SDG 13: CLIMATE ACTION

A LEGAL GUIDE

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Disclaimer

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About A4ID

Advocates for International Development (A4ID) was founded in 2006 to see the law and lawyers play their full part in the global eradication of poverty. Today, A4ID is the leading international charity that channels legal expertise globally toward the achievement of the UN Sustainable Development Goals. Through A4ID, the world's top lawyers are able to offer high-quality, free legal support to NGOs, social enterprises, community-based organisations, and developing country governments that are working to advance human dignity, equality, and justice. A4ID also operates as a knowledge and resource hub, exploring how the law can be better used to help achieve the SDGs through a range of courses, publications, and events.

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Foreword

The SDG Legal Initiative

There are now fewer than ten years left to meet the lofty ambitions of the UN Sustainable Development Goals (SDGs), with their target date of 2030. Aware of the challenge, Advocates for International Development (A4ID) has been continuing its innovative work towards meeting these targets, by harnessing the power of the law and the work of lawyers. A4ID's SDG Legal Initiative has been developed because it is now more important than ever that lawyers worldwide come together to use their skills to advance positive global change.

For this reason, A4ID's SDG Legal Initiative aims to reach every lawyer in the world and provide them with the knowledge and opportunities to take practical action to end poverty, protect the planet, and ensure that all people enjoy peace and prosperity. The SDG Legal Initiative also aims to build thought leadership, to create communities of practice, and to amplify the role of the legal sector in achieving the SDGs.

Legal Guide to the SDGs

As part of its SDG Legal Initiative, A4ID has developed the world's first Legal Guide to the SDGs. The Legal Guide has been developed as a unique resource, providing a foundational analysis of the role that law can and should play in the achievement of the SDGs. Developed in collaboration with lawyers, academics, and development practitioners, the Guide is made up of 17 distinct chapters, each focussed on one of the 17 goals. Each chapter provides an overview of the relevant regional, national, and international legal frameworks, highlighting how the law can be applied to promote the implementation of the SDGs. The Guide also offers key insights into the legal challenges and opportunities that lawyers may encounter, presenting clear examples of the actions that lawyers can take to help achieve each goal.

Role of Law in Advancing Climate Action

Climate change is the defining issue of our time. From rising sea levels to catastrophic weather events, the impact of climate change is being experienced around the world. It presents the single biggest threat to sustainable development.

Limiting global warming to 1.5°C means "rapid and far-reaching" changes, according to the Intergovernmental Panel on Climate Change. These will involve land, energy, industry, buildings, transport, and cities. All levels of governments and segments of society, including the legal community, need to take drastic action. Mitigation of, and adaptation to, climate change also involves important legal issues.

Sustainable Development Goal 13 echoes the climate

change commitment made in the 2015 Paris Agreement. This Guide gives an overview of the legal instruments the international community is using to reduce greenhouse gas (GHG) emissions. It also highlights legislation and policies adopted by regional organisations, national governments, and regulators. These aim to decrease GHG emissions and adapt to a changing climate. Issues will become more urgent and public awareness of them is growing. Climate change litigation directed at governments or energy-intensive companies is likely to increase. This guide includes examples of such litigation.

Climate change also poses a fundamental justice concern. Developed countries are the largest emitters of greenhouse gases - but people in developing countries are worst affected. The concept of 'climate justice' links climate change and human rights. It strives to protect the rights of the most vulnerable people and ensure the burdens and benefits of climate change are shared fairly.

A4ID believes the law can be a tool for positive change and lawyers have a role to play in tackling climate change. There are legal risks and opportunities arising from the impact of climate change. These impact business operations and society in general. Innovative and leading law firms can lead the transition to a low-carbon economy by helping their clients to identify these. This chapter provides practical advice and actions for lawyers in the fight against climate change.

Yasmin Batliwala

Chief Executive

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The Sustainable Development Goals

The UN Sustainable Development Goals (SDGs) are a universal call to action to end poverty, protect the planet, and ensure that all people can enjoy peace and prosperity.

Also known as the Agenda 2030, the SDGs were agreed in 2015 by the UN General Assembly (Resolution 70/1). They were adopted by all UN Member States, and 2030 was set as the deadline for achieving them.

Compared to the Millennium Development Goals (MDGs), which they succeed, the SDGs cover more ground, with wider ambitions to address inequalities, climate change, economic growth, decent jobs, cities, industrialization, oceans, ecosystems, energy, sustainable consumption and production, peace, and justice. The SDGs are also universal, applying to all countries, whereas the MDGs had only been intended for action in developing countries.

The 17 interdependent goals are broken down into 169 targets. At the global level, progress is monitored and reviewed using a set of 232 indicators. The Addis Ababa Action Agenda provides concrete policies and actions to further support the implementation of the 2030 Agenda. Each year, the UN Secretary General also publishes a report documenting progress towards the targets. In addition, the annual meetings of the High-level Political Forum on Sustainable Development (HLPF) continues to play a central role in reviewing global progress towards the SDGs.

At the national level, even though the SDGs are not legally binding, governments are expected to implement country-led sustainable development strategies, including resource mobilisation and financing strategies, and to develop their own national indicators to assist in monitoring progress made on the goals and targets.

SDG 17 stresses the importance of multi-stakeholder partnerships to achieve the goals. The mobilisation of governments, local authorities, civil society, and the private sector is needed to achieve this aim. Today, progress is being made in many places, but, overall, action to meet the SDGs is not yet advancing at the speed or scale required. This decade must therefore deliver rapid and ambitious action to meet the SDGs by 2030.

Key Terms

SDG 13: Take urgent action to combat climate change and its impact *

In the context of SDG 13 and combating climate change, the following term means:

'**Climate Change**', is defined in the United Nations Framework Convention on Climate Change (UNFCCC) (1992), as the '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'.[1]

This SDG is unique in that it is marked with an asterisk (*) indicating that 'the United Nations Framework Convention on Climate Change, is the primary international, intergovernmental forum for negotiating the global response to climate change'.[2]

1 United Nations Development Programme, (n.d.). *Goal 13: Climate Action*. [online] Available at: https://www.un.org/sustainabledevelopment/climate-change

2 United Nations Framework Convention on Climate Change. (1992). [online] United Nations FCCC/INFORMAL/84, p. 1-24. Available at: https://unfccc.int/resource/docs/convkp/conveng.pdf

Overview of the targets

In the late 1980s, scientists began to issue warnings that carbon dioxide and other greenhouse gases produced by human activity could cause an accelerated rise of global temperatures. In response, the World Meteorological Organisation and the United Nations Environment Programme (UNEP) founded the International Panel on Climate Change (IPCC) in 1988. It was created to provide governments with scientific evidence of climate change. Since then, the IPCC has built a scientific consensus on the causes and consequences of climate change.[3]

Faced with this global challenge, the international community has worked towards a concerted reduction of greenhouse gas emissions. It has adopted international instruments, notably the UNFCC (1992), the Kyoto Protocol (1997) and the Paris Agreement (2016). The SDGs, and in particular Goal 13, acknowledge that 'climate change is one of the greatest challenges of our time and its adverse impacts undermine the ability of all countries to achieve sustainable development'.[4] Yet, some states resist tackling climate change. This is due to short-term economic considerations or climate change denial ideologies, as well as the failure of other states to meet their commitments.

