

Human Rights in Practice

# Climate Change and Human Rights

The Contributions of National Human Rights  
Institutions. A Handbook

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# Preface

Sea levels are rising and our oceans are acidifying. Glaciers are melting ever more rapidly, coral reefs are dying. Droughts recur more frequently and wildfires are destroying forests around the world. Deserts are expanding faster than ever, and access to water is dwindling. Heatwaves are more intense and natural disasters are multiplying. There is no doubt: climate change is altering our environment tremendously and is threatening humans and their rights, including the rights to life, food, health, water, housing and education in many regions of the world.

The years 2019 and 2020 are among the hottest on record. In some regions, temperatures could soon be so high for months on end that everyday life is hardly possible. Illnesses and deaths due to heat will increase in many countries. Higher temperatures will promote the spread of new diseases and tropical diseases in the more temperate zones. Climate change will bring about significant changes in the water balance of most countries. The shortage of water resources can lead to serious bottlenecks in supply, such as in 2019, when the Indian megacity Chennai was almost without drinking water for weeks because of empty reservoirs. Changes in precipitation and the water balance as well as temperature development will have an enormous impact on food production systems, and on the income, health, and life expectancy of millions of people.

The quality of state action will be crucial to the human rights impacts of climate change. This applies both to measures that help to mitigate the effects of climate change and to measures designed to help us adapt to climate change. Since 2008, the United Nations has adopted

various resolutions advocating for a human rights-based approach to international climate protection and adaptation to climate change. States are to protect their populations from adverse impacts, for example by reducing their greenhouse gas emissions and taking measures against the effects of climate change that are environmentally sound and take human rights into account.

How can National Human Rights Institutions (NHRIs) contribute to achieving this? What do they and can they do to promote and protect human rights in climate change action? As this Handbook shows, various NHRIs around the world have already acquired a wealth of experience and knowledge in this regard. To mention a few examples: NHRIs in Latin America have developed digital tools to track the impacts of climate-induced-droughts on livelihoods. NHRIs in the Asia Pacific and Africa region monitor the disproportionate impact of extreme weather events on the human rights of certain groups, such as women and indigenous people. NHRIs in Europe use their policy advisory function to place the respect of human rights at the heart of their governments' efforts to combat climate change at the international, regional, national, and local levels. Various NHRIs investigate the negative human rights impacts of climate change mitigation and adaptation, such as with regards to renewable energy projects. NHRIs also address the human rights responsibility of businesses that arise through the climate impacts of their products and operations.

The Handbook is an important step towards strengthening the essential role played by NHRIs to support human rights-based climate action at all levels and reinforce monitoring and accounta-

bility mechanisms, by identifying key challenges in designing and implementing climate change policies and measures, highlighting the gaps that need to be addressed, and by identifying good practices.

The cooperation with the Center for International Environmental Law (CIEL) in compiling this Handbook has proved very successful, many thanks in particular to Nathaniel Eisen and Sébastien Duyck. I would also especially like to thank the NHRIs that have enriched this Handbook

by providing examples of their work and good practices as well as by giving impetus for the way forward of NHRI engagement on the topic of climate change and human rights.

As the UN Secretary General António Guterres put it: “Let’s lace up our running shoes and win the climate race for us all.” (2019 UN Climate Summit)

**Michael Windfuhr**

Deputy Director,  
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# 1 Introduction

National Human Rights Institutions (NHRIs) are on the front lines of the unfolding climate change crisis, which poses a threat to human rights around the world. Therefore, they can play a key role in ensuring that national governments take effective climate action, consistent with their human rights obligations.<sup>1</sup> Substantively, this means working to ensure that human rights are protected from climate impacts via effective mitigation and adaptation measures, and that those measures themselves are designed and implemented in a manner that respects human rights—as well as to ensure that remedy is available for rights violations.

In order to perform their core functions of promoting and protecting human rights,<sup>2</sup> NHRIs carry out essential educational, investigative, and advice-giving activities. As independent bodies charged with delivering policy advice and holding duty-bearers to account, both domestically and through regional and international human rights review mechanisms, NHRIs are uniquely placed to ensure adoption of effective action that incorporates a human rights-based approach to climate change.

The purpose of this handbook is to spark greater engagement by NHRIs on climate change. It presents examples of different forms of action that NHRIs can take concerning climate change and highlights good practices. The examples presented are not exhaustive; rather, they illustrate both past and ongoing NHRI initiatives to encourage conversation among NHRIs on common elements of climate change work.

## Box 1: National Human Rights Institutions: A Primer

National Human Rights Institutions (NHRIs) play a particularly important role in monitoring state compliance with human rights obligations: they are tasked with the promotion and protection of all human rights, with monitoring the fulfilment of the human rights obligations by their respective state, and with keeping an eye on how the exercise of governmental authority affects human rights at all levels. NHRIs are independent public institutions established and financed by the state, which has to ensure institutional, personal, and financial independence of the NHRI. They often have a mandate to receive individual complaints, but do not adjudicate them like courts do. They work closely with civil society, and yet are by nature quite different from it, being based in statute or the constitution and funded by the state.

NHRIs are based on and must comply with the Paris Principles, endorsed in 1993 by the UN General Assembly.<sup>3</sup> Their mandate must extend to all human rights in all areas. On the common basis of the Paris Principles, NHRIs around the world take different forms – Commissions, Ombudspersons, Consultative Commissions, and Institutes – and are arranged and equipped in very different ways in respect of their mandates, structures, and competences.<sup>4</sup>

<sup>1</sup> A number of UN human rights bodies have expressed appreciation for and urged greater NHRI activity to address climate change: see for example Committee on Economic, Social and Cultural Rights (CESCR) (2018a); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (2018a); Committee on the Rights of the Child (CRC) (2016a); joint statement on human rights and climate change of CEDAW, CESCR, UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), CRC, and UN Committee on the Rights of Persons with Disabilities (CRPD) available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E>.

<sup>2</sup> UN General Assembly (1993), A/RES/48/134.

<sup>3</sup> Ibid.

<sup>4</sup> For more detailed information on NHRIs refer to German Institute for Human Rights (2018) or Kämpf (2018).

The examples discussed below and the insights they provide into the role of NHRIs in the climate crisis were identified through a comprehensive desk review of NHRIs' climate activities, a survey, and interviews with NHRI policy officers. The research found that nearly half of all NHRIs deemed partially or fully in compliance with the Paris Principles have worked in some form on climate change.<sup>5</sup> These NHRIs are located in diverse geographies and economies, and have a wide range of mandates, demonstrating that all NHRIs can contribute to finding human rights-based climate solutions.

The handbook first discusses the relationship between human rights and climate change, followed by a brief overview of those international institutions through which cooperation on human rights and climate change currently occurs. These sections can serve as a useful starting point for conversations between NHRIs and governments as well as civil society about the relationship between climate change and human rights. The handbook then presents case studies and good practices of NHRI engagement on climate change and concludes with an outline of potential ways forward for NHRI engagement.

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5 As of November 2019, 114 national human rights institutions are accredited A or B status, see GANHRI (2019).

## 2 The Nexus between Human Rights and Climate Change

Without urgent action, the world will soon exceed the goal governments set in the 2015 Paris Agreement of limiting warming to 1.5°C above pre-industrial levels, or well below 2°C. The rise in average global temperatures to date has already had severe and accelerating effects, and the Intergovernmental Panel on Climate Change (IPCC) has warned that if warming exceeds 1.5°C, the consequences for communities and ecosystems will be catastrophic.<sup>6</sup>

The climate crisis is among the greatest human rights challenges of our time, exacerbating inequalities, deepening precarity, and threatening lives and livelihoods. It raises profound questions about how to protect those populations already suffering from the effects of climate change, including loss and damage, as well as the rights of future generations. In its Special Report on Global Warming of 1.5 Degrees (2018), the IPCC emphasised the impact of climate change on a range of human rights.<sup>7</sup> As scientific research clarifies the scale, scope, and severity of the harm caused by climate change, as well as the uneven distribution of those impacts around the world,<sup>8</sup> human rights experts, judicial authorities, and policymakers at domestic, regional, and international levels recognise the implications of global warming for human rights.<sup>9</sup>

Besides the direct human rights impacts of climate change itself, measures designed to mitigate or adapt to climate change can also negatively affect human rights. Therefore, it is essential to implement a human rights-based approach not only to protect people against the negative impacts of climate change, but also to ensure that actions designed to slow and respond

to climate change, and to remedy its consequences, are undertaken in a way that safeguards and promotes human rights. Such an approach centers principles of equality and non-discrimination in both the substance and process of climate policymaking, ensuring that people have access to information, the ability to shape and engage meaningfully in decisions that affect their lives, and the means to hold governmental and corporate actors accountable.

### 2.1 Human Rights Impacts of Climate Change

Climate change affects nearly every aspect of our lives, with implications for a broad range of human rights – including but not limited to the rights to life, health, food, housing, and water. Climate change also tends to worsen existing disparities in the fulfillment of these rights. And, because of its long-term and irreversible impacts, climate change disproportionately affects the rights of children, young people, and future generations. One of the most succinct, recent descriptions of how climate change impacts human rights comes from the Human Rights Committee in its General Comment on the Right to Life (2018):

“[e]nvironmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.” States’ obligation to protect life therefore includes taking measures to “preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.”<sup>10</sup>

<sup>6</sup> See Intergovernmental Panel on Climate Change (IPCC) (2018), p. 11.

<sup>7</sup> IPCC (2018).

<sup>8</sup> See for example IPCC (2014) and Watts / Adger / et al. (2015).

<sup>9</sup> See for example Duyck / Sébastien / Jöhl (2018).

<sup>10</sup> UN Human Rights Committee (2018). CCPR/C/GC/36.

**Table 1: Human rights impacts of climate change**

| Human right to:                                                                                                                                                                                                                                                                                                                                                        | Illustrative climate change impacts                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Food</b><br><br>The right to adequate food, readily available, physically, and economically accessible to all in a state's territory. (CESCR (1999). E/C.12/1999/5, para. 6-11)                                                                                                                                                                                     | <ul style="list-style-type: none"> <li>– Impairment of direct access to food, food production, and price stability. (IPCC (2020), sections A2.8, A5.4-A5.5)</li> <li>– Drought, flooding caused by extreme weather events, and slow onset events, such as desertification and changing rainfall patterns, all endanger natural and agricultural ecosystems. (OHCHR (2009). A/HRC/10/61, para. 15, 17; UN Special Rapporteur on human rights and the environment (2019). A/74/161, para. 12)</li> </ul>                                                                                                                                                                                                                                                                               |
| <b>Water</b><br><br>The right to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses, such as drinking, food preparation, and personal and household hygiene. (CESCR (2002). E/C.12/2002/11, para. 2)                                                                                                             | <ul style="list-style-type: none"> <li>– Impairment of the availability of and access to water.</li> <li>– Loss of glaciers and the reduction of snow cover, most impacting water supply in those areas dependent on water from mountain ranges.</li> <li>– Average global land and ocean surface temperature increase – predicted to lead to changing rainfall patterns that cause precipitation deficits, prolonged droughts and greater water stress in some areas of the world. (IPCC (2018), pp. 36, 200)</li> <li>– Extreme climate and weather events, including droughts, heavy precipitation and floods, as well as rising sea levels, can result in salinization or contamination of water resources. (OHCHR (2009) – g; CESCR (2000). E/C.12/2000/4, para. 12)</li> </ul> |
| <b>Health</b><br><br>The right to the highest attainable standard of physical and mental health is intimately connected to the previously mentioned rights and includes the enjoyment of, and equal access to, appropriate health care and goods, services and conditions that enable a person to live a healthy life. (CESCR (2000). E/C.12/2000/4, para. 12)         | <ul style="list-style-type: none"> <li>– Extreme weather events cause injuries, destroy housing, lead to displacement, aggravate food and water precarity, and trigger other direct impacts that put people at higher risk of morbidity and mortality.</li> <li>– Multiple effects of climate change lead to the increased spread of vector-borne diseases.</li> <li>– Interference with both health care provision and the provision of services that are underlying determinants of health, such as through extreme weather events leading to the destruction of health centres, preventing transit and cutting off water and electricity. (IPCC (2014), p. 716)</li> </ul>                                                                                                        |
| <b>Housing</b><br><br>The right to live somewhere in security, peace and dignity. This includes factors such as security of tenure, protection from forced evictions, availability of services, quality of materials, facilities and infrastructure, affordability, habitability, accessibility, location, and cultural adequacy. (CESCR (1992). E/1992/23, para. 7-8) | <ul style="list-style-type: none"> <li>– Rising sea levels, flooding, and drought can negatively impact the access to and availability of adequate housing. Coastal communities, especially in small island states, are especially vulnerable to rising sea levels. Several have already been forced to relocate. (UN Special Rapporteur on the right to adequate housing (2009). A/64/255)</li> <li>– Changing weather patterns, including increased frequency or severity of droughts and floods, affect the availability of land and the accessibility of areas essential to populations' food, livelihood and/or cultural practices.</li> </ul>                                                                                                                                  |

Climate change is already proving deadly for some people and is likely to take more lives as the world continues to warm. Some of the ways that climate change directly infringes on the right to life are increased heat-related deaths and deaths due to extreme weather events, the heightened prevalence of zoonotic diseases and pathways that spread illness, and exacerbated food insecurity and malnutrition. The World Health Organization estimates that climate change will be responsible for over 250,000 deaths per year through these channels alone by 2030.<sup>11</sup> The table on page 14 gives an overview of some of the many ways climate change affects human rights, beyond the right to life.

