HREIT

HUMAN RIGHTS AND EQUALITY INSTITUTION OF TÜRKİYE

CLIMATE CHANGE AND HUMAN RIGHTS REPORT



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Foreword

Beyond its environmental impacts, climate change is a global human rights issue that directly affects human life and human dignity. Changes occurring in the climate system pose serious risks to the rights to life and health, as well as to access to adequate food, clean drinking water and safe housing conditions. These risks do not affect all segments of society to the same extent; they may lead to graver consequences for children, older persons, persons with disabilities, and other groups that are in vulnerable situations in the face of the effects of climate change.

The impacts of climate change on human rights bring the responsibilities of States in this field into sharper focus. The obligations of States to respect, protect, and fulfil human rights must also be observed in combating climate change.

In this context, climate policies cannot be assessed independently of human rights law. Indeed, international conventions, judicial decisions, and the work of human rights mechanisms demonstrate the importance of combating climate change from a human rights perspective.

The Human Rights and Equality Institution of Türkiye (HREIT) continues its work on current human rights issues within the framework of its mandate to protect and promote human rights, prevent discrimination, and ensure equality. Prepared in this spirit, the "*Climate Change and Human Rights Report*" aims to provide a comprehensive assessment of the impacts of climate change on human rights and to address the legal developments in this field from a human rights perspective.

Since the report was first prepared, significant developments have taken place in the field of climate change, both in our national legislation and at the international level. In particular, the new legal framework established by the entry into force of Climate Law No. 7552, together with international developments concerning the human rights dimension of climate change, has made it necessary to update the report. This updated report has been revised to take account of these developments.

The report examines the global impacts of climate change and its manifestations in Türkiye, as well as its effects on the rights to life and health, access to basic needs, and the rights of children, older persons, persons with disabilities and other groups in vulnerable situations. It also addresses the role of procedural environmental rights in combating climate change, such as access to information, participation in decision-making processes, and access to justice, as well as obligations of States in this field. I hope that the *Climate Change and Human Rights Report* will contribute to raising awareness of the human rights dimension of climate change and to strengthening human rights-based policies.

I would like to thank the Institution's management and our staff who initiated the work on the preparation of this report in the previous period and contributed to the drafting of the original text, and I extend my gratitude to our valued staff who devoted their efforts to revising the report in line with recent developments.

Vasip ŞAHİN

Governor / President of the Human Rights and Equality Institution of Türkiye

Abbreviations

App.	Application
BP	British Petroleum
CBAM	Carbon Border Adjustment Mechanism
CDP	Carbon Disclosure Project
CFC	Chlorofluorocarbon
CIEL	Center for International Environmental Law
COP	Conference of the Parties
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ENNHRI	European Network of National Human Rights Institutions
EU	European Union
GANHRI	Global Alliance of National Human Rights Institutions
HREIT	Human Rights and Equality Institution of Türkiye
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IPCC	Intergovernmental Panel on Climate Change
ISO	International Organization for Standardization
LCCAPs	Local Climate Change Action Plans
MOP	Meeting of the Parties
NGO	Non-governmental organisation
OHCHR	Office of the United Nations High Commissioner for Human Rights
p.	page
pp.	Page range
SDGs	Sustainable Development Goals
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
USA	United States of America
WHO	World Health Organization

Contents

4 **Foreword**

6 **Abbreviations**

10 **Introduction**

13 **I. CLIMATE CHANGE**

14 A. In General

15 B. The Situation in Türkiye

21 **II. THE IMPACTS OF CLIMATE CHANGE ON HUMAN RIGHTS**

24 A. Right to Life

25 B. Right to Health

27 C. Access to Basic Needs

28 D. Rights of Vulnerable Groups

32 E. Procedural Rights

35 **III. OBLIGATIONS AND EFFORTS UNDERTAKEN**

36 A. Obligations of States in General

38 B. The Vienna Convention and the Montreal Protocol

39 C. United Nations Framework Convention on Climate Change (UNFCCC)

43 D. The Kyoto Protocol

47 E. The Paris Agreement

50 F. Goal 13: Climate Action under the 2030 Sustainable Development Goals (SDGs)

51 G. The European Green Deal

52 H. Green Jobs

53 I. Work of National Human Rights Institutions

58 J. Work of the Courts

62 K. Work of Private Actors

67 **IV. RECOMMENDATIONS AND CONCLUSION**

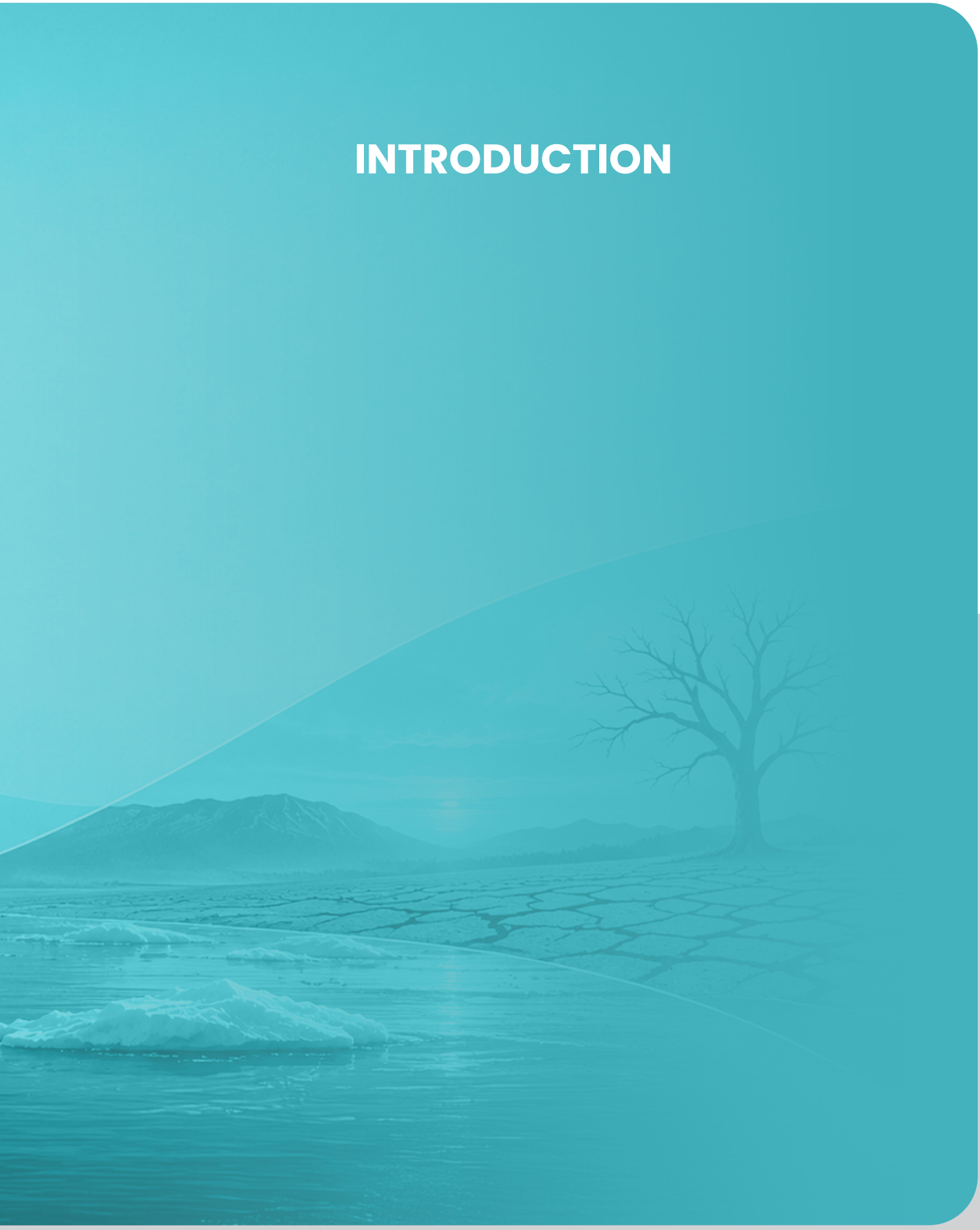
68 A. Defining Climate Change as a Human Rights Issue and Adopting a Human Rights-Based Policy

71 B. Protection and Strengthening of Procedural Environmental Rights

74 **Bibliography**



INTRODUCTION



Introduction

The right to the environment is closely linked to fundamental rights in the context of the protection and promotion of human rights, and climate change is one of the principal environmental problems affecting the enjoyment of human rights.[1] The problem of climate change stems from the use of the Earth's carbon-based resources, such as oil, coal and natural gas, which account for more than two-thirds of greenhouse gas emissions. It is already a global issue that adversely affects the enjoyment of individuals' human rights. The vulnerabilities observed with the changing climate in agricultural production, access to drinking water, and the living spaces of coastal communities reflect the socio-economic vulnerabilities experienced in human life and livelihoods. Human rights such as the right to life, the right to health, and the right to access basic needs are being violated as a result of climate change. Vulnerable groups, in particular older persons, persons with disabilities, and Indigenous peoples (communities that were settled in their geographical area prior to the presence of those who became dominant in a region through means such as occupation or settlement, and that preserve their own distinctive social, cultural, economic and political characteristics inherited from their ancestors),[2] are affected by this process to an even greater extent owing to factors such as their physiology and the geography in which they live.

The core international human rights treaties impose obligations primarily on States rather than on individuals or other non-State actors such as companies, and they generally provide that a State has obligations towards individuals within its own jurisdiction and control. Within the scope of these obligations, States have duties to respect and protect human rights, as well as fulfilling their human rights obligations. Accordingly, in addition to refraining from violating the rights of individuals, States are also obligated to protect human rights from other actors where such rights are violated by those actors. However, human rights treaties do not explicitly address climate change. The obligations, too, have been developed and clarified not on the basis of a right that States might claim not to recognise, such as the right to a healthy, safe or sustainable environment, but on the basis of human rights enshrined in regional and international human rights treaties, such as the right to life and the right to health. In particular, court decisions show that individuals' rights guaranteed under the European Convention on Human Rights (ECHR), such as the right to life, the right to health and the right to respect for private and family life, have been found to have been violated with acts contrary to the fight against climate change. The direct reference to human rights in the Paris Agreement is also significant; the role of human rights in combating climate change is becoming increasingly important.

The first part of the study addresses the nature of climate change and its impacts at both global and national levels. The second part then clarifies the relationship between climate change and human rights, explaining which human rights are principally affected and in what manner. The third part describes the obligations of actors, the State in particular, the mechanisms established within the scope of these obligations, and the efforts undertaken. The final part explains that the focal point of combating climate change is, in fact, human rights, and presents recommendations in this regard.

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[1] HREIT, The Report on Protection and Promotion of Human Rights 2024, Ankara, 2025, p. 77.

[2] United Nations (UN), "Factsheet: Who are indigenous peoples?", https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf (Access Date: 07.05.2024).



I

CLIMATE CHANGE

A. In General

The Earth absorbs radiation from the Sun, mainly at its surface. This absorbed energy is then redistributed by atmospheric and oceanic circulation and radiated back to space. Incoming solar energy is balanced by outgoing terrestrial radiation. However, any factor that alters the radiation received from the Sun or lost to space, or that alters the redistribution of energy within the atmosphere and between the atmosphere, land and ocean, can affect the climate. Human activities are changing the atmospheric concentrations and distributions of greenhouse gases[3] and aerosols.[4] An increase in greenhouse gas concentrations in turn causes the terrestrial radiation emitted from the surface to be absorbed by the atmosphere; the greenhouse effect occurs as a result of positive radiative forcing, which tends to warm the lower atmosphere and the surface.[5] Article 1 of the United Nations Framework Convention on Climate Change[6] (UNFCCC), entitled "*Definitions*", defines climate change as "*a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods*".

Warming caused by anthropogenic emissions from the pre-industrial period to the present has persisted over centuries to millennia. This warming will continue to cause long-term changes, such as sea level rise. However, these emissions alone, without any factor such as human influence, are unlikely to cause global warming of 1.5°C. It is stated that, at present, anthropogenic emissions added on top of a naturally varying climate system, together with human activities, have caused global warming of between 0.8°C and 1.2°C above pre-industrial temperature levels, and that, if global warming continues to increase at this rate, it is likely to reach 1.5°C between 2030 and 2052. Future climate-related risks depend on the rate, peak, and duration of warming. Global warming exceeding 1.5°C and returning to that level by 2100 is more dangerous than global warming gradually stabilising at 1.5°C. Long-lasting or irreversible impacts, such as the loss of some ecosystems, also fall within the scope of future risks.[7]

Climate change experts have long been warning us that climate change will lead to more intense storms, prolonged droughts, more destructive and widespread forest fires, higher air temperatures, the melting of glaciers and ice sheets, and sea level rise. These predictions have proved accurate, and the world is now experiencing the severe effects of increasing greenhouse gas concentrations and climate change.[8]

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[3] Greenhouse gases are gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and emit radiation at specific wavelengths within the spectrum of radiation emitted by the Earth's surface, by the atmosphere itself and by clouds.
[IPCC, "Glossary", https://apps.ipcc.ch/glossary/ (Access Date: 14.08.2026)].

[4] An aerosol is a suspension of airborne solid or liquid particles, with typical particle sizes ranging from a few nanometres to several tens of micrometres and atmospheric lifetimes of up to several days in the troposphere, and up to years in the stratosphere. [IPCC, "Glossary", https://apps.ipcc.ch/glossary/ (Access Date: 14.08.2026)].

[5] Intergovernmental Panel on Climate Change (IPCC), 1996: Climate Change 1995. The Science of Climate Change, (eds.) J.T. Houghton, L.G. Meira Filho/ B.A. Callander/ N. Harris, A. Kattenberg/K. Maskell, Cambridge University Press, p. 14.

[6] Republic of Türkiye Ministry of Environment, Urbanization and Climate Change, "United Nations Framework Convention on Climate Change", https://iklim.gov.tr/bm-iklim-degisikligi-cerceve-sozlesmesi-i-33 (Access Date: 29.05.2024).

[7] IPCC, 2018: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty, (eds.) V. Masson-Delmotte et al., Cambridge University Press, p. 4 et seq.

[8] Frank Pallone, "Time for Action: Addressing the Environmental and Economic Effects of Climate Change", Climate Change: Environmental and Economic Effects, (ed.) Fukui Ayaka, Nova Science Publishers, 2021, p. 13.

As a result of warming, it has been observed that the frequency of extreme high sea levels has increased worldwide, that snow cover and glaciers have diminished in both hemispheres, that cold days, cold nights and frosts have become less frequent while hot days and nights have become more frequent, and that heatwaves and heavy precipitation events occur more frequently. Changes in snow, ice and frozen ground, in turn, increase the number and size of glacial lakes, cause ground instability in permafrost regions, and lead to changes in Arctic and Antarctic ecosystems. Earlier peak flows in glacier- and snow-fed rivers, increased runoff, and changes in the thermal structure and water quality of rivers and lakes are also leading to changes in hydrological systems. Similarly, as a result of warming, spring events in terrestrial ecosystems are occurring earlier, and the ranges of plant and animal species are shifting upwards and downwards. Alongside warming, changes in ice cover, salinity, oxygen levels and circulation are leading to changes in the abundance and ranges of algae, plankton and fish in marine and freshwater systems.[9]

B. The Situation in Türkiye

Due to climate change, the Mediterranean Basin, of which Türkiye is part, is experiencing drought, water scarcity, yield losses in agricultural production, income losses in agriculture and tourism, an increase in forest fires and a loss of biodiversity.[10] According to the Intergovernmental Panel on Climate Change[11] (IPCC), the Mediterranean Basin, which includes Türkiye, is one of the regions that will be most affected by climate change. Since 2018, there has been a marked increase in the number of weather-related natural disasters in Türkiye. A total of 8,274 weather-related natural disasters, affecting different regions of Türkiye to varying degrees, were recorded between 2010 and 2021. Because of climate change, forest fires, storms, floods, hail, heatwaves, landslides and avalanches are projected to increase in Türkiye.[12] A report published in 2023 by the Copernicus Climate Change Service and the World Meteorological Organization states that the deadly *Storm Daniel* in September 2023 caused record levels of rainfall and flooding in Türkiye, Greece and Bulgaria, and that 8 people lost their lives in Türkiye, at least 17 in Greece and 4 in Bulgaria.[13]

Climate change has become a source of risk and vulnerability that directly affects agriculture both globally and in Türkiye. An examination of long-term average annual and monthly total precipitation trends in Türkiye shows that precipitation is generally on a downward trend. From 2050 onwards, decreases in precipitation of up to 250–300 millimetres are projected in all regions except the Eastern Black Sea Region. As 2050 approaches, yield losses increase in almost all regions, with the greatest impacts observed in İstanbul, Bursa, Konya, Kayseri and the Western Black Sea Region. Türkiye is a major exporter of agricultural products, and the fact that its export products generally consist of perennial crops concentrated in certain regions further increases the risk. As Türkiye is one of the world's leading exporters of products

[9] IPCC, Climate Change 2007: Synthesis Report. Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, (eds.) R. K. Pachauri/ A. Reisinger, IPCC, Geneva, Switzerland, 2007, p. 2.

[10] World Wide Fund for Nature (WWF), Türkiye's Tomorrows Project Final Report, WWF-Eti Burçak, 2010, p. 5.

[11] The IPCC, an organisation established in 1988 by the World Meteorological Organization and the United Nations Environment Programme (UNEP), aims to provide governments with scientific information that they can use to develop climate policies. IPCC reports are regarded as an important input into international climate change negotiations [IPCC, "About the IPCC", https://www.ipcc.ch/about/ (Access Date: 29.05.2024)].

[12] Republic of Türkiye Ministry of Environment, Urbanization and Climate Change, Climate Change Mitigation Strategy and Action Plan (2024-2030), 2024, p. 23.

[13] Copernicus Climate Change Service/World Meteorological Organization, "European State of the Climate: Summary 2023", 2023, p. 12.

such as dried fruit and hazelnuts, it is projected that the impact of climate change on Türkiye will also adversely affect world markets. Should this happen, the adverse effects will inevitably be felt not only in the agricultural sector but also across the rest of the economy.[14]

Rising water temperatures are enabling aquatic organisms to survive in waters that they would normally find cold. Recent research shows that more than 90% of the warming that occurred between 1971 and 2010 was ocean-related, and that the temperature increase in the Mediterranean, the fastest-warming sea, has reached very high levels. Invasive aquatic species arriving from the Red Sea and the Indian Ocean are reaching the Mediterranean, which has warmed because of climate change, and are adversely affecting the region's biodiversity. Research conducted in the Gökova Marine Protected Area revealed that 98% of the herbivorous fish biomass consisted of an alien species, the *rabbitfish*, a species that swims in large shoals and destroys the habitats of native species through its feeding habits. Scientifically considered to be the most harmful invasive species, the *lionfish* (*Pterois miles*) is another alien fish species found in Türkiye which has also succeeded in establishing itself in the Mediterranean. This species can consume large quantities of small native fish at once, and it has been established that a 40% increase in the lionfish population was responsible for the 65% decline in the number of native species observed in the Bahamas between 2004 and 2010. Jellyfish swarms, which emerge as jellyfish populations proliferate rapidly due to the disruption of the ecosystem balance, are seriously affecting the fisheries and tourism sectors. These developments are harming not only the fisheries and tourism sectors but also people's nutrition and health conditions.[15]

Türkiye is carrying out the necessary work to combat climate change. One of the most important recent developments regarding climate change has been the incorporation of the Paris Agreement into Turkish domestic law. Türkiye signed the Paris Agreement together with representatives of 175 countries at the High-Level Signature Ceremony held in New York on 22 April 2016, and the domestic ratification process of the Agreement, which was approved by Presidential Decision on 7 October 2021, has been completed.[16]

By Presidential Decree No. 85 published in the Official Gazette dated 29.10.2021 and numbered 31643, the Ministry of Environment and Urbanization was restructured as the Ministry of Environment, Urbanization and Climate Change. The duties of the Ministry include preparing legislation on settlement, the environment and construction, carrying out urban transformation work, supervising implementation, ensuring the development of professional services, preventing environmental pollution, ensuring the protection of our environment and nature, and combating the effects of climate change. By the same decree, the General Directorate of Combating Desertification and Erosion was included among the central units of the Ministry, and the General Directorate of Meteorology among the affiliated institutions of the Ministry.[17] The Directorate of Climate Change was established as an affiliated institution of the Ministry of Environment, Urbanization and Climate Change. The Directorate is responsible for determining policies, strategies and

[14] Turkish Industry and Business Association, Agriculture and Food 2020: An Analysis of the Agriculture and Food Sector in the Context of Sustainable Growth, 2020, p. 43 et seq.

[15] WWF, The Effects of Climate Change in the Mediterranean: Six Stories from an Overheating Sea, WWF Akdeniz Girişimi, 2021, p. 3 et seq.

[16] Republic of Türkiye Ministry of Foreign Affairs, "Paris Agreement", https://www.mfa.gov.tr/paris-anlasmasi.tr.mfa (Access Date: 19.09.2024).

