

## 5. Thematic Issues related to Human Rights and Climate Change

### 5.1 Procedural human rights - access to information, public participation in decision making, and access to remedies

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Many of the processes established by the UNFCCC and the Paris Agreement are process heavy and call for consultations with a variety of stakeholders. These include the processes for nationally determined contributions (NDCs) and national adaptation plans (NAPs). Respect for legally-binding procedural human rights standards will be important in ensuring that these and other climate action mitigation and adaptation processes are carried out in conformity with applicable human rights obligations.

Applicable procedural human rights standards are described in principles 7, 9 and 10 of the report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment on *Framework principles on human rights and the environment*.<sup>1</sup>

#### Framework principle 7

States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request.

#### Framework principle 9

States should provide for and facilitate public participation in decision-making related to the environment, and take the views of the public into account in the decision-making process.

#### Framework principle 10

States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment.

Principle 8 is also relevant to climate action:

#### Framework principle 8

To avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights.

Principle 10 of the 1992 Rio Declaration on Environment and Development captures these procedural rights.<sup>2</sup> They are elaborated in detail in the Convention on Access to

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<sup>1</sup> A/HRC/37/59 at <https://undocs.org/en/A/HRC/37/59>

<sup>2</sup>[https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_CONF.151\\_26\\_Vol.I\\_Declaration.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf) Principle 10 provides as follows:

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

Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention),<sup>3</sup> which is open principally to members of the Economic Commission for Europe and States with consultative status with the Commission.<sup>4</sup> The Aarhus Convention requires its parties to guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters.<sup>5</sup>

While there seems to be no history of NHRIs engaging with Meetings of the Parties of the Aarhus Convention, it appears possible for them to do so. The Meetings of the Parties to the Aarhus Convention are open to members of the public, unless the Meeting of the Parties, in exceptional circumstances, decides otherwise. “The public” means natural or legal persons and their associations, organizations or groups. Non-governmental organizations, qualified or having an interest in the fields to which the Convention relates and that have so requested are entitled to receive notifications of meetings of the parties and to participate in the proceedings of meetings of the Parties, unless one third of the Parties present at that meeting objects to the participation of representatives of an organization.<sup>6</sup>

The procedural rights are also elaborated in the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement) open to the countries of Latin America and the Caribbean.<sup>7</sup> The objective of the Agreement is to guarantee the full and effective implementation in Latin America and the Caribbean of the rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters.

At its first meeting, from April 20-22 April 2022, the Conference of the Parties to the Escazú Agreement discussed its rules of procedure, including the modalities for significant participation by the public. Anyone interested in the Escazú Agreement can register with ECLAC to receive information about activities related to the implementation of the Agreement.<sup>8</sup>

For countries in other regions, the voluntary *Guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters* (the Bali Guidelines) provide general guidance on promoting the effective implementation of their commitments to Principle 10 of the 1992 Rio Declaration on Environment and Development within the framework of national

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participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

<sup>3</sup> <https://unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

<sup>4</sup> The Convention allows any other State that is a Member of the United Nations to accede to the Convention with approval of the Meeting of the Parties. In 2021 the adhesion of Guinea-Bissau was approved.

<sup>5</sup> <https://unece.org/environment-policy/public-participation/aarhus-convention/introduction> The United Nations Economic Commission for Europe has prepared an implementation guide for the Aarhus Convention to assist policymakers, legislators and public authorities in implementing the Convention and to assist members of the public and non-governmental organizations to exercise their rights under the Convention. *The Aarhus Convention: An Implementation Guide* (second edition), 2014 at: [https://unece.org/DAM/env/pp/Publications/Aarhus\\_Implementation\\_Guide\\_interactive\\_eng.pdf](https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf)

<sup>6</sup> Rules of Procedure for Meetings of the Parties, ECE/MP.PP/2/Add.2, rules 1(9), 5(2)(e), 6(2) and 7.

<sup>7</sup> <https://www.cepal.org/en/escazuagreement> and [https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428\\_en.pdf](https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428_en.pdf)

<sup>8</sup> <https://www.cepal.org/en/node/47273>

legislation and processes to facilitate broad access to information, public participation and access to justice in environmental matters.<sup>9</sup>

Within the UNFCCC process, the Action for Climate Empowerment (ACE) reflects the procedural human rights, although they are not described as human rights. Two of the six elements of Action for Climate Empowerment are public access to information and public participation. (No mention is made of access to remedies.) The decision to adopt the Glasgow work programme on Action for Climate Empowerment adopted at COP26 (CMA3) notes that as part of their national programmes and activities in implementing the Convention and the Paris Agreement, and within the framework of the Glasgow work programme, Parties are encouraged to undertake a variety of activities related to public access to information and public participation.<sup>10</sup> While the Glasgow work programme makes no mention of human rights, and its provisions fall short of the full requirements of applicable procedural human rights, it provides an entry point for raising procedural rights within UNFCCC processes at the national and international levels. That entry point is reinforced by a paragraph Glasgow Climate Pact, in which the COP and the CMA urge “Parties to swiftly begin implementing the Glasgow work programme on Action for Climate Empowerment, respecting, promoting and considering their respective obligations on human rights, as well as gender equality and empowerment of women”.<sup>11</sup>

## 5.2 Climate action education

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As discussed in section 3.6.6 above, the over-arching goal of ACE is to empower all members of society to engage in climate action, through education, training, public awareness, public participation, public access to information, and international cooperation on these issues.<sup>12</sup> Three of the six elements of Action for Climate Empowerment are education, training and public awareness. The decision to adopt the Glasgow work programme on Action for Climate Empowerment adopted at COP26 (CMA3) encourages Parties to the UNFCCC and the Paris Agreement to undertake a variety of activities related to education, training and public awareness.<sup>13</sup>

A relatively detailed overview of human rights and related considerations relevant to the Action for Climate Empowerment can be found in a submission from OHCHR and seven other UN entities to the Subsidiary Body for Implementation with recommendations and views on future work to enhance Action for Climate Empowerment.<sup>14</sup> The submission highlights that all States have a legal obligation to