### **Box 2: Towards recognition of a human right to a safe, clean, healthy, and sustainable environment**

80 percent of UN Member States (156 out of 193) recognise the right to an environment that is safe, clean, healthy, sustainable, etc.—whether through their laws or by virtue of being party to a regional instrument containing this right.<sup>12</sup> According to the UN Special Rapporteur on human rights and the environment, “a safe climate is a vital element of the right to a healthy environment and is absolutely essential to human life and well-being.”<sup>13</sup> In 2018, the Special Rapporteur released Framework Principles on Human Rights and the Environment, which summarise existing norms and the foremost state obligations related to the right to a safe environment.<sup>14</sup> For some time now, the Special Rapporteur, the UN Committee on the Rights of the Child and the UN Environment Programme (UNEP) have been recommending the creation of an international legal instrument for a human right to a safe, clean, healthy, and sustainable environment<sup>15</sup> (in analogy to the recognition of the right to safe and clean drinking water and sanitation as a human right in UN Resolution 64/292). A corresponding resolution proposal is expected to be submitted to the UN Human Rights Council in early 2021.

11 World Health Organization (WHO) (2014), para. 6-7.

12 UN Special Rapporteur on human rights and the environment (2019a). A/74/161, para 13.

13 UN Special Rapporteur on human rights and the environment (2019b). A/43/53.

14 UN Special Rapporteur on human rights and the environment (2018). A/HRC/37/59.

15 See for example UN Special Rapporteur on human rights and the environment (2020).

## 2.2 Human Rights Impacts of Responses to Climate Change

Measures to address climate change can and do impact human rights. For example, large-scale renewable energy projects, plantations for the production of biofuels, or projects to capture carbon in forests, where designed or implemented without proper attention to human rights risks, have been shown to negatively impact the rights

of local communities and indigenous peoples, including through forced displacement and deprivation of their means of subsistence. There is always a risk that new policies and projects — even those labeled 'green' — can infringe on human rights if they are not selected and designed with input from, and the consent of, affected communities, and implemented transparently, in a manner that respects environmental and social safeguards.

### Box 3: Climate mitigation and adaptation measures associated with negative human rights impacts

#### Example 1: Alto Maipo Hydroelectric Project, Chile

The Alto Maipo hydroelectric project in Chile is intended to produce electricity not generated from fossil fuels, and is registered with the Clean Development Mechanism under the Kyoto Protocol. It has, however, been associated with negative human rights impacts according to reports by local groups.<sup>16</sup> The construction of this project has impacted the right to adequate housing, as a town has been surrounded by a barrier wall due to 24/7 construction noise and traffic. Additionally, the project is diverting and diminishing the flow of impacted rivers, threatening the rights to water, food, health, and life. The project threatens monuments, natural sanctuaries, and protected heritage sites in the Cajón del Maipo, thereby endangering cultural heritage. The CESCR asked Chile to address the project in its next periodic reporting for 2021.<sup>17</sup>

#### Example 2: The Water Tower Protection and Climate Change Mitigation and Adaptation Programme, Kenya

This EU-funded programme aimed to improve forest conservation and rehabilitation in forests feeding Kenya's major watersheds, thereby building resilience within Kenya to the impacts of climate change.<sup>18</sup> However, as documented by the Kenyan National Commission on Human Rights (see section 5.1.1 below), Amnesty International, and other NGOs, the project has been associated with negative human rights impacts on the Sengwer indigenous population and other local communities, including the destruction of housing, eviction from ancestral lands, and the death of a local resident, leading the EU to suspend its funding for the project.<sup>19</sup> A midterm review by the EU found that the project planners ignored the pre-existing non-participatory conservation policies of Kenya's Forest Service that made negative human rights impacts more likely. The assessment also found that the project should have considered the possible outcomes of several relevant ongoing court cases concerning land tenure in the forests before embarking on the project.<sup>20</sup>

<sup>16</sup> See submission by Citizen's Committee No Alto Maipo (CCNAM), Ecosistemas and Center for International Environmental Law (CIEL) to CESCR available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fICS%2fCHL%2f41329&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fICS%2fCHL%2f41329&Lang=en).

<sup>17</sup> CESCR (2020). E/C.12/CHL/QPR/5.

<sup>18</sup> See [https://eeas.europa.eu/delegations/kenya/14465/protecting-and-increasing-forest-cover-kenya\\_en](https://eeas.europa.eu/delegations/kenya/14465/protecting-and-increasing-forest-cover-kenya_en).

<sup>19</sup> Kenya National Commission on Human Rights (2018); Amnesty International (2018).

<sup>20</sup> European Union (EU) (2018).

## 3 Human Rights Obligations in Relation to Climate Change

States are the primary duty-bearers under international human rights law. All states have obligations to protect human rights when taking action against climate change and its impacts and to uphold their international commitments. Yet, at the same time, climate change presents fundamental challenges to the traditional paradigm of state-centered human rights law. Many actors, including private entities as well as states, have contributed to climate change, and thus bear responsibility not only for preventing and mitigating future warming, but for remedying past, present, and future harm.<sup>21</sup> Further, the profound disconnect between responsibility for climate change and vulnerability to its consequences underscores the imperative of addressing extraterritorial obligations for both states and private actors. Non-discrimination, justice, participation, transparency, and accountability are important principles that should inform the entire design and implementation of climate policies.

### 3.1 State Obligations in the Face of Climate Change Impacts

All states are party to three or more core international human rights treaties. These oblige them to respect, protect, and fulfil human rights.

**Respect:** States must refrain from interfering with or curtailing the enjoyment of human rights:

- Refrain from actions that would harm the global atmosphere in a way that encroaches upon human rights;<sup>22</sup>

- Address disparities in impacts of climate change and disparate effects of climate policies on different groups (non-discrimination);
- Respect human rights in the implementation of climate policies, including the rights to information, freedom of expression, and participation in environmental decision-making, as well as indigenous peoples' right to give or withhold free, prior, and informed consent. This entails providing accessible information to the public on climate change and "ensuring an inclusive, equitable and gender-based approach to public participation in all climate-related actions."<sup>23</sup>

**Protect:** States must protect individuals and groups against human rights infringements and abuses by third parties, such as businesses or armed groups:

- Enact and enforce legislation to prevent climate impacts by private actors;
- Ensure that particular climate mitigation and adaptation projects do not infringe on human rights;<sup>24</sup>
- Protect environmental and human rights defenders working on climate-related issues from intimidation and violence;
- Cooperate at international and regional levels to achieve global greenhouse gas emissions reductions.

<sup>21</sup> See for example statement by Michelle Bachelet, UN High Commissioner for Human Rights, at the Twenty-fifth Conference of the Parties to the UNFCCC in December 2019, where she addresses the issue of access to remedy and the business and human rights dimension of climate change, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25406&LangID=E>

<sup>22</sup> UN Special Rapporteur on human rights and the environment (2019 a). A/74/161, para 64.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

**Fulfil:** States must take positive action to facilitate the enjoyment of basic human rights:

- Introduce laws, policies, and programmes to accomplish human rights-based climate adaptation and mitigation measures;<sup>25</sup>
- Ensure effective, affordable, and timely access to justice and remedies for those negatively impacted by climate change and climate response measures;
- Create awareness by providing the public with accessible, affordable, and understandable information regarding the causes and consequences of the global climate crisis, including incorporating climate change into the educational curriculum at all levels.<sup>26</sup>

The Paris Agreement (2015) reiterates the obligation of states to “respect, promote and consider their respective obligations on human rights when taking action to address climate change”.<sup>27</sup> This recognises the responsibility of states to integrate human rights safeguards into mitigation and adaptation strategies. To operationalise this obligation, the International Bar Association advises states to establish safeguards and accountability processes to ensure that climate policies are designed, implemented, and monitored in a manner that protects the rights of affected people and communities.<sup>28</sup> Human rights safeguards promote policy coherence and legitimacy, and help ensure that projects are more effective and sustainable.<sup>29</sup> Despite their collective agreement to “respect, promote and consider,” parties to the Paris Agreement have yet to develop any corresponding accountability

mechanisms to monitor the integration of human rights safeguards into mitigation and adaptation strategies, nor are they tracking compliance with such safeguards when enacted.

Human rights treaty bodies increasingly recognise that the obligation to prevent climate change flows from obligations to protect the human rights of all people, regardless of whether they reside within or outside of a state’s jurisdiction, as illustrated by the following two examples from reviews of Norway and Switzerland:

In its concluding observations on Norway in 2018,<sup>30</sup> the UN Committee on the Rights of the Child (CRC) found that the Norwegian state should protect children inside Norway and abroad from the impacts of fossil fuels. Similarly, in its concluding observations on Switzerland in 2019, the CESCR urged the Swiss government to take measures to reduce the global investments of public and private Swiss financial institutions in the fossil fuel industry.<sup>31</sup> Therefore, the existence of extraterritorial obligations, at least for some human rights, implies that states are bound to reduce emissions and take measures to address harms to which they foreseeably contributed or oversaw, regardless of where the impacts are felt.<sup>32</sup>

### 3.2 Procedural Rights in Responses to Climate Change

Procedural rights are enshrined in the Universal Declaration of Human Rights<sup>33</sup> and further articulated in the International Covenant on Civil and Political Rights (ICCPR), as well as the ILO Convention 169 (Indigenous and Tribal Peoples’

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> UN Framework Convention on Climate Change (UNFCCC) (2015). FCCC/CP/2015/L.9/Rev.1, Preamble.

<sup>28</sup> International Bar Association (2014).

<sup>29</sup> CIEL et al (2017a), p. 5.

<sup>30</sup> CRC (2018a). CRC/C/NOR/CO/, para 5-6.

<sup>31</sup> CESCR (2019). E/C.12/CHE/CO/4.

<sup>32</sup> See Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, ETO Consortium (2013) and CIEL (2017b).

<sup>33</sup> See articles 19 and 20 of the Universal Declaration on Human Rights available at <https://www.un.org/en/universal-declaration-human-rights/>

Convention) and the Convention on the Rights of Persons with Disabilities. These include the right to information, the right to participation in decision-making, and the right to access to justice. These rights are integral to international environmental law as recognised by the Rio Declaration of 1992 and are reflected in the climate governance framework.

The United Nations Framework Convention on Climate Change (UNFCCC) also recognises the importance of access to information on climate change and public participation in the development of responses to climate change.<sup>34</sup> The Paris Agreement strengthens this commitment to the rights to information and participation.<sup>35</sup> The implementation guidelines<sup>36</sup> of the Paris Agreement, adopted in 2018, also contain procedural rights such as access to information, transparency, and participation.

Human rights treaty bodies have provided further content to these rights, for example by emphasising the necessity of taking steps to ensure the participation of women,<sup>37</sup> indigenous people,<sup>38</sup> children,<sup>39</sup> and people with disabilities<sup>40</sup> in the development of all climate policies.

The Aarhus Convention (1998) and the Escazú Agreement (2018, anticipated entry into force in 2021) set forth legal obligations for state parties to provide information on environmental hazards, promote public participation in environmental governance, and provide effective access to justice in environmental matters.

### 3.3 Human Rights Responsibilities of Business

Businesses have been and continue to be major contributors to climate change.<sup>41</sup> They may cause greenhouse gas emissions directly through their activities, contribute to them through contracting with suppliers or service providers producing emissions, by financing emitting activities, or by selling products that are linked to emissions, most directly in the case of fossil fuels.<sup>42</sup> Since businesses are part of the problem, they are part of the solution, too: businesses are essential to reducing greenhouse gas emissions and implementing effective climate response measures.

#### Box 4: Dutch NGOs versus ING Bank

Finance institutions have their own set of responsibilities to protect human rights from the impacts of climate change. In a recent complaint before the Netherlands' National Contact Point on the OECD Guidelines on Multinational Enterprises (NCP), a group of NGOs challenged the lending and reporting practices of ING. The NCP agreed to hear the case, finding that the OECD guidelines requiring reporting of indirect emissions applied to the lending activities of ING that affected the climate.<sup>43</sup> In a facilitated agreement, ING agreed to improve measurement and reporting of emissions associated with activities it financed and to steer its lending portfolio to be consistent with meeting the Paris Agreement target of limiting global warming to well below 2°C.

<sup>34</sup> See article 6 (a)(ii)-(iii) of the United Nations Framework Convention on Climate Change available at [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>35</sup> UN Framework Convention on Climate Change (UNFCCC) (2015). FCCC/CP/2015/L.9/Rev.1, article 12.

<sup>36</sup> See Implementation Guidelines of the Paris Agreement, UNFCCC (2018).

<sup>37</sup> CEDAW (2018b). CEDAW/C/MHL/CO/1-3.

<sup>38</sup> CESCR (2018b). E/C.12/NZL/CO/4.

<sup>39</sup> CRC (2018b). CRC/C/GTM/CO/5-6.

<sup>40</sup> CRPD (2018). CRPD/C/SYC/CO/1.

<sup>41</sup> According to Heede (2014) and Frumhoff / Heede / Oreskes (2015) 63 percent of total industrial emissions of CO<sub>2</sub> from 1750-2010 can be traced to the products and production of just 90 fossil energy and cement companies.

<sup>42</sup> See Expert Group on Climate Obligations of Enterprises (2018), pp. 5-8.

<sup>43</sup> See final statement of Oxfam Novib, Greenpeace Netherlands, Bank Track and Friends of the Earth Netherlands (Milieudefensie) versus ING (2019) available at <https://www.oecdguidelines.nl/latest/news/2019/04/19/final-statement-dutch-ncp-specific-instance-4-ngos-versus-ing-bank>

In many countries, businesses are obliged under national or regional regulations to conduct and report on their operations in ways that protect the environment.<sup>44</sup> Further, an ever-growing body of scholarship, jurisprudence, and authoritative statements from UN human rights institutions identify a responsibility of businesses to, at the minimum, respect human rights in their own operations and those of their agents and subsidiaries, including an obligation to conduct human rights due diligence.<sup>45</sup> These norms, which in some areas derive from customary international law, are reflected in the UN Guiding Principles on Business and Human Rights, adopted unanimously by the UN Human Rights Council in 2011.<sup>46</sup> Various sources have elaborated the content of these business obligations under international law, specifically in the context of climate change.<sup>47</sup>

The Special Rapporteur on human rights and the environment summarised a number of these sources as follows:

“The five main responsibilities of businesses specifically related to climate change are to reduce greenhouse gas emissions from their own activities and their subsidiaries; reduce greenhouse gas emissions from their products and services; minimise greenhouse gas emissions from their suppliers; publicly disclose their emissions, climate vulnerability and the risk of stranded assets; and ensure that people affected by business-related human rights violations have access to effective remedies. In addition, businesses should support, rather than oppose, public policies intended to effectively address climate change.”<sup>48</sup>

44 Environmental and labour laws and different types of mandatory disclosure laws, covering everything from environmental releases and liabilities to payments to foreign governments can support the protection of human rights. For a helpful summary of disclosure laws see <https://www.carrotsandsticks.net/reporting-instruments/?status=Forthcoming&status=Current&reportingRequirements=Public+law+and+regulation>

45 For a useful summary see Business and Human Rights Resource Centre (2020).

46 OHCHR (2011).

47 Expert Group on Climate Obligations of Enterprises (2018); UN Special Rapporteur on human rights and the environment (2019a). A/74/161. The Human Rights Council's Working Group on Business and Human Rights is also preparing an informational note on how the UN Guiding Principles on Business and Human Rights apply to climate change.

