commands support from countries. Members also stressed the vital effort played by the **Nansen Initiative**, which started as a consultative initiative and was adopted as the Nansen Protection Agenda in 2015. The need is to reaffirm the willingness to commit to implementing the Global Compact and the Nansen Protection Agenda based on averting, minimising, and addressing climate displacement.

The discussion stressed that interdisciplinary research needs to fill the scientific gaps concerning the definition, causes, and protection strategies of climate migration by considering a specific reference for forced migration and evolving a comparative way of monitoring legal standards.

Indigenous people as vital agents in the fight against climate change

The working group recognised the enormous threat climate change poses to Indigenous peoples' livelihoods, cultures, and identities,

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despite the communities' most minuscule contribution in terms of greenhouse emissions. The working group felt that the Indigenous communities could be powerful agents in humanity's fight against climate change. The best practices and legal initiatives existing in many parts of the world to protect the Indigenous population can be replicated or scaled up.

Examples of such practices include:

- Legislation in **Finland** is being amended to make it mandatory to consult with Sámi people on climate matters. The consultative dialogue entered into by the Finland Government with the Sámi community, located in the North of Finland, has brought the Indigenous people to the centre stage of climate governance. The consultation process took place in three different Sámi languages. In addition, at the insistence of the Sámi community, a new Sámi climate council is being established. The council consists of six to seven Sámi members and has representation from climate change and Indigenous researchers. The council will share their traditional knowledge in evolving strategies for fighting climate change. Importantly the Sámi council incorporates gender and geographical factors. At international climate negotiations, Sámi representation is ensured.
- Similarly, efforts have been made in **New Zealand** to engage with the Māori and consider their perspective in climate change responses.
- The **Philippines** has specific legislation for Indigenous people, and one of the characteristics of the provision is for the Indigenous people to be represented in legislative bodies, which they call Indigenous

people mandatory representations.

- The Supreme Court of the Philippines recognised the Indigenous people's rights to use traditional resources (cut and collect trees). Similarly, **Indonesia** categorises the forests into the state, private, and Indigenous.
- Civil society plays a significant role in protecting the people affected by climate change in **Bangladesh**. There is a victim association mainly composed of Indigenous people.

The participants also pointed out that the current understanding of **Disaster Risk Reduction (DRR)** follows Western notions. However, indigenous communities already have their concept of DRR, which they have been implementing for generations. The need is to consider these practices and evaluate the possibility of scaling up in other regions. The working group participants recognised the Indigenous communities' mistrust of the legal and political system given the historical land abuse and exploitation. They emphasised trust-building and communication with the Indigenous communities as the cornerstone of any engagement. Earning trust in these communities is necessary. It is a long-term process that requires time and energy, but it helps long-term relationships.

Protecting environmental human rights defenders and breaking patterns of impunity

The working group expressed concern about the extent of risks environmental human rights defenders (EHRD) face across jurisdictions. The working group members felt that proliferating **Strategic Lawsuits Against Public Participation (SLAPP)** cases threaten EHRD. The members evaluated the practices and

initiatives adopted in jurisdictions to protect EHRD. Such initiatives include:

- Organising training programmes for judicial officers to enhance understanding of SLAPP cases in Southeast Asian jurisdictions. It aims to expand its scope to include enforcement officers and prosecutors.
- The Supreme Court of the **Philippines** has created a liberal separated rule of procedure for environmental causes.
- **Indian** Human Right Commission has a focal point for environmental human rights defenders, and the Philippines Human Rights Commission has investigated the protection options for EHRD.
- **Italy** has stepped up the coordination with civil society to highlight the issue of the protection of EHRD. It includes the creation of an Inter-Ministerial Committee for Human Rights (CIDU) under the Ministry of Foreign Affairs and International Cooperation in charge of submitting the National Action Plan (NAP) on Business and Human Rights to the UN. As part of their preparation for the first NAP for 2016-2021, CIDU organised advisory sessions with several civil society groups, business enterprises, and a network of human rights defenders. The Human Rights Council considered the issue of collaboration and partnership with EHRD an exciting development. The second NAP, which is under preparation, includes monetary mechanisms based on indicators, including the protection of environmental rights defenders, as significant parameters.

Key strategies and messages deliberated by the group focused on the need for more research on the role of EHRD and measures to effectively

protect them from malicious suits and threats to their life. **The United Nations Environmental Programme (UNEP)** guidelines on EHRD promote protection for individuals and groups and provide a valuable framework for policy development by the government and others. There is a need to develop a network of human rights defenders as a rallying point for solidarity and advocacy around issues relating to the protection of environmental rights defenders. There is an excellent Asian network of EHRD where they share information and express solidarity. The members also felt that adequate funding for climate change adaptation plans would be critical in protecting EHRD.

Protecting vulnerable populations from the effects of climate change

Based on the background paper and concept note that enumerated the population categories vulnerable to climate change, the working group addressed the protection strategies. Participants noted that climate change had exacerbated existing patterns of vulnerability and discrimination worldwide. Vulnerable populations often face discrimination in accessing climate information, and their perspectives are excluded from climate actions.

The working group members highlighted the best practice adopted in jurisdictions to integrate the active participation of vulnerable communities in climate governance. For example, in Finland, the councils for elders, young people, and people with disabilities actively engaged and participated in **Finland's** mid-term review of Climate Action Plan. Discussions about transition-related issues are held at a new climate change roundtable, led by Finland's prime minister and members of NGOs. The meetings, which have been held virtually, have gathered over 18,000

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participants so far. The unique **Sign Language Act of Finland** that recognises the aspirations of cultural identity is relevant for Indigenous people and differently abled populations to gather information about climate change measures taken by the government. Italy has undertaken similar consultation and coordination with youth representatives, and the youth is empowered to engage in the dialogue. **Italy** also co-hosted an event, **Youth 4 Climate**, before **COP26**. Gender Impact Assessment for climate policies is obligatory in Finland.

The members observed that the pandemic revealed an increase in the marginalisation of certain groups of people. The same situation will be repeated in the context of climate change as well. It is imperative to educate the youth to make them climate change actors. The members also highlighted the potential of social media and the need to include climate change in the educational curriculum. For example, social media can replicate the model of Greta Thunberg and her ability to mobilise a considerable number of people to generate awareness among people.

Similarly, the requirement is to have a better evacuation plan for disabled persons because of their inherent vulnerability to access humanitarian relief. We need to better dialogue with civil society and have a local-based approach to including these vulnerable people in climate change actions. Similarly, advocacy groups should explore the possibility of collaborating with other human rights or advocacy groups to bring broad-based challenges. At the same time, the participation of the communities at the national level needs to be extended from an international perspective because these are global issues.

Participants identified several areas where action might be taken. National human rights institutions and other administrative bodies could play a heightened role in the promotion and remedial role to address systemic and structural discrimination. Participants emphasised the need for good practice, technological innovation, and education policy measures. There is also a need to raise critical reflection on the extent of the vulnerabilities, with a view to human rights, and to improve levels of protection to ensure the full realisation of human rights for all.

Recommendations

- Explore ways of making better use of existing international, regional, and national laws and frameworks (Global Compact and Nansen initiative) to avert, delay, and address climate displacement. Work collaboratively with international and national bodies to improve the knowledge base regarding climate change impacts and vulnerability and ensure that vulnerable populations and their representative organisations are represented in the formulation of climate policies and actions.
- Ensure that policy response to climate displacement prioritises the assumption that everybody intends to stay home linked to their social and cultural identity.
- Ensure that national policies and legislation addressing issues of climate displacement have adequate participation of vulnerable populations.
- Ensure that any dialogue on climate vulnerability covers different levels of governance, involving extensive consultations at the national and community levels.
- Explore the possibility of scaling up the Regional Mobility Framework, with

dedicated displacement and relocation policies and standard operating procedures, in the regions across the Pacific.

- Encourage empirical research to understand the lived experience and testimonies of the people about their perspectives on relocation and to consider the specific and unique characteristics and vulnerabilities of regions.
- Adopt measures to scale up climate finance by banks, multilateral funds, and bilateral donors to provide short-term and long-term loans to assist relocation of climate displaced populations and ensure that vulnerable groups have access to these schemes.
- Adopt specific legislation or policy initiatives to recognise the rights of Indigenous people and their representation in legislative and institutional bodies. Adopt mechanisms to recognise and integrate the traditional knowledge and skills of the Indigenous communities in climate actions and take necessary steps to build up trust and communication with the Indigenous communities as the cornerstone of engagement with the community.
- Assess how national human rights institutions and other administrative bodies can do more to address systemic and structural discrimination in society. Review the mandates of the national human rights institutions or other similar bodies to ensure that those mandates cover the rights of environmental human rights defenders and other issues of human rights concerning climate change.
- Take measures to develop a network of environmental human rights defenders (EHRD) as a rallying point for solidarity and

advocacy around issues relating to the protection of environmental human rights defenders. There should be adequate funding for climate change adaptation plans as this will help protect EHRDs.

- Take all necessary steps to encourage better dialogue with civil society and have a local-based approach by including vulnerable people in climate change actions.
- Identify the entrenched drivers of vulnerability and gender inequality in order to remove barriers to successful adaptation and adopt an obligatory Gender Impact Assessment for climate policies.
- Consider ways to incorporate climate change into educational curriculums and make climate information available through social media channels in a way that it is accessible for all.
- Take all necessary measures to have a specific evacuation plan for disabled persons due to their inherent vulnerability to accessing humanitarian relief.