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<sup>9</sup> <https://www.unep.org/resources/publication/guidelines-development-national-legislation-access-information-public>

<sup>10</sup> Glasgow work programme on Action for Climate Empowerment, paras. 24, 28 and 29 at: [https://unfccc.int/sites/default/files/resource/cma3\\_auv\\_3b\\_Glasgow\\_WP.pdf](https://unfccc.int/sites/default/files/resource/cma3_auv_3b_Glasgow_WP.pdf)

<sup>11</sup> Glasgow Climate Pact, para. 91 at [https://unfccc.int/sites/default/files/resource/cma3\\_auv\\_2\\_cover%20decision.pdf](https://unfccc.int/sites/default/files/resource/cma3_auv_2_cover%20decision.pdf)

<sup>12</sup> <https://unfccc.int/topics/education-youth/the-big-picture/what-is-action-for-climate-empowerment>

<sup>13</sup> Glasgow work programme on Action for Climate Empowerment, paras. 24-27 at: [https://unfccc.int/sites/default/files/resource/cma3\\_auv\\_3b\\_Glasgow\\_WP.pdf](https://unfccc.int/sites/default/files/resource/cma3_auv_3b_Glasgow_WP.pdf)

<sup>14</sup> Submission of 21 February 2020 at <https://www4.unfccc.int/sites/SubmissionsStaging/Documents/202002210212--->

respect, protect and fulfil human rights, including in the context of climate action, and that the UN Charter, the International Covenant on Economic, Social and Cultural Rights, and other human rights instruments impose upon States the duty of international cooperation to ensure the realization of all human rights. It notes that in addition to being an obligation under human rights law, a rights-based approach to climate action is also more effective. A United Nations Alliance of Climate Change: Education, Training and Public Awareness consisting of fourteen UN entities has as one of its objectives to support Parties to the UNFCCC in their efforts to design, initiate and undertake activities related to climate change education, training, public awareness, public participation and public access to information.<sup>15</sup> A list of designated national focal points for Action for Climate Empowerment is posted on the UNFCCC website.<sup>16</sup>

Climate change is mentioned as one of many learning competencies The *UN Plan of action for the fourth phase (2020–2024) of the World Programme for Human Rights Education* mentions.<sup>17</sup>

UNESCO's Strategy for Action on Climate Change (2018-2021) consolidates UNESCO's work and joins it with that of other UN bodies with the aim of helping UNESCO's member states to mitigate and adapt to climate change, to educate for sustainable development in the context of climate change, to assess the risks of natural disasters due to climate change, and to monitor the effects of climate change on UNESCO designated sites, such as World Heritage sites, biosphere reserves and UNESCO Global Geoparks. Over 30 UNESCO programmes in the sciences, education, culture and communication contribute to creating knowledge, educating and communicating about climate change, and to understanding the ethical implications for present and future generations.<sup>18</sup> In 2017 UNESCO adopted a Declaration of Ethical Principles in relation to Climate Change.<sup>19</sup>

### 5.3 Human-Rights-Based Approaches

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The GANHRI statement on *Climate Change: The role of National Human Rights Institutions* commits GANHRI and its members to bring a human-rights-based

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[OHCHR,%20ILO,%20UN%20Women,%20UNESCO,%20UNEP,%20ECLAC,%20UNICEF%20and%20UNECE%20Joint%20Submission%20on%20ACE.pdf](#)

<sup>15</sup> Members of the UN Alliance on Climate Change Education, Training and Public Awareness at <https://unfccc.int/members-of-the-un-alliance-on-climate-change-education-training-and-public-awareness>

<sup>16</sup> They are listed at: <https://unfccc.int/topics/education-and-outreach/focal-points-and-partnerships/ace-focal-points>.

<sup>17</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/227/36/PDF/G1922736.pdf?OpenElement> adopted by Human Rights Council resolution 42/7 of 26 September 2019. World Programme for Human Rights Education: adoption of the plan of action for the fourth phase.

<sup>18</sup> UNESCO, Addressing Climate Change at: <https://en.unesco.org/themes/addressing-climate-change>.

<sup>19</sup> <https://en.unesco.org/themes/ethics-science-and-technology/ethical-principles#:~:text=The%20UNESCO%20Declaration%20of%20Ethical,morally%20unacceptable%20amage%20and%20injustice> at pages 86 and 126.

approach to climate action.<sup>20</sup> Many civil society organisations, governments and international organisations also speak about the importance of a human-rights-based approach in responding to climate change.<sup>21</sup> However, there is no universal understanding of the practical requirements of a human-rights-based approach. The OHCHR Fact Sheet *Frequently Asked Questions on Human Rights and Climate Change* describes elements of a human-rights-based approach.<sup>22</sup> That FAQ mentions the 2003 *Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies*<sup>23</sup> as the basis for a human-rights-based approach. That statement of common understanding specifically refers to a human-rights-based approach to the development cooperation and development programming of UN agencies.<sup>24</sup> The common understanding emphasizes key human rights *principles*, such as: universality and inalienability, indivisibility, interdependence and interrelatedness of human rights; non-discrimination and equality; participation and inclusion; accountability and the rule of law. It identifies the following elements as necessary, specific, and unique to a human-rights-based approach:

- Assessment and analysis to identify the human rights claims of rights-holders and the corresponding human rights obligations of duty-bearers as well as the immediate, underlying, and structural causes of the non-realization of rights.

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<sup>20</sup> The National Consultative Commission on Human Rights (CNCDDH) of France has recommended that “France adopts and defends a human rights-based approach to climate action in multilateral forums.” *Avis "Urgence climatique et droits de l'Homme"* (A- 2021 - 6), Assemblée plénière du 27 May 2021 <https://www.cncdh.fr/fr/publications/avis-urgence-climatique-et-droits-de-lhomme-2021-6>. English version at: <https://www.cncdh.fr/fr/publications/opinion-climate-emergency-and-human-rights>.

