

Terán, Daniel Uribe; Rosales, Luis Fernando

**Research Report**

## Analysing intersections between climate change and human rights

Research Paper, No. 167

**Provided in Cooperation with:**

South Centre, Geneva

*Suggested Citation:* Terán, Daniel Uribe; Rosales, Luis Fernando (2022) : Analysing intersections between climate change and human rights, Research Paper, No. 167, South Centre, Geneva

This Version is available at:

<https://hdl.handle.net/10419/278264>

**Standard-Nutzungsbedingungen:**

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

**Terms of use:**

*Documents in EconStor may be saved and copied for your personal and scholarly purposes.*

*You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.*

*If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.*

167

Research  
Paper

27 October 2022

# Analysing Intersections between Climate Change and Human Rights

Daniel Uribe Teran and  
Luis Fernando Rosales



 **SOUTH  
CENTRE**





# **RESEARCH PAPER**

**167**

## **ANALYSING INTERSECTIONS BETWEEN CLIMATE CHANGE AND HUMAN RIGHTS**

**By Daniel Uribe Teran and Luis Fernando Rosales\***

**SOUTH CENTRE**

**27 OCTOBER 2022**

---

\* Luis Fernando Rosales is Coordinator of the Sustainable Development and Climate Change Programme and Daniel Uribe Teran is Lead Programme Officer of the Sustainable Development and Climate Change Programme, South Centre. The authors would like to express their gratitude to Isabella Mazzei, Intern of the Sustainable Development and Climate Change Programme, for her contributions to this research paper.



## **SOUTH CENTRE**

In August 1995, the South Centre was established as a permanent intergovernmental organization. It is composed of and accountable to developing country Member States. It conducts policy-oriented research on key policy development issues and supports developing countries to effectively participate in international negotiating processes that are relevant to the achievement of the Sustainable Development Goals (SDGs). The Centre also provides technical assistance and capacity building in areas covered by its work program. On the understanding that achieving the SDGs, particularly poverty eradication, requires national policies and an international regime that supports and does not undermine development efforts, the Centre promotes the unity of the South while recognizing the diversity of national interests and priorities.

## NOTE

The views contained in this paper are attributable to the author/s and do not represent the institutional views of the South Centre or its Member States. Any mistake or omission in this study is the sole responsibility of the author/s.

Any comments on this paper or the content of this paper will be highly appreciated. Please contact:

South Centre  
International Environment House 2  
Chemin de Balexert 7–9  
POB 228, 1211 Geneva 19  
Switzerland  
Tel. (41) 022 791 80 50  
[south@southcentre.int](mailto:south@southcentre.int)  
[www.southcentre.int](http://www.southcentre.int)

Follow the South Centre's Twitter: [South Centre](#) 

## ABSTRACT

The effects of climate change on people's daily lives threaten the full enjoyment of human rights. The Human Rights Council adopted two landmark resolutions recognising the human right to a clean, healthy and sustainable environment (Resolution 48/13), and establishing the mandate for a Special Rapporteur on the promotion and protection of human rights in the context of climate change (Resolution 48/14). Nevertheless, a broader dialogue between the UNFCCC and the UN human rights architecture seems necessary to establish a coordinated and coherent response to climate change and its effects on human rights.

This research paper analyses the intersections of these two legal systems. It does so by identifying how the climate change negotiations and the human rights architecture can contribute to strengthening international cooperation. It also recognises the need for a more profound international debate on the linkages between human rights and climate change consistent with the principles of equity and common but differentiated responsibilities included in the UNFCCC.

*Les effets du réchauffement climatique sur la vie quotidienne des êtres humains menacent la pleine jouissance de leurs droits. Le Conseil des droits de l'homme a adopté deux résolutions d'une portée historique, qui reconnaissent le droit de l'homme à un environnement propre, sain et durable (résolution 48/13), et nomment un rapporteur spécial chargé de la promotion et de la protection des droits de l'homme dans le contexte du changement climatique (résolution 48/14). Toutefois, un dialogue plus large entre la Convention-cadre des Nations unies sur les changements climatiques (CCNUCC) et l'architecture de protection des droits de l'homme de l'ONU semble nécessaire en vue de parvenir à une réponse coordonnée et cohérente au réchauffement climatique et à ses effets sur les droits de l'homme.*

*Le présent document de recherche analyse les points de convergence entre ces deux mécanismes en mettant en avant de quelle manière les négociations sur le réchauffement climatique et l'architecture de protection des droits de l'homme peuvent contribuer à renforcer la coopération internationale. Il reconnaît également la nécessité de discussions plus approfondies au niveau international sur les liens entre droits de l'homme et réchauffement climatique, conformément aux principes d'équité et de responsabilités communes mais différenciées inclus dans la CCNUCC.*

*Los efectos del cambio climático en la vida diaria de las personas amenazan el pleno disfrute de los derechos humanos. El Consejo de Derechos Humanos ha adoptado dos resoluciones históricas en las que se reconoce por un lado el derecho humano a un medio ambiente limpio, saludable y sostenible (Resolución 48/13), y se establece por otro el mandato de un Relator Especial sobre la promoción y la protección de los derechos humanos en el contexto del cambio climático (Resolución 48/14). Aun así, parece existir la necesidad de que la CMNUCC y la estructura de derechos humanos de las Naciones Unidas mantengan un diálogo más amplio a fin de dar con una respuesta coordinada y coherente al cambio climático y sus efectos sobre los derechos humanos.*

*En este documento de investigación se analizan las intersecciones de estos dos sistemas jurídicos. Para ello, se identifica el modo en que las negociaciones relativas al cambio climático y la estructura de derechos humanos pueden contribuir a fortalecer la cooperación internacional. También se reconoce la necesidad de un debate internacional de mayor calado acerca de las relaciones entre los derechos humanos y el cambio climático, coherente con los principios de equidad y las responsabilidades comunes pero diferenciadas del CMNUCC.*





## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	THE CLIMATE CRISIS.....	2
III.	DEVELOPMENTS FROM COP26 .....	4
	3.1 <i>Adaptation</i> .....	4
	3.2 <i>Mitigation</i> .....	5
	3.3 <i>Loss and damage</i> .....	5
	3.4 <i>The need for strengthened climate finance</i> .....	6
IV.	CLIMATE CHANGE AND HUMAN RIGHTS.....	7
	4.1 <i>The right to a clean and safe environment</i> .....	7
	4.2 <i>Climate change impacts, vulnerabilities, and human rights</i> .....	9
	4.3 <i>Just transition and climate action</i> .....	10
V.	RESPONSIBLE BUSINESS CONDUCT AND CLIMATE CHANGE.....	12
	5.1 <i>Corporate human rights due diligence</i> .....	13
VI.	INTERNATIONAL INVESTMENT AGREEMENTS, HUMAN RIGHTS AND CLIMATE CHANGE.....	15
VII.	CONCLUDING REMARKS .....	16



## I. INTRODUCTION

In 2021, several important developments took place on the intersection of climate change and human rights. On the one hand, the United Nations Climate Change Conference of the Parties (COP26) was held in Glasgow, Scotland from 31 October to 13 November, after almost two years of activity having been frozen by the COVID-19 pandemic. On the other hand, the Human Rights Council (HRC) adopted two landmark resolutions related to climate change and the environment in its 48<sup>th</sup> session. HRC Resolution 48/13 recognized the human right to a clean, healthy and sustainable environment, while Resolution 48/14 established the mandate for a Special Rapporteur on the promotion and protection of human rights in the context of climate change.

These developments are consistent with the Sustainable Development Goals (SDGs) and the 2030 Agenda for Sustainable Development (2030 Agenda), where human rights are embedded in each of the 17 SDGs and are essential to their achievement.<sup>1</sup> In particular, SDG 13 calls for climate action and recognises the need to integrate climate change measures into broader policies and planning.

In this context, many important questions arise: what is the state of play on climate change policies and human rights? What is the interplay between these two frameworks? How does this interaction affect countries' policy approaches, in developing countries in particular? This Research Paper aims to address these questions by analysing the latest developments on the side of climate change, the climate crisis and the negotiations on adaptation, mitigation, climate finance, and loss and damage. It also analyses the effects arising from the relationship between climate change and human rights, including implications in the field of corporate responsibilities and investment policies. In addition, the paper examines some other climate change issues relevant to developing countries in the fields mentioned above.