48 UN Special Rapporteur on human rights and the environment (2019a). A/74/161, para 19-20.

## 4 Key Institutions Protecting Human Rights in the Context of Climate Change

Many institutions work at the nexus of human rights and climate change. This chapter highlights some of them, namely: the UN Human Rights Council (HRC) and its special procedures, the Human Rights Treaty Bodies (HRTBs), the Office of the High Commissioner on Human Rights (OHCHR), and the key climate change-related institutions such as the UNFCCC, its Adaptation Fund, and the Green Climate Fund (GCF).

Several other legal regimes and institutions also protect procedural rights in climate action and review the implementation of complementary frameworks. Examples include the Aarhus Convention and Escazú Agreement, and the High-level Political Forum on the Sustainable Development Goals.

### 4.1 International Human Rights Institutions and Mechanisms

#### 4.1.1 The UN Human Rights Council

The UN Human Rights Council is the primary multilateral body formed by the UN Member States to strengthen and promote human rights worldwide. The HRC has broad jurisdiction to:

- Promote universal respect for human rights;
- Address situations in which human rights are violated and respond promptly to human rights emergencies;
- Serve as a forum for dialogue on thematic issues;

- Review the performance of states with respect to their human rights obligations; and
- Make recommendations to the General Assembly on the development of international human rights law.<sup>49</sup>

With this jurisdiction the HRC can examine states' performance in fulfilling their climate change-related human rights obligations. Over the past decade, a series of HRC resolutions has recognised the human rights impacts of climate change and the corresponding obligations of states to respond to climate change using a human rights-based approach.<sup>50</sup>

#### 4.1.2 Universal Periodic Review (UPR)

Member states of the HRC review climate change-related human rights obligations of specific states through the UPR. This state-led process evaluates a state's human rights performance via peer-review and leads to recommendations of how the state in question can improve its human rights compliance.<sup>51</sup> As of May 2020, the UPR has facilitated the exchange of over one hundred recommendations related to individual states' human rights obligations in the context of climate change.<sup>52</sup> As the relationship between human rights and climate change is further studied and better understood, the UPR is increasingly becoming an opportunity for states to communicate their national experience with the protection of human rights in the context of climate change as well as to provide country-specific guidance to their peers regarding how to further such protection.<sup>53</sup>

<sup>49</sup> UN General Assembly (2006). A/RES/ 60/251.

<sup>50</sup> An overview of all HRC resolutions on climate change and human rights available at <https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/Resolutions.aspx>

<sup>51</sup> OHCHR has issued useful basic facts about the UPR, available at <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>

<sup>52</sup> OHCHR (Forthcoming 2020)

<sup>53</sup> Ibid.

### 4.1.3 Special Procedures

As of May 2020, the HRC had established 44 thematic special procedures<sup>54</sup> to explore and develop the content of human rights obligations and investigate states' compliance thereof. The Special Rapporteur on human rights and the environment<sup>55</sup> has the most explicit mandate to work on human rights obligations relating to climate change and has contributed immensely to substantiating these obligations<sup>56</sup> and collecting good practices on human rights-based climate change responses<sup>57</sup>.

Other special procedures have also dealt with climate change including the Independent Experts and Special Rapporteurs on the right to water and sanitation,<sup>58</sup> on the right to food,<sup>59</sup> on the rights of indigenous peoples,<sup>60</sup> on adequate housing<sup>61</sup>, on the human rights of internally displaced persons,<sup>62</sup> on the human rights of migrants,<sup>63</sup> on cultural rights,<sup>64</sup> and on extreme poverty and human rights.<sup>65</sup> A number of Special Rapporteurs have also made joint statements on climate change, including, for example, on the dangers of exceeding 2 degrees Celsius of global temperature increase and on the importance of fully incorporating human rights into the implementation guidelines of the Paris Agreement.<sup>66</sup>

### 4.1.4 Human Rights Treaty Bodies

Human rights treaty bodies monitor the implementation of states' obligations under

their respective treaties. In recent years, human rights treaty bodies have increasingly issued climate-related recommendations to states, most notably as of March 2020: the UN Committee on the Elimination of Discrimination Against Women (CEDAW) (57 recommendations), CRC (41 recommendations) and CESCR (18 recommendations).<sup>67</sup> The recommendations have addressed a broad range of policy areas, from the vulnerabilities and participation of specific population groups in climate responses to reducing fossil fuel extraction, exports, and consumption as preventive measures.

Some human rights treaty bodies also receive individual communications, including communications related to climate change. In January 2020, the UN Human Rights Committee adopted its first decision in an individual communication related to climate-induced migration, recognising climate change as a threat to the right to live with dignity.<sup>68</sup> There is a further communication awaiting a decision by this Committee from Torres Straits Islanders alleging insufficient action by Australia to mitigate and assist them with adapting to climate change.<sup>69</sup> Finally, children and youth from around the world lodged a complaint, also awaiting decision, with the CRC against five countries alleging insufficient action to address climate change.<sup>70</sup>

Human rights treaty bodies also issue general recommendations (usually called 'general

54 See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25871&LangID=E>

55 An overview of the mandate of the UN Special Rapporteur on human rights and the environment is available at <https://www.ohchr.org/en/Issues/environment/SREnvironment/Pages/SREnvironmentIndex.aspx>

56 UN Special Rapporteur on human rights and the environment (2019a); UN Special Rapporteur on human rights and the environment (2016), A/HRC/31/52.

57 UN Special Rapporteur on human rights and the environment (2019a). A/74/161.

58 UN Special Rapporteur on the right to water 2010). E/C.12/2002/11.

59 UN Special Rapporteur on the right to food (2015). A/70/287.

60 UN Special Rapporteur on the rights of indigenous peoples (2017). A/HRC/36/46.

61 UN Special Rapporteur on adequate housing (2009). A/64/255.

62 UN Special Rapporteur on the human rights of internally displaced persons (2011). A/66/285.

63 UN Special Rapporteur on the human rights of migrants (2012). A/67/299.

64 UN Human Rights Council (2019).

65 UN Special Rapporteur on extreme poverty and human rights (2019). A/HRC/41/39.

66 Collected from <https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HumanRightsMechanisms.aspx>.

67 CIEL (2020), figure 4.

68 UN Human Rights Committee (2020). CCPR/C/127/D/2728/2016.

69 A summary of the petition available at <http://climatecasechart.com/non-us-case/petition-of-torres-strait-islanders-to-the-united-nations-human-rights-committee-alleging-violations-stemming-from-australias-inaction-on-climate-change/>.

70 CRC (2019), case 104/2019.

comments’) concerning the interpretation of the treaties they monitor. Some of these general comments have included recommendations concerning climate change. For example, CEDAW’s General Recommendation no. 37 (2018) identifies many of the key climate change issues that states should consider when implementing the CEDAW Convention, including in relation to the elimination of fossil fuel subsidies and pursuing other mitigation actions, and insists on the participation of women in designing responses and solutions at all levels of decision-making.<sup>71</sup> CRC’s General Comment no. 15 (2013) addresses climate change as a direct threat to children’s health and a factor exacerbating existing health disparities.<sup>72</sup> Finally, CEDAW, CRC, CESCR, the UN Committee on the Protection of All Migrant Workers and their Families (CRM), and the UN Committee on the Rights of Persons with Disabilities (CRPD) issued a joint statement calling on states to take more ambitious climate action while addressing all forms of discrimination and inequality.<sup>73</sup>

Collectively, these concluding observations, views on individual communications, and general comments have produced a growing body of soft law clarifying states’ human rights obligations in the climate context for each respective treaty.<sup>74</sup>

#### 4.1.5 The Office of the High Commissioner for Human Rights

The Office of the High Commissioner for Human Rights (OHCHR) is the main UN agency mandated to promote and protect human rights. It provides technical expertise and capacity building. Since 1993, it has worked to elucidate the links between climate change and human rights, as well as advocate for a human rights-based approach to climate solutions and the integration of human rights into the international climate regime. A comprehensive list of reports published by OHCHR on climate change and human rights is available in the references section on page 55.

## 4.2 International Institutions on Climate Change

### 4.2.1 United Nations Framework Convention on Climate Change

The international response to climate change accelerated in 1992, with the adoption of the United Nations Framework Convention on Climate Change (UNFCCC). The Convention’s objective is to “[s]tabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”<sup>75</sup> The state parties to the Convention meet annually to monitor their collective progress towards this objective (known as the Conference of the Parties (COP)). Under the auspices of the annual COP various mechanisms and legal agreements have been established – including the adoption of the Paris Agreement and its implementation guidelines.

With the adoption of the Cancun Agreement in 2010 the importance of anchoring human rights within the UNFCCC was first formally recognised. The Paris Agreement is a further milestone as it states that state parties should:

“... [r]espect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity” (Preamble).

Various COP decisions and workstreams under the UNFCCC reference human rights and related principles, including in the context of emission reductions in the forestry sector, gender, loss and damage, the participation of indigenous people and local communities, and capacity building.<sup>76</sup>

<sup>71</sup> CEDAW (2018a). CEDAW/C/GC/37.

<sup>72</sup> CRC (2013). CRC/C/GC/15.

<sup>73</sup> Available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E>.

<sup>74</sup> CIEL / Global Initiative on Economic, Social and Cultural Rights (2020).

<sup>75</sup> Text of the Convention available at <https://unfccc.int/resource/docs/convkp/conveng.pdf>.

<sup>76</sup> For an overview of human rights under the UN Climate Agreements see CIEL (2019).

### 4.2.2 International Climate Funds

The parties to the UNFCCC have established several international funds to support developing countries' efforts to combat climate change.

#### Adaptation Fund

The Adaptation Fund was set up by the state parties to the Kyoto Protocol to fund projects in developing countries with the aim of reducing vulnerability and increasing the adaptive capacity of societies and ecosystems to respond to the impacts of climate change.<sup>77</sup> The Fund established social and environmental safeguards for the projects it funds as well as a Gender Policy and Gender Action Plan.<sup>78</sup> The Fund's Environmental and Social Policy requires that implementing entities respect human rights, identify and develop management plans for social and environmental risks and establish or identify an existing grievance mechanism for each project.<sup>79</sup> Further, the Adaptation Fund established its own complaint mechanism for individuals and communities negatively affected by projects.<sup>80</sup>

#### Green Climate Fund (GCF)

The Adaptation Fund served as a role model for establishing safeguards and procedures for the Green Climate Fund (GCF), established by the state parties to the UNFCCC in 2010. The GCF is the largest fund channeling support to projects in developing countries that enable the shift towards low-carbon and climate resilient societies, paying particular attention to those most vulnerable to the effects of climate change.

The GCF has issued the first Results Based Payments for slowing deforestation and degradation under the REDD+ framework created by state parties to the UNFCCC. Given that many REDD+ projects have been associated with reported infringements on human rights,

despite the Cancun Safeguards for such activities agreed to by the parties, it is important that the GCF has its own safeguards. To date, the Fund has adopted an Indigenous Peoples Policy, a Gender Policy and Action Plan, and an Environmental and Social Policy as part of its overall process for the development of a complete Environmental and Social Management System to safeguard human rights and protect the environment.

GCF's Indigenous Peoples' Policy is a good example of a human rights-based climate policy that includes social safeguards and protects the rights of indigenous people, including their right to free, prior, and informed consent.<sup>81</sup> GCF's Independent Redress Mechanism (IRM) can hear complaints from people and local communities who believe they have been or may be negatively impacted by a GCF-funded project and are seeking redress. While the IRM is still in its infancy, it is now open to hearing complaints from affected communities.<sup>82</sup> One additional component by which the GCF seeks to protect human rights is through the accreditation process for entities implementing GCF projects (such as regional development banks and international agencies) – this requires, *inter alia*, that the entities set up their own complaint mechanisms.

### 4.3 National Courts and Regional Bodies

National courts and regional bodies play a crucial role as sites for what is often referred to as proactive climate litigation – meaning litigation brought to secure stronger policies in climate mitigation or adaptation, or redress for harm.<sup>83</sup> National courts also are a site for what is often referred to as reactive litigation – for example, litigation challenging positive laws and

<sup>77</sup> Adaptation Fund (2019).

<sup>78</sup> Adaptation Fund (2016a).

<sup>79</sup> Adaptation Fund (2016b).

<sup>80</sup> Adaptation Fund (2016c).

<sup>81</sup> GCF (2018).

<sup>82</sup> GCF (2019).

<sup>83</sup> Ghaleigh (2010); Peel / Osofsky (2015), pp. 30-31; Savaresi / Auz, (2019), p. 246. This type of litigation is also referred to as 'promotive' or 'positive'.

regulations such as those hastening a transition to renewable energy.<sup>84</sup>

On the promotive side, new legal theories have been pursued and additional courts engaged in the past year alone.<sup>85</sup> Cases challenging government action or inaction as insufficient to address climate change or seeking to hold private actors accountable have now been filed in at least 28 countries.<sup>86</sup> Though not central to most cases, human rights arguments are increasingly cited by advocates, with the main database tracking this counting 33 non-U.S. cases making human rights arguments up to May 2020.<sup>87</sup> A number of landmark rulings on the merits (refer to the examples below) have found that meeting its human rights obligations requires each state to do its part – defined with reference to nationally established targets or international consensus in the various cases – to mitigate climate change. The use of human rights arguments in climate litigation is therefore likely to continue to grow.<sup>88</sup> Even cases that have not obtained a positive ruling on the merits have influenced policymaking and corporate behaviour.