<sup>21</sup> For example, the IPCC Working group II has observed that rights-based approaches, participation and inclusion can contribute to reducing structural vulnerabilities to climate change and advance climate resilient development. *Climate Change 2022, Impacts, Adaptation and Vulnerability: Summary for Policymakers*, IPCC WGII Sixth Assessment Report, PMM.D.2.1, p. 32 at [https://report.ipcc.ch/ar6wg2/pdf/IPCC\\_AR6\\_WGII\\_SummaryForPolicymakers.pdf](https://report.ipcc.ch/ar6wg2/pdf/IPCC_AR6_WGII_SummaryForPolicymakers.pdf). See also the submission of OHCHR and seven other UN entities with recommendations and views on future work to enhance Action for Climate Empowerment, 21 February 2020 at [https://www.ohchr.org/Documents/Issues/ClimateChange/OHCHR\\_ILO\\_UNWomen\\_UNESCO\\_UNEP\\_ECLAC\\_UNICEF\\_UNECE\\_JSubmission\\_ACE.pdf](https://www.ohchr.org/Documents/Issues/ClimateChange/OHCHR_ILO_UNWomen_UNESCO_UNEP_ECLAC_UNICEF_UNECE_JSubmission_ACE.pdf). The second three-year workplan of the UNFCCC Local Communities and Indigenous Peoples Platform for 2022–2024 identified as a basis for workplan activities, “(b) Fostering and promoting a **human-rights-based approach** to ensure recognition and safeguarding of the knowledge of indigenous peoples and local knowledge systems and practices in relation to climate change.” See above at page 49.

<sup>22</sup> [https://www.ohchr.org/Documents/Publications/FSheet38\\_FAQ\\_HR\\_CC\\_EN.pdf](https://www.ohchr.org/Documents/Publications/FSheet38_FAQ_HR_CC_EN.pdf) at pages 41-43.

<sup>23</sup> <https://unsdg.un.org/sites/default/files/6959->

[The Human Rights Based Approach to Development Cooperation Towards a Common Understanding among UN.pdf](https://unsdg.un.org/sites/default/files/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf)

<sup>24</sup> See also: OHCHR, *Frequently Asked Questions on a Human-rights-based approach to Development Cooperation*, 2006 at <https://www.ohchr.org/Documents/Publications/FAQen.pdf>. United Nations Sustainable Development Cooperation Framework - Internal Guidance, 2019. The Human-rights-based approach to Development is a conceptual framework for the process of sustainable development that is normatively based on international human rights standards and principles and operationally directed to promoting and protecting human rights. Under the HRBA, the plans, policies and processes of development are anchored in a system of rights and corresponding obligations established by international law, including all civil, cultural, economic, political and social rights, and the right to development. HRBA requires human rights principles (equality and non-discrimination, participation, accountability) to guide UN development cooperation, and focus on capacity development of both ‘duty-bearers’ to meet their obligations and ‘rights-holders’ to claim their rights. Para 19 at page 11.

At: ([https://unsdg.un.org/sites/default/files/2019-10/UN-Cooperation-Framework-Internal-Guidance-Final-June-2019\\_1.pdf](https://unsdg.un.org/sites/default/files/2019-10/UN-Cooperation-Framework-Internal-Guidance-Final-June-2019_1.pdf))

- Programmes assess the capacity of rights-holders to claim their rights, and of duty-bearers to fulfill their obligations. They then develop strategies to build these capacities.
- Programmes monitor and evaluate both outcomes and processes guided by human rights standards and principles.
- Programming is informed by the recommendations of international human rights bodies and mechanisms.

While these elements would apply to development programming, it is not clear that all of them would apply equally, without adjustment, to climate action, particularly as much climate action needs to be taken by developed countries.

Notwithstanding the widespread calls for a human-rights-based approach to climate action, there is little detailed guidance for applying such an approach to climate action.<sup>25</sup> If a human-rights-based approach is to be more than a slogan,<sup>26</sup> it will be important to be clear about what a human-rights-based-approach requires in practical terms. The UN Special Rapporteur on human rights and climate change has a role a role to play here, as part of his mandate requires him:

To promote and exchange views on lessons learned and best practices related to the adoption of **human rights-based**, gender-responsive, age-sensitive, disability-inclusive and risk-informed approaches to climate change adaptation and mitigation policies, with a view to contributing to the achievement of the Paris Agreement and the United Nations Framework Convention on Climate Change ....<sup>27</sup>

There is some guidance for its application in other areas that might be adapted and developed for climate action.

A human-rights-based approach needs to address both procedural and substantive human rights standards.<sup>28</sup> Many of the principles enunciated by the UN Special Rapporteur on human rights and the environment in the *Framework principles on human rights and the environment*<sup>29</sup> are clearly relevant to defining elements of a human rights-based approach, even though the Framework principles do not speak of a human rights-based approach.

In addition, some NHRIs have applied a human-rights-based approach in areas of activity other than climate action. The Danish Institute for Human Rights has published

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<sup>25</sup> An illustration of how human rights principles can be translated into detailed guidance can be found in: Guidelines on Incorporating Human Rights Standards and Principles, Including Gender, in Programme Proposals for Bilateral German Technical and Financial Cooperation at <https://www.bmz.de/resource/blob/70448/14b3b6b3fe59eab4dcc05efe266e57b4/guidelines-human-rights-bilateral-cooperation>.

<sup>26</sup> Sloganic references to human-rights-based approaches will be counter-productive if human rights advocates call repeatedly on governments and others to adopt human-rights-based approaches without offering guidance on what that requires. Governments and others will simply stop listening.

<sup>27</sup> Resolution A/HRC/48/14, paragraph 2(d) at <https://undocs.org/A/HRC/RES/48/14>.

<sup>28</sup> See section 5.1. above on procedural human rights.

<sup>29</sup> <https://undocs.org/A/HRC/37/59> See the entry for the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment above at section 2.2.6.1.

an *Introduction to a human-rights-based approach* for development activities.<sup>30</sup> The Scottish Human Rights Commission has published *A human-rights-based approach relating to the care and support of older people*.<sup>31</sup> ENNHRI has published *Applying a Human-rights-based approach to Poverty Reduction and Measurement*.<sup>32</sup> Lessons might be drawn from these and other experiences with human rights-based approaches for application to climate action.