Green, equitable and inclusive: Innovative ideas on international cooperation to address the impacts of climate change on human rights³

Working group participants started the discussion with a conversation about just transition. There were different perspectives because of the mix of the group – academics, students, youth representatives, diplomats, and government officials from both developed countries in Europe and developing countries in Asia.

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. **The International Labour Organisation’s (ILO) ‘Guidelines for a Just Transition towards Environmentally Sustainable Economies and Societies for All’** provides a framework for a systemic and whole-of-economy approach to sustainability that addresses

environmental, social, and economic issues together. Developed countries’ perspective on just transition focuses on shifting from the fossil fuel industry to renewable industries and reaching a net-zero society. Developing countries’ perspectives on just transition focus more on the inclusion and participation of the people directly affected by the transition, and how to take advantage of the tools available to engender a just transition. But each perspective has a common understanding, that in just transition it is important that nobody is left behind.

Green development pathways help countries to move away from an economy dependent on fossil fuel. These green development pathways should include human rights approaches in dealing

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with climate impacts to reach a just transition. Fossil fuel industries need to acknowledge their responsibility for the impacts caused by the industry, but also need to be assisted in terms of green development pathways and just transition. Many businesses and industries were hit hard by the pandemic, and they need to be reminded that survival is more sustainable when engaging in green and renewable pathways, rather than getting back to the fossil fuel bandwagon. It is important not to lose focus on the important nexus between climate impact and human rights during the troubled time of the pandemic and war in Europe.

Currently, the mechanisms to integrate human rights issues into the climate change regime are fragmented and incomplete. The working group agreed that the current instruments on climate change are not yet adequate for this. Collaboration and identification of stakeholders, the inclusion of the business sector, youth, and directly impacted communities are necessary

through international cooperation. Gender issues are also a focus that need to be discussed and implemented.

Opinion varies on whether hard law or soft law is needed for this endeavour. Some agree with more stringent and binding measures being enacted and implemented to speed the integration of human rights issues in climate change action, but others think that more flexible instruments such as action plans and strategic plans, even at the lowest level, would compel countries, business sectors, and communities to strive harder for this integration. The working group agreed that both methods are needed when dealing with highly complex issues such as human rights and climate change. In some sense, stringent hard law is needed to create sanctions and deterrence, but more flexible soft law forms are also needed to empower stakeholders to take action. Offering incentives (e.g., a system of points, subsidies, and tax breaks) would be one way to encourage

The working group agreed that both methods are needed when dealing with highly complex issues such as human rights and climate change. In some sense, stringent hard law is needed to create sanctions and deterrence, but more flexible soft law forms are also needed to empower stakeholders to take action.

compliance by certain parties. Businesses play an important role in the transition effort. At this stage, there is no binding treaty so companies are not liable at the international level but can be held accountable at the national level.

The idea of a '**Green Court**' or an '**International Environmental Tribunal**' to settle all environmental issues (including human rights issues in climate impacts) at the international level was also discussed. Many members wondered whether another institution is needed. But the idea of environmental courts and/or tribunals is already in practice at the national level. There are, to date, at least 67 countries with environmental courts and/or tribunals. These courts and tribunals are supposedly better prepared to handle human rights issues in climate impacts since they already have the mandate, expertise, support, and facility to provide justice for environmental cases.

National human rights institutes (NHRI) were discussed as one of the main actors in the integration of human rights issues in climate impacts. NHRI's efforts are not without many challenges, especially when the respondents are big corporations. Therefore, there needs to be sharing of resources between NHRIs to achieve more gravitas regionally and more resonance globally. Support is needed for NHRIs that have less capacity, resources, and networking.

The working group agreed that a priority is human rights issues during climate emergencies. More needs to be done about this by the government, the private sector, and other stakeholders. A collective commitment is needed. Support for developing countries must be prioritised so they can address the situation on the ground and improve their own capacity. Europe has the expertise, know-how, and technology that can be beneficial to Asia's developing countries.

Recommendations

- Green development pathways will help developing countries to disengage from their dependence on fossil fuel. This green transition movement should include human rights approaches in dealing with climate impacts.
- Developed countries should support developing countries with financial assistance, capacity building, technology transfer, networking, and communication of best practices in the effort to achieve just transition.
- The current international mechanisms for climate change (United Nations Framework Convention on Climate Change, Paris Agreement) are adequate to facilitate the inclusion of human rights issues in the climate change regime. More robust, inclusive, and detailed mechanisms are needed.
- The business sector must be included in the global and regional mechanism to integrate human rights into the climate change regime.
- Both hard and soft laws are needed. Legally binding instruments would push this agenda further, but soft laws such as National Action Plans and other national and regional commitments are also important to develop momentum and political will to further human rights issues in the climate regime.
- An international green court could help less powerful countries in disputes with giant corporations over environmental issues.
- NHRIs are important to highlight the nexus between human rights and climate impacts. Support and assistance are needed to empower NHRIs in developing countries.



Taking stock of national and international human rights regimes to protect against the consequences of climate change⁴

This working group addressed cross-cutting questions related to national and international human rights regimes to protect against the consequences of climate change. The discussion covered the following topics:

- Human rights in climate legislation
- The role of national human rights institutions
- The right to a healthy environment
- Climate change litigation
- The rights of future generations
- The UN Special Rapporteur on Human Rights and Climate Change

Human rights in climate legislation

Participants in the working group noted that there is limited practice in this area and that more

knowledge sharing is needed. They learnt that **Bangladesh** has formally adopted a **National Strategy on the Management of Disaster and Climate Induced Internal Displacement**, which is aimed at preventing displacement and provides durable solutions to displacement induced by climate change. This strategy follows a consultative and multi-sectorial approach with the involvement of numerous stakeholders and an emphasis on international standards and guidelines. The participants heard that the **Philippines** NHRI plans to adopt recommendations prompting businesses with high carbon emissions to respect human rights. Some called for closer collaboration between governments and NHRIs on this matter.

Participants discussed the importance of sub-

⁴ Rapporteur: Dr Annalisa SAVARESI, Associate Professor of International Environmental Law at the University of Eastern Finland Center for Climate Change

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national entities, which often are in a position to deliver concrete positive impacts on the ground, even in states where there is some reluctance to explicitly embrace a rights-based approach in national laws and regulations.

Participants heard that some countries subject all legislative proposals to an assessment of potential impacts on biodiversity, the climate, and human rights.

Some noted that, if States do not adopt a human rights approach to climate change-induced human displacement, then each country will take individual approaches, without necessarily connecting to the vast body of international standards and guidelines on the matter.

The role of national human rights institutions (NHRIs)

Participants noted that NHRIs should work independently from governments and thus have the freedom to cooperate with local actors and initiate local programmes. At the same time, they acknowledged that NHRIs need to receive adequate support to perform their activities.

Participants noted that NHRIs should coordinate and be informed about initiatives on human rights and climate change. They emphasised NHRIs' important monitoring role in ensuring the implementation of human rights policies, especially in cases of natural disasters. Some flagged the possibility of joint NHRI inquiries, which would allow pooling resources, especially as a lot of climate change issues are of a transboundary nature.

Participants recognised that NHRIs play an important educational role and that they should aim toward making the process of climate law and policy-making more inclusive and focused on

human rights. They noted that, while it might be difficult to undertake rights-based approaches in certain countries, creating good working relationships with the relevant Ministries and international partners could help to address this challenge.

The right to a healthy environment

Participants considered **Resolution 48/13** adopted in 2021 by the **UN Human Rights Council** on the right to a clean, healthy, and sustainable environment. Some noted that it might take a long time before the resolution produces concrete effects. Others noted that there already is a demonstrated correlation between the recognition of this right in national law and the development of environmental policies, even though measurable statistical causation is hard to prove. They added that the recognition of the right to a healthy environment within constitutional frameworks helps to accelerate other initiatives related to this right and to raise awareness.

Some participants noted that soft law can also produce numerous beneficial impacts and inspire lawmakers and courts interpreting legally binding norms. They added that over time soft law can evolve into customary international law or function as a first step towards the adoption of legally binding international treaties.

Others referred to the **Universal Periodic Review (UPR)** as a unique process involving the review of the human rights records of all 193 UN Member States. They said that the UPR provides an opportunity for all States to set out plans to improve their human rights records and overcome challenges. They emphasised that the UPR enables the sharing of best practices and enables states to make recommendations to improve their performance and include

environmental consideration in their human rights policies.

Climate change litigation

Participants acknowledged that climate litigation is on the rise and that some court decisions have ordered states to adopt more ambitious climate change laws and policies or provided the basis for concrete political action. However, some noted that court decisions are very context specific and sometimes are not properly enforced.

Participants noted the media attention generated by court decisions, which may be used as a tool to reform climate policies and laws. Participants noted that there are extant processes training judges and lawyers in adjudicating climate change cases. These processes provide information about the scientific aspects of climate change, equipping practitioners with the knowledge that is necessary to implement the law properly and protect against infringements.