### Examples from national courts

In December 2019, the Dutch Supreme Court issued a final ruling in what was popularly known as the ‘Urgenda’ case. It found the Dutch government was violating its duty of care towards its citizens and directed it to change national policy to achieve reductions in national greenhouse gas emissions more rapidly.<sup>89</sup> The

claim was largely grounded in the rights to life and a private life under articles 2 and 8 of the European Convention on Human Rights.<sup>90</sup> In 2015, a Pakistani appellate court decided in the ‘Leghari’ case that “the delay and lethargy of the State in implementing the Framework [policy on climate change] offend the fundamental rights of the citizens”.<sup>91</sup>

In 2018, the Colombia Supreme Court found that the government’s failure to slow deforestation in accordance with targets set in a National Development Plan and the Nationally Determined Contributions (NDCs) under the Paris Agreement violated a number of rights of the youth plaintiffs, among them rights to life, health, and adequate subsistence, while also recognising the Colombian Amazon as a rights-holder in its own regard.<sup>92</sup>

The publication of studies attributing individual shares of global emissions since the industrial age to fossil fuel companies and other major emitters<sup>93</sup> has been a key factor behind the acceleration of cases seeking to hold these actors accountable for the impacts of climate change on populations.<sup>94</sup> A body of climate cases concerns the so-called ‘carbon majors,’ as plaintiffs have sought to hold accountable those companies that have the largest impact on greenhouse gas emissions. These cases include, among others, Friends of the Earth Netherlands v. Shell,<sup>95</sup> and Friends of the Earth France v. Total,<sup>96</sup> which echo legal arguments at the core of the Philippines Commission on Human Rights inquiry (see box 6, p. 33).<sup>97</sup>

84 Savaresi / Auz (2019), p. 246. Also referred to as ‘defensive’ litigation.

85 Selzer et al. (2019); ‘Savaresi / Auz (2019), p. 244.

86 Selzer et al. (2019), p. 3.

87 Available at <http://climatecasechart.com/non-us-case-category/human-rights/>.

88 Selzer et al. (2019), p. 8.

89 Unofficial translation of the ruling available at [climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/](http://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/).

90 Ibid.

91 Full decision available at [http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2018/20180125\\_2015-W.P.-No.-25501201\\_judgment.pdf](http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2018/20180125_2015-W.P.-No.-25501201_judgment.pdf).

92 Full decision available at <http://climatecasechart.com/non-us-case/future-generation-v-ministry-environment-others/>.

93 Heede (2014); Frumhoff / Heede / Oreskes (2015).

94 Savaresi / Auz (2019), p. 248.

95 Summons available at [http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2019/20190405\\_8918\\_summons.pdf](http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2019/20190405_8918_summons.pdf).

96 Case documents available at <http://climatecasechart.com/non-us-case/lliuya-v-rwe-ag/>.

97 Case summary and documents available at <http://climatecasechart.com/non-us-case/in-re-greenpeace-southeast-asia-et-al/>.

Some regional human rights bodies, including the Commissions and Courts in the Inter-American and European human rights protection systems, have addressed climate change to some extent already, and additional cases are anticipated.

### **Examples from regional bodies**

The Inter-American Commission on Human Rights touched upon the issue as early as 2005, with the filing of the Inuit Petition, in which a population indigenous to Northern Canada and Alaska sought remedy for acts and omissions of the United States that contributed to climate change and thereby negatively impacted their rights to life and cultural survival, amongst others.<sup>98</sup>

In an advisory opinion requested by the Colombian government in 2017, the Inter-American Court on Human Rights found that an autonomous right to a healthy environment exists under the American Convention on Human Rights. The Court determined that states have a duty to prevent overseas violations of this right by their nationals.<sup>99</sup>

While the European Court of Human Rights has not yet considered a case explicitly addressing climate change, the European Committee of Social Rights concluded in 2006 that the failure of Greece to adequately regulate coal mines and power plants constituted a breach of its obligations under the European Social Charter by virtue of their impacts on climate change.<sup>100</sup>

<sup>98</sup> Text of the petition available at <http://climatecasechart.com/non-us-case/petition-to-the-inter-american-commission-on-human-rights-seeking-relief-from-violations-resulting-from-global-warming-caused-by-acts-and-omissions-of-the-united-states/>.

<sup>99</sup> Inter-American Court of Human Rights (2017). OC-23/17. The potential ramifications of this case for climate litigation have been noted elsewhere – see Savaresi / Auz (2019), p.255.

<sup>100</sup> European Committee of Social Rights (2007). Complaint No. 30/2005.

## 5 How National Human Rights Institutions Engage

Over the past decade, National Human Rights Institutions (NHRIs) have increasingly engaged with climate change. The research conducted for this handbook identified more than 250 instances of engagement by more than 50 NHRIs. The research includes a comprehensive review of NHRI public-facing documentation, a scan for all NHRI submissions to human rights treaty bodies and the UPR, input from NHRIs on research undertaken by several UN human rights entities, and responses to a questionnaire issued to inform the writing of this handbook (responses received from ten NHRIs). These materials were completed through interviews with policy officers working in NHRIs from six different countries. This chapter summarises the research findings, highlighting illustrative case studies and good practices.

As the core functions of NHRIs are to protect and promote human rights, the research findings are categorised accordingly. Activities are further categorised by a typology based on how NHRIs generally fulfil these functions:

**Protection:** domestic and international monitoring and reporting, handling complaints, undertaking independent investigations.

**Promotion:** raising public awareness and outreach, contributing to research reports and analysis, providing policy advice to national and international processes, engaging with the business sector.

Clearly, many activities of NHRIs fulfil multiple functions. For example, a report may document interference with the enjoyment of a human right, serve to raise public awareness of the factors giving rise to that interference, and make policy

recommendations on how states or other actors can fulfil their human rights obligations. The examples of NHRI activities given in this section are therefore categorised according to what was considered the predominant function while still mentioning other functions served by the case.

### 5.1 Protecting Human Rights

To fulfil their protective function in the context of climate change, NHRIs have monitored the impacts climate change and climate policies have on specific human rights through a variety of methods, including quantitative and qualitative analysis and transcribing first-hand accounts. NHRIs have shared their findings with other national bodies and international human rights entities in order to improve their policies and preparedness for the protection of human rights. Additionally, NHRIs have used their mandates to receive complaints and independently undertake investigations in concrete situations of severe rights violations, providing much more detailed fact-finding and non-judicial remedies.

#### 5.1.1 Domestic Monitoring and Reporting

A core function of NHRIs is to monitor and report on the fulfilment of human rights within their countries. As climate change directly impacts many of these rights, a number of NHRIs have documented those impacts. In many cases, this has been part of a larger report on the fulfilment of a climate-affected right in that country or a section of an annual report. In some cases, the documentation related to particularly extreme weather events; in others to the slow onset effects of climate change; in others, still to procedural rights in climate policy. Establishing climate

change's likely responsibility for particular human rights harms may require NHRIs to draw on scientific expertise from other government agencies or academia.

**Honduras' Comisionado Nacional de los Derechos Humanos (CONADEH)** has examined the impacts of a climate-aggravated five-year drought on food production and availability. CONADEH documented the effects on small-holder farmers and those dependent on their output and called for solidarity and support for families affected by the drought from all sectors of society. It also urged the government to build the capacity of farmers to adapt to climate change through the use of different seeds, growing practices, and market strategies.<sup>101</sup> CONADEH also has issued reports documenting the impacts of climate change on forests via forest fires and the spread of pests.<sup>102</sup>

The **Ugandan Human Rights Commission** detailed the effects of climate change-worsened drought and floods on food security in the ex-

acerbated La Niña El Niño cycle in 2017.<sup>103</sup> The Commission's report stands as a good example of detailing how a global phenomenon like climate change takes local form, and intersects with local policies and practices. For example, it underscored the cyclical connections between a national policy to promote cash crops with deforestation and wetlands degradation, climate change, and food insecurity.

The 2008 "Native Title" report from the Aboriginal and Torres Strait Islander Social Justice Commissioner of the **Australian Human Rights Commission** considered first-hand accounts and integrated them with secondary sources on present or future human rights impacts.<sup>104</sup> The report took two regions as case studies: the Torres Straits Islands and the Murray-Darling River Basin, which accounts for 14 percent of the country's land area. Especially in the Torres Straits Islands case study, the report documented existing impacts of climate change on rights to food, culture, and housing.<sup>105</sup>

<sup>101</sup> Comisionado Nacional de los Derechos Humanos (CONADEH) (2018).

<sup>102</sup> CONADEH (2015); CONADEH (2016).

<sup>103</sup> Uganda Human Rights Commission (UHRC) (2017).

<sup>104</sup> The Native Title report was an annual report required from this Commissioner from 1993-2016 on the impacts of the Native Title system on the exercise and enjoyment of human. The system was introduced in 1992 for the recognition of aboriginal title to land rights, see Australian Human Rights Commission (2008).

<sup>105</sup> Ibid, pp. 239, 244.

### Box 5: Using SDG monitoring and reporting to address climate (in)action

The Sustainable Development Goals (SDGs) include climate action (Goal 13) and affordable and clean energy (Goal 7). By monitoring SDG implementation, as endorsed by many NHRIs in the Merida Declaration on the Role of National Human Rights Institutions in implementing the 2030 Agenda for Sustainable Development,<sup>106</sup> NHRIs can contribute to advancing climate goals and the integration of human rights in climate responses. Pursuing human rights-based climate action can facilitate progress towards a number of other SDGs including reducing air pollution, achieving clean energy for all, and decreasing inequality and poverty.<sup>107</sup> While human rights instruments and mechanisms provide an important framework for SDG implementation, and while SDG implementation can contribute to the realisation of human rights,<sup>108</sup> it is also the case that the two frameworks may have different resonance for different administrations. NHRIs with experience in monitoring both the implementation of the SDGs and of international human rights law may therefore be better equipped to promote climate action across changes in government.<sup>109</sup>

**Argentina's Defensoría del Pueblo de la Nación** monitors SDG implementation in Argentina. The Defensoría's 2017 report critiqued both the lack of an overarching climate policy at the national level and Argentina's policies that support the further development of fossil fuels, contravening SDG Goal 13. The report also recommended concrete policy measures to improve Argentina's SDG progress.<sup>110</sup>

The 2015 annual report by **Costa Rica's Defensoría de Los Habitantes** outlined where existing Costa Rican policies supported achievement of the SDGs and where there was room for improvement. The section on Goal 13 assessed the national climate strategy and the specific approaches being followed to achieve its targets, and recommended greater public participation in climate policy and access to information on positions taken by Costa Rica at the UNFCCC.<sup>111</sup>

Finally, the **Scottish Human Rights Commission**, in its submission to the Scottish Parliament on the 2017 Climate Change Bill, emphasised that the bill should follow a human rights-based approach, including the human rights principles of participation, accountability, non-discrimination, empowerment, and legality, and should support the achievement of the SDGs within the country. The submission recommended specific reporting guidelines to ensure that a rights-based approach was followed and the SDGs monitored.<sup>112</sup>

106 Available at <https://nhri.ohchr.org/EN/ICC/InternationalConference/12IC/Background%20Information/Merida%20Declaration%20FINAL.pdf>.

107 UN Special Rapporteur on Human Rights and the Environment (2019a). A/74/161.

108 International Coordinating Committee (now Global Alliance of National Human Rights Institutions, GANHRI) (2015), para. 12. Merida Declaration, para. 12.

109 The Danish Institute for Human Rights has published several reports on national human rights institutions as a driving force for sustainable development, including good practices of NHRIs for SDG programming and monitoring available at <https://www.humanrights.dk/what-we-do/sustainable-development-goals/sdgs-national-human-rights-institutions>. For more insight into how NHRIs can overcome challenges, including a lack of funding and closing civil society spaces, in relation to participating in SDG monitoring and implementation see Eschke (2018).

110 Defensor Del Pueblo De la Nación, Argentina, (2017a) (in Spanish).

111 See La Defensoría de los Habitantes, Costa Rica (2015) (in Spanish).

112 Scottish Human Rights Commission (2017).

### 5.1.2 Reporting to International Human Rights Mechanisms

NHRIs also fulfil their monitoring and reporting roles by submitting parallel reports to the UPR and UN human rights treaty bodies during their country review processes. States increasingly use the UPR and the human rights treaty bodies' review processes to report on their efforts to respect, protect, and fulfil human rights in the context of climate change and to consider recommendations from their peers to step up these efforts. NHRIs play an important role in this trend, and provide an informed and independent perspective on the state efforts under discussion.