---

<sup>1</sup> See: [https://www.ohchr.org/sites/default/files/Documents/Issues/MDGs/Post2015/SDG\\_HR\\_Table.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/MDGs/Post2015/SDG_HR_Table.pdf).

## II. THE CLIMATE CRISIS

Climate change is one of the major challenges of our time.<sup>2</sup> From a legal and institutional perspective, the international system has evolved from the United Nations Framework Convention on Climate Change (UNFCCC), adopted during the Earth Summit (1992), including its Kyoto Protocol (1997<sup>3</sup>), to the Paris Agreement (PA), adopted in 2015.

Broadly speaking, the UNFCCC sets the multilateral substantive foundations, principles and institutional framework for international cooperation to face the climate crisis. It recognizes the historical responsibilities of the Parties on the origin of the problem, and the need to engage in cooperation, technology transfer and climate finance in order to help those Parties now suffering the damage to the environment without having caused it.<sup>4</sup> The principles of equity and common but differentiated responsibilities and respective capabilities (CBDR-RC) embedded in the UNFCCC provide the basis for differentiation of climate actions by developed and developing countries to account for their different levels of contribution to past emission of greenhouse gases (GHGs).<sup>5</sup> The PA upheld the principles and responsibilities of the UNFCCC, incorporating the international community's agreement to "[h]olding 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."<sup>6</sup> In addition, with the view to achieving the objectives of the PA, all members agreed to make individual Nationally Determined Contributions (NDCs) to fight against climate change, which, in turn, progressively supports a higher level of ambition.<sup>7</sup> PA was a significant breakthrough in international climate change law.

However, concrete results are still lacking. The recent Intergovernmental Panel on Climate Change (IPCC) report on "Mitigation of Climate Change" states that net anthropogenic GHG emissions continued to rise during the period 2010–2019. Despite the rate of growth in this decade being lower than in the previous one, average annual GHG emissions during 2010–2019 were still higher than in any previous decade.<sup>8</sup> Moreover, according to the recent World Meteorological Organization (WMO) report, there is a 50% chance of "the annual average global temperature temporarily reaching 1.5 °C above the pre-industrial level for at least one of the next five years – and the likelihood is increasing with time".<sup>9</sup> Furthermore, as the WMO Secretary-General clearly highlights, "[i]ncreasing temperatures mean more melting ice, higher sea levels, more heatwaves and other types of extreme weather, and greater impacts on food security, health, the environment and sustainable development."<sup>10</sup>

The IPCC has played a crucial role in informing negotiations, in the context of the UNFCCC and the PA, about the magnitude of the problem. According to the IPCC, we are close to reaching an irreversible point if we overshoot 1.5°C of global warming by continuing "business

---

<sup>2</sup> United Nations (UN) Secretary-General Antonio Guterres' speech to the United Nations General Assembly, 10 September 2018.

<sup>3</sup> The Kyoto Protocol was adopted in 1997 to implement the UNFCCC. It is the only protocol in this regard. In this protocol, Annex 1 countries of the UNFCCC agreed to reduce carbon dioxide emissions for the period 2008 to 2012 by at least 5 percent compared with the 1990 level.

<sup>4</sup> UNFCCC Preamble, UNFCCC Article 4. Available from [https://unfccc.int/files/essential\\_background/background\\_publications\\_htmlpdf/application/pdf/conveng.pdf](https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf).

<sup>5</sup> Natalia Pacheco, "Social Safeguards and Equity in the Provisions of Payment for Environmental Services in the Paris Agreement," PhD Thesis for University of Geneva (2019), p. 63.

<sup>6</sup> Paris Agreement, Article 2.1.a. Available from [https://unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf).

<sup>7</sup> Paris Agreement, Article 3.

<sup>8</sup> IPCC, *Climate Change 2022: Mitigation of Climate Change, Summary for Policymakers*, para. B.1, p. 10.

<sup>9</sup> See: <https://public.wmo.int/en/media/press-release/wmo-update-5050-chance-of-global-temperature-temporarily-reaching-15%C2%B0c-threshold> (accessed 13 June 2022).

<sup>10</sup> See: <https://public.wmo.int/en/media/press-release/new-climate-predictions-increase-likelihood-of-temporarily-reaching-15-%C2%B0c-next-5>.

as usual”.<sup>11</sup> Moreso, global warming will likely reach something between 2.1°C to 3.5°C by 2081 in an intermediate scenario of GHG emissions:

*“Compared to 1850–1900, global surface temperature averaged over 2081–2100 is very likely to be higher by 1.0°C to 1.8°C under the very low GHG emissions scenario considered (SSP1-1.9), by 2.1°C to 3.5°C in the intermediate scenario (SSP2-4.5) and by 3.3°C to 5.7°C under the very high GHG emissions scenario (SSP5-8.5)”*.<sup>12</sup>

In the scenarios depicted by the IPCC Sixth Assessment Report (AR6) Working Group I (WG I), the degradation of biodiversity and ecosystems will probably occur at an unprecedented scale. The IPCC AR6 Working Group II (WG II) highlights that “...In terrestrial ecosystems, 3 to 14% of species assessed will likely face *very high risk* of extinction at global warming levels of 1.5°C, increasing up to 3 to 18% at 2°C, 3 to 29% at 3°C, 3 to 39% at 4°C, and 3 to 48% at 5°C”.<sup>13</sup> This means 48% of species would face extinction at 5°C of global warming. All these scenarios, adverse impacts, and related losses and damages escalate with every increment of global warming.<sup>14</sup>

The last report of the United Nations Office for Disaster Risk Reduction (UNODRR) also concluded that the risk and cost of disasters are increasing globally. The number of disasters per year may increase by 40% by 2030 globally. The number of extreme temperature events per year will likely increase to almost triple between 2001 and 2030, while “[e]conomic losses from disasters have more than doubled over the past three decades, showing an increase of 145% from an average of around \$70 billion per year in the 1990s to over \$170 billion per year in the decade ending in 2020.”<sup>15</sup>

Of course, as the IPCC also highlights, the magnitude and rate of climate change and associated risks are clearly dependent on climate action, near-term mitigation, and adaptation actions by governments. These actions are also highly dependent on the negotiations held under the umbrella of the UNFCCC in successive COPs, and the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement (CMA).

All these extreme weather events will, likely, have impacts on the ability of many states to protect and promote the human rights of their people, particularly rights of the most vulnerable.

---

<sup>11</sup> IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability, Summary for Policymakers*, para. B.6, p. 19.

<sup>12</sup> IPCC, *Climate Change 2021: The Physical Science Basis, Summary for Policymakers*, para. B.1.1, p. 14.

<sup>13</sup> IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability, Summary for Policymakers*, para. B.4.1, p. 14.

<sup>14</sup> *Ibid.*, para. B.4.

<sup>15</sup> United Nations Office for Disaster Risk Reduction, *Global Assessment Report on Disaster Risk Reduction 2022: Our World at Risk: Transforming Governance for a Resilient Future* (Geneva, 2022), p. 202.

### III. DEVELOPMENTS FROM COP26

COP26 concluded on 13 November 2021 by issuing the ‘Glasgow Climate Pact’, an outcome document reflecting the consensus on key actions to address climate change at its current stage. In the document, States expressed alarm at the current climate situation—the world has already reached 1.1°C of warming, causing impacts in every region worldwide. It further noted that “carbon budgets consistent with achieving the Paris Agreement temperature goal are now small and being rapidly depleted.”<sup>16</sup> The document also recognised the need to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels, highlighting that “rapid, deep and sustained reductions in global greenhouse gas emissions, including reducing global carbon dioxide emissions”<sup>17</sup> are necessary to achieve the Paris Agreement objectives.

As a consequence, States recognized the urgency of increasing ambition and action in relation to mitigation, adaptation, and finance to address the gaps in the implementation of the goals of the Paris Agreement.<sup>18</sup> Accordingly, the outcome document contains several provisions to further progress in facing the climate crisis.