[17] Republic of Türkiye Ministry of Environment, Urbanization and Climate Change, "History of the Ministry of Environment, Urbanization and Climate Change", https://csb.gov.tr/tarihcemiz-i-7012 (Access Date: 18.09.2024).

actions at the national and international levels within the scope of Türkiye's efforts to combat and adapt to climate change, conducting negotiation processes and ensuring coordination with institutions and organisations. Within the scope of this responsibility, it is tasked with carrying out all kinds of work necessary for climate change adaptation and mitigation in line with Türkiye's "net zero emissions and green development" goals by 2053, and with raising awareness of climate change among all segments of society through a human- and nature-friendly approach.[18]

The establishment of the Türkiye Environment Agency may be cited among the institutional reforms carried out at the national level. The "zero waste" approach has gained importance with the aim of placing the existing system on a more orderly, systematic and practicable basis in order to prevent waste, use natural resources more efficiently, prevent or minimise waste generation by reviewing its causes and, where waste is generated, separate it at source and recover it through recycling.[19] By Law No. 7261 published in the Official Gazette dated 24.12.2020 and numbered 31350, the Türkiye Environment Agency was established to operate as an affiliated institution of the Ministry, with the aims of taking further the work of the "Zero Waste Project" implemented by the Ministry of Environment, Urbanization and Climate Change and ensuring the effective collection of beverage packaging.[20]

The green transition process launched with the "2053 Net Zero Emissions Target" and Türkiye becoming a party to the Paris Agreement in 2021 is bringing about comprehensive change and transformation in all sectors. Türkiye considers that the Paris Agreement offers an important opportunity for a green and sustainable world and supports the implementation of climate change policies. Furthermore, as a country in the process of accession to the European Union (EU), Türkiye closely follows EU policies and is developing legislation on climate change and environmental matters with a view to aligning with the relevant acquis. Türkiye's climate change policy is structured through various local and national policy documents, strategies and action plans on mitigation and adaptation. In addition, there are various plans and strategies that have been prepared, updated or are being prepared by the relevant ministries and public institutions in order to identify and realise Türkiye's mitigation potential.[21]

The "National Climate Change Strategy" covering 2010–2023, the "National Climate Change Action Plan" covering 2011–2023 and the "National Climate Change Adaptation Strategy and Action Plan" covering 2011–2023 were prepared with the aim of contributing to the efforts to mitigate the impacts of climate change. As the implementation period of these plans came to an end, the need arose to prepare a new strategy and action plan, and in response to this need, the Climate Change Mitigation Strategy and Action Plan (2024–2030) and the Climate Change Adaptation Strategy and Action Plan (2024–2030) were prepared under the coordination of the Directorate of Climate Change. The preparatory phase lasted two years, and hundreds of meetings were held with thousands of participants, including representatives and

[18] Republic of Türkiye Ministry of Environment, Urbanization and Climate Change, "Directorate of Climate Change", https://iklim.gov.tr/hakkimizda-i-4#:~:text=%C4%B0klim%20De%C4%9Fi%C5%9Fikli%C4%9Fi%20Ba%C5%9Fkanl%C4%B1%C4%9F%C4%B1%2C%2029%20Ekim,ba%C4%9Fl%C4%B1%20bir%20kurulu%C5%9F%20olarak%20kurulmu%C5%9Ftur. (Access Date: 18.09.2024).

[19] Republic of Türkiye Ministry of Environment, Urbanization and Climate Change, "Zero Waste Handbook", 2017, p. 8.

[20] Republic of Türkiye Ministry of Environment, Urbanization and Climate Change, "Law on the Establishment of the Environment Agency Published in the Official Gazette", https://www.csb.gov.tr/cevre-ajansinin-kurulmasina-iliskin-kanun-resmi-gazetede-yayimlandi-bakanlik-faaliyetleri-29871 (Access Date: 18.09.2024).

[21] Republic of Türkiye Ministry of Environment, Urbanization and Climate Change, Climate Change Mitigation Strategy and Action Plan (2024-2030), p. 24.

experts from public institutions, the private sector, and civil society organisations.[22] The Climate Change Mitigation Strategy and Action Plan (2024–2030) is a comprehensive roadmap established by Türkiye to combat climate change and includes measures such as increasing energy efficiency, promoting the use of renewable energy sources, and adopting cleaner technologies in industrial processes. The Climate Change Adaptation Strategy and Action Plan (2024–2030), for its part, focuses on issues such as the sustainable management of water resources, ensuring agricultural and food security, reducing natural disaster risks, and the adaptation of the health sector to climate change, with the aim of making society and the economy more resilient to the adverse effects of climate change and supporting sustainable development.[23]

With regard to our country's policy on combating climate change, Climate Law No. 7552 dated 02.07.2025 contains provisions as important as those of the policy documents. The Law aims to combat climate change in line with the green growth vision and the net zero emissions target. In this context, the Law regulates the reduction of greenhouse gas emissions and climate change adaptation activities, as well as the planning and implementation instruments, revenues, and permitting and inspection processes in these fields, together with the procedures and principles of the related legal and institutional framework.

Climate Law No. 7552 defines the concepts of just transition, climate justice, climate change adaptation, and the Nationally Determined Contribution (NDC) within the scope of combating climate change. Just transition refers to inclusive policies and practices that take into account the groups that may be more affected by the process, particularly children, women, older persons and persons with disabilities, while climate justice refers to the elimination of inequalities caused by climate change. Climate change adaptation refers to the process aimed at preventing adverse impacts and reducing damage, while the Nationally Determined Contribution refers to the document setting out Türkiye's emission reduction and adaptation targets and commitments, which is submitted to the Secretariat of the United Nations Framework Convention on Climate Change.

The same Law provides that principles such as equality, climate justice, precaution, participation, sustainability, transparency, and just transition shall form the basis of combating climate change. It further provides that public institutions and organisations, as well as natural and legal persons, are obliged to comply with the measures taken under the Law, and that the Nationally Determined Contribution shall be prepared in line with the net zero emissions target, taking into account the country's development priorities and special circumstances. These principles and provisions of the Law are important in ensuring that the human rights and climate justice dimensions of combating climate change are also taken into account. In this context, during the legislative process of the Climate Law proposal that became Law No. 7552, HREIT submitted an opinion letter to the Office of the Speaker of the Grand National Assembly of Türkiye. The opinion drew attention to the Institution's power to monitor and assess legislative work under Law No. 6701. Accordingly, it was recommended that the Climate Law proposal include provisions on

[22] Republic of Türkiye Ministry of Environment, Urbanization and Climate Change, "2024-2030 Climate Change Mitigation and Adaptation Strategies and Action Plans Published", https://iklim.gov.tr/2024-2030-iklim-degisikligi-azaltim-ve-uyum-strateji-ve-eylem-planlari-yayinlandi-haber-4239 (Access Date: 18.09.2024).

[23] Carbon Gate, "2024-2030 Sustainability Action Plan: Roadmap and Targets", https://www.carbongate.io/blog/2024-2030-surdurulebilirlik-eylem-plani-yol-haritasi-ve-hedefler (Access Date: 18.09.2024).

preventing the adverse impacts of climate change on human rights, protecting vulnerable groups that are at disproportionate risk from these impacts, and taking climate justice into account.

Following the entry into force of Climate Law No. 7552, the Regulation on Local Climate Change Action Plans and Provincial Climate Change Coordination Boards, prepared by the Ministry of Environment, Urbanization and Climate Change on the basis of Article 7(4) of the same Law, was published in the Official Gazette dated 04.08.2026.

The Regulation aims to determine the procedures and principles for local climate change action plans to be prepared at the provincial level for the purposes of climate change adaptation and the reduction of greenhouse gas emissions, in line with Türkiye's net zero emissions target, the Nationally Determined Contribution, and the relevant planning instruments. In this context, it regulates the processes for the preparation, implementation, monitoring, evaluation, and reporting of the action plans, the duties and responsibilities of the relevant institutions and organisations, and the working principles of the provincial climate change coordination boards.

It is envisaged that Local Climate Change Action Plans (LCCAPs) will cover the geographical, ecological, demographic, social, and economic characteristics of the province, as well as its climate risks, greenhouse gas inventory, adaptation, and emission reduction targets and the actions directed towards these targets. The plans are also required to specify the responsible institutions and organisations, the implementation period, the monitoring indicators, the budget, and possible sources of financing.

LCCAPs are required to be prepared under the coordination of the governor with the participation of the relevant local governments, institutions, and organisations; the draft plan must be submitted to the Provincial Climate Change Coordination Board by 1 October of the year preceding the implementation period and must be decided upon within one month of its submission. Where necessary, the revision period may be extended until 31 December of the same year. It is envisaged that the adopted plans will be transferred to the electronic system and shared with the public, and that LCCAPs will be updated every five years.

Under the Regulation, a Provincial Climate Change Coordination Board must be established in every province by 31 December 2026. It is envisaged that the first LCCAP will be prepared to cover the period 2028–2032 and will be decided upon by the Provincial Climate Change Coordination Board by 31 December 2027; where necessary, the Ministry has been granted the authority to extend this period by up to one year. Provinces that had a provincial climate change action plan prior to the publication of the Regulation are required to bring their existing plans into conformity with the provisions of the Regulation and to prepare their LCCAPs within the same period.



II

THE IMPACTS OF CLIMATE CHANGE ON HUMAN RIGHTS



In 1948, the Universal Declaration of Human Rights (UDHR) was set out as a series of specific claims concerning the rights held by all human beings, irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. This Declaration, together with the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which were opened for signature in 1966 and entered into force in 1976, constitutes the core international human rights instruments. These covenants are binding on the States that have ratified them. The rights under these instruments constitute the common language of humanity, and although they may fall short in some cases, it can be said that they are important values available to humanity for calling States to account for human rights violations. The United Nations (UN) Human Rights Council has stated that climate change poses an immediate and far-reaching threat to the full enjoyment of human rights, and that the elements of non-discrimination, participation, transparency, and accountability are necessary for a human rights approach to climate change.[24] By its resolution 7/23 of 2008, in which it addressed the link between climate change and human rights and described climate change as an immediate and far-reaching threat, the UN Human Rights Council called upon the Office of the UN High Commissioner for Human Rights (OHCHR) to prepare a detailed analytical study on the relationship between climate change and human rights. The OHCHR report made ambitious statements about the multiple human rights impacts of climate change; however, like many other analyses of climate change, it addressed the human rights implications of climate change adaptation only to a limited extent. The equity issues raised by climate change adaptation were not explored in depth.[25]

There are important reasons why applying a human rights framework to climate change is normatively and legally desirable. Climate change is an international problem with consequences that affect people. The fact that these consequences arise on an international scale and require cross-border solutions makes international law an appropriate tool for ensuring accountability. With the involvement of human rights law, courts will assume the task of balancing limited government resources against human needs and monitoring and enforcement tools will become available. In addition, coherence in adaptation policy and the maintenance of international standards for adaptation practices at various levels will be ensured. Notwithstanding all these benefits, there is widespread concern about the effectiveness of human rights treaties and instruments. Substantive and procedural weaknesses may arise where treaties grant governments the power to restrict or withhold rights and freedoms on grounds such as national security, public order, morals, and health, and States Parties may further limit the effectiveness of a treaty by entering reservations to certain provisions. Moreover, most human rights treaties lack a strict enforcement regime, and the success of treaty monitoring mechanisms varies according to various parameters, such as whether the parties submit adequate reports in a timely manner and whether there is sufficient time and expertise to examine the reports and to question State representatives. In practice, it is observed that States delay their reports and that the processes are disrupted. In addition to these concerns, there are fears that human rights law may be overly prescriptive, that creative and appropriate solutions may not be

[24] Atieno Mboya, "Human Rights and the Global Climate Change Regime", Natural Resources Journal, 58/1, pp. 51-74, 2018, p. 67 et seq.

[25] Margaux J. Hall & David C. Weiss, "Climate Change Adaptation and Human Rights: An Equitable View", Climate Change: International Law and Global Governance: Volume I: Legal Responses and Global Responsibility, (eds.) Oliver C. Ruppel/Christian Roschmann/Katharina Ruppel-Schlichting, Nomos Verlagsgesellschaft mbH, 2013, p. 275.

provided, and that an approach may be adopted in which countries meet only the minimum requirements for achieving targets in respect of urgent problems and resort to dilatory solutions.[26]

Human rights regulations essentially consist of political norms concerning how people should be treated by governments and institutions. The soft nature of climate change law, which develops through negotiation and compromise, differs from the formality-based hard law of human rights, and the conflict of rights between those harmed by climate change and the economic actors responsible for carbon pollution pave the way for a contentious approach to resolving the problem of climate change. Not only individuals but also vulnerable States may seek recourse to international law in order to secure justice in the context of climate change. The communities that make up nations, on the other hand, turn first to their own States. However, the market-based approach favours industrialised States and institutions over non-industrialised ones, and this approach underlies the distorted and hierarchical nature of rights creation under international law and the way in which this distortion privileges more powerful parties. The realisation of human rights requires the sensitivity of the State, which, when faced with a choice between supporting economic interests and advancing human rights, tends to choose the former. The realisation of human rights has historically depended on the existence of an economic base capable of supporting these rights; however, many countries lack such a base. The fact that climate change is not perceived as a catastrophe by most of the current generation leads to the economic agenda taking precedence over the rights agenda and to the violation of the climate rights of vulnerable and poor segments of society. In the absence of an international sanction compelling States and companies to reduce greenhouse gas emissions and to protect the climate rights of the world's citizens, the most that vulnerable States and communities can do is to exercise both their right to exist and their right to be protected from significant environmental harm. However, this is not something they can achieve on their own. Vulnerable States demand that the parties responsible for climate change reduce their greenhouse gas emissions, and this demand prompts duty-bearers to argue in their defence that climate-related rights are not genuine rights and may be disregarded.[27]

According to Principle 1 of the Stockholm Declaration, proclaimed at the UN Conference on the Human Environment held in Stockholm in 1972, "*Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations*." Turning to more recent times, the Malé Declaration on the Human Dimension of Global Climate Change, adopted on 14 November 2007 by the Alliance of Small Island States,[28] referred to the fundamental right to an environment capable of supporting human society and the full enjoyment of human rights. It also expressed concern "*that climate change has clear and immediate implications for the full enjoyment of human rights including inter alia the right to life, the right to take part in cultural life, the right to use and enjoy property, the*

[26] Ibid., p. 278 et seq.

[27] Atieno Mboya, op. cit., p. 69 et seq.

[28] The Alliance of Small Island States is an intergovernmental organisation of 39 low-lying coastal and small island States whose purpose is to defend the interests of these States in international processes relating to climate change and sustainable development (Alliance of Small Island States, "About Us", https://www.aosis.org/about/chair-of-aosis/ (Access Date: 16.09.2024)).

right to an adequate standard of living, the right to food, and the right to the highest attainable standard of physical and mental health".[29]

IPCC reports demonstrate that climate change poses a threat to human rights. For instance, people living in low-lying coastal zones and on small islands face the risk of increased death, injury, ill health, and disrupted livelihoods due to storms, coastal flooding, and sea level rise. The poor in rural and urban areas, for their part, face the risk of increasing droughts, extreme weather events, and floods causing the collapse of the food systems on which their livelihoods depend. While urban populations are exposed to an increased risk of death and illness during periods of extreme heat, fishers living in the tropics and the Arctic face the danger of water scarcity and the irreversible degradation of marine and coastal ecosystems.[30] In short, climate change adversely affects people's lives in many respects, and the following sections will address which rights are affected by this process and in what manner.

A. Right to Life

The right to life is the most fundamental right, being a precondition for the enjoyment of all other human rights, and it is equivalent to human existence itself. Given its importance, the right to life is enshrined in Article 3 of the UDHR, Article 3 of the ICCPR, Article 4 of the African Charter on Human and Peoples' Rights, Article 4 of the American Convention on Human Rights, and Article 2 of the ECHR. The *jus cogens* character of the right to life renders States, as traditional duty-bearers, responsible not only when they violate the right to life but also when they fail to take the measures necessary to prevent its violation. The European Commission of Human Rights adopted this approach, which interprets the obligation of the State broadly, stating that the right to life under Article 2 of the ECHR requires not only refraining from the intentional taking of life but also taking appropriate steps to safeguard life. In its General Comment No. 6 on the right to life,[31] the UN Human Rights Committee described the right to life as a supreme and non-derogable human right that should not be interpreted narrowly. In this context, States are invited to take positive measures, including increasing life expectancy and eliminating malnutrition and epidemics. This interpretation laid the foundation for the right to life to extend beyond the traditional threat posed by public authorities and to encompass environmental threats affecting the well-being and livelihoods of millions of people worldwide.[32]

Climate change adversely affects the right to life both directly and indirectly. The right to life is directly affected when people die in hurricanes or floods caused by global warming. Although such situations occur mostly in developing countries, the extreme weather events recently experienced in the United States of America (USA) and Europe demonstrate that they can occur in any region of the world. The fact that people's rights to health, food, and clean water are affected by extreme weather events and sea level

[29] Simon Caney, "Climate Change, Human Rights and Moral Thresholds", Human Rights and Climate Change, (ed.) Stephen Humphreys, Cambridge University Press, 2010, p. 70 et seq.

[30] Margaretha Wewerinke-Singh, State Responsibility, Climate Change and Human Rights Under International Law, Hart Publishing, 2019, p. 3 et seq.

[31] UN Human Rights Committee, General Comment No. 6 (Right to Life), 1982.

[32] Linda Hajjar Leib, Human Rights and the Environment: Philosophical, Theoretical and Legal Perspectives, Martinus Nijhoff Publishers, Leiden-Boston, 2011, p. 72 et seq.

rise shows that the right to life is also indirectly at risk.[33] Complaints concerning environmental problems submitted to redress mechanisms are mostly based on the protection of the right to life. For instance, following allegations that the Government of Brazil had damaged the environment by building a highway through the lands of the *Yanomami* Indians and that the people's right to life had been violated,[34] the Inter-American Commission on Human Rights held that the failure to take measures to prevent environmental harm resulting in loss of life constituted a violation of the right to life, liberty, and security.[35]

Injury, illness, and mortality rates are expected to increase because of intense heatwaves and fires caused by climate change, increasing malnutrition, and the consequences of declining labour productivity among vulnerable groups.[36] The World Health Organization (WHO) has stated that changes in temperature and precipitation increase the spread of vector-borne diseases and that, unless preventive measures are taken, deaths from such diseases, which exceeded 700,000 as of 2023, may increase.[37] The aforementioned report of the Copernicus Climate Change Service and the World Meteorological Organization states that, since 1970, extreme heat has been the leading cause of weather- and climate-related deaths in Europe. According to the report, 23 of the 30 most severe heatwaves have occurred since 2000 and 5 of them in the last three years, and it is estimated that heatwaves caused between 55,000 and 72,000 deaths in each of the summers of 2003, 2010, and 2022. Heat-related deaths in Europe have increased by 30% over the last 20 years, and the impact of heat on human health is more pronounced in cities.[38]

B. Right to Health

Climate change also harms people's right to health. Article 12 of the ICESCR, which was adopted by the UN General Assembly and entered into force on 3 January 1976, recognises "*the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*" Article 24 of the Convention on the Rights of the Child, which was adopted by the UN General Assembly and entered into force on 2 September 1990, in turn recognises "*the right of the child to the enjoyment of the highest attainable standard of health.*"[39] The right to health entails obligations of the State to ensure individuals' access to health services and to other underlying determinants of health, and to protect individuals against interference with their health. Moreover, claims based on the right to life, which are frequently made in climate change litigation, also extend to the right to health when interpreted broadly. This is because, when a person's life is threatened by climate change, his or her health is also clearly harmed. Accordingly, the right to health of individuals must be protected in the face of climate change, which entails the risk of loss of both health and life. The right to health, which is linked to the right to a healthy environment, provides a basis for

[33] Christine Bakker "Climate Change and Right to Life: Limits and Potentialities of the Human Rights Protection System", Climate Change and Human Rights: An International and Comparative Law Perspective, (eds.) Ottavio Quirico/Mouloud Boumghar, Routledge, 2016, p. 71 et seq.

[34] Inter-American Commission on Human Rights, Case No: 7615, Resolution No: 12/85, 05.03.1985.

[35] Sumudu Atapattu, "The Right to a Healthy Life or the Right to Die Polluted?: The Emergence of a Human Right to a Healthy Environment Under International Law", Tulane Environmental Law Journal, 16/1, pp. 65-126, 2002, p. 100.

[36] IPCC, 2018, p. 240.

[37] World Health Organization, "Climate Change", https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health (Access Date: 09.09.2024).

[38] Copernicus Climate Change Service/World Meteorological Organization, "European State of the Climate: Summary 2023", p. 32.

[39] Simon Caney, op. cit., p. 78.

intervening against the harms of climate change, for redressing the harms that have occurred and for guaranteeing States' compliance with human rights principles in their climate policies.[40]

Biological and social adaptation is more difficult to achieve in a highly variable climate than in a more stable one. Human health is sensitive to changes in weather and to climate change. While changes in temperature and precipitation, as well as heatwaves, floods, droughts and fires, have a direct impact on human health, the ecological disruptions caused by climate change, such as food shortages and an increase in vector-borne diseases, and social responses, such as population displacement following prolonged drought, constitute the indirect impacts of climate change on human health.[41]

The WHO states that climate change is affecting human health today and will continue to do so in the future. With climate change, health inequalities are expected to widen further[42] and existing health problems to worsen. While there is a possibility that existing diseases may spread to areas where they have not yet had an impact, it is considered that the greatest risks will apply to the populations most affected by climate, such as regions already facing food insecurity.[43]

Africa is regarded as the most vulnerable region of the world in terms of the impacts of climate change on agricultural crops and fisheries. In sub-Saharan Africa, droughts are already more frequent and last longer. With declining crop yields in this region, tens of millions of people are expected to be exposed to malnutrition, and water-borne and vector-borne diseases such as *cholera*, *malaria*, *hantavirus*, *dengue fever*, *scrub typhus,* and *schistosomiasis* are expected to increase as a result of geographical and ecological changes. It is estimated that groups in vulnerable situations in Africa, such as children, older persons and pregnant women, will be the most affected.[44] According to WHO data, between 2019 and 2020, the estimated number of malaria cases in Africa rose from 218 million to 230 million, and the number of malaria deaths from 552,000 to 604,000. Between 2020 and 2022, while the estimated number of cases remained almost unchanged, the number of malaria deaths fell to 580,000.[45]

The IPCC report states that *dengue fever* globally; *chikungunya* in Asia, Latin America, North America, and Europe; *Lyme* disease in North America; and *Lyme* disease and tick-borne *encephalitis* in Europe are significantly linked to climate change and population mobility. High temperatures, heavy rainfall, and floods lead to an increase in diarrhoeal diseases, while climate extremes increase the risk of various respiratory diseases. Moreover, the rate of mental illness is also increasing in communities exposed to extreme weather events.[46]

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[40] Chuan-Feng Wu, "Challenges to Protecting the Right to Health under the Climate Change Regime", Health and Human Rights, 23/2, pp. 121-138, 2021, p. 125.

