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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Promotion and protection of human rights in the context of climate change

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, in accordance with Human Rights Council resolution [48/14](#).

* [A/78/150](#).



Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry**Exploring approaches to enhance climate change legislation, supporting climate change litigation and advancing the principle of intergenerational justice***Summary*

In the present report, the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, reviews current efforts by Governments to include human rights considerations in climate change-related legislation and reflect them in constitutions. He also reviews the application of human rights obligations in climate change litigation and explores the various limitations of litigation owing to substantive and procedural blockages. In the report, he notes the critical role of litigation in placing obligations on Governments, corporations and society as a whole to take decisive action to address climate change and the respective human rights obligations that underpin their corresponding responsibilities. Lastly, he explores the application of the principle of intergenerational equity and how it is evolving into intergenerational justice. The present report is a snapshot of current trends with respect to legislation, litigation and intergenerational justice. It is aimed at providing direction on incorporating human rights considerations into those three elements and is not intended to be a comprehensive review of those elements.

I. Introduction

1. In recognition of their responsibilities under the United Nations Framework Convention on Climate Change and the Paris Agreement, countries around the world have enacted laws and adopted policies that prescribe national and international responses to climate change. The linkage between taking action to address climate change and respecting, promoting and considering human rights obligations is stipulated in the preamble of the Paris Agreement. Prior to these two treaties, climate change had been considered a common concern for the world when, in 1988, the General Assembly adopted its resolution [43/53](#), entitled “Protection of global climate for present and future generations of mankind”.

2. There is a growing body of work linking responsibilities on climate change to human rights treaties. Nevertheless, many countries have yet to make the link between climate change and human rights, even though they have clear obligations under international law that must be guaranteed in both of those legal fields. As such, States cannot ignore their human rights responsibilities when addressing climate change; this is of critical importance given the impacts that climate change is having on the rights and freedoms of people across the globe. As the Special Rapporteur stated in his previous thematic report, entitled “Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation” ([A/77/226](#)), the world is faced with a global crisis in the name of climate change. Climate change is negatively affecting and violating the rights of individuals, including their rights to life, water and sanitation, health, food, housing, a healthy environment and development, among many others. Furthermore, the climate change has a disproportionate impact on the poor, women and children, persons with disabilities, Indigenous Peoples and other disadvantaged rights holders. The impacts of climate change intersect with other factors, such as race, gender, age and socioeconomic status.

3. As the impacts of climate change on the rights of individuals continue to intensify, a rise in community frustration at the lack of urgency of Governments and corporations to take action to address climate change is being witnessed, including through various forms of public protest. In response, an increase in suppression of public dissent by Governments is also being observed. This has led to the arrest, imprisonment and extrajudicial killing of environmental rights defenders in various parts of the world, in developed and developing countries alike. This crackdown on dissent tends to create further frustration and escalate expressions of dissent. Article 19 of the International Covenant on Civil and Political Rights clearly states that people have the right to freedom of expression. This right must be respected.

4. In preparing the present report, the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, held extensive consultations online and in-person with Governments, United Nations entities and civil society organizations. These consultations were complemented by a call for inputs, to which the Special Rapporteur received more than 60 submissions. The Special Rapporteur would like to thank all those who made submissions or participated in the consultations.

II. Considerations with regard to climate change and human rights in national constitutions

5. In many countries, the constitution outlines the structure and powers of the Government and provides the basis for national laws. Some constitutions have evolved quite rapidly and integrated new international and national legal norms. In

recent times, a number of countries have incorporated the right to a healthy environment in their constitutions. More than 150 countries have taken action on environmental constitutionalism. In addition, the following 11 jurisdictions have included a dedicated constitutional provision on climate, or “climate clauses”: Algeria, Bolivia (Plurinational State of), Côte d’Ivoire, Cuba, Dominican Republic, Ecuador, Thailand, Tunisia, Venezuela (Bolivarian Republic of), Viet Nam and Zambia.¹ In the Constitution of Zambia, for example, it is stated that: “The State shall, in the utilisation of natural resources and management of the environment ... establish and implement mechanisms that address climate change”.²

6. The Constitution of Zambia also establishes a number of human rights obligations, including the protection of young persons from exploitation, the right to life and the protection of the right to personal liberty. The Constitution of Cuba stipulates that the Government of Cuba will respond to climate change, given the threat that it poses to humans, while recognizing, among other things, the common but differentiated responsibilities principle.³ It is further stated that all persons are equal before the law, receive the same protection and treatment from the authorities and enjoy the same rights, freedoms and opportunities, without discrimination of any kind on grounds of sex, gender, sexual orientation, gender identity, age, ethnic origin, skin colour, religious belief, disability, national or regional origin, or any other personal condition or circumstance that implies a distinction detrimental to human dignity.

7. In Latin America, some 45 per cent of countries and, in Africa, about 36 per cent of countries have a climate clause, while, in Europe and North America, there are none.⁴ Nevertheless, no constitution directly recognizes the right to a stable climate per se or fully reflects the temperature targets of the Paris Agreement or reports of the Intergovernmental Panel on Climate Change.⁵ While there are emerging trends in constitutional reform to integrate climate change considerations, the link between climate change and human rights obligations appears to be lacking in many countries. All countries, notably developed countries, need to review and amend their constitutions to encompass rights-based approaches to climate change and the protection of individuals against the impacts of climate change.

III. Human rights in climate change legislation

8. Making the link between climate change and human rights considerations in domestic legislation is a relatively new phenomenon. A number of countries refer to human rights or the special considerations of rights holders in their legislation, although the coverage is not widespread or systematic. Many countries have indicated that their climate change legislation is for the purposes of meeting their obligations under the Paris Agreement. This connection is made in the National Climate Change Act, 2021 of Uganda, for example.⁶ By referring to the Paris Agreement, the linkage between climate change and human rights is strengthened, thereby allowing for better implementation of human rights obligations in the context of climate change.

¹ Karla Martínez Toral and others, “The 11 nations heralding a new dawn of climate constitutionalism”, Grantham Research Institute on Climate Change and the Environment, 2 December 2021. Available at www.lse.ac.uk/granthaminstitute/news/the-11-nations-heralding-a-new-dawn-of-climate-constitutionalism/.

² See https://climate-laws.org/documents/constitution-of-zambia_7667.

³ Available at <http://cuba.cu/gobierno/NuevaConstitucion.pdf> (in Spanish).

⁴ Karla Martínez Toral and others, “The 11 nations”.

⁵ Ibid.

⁶ Available at https://cdn.climatepolicyradar.org/navigator/UGA/2021/national-climate-change-act-2021_54d82dea4d1d85dca314a17cba045210.pdf.

9. Much of the climate change legislation drafted by countries is focused on the implementation of nationally determined contributions. In this regard, a large percentage of the legislation reviewed is based on mitigation outcomes. Some countries have gone further by establishing systems of carbon markets. For example through its Climate Change and Carbon Market Initiatives Act, 2022,⁷ the Bahamas has created a carbon market, while India has introduced a domestic carbon market through its Energy Conservation (Amendment) Act, 2022.⁸

10. According to the Grantham Research Institute on Climate Change and the Environment, at least 27 countries have passed domestic laws enshrining economy-wide net-zero commitments,⁹ most of them on the basis of a 2050 target. The Climate Change Act of Nigeria, for example, contains an overarching objective of achieving net-zero emissions between 2050 and 2070.¹⁰ Of particular note, is the Federal Act of Switzerland on climate protection goals, innovation and strengthening energy security,¹¹ by which all companies are required to become net zero in terms of direct and indirect emissions by 2050. Exceptions to the 2050 targets include the Federal Climate Change Act, 2019 of Germany, in which a net-zero target date of 2045 is set,¹² and the Climate Change Act, 2022 of Finland, establishing a “carbon neutral” target date of 2035.¹³ Each of these net-zero or carbon-neutral targets are, at best, aspirational, as no Government currently in office will be in power in 2050, 2045 or 2035 and thus will not have the opportunity to enforce or witness the achievement of those targets. Such aspirational target-setting has already been called into question. For instance, the Government of Australia has described the target set by the previous Government as a “fantasy”.¹⁴

