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HUMAN RIGHTS UNDER THE PARIS AGREEMENT

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"Humanity is currently enacting a narrative that nature is ours to abuse and exploit and pollute as we see fit, forgetting that we are a part of it. We are part of the web of life, and when we harm one part of that web, we harm ourselves. We urgently need a new narrative, where instead of hubris we have humility. Instead of rapacious destruction we have respect and stewardship. Instead of disconnection, we have deep connection – to nature, to each other, to ourselves, and to our future."

Roz Savage

Glossary of Acronyms:

ACHR American Convention on Human Rights

ACHPR African Charter on Human and Peoples' Rights

COP Conference of the Parties

ECHR European Convention on Human Rights

ECtHR European Court of Human Rights

GHG Greenhouse gas (emissions)

HRC Human Rights Council

IACommHR Inter-American Commission on Human Rights

IACtHR Inter-American Court of Human Rights

ICCPR International Covenant on Civil and Political Rights

ICESCR International Covenant on Economic, Social and Cultural Rights

IPCC Intergovernmental Panel on Climate Change

OHCHR Office of the United Nations High Commissioner for Human Rights

UDHR Universal Declaration of Human Rights

UN United Nations

UNFCCC United Nations Framework Convention on Climate Change

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- **Statement of the problem:**

At the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change in Paris in December 2015 the highly anticipated and promising international climate treaty was adopted unanimously. Known as the Paris Agreement,[1] it is arguably the most consequential international legal instrument to address the challenge of global climate change. It continues the climate narrative established earlier by the framework Convention and intends to shape how the world as a whole would respond to the challenges presented by global climate change.

In its preamble the Paris Agreement provides:

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.

While the treaty represents a significant achievement in that regard, it also impacted the way the world looks and treats global human rights as well. With the treaty entering into force, the idea that the global climate emergency has a direct and devastating influence on the enjoyment of human rights has become uncontroverted. The international community explicitly recognizes that "climate change is a common concern of humankind" and national governments therefore committed to "respect, promote and consider their respective obligations on human rights". [2] The acknowledgment of the human rights dimensions within the climate agenda represents an attempt at forging a basic common outlook on how to address the challenge of climate actions for upcoming decades to come.

Indeed, until recently no multilateral environmental treaty has explicitly recognized the nexus between climate and human rights law. Accordingly, the implications of climate change on human rights law were of little concern and generally did not fall into the ambit of the environmental law. The variety of international soft law instruments, scientific and scholars` findings, as well as states` relevant commitments and pledges suggested the inclusion of a human rights-based approach to the international environmental agenda, but it was not adopted until 2015 when the Paris Agreement became the first of this kind to finally recognize it.

[1] Paris Agreement, December 12, 2015, in force November 4, 2016, U.N. Doc. FCCC/CP/2015/19.
[2] Paris Agreement, recital 12.

Nevertheless, the Paris outcome amounts only to the acknowledgement of human rights dimensions in the preamble recital; mention of it in the operative part of the treaty was declined. Furthermore, the Paris Agreement recognized only that measures taken to adapt and mitigate climate change impacts have the potential to cause infringement of human rights and left untreated the overarching issue of severe threats to human rights posed by climate change itself. In addition, it stops short of imposing obligations to protect or fulfil human rights; instead, it requires states to consider and promote them, naturally giving rise to a number of legal issues and questions, some of them quite controversial, which this thesis will analyze and seek to answer.

Arguably, the endorsement of this linkage in the preamble to the Paris climate Agreement does not suffice itself to ensure the effective human rights protection in face of climate change, but it represents a valuable instrument to set out the context of states` climate actions. The Paris treaty in pursuing the overall objectives of the UNFCCC, comes up with a new rights-based approach to a climate change governance framework, where the human rights would constitute an inherent part of it. And notwithstanding the supplemental character of preamble provision, its value arguably is to be explored further by means of litigation in order to strengthen the overall efficacy of human rights protection against the threats of climate change.

- **The research question and the scope:**

This thesis will argue that the reference to human rights in the preamble to the Paris Agreement is potentially highly significant for the development of national rights-sensitive climate change policies and strengthening arguments for potential climate lawsuits. It will show why the international community decided to consider human rights obligations for the purposes of international environmental regulation and how human rights law might influence the latter. This paper thus covers the historical background, the evolution of the disputable concept of environmental human rights, key developments that featured modern understanding of the problem, the final incorporation of carefully circumscribed human rights language into the Paris Agreement and its legal value. Therefore, when discussing the legal meaning of the provision endorsed the human rights considerations, the particular attention has been drawn to its ability to influence the domestic climate laws and policies as well as to facilitate more aggressive climate actions, which are viewed consistent with human rights obligations. In that regard, the analysis of climate change jurisprudence asserting the human rights violations associated with climate change will help this thesis to investigate the Paris Agreement`s capacity to secure the human rights enjoyment.

The research question of this thesis, thus, is primary focused on the examination of relevance of human rights inclusion into the context of climate actions. Moreover, this thesis aims to discuss the issue of whether the Paris Agreement`s mention of human rights represents any legal remedies for people whose human rights (or any particular right) are or will be in danger due to climate change and climate actions. For this purpose this thesis will also encompass the movement towards acknowledgement of environmental implications on human rights, the correlations between environmental deterioration, environmental vulnerability and jeopardy for human rights. Above all, this thesis seeks to determine how Paris Agreement`s objectives coupled with human rights instruments will provide for decent human rights protection.

- **Relevance of the final thesis:**

Climate change and climate response measures impose obligations to respond to the threats it poses and secure protection of humans and their rights. Problems analyzed under the present thesis are relevant since the implementation of the Paris Agreement on climate change might affect an array of human rights and have especially severe consequences for those, who already suffer from climate change effects. Despite the fact that in Paris negotiators decided to leave the human rights commitment beyond the core of the Agreement, the human rights lens remain of the highest importance within the current climate framework.

The Paris Agreement, in line with the UNFCCC, established a set of rules and principles designed to reach the aim of sustainable development, where the subject of human rights is a substantive part of it, and imposes the primarily responsibility on governments. Governments are only subjects, capable of preserving the decent environmental conditions, which are necessary to protect individuals against the possible harm resulting from external sources, including climate change. Moreover they are only capable to undertake adequate and sufficiently ambitious national measures that can minimize climate impacts and reduce the possibility of human rights offences. That said, the rights-based approach has a potential to shape national responsive measures consistent with human rights obligations and facilitate implementation of the Paris Agreement that would be able to meet the highest human rights standards.

With each coming year, the climate change implications become more obvious and severe in their magnitude and pose an ever increasing threat to human rights. Since the Paris Agreement represents the core multilateral environmental treaty designed specifically to coordinate the global respond to climate change, its progressive endorsement of human rights

requires governments to take into account its effects on the exercise of human rights and fulfil the need to respect, protect, promote, and fulfill human rights in all climate-related activities. Thus it is of relevance to ascertain whether governments are bound by human rights obligations when dealing with climate change and how rights-holders can benefit from it.

- **Research methodology:**

Discussing the issues raised above is decisive for the nature and manner of the research in this thesis using methodologies which are descriptive, evaluative, normative and comparative. This paper therefore uses a combination of relevant research methods, as outlined below:

i. Historical method - to show in the chronological order the development of relations between human rights law and environmental law and its extensions to climate change, reviewing the background and underlying factors of the Paris Agreement;
ii. Research method - to review the development of international climate change policy, its correlation with human rights and the role of the Paris Agreement in that regard,
iii. Comparative method – to involve key findings of scholars, scientists, policy-makers and other stakeholders to prove the objectives of the present thesis;
iv. Method of analysis - to identify key problems and perspectives of human rights protection within the international climate agenda under the Paris Agreement.

- **Structure of research:**

The first part provides a brief overview of the early international movement to draw a link between environmental protection and human rights, which later were reflected in building up the modern climate treaty regime. It emphasizes the relevance of such multilateral environmental instruments as the 1972 Stockholm Declaration on the Human Environment, the 1992 Rio Declaration on Environment and Development, the 1992 United Nations Framework Convention on Climate Change etc. and also extends to other compacts, including human rights instruments, of a global as well as regional nature, both legally binding and non-binding, which address the relationship between environmental protection and human rights. This will demonstrate the necessity for a human rights-based approach to deal with impacts of climate change. Furthermore, the paper will review in a chronological context how different processes influenced and facilitated the recognition of human rights concerns under the present UNFCCC governed regime, while emphasizing the challenges of legal standing and highlighting a few successful case-law examples.

The connection between climate change and human rights will be explained more elaborately, since it is necessary to understand why a stronger human rights-based approach is needed. The description of the evolutionary process will reveal the problems and obstacles with this approach. In that regard, tracking the evolutionary process over the substantive content of the right to an environment is a key for understanding the idea of integration of human rights law into climate change policy.

The second part of the paper provides a brief overview of the efforts undertaken by human rights supporters in the lead-up to the Paris Conference and of the achievements they gained. Moreover, it discusses different textual suggestions and encompasses core controversial matters that have led to disagreement over framing the human rights language and subsequently caused its exclusion from the operative text of the treaty.

The third part strives to deliver a detailed analysis of the human rights referred to in the Agreement with respect to each particular right or acknowledged interest. It strives to clarify the corresponding states` obligations these rights would entail and outlines the suitability of the Paris Agreement to secure its protection in the context of climate actions.

The last part deals with issues that arise under the Paris Agreement`s acknowledgment of human rights paradigm. It assess the legal force of human rights language and overviews its shortcomings, comments on the implications and profiles the most promising climate-related cases brought before judiciaries. It seeks to determine the role and relevance of the Paris Agreement in the securement of human rights protection against the backdrop of climate change.

- **The aim of research:**

This thesis is written from the human rights perspective; the focus of this thesis is how human rights are protected and could be promoted under the climate change regime, created by the Paris Agreement. Therefore it seeks to analyze the human right language under the treaty and highlight the difference it made in terms of human rights protection under the current climate governed regime. The following issues are to be discussed and assessed in this thesis:

- why there was a need the human rights considerations had to fall into the scope of international environmental law instruments;
- how the body of human rights law corresponds to the needs of environmental protection and how respectively it was used in the practice of different organs and institutions;
- what was the role of human rights advocacy and what it achieved in Paris;

- why the reference of human rights was limited to the preamble to the Paris Agreement rather than in its operative text and how this matter implicitly affect some fundamental human rights;
- why human rights of some marginalized segments (groups) of society are directly referred to in the preamble of the treaty and what it entails;
- how the Paris Agreement commitments shape the climate change litigation and what are the most promising pathways to seek remedies for human rights violations associated with climate change.

I. Linking Climate Change and Human Rights

"Global climate change is a defining challenge of our time. It poses an effective obstacle to the continued progress of human rights, which translates directly into a worsening of the existing inequities that afflict a world already riven with vast inequality, poverty and conflict."

International Bar Association, 2014

The issue of linkage between environmental law (particularly in its climate change implication) with other areas of international law, including human rights law, has spread far beyond scientific circles. However, until recently, no legally binding international climate instrument explicitly recognized its existence. Paula Spieler notices that human rights and environmental protection represent "overlapping social values with a core of common goals".[3] Alan Boyle also states that it is self-evident that insofar as we are concerned with the environmental dimensions of rights found in avowedly human rights treaties, we are necessarily talking about a "greening" of existing human rights law rather than the addition of new rights to existing treaties.[4]

Arguably these questions are not only subject for legal researchers in appearance, but rather the indispensable issues to decide for policy-makers in reality.

[3] See Paula. Spieler. (2010). The La Oroya Case: the Relationship between Environmental Degradation and Human Rights Violations. Human Rights Brief 18 (1), 19-23.
[4] See Alan Boyle, Human Rights and the Environment: Where Next?, European Journal of International Law, Volume 23, Issue 3, August 2012, Pages 613–642, https://doi.org/10.1093/ejil/chs054

In view of the swift and severe climate change threatening the very existence of all living things and, prima facie, the normal progression of humanity [5], safeguarding the environmental safety simultaneously becomes the overriding human rights issue. The impacts of environmental harm resulting from global warming can directly affect several human rights, including the rights to life and health and the access to food and clean water.[6]

All parties attending the Paris Climate Conference were reminded of these concerns by the United Nations Special Rapporteur on human rights and the environment, John Knox. He recalled "that climate change threatens the enjoyment of a vast range of human rights. Moreover, it is inherently discriminatory, harming mostly those who have contributed least to the problem."[7]

The need to create enabling socioeconomic conditions for the effective protection of human rights is justified by human dependence on a safe and decent environment, a suitable food and water supply, and manageable weather conditions. Moreover, human rights are necessary for the overall development of human personality, material comfort, and the quality of the environment that is necessary to safeguard the conditions conducive to such development.[8] Without the necessary level of environmental safety it would be difficult to safeguard the effective protection of the basic rights referred to above, as such protection cannot be fully realized in the absence of a safe environmental background. Hence, since the early days of negotiations, developing countries have advanced a perspective on climate change that is underpinned by human rights concerns.[9]

i. Suggested intersection of human rights language and environmental law

"Climate change is a direct cause of the denial of those fundamental equal rights to which all states – at least nominally – subscribe."