[41] IPCC, Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, (eds.) C.B. Field et al., 2014, Cambridge University Press, Cambridge, United Kingdom and USA, p. 713.

[42] Office of the United Nations High Commissioner for Human Rights (OHCHR), Analytical Study on the Relationship Between Climate Change and the Human Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, 2016, UN Doc A/HRC/32/23, p. 4.

[43] IPCC, 2014, p. 713.

[44] Margaretha Wewerinke-Singh, op. cit., p. 119.

[45] World Health Organization, World Malaria Report 2023, 2023, p. 12.

[46] IPCC, Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, (eds.) H.-O. Pörtner et al., 2022, Cambridge University Press, Cambridge, United Kingdom and USA, p. 1045.

C. Access to Basic Needs

When the interdependence of human rights is taken into account, it becomes clear that the need for food and water constitutes the basis for the enjoyment of all other rights, notably the rights to health and life.[47] Climate change also affects people's access to basic needs.

According to the IPCC report, agriculture, forestry, fisheries, and aquaculture are adversely affected by climate change. Over the last 50 years, agricultural productivity in mid- and low-latitude regions, crop and rangeland quality, and harvest stability have declined owing to warming. Warmer and drier climatic conditions have increased tree mortality and forest degradation in many regions, adversely affecting provisioning services. Changes in grazing systems, for their part, have reduced the resilience of livestock farmers by adversely affecting animal productivity, mortality rates, and herd recovery rates. Meat and milk productivity will decline further as cattle, sheep, goats, and poultry in low latitudes suffer extreme stress from high temperatures and humidity. With ocean acidification and warming, the sustainable yield of some wild fish populations decreased by 4.1% between 1930 and 2010, and farmed aquatic species have already been affected. Consequently, it can be said that, as food availability has decreased and food prices have risen since the mid-20th century, people's food security, nutrition, and livelihoods are under threat.[48]

In addition to the need for access to food, everyone has the right of access to sufficient, safe, acceptable, physically accessible, and affordable water for uses such as drinking, personal hygiene, washing clothes, food preparation, and household cleaning. However, overall water availability will be seriously affected by climate change, particularly through drought, the reduction of water resources stored in glaciers and snow cover, and floods. Increasing water scarcity will lead to greater competition between sectors such as domestic, agricultural, and industrial water use. On the other hand, rising water temperatures, higher or lower groundwater levels, floods and droughts, and increases in micro-organisms, chemicals, and radiological hazards in drinking water will adversely affect water quality in many parts of the world. The availability of drinking water will decrease due to the deterioration of water quality as a result of water pollution and salinisation, while taking sanitation and hygiene measures will become more difficult owing to increasing water scarcity.[49]

The decrease in water availability and the deterioration in water quality may, in turn, increase operating costs and cause indirect effects such as rising prices for domestic water and sanitation. At the same time, this will not only make services more expensive but will also create or exacerbate discrimination against certain groups of the population by increasing the risk that low-income households will be deprived of basic water and sanitation services. Risks such as the deepening of poverty, the aggravation of health problems, obstacles to development, political conflict, and social instability will thus come to the fore.[50]

[47] Alessandra Franca, "Climate Change and Interdependent Human Rights to Food, Water and Health", Climate Change and Human Rights: An International and Comparative Law Perspective, 2016, p. 89.

[48] IPCC, 2022, p. 717.

[49] OHCHR, Climate Change and the Human Rights to Water and Sanitation: Position Paper, UN: Geneva, Switzerland, 2010, p. 17 et seq.

[50] Ibid., p. 23.

The right to adequate housing is also among the fundamental rights seriously threatened by climate change. In addition to the damage and destruction caused by extreme weather events, which have become more frequent today, slow-onset events such as desertification and sea level rise, which threaten housing and human settlements, continue to harm the right to adequate housing in ways that are not yet visible. Climate change is forcing people to migrate from rural areas to cities that are overburdened and unable to provide adequate housing for all, due to the loss of livelihoods and the fresh water used for agriculture and drinking. These migrants are compelled to set up their homes in informal settlements where they live in inadequate and even inhumane conditions, often without any security of tenure. In 2020, of the 40 million people displaced, 30 million were displaced by weather events ranging from drought to hurricanes. This figure is far higher than the number of those displaced by conflict, and it is estimated that it will continue to rise.[51]

D. Rights of Vulnerable Groups

Persons who are already vulnerable are those at greatest risk of being subjected to human rights violations as a result of climate change. Indigenous peoples, local communities, villagers, migrants, children, women, persons with disabilities, people living in developing small island States and least developed countries, people living in conditions of inadequate access to water, and other persons in vulnerable situations who are at risk of being left behind are among these groups at risk. The impacts of climate change may vary depending on a range of factors such as geography, poverty, age, gender, disability, migration status, religion, race, and cultural or ethnic origin. Where more than one ground of discrimination is present, people in vulnerable groups may experience multiple forms of discrimination.[52]

Since children, who are among the vulnerable groups, have particular sensitivities due to their developmental needs and physiology, changes in factors such as food security and water quality can have significant consequences for them. Morbidity and mortality among children, including from malaria, diarrhoea, and malnutrition, are expected to increase. The stress placed on children by physical and social environments that change for reasons such as migration may have lasting effects on their physical and mental health. Moreover, there is a likelihood that children will be exposed to a greater risk of exploitation and abuse, and that, in underserved areas, children's access to medical services and education will be interrupted or eliminated.[53]

Another vulnerable group affected by climate change is women. Owing to the inequality they face in accessing the freedoms and resources necessary for the realisation of economic, social, and cultural rights, women face disproportionate risks arising from the adverse effects of climate change.[54] Vulnerable groups who are already subjected to discrimination in ordinary times are even more likely to experience human rights violations while the effects of natural disasters triggered by climate change persist. Discriminatory practices stemming from social and cultural structures of societies make it more difficult for women to

[51] OHCHR, Towards a Just Transformation: Climate Crisis and the Right to Housing, UN Doc A/HRC/52/28, 2022, p. 5.

[52] OHCHR, The Impacts of Climate Change on the Human Rights of People in Vulnerable Situations, UN Doc A/HRC/50/57, 2022, p. 6.

[53] OHCHR, The Slow Onset Effects of Climate Change and Human Rights Protection for Cross-Border Migrants, UN Doc A/HRC/37/CRP.4, 2018, p. 18.

[54] Ibid., p. 18 et seq.

access fertile land and agricultural services. The food insecurity associated with this difficulty makes it harder for women to meet their nutritional needs. Poor nutrition of women, particularly during pregnancy, breastfeeding, and childbirth, leads to various health problems. For example, between 2012 and 2016, the rate of anaemia caused by poor nutrition among women of reproductive age worldwide rose from 30.3% to 32.8%.[55] Statistics on deaths in climate change-related disasters in developing countries also show that women are at greater risk. For instance, it was found that 80% of those who lost their lives as a result of *Cyclone Sidr* in 2007 were women. During Typhoon Haiyan in the Philippines, the mortality rate of women was 50% higher than that of men. Of those who died as a result of the 2004 Indian Ocean tsunami, 70% were women. Furthermore, the damage these disasters cause to health facilities and infrastructure makes access to health services more difficult. This, in turn, increases the numbers of unplanned pregnancies, premature births, infection-related illnesses, and maternal and infant deaths.[56]

Another group that is vulnerable to climate change due to its physical, social and economic conditions is older persons, whose capacity to prepare for, respond to, and adapt to disasters is limited. As the body's thermoregulatory system gradually declines after the age of 60, the capacity of older persons to adapt to different thermal conditions decreases and their vulnerability to cold spells and heatwaves increases. The diminished sense of thirst that accompanies the decline in bodily functions is another factor that makes it more difficult for older persons to respond to heat. Their inability to perceive their need for water increases the risk of dehydration. Furthermore, turning to social impacts in addition to physical ones, social stress factors such as the scarcity of intergenerational ties and social spaces for older persons and the breakdown of social bonds increase the risks to which older persons are exposed. When older persons migrate, their struggle with their feelings of attachment to their former places and the change in their social environments affect their well-being and increase their social vulnerability.[57]

Persons with disabilities, another vulnerable group, are unable to participate fully and effectively in society on an equal basis with others owing to both social and environmental barriers. Persons with disabilities, estimated to number 1 billion worldwide, are also at risk of being more adversely affected by the impacts of climate change. It is evident that persons with disabilities, who are generally exposed to disproportionately higher rates of morbidity and mortality in emergencies and are among those least able to access emergency support, face the risk of being seriously affected by climate change in areas such as nutrition, safe drinking water and sanitation, health services and medicines, education and training, adequate housing, and access to decent work.[58]

An estimated 370 million indigenous people are adversely affected by climate change. The adverse effects of climate change, caused largely by the human activities of developed countries, are felt in poor countries, particularly among vulnerable indigenous communities whose lifestyles are normally low-carbon. The survival of indigenous communities and the maintenance of their cultural identity and beliefs de-

[55] Food and Agriculture Organization of the United Nations, The State of Food Security and Nutrition in the World, Rome, 2018, p. 16.

[56] Muhammed Emre Küçükşahin, The Impact of Climate Change on Human Rights, Nobel Bilimsel Eserler Yayınevi, 2023, p. 68 et seq.

[57] Harmanjot Antal/ Smita Bhutani, "Identifying Linkages Between Climate Change, Urbanisation, and Population Ageing for Understanding Vulnerability and Risk to Older People: A Review", Ageing International, 48, pp. 816-839, 2023, p. 827 et seq.

[58] OHCHR, Analytical Study on the Promotion and Protection of the Rights of Persons with Disabilities in the Context of Climate Change, UN Doc A/HRC/52/28, 2020, p. 3.

pend heavily on their traditional livelihoods and their ties to their natural environment. Their confinement to the least productive and most sensitive lands for reasons of historical, social, political and economic exclusion, and the fact that they are given less consideration when climate change mitigation strategies are being developed, make them more vulnerable to climate change.[59]

Since indigenous peoples have a close cultural and religious connection with the world's resources and the environment, the impacts of climate change have affected their physical location. In addition, these impacts have exposed them to political and economic marginalisation, discrimination and dispossession of their lands. Although each indigenous group is affected in different ways, there are common experiences shared by indigenous groups around the world. Indigenous peoples have generally been the groups compelled to respond first to the impacts of climate change. For example, the melting of glaciers in the Arctic has caused flooding and a decline in the number of reindeer on which the survival of Indigenous peoples depends. The disappearance of pine trees in North America, in turn, has caused indigenous groups in Canada to lose their food sources.[60]

In December 2005, a petition was submitted to the Inter-American Commission on Human Rights on behalf of the Inuit people, alleging that the climate change policy of the USA violated the rights of the Inuit. Following the submission of the petition, at the 11th Conference of the Parties[61] (COP) held under the UNFCCC in 2005, Sheila Watt-Cloutier, Chair of the Inuit Circumpolar Conference, delivered a speech on the magnitude of the impending threat. In her speech, she stated that the Inuit are a people of the land, the ice, the snow, and the animals, that their hunting culture developed in the cold, that they need the cold in order to sustain their culture and way of life, and that climate change has become the greatest threat to Inuit culture. She further laid bare the dramatic nature of the situation with the question: "*How would you respond if an international assessment, prepared by more than 300 scientists from 15 countries, concluded that your centuries-old culture and economy were coming to an end, and that you were going to become a footnote to globalization?*" The Inter-American Commission on Human Rights, for its part, responded to the petition with a two-paragraph reply, which stated briefly that it was not possible to determine whether the alleged matters could be characterised as violations of the rights protected by the American Declaration.[62] Moreover, the fact that the petitioners, who complained of the acts and omissions of the USA, lived in Canada gave rise to a problem of jurisdiction.[63] Although the reply to the petition stated that it could not be established that the allegations could be characterised as violations of the rights protected by the American Declaration, the innovative legal arguments contained in the petition were praised, and the

[59] W. L. Filho/ N. R. Matandirotya/ J. M. Lütz/ E. A. Alemu/ F. Q. Brearley/ A. A. Baidoo/ A. Kateka/ G. M. Ogend/ G. B. Adane/ N. Emiru/ R. A. Mbih, "Impacts of Climate Change to African Indigenous Communities and Examples of Adaptation Responses", Nature Communications, 12/6224, 2021, DOI: 10.1038/s41467-021-26540-0

[60] Jordan K. Medaris, "The Impact of Climate Change on the Cultural Identity of Indigenous Peoples and the Nation's First 'Climate Refugees'", American Indian Law Review, 47/1, 2023, p. 10 et seq.

[61] The COP, the supreme decision-making body under the UNFCCC, meets once a year to review the implementation of the UNFCCC, adopt decisions to further develop the UNFCCC and conduct negotiations on significant new obligations (Republic of Türkiye Ministry of Environment, Urbanization and Climate Change, "International Climate Change Negotiations", https://cevresehiriklimkutuphanesi.csb.gov.tr/SourcePDF/cd73896b-02f1-4a44-9f3e-a4c49d201bf1 (Access Date: 30.05.2024)).

[62] Hari M. Osofsky, "The Inuit Petition as a Bridge? Beyond Dialectics of Climate Change and Indigenous Peoples' Rights", American Indian Law Review, 31/2, pp. 675-697, 2007, p. 675 et seq.

[63] Agnieszka Szpak, "Arctic Athabaskan Council's petition to the Inter-American Commission on human rights and climate change—business as usual or a breakthrough?", Climatic Change, 162/3, pp. 1575-1593, 2020, p. 1576.

petition was regarded as an important step in terms of encouraging collective action frameworks for the recognition of Indigenous rights in the context of climate change.[64]

The 2020 judgment of the Inter-American Court of Human Rights concerning the rights of Indigenous peoples in *Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina*[65] is also important for establishing standards on the right to a healthy environment. The judgment confirmed that environmental human rights fall within the scope of Article 26 of the American Convention on Human Rights, entitled "*Progressive Development*" and that human rights depend on the existence of a healthy environment, and emphasised that States must take measures to prevent significant environmental harm to individuals both within and outside their territories. It was further stated that the right to a healthy environment entails a duty to protect components of the environment, such as forests, seas, rivers, and other natural features, as interests in themselves, even in the absence of certainty or evidence as to how they affect people.[66]

The risks faced by vulnerable groups in terms of access to their basic needs are also concretely visible in the context of the developments in Gaza. As stated in HREIT's "Human Rights Violations in Palestine and Gaza Genocide Report," a significant part of the 180,000 decares of agricultural land in Gaza was destroyed after 7 October, and the continuation of agricultural activities has become more difficult. In addition, due to the damage inflicted on the water infrastructure, daily water consumption per person in Gaza fell to as low as 2 litres after 7 October, deepening the humanitarian crisis in the region. It is further noted that the UN recommends a minimum daily consumption of 50 litres of water per person for drinking, cooking, and cleaning. The destruction of agricultural land and water infrastructure adversely affects the access of the people of Gaza to fundamental human rights by increasing existing vulnerabilities in terms of access to food and water.[67]

The developments in Gaza reveal the mutually aggravating effects of the impacts of climate change, environmental destruction, water scarcity, and conflict on vulnerable groups' access to fundamental rights. In Palestinian territories, drought and reduced precipitation are occurring as a result of climate change. It is projected that annual precipitation may decrease by 10% to 30% by 2100, while temperatures may rise by 3°C to 5°C. While these changes are expected to increase the pressure on agricultural productivity, food supply, and water resources; the destruction of water and wastewater infrastructure in Gaza and the difficulties in accessing energy sources are further deepening existing vulnerabilities. The inability of water treatment plants to operate regularly and the discharge of wastewater into the sea without adequate treatment pose risks to the environment and public health, while difficulties in accessing water resources increase the pressure on agricultural production and food security.[68]

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[64] Lisa Mardikian/Sofia Galani, "Protecting the Arctic Indigenous Peoples' Livelihoods in the Face of Climate Change: The Potential of Regional Human Rights Law and the Law of the Sea", Human Rights Law Review, 23, pp. 1-24, 2023, p. 12.

[65] Inter-American Court of Human Rights, Comunidades Indígenas Miembros de la Asociación Lhaka Honhat (Nuestra Tierra) v. Argentina, 06.02.2020

[66] Christiana Ochoa, "Nature's Right", Michigan Journal of Environmental & Administrative Law, 11/1, pp. 39-86, 2021, p. 84.

[67] HREIT, Human Rights Violations in Palestine and Gaza Genocide Report, Ankara, 2024, pp. 93-94.

[68] "Israeli Attacks Increase Gaza's Vulnerability to Climate Change" (26.10.2023). Anadolu Agency, https://www.aa.com.tr/tr/yesilhat/iklim-degisikligi/israil-saldirilari-gazzenin-iklim-degisikligi-karsisindaki-savunmasizligini-artiriyor/1821530 (Access Date: 14.08.2026).

E. Procedural Rights

Article 19 of the UDHR and Article 19 of the ICCPR state that everyone has the right to seek, receive, and impart information. These instruments impose on States an obligation to ensure public access to all information of public interest. The UN Human Rights Committee has not explicitly stated whether the right of access to information includes an obligation on States to carry out environmental impact assessments. However, the International Court of Justice has held that States have an obligation to carry out an environmental impact assessment where there is a risk that an activity may have an adverse impact on other States in a transboundary context, in particular on a shared resource, and to disclose the results of that assessment to the countries that may be adversely affected. According to this decision, States should assess how activities within their jurisdiction will adversely affect the climate and disclose this to the international community. For instance, when it comes to activities carrying a risk of significant greenhouse gas impacts, such as the construction of a fossil fuel power plant, States must carry out a greenhouse gas assessment and share the results with the public. The right of access to information is also regarded as a precondition for the exercise of the other procedural rights concerning public participation and access to legal remedies, and these procedural rights are considered important for the exercise of other human rights affected by climate change. Indeed, many regional courts have also recognised that the obligation of States to assess and disclose environmental risks is a positive duty within the framework of protecting and respecting human rights. This obligation is not limited to States' own activities; since States must protect people's rights against harm caused by third parties, it also covers other environmental risks.[69]

Article 21 of the UDHR and Article 25 of the ICCPR, for their part, state that everyone has the right to take part in public affairs. The United Nations Framework Convention on Climate Change likewise directs States to promote and facilitate public participation in addressing climate change and its effects and in developing adequate responses. The right of the public to participate in environmental decision-making has been recognised both by the relevant human rights bodies of various treaties and in other multilateral environmental instruments. For such participation to be adequate and effective, affected persons must be given the opportunity to voice their concerns after the environmental impacts have been assessed and effectively communicated. The public's right to participate is of particular importance in decisions affecting groups in vulnerable situations and concerning the displacement or resettlement of certain groups. The OHCHR has emphasised that conducting adequate and effective consultation with affected persons takes precedence over taking decisions to relocate them away from hazardous areas.[70]

The obligation of States to provide an effective remedy for human rights violations is also among the procedural rights set out in the aforementioned international treaties. The relevant human rights treaty bodies have stated that the right to an effective remedy also covers human rights violations arising from environmental harm. While ensuring people's access to administrative and judicial authorities constitutes the procedural dimension of this obligation, its substantive dimension also requires ensuring the availability of compensation or other forms of redress. For instance, the Committee on Economic, Social and Cul-

[69] United Nations Environment Programme, Climate Change and Human Rights, UNON Publishing Services Section: Nairobi, 2015, p. 16.

[70] Ibid., p. 17.

tural Rights has stated that States must ensure that Indigenous communities and other groups displaced by large infrastructure projects and deforestation are provided with adequate compensation, alternative housing, and resettlement opportunities.[71]

In April 2021, the EU adopted the European Climate Law, Regulation (EU) 2021/1119. This instrument enshrined in law the EU's targets of becoming a climate-neutral continent by 2050 and reducing greenhouse gas emissions by at least 55% by 2030 compared with 1990 levels. The European Climate Law and the Regulation on the Governance of the Energy Union and Climate Action (Regulation (EU) 2018/1999 of the European Parliament and of the Council on the Governance of the Energy Union and Climate Action) constitute a regulatory framework for the implementation and development of the EU's climate policy. These instruments encompass procedural rights consisting of access to information, public participation in decision-making, and access to justice. Procedural rights are also emphasised in the framework legislation that has entered into force at the national level. In addition to the United Kingdom's Climate Change Act 2008, Austria, Bulgaria, Denmark, Finland, France, Germany, Ireland, Malta, the Netherlands, Spain, and Sweden may be cited as examples of countries with national climate laws. The national laws of these countries, while making national climate targets binding through domestic law, also provide a legal basis for protection of procedural rights.[72] For example, Article 45 of the Spanish Constitution provides that everyone has the right to enjoy an adequate environment for the development of the person, as well as the duty to preserve it. In May 2021, Spain enacted its first law on climate change and energy transition[73] with a view to recognising climate rights. Article 39 of the Law provides that the fight against climate change shall be conducted through open formulas and accessible channels that guarantee social participation, that existing participation mechanisms shall be strengthened, and that the participation of citizens in decision-making on climate change shall be guaranteed through the establishment of a council.[74]

[71] Ibid., p. 18.

[72] Kati Kulovesi et al., "The European Climate Law: Strengthening EU Procedural Climate Governance?", Journal of Environmental Law, 36/1, pp. 23-42, 2024, p. 23 et seq.

[73] Spain's Act 7/2021 of 20 May on Climate Change and Energy Transition, 2021.

[74] Justice and Environment, Legal Study: The Concept of "Climate Rights" Assessment Frameworks, Classifications and Country Examples, 2023, p. 35 et seq.