11. While setting clear mitigation outcomes relating to a 1.5 degree Celsius target, is important in order to achieve overall human rights benefits by reducing the impacts of climate change, very few specifics have been provided on how mitigation technologies may have an impact on human rights and how such impacts would be addressed. The impact of mitigation technologies has been noted by the Special Rapporteur in his previous report to the General Assembly (see [A/77/226](#)). One exception to this lack of action is Decree No. 9,571/2018 of Brazil, establishing national guidelines on business and human rights for medium-sized and large companies, including multinational companies conducting activities in Brazil.¹⁵ The guidelines create corporate responsibility for protecting human rights in business activities and a responsibility to reduce greenhouse gas emissions. The European Union has proposed a directive on framing business decisions in terms of human rights, climate and environmental impact, as well as in terms of the company’s

⁷ Available at www.ilo.org/dyn/natlex/docs/ELECTRONIC/113259/141905/F-1761943569/BHS113259.pdf.

⁸ Available at <https://beeindia.gov.in/sites/default/files/2023-05/EC%20Act%2C%202022.pdf>.

⁹ Tiffanie Chan and Catherine Higham, “Evolving regulation of companies in climate change framework laws”, Grantham Research Institute on Climate Change and the Environment, 21 February 2023. Available at www.lse.ac.uk/granthaminstitute/news/evolving-regulation-of-companies-in-climate-change-framework-laws/.

¹⁰ Available at https://cdn.climatepolicyradar.org/navigator/NGA/2021/explanatory-memorandum-on-nigeria-s-climate-change-act_6c83884695bbf609fed795a49d196e89.pdf.

¹¹ Available at www.fedlex.admin.ch/eli/fga/2022/2403/fr (in French).

¹² Available at www.gesetze-im-internet.de/englisch_ksg/englisch_ksg.html.

¹³ Available at <https://ym.fi/en/climate-change-legislation>.

¹⁴ Giles Parkinson, “Bowen unveils sector by sector decarbonisation plan, but says no to 2035 net zero target”, Renew Economy, 18 July 2023. Available at <https://reneweconomy.com.au/bowen-unveils-sector-by-sector-decarbonisation-plan-but-says-no-to-2035-net-zero-target/>.

¹⁵ Available at www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/decreto/D9571.htm (in Portuguese).

resilience in the longer term.¹⁶ The directive is aimed at fostering the contribution of businesses to ensure respect for human rights and the environment in their own operations and through their value chains.

12. There appears to be less of a focus on adaptation, capacity-building and education needs and even less on procedures for addressing loss and damage. Each of these thematic issues should also incorporate a human rights focus. In particular, gender considerations and the rights of young people and children, Indigenous Peoples, persons with disabilities and other rights holders mentioned in the preamble of the Paris Agreement are not well covered in domestic legislation. An exception to this is the Climate Change and Carbon Market Initiatives Act of the Bahamas, in which the preamble of the Paris Agreement has been explicitly drawn from in order to reference particular rights holders.¹⁷

13. Very few countries have considered the issue of climate change displacement. Fiji is an exception; under its Climate Change Act of 2021¹⁸ a task force on the relocation and displacement of communities vulnerable to the impacts of climate change has been established so as to respond to people being displaced by climate change events. The framework law No. 98/2021, on climate, of Portugal and the Climate Change (Management) Act 2015 of Papua New Guinea both include references to concerns about climate change-induced migration.¹⁹

14. The right to information on climate change is an important element in any consideration of the rights-based application of domestic legislation. In Viet Nam, the Law on Environmental Protection of 2014 states, in article 46, that the community “shall be vested with the right to provide and request the provision of information about climate change issues, exclusive of information specified in the list of state secret information”.²⁰

15. A significant omission in most climate change legislation is any reference to loss and damage and how it can be addressed, although there are a few exceptions. In Azerbaijan, pursuant to article 6 of a 2001 law on protection of atmospheric air all legal entities and physical persons in Azerbaijan have the same right to compensation for damage caused to them as a result of air pollution.²¹ While it is not directly related to climate change, most air pollution is caused by the burning of fossil fuels. In the Climate Change Act of Fiji it is specified that, as part of their duty to act with reasonable care and diligence under the Companies Act, directors must consider and evaluate climate change risks and opportunities to the extent that they are foreseeable and intersect with the interests of the company.

16. There are limited references to obligations to protect the human rights of various rights holders in climate change legislation, with some exceptions. In the National Climate Change Act 2021 of Uganda it is stated that gender and human rights issues must be taken into account; in Supreme Decree No. 003-2022-MINAM of Peru, on declaring the climate emergency as a matter of national interest, human rights and climate justice are identified as priority areas; the framework law No. 98/2021, on

¹⁶ European Commission, proposal for a directive of the European Parliament and of the Council on corporate sustainability due diligence and amending Directive (EU) 2019/1937, document COM(2022) 71 final, 23 February 2022. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071>.

¹⁷ Available at https://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/2022/2022-0015/ClimateChangeandCarbonMarketInitiativesAct2022_1.pdf.

¹⁸ Available at <https://laws.gov.fj/Acts/DisplayAct/3290>.

¹⁹ Submission by the Grantham Research Institute on Climate Change and the Environment.

²⁰ See https://climate-laws.org/documents/law-on-environmental-protection-no-55-2014-qh13_cca6?q=%22human+rights%22&c=Legislation&o=10.

²¹ Submission by the Government of Azerbaijan.

climate, of Portugal contains a core objective to guarantee climate justice, respect for human rights, equality and collective rights over commons;²² and Act No. 2019-40 of Benin, amending the Constitution, contains provisions devoted to the rights and duties of human beings.²³

17. Few national climate change laws make reference to the rights of Indigenous Peoples or adherence to obligations under the United Nations Declaration on the Rights of Indigenous Peoples. One exception is the new Climate Change Act, introduced by Finland, establishing the Sámi Climate Council, which supports the preparation of climate change policy plans and identifies key issues with regard to the rights of the Sámi people. In the United States of America, the President has issued an executive order aimed at advancing environmental justice by, inter alia, addressing climate change and its effects, including in areas within the boundaries of “Tribal Nations”.²⁴ The inclusion of Indigenous Peoples is noteworthy given that the United States had originally opposed the adoption of the United Nations Declaration on the Rights of Indigenous Peoples and has now lent its tacit support to the Declaration, with a number of interpretative caveats.

18. Civil society organizations are working on a climate change bill in Poland that will include the right to a healthy environment and the right to safe climate.²⁵ The Special Rapporteur highly commends this initiative as an important example of engagement by civil society.

19. Overall, the incorporation of human rights obligations in climate change legislation throughout the world appears to be a relatively recent development. For the majority of countries, however, many factors appear to be missing. The Special Rapporteur is proposing guidance for countries on incorporating human rights obligations in climate change legislation. Countries should incorporate substantive and procedural elements in the development of climate change legislation and are therefore encouraged to revise their climate change legislation so as to incorporate this guidance.

IV. Climate change litigation

20. Consideration of climate change litigation is important, as it is a means of analysing how Governments, corporations and members of the public are implementing obligations with respect to climate change and human rights. Climate change litigation can potentially drive legislative and policy changes in mitigation, adaptation, finance, and loss and damage efforts and positively influence future responses to climate change. Climate change litigation is expanding rapidly around the world. Courts are now starting to play a key role in defining appropriate climate change governance and thus directing regulatory decision-making, corporate behaviour and public understanding of the climate crisis. Domestic and transnational litigation has advanced the goals of the global climate framework, successfully raised awareness of the devastating effects of climate change and enhanced the visibility of marginalized groups.²⁶ The following section of the present report is focused

²² Submission by the Grantham Research Institute on Climate Change and the Environment.