[5] The Intergovernmental Panel on Climate Change concludes that evidence of changes in the climate system is now unequivocal, with the atmosphere and the oceans warming, glaciers and polar ice melting, sea levels rising, and atmospheric greenhouse gas concentrations at levels unprecedented in the past 800,000 years.

[6] See, e.g., Human Rights Council res. 32/33 (June 28, 2016); Office of the High Commissioner for Human Rights, Understanding Human Rights and Climate Change: Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change (November 26, 2015). The human rights approach to climate change is also discussed in Intergovernmental Panel on Climate Change, Climate Change 2014: Mitigation of Climate Change (2014), p. 1027.

[7] Online article, available at:
https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16836&Lan

[8] See Lal, A. (1995). Right to live in Healthy Environment vis-à-vis Human Excretion. In B. P. Singh (Ed.) Human Rights in India (p. 370). New Delhi, Deep and Deep Publication.

[9] See Rajamani, L. (2018). Human Rights in the Climate Change Regime. In J. Knox & R. Pejan (Eds.), the Human Right to a Healthy Environment (pp. 236-251). Cambridge: Cambridge University Press. doi:10.1017/9781108367530.013

Mary Robinson, the former UN High Commissioner for Human Rights

Generally speaking, the appearance of human rights language in the texts of environmental legal instruments extents to the very origin of the United Nations Framework Convention on Climate Change (hereafter – the UNFCCC). The starting point for associating human rights with environmental issues dates back to the 1970s. Some argue that it was a recognizable trend in the development of international law towards recognition of human rights to a safe and healthy environment in "soft law" instruments.[10] Linking human rights with the environment was regarded as a factor to endorse a rights-based approach to environmental protection, which places those potentially harmed by environmental degradation at its center.

Instructive here is the states` commitment to the 1972 Stockholm Declaration on the Human Environment[11] does indeed refer to man`s "fundamental right to adequate conditions of life in an environment of a quality that permits a life of dignity and well-being, and stress that "he [man] bears a solemn responsibility to protect and improve the environment for present and future generations."[12] The relationship between the environment and human rights is also stressed in the preamble to the Declaration, which states that protection of the environment is "essential to the enjoyment of basic human rights – even the right to life itself". The Declaration could, however, in view of some delegations, make an important contribution to recognition of the fundamental need of the individual for a satisfactory environment which permits the enjoyment of his human rights[13], but it was decided that human rights concept shall be embodied in another document. Diego Quiroz[14] clearly outlines that human rights have only inconsistently appeared in the discussion of environment and development of the Stockholm Conference, from 1972 onwards.

The principle laid down therein is often mistakenly understood as implying human right to be interwoven with environmental quality and right to healthy environment. However, *the travaux préparatoires* considered as a guide to (historical) interpretation clearly show that this

[10] Committee on the Environment, Agriculture and Local and Regional Affairs, Report on environment and human rights, 16 April 2003, Doc. 9791, https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10145&lang=EN

[11]Declaration of the United Nations Conference on the Human Environment, Stockholm 5- 16 June 1972, accessible athttp://www.unep.org/Documents.Multilingual/Default.Print.asp?documentid=97&articleid=1503

[12] Summary of Proposed Legal Principles for Environmental Protection and Sustainable Development, para 1: "All human beings have the fundamental right to an environment adequate for their health and well being", adopted by the World Commission on Environment and Development Experts Group On Environmental Law, appended to the Brundtland Report Our Common Future, Oxford 1987

[13] U.N. Doe. A/CONF.48/PC/9, paras. 33 (1971), see the Stockholm Declaration on the Human Environment, LOUIS B. SOIIN, p. 427

[14] Pathak, Puneet, Human Rights Approach to Environmental Protection (February 17, 2014). OIDA International Journal of Sustainable Development, Vol. 07, No. 01, pp. 17-24, 2014. Available at SSRN: https://ssrn.com/abstract=2397197

writing did not intend to articulate any direct environmental human right as such. These commitments rather amount to the indirect recognition of the link and interdependence between well-recognized human rights, such as the right to freedom and the right to life, and the quality of the environment.

Remarkably then, the 1972 Stockholm Declaration on the Human Environment was the first international instrument, which can be regarded as to establish a link between human rights and environmental protection and starting point for the further elaboration on this matter.

Later in the 1992 Rio Declaration on Environment and Development no provision to address human rights interconnection can be found, only few of them can be relevant to the issue. Principle 1 merely stipulates that human beings are "the central concern of sustainable development entitled to a healthy and productive life in harmony with nature".[15] Although this provision can hardly be called workable and one which can provide any effective legal protection of human rights capable to create any positive legally binding obligations. The primary purpose of this provision has been to articulate an anthropocentric rationale for environmental protection and sustainable development, rather than to affirm individual environmental rights.[16]

Similarly, the United Nations Framework Convention on Climate Change (hereafter – the UNFCCC), which is regarded as a hard law instrument, contains only explicit reference to a "right" of sustainable development. The UNFCCC Article 3(4), in relevant part, reads: "the Parties have a right to, and should, promote sustainable development."[17] However, by a large margin, the right to a sustainable development also implies dimensions of human rights, which in turn could be interpreted as providing socioeconomic preconditions necessary for effective securement of those rights. The concept of sustainable development is served to interrelate the human rights framework with the environmental protection and is comprised of three interrelated dimensions: environmental, economic and social.

Admittedly, the explicitly recognized human right to an environment has not fallen into ambit of any of these core international environmental instruments. Since then, the idea of a generic human right to an adequate or healthy environment, while taking root in some regional human rights systems, has failed to garner general international support, let alone become

[15] Rio Declaration on Environment and Development, Principle 1, A/CONF.151/26/Rev.l (Vol. l) (14 June 1992)
[16] See Maguelonne Déjeant-Pons, Marc Pallemaerts and Sara Fioravanti, Human rights and the environment: Compendium of instruments and other international texts on individual and collective rights relating to the environment in the international and European framework, Council of Europe, June 2002, p.13, available online: https://rm.coe.int/1680489692
[17] See the 1992 UN FCCC, Article 3(4)

enshrined in any global human rights treaty, points Günther Handl.[18] The attempt to adopt an ambitious but politically controversial document – the 1994 UN declaration on human rights and the environment - failed also because it lacked the backing of States.[19] As an outcome the issue of human rights framing remained unresolved and confusing for quite a long time.

Later developments, such as the 2002 World Summit on Sustainable Development in Johannesburg, also kept focus on the concept of sustainable development, which was subsequently affirmed also in the final document – the Johannesburg Declaration. The 2005 Kyoto Protocol has also ignored the considering of human rights issue and focused instead on the mandatory reduction of the GHG emissions. In post-Kyoto climate change framework the human rights dimensions still were given not given due attention. Some states, as notes Limon, informally raised concerns that including human rights in negotiations would perversely make delegations less likely to sign up to stringent emission reduction targets for fear that, if they were to fail to reach those targets, they might leave themselves open to litigation.[20]

2007 represented, however, some developments in that regard, the parties to the UNFCCC agreed to negotiate a new climate agreement on the basis of a mandate set forth in the Bali Action Plan, which was aimed "to launch a comprehensive process to enable the full, effective and sustained implementation of the Convention".[21] The Bali Plan has influenced also the human rights development in course of international environmental policy since it for the first time it highlighted the human right dimensions of legal climate change discussions. It has focused attention to human rights considerations of four key components of future climate actions such as mitigation, adaptation, financing and technologies transfer. Despite rare references to climate vulnerability of developing countries and a call for the urgent actions, the document is largely missing the rights language.

ii. Recognition of link: the Maldives initiative and its impacts

Besides these conferences, some progress was made also in the form of resolutions, special reports and debate by human rights bodies and specialized agencies working in the area of environment and human rights.

[18] See Günther Handl, Eberhard Deutsch Professor of Public International Law Tulane University Law School, available at: https://legal.un.org/avl/ha/dunche/dunche.html
[19] See TECOSOC, Draft Declaration of Principles on Human Rights and the Environment, in Human Rights and the Environment, Final Report (1994) UN Doc E/CN 4/Sub 2/1994/9. See N. Popovic, "In Pursuit of Human Rights: Commentary on the Draft Declaration of Principles on Human Rights and the Environment" (1996) 27, ColumHumRtsLRev 487.
[20] Marc Limon, Human Rights and Climate Change: Constructing a Case for Political Action, Harvard Law Review, 2009, Vol. 33, pp.440-476.
[21] See UNFCCC 2007, Decision 1/CP.13, Bali Action Plan, para. 1

The first initiative to link climate change and human rights originated in the Maldives. In 2008 this initiative introduced climate change issues to the UN Human Rights Council (hereafter – the HRC)[22] - asking the United Nations Office of the High Commissioner for Human Rights (hereafter - the OHCHR) for conducting a detailed study of climate change and its impact on human rights. The core impetus for the Maldives effort appeared as a result of the particular vulnerability of its residents to the rising sea levels that respectively put entire nations at risk of inundation. [23] As far back as 1987, its then-president Maumoon Abdul Gayoom warned the UN General Assembly that a two-meter rise in sea level would inundate his entire country, causing "the death of a nation."[24] Many scholars refer to the campaign which launched in 1989 on the common initiative of Maldives and a group of small island states as one of the first calls for a binding convention on climate change.[25]

In 2007 the Alliance of Small Island States headed by the Maldives government passed the Male' Declaration on the Human Dimension of Global Climate Change.[26] It was clearly noted that States are "concerned 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 right to an adequate standard of living, the right to food, and the right to the highest attainable standard of physical and mental health".[27] It marked a watershed moment in international environmental negotiations since through passing the mentioned Declaration, the issue of human rights implications of climate change was put on the international agenda during the historical Bali Conference in 2007.

Many States, however, especially large industrialized economies and emerging economies, have long been skeptical about this point – arguing that human rights and climate change constitutes two separate and distinguished areas of international law. It is noteworthy that this approach has been the overarching and prevailing one for many years among international policy-makers until the Male' Declaration of November 2007.[28] Because of that declaration had received the support of a core group of sponsors including the UK, Germany, Switzerland,

[22] OHCHR in the Maldives. Available at: https://www.ohchr.org/EN/Countries/AsiaRegion/Pages/MVSummary.aspx

[23] IPCC, climate change — 2007: impacts, adaptation and vulnerability 323-324 (2007) [IPCC 2007 impact assessment].

[24] See R.K. Pachauri, the chairman of the IPCC, recalled and quoted these words in his acceptance speech for the 2007 Nobel Peace Prize. See R.K. Pachauri, Chairman, IPCC, Acceptance Speech for the Nobel Peace Prize Awarded to the Intergovernmental Panel on Climate Change (IPCC) 11 (Dec. 10, 2007), available at http://www.ipcc.ch/graphics/speeches/nobel-peaceprize-oslo-10-december-2007.pdf.

[25] See James Lewis, Small States Conference on Sea Level Rise, 10 Environmentalist 141 (1990).

[26] Male Declaration, 2007. Available at: http://ciel.org/Publications/Male_Declaration_Nov07.pdf

[27] Ibid, pmbl.

[28] Male' Declaration on the Human Dimension of Global Climate Change acknowledged in the preamble that climate change has clear and immediate implications for the full enjoyment of human rights; supra note 25.