3 The Intergovernmental Panel on Climate Change (IPCC), (n.d.). Reports. [online]. Available at: https://www.ipcc.ch/reports/
4 United Nations, (2015). *Transforming our world: the 2030 Agenda for Sustainable Development*. [Online]. Available at: https://bit.ly/39wTZ8o

The effects of climate change are already felt globally with serious consequences for the environment and for people. The rise of the average global temperature is measurable. The period from 1983 to 2012 was the warmest 30-year period in the Northern Hemisphere in the last 1,400 years.[5] Global warming is causing the polar ice caps to melt and the sea level to rise. Climate change increases the incidence of extreme weather conditions. These include typhoons, snow storms, heatwaves, heavy rainfall, flooding, drought, desertification and water scarcity. Between 1998 and 2017, climate-related and geo-physical disasters claimed an estimated 1.3 million lives.[6]

Climate change undermines the ability of all countries to achieve sustainable development.

Climate change disproportionally affects people living in poor and developing countries. Small Island Developing States are threatened by the rise of sea levels. Countries located near the equator are expected to suffer the most extreme variations in temperatures. Also, a large share of the population in developing countries depends on small-scale agriculture, which is particularly vulnerable to climate variations. Climate change is interconnected with land degradation, drought, and desertification.[7] While developed countries are the largest emitters of greenhouse gases, it is people living in the poorest countries who bear most of the burden. The UNFCCC has formalised the principle of 'common but differentiated responsibilities'. This affirms that, while climate change is a global concern that all governments need to address, 'the developed countries must take the lead in combating climate change and the adverse effects thereof'.

To combat climate change and its impact, two strategies are to be pursued simultaneously: mitigation and adaptation.

Developed countries must take the lead in combating climate change and move from a fossil-fuel based economy to a carbon neutral one.

Mitigation aims to limit the increase of global temperature by reducing human-produced greenhouse gas emissions. A key mitigation measure is the transition from a fossil fuel-based economy to a carbon neutral one. Adaptation refers to the measures taken to reduce harm from changing climate environment. It includes infrastructure projects, such as seawalls, and technological shifts, like more efficient irrigation methods. Climate change policies sometimes also refer to impact reduction. These are measures to minimise adverse effects of climate-related hazards. They also refer to resilience (the ability to recover from natural disasters).

Tackling climate change plays a vital role in the achievement of other SDGs and the realisation of human rights. For example, droughts and famines will displace a growing number of people from their homelands. Without a focus on climate change, these human rights issues will increase both in frequency and impact.

5 Core Writing Team, Pachauri, R.L.; Meyer, L., (2015). *Climate Change 2014 Synthesis Report*, Intergovernmental Panel on Climate Change (IPCC). Available at: https://bit.ly/3u3Wybn
6 United National Department of Economic and Social Affairs (2019). *The Sustainable Development Goals Report 2019*. [Online]. Available at: https://bit.ly/39wUZJG
7 United Nations (2016). *One Day to Combat Desertification, UN calls for action to restore land resources*. [Online]. Available at: https://bit.ly/3CH4hz0

Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries

This target directly addresses adaptation to climate change and disaster risk management (DRM). Adaptation and DRM both aim to reduce the negative consequences of climate change in terms of human and economic losses. DRM strategies reduce vulnerability to climate-related hazards in the short-term. Meanwhile, adaptation is a longer-term process of adjustment to the expected climate change. The reference document on adaptation and DRM is the Special Report of the IPCC 'Managing the risks of extreme events and disasters to advance climate change adaptation'.[8]

It gives examples of DRM and adaptation strategies for several climate events. For instance, faced with rising sea levels, in the short-term, Small Island Developing States should improve early warning systems and drainage maintenance to reduce vulnerability. In the longer-term, they need to adapt their economies to render them more climate independent. In extreme cases, they should consider relocation.

Four priorities of action were identified in the Sendai Framework 2015-2030. This was adopted at the end of the third World Conference on Disaster Risk Reduction and later endorsed by the UN General Assembly. They are:

i. understanding disaster risk
ii. strengthening disaster risk governance
iii. investing in disaster risk reduction
iv. enhancing disaster preparedness

It also sets seven non-binding targets.[9] Among these targets, two serve as indicators for the SDG target 13.1:

i. reducing the number of deaths, missing persons and directly affected persons attributed to disasters per 100,000 population
ii. increasing the number of countries that adopt and implement national disaster reduction risk strategies

Climate activist Greta Thunberg

8 The Intergovernmental Panel on Climate Change (IPCC), (2012). *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation*. [online] Cambridge: Cambridge University Press. Available at: https://www.preventionweb.net/files/24327_srexallfinal.pdf

9 United Nations General Assembly (2015) *Sendai Framework for Disaster Risk Reduction 2015-2030*. [Online]. Available at: https://bit.ly/3CzWYZS

Integrating climate change measures into national policies, strategies and planning

Progress towards this target is measured according to the 'number of countries that have communicated the establishment or operationalisation of an integrated policy, which increases their ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development'.

This indicator measures the number of countries that have ratified the Paris Agreement and have adopted and communicated 'nationally determined contributions' (NDCs). It doesn't reflect the level of implementation of these commitments. It also doesn't reflect the actual reduction in greenhouse gas emissions. This is because the relevant framework for combatting climate change is the UNFCCC, rather than the SDG framework as part of Agenda 2030.

The Paris Agreement entered into force on 4th November 2016. As of September 2021, 190 states and the European Union have ratified it. The Agreement obliges all parties to 'prepare, communicate and maintain successive nationally determined contributions' to the global response to climate change (Article 4). The treaty does not impose binding quantified targets for reducing greenhouse gas emissions. Each state must set its own target in line with the global objective of 'holding the increase in the global average temperature to well below 2°C above pre-industrial levels' (Article 2).

Each party must regularly provide information on the progress made in achieving its NDC to an expert committee (Articles 13 to 15). As of May 2019, 183 parties (182 countries plus the European Union) had communicated their first NDCs to the UNFCCC Secretariat. One party had communicated its second NDC.[10] The rationale behind this transparency mechanism is that peer pressure and global public opinion will drive states to set ambitious targets and achieve them.

Improving education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning

Raising awareness among the public and private sectors, as well as individuals, is essential to combat climate change. Moreover, capacity building is needed to implement mitigation and adaptation strategies. This target is in line with Article 12 of the Paris Agreement. This states that 'parties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information'. UN Member States have pledged to integrate climate change mitigation, adaptation, impact reduction and early warning into school curricula. As of September 2021, no data is available on the countries that have done so.

10 United National Department of Economic and Social Affairs (2019). *The Sustainable Development Goals Report 2019*. [Online]. Available at: https://bit.ly/39wUZJG

Key actions lawyers can take

The final section of this chapter provides more details on how the international legal community can engage in efforts to advance SDG 13. However, the following short summary describes some of the key actions that lawyers can take to contribute to the sustainable development agenda on climate action.

Learn and educate

Climate change poses a fundamental justice concern. By enhancing their understanding of climate change – as well as the policy and programmatic efforts to mitigate its impact and to adapt to its consequences – lawyers can play a key role in promoting 'climate justice'. Law firms with expertise in this area can consider organising seminars and workshops on international climate change obligations to raise awareness of the existing laws relevant to climate change.