The rights of future generations

Participants noted that civil society, including human rights defenders, plays an important role in flagging issues of concern on behalf of communities without a strong voice in the public debate. Thus, it is crucial to create conditions for civil society to operate safely, as their work has a direct impact on future generations and in informing governments' activities on climate change. Some remarked that the international community should support developing countries to acquire the necessary financial and technological resources to tackle climate change.

Others underscored that 'future generations' are already here and are already impacted by

the consequences of climate change. Some participants noted that there are some positive developments in this area, as numerous young people are actively involved in devising climate change solutions.

Participants agreed that more youth participation should be encouraged, for example by involving youth in legislative processes (e.g., Youth parliaments) or including them in official delegations at international negotiations or supporting youth initiatives. Participants emphasised that it is important to include the youth in decision-making processes and to listen to their suggestions as they are the ones who will be most impacted by climate change.

The UN Special Rapporteur on Human Rights and Climate Change

Participants considered **Resolution 48/14** adopted **by the UN Human Rights Council in 2021**, establishing a Special Rapporteur on the promotion and protection of human rights in the context of climate change. They noted that the human rights of vulnerable groups will be most adversely affected both by climate change and by climate change response measures.

Some suggested that the Special Rapporteur should focus on the impact of climate change on vulnerable groups and consider the gender dimension of the negative impacts of climate change. Others emphasised the need to work closely together with actors other than States, such as multinational corporations, in order to raise awareness of the impacts of their activities on the enjoyment of human rights.

Some underscored the need to bolster action on loss and damage, and the importance to continue to share best practices in this regard.

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Others noted the need to consider human mobility and to find solutions to major population movements caused by climate change on a regional or cross-border level.

Participants agreed that the Special Rapporteur should work closely with other Special Rapporteurs and create synergistic relationships. They emphasised, as a priority, the importance of protecting human rights defenders who suffer from harassment and prosecution by governments in some parts of the world.

Some participants lamented that financial commitments under the Paris Agreement are insufficient to address the impacts of climate change. They underscored the need to ensure that climate funding is distributed equitably according to the specific needs of the regions most impacted by climate change. They noted that transparency is a key factor during the distribution process of climate funds and resources. Others noted that technological progress is a key factor to counteract the adverse effects of climate change and that helping to guarantee access to technology for vulnerable communities is a priority.

Participants agreed on the need for timely action. What the world needs is clear and direct action towards achieving the goal of protecting human rights and the climate.

Recommendations

- Respect, promote, and consider human rights obligations when taking action to address climate change. Empower NHRIs and other similar bodies to address human rights concerns associated with the impacts of climate change and climate change response measures.
- Use extant international human rights mechanisms to monitor and sanction human rights violations associated with climate change and with the implementation of climate change response measures.
- Support the recognition of the right to a clean, healthy, and sustainable environment at the national, regional, and international level.
- Ensure greater accountability of state and corporate actors for climate action and train judges and lawyers to support this crucial mission.
- Protect the rights of future generations and empower youth representatives in climate change decision-making processes and at the national, regional, and international level.
- Ensure that climate finance is adequate, transparent, and equitably distributed.
- Protect human rights defenders against harassment and prosecution.
- Find durable intergovernmental solutions to address climate change-induced human displacement and migration.
- Engage with the UN Special Rapporteur on Human Rights and Climate Change and support him in his mandate to promote and exchange views on lessons learned and best practices on human rights-based, gender-responsive, age-sensitive, disability-inclusive, and risk-informed approaches to climate change adaptation and mitigation policies.

Conclusion

The Seminar underlined the urgent need to consider the interplay between human rights and climate change law in Asia and Europe, as well as all over the world. While the circumstances in countries vary both between and within the regions (as well as within countries for different population groups), there are many commonalities. In both regions, the impacts of climate change on the enjoyment of human rights are increasingly visible, and the adoption of climate change response measures is disproportionately affecting the most vulnerable.

We need to take into serious consideration human rights in climate action and recognise that the pursuit of climate objectives could have consequences such as rising energy and commodity prices. It is vital that there are mechanisms, such as global social protection floors, minimum wages, and effective public health services, to buffer the less privileged from these outcomes. The Paris Agreement has engendered a paradigm shift, but there is a very long way to go to reach net-zero emissions. The global energy transition away from fossil fuels requires mutual learning and cooperation, including sharing lessons learned through innovative practices discussed at the Seminar.

Many human rights bodies at the subnational, national, regional, and international level have already started to engage with climate change. Extant processes, such as the Universal Periodic Review, and new bodies, like the newly established Special Rapporteur on Human Rights and Climate Change, must be supported to facilitate the integration of human rights into climate action.

A major theme of the Seminar was the need to tackle the catastrophic impacts of climate change on the enjoyment of human rights. Participants noted that climate change-induced human displacement and migration are a major concern. There was consensus that much more concerted international cooperation is needed to address this unfolding emergency and deliver durable and equitable solutions. The Seminar emphasised the need to ensure greater accountability for human rights violations associated with the impacts of climate change. Participants pointed to the role of human rights bodies, instruments, and processes in bridging this gap. Ongoing law- and policy-making processes at the national, regional, and international level provide new opportunities to address this matter.

The Seminar has taken place at an important juncture when the COVID-19 pandemic and the armed conflict in Europe reminded us that, in times of emergency, bold measures are needed. The discussions at the Seminar revealed that there already is a growing body of human rights practice and guidance concerning the impacts of climate change and of climate change response measures. The challenge is for governments, collectively and individually, along with stakeholders, international bodies, and the private sector, to strengthen their efforts towards implementing these guidelines and deliver human rights-based, gender-responsive, age-sensitive, disability-inclusive, and risk-informed approaches to climate change adaptation and mitigation.

BACKGROUND ON HUMAN RIGHTS AND CLIMATE CHANGE

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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 right 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 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,

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.

*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 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

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emissions — including those produced by their own activities and by their subsidiaries, their products, and services — and to minimise 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 will be 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 realisation 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

I. Introduction

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 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;
- (l) 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;
- (m) 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 ASEMHS21 to guide discussions for 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 that have 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 the 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 Asia (b) and Europe (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 that occurred under the climate treaties, and then 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,

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and underscore the States' commitment to implement climate change response measures in a rights-based manner. 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 10 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 recognised 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 recognised 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 recognised 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 recognised 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 emphasised 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 emphasised 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, mobilisation 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

II. INTERNATIONAL AND REGIONAL PROTECTION

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, emphasising 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 include 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 **ASEAN 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

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regional institutions in Africa and Europe, AICHR does not have the power to investigate and consider complaints of human rights violations. ASEAN also lacks a regional court to adjudicate human rights complaints.

Nevertheless, 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 33 principles include:

- the right to environment,
- right to environmental education,
- participation of children 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, and the media to protect children from climate change impacts.

Furthermore, many specific climate change programmes – 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, 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 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:

- supporting 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

...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. However, these guidelines are only voluntary.

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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 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 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:

- o Embedding environmental rights in the

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

Müllner v Austria was lodged by an individual applicant, after an unsuccessful appeal to the Austrian Supreme Court. 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 v 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

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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

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. 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 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 in 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 healthy 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 individuals 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 evaluating 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

centre 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 the 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

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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 policymaking. For example, in 2020 UK 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 been 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 to 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 has yet to release its findings.

The issue of human displacement associated with climate change has also been at the centre

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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 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, much more needs to be done to address the plight of those most vulnerable to the impacts of climate change.¹⁴⁴

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 undermine 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 realise 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.

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- (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 organise 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, such as Amnesty International, have expressed support for the ILO Guidelines and consider just transition 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 creates 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, and

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 and 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

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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 has 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

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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

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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 *Millieudéfensie 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 Partners 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 treaties,¹⁹⁰ 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. 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 as 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

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IV. THE WAY FORWARD

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 Partners 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 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 the Paris Agreement to cooperate in the mitigation of greenhouse gas emissions, while supporting sustainable

development. Loss and damage are 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 Partners 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 Partners 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:

- Provides an analytical focus on the human impacts of climate change and of climate change response measures.
- 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.
- 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.
- Seeks to ensure that climate law and policy realise human rights and abide by relevant international and domestic

obligations and standards.

- 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 ways.

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 in 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.

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Closing Address

EUROPE AND ASIA HAVE A COMMON RESPONSIBILITY TO MANAGE CLIMATE CHANGE AND HELP THE MOST VULNERABLE

Eamon GILMORE

EU Special Representative for Human Rights

(Closing remarks at the 21st Informal ASEM Seminar on Human Rights)

It is a privilege to have been invited to deliver remarks at this, the closing discussion of the 21st ASEM Seminar on Human Rights.

Here in Europe, the world as we know it has changed dramatically over the course of the last few weeks. The events in Ukraine took many by surprise; and a humanitarian catastrophe is unfolding in front of our eyes. While the situation in Ukraine will continue to be our primary focus over the course of the next few weeks and months, the climate crisis has not gone away.

There is no doubt that we are in the middle of an unprecedented environmental crisis with climate change affecting every region across the globe, in Asia, Europe and elsewhere.

Climate change and environmental degradation has and will continue to have an adverse impact on the full and effective enjoyment of human rights, such as the right to life, the right to health, the right to safe drinking water and sanitation, the right to food, to adequate housing and standard of living.

The European Union recognises this and has made climate change a central element in its policies both internally and externally.