²³ Submission by the Government of Benin.

²⁴ United States of America, Executive Order on Revitalizing Our Nation’s Commitment to Environmental Justice for All, 21 April 2023. Available at www.whitehouse.gov/briefing-room/presidential-actions/2023/04/21/executive-order-on-revitalizing-our-nations-commitment-to-environmental-justice-for-all/.

²⁵ Submission by a civil society organization in Poland.

²⁶ Maria Antonia Tigre, Natalia Urzola and Alexandra Goodman, “Climate litigation in Latin America: is the region quietly leading a revolution?”, *Journal of Human Rights and the Environment*, vol. 14, No. 1 (March 2023), pp. 67–93, p. 68.

primarily on how human rights obligations have been incorporated into climate change litigation. The Special Rapporteur also reviews the barriers to litigation and explores future trends.

21. In 2021, 266 new climate litigation cases were filed. The United States continues to be the country with the highest number of documented climate litigation cases, with 1,590 in total, followed by Australia, where 130 cases have been identified, and the United Kingdom of Great Britain and Northern Ireland, with 102. In addition, 67 cases have been filed before the Court of Justice of the European Union. Relatively high numbers of cases have also been documented in Germany (59), Brazil (40) and Canada (35).²⁷

22. Climate change litigation is starting to influence corporate behaviour and shareholder responses to litigation. For instance, in a working paper of the London School of Economics and Political Science over 100 climate-related lawsuits from between 2005 and 2021 were examined. It was found that the filing of a climate-based litigation claim or corresponding unfavourable court decision reduced the market capitalization of the defendant company by about 0.41 per cent, on average. The study found that the mere filing of a climate-related lawsuit could decrease a company's market valuation by 0.35 per cent, while an actual court decision finding of liability on the part of the company reduced the defendant company's market capitalization by 0.99 per cent.²⁸ The Secretary-General has suggested that litigation is important to challenge "climate-wrecking corporations" such as fossil-fuel producers.²⁹

23. The United Nations Environment Programme indicates that the climate cases that have been brought to date generally fall into one or more of the following six categories: (a) climate rights; (b) domestic enforcement; (c) keeping fossil fuels in the ground; (d) corporate liability and responsibility; (e) failure to adapt and the impacts of adaptation; and (f) climate disclosures and "greenwashing". The Global Climate Change Litigation Database lists cases under the following two categories: (a) "suits against Governments", which encompasses lawsuits on issues such as just transition, energy and power, environmental crimes, trade and investment, greenhouse gas emissions reduction and trading, access to information, environmental assessment and permitting, human rights, failure to adapt, protecting biodiversity and ecosystems, public assembly, and public trust; and (b) "suits against corporations, individuals", which involves lawsuits against corporations, protesters and others.³⁰ The evolution of climate change litigation may be considered as occurring in "three waves", the first wave being cases brought under administrative tort law, the second under human rights law and the third under commercial law, generating over 2,000 pro-climate cases in more than 40 countries and in nine international tribunals since 1986.³¹

²⁷ Ibid.

²⁸ Misato Sato and others, "Impacts of climate litigation on firm value", (2023) Centre for Climate Change Economics and Policy Working Paper No. 421/Grantham Research Institute on Climate Change and the Environment Working Paper No. 397 (London, London School of Economics and Political Science, 2023). Available at www.lse.ac.uk/granthaminstitute/wp-content/uploads/2023/05/working-paper-397_-Sato-Gostlow-Higham-Setzer-Venmans.pdf.

²⁹ Jamey Keaten, "UN chief slams 'climate-wrecking' firms at human rights body", AP News, 27 February 2023. Available at <https://apnews.com/article/russia-ukraine-politics-new-york-city-climate-and-environment-antonio-guterres-eae595bc528caad4fa8b7da6fe3796f4>.

³⁰ Sabin Center for Climate Change Law, Global Climate Change Litigation database. Available at <http://climatecasechart.com/non-us-climate-change-litigation/>.

³¹ Lauren Croft, "'Many clouds remain' in climate litigation cases", *Lawyers Weekly*, 14 April 2023, Available at www.lawyersweekly.com.au/biglaw/37101-many-clouds-remain-in-climate-litigation-cases.

Human rights invoked in climate change litigation

24. The consideration of human rights violations in climate change litigation is a growing trend, albeit a relatively nascent one. The Sabin Center lists over 125 climate change cases that are linked to human rights issues.³² What follows is a selection of these cases for the purpose of highlighting the growing body of jurisprudence with respect to human rights and climate change and the procedural difficulties that litigants face in taking their concerns to the courts. The human rights at stake in this selection of cases include the rights to life, freedom, dignity, property, safe drinking water, food, health and an adequate standard of living (energy).

25. In 2015, 21 individual plaintiffs, all aged 19 years and under, filed a lawsuit, *Juliana v. the United States of America*, in the federal district court of the District of Oregon against the United States, the President and various federal officials and agencies.³³ The plaintiffs alleged that the “nation’s climate system” was critical to their rights to life, liberty and property and that the defendants had violated their substantive due process rights by allowing fossil-fuel production, consumption and combustion at “dangerous levels”.³⁴ The case has gone through numerous judicial processes and appeals and, at the time of writing the present report, had not been resolved. The case also highlights the extensive procedural blockages (discussed later in the present report) that respondents can leverage to deny access to justice by complainants who allege that their human rights have been violated. In the *Leghari v. Federation of Pakistan* case of 2015, Ashar Leghari, a Pakistan farmer sued the Federal Government of Pakistan, claiming that it should pursue climate mitigation or adaptation efforts and alleging that the Government’s failure to meet its climate change adaptation targets had resulted in immediate impacts on the water, food and energy security of Pakistan. Such impacts offended his fundamental right to life. The case is notable for the fact that the Lahore High Court, in its final order, nominated “climate justice” as the successor to “environmental justice” and was based on a human-centred approach and noted that “water justice” as a human right to access clean water and a subconcept of climate justice.³⁵ As a consequence, the Court ordered the establishment of the Climate Change Commission. Also in 2015, in *Urgenda Foundation v. State of the Netherlands*, a Dutch environmental group, the Urgenda Foundation, and 900 Dutch citizens sued the Government of the Kingdom of the Netherlands, seeking for it to do more to prevent global climate change. The court found in favour of the plaintiffs citing, inter alia, principles under the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights), the “no harm” principle of international law, the doctrine of hazardous negligence, the principle of fairness and the precautionary principle.³⁶

26. In 2016, in China, the environmental non-governmental organization (NGO), the All-China Environment Federation brought a case against Dzhou Jinghua Group Zhenhua Decoration Glass Co. Ltd. The Federation claimed that Zhenhua should pay compensation for damage to public environmental interests caused by its excessive emissions of air pollutants. The court found for the plaintiff and ordered the company

³² See <http://climatecasechart.com/non-us-case-category/human-rights/>.

³³ United States District Court, District of Oregon, *Juliana et al v. the United States of America et al.*, Case No. 6:15-cv-01517-TC, complaint, 12 August 2015. Available at <https://static1.squarespace.com/static/571d109b04426270152febe0/t/57a35ac5ebbd1ac03847eece/1470323398409/YouthAmendedComplaintAgainstUS.pdf>.

³⁴ See <http://climatecasechart.com/case/juliana-v-united-states/>.

³⁵ See <http://climatecasechart.com/non-us-case/ashgar-leghari-v-federation-of-pakistan/>.