III

OBLIGATIONS AND EFFORTS UNDERTAKEN



A. Obligations of States in General

The law of State responsibility constitutes the general secondary law of international obligations, just as the Vienna Convention on the Law of Treaties provides the general secondary law of treaties. Today, it is codified in the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts.[75] In short, the law of State responsibility comprises the general conditions under international law for a State to be held responsible for wrongful acts or omissions and the legal consequences that flow from them. International climate change law has no secondary rules or enforcement mechanisms of its own. Therefore, it may be possible to refer to the law of State responsibility to address breaches of obligations arising from the international climate change regime. Nevertheless, international human rights law has its own secondary rules, which must be taken into account when considering questions of State responsibility for human rights violations. The right to a remedy constitutes the most important of these secondary rules.[76]

In relation to climate change, which is a geographically and historically diffuse ecological harm, establishing a causal link may be difficult or uncertain. Moreover, the acts causing the harm may have been carried out without knowledge of their harmfulness. However, since the physical mechanism of the industrial greenhouse effect has been known for more than a century, causing existing harm or aggravating such harm through the harmful effects of greenhouse gases is a distinct matter from ceasing to do so and assuming responsibilities. Once it has been established that existing harm is being caused, the right course of action is to stop causing the harm, even if it requires additional effort. Particular groups, cultural practices, and nations have caused, or contributed to, industrial greenhouse pollution. Tackling climate change, for its part, requires large-scale multilateral action at administrative levels. Since States hold ultimate power over protecting the Earth and its resources and exercising control over those resources, they are the parties capable of negotiating and implementing agreements on the use and protection of the commons.[77]

Although climate change has numerous serious adverse effects, sea level rise is foremost among them. Since sea level rise poses a threat to the territorial integrity, resources, and statehood of developing small island States, these States are among the most vulnerable to the effects of climate change and rising sea levels. These effects raise legal and practical questions, such as who is liable to compensate for the infrastructure required to protect and preserve the territory of the affected small island States, and how maritime zones and maritime boundaries should be determined in the context of rising sea levels.[78]

Article 96 of the Charter of the United Nations provides that "*the General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question*." In considering such questions, the International Court of Justice (ICJ) will be able to carry out an assessment under Article 47 of the Articles on Responsibility of States for Internationally Wrongful Acts, which provides

[75] Text adopted by the International Law Commission at its 53rd session in 2001 and submitted to the General Assembly as part of the Commission's report covering the work of that session. The report appears in the Yearbook of the International Law Commission, 2001, vol. II, Part Two.

[76] Margaretha Wewerinke-Singh, op. cit., p. 60 et seq.

[77] Chris J. Cuomo, "Climate Change, Vulnerability and Responsibility", Hypatia, 26/4, pp. 690-714, 2011, p. 697 et seq.

[78] Malgosia Fitzmaurice/Agnes Viktoria Rydberg, "Using International Law to Address the Effects of Climate Change", Yearbook of International Disaster Law Online, 4/1, pp. 281-305, 2023, p. 281.

that, "*where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act*." It will also have the opportunity to clarify how compensation for environmental damage is to be calculated.[79] In 2011, Palau announced its intention to request an advisory opinion from the ICJ on whether countries have a legal responsibility to prevent any activity emitting greenhouse gases within their territory from causing harm to other States.[80] Vanuatu, for its part, succeeded in its campaign to persuade the UN General Assembly to request an advisory opinion from the ICJ on climate change.

On 23 July 2025, the ICJ delivered its advisory opinion entitled "Obligations of States in respect of Climate Change."[81] In its advisory opinion, the ICJ addressed the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from the harm caused by anthropogenic greenhouse gas emissions, and the legal consequences arising where States, by their acts or omissions, have caused significant harm to the climate system. In this context, the Court assessed the legal consequences that may arise with respect to States that, owing to their geographical circumstances or level of development, are more exposed or more vulnerable to the adverse effects of climate change, in particular developing small island States, as well as with respect to the peoples and individuals of present and future generations affected by climate change.

The ICJ examined the obligations of States regarding climate change within a multi-layered framework of international law. In this context, it first assessed the relationship between the United Nations Framework Convention on Climate Change, the Kyoto Protocol, and the Paris Agreement, and addressed the obligations of States under these instruments concerning the reduction of greenhouse gas emissions, adaptation to the effects of climate change, the preparation and implementation of nationally determined contributions, and financial assistance, technology transfer, capacity-building, and international cooperation. It further examined the obligations under customary international law to prevent significant harm to the environment and to cooperate, together with related elements such as due diligence, the consideration of scientific and technological data, the precautionary approach, risk and environmental impact assessment, and notification and consultation.

The ICJ stated that, in the context of climate change, States responsible for an internationally wrongful act may be under an obligation to make reparation for the damage caused. The Court noted that, as part of the legal consequences arising from an internationally wrongful act, the obligation to perform the international obligation concerned continues even if it has been breached. It was stated that, where the wrongful conduct continues, it must be brought to an end and, where necessary, assurances and guarantees of non-repetition must be provided. The Court further considered that, where a causal link is established between the breach and the damage caused, the damage may be redressed, and that such reparation may take different forms, such as restoring the previous situation as far as possible, monetary compensation, a formal apology, acknowledgement of the wrongfulness, or a public statement. It was

[79] Ibid., p. 299.

[80] David Freestone/Richard Barnes/Payam Akhavan, "Agreement for the Establishment of the Commission of Small Island States on Climate Change and International Law", International Journal of Marine & Coastal Law, 37/1, pp. 166-178, 2022, p. 172.

[81] ICJ, "Obligations of States in respect of Climate Change", https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf (Access Date: 14.08.2026).

emphasised that, since damage resulting from climate change is often irreversible or difficult to quantify precisely, the appropriate form of reparation and the amount of compensation must be determined in the light of the circumstances of each specific case.

Climate change is not merely an example of a negative externality; it affects the entire world and every aspect of life. While a single State is no more than a simple and helpless bystander in the face of climate change, all States, by acting together to reduce greenhouse gas emissions and thereby avoid crossing the threshold of dangerous climate disruption, can generate the necessary power. For this reason, combating climate change requires global cooperation. Under the umbrella of global cooperation, the 1992 United Nations Framework Convention on Climate Change (UNFCCC), the 1997 Kyoto Protocol, the 2015 Paris Agreement, and other international instruments on the subject have been adopted. However, although greenhouse gas emission reduction and adaptation policies will bring great benefits to the entire world, they entail costly procedures for States. The fact that this cost also adversely affects the citizens of States, and that States can already benefit from the mitigation and adaptation policies undertaken by other States, leads States to perform poorly in relation to these policy objectives and even to prefer not to make many commitments at the international level.[82]

B. The Vienna Convention and the Montreal Protocol

An assessment conducted in 1986 under the leadership of the National Aeronautics and Space Administration and sponsored by the United Nations Environment Programme (UNEP), the World Meteorological Organization, and other organisations concluded that continued chlorofluorocarbon (CFC) emissions at the 1980 rate would reduce global average ozone by approximately 9% by the second half of the following century, with even greater seasonal and latitudinal reductions. The fact that measurements taken between 1975 and 1985 showed that CFC accumulations had doubled, even though CFC production had stagnated at that time, revealed the long-term danger posed by these substances. Although the USA and the European Community[83] were the principal producers of CFCs, the fact that the ozone problem affected the entire world in its consequences led UNEP to assume an intermediary role in bringing about the signature of an international convention. UNEP soon made the protection of the ozone layer a priority. In this context, UNEP worked to inform the public about the danger to the ozone layer, provided an international forum for negotiations, and ultimately became the driving force behind the agreement reached. Both the USA and the European Community supported the adoption of a protocol containing provisions that would be economically favourable to themselves and unfavourable to the other side.[84] In 1985, the parties meeting in Vienna signed the Vienna Convention for the Protection of the Ozone Layer, an interim

[82] Armando Rocha, "Suing States: The Role of Courts in promoting States' Responsibility for Climate Change", Blue Planet Law: The Ecology of our Economic and Technological World, (eds.) Maria da Glória Garcia/ António Cortês, Springer Nature, 2023, p. 100.

[83] The European Community, also referred to as the European Economic Community, is the predecessor of the EU and was established to achieve economic integration among its Member States. Founded by France, Germany, Italy, Belgium, the Netherlands and Luxembourg, the European Community originally consisted of the European Coal and Steel Community, the European Atomic Energy Community and the European Economic Community [Corporate Finance Institute, "European Community", https://corporatefinanceinstitute.com/resources/economics/european-community/ (Access Date: 17.09.2024)].

[84] Although both the USA and the European Community were major producers of CFCs, the European Community was also a major exporter of CFCs, and therefore disputes arose during the negotiations on the Protocol as to whether the targets should be based on the consumption or the production of CFCs [UN, "Audiovisual Library of International Law: Environmental Law", https://legal.un.org/avl/ha/vcpol/vcpol.html#:~:text=The%20Vienna%20Convention%2C%20concluded%20in,that%20harm%20the%20ozone%20layer. (Access Date: 17.09.2024)].

convention that promoted international monitoring, research, and data exchange and provided a framework for eventual protocols on the control of substances that modify the ozone layer. At the same meeting, the parties adopted a separate resolution calling on UNEP to continue work on a CFC protocol, which was targeted for adoption in 1987.[85]

In 1987, the Montreal Protocol on Substances that Deplete the Ozone Layer was adopted, under which it was agreed to significantly reduce the production of chemicals capable of depleting the ozone layer and altering the global climate. Although international economic competition conflicted with international environmental cooperation, environmental concerns ultimately prevailed. The Montreal Protocol reflects the awareness that nations must work together in the face of global threats and that the efforts of others will be in vain if certain major actors do not participate. It is also an important milestone, symbolising fundamental changes both in the types of problems facing the modern world and in the way the international community addresses them.[86] The restriction of anthropogenic ozone-depleting substances through a multilateral convention, in the light of scientific findings that were not yet conclusive, served as a precedent for the climate change regime and also paved the way for the UNFCCC.[87] Apart from the Kigali Amendment, the Protocol has been amended four times; most recently, the Kigali Amendment adopted in 2016 brought the process of phasing down the production and consumption of hydrofluorocarbons within the scope of the Protocol.[88]

Türkiye became a party to the Montreal Protocol, which has been accepted by 198 parties comprising 197 States and the EU, on 19 December 1991, and has accepted all the amendments made under the Protocol. With the Kigali Amendment, which Türkiye accepted on 10 November 2021, it has committed, under its developing country status, to reducing hydrofluorocarbon production and consumption by more than 80% by 2045.[89]

C. United Nations Framework Convention on Climate Change (UNFCCC)

The IPCC was established in 1988 under the auspices of UNEP and the World Meteorological Organization to serve as the scientific body of the UN guiding international atmospheric research on global warming. The establishment of the IPCC was also intended to provide policy-makers with the best possible scientific assessment of global warming, to review and assess scientific developments relating to climate change, to assess the potential environmental and socio-economic impacts of climate change, and to identify potential response strategies. After the findings of the First Assessment Report prepared by the IPCC were submitted to the UN General Assembly and to the Second World Climate Conference in 1990, the report was adopted

[85] Richard Elliot Benedick, "Ozone Diplomacy", Issues in Science and Technology, 6/1, pp. 43-50, 1989, p. 44 et seq.

[86] Ibid., p. 50.

[87] Republic of Türkiye Ministry of Foreign Affairs, "Vienna Convention and Montreal Protocol", https://www.mfa.gov.tr/viyana-sozlesmesi-ve-montreal-protokolu.tr.mfa (Access Date: 05.01.2024).

[88] Republic of Türkiye Ministry of Environment, Urbanization and Climate Change, "Montreal Protocol", https://iklim.gov.tr/montreal-protokolu-i-38 (Access Date: 06.01.2024).

[89] Republic of Türkiye Ministry of Environment, Urbanization and Climate Change, "Türkiye Becomes a Party to the Kigali Amendment", https://iklim.gov.tr/turkiye-kigali-degisikligine-taraf-oldu-haber-24#:~:text=Ozon%20Tabakas%C4%B1n%C4%B1%20%C4%B0ncelten%20Maddelere%20%C4%B0li%C5%9Fkin,2022%20tarihinden%20itibaren%20y%C3%BCr%C3%BCrl%C3%BC%C4%9Fe%20girecek (Access Date: 06.01.2024).

by the UN General Assembly, and the foundations of the UNFCCC were laid. The UNFCCC was opened for signature at the Earth Summit held in Rio de Janeiro in 1992 and entered into force in March 1994.[90]

The COP serves as the supreme body of the UNFCCC. Taking into account the environmental, economic and social effects of the measures adopted, the COP performs functions in three categories: the adoption of protocols to the Convention, the supervision of the Convention's implementation programmes, and the review of the implementation of the Convention by the parties. It also has powers and responsibilities regarding the disbursement of financial resources; within the scope of these powers, it also decides on policies, programme priorities, and eligibility criteria for financial assistance to developing countries. The UNFCCC has a secretariat and two subsidiary bodies.[91]

The UNFCCC was signed together with the Convention on Biological Diversity, the United Nations Convention to Combat Desertification, and a set of non-binding principles on forest management. These conventions ushered in an era of global environmental governance and negotiations whose scope and intensity have grown to the extent that climate change is today regarded as a global concern equal to, or even surpassing, matters such as trade and security. The UNFCCC adopted a convention-protocol approach, whereby, as a first step, an institutional framework is established under the convention and only as a second step are commitments to address the problem in question agreed upon through subsequent protocols. The UNFCCC was designed as a framework convention that determines its own architecture and sets in motion a process towards achieving its ultimate objective.[92] The ultimate objective is the stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. The parties to the UNFCCC are obliged to reduce greenhouse gas emissions, to promote the conservation of sinks,[93] and to cooperate on research and technology.[94] The principles on which the Convention is based are listed in Article 3 as "*common but differentiated responsibilities*," "*consideration of the specific needs and special circumstances of developing country Parties,*" "*precaution*," "*promotion of sustainable development*" and "*cooperation for economic growth and development.*"[95]

The principle of "*common but differentiated responsibilities*" is a well-established concept in international environmental law and aims to ensure equality in international relations by balancing the responsibility of nations to solve global problems against their right to development. Nations share a common responsibility to protect the environment, or parts of it, at the national, regional and global levels. Secondly, the need

[90] Murtala Ganiyu A. Murgan, "Revisiting the role of United Nations Framework Convention on Climate change (UNFCCC) and the Kyoto protocol in the fight against emissions from international civil aviation", Nnamdi Azikiwe University Journal of International Law and Jurisprudence, 12/1, pp. 112-126, 2021, p. 114.

[91] Ibid., p. 115.

[92] Jonathan Kuyper/Heike Schroeder/Björn-Ola Linnér, "The Evolution of the UNFCCC", Annual Review of Environment and Resources, 43, pp. 343-368, 2018, p. 345.

[93] Sinks are natural or man-made systems that absorb carbon dioxide from the atmosphere and store it. Forests are the most common type of sink. Soil, peat, permafrost (permanently frozen) soil layers, ocean water and carbonate sediments in the deep ocean are other forms of sinks [Republic of Türkiye Ministry of Environment, Urbanization and Climate Change, "Climate Change: Sinks and Carbon Sequestration", https://cevreselgostergeler.csb.gov.tr/yutak-alanlar-ve-karbon-tutumlari-i-85723 (Access Date: 17.09.2024)].

[94] Republic of Türkiye Ministry of Foreign Affairs, "United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol", https://www.mfa.gov.tr/united-nations-framework-convention-on-climate-change-_unfccc_-and-the-kyoto-protocol.en.mfa (Access Date: 24.10.2023).

[95] Niels B. Bekkhus, "Kyoto and Beyond, International Burden-Sharing in the Fight Against Climate Change", Studia Diplomatica, 61/1, pp. 177-198, 2008, p. 180.

to take into account the particular circumstances of each nation, in particular each State's contribution to the development of a given problem and its ability to prevent, reduce and control the threat, constitutes an element of this principle. While the term "common" denotes collective or shared interests, common responsibilities refer to the shared obligations of two or more States towards the protection of a particular environmental resource. The term "differentiated responsibilities", on the other hand, aims at substantive rather than merely formal equality between developing and developed States within a regime. Accordingly, not all States Parties are subject to the same obligations, and responsibilities are determined on the basis of a range of factors, including the State's level of development and its contribution to addressing the problem at hand.[96]

The second principle, "*consideration of the specific needs and special circumstances of developing country Parties*", is based on the idea that poor and developing countries will suffer great harm from climate change, that many of these countries are already located in regions exposed to arid and extreme weather conditions, and that they have limited resources to prepare themselves and adapt to the effects of climate change. Since the countries currently emitting greenhouse gases are developed countries, it would be disproportionate to require only developing countries to undertake commitments against climate change. The third principle, the principle of "*precaution*", is based on the idea that the lack of absolute certainty regarding the effects of climate change should not be used as a reason for postponing measures. The fourth principle emphasises that the Parties have a right to promote sustainable development in a manner appropriate to their specific circumstances and integrated with national development programmes. Finally, the principle of "*cooperation for economic growth and development*" aims to establish, through cooperation, an economic system leading to sustainable economic growth and development. According to this principle, initiatives taken under the Convention shall not constitute a barrier to international trade and shall enable developing countries to follow an industrial, sustainable path of development.[97]

According to their commitments, the 198 Parties to the Convention are divided into three main groups, namely Annex I, Annex II and non-Annex I Parties, and the Annex II Parties, which are members of the OECD, also constitute a subset of the Annex I Parties. The Annex I Parties consist of the developed countries that were members of the Organisation for Economic Co-operation and Development (OECD) in 1992 as well as countries with economies in transition,[98] including the Russian Federation, the Baltic States and several Central and Eastern European countries. The Annex I Parties comprise 42 countries and the EU. The Annex II Parties comprise the OECD members of Annex I, but countries with economies in transition do not fall within this group. These countries are obliged to take all necessary steps to transfer environmentally sound technologies, particularly to developing countries, and to promote, facilitate and finance access to these technologies. The non-Annex I Parties, on the other hand, are mostly developing countries, and 155 of the 198 Parties are non-Annex I Parties. The 49 Parties classified by the UN as least

[96] Robin Kundis Craig, "Climate Change and Common but Differentiated Responsibilities for the Ocean", Carbon & Climate Law Review, 11/4, pp. 325-334, 2017, p. 329 et seq.

[97] Niels B. Bekkhus, op. cit., p. 181 et seq.

[98] The term "economy in transition" refers to an economy undergoing structural reform in order to become more market-oriented rather than centrally planned. Since the collapse of the Soviet Union, this term has been used mainly to describe the economic reforms carried out in Eastern and Central Europe and in the former Soviet countries. (Jan Svejnar, "Transition Economies: Performance and Challenges", Journal of Economic Perspectives, 16/1, pp. 3-28, 2002, p. 3).

developed countries are given special consideration owing to their limited capacity to respond to climate change and adapt to its adverse effects.[99]

Owing to its OECD membership, Türkiye was included in both the Annex I and Annex II lists in 1992, and at COP 7 of the UNFCCC in 2001 a decision was taken to remove Türkiye's name from Annex II. Today, Türkiye is listed only in Annex I. Nevertheless, it should be emphasised that Türkiye, which was included in Annex I in 1992, bears no historical responsibility for greenhouse gas emissions; indeed, while the average greenhouse gas emissions of the Annex I Parties amount to 14.37 tonnes of carbon dioxide per capita, Türkiye ranks near the bottom of the list with 3.88 tonnes of carbon dioxide per capita.[100]

Türkiye's position in combating climate change should be assessed within the framework of the principles of equity, common but differentiated responsibilities and the consideration of countries' different national circumstances, as adopted in international climate negotiations. In this framework, enabling developing countries to cope with the effects of climate change, strengthening adaptive capacity and ensuring access to adequate climate finance are among the key agenda items of the international climate regime.

This approach is also reflected in the decisions taken at the Conferences of the Parties held in recent years. Indeed, at COP 30, held in Belém, Brazil, in 2025, the Belém Adaptation Indicators were adopted by decision 12/CMA.7 at the seventh session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA 7).[101] The indicators were developed to monitor the progress made towards the global goal on adaptation set out in Article 7 of the Paris Agreement. It was stated that the indicators are voluntary, non-prescriptive and sensitive to national circumstances, that they are not intended for comparison between countries, and that they should not create an additional reporting burden for developing countries.

The Belém Adaptation Indicators cover seven main thematic areas: water; food and agriculture; health; ecosystems and biodiversity; infrastructure and human settlements; poverty eradication and livelihoods; and cultural heritage. In addition, indicators have been established relating to early warning systems and climate risk assessment, national adaptation planning, the implementation of adaptation policies, finance, technology and capacity-building, and monitoring, evaluation and learning processes.

The fact that the indicators cover key areas such as water, food, health and livelihoods is important for monitoring the impacts of climate change on living conditions. In particular, by taking into account adaptation efforts directed at populations and vulnerable groups disproportionately affected by climate change, the indicators contribute to strengthening the link between climate change and human rights.

The Belém Adaptation Indicators also provide for the principles of human rights, gender equality, intergenerational equity and social justice to be taken into account. Furthermore, the indicators may, where appropriate, be disaggregated by age, disability, socio-economic status, migration status and other social

[99] UN Climate Change, "Parties & Observers", https://unfccc.int/parties-observers (Access Date: 24.10.2023).

[100] Republic of Türkiye Ministry of Foreign Affairs, "United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol".

[101] UN Climate Change, "Matters relating to adaptation: Global goal on adaptation", https://unfccc.int/sites/default/files/resource/cma2025_L25E.pdf (Access Date: 14.08.2026).

categories. This approach contributes to monitoring progress in the field of climate change adaptation more inclusively with respect to different social groups.