Urgent and decisive action is needed: the COP26 outcome document recognized that “the aggregate greenhouse gas emission level, considering implementation of all submitted NDCs, is estimated to be 13.7 per cent above the 2010 level in 2030”.<sup>19</sup>

#### 3.1 Adaptation

Climate change adaptation is no longer a matter of choice for developing countries. In a situation where we are quickly moving towards an overshoot of the 1.5°C increase in global temperature, adaptation must be a priority.<sup>20</sup> The COP26 outcome document emphasizes “the urgency of scaling up action and support, including finance, capacity building and technology transfer, to enhance adaptive capacity, strengthen resilience and reduce vulnerability...”<sup>21</sup>

In the outcome document, there is a specific sub-heading on adaptation finance, which highlights that climate finance for adaptation remains insufficient to respond to worsening climate change impacts in developing countries. Although developed countries have already made several pledges on climate finance, the outcome document “urges developed country Parties to at least double their collective provision of climate finance for adaptation to developing country Parties from 2019 levels by 2025, in the context of achieving a balance between mitigation and adaptation in the provision of scaled-up financial resources, recalling Article 9, paragraph 4, of the Paris Agreement”<sup>22</sup> and the UNFCCC Article 4 and Article 11.

Unless the international community takes more concrete actions to find solutions on adaptation, given the scenarios depicted by the IPCC, the most vulnerable people and

---

<sup>16</sup> FCCC/PA/CMA/2021/L.16 Outcome Document, para. 3.

<sup>17</sup> See: Glasgow Climate Pact, Advance unedited version, paras. 13 and 17. Available from [https://unfccc.int/sites/default/files/resource/cop26\\_auv\\_2f\\_cover\\_decision.pdf](https://unfccc.int/sites/default/files/resource/cop26_auv_2f_cover_decision.pdf).

<sup>18</sup> FCCC/PA/CMA/2021/L.16 Outcome Document, para. 5.

<sup>19</sup> FCCC/PA/CMA/2021/L.16 Outcome Document, para. 25.

<sup>20</sup> Harjeet Singh and Indrajit Bose, *History and Politics of Climate Change Adaptation at the United Nations Framework Convention on Climate Change*, Research Paper No. 89 (Geneva, South Centre, 2018), p. 3, 4. Available from [https://www.southcentre.int/wp-content/uploads/2018/11/RP89\\_History-and-Politics-of-Climate-Change-Adaptation-at-the-UNFCCC\\_EN.pdf](https://www.southcentre.int/wp-content/uploads/2018/11/RP89_History-and-Politics-of-Climate-Change-Adaptation-at-the-UNFCCC_EN.pdf).

<sup>21</sup> FCCC/PA/CMA/2021/L.16 Outcome Document, para. 7.

<sup>22</sup> FCCC/PA/CMA/2021/L.16 Outcome Document, para. 18.

ecosystems will continue to be disproportionately affected.<sup>23</sup> Developed countries also stand to be affected, but the difference is that they have more resources to tackle the impacts of climate change and therefore higher adaptive capacity.<sup>24</sup>

### 3.2 Mitigation

As said, at COP 26 States noted with “serious concern” that the aggregate greenhouse gas emission level has increased, and is going to grow more. Thus, the outcome document emphasizes the urgent need for Parties to increase their efforts to collectively reduce emissions through accelerated action and implementation of domestic mitigation measures.<sup>25</sup>

In the case of developing countries, according to the UNFCCC’s Article 4.7, mitigation actions and policies are also subject to financial resources and transfer of technology. These elements are crucial to taking mitigative action. The COP26 outcome document “[c]alls upon Parties to accelerate the development, deployment and dissemination of technologies, and the adoption of policies, to transition towards low-emission energy systems, including by rapidly scaling up the deployment of clean power generation and energy efficiency measures, including accelerating efforts towards the phase-down of unabated coal power and inefficient fossil fuel subsidies (...) recognizing the need for support towards a just transition.”<sup>26</sup> This important statement requires an approach from a developing country perspective, because not all Parties of the UNFCCC are at the same starting point to phase down fossil fuels. Again, actions to phase down fossil fuels should come from developed countries in the light of the principle of CBDR-RC and Article 4.4 of the PA.<sup>27</sup>

NDCs are the institutional mechanism for countries to contribute to the struggle against climate change. The outcome document recognized the need to increase Parties’ pledges in their “nationally determined contributions”. This includes development strategies aiming to “reducing global carbon dioxide emissions by 45 per cent by 2030 relative to the 2010 level and net zero around mid-century, as well as deep reductions in other greenhouse gases”<sup>28</sup>. But, again, as recognized in the UNFCCC and the Paris Agreement, to improve NDCs and policy responses from developing countries, it is crucial to enhance these states’ access to technology and climate finance.<sup>29</sup>

### 3.3 Loss and damage

One important breakthrough at COP26 was the operationalization of the Santiago Network<sup>30</sup>, where Parties will “discuss the arrangements for the funding of activities to avert, minimize and address loss and damage associated with the adverse impacts of climate change.”<sup>31</sup>

---

<sup>23</sup> IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability, Summary for Policymakers*, para. B.1, p. 7.

<sup>24</sup> Singh and Bose, *History and Politics of Climate Change Adaptation at the United Nations Framework Convention on Climate Change*, p. 28.

<sup>25</sup> Glasgow Climate Pact, para. 26.

<sup>26</sup> Glasgow Climate Pact, Advance unedited version, para. 20.

<sup>27</sup> Worryingly, due to the war in Europe and the ensuing energy crisis, some developed countries are reactivating their coal plants.

<sup>28</sup> See: [https://unfccc.int/sites/default/files/resource/cma2021\\_L16\\_adv.pdf](https://unfccc.int/sites/default/files/resource/cma2021_L16_adv.pdf), paras. 22-4.

<sup>29</sup> Paris Agreement, Articles 9 and 10.

<sup>30</sup> Santiago Network for averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, adopted as part of the Warsaw International Mechanism (Decision 2/CMA.2., para. 43).

<sup>31</sup> See: [https://unfccc.int/sites/default/files/resource/cma2021\\_L16\\_adv.pdf](https://unfccc.int/sites/default/files/resource/cma2021_L16_adv.pdf), para. 73.



COP26 also decided to further develop the institutional arrangements of the Santiago Network<sup>32</sup>.

For the Group of 77 (G77) and China the “enhanced action and support in relation to loss and damage, including loss and damage-related financing and technology transfer”<sup>33</sup> was a priority at COP26. This includes the possible establishment of a fund to compensate for loss and damage related to climate change.

### **3.4 The need for strengthened climate finance**

As noted above, climate finance is crucial for developing countries to support the implementation of their NDCs and to deal with the climate crisis. Nevertheless, the commitment of developed countries to jointly mobilize USD 100 billion dollars a year by 2020 to address the needs of developing countries has not been fulfilled. The strengthening of financing and facilitation of new cash-flows for climate action was one of the major outcomes developing countries were expecting from COP26, however, it unfortunately was not reached.

For the G77+China, Glasgow was an opportunity to:

“[s]ee tangible actions from developed countries at this COP that translate into enhanced climate finance flows that are demand-driven and responsive to the needs of developing countries. These include real progress in our negotiations relating to the new finance goal.”<sup>34</sup>

In particular, the G77+China considered that the provision and mobilization of finance, technology and capacity building should be done in a “transparent manner, must be new, additional, predictable, and consider the actual needs and priorities of developing countries.”<sup>35</sup>

Therefore, the provision of “new and additional” financial resources as stated in Article 4.3 of the UNFCCC, should not only consider the mobilization of new resources, but also clarify the nature of the mechanisms for providing climate finance. Financial resources should come in the form of grants, instead of loans in non-concessional or semi-concessional terms. Commercial loans should not be counted as part of climate finance, as such loans will only increase the debt distress in developing countries, leaving the climate crisis to be borne mainly by developing countries.

Indeed, as mentioned by the G77+China, the reporting of climate finance by developed countries should be improved, in particular considering that climate finance is “translating into increased external debt of developing countries.”<sup>36</sup> Therefore, an operational definition of climate finance is essential to avoid the classification of non-concessional or semi-concessional loans as ‘climate finance’.

As a climate finance expert told the authors, climate finance is not a gift; it is a reparation from those responsible for climate change to those who currently are suffering its consequences.

---

<sup>32</sup> FCCC/CP/2021/L.15, Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts, para. 10.

<sup>33</sup> See: <https://www.g77.org/statement/getstatement.php?id=211031>.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

## IV. CLIMATE CHANGE AND HUMAN RIGHTS

Lowering global greenhouse gas emissions is one of the most important objectives identified by the international community. Such an objective can only be achieved in line with the obligation of States, individuals and every organ of society to respect human rights. Identifying those who will suffer the most as a result of climate change and environmental degradation, and subsequently addressing adverse impacts are part and parcel of the recognition of linkages between climate change and human rights.