Philippines, Uruguay etc. the Human Right Council adopted its landmark Resolution 7/23 on "human rights and climate change" by consensus. In this resolution, accepted on March 2008, the Council declared, for the first time, that "climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights".[29] Hence, as it may seem, the human rights language of the 2007 Male Declaration was partially replicated in the Resolution and, as a corollary, explicitly established it for the first time within the UN governed climate change regime.

iii. Role of the Human Rights Council and subsequent developments on human rights issue

As many scholars suggested the Council's first and primary goal was to introduce human rights concepts and principles into the UNFCCC process so as to highlight the human dimension of global warming, and to use human rights principles, such as equality, non-discrimination, access to information, access to decision-making and access to justice, to qualitatively improve climate policy.[30]

Having received the information from Governments, civil society organizations and others[31], the Office of the United Nations High Commissioner for Human Rights (hereafter - the OHCHR) published a subsequent report where it described the way how climate change intimidates the use of a wide range of human rights, including the right to life, health, nutrition, water, proper housing and self-determination. The report in question, however, did not take stock that climate change threatens to violate human rights. Instead, it states: "while climate change has obvious implications for the enjoyment of human rights, it is less obvious whether, and to what extent, such effects can be qualified as human rights violations in a strict legal sense."[32]

The abovementioned OHCHR report was supposed to infuse the 15th Conference of Parties to the UNFCCC (hereafter – COP) negotiation process, held in Copenhagen[33] in 2009, with broader awareness of the human rights implications of climate change in order to bring this issue into states` consideration while deciding on climate policies. Indeed, the OHCHR report interjected a breath of fresh air into the climate debate, and brought into focus human rights

[29] Human Rights Council Resolution no. 7/23, on human rights and climate change, March 28, 2008, available at: https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_23.pdf

[30] Human rights, climate change and cross-border displacement: the role of the international human rights community in contributing to effective and just solutions, 2015 policy report by Jane McAdam and Marc Limon, available at: https://www.universal-rights.org/wp-content/uploads/2015/12/CC_HR_Displacement_pge.pdf

[31] Resolution 7/23 asked the OHCHR to prepare the report "in consultation with and taking into account the views of States, international organizations. . . and other stakeholders," and encouraged states to contribute to the report, Res. 7/23, supra note 27, para 1.

[32] See the OHCHR Report, supra note 29, paras 65–68.

[33] Copenhagen Accord (Dec 19, 2009), in Report of the Conference of the Parties on its Fifteenth Session, Decision 2/CP.15, U.N. Doc. FCCC/CP/2009/11/Add.1 (Mar. 30, 2010).

consequences related to climate change, and thus, affected individuals and communities have been given a more central place amidst the climate debate previously dominated by discussions on mitigation. [34] Although as Bodansky pointed out, the Copenhagen Conference was freighted with huge expectations - expectations further heightened by the Danish decision to invite heads of state, two years proved too little time to fully resolve the enormous issues at stake about the future architecture of the regime, and the Copenhagen Conference ended in acrimony and disappointment.[35]

The second resolution (Resolution 10/4)[36] on Human Rights and Climate Change was adopted in March 2009. It notes that "climate change-related effects have a range of implications, both direct and indirect, for the effective enjoyment of human rights", and that the effects of climate change will fall hardest on the rights of those people who are already in vulnerable situations "owing to factors such as geography, poverty, gender, age, indigenous or minority status and disability." Moreover it went on to recognize another dimension of the relationship between human rights and climate change: that "human rights obligations and commitments have the potential to inform and strengthen international and national policymaking in the area of climate change."

Importantly the Resolution 10/4 took up the option of Special Procedures that suggested the appointment of independent human rights experts with either a country or a thematic mandate including for instance the right to food, access to water, and the right to health. Special Procedures mandate holders were "encouraged to give consideration to the issue of climate change within their respective mandates." These independent experts report at least once a year to the Council on their findings and recommendations, as well as to the UN General Assembly. At times they are the only mechanism alerting the international community to certain human rights issues.[37] Significantly the number of human rights Special Procedures have noted the indispensability of a healthy environment as a precondition for the effective enjoyment of human rights.

The same Resolution depict the Council's intention to support the UNFCCC Bali process since its operative paragraphs welcome steps towards establishing institutional linkages between the OHCHR and the UNFCCC Secretariat and encouraging the High Commissioner for Human Rights or a senior representative to participate in key climate change meetings.[38]

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[34] See Climate Change Liability and Beyond, edited by Jiunn-rong Ye, google scholar, 2017, p.42, available at: https://books.google.com.ua/books?id=uT0uDgAAQBAJ
[35] See Daniel Bodansky, The Paris Climate Change Agreement: A New Hope, 110 Am. J. Int'l L. 288 (2016)
[36] Available at: https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_10_4.pdf
[37] Available at: https://www.ohchr.org/EN/HRBodies/HRC/Pages/SpecialProcedures.aspx
[38] Supra note 32, paras 4-5

Next one the HRC Resolution 22/18 [39] was adopted in September 2011, further "reaffirming the UNFCCC and the objectives and principles thereof, and emphasizing that parties should, in all climate change-related actions, fully respect human rights as enunciated in the outcome of the COP 16th session", but this time it has won support of a much smaller number of sponsors. Recognizing the key role of the international climate change regime in protecting human rights, this Resolution provided a clear mandate to the OHCHR to work closely with the UNFCCC secretariat, noting that the "full, effective and sustained implementation of the UNFCCC is important in order to support national efforts for the realization of human rights implicated by climate change-related impacts.[40]" Additionally, it was declared that climate change contributes to a sudden increase in natural cataclysms and slow events that have a negative impact on the full realization of all human rights.[41]

Ultimately, the HRC adopted five resolutions and held three panel discussions on the threat that climate change poses to people around the world and their enjoyment of human rights. Impacts of these resolutions can hardly be underestimated since it has demonstrated this nexus at the UN level, and, importantly, provided a normative and moral dimensions for this nexus to be elaborated further at international and national levels in its legal aspect. But on the other hand its failure to clearly integrate the results achieved into the UNFCCC framework amounts to major shortcoming of the HRC attempts to bring any critical changes to climate change negotiations.

Later developments within the UNFCCC guided regime included the 2010 Cancun Agreements, adopted at the COP16 by the determined and persistent advocacy of the Maldives and Switzerland, - a non-binding COP decision that eventually succeeded in integrating explicit language on the promotion and protection of human rights. This decision was, among others, informed by the Resolution 10/4, and, most importantly, included the particular emphasis "that parties should, in all climate change related actions, fully respect human rights". [42] This paragraph is of particular importance because it was included in part I of the operative section of the agreement, thus making clear that states must be guided by human rights considerations across all of the climate change building blocks: mitigation, adaptation, finance and

[39] https://www.ohchr.org/Documents/Issues/ClimateChange/A.HRC.RES.18.22.pdf

[40] Human Rights Council Res. 18/22, Human rights and climate change, 18th Sess., 12-30 Sept. 2011, U.N. Doc.A/HRC/RES/18/22 (17 Oct. 2011).

[41] Resolutions 18/22, 26/27 and 29/15 // United nations. Human Rights Council. Available at: https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session18/Pages/ResDecStat.aspx

[42] UNFCCC, "The Cancun Agreements: Outcome of the work of the Ad Hoc working Group on Further Commitments for Annex I Parties under the Kyoto Protocol at it fifteenth session", FCCC Dec 1/CMP.6, UNFCCC, 2011, UN Doc FCCC/KP/CMP/2010/12/Add.1, available at: <unfccc.int/meetings/cancun_nov_2010/meeting/6266/php/view/decisions.php>

technology.[43] Despite that, the formulation "to respect" cannot be treated as "strong legal language" with the implication of legal obligation upon the parties to the Convention. Rather, this formulation constitutes the critical step towards framing the issue of human rights protection in the international climate regime. For the first time human rights obligations were mentioned in an operative paragraph of the international climate change agreement, albeit it was not endowed with any binding force. On this ground the Cancun Agreement remains much criticized because of the lack of states obligations "to protect, promote and fulfil" those human rights.

Prior to the next landmark the UN Conference on Sustainable Development addressing environmental issues in 2012 – called Rio+20 – the UN human rights experts called for human rights pathway to be fully integrated in the outcome document. In hindsight, the Stockholm 1972, Rio 1992, and Johannesburg 2002 UN conferences, Rio+20 was the first to face the challenge of recognizing a rights-based approach to sustainable development.

The UN Human Rights chief - Navi Pillay - in an open letter appealed to all Member States[44] to "commit to ensuring full coherence between efforts to advance the green economy[45], on the one hand, and their solemn human rights obligations on the other." She asked for the recognition "that all policies and measures adopted to advance sustainable development must be firmly grounded in, and respectful of, all internationally agreed human rights and fundamental freedoms." Similarly independent experts of the Human Rights Council made a pledge to "incorporate universally agreed international human rights norms and standards in the Outcome Document of the Rio+20 Summit with strong accountability mechanism to ensure its implementation… Rio+20 should ground global commitments in human rights."[46]

The outcome document of the Rio+20 Conference reaffirmed the importance of human rights for achieving sustainable development, while later attempts to highlight issues of climate change undermining states' efforts to progressively realize economic, social and cultural rights and to accent the significance of the human rights perspective on climate action were mostly driven by the activity of the HRC mandate owners. An Open Letter dated 17 October 2014 to State Parties to the UNFCCC from 28 Special Procedures mandates that urges the UNFCCC "to

[43] See Human rights, climate change and cross-border displacement: the role of the international human rights community in contributing to effective and just solutions, 2015 policy report by Jane McAdam and Marc Limon, available at: https://www.universal-rights.org/wp-content/uploads/2015/12/CC_HR_Displacement_pge.pdf

[44] The UN High Commissioner for Human Rights Navi Pillay, Open Letter to all Permanent Missions in New York and in Geneva (30 March 2012), available online: https://www.ciel.org/Publications/Rio+20_Integration_Apr2012.pdf

[45] In his Grotius Lecture in 2009, Achim Steiner, Executive Director of the UN Environment Program, elaborated on the term "green economy" to describe an "economic system that recognizes the properties of healthy ecosystems as the backbone of economic and social wellbeing and as a precondition for poverty reduction."

[46] Special Procedures mandate-holders of the Human Rights Council, Joint Statement to States negotiating the Outcome Document of the Rio+20 Summit (14 March 2012), available online: https://www.ciel.org/Publications/Rio+20_Integration_Apr2012.pdf

adopt urgent and ambitious mitigation and adaptation measures to prevent further harm" and to include in the 2015 climate agreement a commitment that "the Parties shall, in all climate change related actions, respect, protect, promote and fulfil human rights for all."[47]

iv. Making a link from human rights perspective: brief overview of the relevant instruments, policies and practices

International human rights law goes beyond other areas of international law by providing a framework wherein individuals are the subjects of its obligations. As a result, a human rights approach to climate change can contribute to addressing questions that environmental law has failed to address effectively.[48]

Apart of the UNFCCC regime, the process of acknowledgment of links between human rights and climate change has been simultaneously developing from the perspective of human rights law, but only few human rights instruments expand on references to environmental matters. As the UN Special Rapporteur on human rights and the environment, John K. Knox, states, the fundamental UN human rights treaties do not include this right because the modern environmental movement began in the late 1960s, just after the adoption of the two International Covenants on human rights, and twenty years after the adoption of the Universal Declaration of Human Rights.[49] The OHCHR Report has also noticed that although universal human rights treaties do not recognize a specific right to a safe and healthy environment, the bodies charged with overseeing compliance with those treaties have recognized "the intrinsic link between the environment and the realization of a range of human rights."[50]

In the following decades, international community slowly came to the realization of the idea, although only in part, that the decent environment is a necessary element to support human society and, importantly, that environmental degradation can be critical for enjoyment of human rights. Limited number of international human rights treaties, however, institutionalized the right to environment in varying formulations. Some of them explicitly articulated the right to a healthy

[47] Open Letter from Special Procedures mandate-holders of the Human Rights Council to the State Parties to the UNFCCC on the occasion of the meeting of the Ad Hoc Working Group on the Durban Platform for Enhanced Action in Bonn, October 17, 2014, available at: http://www.ohchr.org/Documents/HRBodies/SP/SP_To_UNFCCC.pdf

[48] See Gray, K., Tarasofsky, R., Carlarne, C., & Cullet, P. (2016-03-24). Human Rights and Climate Change: Broadening the Right to Environment. In The Oxford Handbook of International Climate Change Law. : Oxford University Press. Retrieved 16 Mar. 2020, from https://www.oxfordhandbooks.com/view/10.1093/law/9780199684601.001.0001/oxfordhb-9780199684601-e-22.

[49] It is time for the United Nations to recognize the human right to a healthy environment, by professor John H. Knox, UN Special Rapporteur on human rights and the environment June 29, 2018, blog, available at: https://www.universal-rights.org/by-invitation/it-is-time-for-the-united-nations-to-recognise-the-human-right-to-a-healthy-environment/

[50] OHCHR, Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009), supra note 1, para 18;

environment. For example the Convention on the Rights of the Child[51] recognizes that the enjoyment of human rights depends on a decent environment, and ILO Convention No. 169[52] concerning indigenous and tribal peoples also provides for the protection of the environment of indigenous and tribal peoples.