## 5.4 Human Rights Impact Assessment and Due Diligence

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In the *Framework principles on human rights and the environment*, the Special Rapporteur on human rights and the environment notes that prior assessment of the possible environmental impacts of proposed projects and policies is generally required by national laws, and he describes the required elements of environmental impact assessment. Framework Principle 8 provides:

To avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights.<sup>33</sup>

The commentary to Principle 8 calls for human rights impact assessments to accompany environmental impact assessments.

To protect against interference with the full enjoyment of human rights, the assessment of environmental impacts should also examine the possible effects of the environmental impacts of proposed projects and policies on the enjoyment of all relevant rights, including the rights to life, health, food, water, housing and culture. As part of that assessment, the procedure should examine whether the proposal will comply with obligations of non-discrimination (framework principle 3), applicable domestic laws and international agreements (framework principles 11 and 13) and the obligations owed to those who are particularly vulnerable to environmental harm (framework principles 14 and 15). The assessment procedure itself must comply with human rights obligations, including by providing public information about the assessment and making the assessment and the final decision publicly available (framework principle 7), facilitating public participation by those who may be affected by the proposed

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<sup>30</sup> An introduction to the concepts and practices of the human-rights-based approach (HRBA) to development can be found at <https://www.humanrights.dk/learning-hub/introduction-human-rights-based-approach>

<sup>31</sup> <http://careaboutrights.scottishhumanrights.com/whatisahumanrightsbasedapproach.html>

<sup>32</sup> <https://ennhri.org/news-and-blog/new-nhri-guide-outlines-7-principles-for-addressing-poverty-through-a-human-rights-based-approach/>

<sup>33</sup> Framework principle 8, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/37/58, 24 January 2018 at page 11, paras 20-22. At: <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/FrameworkPrinciplesReport.aspx> and <https://undocs.org/en/A/HRC/37/59>.

action (framework principle 9), and providing for effective legal remedies (framework principle 10).<sup>34</sup>

The Special Rapporteur also recalls the requirements of the UN Guiding Principles on Business and Human Rights for human rights due diligence.<sup>35</sup>

Business enterprises should conduct human rights impact assessments in accordance with the Guiding Principles on Business and Human Rights, which provide that businesses “should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships”, include “meaningful consultation with potentially affected groups and other relevant stakeholders”, “integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action”

Framework Principle 8 would require governments to undertake environmental and human rights impact assessment to identify climate change impacts of their policies and measures and businesses to undertake due diligence to identify climate change impacts of their activities and business relationships.<sup>36</sup> It would also require them to undertake assessments of their mitigation and adaptation measures to combat climate change. Principle 16 of the *Framework principles on human rights and the environment* provides:

States should respect, protect and fulfil human rights in the actions they take to address environmental challenges and pursue sustainable development.<sup>37</sup>

Governments’ first step towards ensuring that their climate change mitigation and adaptation measures are consistent with their human rights obligations is to evaluate whether such measures might have adverse effects on human rights. Human rights impact assessment offers a tool for governments to prevent human rights violations by identifying and avoiding or mitigating human rights issues during the development

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<sup>34</sup> Idem at para. 21

<sup>35</sup> Idem at para. 22. See: [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) and [https://www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf) at pages 31-45. See also: Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, 2011 Edition, Part IV Human Rights, paras 41 and 45 on pages 33-34 at: <https://www.oecd.org/daf/inv/mne/48004323.pdf> and OECD Due Diligence Guidance for Responsible Business Conduct at: <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>. A requirement for due diligence is also addressed in the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration), Fifth edition, March 2017, principle 10(d) at [wcms\\_094386.pdf \(ilo.org\)](https://www.ilo.org/publications/094386.pdf).

<sup>36</sup> In its webinar series 'Human Rights Due Diligence for Climate Change Impacts', the British Institute of International and Comparative Law (BIICL) examined business responsibility for human rights due diligence for climate change impacts. <https://www.biicl.org/publications/human-rights-due-diligence-for-climate-change-impacts-webinar-series-report> and [https://www.biicl.org/documents/125\\_hrdd\\_for\\_climate\\_change\\_impacts\\_webinar\\_series\\_report\\_8\\_jan\\_2020.pdf](https://www.biicl.org/documents/125_hrdd_for_climate_change_impacts_webinar_series_report_8_jan_2020.pdf).

<sup>37</sup> Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, *Framework principles on human rights and the environment*, A/HRC/37/59, 24 January 2018 at: <https://undocs.org/en/A/HRC/37/59>.

of policies and related implementation measures. A human rights-based approach to climate action requires human rights impact assessment and human rights due diligence.<sup>38</sup>

For businesses, human rights impact assessment is often equated with the due diligence called for in the UN Guiding Principles on Business and Human Rights. However the better view may be that human rights impact assessment is only one element of the broader concept of due diligence, which includes conducting human rights impacts assessment, implementing their findings, and measuring and reporting on performance.<sup>39</sup> In the view of others, human rights impact assessment, must be an ongoing and dynamic process with a procedure for monitoring that recommendations are implemented and ongoing review of future human rights impacts.<sup>40</sup> Notwithstanding these different perspectives, it is the substance of the process that is important, and there will be no single one-size-fits-all model for human rights impact assessment or due diligence.

Human rights impact assessments present numerous practical challenges. The author of one overview of human rights impact assessment suggests that the central challenge is to strike the right balance of robustness and usability, In his view, this requires using human rights standards appropriately as the basis for assessment, avoiding bureaucratisation, utilising evidence to inform the assessment, ensuring consultation, participation and transparency, and enhancing the ability of human rights impact assessments to lead to policy change.<sup>41</sup> The requirements of human rights impact assessment suggests that in most circumstances, the role of NHRIs will be to encourage and assist governments (and others) to adopt and carry out human rights impact assessment, rather than to conduct it themselves.