The following sub-sections analyse the evolution of the relationship between climate change and human rights in line with experiences of States at the national, regional and international level, including the role that private parties have in promoting and respecting the human right to a clean and safe environment, and in combating climate change.

### 4.1 *The right to a clean and safe environment*

Since the adoption of the Declaration of the United Nations Conference on the Human Environment in 1972 (Stockholm Declaration), the international community has made significant progress in the development of international environmental law and in addressing environment-related human rights. Given the anthropocentric focus characterising the Stockholm Declaration and other international instruments following it,<sup>37</sup> references to the right to a healthy environment can be found in these instruments. For example, the Stockholm Declaration recognises **“the fundamental right to [...] adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.”**<sup>38</sup>

The Stockholm Declaration is an important milestone in identifying the linkage between human rights and the environment, and served as a catalyst for its recognition in regional and national legal frameworks. For example, Article 66 of the Constitution of Portugal, adopted in 1976, recognises the right **“to a healthy and ecologically balanced human living environment and the duty to defend it,”**<sup>39</sup> paraphrasing the rights and duties mentioned in the Stockholm Declaration. Similarly, Article 79 of the Constitution of Colombia, adopted in 1991, recognises every individual’s right **“to enjoy a healthy environment.”**<sup>40</sup> According to the Special Rapporteur on human rights and the environment, the right to a healthy environment “has gained constitutional recognition and protection in more than 100 States”.<sup>41</sup>

In line with such developments, the United Nations has recognised the human right to a clean, healthy, and sustainable environment. The most recent development was resolution A/RES/76/300, adopted by the United Nations General Assembly (UNGA) in July 2022.

This UNGA resolution not only recognises this right, but also highlights that: “[...] the promotion of the human right to a clean, healthy and sustainable environment requires the full

---

<sup>37</sup> See: Report of the World Commission on Environment and Development: Our Common Future (Brundtland Report, United Nations, 1987) and the Rio Declaration on Environment and Development (United Nations Conference on Environment and Development, 1992).

<sup>38</sup> Stockholm Declaration (1972), Principle 1. Available from <https://wedocs.unep.org/bitstream/handle/20.500.11822/29567/ELGP1StockD.pdf?sequence=1&isAllowed=y>.

<sup>39</sup> For example, Portugal was the first country to include the right to a safe and healthy environment in its constitution in 1976. See: [https://www.constituteproject.org/constitution/Portugal\\_2005.pdf](https://www.constituteproject.org/constitution/Portugal_2005.pdf).

<sup>40</sup> See: [https://www.constituteproject.org/constitution/Colombia\\_2015.pdf?lang=en](https://www.constituteproject.org/constitution/Colombia_2015.pdf?lang=en).

<sup>41</sup> United Nations General Assembly (UNGA), Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/73/188. Available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/231/04/PDF/N1823104.pdf?OpenElement>.

implementation of the multilateral environmental agreements under the principles of international environmental law.”<sup>42</sup>

An important precedent for such milestone achievement was the Human Rights Council resolution 48/13, adopted in 2021, recognising “**the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights**”<sup>43</sup> and the Human Rights Council resolution 48/14 which establishes a new special procedure mandated 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”<sup>44</sup>. (emphasis added)

These resolutions were built on previous regional developments, such as the African Charter on Human and Peoples’ Rights (Art. 24), the 1988 Additional Protocol to the American Convention on Human Rights (Art. 11(1)), the 2004 Arab Charter on Human Rights (Art. 38), the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration of 2012, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazu Agreement), and the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention), among others.

The African Charter, the Aarhus Convention and the Escazu Agreement carry a special weight not only regarding the recognition of the right to live in a healthy environment, but also in respect of the means and mechanisms for its enforcement. The African Charter was the first internationally binding instrument recognising such right in Article 24, stating that “**[a]ll peoples shall have the right to a general satisfactory environment favorable to their development.**” The recognition of this right as a legally binding obligation for States has been highlighted by the African Commission on Human and Peoples’ Rights by emphasising that this right:

“requires the State to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources.”<sup>45</sup>

The characterization of the right to a healthy environment and environmental right as ‘third generation rights’ or ‘solidarity rights’<sup>46</sup> has limited its full enjoyment from a substantial point of view, given that there is yet no “clear definition of this right nor is the content of this right clearly demarcated.”<sup>47</sup>

However, the Aarhus Convention and the Escazu Agreement have introduced the procedural rights approach in relation to the substantive right to a clean, healthy and sustainable

---

<sup>42</sup> UNGA Resolution A/RES/76/300, adopted 28 July 2022. Available from <https://www.un.org/en/ga/76/resolutions.shtml>.

<sup>43</sup> HRC Res. 48/13 OP 1. Available from <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FRES%2F48%2F13&Language=E&DeviceType=D&esktop&LangRequested=False>.

<sup>44</sup> HRC Res. 48/14 OP 2.a. Available from <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FRES%2F48%2F14&Language=E&DeviceType=D&esktop&LangRequested=False>.

<sup>45</sup> See: Communication 155/96 (2021).

<sup>46</sup> See: <https://www.corteidh.or.cr/tablas/R21586.pdf>, p. 174.

<sup>47</sup> See: *Ibid.*, p. 175.

environment. Both of these agreements go beyond the recognition of this right by including a set of procedural guarantees and rights necessary to achieve the full enjoyment of the right to a clean and healthy environment. Both instruments include the obligation of State Parties to guarantee “the rights of access to information, public participation in decision-making, and access to justice in environmental matters...”<sup>48</sup> as necessary means for the protection of the right of “every person of present and future generations to live in a healthy environment and to sustainable development.”<sup>49</sup> Not only are the procedural rights linked to environment protection included in these instruments an outstanding achievement for the promotion of the right to a clean and healthy environment, they also serve as a cornerstone to characterize it as part of civil and political rights.

Another important basis for the right to a clean, healthy and sustainable environment is the recognition by the Committee on Economic, Social and Cultural Rights (CESCR), General Comment 12, paragraph 12, that the protection of the environment is closely related to the enjoyment of human rights, including the right to life and health, food, and housing, among others enshrined in Article 12.2.b of the International Covenant of Economic and Social Rights (ICESCR). Significantly, the UN Declaration on the Rights of Peasants and other people living in rural areas (UNDROP) in Article 18 also recognises the obligation of the State to comply with their climate change obligations as part of their human rights obligations to peasants and other people working in rural areas. The same article recognises the right of peasants to contribute to the design and implementation of national and local climate change adaptation and mitigation policies, including through the use of traditional knowledge and practices.

#### **4.2 Climate change impacts, vulnerabilities, and human rights**

Although international human rights law, as noted, has recognised the right to a safe and clean environment through declarations, conventions, and decisions by regional human rights courts, there is still much to do in order to address the linkage between climate change impacts and human rights. As mentioned by the report of the Office of the High Commissioner for Human Rights (OHCHR), in respect of the relationship between climate change and human rights, the physical effects of climate change cannot be directly classified as human rights violations because “(...) climate change-related harm often cannot clearly be attributed to acts or omissions of specific States. Yet, addressing that harm remains a critical human rights concern and obligation under international law.”<sup>50</sup> Along these lines, the Special Rapporteur on the Right to Development recalled that the Paris Agreement recognises that climate change has an impact on human rights<sup>51</sup> and that:

“the effects of climate change are not solely an environmental or an economic issue; they impact the enjoyment of the rights to health care, education, housing, culture and food; and they destroy property and eradicate livelihoods and employment opportunities in affected communities and, in some instances, in entire countries.”<sup>52</sup>

Nevertheless, the Glasgow Climate Pact is lacking in human rights considerations: the topic is mentioned only twice. In the preamble, the outcome document recognises that “climate change is a common concern of humankind”<sup>53</sup> and therefore, human rights should permeate the design and implementation of climate action, in particular seeking to promote and consider “the right to health, the rights of indigenous peoples, local communities, migrants, children,

---

<sup>48</sup> Aarhus Convention, Article 1.

<sup>49</sup> Escazu Agreement, Article 1.

<sup>50</sup> Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, Doc A/HRC/10/61 (2009).

<sup>51</sup> See: <https://undocs.org/A/76/154>, para. 21, and the Paris Agreement.