³⁶ See <http://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/>.

to pay compensation.³⁷ While it was not directly related to climate change, it could be considered that the right to a healthy environment was upheld by the court. Nevertheless, it is contended that the majority of climate change litigation cases in China target companies that are mostly carbon emitters. However, instead of addressing climate change-related concerns per se, these cases are contract-based civil disputes and the plaintiffs are companies rather than individuals or NGOs.³⁸

27. In 2018, in *Future Generations v. Ministry of the Environment and Sustainable Development and Others*, the Supreme Court of Colombia ruled in favour of a group of 25 children and young people, recognizing that their fundamental rights to life, health, a minimum standard of living, freedom and human dignity are substantially linked to and determined by the environment and the ecosystem.³⁹

28. In 2019, a group of eight Australian nationals, all of them Torres Strait Islanders, and six of their children submitted a complaint against the Government of Australia to the Human Rights Committee. In *Billy et al. v. Australia*, the Torres Strait Islanders alleged that changes in weather patterns have direct harmful consequences on their livelihoods, their culture and their traditional ways of life. In 2020, the Government of Australia asked the Committee to dismiss the petition on the ground of inadmissibility. This request was rejected, and the Human Rights Committee found that the failure of the Government of Australia to adequately protect the Indigenous Torres Strait Islanders against the adverse impacts of climate change violated their rights to enjoy their culture and be free of arbitrary interferences with their private lives, their family and home. The Committee requested the Government of Australia to provide adequate compensation to the members of the Indigenous community for the harm suffered, engage in meaningful consultations with their communities to assess their needs and take measures to continue to secure the communities' safe existence on their respective islands.⁴⁰ In 2019, in *Milieudefensie et al. v. Royal Dutch Shell Plc*, the NGO Milieudefensie/Friends of the Earth Netherlands and its co-plaintiffs served Royal Dutch Shell a court summons alleging that Shell's contributions to climate change violated its duty of care under Dutch law and its human rights obligations. In its findings, the Hague District Court ordered Shell to reduce its emissions by a net 45 per cent from emissions from its own operations and those from the use of the oil it produces. The Court made its decision provisionally enforceable, meaning that Shell would be required to meet its reduction obligations even as the case is being appealed. During the case, the plaintiffs had argued that, stemming from this duty of care, Shell had an obligation to prevent dangerous climate change through its policies, and the Court applied the duty of care to the company's policies, emissions, the consequences of its emissions and its human rights and international and regional legal obligations.⁴¹

29. In 2020, a group of German young people filed a legal challenge in the Federal Constitutional Court against the Federal Climate Change Act of Germany, arguing that the target contained in the Act of reducing greenhouse gas emissions by 55 per cent from 1990 levels by 2030 was insufficient. The complainants alleged that the Act therefore violated their human rights, as protected under the Basic Law of Germany. The Court notably found that the legislature had not proportionally distributed the budget between current and future generations, noting that "one generation must not

³⁷ Yue Zhao, Shuang Lyu and Zhu Wang, "Prospects for climate change litigation in China", *Transnational Environmental Law*, vol. 8, No. 2 (July 2019), pp. 349–377.

³⁸ Ibid.

³⁹ Supreme Court of Colombia, *Future Generations v. Ministry of the Environment and Sustainable Development and others*, STC No. 4360-2018, judgment, 5 April 2018. See <http://climatecasechart.com/non-us-case/future-generation-v-ministry-environment-others/>.

⁴⁰ CCPR/C/135/D/3624/2019.

⁴¹ See <http://climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/>.

be allowed to consume large portions of the [carbon dioxide emissions] CO₂ budget while bearing a relatively minor share of the reduction effort, if this would involve leaving subsequent generations with a drastic reduction burden and expose their lives to serious losses of freedom”.⁴²

30. In 2022, the Federal Supreme Court of Brazil issued a ruling in the case *PSB et al. v. Brazil* brought by certain political parties, alleging that the Brazilian Federal Administration had not taken appropriate measures to ensure the allocation and use of funds from the Brazilian Climate Change Fund. By a majority, the Court found in the plaintiffs’ favour and ruled that the Paris Agreement was a human rights treaty, becoming the first court in the world to accord such status to the Paris Agreement, thereby setting an important precedent for Brazil and other countries.⁴³

31. It can be seen from the examples provided above that the rise in climate change litigation associated with human rights violations has been primarily focused on the actions of Governments (or lack thereof), although some more recent cases have been brought against corporations. More attention is also being turned to financial institutions and their role in underwriting financing for the fossil-fuel industry.

V. Barriers to climate change litigation

32. While climate change litigation is seen by many to advance action on climate change and address human rights violations, many barriers exist to accessing the courts in various parts of the world. From a legal standpoint, barriers can either be procedural (e.g. lack of standing to file a complaint) or material (e.g. the absence of cogent domestic norms on climate change).⁴⁴ Some of these procedural and material barriers are explored below. A lack of access to judicial processes denies individuals their right of redress against actions taken by Governments or corporations. It denies them the right to judicial remedy enshrined in the International Covenant on Civil and Political Rights.

A. Standing

33. The ability of an individual or a group to have the right or capacity to bring an action or to appear in court, a concept known as standing, or *locus standi*, often constitutes a challenge in a number of jurisdictions and represents a significant barrier to litigation. Courts often require there to be a direct connection between the plaintiff and the harm suffered, thereby making it difficult for individuals or communities to demonstrate eligibility to bring a lawsuit. In Japan, for instance, environmental NGOs are not granted the right to initiate legal proceedings.⁴⁵ In Namibia, legal standing is limited to individuals with a “direct and substantial interest” in a matter.⁴⁶ In the General Court of the European Union, applicants must be “distinctively concerned”.⁴⁷ Only a quarter of countries guarantee the right of the child to be heard in legal proceedings.⁴⁸ In contrast, article 52 of the Constitution of Portugal provides for the

⁴² See <http://climatecasechart.com/non-us-case/neubauer-et-al-v-germany/>.

⁴³ Federal Supreme Court of Brazil, *PSB et al. v. Brazil*, Case No. ADPF 708, Judgment, 4 July 2022. Available at www.escri-net.org/sites/default/files/caselaw/final_judgement_portuguese.pdf (in Portuguese).

⁴⁴ Submission by the Climate Change Law Specialist Group, World Commission on Environmental Law of the International Union for the Conservation of Nature and Natural Resources.

⁴⁵ Submission by the Kiko Network.

⁴⁶ Vanessa Boesak and Camelot Brinkman, “The growing tide of ESG litigation: what’s in store for Namibia?” *ENS Africa*, 1 June 2023.

⁴⁷ Submission by Gred Winter.

⁴⁸ Submission by Child Rights International Network.

right of *actio popularis*, or public action, recognizing that some damages (including environmental damages) are so diffuse that any person should have the right to request a judge to check the legality and the merits of the case.⁴⁹

B. Procedural delays and hinderances

34. Procedural delays and hinderances often stall litigation. Large corporations and powerful economic sectors often attempt to hinder or delay legal proceedings by investing significant resources in lobbying, political influence and legal challenges.⁵⁰ These tactics can be used by respondents in the hope that the plaintiff will give up or will have exhausted the funds to support the case. For instance, *Ali v. Federation of Pakistan* is a case that has been pending before the Supreme Court of Pakistan since 2016. In this case, a young girl filed a public interest petition seeking an injunction against the development of the Thar coalfield and coal-fired power plants.⁵¹ Ali maintained that exploiting the coalfield would further destabilize the climate system and infringe citizens' constitutional rights to life, liberty, dignity, information, equal protection before the law, among others.