While there is relatively little practical guidance for governmental human rights impact assessment, there is a plethora of information available about human rights due diligence. High-level overviews can be found on the website of the UN Office of the High Commissioner for Human Rights,<sup>42</sup> the 2018 report to the UN General Assembly

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<sup>38</sup> This is implicit in the necessary, specific, and unique elements of the UN's human-rights-based approach to development cooperation. The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies at: [https://unsdg.un.org/sites/default/files/6959-The\\_Human\\_Rights\\_Based\\_Approach\\_to\\_Development\\_Cooperation\\_Towards\\_a\\_Common\\_Understanding\\_among\\_UN.pdf](https://unsdg.un.org/sites/default/files/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf).

Assessment and analysis in order to identify the human rights claims of rights-holders and the corresponding human rights obligations of duty-bearers as well as the immediate, underlying, and structural causes of the non-realization of rights.

For a national example of how the human-rights-based approach requires human rights impact assessment, see also *Guidelines on Incorporating Human Rights Standards and Principles, Including Gender, in Programme Proposals for Bilateral German Technical and Financial Cooperation* at: <https://www.bmz.de/resource/blob/70448/14b3b6b3fe59eab4dcc05efe266e57b4/guidelines-human-rights-bilateral-cooperation>.

<sup>39</sup> BSR, Conducting an Effective Human Rights Impact Assessment: Guidelines, Steps, and Examples, at page 6. [https://www.bsr.org/reports/BSR\\_Human\\_Rights\\_Impact\\_Assessments.pdf](https://www.bsr.org/reports/BSR_Human_Rights_Impact_Assessments.pdf).

<sup>40</sup> James Harrison, Measuring Human Rights: Reflections on the Practice of Human Rights Impact Assessment and Lessons for the Future, 2010, page 23 at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1706742](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1706742).

<sup>41</sup> Idem, pp. 17-24.

<sup>42</sup> <https://www.ohchr.org/EN/Issues/Business/Pages/CorporateHRDueDiligence.aspx>.

of the Working Group on the issue of human rights and transnational corporations and other business enterprises,<sup>43</sup> and the Organisation for Economic Cooperation and Development (OECD) Due Diligence Guidance for Responsible Business Conduct.<sup>44</sup> The Danish Institute for Human Rights has made available on its website a wide variety of material about business human rights impact assessment and due diligence.<sup>45</sup>

Human rights impact assessment and due diligence should be relevant to the Programme of work of the Katowice Committee of Experts on the Impacts of the Implementation of Response Measures, which has a mandate to, inter alia:

(a) Provide a platform allowing Parties to share, in an interactive manner, information, experiences, case studies, best practices and views, and to facilitate assessment and analysis of the impact of the implementation of response measures, including the use and development of modelling tools and methodologies, with a view to recommending specific actions;

(c) Provide concrete examples, case studies and practices in order to enhance the capacity of Parties, in particular developing country Parties, to deal with the impact of the implementation of response measures[...]<sup>46</sup>

## 5.5 Human Rights Defenders

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GANHRI's Marrakech Declaration on "Expanding the civic space and promoting and protecting human rights defenders, with a specific focus on women: The role of national human rights institutions" expressly acknowledges defenders working on environmental and land issues and on indigenous rights.<sup>47</sup> Many UN and civil society reports have described numerous serious human rights violations and abuses committed against environmental activists in many countries.<sup>48</sup> The previous UN Special Rapporteur on the situation of human rights defenders devoted his 2016 report to the UN General Assembly to environmental human rights defenders.<sup>49</sup> The current

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<sup>43</sup> A/73/163, 16 July 2018 at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/224/87/PDF/N1822487.pdf?OpenElement>.

<sup>44</sup> <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

<sup>45</sup> Human Rights Impact Assessment: Guidance and Toolbox at [https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hria\\_toolbox\\_2020/eng/dihr\\_hria\\_guidance\\_and\\_toolbox\\_2020\\_eng.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hria_toolbox_2020/eng/dihr_hria_guidance_and_toolbox_2020_eng.pdf). See also: <https://www.humanrights.dk/business-human-rights>.

<sup>46</sup> Modalities, work programme and functions under the Paris Agreement of the forum on the impact of the implementation of response measures Decision 7/CMA.1, FCCC/PA/CMA/2018/3/Add.1 19 March 2019 at: [https://unfccc.int/sites/default/files/resource/cma2018\\_3\\_add1\\_advance.pdf](https://unfccc.int/sites/default/files/resource/cma2018_3_add1_advance.pdf).

<sup>47</sup> Para 10 at: [https://ganhri.org/wp-content/uploads/2019/11/Marrakech-Declaration\\_ENG\\_-\\_12102018-FINAL.pdf](https://ganhri.org/wp-content/uploads/2019/11/Marrakech-Declaration_ENG_-_12102018-FINAL.pdf).

<sup>48</sup> Final warning: death threats and killings of human rights defenders, Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor, A/HRC/46/35, 24 December 2021 at: <https://undocs.org/A/HRC/46/35>. Defending Tomorrow: The climate crisis and threats against land and environmental defenders, 29 July 2020 at: <https://www.globalwitness.org/en/campaigns/environmental-activists/defending-tomorrow/>. Last Line of Defence: The industries causing the climate crisis and attacks against land and environmental defenders, 13 September 2021 at: <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/>.

<sup>49</sup> Report of the Special Rapporteur on the situation of human rights defenders, A/71/281, 3 August 2016 <https://undocs.org/A/71/281>

Special Rapporteur on the situation of human rights defenders has signaled that defenders working on the climate crisis and working in isolated and remote areas are among the priority areas for her future activities.<sup>50</sup>

In 2019 the Human Rights Council adopted a resolution on *Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development*.<sup>51</sup> Subsequent resolutions including Human Rights Council resolution 48/13, on the human right to a clean, healthy and sustainable environment, have referred to environmental human rights defenders.<sup>52</sup> At the 49<sup>th</sup> session of the Human Rights Council a group of more than 60 states delivered a joint statement on environmental human rights defenders.