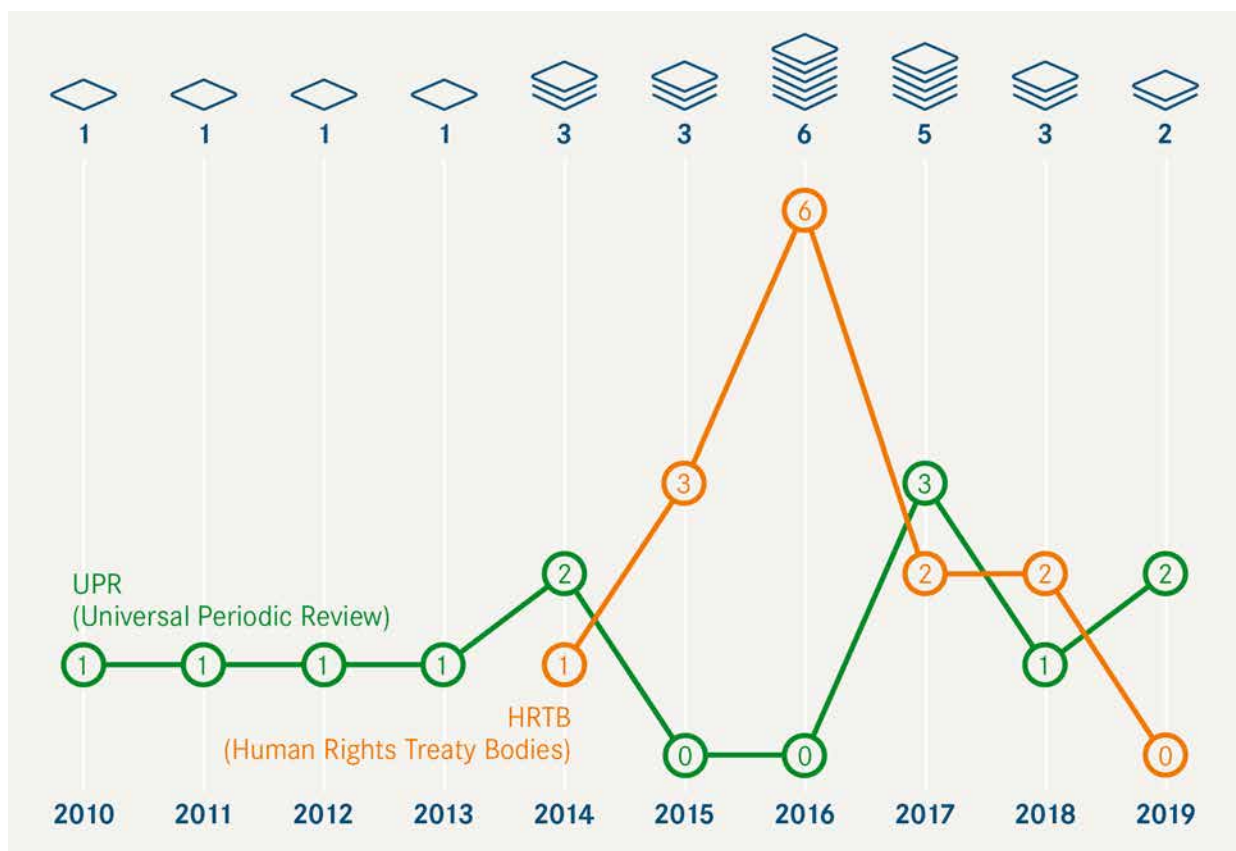
#### UPR

The Human Rights Council's UPR process provides an opportunity to scrutinise states' performance on human rights internationally and to share best practices among states. The recognised role of NHRIs in providing independent human rights assessments of their countries

to the HRC gives them a unique opportunity to place climate change on the review's agenda. As of May 2020, there have been 12 submissions by NHRIs on climate change to the UPR and another 25 submissions on broader environmental concerns.<sup>113</sup> Making such submissions can encourage international collaboration on aspects of climate policy or encourage other states to make recommendations with respect to harmful policies in the NHRI's home country.

The **Bangladeshi National Human Rights Commission** outlined the challenges climate change poses to human rights in its submission to Bangladesh's first UPR review in 2009. Following this submission, Bangladesh received two recommendations, to "continue and strengthen, with international support and cooperation, its efforts to mitigate the negative impact of climate change" and to "pursue its efforts within the Human Rights Council on the issue of climate change and human rights."<sup>114</sup>

### UPR and human rights treaty body submissions on climate change



<sup>113</sup> The search included all NHRI submissions made up to and including the 33rd UPR session in May 2019.

<sup>114</sup> Human Rights Council (2009).

In 2017, the **Philippines' Commission on Human Rights** expressed concern at statements from the Philippine government that it would not ratify the Paris Agreement and pointed to the carbon majors case it was undertaking (see box 6, p. 33).<sup>115</sup> Following this, the Philippines received recommendations from three states advising it to implement the Paris Agreement, address challenges in implementing its climate policy, and pursue climate adaptation measures. The Philippines supported all these recommendations.<sup>116</sup>

**Argentina's Defensoría del Pueblo de la Nación** has regularly engaged with the UPR on the status of the right to a healthy environment. In 2012, the Defensoría submitted a report expressing concern about various environmental issues in Argentina. The NHRI underlined that policies on access to information, citizen participation, and environmental impact assessment were insufficient and environmental damage was not mapped correctly.<sup>117</sup>

In 2017, the Defensoría submitted a second report. Concerning climate change specifically, the Defensoría noted that Argentina should 1) include measures related to climate change in national policies and plans and 2) improve education, awareness, and human and institutional capacity concerning climate change mitigation.<sup>118</sup> Argentina ultimately received a recommendation to strengthen measures to combat the negative effect of companies' economic activities on the environment and on biodiversity.<sup>119</sup>

### Submissions to Human Rights Treaty Bodies

Human rights treaty bodies offer an opportunity for NHRIs to contribute their expertise to the development of human rights norms and standards on climate change – and focus international attention on certain policies in the NHRI's home state.<sup>120</sup> A number of human rights treaty bodies have expressed appreciation for the participation of NHRIs in their state reporting procedures, most recently CEDAW, which also explicitly asked NHRIs to increase their capacity to assess implementation of the UNFCCC and its protocols.<sup>121</sup>

While reporting procedures differ among treaty bodies, there are generally two especially opportune moments for NHRIs to make submissions to the state reporting procedure: first, before the treaty body in question finalises its so-called 'list of issues prior to reporting' – this is an opportune moment for agenda setting as replies to the list of issues constitute the state party report to the treaty body – and second, before the treaty body conducts its dialogue with the state under review and issues its concluding observations.<sup>122</sup> NHRIs can also produce a follow-up report on a state's progress in implementing the recommendations contained in the treaty body's concluding observations.<sup>123</sup>

Between January 2012 and February 2020 there were at least twelve submissions from NHRIs to human rights treaty bodies concerning climate change (refer to graphic on p. 30).<sup>124</sup>

<sup>115</sup> [https://www.upr-info.org/sites/default/files/document/philippines/session\\_27\\_-\\_may\\_2017/chrp\\_upr27\\_phl\\_e\\_main.pdf](https://www.upr-info.org/sites/default/files/document/philippines/session_27_-_may_2017/chrp_upr27_phl_e_main.pdf) The Philippines has since ratified the Paris Agreement.

<sup>116</sup> Human Rights Council (2017a).

<sup>117</sup> Defensoría del Pueblo de la Nación, Argentina, (2012) (in Spanish).

<sup>118</sup> Defensoría del Pueblo de la Nación, Argentina, (2017b) (in Spanish).

<sup>119</sup> Human Rights Council (2017b).

<sup>120</sup> For background information on how UN human rights treaty bodies review state performance, as well as their activities on climate change see CIEL (2020b).

<sup>121</sup> CEDAW (2019). INT/CEDAW/BAP/8997, para 15.

<sup>122</sup> A number of UN human rights treaty bodies are moving towards employing a simplified reporting procedure in which a treaty body initiates the review with a 'List of Issues Prior to Reporting'. Currently treaty bodies are, however, employing this procedure in different ways, see OHCHR (Secretariat for the Thirty-first meeting of Chairs of the Human Rights Treaty Bodies) (2019). HRI/MC/2019/CRP.1.

<sup>123</sup> Ibid, paras 23-28. See also Human Rights Committee (2012). CCPR/C/106/3.

<sup>124</sup> The search included submissions made to either CEDAW, CRC, CRPD or CESC, which are the Committees that engage most on the subject of climate change and/or where NHRIs have a special role in the reporting cycle.

In 2016, the **New Zealand Human Rights Commission** suggested to the CRC that New Zealand should “develop a specific health impact assessment mechanism to inform climate change policies and corresponding health sector planning.” Building on its dialogue with the state, the CRC echoed this suggestion in one of its concluding observations to New Zealand.<sup>125</sup>

In 2016, **Costa Rica’s Defensoría de Los Habitantes** made a submission informing the CESCR about the impacts of climate change on the rights to water and housing in Costa Rica. The submission contained two main recommendations on the right to water: first, ensuring citizen participation in the development of policies and instruments related to water use, and second, guaranteeing respect for the rights of indigenous people to provide free, prior, and informed consent to developments that may impact their water resources.<sup>126</sup> The CESCR recommended that Costa Rica increase its efforts to guarantee access to safe drinking water and sanitation services for the most disadvantaged and marginalised groups.<sup>127</sup> On housing, the Defensoría noted that due to inadequate planning procedures, new housing was being built in areas highly prone to flooding made worse by climate change.

### 5.1.3 Investigations and complaints handling

Albeit not mandatory under the Paris Principles, most NHRIs have a mandate to receive and investigate complaints. Many can also undertake investigations on their own initiative and have the power to summon witnesses. While few NHRIs have an explicit mandate to hear complaints about human rights violations by private actors, the Global Alliance of National Human Rights Institutions the Global Alliance of National Human Rights Institutions (GANHRI) has interpreted the Paris Principle requirement that NHRIs “shall be

given as broad a mandate as possible” to support an understanding of mandates to hear complaints on the acts and omissions of private as well as public sector actors.<sup>128</sup> Only very few NHRIs have quasi-judicial powers, however, or can award remedies.<sup>129</sup>

NHRIs can and have used these mandates to investigate the impacts of climate change, climate responses, and activities that make populations more vulnerable to climate change. While complaints identifying climate change as the source of injury may be rare, climate change may be at least partially responsible for the injury underlying the complaint and the NHRI has an opportunity to highlight this in its response. Moreover, many complaints concern local impacts such as air pollution caused by state or corporate activities that simultaneously cause climate change. The **Ombudsman’s Office in Croatia**, for example, has received many complaints about the negative health effects of air pollution and brought a climate change lens to its response.<sup>130</sup>

In some instances, NHRIs have received complaints about activities that make communities more vulnerable to climate change. In 2015, regional offices of **Mexico’s Comisión Nacional de los Derechos Humanos (‘Comisión’)** received multiple complaints regarding a proposed coastal resort development in the state of Quintana Roo. Mangrove forests had been cut down with the permission of local authorities to build the resort, and there were reports of harassment of human rights defenders. The Comisión initially issued a protective order to cease this harassment. It subsequently issued a specific recommendation to the authorities involved, in which the Comisión emphasised that cutting down the mangroves would increase the vulnerability of the local community to storm surges and violated the right to a healthy environment under the Mexican constitution and the San Salvador Protocol to

<sup>125</sup> CRC (2016b). CRC/C/NZL/CO/5.

<sup>126</sup> La Defensoría de los Habitantes, Costa Rica (2016), pp. 56-57.

<sup>127</sup> CESCR (2016). E/C.12/CRI/CO/5.

<sup>128</sup> GANHRI (2018).

<sup>129</sup> German Institute for Human Rights / Danish Institute for Human Rights (2019).

<sup>130</sup> Croatian Office of the Ombudsman, response to questionnaire.

the American Convention.<sup>131</sup> The Comisión made a number of recommendations to the relevant federal ministries and local municipality, most importantly to restore the mangrove forest and to improve oversight of permit approval processes to ensure similar events would not

recur. These recommendations were accepted in full, making them binding for the authorities who accepted them. The project has been halted and the ecological restoration planning process is underway; the Comisión is monitoring to ensure implementation of the recommendations.<sup>132</sup>

### **Box 6: The Responsibility of Business: The Philippines Commission on Human Rights and the Carbon Majors Inquiry (2015 – 2020)**

In 2015, a group of civil society organisations and citizens of the Philippines filed a petition with the Philippines' Human Rights Commission, asking the Commission to investigate the responsibility of the largest global investor-owned fossil fuel companies for violations of human rights in the Philippines through the climate impacts of their products. The individual petitioners were survivors of Typhoon Yolanda, which in 2013 killed more than 6,000 people and affected millions. The 47 investor-owned oil, gas, and coal companies identified in the complaint were among those whose contributions to total greenhouse gas emissions since the industrial revolution were documented in a prior, independent study.<sup>133</sup>

The Commission proceeded with an inquiry in December 2017.<sup>134</sup> It conducted a series of hearings in the Philippines, New York, and London. Evidence was presented by victims of typhoons in the Philippines, experts on climate change and human rights, and the respondents' representatives.

A number of amicus briefs, including one filed on behalf of the Asia-Pacific Forum of National Human Rights Institutions, made arguments for why the Commission had jurisdiction to hear the case and highlighted the early stages at which various companies understood the impacts of their products on the climate, as well as how much of the damage from storms and overall sea-level rise was attributable to climate change.<sup>135</sup>

At the 2019 UN Climate Change Conference, the Commission presented its initial findings: 'Carbon Majors', it argued, had a moral responsibility for human rights impacts linked to climate change and could potentially face civil and criminal liability under national laws, including in the Philippines (ruling directly on liability was not within the Commission's mandate<sup>136</sup>).

<sup>131</sup> Recomendación No. 67/2017 (in Spanish) available at [http://www.cndh.org.mx/sites/all/doc/Recomendaciones/2017/Rec\\_2017\\_067.pdf](http://www.cndh.org.mx/sites/all/doc/Recomendaciones/2017/Rec_2017_067.pdf) (last accessed 16.04.2019).

<sup>132</sup> Interview with Comisión Nacional de los Derechos Humanos, Mexico, 11.06. 2020.

<sup>133</sup> See Richard Heede (2014).

<sup>134</sup> Some carbon majors argued that the Commission did not have the authority to hear the petition, since none of the 47 companies had its headquarters in the territory of the Philippines. However, the Commission denied this argument, because was an inquiry and not a legal proceeding. The Commission acknowledged it could not compel any of the respondent companies to appear before it, but that this would not stop it from issuing findings as to their responsibility for climate change and its impacts. Some respondents also argued that the Commission only had a mandate to investigate civil and political rights which were not impacted by climate change. The Commission, however, noted that civil and political rights are among those human rights alleged to have been violated, and that all human rights are interdependent.