Specific provisions on the right to an environment are found in few regional human rights treaties that acknowledge that "all peoples shall have the right to a general satisfactory environment favorable to their development"[53] and declaring that everyone has "the right to live in a healthy environment"[54] and providing "for the right of every person of present and future generations to live in an environment adequate to his or her health and well-being"[55]. Similar provision can be found in the Protocol of San Salvador, which refers to the "right to healthy environment" and states that "everyone shall have the right to live in a healthy environment and to have access to basic public services' and requires that states 'shall promote the protection, preservation and improvement of the environment"[56]. In view of the above it can be asserted that regional systems of human rights and environmental treaties recognize the right to a safe and healthy environment as an independent substantive human right. The most recently adopted Escazú Agreement[57] became the first environmental human rights treaty for Latin America and the Caribbean that built on this approach.

At the national level, environmental concerns of many countries are addressed by enshrining in their constitutions specific provisions with respect to the protection of the right to the environment. More than 100 national constitutions[58] now include such an explicit provision.

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[51] U.N. Convention on the Rights of the Child art. 24(2), adopted Nov. 20, 1989, 1577 U.N.T.S. 3 (on the right to the highest attainable standard of health requires state parties to consider "the dangers and risks of environmental pollution" and ensure that all segments of society have access to information and education with regard to, inter alia, hygiene and environmental sanitation); id. art. 29(e) (includes "the development of respect for the natural environment" among the goals of educational programs).

[52] Convention Concerning Indigenous and Tribal Peoples in Independent Countries art. 4, 7(3)-(4), adopted June 27, 1989, 28 I.L.M. 1382.

[53] See African Charter on Human and Peoples' Rights art. 24, June 27, 1981, 21 I.L.M. 58 ("All peoples shall have the right to a general satisfactory environment favorable to their development").

[54] Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights art. 11, Nov. 17, 1988, 28 I.L.M. 156 (declaring that everyone has "the right to live in a healthy environment").

[55] UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters art. 1, adopted June 25, 1998, 2161 U.N.T.S. 447.

[56] Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador", adopted in San Salvador on November 17, 1988, art. 11, available at: https://www.oas.org/juridico/english/treaties/a-52.html

[57] Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, adopted at Escazú, Costa Rica, on 4 March 2018.

[58] Examples include: Angola ("all citizens shall have the right to live in a healthy and unpolluted environment", Art. 24-1); Argentina ("all residents enjoy the right to a healthy, balanced environment which is fit for human development", Art. 41); Azerbaijan ("everyone has the right to live in a healthy environment"); Brazil ("everyone has the right to an ecologically balanced environment, which is a public good for the people`s use and is essential for a healthy life", Art. 225). Shelton, D. Human Rights, Health & Environmental Protection: Linkages in Law & Practice, online access: https://www.who.int/hhr/Series_1%20%20Sheltonpaper_rev1.pdf

Although the fundamental right to the environment capable of supporting human society and the full enjoyment of human rights is indirectly recognized in varying formulations in several international and regional instruments, the fact remains that since Stockholm, efforts at the international level to establish a universal right to a safe and secure environment have floundered - if not gone backward.[59] Tendencies of modern world obviously demonstrate that the global warming causes environmental change and entails environmental degradation affecting human rights; hence there are reasonable grounds to argue for environmental rights to be viewed as a part of the human rights paradigm, rather than to be categorized as soft rights or any other nomenclature.

v. Contribution of judicial and quasi-judicial bodies. Key highlights on their jurisprudence

Finally some attempts to define such nebulous concepts as 'environmental rights' were made by judicial and quasi-judicial institutions. The prominent judicial decisions, relevant courts or regional bodies' filings, which were tasked to enforce human rights, clarified the relationship between the two bodies of law. This produced a growing body of human rights jurisprudence associated with the right to an environment and its extensions to climate change.

In the absence of complaint or petition procedures at the human rights and environmental level, most human rights bodies, including judiciaries, have resorted to an interpretive strategy. They took pthe position that degradation of the environment can contribute to violations of human rights and attempted to recognize the right to an environment as the core prerequisites to the full enjoyment of other human rights. As Judge Weeramantry explained in a separate opinion for the International Court of Justice: "the protection of the environment is a vital part of contemporary human rights doctrine, for it is *a sine qua non* for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments".[60]

International courts as well as regional and national courts, having applied international law or having considered human rights claims under domestic law, have significantly contributed to the development of jurisprudence which acts to bridge the current gap between human rights and climate change. Remarkably, judiciary bodies managed to develop a body of jurisprudence through the application of provisions of human rights treaties in force to environmental issues, and environmentally concerned strategies to existing human rights norms. As a result, litigation

[59] See Marc Limon, Human Rights and Climate Change: Constructing a Case for Political Action, Harvard Law Review, 2009, Vol. 33, pp.440-476

[60] Maldives OHCHR Report Submission, available at: http://www2.ohchr.org/english/issues/clima4t6echange/docs/submissions/ Maldives Submission. pdf, at 13 (quoting Case Concerning the Gabcikovo-Nagymaros Project (Hung. v. Slovk.), 1997 I.C.J. 7 (Sept. 25)).

practice of different courts and quasi-court bodies on numerous occasions proved to be more ambitious in their approaches to environmental and climate change-induced violations of human rights.

When discussing the importance of judiciary contribution to the development of environmental dimensions to human rights, it is important to examine the case-law practice of three international human rights judicial bodies that represent three different world systems, namely – the European, the American and the African. The common thread between all three is the so-called strategy of 'greening' the existing human rights obligations. While only the African Charter explicitly provides for the right to a satisfactory environment, the cases emerged in the European and American systems are mostly based on two accounts. As Shelton explains, they concern either the public authorities` failed responsibility to enforce national environmental rights, or are related to another right in the Convention over which the Court has jurisdiction, that has been violated by environmental degradation.[61] The jeopardy of an environmental degradation and climate change to the realization of basic human rights, including the right to life, to development, to equity, to private and family life etc. has been proved through the case law of regional bodies. But the differences in the approaches taken by the regional judicial bodies shall be highlighted here since subsequently they have been of a decisive nature for their respective jurisprudence.

a. Jurisprudence of the European Court of Human Rights

First the most relevant cases adjudicated in the European system need to be assessed and discussed since the case law of the European Court of Human Rights (hereafter - the ECtHR) contributed so much to the development of the issue. Indeed, the explicit right to a clean or healthy environment[62] is not directly determined by the European Convention of human rights and, even more importantly, the ECtHR has abstained from the development of its jurisprudence. In case of Janina *Furlepa v. Poland*[63] the Court stressed that "there is no explicit right in the Convention to a clean and quiet environment". Further it noted "where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8." Indeed, the ECtHR environmental cases invoke predominantly the application of article 2, providing for the right to life, although quite limited in practice, and article 8 of the Convention, defining the

[61] See Shelton, Dinah, Legitimate and Necessary: Adjudicating Human Rights Violations Related to Activities Causing Environmental Harm or Risk, 2015, 6(2) Journal of Human Rights and the Environment 139, 145.
[62] In 1973, the Council of Europe's Ministerial Conference proposed the incorporation of a right to the environment into the Convention, which was, however unsuccessful. More recently, the Parliamentary Assembly has recommended the adoption of a protocol to the Convention laying down a right to the environment. See Council of Europe, Parliamentary Assembly, Environment and Human Rights, Doc. 9791 16 April 2003.
[63] ECHR, case of Janina Furlepa v. Poland 62101/00, dec.18/03/2008.

right to a private and family life. Hence, the Court has formed an extensive body of relevant case law and devised a set of procedural norms to a similar effect,[64] which may be helpful in terms of determination of states` responsibility towards those effected by climate change.

The most prominent case, where the ECtHR found the breach of Article 2, thus far has been the case of *Oneryildiz v. Turkey*[65]. The responding state was found in violation of its affirmative duty to secure the applicant`s right to life, which was violated as a result of an accidental explosion at a rubbish tip close to a shanty town. Considering the impact of the environmental hazard the European Court ruled that the "lack of adequate protection "by law" safeguarding the right to life and deterring life-endangering conduct in the future, amounted to a violation of Article 2 in its procedural aspect".[66] Substantively speaking, within the context of environmental jeopardy to the human right to life, the ECtHR has ruled that an individual`s right to life entails the state`s affirmative obligation to take necessary measures to prevent or end serious environmental harm "to ensure the effective protection of citizens, whose lives might be endangered by the inherent risks".[67]

The other case on point is *Budayeva and others v. Russia*[68], where applicants` lives were endangered by the occurrence of natural disaster such as strong mudslides. The key question before the Court was whether the domestic authorities` omissions to prevent the devastation, warn the population, and take necessary measures to mitigate the severe consequences amount to a violation of the affirmative duty empowered by virtue of the right to life. Mutatis mutandis the above cited case of *ÖneryıldızIt v. Turkey*, the Court recognized that "in the context of dangerous activities the scope of the positive obligations under Article 2 of the Convention largely overlap with those under Article 8. Consequently, the principles developed in the Court's case-law relating to planning and environmental matters affecting private life and home may also be relied on for the protection of the right to life."[69] The Court has established the connection between cases under Article 2 and 8 of the Convention and further acknowledged that, regarding the environmental danger to human rights, the same facts are often relevant.

In fact, the European Court generally doesn't consider the case under Article 2 – asserted violation of the right to life - given that it had found any interference with rights to private and family life. However, the application of these rights in environment centric cases

[64] See Pedersen, Ole Windahl, The Ties that Bind: The Environment, the European Convention on Human Rights and the Rule of Law (September 7, 2010). European Public Law, Vol. 16, No. 4, p. 571, 2010. Available at SSRN: https://ssrn.com/abstract=1673125
[65] ECHR, case of Öneryıldız v. Turkey 48939/99, jud.30/11/2004.
[66] Ibid, § 118.
[67] Ibid, § 90.
[68] ECHR, case of Budayeva and Others v. Russia 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, jud. 20/03/2008.
[69] Ibid, § 133.

should not be treated as mutually exclusive as they serve the same aim: the effective protection of human rights.

The case of *Guerra v. Italy*[70], where the Court found an article 8 violation, represents, however, an example of extensive insight into the violation of particular human rights by the impact of environmental deterioration. Specifically, in the separate opinion of Judge Walsh, annexed to the judgement, where he suggested that "a breach of the Convention can frequently have implications for articles other than the Article claimed to have been violated".[71] According to him, "Article 2 also guarantees the protection of the bodily integrity of the applicants", therefore it must be also the recognized violation of the right to life. Similarly Judge Jambrek made some observations on the possible applicability of Article 2 in the present case. He stressed that "the protection of health and physical integrity is as closely associated with the 'right to life' as with the 'respect for private and family life'. If the information on the situation that presents a real risk of danger to health and physical integrity is withheld, then such a situation may also be protected by Article 2 of the Convention: "No one shall be deprived of his life intentionally."[72]

The above analyzed cases, which involved the violation of article 2, irrespective of that violation has resulted from the industrial-induced hazard or natural disaster occurrence, stressed the importance of the proper fulfilment of the duty of care. Arguably this duty is imposed by virtue of article 2 of the Convention against the impacts of the surrounding environment on human lives. The European Court has concluded that a State is obliged to do everything within its powers to protect an individual` right to life in face of dangers from environmental harm. The same is particularly true for the environmental danger caused by climate change. In that regard Warner points out that climate change will have a progressively increasing impact on environmental degradation.[73] Therefore it might be argued that the affirmative obligation under article 2 might also interpreted as a duty of a state to prevent loss of life in face of climate change that consequently would require states to take strong reasonable measures.

As already mentioned, the ECtHR typically extends the application of article 8 of the Convention to the complaints involving environmental pollution. In a number of cases the Court has clearly defined that the environmental well-being constitutes part of an individual`s private and family life and home, and, importantly, it stressed that degradation of the environment could

[70] ECHR, case of Guerra and Others v. Italy 14967/89, jud.19/02/1998.
[71] Ibid. See the concurring opinion of Judge Walsh.
[72] Ibid. See the concurring opinion of Judge Jambrek.
[73] Warner, Koko & Hamza, Mo & Oliver-Smith, A. & Renaud, Fabrice & Julca, Alex. (2010). Climate change environmental degradation & migration. Natural Hazards. 55. 689-715. 10.1007/s11069-009-9419-7.

amount to a violation of a specific right recognized by the Convention.[74] For this to be the case, however, the deterioration in the quality of the environment "must directly and seriously affect private and family life or the home".[75] In other words, the effect of environmental harm is supposed to reach a certain threshold of harm. In particular, it is now indisputable that intangible sources such as noise, emissions or smells may also amount to a breach of human rights.[76]

In the context of the right to private and family life, the Court considers that the violation of human rights under article 8 arises only if the environment has direct negative impact on a claimant.[77] In its judgement in the case of *Kyrtatos v. Greece*[78], reaffirmed that "the crucial element which must be present in determining whether, in the circumstances of a case, environmental pollution has adversely affected one of the rights safeguarded by paragraph 1 of Article 8, is the existence of a harmful effect on a person's private or family sphere and not merely the general deterioration of the environment".[79]

Therefore in the absence of the explicitly defined human right to an environment in the ECHR the growing concerns on the environmental deterioration and its impact on people's lives cannot lead the Court to go beyond the scope of the Convention. The Court is bound to deal solely with environmental dimensions of human rights issues. Thus, the ECtHR approach is defined to be strictly focused on the protection of an individual' human rights.