Under the Secretary-General's Call to Action for Human Rights, the United Nations would increase "support to Member States at field level for the development of protection mechanisms for human rights defenders and environmental activists, particularly young people, women and girls".<sup>53</sup> In many countries, children and youth have been at the forefront of public demands that governments and businesses do more to address the climate emergency. That occasionally puts them in the position of requiring protection as environmental human rights defenders.

In Article 3(8), the Aarhus Convention, applicable principally in Europe, includes a provision that requires each party to "ensure that persons exercising their rights in conformity with the provisions of th[e] Convention shall not be penalized, persecuted or harassed in any way for their involvement." Further to this provision the parties to the Convention have established a Special Rapporteur on environmental defenders under the Convention to provide a rapid response to alleged violations against such persons. The Rapporteur's role is to take measures to protect any person experiencing, or at imminent threat of penalization, persecution, or harassment for seeking to exercise their rights under the Aarhus Convention.<sup>54</sup>

The Escazú Agreement, applicable in Latin America and the Caribbean, is the first binding instrument that includes specific provisions for the protection and promotion of environmental human rights defenders. It obliges State parties to guarantee an enabling environment for the work of persons, associations, organizations or groups

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<sup>50</sup> Report of the Special Rapporteur on the situation of human rights defenders to the UN General Assembly, 16 July 2020, para. 7(b) at: <https://undocs.org/en/A/75/165>.

<sup>51</sup> A/HRC/RES/40/11. 21 March 2019

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/088/48/PDF/G1908848.pdf?OpenElement>

<sup>52</sup> Resolution 48/13 includes a preambular paragraph "Recalling the Guiding Principles on Business and Human Rights, which underscore the responsibility of all business enterprises to respect human rights, including the rights to life, liberty and security of human rights defenders working in environmental matters, referred to as environmental human rights defenders". See also.

<https://www.ohchr.org/en/stories/2022/03/environmental-human-rights-defenders-must-be-heard-and-protected>.

<sup>53</sup> Call to Action for Human Rights, page 10 at:

[https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/2020\\_sq\\_call\\_to\\_action\\_for\\_hr\\_the\\_highest\\_aspiration.pdf](https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/2020_sq_call_to_action_for_hr_the_highest_aspiration.pdf).

<sup>54</sup> UNECE, Rapid response mechanism to protect environmental defenders established under the Aarhus Convention, 22 October 2021 at: <https://unece.org/media/press/361413>. Decision VII/9 on a rapid response mechanism to deal with cases related to article 3 (8) of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, ECE/MP.PP/2021/CRP.8, 21 October 2021 at [https://unece.org/sites/default/files/2021-11/ECE.MP\\_PP\\_2021\\_RRM\\_CRP.8\\_3.pdf](https://unece.org/sites/default/files/2021-11/ECE.MP_PP_2021_RRM_CRP.8_3.pdf).

that promote environmental protection.<sup>55</sup> It also requires States parties to “take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters”.<sup>56</sup>

## 5.6 Protest, civil disobedience and climate change

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In countries around the world, members of civil society are increasingly expressing their concern about the danger of climate change (and other ecological emergencies) through peaceful protests and civil disobedience in efforts to compel governments to act. Some of the protests are very disruptive, and some governments are reacting by repressing peaceful protest, sometimes violently, and by establishing restrictions on peaceful protest. It is foreseeable that these trends will accelerate in the near future.

The rights to freedom of peaceful assembly and of association and to freedom of opinion and expression are essential to civil society climate action.<sup>57</sup> Peaceful protest and civil disobedience are essential means through which individuals can join forces to express their shared concerns about climate change and their demands that governments and businesses address the climate emergency.

NHRIs have an important role to play in defending the rights to freedom of peaceful assembly and of association and to freedom of opinion and expression that are essential to civic space necessary for public advocacy. Some contributed to the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on the exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice.<sup>58</sup> Others delivered a written

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<sup>55</sup> Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, article 4(6) at:

[https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428\\_en.pdf](https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428_en.pdf).

<sup>56</sup> Idem, article 9.

<sup>57</sup> See the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on “Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice”, A/76/222, 23 July 2021. Note in particular Part V, Meeting human rights obligations, starting at paragraph 4888, where he sets out applicable human rights law. At:

<https://www.ohchr.org/en/documents/thematic-reports/a76222-exercise-rights-freedom-peaceful-assembly-and-association>.

Note also the Joint Declaration on the Right to Freedom of Peaceful Assembly and Democratic Governance by the UN Special Rapporteur on Freedom of Assembly and Association, the InterAmerican Commission for Human Rights<sup>2</sup> (IACHR) and its Special Rapporteur on Freedom of Expression, the Special Rapporteur on Human Rights Defenders and focal point for reprisals in Africa of the African Commission on Human and Peoples' Rights (ACHPR), and the OSCE Office for Democratic Institutions and Human Rights (ODIHR). The Declaration takes note of serious harms caused by climate change and notes protesters calls for action to combat climate change and other environmental harms. At:

<https://www.ohchr.org/sites/default/files/Documents/Issues/FAssociation/joint-declaration-democratic-governance/declaration-en.pdf>.

<sup>58</sup> The report of the Special Rapporteur mentions contributions by five NHRIs, A/76/222 at para. 3. See also: Scottish Human Rights Commission Call for inputs – Special Rapporteur on the rights to freedom of peaceful assembly and of association, May 2021 at:

<https://www.scottishhumanrights.com/media/2185/call-for-inputs-to-special-rapporteur-on-freedom-of-assembly-final.pdf>.

statement to the 49<sup>th</sup> session of the UN Human Rights Council in connection with freedom of assembly and the right to protest at COP26.<sup>59</sup>