C. High costs of litigation

35. The costs of legal representation, expert witnesses, research and evidence-gathering, and a lack of access to or the absence of legal aid, can impede individuals, the poor or marginalized communities from pursuing legal action. High court fees may also represent a significant barrier; bringing a case in the United States, for example, can be very expensive. In many countries, the lack of access to legal aid is a significant barrier. In the global South, litigants may be barred from meeting participation requirements if they do not have a bank account or a tax declaration.⁵² In some countries, such as Switzerland, there is a lack of a pro bono culture, making it difficult for people to gain access to legal support.⁵³

36. Furthermore, defendants may resort to procedural delays, such as motions, injunctions, extensions to the commencement date and other procedurally onerous processes (in particular, the expensive and resource-intensive discovery or disclosure process) to impose heavy burdens on activists and civil society organizations which, in turn, creates higher costs for proceedings. This appears to be the case in *Suncor Energy (USA) Inc., et al. v. Board of County Commissioners of Boulder, et al.*, as the respondents sought leave for the suit to be removed to federal court on the ground that their state-law claims should be recharacterized as claims arising under federal common law.⁵⁴ This type of "procedural jurisdiction jumping" appears to be a common tactic, in particular in the United States.

37. It has been noted that some courts impose very high limits on liability, meaning that litigants may fear bringing a case for fear of high costs being awarded against them.⁵⁵

⁴⁹ Portugal, Constitution, seventh revision (2005).

⁵⁰ Submission by the climate justice working group of the Latin American Climate Lawyers Initiative for Mobilizing Action, or LACLIMA.

⁵¹ See <http://climatecasechart.com/non-us-case/ali-v-federation-of-pakistan-2/>.

⁵² Submission by HEKS/EPER.

⁵³ Ibid.

⁵⁴ Supreme Court of the United States of America, *Suncor Energy (USA) Inc., et al. v. Board of County Commissioners of Boulder, et al.*, No. 21-150.

⁵⁵ Submission by Child Rights International Network.

D. Burden of proof and causal link

38. Climate change litigation relies on scientific evidence, which can be complex and technical, thereby posing difficulties in terms of making it accessible and understandable to the courts. Litigants face the challenge of providing strong evidence to demonstrate harm, defendant responsibility and the causal link between actions and impacts, in particular considering the long-term and diffuse nature of climate change.⁵⁶ In *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, the case was rejected by the Swiss courts because it was argued that the applicants' rights had not been individually and sufficiently affected, as they were not the only ones being affected by climate change.⁵⁷

E. Language barriers

39. In testimonies received by the Special Rapporteur a number of Indigenous Peoples' groups expressed concern that they were not able to gain access to courts in a language that they understood. In general, courts use complex legal language and proceedings are often conducted in colonial languages. This makes it difficult for Indigenous Peoples to engage in the court system. The same is true for linguistic minorities or people who have not been educated in colonial languages. In many cases, the courts are unable to take testimonies in languages that are not common to the court system. There are related aspects of intersectionality that limit access to courts. In Brazil, for example, certain regions are more vulnerable to the impacts of climate change and yet those regions are poorly represented in climate change litigation cases.⁵⁸

F. Fear of counter claims

40. Another limitation with regard to access to justice is the fear of counter claims. Such counter claims often materialize as strategic lawsuits against public participation, which generally refers to litigation brought by a corporation against private individuals or NGOs on a substantive issue of some political interest or social significance. The aim of this type of litigation is to shut down critical speech by intimidating critics into silence and draining their resources. Strategic lawsuits against public participation can also have personal and collective consequences, since they can deter organizations from carrying out their human rights-related work. Such lawsuits are often filed after defenders have expressed criticism of business actors by publishing a report, participating in an event or interview, launching a campaign, organizing a demonstration or posting on social media. Strategic lawsuits against public participation can have a "chilling effect" on the exercise of freedom of expression if others are afraid to speak out for fear of being sued. Such lawsuits also put significant pressure on public resources and cause judicial systems to waste time on superfluous legal processes. Companies use these strategic lawsuits to target a wide range of dissenting voices in order to suppress criticism. In many instances, the defendants are Indigenous leaders or community members protecting their lands and territories from large-scale projects, such as mining or oil pipelines, or even journalists covering the harmful activities of companies. Strategic lawsuits against

⁵⁶ Submission by Group Development Pakistan.

⁵⁷ Submission by World's Youth for Climate Justice.

⁵⁸ Submission by the climate justice working group of the Latin American Climate Lawyers Initiative for Mobilizing Action, or LACLIMA.

public participation generally include exorbitant claims for damages and allegations designed to smear, harass and overwhelm the campaigners.⁵⁹

41. In April 2022, the European Commission unveiled a draft directive that would require States members of the European Union to put protections in place to guard against strategic lawsuits against public participation. The draft directive includes measures to allow defendants to ask for such lawsuits to be thrown out of court at an early stage, sanction those who engage in the use of strategic lawsuits against public participation and minimize the damage caused to lawsuit victims.⁶⁰ The Special Rapporteur highly commends the European Commission for its action on these types of lawsuits. He also takes notes of and supports the recommendations made by the Working Group on the issue of human rights and transnational corporations and other business enterprises in its report on guidance on ensuring respect for human rights defenders (A/HRC/47/39/Add.2).

G. Judicial biases

42. Issues around judicial biases come in many forms. For example, concerns have been expressed to the Special Rapporteur that judges in Japan tend towards showing deference to the Government, rather than representing the public interest. Furthermore, there appears to be a regular rotation of judges and prosecutors who represent the Government in administrative litigation cases.⁶¹ In Indonesia, it is claimed that the judiciary is reluctant to engage with human rights-related arguments. The judiciary in such cases claim that these issues are political, not legal.⁶² Judicial biases may be derived from economic and political questions that adversely affect a country's litigation culture and undermine the effectiveness of access to climate change justice.⁶³ Authoritarian regimes may also create judicial biases, making it difficult for people to pursue climate change justice.⁶⁴ Furthermore, the fact that judges are elected in some jurisdictions, notably the United States, may give rise to questions regarding the appearance of independence, including potential perceptions of corruption or political bias.

H. Other barriers

43. Many other barriers make it difficult for individuals to seek climate change justice, such as low levels of climate change literacy, a lack of training by the judiciary on climate change and human rights matters, a lack of available magistrates, a limited number of environmental lawyers, a lack of legislation and limited jurisprudence on climate change matters.

44. It is critically important that countries strive to overcome these barriers and allow for greater access to the court system by all individuals, irrespective of their

⁵⁹ Submission received by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression for her thematic report on gender justice and the right to freedom of opinion and expression (A/76/258), submitted by the Indigenous Human Rights Defenders and Corporate Accountability Programme of the Water Protector Legal Collective and the Business and Human Rights Resource Centre, 14 June 2021.

⁶⁰ European Parliament, "Strategic lawsuits against public participation", briefing note, 2023. Available at [www.europarl.europa.eu/RegData/etudes/BRIE/2022/733668/EPRS_BRI\(2022\)733668_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733668/EPRS_BRI(2022)733668_EN.pdf).

⁶¹ Submission by the Kiko Network.

⁶² Submission by the Indonesia Center for Environmental Law.

⁶³ Submission by the Climate Change Law Specialist Group, World Commission on Environmental Law of the International Union for the Conservation of Nature and Natural Resources.

⁶⁴ Submission by J. R. Walsh.

race, gender, Indigenous origin or identity, age, religious beliefs or socioeconomic status. Some recommendations on how to overcome the barriers outlined above and ensure access to justice for all are provided in the present report.

VI. Recent litigation trends and future directions

45. Over the past year, climate litigation has begun to evolve and cases have been directed towards financial institutions that underwrite the use of fossil fuels. Litigation has also been directed at actions taken by corporations. The legal community is seeing greater attention being paid to the liability and responsibility of corporate actors to take decisive action on climate change. While corporations face greater pressure to take climate change action, false claims of action, known as “greenwashing” or “climate-washing”, are also being witnessed. Cases are now being brought as a means of questioning the use of such tactics. The scope of litigation is also expanding as litigants explore extraterritorial harm; advisory opinions are being sought in a number of international jurisdictions to explore the obligations of States in that regard. Consideration is also being given to criminal liability for lack of action on climate change. These elements are discussed below.