Integrate

In many law firms, climate change has become a specialised area of practice. However, all legal departments can now consider the ways in which climate change can affect their practice areas. Law firms can use their unique positioning and expertise to ensure that the burdens and benefits of climate change are shared equitably; to encourage their clients to introduce and monitor carbon management strategies; and to safeguard the rights of the communities most vulnerable to climate change.

Act

Climate change litigation is on the rise and courts are starting to show willingness to hold corporations accountable for their contributions to GHG emissions. Commercial lawyers can work with their clients to develop effective climate change policies, which respond to international legal frameworks on climate change and future-proof businesses.

Lawyers can also support the fight against climate change by using their legal expertise to advise on the mitigation and adaptation strategies being developed internationally. Law firms, corporate legal departments, judiciaries and barrister's chambers can partner with A4ID to provide pro bono legal services to governmental and non-governmental organisations working to address climate change.

Elements of the international legal framework

The United Nations Framework Convention on Climate Change

Adopted: 9 May 1992

Entered into force: 21 March 1994

Status of ratification (as of September 2021): 197 Parties

The UNFCCC is the first internationally-negotiated instrument to combat climate change. Its objective is to 'stabilise greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous interference with the climate system' (Article 2).

The Convention is founded on the principles of equity and 'common but differentiated responsibilities', according to which developed countries have to take the lead in combating climate change (Article 3.1). If all parties to the Convention commit to implement measures to mitigate the adverse effects of climate change (Article 4.1), only the developed countries (listed in Annex I) are required to limit the emissions of greenhouse gases that are the result of human activity (Article 4.2.).

However, the Convention itself contains no binding targets or enforcement mechanisms. The UNFCCC contains provisions to support research and systematic observation (Article 5), as well as to promote education, training and public awareness of climate disruption (Article 6). A solidarity financing mechanism is established to support developing countries that are particularly vulnerable to the effects of climate change (Articles 4.3. and 11). Every year since 1995, governments meet in a Conference of the Parties (COP) to measure progress in the implementation of the UNFCCC. COPs have also been used as fora to negotiate protocols and agreements.

The Kyoto Protocol

Adopted: 11 December 1997

Entered into force: 16 February 2005

Status of ratification (as of September 2021): 192 Parties

In 1997, parties to the UNFCCC concluded the Kyoto Protocol, which contains legally binding obligations upon 37 industrialised countries and the European Union to reduce greenhouse gas emissions by an average of 5.2% by 2012 as compared to 1990 levels (Article 3 and Annex B). When the Protocol came into force in 2005, it became the first international, legally binding agreement that set emission reduction targets.

As a flexibility mechanism, the Protocol allows developed countries to trade their emissions in order to fulfil their reduction commitments (Article 17).

Nearly every industrialised country ratified the Protocol, with the notable exception of the United States. According to the principle of 'common but differentiated responsibilities', the Protocol does not impose new obligations on developing countries, including China and India which were nevertheless major contributors to global greenhouse gas emissions. The United States, whilst a signatory party to the Protocol, has never ratified it, notably citing the lack of quantitative commitments from emerging economies. The fact that the Protocol does not apply to three of the world's major economies has considerably undermined its impact. Moreover, the Protocol has not been fully implemented by its ratifying parties: for instance, in December 2011, when it appeared that Canada would not reach its target, it withdrew from the Protocol.

The emission reduction commitments covered the period from 2008 to 2012. The Doha Amendment extended the Kyoto obligations to 2020. However, the Doha Amendment did not enter into force until its ratification by two thirds of the parties. Due to a very low rate of ratification, this number was not reached until October 2020, just two months before the end of the 2013-2020 extension period which the Amendment covered.

The Paris Agreement

Adopted: 12 December 2015

Entered into force: 4 November 2016

Status of ratification (as of September 2021): 191 Parties

In December 2015, parties to the UNFCCC reached a landmark agreement in Paris. This was a legally binding agreement that would replace the Kyoto regime after 2020. The Paris Agreement has three objectives (Article 2):

i. to limit global warming to less than 2°C above pre-industrial levels and pursue efforts to limit the rise to 1.5°C

ii. to improve the ability to adapt to climate change and foster climate resilience

iii. to make finance flows consistent with the above objectives

The Paris Agreement is on the way to universal ratification. In 2020, under the Trump administration, the United

States withdrew from the Paris Agreement. However, the United States re-entered the agreement under the Biden administration on 20 January 2021.[11]

The distinction between developing and developed countries, which previously quantified reduction targets under the Kyoto Protocol, has now been abandoned. Each party shall determine its own NDC to the overarching aim (Article 4), which will then become legally binding. With this system, the Paris Agreement moves away from the 'common but differentiated responsibilities' principle on which the UNFCCC was based. Instead, it focuses on common commitments for countries of both the Global South and the Global North according to their capacities.

However, flexibility and solidarity mechanisms in favour of developing countries remain. Developed countries 'should continue taking the lead by undertaking economy-wide absolute emission reduction targets'. However, developing countries are only 'encouraged to move over time' towards absolute reduction targets (Article 4.5). Parties commit to providing financial support, transfer of technology and capacity building to assist developing countries with mitigation and adaptation (Article 9, 10 and 11).

The Paris Agreement has been criticised for the lack of an enforcement mechanism to ensure states will set meaningful emission targets and meet them. To promote effective implementation, the Agreement relies on an 'enhanced transparency mechanism' (Article 13). Each party must regularly submit a report on its emissions with the information necessary to track progress in achieving its NDC. The reports will undergo a review by an expert committee. The COP will then periodically assess the global progress towards the Agreement's long-term goals.

When the Paris Agreement was adopted in 2015, it was clear that further rules and procedures for its effective implementation needed to be negotiated. The deadline to complete these negotiations was in 2018 at the COP24 in Katowice (Poland). The Katowice outcome is a complex package of procedures and mechanisms. It was achieved through in-depth technical discussions and political compromise. It contains operational guidance on the exact information that governments must provide in their nationally determined contributions and the rules of the transparency framework. It also includes how to assess progress on the development and transfer of technology and how to provide information on financial support to developing countries.[12]

In between the annual Conferences of Parties, the Subsidiary Body for Implementation meets in Bonn (Germany). Its agenda is shaped around the key building blocks of implementation of the UNFCCC, the Kyoto Protocol and the Paris Agreement. There is a focus on the monitoring, reporting and verification issues. It aims to enhance the ambition of Parties on all aspects of its agenda.[13]

The Paris Agreement has been criticised for the lack of an enforcement mechanism to ensure states will set meaningful emission targets and meet them.

11 The White House (2021). *Briefing on Paris Climate Agreement*. [Online]. Available at: https://bit.ly/3EDQcUS
12 UNFCCC (n.d.), *Katowice climate package*. [Online] Available at: https://bit.ly/3i11lp9
13 UNFCCC (n.d.), *Subsidiary Body for Implementation*. [Online] Available at: https://unfccc.int/process/bodies/subsidiary-bodies/sbi

Vienna Convention for the Protection of the Ozone Layer

Adopted: 22 March 1985

Entered into force: 22 September 1988

Status of ratification (as of September 2021): 197 Parties

On the initiative of the UNEP, the Vienna Convention was signed to address the damage caused to the ozone layer. Parties agreed to cooperate through systematic observations, research and information exchange and to adopt measures against activities likely to have adverse effects on the ozone layer. However, the Convention itself did not require States to ban specific ozone-depleting chemicals.