<sup>135</sup> See Amicus Brief of the Asia Pacific Forum of National Human Rights Institutions (2017); CIEL et al. (2018).

<sup>136</sup> The Commission's constitutional mandate includes the power to investigate alleged human rights abuses or violations. Like most other NHRIs, it does not have the power to provide compensation to the victims. Therefore, it can only provide recommendations on how to address and remedy human rights violations.

NHRIs have investigated adverse human rights impacts of climate response (mitigation and adaptation) policies. In Colombia, the El Quimbo Hydropower Energy Project, constructed from 2010 to 2015, was billed as a means of moving towards energy with fewer greenhouse gas emissions. However, it caused repeated controversy, as its construction resulted in more than 1500 people being forcibly displaced without adequate compensation – including resettlement in conditions without access to water or electricity.<sup>137</sup> A report by the International Commission of Jurists concluded that with regards to El Quimbo, rights under both international and national law – such as the rights to participation, housing, food, water, work, a decent salary, and education – were violated.<sup>138</sup> Moreover, the environmental human rights defenders protecting their rights and lands have faced threats and retaliatory criminal charges.<sup>139</sup> **Colombia's Defensoría del Pueblo** has been active in regards to El Quimbo and other hydroelectric projects. The Defensoría's Delegate for Collective and Environmental Rights prepared a study that assessed eight hydroelectric projects, including El Quimbo, and concluded that frequent changes to and violations of their environmental operating permits violated participation rights.<sup>140</sup>

Similarly, **Kenya's National Commission on Human Rights (KNCHR)** investigated reports of severe human rights violations connected to the Water Towers Protection and Climate Change Mitigation and Adaptation Programme, including the death of a resident of Embobut Forest during a forced eviction in January 2018. While noting an ongoing investigation into this death, KNCHR presented the facts available to it. KNCHR also reported other human rights violations associated with evictions in the forest, which dated back years. In its report, KNCHR investigated in

detail the underlying drivers of deforestation, the status of competing claims to the land, the history of resettlement and the inadequacy of compensation associated with such resettlement. It recommended to the National Government, Kenya's Forest Service, and County Governments to halt forced evictions, to recognise indigenous land rights, and to adopt a collaborative, rights-respecting approach to forest conservation.<sup>141</sup>

In rare cases, NHRIs may also be in a position to directly investigate the responsibility of private actors for climate change and its impacts. Such was the case with the high-profile Philippines Commission on Human Rights Carbon Majors Inquiry (see box 6, p. 33).

## 5.2 Promoting Human Rights

NHRIs are mandated to promote a culture of respect for human rights, including through awareness-raising, human rights education, capacity-building, policy advice, research, communication, and media outreach. The proactive role that NHRIs can play with these functions is critical to strengthening the public recognition of the importance of issues affecting human rights and the capacity of key stakeholders and institutions to integrate human rights into public policies. NHRIs have used a wide range of tools to promote human rights among policy-makers, scientists, civil society, and the general public. In doing so, they have improved public understanding of the causes and impacts of climate change, increased vital public participation in national and international climate policymaking venues, provided advice to successfully strengthen laws and policies, and engaged with businesses to enable them to fulfil their responsibilities and to hold them to account when they fail.

<sup>137</sup> International Commission of Jurists (2016), pp. 37-38. Note, the number of displaced comes from a census conducted by the company building the dam; the Constitutional Court rejected this number in a decision in 2013 and a new census concluded roughly 30,000 people were impacted (not all displaced). See José Alvear Restrepo Lawyers Collective (Cajar) / Observatory for the Protection of Human Rights Defenders (FIDH-OMCT) (2017), p. 38.

<sup>138</sup> International Commission of Jurists (2016), p. 45.

<sup>139</sup> Cajar / FIDH-OMCT (2017), p. 40.

<sup>140</sup> See <https://www.defensoria.gov.co/es/nube/comunicados/5613/Defensor%C3%ADa-advierte-preocupante-impacto-ambiental-de-las-hidroel%C3%A9ctricas-en-Colombia.htm> (in Spanish).

<sup>141</sup> Kenya National Commission on Human Rights (2018).

### 5.2.1 Public awareness and outreach

In many countries, there is still a great deal of work to do to raise awareness of steps that can and must be taken collectively to mitigate and adapt to climate change, and to increase understanding of how climate change and climate response policies are related to human rights obligations. NHRIs have found numerous ways to fill this information gap through public workshops, webinars, blog posts, videos, and more.

In-person workshops have been a tool frequently used by NHRIs to train or facilitate cross-pollination of ideas among specific audiences. In 2016, **Guatemala's Procurador de los Derechos Humanos** hosted a series of workshops on climate change with civil society representatives, local communities, community leaders, students and city authorities.<sup>142</sup> **Costa Rica's Defensoría de Los Habitantes** hosted a workshop with civil servants, scientists, and interested members of the public in 2013, which produced a number of recommendations. **Panama's Defensoría del Pueblo** has an ecological affairs unit, which has conducted an "Environmental Education Program" since 2017 specifically for government officials. Topics have included climate change and management of related natural disasters.<sup>143</sup> Finally, **Morocco's Conseil National des Droits de l'Homme (CNDH)** has held a number of public workshops around climate change since 2016, with one series focusing on gender, climate change, and sustainable development. Using a 'train the trainers' approach, CNDH, in collaboration with the National Renewable Energy and Energy Efficiency Agency, trained civil society leaders to promote energy saving technology and behaviour in rural areas.<sup>144</sup> Other trainings in the series included developing gender-responsive climate adaptation policies and accessing international financing.

In preparation for Morocco hosting the 22nd Conference of Parties to the UNFCCC (COP22)

in December 2016, the **Moroccan Conseil National des Droits de l'Homme (CNDH)** hosted a series of workshops with key members of the public, particularly civil society, on climate change in Morocco and the region.

Additionally, staff from CNDH met with civil society in over 25 African countries ahead of the COP to hear about local environmental challenges and prepare them to engage during the COP as part of a regional network.<sup>145</sup>

Simultaneously, CNDH served on the presidency's Steering Committee for the hosting of the COP, with the President of CNDH acting as head of the civil society pole for the COP. This institutional linkage enabled CNDH to secure the so-called 'Green Zone' – an enhanced space for civil society – in which workshops and side events were conducted, giving civil society representatives the opportunity to meet with state delegates and push their messages. CNDH also co-hosted a workshop at the COP on the role of NHRIs in monitoring the implementation of the SDGs and commitments under the Paris Agreement. The workshop addressed the potential for NHRIs to cooperate with strategic partners on climate change and to encourage their states to push for a human rights-based approach to action in climate negotiations.

Other NHRIs have also been active at COPs, often collaboratively: At COP23 in Bonn the **Philippines' Commission on Human Rights** organised a meeting with legal experts, supported by the **German Institute for Human Rights (GIHR)**, to receive technical input on its Carbon Majors inquiry. At COP24 in Katowice (2018), GANHRI and GIHR co-organised a panel discussion with the UNFCCC Paris Committee on Capacity Building that addressed the additional capacity needs of NHRIs and climate experts in order to address and integrate human rights in climate policies. In parallel, the **Polish Commissioner for Human Rights** seized the opportunity offered

<sup>142</sup> See <https://www.pdh.org.gt/abordan-temas-acerca-del-medio-ambiente/> (in Spanish).

<sup>143</sup> See <http://www.defensoriadelpueblo.gob.pa/portal/defensoria-del-pueblo-inicia-programa-de-educacion-ambiental-a-nivel-nacional/> (in Spanish).

<sup>144</sup> See <https://www.cndh.org.ma/an/press-releases/marrakech-training-session-trainers-gender-climate-and-sdgs> (in Spanish).

<sup>145</sup> Interview with Conseil National des Droits de l'Homme, 20.05.2020.

by the COP to highlight the importance of protecting environmental rights and to meet with local activists working for environmental protection in the region. These meetings triggered a series of more formal regional meetings between the Commissioner and civil society shortly after the COP.

Digital tools are growing in importance, both to reach different audiences and in light of the COVID-19 pandemic. They can serve many functions, from traditional public notice and comment to citizen monitoring of environmental conditions. The most common use of such tools may be to share information.

For example, both **Peru's Defensoría del Pueblo**<sup>146</sup> and **Chile's Instituto Nacional de Derechos Humanos (INDH)**<sup>147</sup> published blog posts emphasising how livelihoods in both countries depend on water, and describing how climate-induced droughts heavily impact those livelihoods. In some cases in Chile, drought and hydroelectric energy projects have been associated with conflict (see box 3, p. 16), and INDH has logged some of these conflicts along with others in a mapping tool.<sup>148</sup> The tool has been useful for researchers and visually demonstrates the impacts of climate change in a novel way for the public. The **German Institute for Human Rights (GIHR)** has provided its expertise on the nexus of climate change and human rights as well as the Paris Agreement's implementation guidelines in several webinars targeting different audiences, including civil society and businesses. As part of a larger programme on climate change and human rights which has included research reports (section 5.2.2) and policy advice (section 5.2.3), **Mexico's Comisión Nacional de los Derechos Humanos** has conducted public awareness raising via blog posts, press releases, and videos – including one designed for children.<sup>149</sup>

Yet when used improperly or without sufficient evaluation beforehand, such tools have the potential to exclude key actors from participation, diminish the opportunity for a true exchange of ideas, or provide opportunities for state or private surveillance. NHRIs can play an important role in developing and critically assessing such digital tools, while being vigilant against their misuse.<sup>150</sup>

### 5.2.2 Research reports and analysis

NHRIs make significant contributions, individually or in collaboration, to research and analysis on human rights law and implementing frameworks. These activities, which complement but are distinct from monitoring and reporting on the fulfilment of human rights obligations in the NHRI's country, clarify the legal frameworks applicable to human rights and climate change (and gaps therein), and the causal relationships between climate change and human rights infringements and violations. They also serve to improve the familiarity of human rights actors with the causes and consequences of climate change.

NHRIs frequently present this research in annual or thematic reports. **The Protector of Citizens in Serbia** addressed climate change and environmental protection in its annual reports of 2014 and 2015. Both reports contained an analysis of the country's regulations as well as of the implementation of recommendations the Serbian NHRI had made to its government on environmental and climate change matters.<sup>151</sup> The **Croatian Ombudsman for Human Rights** included in its 2014 annual report an analysis of how climate change had contributed to the major flooding experienced that year.<sup>152</sup> The **Combat Poverty Service of Belgium** dedicated its 2018-19 Biennial Report to uncovering the links between issues of sustainability, including climate change, and poverty in Belgium. The Service

<sup>146</sup> Available at <https://www.defensoria.gob.pe/blog/el-agua-y-el-cambio-climatico/> (in Spanish).

<sup>147</sup> Available at <https://www.indh.cl/hoy-se-conmemora-dia-mundial-del-agua-derecho-clave-la-vida/> (in Spanish).

<sup>148</sup> Available at <https://mapaconflictos.indh.cl/#/> (in Spanish).

<sup>149</sup> See for example <https://www.youtube.com/watch?v=OL6ATJSb8uQ> (in Spanish). For more outputs of Mexico's Comisión Nacional de los Derechos Humanos on climate change see <https://www.cndh.org.mx/programa/39/derechos-economicos-sociales-culturales-y-ambientales> (in Spanish).

<sup>150</sup> See UN Economic and Social Council (2010). ECE/MP.PP/WG.1/2010/4.

<sup>151</sup> Protector of Citizens, Serbia (2014) and Protector of Citizens, Serbia (2015).

<sup>152</sup> An English summary of the annual report is available at <https://www.ombudsman.hr/en/download/summary-of-the-annual-report-of-the-ombudsman-2014/?wpdmdl=5087&refresh=5f07384b15f461594308683>.

undertook an extensive series of consultations with anti-poverty organisations and their members on this theme. As a result of these consultations, the Service was able to highlight how some existing national and regional policies intended to promote sustainability, for example in the form of taxes and subsidies, reinforced inequality, as subsidies were often for goods that remained unaffordable to those in poverty, who were also least able to change their behaviour to avoid the taxes.

The **Samoan Office of the Ombudsman** similarly dedicated half of its 2017 State of Human Rights Report to climate change. The report covered likely and documented climate change impacts on a range of human rights in Samoa, including the right to housing and rights affected during internal relocation. It combined a human rights legal analysis with a synthesis of existing scientific and socio-scientific studies such as the IPCC's 5th Assessment Report and national level climate impact studies. Noting that, under CEDAW, Samoa is obliged to protect the rights of women from any form of discrimination, the report noted that women were disproportionately at risk of dying in climate-fueled megastorms and that gender-based domestic violence spiked after such disasters.<sup>153</sup>

In many instances, NHRIs have contributed valuable case studies and other expertise to research activities by other actors, including OHCHR, the HRC and its special procedures. Several NHRIs made submissions to OHCHR for the 2016 Human Rights Council resolution on the relationship between climate change and the right to health.<sup>154</sup> The **New Zealand Human Rights Commission** synthesised an academic article and a presentation by one of its authors on climate change impacts on the rights to health of the Maori in New Zealand. The NHRI

noted the interaction of climate change with pre-existing discrimination in access to the underlying determinants of health including nutrition, location of settlements, and economic opportunity.<sup>155</sup>

Seven other NHRIs also made submissions for this HRC resolution.<sup>156</sup> Separately, **Costa Rica's Defensoría de los Habitantes** responded to the questionnaire of the UN Special Rapporteur on human rights and the environment for his 2016 report on biodiversity, highlighting adaptation to climate change – specifically the need to adopt better policies on infrastructure development in critical water recharge areas – as a key factor influencing biodiversity protection in Costa Rica.<sup>157</sup>

### 5.2.3 Policy Advice

As independent expert institutions with, in many cases, an explicit mandate to do so, NHRIs are in a unique position to provide advice to governments, through briefings for lawmakers on key human rights issues or submissions to policy and law reform processes. Many NHRIs use these avenues to advocate for a human rights-based approach to climate policy. Some have explicitly argued for consideration of extraterritorial harms from state behaviour or private activities regulated by a state as part of such an approach. The advice has extended well beyond formally defined climate policies to areas ranging from fiscal incentives for renewable energy generation to the effects of trade agreements on emissions, to the development of disaster response operational guidelines.