A. Actions against banks

46. Banks have become the target of climate change litigation for funding projects that are not consistent with reducing greenhouse gas emissions. In 2022, a Brazilian NGO, Conectas Direitos Humanos, filed a claim against the Brazilian National Bank for Economic and Social Development and BNDESPAR, its investment arm, which is responsible for managing the Bank’s shareholdings in various Brazilian companies. Conectas Direitos Humanos has asked the court to require the Bank and BNDESPAR to adopt transparency measures and to present, within 90 days, a plan establishing rules and mechanisms to commit their investments and divestments to the reduction of greenhouse gas emissions by the companies they finance.⁶⁵

47. In 2023, the NGOs Oxfam France, Friends of the Earth France and Notre Affaire à Tous filed a lawsuit before the Judicial Court of Paris alleging that BNP Paribas, the largest bank in the eurozone, had violated the Act of 2017 on duty of care of parent and subcontracting companies, which was incorporated into articles L. 225-102-4 and L. 225-102-5 of the French Commercial Code.⁶⁶ The Act on duty of care provides that specific companies of a certain size must establish a plan to prevent human rights violations and environmental damage that may occur in the course of their business operations. In the summons sent to BNP Paribas multiple violations of the law are alleged, including that the plan established by BNP Paribas does not identify with sufficient clarity the climate risks derived from its activities. The plaintiffs are particularly concerned about the huge “carbon majors” that BNP Paribas has as clients, such as TotalEnergies, Chevron, ExxonMobil, Shell, BP, Eni, Repsol and Equinor. These companies are involved in more than 200 new fossil-fuel projects, scheduled for approval by 2025, which would collectively produce about 8.6 billion tons of carbon dioxide.

48. The above are two examples in which banks and financial institutions have been brought before the courts to account for their investments in the fossil-fuel industry and the resultant human rights violations. The Special Rapporteur believes this will be a growing area of litigation, as various Governments are creating disclosure

⁶⁵ See <http://climatecasechart.com/non-us-case/conectas-direitos-humanos-v-bndes-and-bndespar/>.

⁶⁶ See <http://climatecasechart.com/non-us-case/notre-affaire-a-tous-les-amis-de-la-terre-and-oxfam-france-v-bnp-paribas/>.

mechanisms to reveal where banks and other financial institutions are investing their money. Corporate accountability will be the subject of the Special Rapporteur's next report to the Human Rights Council, in 2024.

B. Greenwashing and climate-washing

49. Another growing trend in climate change litigation relates to the issue of “greenwashing”, or “climate-washing”. Greenwashing is the practice of misrepresenting how sustainable or environmentally friendly a fund's or a company's practices are. According to a study conducted by the Grantham Research Institute on Climate Change and the Environment in early 2023, 26 climate-washing cases had been filed, in 2022. These cases are challenging various types of misinformation, such as the accuracy of corporate climate commitments or claims about product attributes, overstated investments or support for climate action, and failure to disclose climate risks.⁶⁷ In the past few years, there has been a significant increase in climate-washing cases being filed before the courts and administrative bodies, such as consumer protection agencies.

50. In early 2023, an individual brought a class action against Delta Air Lines Inc. in the United States District Court, Central District of California, alleging that Delta's carbon neutrality claim was demonstrably false, as it relied heavily on “junk carbon offsets” that did nothing to counteract the climate crisis. It was further alleged that customers would have purchased Delta tickets believing that they had no impact on the environment and that many would not have bought the tickets without the carbon neutrality claim.⁶⁸ The class action has links to a nine-month investigation conducted by *The Guardian*, the German weekly *Die Zeit* and the investigative group SourceMaterial, which found that, according to independent studies, the Verra rainforest credits used by Disney, Shell, Gucci and other big corporations were largely worthless and were often based on stopping the destruction of rainforests that were not threatened.⁶⁹ While the present report is focused primarily on false accounting, it is worth noting that numerous Indigenous Peoples' groups have expressed their concerns to the Special Rapporteur about the use of carbon offsetting in carbon markets and the impact that such schemes have on their human rights to life, food, water and housing.⁷⁰

51. As a result of similar greenwashing behaviour in Europe, in 2021, the European Commission and national consumer authorities released the results of a screening (“sweep”) of websites, an exercise carried out each year to identify breaches of European Union consumer law with regard to online markets. It was the first time that the sweep had been focused on greenwashing.⁷¹

52. In 2023, the Australian Securities and Investment Commission released a statement announcing that it had launched its first proceedings in the Federal Court against Mercer Superannuation (Australia) Ltd for allegedly “making misleading statements about the sustainable nature and characteristics of some of its

⁶⁷ See www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2023-snapshot/.

⁶⁸ See www.courthousenews.com/wp-content/uploads/2023/05/berrin-vs-delta.pdf.

⁶⁹ Patrick Greenfield, “Delta Air Lines faces lawsuit over \$1bn carbon neutrality claim”, *The Guardian*, 30 May 2023. Available at www.theguardian.com/environment/2023/may/30/delta-air-lines-lawsuit-carbon-neutrality-aoc.

⁷⁰ Testimonies received by the Special Rapporteur from Indigenous Peoples' groups.

⁷¹ PubAffairs Bruxelles, “Screening of websites for ‘greenwashing’: half of green claims lack evidence”, 28 January 2021. Available at www.pubaffairsbruxelles.eu/eu-institution-news/screening-of-websites-for-greenwashing-half-of-green-claims-lack-evidence/.

superannuation investment options”.⁷² The Commission has alleged that, in spite of the representations made about the “Sustainable Plus” investment options, Mercer had investments in industries that it had said were excluded from its portfolio. Those investments included 15 companies involved in the extraction or sale of carbon-intensive fossil fuels.⁷³ The Commission has categorized such actions as greenwashing, which it has defined as “the practice of misrepresenting the extent to which a financial product or investment strategy is environmentally friendly, sustainable or ethical”.⁷⁴

C. Extraterritorial harm

53. There is growing interest in climate change litigation associated with transboundary harm. Transboundary environmental harm is not a new phenomenon. In the *Trail Smelter* case of 1938, it was established by special arbitration that fumes discharged from a smelter in Canada had caused damage in the state of Washington in the United States. The arbitration ruling ordered that Canada pay the United States the sum of \$350,000 for damages.⁷⁵ Transboundary climate change harm is currently being contested in *Luciano Lliuya v. RWE AG*, a complaint filed in 2015 by a Peruvian farmer who filed claims for declaratory judgment and damages in the District Court of Essen, Germany, against RWE, the largest electricity producer in Germany. The court dismissed the plaintiff’s requests for declaratory and injunctive relief, as well as his request for damages. However, in 2017, on appeal, the Higher Regional Court of Hamm declared the complaint admissible, thereby allowing the case to move into the evidentiary phase.⁷⁶

54. The international community is also witnessing extraterritorial claims of liability for environmental, social and human rights-related concerns being brought before courts in the United Kingdom where there are allegations that a United Kingdom company owes a duty to those affected by other parties. In *Okpabi and others v. Royal Dutch Shell Plc and another*, in 2021, the Supreme Court of the United Kingdom reaffirmed that a British parent company may, in certain circumstances, owe a duty of care, for purposes of liability in a suit for negligence, towards persons affected by the operations of a foreign subsidiary. Specifically, the Court found a real issue to be tried as to whether Shell owed a duty of care to persons affected by spills from its subsidiary’s oil pipeline in Nigeria.⁷⁷ While the case was related to an oil spill, there is a potential that such obligations may also apply to greenhouse gas emissions.

⁷² Australian Securities and Investments Commission, “ASIC launches first court proceedings alleging greenwashing”, 28 February 2023.

⁷³ Ibid.

⁷⁴ Australian Securities and Investment Commission, “How to avoid greenwashing when offering or promoting sustainability-related products”, information sheet No. 271, June 2022. Available at <https://asic.gov.au/regulatory-resources/financial-services/how-to-avoid-greenwashing-when-offering-or-promoting-sustainability-related-products/>.