Montreal Protocol on Substances that Deplete the Ozone Layer

Adopted: 16 September 1987

Entered into force: 1 January 1989

Status of ratification (as of September 2021): 197 Parties

In 1989, the Montreal Protocol to the Vienna Convention on Substances that Deplete the Ozone Layer entered into force. This imposed specific obligations in respect of the different harmful substances, notably phasing out the production of chlorofluorocarbons (CFCs) commonly used as refrigerants. The Protocol includes an adjustment provision that enables the parties to respond quickly to new scientific information and control new chemicals. The Protocol has been amended several times to include more substances. Most recently, in 2016, the Kigali amendment extended controls to reduce and phase out the use of hydrofluorocarbons (HFCs). HFCs were used by manufacturers moving away from CFCs and other ozone-depleting substances but are potent greenhouse gases.

There is also a mechanism to provide financial and technical support to Least Developed Countries (LDCs). This assists with the economic burden they would face when complying with these regulations.

Soft law and declarations

UN General Assembly Resolutions

Since 1988, the UN General Assembly regularly adopts Resolutions affirming that climate change is 'one of the greatest challenges of our time'. The General Assembly also closely monitors the climate negotiations under the UNFCCC. As of September 2021, fifteen Resolutions have been adopted by the General Assembly, the most recent being Resolution 74/219: Protection of global climate for present and future generations of humankind.[14]

On 8 October 2021, the Human Rights Council recognised for the first time that having a clean, healthy and sustainable environment is a human right, in its resolution 48/13. The resolution clearly recognises environmental degradation and climate change as interconnected human rights crises. The Council called on States to work together, and with other partners, to implement this newly recognised right. The issue will now pass on to the UN General Assembly for further consideration. At the same time, through a second resolution (48/14), the Council also increased its focus on the human rights impacts of climate change by establishing a Special Rapporteur dedicated specifically to that issue.[15]

Intergovernmental Panel on Climate Change Reports

The mission of the Intergovernmental Panel on Climate Change (IPCC) is to assess the science related to climate change. Created in 1988 by the World Meteorological Organisation and the UNEP, it is composed of representatives of the UN Member States. The IPCC assessment reports are written and reviewed by hundreds of leading scientists. The IPCC's objective is not to produce environmental norms or regulations. Instead, it provides policymakers with scientific information and projections based on different scenarios. The intergovernmental and scientific nature of the IPCC confers significant influence on its assessment reports.

The Fifth IPCC Assessment Report (2014) states 'anthropogenic emissions of greenhouse gases are the highest in history' and that 'human influence on the climate system is clear'.[16] The report estimates that maintaining the same levels of greenhouse gas emissions is likely to lead to 'severe, pervasive and irreversible impacts for people and ecosystems.'[17] According to the report, climate risks can only be reduced by 'substantial emissions reductions over the next few decades,'[18]

14 United Nations General Assembly, (2019). *Resolution 74/219: Protection of global climate for present and future generations of humankind.* [Online]. Available at: https://undocs.org/pdf?symbol=en/A/RES/74/219

15 United Nations, (2021). Access to a healthy environment, declared a human right by UN rights council. [Online] Available at: https://news.un.org/en/story/2021/10/1102582

16 Core Writing Team, Pachauri, R.L.; Meyer, L., (2015). *Climate Change 2014 Synthesis Report*, Intergovernmental Panel on Climate Change (IPCC). Available at: https://bit.ly/3u3Wybn

17 Ibid. p. Foreword

18 Ibid. p. 17

along with adaptation measures.

When adopting the Paris Agreement, the COP asked the IPCC to prepare a Special Report on 'the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emissions pathways'. This was published in October 2018. The report highlighted that limiting global warming to 1.5°C compared to 2°C would avoid or mitigate several climate change impacts. Anthropogenic greenhouse gas emissions would need to be reduced by 45% from 2010 levels by 2030 and reach global 'net zero' by 2050. This means that the remaining emissions could be compensated by removing carbon dioxide from the air, which relies on techniques currently under development.

The Sixth Assessment Report of the IPCC, 'AR6 Climate Change 2021: The Physical Science Basis', published in August 2021, paints an even starker picture. The report states that, 'It is unequivocal that human influence has warmed the atmosphere, ocean and land'. It says, 'Human-induced climate change is already affecting many weather and climate extremes in every region across the globe. Evidence of observed changes in extremes such as heatwaves, heavy precipitation, droughts, and tropical cyclones, and their attribution to human influence, has strengthened since the Fifth Assessment Report (AR5).'[19] The report adds that 'Global surface temperature will continue to increase until at least the mid-century under all emissions scenarios considered. Global warming of 1.5°C and 2°C will be exceeded during the 21st century unless deep reductions in carbon dioxide (CO2) and other greenhouse gas emissions occur in the coming decades.' The report lays out five scenarios outlining various levels of greenhouse gas output. Under the very low emissions scenario, the climate is likely to increase by 1.0°C to 1.8°C compared to 1850-1900 levels, by 2.1°C to 3.5°C in the intermediate scenario, and by 3.3°C to 5.7°C under the very high emissions scenario.[20]

The report also states that 'With every additional increment of global warming, changes in extremes continue to become larger. For example, every additional 0.5°C of global warming causes clearly discernible increases in the intensity and frequency of hot extremes, including heatwaves, and heavy precipitation, as well as agricultural and ecological droughts in some regions (...) There will be an increasing occurrence of some extreme events unprecedented in the observational record with additional global warming, even at 1.5°C of global warming.' This report is the first in a series of three. The two other working groups are expected to publish their reports in 2022.

Human-inducted climate change is already affecting many weather and climate extremes in every region across the globe. Evidence of observed changes in extremes such as heatwaves, heavy precipitation, droughts, and tropical cyclones, and their attribution to human influence, has strengthened since the Fifth Assessment Report.

19 Intergovernmental Panel on Climate Change. (2021). *Headline Statements from the Summary for Policymakers,* Sixth Assessment Report. [Online]. Available at: https://bit.ly/2XQDUYE
20 Ibid.

Regional legal and policy frameworks

African Union

Agenda 2063 – The Africa We Want (2015)

Agenda 2063 is a strategic document to accelerate progress and reach sustainable development in Africa. It was adopted by the African Union in 2015. It consists of both a vision and a framework for action.

One of the key goals is to 'act with a sense of urgency on climate change and the environment'.[21] Whilst African countries pledge to take part in global mitigation efforts, Africa is contributing to less than 5% of global emissions. The priority therefore, is set on adaptation to reduce the adverse consequences of climate change, especially for vulnerable populations (paras 16 and 17).

Draft Africa Climate Change Strategy (2016-2020)

The purpose of this strategy is to 'define the main parameters for an effective, coordinated climate change response for the African continent that builds resilient capacities for adaptation and unlocks the benefits of the massive mitigation potential of the continent.'[22]

However, as of September 2021, this document has not yet been formally adopted by the African Union.