## 5.7 Climate Change Litigation and Amici Briefs

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The *Global Climate Litigation Report 2020 Status Review*<sup>60</sup> defines “‘climate change litigation’ to include cases that raise material issues of law or fact relating to climate change mitigation, adaptation, or the science of climate change” and observes that such cases have been brought before a wide range of national and international administrative, judicial, and other adjudicatory bodies.<sup>61</sup> In the face of inadequate governmental and business measures to meet the challenges of climate change, there has been increasingly frequent recourse to national and international judicial and quasi-judicial bodies, by a range of litigants seeking “relief through the enforcement of existing climate laws; integration of climate action into existing environmental, energy, and natural resources laws; clear definitions of fundamental climate rights and obligations; and compensation for climate harms.”<sup>62</sup> Success in litigation in a many countries and fora provide sound reasons to believe that climate change litigation can catalyse legal, policy and social change and compel governments and businesses to pursue more ambitious climate change mitigation and adaptation goals.<sup>63</sup>

The *Global Climate Litigation Report 2020* identifies a variety of kinds of climate litigation, one of which focusses on relying on human rights enshrined in international law and national constitutions to compel climate action. One of the earliest judgements to apply international human rights standards to greenhouse gas emission mitigation was that of the Hague District Court in *Urgenda Foundation v. State of the Netherlands*, which explicitly linked fundamental rights and a duty to mitigate climate change. On appeal the Supreme Court of the Netherlands ruled that the government of the Netherlands had an obligation under articles 2, right to life, and 8, right to private life, family life, home, and correspondence, of the European Convention on Human Rights to reduce greenhouse gas emissions from Dutch territory to protect these rights from the real threat of climate change.<sup>64</sup>

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<sup>59</sup> Written submission by the United Kingdom of Great Britain and Northern Ireland: Equality and Human Rights Commission (EHRC) and the Scottish Human Rights Commission (SHRC), A/HRC/NI/2, 8 Sept 2021 at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/168/21/pdf/G2116821.pdf?OpenElement>.

<sup>60</sup> United Nations Environment Programme and Sabin Center for Climate Change Law, Executive Summary, *Global Climate Litigation Report 2020 Status Review*, 2020 at p. 6.

<https://wedocs.unep.org/bitstream/handle/20.500.11822/34818/GCLR.pdf?sequence=1&isAllowed=y>

<sup>61</sup> The Sabin Center for Climate Change Law at Columbia Law School maintains a website that provides two databases of climate change litigation, one for U.S. climate change litigation and one for non-U.S. cases. The U.S. Climate Change Litigation database is a joint project of the Sabin Center and the law firm Arnold & Porter. It tracks developments in litigation and administrative proceedings related to climate change. The Non-U.S. Climate Litigation database was created in 2011 and is updated regularly. Entries in the database include important documents such as claimant applications, defendant responses, third party interventions and judgements. At: <http://climatecasechart.com/climate-change-litigation/>

<sup>62</sup> *Global Climate Litigation Report 2020 Status Review*, 2020 at p. 4.

<sup>63</sup> For example, see: *Urgenda Foundation v. State of the Netherlands* at <http://climatecasechart.com/climate-change-litigation/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/>

<sup>64</sup> <http://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/>

Not much later in September 2015, Pakistan's High Court of Lahore rendered an unrelated judgement in Leghari v. Federation of Pakistan.<sup>65</sup> The plaintiff, a farmer, sued the national government for failure to carry out the National Climate Change Policy of 2012 and the Framework for Implementation of Climate Change Policy (2014-2030). Relying on the rights to life and human dignity (under articles 9 and 14 Pakistan's constitution), the court upheld Leghari's claims. It reasoned that "the delay and lethargy of the State in implementing the Framework offend the fundamental rights of the citizens, " and it ordered the government to take measures to ensure the implementation the Framework.

In December 2018, the Supreme Court of Nepal rendered its decision in Shrestha v. Office of the Prime Minister.<sup>66</sup> The plaintiff had petitioned the Supreme Court to issue a writ of mandamus or other appropriate order to enact a new climate change law. In its decision, the court determined that action was needed to ensure climate justice, sustainable development, and intragenerational and intergenerational justice. The court concluded that climate change impaired the petitioner's constitutional right to a dignified life and a clean and healthy environment, and it ordered the government of Nepal to enact a new climate change law to (i) mitigate and adapt to the effects of climate change, (ii) reduce the consumption of fossil fuels and promote low carbon technologies, and (iii) develop scientific and legal instruments to compensate those harmed by pollution and environmental degradation.

NHRIs have been active in contributing to climate change litigation and similar measures. The Philippines Commission on Human Rights conducted a precedential international enquiry that has been described as holding promise to establish the basis for follow-on litigation to hold major corporations accountable for their contributions to damage caused by climate change.<sup>67</sup> Examples of NHRI third party (amicus) interventions in climate change litigation include the following:

- Mexican National Commission for Human Rights amicus curiae brief filed before the Inter-American Court of Human Rights for the Advisory Opinion of the State of Colombia, 19 January 2017.<sup>68</sup>
- Global Alliance of National Human Rights Institutions (GAHNRI) - Asia Pacific Forum for National Human Rights Institutions (APF) Amicus Brief: Human Rights and Climate Change in the "Carbon Majors" National Inquiry on Climate Change by the Philippines Commission on Human Rights.<sup>69</sup>

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<sup>65</sup> <http://climatecasechart.com/non-us-case/ashqar-leghari-v-federation-of-pakistan/>

<sup>66</sup> <http://climatecasechart.com/non-us-case/shrestha-v-office-of-the-prime-minister-et-al/>

<sup>67</sup> Philippines Commission on Human Rights, National Inquiry on Climate Change, <https://Chr.Gov.Ph/Nicc-2/>. The Commission published the Inquiry final report on 6 May 2022, at: <https://chr.gov.ph/wp-content/uploads/2022/05/CHRP-NICC-Report-2022.pdf>. It has also established a public repository of evidence received and a mechanism for monitoring of climate-impacted areas in the Philippines. Climate Change Observatory at: <https://chr-observatories.uwazi.io/page/e4iqfcf46wp>. The Center for International Environmental Law has published a *Roadmap and Initial Reflections on CHR's Final Report in the Philippines National Inquiry on Climate Change*, 6 May 2022 at <https://www.ciel.org/reports/roadmap-and-initial-reflections-on-chrs-final-report-in-the-philippines-national-inquiry-on-climate-change-may-2022/>.