⁷⁵ *Trail Smelter case (United States, Canada)*, Award of 16 April 1938 and 11 March 1941, Reports of International Arbitral Awards, vol. III, pp. 1905–1982. Available at https://legal.un.org/riaa/cases/vol_III/1905-1982.pdf.

⁷⁶ See <http://climatecasechart.com/non-us-case/liuya-v-rwe-ag/>.

⁷⁷ Supreme Court of the United Kingdom, *Okpabi and others v. Royal Dutch Shell Plc and another*, [2021] UKSC 3. Available at www.supremecourt.uk/cases/uksc-2018-0068.html.

D. Advisory opinions

55. A number of advisory opinions are being sought in various jurisdictions to test States' obligations with respect to transboundary climate change harm. One case that has been resolved is the advisory opinion of the Inter-American Court of Human Rights, requested by Colombia, concerning State obligations in relation to the environment. The Inter-American Court found "that States must ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of their jurisdiction, and that States are obliged to use all available means to avoid activities in their territory, or in any area under their jurisdiction, causing significant damage to the environment of another State".⁷⁸ The Inter-American Court drew from the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons.⁷⁹ The Inter-American Court's rationale regarding extraterritorial responsibility was adopted, in 2021, by the Committee on the Rights of the Child, in five cases – *Sacchi et al. v. Argentina, Brazil, France, Germany and Turkey*, respectively – although the Committee declared the cases inadmissible for failure to exhaust domestic remedies.⁸⁰

56. A number of advisory opinions have been sought to clarify the legal obligations of States with respect to climate change, including from the International Tribunal for the Law of the Sea,⁸¹ the Inter-American Court of Human Rights⁸² and the International Court of Justice, with the latter possibly being the most notable of those three. The request for an advisory opinion of the International Court of Justice was spearheaded by the Government of Vanuatu and adopted by consensus by the General Assembly in its resolution 77/276 requesting an advisory opinion of the International Court of Justice on the obligations of States inter alia in respect of climate change.

57. There are clear principles and international and national jurisprudence which the International Court of Justice and others can draw upon in making their determinations. The international legal principle of *sic utere tuo ut alienum non leadas* (use your own property in such a way that you do not harm that of another) and the notion of international "good neighbourliness" found in Article 74 of the Charter of the United Nations are core principles of international law to which the International Court of Justice could give considerable weight in its deliberations. Furthermore, there are various international cases, such as the *Trail Smelter* case, which addresses transboundary harm. The *Corfu Channel* case⁸³ has also been cited with respect to transboundary obligations and environmental protection. Another more recent case in which transboundary environmental damage has been cited is the

⁷⁸ Inter-American Court of Human Rights, "The environment and human rights", Advisory Opinion No. OC-23/17, 15 November 2017. Available at www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf.

⁷⁹ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, para. 29.

⁸⁰ See <https://climaterightsdatabase.com/2021/09/22/crc-sacchi-et-al-v-argentina-et-al/>. See also *Sacchi et al. v. Argentina* (CRC/C/88/D/104/2019), *Sacchi et al. v. Brazil* (CRC/C/88/D/105/2019), *Sacchi et al. v. France* (CRC/C/88/D/106/2019), *Sacchi et al. v. Germany* (CRC/C/88/D/107/2019) and *Sacchi et al. v. Turkey* (CRC/C/88/D/108/2019).

⁸¹ International Tribunal for the Law of the Sea, *Request for an advisory opinion submitted by the Commission of Small Island States on Climate Change and International Law*, No. 31, December 2022. Available at www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinion-submitted-to-the-tribunal/.

⁸² Request for an advisory opinion of the Inter-American Court of Human Rights on the scope of the obligations of State in respect of responding to the climate emergency, submitted by Chile and Colombia, 9 January 2023. See <http://climatecasechart.com/non-us-case/request-for-an-advisory-opinion-on-the-scope-of-the-state-obligations-for-responding-to-the-climate-emergency/>.

⁸³ *Corfu Channel case*, Judgment of 9 April 1949, I.C.J. Reports 1949, p. 4.

judgment of 1997 in the *Gabčíkovo-Nagymaros Project* case.⁸⁴ The Special Rapporteur firmly believes that States have a distinct legal and moral responsibility to ensure that greenhouse gas emissions produced in one State do not harm another State. As this form of transnational harm is already occurring, it is inevitable that the “no harm” principle will be a key point of litigation now and in the future, with jurisprudence on this principle developing quite rapidly.

E. Crimes against humanity

58. In 2021, the General Assembly adopted resolution [76/114](#), on crimes against humanity, triggering a process of at least two years of debate and discussion by the Sixth Committee on the draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission at its seventy-first session in 2019 (see [A/74/10](#)). At the current time, the draft articles do not include any reference to impacts on humanity owing to climate change. Nevertheless, there have been various calls to include climate change harm within the definition of ecocide, something to which the Special Rapporteur referred in his previous report to the Assembly, in 2022 (see [A/77/226](#)). Around the globe, many people are being denied the right to life as a consequence of climate change. This is due to direct impacts, such as floods, droughts, storm surges, heat stress, hurricanes, typhoons and cyclones, and indirect effects, such as being displaced from their homes owing to such events and having to confront the perils of migration, which may result in death.

VII. Intergenerational equity and the rights of future generations

59. In the consideration of climate change justice, it is vitally important that the international community not only addresses the fate of current generations, but also protects the rights of future generations. The greenhouse gas pollutants that the global community is currently injecting into the atmosphere will have significant implications for many generations to come. The need to give consideration to future generations is embodied in the concept of intergenerational equity. This concept was first incorporated into treaty law in the preamble of the International Convention for the Regulation of Whaling of 1946, in which the importance of safeguarding for future generations the great natural resources represented by the whale stocks is highlighted. The concept was later incorporated into the Declaration of the United Nations Conference on the Human Environment (the Stockholm Declaration) of 1972 and the preamble of the Paris Agreement.

60. There have been some notable court cases reaffirming the notion of protecting the rights of future generations. In *Future Generations v. Ministry of the Environment and Sustainable Development and others*, 25 youth plaintiffs brought a case for constitutional protection against the Government of Colombia and several corporations. The plaintiffs asserted that the Government’s failure to comply with its international commitment to ensure net-zero deforestation in the Amazon rainforest by 2020 was a violation of their human rights. The Supreme Court of Colombia recognized that there was a substantial link between the Government’s commitment to reduce deforestation and greenhouse gas emissions and fundamental and constitutional rights, such as the rights to life, health, human dignity and a healthy environment.⁸⁵ It has been argued that the *Future Generations* case has opened the door to youth climate lawsuits by substantially expanding constitutional provisions

⁸⁴ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 7.

⁸⁵ Supreme Court of Colombia, *Future Generations v. Ministry of the Environment and Sustainable Development and others*.

to future generations, including by creating an “intergenerational pact” to reduce deforestation and greenhouse gas emissions.⁸⁶ Analogous to the *Future Generations* case, the petitioners in the *Álvarez et al. v. Peru* case of 2019 argued that intergenerational equity was embedded within the principle of sustainable development.⁸⁷

61. From the few examples outlined above, it can be seen that there is a growing body of jurisprudence on intergenerational equity and justice. Nevertheless, a clear expression of the rights of future generations is generally missing at the international level. In an effort to bridge that gap, a group of legal experts produced the Maastricht Principles on the Human Rights of Future Generations. The authors state that the aim of the Maastricht Principles is to “clarify the present state of international law” as it applies to the human rights of future generations,⁸⁸ although it may be argued that the Principles are more prescriptive than clarificatory. Nevertheless, they provide a very useful basis for giving further consideration to how to develop legal norms on intergenerational equity at the international level. The General Assembly should give due consideration to the Maastricht Principles and explore how they could be incorporated into the Summit of the Future, to be held in 2024.

