

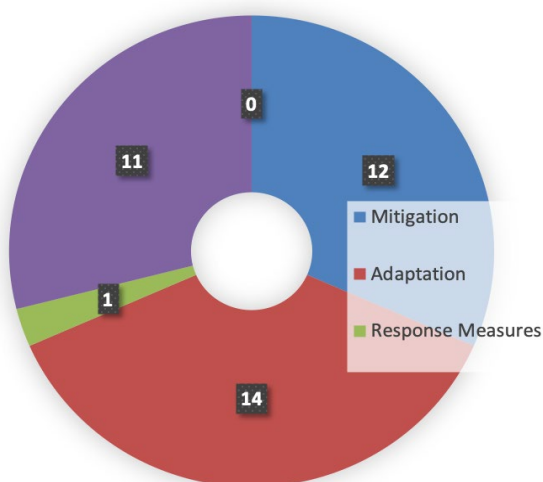
Human Rights Obligations of States in the Context of Climate Change

The Role of the Human Rights Committee (2022 Update)



This note reviews the outputs of the Human Rights Committee (CCPR) related to climate change in 2020 and 2021 and complements our [previous note](https://bit.ly/CCPRclimate2020) dedicated to such outputs up to 2019 (bit.ly/CCPRclimate2020).

Themes Addressed in the 2020/2021 Outputs of the CCPR



Outputs of the CCPR in 2020 and 2021, by Country Category

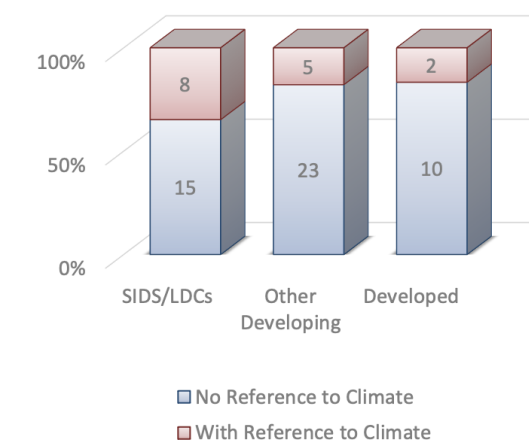


Figure 1 (left): Themes Addressed in the 2020/2021 Outputs of the CCPR

Figure 2 (right): Outputs of the CCPR in 2020 and 2021, by Country Category

The Human Rights Committee (CCPR) has only recently begun to address the issue of climate change in its work, starting in 2019. Since then, the Committee has increased the number of recommendations and questions to States in which it addressed climate change, from four in 2019 to seven in 2020 and eight in 2021. Due to the disruption caused by the COVID-19 pandemic, the CCPR's total number of outputs decreased in 2021 (from 37 in 2020 and 36 in 2019 to only 26 in 2021). Only one of the Concluding Observations (COBs) issued in 2020 and two issued in 2021 contained references to climate change. The majority of climate-related references in 2020 and 2021 were found in the Lists of Issues (LOIs) or Lists of Issues Prior to Reporting (LOIPRs) of the CCPR.

All of the CCPR's outputs on climate change in 2020 were made to Small Island Developing States (SIDS) or developing countries. In 2021, this trend shifted slightly, as the Committee addressed a recommendation to Germany and an issue to Canada.

In 2020 and 2021, the CCPR addressed issues of mitigation, adaptation, and procedural rights relatively evenly in its outputs on climate change. For instance, it asked Kenya, the Philippines, Guyana, Indonesia, Zimbabwe, Fiji, Nepal, and São Tomé to provide information about efforts to prevent and mitigate the effects of climate change and environmental degradation on vulnerable populations. The Committee addressed the issue of public participation in climate-related policy making in its questions to the Maldives in 2020, and to Nepal, São Tomé and Príncipe, Seychelles, and Tanzania in 2021, and in its recommendations to Dominica in 2020 and Kenya in 2021. In its 2021 LOIPR to Nepal, the Committee addressed the State's duty to regulate private actors, as it requested information on "measures aimed at preventing and addressing, including through regulation of the public and private sectors, the current and foreseeable future effects of climate change and environmental degradation." In its 2021 COB to Germany, the Committee took note of a [March 2021 ruling by the Federal Constitutional Court](#), which found that Germany's Climate Change Act was unconstitutional, as the emission levels it would allow until 2030 may endanger the fundamental rights of future generations. The Committee recommended that the State party take all necessary steps to follow the ruling.