The European Green Deal, adopted in 2019, sets out a roadmap for a climate neutral continent by 2050. It identifies biodiversity conservation as an essential objective for sustainable development at the European and at the global level and aims to protect the health and wellbeing of people from environmental related risks and impacts.

The EU Action Plan on Human Rights and Democracy [2020 - 2024], firmly establishes the EU's commitment to supporting measures to address the high risks of environmental degradation, biodiversity loss, and water scarcity on the exercise of human rights.

We are implementing this Action Plan, mainly through our 143 EU Delegations and the hundreds of Member State embassies across the world, including in the Asia Pacific region.

The strength of our policies lies in our ability to cooperate with partners both at the bilateral and

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multilateral level.

Many actions are based on cooperation and partnership, and we need to listen and work closely with other stakeholders, the UN, regional organisations, civil society organisations, and of course our Asian partners, to improve and to address our common problems.

Respect for human rights is already an important part of the ASEM partnership, with leaders of ASEM countries across Asia and Europe reasserting the universal, indivisible, interdependent and interrelated nature of human rights at their Summit last November.

I am glad that ASEM has also become an active forum for discussions on climate change. Asia is one of the world's most vulnerable regions when it comes to global warming and natural disasters and is the source of over half of carbon dioxide emissions worldwide, with its global share having grown since 2000, accounting for almost all of the global increase in the last two decades.

The theme of this year's 21st Informal ASEM Seminar on Human Rights - human rights and climate change - shows that both human rights and climate change, are an important aspect of our partnership.

Last September, the European Union adopted the Indo-Pacific Strategy. Through the Indo-Pacific Strategy, the EU intends to increase its engagement with the region to build partnerships that reinforce the rules-based international order, address global challenges, and lay the foundations for a rapid, just, and sustainable economic recovery that creates long-term prosperity for us all.

Our engagement will be based on promoting democracy, the rule of law, human rights, and universally agreed commitments such as the 2030 Agenda and its Sustainable Development Goals, and the Paris Agreement on Climate Change.

The Indo-Pacific region is home to three-fifths of the world's population, produces 60% of global GDP, contributed two-thirds of pre-pandemic global economic growth and is at the forefront of the digital economy. The EU is the world's largest trading bloc with transparent rules and regulations. The futures of the EU and the Indo-Pacific are inextricably linked given the interdependence of our economies and our common global challenges.

Our approach to the Indo-Pacific region is one of cooperation and partnership. The EU's renewed commitment to the region is inclusive of all partners wishing to cooperate with the EU. We will adapt this cooperation according to specific areas where partners share principles, values, or mutual interest. The Strategy is an invitation to our partners in the region to dialogue and to address the issues at stake, upholding international law and defending values and principles to which we are committed, with democracy and human rights at the forefront.

The EU Indo-Pacific Strategy highlights concrete actions in seven priority areas, one of which focuses

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on green transition. As part of the Indo-Pacific Strategy, we will conclude Green Alliances with like-minded partners that have signed up to the goal of climate neutrality by 2050 and other ambitious climate and environmental objectives. Last May for example, we signed the first such Green Alliance with Japan.

Europe and Asia have a common responsibility for translating our climate change commitments into reality and helping the most vulnerable. Addressing the human cost of climate change and integrating human rights into our actions implies higher levels of ambition from all of us.

It is only by doing so that we'll be able to fulfil our responsibilities towards our planet, and towards present and future generations.

I hope that today's discussion, and indeed the discussions which have taken place over the course of the last few days, will contribute to enhancing the partnership between Asian and European countries when it comes to the addressing the impact of climate change on human rights.

Thank you.

Closing Address

HUMAN RIGHTS AND THE EFFECTS OF CLIMATE CHANGE GO HAND IN HAND

Carole DIESCHBOURG

Minister for the Environment, Climate and Sustainable Development, Grand Duchy of Luxembourg

(Closing remarks at the 21st Informal ASEM Seminar on Human Rights)

Excellencies,
Distinguished colleagues and friends,
Dear participants,

On behalf of Luxembourg, let me thank you for being here the past three days to discuss, exchange and elaborate concrete action points to address the complex – and yet so obvious – intersection of climate change and human rights, as we aim to re-build better to a fairer post-pandemic world.

At this moment, we have a war at our doorstep that shows just how fragile human rights and human security actually are. How important it is to do our utmost to not let situations or realities escalate. And how much work and efforts lie ahead of us when we fail to do so! This does not only apply to armed conflict and all the injustice that comes with it, but it is also applicable to a reality that affects each and every one of us, right here and right now: the climate change crisis. Because we all know that the consequences of climate change are directly affecting our fundamental human rights and human security.

I once compared Luxembourg to a rice grain, due to its size. I hope you've been able to explore some areas of this beautiful, tiny country. But just because it is a small country, doesn't mean it can't have an important impact. When we redesigned our International Climate Finance Strategy last summer, we decided to place a more important focus on human rights and gender issues in our climate financing, because those are transversal themes that we see as intrinsically linked to climate – both in terms of the impact of climate change, but also in terms of solutions to the climate crisis. A new funding theme has been dedicated to the issue of climate-induced migration – which has been discussed during a panel session on day one. This topic, which has a clear impact on peoples' human rights, will need our closest attention at present and in the future.

This is also important for me to mention, because Luxembourg's international climate finance is given on top of its ODA. Thus, this shows that we take inclusive, holistic climate action very seriously, and ultimately understand that a human rights-based approach is the only way to achieve it and ensure the sustainability of our decisions and actions.

Public participation in this process is key – because it is only through first-hand experiences that we learn what is really needed to find solutions to problems. It is also the only way to make solutions –

Closing Address

and their uptake – hold in the long-term. Sometimes we get caught up in our political agendas, and we really must do our best to ensure public participation at all levels.

Luxembourg places very high importance on stakeholder engagement. Locally, we also engage with citizens directly (for example through our recently launched Citizens Climate Council) to make sure they can help shape our climate policy – because at the end of the day, they know what they need – and we as policy makers are responsible to provide them with actionable, sustainable solutions. We are happy to work with established organisations to ensure that our national and international climate actions and policies are based on sound human rights principles and really strengthen them in our countries of intervention.

Much has happened in the past years, things that are non-negligible: for example, the principle of do no significant harm to the environment and human rights is much more enshrined in policymaking than even just a few years ago. Much has also happened in terms of the human rights due diligence obligations of companies as well. And let's of course not forget last year's adoption by the Human Rights Council of the two resolutions regarding the right to a clean, healthy, and sustainable environment and the appointment of a Special Rapporteur on the promotion and protection of human rights in the context of climate change.

There really is a paradigm shift. Our government also actively pursues an inclusive and just energy transition. All of this wouldn't have happened if it weren't for the increasing awareness and understanding in society and among policy makers that human rights are deeply impacted by the effects of climate change, and both can really go hand in hand – be it positively or negatively.

I would like to also highlight that all of these activities need to be pursued both at the national, but also on the international level – because the climate crisis does not know borders, and time is pressing. Last summer, in Luxembourg, we had torrential floodings that we had not seen in over a century. The weather, even here, is always getting more extreme. We have known for a long time that the Asia-Pacific region is particularly vulnerable to the effects of climate change, and has been dealing with these types of issues, unfortunately, quite regularly.

At COP26, I was co-facilitating the negotiation session on loss & damage. The loss & damage area is something Luxembourg wishes to pursue further, by also getting involved in the Santiago Network in an established manner. Here also, the link between human rights and climate is undeniably clear.

I have talked a lot now, so I will wrap up my thoughts.

Firstly, I would like to take the opportunity again to thank you all for joining us, either in-person or virtually, to discuss these important topics and I am sure you could gain many new insights to move the needle forward on human rights and climate change.

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I thank my colleague, Minister Jean ASSELBORN, and his team at the Ministry of Foreign and European Affairs, for hosting this event and for inviting me to address you.

On behalf of Luxembourg, I also would like to thank Ms Michelle BACHELET and Dr David BOYD again for their enlightening keynote addresses, as well as all our distinguished speakers, rapporteurs, moderators, participants, and co-Organizers who shared their expertise over the past three days.

It is time we step up our responsibility. And as Dr Boyd put it during his keynote address – and I completely agree: “Time for talk is over! Time for action is now!”

I wish you a pleasant rest of the day, and safe travels back.

Closing Address

THE DISCUSSION ABOUT CLIMATE CHANGE AND HUMAN RIGHTS CANNOT TAKE PLACE IN SILOS

Achsanul HABIB

Director for Human Rights and Humanitarian Affairs, Ministry of Foreign Affairs of the Republic of Indonesia

(Closing remarks at the 21st Informal ASEM Seminar on Human Rights)

Excellencies,
Ladies and Gentlemen

A very good afternoon to you.

First of all, I would like to take this opportunity to thank the organisers of this event. Amidst all the challenges, you have arranged a very important and comprehensive programme on Human Rights and Climate Change, with excellent contributions from distinguished speakers.

I am very happy that we can finally meet in-person, after a fully virtual Seminar last year.

This year marks the 25th year since the first ASEM Human Rights Seminar was first held in Lund in 1997. In this light, I would like to congratulate the organisers for the tireless effort in planning and holding the Seminar each and every year, as well as ensuring the implementation of the Seminar's recommendations. May this Seminar continue to enrich the global human rights discourse and inspire further collaboration and innovation in the promotion and protection of human rights.