21 African Union Commission. (2015). *Agenda 2063: The Africa We Want*. [online]. Nairobi: The African Union Commission. Available at: https://bit.ly/3kAeqHN

22 United Nations. (2014). *Draft African Union Strategy on Climate Change*. [Online]. Available at: http://www.un.org/en/africa/osaa/pdf/au/cap_draft_auclimatestrategy_2015.pdf

Asia

Association of South East Asian Nations

The Association of South East Asian Nations (ASEAN) have established a Roadmap for the ASEAN Community (2009-2015) and published a common prospectus, the ASEAN Community Vision 2025. In this document, they undertake to realise a 'resilient community with enhanced capacity and capability to adapt and respond to social and economic vulnerabilities, disasters, climate change, as well as emerging threats and challenges.'[23]

ASEAN also promotes actions for climate change on a regional scale. For example, updated Regional Guidelines for Promoting Climate Smart Agriculture (CSA) Practices were published in 2015 to support close cross-sectoral collaboration and coordination in climate change responses.[24]

Two crucial documents of ASEAN energy cooperation, the ASEAN Plan of Action for Energy Cooperation (APAEC) 2016-2025 Phase 2: 2021-2025 , and the 6th ASEAN Energy Outlook (AEO)[25], reference climate change adaptation and mitigation with a focus on sustainable energy.

On 7th October 2021, ASEAN published their first State of Climate Change Report. The report provides an overall outlook on the state of climate change in the ASEAN region and outlines opportunities for cooperation and collaboration towards 2050 climate targets.[26]

European Union

Decision No 406/2009/EC of the European Parliament and of the Council (2009)

The European Union has set itself the objective of reducing its greenhouse gas emissions by 20% by 2020 compared with 1990 levels. For the sectors not covered by the EU Emissions Trading System, such as transport, buildings, agriculture or waste, this decision establishes binding reduction targets for Member States.[27]

The national targets are based on each Member State GDP per capita, the rationale being that wealthier countries have higher investment capacities.

23 ASEAN, (2015). *Community Vision 2025* [Online]. Available at: https://bit.ly/3AGdA1w
24 ASEAN, (2015). *Regional Guidelines on Promoting Climate Smart Agriculture (CSA) Practices.* [Online]. Available at: https://bit.ly/3AHrFvY
25 Reports available here: https://bit.ly/3zDgfl0 and here: https://bit.ly/3o3FqS3
26 ASEAN, (2021). ASEAN State of Climate Change Report. [Online] Available at: https://asean.org/wp-content/uploads/2021/10/ASCCR-e-publication-Final-12-Oct-2021.pdf
27 European Union, (2009). *Decision No 406/2009/EC of the European Parliament and of the Council on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020.* [Online]. Available at: https://bit.ly/3lWd0qw

Regulation 2018/842 of the European Parliament and of the Council (2018)

In line with the objective set in the Paris Agreement, the European Union adopted a new regulation setting a more ambitious target of 30% reduction of emissions by 2030 compared with 2005 levels. The Regulation sets new binding national emission reduction targets for sectors outside of the EU Emission Trade System. These range from 0% for Bulgaria to a target of 40% for Luxembourg and Sweden.[28]

Directive 2003/87/EC – European Union Emissions Trading System

The European Union Emissions Trading System (EU ETS) was launched in 2005. It is the first international emissions trading system and remains the largest one to this date.

The Trading System aims to cost-effectively reduce industrial greenhouse gas emissions through a 'cap and trade' system. This limits the total amount of greenhouse gases emitted and allows a trade of emission allowances within that limit. The cap is reduced each year in line with European carbon dioxide emissions reduction targets. Businesses and industries can receive or buy allowances. Each allowance gives them the right to emit one tonne of carbon dioxide. Companies can then trade these allowances on an exchange market, based on their actual level of emissions. This fixes the price per tonne of carbon dioxide through supply and demand. Companies that do not acquire sufficient allowances to cover their emissions face heavy fines.

The EU ETS covers power stations, oil refineries, coke ovens, iron and steel plants, certain kinds of factories, and aviation. Together, these are responsible for around 45% of the EU's greenhouse gas emissions

28 European Union (2018). *Regulation (EU) 2018/842 of the European Parliament and of the Council on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013.* [Online]. Available at: https://bit.ly/3CF5jvy

Communication 2019/640 on the European Green Deal

On 11 December 2019, the European Commission presented by way of a Communication to the Council and the Parliament the European Green Deal. The European Green Deal is a growth strategy that aims to transform the EU into a fair and prosperous society, with a modern, resource-efficient and competitive economy where there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use.[29]

In 2021, the EU set an interim GHG emission reduction target of 55% from 1990 levels. In July 2021, the European Commission issued the "Fit for 55" proposal to achieve this target. This is a package of legislative proposals to make the EU's climate, energy, land use, transport and taxation policies fit for reducing net greenhouse gas emissions by at least 55% by 2030, compared to 1990 levels.[30]

29 European Union, (2019). Communication 2019/640/CE from the Commission to the European parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on The European Green Deal. Available at: https://bit.ly/3AFvXCZ

30 European Parliament, (2021). Legislative train schedule – Fit for 55 package under the European Green Deal [Online]. Available at: https://bit.ly/3AKjhLg

Examples of relevant national legislation

Denmark

Climate Change Act (2014)

Denmark passed the Climate Change Act in 2014 establishing new strategies for the period 2014 to 2050. The Act creates a permanent and independent Climate Council.[31] It is composed of skilled experts specialising in energy, transport, buildings, agriculture, environment, nature and economics.[32]

Between 2005 and 2018, Denmark achieved a net emissions reduction of 23 %, performing better than the EU overall. The emissions reduction target for Denmark has risen from 20% for 2020 to 39 % by 2030 (compared to 2005).[33]

Germany

Climate Action Law (2021)

Until 2019, Germany did not have one specific piece of legislation focussed on the climate. Instead, Germany's climate action policies were embedded in a multitude of national laws, government programmes, EU regulations and international agreements. Several German states had their own climate action laws, which were reinforced by Germany's Climate Action Plan 2050, the country's long-term climate action strategy.

In 2019, Germany adopted the Climate Action Law at the Federal level. Following a landmark ruling by the German Constitutional Court,[34] the Parliament decided in 2021 to strengthen the Climate Action Law and to align it with new EU targets. The reform brings forward the target date for climate neutrality to 2045. It makes this target legally binding, while also introducing stricter greenhouse gas reduction targets on the way.[35]

31 European Parliament Think Tank. (2021). *Climate action in Denmark: Latest state of play.* [Online]. Available at: https://bit.ly/2W8zewA
32 Offshore Wind, (2015). *Denmark Passes Climate Change Act.* [online]. Available at: https://www.offshorewind.biz/2015/01/14/denmark-passes-climate-change-act/
33 Ministry of Climate, Energy and Building (2013). *The Danish Climate Policy Plan: Towards a Low Carbon Society.* [Online]. Available at: https://bit.ly/3IU4rMN
34 Bundesverfassungsgericht. (2021). *Constitutional complaints against the Federal Climate Change Act partially successful.* [Online Press Release]. Available at: https://bit.ly/3i1o6Jw
35 Clean Energy Wire. (2021). *Germany's Climate Action Law.* [Online]. Available at: https://www.cleanenergywire.org/factsheets/germanys-climate-action-law-begins-take-shape

United Kingdom

Climate Change Act (2008) Environment Bill (2021)

The Climate Change Act was passed in 2008 with the aim of creating an economically credible emissions reduction path.[36] It includes a 2050 target to reduce greenhouse gas emissions by at least 80% from the 1990 levels. The Act also sets legally binding 'carbon-budgets' and sets up a Committee on Climate Change.[37]