<sup>52</sup> See: [https://www.ohchr.org/sites/default/files/2021-12/Policy\\_Brief\\_RTDC\\_Climate\\_Action.pdf](https://www.ohchr.org/sites/default/files/2021-12/Policy_Brief_RTDC_Climate_Action.pdf), p. 8.

<sup>53</sup> Glasgow Climate Pact, Preamble.

persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.”<sup>54</sup> The second reference to human rights is included in paragraph 91, highlighting that Parties should respect, promote and consider their respective obligations on human rights, as well as gender equality and empowerment of women when implementing the Work Programme on Action for Climate Empowerment (ACE).<sup>55</sup> Interestingly, the ACE itself does not mention human rights, regardless of paragraph 91.<sup>56</sup>

The linkages between human rights and climate change require more discussions in both the UNFCCC process and the Human Rights Council. It is imperative that the international community pays major attention to the need to protect people against the harm of climate change as a fundamental right. This must be consistent with the principles of equity and common but differentiated responsibilities included in the UNFCCC, and requires increased support for and international cooperation with developing countries. Indeed, Article 4.7 of the UNFCCC recognises that the efforts made by developing countries against the effects of climate action depend on the effective provision of climate finance and transfer of technology by developed countries. Additionally, the Human Rights Council Resolution 48/14 recognised the need to face the challenges that States confront in addressing the adverse effects of climate change, including financial challenges.

The decisions taken by the Human Rights Council in 2021, through Resolutions 48/13 and 48/14 and Resolution 47/24<sup>57</sup>, which established a yearly panel discussion starting in 2023, will assist the international community in clarifying the linkages between climate change and its impact on human rights. Certainly, as the OHCHR stated, “human rights obligations provide important protection to the individuals whose rights are affected by climate change or by measures taken to respond to climate change.”<sup>58</sup>

### **4.3 Just transition and climate action**

The Glasgow Climate Pact makes a compelling argument on the need to increase NDCs and achieve ‘net-zero’ emissions by the mid-century. However, the Glasgow Climate Pact outcomes do not reflect a balance between that level of ambition and the crucial climate finance required to achieve it. Developing countries have clearly recognised that “[e]nhanced ambition must come with enhanced support.”<sup>59</sup>

Indeed, global policies intended to curb the effect of climate change should support the efforts made by countries through their NDCs but should not be limited to only addressing direct actions on the climate front. On the contrary, climate finance and international cooperation, including for capacity building, should also be considered as part of “the need for support towards a just transition.”<sup>60</sup> COP26 recognised that unless rapid, sustained and urgent action is taken to deeply cut global GHG emissions by 45% at latest in 2030 and reach net-zero by mid-century, the opportunity to limit warming to well below 2°C or eventually 1.5°C will be extremely challenging.<sup>61</sup> This requires, among other efforts, a major decarbonization of the world’s economy, starting with transitioning energy systems to renewable sources. Thus,

---

<sup>54</sup> Ibid.

<sup>55</sup> Ibid., para. 91.

<sup>56</sup> See: [https://unfccc.int/sites/default/files/resource/cma3\\_auv\\_3b\\_Glasgow\\_WP.pdf](https://unfccc.int/sites/default/files/resource/cma3_auv_3b_Glasgow_WP.pdf).

<sup>57</sup> HRC Resolution 47/24, adopted on 14 July 2021. Available from <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FRES%2F47%2F24&Language=E&DeviceType=Desktop&LangRequested=False>.

<sup>58</sup> Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, para. 71.

<sup>59</sup> See: <https://www.g77.org/statement/getstatement.php?id=211031>.

<sup>60</sup> Glasgow Climate Pact, para. 36.

<sup>61</sup> FCCC/PA/CMA/2021/L.16. Outcome Document, para. 22.

energy is at the heart of the solution to the climate challenge.<sup>62</sup> However, even if energy transition towards greenhouse gas mitigation is prioritized in responding to climate change, social and economic development challenges and the respect and realization of human rights must also be considered.

Access to energy, poverty eradication and sustainable development are intertwined processes, and cannot be treated in isolation. The fact that developed economies have had historically high consumption rates of energy is a clear example of the need to accelerate the infrastructural development of less developed economies, not only in the energy sector, but also in health, communication, and social services. As noted by the Special Rapporteur on the Right to Development, diversified and developed economies tend to be more resilient to economic shocks and harm caused by climate change.<sup>63</sup>

In addition, many developing countries face challenges linked to chronic food insecurity, malnutrition, and natural resource degradation, exacerbated by climate change. A fast transition to renewable energies which does not consider developing countries' vulnerabilities might also trigger human displacement and migration, increasing poverty, inequality, and other vulnerabilities.<sup>64</sup> This reality requires thoughtful consideration of the impacts that climate change may have on the livelihoods and daily life of the most affected and vulnerable groups, including indigenous people, peasants, internally displaced persons, persons with disabilities, and women, as recognised by Resolution 47/24 adopted by the Human Rights Council in July 2021.

The concept of just transition is therefore intended to respond to these challenges and address inequalities in different sectors,<sup>65</sup> while promoting and protecting human rights. Engaging in collaboration at all levels of public decision making and paying particular attention to the participation of grassroots and vulnerable groups can play an important role towards the realization of a just transition.

---

<sup>62</sup> Hoesung Lee and Fatih Birol, "Energy is at the heart of the solution to the climate challenge", IPCC, 31 July 2020. Available from <https://www.ipcc.ch/2020/07/31/energy-climatechallenge/> (accessed 20 June 2022).

<sup>63</sup> Saad Alfarargi, United Nations Special Rapporteur on the right to development, "Climate action and the right to development: a participatory approach" (October 2021), p. 9. Available from [https://www.ohchr.org/sites/default/files/2021-12/Policy\\_Brief\\_RTDC\\_Climate\\_Action.pdf](https://www.ohchr.org/sites/default/files/2021-12/Policy_Brief_RTDC_Climate_Action.pdf).

<sup>64</sup> See: Food and Agricultural Organization (FAO), International Fund for Agricultural Development (IFAD), United Nations Children's Fund (UNICEF), World Food Programme (WFP) and World Health Organization (WHO), *The State of Food Security and Nutrition in the World 2021*, p. 65.

<sup>65</sup> See: <https://www.theguardian.com/inequality/2017/nov/14/worlds-richest-wealth-credit-suisse>.

## V. RESPONSIBLE BUSINESS CONDUCT AND CLIMATE CHANGE

The 2030 Agenda, in particular SDG 13, calls for climate action and recognises the need to integrate climate change measures into broader policies and planning. The 2030 Agenda also states that investment is one of the most effective means of poverty reduction, transition to clean and renewable energy, and a major driver of productivity, inclusive economic growth, and job creation. But investors also have obligations. The “respect of human rights applies to all societal relations locally, regionally and globally,”<sup>66</sup> meaning that all efforts taken by all organs of society to respond to climate change impacts must consider international human rights obligations, including by private parties.<sup>67</sup> Indeed, guaranteeing the full enjoyment of human rights needs to “ensure that no other individual or entity, public or private [...] act in disregard of such rights.”<sup>68</sup>

Governments have the primary duty to protect their citizens, including by protecting them from acts carried out by private parties,<sup>69</sup> and from any adverse impact on their rights, which includes the right to a safe and healthy environment. For example, the Inter American Court of Human Rights has recognised that the obligation to protect the right to a healthy environment extends to the private sphere: States should prevent third parties from violating this right, and must provide sufficient means to deal with such violations in cases they occur.<sup>70</sup> This obligation requires States to take positive action under human rights instruments to prevent any act or omission by private parties that could harm human rights, including impacts emanating from climate change.

One of the major achievements in the dialogue between business and human rights is the current discussions on a legally binding instrument on business and human rights carried out by the UN Human Rights Council.<sup>71</sup> During the Seventh Session of the Open-ended Intergovernmental Working Group on Business and Human Rights negotiating said instrument, several States and civil society organizations recognised the need to face the challenges arising from climate change through the protection and promotion of human environment-related rights in the legally binding instrument.<sup>72</sup>

Further, in 2022 the Labour Ministers of the Group of 7 reached an agreement recognising the need for “concrete actions and joint steps towards a just transition and the creation of decent, high-quality work for a green economy,”<sup>73</sup> and the need to take steps towards the adoption of “mandatory measures, to ensure corporate due diligence and the elimination of child labour and forced labour along value chains [...] to ensure coherence in regulatory measures taken

---

<sup>66</sup> Dinah Shelton, “Protecting Human Rights in a Globalized World”, *Boston College International and Comparative Law Review*, Vol. 25 (2002), p. 284. Available from <http://lawdigitalcommons.bc.edu/iclr/vol25/iss2/7>.