This year's Seminar, themed "Human rights and climate change" could not be held at a better time.

Climate change is indeed one of the biggest challenges that the world is facing today. It continues to affect the enjoyment of a wide range of human rights, such as the right to food, clean water, adequate housing, education, and right to development.

The international community's biggest homework is to turn the tide on climate change and mitigate its impact so it does not hinder the enjoyment of human rights. On the flip side, the international community also needs to ensure that climate change response measures do not negatively impact human rights.

This titanic task is becoming even harder given the COVID-19 pandemic. The economic impact of the pandemic has limited states' capability to implement its human rights obligations, particularly with regards to climate change.

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During the past three days, we have discussed extensively about this complex interplay between human rights and climate change and how to better integrate human rights perspective in climate change policies and actions.

I will not give any recap of the Seminar discussion, because it has been elaborately explained by our distinguished rapporteurs but allow me to lay out three key takeaway points from our discussion.

First, is that the discussion on climate change and human rights cannot happen in silos. More often than not, human rights language is placed at the periphery of climate change and environmental discussion.

In this regard, some progress has been made at the international level. In 2021, the UN Human Rights Council passed a landmark resolution which recognizes ‘the right to a clean, healthy and sustainable environment’ as a right that is important for the enjoyment of other human rights.

The Glasgow Climate Pact, adopted as the outcome of COP26, also stated that human rights considerations should always be at the centre of any climate actions and policies.

ASEM Partner countries should utilise this momentum to continue their endeavours in integrating human rights language in the climate and environmental policies, including at national level.

Second, there is no ‘silver bullet’, one-size-fits-all recipe in formulating human rights-based climate policies. Developing countries might face different sets of problem compared to developed countries.

In this regard, any climate action must take into account and respect these differences to ensure that no country is being left behind, and to ensure that the climate change response does not adversely impact human rights.

This brings me to my third and last takeaway point, which is multi-stakeholder collaboration at the national, regional, and international level. Multistakeholder collaboration is the key to tackle climate change and mitigate its impact – without sacrificing human rights.

Inclusivity must also be the cornerstone of collaboration in surmounting the climate challenge, including with regards to vulnerable communities. In this regard, ASEM Partners could continue to promote the strengthening of dialogue platforms – like this Seminar – to share knowledge and best practices in formulating human rights-based climate policy. Capacity building through technical cooperation and transfer of technology must also be encouraged.

Furthermore, we should also push for increased participation from the private sector in any climate action. As we are aware, business have the responsibility to respect human rights, including those rights that will be affected by environmental damage caused by business activities.

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Going forward, I hope these takeaway points could inspire ASEM Partners in promoting human-rights based climate actions – be it at national, regional, and international level. I believe the organiser will prepare a summary of the outcome of this Seminar and I look forward to receiving it.

Finally, on behalf of the Steering Committee, allow me to thank the participants for their meaningful participation and contribution in this Seminar. I hope you enjoy the rest of your stay in Luxembourg, and I wish you safe travels home.

Thank you.

Annex 1: Seminar Programme

DAY 1 – WEDNESDAY, 16 MARCH 2022

Location: The European Convention Center Luxembourg & online

All times are displayed in Luxembourg time (GMT+1)

		Welcome Remarks Ambassador Toru MORIKAWA Executive Director, Asia-Europe Foundation (ASEF)
09:40 – 10:15	Official Welcome	Keynote Address Dr David R. BOYD United Nations Special Rapporteur on Human Rights and the Environment Ms Michelle BACHELET United Nations High Commissioner for Human Rights Mr Jean ASSELBORN Minister of Foreign and European Affairs, Grand Duchy of Luxembourg
10:15 – 10:50	Presentation of Background Paper	Moderator: Ambassador Leon FABER, Deputy Executive Director, Asia-Europe Foundation (ASEF) Lead Rapporteur Dr Annalisa SAVARESI, Associate Professor of International Environmental Law, University of Eastern Finland (UEF) Rapporteur Dr Stellina JOLLY, Associate Professor at the Faculty of Legal Studies, South Asian University (SAU)
10:50 – 11:10	Plenary discussion with audience	
11:10 – 11:25	Coffee Break	
11:25 – 11:40		Conversation with European Investment Bank (EIB) Speakers: Ms Mariana RUIZ ALVARADO, Senior Social Development Specialist at the Environment, Climate and Social Office of the European Investment Bank (EIB) Ms Moa WESTMAN, Gender Specialist at Environment, Climate and Social Office of the European Investment Bank (EIB) Moderator: Professor Robert HARMSEN, University of Luxembourg
11:40 – 13:00		Panel Discussion on Migration, Human Rights and Climate Change (Organised by the Ministry of Foreign and European Affairs of Luxembourg) Speakers: Prof. Vitit MUNTARBHORN, Chulalongkorn University Dr Sara VIGIL, Stockholm Environment Institute (SEI) Maria Theresa LAURON, Rosa Luxemburg Stiftung Mr Atle SOLBERG, Platform on Disaster Displacement (PDD) Moderator Ms Elissa JOBSON, International Crisis Group
13:00 – 14:00	Lunch	
15:00 – 17:00		For participants in Luxembourg: Visit to the Court of Justice of the European Union

Seminar Programme

DAY 2 – THURSDAY, 17 MARCH 2022

Venue: The European Convention Center Luxembourg & online

08:30 -12:00 (with two coffee breaks)

Simultaneous Working Groups

Working Group 1

Theme: Reinforcing socio-ecological resilience of communities through information and public participation

Rapporteur:

Mr Sébastien DUYCK, Center for International Environmental Law (CIEL)

Moderator:

Mr Md. Ekhtekharul ISLAM, Independent University, Bangladesh

Working Group 2

Theme: Promoting the full enjoyment of human rights by all persons affected by climate change

Rapporteur:

Dr Stellina JOLLY, South Asian University

Moderator:

Dr Sabin BIERI, University of Bern

Working Group 3

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

Rapporteur:

Dr Linda Yanti SULISTIAWATI, National University of Singapore

Moderator:

Professor Robert HARMSEN, University of Luxembourg

Working Group 4

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

Rapporteur:

Dr Annalisa SAVARESI, University of Eastern Finland (UEF)

Moderator:

Ms Caleen C. OBIAS, Human Rights Commission of the Philippines

12:00 -13:30 Lunch & Networking

15:00 For participants in Luxembourg:
Visit to Esch-sur-Alzette, European Capital of Culture 2022

19:00 For participants in Luxembourg:
Dinner at KUFA, Esch-sur-Alzette

Seminar Programme

DAY 3 – FRIDAY, 18 MARCH 2022

Venue: The European Convention Center Luxembourg & Online

08:30 -12:00	Closing Plenary The European Convention Center Luxembourg	Chair: Mrs Jenny PIAGET , Head of Human Rights Diplomacy Section, Federal Department of Foreign Affairs of Switzerland
09:30 – 10:15	Rapporteurs' Summary on Each Workshop	Rapporteur: Mr Sébastien DUYCK Theme: Reinforcing socio-ecological resilience of communities through information and public participation – 10 min
		Rapporteur: Dr Stellina JOLLY Theme: Promoting the full enjoyment of human rights by all persons affected by climate change – 10 min
		Rapporteur: Dr Linda Yanti SULISTIAWATI Theme: Green, equitable and inclusive: Innovative ideas on international cooperation to address the impacts of climate change on human rights – 10 min
10:15 – 11:00	Q&A Session	Rapporteur: Dr Annalisa SAVARESI Theme: Taking stock of national and international human rights regimes to protect against the consequences of climate change – 10 min
11:00 –11:15	Coffee Break	
11:15 – 12:15	Closing Discussion – Human Rights and Climate Change: Defining opportunities and prospects for joint action in Asia and Europe Moderator: Mr Rolf RING , Deputy Director, Raoul Wallenberg Institute	
12:15 – 12:30	Official Closing	Speakers: (7-10 min each) Mr Eamon GILMORE , European Union's Special Representative for Human Rights Ms Irum AHSAN , Lawyer and environmental and climate rights specialist Mr Roberto Eugenio CADIZ , Commissioner, Commission of Human Rights of the Philippines Ms Marie-Claire GRAF , Swiss representative of Youth Constituency of the UNFCCC (YOUNGO)
12:30	End of Programme	Closing remarks on behalf of the Host: Ms Carole DIESCHBOURG , Minister for the Environment, Climate and Sustainable Development Closing remarks on behalf of the Host: Mr Achsanul HABIB , Director for Human Rights and Humanitarian Affairs, Ministry of Foreign Affairs of the Republic of Indonesia
	About #ASEMHRS21	The Asia-Europe Meeting (ASEM) is an intergovernmental forum for dialogue and cooperation established in 1996 to deepen relations between Asia and Europe. It presently comprises 53 Partners: 30 European and 21 Asian countries, the European Union and the ASEAN Secretariat. ASEM addresses political, economic, social, cultural, and educational issues of common interest, in a spirit of mutual respect and equal partnership.
		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.