In 2019, the Climate Change Act 2008 (2050 Target Amendment) Order 2019 was passed, increasing the UK's commitment to a 100% reduction in emissions by 2050, as opposed to the original commitment of 80% reduction of greenhouse gas emissions by 2050.[38]

Adopted in 2021, the Environment Bill, among other things, will establish a new environmental watchdog in the Office for Environmental Protection as well as new regulations on waste, resource efficiency, and due diligence on certain commodities, air quality, water, and nature and biodiversity.[39]

Philippines

The Philippines Climate Change Act (2009) and the Disaster Risk Reduction and Management Act (2010) are considered model legislations in the Asia Pacific region by the UN Office for Disaster Risk Reduction.[40]

Contrary to other legislation, the Philippine Climate Change Act[41] and its Action Plan (2011–2028)[42] have no legally binding targets on greenhouse gas emissions. Instead, they prioritise adaptation to reduce vulnerability. Philippine's legislation is remarkable for its cross-sectoral approach: it involves all ministries and State entities at the national and local levels.

36 Committee on Climate Change (CCC), (n.d.). *UK regulations: the Climate Change Act*. [online]. Available at: https://bit.ly/3kAKyul
37 Committee on Climate Change (CCC), (n.d.). *About the Committee on Climate Change*. [online]. Available at: https://www.theccc.org.uk/about/
38 UK Parliament: House of Lords Library (2021). *Climate change targets: the road to net zero?* [Online]. Available at: https://bit.ly/3u9OGVV
39 UK Parliament, (2021). The Environment Bill. Available at: https://bills.parliament.uk/bills/2593
40 Smith, T. (2012). *Is the Philippines' climate law the best in the world?* Climate Home News. [Online]. Available at: https://bit.ly/2W7W4V0
41 Republic of the Philippines. (2009). *Philippines Republic Act No. 9729*. [online] Manila. Available at: https://www.ifrc.org/docs/IDRL/RA209729.pdf.
42 Climate Change Commission. (n.d.). *Change Action Plan 2011-2028.* [online] Manila: Climate Change Commission. Available at: https://bit.ly/3i3RG18

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Mozambique

National Climate Change Strategy (2012)

Mozambique has taken impressive legislative steps in developing measures concerning climate change. The adoption of the National Strategy for Climate Change, covering the period between 2013 and 2025, is Mozambique's 12-year-plan to reduce the country's vulnerability to climate change and improve the living conditions of the Mozambican people. The Strategy is centred around three core themes:

i. adaptation and climate risk management
ii. mitigation and low carbon development
iii. cross-cutting issues[43]

In addition to this, in 2014, Mozambique passed a law and approved a Framework Law for Disaster Management. This law addresses disaster prevention, mitigation, and management and emphasises the importance of strategic readiness and systematic preparedness to prevent the impacts of climate change.[44]

China

National Plan (2015)

In 2015, China adopted a National Plan for Tackling Climate Change.[45] This plan covers mitigation, adaptation, scientific research and public awareness. The plan proposes to 'achieve the peaking of carbon dioxide emissions around 2030, increase the share of non-fossil fuels in primary energy consumption to around 20% in 2030, to lower carbon dioxide emissions per unit of GDP in 2030 by 60% to 65% compared with the level in 2005, increase the forest stock volume by around 4.5 billion cubic meters compared to the 2005 level, and to improve the ability to adapt to climate change in a comprehensive manner.'[46]

At the 75th session of the United Nations General Assembly, President Xi Jinping announced in September 2020 that China will strengthen its 2030 climate target (NDC), and aim to achieve carbon neutrality before 2060.[47]

43 Grantham Research Institute on Climate Change and the Environment. (2015). *Climate Change Legislation in Mozambique.* [Online]. Available at: http://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2015/05/MOZAMBIQUE.pdf
44 Ibid.
45 The National Development and Reform Commission, (2015). *China's Policies and Actions on Climate Change.* [online]. Available at: https://bit.ly/3kyNZ5c
46 Briggs, H. (2015). *China climate change plan unveiled.* BBC News. Available at: https://www.bbc.co.uk/news/science-environment-33317451
47 Ogden, Pete. (2020). *Climate change and biodiversity take center stage at the 75th session of the UN General Assembly. United Nations Foundation.* [Online]. Available at: https://unfoundation.org/blog/post/climate-change-biodiversity-take-center-stage-75th-session-general-assembly/

Papua New Guinea

Climate Change Management Act (2015)

The Papua New Guinea Climate Change Management Act establishes a Climate Change and Development Authority (CCDA) to promote and manage 'climate compatible development through climate change mitigation and adaptation activities'. The CCDA has extensive powers. These include administering the Climate Change and Green Growth Trust Fund. It also raises money through fees and levies for the Fund. The CCDA establishes planning committees within regulated sectors to plan sectoral regulation for mitigation and adaptation. The Act also provides for mitigation targets to be set by the minister in charge, on the advice of the CCDA and relevant government departments. The targets are to be set to allow for economic growth in a developing country. At the same time, they aim to minimise carbon intensity within particular sectors. The latter aim is pursued by setting mitigation and adaptation standard and performance level regulations for high-carbon sectors and establishing fuel and building 'climate standards'.

Seychelles

Disaster Risk Management Act (2014)

The Act specifies that the Disaster Risk Management Division of government shall develop and maintain a database on disaster related information, including climate change and other emerging threats. The inclusion of climate change in planning laws should strengthen the resilience and adaptive capacity of the country to climate-related hazards.

Insights for the legal profession
a) Examples of Relevant Litigation and Cases

USA

Massachusetts v. Environmental Protection Agency (2007)

The Clean Air Act (CAA) requires the US Federal government – and in particular the Environmental Protection Agency (EPA) – to regulate 'any air pollutant (…) which may reasonably be anticipated to endanger public health or welfare' including from motor vehicles (Section 202.a).

In 1999, Massachusetts and 11 other States, joined by environmental organisations, petitioned the EPA to regulate carbon dioxide as an air pollutant based on its contribution to climate change and global warming. The EPA denied the petition arguing that it did not have the authority under the Clean Air Act to regulate carbon dioxide and that binding regulation under the CAA would contravene the Administration's policy approach to climate change. The Court of Appeal of the District of Columbia upheld the EPA's decision in 2005. The petitioners then appealed to the US Supreme Court.

In 2007, the US Supreme Court ruled against the EPA. According to the Supreme Court, the CAA wording of 'air pollutants' is large enough to encompass carbon dioxide. The Court also rejected EPA's policy arguments for delaying its intervention by stating that: 'EPA can avoid promulgating regulations only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do'.

In December 2009, in accordance with the decision of the Supreme Court, the EPA administrator issued two findings stating that (1) greenhouse gas emissions threaten the public health and welfare of current and future generations, and (2) motor vehicles contribute to these greenhouse gas emissions.[48] This decision paved the way for imposing greenhouse gas emissions standards for vehicles.[49]

According to the Supreme Court, the CAA wording of 'air pollutants' is large enough to encompass carbon dioxide.