<sup>67</sup> *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. Argentina*, ICSID Case No. ARB/07/26 (Award of 8 December 2016), para. 1194.

<sup>68</sup> *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. Argentina*, ICSID Case No. ARB/07/26 (Award of 8 December 2016), para. 1196.

<sup>69</sup> See: Inter-American Court of Human Rights (IACtHR), *Velásquez Rodríguez Case*, Judgment of July 19, 1988, Series C, No. 4.

<sup>70</sup> See: IACtHR, *Lhaka Honhat Association v. Argentina*, Judgment of February 6, 2020.

<sup>71</sup> See: <https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc>. Also see: <https://www.southcentre.int/wp-content/uploads/2020/07/Designing-an-International-Legally-Binding-Instrument-on-Business-and-Human-Rights-REV.pdf>.

<sup>72</sup> See: Annex to the report on the seventh session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (A/HRC/49/65). Available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/397/55/PDF/G2139755.pdf?OpenElement>.

<sup>73</sup> See: “Just transition: Make it work, Towards decent and high quality work in a green economy”, G7 Employment Ministerial Meeting Communiqué (Wolfsburg, 24 May 2022), p. 1. Available from <https://www.bundesregierung.de/resource/blob/998440/2049588/9a352fb23d51b70e92545cb2220fe030/2022-05-24-g7-employment-ministerial-meeting-communicu%c3%a9-en-data.pdf?download=1>.

at the national level, provide legal clarity to business, reduce compliance costs for companies and, most importantly, prevent business involvement with harms to people and planet in the first instance, and enable access to effective remedy wherever they occur.”<sup>74</sup>

### 5.1 Corporate human rights due diligence

According to a report prepared by the Economist Intelligence Unit,<sup>75</sup> one of the most common barriers businesses face with regards to their duty to respect human rights is the “lack of understanding of human rights responsibilities”.<sup>76</sup> Corporate human rights due diligence regulations (HRDD) at the national, regional and international level have a strong potential for clarifying these obligations, thereby contributing to addressing the current concerns with respect to human rights and climate change.

Some States and regional groups have extensively worked on the design of policies and mechanisms directed toward identifying and assessing the risks associated with business operations in the realm of human rights.<sup>77</sup> The adoption of human rights due diligence measures aims to mitigate such risks, provide remedy, and monitor and report the effectiveness of such measures. Nevertheless, currently, a baseline study focusing on the impacts of renewable energies on human rights has shown that less than 50% of companies have human rights commitments included in their internal policies.<sup>78</sup>

Different criteria and standards aiming to introduce corporate human rights due diligence legislation in various jurisdictions could create a protection gap for victims of human rights violations related to climate change, particularly as a result of differing approaches with respect to liability and sanctions in cases of non-compliance. The potential of HRDD legislation to strengthen the prevention of human rights violations, while also addressing remediation after the occurrence of harm through State recognised mechanisms, could be achieved through the establishment of international standards on this matter.

The issue of remediation and compensation becomes even more relevant when considering its links to loss and damage related to climate change. According to the UN Special Rapporteur on Extreme Poverty and Human Rights, the number of climate change cases filed in several countries seek to hold “[g]overnments and companies accountable for emissions and pursue remedies for harms caused by their failure to reduce emission they knew would be harmful.”<sup>79</sup> The increase of climate change-related litigation illustrates that discussion over its effects and the policies adopted to respond to the climate crisis also require efforts directed towards lessening the toll taken on human rights as a result of “loss of livelihoods, displacement, food insecurity and other effects of climate change.”<sup>80</sup>

---

<sup>74</sup> Ibid., para. 18..

<sup>75</sup> The Economist Intelligence Unit, *The Road from Principles to Practice: Today’s Challenges for Business in Respecting Human Rights* (2015). Available from [https://eiperspectives.economist.com/sites/default/files/EIU-URG%20-%20Challenges%20for%20business%20in%20respecting%20human%20rights%20WEB\\_corrected%20logos%20and%20UNWG%20thx.pdf](https://eiperspectives.economist.com/sites/default/files/EIU-URG%20-%20Challenges%20for%20business%20in%20respecting%20human%20rights%20WEB_corrected%20logos%20and%20UNWG%20thx.pdf) (accessed 4 March 2020).

<sup>76</sup> Ibid., p. 18.

<sup>77</sup> See: e.g. the European Union initiative at [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1145](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145).

<sup>78</sup> Business and Human Rights Resource Centre, *Renewable Energy Risking Rights & Returns: An analysis of solar, bioenergy and geothermal companies’ human rights commitments* (September 2018). Available from [https://www.business-humanrights.org/sites/default/files/Solar%2C%20Bioenergy%2C%20Geothermal%20Briefing%20-%20Final\\_0.pdf](https://www.business-humanrights.org/sites/default/files/Solar%2C%20Bioenergy%2C%20Geothermal%20Briefing%20-%20Final_0.pdf).

<sup>79</sup> See <https://undocs.org/A/HRC/41/39>, para. 73.

<sup>80</sup> Ibid.



The steps taken at climate change negotiations are critical but insufficient for addressing the needs for adaptation and preventing food scarcity, water stress, increased risk on health and adverse consequences on human security and human rights, in particular for disadvantaged and vulnerable populations. Although many pledges have been repeated, much still has to be done to address these needs.

## VI. INTERNATIONAL INVESTMENT AGREEMENTS, HUMAN RIGHTS AND CLIMATE CHANGE

Experience has shown that ensuring investors conduct business activities in a responsible and sustainable manner is critical not only for the implementation of climate action, but also to guarantee the respect of human rights. Actually, a recent publication shows a correlation between decreasing foreign direct investment (FDI) inflows and ‘weak’ human rights frameworks. Further, it notes that “pressures by civil society and stakeholders have been described as social risks for firms that may influence or even outweigh economic advantages of investing abroad, and ultimately deter FDI.”<sup>81</sup> In line with such findings, countries might ‘win’ more by providing a strong and clear framework for promoting and protecting human rights, including the right to a clean and healthy environment than by pursuing a ‘race to the bottom’ approach in an attempt to promote international investment and trade.

In this context, the need to support developing countries to build convergence and consolidate common positions on the reform of international investment agreements (IIAs) is a necessary step to promote better alignment of corporate conduct with international human rights standards.

The dynamics of contemporary business models, often carried out through global value chains and a diversity of corporate contracts, require an effective response adapted to the challenges and risks deriving from the modalities under which business is conducted. Such effective response could be developed through the adoption of corporate human rights due diligence legislation, as mentioned above. This is even more important considering that developing and least developed countries are among countries most affected by environmental degradation, climate change and the challenges derived from the investor-State dispute settlement (ISDS) mechanism<sup>82</sup>. The cost of defence and payment of multi-million-dollar awards add pressure to these States’ already fragile financial systems by increasing the risk of sovereign default or tightening public expenditure necessary to combat climate change and achieve the SDGs.<sup>83</sup>

The current ISDS framework increases the risks of States to face costly claims related to climate change action, which will not only affect the implementation of the NDCs, but also limit the funding necessary for the realization of human rights<sup>84</sup> and the achievement of the SDGs. Therefore, the impact that IIAs and ISDS might have on financial resource mobilization is critical, particularly as developing countries are struggling with the effects of a pandemic and a global economic slowdown.

---

<sup>81</sup> Krishna Chaitanya Vadlamannati, Nicole Janz and Øyvind Isachsen Berntsen, “Human Rights Shaming and FDI: Effects of the UN Human Rights Commission and Council”, *World Development* 2022, Vol. 104 (2018).

<sup>82</sup> See: Examples of ISDS claims against environmental and climate change policies: RWE v. Netherlands (ICSID Case No. ARB/21/4); Eco Oro v. Colombia (ICSID Case No. ARB/16/41); Bear Creek Mining v. Peru (ICSID Case No. ARB/14/21).