Annex 2: List of Participants

21st Informal ASEM Seminar on Human Rights

Human Rights and Climate Change

16 – 18 March 2022, Luxembourg

SPEAKERS

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Asia-Europe Foundation (ASEF)

Dr David R BOYD
United Nations Special Rapporteur on Human Rights and the Environment

Ms Michelle BACHELET
United Nations High Commissioner for Human Rights

Mr Jean ASSELBORN
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Mr Eamon GILMORE
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Ms Irum AHSAN
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Mr Roberto Eugenio CADIZ
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Ms Marie-Claire GRAF
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Ms Carole DIESCHBOURG
Minister for the Environment, Climate and Sustainable Development
Grand Duchy of Luxembourg

Mr Achsanul HABIB
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Mr Sébastien DUYCK
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Dr Stellina JOLLY
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Dr Linda Yanti SULISTIAWATI
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Annex 3: Concept Note

Introduction

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

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

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

While climate change affects all human rights, its impact poses a serious and more direct risk to people’s rights to life, to health, to food, to a healthy environment, to a proper education, to water and sanitation, to adequate housing, to development and to self-determination in particular.² The World Health Organization (WHO) indicates that between 2030 and 2050, climate change is expected to cause approximately 250,000 additional deaths each year resulting from pollution, malnutrition, scarcity of clean water and heat stress. Furthermore, according to the 2015 Lancet Commission on Health and Climate Change, climate crisis is the biggest global health threat of this century and could reverse five decades of progress in global health, particularly as it endangers the right to food.³

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

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Nations High Commissioner for Refugees (UNHCR), climate-related disasters could double the number of persons requiring humanitarian assistance to over 200 million each year by 2050⁶. Climate change also impacts persons in vulnerable situations differently, including Indigenous peoples and local communities, persons with disabilities, refugees, and migrants, as well as older adult persons, lesbian, gay, bisexual, transgender, and intersex persons (LGBTI) and persons belonging to national ethnic or other minorities⁷.

Besides these concrete examples of direct effects of climate change, it should also be noted that environmental human rights defenders⁸ are increasingly exposed to violence and harassment because of their peaceful work in defence of a healthy and clean environment.⁹ According to the Global Analysis 2020 by the NGO Frontline Defenders, 69% of human rights defenders killed in 2020 worked on land, environmental or indigenous peoples' rights.¹⁰ Furthermore, over the 2002–2018 period, there have been 150 reported killings of women environmental defenders, with a growing proportion of women defenders killed since 2010.¹¹ Most killings remain unpunished.

In addition, COVID-19 restrictions and lockdowns have reduced transparency and monitoring of human rights violations, and have intensified political intimidation and digital surveillance, while limiting access to justice and the abilities of environmental human rights defenders, local actors, Indigenous communities and others to effectively participate in decision-making processes.¹² Nevertheless, in spite of the COVID-19 pandemic, grassroots environmental activism is on the rise, witnessed by international and national movements such as Friday for Future, in many parts of Asia and Europe.

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

The Male' Declaration on the Human Dimension of Global Climate Change, which was adopted by representatives of Small Island Developing States (SIDS) in 2007, stated for the first time in an international agreement that “*climate change has clear and immediate implications for the full enjoyment of human rights [...]*”¹³. One year later, with its landmark resolution 7/23, the Human Rights Council (HRC) acknowledged that “*climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights*”.¹⁴

Another resolution (10/4) was adopted in 2009, stating that “*human rights obligations and commitments have the potential to inform and strengthen international and national policymaking in the area of climate change*”.¹⁵ The most recent resolution (41/21) outlines that the impacts of climate change and continued environmental degradation are already negatively affecting “*the effective enjoyment of human rights, including, inter alia, the right to life, the right to adequate food,*

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*the right to the enjoyment of highest attainable standard of physical and mental health, the right to adequate housing, the right to self-determination, the rights to safe drinking water and sanitation, the right to work and the right to development”.*¹⁶

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

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

However, the **Katowice rulebook**, agreed at the 24th Conference of the Parties (UNFCCC COP24) held in December 2018 and developed to guide the implementation of the Agreement, omitted any reference to human rights. The continuing negotiations of the rulebook,¹⁸ however, offer an opportunity to remedy this and integrate human rights protections more firmly into the climate commitments. It remains to be seen what role the next conference, COP26, - scheduled to take place in November 2021 – will play in encouraging the interrelation of environment, climate change, and human rights.

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

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

About the Seminar

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

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

The 21st Informal ASEM Seminar on Human Rights (ASERMHRS21) will be hosted by the Ministry of Foreign and European Affairs of the Grand Duchy of Luxembourg and is scheduled to take place in March 2022 in Luxembourg. The Seminar will be followed by outreach and capacity-building activities to disseminate the outcomes of the Seminar and to improve the knowledge and capacity of relevant actors in Asia and Europe on the theme of the Seminar. The follow-up activities will also be delivered in the same year.

Working Groups

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

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

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

Cross-cutting questions:

1. In light of a possible global recession due to the COVID-19 pandemic, how can the principle of **non-regression of human rights and environmental obligations** be implemented, and delays or changes of states' commitments best be avoided? How can we ensure that human rights protections and climate commitments will not become COVID-19 collateral?

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2. How can we ensure the meaningful **participation of women** with diverse backgrounds in relevant decision-making processes and the integration of a gender perspective into climate related policies and programmes in order to guarantee that the rights of women and girls – including their Sexual and Reproductive Health and Rights (SRHR) – are respected? What about **other vulnerable groups**, including indigenous peoples and local communities?
3. What is the role of **human rights education** (what, how and to whom) in ensuring transparency and accountability in climate change related policies?
4. How would you assess the current **dialogues** on the interlinkages between human rights and climate change between regions (Europe, Asia, SIDS etc.)? Where do you see potential to further strengthen these dialogues? What role can the **Asia-Europe Meeting (ASEM)** play in advancing the respect of human rights in climate actions?
5. How can the **obligations of States** in the context of climate change and other environmental harms be extended to all rights holders?

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

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

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

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

A few years later, in 1998, the **United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to**

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Justice in Environmental Matters was adopted in the Danish city of Aarhus (Århus) with the aim of empowering the role of citizens and civil society organisations in environmental matters. The Aarhus Convention, as it came to be known, establishes a number of rights of the public with regard to the environment and obligates parties to the convention to make the necessary provisions so that public authorities at a national, regional, or local level will contribute to these rights to become effective. While originally a European agreement, the Aarhus Convention is now open for global signature and has several Central Asian nations as parties. Around the beginning of the 21st century, the debate on sustainable development appeared to lose momentum and, in many countries, the NCSs were losing traction and influence. However, the launch of the 2012 UN Conference on Sustainable Development and the adoption of the **2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs)** started to put inclusive and sustainable development and climate change back on the international agenda. After the adoption of the 17 SDGs, with stand-alone goal number 13 focusing exclusively on climate action, the international community came to a historic agreement with the adoption of the Paris Agreement in 2015. Article 7 places a special accent on a “participatory and fully transparent approach”:

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

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

First, special care should be taken in terms of the **participation of persons in vulnerable situations and indigenous peoples** in decision-making processes in order to enhance positive environmental outcomes and comply with relevant human rights obligations. Meaningful participation with vulnerable sectors will help to ensure that climate adaptation and mitigation efforts address the specific vulnerabilities of each group and do not adversely impact their basic human rights. Indigenous peoples and local communities are, for instance, disproportionately affected by climate change as they often live in fragile ecosystems that are particularly exposed to extreme weather events. The 2030 Agenda and the Paris Agreement have recognised the unique and important role of indigenous peoples and local communities as key actors in achieving their goals.

The same is often true for women who do not merely bear the greatest burden of climate change-induced effects but additionally have to face multiple and intersecting forms of discrimination, gender-based violence, and marginalisation due to, inter alia, a lack of educational and professional opportunities.

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A study by the Office of the United Nations High Commissioner for Human Rights (OHCHR) found that the “inclusion of women with diverse backgrounds in climate action and decision-making processes was critical for meaningful, effective and informed action that respected women’s rights”²⁶.

As among those most affected by climate change, persons with disabilities, through their representative organisations, must also be actively included in shaping climate policies and actions. Youth are generally under-represented in political institutions, but children and young persons should also play an important role in climate justice. The Fridays for Future movement, for example, has shown that young people want to have a say in the decision-making pertaining to environment, climate change, and human rights. These are just four examples that need particular attention in decision making related to climate change.

Second, **the right to freedom of expression and association in general and access to reliable and accessible information** on climate change are fundamental for all, including journalists writing science-based articles to fight climate change denial, smallholder farmers relying on access to weather forecast information, and environmental human rights defenders. The latter in particular have been experiencing a dramatic shrinking of their civic space worldwide, which was further accelerated by the onset of the COVID-19 pandemic. In recent years, governments across all continents have imposed unnecessary and disproportionate restrictions on the right to protest, freedom of speech, access to information and freedom of association – an action that disproportionately affects human rights defenders, including those who are working on environmental and land issues. Moreover, women activists suffer from gender-specific forms of violence and intimidation which are a source of grave concern.²⁷

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

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

Guiding questions

1. What are the lessons learned about **public participation** since the Rio Summit in 1992 and how can we capitalise on them now that there is an increased global awareness of climate change?