Another particularity of the European approach flows from the procedural aspects of the Court`s procedure. The right of standing before the Court can be granted only to those, who can be treated as a victim of human rights violations. According to Article 34 ECHR, the applicant must be "personally affected by an alleged violation of a Convention right".[80] Hence only a directly affected person has standing and can claim the protection of individual rights, although environmental rights are predominantly "collective" in nature.

With regard to environmental deterioration and role of climate change in this process, it might be also argued that the existing environmental case law of the ECtHR, which has already

[74] see the ECHR case law, Powell and Rayner v. the United Kingdom, judgment of 21 February 1990, Series A no. 172, § 40; López Ostra v. Spain (judgment of 9 December 1994, Series A no. 303-C, § 51; Guerra v. Italy, judgment of 19 February 1998, Reports of Judgments and Decisions 1998-I, § 57.

[75] Council of Europe (Manual on human rights and the environment - 2nd edition), chapter II, p.45.

[76] Ibid, p.45.

[77] See for example cases concerning noise pollution: Powell & Rayner v. UK (9310/01) 1990 (noise from Heathrow airport not a violation of Art 8 ECHR); Hatton and Others v. United Kingdom (36022/97) 2003 (noise from Heathrow airport night-flights not a violation of Article 8); Moreno Gomez v. Spain (4143/02) 2004 (night-time noise from nightclubs was excessive, and was a breach of Article 8); Dees v. Hungary (2345/06) 2010 (noise from unregulated heavy traffic was a violation of Article 8).
Industrial pollution: López Ostra v. Spain (López Ostra v. Spain) 1994 (umes and smells from a waste treatment plant treating waste from tannery productions was a violation of Article 8); Fadeyeva v. Russia (55723/00) 2005 (failure of state to protect from the emissions of a metallurgical plant was a violation of Article 8) etc.

[78] See the ECHR, case of Kyrtatos v Greece, 41666/98, jud.22/05/2002.

[79] Ibid, para 52.

[80] See the ECHR judgement, Karner v Austria, App. no 40016/98, 2003-IX 199, para 25.

admitted the interrelation of human rights and the environment, may be a useful tool for the individuals` protection against human rights violations caused by climate change. The Court`s findings show that States-parties to the Convention must take sufficient measures to address well-known risks for human rights, even when they come from the surrounding environment. In light of the existing Court`s "environmental jurisprudence", the European Convention, thus, by means of interpretation, could provide adequate relief for individual human rights violation caused by severe implications of climate change.

The ECtHR has constantly held that the Convention represents the "living" human right instrument and shall be "interpreted in light of present-day conditions". In his concurring opinion in the case of *Herrmann v. Germany* the judge Pinto de Albuqerque explains that "in positive terms, the safeguarding of the environment constitutes an inherent obligation on the Contracting Parties bound by the Convention. From this perspective, environmental rights do not fit neatly into any single category or generation of human rights, but straddle all three classical categories, showing that international human rights law has considerable potential for environmental and protection".[81]

b. Jurisprudence of the Inter-American Commission on and Court of Human Rights

On the other part of the globe, the Inter-American Commission (hereafter - the IACtHR) has also dealt with hundreds of cases related to conflicts over land and water and threats to food sovereignty, which evidences that climate change is a reality that is affecting the enjoyment of human rights in the region.[82] The largest part of the IACtHR jurisprudence, and the Inter-American Court of Human Rights respectively[83], concerning both the right to life and environmental protection has been developed in the context of protection of indigenous peoples.

Notably, the first call for the protection of human rights against damage caused by climate change originated from the famous *petition of the Inuit people*[84] in 2005 arguing that global warming was impacting their rights to life, health, culture, and subsistence. It represents

[81] See the ECHR, case of Herrmann v. Germany, 9300/07, jud.26/06/2012.
[82] See IACHR Expresses Concern regarding Effects of Climate Change on Human Rights, December 2, 2015, Press Release, available at: https://www.oas.org/en/iachr/media_center/PReleases/2015/140.asp.
[83] Cases taken by the IACHR, on behalf of the alleged victims of human rights violations, to the Inter American Court of Human Rights include the case of Xákmok Kasek Indigenous Community v Paraguay (2010), Inter-Am Ct HR (Ser C) No 214; The Mayagna (Sumo) Awas Tingni Community v Nicaragua (2001), Inter-Am Ct HR (Ser C) No 79; The Saramaka People v Suriname (2007), Inter-Am Ct HR (Ser C) No 172; Sawhoyamaxa Indigenous Community v Paraguay (2006), Inter-Am Ct HR (Ser C) No 146) and others.
[84] Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States (Dec. 7, 2005), available at: http://www.inuitcircumpolar.com/files/uploads/icc-files/FINALPetitionICC.pdf. The petition was filed by Sheila Watt-Cloutier, the chair of the Inuit Circumpolar Conference, on behalf of herself, sixty-two other named Inuit, and "all Inuit of the arctic regions of the United States and Canada who have been affected by the impacts of climate change described in this petition."

the first group attempt to reach the public recognition of human rights implications of climate change. As it was emphasized, the Inuit petition was the first harbinger of a sea-change in how the international community thinks about climate change.[85] The petition detailed the effects of rising Arctic temperatures on the ability of the Inuit to enjoy a wide variety of human rights, including the rights to life (melting ice and permafrost make travel more dangerous), property (as permafrost melts, houses collapse and residents are forced to leave their traditional homes), and health (nutrition worsens as the animals on which the Inuit depend for sustenance decline in number).[86] However no further actions were taken by the Commission – it decided not to proceed with dealing with the issue in substance answering that "it will not be possible to process the petition at present [since] the information provided does not enable us to determine whether the alleged facts would tend to characterize a violation of [protected human] rights." Due to the lack of evidence, the petition was likely unsuccessful since it could not reach the Inter-American Court of Human Rights (hereafter – the IACtHR). The defendant in the case – the United States – had not ascertained the jurisdiction of the Court, and, thus, it could not have issued any binding decision.

This petition has followed a quasi-judicial path, but apart from attracting attention to the issue, it failed to get any formal recognition on the connection between climate change and human rights. In line with the Male' Declaration on the Human Dimension of Global Climate Change[87], adopted in 2007, the Inuit Petition is deemed to represent the landmark event, which managed to raise for the first time the increased international attention to the link between climate change and human rights.

Another attempt of seeking relief from violation of the rights of indigenous people emerged with the *petition of Athabaskan peoples* filed in 2013 with the IACHR. Representatives of Athabaskan populations required to protect their culture and resources from the effects of the accelerated Arctic warming. In the petition they argued that the failure of Canadian government to introduce the effective federal and provincial regulations for black carbon emissions contributes to Arctic warming and violates the human rights of Arctic Athabaskan peoples.[88] To be more precise, the petitioners claimed that Canada`s failure to regulate emissions impedes the

[85] UNEP Report (n 110) VII.
[86] Ibid, at 79-95.
[87] Supra note 26.
[88] Arctic Athabaskan Council, Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations of the Rights of Arctic Athabaskan Peoples Resulting from Rapid Arctic Warming and Melting caused by Emissions of Black Carbon by Canada (Apr. 23, 2013), available at: http://earthjustice.org/sites/default/files/AAC_PETITION_13-04-23a.pdf

Athabaskan peoples' right to the benefits of their culture,[89] right to property[90], and right to health[91] enshrined in the American Declaration.

The petition is a detailed and comprehensive memorial that includes a thorough analysis of international human rights law and case law, as well as the evidence of some Athabaskan people claiming violations of their human rights, notes Verónica de la Rosa Jaimes, who has analyzed in details the petition at issue and its real impacts.[92] In legal terms, however, seeking to pursue the rights-based claim the petitioners have also faced the burden of proving the cause-effect relationship between the climate change impacts and the act of omissions of the Canadian government. Moreover, with regard to the procedure of litigation, the national remedies have not been exhausted.

With regard to the unsuccessful experience of the Inuit Petition in 2005, the Athabaskan petition is considered as "giving the IACHR a second chance to make advancements regarding human rights claims related to the negative effects of anthropogenic climate change".[93] The Athabascan petition, however, is still pending. [94]

The other interesting examples of the IACtHR jurisprudence, which addressed violations of the right to life of the indigenous peoples, include the cases of *Yakye Axa v. Paraguay* [95] and *Sawhoyamaxa v. Paraguay*. [96] The Court has found that states must take "positive, concrete measures geared toward fulfillment of the right to a decent life, especially in the case of persons who are vulnerable and at risk, whose care becomes a high priority." [97] In *Sawhoyamaxa* it has also confirmed the duty to adopt "the necessary measures to create an adequate statutory framework to discourage any threat to the right to life."[98]

In *Yanomami Indians v. Brazil*[99] the right to life was also at stake. The case was filed with the IACHR because of the construction of a trans-Amazonian highway through the territory of indigenous community and meant to scrutinize an authorization to use the local natural

[89] Ibid, p.61.
[90] Ibid, p.71.
[91] Ibid, p.76.
[92] The Petition of the Arctic Athabaskan Peoples to the Inter American Commission on Human Rights, online article posted on July 22, 2013 by Verónica de la Rosa Jaimes, available at: https://ablawg.ca/2013/07/22/the-petition-of-the-arctic-athabaskan-peoples-to-the-inter-american-commission-on-human-rights/
[93] Jaimes, Veronica de la Rosa (2015) "Climate Change and Human Rights Litigation in Europe and the Americas," Seattle Journal of Environmental Law:Vol.5: Iss.1, Article7. Available at: https://digitalcommons.law.seattleu.edu/sjel/vol5/iss1/7
[94] Climatecasechart.com online resource also confirms that the status of the petition is not yet decided.
[95] Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125 (June 17, 2005), para. 162.
[96] Sawhoyamaxa Indigenous Community v Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No 146 (Mar. 29, 2006).
[97] Supra note 93, para. 162.
[98] Supra note 94, para. 153.
[99] Comunidad Yanomami. Caso Nº 7615. Resolución Nº 12/85. available at: http://www.cidh.org/annualrep/84.85eng/Brazil7615.htm

resources which led to environmental destruction. The Commission admitted[100] that the failure of the Government of Brazil to take timely and effective measures on behalf of these peoples has resulted in violation and injury to the rights to life, liberty, and personal security, the right to residence and movement, and the right to the preservation of health and to well-being.[101] Here the IACHR extended the protection of the right to life, recognized by the American Declaration, to the protection of the local indigenous peoples from the environmental deterioration.

Thus it may be argued that in line with the ECtHR well-established jurisprudence, notably its findings in Oneryildiz case[102], the Inter-American Court has also confirmed the existence of a positive obligation of states to protect an individual or a group of individuals in situation posing an immediate and certain risk to their lives, if they know or ought to know about such a situation.

A more recent climate case, filed as a constitutional climate lawsuit in the Inter-American Court, is the 2015 *Juliana v. the United States* case. The plaintiff asserts that the government's affirmative actions which cause climate change, are violating the youngest generation's constitutional rights to life, liberty, and property, while failing to protect essential public trust resources.[103] Although the Court in January 2020, ruled to dismiss the case on the grounds that the plaintiffs lacked standing to sue, it raised attention to the phenomenon of climate change and its impacts on the enjoyment of human rights, especially those of children.

The IACtHR also acknowledges that the environmental deterioration and its impact may constitute a serious threat to human right to life, which in turn is the paramount of all other rights. In the absence of states` due attention to adequate regulation and effective protection against threats to the right to life, dangerous industrial activities severely affecting the environment are likely to lead to interference with the human right to life. This may set the stage for future petitions arguing that catastrophic natural events, which are the product of anthropogenic climate change, cause violation of the right to life guaranteed by the American Declaration of the rights and duties of man.[104] The failure to design and enforce measures to mitigate climate change could amount to a violation of the duty to protect the right to life.