<sup>83</sup> See: Kyla Tienhaara and Lorenzo Cotula, “Raising the cost of climate action? Investor-state dispute settlement and compensation for stranded fossil fuel assets”, IIED Land, Investment and Rights series (2020). Available from <https://pubs.iied.org/sites/default/files/pdfs/migrate/17660IIED.pdf>.

<sup>84</sup> See: [https://www.ohchr.org/sites/default/files/2021-12/Policy\\_Brief\\_RTDC\\_Climate\\_Action.pdf](https://www.ohchr.org/sites/default/files/2021-12/Policy_Brief_RTDC_Climate_Action.pdf), p. 16.

## VII. CONCLUDING REMARKS

The world is quickly running out of time to meet the 1.5°C limit established in the Paris Agreement. Technically, all countries recognise the need to take action, and the Glasgow Climate Pact reflects how far we can go under the current circumstances. Unfortunately, it seems not to be enough. If no further action is taken, the world will overshoot the 1.5°C threshold in 20 years or less. This means more frequent droughts, flooding, heatwaves and other extreme weather effects affecting most regions of the world, particularly the most vulnerable people.

Climate finance is still one of the most relevant issues for developing countries today. It needs careful attention to avoid the perverse effect of increasing the indebtedness of developing countries. As noted, developed countries' obligation to provide climate finance is a reparation coming from those who depleted the climate to those who currently are suffering its consequences.

The way in which countries implement their climate change mitigation and adaptation strategies will have implications on the protection of human rights. The new Special Rapporteur on Climate Change will have the important task of further elaborating on this intersection, particularly on the adverse impacts on the rights of the most vulnerable groups, and of promoting a better coordination between human rights and climate change adaptation and mitigation policies, in accordance with the principles and provisions of the UNFCCC and the Paris Agreement.

Considerations about the impact that climate change has on the full enjoyment of human rights should not be limited to the direct risks emanating from climate phenomena. As mentioned above, human rights obligations and responsibilities as enshrined in relevant international human rights instruments provide roles for States and other duty bearers, including businesses, to promote, protect and respect, as would be appropriate, human rights, including those of people in vulnerable situations, when taking action to address the adverse effects of climate change. In this regard and in the light of the latest developments on the human rights framework, States should consider the rights, specific risks, needs and capabilities of people in vulnerable situations in the design and implementation of climate action plans and other relevant policies or legislation<sup>85</sup>. Consequently, the participation of grassroots communities and vulnerable groups at all levels of public decision-making in these matters should be promoted.

The current efforts taken by the international community to face the challenges arising from climate change and the recognition of the right to a clean environment as a human right must not be misconstrued as merely aspirational objectives. These efforts encompass essential elements of public policy, aiming to build a better and more resilient future for all<sup>86</sup>. Moreover, fundamental human rights principles should not be only streamlined through the design, implementation and monitoring of climate actions, but should also consider the strong linkages with other branches of social and economic policies, including trade, investment, labour and social protection.

UNGA Resolution A/RES/76/300 and HRC's resolutions 47/24, 48/13 and 48/14 are steps in the right direction to better understand the relationship and the interactions between both the human rights and climate change legal frameworks. These resolutions will guide the works in

---

<sup>85</sup> See: <https://undocs.org/A/HRC/RES/47/24>.

<sup>86</sup> South Centre Statement, Interactive Dialogue with the Special Rapporteur on the Right to Development, 20 September 2021. See: [https://www.southcentre.int/wp-content/uploads/2021/09/South-Centre\\_ID-SR-Right-to-Development\\_48-Session-HRC.pdf](https://www.southcentre.int/wp-content/uploads/2021/09/South-Centre_ID-SR-Right-to-Development_48-Session-HRC.pdf).

both scenarios, but in particular in the Human Rights Council. However, more efforts are required to address these linkages in climate change negotiations and other multilateral forums where these issues are discussed.

Strengthening the promotion and protection of human rights *vis-à-vis* climate change, including by providing clear and mandatory guidelines for private parties, will contribute to providing protections against measures that may negatively affect people's rights. The consideration of the right to a safe and clean environment by the HRC and the new mandate of the Special Rapporteur on Climate Change, and the recognition of this right by the UNGA, could create new opportunities for increased dialogue and cooperation between the UNFCCC and the HRC in this area.

## RECENT SOUTH CENTRE RESEARCH PAPERS

No.	Date	Title	Authors
91	February 2019	Key Issues for BAPA+40: South-South Cooperation and the BAPA+40 Subthemes	Vicente Paolo B. Yu III
92	March 2019	Notification and Transparency Issues in the WTO and ' November 2018 Communication	Aileen Kwa and Peter Lunenburg
93	March 2019	Regulating the Digital Economy: Dilemmas, Trade Offs and Potential Options	Padmashree Gehl Sampath
94	April 2019	Tax Haven Listing in Multiple Hues: Blind, Winking or Conniving?	Jahanzeb Akhtar and Verónica Grondona
95	July 2019	Mainstreaming or Dilution? Intellectual Property and Development in WIPO	Nirmalya Syam
96	Agosto 2019	Antivirales de acción directa para la Hepatitis C: evolución de los criterios de patentabilidad y su impacto en la salud pública en Colombia	Francisco A. Rossi B. y Claudia M. Vargas P.
97	August 2019	Intellectual Property under the Scrutiny of Investor-State Tribunals Legitimacy and New Challenges	Clara Ducimetière
98	September 2019	Developing Country Coalitions in Multilateral Negotiations: Addressing Key Issues and Priorities of the Global South Agenda	Adriano José Timossi
99	September 2019	Ensuring an Operational Equity-based Global Stocktake under the Paris Agreement	Hesham AL-ZAHRANI, CHAI Qimin, FU Sha, Yaw OSAFO, Adriano SANTIAGO DE OLIVEIRA, Anushree TRIPATHI, Harald WINKLER, Vicente Paolo YU III
100	December 2019	Medicines and Intellectual Property: 10 Years of the WHO Global Strategy	Germán Velásquez
101	December 2019	Second Medical Use Patents – Legal Treatment and Public Health Issues	Clara Ducimetière
102	February 2020	The Fourth Industrial Revolution in the Developing Nations: Challenges and Road Map	Sohail Asghar, Gulmina Rextina, Tanveer Ahmed & Manzoor Illahi Tamimy (COMSATS)
103	February 2020	Eighteen Years After Doha: An Analysis of the Use of Public Health TRIPS Flexibilities in Africa	Yousuf A Vawda & Bonginkosi Shozi

104	March 2020	Antimicrobial Resistance: Examining the Environment as Part of the One Health Approach	Mirza Alas
105	March 2020	Intersección entre competencia y patentes: hacia un ejercicio pro-competitivo de los derechos de patente en el sector farmacéutico	María Juliana Rodríguez Gómez
106	March 2020	The Comprehensive and Progressive Agreement for the Trans-Pacific Partnership: Data Exclusivity and Access to Biologics	Zelege Temesgen Boru
107	April 2020	Guide for the Granting of Compulsory Licenses and Government Use of Pharmaceutical Patents	Carlos M. Correa
108	April 2020	Public Health and Plain Packaging of Tobacco: An Intellectual Property Perspective	Thamara Romero
109	May 2020	Non-Violation and Situation Complaints under the TRIPS Agreement: Implications for Developing Countries	Nirmalya Syam
110	May 2020	Estudio preliminar del capítulo sobre propiedad intelectual del acuerdo MERCOSUR – UE	Alejandra Aoun, Alejo Barrenechea, Roxana Blasetti, Martín Cortese, Gabriel Gette, Nicolás Hermida, Jorge Kors, Vanesa Lowenstein, Guillermo Vidaurreta
111	May 2020	National Measures on Taxing the Digital Economy	Veronica Grondona, Abdul Muheet Chowdhary, Daniel Uribe
112	June 2020	La judicialización del derecho a la salud	Silvina Andrea Bracamonte and José Luis Cassinerio
113	June 2020	La evolución de la jurisprudencia en materia de salud en Argentina	Silvina Andrea Bracamonte and José Luis Cassinerio
114	June 2020	Equitable Access to COVID-19 Related Health Technologies: A Global Priority	Zelege Temesgen Boru
115	July 2020	Special Section 301:US Interference with the Design and Implementation of National Patent Laws	Dr. Carlos M. Correa
116	August 2020	The TRIPS Agreement Article 73 Security Exceptions and the COVID-19 Pandemic	Frederick Abbott
117	September 2020	Data in Legal Limbo: Ownership, sovereignty, or a digital public goods regime?	Dr. Carlos M. Correa