48 Environmental Protection Agency. (2009). *Endangerment and Cause of Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*. [Online] Available at: https://grist.files.wordpress.com/2009/12/finalfindings.pdf

49 United States Environmental Protection Agency, (n.d.). *Regulations for Emissions from Vehicles and Engines*. [online]. Available at: https://www.epa.gov/regulations-emissions-vehicles-and-engines/regulations-greenhouse-gas-emissions-passenger-cars-and.

The Netherlands

Urgenda Foundation v. Kingdom of The Netherlands, The Hague Court of Appeal (2018)

Urgenda, an environmental organisation, brought a case arguing that the efforts of the Dutch government to reduce greenhouse gas emissions were not ambitious enough. It demanded the state be ordered to achieve a 25% reduction by 2020 relative to 1990 levels.

In 2015, the District Court of The Hague ruled in favour of Urgenda and the Dutch State appealed.

On 9 October 2018, The Hague Court of Appeal issued its judgment[50], holding that, by doing too little to prevent climate change, the state failed to fulfil its duty of care under Articles 2 and 8 of the European Convention on Human Rights. These protect, respectively, the right to life and the right to private and family life. It ordered the state to reduce emissions by at least 25% by end-2020. On 20th December 20, 2019, the Supreme Court of the Netherlands upheld the decision under Articles 2 and 8 of the ECHR.[51]

This case reaffirms that litigants can be successful in establishing a positive obligation for governments to adopt environmental policies aimed at reducing greenhouse gas emissions to mitigate the effects of climate change.

Pakistan

Asghar Leghari v. Federation of Pakistan, Lahore High Court Green Bench (2015)

Asghar Leghari, a Pakistani farmer, brought a public interest litigation against the provincial and federal governments to challenge their inaction in implementing the National Climate Change Policy of 2012 and its Framework for Implementation 2014-2030. The Lahore High Court recognised that 'climate change [was] a defining challenge of our time and [had] led to dramatic alterations in our planet's climate system'.[52] For Pakistan in particular, the Court highlighted that frequent floods and droughts had led to water scarcity and a lack of food security.

The Court found that 'the delay and lethargy of the State' in implementing the national climate change policy violated Constitutional provisions protecting the right to life and the right to human dignity, as well as on international environmental principles of sustainable development, precautionary principle and climate change justice. It ordered the authorities to nominate a climate change focal person

50 The Hague District Court, Chamber for Commercial Affairs. (2015). *Urgenda Foundation v Kingdom of the Netherlands, , C/09/456689* Available at: https://bit.ly/2XK1Bl4
51 Climate Case Chart, (2015). *Urgenda Foundation v. State of the Netherlands* [Online]. Available at: https://bit.ly/2XZMg06
52 Lahore High Court (2015). *Asghar Leghari v Federation of Pakistan, Order Sheet, Case No. 25501/2015*, Lahore Judicial Department. [Online]. Available at: https://bit.ly/3CCkHsu

responsible for the implementation of the Climate Change Policy and to constitute a climate change commission comprising representatives of the key ministries, NGOs and technical experts.

The Netherlands

Milieudefensie et al. v. Royal Dutch Shell plc (2021)

In April 2019, Mileudefensie, also known as Friends of the Earth Netherlands, served a court summons against Shell, with 6 other NGOs and more than 17,000 Dutch citizens as co-plaintiffs.

The plaintiff argued that Shell had a duty of care and claimed that Shell was breaching article 6:162 of the Dutch civil code, the general basis for claims for damages that arise from torts[53], as well as violating articles 2 and 8 of the European Convention on Human Rights – the right to life and the right to family life. It was additionally argued that Shell had been aware of the damaging impact of its emissions for years, without taking any significant action. Shell, on the other hand, argued that the case held no legal basis, and that emissions reduction is the mandate of states alone.

The oil giant was ordered by the Hague District Court to reduce its emissions by 45% by the end of 2030 compared to 2019 levels, as per the Paris Climate Agreement.[54] This case built on the principles applied in the landmark Urgenda case. In applying a duty of care on Shell, the court concluded that the standard of care included the need for companies to take responsibility for all CO2 emissions produced, including direct emissions, indirect emissions, and emissions produced as a result of third-party use . This case is considered to be a landmark case amongst climate litigation, as the first example of a judge ordering a large polluting corporation to comply with the Paris Climate Agreement. Furthermore, it is the first major example of a successful climate litigation case against a corporation which is based on human rights approach.

Shell intends to appeal,[55] however, the ruling is provisionally enforceable, meaning that notwithstanding the pending appeal procedure, Shell is obligated to reduce its emissions in accordance with the ruling.

The oil giant was ordered by the Hague District Court to reduce its emissions by 45% by the end of 2030 compared to 2019 levels, as per the Paris Climate Agreement .

53 WILMAP. (2018). *Article 6:162 Dutch Civil Code.* Stanford University. [Online]. Available at: https://wilmap.stanford.edu/entries/article-6162-dutch-civil-code
54 Rechtbank Den Haag (2021). *ECLI:NL:RBDHA:2021:5339.* [Online]. Available at: https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339
55 Climate Case Chart, (2019). *Milieudefensie et al. v. Royal Dutch Shell plc.* [Online]. Available at: https://bit.ly/3kCsrEL

b) Legal context and challenges

Former President of Ireland, Mary Robinson speaking at the USAID Frontiers in Development Forum

Climate change poses a fundamental justice concern. The countries that have contributed least to greenhouse gas emissions are most affected by the effects of global warming. They also have the fewest resources to adapt to and protect themselves from it.

The principle of 'common but differentiated responsibilities' first formulated in the UNFCCC implies that all states share an obligation to protect the climate system. However, this equity means taking into consideration the different responsibilities and respective capabilities. The UNFCCC states that developed countries 'should take the lead in combating climate change' (Art. 3.1). It also says the 'specific needs and special circumstances' of developing and most vulnerable countries 'should be given full consideration' (Article 3.2). The concept of 'climate justice' links climate change and human rights with the purpose of safeguarding the rights of the most vulnerable people and ensuring that the burdens and benefits of climate change are shared equitably.[56]

56 Mary Robinson Foundation: Climate Justice, (n.d.). *Principles of Climate Justice*. [online]. Available at: https://www.mrfcj.org/principles-of-climate-justice/

Neither the Universal Declaration of Human Rights nor the Human Rights Covenants recognise a right to a safe and healthy environment.[57] However, climate change undoubtedly has an impact on the enjoyment of specific human rights, especially for the most vulnerable populations. This impact will increase in the future.

Climate disruption will affect the rights to food, water, and decent housing. In the most extreme cases, it will affect the right to life. It is interesting to note that the Court of Appeal of The Hague based its judgment in the Urgenda case, not on environmental regulations, but on Articles 2 and 8 of the European Convention on Human Rights. These are the rights to life and privacy/family life.

SDG 13 on climate change expressly states that 'the UNFCCC is the primary international, intergovernmental forum for negotiating the global response to climate change'. Adopted within the framework of the UNFCCC, the Paris Agreement is now the cornerstone of the fight against global warming.

'Climate change' poses a fundamental justice concern; but 'Climate justice' safeguards the rights of the most vulnerable people.

The Paris Agreement has been criticised for not imposing binding emissions reduction targets. Its predecessor, the Kyoto Agreement, did contain binding commitments to reduce greenhouse gas emissions. However, these applied only to developed countries. They excluded major emitters, such as China or India. The mandatory nature of these emission reduction targets prevented the ratification of Kyoto by parties, in particular the United States.