Above all, the highlights on the case law practice, developed within the American human rights system, clearly demonstrate that the major challenge on the way of environmental

[100] Ibid, Commission findings, para 1.
[101] See respectively Article I, Article VIII, Article XI of the American Declaration of the Rights and Duties of Man.
[102] Supra note 65.
[103] See text of the filed complaint available online:
https://static1.squarespace.com/static/571d109b04426270152febe0/t/57a35ac5ebbd1ac03847eece/1470323398409/YouthAmendedComplaintAgainstUS.pdf
[104] Article I proclaims that "every human being has the right to life", the American Declaration of the Rights and Duties of Man, adopted at the Ninth International Conference of American States, OP OEA/Ser L/V/II 82/Doc 6, rev. 1 (1992).

and climate petitions is the difficulty to establish human-induced effects of climate change, which result in a threat to human rights. The casual link between environmental deterioration, climate change impacts and human rights enjoyment is strengthened through recognition by variety of bodies; however, no genuinely brave and ambitious climate change litigation cases have as yet emerged within the American legal system.

In line with the European approach of dynamic interpretation of the ECHR, the recent jurisprudence of the Inter-American Court suggests that the IACHR is well equipped to interpret the American Declaration in light of broader developments in international human rights law.[105] As Juan Auz summarizes, even if both the Commission and the Court have been instrumental for advancing an environmental agenda via human rights in the region, they have been slow to advance a climate justice agenda.[106]

c. Jurisprudence of the African Commission and Court on Human and Peoples' Rights.

In pursuing attempts to highlight the common features and differences in regional environmental litigation, due attention shall also be given to the environmental jurisprudential developments within the African system. The African Charter, as already mentioned, contains a substantive environmental human right[107], and it naturally gives rise to the development of 'environmental' jurisprudence on the continent. Compared to the European system and American systems, where the procedural requirements are inherent, the provision in question does not involve any individual-harm requirement to lodge a petition. Moreover, the wording of the provision is referring to 'peoples' rights that leads to the assumption that the provided right to environment has a collective nature rather than an individual one.

The first and the foremost case regarding the right to life and the right to satisfactory environment at hands of the African Commission on Human and People Rights is *SERAC v. Nigeria*[108], which took place in 2001. Nigeria has incorporated the Charter into its domestic legal system, thus the rights established therein can be justiciable through the national courts. In 1996 the SERAC communication was filed with the Commission alleging, among others, the violation of the right to a satisfactory environment by the Nigerian government through its direct

[105] See, for example, the case of Kichwa indigenous people of Sarayaku v. Ecuador (2012), Inter-Am Ct HR (Ser C) No 245 at para 161.
[106] Juan Auz, Why is the Inter-American Human Rights System lagging on climate change, online article, originally published on January 11, 2018, available at: https://www.openglobalrights.org/why-is-the-inter-american-human-rights-system-lagging-on-climate-change/
[107] Article 24 of the African Charter on Human and Peoples' Rights reads as "all peoples shall have the right to a general satisfactory environment favorable to their development."
[108] Communication 155/96: Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria (2001) Case no. ACHPR/COMM/A044/1, OAU Doc CAB/LEG/67/3 rev. 5.

participation in contamination of the air, water or soil resources. When considering the Communication in substance the Commission reiterated the strong linkage between the environment and other rights, established in the African Charter. In particular it referred to the right to health, and the right to food and the right to housing, although not explicitly prescribed by the Charter. Most importantly here, however, is that the Commission defined the right to the environment as imposing the positive obligation on national government "to take reasonable measures to prevent pollution and ecological degradation".[109]

The SERAC decision takes form of the Commission`s recommendations, which in fact are not binding upon the national government. Despite the great significance and progressive nature of the decision itself, given the lack of a follow-up mechanism it was rather declarative in nature. In this regard Shelton noted that if the "government acts to implement the recommendations of the Commission, the decision has the potential to have an impact on human rights law and practice well beyond Africa."[110] Indeed in case it had been well developed, the explicitly recognized human right to the environment in the African Charter could represent a useful tool to succeed in mitigating the threatening environmental problems in that region.

d. Jurisprudence of the human rights treaty bodies

The human rights treaty bodies tried to compensate for the lack of an explicit right to a safe and healthy environment by creatively and expansively interpreting other fundamental rights such as a right to privacy and family life as well as the right to life itself. The UN Committee on Economic, Social and Cultural Rights, which monitors the implementation of the ICESCR by State Parties, has attempted to address this gap by interpreting the right to health, enshrined in this International Covenant, as encompassing the underlying determinants of health, such as healthy environmental conditions.[111] In 2017 it passed a landmark decision holding that the Australia's commitments to cut the GHG emissions do not suffice to the necessary level and thus may be considered a violation of fundamental human rights.[112]

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[109] Summary of the facts in Communication 155/96, The Social and Economic Rights Action Centre and another v. Nigeria (SERAC case), Fifteenth Annual Activity Report, para 52.

[110] See D Shelton, Decision regarding communication 155/96 (Social and Economic Rights Action Center/ Center for Economic and Social Rights v Nigeria), (2002) 96 American Journal of International Law, p. 942.

[111] See Mark Limon, Human Rights and Climate Change: Constructing a Case for Political Action, Harvard Law Review, 2009, Vol. 33, pp. 440-476.

[112] See Concluding Observations on the Fifth Periodic Report of Australia, UNCESCR, 61st sess, E/C. 12IAUS/CO/5 (2017) paras 11-12; Jessica Wentz, "UN Body Finds that Human Rights Treaty Requires Climate Action" (30 June, 2017), Sabin Center for Climate Change Law, Climate Law Blog (blog), available at: blogs.law.columbia.
edulclimatechange/2017/06/30/un-body-finds-that-human-rights-treaty-requires-climate-action/

In that regard, the UN Human Rights Committee (hereafter - the CCHR) has also pointed out that the scope of protection of the right to life should be extended to an environmental dimension in order "to increase life expectancy."[113]

Within the European system it is worth recalling the case of *Marangopoulos v. Greece*[114], brought before the European Committee of Social Rights (hereafter - the ECSR), where the responding State was found in violation to fulfil its affirmative obligations under the European Social Charter (hereafter – the ECSR).[115] The failure of the Greek government to introduce pollution control measures, regulate the public health risks and cut on the emissions was incompatible with citizens' right to a clean environment, which requires, among other things, restrictions on pollutants known to effect the environment, human health, and occupational health and safety. In the present case the Committee concluded that Greece had indeed violated several articles 2, 3, and 11 of the ECSR. This case takes an important place in the European environmental jurisprudence since it places the right to a healthy environment in the mainstream of human rights.[116]

Remarkably, the international and regional non-judiciary bodies in line with key court bodies have also admitted that the effect of industrial pollution can amount to a breach of human rights, especially when it heavily impacts the environment and human health. Their relevant findings and commitments have also contributed to the idea that human rights by their very nature require a suitable level of environmental protection.

e. Concluding thoughts

It follows that each regional system has recognized a certain dimensions of the right to an environment. Subject to procedural criteria of different complexity, individuals or groups of individuals can lodge petitions against their governments for failing to respect, protect, or fulfill regionally guaranteed human rights, including those endangered by environmental impacts. The human rights law application to the environmental cases, however, raised some disputable issues on legitimacy and appropriateness of human rights instruments. Since human rights have been primarily articulated to protect humans, not the environment, they proved difficult to enforce in view of the absence to the universally recognized human right to an environment and the scope

[113] United Nations Human Rights Committee, United Nations Human Rights: Office for the Commissioner for human rights, available at http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIntro.aspx

[114] Marangopoulos Foundation for Human Rights v. Greece, Eur. Committee of Social Rights, 30/2005, Dec., 6, 2006.

[115] Council of Europe, European Social Charter, revised version (ETS No. 163), Strasbourg, 3 May 1996, article 11, for example, reads as "Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable".

[116] Mirja Trilsch, European Committee of Social Rights: The right to a healthy environment, 7 INT'L J. CONST. L.529, 534 (2009).

of its application. Consequently, environmental human rights jurisprudence depends on the outcome of human rights interpretation techniques. The judicial way is focused predominantly at considering the "right to an environment" only as an extension of other human rights.

Nonetheless the courts` jurisprudence sufficiently advanced the intrinsic link between the human rights, on the one hand, and environmental degradation and climate change on the other hand. Judicial practice, has successfully confirmed the responsibility of national governments for taking effective measures to mitigate the negative environmental impacts. In spite of these achievements, the international community still has not considered the climate change litigation submitted under the current multilateral environmental agreements, which in turn raises a question of their suitability for the protection of human rights.

In conclusion, the developed judicial practice is evident not only from the nexus between two bodies of law, but also proves that the international environmental law, where the climate change regime is part of its corpus, shares common values with human rights law. The highlighted developments such as practice of international and national courts, the UNFCCC instruments and findings of the United Nations human rights bodies together made up the firm background and paved the way to integrate the human rights considerations into the modern body of international climate law as the Paris climate Agreement.

II. Road to Paris. Protecting human rights in climate action:

"We talk of the rights of humanity… the right of all the inhabitants of the Earth to live in a world where the future is not compromised by the irresponsibility of the present."

French President Hollande talking in front of COP21

The peak of the observation between climate change and human rights was reached at the COP 21st session, which was held in December 2015 in Paris. Given all previous achievements, gained by the efforts the human rights community including the Council, its mechanisms, and the OHCHR, and the climate change community led by states parties to the UNFCCC, human rights concerns were included as an accepted and integral part of the third climate agreement among the three existing.

The Paris Conference was mandated to adopt "a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all parties," which has been supposed for implementation from 2020 onwards.[117] The new ambitious Paris Agreement became a final effort among various attempts to bridge the normative and language gaps between the two disciplines, while marking the beginning of the road toward the protection of human rights in the climate change regime.

During the process leading up to Paris Conference many parties[118], NGOs[119], international bodies[120] and other actors have taken active steps to press for more urgency and pushed for greater ambition in the climate change negotiations while explicitly calling for the integration of human norms and principles into the text of the new climate treaty. The

[117] The Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) was a subsidiary body of the UNFCCC established at COP.17 in Durban. It was set up in order to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties, available at: http://www.climaeast.eu/unfccc-info/convention

[118] See, e.g., Submission of Chile on behalf of AILAC to the ADP on Human Rights and Climate Change (May 31, 2015), available at: www4.unfccc.int/Submissions/Lists/OSPSubmissionUpload/195_99_130775585079215037Chile%20on%20behalf%20of%20AILAC%20HR%20and%20CC.docx; EU Text Suggestions on Key Issues (October 19, 2015), http://unfccc.int/files/bodies/awg/application/pdf/151019_eu_proposed_edits_agreement.pdf

[119] See, e.g., Civil Society Submission to the Ad Hoc Working Group on the Durban Platform for Enhanced Action Calling for Human Rights Protections in the 2015 Climate Agreement (February 7, 2015), available at: http://unfccc.int/files/documentation/submissions_from_non-party_stakeholders/application/pdf/489.pdf; Human Rights and Climate Change Working Group, Submission to the Ad Hoc Working Group on the Durban Platform for Enhanced Action Regarding Information, Views and Proposals Related to the Durban Platform Work plan Under Workstream 1 (March 1, 2013), available at: http://unfccc.int/resource/docs/2013/smsn/ngo/303.pdf; Submission to the ADP by the Mary Robinson Foundation – Climate Justice (March 1, 2013), available at: http://unfccc.int/resource/docs/2013/smsn/un/306.pdf.

[120] See, e.g., OHCHR, An Open Letter from Special Procedures mandate-holders of the Human Rights Council to the State Parties to the UN Framework Convention on Climate Change on the occasion of the meeting of the Ad Hoc Working Group on the Durban Platform for Enhanced Action in Bonn (20–25 October 2014) (October 17, 2014), www.ohchr.org/Documents/HRBodies/SP/SP_To_UNFCCC.pdf; OHCHR, Special Procedures of the United Nations Human Rights Council, The Effects of Climate Change on the Full Enjoyment of Human Rights (April 30, 2015), available at: www.thecvf.org/wpcontent/uploads/2015/05/humanrightsSRHRE.pdf.

proponents of that strategy believed that the inclusion of human rights language is not only essential for the Paris Agreement implementation, but also for ensuring policy coherence.[121] During that phase, however, the emphasis was not on the right to a healthy environment and its extension to climate protection, but on the goal to established human rights such as the rights to life, food, shelter, and health that could be adversely affected by climate impacts and responses.[122]

The Paris Agreement on climate change was being negotiated within Ad-hoc working group on the Durban Platform for Enhanced Action (hereafter - ADP)[123], where governments had clearly recognized the need to draw up the blueprint for a fresh universal, legal agreement to deal with climate change beyond 2020.[124] In the run-up to COP-21 in Paris at the UNFCCC session in Geneva in 2015 the negotiating text of the treaty was formally adopted and included several versions of human rights language. As the ADP Co-Chairs Ahmed Djoghlaf and Daniel Reifsnyder noted, the objective of the Geneva session was to deliver the negotiating text. Moreover Reifsnyder stressed that "the main objective was to ensure that the text fully reflects the parties' positions".[125]

i. Role of human rights advocacy

Framing of human right options and proposals to be included in the new climate agreement. Given the relative novelty of human rights concept within climate governance, the common understanding on human rights articulation in the climate agreement proved difficult to reach.