118	September 2020	Re-thinking Global and Local Manufacturing of Medical Products After COVID-19	Dr. German Velásquez
119	October 2020	TRIPS Flexibilities on Patent Enforcement: Lessons from Some Developed Countries Relating to Pharmaceutical Patent Protection	Joshua D. Sarnoff
120	October 2020	Patent Analysis for Medicines and Biotherapeutics in Trials to Treat COVID-19	Srividya Ravi
121	November 2020	The World Health Organization Reforms in the Time of COVID-19	German Velásquez
122	November 2020	Analysis of the Overcapacity and Overfishing Pillar of the WTO Fisheries Subsidies Negotiations	Peter Lunenborg
123	November 2020	The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas: One Step Forward in the Promotion of Human Rights for the Most Vulnerable	Maria Natalia Pacheco Rodriguez and Luis Fernando Rosales Lozada
124	November 2020	Practical Implications of 'Vaccine Nationalism': A Short-Sighted and Risky Approach in Response to COVID-19	Muhammad Zaheer Abbas, PhD
125	December 2020	Designing Pro-Health Competition Policies in Developing Countries	Vitor Henrique Pinto Ido
126	December 2020	How Civil Society Action can Contribute to Combating Antimicrobial Resistance	Mirza Alas Portillo
127	December 2020	Revisiting the Question of Extending the Limits of Protection of Pharmaceutical Patents and Data Outside the EU – The Need to Rebalance	Daniel Opoku Acquah
128	February 2021	Intellectual Property in the EU–MERCOSUR FTA: A Brief Review of the Negotiating Outcomes of a Long-Awaited Agreement	Roxana Blasetti In collaboration with Juan I. Correa
129	March 2021	The TRIPS waiver proposal: an urgent measure to expand access to the COVID-19 vaccines	Henrique Zeferino de Menezes
130	April 2021	Misappropriation of Genetic Resources and Associated Traditional Knowledge: Challenges Posed by Intellectual Property and Genetic Sequence Information	Nirmalya Syam and Thamara Romero
131	June 2021	TRIPS Flexibilities and TRIPS-plus Provisions in the RCEP Chapter on Intellectual Property: How Much Policy Space is Retained?	Vitor Henrique Pinto Ido
132	June 2021	Interpreting the Flexibilities Under the TRIPS Agreement	Carlos M. Correa

133	August 2021	Malaria and Dengue: Understanding two infectious diseases affecting developing countries and their link to climate change	By Mirza Alas
134	September 2021	Restructuring the Global Vaccine Industry	Felix Lobo
135	September 2021	Implementation of a TRIPS Waiver for Health Technologies and Products for COVID-19: Preventing Claims Under Free Trade and Investment Agreements	Carlos M. Correa, Nirmalya Syam and Daniel Uribe
136	September 2021	Canada's Political Choices Restrain Vaccine Equity: The Bolivia-Biolyse Case	Muhammad Zaheer Abbas
137	October 2021	The Ocean Economy: trends, impacts and opportunities for a post COVID-19 Blue Recovery in developing countries	David Vivas Eugui, Diana Barrowclough and Claudia Contreras
138	October 2021	Beyond Corporate Social Responsibility: Strengthening Human Rights Due Diligence through the Legally Binding Instrument on Business and Human Rights	Daniel Uribe Terán
139	October 2021	Governing Seed for Food Production: The International Treaty on Plant Genetic Resources for Food and Agriculture	Nina Isabelle Moeller
140	November 2021	Del SIDA al COVID-19: La OMS ante las crisis sanitarias globales	Germán Velásquez
141	November 2021	Utilising Public Health Flexibilities in the Era of COVID-19: An Analysis of Intellectual Property Regulation in the OAPI and MENA Regions	Yousuf A Vawda and Bonginkosi Shoji
142	4 January 2022	Competition Law and Access to Medicines: Lessons from Brazilian Regulation and Practice	Matheus Z. Falcão, Mariana Gondo and Ana Carolina Navarrete
143	11 January 2022	Direito Brasileiro da Concorrência e Acesso à Saúde no Brasil: Preços Exploratórios no Setor de Medicamentos	Bruno Braz de Castro
144	27 January 2022	A TRIPS-COVID Waiver and Overlapping Commitments to Protect Intellectual Property Rights Under International IP and Investment Agreements	Henning Grosse Ruse- Khan and Federica Paddeu
145	9 February 2022	The Right to Health in Pharmaceutical Patent Disputes	Emmanuel Kolawole Oke
146	16 February 2022	A Review of WTO Disputes on TRIPS: Implications for Use of Flexibilities for Public Health	Nirmalya Syam
147	28 February 2022	Can Negotiations at the World Health Organization Lead to a Just Framework for the Prevention, Preparedness and Response to Pandemics as Global Public Goods?	Viviana Muñoz Tellez



148	7 March 2022	Marine Genetic Resources Beyond National Jurisdictions: Negotiating Options on Intellectual Property	Siva Thambisetty
149	8 March 2022	The International Discourse on the Right to Development and the Need to Reinvalidate its Implementation	Yuefen Li, Daniel Uribe and Danish
150	21 March 2022	The Liability of Internet Service Providers for Copyright Infringement in Sri Lanka in Relation to Infringing Items Carried on their Networks: A Comparative Analysis with the US and English Law	Ruwan Fernando
151	19 April 2022	Escaping the Fragility/Conflict Poverty Trap: How the interaction between service delivery, capacity development and institutional transformation drives the process of transition out of fragility	Mamadou Dia
152	21 April 2022	An Examination of Selected Public Health Exceptions in Asian Patent Laws	Kiyoshi Adachi
153	26 April 2022	Patent Analysis for Medicines and Biotherapeutics in Trials to Treat COVID-19	Srividya Ravi
154	9 May 2022	COVID-19 Vaccines as Global Public Goods: between life and profit	Katuska King Mantilla and César Carranza Barona
155	27 May 2022	Manufacturing for Export: A TRIPS-Consistent Pro-Competitive Exception	Carlos M. Correa and Juan I. Correa
156	1 June 2022	A Tough Call? Comparing Tax Revenues to Be Raised by Developing Countries from the Amount A and the UN Model Treaty Article 12B Regimes	Vladimir Starkov and Alexis Jin
157	3 June 2022	WTO Moratorium on Customs Duties on Electronic Transmissions: How much tariff revenue have developing countries lost?	Rashmi Banga
158	15 June 2022	Twenty Years After Doha: An Analysis of the Use of the TRIPS Agreement's Public Health Flexibilities in India	Muhammad Zaheer Abbas, PhD
159	15 July 2022	Reaping the Fruits of Research on Microorganisms: Prospects and Challenges for R&D and Industry in Sri Lanka	Ruwan Fernando
160	21 July 2022	Movement Forward on ABS for the Convention on Biological Diversity: Bounded Openness Over Natural Information	Joseph Henry Vogel, Manuel Ruiz Muller, Klaus Angerer, and Christopher May
161	26 July 2022	Two Pillar Solution for Taxing the Digitalized Economy: Policy Implications and Guidance for the Global South	Irene Ovonji-Odida, Veronica Grondona, Abdul Muheet Chowdhary

162	11 August 2022	The Proposed Standing Multilateral Mechanism and Its Potential Relationship with the Existing Universe of Investor – State Dispute Settlement	Danish and Daniel Uribe
163	19 August 2022	The Human Right to Science: From Fragmentation to Comprehensive Implementation?	Peter Bille Larsen and Marjorie Pamintuan
164	23 September 2022	Impact of a Minimum Tax Rate under the Pillar Two Solution on Small Island Developing States	Kuldeep Sharma
165	4 October 2022	Evaluating the Impact of Pillars One and Two	Suranjali Tandon and Chetan Rao
166	6 October 2022	Lessons From India's Implementation of Doha Declaration on TRIPS and Public Health	Nanditta Batra

# **S****OUTH** **CENTRE**

International Environment House 2  
Chemin de Balexert 7-9  
POB 228, 1211 Geneva 19  
Switzerland

Telephone: (41) 022 791 8050  
E-mail: [south@southcentre.int](mailto:south@southcentre.int)

Website:  
<http://www.southcentre.int>

ISSN 1819-6926