The framework set out at COP 30 is also expected to serve as an important reference in the process of COP 31, to be held in 2026. The fact that Türkiye will host COP 31 gives our country the opportunity to contribute to ensuring that not only policies on combating and adapting to climate change but also their human rights, equality and justice dimensions are addressed on the international agenda. In the negotiations to be conducted within the framework of COP 31, issues such as adaptation, climate finance, technology, capacity-building and just transition are expected to come to the fore in line with the decisions taken at COP 30.[102] HREIT's work in the field of human rights also draws attention to the impacts of climate change on human rights, while the risks posed by the climate crisis to the enjoyment of the rights to life, health, water and food and of other fundamental rights are addressed from a human rights perspective. Accordingly, it is considered important that, in the negotiations to be conducted within the framework of COP 31, policies on combating and adapting to climate change be assessed together with their human rights, equality and justice dimensions.[103]

D. The Kyoto Protocol

The Parties, meeting at COP 1 held in Berlin in 1995 to review their commitments under the UNFCCC, agreed, by a decision known as the "Berlin Mandate", to strengthen the commitments under the UNFCCC by means of a protocol or another legal instrument, with the aim of setting quantified emission limitation and reduction objectives for the period after 2000 and elaborating policies and measures for emission reductions. The Ad Hoc Group on the Berlin Mandate, established to launch negotiations on that legal instrument, met eight times between 1995 and 1997 to discuss and develop the general framework and specific provisions of the new instrument. As a result of these meetings, a draft text was prepared to serve as the basis for the negotiations to be held at COP 3, thereby paving the way for the Kyoto Protocol.[104]

The Kyoto Protocol was adopted at the third session of the COP held in Kyoto, Japan, in 1997. The Protocol is an instrument that strengthens the UNFCCC and facilitates the implementation of the targeted policies. At COP 4, held in Buenos Aires in 1998, the focus was on mechanisms providing flexibility to countries and also offering an opportunity to strengthen the compliance regime.[105] The obligations relating to emission reduction targets, the timetable within which the targets must be achieved, the steps to be taken by countries, the mechanisms providing flexibility in respect of the obligations that countries must fulfil, the minimisation of the impacts of climate change on developing countries, and accounting, reporting, review and compliance with the provisions of the UNFCCC constitute the obligations and rules on which the Protocol is based.[106] It was stipulated that the Protocol would enter into force on the ninetieth day after the date on which two conditions had been met: ratification by at least 55 countries, and the inclusion among the ratifying countries of

[102] UN Climate Change Conference – Antalya, November 2026, https://unfccc.int/cop31 (Access Date: 14.08.2026).

[103] HREIT, The Report on Protection and Promotion of Human Rights 2023, Ankara, 2025, p. 104.

[104] Clare Breidenich/Daniel Magraw/Anne Rowley/James W. Rubin, "The Kyoto Protocol to the United Nations Framework Convention on Climate Change", The American Journal of International Law, 92/2, pp. 315-331, 1998, p. 318.

[105] Ibid., p. 330.

[106] UNFCCC, Caring for Climate: A Guide to the Climate Change Convention and the Kyoto Protocol, UNFCCC, Bonn, 2003, p. 16.

Annex I Parties accounting for at least 55% of total carbon dioxide emissions in 1990. While the condition concerning the number of countries was met on 31 May 2002 with the simultaneous ratification of the Protocol by 15 EU countries, the second condition was met with Russia's ratification of the Protocol on 18 November 2004. The Kyoto Protocol entered into force on 16 February 2005.[107]

The Kyoto Protocol changed the content of global warming policies by setting greenhouse gas emission reduction targets for certain countries.[108] This target is for the Annex I Parties to reduce their greenhouse gas emissions by at least 5% below 1990 levels. While Annex A of the Kyoto Protocol specifies the gases and sectors covered by the agreement, Annex B sets out the greenhouse gas reduction target of each country. With the exception of Türkiye, the Parties listed in Annex I are also listed in Annex B.[109]

At COP 7, held in Marrakesh, Morocco, in 2001, the "Marrakesh Accords", a set of rules of approximately two hundred pages for the implementation of the Kyoto Protocol and the UNFCCC, were adopted.[110] In 2005, the first meeting under the Kyoto Protocol (MOP[111] 1) was held in Montreal. The "Procedures and Mechanisms relating to Compliance under the Kyoto Protocol", contained in the Marrakesh Accords, were adopted pursuant to Article 18 of the Protocol in order to promote, facilitate and, where necessary, enforce compliance with the core obligations.[112] The *Compliance Committee* consists of two separate branches: the *Facilitative Branch* and the *Enforcement Branch*. The Facilitative Branch assists the Parties by providing technical, administrative and financial support when they experience difficulties in fulfilling their obligations. The Enforcement Branch, for its part, ensures the application of sanctions in cases of non-compliance with obligations by the Parties, with a view to restoring and promoting compliance and ensuring environmental integrity. The consequences faced by the parties are determined according to the nature and significance of the obligation breached. It is provided that, in the event of a breach, the situation shall be determined and declared, the Party concerned shall prepare an action plan and the policies and measures to be implemented under the plan shall be reported. The Enforcement Branch also has deterrent powers, such as the suspension of international emissions trading and the deduction of the amount by which the Parties have exceeded their emission commitments from their entitlements for the subsequent commitment period.[113] Safeguards such as the equality of the Parties, granting the Party the right to defend itself and to be heard, placing the burden of proof on the claimant, the requirement that decisions be reasoned, and the requirement that the Enforcement Branch take a new decision where a qualified majority of three quarters is reached in the COP or the MOP demonstrate that the compliance

[107] Jon C. Lovett, "1999 Kyoto Protocol", Journal of African Law, 49/1, pp. 94-96, 2005, p. 94.

[108] Article 3: "The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012."

[109] Aurelia Bengochea Morancho/Immaculada Martínez Zarzoso, "Economic Effects of the Kyoto Mechanisms", The Kyoto Protocol: Economic Assessments, Implementation Mechanisms, and Policy Implications, (ed.) Christophe P. Vasser, Nova Science Publishers, 2009, p. 184.

[110] David A. Wirth, "The Sixth Session (Part Two) and Seventh Session of the Conference of the Parties to the Framework Convention on Climate Change", The American Journal of International Law, 96/3, pp. 648-660, 2002, p. 648 et seq.

[111] The MOP is the supreme body of the Kyoto Protocol, meeting annually for negotiations within the framework of the UNFCCC and the COP (UN-REDD Programme, "Meeting of the Parties (MOP)", https://www.un-redd.org/glossary/meeting-parties-mop (Access Date: 30.05.2024)).

[112] Şule Anlar Güneş, "Ensuring Compliance with Climate Change Obligations: The Kyoto Protocol Compliance Mechanism", Uluslararası İlişkiler Dergisi, 8/31, pp. 69-94, 2011, p. 71.

[113] Şule Anlar Güneş, op. cit., p. 74 et seq.

system has a legitimate basis and a quasi-judicial character. At the same time, the balance between the effectiveness of the system and legality is also preserved.[114]

In accordance with the principle of common but differentiated responsibilities, the obligations relating to emission reductions are borne by the Annex I Parties, which are developed countries, and in practice achieving the emission reduction target has not proved easy. Flexibility mechanisms were established in order to strike a balance between developed and developing countries and to make it easier for developed countries to fulfil their obligations.[115] In this way, environmental targets can be achieved at the lowest possible cost, while joint projects can be established between developed and developing countries.[116]

International emissions trading, the joint implementation mechanism and the clean development mechanism are the mechanisms under the Kyoto Protocol that provide developed countries with flexibility in achieving the greenhouse gas emission reduction target. Article 16, which regulates international emissions trading, grants the Parties listed in Annex B the right to participate in emissions trading[117] in order to fulfil their commitments referred to in Article 3 of the Protocol. Within the framework of this trading, parties with a surplus of the emission allowances granted to them have the right to sell their credits to others.[118] However, it should be noted that, under international law, States are obliged to perform their commitments themselves, and transferring these commitments to others by paying for them does not mean that the commitments has been fulfilled. By way of example, just as a citizen cannot pay to have another person perform a civic duty that he or she is required to perform in person, such as military service, States must also perform their duties themselves.[119] Accordingly, the need to discuss whether it is fair for countries to enjoy an advantage in emissions trading because they are economically stronger should not be overlooked.

Article 6, which regulates the second mechanism, the joint implementation mechanism, provides that any Party included in Annex I may transfer to any other such Party emission reduction units resulting from projects aimed at reducing anthropogenic emissions or enhancing anthropogenic removals by sinks in any sector of the economy. Accordingly, two Parties listed in Annex I may conclude an agreement between them, and the greenhouse gas reductions achieved through a project undertaken in the host country and based on the prevention, reduction or sequestration of greenhouse gases may generate credits for the investor country. Third and finally, the clean development mechanism regulated in Article 12 is based on an agreement between Parties included and not included in Annex I, in other words between developed and developing countries. The emission reductions resulting from the project are referred to as certified emission reductions. The purpose of the mechanism is to assist Parties not included in Annex I in achiev-

[114] Ibid., p. 86 et seq.

[115] Ibid., p. 70; Chen Gang, "The Kyoto Protocol and the Logic of Collective Action", The Chinese Journal of International Politics, 1/4, pp. 525-557, 2007, p. 532.

[116] Eriika Melkas, "Equitable as Equal: The Kyoto Protocol Project Based Flexibility Mechanisms in an Unequal World", International Community Law Review, 9/3, pp. 263-290, 2007, p. 263.

[117] By virtue of the right to emissions trading, a Party listed in Annex I may trade the amount of emissions set out for it in Annex B to the Kyoto Protocol. In other words, an Annex I Party that achieves emission reductions greater than the amount it has committed to may sell this additional reduction to another Annex I Party [Republic of Türkiye Ministry of Energy and Natural Resources, "Emissions Trading", https://evcedruzgar.enerji.gov.tr/iklim_deg/emisyon_ticareti.aspx (Access Date: 17.09.2024)].

[118] Aurelia Bengochea Morancho/Immaculada Martínez Zarzoso, op. cit., p. 184 et seq.

[119] Simon Caney/Cameron Hepburn, "Carbon Trading: Unethical, Unjust and Ineffective?", Royal Institute of Philosophy Supplements, 69, pp. 201-234, 2011, p. 214.

ing sustainable development and to assist Parties included in Annex I in achieving compliance with their quantified emission limitation commitments. Thus, while Parties not included in Annex I benefit from project activities resulting in certified emission reductions, Parties included in Annex I may use the certified emission reductions accruing from project activities to comply with their quantified emission limitation commitments. Both joint implementation and the clean development mechanism are project-based mechanisms, and the difference between them is that, under the joint implementation mechanism, the Parties to the project are listed in Annex I, whereas under the clean development mechanism one party is an Annex I Party and the other a non-Annex I Party. By enabling the transfer of emission rights or emission reduction credits between countries, these three mechanisms allow the Parties to access cost-effective opportunities to reduce emissions or to remove carbon from the atmosphere in other countries.[120]

The inadequacy of the content of the Kyoto Protocol prevented it from providing a solution to the problem of climate change. First, a very short period was envisaged for implementing the measures under the Kyoto Protocol, and the Parties were encouraged to adopt policies that could be achieved quickly rather than those involving permanent or radical changes. Although the Protocol was adopted in 1997, it only entered into force in 2005, and its commitment period covered only the years 2008–2012. This time constraint severely limited the policy options available to the parties. For example, where a policy of transition to nuclear energy, which does not produce greenhouse gases, is to be implemented, the construction of a new plant takes approximately five to seven years, excluding the planning stages. Similarly, a transition to renewable forms of energy such as solar or wind power requires a serious research and development incentive. The limited time, in turn, led the parties to turn to more micro-level policies, such as increasing energy efficiency, rather than adopting long-term strategies. Secondly, assigning each developed country a target of reducing its emissions by an average of 5% meant choosing an insignificant and static target for emission reduction, and this choice of target meant that the policies would not require large-scale changes. Germany and the United Kingdom, by contrast, were exceptions, voluntarily adopting more progressive targets (21% for Germany and 12.5% for the United Kingdom), deeper policies and a longer time frame for action. The accounting of emission reductions gives rise to a third problem. For instance, the clean development mechanism allows Annex I Parties to earn credits through emission-reducing development projects and to avoid cuts in their own countries while paying for reductions elsewhere. This, in turn, means that, although countries may appear to have reduced emissions in accounting terms by shifting their production overseas, emissions are merely concealed and global temperatures continue to rise.[121] In this case, as with emissions trading, the question arises whether it is ethical and fair for economically powerful countries to lighten their obligations in combating climate change through projects carried out in other countries. Although, legally, the countries benefiting from this mechanism do not appear to go beyond the scope of their obligations or to exceed their quantified limits, it is evident that it renders the efforts made ineffective from the perspective of humanity.

Political and economic competition also raises doubts as to whether the Protocol created a politically and economically fair environment. While developed countries were expected to achieve their emission reduction targets, developing countries were exempted and permitted to use fossil fuels at existing levels.

[120] Aurelia Bengochea Morancho/Immaculada Martínez Zarzoso, op. cit., p. 184 et seq.

[121] Amanda M. Rosen, "The Wrong Solution at the Right Time: The Failure of the Kyoto Protocol on Climate Change", Politics & Policy, 43/1, pp. 30-58, 2015, p. 40 et seq.

However, many countries argued that not only the countries listed in Annex I but all countries should do their part to mitigate climate change. For instance, developing countries such as India and China were exempted from the Protocol despite producing large quantities of greenhouse gases.[122] Since China was classified as a developing country, it was among the non-Annex I Parties. Not being bound by the requirements of the Protocol, it was able to focus on its own economic growth, and as a result of this growth it became the world's largest emitter of carbon.[123]

At COP 18, held in Doha in 2012, an amendment to the Kyoto Protocol was adopted, establishing a second commitment period covering 2012–2020.[124] Whereas the reduction target for the first period was 5%, the targets for the second commitment period called for an average reduction of 18% by 2020, and Canada, the USA, Russia, New Zealand and Japan refused to take part in the new period. Although the period was extended, the problems relating to the Protocol persisted, and, as a result of short-term policies relying on loopholes in the agreement, the situation regarding the impacts of climate change has been no better than in 1997.[125] The Kyoto Protocol paved the way for its successor, the Paris Agreement, and accelerated the development of climate policy by ensuring that climate change was regarded as a global problem. However, owing to reasons such as the failure of developing countries to set targets under the Protocol, the failure of the developed countries that did set targets to take sufficient steps and the weak solutions offered by the flexibility mechanisms, the Kyoto Protocol was unable to achieve the expected success in combating climate change.

Türkiye became a party to the Kyoto Protocol in 2009. Since Türkiye was not a party to the UNFCCC in 1997, when the Protocol was adopted, it was not included in the Annex B list of the Protocol, and Türkiye therefore has no quantified greenhouse gas emission reduction or limitation commitment.[126] With the Paris Agreement becoming operative for the post-2020 period, the Kyoto Protocol has completed its function, and the second commitment period was accepted only as a formality.[127]

E. The Paris Agreement

As countries were unable to reach agreement on emission reductions and their duration under the Kyoto Protocol, in 2015, 196 parties, comprising 195 countries and the EU, reached consensus on a new climate agreement, which UN Secretary-General Ban Ki-moon described as "*a monumental triumph for people and our planet*". The Paris Agreement represents a notable development in which the downward trajectory of UN-backed climate negotiations was reversed.[128]

The aims of the Agreement are to enhance the implementation of the UNFCCC and to limit the increase in temperature by the end of the 21st century to 2°C above pre-industrial levels and, if possible, to a lower

[122] David B. Resnik, "Environmental justice and climate change policies", Bioethics, 36/6, pp. 735-741, 2022, p. 739.

[123] Asia Society, "Key Factors Shaping China's Engagement With International Environmental Law", https://asiasociety.org/policy-institute/key-factors-shaping-chinas-engagement-international-environmental-law (Access Date: 17.09.2024).

[124] European Parliament, "Doha Amendment to the Kyoto Protocol", https://www.europarl.europa.eu/EPRS/EPRS-AaG-559475-Doha-Agreement-Kyoto-Protocol-FINAL.pdf (Access Date: 19.10.2023).

[125] Amanda M. Rosen, op. cit., p. 43 et seq.

[126] Republic of Türkiye Ministry of Foreign Affairs, "Kyoto Protocol", https://www.mfa.gov.tr/kyoto-protokolu.tr.mfa (Access Date: 28.11.2023).

[127] Republic of Türkiye Ministry of Foreign Affairs, "Kyoto Protocol".

[128] Robert Falkner, "The Paris Agreement and the New Logic of International Climate Politics", International Affairs, 92/5, pp. 1107-1125, 2016, p. 1107.

level. Following the same philosophy as the Kyoto Protocol, the Agreement focuses on emission reduction and adaptation to the phenomenon of climate change; in addition to the emission reduction obligation, it contains both binding and non-binding provisions relating to financial obligations and adaptation obligations. The Agreement has a framework comprising the elements of "*emission reduction, adaptation, finance, technology development and transfer, capacity-building and transparency*". Unlike under the Kyoto Protocol, the Parties themselves determine the scope and form of their participation in accordance with the rules laid down in the Agreement.[129] Acknowledging the primacy of domestic politics in climate change and allowing the parties to set their own levels of ambition ushered in a new era in international climate policy, offering the possibility of more durable cooperation. By enabling countries to set targets suited to their own circumstances and capacities, this approach ensures greater compliance. The absence from this Agreement of the coercive provisions contained in the Kyoto Protocol led the major emitting countries, which would previously have blocked progress in the negotiations, to support the Agreement, and meant that no responsible major power wished to remain outside the newly emerging climate consensus. Indeed, the signing in November 2014 of a bilateral agreement on climate change between the USA and China, the world's largest carbon emitters, emerged as a harbinger of this new unity of purpose.[130]

The nationally determined contributions declared by the Parties regarding emission reduction targets are not legally binding. Consequently, there is no particular country to blame if the set target is not achieved. The fact that the quantitative commitments under the Kyoto Protocol applied only to developed countries, that it excluded countries such as China and India, which would become the largest carbon emitters of the future, that the USA refused to ratify the Protocol, that countries such as Canada withdrew from it, and that only a handful of countries remained Parties to the Protocol, sent humanity back to square one in its goal of combating climate change. The Paris Agreement offers a second chance in this respect, and although voluntary commitments are less ambitious than binding ones, the fact that the Agreement covers more Parties than the Protocol is regarded as an advantage.[131] The Agreement has made climate change a firm part of public policy worldwide, and governments have adopted legislation on emission control, energy efficiency standards and low-carbon technological innovation.[132]

Differences in countries' levels of economic development, resource endowments and degrees of exposure to climate impacts affect their views on climate policies. For example, while relatively poor, low-lying island States with no fossil fuel reserves, such as the Maldives, have expressed their support for international emission reduction policies and adaptation measures, relatively wealthy countries whose national economies depend on the use of fossil fuels, such as Saudi Arabia, tend to oppose greenhouse gas reduction policies. Among the countries lying between these two extremes, the impacts of climate and the cost of climate policies are distributed differently. Cost-benefit calculations, social perceptions, environmental values, commercial interests and political institutions are the factors that shape countries' positions.[133]

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[129] Hojjat Salimi Turkamani, "From Kyoto to Paris: Problematic Route of State Responsibility for Climate Changes", Law Review, 23/4, pp. 321-335, 2021, p. 329.

[130] Robert Falkner, "The Paris Agreement and the New Logic of International Climate Politics", p. 1108 et seq.

[131] Alejandro Caparrós, "The Paris Agreement as a Step Backward to Gain Momentum: Lessons From and For Theory", Revue d'économie Politique, 126/3, pp. 347-356, 2016, p. 348 et seq.

[132] Robert Falkner, "The Paris Agreement and the New Logic of International Climate Politics", p. 1120.

[133] Robert Falkner, "The Paris Agreement and the New Logic of International Climate Politics", p. 1120.

Under the Agreement, the Parties strengthen the existing adaptation framework by subjecting their national adaptation policies to a five-yearly review mechanism. In accordance with the principle of progression, the parties are required to submit a new nationally determined contribution every five years; this contribution must reflect the Party's highest possible level of ambition and contain a commitment going beyond its previously submitted contribution.[134] The Parties may adjust their contributions at any time with a view to enhancing them. Starting in 2023 and every five years thereafter, the Parties will take stock of the implementation of the Agreement to assess collective progress towards achieving the purpose of the Agreement and its long-term goals, and it is envisaged that new nationally determined contributions will be informed by the outcomes of the preceding global stocktake.[135]

For the international review mechanism to operate effectively, transparency must be properly ensured. Even if no particular sanction is imposed on States as a result of this mechanism, peer pressure among the Parties and the identification, in sessions repeated every five years, of which Parties have been able to fulfil which of their commitments and to what extent, are important in increasing the likelihood that commitments will be fulfilled. In the review sessions held every five years, the Parties will be able to determine which countries have fulfilled their previous commitments and whether new and more ambitious commitments are needed to achieve the temperature goal. While a "naming and shaming" strategy will be used against countries that fall short of international expectations, the successful implementation of commitments will strengthen trust and create a virtuous circle that enhances cooperation. Naming and shaming mechanisms operate in various global governance contexts, from the International Labour Organization to human rights bodies and corporate social responsibility institutions, generally as a back-up mechanism where formal compliance and enforcement processes are absent or ineffective. Countries also care about how their conduct is collectively assessed, since it is in their own interest to cooperate with others in the future. However, where there are large gaps between countries' commitments and their actual practice, there is also a possibility of a downward spiral in which countries' trust and determination diminish.[136]

It may be said that whether peer pressure and the "naming and shaming" strategy will work consistently over several decades is open to debate. Although international reputation is an important consideration, countries may prefer to give greater weight to domestic interests on the basis of cost-benefit calculations. Countries in financial, political or economic crisis may prioritise the needs of voters and the growth of local industry and the national economy over voluntary and non-binding commitments under the Agreement. Cost, in particular, will be a factor leading governments to avoid ambitious targets when submitting their nationally determined contributions. For example, the cost for the USA of pursuing the policy needed to prevent warming beyond 2°C is estimated at trillions of dollars. Given the high costs that must be incurred for emission reduction, there is nothing to prevent governments from submitting a nationally determined contribution containing low targets and stating that the target indicated is the full contribution they can make. The fact that Canada, which withdrew from the Kyoto Protocol in 2011, did not face significant retaliation and was admitted to the Paris Agreement negotiations only a few years later, and that the USA was able to rejoin the Agreement as a party after withdrawing from it, shows that the "naming and shaming" strategy is

[134] Ralph Bodle/Lena Donat/Matthias Duwe, "The Paris Agreement: Analysis, Assessment and Outlook", Carbon & Climate Law Review, 10/1, pp. 5-22, 2016, p. 9.