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

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

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

Research indicates that the impact of climate change and natural disasters for **women and girls**, in particular, are far-reaching as the majority of the world's poor are women. According to the WHO, *"globally, natural disasters such as droughts, floods and storms kill more women than men, and tend*

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to kill women at a younger age”³⁰. Most of the time, women play a key role in family care, children’s education, and food production and provision, as well as in the spreading of grassroots knowledge on food and nutrition. Due to climate change, however, food production becomes less predictable and family revenues less secure. Water and food collection also become difficult, and as women will need to walk further distances, they may become more exposed to physical dangers and sexual violence. Also, women and girls tend to have less access to or control over assets, including the resources necessary to cope with hazardous events, such as information, education, health, and wealth. Other climate-sensitive health impacts, such as undernutrition and malaria, also show important gender differences.³¹ Besides, climate change leads to more violence against women and girls³² as crises and resource scarcity increase the risk that women and girls will be victims of violence or forced marriage.

But while the impacts of climate change may disproportionately affect women and girls, women and girls are also important agents and leaders of change and often possess particular skills and knowledge useful for climate change adaptation. According to the OHCHR, “*promoting women’s education, participation in decision-making are among the most effective ways of reducing future emissions of carbon dioxide.*”³³ While there is a greater global commitment³⁴ and understanding of the need to incorporate gender perspectives into climate change policy, there are still considerable gender-based barriers across the major pillars of international and national policy processes on climate change.³⁵

According to Internal Displacement Monitoring Centre (IDMC), an average of 25.3 million **displacements** have been recorded each year since 2008 by sudden-onset disasters alone.³⁶ The Intergovernmental Panel on Climate Change (IPCC) has argued that the greatest impact of climate change could be on human migration and has predicted that 200 million people will have migrated from their place of origin by 2050 for this reason³⁷. It should be recognised that climate is just one of the factors influencing migration, the consequences of climate change for human population distribution being unclear and unpredictable and the people most vulnerable to climate change are not necessarily the ones most likely to migrate. In some cases, however, climate change can be the sole factor prompting migration. Even though climate migration and displacement remain mostly internal, there are some countries that are at risk of completely disappearing, and whose residents are in danger of displacement. Some of these examples can be found in Small Island Developing States (SIDS). However, there is considerable resistance to the idea of expanding the definition of political refugees – as outlined in the Geneva Conventions - to incorporate “climate refugees.”³⁸

Informal sector workers are playing an important role in climate change mitigation. For instance, the International Labour Organization (ILO) estimates that 15 million persons worldwide earn their living from recycling waste.³⁹ According to the NGO Women in Informal Employment: Globalizing and Organizing (WIEGO), around 1% of the urban workforce in developing countries is engaged in recycling. While recycling is one of the cheapest, fastest ways to reduce greenhouse gas emissions, it is also a labour-intensive model of waste management. In addition, the carbon footprint of informal workers and enterprises is often smaller than that of their formal counterparts, but they are at significant risk from the increased impacts of climate change effects.⁴⁰

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

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

Climate change also affects **young people** in all aspects of their lives. Young people between 10 and 24 years constitute over 1.5 billion people in the world, of which 70% live in developing countries.⁴⁴ Due to climate change, more children, and young girls in particular, will lack access to education and to the labour market later on. Moreover, children born today will face a lifetime of climate change-related health problems everywhere in the world.

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

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

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

Guiding questions

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

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

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

The Rio Conventions, the Convention on Biological Diversity (CBD), the United Nations Convention to Combat Desertification (UNCCD), and **the United Nations Framework Convention on Climate**

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Change (UNFCCC), which all derive from the 1992 Earth Summit, are all important legally binding international agreements that establish framework for international cooperation on environmental and sustainable development issues. Of the three conventions, the UNFCCC is the primary framework for international climate change cooperation, and it has been updated by subsequent agreements including the **1997 Kyoto Protocol** and the 2015 **Paris Agreement**. Its overarching objective is to stabilise greenhouse gas concentrations at a level that would prevent dangerous human induced interference with the climate system. While the UNFCCC Convention does not refer to human rights directly, it has recognised, by extension, that states must ensure that their responses to climate change do not themselves violate human rights.

The international community took a historic step in 2011 when it adopted the **Cancun Agreements**, which explicitly call on Parties to respect human rights when taking actions to address climate change. It also states the need for enhanced “*international cooperation, [...] innovation and the transfer of appropriate technologies.*”⁵¹ In 2015, the Paris Agreement also highlighted the need for respect for human rights and for international cooperation on adaptation efforts by the parties. In the same year, 18 countries⁵² signed the **Geneva Pledge for Human Rights in Climate Action** in order to facilitate, amongst others, “*the exchange of expertise and best practice between our human rights and climate experts to build our collective capacity to deliver responses to climate change.*”⁵³

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

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

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

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important aspects of development cooperation as they are crucial in the fight against climate change and the promotion of human rights and fundamental freedoms.

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

In order to mobilise resources, knowledge, and innovation for addressing climate change and promoting green growth, engagement with the private sector is critical. While companies play an increasingly important role in driving green growth in both developing and developed countries by promoting greener behaviour across their supply chains, there are no concrete instruments within the Paris Agreement that hold state and corporate actors accountable for their impact on climate change and the exercise of human rights.⁵⁹ While a set of implementation guidelines – initially described as the ‘Paris Rulebook’ – (partially) adopted⁶⁰ at the 24th Conference of the Parties (COP24) in Katowice 2018, are critical in enhancing accountability, trust, and compliance, as well as ensuring that the Paris Agreement contributes to mitigating the impact of climate change on the enjoyment of human rights⁶¹, it remains unclear to what extent non-state actors are accountable and expected to contribute to the achievement of the objectives of the Agreement.⁶² The role of non-state actors is part of the continuing negotiations on Article 6 concerning creation of a cooperation framework for the implementation of international emissions trade. The negotiations on Article 6, which are expected to continue at the COP26 in 2021, offer an opportunity to integrate human rights protections such as stakeholder consultations, environmental and social safeguards, and an independent redress mechanism which allows communities to seek remedy when projects under the mechanism cause harm.

Transitioning from the current development pathway to a low-carbon, climate-resilient one will require significant **investment and innovation**. At the Climate Change Summit in Copenhagen in 2009, a clear promise was made to provide financial support to developing countries. The so-called \$100 billion target was adopted at that point. However, **climate finance** still lacks an agreed upon definition despite some international initiatives. A human rights-based approach to⁶³ climate finance would mean respect for human rights, as well as human rights-based principles such as non-discrimination and participation, that must be maintained at every stage of climate-related efforts

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and processes.⁶⁴ It would also entail that international assistance for climate change mitigation and adaptation be additional to existing **Official Development Assistance (ODA)** commitments. However, climate finance and green technologies promised in 2009 under the Paris agreement have not met their agreed targets, and as raised at the recent UN-ECOSOC Development Cooperation Forum, the current levels of funding available for climate actions in developing countries are not sufficient nor geared towards meeting the goals of the Paris Agreement.⁶⁵

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

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

Guiding questions

1. Having been recognised as a ‘common’ concern’ of humanity since the late 1980s⁶⁷, climate change is an issue in respect of which all States have common concerns and shared obligations. Going forward, how can the recognition of the **link between climate change and human rights in the Paris Agreement be strengthened** in order to give human rights concerns greater weight within the United Nations Framework Convention on Climate Change (UNFCCC) negotiating process? What is the best way to convince the UNFCCC to develop guidelines on how to integrate the human rights dimensions into Nationally Determined Contributions (NDCs)?
2. Are the existing frameworks conducive enough to encourage international cooperation on combined action regarding climate change and human rights? Is there a common interest to revitalise the **Geneva Pledge for Human Rights in Climate Action**?
3. Given that many countries have to respond to the adverse effects of climate change at the local and national levels, what are the implications for **regional and international cooperation** (institutions and resources) for both human rights and climate change concerns? How can the strategic **partnership between Europe and Asia** be strengthened in terms of cooperation on human rights and climate change?
4. Given their broad and flexible mandate, National Human Rights Institutes (NHRIs) are well placed to seek remedies to human rights violation concerns resulting from the adverse impacts of climate change and national climate change-related frameworks. One good example being the inquiry by the Commission on Human Rights of the Philippines (CHR) calling for an

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investigation into the responsibility of 47 fossil fuel companies, 'the Carbon Majors', for fuelling catastrophic climate change resulting in human rights violations.⁶⁸ **How can the role of NHRIs as an interface between civil society, government, the private sector, and the international community be strengthened and supported?** Can you share other good examples of NHRI collaborations in promoting and protecting human rights in relation to climate change?

5. How can **international development cooperation** providers better integrate the **climate imperative** into their mandate and systems for the purpose of ensuring inclusive and sustainable development, while respecting a human rights-based approach? Are there any flagship projects promoted by international cooperation relevant to climate action and human rights that could be highlighted here?
6. How can a **principle-oriented approach** in climate action and human rights-based programming be ensured?
7. In view of a **post-COVID economic recovery**, what can be done to build back greener and fairer while taking into account the need to enhance **due diligence in supply chain processes**?
8. **Scaling up funding for sustainable programmes** and involving the **private sector** is not an easy task. However, there are a growing number of pilot projects that lead the way. Which are the major flagship projects in this respect to be highlighted in the ASEM region? What are the main existing hurdles for the private sector involvement?
9. Is there a way to spur international and regional initiatives to better define **climate finance** and its relationship with human rights?