<sup>68</sup> [https://www.cndh.org.mx/sites/default/files/doc/OtrosDocumentos/Doc\\_2017\\_028.pdf](https://www.cndh.org.mx/sites/default/files/doc/OtrosDocumentos/Doc_2017_028.pdf)

<sup>69</sup> <https://www.asiapacificforum.net/resources/amicus-brief-human-rights-and-climate-change/>

- Written submission from the Norwegian National Human Rights Institution to shed light on public interests in Case No. 20-051052SIVHRET Föreningen Greenpeace Norden & Natur og Ungdom v. The Government of Norway (Supreme Court of Norway)<sup>70</sup>
- European Network of National Human Rights Institutions (ENNHRI), Written observations in application no. 53600/20 Verein Klimaseniorinnen Schweiz et autres c. la Suisse (European Court of Human Rights)<sup>71</sup>

The European Network of National Human Rights Institutions has also prepared guidance for third party interventions before the European Court of Human Rights.

- Third Party Interventions Before the European Court of Human Rights, Guide for National Human Rights Institutions, October 2020<sup>72</sup>
- Procedure for Third Party Interventions before the European Court of Human Rights Updated: September 2020<sup>73</sup>

The Asian Development Bank has published a series of four documents about climate change litigation focussed on countries in Asia and the Pacific.<sup>74</sup>

- *Climate Change, Coming Soon to a Court Near You: Report Series Purpose and Introduction to Climate Science*, December 2020.<sup>75</sup> This report guides readers through some of the basics about climate change as a defining challenge of our time. It further explains how judges from Asia and the Pacific contribute to climate governance and litigation.
- *Climate Change, Coming Soon to a Court Near You: Climate Litigation in Asia and the Pacific and Beyond*, December 2020.<sup>76</sup> This report contains a comprehensive review of the growing number and variety of climate lawsuits in Asia and the Pacific. It underscores the unique flavor and voice of regional jurisprudence and compares it with global approaches.

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<sup>70</sup> <https://www.klimasøksmål.no/wp-content/uploads/2020/11/Amicus-Curiae-from-the-Norwegian-National-Human-Rights-Institution.pdf>

<sup>71</sup> [https://ennhri.org/wp-content/uploads/2021/09/Third-Party-Intervention-Klimaseniorinnen-\\_-website.pdf](https://ennhri.org/wp-content/uploads/2021/09/Third-Party-Intervention-Klimaseniorinnen-_-website.pdf) See also: European National Human Rights Institutions Intervene in a High-Profile Climate Case, 3 December 2021, <https://strasbourgobservers.com/2021/12/03/european-national-human-rights-institutions-intervene-in-a-high-profile-climate-case/#more-7689>

<sup>72</sup> <https://ennhri.org/news-and-blog/new-nhri-guide-on-third-party-interventions-before-the-european-court-of-human-rights/> or <https://ennhri.org/wp-content/uploads/2020/10/Third-Party-Interventions-Before-the-European-Court-of-Human-Rights-Guide-for-NHRIs.pdf>

<sup>73</sup> <https://ennhri.org/wp-content/uploads/2020/10/Procedure-for-Third-Party-Interventions-before-the-European-Court-of-Human-Rights.pdf>

<sup>74</sup> These publications can be downloaded free of charge as PDF documents or e-publications.

<https://www.adb.org/publications/series/climate-change-coming-to-court>

<sup>75</sup> <https://www.adb.org/publications/purpose-introduction-climate-science>

<sup>76</sup> <https://www.adb.org/publications/climate-litigation-asia-pacific>

- *Climate Change, Coming Soon to a Court Near You: National Climate Change Legal Frameworks in Asia and the Pacific*, December 2020.<sup>77</sup> The report provides holistic syntheses of the climate legal and policy frameworks of 32 countries in Asia and the Pacific and discusses key legislative trends and climate-relevant constitutional rights.
- *Climate Change, Coming Soon to a Court Near You: International Climate Change Legal Frameworks*, December 2020.<sup>78</sup> The report explores the Paris Agreement and the international legal framework that supports global and domestic climate action. It highlights the crucial role of judges in holding their governments accountable for their climate pledges.

## 5.8 National Mechanisms for Reporting and Follow-Up

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A growing number of national governments are establishing National Mechanisms for Reporting and Follow-up (NMRFs) to coordinate and prepare reports to and to coordinate follow-up on their engagement with the international and regional human rights mechanisms (including UN treaty bodies, the Universal Periodic Review and the Special Procedures). Many NMRFs also have responsibilities related to the Sustainable Development Goals. NMRFs perform these functions in coordination with government ministries, specialized state bodies, parliaments and the judiciary. National human rights institution and civil society often have a consultative role.

As government structures, the membership and structure of NMRFs will be determined by the responsible government ministries. Through their consultative role, NHRIs could advocate for the inclusion of national structures responsible for climate action with the aim of addressing links between human rights obligations, SDG realisation and relevant climate change mitigation and adaptation measures.<sup>79</sup>

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<sup>77</sup> <https://www.adb.org/publications/national-climate-change-legal-frameworks-asia-pacific>

<sup>78</sup> <https://www.adb.org/publications/international-climate-change-legal-frameworks>

<sup>79</sup> OHCHR, *National Mechanisms for Reporting and Follow-up: A Practical Guide to Effective State Engagement with International Human Rights Mechanisms*, 2016. [https://www.ohchr.org/Documents/Publications/HR\\_PUB\\_16\\_1\\_NMRF\\_PracticalGuide.pdf](https://www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf). Further to [Human Rights Council resolution 42/30](https://www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf) OHCHR is conducting five regional consultations between 24 November and 3 December 2021 “to exchange experiences and good practices relating to the establishment and development of national mechanisms for implementation, reporting and follow-up, and their impact on effective implementation of human rights obligations and commitments, in consultation with all relevant stakeholders.” The results of the consultations, which will be reported to the fiftieth session of the Human Rights Council, should provide a better basis for assessing whether NMRFs could provide a channel for drawing operational connections between climate action and human rights at the national level.