[135] Noah M. Sachs, "The Paris Agreement in the 2020s: Breakdown or Breakup?", Ecology Law Quarterly, 46/3, pp. 865-910, 2019, p. 874.

[136] Robert Falkner, "The Paris Agreement and the New Logic of International Climate Politics", p. 1121.

not a sufficient sanction. Nevertheless, the fact that more than 190 countries have engaged in cooperation by participating and making commitments offers hope that a process based on mutual trust may develop.[137]

Türkiye signed the Paris Agreement together with representatives of 175 countries at the High-Level Signature Ceremony held in New York on 22 April 2016. The instrument of ratification of the Agreement, whose domestic ratification process was completed upon its approval by Presidential Decision on 7 October 2021, was deposited with the UN Secretary-General on 11 October 2021. In its national declaration, Türkiye stated that it participates as a developing country. On 20 September 2015, Türkiye announced an emission reduction target of 21% to be achieved by 2030; since Türkiye was not a party to the Agreement at that date, this declaration is referred to as an *intended* nationally determined contribution. At COP 27, held in Sharm El-Sheikh, Egypt, in 2022, it was announced that the previously declared reduction target of up to 21% by 2030 had been raised to 41%, which would result in an emission reduction of approximately 500 million tonnes. In addition, President Recep Tayyip Erdoğan announced a net zero emissions target for 2053.[138] Growing population and economic activity increase greenhouse gas emissions, placing a financial strain on Türkiye, which relies solely on its own national resources for emission reduction. Türkiye overcomes this difficulty by differentiating itself as a developing country pursuant to the right it derives from the Vienna Convention on the Law of Treaties.[139]

F. Goal 13: Climate Action under the 2030 Sustainable Development Goals (SDGs)

Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.[140] Adopted by all UN Member States in 2015, the 2030 Agenda for Sustainable Development provides a blueprint for peace and prosperity for the whole world and consists of 17 Sustainable Development Goals, which constitute an urgent call to action. Recognising that ending poverty and other deprivations must go hand in hand with strategies that improve health and education, reduce inequality and spur economic growth, these goals also encompass tackling climate change and preserving nature. "*Take urgent action to combat climate change and its impacts*" constitutes Goal 13[141] of the SDGs.[142] The SDGs do not propose targets or restrictive standards as concrete as those of the Paris Agreement; however, they outline the goals that the international community should strive to achieve in respect of climate change adaptation and emission reduction.[143]

[137] Noah M. Sachs, op. cit., p. 876 et seq.

[138] Republic of Türkiye Ministry of Foreign Affairs, "Paris Agreement".

[139] İzzet Arı, "Türkiye's Climate Policy", Insight Turkey, 24/2, pp. 89-112, 2022, p. 107.

[140] Inga T. Winkler/Carmel Williams, "The Sustainable Development Goals and Human Rights: A Critical Early Review", The International Journal of Human Rights, 21/8, pp. 1023-1028, 2017, p. 1024.

[141] Sustainable Development Goal 13: "13.1 Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries, 13.2 Integrate climate change measures into national policies, strategies and planning, 13.3 Improve education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning, 13.a Implement the commitment undertaken by developed-country parties to the United Nations Framework Convention on Climate Change to a goal of mobilizing jointly $100 billion annually by 2020 from all sources to address the needs of developing countries in the context of meaningful mitigation actions and transparency on implementation and fully operationalize the Green Climate Fund through its capitalization as soon as possible, 13.b Promote mechanisms for raising capacity for effective climate change-related planning and management in least developed countries and small island developing States, including focusing on women, youth and local and marginalized communities."

[142] United Nations Department of Economic and Social Affairs, "Sustainable Development: The 17 Goals", https://sdgs.un.org/goals (Access Date: 08.01.2024).

[143] Kristen Cordell, "Climate Cooperation and Competition: Leveraging Sustainable Development Goal 13", Center for Strategic and International Studies (CSIS), 2021, p. 2.

At its 48th session in October 2021, the UN Human Rights Council established a special rapporteur mandate on the promotion and protection of human rights in the context of climate change and set out the rapporteur's tasks. These tasks are listed as studying and identifying how climate change affects the full and effective enjoyment of human rights, and identifying and promoting good practices, strategies and policies and making recommendations. Raising awareness, providing technical assistance and capacity-building, integrating a perspective inclusive of all humanity into the work, promoting cooperation at the international level and working closely with stakeholders constitute the rapporteur's other tasks.[144]

G. The European Green Deal

In EU legislation, the foundation of climate law rests on Article 3 of the Treaty on European Union, Article 191(2) of the Treaty on the Functioning of the European Union and Article 37 of the Charter of Fundamental Rights of the European Union. With the emergence of climate change as an issue requiring urgent action, the European Council reached a decision on the new scope of the EU's climate targets. The European Green Deal, announced in December 2019, adopted a strategy of reducing carbon emissions by at least 55% by 2030 and transitioning to an economy with zero carbon dioxide emissions by 2050. This strategy arose from the need for a series of legal developments and political commitments that would make climate law part of the EU legal order following important steps in international law, such as the Paris Agreement and the 2030 SDGs. Ultimately, the aim is to transform the EU by 2050 into a fair and prosperous society with a modern, resource-efficient and competitive economy.[145]

The European Green Deal has three main objectives. The first is to make the EU a global leader in the green transition, the second is to transform the EU economy for a sustainable future, and the third is to establish a European Climate Pact. To achieve these objectives, the European Commission is putting into effect interim legislative instruments and policies, such as the European Climate Law, and revising climate-related policy instruments where necessary. Under the umbrella of the European Climate Law, the binding targets up to 2050 will be established as legally binding and more sources of finance will be mobilised. The Deal is intended to be a holistic and wide-ranging project addressing a variety of issues, among them a clean and circular economy, including energy-intensive industries such as steel, chemicals and cement; sustainable and smart mobility; an environmentally friendly food system; and the protection of ecosystems and biodiversity.[146]

Through the Carbon Border Adjustment Mechanism (CBAM), as part of the European Green Deal and its climate policy, the EU aims to preserve Europe's competitiveness in the face of the costs that the green transition will generate, to prevent production from shifting outside the EU and, at the same time, to step up efforts to combat climate change. It is envisaged that the carbon pricing[147] applied within the EU since

[144] OHCHR, "About the Mandate: Special Rapporteur on Climate Change", https://www.ohchr.org/en/specialprocedures/sr-climate-change/about-mandate (Access Date: 09.01.2024).

[145] Alicja Sikora, "European Green Deal – legal and financial challenges of the climate change", ERA Forum, 21, pp. 681-697, 2021, p. 682 et seq.

[146] Steven Verschuur/Cecilia Sbrolli, "The European Green Deal and State Aid: The Guidelines on State Aid for Environmental Protection and Energy Towards the Future", European State Aid Law Quarterly, 19/3, pp. 284-289, 2020, p. 284 et seq.

[147] Carbon pricing puts a price on the environmental cost of greenhouse gas emissions and internalises negative environmental externalities. The pricing revenues obtained are used for environmental purposes and create an important opportunity for the green transition. (Republic of Türkiye Ministry of Environment, Urbanization and Climate Change, "State and Trends of Carbon Pricing 2024 Report", https://iklim.gov.tr/karbon-fiyatlandirmada-mevcut-durum-ve-trendler-2024-raporu-haber-4278#:~:text=Karbon%20fiyatland%C4%B1rma%20ara%C3%A7lar%C4%B1%2C%20sera%20gaz%C4%B1,i%C3%A7in%20%C3%B6nemli%20bir%20f%C4%B1rsat%20yaratmaktad%C4%B1r (Access Date: 24.09.2024)).

2005 under the EU Emissions Trading System (EU ETS) as a flexibility mechanism will also be applied to imports of products falling within the scope of the CBAM. This also serves as a mechanism to prevent the risk of carbon leakage, which arises when companies covered by the EU ETS shift their production to countries whose efforts to combat climate change are not at the EU level. Indeed, costs equivalent to those under the EU ETS will be borne by importers.[148]

It is inevitable that commercial and economic relations between the EU and Türkiye under the Customs Union will be affected by these developments. A roadmap has been established to monitor developments and ensure adaptation, and Presidential Circular No. 2021/15 on the Green Deal Working Group and the Green Deal Action Plan was published in the Official Gazette dated 16.07.2021. Under the Action Plan, targets have been set in respect of carbon border adjustments, a green and circular economy, green finance, a clean, economical and secure energy supply, sustainable agriculture, sustainable smart transport, combating climate change, diplomacy, and information and awareness-raising.[149]

H. Green Jobs

The concept of green jobs has become emblematic of a sustainable economy and society that seeks to protect the environment for both present and future generations and to be fairer and more inclusive for humanity. Being highly efficient, these jobs help to avoid the waste of energy, raw materials and water, to decarbonise the economy, to reduce greenhouse gas emissions, to prevent pollution and to protect ecosystems and biodiversity. They reduce the environmental impacts of enterprises and economic sectors, bringing them down to sustainable levels, and contribute to preserving and restoring environmental quality. For instance, bioenergy, an alternative type of fuel, has a high potential for job creation and also offers significant opportunities in terms of environmental and social benefits.[150]

Climate change and efforts to adapt to it have far-reaching implications for economic and social development, for production and consumption and thus for employment, income and poverty. These consequences hold both major risks and opportunities for working people in all countries, but particularly for the most vulnerable segments in the least developed countries and small island States. Aligning economic growth and development with the stabilisation of the climate and a sustainable environmental footprint requires a serious transition worldwide towards clean development and green, low-carbon economies. This transition means that economies and societies will undergo a second great transformation, as far-reaching as the first transformation brought about by the Industrial Revolution.[151]

Within the framework of the green growth approach, environmental and economic policies must be addressed together. Green jobs, which ensure the protection of the environment alongside balanced eco-

[148] Republic of Türkiye Ministry of Trade, "EU CBAM Information Note", https://ticaret.gov.tr/dis-iliskiler/yesil-mutabakat/ab-sinirda-karbon-duzenleme-mekanizmasi/ab-skdm-bilgi-notu (Access Date: 10.01.2024).

[149] Republic of Türkiye Ministry of Trade, "Green Deal Action Plan and Working Group", https://ticaret.gov.tr/dis-iliskiler/yesil-mutabakat/yesil-mutabakat-eylem-plani-ve-calisma-grubu (Access Date: 10.01.2024).

[150] UNEP/International Labour Organization/International Organisation of Employers/International Trade Union Confederation, "Green Jobs: Towards Decent Work in a Sustainable, Low-Carbon World", UNEP: Nairobi, 2008, p. 1 et seq.

[151] Ibid., p. 2 et seq.

nomic, social and environmental development, increase social welfare and place people at their centre, are expected to expand employment and create decent work.

I. Work of National Human Rights Institutions

National human rights institutions, as independent institutions, not only have a constitutional mandate to address individual and systemic human rights violations but also usefully complement the work of both the judiciary and the government. Their broad and flexible constitutional mandate enables them, unlike courts, to initiate and conduct inquiries and investigations whenever they wish, to choose freely the subject of their inquiries and investigations, to draw on independent research capacity and to propose comprehensive and innovative remedies. Their ability to request information and documents from the relevant institutions and organisations, to cooperate with them, to carry out reporting and advisory work, to initiate judicial proceedings depending on their mandate, and to conduct conciliation and mediation as alternative dispute resolution places national human rights institutions in a good position to seek remedies for human rights violations arising from climate change.[152]

Addressing climate change through a human rights-based approach provides the legal basis for rights-holders to assert claims against duty-bearers and strengthens the position of rights-holders. It is therefore argued that integrating climate change with human rights norms and principles will have a positive effect on remedying the adverse consequences of climate change, and that this holistic approach will benefit, in particular, the persons and groups most affected by climate change.[153] At its annual conference held in 2020, the Global Alliance of National Human Rights Institutions (GANHRI) committed national human rights institutions, as independent public institutions with broad mandates, to working individually and collectively to promote human rights-based climate action, and the declaration issued set out the methods by which they would work for climate justice. Reporting on climate change, making recommendations, promoting policy measures, monitoring potential risks and assessments prior to projects, advocating for climate action policies, including climate change-related applications in complaints mechanisms and providing effective remedies were listed among the commitments at the national level. Serving as a bridge between policy-makers, civil society and other stakeholders, providing a platform for the exchange of ideas, and participating in national, regional and international processes in order to encourage action are the commitments at the international level. In assuming these tasks, national human rights institutions will act collectively with the networks of national human rights institutions in their regions and in harmony with GANHRI and the UN system.[154] At the 2020 GANHRI Annual Conference, national human rights institutions from around the world recognised the importance of protecting the environment and biodiversity for future generations and committed themselves to striving for climate justice. To further support its members in this important endeavour, GANHRI published the Practical Guidance for NHRIs on Addressing Human Rights and Climate Change.[155] The main

[152] WaterLex, "Climate Change and Health: The Role of National Human Rights Institutions", https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/Impact/Waterlex.pdf (Access Date: 08.01.2024).

[153] Feza Sencer Çörtoğlu, "A Human Rights-Based Approach to Climate Change: Integrating Human Rights and Climate Change", Symposium on Climate Change and the Right to Food in the Context of Human Rights (Human Rights and Equality Institution of Türkiye, 2022), (eds.) Pelin Babaoğlu/Mücahit Yasin Zabunoğlu, Göktuğ Ofset Yayıncılık Matbacılık Tic. Ltd. Şti., Ankara, 2024, p. 52 et seq.

[154] GANHRI, "Climate Change and Human Rights", https://ganhri.org/climate-change-and-hr/ (Access Date: 08.01.2024).

[155] GANHRI, "Practical Guidance for NHRIs on Addressing Human Rights and Climate Change", https://ganhri.org/wp-content/uploads/2022/10/Practical-Guidance-for-NHRIs-on-Addressing-Climate-Change_EN.pdf (Access Date: 14.08.2026).

purpose of the Guidance is to help national human rights institutions integrate climate change and climate action into their human rights mandates. The publication emphasises that the global climate crisis directly threatens the full enjoyment of human rights, including the rights to life, health, food and housing and the right to live in a healthy environment. The Guidance sets two main objectives for national human rights institutions with regard to climate action:

To encourage governments and the private sector to reduce greenhouse gas emissions, adapt to climate impacts and build resilience.

To ensure that climate change mitigation and adaptation measures are carried out in full conformity with international human rights standards.

In November 2024, GANHRI published an open letter for COP 29, held in Baku, Azerbaijan. The main purpose of the letter is to invite States to place human rights at the centre of their policies, negotiations and commitments on combating climate change. The key points highlighted in the letter are:[156]

- Prioritising human rights in climate finance commitments,
- Placing human rights at the centre of national climate targets,
- Establishing a just and human rights-based loss and damage fund,
- The need to integrate human rights principles into adaptation policies through a country-driven, inclusive and participatory, gender-responsive and locally led approach,
- Calling on all Parties attending COP 29 to recognise the rights of human rights defenders and to ensure safe, open and inclusive participation for all individuals advocating for climate justice.

National human rights institutions contribute, through their function of protecting and strengthening human rights, to preventing human rights violations arising from climate change. In this context, various methods are followed, such as monitoring, analysing and reporting on the impacts of climate change and climate policies on specific human rights, formulating policy recommendations, establishing multi-stakeholder forums, and developing and applying monitoring and evaluation tools. For example, the national human rights institution of Honduras, the *Comisionado Nacional de los Derechos Humanos en Honduras*, examined the effects of climate-exacerbated drought on smallholder farmers and those dependent on their production, and also published reports documenting the effects of climate change on forests through forest fires and the spread of harmful insects. National human rights institutions increasingly use the UN Universal Periodic Review and the review processes of the human rights treaty bodies to report on their own activities, and, by submitting their policies and findings on the protection of human rights to international and regional human rights bodies, they provide an independent perspective on government efforts.[157]

Although not mandatory under the Paris Principles, national human rights institutions may receive and examine complaints from applicants. Through the decisions they render upon examining climate-related

[156] GANHRI, "Integrating Human Rights into the International Climate Negotiations: GANHRI Open Letter to COP 29", https://ganhri.org/wp-content/uploads/2024/11/GANHRI-Open-Letter-COP29.pdf (Access Date: 14.08.2026).

[157] Center for International Environmental Law (CIEL)/German Institute for Human Rights, Climate Change and Human Rights: The Contributions of National Human Rights Institutions. A Handbook, German Institute for Human Rights, 2020, p. 27 et seq.

complaints, national human rights institutions have the opportunity to investigate the role played by climate change and to make findings of responsibility. For instance, the Ombudsperson of the Republic of Croatia placed climate change under scrutiny in its decisions on the many complaints it received concerning the adverse health effects of air pollution.[158] In September 2015, *Greenpeace Southeast Asia*, the *Philippine Rural Reconstruction Movement* and a number of other groups submitted a petition to the Commission on Human Rights of the Philippines requesting an investigation into whether 47 fossil fuel-producing carbon majors had breached their responsibility to respect human rights. Upon this petition, the Commission granted the request for an investigation contained therein, on the grounds that it had the power to investigate, make recommendations and monitor, and that the subject matter of the petition fell within its special power to conduct national public inquiries into human rights issues, and stated that the inquiry would be dialogic and fact-finding rather than adversarial in nature. Thus, for the first time, a State institution took action regarding the human rights responsibility of fossil fuel producers for climate change.[159]

The Commission on Human Rights of the Philippines published the report[160] of the public inquiry it conducted following a petition submitted to it . The report examined in depth the link between climate change and human rights and concluded that the producers had violated human rights in connection with their contribution to climate change. It emphasised that the anthropogenic causes of climate change are both measurable and significant, that the fossil fuel industry has been aware of the effects of greenhouse gases on the climate since at least 1965, and that it engaged in a concerted effort to persuade the public that the use of its products was not harmful. The report concluded that all acts aimed at delaying, derailing and obstructing the transition of the global economy to clean energy through wilful concealment may give rise to liability and are, at the very least, immoral. According to the report, climate change and the increasing frequency of extreme weather events, natural disasters and other harmful events adversely affect established rights, including the rights to life, health, food, water and adequate housing, enshrined not only in the Philippine Constitution but also in the core international human rights treaties. In reaching this conclusion, the Commission not only drew on the IPCC's scientific evidence and research reports but also conducted a long-term information-gathering process to investigate the impact of climate change on the Filipino people. In gathering information, the Commission drew on the statements of community representatives such as fishers, farmers and academics, documented evidence, expert reports, and the testimony of various scientists, lawyers, human rights experts, researchers and medical experts. Although the report is not binding, it provides guidance, particularly for litigants seeking legal remedies in the Philippines, and shows that human rights are becoming increasingly important in the context of the impacts of climate change.[161]

Even though most human rights-based claims are brought against government bodies, there is also an increase in the number of lawsuits brought directly against companies, which poses a risk for companies

[158] Ibid., p. 32.

[159] Keely Boom/Iman Prihandono/Nadirsyah Hosen, "A Mandate to Investigate the Carbon Majors and the Climate Crisis: The Philippines Commission on Human Rights Investigation", Australian Journal of Asian Law, 23/1, pp. 57-76, 2022, p. 57 et seq.

[160] Commission on Human Rights of the Philippines, "National Inquiry on Climate Change Report", 2022.

[161] The International Comparative Legal Guides, "Environmental, Social & Governance Law Philippines Climate Change Report: Implications for Carbon Majors 2023-2024", https://iclg.com/practice-areas/environmental-social-and-governance-law/08-philippines-climate-change-report-implications-for-carbon-majors (Access Date: 13.01.2024).

in carbon-intensive industries and affects their corporate risk management. Indeed, the Commission stated that the purpose of the inquiry was to raise standards of corporate conduct, as well as to help identify or elaborate the fundamental rights and duties relating to climate change. In line with this purpose, the report made comprehensive recommendations addressed to companies in carbon-intensive industries, governments, financial institutions and investors, the UN and other international bodies, national human rights institutions, courts, non-governmental organisations (NGOs), lawyers and the citizens of the world.[162]

The European Network of National Human Rights Institutions (ENNHRI) applied to the Grand Chamber of the European Court of Human Rights (ECtHR) to intervene as a third party in landmark climate cases such as *Duarte Agostinho and Others v. Portugal and Others*,[163] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*[164] and *Carême v. France*.[165] These interventions underline the responsibility of States to combat climate change effectively in order to protect the right to life under Article 2 and the right to respect for private and family life under Article 8 of the ECHR. In *Duarte Agostinho and Others v. Portugal and Others*, the complaint is that the States have not made sufficient efforts to protect the public from the effects of climate change. In *KlimaSeniorinnen v. Switzerland*, the complaint is that Switzerland, by failing to reduce greenhouse gas emissions sufficiently, has breached its positive obligation to protect the rights of the public to life and health from the effects of dangerous heatwaves. In *Carême v. France*, the complaint is that the failure to reduce emissions has led to more dangerous heatwaves and sea level rise in the coastal town of *Grande-Synthe*. In each of the three cases, the Chamber of the ECtHR decided to relinquish jurisdiction in favour of the Grand Chamber because the cases raised serious questions affecting the interpretation of the ECHR and would have a significant impact on the protection of the rights enshrined in the ECHR. ENNHRI, having intervened in the cases as a third party, submits independent written observations, without commenting on the facts or the merits, in order to assist the ECtHR in assessing the legal and factual questions arising in the cases.[166]

In its intervention in the proceedings, ENNHRI submitted that States must protect people within their territory from the harmful effects of greenhouse gas emissions under their effective control. It thus invited the ECtHR to use its power to protect vulnerable individuals from irreversible and escalating climate harm and to safeguard individual rights.[167] This is because the jurisdiction of a State Party to the ECHR also covers greenhouse gas emissions under its effective control and should, at the very least, include the territorial harm resulting from fossil fuels extracted from its own territory. ENNHRI further stated that violations may be attributable to more than one State and partly to factors outside the State's jurisdiction, and that it is therefore immaterial whether the climate harm results directly from the greenhouse gas emissions of States and entities. For example, the Federal Constitutional Court of Germany held that,

[162] Ibid.