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

Climate change threatens the future of human rights and risks undoing the last 50 years of progress in development, global health, and poverty reduction. The Intergovernmental Panel on Climate Change and the Human Rights Council (Resolution 41/21) highlighted that climate change has an impact on, among others, the rights to life, self-determination, development, health, food, water and sanitation, adequate housing, and a range of civil and political rights. Along with other international organisations and experts, the UN is therefore calling for the global recognition of the right to a healthy, sustainable, and safe environment as a universal right.

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

As the principal United Nations intergovernmental body responsible for promoting and protecting human rights, the **Human Rights Council (HRC)** has addressed the issue of the impact of climate

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change on human rights. Its resolution 44/7, adopted in 2020, clearly states that “*human rights obligations, standards and principles have the potential to inform and strengthen international, regional and national policymaking in the area of climate change, thereby promoting policy coherence, legitimacy and sustainable outcomes*”.⁶⁹ The Council has contributed to raising awareness on the links between climate change and human rights by adopting a number of resolutions since 2008, with the most recent one recognising the disproportionate impacts of climate change on older persons.⁷⁰

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

The **human rights treaty bodies**, on the other hand, have addressed climate change and human rights in a number of statements, concluding observations, and general comments. Out of all the treaty bodies, the **Committee on Economic, Social and Cultural Rights (CESCR)** has produced the most extensive and focused account to date and affirmed in 2018 that the “*failure to prevent foreseeable human rights harm caused by climate change, or a failure to mobilise the maximum available resources in an effort to do so, could constitute a breach of its legal obligations*”.⁷³ In the same year, 42% of the Committee’s Concluding Observations on States’ reports addressed climate change.⁷⁴

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

In its general recommendation No. 37, issued in 2018, the **Committee on the Elimination of Discrimination Against Women (CEDAW)** highlighted the steps needed to mainstream gender in the prevention of and response to climate change and environmental disasters. It also underscored the

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key principles of non-discrimination and equality, participation and empowerment, accountability, and access to justice. For its part, the **Committee on the Rights of the Child (CRC)** has highlighted in its general comment No.15 the impacts of climate change and environmental degradation on children's right to health.

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

An increasing number of national courts in the EU hold member states accountable for the climate crisis. At the **regional level**, the **European Court of Human Rights** has clearly established that various types of environmental degradation can result in violations of substantive human rights, such as the rights to life, private and family life, and the peaceful enjoyment of the home, and the prohibition of inhuman and degrading treatment.⁷⁸ The European Court of Human Rights is currently, for example, considering a case initiated by four Portuguese children and two young adults against 33 governments – all EU states as well as Norway, Russia, Switzerland, Turkey, Ukraine, and the United Kingdom – on the grounds that heat waves and forest fires interfere with their right to life and harm their physical and mental wellbeing. While the lawsuit is in its early stages, and no decision on its admissibility or substance has been made yet, the court has decided to fast-track the case, recognising the importance and urgency of the issues raised.⁷⁹

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

Climate litigation is compelling governments and corporate actors to pursue more ambitious climate change mitigation and adaptation goals, as was the case in *Urgenda Foundation v. State of Netherlands*, whereby a group of Dutch citizens successfully challenged the Dutch Government for not taking sufficiently ambitious action to reduce greenhouse gas emissions based on tort and human rights law arguments. Besides the overall increase in the number of climate litigation cases, human rights arguments are being used as support in an increasing number of cases.⁸¹ At the time of writing, the Grantham Research Institute on Climate Change and the Environment at the London School of Economics lists a total of 33 climate litigation cases in Asia and Europe that make some reference to human rights.⁸²

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

Despite the increasing number of climate change litigation cases, it seems that the United Nations as well as the human rights institutions have not yet fully explored the advantages of a human

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rights-based approach to climate change. By approaching climate change from a human rights perspective, the discussion moves from the political arena to the area of legally binding instruments under international law.

Guiding questions

1. What ways are there to promote the **adoption and strengthening and implementation of legislation** aligned with a comprehensive human rights-based approach to climate action? What are the key challenges in this regard?
2. How can one ensure that **measures** of climate change mitigation and adaptation are **ambitious, non-discriminatory, and compliant with fundamental human rights obligations**?
3. Is there a need for an international authority within the UN system to regulate and provide coordinated focus on climate change issues? Would, for example, appointing a **UN Special Rapporteur on Human Rights and Climate Change** ensure greater consistency in the way human rights and climate change are addressed, as has been suggested by civil society organisations⁸³?
4. The independence of **National Human Rights Institutes (NHRI)** can enable them to pursue human rights cases that might be overlooked by government bodies or the prosecution due, for example, political or bureaucratic complacency. **How can the role of NHRIs in planning and implementing national climate commitments, laws and policies be further strengthened?** Any examples of good practices of NHRI involvement on climate change that could be highlighted here?
5. Are there viable initiatives in your country/region that push for the recognition of the **right to a healthy and safe environment as a universal right**? What lessons can be learned from the environment-related cases and the jurisprudence developed by constitutional courts in some countries?
6. To what extent have **climate litigation** cases been effective in bringing about change in attitudes of courts and lawmakers, and providing remedies where other areas of law do not?
7. The principle of equity, including intergenerational equity, is recognised in the UNFCCC which calls for all parties to “*protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.*” Is the current human rights and climate change framework adequate in protecting the rights of **future generations** from climate change related threats? What can be done to encourage more countries to recognise their rights?

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Glossary

ADB	Asian Development Bank
AICHR	ASEAN Intergovernmental Commission on Human Rights
ARAIBA	Responsible and Inclusive Business Alliance
ASEAN	The Association of South-East Asian Nations
ASEF	Asia-Europe Foundation
ASEM	Asia-Europe Meeting
ASEMHRS21	The 21st Informal ASEM Seminar on Human Rights
BIMSTEC	Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation
CBD	Convention on Biological Diversity
CEDAW	Committee on the Elimination of Discrimination Against Women
CER	Corporate Environmental Responsibility
CESCR	Committee on Economic, Social and Cultural Rights
COE	Council of Europe
COP	Conference of Parties
CRC	Committee on the Rights of the Child
CSO	Civil society organisation
DRR	Disaster risk reduction
ECHR	European Convention on Human Rights
ECTHR	European Court of Human Rights
EHRD	Environmental human rights defenders
EIA	Environmental Impact Assessment
EMP	Environment Management Plan
EU	European Union
ESG	Environmental, Social, and Governance
FPIC	Free, prior, and informed consent
G7	Group of Seven
GHG	Greenhouse gases
GIDA	Geographically isolated and disadvantaged areas
HR	Human rights
HRC	UN Human Rights Council
IDMC	Internal Displacement Monitoring Centre
ILO	International Labour Organization
IPCC	Intergovernmental Panel on Climate Change
LGBTIQ	Lesbian Gay Bisexual Transgender Intersex and Queer
NAP	National Action Plan
NCP	National Contact Points
NCSD	National Council for Sustainable Development
NDCs	Nationally Determined Contributions
NGO	Non-governmental organisation
NHRIs	National Human Rights Institutions
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner on Human Rights

Glossary

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
SDG	Sustainable Development Goals
SIDS	Small Island Developing States
SLAPP	Strategic Lawsuits Against Public Participation
UN	United Nations
UNCCD	United Nations Convention to Combat Desertification
UNECE	United Nations Economic Commission for Europe
UNEP	UN Environmental Programme
UNGP	UN Guiding Principles on Business and Human Rights
UNICEF	United Nations Children's Emergency Fund
UNFCCC	UN Framework Convention on Climate Change
UNHCR	United Nations High Commissioner for Refugees
UN-REDD	United Nations REDD Programme
UPR	Universal Periodic Review
WG	Working Group
WHO	World Health Organization

Annex 4

ABOUT THE CO-ORGANISERS



The **Asia-Europe Foundation (ASEF)** promotes understanding, strengthens relationships and facilitates cooperation among the people, institutions and organisations of Asia and Europe. ASEF enhances dialogue, enables exchanges and encourages collaboration across the thematic areas of culture, economy, education, governance, public health and sustainable development.

ASEF is an intergovernmental not-for-profit organisation located in Singapore. Founded in 1997, it is the only institution of the Asia-Europe Meeting (ASEM). Together with about 750 partner organisations ASEF has run more than 700 projects, mainly conferences, seminars and workshops. Over 20,000 Asians and Europeans have actively participated in its activities, and it has reached much wider audiences through its networks, web-portals, publications, exhibitions and lectures.

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The **Raoul Wallenberg Institute** of Human Rights and Humanitarian Law is an independent academic institution dedicated to the promotion of human rights through research, training and education. Established in 1984 at the Faculty of Law at Lund University, Sweden, the institute is currently involved in organising in Lund two Masters Programs and an interdisciplinary human rights programme at the undergraduate level. Host of one of the largest human rights libraries in the Nordic countries and engaged in various research and publication activities, the Raoul Wallenberg Institute provides researchers and students with a conducive study environment. The Institute maintains extensive relationships with academic human rights institutions worldwide.

For more information, please visit www.rwi.lu.se



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Annex 4



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For more information, please visit www.dfa.gov.ph



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Federal Department of Foreign Affairs FDFA

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The **Ministry of Foreign Affairs of the Peoples' Republic of China**.

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ABOUT THE HOST



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