Despite the range of measures on which NHRIs have provided policy advice and the varied content of that advice, some commonalities emerge. One area of policy design that NHRIs appear to be especially attuned to concerns the right of the public to access information on issues of environmental concern and to participate in policymaking.<sup>158</sup> Similarly, a

<sup>153</sup> Office of the Ombudsman, National Human Rights Institute of Samoa “State of Human Rights Report – 2017” at 17–18.

<sup>154</sup> OHCHR (2016). A/HRC/32/3.

<sup>155</sup> The reply of the New Zealand Human Rights Commission to the study on Human Rights, Climate Change and the Right to Health of the UN Human Rights Council is available at <https://www.ohchr.org/Documents/Issues/ClimateChange/Impact/NewZealandHRC.pdf>

<sup>156</sup> The submissions are available at <https://www.ohchr.org/EN/Issues/HRAAndClimateChange/Pages/RightHealth.aspx#Inputs>.

<sup>157</sup> The response of the Defensoría de Los Habitantes to the questionnaire on “Biodiversity and Human Rights” is available at <https://www.ohchr.org/Documents/Issues/Environment/Biodiversity/CostaRica.pdf>

<sup>158</sup> See the recommendations described in the following paragraphs from the Scottish and Mexican NHRIs. See also La Defensoría de los Habitantes, Costa Rica (2015).

number of NHRIs reported suggesting that policies needed to better incorporate the views of specially vulnerable populations in order to better protect their human rights.<sup>159</sup>

The **Scottish Human Rights Commission (SHRC)** has regularly engaged with the Scottish Parliament on climate change through briefings and submissions. Since 2009, the Commission has provided briefings on climate justice to the Scottish government, ministers, and parliament. This helped lay the groundwork for a 2012 resolution by the Scottish Parliament to place respect for human rights at the heart of the government's efforts to combat climate change.<sup>160</sup> In a submission to Parliament in 2017 regarding a new bill to enhance ambition in the country's climate mitigation policies, SHRC provided an analysis of the links between human rights and climate change and emphasised the importance of aligning the new policies with human rights standards and SDGs.<sup>161</sup> Although the law adopted by Parliament in the end did not explicitly reference human rights, lawmakers argued in the accompanying policy memorandum that it was compliant with human rights.<sup>162</sup> Indeed, the law included several elements of a human rights-based approach: it establishes a national citizens' committee to participate in climate policymaking, enshrines the principles of a just transition, and makes compatibility with the SDGs a criterion for approving emissions reduction targets.<sup>163</sup>

**Mexico's Comisión Nacional de los Derechos Humanos ('Comisión')** has a formal process of issuing general recommendations on issues of national concern. In 2018, the Comisión issued a

general recommendation on urban air pollution, motivated by inadequate implementation of a federal policy to create monitoring stations and collect adequate data. In this recommendation, the Comisión described how inadequate control of air pollution led to impairments of several rights, including the rights to an adequate standard of living, a healthy environment, and information about environmental dangers.<sup>164</sup> The Comisión focused on both the immediate local effects of fossil fuel combustion on human rights and its related contribution to climate change.<sup>165</sup> The recommendation provided a detailed analysis of how the lack of effective regulation was a violation of Mexico's human rights and other international treaty obligations (such as under the UNFCCC) and included policy proposals addressed to different actors in Mexico's three levels of government.<sup>166</sup> Government actors have largely been receptive to the recommendations — one state invited the Comisión to review its efforts to create criteria for monitoring air pollution.<sup>167</sup>

A number of NHRIs have focused their policy advice on energy. **Hungary's Commissioner for Fundamental Rights** interceded to recommend that renewable energy technology be exempted from a proposed fee for certain products to fund environmental protection efforts.<sup>168</sup> The Commissioner also criticised the signing of the Canada-European Trade Agreement (CETA), as did

<sup>159</sup> See recommendations below from the Croatian Ombudswoman; Interview with the Defensoria de Los Habitantes, Costa Rica, 19.06.2020.

<sup>160</sup> The Scottish Parliament (2012).

<sup>161</sup> Scottish Human Rights Commission (2017).

<sup>162</sup> The Scottish Parliament (2018). SP Bill30–PM.

<sup>163</sup> The Scottish Parliament (2019). 2019 asp 15.

<sup>164</sup> Comisión Nacional de los Derechos Humanos, Mexico (2018): Recomendación General No. 32/2018 (in Spanish).

<sup>165</sup> The recommendation also noted how fossil fuel extractive activities in a neighboring country – in this case hydraulic fracturing ('fracking') projects in the United States – were releasing volatile organic compounds with disproportionate impacts on rural and indigenous populations in Mexico.

<sup>166</sup> Comisión Nacional de los Derechos Humanos, Mexico (2018): Recomendación General No. 32/2018 (in Spanish).

<sup>167</sup> Interview with Comisión Nacional de los Derechos Humanos, Mexico, 11.06.2020.

<sup>168</sup> See [http://www.ajbh.hu/web/ajbh-en/secretary-general/-/asset\\_publisher/EN387MJGey2L/content/the-ombudsman-for-future-generations-to-initiate-the-amendment-of-the-act-on-environmental-protection-product-charges-in-connection-with-solar-cells?inheritRedirect=false](http://www.ajbh.hu/web/ajbh-en/secretary-general/-/asset_publisher/EN387MJGey2L/content/the-ombudsman-for-future-generations-to-initiate-the-amendment-of-the-act-on-environmental-protection-product-charges-in-connection-with-solar-cells?inheritRedirect=false).

### Box 7: Towards human rights-based relocation policies in Samoa

Samoa's Office of the Ombudsman, has delivered advice on the internal relocation policies of the Samoan government in response to climate change. 70 percent of Samoans live within one kilometer of the coast. Typhoons and rising seas have destroyed whole villages and inundated land used to grow food or sources of drinking water. In response, the government piloted coastal hazard management plans at the village level and drafted a national strategy to guide this planning process and any necessary relocations.<sup>169</sup>

Noting a lack of provisions establishing sources of funding to cover the costs of relocation for individual households, a lack of dispute resolution provisions, and a stalemate among government agencies on who bore responsibility for providing services to families relocated inland, the Ombudsman's Office recommended that the relevant ministries adopt human rights safeguards to guide the process. More specifically, though not phrased as recommendations, the Ombudsman put forward several questions that it indicated needed to be answered to ensure that human rights were protected during relocation. These questions covered both the initial determination that an area had become uninhabitable and the rights of affected communities.

The Samoan Ombudsman evaluated government implementation of its recommendations two years later in its 2019 annual report. On the specific issue of adopting a human rights-based approach to relocation, it gave the relevant ministries a "B" grade.<sup>170</sup>

**France's Commission Nationale Consultative des Droits de l'Homme.** These NHRIs highlighted that CETA was likely to substantially boost the development of polluting 'tar sands' petroleum in Canada, which, combined with the undemocratic protections offered to foreign investors by the treaty, would negatively impact European renewable energy development and the ability to meet emissions targets.<sup>171</sup> The **Thai National Human Rights Commission** had to decline to hear an individual complaint concerning a transmission line bringing energy from a thermal coal power plant in Laos to Thailand, as the complaint was duplicative of ongoing court cases. Nevertheless, the NHRI

used the opportunity to make recommendations to the government on protecting both substantive and procedural human rights in energy policy.<sup>172</sup>

In its special report on catastrophic flooding in 2014, the **Croatian Ombudsman's Office** made several recommendations for human rights-based changes to national disaster response policies, including on such detailed issues as design and establishment of protection and rescue systems, provision of health care and humanitarian aid, rehabilitation and reconstruction, provision of information and free legal counselling.<sup>173</sup> Just three years later in its 2017 annual report, the Office had occasion to assess the implementation

169 Office of the Ombudsman, Samoa (2017), pp. 21-22.

170 Office of the Ombudsman, Samoa (2019), pp. 87-88.

171 See <https://www.cndh.fr/fr/publications/ne-sacrifions-pas-les-droits-de-lhomme-aux-interets-commerciaux-avis-sur-le-ceta-et-les> (in French); <https://www.ajbh.hu/-/a-jovo-nemzedek-szoszolojanak-aggalyai-a-kanadaval-tervezett-szabadkereskedelmi-megallapodas-ugyeben> (in Hungarian).

172 National Human Rights Commission of Thailand (2015).

173 The special report is only available in Croatian at [https://www.ombudsman.hr/wp-content/uploads/2020/04/izvjesce-pucke-pravobraniteljice-o-ljudskim-pravima-u-kontekstu-katastrofe-uzrokovane-poplavom-u-vukovarsko-srijemskoj-zupaniji\\_u-2014.-godini.pdf](https://www.ombudsman.hr/wp-content/uploads/2020/04/izvjesce-pucke-pravobraniteljice-o-ljudskim-pravima-u-kontekstu-katastrofe-uzrokovane-poplavom-u-vukovarsko-srijemskoj-zupaniji_u-2014.-godini.pdf). The recommendations are as summarised in Republic of Croatia Ombudsman (2017).

of these recommendations due to intense wild-fires that spread through parts of Split and the surrounding areas that summer. The report found that while some recommendations, such as those concerning the design of the new National Protection and Rescue Directorate were adopted, others, including creating a secure database of persons especially vulnerable to natural disasters, legally defining the concept of public shelters, and creating a national non-budgetary fund for emergency response, were not.<sup>174</sup>

The **German Institute for Human Rights (GIHR)** has directed policy advice to German climate negotiators. In the run-up to COP24 in 2018 it held talks with ministries in charge of international climate negotiations on how human rights principles and standards could be anchored in the implementation guidelines of the Paris Agreement adopted in 2018. As a follow-up, GIHR published a brief for German policymakers on key elements of a human rights-based approach to climate policy, again highlighting the human rights principles and standards incorporated in the Paris Agreement's implementation guidelines. In addition, GIHR regularly advises the German Ministry for Economic Cooperation and Development on the implementation of a human rights-based approach in climate mitigation and adaptation projects within German development cooperation.

### **Box 8: Engaging in UNFCCC workstreams and reporting mechanisms under the Paris Agreement**

NHRIs may respond to the regular calls for inputs from various 'workstreams' under the UNFCCC. Many workstreams aim to improve both the procedures of the UNFCCC and the national-level processes of implementing the Convention and its Protocols and Agreements. For example, the Doha Work Programme on Article 6 of the Framework Convention aims to find ways to cooperate on climate education and improve civil society participation in the UNFCCC processes.<sup>175</sup> Similarly, the Gender Action Plan of the Lima Work Programme on Gender has five pillars, some relating to women's participation in the processes of the UNFCCC and some to the gender responsiveness of national climate policy.<sup>176</sup> The workstreams are managed by the Subsidiary Bodies or Constituted Bodies, whose members are elected from among the state parties. These bodies often seek submissions from state parties and civil society on how to best meet their objectives under the mandates assigned to them.<sup>177</sup>

Beginning in 2023, NHRIs will also have the opportunity to contribute to the Global Stocktake – the mechanism established under the Paris Agreement for assessing collective progress towards the global goals of the Agreement, including space to highlight the importance of a human rights-based approach for effective climate responses and increasing climate ambition.<sup>178</sup>

<sup>174</sup> Republic of Croatia Ombudsman (2017).

<sup>175</sup> UNFCCC (2012), FCCC/SBI/2012/L.47.

<sup>176</sup> UNFCCC (2019), FCCC/CP/2019/L.3, Annex I Gender Action Plan.

<sup>177</sup> See <https://www4.unfccc.int/sites/submissionsstaging/Pages/Home.aspx> for the latest calls for submissions.

<sup>178</sup> For more information visit the World Resources Institute's online tool 'Navigating the Paris Agreement: Global Stocktake', available at <https://www.wri.org/paris-rulebook/global-stocktake>.

### 5.2.4 Engaging the Business Sector

Many NHRIs work on business and human rights in various forms, including by promoting human rights-based public procurement, establishing multi-stakeholder fora on controversial projects or industries, developing and implementing monitoring and assessment tools, investigating alleged abuses, engaging with their governments on the development of national action plans on business and human rights, and building capacity through workshops or guides.<sup>179</sup> Many of these forms of action are important for NHRIs to respond to climate change as well.

In addition to the **Philippines Human Rights Commission** case discussed earlier (see box 6, p. 33), the **Danish Institute for Human Rights (DIHR)** has declared work on the energy transition a high priority and is undertaking a number of projects related to approaching the energy transition through a human rights lens. This includes work with individual corporate actors in the energy sector on integrating human rights considerations into their transition to renewable energy, as well as engagement and collaboration with various stakeholder groups, including the Business and Human Rights Resource Centre (BHRRC) on their Renewables Atlas<sup>180</sup> and Renewables Benchmarking.<sup>181</sup> The DIHR is also undertaking a project on Responsible Business Conduct in Sub-Saharan Africa which includes a component focusing on the energy transition in the region.<sup>182</sup> Relatedly, **CNDH in Morocco** has contributed to efforts for an African Union policy framework on business and human rights.<sup>183</sup>

Given the roles businesses play as contributors to the climate crisis, but also as essential actors in reducing greenhouse gas emissions and imple-

menting climate protection measures, there is more NHRIs can do to integrate climate change into their work on business and human rights. Potential avenues for doing so are given below, in section 6.

## 5.3 Planning, Cooperation, and Leadership by Example

Many NHRIs are incorporating climate change in their strategic planning, in planning joint workstreams bilaterally with other NHRIs or through regional and global networks, or in adjusting their conduct in light of climate change.