[163] ECtHR, Duarte Agostinho and Others v. Portugal and Others, App. No: 39371/20, 13.11.2020.

[164] ECtHR, Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, App. No: 53600/20, 17.03.2021.

[165] ECtHR, Carême v. France, App. No: 7189/21, 07.06.2022.

[166] ENNHRI, "ENNHRI Intervenes Before the Grand Chamber of the European Court of Human Rights in Three Historic Climate Cases", https://ennhri.org/news-and-blog/ennhri-intervenes-before-the-grand-chamber-of-the-european-court-of-human-rights-in-three-historic-climate-cases/ (Access Date: 11.01.2024).

[167] ENNHRI, "History in the Making: ENNHRI Speaks Before the Grand Chamber of the European Court of Human Rights in Major Climate Case", https://ennhri.org/news-and-blog/history-in-the-making-ennhri-speaks-before-the-grand-chamber-of-the-european-court-of-human-rights-in-major-climate-case/ (Access Date: 11.01.2024).

although Germany is not in a position to halt climate change on its own, it cannot evade responsibility.[168] On these grounds, ENNHRI stated that States may be held responsible for increasing territorial climate harm, because a State's efforts to mitigate climate change will slow the rate of increase of greenhouse gas emissions elsewhere.[169]

Another case in which ENNHRI intervened as a third party is *Greenpeace Nordic and Others v. Norway*.[170] The case concerned the consequences, in terms of climate change, of the 2016 decision of the Norwegian authorities to grant petroleum exploration licences in the Barents Sea. The applicants alleged violations of Articles 2 and 8 of the Convention, arguing that the climate harm resulting from the extraction and combustion of petroleum had not been adequately assessed, that no comprehensive environmental impact assessment had been carried out in the licensing process, and that the State had failed to fulfil its obligation to protect individuals against climate-related harm.

As a third-party intervener, ENNHRI emphasised that, in assessing States' procedural obligations under Articles 2 and 8 of the Convention, environmental impacts must be examined at the early stages of the decision-making process, while all options are still open. It was stated that these assessments should also cover the indirect and significant effects of plans and projects on the climate, in particular future combustion emissions, and should be conducted in the light of the temperature goals of the Paris Agreement. ENNHRI further argued that these assessments should not be deferred to later project stages, and requested the Court to recognise that States are obliged under Articles 2 and 8 to assess the compatibility of emissions from new oil and gas fields with the goals of limiting global warming to 1.5°C or, at the very least, well below 2°C.

The Court took into account that the effects of petroleum production on climate change, including combustion emissions, would be subject to a comprehensive environmental impact assessment at the development and operational stages of the project, and that the public would be informed and consulted before a decision was taken. Noting that there was no structural problem preventing the effective implementation of the existing legal framework, the Court concluded that deferring the environmental impact assessment to a later stage did not, in itself, amount to insufficient protection under Article 8 of the Convention. It further emphasised that the assessments must be based on up-to-date and adequate information and must take into account the cumulative greenhouse gas effects of projects. On these grounds, the Court unanimously held that there had been no violation.

In its statement of 25 June 2024,[171] ENNHRI calls on the Member States of the Council of Europe to adopt a binding legal instrument recognising the right to a healthy environment at the European level. The statement emphasises that there are gaps in normative protection because the ECtHR has not recognised the right to a healthy environment as a self-standing right. ENNHRI recommends that a binding instrument,

[168] German Constitutional Court, Neubauer v. Germany, BvR 2656/18, 24.03.2021, para. 149.

[169] ENNHRI, "Written Observations in Application No. 39371/20: Duarte Agostinho et Autres c. Portugal et 32 Autres", https://ennhri.org/wp-content/uploads/2022/12/ENNHRI-3rd-party-intervention-Duarte-v.-Portugal-others.pdf (Access Date: 11.01.2024).

[170] ECtHR, Greenpeace Nordic and Others v. Norway, App. No: 34068/21, 28.10.2025.

[171] ENNHRI, "Climate Change & Human Rights", https://ennhri.org/our-work/topics/climate-change-human-rights/ (Access Date: 10.08.2026).

supported by an effective supervisory and access-to-justice mechanism, be adopted, preferably by means of an additional protocol to the ECHR.

The main reservations regarding the recognition of the right to a healthy environment are that the content of the right is uncertain, that it may lead to an increase in the number of cases, and that judicial bodies may interfere with States' margin of appreciation regarding their environmental policies. Nevertheless, ENNHRI states that the experience of national human rights institutions in the Council of Europe region and national case law show that the implementation of this right gives rise to reasonable responsibilities for duty-bearers and is manageable for courts.

National human rights institutions cooperate bilaterally and through regional or international networks, producing joint declarations to advance their collective work on the subject, determine future policy directions and plan joint activities. National human rights institutions that signed the *St Julian's Declaration* ahead of COP 21 in 2015 committed themselves to a series of actions, including enhancing their understanding of how human rights obligations affect climate action, developing tools to ensure the protection of human rights in climate change policies, and encouraging the integration of national and international climate frameworks with human rights. Furthermore, in 2019, ENNHRI established a sub-working group to encourage greater participation and cooperation among the national human rights institutions in the region in joint actions on climate change. GANHRI likewise hosts international thematic conferences and annual meetings, and these events offer national human rights institutions an important opportunity to coordinate their actions and share their experiences.[172]

J. Work of the Courts

National court decisions also offer significant opportunities to contribute to combating climate change; in resolving disputes or delivering opinions, courts interpret and apply the law. Although the judiciary cannot directly decide which policies are to be implemented, it makes findings and clarifies whether the work carried out so far on greenhouse gas reduction and adaptation is sufficient for the State to fulfil its obligations and to achieve the UNFCCC objectives. Moreover, the executive and private actors are held accountable for their conduct and are made to comply with the climate change laws by which they are bound. Courts make an important contribution to determining the responsibility of States. From a sociological perspective, it may also be said that courts have an empowering function. Indeed, as a platform on which States, individuals and other institutions and organisations can debate their rights, courts can contribute to the development of action to combat climate change. Accordingly, courts do not take the place of States; rather, they act as providers of legitimacy, since they raise awareness of a particular issue and help us to understand what needs to be done and what has been done inadequately or not at all.[173]

One of the most important benefits of bringing climate litigation before national and regional courts is that, compared with bringing cases before quasi-judicial human rights bodies, it has the potential to result in a binding decision. In particular, claimants may obtain an equitable remedy to prevent future harm as well as a right to compensatory damages, thus achieving concrete solutions. Another benefit is that

[172] CIEL/German Institute for Human Rights, op. cit., p. 42.

[173] Armando Rocha, op. cit., p. 101.

it offers civil society, the private sector, academia and the national media an opportunity to become involved in the process. Lawyers and members of the judiciary in the jurisdiction where the case is brought become important players in the global climate movement. Persons whose rights are affected can give testimony relatively easily, whereas in international and foreign cases this is more burdensome and costly.[174] It is observed that cases brought in relation to climate change fall into two groups: cases brought in tort on grounds of public nuisance, and cases alleging that private companies emitting greenhouse gases have made a proportionate contribution to climate change. With the development of climate science and doctrine, the number of cases based on the proportionate contribution of companies has increased, particularly from 2015 onwards.[175]

Unless State responsibility is formally established, it is uncommon for the legal consequences of a breach to be effective in practice, and, in principle, effectiveness requires a public representative to invoke the responsibility of the State. Claimants, for their part, must show that they are directly affected by the adverse effects of climate change and present evidence enabling particular harms to be attributed to climate change. In the course of proceedings, courts frequently refer to the UNFCCC, the Kyoto Protocol and the Paris Agreement, as well as to regional and international human rights law; however, the extent to which international law is applicable before national courts depends on the nature of the legal system concerned. Where national courts examine the merits of a rights-based climate case, the claimant must establish a link between the respondent State and the rights violations, and how the claimant is to establish this remains an open question. International and regional human rights bodies have underlined that, owing to the difficulty of providing absolute proof of the harms of climate change, human rights violations may be established even by a reasonable causal link. This approach is based on the positive obligations of the State and, in line with the precautionary principle, places part of the burden of uncertainty regarding environmental impacts on the State. Respondents, on the other hand, may argue, and indeed do argue, that the greenhouse gases for which they are responsible constitute only a fraction of the global total and that it therefore cannot be established that they caused a particular harm.[176] The time lag between the occurrence of greenhouse gas emissions and the materialisation of their consequences, the differing levels of impact of different actors on climate change, and the difficulty of proving causation constitute the obstacles to the application of legal sanctions. However, judicial developments in this field are bringing about the methodological adaptations necessary to identify the activities and omissions responsible for climate change-related human rights violations, and are giving momentum to the struggle.[177]

The information note on climate change published by the ECtHR in June 2026[178] states that the climate change-related applications brought before the Court mainly concern the current and future serious effects of climate change on living conditions and health and allegations that States have not taken adequate measures to mitigate the effects of climate change and adapt to them. These applications mostly

[174] Margaretha Wewerinke-Singh, op. cit., p. 149 et seq.

[175] Rabia Ersoy, "Climate Change Litigation and the Liability of the Administration Arising from Climate Inaction in Turkish Law", Symposium on Climate Change and the Right to Food in the Context of Human Rights (Human Rights and Equality Institution of Türkiye, 2022), p. 103.

[176] Margaretha Wewerinke-Singh, op. cit., p. 147 et seq.

[177] İzzet Arı/Elif Okkan, "Linking the Concept of Human Rights to the Paris Agreement and Nationally Determined Contributions", Symposium on Climate Change and the Right to Food in the Context of Human Rights (Human Rights and Equality Institution of Türkiye, 2022), p. 44.

[178] ECtHR, "Focus On: Climate Change", https://ks.echr.coe.int/documents/d/echr-ks/focus-on-climate-change (Access Date: 10.08.2026).

rely on the right to life under Article 2 of the ECHR, the prohibition of torture and inhuman or degrading treatment under Article 3, the right to respect for private and family life under Article 8 and the right to an effective remedy under Article 13.

According to the ECtHR data contained in the information note, the proportion of climate change-related applications among all applications is very low. Approximately 0.007% of the cases pending before the Court relate to climate change. Since 2020, 23 applications on this subject have been lodged with the Court; 19 of these have been decided, while 4 remain pending. Of the applications decided, 17 were declared inadmissible or struck out of the list, while 2 resulted in judgments. In one of these cases the Grand Chamber found a violation of the Convention, while in the other the Chamber found no violation of Article 8 of the Convention.

In order to examine an application, the ECtHR requires that the applicant be within the jurisdiction of the State concerned, that he or she be directly affected by an act or measure attributable to the State, and that the complaints raised have first been brought before the national judicial authorities. In climate change cases too, the Court places particular emphasis on the principle of subsidiarity, stating that having climate change-related matters dealt with directly by the ECtHR, without giving national courts the opportunity to examine the dispute, would be incompatible with the principles of subsidiarity and exhaustion of domestic remedies, which form the foundation of the Convention system. In this framework, the ECtHR emphasises that it is not a court of first instance and that the initial factual findings must first be made by the national judicial authorities.

The *Urgenda*[179] case had a wide public impact and has served as a precedent in global and transnational climate litigation. The *Urgenda* judgment is important in that it emphasised that the State has positive obligations in respect of the environment and the climate, thereby inspiring other cases on the same subject. In this case, the Supreme Court of the Netherlands based its judgment on Article 2 of the ECHR, entitled "*Right to life*", and Article 8, entitled "*Right to respect for private and family life*". It was stated that, in the light of these Articles, States are obliged to take appropriate measures where they are aware of the existence of a real and significant risk to the life and well-being of individuals, and the State was ordered to reduce greenhouse gas emissions by the end of 2020 by at least 25% compared with 1990. This case law of the Supreme Court also paved the way for cases concerning climate change that threatens the population in the future and in the long term. Following this case, the NGO *Milieudefensie* brought an action against the oil company *Shell*, as a result of which it was decided that *Shell* must reduce its carbon dioxide emissions by 45% by 2030 compared with 2019.[180] Similarly, *Earthlife*, an African NGO, relying on its aim of mobilising civil society around environmental issues, prevailed in the case[181] it brought against the Government of South Africa.[182]

[179] Supreme Court of the Netherlands, The State of the Netherlands v. Stichting Urgenda, Case No: 19/00135, 20.12.2019.

[180] Jasper Krommendijk, "Beyond Urgenda: The Role of the ECHR and Judgments of the ECtHR in Dutch Environmental and Climate Litigation", Review of European, Comparative & International Environmental Law, 31/1, pp. 60-74, 2021, p. 60 et seq.

[181] High Court of South Africa, Earthlife Africa v. Minister of Environmental Affairs, Case No: 65662/16, 06.03.2017.

[182] Margaretha Wewerinke-Singh, op. cit., p. 148.

In its Öneryıldız *v. Turkey*[183] judgment, the ECtHR clearly stated that environmental harm may violate the right to life. Where the adverse effects of environmental degradation affect the quality of life and reach a certain minimum level, the responsibility of the State is engaged. In such a case, whether the State itself directly causes the pollution or fails to provide protection against pollution caused by private actors, the ECtHR has stated that it is imperative to take practical measures to ensure the effective protection of people whose lives may be endangered by the risks that have arisen.[184]

Complaints concerning the adverse effects of environmental degradation have also occasionally been brought before the Constitutional Court of the Republic of Türkiye by way of individual application. One of these, the application of *Eşref Demir*,[185] concerns the allegation that the right to respect for private life was violated owing to the dismissal of an action for annulment brought against the "EIA positive" decision granted for a capacity expansion project of a mining operation planned to be carried out in the İliç district of Erzincan. The applicant argued that the environmental impacts of the project had not been adequately assessed, that pasture lands and agricultural and livestock activities could be harmed, that the pollution of surface waters could affect the drinking water of the surrounding settlements, and that the chemicals to be used in the project could have adverse consequences for human health and the ecosystem.[186]

The applicant argued that the village in which he lived with his family was directly affected by the mining project, and that the hazardous chemicals used in the waste storage facility close to the residential area posed risks to human health and ecological life. He further alleged violations of the right to life, the right to respect for private and family life and the right to a fair trial, stating that pasture lands and livestock activities had been harmed, whereas the panel of experts had not adequately covered the relevant fields of expertise, and that the scientific and visual evidence he had submitted concerning the environmental harm had not been duly assessed during the proceedings.[187]

The Constitutional Court stated that, for environmental impacts to be examined within the scope of the right to respect for private life, the impact in question must reach a certain level of severity and there must be a sufficiently close link between the environmental activity and the person's private and family life or the use of his or her home. In the case at hand, taking into account that the applicant resided in the area covered by the project and was engaged in livestock farming, it was concluded that the effects of the mining activity on the applicant's right to respect for private life had to be examined under Article 20 of the Constitution of the Republic of Türkiye.[188]

The Constitutional Court emphasised that, in the judicial review of projects with environmental impacts, not only general risks to the environment and human health but also the concrete effects of the project on the livelihoods of the local population must be examined with sufficient expertise and depth. In the case at hand, it was found that no adequate assessment had been made of how livestock farming, the

[183] ECtHR, Öneryıldız v. Turkey, App. No: 48939/99, 30.11.2004.

[184] John H. Knox, "Climate Change and Human Rights Law", Virginia Journal of International Law, 50/1, 2009, p. 11.

[185] Constitutional Court of the Republic of Türkiye, Eşref Demir, App. No: 2020/12802, 01.11.2023.

[186] Constitutional Court of the Republic of Türkiye, Eşref Demir, paras. 1-3.

[187] Constitutional Court of the Republic of Türkiye, Eşref Demir, para. 10.

[188] Constitutional Court of the Republic of Türkiye, Eşref Demir, para. 13.

main source of livelihood in the region, and the actively used pasture lands would be affected by the mining activity, that the panel of experts did not include an agricultural engineer to assess these matters, and that the applicant's substantive allegations had not been addressed by the inferior courts. Stating that a fair balance must be struck between individual interests and the public interest in environmental decision-making and judicial review processes, the Court concluded that, in the case at hand, the public authorities had not exercised due diligence and had failed to fulfil their positive obligations under the right to respect for private life.[189]

K. Work of Private Actors

In addition to States, private actors also continue to operate as a social choice mechanism in international governance, and in this context companies are regarded as critical players in solving global environmental problems, since they have an influence on the environment and environmental governance. Companies can influence the decisions of States by promoting global norms during the negotiation of multilateral environmental agreements and play a prominent role in the implementation of international agreements. They also interact with each other, as well as with States and other non-State actors, to create institutional arrangements that perform environmental governance functions. For example, in the 1980s, the US Chemical Manufacturers Association, together with its Canadian counterpart, developed a programme called "*Responsible Care*" to promote environmental and safety principles and codes of management practice in the global chemical industry. With the market power of American multinational enterprises, the programme was also exported to developing countries, and the development of good practices became an important benchmark in the chemical industry. Similarly, the International Organization for Standardization (ISO) has created a global standard for environmental management systems, which provides guidance for improving environmental management in many industrial sectors and enables individual companies to obtain certification. The ISO 14000 series systematically sets out principles on environmental management. These principles are based on the idea that companies can agree on a set of principles and guidelines governing their environmental management without the need for external, State-backed enforcement mechanisms. The flexibility mechanisms supporting the emission reduction target mentioned in the context of the Kyoto Protocol were brought into the process through the lobbying activities of companies, and their implementation takes place through companies.[190]

It is apparent that companies, multinational enterprises in particular, are not fulfilling their responsibilities in these matters. A study[191] revealed that one fifth of carbon dioxide emissions originate from the global supply chains of multinational enterprises. The same study stated that these emissions are shifting from developed to developing countries, which means that emissions are being moved to poorer parts of the world.[192] Indeed, where strict environmental policies are applied in the countries in which multinational

[189] Constitutional Court of the Republic of Türkiye, Eşref Demir, paras. 17-20.

[190] Robert Falkner, "Private Environmental Governance and International Relations: Exploring The Links", Global Environmental Politics, 3/2, pp. 72-87, 2003, p. 72 et seq.

[191] Zengkai Zhang et al., "Embodied Carbon Emissions in the Supply Chains of Multinational Enterprises", Nature Climate Change, 10, pp. 1096-1101, 2020.

[192] University College London, "Multinationals' Supply Chains Account for a Fifth of Global Emissions", https://www.ucl.ac.uk/news/2020/sep/multinationals-supply-chains-account-fifth-global-emissions (Access Date: 17.10.2024).

enterprises are headquartered, these enterprises locate their greenhouse gas-emitting activities in countries with weaker environmental policies. For example, Trinidad and Tobago, Bosnia and Herzegovina, Slovakia, Suriname and Barbados are among the countries with the weakest environmental policies and, at the same time, rank highest in terms of exports of greenhouse gas emissions relative to gross domestic product.[193] Between 2011 and 2016, emissions resulting from US investment in India rose from 48.3 million tonnes to 70.7 million tonnes. Over the same years, emissions resulting from Chinese investment in South-East Asia rose from 0.7 million tonnes to 8.2 million tonnes. In particular, the sectors of electricity, gas, steam and air conditioning supply, air and water transport, and the manufacture of coke and refined petroleum products are more inclined to export pollution abroad. The UK-headquartered energy company *British Petroleum (BP)* produced more emissions through its foreign subsidiaries than the foreign-owned petroleum industry in any country other than the USA.[194]

In addition to the shifting of emissions by multinational enterprises from developed to developing countries, *greenwashing* is another element that must be prevented. Greenwashing is the selective disclosure of positive information without full disclosure of negative information, with the aim of creating a positive corporate image.[195] For example, in 2015 the US Environmental Protection Agency found that emission tests on diesel *Volkswagen* vehicles sold in the USA had been manipulated by tampering with computer settings, and that, while the vehicles were being driven, their emissions were many times higher than the test results indicated.[196] Another study collected twelve years of quantitative and qualitative data to examine whether the oil companies *BP*, *Chevron*, *ExxonMobil* and *Shell* had made the transition from fossil fuels to clean energy. The study stated that, judging by the companies' discourse and reports, there had been an increase in the emphasis on climate change and clean energy, but that there was a mismatch between discourse, pledges, actions and investments, that none of these companies had achieved a clean energy target and that they had not made significant progress in this direction.[197]

Fossil fuels are the largest source of anthropogenic greenhouse gas emissions worldwide. A report published in 2017 by the *Carbon Disclosure Project* (CDP) found that, in 2015, the fossil fuel industry and its products accounted for 91% of global industrial greenhouse gas emissions and approximately 70% of all anthropogenic greenhouse gas emissions. If the fossil fuel industry continues to operate over the next 28 years as it did over the previous 28 years, temperatures are expected to rise to approximately 4°C above pre-industrial levels by the end of the century. More than half of global industrial greenhouse gas emissions are attributable to just 25 private and State-owned companies, and 71% to 100 private and State-owned companies. Since 1988, the private companies with the highest greenhouse gas emissions have been *ExxonMobil*, *Shell*, *BP*, *Chevron*, *Peabody*, *Total* and *Broken Hill Proprietary Company*. *Saudi Aramco*, *Gazprom*, *National Iranian Oil, Coal India*, *Pemex* and *PetroChina*, for their part, are State-owned companies with signifi-

[193] Principles for Responsible Investment, "Exporting pollution: where do multinational firms release CO2?", https://www.unpri.org/pri-blog/exporting-pollution-where-do-multinational-firms-release-co2/5592.article (Access Date: 17.10.2024).