The CCPR looked at fossil fuel extraction in three outputs. In its 2020 LOIPR to Guyana, the Committee requested "information on the steps taken to prevent and mitigate the negative effects of climate change and environmental degradation, particularly as a consequence of gold mining and offshore oil production," and to "respond to concerns that large-scale oil extraction significantly increases greenhouse gas emissions, causes ocean acidification and sea level rise, and adversely affects the most vulnerable groups in the State party." In its 2021 LOIPR to Tanzania, it requested information "on the measures taken to prevent and mitigate the negative effects of climate change and environmental degradation, particularly in relation to the use of natural resources," and requested that the State party "respond to concerns about the negative local and global impacts of the construction of the East Africa Crude Oil Pipeline on climate change as well as on the livelihood of the population residing in the affected areas." In its LOIPR to São Tomé and Príncipe, it requested information on efforts to protect vulnerable persons from the negative impacts of climate and natural disasters, "including in relation to managing the exploitation of oil resources."

Individual Communications

In January 2020, the Human Rights Committee published its decision in the case *Teitiota v. New Zealand* (2728/2016). This case questioned whether New Zealand violated a family's right to life by refusing asylum despite the threats that climate change would pose to this family's life upon their return to their homeland in Kiribati. The Committee found that climate-related threats in Kiribati constituted a "real predicament" for the communicants and consequently found the communication admissible. On the merits, the Committee ruled that, while Kiribati would be uninhabitable within 10 to 15 years, this timeframe afforded the government sufficient time to take affirmative action to protect the rights of its population. Based on this argument, the Committee found that New Zealand had not breached its obligations regarding non-refoulment. The Committee nevertheless recognized that, in the absence of adequate climate action, the impacts of climate change will accelerate, causing real threats to Articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR) and triggering the obligation of non-refoulment. In two dissenting

opinions, two members of the Committee contested the reasoning of the majority, arguing that the Committee had taken too restrictive a view of the scope of the positive obligations of the responding States, with regards to the burden of proof and the threshold of the threat triggering the obligation of non-refoulement.

A second communication related to climate change, *Torres Strait Islanders v. Australia* (3624/2019), remains pending.

The CCPR released its decision on another communication in 2021, *Pereira Benega v. Paraguay* (2552/2015). The case concerned a claim by two members of the Campo Agua'e Indigenous Community, in their own right and on behalf of their community, over the contamination of their traditional land and waterways due to the illegal use and disposal of toxic pesticides by nearby commercial farms. The claimants argued that this violated their home and that the State had consequently breached its obligations under Articles 17 (private and family life), 27 (cultural life), and 2 (effective remedy) of the ICCPR.

Concerning the right to private and family life, the Committee recalled that Article 17 also implies an obligation to adopt positive measures to ensure effective respect for this right concerning interference by State authorities and by natural or legal persons. Concerning the right to cultural life, the Committee recalled that Article 27 must be interpreted in relation

to the United Nations Declaration on the Rights of Indigenous Peoples, enshrining the inalienable right of Indigenous Peoples to enjoy the territories and natural resources that they have traditionally used for their food subsistence and cultural identity. Thus, as Paraguay had failed to control and stop the illegal polluting activities adequately, it violated Articles 17 and 27 of the ICCPR. The Committee also found a violation of the right to remedy, under Article 2(3) of the Covenant, due to the delays in the domestic investigations, which did not make it possible to provide reparation for the damage suffered. Additionally, three Committee members suggested in a [concurring opinion](#) that a violation of the right to life protected under Article 6 of the Covenant was manifest in this case.

While this case does not concern climate change, it still provides an important precedent in interpreting the negative and positive obligations of the States to prevent environmental threats to the right to private and family life and cultural life as protected under the ICCPR. The *Pereira Benega v. Paraguay* precedent will inform the future interpretation of the scope of the obligations provided under the ICCPR, with regards to the duty of States to prevent climate-induced threats to civil and political rights, as well as to ensure that its policies – for instance in relation to so-called clean energy projects – do not further undermine these rights.



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