A number of NHRIs have identified climate change or environmental issues more broadly as a priority. **Bahrain's National Institution for Human Rights** identified "Environmental Impacts on Human Rights" as a priority area in its strategic plan for 2019-2021. The Bahraini NHRI intends to organise an international forum on human rights and climate change, with a clear educational function. More broadly, it intends to look into air pollution and target schools and universities to engage them in the conservation on human rights and the environment.<sup>184</sup> Climate change is also one of the core topics in the 2019-2023 strategic plan of the **German Institute for Human Rights**. Key aims include building up cooperation between the human rights and climate and environmental communities in Germany to achieve mutual learning, and continuing to provide policy advice on applying a human rights-based approach in climate policies within Germany's internal and external affairs.

### 5.3.1 Cooperation

NHRIs cooperate on the topic of human rights and climate change within their international and

<sup>179</sup> These examples are taken from a series of briefing notes produced by the Danish Institute of Human Rights in collaboration with individual NHRIs, available at [https://ganhri.org/wp-content/uploads/2020/02/northern\\_ireland\\_nhri\\_bhr\\_case\\_study\\_2020.pdf](https://ganhri.org/wp-content/uploads/2020/02/northern_ireland_nhri_bhr_case_study_2020.pdf); [https://ganhri.org/wp-content/uploads/2020/02/peru\\_nhri\\_bhr\\_case\\_study\\_2020\\_spanish.pdf](https://ganhri.org/wp-content/uploads/2020/02/peru_nhri_bhr_case_study_2020_spanish.pdf); [https://ganhri.org/wp-content/uploads/2020/02/philippines\\_nhri\\_bhr\\_case\\_study\\_2020.pdf](https://ganhri.org/wp-content/uploads/2020/02/philippines_nhri_bhr_case_study_2020.pdf); [https://ganhri.org/wp-content/uploads/2020/02/slovak\\_nhri\\_bhr\\_case\\_study\\_2020.pdf](https://ganhri.org/wp-content/uploads/2020/02/slovak_nhri_bhr_case_study_2020.pdf); [https://ganhri.org/wp-content/uploads/2020/02/slovak\\_nhri\\_bhr\\_case\\_study\\_2020.pdf](https://ganhri.org/wp-content/uploads/2020/02/slovak_nhri_bhr_case_study_2020.pdf); [https://ganhri.org/wp-content/uploads/2020/02/zambia\\_nhri\\_bhr\\_case\\_study\\_2020.pdf](https://ganhri.org/wp-content/uploads/2020/02/zambia_nhri_bhr_case_study_2020.pdf).

<sup>180</sup> Available at <https://www.business-humanrights.org/en/mapping-the-renewable-energy-sector-to-the-sustainable-development-goals-atlas-0>.

<sup>181</sup> See <https://www.business-humanrights.org/en/renewable-energy-human-rights-benchmark-methodology>.

<sup>182</sup> See <https://www.humanrights.dk/projects/responsible-business-conduct-sub-saharan-africa>.

<sup>183</sup> Conseil National des Droits de L'homme (2019).

<sup>184</sup> Bahrain National Institution for Human Rights (2019).

regional networks. They produce joint statements and declarations to advance the collective work of NHRIs on the topic, to chart future policy directions and to plan joint activities.

The joint Apia Statement, adopted at the **Asia Pacific Forum's (APF) Roundtable for National Human Rights Institutions on the Rights of Women and Girls** in 2018, identifies climate change as an issue affecting women and girls and requiring priority attention.<sup>185</sup> The **Commonwealth Forum of National Human Rights Institutions** Working Group on Climate Justice, chaired consecutively by Scotland's and Cameroon's NHRIs passed the St. Julian's Declaration on Climate Justice in 2015, which outlines several actions NHRIs can take to integrate human rights into climate policies and frameworks.

#### **Box 9: Commonwealth Forum of National Human Rights Institutions, St. Julian's Declaration on Climate Justice (2015)**

Ahead of the UNFCCC COP21 in 2015, NHRI signatories of the St. Julian's Declaration committed themselves to a range of actions including increasing their understanding of how human rights obligations inform climate action and encouraging national and international climate frameworks to integrate human rights:

"1. To take steps to increase our understanding of how human rights obligations inform better climate action by pursuing meaningful collaboration between national representatives in the above two processes; (...)

6. To take steps to develop tools to ensure the protection of human rights within climate change policies and actions such as impact assessments and participatory indicators that are anchored in human rights at the national and international levels; (...)

12. To take steps to ensure that human rights are integrated into all aspects of climate actions, including formulation, implementation and monitoring, with the active and free participation of the populations concerned;"

In 2019, the **European Network of National Human Rights Institutions (ENNHRI)** set up a sub-working group on climate change. The aim is to spark greater engagement and cooperation of NHRIs in the region, such as with regard to possible joint actions in view of the COP26 in Glasgow (re-scheduled for 2021) as well as climate-related processes at European and EU level, such as the EU's proposed Green Deal.

The **Global Alliance of National Human Rights Institutions (GANHRI)** likewise hosts international thematic conferences and annual meetings, which provide a prime opportunity for NHRIs to coordinate their actions on climate change, and to exchange experiences. In 2012, the **Scottish Human Rights Commission** presented Scotland's approach to climate change. It highlighted the climate justice approach and policies and measures taken by the Scottish government. The creation and active efforts of an informal task force on human rights and climate change within GANHRI is a particularly encouraging trend in this regard. The 2020 GANHRI Annual Meeting in December 2020 will focus on the role of NHRIs in protecting and promoting human rights in the context of climate change.

In August 2018, the **National Human Rights Commission of Thailand**, together with the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, hosted a 'Consultative Workshop on Human Rights Violations and its Cross-Border Effects: Addressing the protection gap through extraterritorial obligations.' The workshop was attended by NHRIs from the South East Asia Region, and was an opportunity to share experiences and build their knowledge of extraterritorial human rights obligations, including as they relate to climate change.

<sup>185</sup> See <http://www.asiapacificforum.net/resources/apia-statement/>.

### 5.3.2 Leadership by example

Leadership by example is an important building block in climate change action. Some NHRIs have adopted internal policies to reduce the greenhouse gas emissions of their institution, and in some cases, aim for carbon neutrality. In 2016, **Hungary's Office of the Commissioner for Fundamental Rights** signed up for the 'Save@Work – Energy Neighbourhoods at Work' programme, an EU-wide scheme that aims to cut carbon emissions in the public sector by changing behaviours at work. As part of this programme,

the Hungarian NHRI will participate by competing against other public sector workplaces to save the most energy.<sup>186</sup>

#### **Costa Rica's Defensoría de los Habitantes**

has drafted an environmental policy that aims for carbon neutrality. The NHRI will aim to satisfy international standards for carbon neutrality and deliver on these goals through its Environmental Management Program. The Defensoría sees this policy as consistent with its core value of solidarity.<sup>187</sup>

<sup>186</sup> See <https://www.ajbh.hu/web/ajbh-en/-/-save-work-energy-neighborhoods-at-work-project-launching-at-the-ombudsman-s-office>

<sup>187</sup> See [http://www.dhr.go.cr/la\\_defensoria/programa\\_de\\_gestion\\_ambiental\\_institucional.aspx](http://www.dhr.go.cr/la_defensoria/programa_de_gestion_ambiental_institucional.aspx).

## 6 The Way Forward for NHRI Engagement

As a group of renowned Special Rapporteurs wrote ahead of the Climate Action Summit in 2019, “In today’s global climate emergency, meeting the obligations to respect, protect and fulfil human rights could help to spur the transformative changes that are so urgently required. To successfully address the daunting challenge of climate change demands heroic action.”<sup>188</sup>

The multitude of different ways NHRIs have found to engage on climate change is encouraging and demonstrates context-specific strategies and impact. Rather than recommending any particular form of engagement, this section aims to identify some lessons learned under each of the main forms of engagement.

### 6.1 Protection

#### Monitoring and Reporting

- A thematic report containing findings on how climate change is impacting a variety of rights is one strategy that has been pursued. However, NHRIs can also highlight results of their monitoring activities in annual reports or special reports on the fulfillment of a particular right.
- Tracking the implementation of recommendations, for example in an annual report, is a practice a number of NHRIs have employed to good effect.
- Many rights are placed at risk by climate-fueled natural disasters. Quickly sending staff to interview survivors, and then conducting follow up interviews with those in shelters as well as with disaster response teams and

humanitarian NGOs enables an NHRI to both quickly alert the public about human rights infringements and violations and make well-informed recommendations to relevant state and non-state actors to improve the planning for and response to disasters.

- Contributing to state reporting to the UPR or human rights treaty bodies, or writing shadow reports to the same, offers an opportunity to focus international attention and the clout of those bodies on climate change-related human rights impacts, including those of mitigation and adaptation policies and measures.

#### Complaints and Investigations

- For NHRIs that can receive individual or collective complaints, it is worth considering the unique evidentiary burdens posed by attempts to prove responsibility of an actor, whether governmental or private, for a complainant’s climate-related harms. These burdens may suggest a need for modified procedures or additional expertise.
- Even where an NHRI has no mandate or a limited one to hear individual complaints, it may be able to use its other competencies, such as initiating general investigations of situations of regional or nationwide concern.

### 6.2 Promotion

#### Awareness Raising

- Public workshops designed to educate key constituencies (such as staff of line ministries, local government officials, or educators) are a means of focusing limited resources where they will be most effective.

<sup>188</sup> Statement by UN Special Rapporteurs ahead of the UN Climate Action Summit in September 2019 available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25003&LangID=E>.

- Hosting a conference of the parties to the UNFCCC or other international or regional climate events presents an opportunity for NHRIs to organise side events and otherwise interact with international delegations. An equally crucial role is empowering local (and international) civil society, whether through workshops ahead of the COP to explain the issues under discussion or by ensuring adequate and legally protected means for civil society to participate. In case the present COVID-19 pandemic continues to prevent in-person meetings, monitoring and advocating for the openness and meaningful participation of civil society globally in virtual meetings is another important role NHRIs can play.

### Research and Analysis

- In most cases, NHRIs will be able to draw on existing government reports documenting present or likely future impacts of climate change, though these reports may lack a human rights perspective. Translating these reports into a language of human rights infringements and violations that is more accessible for many people and is legally actionable is a valuable way of protecting those rights.
- NHRIs provide critical, on-the-ground knowledge for regional and international research agendas on the human rights impacts of climate change, as well as the legal and policy frameworks to address it.
- Climate-induced mobility<sup>189</sup> is a topic that will become even more important as the world changes. NHRIs can contribute research and analysis to ensure that the human rights of people on the move are protected. To that end, they can also support closing the gaps in domestic and international frameworks protecting people's human rights outside their country of origin, as well as recognition of environmental drivers as a legitimate basis for permanent migration. Regional solutions to fill these gaps are critical.<sup>190</sup>

### Policy Advice

- Any national climate policy dialogue presents opportunities for an NHRI to make helpful interventions to safeguard procedural and substantive human rights in climate mitigation and adaptation measures: for example, by encouraging greater participation in developing new renewable energy projects or disaster response plans; or by encouraging governments to integrate human rights standards and principles in climate policies and to adopt principles of climate justice and a just transition that address, inter alia, employment, fuel poverty, food security, and more.
- NHRIs can intervene in policy discussions that extend well beyond formal national climate policies, as displayed in the above examples, to matters of energy and fiscal and trade policy, to name just a few.
- NHRIs may engage with their governments on the formulation of Nationally Determined Contributions (NDCs) to the Paris Agreement or monitoring the implementation of these NDCs; they may also engage directly with the UNFCCC through calls for inputs under various workstreams.

<sup>189</sup> Climate-induced mobility refers to both displacement by sudden onset weather events and migration in the context of slow-onset effects of climate change (and their interaction). In either event, see The Nansen Initiative (2015), p. 18; ; OHCHR (2018a). A/HRC/37/CRP.4; OHCHR (2018b). A/HRC/38/21.

<sup>190</sup> Proximate countries often have existing formal agreements covering migration, seasonal employment, and other forms of movement. Some have started to do more to proactively prepare for and facilitate climate mobility in a manner that respects human rights. For example, the Pacific Islands Forum Secretariat convened a meeting on the topic in 2016, and there have been similar efforts in the Caribbean and the horn of Africa. NHRIs may find it fruitful, if they are not already doing so, to either seek to join these efforts themselves or as a regional group, or to make recommendations to their respective governments ahead of the meetings; See UN Economic and Social Commission for Asia and the Pacific (2016), Francis (2019), and Intergovernmental Authority on Development (2017).

### Business and Human Rights

- When supporting drafting of National Action Plans (NAPs), NHRIs may link business obligations on environmental due diligence with human rights due diligence.
- Through their monitoring activities, NHRIs may document human rights infringements and violations by businesses either contributing to the climate crisis or implementing response measures, thereby increasing transparency and accountability.
- NHRIs can build businesses' capacity to assess projects for likely human rights impacts related to climate change.
- NHRIs can contribute to the development of normative frameworks on the human rights obligations of businesses and access to remedy in violations caused by climate change and climate action.
- NHRIs can call attention to corporate capture of regulatory processes and other forms of national, regional and international law-making as it negatively impacts on the right to participation, for example.

### 6.3 Planning, Cooperation, and Leadership by Example

- NHRIs may wish to examine their internal policies on travel, procurement, or energy use as major sources of emissions and aim to reach institutional climate neutrality.
- As noted, climate-induced mobility is a key area for greater collaboration on both research and policy advice among NHRIs.
- In many countries, the human rights and environmental and climate communities still act in silos. NHRIs can support and build up collaboration among environmental and climate scientists and experts, social scientists, and human rights experts to learn from each other's expertise and to jointly craft effective human rights-based climate policies and measures.

As has been noted elsewhere, “NHRIs play unique bridging roles – between international and national spheres; between different government institutions; between government and civil society; and across rights.”<sup>191</sup>

There may be no societal problem that requires more bridges to be built between previously disparate institutions, populations, and bodies of knowledge than climate change. It is encouraging to see so many National Human Rights Institutions acting on climate change. It is hoped that this handbook is useful for encouraging further commitment and action.

<sup>191</sup> Danish Institute for Human Rights (2005).

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