Noteworthy here is that the importance of addressing human rights in the context of on-going climate discussions related to the new climate treaty was highlighted on 13 February 2015 at the final stage of the UNFCCC agenda in Geneva. Costa Rica alongside with the other 18 other sponsors voluntary committed to the Geneva Pledge on Human Rights and Climate Action that, inter alia, was aimed to promote and respect human rights in a context of climate actions. This diverse group of national governments pledged to "enable meaningful collaboration between national representatives in these two processes (UNFCCC and Human Rights Council)

[121] See Delivering on the Paris Promises: Combating Climate Change while Protecting Rights Recommendations for the Negotiations of the Paris Rule Book, available at: https://unfccc.int/sites/default/files/903.pdf
[122] See Human Rights in the Climate Change Regime From Rio to Paris and Beyond, By Lavanya Rajamani, edited by John H. Knox, Wake Forest University, North Carolina, Ramin Pejan, p. 236-251; publisher: Cambridge University Press, DOI: https://doi.org/10.1017/9781108367530.013
[123] The body tasked with developing the Paris agreement was the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP). In Geneva, the ADP held the eighth part of its second session (ADP 2-8). Source: https://enb.iisd.org/vol12/enb12626e.html
[124] Available at: https://unfccc.int/process/conferences/the-big-picture/milestones/outcomes-of-the-durban-conference
[125] Available at: https://enb.iisd.org/vol12/enb12626e.html

to increase our understanding of how human rights obligations inform better climate action."[126] Moreover, these states formed the core of supporters group – "Friends of principles" - advocating for human rights inclusion as a guiding principle of the new climate treaty.

Similarly, the Global Network on Human Rights and the Environment[127] (hereafter – the GNHRE) issued a Draft Declaration on Human Rights and Climate Change with the aim of alerting the negotiators to the interdependence of human rights and climate change.[128]

Main human rights bodies also took position of taking the broad approach at the framing the human rights perspective in climate change actions. For instance, the UN High Commissioner for Human Rights made a strong statement that "immediate, effective and ambitious efforts to combat climate change are not only a moral imperative but also necessary to fulfill the obligations of States in accordance with human rights legislation".[129] "Every State in the climate negotiations belongs to at least one human rights treaty, and they must ensure that all of their actions comply with their human rights obligations. That includes their actions relating to climate change," said John Knox, the UN Special Rapporteur on human rights and the environment, during the COP 21 meeting in Paris.[130] "I call on Governments to honor their human rights obligations as they negotiate the climate agreement," the expert stated. "Even including a reference to human rights in the agreement itself would be of great symbolic and practical importance." The OHCHR actually advocated for the broad approach, which considers that states are obliged to "take affirmative measures to prevent human rights harms caused by climate change, including foreseeable long-term harms."[131]

As the UNFCCC COP21 in Paris was foreseen, the Human Rights Council for its part emphasized in texts of Resolution 26/27[132] of July 2014 and Resolution 29/15[133] of July 2015 the need for all states to enhance international dialogue and cooperation to address the adverse impacts of climate change on the enjoyment of human rights, including the right to development.

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[126] See the Geneva Pledge for Human Rights in Climate Action (February 13, 2015), available at: www.mrfcj.org/resources/geneva-pledge-human-rights.

[127] Environment and Human Rights Advisory is a non-profit corporation chartered in the state of Oregon. Its work is to provide information and analysis services nationally and internationally to government agencies, private firms and environmental organizations regarding the human rights dimensions of their work. access online: http://www.environmentandhumanrights.org/

[128] (PDF) Human Rights in the Paris Agreement: Too Little, Too Late?. Available from: https://www.researchgate.net/publication/322082106_Human_Rights_in_the_Paris_Agreement_Too_Little_Too_Late [accessed Mar 17 2020].

[129] Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the UNFCCC, Understanding Human Rights and Climate Change, available at: https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf

[130] Available at: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16836&Lan

[131] See OHCHR, Understanding Human Rights and Climate Change, supra note 84.

[132] Human Rights Council Resolution no. 26/27, on human rights and climate change, June 27, 2014, available at: https://www.right-docs.org/doc/a-hrc-res-26-27/

[133] Human Rights Council Resolution no. 29/15, on human rights and climate change, July 2, 2015, available at: https://www.right-docs.org/doc/a-hrc-res-29-15/

The Inter-American Commission on Human Rights, which had developed the large body of environmental human rights jurisprudence, urged negotiators to integrate human rights values in climate negotiations. It pledged "to ensure that it has a real impact, the new climate accord should make reference to the respect, guarantee, promotion and fulfillment of human rights, both in the preamble and in the operative part."[134]

Mary Robinson, president of the Mary Robinson Foundation for Climate Justice and, since May 2016, the UN Secretary-General special envoy on climate change, argued that human rights should be enshrined in the legally binding sections of the Paris Agreement.[135]

In a 2014 open letter to the parties of the UNFCCC, the special procedures mandate-holders of the UNHRC recommended that states "shall, in all climate change-related actions, respect, protect, promote and fulfill human rights for all."[136]

Several other leading civil society organizations emphasized the importance of incorporating human rights language in both the preamble as well as the operative provisions of the Paris Agreement.[137]

As was noted by Savaresi, the human rights language in the Agreement provided "a marginal victory for those advocating for building bridges between the climate change regime and human rights law".[138] But besides of passionate pledges of diverse human rights bodies and considerable achievements of their advocacy, as Rajamani observes, the Paris Agreement's narrow approach recommends that states should respect, promote, and consider human rights when taking responsive measures, but is silent with respect to whether they should take human rights considerations into account in determining the ambition, scope, and scale of their mitigation or adaptation actions. [139]

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[134] Organization of American States, Inter-American Commission on Human Rights, Press Release, 140, "IACHR Expresses Concern Regarding Effects of Climate Change on Human Rights" (2 December 2015), online: [emphasis added].

[135] Megan Rowling, "Keep Human Rights in UN Deal to Secure Climate Justice: Robinson", Reuters December 8, 2015, online article, available at: https://www.reuters.com/article/us-climatechange-summit-rights/keep-human-rights-in-u-n-deal-to-secure-climate-justice-robinson-idUSKBN0TR29J20151208

[136] Letter from Special Procedures mandate-holders of the Human Rights Council to the State Parties to the UN Framework Convention on Climate Change (17 October 2014), A New Climate Change Agreement Must Include Human Rights Protection for All, online:

[137] See Carbon Market Watch, Media Release, "Media Statement: Report highlights need for human rights in the Paris agreement" (10 December 2015), online: Human Rights Watch, "Human Rights in Climate Pact Under Fire: Norway, Saudis, US Blocking Strong Position" (7 December 2015), online: <https://www.hrw.org/news/2015/12/07/human-rights-climate-pact-under-fire> [Human Rights Watch]; Center for International Environmental Law, News Release, "A Powerful Signal but a Weak Agreement in Paris: Global Movement for Climate Action Must Accelerate" (12 December 2015), online: [Global Movement].

[138] Savaresi, A., The Paris Agreement: A New Beginning? (2016) 34(1) Journal of Energy & Natural Resources Law, pp. 16–26 CrossRef | Google Scholar, at 19–20. Oberthür, S. & Bodle, R., Legal Form and Nature of the Paris Outcome (2016) 6(1–2) Climate Law, pp. 40–57

[139] Rajamani, L. (2018). Human Rights in the Climate Change Regime. In J. Knox & R. Pejan (Eds.), the Human Right to a Healthy Environment (pp. 236-251). Cambridge: Cambridge University Press. doi:10.1017/9781108367530.013

Regarding the negotiating states' own positions on the given issue it imperative to mention that prior to the Paris Climate Conference, 24 countries emphasized the human rights considerations in their Intended Nationally Determined Contributions (hereafter - INDCs).[140] 17 countries[141] insisted on the importance of integrating human rights in climate actions. Seven additional countries[142] mentioned human rights when describing their domestic legal framework. In addition, many INDCs also referred to other specific aspects of rights-based policies, such as the need to guarantee food security, the importance of gender equality and the participation of women, and the need to ensure public participation in climate policies.[143] For example Brazil has committed "to implementing its INDC with full respect to human rights, in particular the rights of vulnerable communities, indigenous populations, traditional communities, and workers in sectors affected by relevant policies and plans, while promoting gender-responsive measures".[144]

ii. Key highlights on framing human rights language

The history of the negotiations thus provides an important context to the Paris Agreement's attempts to operationalize and reinterpret the human rights principles in climate change actions. The mere emergence of the human rights considerations in the climate framework regime *ipso facto* represents a great achievement. In the lead-up to Paris meeting there were numerous textual suggestions for references to human rights, which reflected different views and interests of the parties advocating for different visions and pathways to alternative futures. Many of them, who supported the viewing of the human rights issues as an inherent part in global warming, sought an explicit human rights reference in an operative part of the Agreement. The most disputable apparently was the suggestion for including the human rights language in Article 2, which defines the purpose of the treaty *per se*.[145]

Notably, the early version of the negotiating text of the Agreement, adopted in Geneva in 2015, suggested three different variants of disputable articulation on human rights language to be implemented into its preamble and several variations to be integrated into the operative provisions.

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[140] According to the decisions taken at COP meetings in Warsaw in 2013 and in Lima in 2014, each party to the UNFCCC was requested to prepare Intended Nationally Determined Contributions to climate action and was requested to communicate these INDCs before the COP-21 in Paris.

[141] These are Bolivia, Brazil, Chad, Chile, Costa Rica, Ecuador, Georgia, Guatemala, Guyana, Honduras, Malawi, Marshall Islands, Mexico, Morocco, Philippines, South Sudan, Uganda.

[142] The list includes Cuba, El Salvador, Indonesia, Nepal, Venezuela, Yemen, Zimbabwe.

[143] http://climaterights.org/our-work/unfccc/human-rights-in-indcs/

[144] online access: https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Brazil%20First/BRAZIL%20iNDC%20english%20FINAL.pdf

[145] See, e.g., Submission of Chile on behalf of AILAC to the ADP on Human Rights and Climate Change. See also, for media reportage, Human Rights Watch, UN: Human Rights crucial in addressing climate change - Paris Agreement Should Ensure Transparency, Accountability and Participation, (December 3, 2015), www.hrw.org/news/2015/12/03/un-human-rights-crucialaddressing-climate-change.

The first alternative of the preamble wording, firmly inspired by human rights values and advanced by its supporters, was framed as:

> "[stressing that all actions to address climate change and all the processes established under this agreement should ensure [a gender-responsive approach] [gender equality and intergenerational equity], take into account [environmental integrity] [the protection of the integrity of Mother Earth], and respect human rights, the right to development and the rights of [youth and] indigenous peoples, [as well as the just transition of the workforce and the creation of decent work, in accordance with nationally defined development priorities and strategies,]]".[146]

Obviously, the first variant of the draft text reiterates the relevance of human rights language in climate change actions, although in a much narrower way compared to the analogous provision contained in the Cancun Agreements that prescribed the Parties` obligation "in all climate change related actions to respect fully human rights". And so, the language limited the scope of human rights obligations reducing it to "all actions to address climate change and all the processes established under this agreement". Moreover, this recital emphasizes the interdependence of human rights and other mentioned rights, subject to nationally defined development policies, on the core right to development. This particular language contains, among others, the reference to the disputable right of Mother Earth that in turn is linked to the highly controversial right to an environment.

The second option has been worded as "[Parties should ensure in all climate change related actions full respect to all human rights]."

That formulation clearly mirrors the language of the Cancun Agreements - not binding COP decision, which for the first time recognized the human rights-environment nexus under the UNFCCC umbrella.[147] This paradigm clearly put the human rights considerations at the core of any climate change actions, which on the one hand, could hypothetically promote more ambitious climate protection and reach effective human rights securement for all. But on the other hand, such commitment could boost the level of legal ambiguity and hinder foreseeability of the legal instrument.