[194] Zengkai Zhang et al., op. cit.; Principles for Responsible Investment, "Exporting pollution: where do multinational firms release CO2?".

[195] Frances Bowen/ J. Alberto Aragon-Correa, "Greenwashing in Corporate Environmentalism Research and Practice: The Importance of What We Say and Do", Sage Publications, Inc., 27/2, pp. 107-112, 2014, p. 107.

[196] Habertürk, "Manipulation Shock for Volkswagen in the US", https://www.haberturk.com/ekonomi/otomobil/haber/1131571-volkswagena-abd-de-manipulasyon-soku (Access Date: 17.10.2024).

[197] Mei Li/ Gregory Trencher/ Jusen Asuka, "The clean energy claims of BP, Chevron, ExxonMobil and Shell: A mismatch between discourse, actions and investments", PLOS ONE, 17/2, 2022.

cant greenhouse gas emissions. *Shenhua Group*, *Datong Coal Mine Group* and *China National Coal Group* are State-owned companies located in China that emit significant amounts of greenhouse gases. The greenhouse gas emissions produced by these companies are of a scale that will significantly affect the course of climate change, and the steps they take in the medium to long term play a major role in the global energy transition.[198] It is important that multinational enterprises, rather than focusing solely on profit maximisation, also value corporate responsibility practices and have a governance structure in which they pursue socially and environmentally responsible objectives, and that policy-makers also take decisions to prevent the polluting activities of multinational enterprises, particularly those in polluting industries.

The OECD Guidelines for Multinational Enterprises set out the expectations of the governments of OECD countries regarding the corporate social responsibility of international companies. These expectations include developing reporting standards on the amount of greenhouse gas emissions caused by companies' activities and setting targets for reducing those emissions.[199] In their academic work, case law and statements, UN human rights bodies emphasise the responsibility of companies to respect human rights and to exercise human rights due diligence. These norms with which companies must comply were also reflected in the UN Guiding Principles on Business and Human Rights, endorsed unanimously by the UN Human Rights Council in 2011. The Special Rapporteur on the promotion and protection of human rights in the context of climate change has stated that companies should reduce greenhouse gas emissions arising from their own operations and subsidiaries, products and services and suppliers, publicly disclose their climate vulnerabilities and existing risks, and provide effective remedies to victims.[200] The Guiding Principles on Business and Human Rights recognise that the corporate responsibility to protect human rights entails the need to avoid infringing human rights through business practices, and that there should be greater access to effective remedies for victims of human rights abuses caused by companies. Nevertheless, these principles are not binding and in fact rest on voluntary commitment. Otherwise, there is a risk of facing a backlash from the public, shareholders and public opinion over failures to respect, protect and fulfil human rights.[201]

NGOs contribute to the governance of the climate change process through their actions to influence international conferences, monitor the implementation of agreements by States and raise public awareness. NGOs share their knowledge and expertise and help to set the agenda. The fact that UNFCCC meetings are open to NGOs and that these organisations can participate as observers enables them to play an important role in the negotiations. This, in turn, ensures the transparency of the negotiations and puts pressure on government delegates in terms of accountability to their constituents. The fact that NGOs are representatives of global civil society lends greater legitimacy to the overall process and creates the capacity to remedy the democratic deficits in international decision-making. However, climate change is a highly complex issue to address, and there are doubts about the effectiveness of NGOs in resolving this uncertainty. It is therefore considered that NGOs should adopt more innovative, grassroots-oriented roles rather than merely acting

[198] CDP, The Carbon Majors Database: CDP Carbon Majors Report 2017, CDP Worldwide/Climate Accountability Institute, 2017, p. 7 et seq.

[199] BankTrack, "NGOs File Complaint Against ING for Violation of OECD Guidelines", https://www.banktrack.org/news/ngos_file_complaint_against_ing_for_violation_of_oecd_guidelines (Access Date: 18.01.2024).

[200] CIEL/German Institute for Human Rights, op. cit., p. 20.

[201] Scott Walker, "The Meaning and Potential of a Human Rights-Based Approach to Climate Change Post-Sharma", Alternative Law Journal, 47/3, pp. 194-198, 2022, p. 196.

as transmitters of information. For example, the Kyoto Protocol does not reflect any target or provision proposed by NGOs, including the 20% reduction target. For a genuine impact to be possible, the mere participation of NGOs in the policy process is not sufficient; outcomes close to their proposals must be produced, and they must have the capacity to change the positions of States on environmental issues.[202]

One of the greatest challenges encountered is that, while environmentalists view the issue in terms of its environmental impacts, its economic, political and social aspects are not understood. The climate change debate has not been framed in a way that makes this adverse situation a primary concern of the public. Activism remains confined to voicing the interests of a small group and leaves larger groups of people outside its sphere of influence. Social movements must be supported by identifying the main challenges; otherwise, the consequences rather than the causes will be addressed.[203]

In the process of combating climate change, NGOs have begun to play a greater role in addressing problems through environmental governance conducted at the national, regional and international levels. NGOs operating worldwide in particular stand out in environmental governance by seeking to influence policies and providing support at the national and international levels in the face of climate change. NGOs receiving financial support from abroad and the policies of NGOs headquartered abroad may at times be viewed with suspicion. In 2012, Greenpeace India and Indian NGOs, together with American and European donors, held a strategy meeting to assess coal-based energy production in India. Following this meeting, there was a sudden increase in protests against large infrastructure projects in India. Suspecting that the protests were being financed by international NGOs, the Government of India accused US donors of supporting anti-nuclear protests against the *Kudankulam Nuclear Power Plant* and moved to revoke the permission of some Indian NGOs to accept foreign donations. Government officials stated that approximately 22,000 NGOs had received a total of more than 2 billion dollars in donations from abroad in 2010, that 650 million dollars of this sum had come from the USA, that, when foreign donations are used to criticise policies, one can never know what the conspiracy is, and that donations should be used for development work.[204] In this context, it is considered that international NGOs would achieve more effective and sustainable results in combating environmental problems if, rather than encouraging protests, they conducted their policies in cooperation with countries and by creating an environment of dialogue. In this way, NGOs assuming a constructive role will be able to develop solutions that benefit all parties while promoting social change.

[202] Chandra Lal Pandey, "Managing Climate Change: Shifting Roles for NGOs in the Climate Negotiations", Environmental Values, 24/6, pp. 799-824, 2015, p. 800.

[203] Ibid., p. 810 et seq.

[204] J. Scott Hauger/ Michael Daniels/ Lora Saalman, "Environmental Security and Governance at the Water–Energy Nexus: Greenpeace in China and India", Journal of Asian Security and International Affairs, 1/3, pp. 235-262, 2014, p. 242 et seq.



IV

RECOMMENDATIONS AND CONCLUSION



A. Defining Climate Change as a Human Rights Issue and Adopting a Human Rights-Based Policy

The UDHR defines human rights as a set of specific claims concerning the rights held by all human beings irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and these claims are understood to carry both moral authority and legal authority. Since the UDHR is not legally binding, the primary source texts under international law are the ICCPR and the ICESCR. These two covenants are legally binding on the States that have ratified them. These instruments are supported by other human rights treaties of global or regional binding force, case law, soft law and doctrine. The rights set out in these texts relating to "*life, liberty, property, freedom of expression and assembly, political participation, fair trial, privacy and the prohibition of torture*" are civil and political rights. On the other hand, "*work, education, social security, the enjoyment of the highest attainable standard of physical and mental health, adequate food, clothing, housing and the continuous improvement of living conditions*" are among economic, social and cultural rights. While the former rights have generally been secured through judicial mechanisms, including at the international level, the latter have been achieved largely through national welfare mechanisms. Although social security is more readily available in wealthy countries, poor countries are also encouraged under the ICESCR to realise social security progressively within the limits of their means. Accordingly, human rights encompass a range of concerns that are clearly related to climate change. Under human rights treaty law, States have obligations towards their citizens, and every State that has ratified the ICESCR is obliged to respect, protect and fulfil the rights set out in the ICESCR in respect of citizens within its jurisdiction. Respecting a right requires the State to refrain from any act that would violate the right; the obligation to protect the right requires the State to act so that the right is not violated by other actors; and the obligation to fulfil requires the State to take steps towards the realisation of the right concerned.[205]

Although the core international human rights treaties do not contain direct provisions addressed to private actors, they are interpreted as requiring States to take the necessary steps where the exercise of the rights set out in them is interfered with by any private actor. Where the measures taken by the State fail to prevent harm from occurring, the State has other positive duties, such as providing adequate remedies. The human rights bodies responsible for interpreting the treaties have also largely adopted this approach. The African Commission on Human and Peoples' Rights held that, by failing to take into account the health of the *Ogoni* people and the environment while exploiting oil resources, the Government of Nigeria had violated many human rights of that people protected by the African Charter on Human and Peoples' Rights, including the right to life. The Commission emphasised that the duty of the State is not limited to refraining from violating rights, and that protecting the rights of the people from harmful acts that may be committed by private actors, including *Shell*, its partner in the extraction of oil resources, also falls within the duties of the State. Accordingly, States must implement the measures necessary to prevent harm

[205] Stephen Humphreys, "Introduction: Human Rights and Climate Change", Human Rights and Climate Change, (ed.) Stephen Humphreys, Cambridge University Press, 2010, p. 8 et seq.

arising from pollution that threatens people's right to life and, in the event of a violation of rights, must put in place appropriate investigation and compensation measures.[206]

The Paris Agreement similarly reaffirms that, in taking action to address climate change, States should respect, promote and consider their respective obligations on human rights. This emphasis in the Agreement acknowledges the responsibility of States to ensure human rights safeguards and to incorporate adaptation strategies that will help to ensure such safeguards. To fulfil these obligations, the International Bar Association recommends that governments establish safeguards and accountability processes to ensure that climate policies are designed, implemented and monitored in a manner that is protective of human rights and inclusive. The existence of safeguards and accountability will ensure that policies are stable and legitimate and that projects are effective and sustainable. It should be emphasised that mechanisms in this regard have not yet been developed.[207] The report prepared by the OHCHR[208] underlined that international human rights law is complementary to the UNFCCC and that international cooperation on climate change is a human rights obligation. Treating international cooperation as a human rights obligation enables the establishment of global governance against transboundary environmental harm and removes legal and practical obstacles to the implementation of environmental policies.[209] Nevertheless, the fact that the Paris Agreement, which is regarded as an important milestone in terms of the link between human rights and climate change, does not express any view on the role of human rights leaves the human rights dimension superficial. There is no global, binding human rights treaty that explicitly recognises the close relationship between human rights and the environment.[210]

Defining climate change as a human rights issue and integrating human rights into climate policies are of critical importance in combating climate change. Climate justice establishes a link with human rights in order to secure a people-centred approach to climate action; it protects the rights of the most vulnerable and shares both the burdens and the benefits of the solution equally and fairly. Placing human rights at the centre ensures that human rights law is upheld and that obligations under human rights law are fulfilled while governments strive to adapt to the effects of climate change and reduce greenhouse gas emissions. At COP 16, held in Cancun in 2010, it was recognised that the adverse effects of climate change harm human rights, that they have direct and indirect implications for the effective enjoyment of human rights, and that those segments of the population that are already vulnerable on various grounds such as gender, age and disability will feel these effects most acutely. With the Paris Agreement, signed at COP 21 in Paris in 2015, countries recognised the importance of respecting and promoting their obligations on human rights when taking action to address climate change. The 2016 report prepared by the UN Special Rapporteur on human rights and the environment concluded that complying with human rights obligations not only helps to protect the rights of everyone affected by climate change but also promotes policy coherence, legitimacy and sustainable outcomes. The 2015 resolution of the UN Human Rights Council, numbered A/HRC/29/L.21, stated that the adverse effects of climate change have a range

[206] John H. Knox, "Climate Change and Human Rights Law", p. 9 et seq.

[207] CIEL The German Institute for Human Rights, op. cit., p. 17 et seq.

[208] OHCHR, Report on the Relationship between Climate Change and Human Rights, UN Doc A/HRC/10/61, 2009, p. 30.

[209] John H. Knox, "Linking Human Rights and Climate Change at the United Nations", Harvard Environmental Law Review, 33, 2009, p. 495.

[210] İzzet Arı/Elif Okkan, op. cit., p. 44.

of direct and indirect implications for the effective enjoyment of human rights and that these effects will be felt most acutely by those who are already in vulnerable situations. The national communications submitted to the UNFCCC reflect the degree of respect for human rights in relation to climate change. It can be seen that 70 of the 153 national communications submitted between 2010 and 2015, in other words 45%, referred to measures taken to reduce the effects of climate change on human health, food security and access to drinking water. However, 66 of these 70 national communications did not refer to human rights such as the right to health, the right to food, the right to water and the right to a clean environment, which shows that the protection of human rights has not been a motivating purpose for climate action.[211]

The existential threat posed by climate change requires urgent intervention. A human rights-based approach has the potential to provide tools for responding to the turbulent process facing humanity. A human rights-based approach to climate change will ensure that climate action is prioritised by highlighting how the harms of climate change impede the enjoyment of human rights. Traditional legal mechanisms, such as bringing proceedings before domestic courts, are not sufficient to establish a human rights-based approach to climate change. Action by international and national human rights actors, such as treaty bodies and national human rights institutions, to encourage States will increase the effectiveness of a human rights-based approach to climate change. Although there is no universal definition of the human rights-based approach, it originates in sustainable development and tends to share a number of common elements. These include the participation of rights-holders in decision-making processes, the accountability of the competent authorities, respect for the principles of equality and non-discrimination, the empowerment of rights-holders to understand and exercise their human rights and to participate in decision-making on, and the formulation of, the laws, policies and practices affecting them, and transparency for the relevant stakeholders. A human rights-based approach goes beyond viewing individuals on the front lines of climate change as victims of a hostile world, regarding them instead as dignified and autonomous rights-holders who demand the protection and realisation of their right to a healthy environment.[212]

States adopting a human rights-based approach must pay attention to certain points. The nationally determined contributions (NDCs) submitted by these States should highlight priorities, implementation and support needs for addressing the relevant human rights obligations, including, in particular, children's right to education on climate change-related issues, the right to an adequate standard of living and the right to a clean, healthy and sustainable environment. In accordance with the principles of equality and non-discrimination, NDCs in particular should include impact assessments, measures and commitments regarding efforts to protect the rights of vulnerable groups from the adverse effects of climate change and to ensure that these persons are the primary beneficiaries of climate action. In addition, States have obligations such as mobilising their resources for the realisation of human rights, engaging in international cooperation, guaranteeing accountability, access to justice and effective remedies for human rights violations, and holding other actors, including companies, accountable for their actions. Mechanisms tasked with promoting human rights, such as national human rights institutions, ministries and inter-ministerial committees, have experience and expertise in integrating human rights into government policies.

[211] Mary Robinson Foundation, Incorporating Human Rights into Climate Action (Version 2), 2016, p. 3 et seq.

[212] Scott Walker, op. cit., p. 196.

The active participation of these mechanisms in the development of appropriate consultation processes and in the planning and implementation of NDCs should be ensured.[213]

B. Protection and Strengthening of Procedural Environmental Rights

Procedural environmental rights play a key role in improving national and international environmental decision-making processes. While substantive obligations relate to obligations of conduct, procedural environmental rights and obligations relate to the compliance of States with certain procedures before permitting activities that may cause environmental harm to be carried out. While substantive environmental rights encompass rights and obligations such as the right to health, access to clean and fresh drinking water and environmental conditions of a certain quality, procedural environmental rights focus on access to information, the right to participation and access to justice. Procedural environmental rights ensure that the interests of individuals or groups, and particularly of vulnerable ones, are taken into account in environmental decision-making processes. Principle 10 of the 1992 Rio Declaration emphasises that the public should be afforded appropriate access to information concerning environmental matters, participation in decision-making processes and effective access to judicial and administrative proceedings, and that environmental issues are best handled in this way. Even though environmental rights have mostly been presented from a perspective in which they are perceived as substantive rights, the view that they also encompass procedural rights has been adopted in the doctrine. In parallel with this view, newly adopted international environmental agreements increasingly contain procedural environmental rights.[214]

The Aarhus Convention, which guarantees procedural environmental rights, is an international agreement adopted under the auspices of the UN Economic Commission for Europe. The Convention was adopted at the Fourth Ministerial Conference held within the framework of the "Environment for Europe" process and entered into force in 2001. The Convention establishes a link between environmental rights and human rights and makes clear that sustainable development can only be achieved with the participation of all stakeholders.[215] The elements of access to information, public participation in decision-making and access to justice form the basis of the Convention. Passive access to information concerns the right of the public to request information from public authorities and the obligation of public authorities to provide information in response to a request. Active access to information, on the other hand, concerns the right of the public to receive information and the obligation of the authorities to collect and disseminate information of public interest without the need for a specific request. Public participation in decision-making, another procedural environmental right, covers public participation in the development of environment-related plans, programmes and policies and in the preparation of rules and legally binding norms. The right of access to justice, for its part, constitutes a mechanism through which the public can secure the direct enforcement of environmental law.[216]

[213] OHCHR/CIEL/The German Federal Ministry for Economic Cooperation and Development/Deutsche Gesellschaft für Internationale Zusammenarbeit, Integrating Human Rights in Nationally Determined Contributions (NDCs): Toolkit for Practitioners, 2022, p. 8.

[214] Birgit Peters, "Unpacking the diversity of procedural environmental rights: the European Convention on Human Rights and the Aarhus Convention", Journal of Environmental Law, 1, pp. 1-27, 2018, p. 1 et seq.

[215] UN Economic Commission for Europe, The Aarhus Convention: An Implementation Guide, UN Publication, 2014, p. 15.

[216] Ibid., p. 19.

Through the directives it has adopted on the subject, the EU has transposed the obligations arising from the Aarhus Convention into its own internal law. "The Directive on Public Access to Environmental Information" aims to facilitate public access to environmental information and to raise public awareness of environmental issues. The Directive regulates the obligation of public authorities to make environmental information available by using information and communication technologies. "The Directive on Public Participation in Environmental Plans and Programmes" provides that natural and legal persons are entitled to participate in decision-making processes concerning environmental plans and programmes, while public authorities are under an obligation to provide those wishing to participate in the process with timely and effective opportunities to do so. The third pillar, "The Directive on Access to Justice in Environmental Matters", provides the right to resort to judicial proceedings in the event of breaches of environmental legislation. These directives show that the EU has made significant progress in integrating its human rights and climate change policies.[217]

The active involvement of the public in shaping the policies and decisions that affect it provides society with a channel through which to voice its concerns and to set out in detail how people's lives are or will be affected. Effective and inclusive participation brings to light previously inaccessible and unknown information and, by making policy-makers and investors aware of potential unintended consequences, enhances the social quality of society. Public participation should not be limited to the decision-making process; it should be capable of changing the activities and modus operandi of the public or private actor. Reciprocally, society will also be informed about the rationale for certain activities, which will reduce misunderstandings. The public, being informed about the environmental impacts of the developments and activities around it and having the chance to understand how and to what extent the environment may be affected, will thus have the opportunity to shape decisions concerning the activities or production processes of companies.[218]

The right of access to justice, for its part, provides the public with procedures and remedies so that environmental rights can be effective in practice, and helps the parties to fulfil their commitments. The public's ability to help enforce environmental law also makes an important contribution to the government's efforts.[219] For this reason, developing channels through which the public and the State can cooperate, creating an environment that enables a mutual exchange of information and views, and making progress in the process in the light of court decisions resulting from proceedings brought by the public appear to be important for reaching a solution more quickly.

Climate change is an international problem that threatens the entire world, and human rights such as the right to life, the right to health and the right to access basic necessitiesare being violated as a result of climate change. Since the market-based approach favours industrialised States and institutions over non-industrialised ones, the hierarchically powerful party is privileged. Those harmed by climate change are faced, on the other side, by the actors responsible for carbon pollution. Climate change law, which develops through negotiation and compromise, has a soft nature compared with the formality-based hard

[217] Feza Sencer Çörtoğlu, op. cit., p. 56 et seq.

[218] Hinrich Voss, "Environmental Public Participation in the UK", International Journal of Social Quality, 4/1, pp. 26-40, 2014, p. 27 et seq.

[219] UN Economic Commission for Europe, op. cit., p. 187.

law of human rights. The soft nature of climate change law paves the way for a contentious approach to the conflict of rights between the parties harmed by climate change and the responsible actors. When a choice has to be made between supporting economic interests and realising human rights, allowing economic interests to take precedence over human rights leads to the violation of people's rights, particularly those of vulnerable and poor segments of society. National and international court decisions also state that the rights of individuals to life and to respect for private and family life have been violated owing to actors causing climate change, and that States are obliged to take appropriate measures where they are aware of the existence of a real and serious risk to the life and well-being of individuals.

In order to prevent human rights violations resulting from climate change, it is important to define climate change as a human right and to integrate human rights into climate policies. A human rights-based approach to climate change will ensure that climate action is prioritised by highlighting how the harms of climate change impede the enjoyment of human rights. For a human rights-based approach to be implemented, the NDCs submitted by States regarding their climate change targets must emphasise human rights obligations; impact assessments, measures and commitments must be based on the principle of equality and non-discrimination; and the experience and expertise of the mechanisms tasked with promoting human rights must be drawn upon in the policy-making process. Furthermore, it should be noted that the protection and strengthening of procedural environmental rights, consisting of the rights of access to information, public participation in decision-making and access to justice, are necessary to ensure that human rights are not overlooked in solving the problem of climate change.

The 2026 United Nations Climate Change Conference (COP 31) will be held at the Antalya EXPO Fair Area and Congress Centre from 9 to 20 November 2026, hosted by Türkiye, which will hold the COP Presidency. It is considered that it would be appropriate for HREIT to make a recommendation so that the issue of climate change being a human rights matter can be addressed at this conference, and, as a final paragraph, to include HREIT's view that climate change should be assessed within the scope of human rights.

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