VIII. Conclusions and recommendations

62. In recognition of their responsibilities under the United Nations Framework Convention on Climate Change and the Paris Agreement, countries around the world have enacted laws and adopted policies in which they describe national and international responses to climate change. Despite such efforts, there are significant material and procedural barriers to undertaking decisive legal action on climate change. These barriers relate to inadequate climate change legislation, significant limitations with regard to pursuing climate change litigation and limited efforts to enshrine the concept of intergenerational equity at the international level. The Special Rapporteur proposes the set of recommendations outlined below for focused attention by the General Assembly and Member States.

63. The General Assembly is encouraged to give full and proper consideration to the Maastricht Principles on the Human Rights of Future Generations and prepare a resolution reflecting key elements of these Principles at its seventy-eighth session.

64. The United Nations Environment Programme, in collaboration with the World Commission on Environmental Law of the International Union for the Conservation of Nature and Natural Resources, is encouraged to develop simple and accessible multilingual training manuals and training programmes for judges on the linkages between climate change and human rights. It is also encouraged to develop simple and accessible multilingual guidebooks for judges on the science of climate change.

65. All countries that have yet to do so should revise their constitutions to incorporate recognition of the need to address climate change, the human rights implications of climate change and the right to a healthy environment.

⁸⁶ Maria Antonia Tigre, Natalia Urzola and Alexandra Goodman, “Climate litigation in Latin America”.

⁸⁷ See <http://climatecasechart.com/non-us-case/alvarez-et-al-v-peru/>.

⁸⁸ See www.ciel.org/issue/the-maastricht-principles-on-the-rights-of-future-generations/.

66. All countries are strongly urged to develop legislation to allow for improved access to the courts undertaking cases related to climate change and human rights. Such access should overcome the barriers identified in the present report.

67. All countries are strongly encouraged to develop new climate change legislation on the basis of the detailed guidance outlined below.

General principles

68. New climate change legislation should incorporate general principles with a view to:

- (a) Ensuring the equal participation of women in all aspects of climate change decision-making;
- (b) Respecting the rights of children and ensuring that the concept of intergenerational justice is enshrined in legislation;
- (c) Providing opportunities for young people and children to engage in climate change decision-making;
- (d) Guaranteeing to every individual in the country the right to life, food, water and sanitation, housing and other fundamental rights, irrespective of gender, race, religious belief or socioeconomic status;
- (e) Respecting the concept of common but differentiated responsibilities and respective capabilities;
- (f) Fully recognizing the precautionary principle and ensuring that this principle is applied in the context of causality in climate change litigation;
- (g) Accepting the polluter pays principle;
- (h) Guaranteeing the right to a safe, healthy and sustainable environment, a right that should be incorporated into national constitutions;
- (i) Guaranteeing the right of every individual to have access to the courts at minimal cost;
- (j) Establishing education and training programmes for businesses so that they can recognize their responsibilities with respect to human rights and climate change;
- (k) Respecting the rights of Indigenous Peoples in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, including by ensuring the incorporation of provisions on free, prior and informed consent.

Mitigation

69. With respect to mitigation, it should be ensured that new climate legislation:

- (a) Incorporates women's knowledge as a basis for decision-making in mitigation planning and implementation;
- (b) Establishes provisions on prior and informed consent with regard to Indigenous Peoples;
- (c) Ensures that businesses, corporations and financial institutions undertake environmental and human rights impact assessments of all mitigation projects;
- (d) Ensures that science and Indigenous knowledge are given primacy in decision-making processes associated with climate change mitigation actions;

(e) Ensures that mitigation target-setting is based on the best available opportunity to reduce emissions, taking into consideration the concept of common but differentiated responsibilities and respective capabilities;

(f) Ensures that all mitigation target-setting is based on a progression towards low targets within short turnaround time frames so as to make the best opportunity of advancing technologies and knowledge. New targets could be set by subordinate legislation using executive orders;

(g) Ensures access to environmental information, including through the use of full disclosure procedures regarding climate change mitigation decision-making, including information on economic modelling associated with such decisions;

(h) Removes subsidies for fossil fuels and tax avoidance schemes for major greenhouse gas emitting industries;

(i) Ensures that all significant greenhouse gas emitting enterprises produce climate change transition plans;

(j) Provides incentives for businesses, corporations and financial institutions to transition to renewable energy and energy efficiency activities;

(k) Ensures that climate change transition plans allow for a just transition and protects the labour rights of workers in high greenhouse gas emitting industries.

Adaptation

70. With respect to adaptation, new climate change legislation should:

(a) Provide for meaningful consultation and engagement in adaptation planning processes for those who are most vulnerable to the impacts of climate change, in particular people living in poverty, Indigenous Peoples, persons with disabilities, women and children;

(b) Ensure that persons in vulnerable situations are given priority with respect to adaptation plans and are given priority support to build their resilience to the impacts of climate change;

(c) Create early warning systems for climate change events. Such early warning systems should be designed to be accessible to people living in poverty or in remote communities.

Right to information

71. With respect to the right to information, new climate change legislation should:

(a) Ensure that all individuals have the right to information, consultation and participation in decision-making associated with matters related to climate change;

(b) Establish advisory committees constituted by vulnerable communities, Indigenous Peoples and other disadvantaged communities.

Loss and damage

72. With respect to loss and damage, new climate change legislation should:

- (a) Support processes for international cooperation on loss and damage based on the principle of solidarity entailing a duty of assistance without expectation of reciprocity;**
- (b) Create provisions for compensation, liability and reparations to ensure that major greenhouse gas polluters – countries and corporations alike – pay for the harm they are causing. This should include domestic and transnational liability;**
- (c) Ensure that individuals are granted freedom of movement and given full legal rights as though they were refugees if they are displaced across international borders as a consequence of climate change;**
- (d) Develop affordable insurance and risk-pooling mechanisms to assist the most vulnerable;**
- (e) Create mechanisms to assess, quantify and compensate for loss and damage for economic and non-economic losses, including human rights impacts;**
- (f) Support the establishment of an international mechanism for processing loss and damage claims in an expedited manner.**

Climate change finance

73. With respect to climate change finance, new climate change legislation should:

- (a) Facilitate easy access to international funds for mitigation, adaptation and loss and damage;**
- (b) Ensure that compensation funding is provided to victims of climate change impacts;**
- (c) Ensure that direct access to climate change finance is provided for communities and individuals.**

Corporate accountability

74. With respect to corporate accountability, new climate change legislation should:

- (a) Ensure that businesses, corporations and financial institutions (including insurance and reinsurance companies) provide full disclosure of their investments in greenhouse gas intensive industries;**
- (b) Ensure that businesses, corporations and financial institutions provide full disclosure of their exposure to climate change risks associated with climate change impacts;**
- (c) Establish direct personal criminal liability for directors and chief executive officers of businesses, corporations and financial institutions for failing to address the life-cycle climate change impacts of their respective activities;**
- (d) Ensure that businesses, corporations and financial institutions provide full details of any claims of climate neutrality or net-zero emissions and provide regular updates on progress towards achieving those claims.**

Access to justice

75. With respect to access to justice, new climate change legislation should:

- (a) Ensure that all individuals or groups of individuals have access to justice without legal hurdles, including any age restrictions on access to courts or limitations on standing;**
- (b) Ensure that adequate provision is made to allow all individuals access to court systems, including provisions for language services, limitation of costs and legal representation;**
- (c) Eliminate strategic lawsuits against public participation;**
- (d) Create provisions on civil liability for loss and damage that have domestic and transnational applicability and are therefore without jurisdictional limitations.**

Freedom of expression

76. New climate change legislation should ensure that all individuals can enjoy their right to freedom of expression with respect to actions or lack of action by Governments or businesses on climate change. In that regard, States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.⁸⁹

⁸⁹ See [A/HRC/37/59](#), annex, framework principle 4.