The Paris Conference opted for a different approach. It uses 'nationally determined contributions' associated with a transparent review mechanism. The hope is this 'name and shame' system, combined with global public pressure and the growing urgency to act, will compel states to set ambitious greenhouse gas emissions reduction targets - and to meet them. However, the mild optimism that followed the signature of the Paris Agreement was short-lived. In October 2018, a worldwide survey of national legislation regarding climate change showed little progress. Almost all parties to the Paris Agreement have set emission reduction targets in their nationally determined contributions. But only 16 of them have adopted national laws or policies consistent with these objectives.[58]

Moreover, the rise of climate scepticism in certain countries, and the indecisiveness of key actors, raise concerns about the international community's ability to face this global challenge. With limited enforcement mechanisms at the global level, domestic political disposition continues to have a profound effect on the potency of multilateral environmental agreements.

57 Some national constitutions, such as the South African constitution (Section 24), do explicitly recognise an autonomous right to a safe environment.

58 Grantham Research Institute on Climate Change and the Environment. (2018). *Policy Brief: Aligning national and international climate targets*. [Online]. Available at: http://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2018/10/Aligning-national-and-international-climate-targets.pdf.

c) So, what can lawyers do?

This section highlights several areas for action. It encourages lawyers to use their expertise and influence to contribute to the fight against climate change.

Learn and Educate

Lawyers can learn more about climate change. They can also educate themselves on the policy and programmatic efforts to mitigate it and to adapt to its consequences. In 2012, the International Bar Association (IBA) set up a Task Force on Climate Change Justice and Human Rights. Its work resulted in a publication entitled 'Achieving justice and human rights in an era of climate disruption'.[59] This comprehensive report analyses international legal frameworks relevant to climate change. These include environmental law, human rights treaties, and trade instruments. It also promotes an approach to climate change centred on justice and human rights. It makes recommendations for various stakeholders, from international organisations and states to the private sector.

The Grantham Research Institute on Climate Change and Environment, at the London School of Economics and Political Science, offers a free global database on legislation and litigation linked with climate change. This is of definitive interest to the practitioner.[60] The Law and Climate Change Toolkit is an online and open database. It is being developed by a partnership among the UN Climate Change secretariat, UN Environment, and the Commonwealth Secretariat working in close collaboration with partner countries, other international organisations, and research institutions. The toolkit aims to provide a global resource to help countries put in place the legal frameworks necessary for effective domestic implementation of the Paris Agreement and their nationally determined contributions (NDCs).[61]

Law firms with expertise in this area could organise seminars and workshops on international climate change norms and obligations. These would raise further awareness of the existing body of law relevant to climate change.

The Grantham Research Institute on Climate Change and Environment, at the London School of Economics and Political Science, offers a free global database on legislation and litigation linked with climate change.

59 International Bar Association (IBA), (2012). *Achieving Justice and Human Rights in an Era of Climate Disruption*. Available at: https://bit.ly/3u615Ki
60 Grantham Research Institute on Climate Change and the Environment, (n.d.). *Climate Change Laws of the World.* Available at: https://bit.ly/3zI7fkR
61 The Commonwealth, UNEP and UNFCC (n.d). *Law and Climate Change Toolkit*. [online] Available at: https://climatelawtoolkit.org/

Integrate

The adoption of the UN Sustainable Development Agenda is good reason for law firms, corporate legal departments, and other law-related organisations to examine and realign their own policies and practices. The work of an increasing number of lawyers is closely intertwined with climate change and it has become an area of practice for many law firms. For instance, lawyers can specialise in carbon markets and the trading of emissions allowances or focus on the renewable energy market and advise clients on environmental regulations. Within law firms, all departments should now be assessing the way climate change will affect their practice areas. This could be related to pensions, mergers and acquisitions, energy, financial regulation, property, or planning. When completing internal and client-facing work, all commercial lawyers should assess mitigation and adaptation strategies, and corporate social responsibility policies that consider climate change and its impact on the enjoyment of human rights, especially for vulnerable communities.

Act

Climate change litigation is on the rise. Better understanding of climate change science provides more tools to the courts to adjudicate these cases. Strategic litigation can force governments to adopt ambitious climate change mitigation plans. An example of this is the Urgenda case in the Netherlands. Several cases are ongoing in other jurisdictions. These include the United States, France, Germany, the UK, Belgium, Ireland, and Norway. They are led by NGOs, civil society organisations or specialised law firms.[62] The positive outcome of the Urgenda case, combined with a better understanding of climate change and attribution science, suggest these procedures may prove to be successful in forcing states to commit to more ambitious climate action policies.

Some argue for legal action against companies responsible for greenhouse gas emissions.[63] Courts are starting to show willingness to hold corporations accountable for their contributions to greenhouse gas emissions. Several legal actions against businesses that are major polluters, such as fossil fuel corporations, are ongoing.[64] Investors have also recently brought claims against other companies for failing to account for or disclose climate change-associated risks to business models and value chains in their financial

62 See for instance: A group of young people in USA sued the Federal Government on the grounds that the government has allowed CO2 emissions to increase causing 'climate instability that injures their prospects for long and healthy lives'. Available at: https://bit.ly/3i2v80P

63 Ganguly, G, Setzer, J and Heyvaert, V. (2018). *If at First You Don't Succeed: Suing Corporations for Climate Change.* Oxford Journal of Legal Studies. [Online]. Available at: http://eprints.lse.ac.uk/89702/7/gqy029.pdf.

64 De Wit, E., Quinton, A. and Meehan, F. (2019). *Climate change litigation update.* Norton Rose Fulbright. [Online]. Available at: https://bit.ly/3lZipgB

reporting.[65] These trends in climate strategic litigation should not be underestimated by commercial lawyers. Their clients will face increased scrutiny on their climate change policies.[66]

The SDGs also present an opportunity for law firms, corporate legal departments, and other lawyers to expand their pro bono legal activities domestically and abroad. Resources and skills should be used by law firms to support the fight against climate change. They can bring their legal expertise to mitigation and adaptation strategies. Many developing countries, which are most affected by the consequences of global warming, are elaborating adaptation plans, DRM strategies and environmental regulations. They are mainstreaming climate change into their policy and legal frameworks. This is in line with SDG 13 and the Paris Agreement. The provision of pro bono expertise on legal issues related to these climate change strategies can be very valuable. For instance, during climate change negotiations, Legal Response International (LRI) provides free legal support to poor and particularly climate vulnerable developing countries, as well as civil society observers organisations. This work helps create a more level playing field between negotiators. Once an international agreement is reached, LRI also helps developing countries' governments to implement it into national legislation.[67]

When considering international pro bono, law firms should establish relationships with NGOs and local partners that can provide insight on the context and the national legal environment.

65 Brook, N. and Beresford, N. (2019). *Report: Climate change – the evolving landscape of litigation.* Clyde & Co. [Online] Available at: https://bit.ly/3uaeTmU
66 Lord R., Goldberg S., Rajamani L., Brunnee J., (2011). *Climate Change Liability – Transnational Law and Practice.* Cambridge University Press. Available at: https://bit.ly/3o5dpcD
67 Legal Response International (n.d.). *Lawyers Responding to Climate Change.* [Online]. Available at: https://legalresponse.org/

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