And finally, the last alternative focused attention to post-Paris climate governance by means of

> "[Recognizing that all actions on climate change shall significantly contribute to the post 2015 development agenda of the United Nations with a particular focus

[146] Ad Hoc working group on the Durban Platform for enhanced action, materials, Negotiating text, Advance unedited version, 12 February 2015, accessible online: https://unfccc.int/files/bodies/awg/application/pdf/negotiating_text_12022015@2200.pdf
[147] Ibid.

on human rights, good governance, gender equality and the needs of particularly vulnerable groups]".[148]

This version of the preamble recital focuses primary attention to the UN sustainable development goal and highlights its importance in the context of climate actions. Human rights are put in the line with other common principles of the UN development agenda.

Notwithstanding the textual variations, these suggestions were carefully tailored to cover climate change impacts on the enjoyment of human rights as well as to promote the climate responsive measures compliance with human rights principles and standards.

In addition to the preamble clauses, the Geneva text encompassed multiple suggestions on the human rights language that has been proposed for inclusion into operative provision defining the purpose and objective of the entire agreement. The option ranked at number 12*bis* deployed the extensive and detailed wording:

> "[all Parties [and stakeholders] shall [ensure respect for human rights and gender equality in the implementation of the provisions of this Agreement] [in all climate change related actions, respect, protect, promote, and fulfil human rights for everyone. All Parties shall be guided by gender equality and ensure the full and equal participation of women in all climate actions and decision making processes. All Parties should consider in their climate policies and actions a just transition of the workforce that creates decent work and quality jobs.]] [All parties shall implement this agreement, in line with the mandate principles and provisions of the UNFCCC, to protect the integrity of Mother Earth, respect and promote human rights, as well as the right to development and the rights of indigenous peoples]".[149]

Among other suggestions, the language of Article 2 (2) was also viewed to be read as follows:

> "[This Agreement shall be implemented on the basis of equity and science, and in accordance with the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances, and on the basis of respect for human rights and the promotion of gender equality [and the right of peoples under occupation]."[150]

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[148] Ibid.
[149] Ibid.
[150] See online article Human Rights in Climate Pact Under Fire Norway, Saudis, US Blocking Strong Position. Saudi Arabia insisted on the reference to human rights in Article 2 to be removed if a reference to "the right of peoples under occupation" is not included in the same sentence. Available at: https://www.hrw.org/news/2015/12/07/human-rights-climate-pact-under-fire

The suggested inclusion of the concept of "the rights of the people under occupation" was a condition for the acceptance of any human rights language in the operative paragraphs of the agreement for Saudi Arabia.[151]

Next, the proposed text addressed human rights considerations regarding the states' respective obligations in terms of adaptation. Option 4 states that

> "[nationally determined adaptation commitments of all Parties shall: (h) promote and protect all human rights, be gender sensitive, country-driven, participatory and fully transparent, take into account vulnerable groups and ecosystems, be based on science and traditional and indigenous knowledge, and promote the engagement of sub-national and local authorities and other stakeholders.]"[152]

There were many versions of this language and most of these proposals were put in brackets that evidences the large disagreement among the negotiating parties. Importantly, the negotiations on the text of the agreement started in early 2015 and included four meetings of parties before the final one in Paris.

The human rights language was being changed with each subsequent draft of the agreement and ultimately the final version of the text includes an express reference to human rights only in its preamble. Even though references in operational provisions of the draft agreement were deleted, the Paris Agreement represents the first multilateral environmental agreement to recognize explicitly the intersection of human rights and climate change.

iii. Reasons for human rights language removal from the operative part

The inclusion of explicit text safeguarding human rights into the operative part was controversial for several reasons. Bearing in mind that operative provisions of a legally binding international treaty, when articulated in clear and precise manner, usually create obligations for states, using the human rights language in the operative part of the Agreement would connect existing human rights obligations of states (both international and national) with those established under the climate treaty regime. On the other hand, not all signatories have been parties to a human rights treaty. This could affect the imposition of new or additional human rights obligations.

Moreover few state-parties to the UNFCCC raised concerns that human rights protection falls strictly within the scope of a state's jurisdiction since from the legal perspective, states have no obligation to take into account the effects of their policies on the enjoyment of

[151] Ibid.
[152] Supra note 143.

human rights outside their jurisdiction or effective control.[153] That position has been proved also by the ECtHR findings, for example in case of *Al-Skeini v. United Kingdom*, where the Court held that the obligation to protect human rights is limited to individuals within the states' own jurisdiction or, at most, to individuals under their effective control. [154] The framing of language on human rights and group rights, as mentioned above, into the text of the Paris Agreement did not win support of those unwilling to undertake any positive or negative obligations to secure protection beyond their own territory.

Consequently, the Human Rights Council Special Procedures mandate-holders in their open letter to the UNFCCC parties called upon negotiators to view their responsibilities in all of the [human rights] respects as a trans-border in nature.[155] Conversely, the International Law Association has drafted the Declaration of legal principles relating to climate change, which explicitly stated that "States and competent international organizations shall respect international human rights when developing and implementing policies and actions at international, national, and subnational levels regarding climate change. In developing and implementing these policies and actions, States shall take into account the differences in vulnerability to climate change of their populations, particularly indigenous peoples, within their borders and take measures to ensure that all their peoples' rights are fully protected."[156]

Furthermore some states like the United States, Norway and Saudi Arabia etc[157] expressed the concerns that introducing human rights concerns into the "purpose" of the Paris Agreement would affect the "clear" climate goal[158], and argued that other fora would be more appropriate to advance the human rights objectives.[159] On the other hand the removal of human rights from the core of the treaty, as Mayer noticed, reflects a welcome orientation towards a

[153] Simlinger F., Mayer B. (2019) Legal Responses to Climate Change Induced Loss and Damage. In: Mechler R., Bouwer L., Schinko T., Surminski S., Linnerooth-Bayer J. (eds) Loss and Damage from Climate Change. Climate Risk Management, Policy and Governance. Springer, Cham, https://doi.org/10.1007/978-3-319-72026-5_7

[154] See Al-Skeini v. UK, ECtHR 55721/07 (7 Jul 2011).

[155] Open Letter from Special Procedures mandate-holders of the Human Rights Council to the State Parties to the UN Framework Convention on Climate Change on the occasion of the meeting of the Ad Hoc Working Group on the Durban Platform for Enhanced Action in Bonn (20-25 October 2014), 17 October 2014. online access: https://www.ohchr.org/Documents/HRBodies/SP/SP_To_UNFCCC.pdf

[156] International Law Association`s Committee on the Legal Principles Relating to Climate Change, Resolution 2/2014, Declaration of legal principles relating to climate change, article 10.3(b)

[157] Norway, Saudi Arabia, and the United States have been criticized by some countries and nongovernmental organizations for seeking to eliminate key references to rights in the document. Chile, Costa Rica, Mexico, and the Philippines have advocated including human rights language. See supra note 147.

[158] See, e.g., Government of Norway, COP 21: Indigenous Peoples, Human Rights and Climate Change (December 7, 2015), www.regjeringen.no/no/aktuelt/cop21-indigenous-peopleshuman-rights-and-climat-changes/id2466047.

[159] See, e.g., New Zealand Submission to the Ad Hoc Working Group on the Durban Platform for Enhanced Action: Views on options and ways for further increasing the level of global ambition (March 28, 2012), http://unfccc.int/resource/docs/2012/adp1/eng/misc01.pdf.

more climate-centered climate regime-one which does not attempt to solve all the issues of our time while addressing the most difficult one.[160]

After references to the protection of rights, equality and ecosystems have been removed from the core of the Agreement, the group of states, with called themselves "Friends of Principles"[161], appealed to the French Presidency hosting the COP21 to safeguard the protection of rights and needs of all peoples in addressing the climate crisis. They argued that "a handful of reluctant countries cannot be allowed to silence human rights or diminish the weight of their importance in climate change, including the rights of Indigenous peoples, gender equality and the full and equal participation of women, a just transition of the workforce that creates decent work and quality jobs, food security, intergenerational equity, and ecosystems integrity".[162]

Nevertheless the human rights elements were no longer restored in the operative part of the Paris Agreement. Eventually, however, states at least agreed to include selected human rights language into the Preamble. This gives it time prominence as it is referred to in the determination of the content of the treaty in accordance with the general rule of interpretation set out in the body of customary international law.[163]

Ultimately the Paris Agreement preamble[164] was adopted as follows:

"Parties should, when taking action to address climate change, respect, promote, and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations, and the right to development, as well as gender equality, empowerment of women, and intergenerational equity."[165]

Various scholars remark that "human rights would have had greater weight if the wording in the draft had been retained, although some writers have argued that it is important that the temperature targets in the article were not muddied by the inclusion of human rights obligations".[166]

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[160] Mayer, Benoit. Human Rights in the Paris Agreement. Climate Law, vol. 6, no. Issues 1-2, 2016, p. 109-117. HeinOnline, https://heinonline-org.skaitykla.mruni.eu/HOL/P?h=hein.journals/climatla6&i=117.

[161] 15 of the UNFCCC parties formed the group "Friends of Principles" to advocate the human rights issues to remain in the text, among them: Belgium, Finland, Sweden, Switzerland, Mexico, the Philippines, Costa Rica etc.

[162] "A Call to Action to Defend Humanity and the Planet", 11 December 2015, online access: https://www.ciel.org/wp-content/uploads/2015/12/A-Call-to-Action-to-Defend-Humanity-and-the-Planet-11-Dec-2015.pdf

[163] Article 31(2) of the 1969 VCLT, general rule of interpretation - the context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes.

[164] Adoption of the Paris Agreement, Decision 1/CP.21, in COP Report No. 21, Addendum, at 2, U.N. Doc. FCCC/CP/2015/10/Add.1.

[165] Paris Agreement, pmbl. para. 11.

[166] (PDF) Human Rights in the Paris Agreement: Too Little, Too Late?. Available from: https://www.researchgate.net/publication/322082106_Human_Rights_in_the_Paris_Agreement_Too_Little_Too_Late [accessed Mar 17 2020].

III. Analysis of listed human rights under the Paris Agreement Preamble

"By comparison to what it could have been, it's a miracle. By comparison to what it should have been, it's a disaster"

G. Monbiot

Preamble text does not create new legal obligations on its own, therefore many argue that the outcome of negotiations missed an opportunity to fully integrate the human rights-centered approach, which has been gradually developed for many years through international and national practices. The *travaux préparatoires* do not shed any clarity as to the reasons why states decided to include human rights only in the preamble and outside of operative provisions during the political bargaining that led to the Paris Agreement.[167]

The Paris Agreement preamble recital relies on and reflects the expanded scope of the earlier reference in the non-binding landmark COP-16 decision taken in Cancun. Nonetheless at that time the decision had been framed in general terms of human rights language and stressed the need for states "to respect human rights in all climate actions". The language of the Paris provision went further and elaborated on specific aspects of human rights – and specific groups of rights-holders – that are highlighted as particularly relevant in the implementation of the Paris Agreement.[168]

Although it seems promising, Alan Boyle stresses that the list of rights mentioned in the preamble recital constitutes a curious catalogue.[169] On this point he remarks, as it was similarly confirmed by Klein[170], that overall this looks more like a list of categories designed to satisfy special interest groups rather than a serious attempt to address the relationships between human rights law and climate change. [171] The Preamble thus contains differentiated, but not incompatible, conceptions of human and environmental rights, yet does little to promote and protect either variant.[172] As a consequence, in Sam Adelman`s words, it is argued that the Paris

[167] See Patrícia Galvão Ferreira, Did the Paris Agreement Fail to Incorporate Human Rights in Operative Provisions? Not If You Consider the 2016 SDGs; CIGI Papers No.113 — October 2016, available at: https://www.cigionline.org/sites/default/files/documents/Paper%20no.113.pdf

[168] Human Riginto for the UNFCCC, the Human Rights Institutions and the G-20, Sébastien Duyck, Yves Lador, November 2016, online access: http://library.fes.de/pdf-files/iez/12893.pdf

[169] Boyle, Alan. (2018). CLIMATE CHANGE, the PARIS AGREEMENT and HUMAN RIGHTS. P. 770, International and Comparative Law Quarterly. 67. 1-19. 10.1017/S0020589318000222.

[170] The Paris Agreement on climate change. Analysis and commentary. Daniel Klein, María Pía Carazo, Meinhard Doelle, Jane Bulmer, and Andrew Higham (es). 2017. Oxford 108, 114-17.

[171] Supra note 109

[172] See Adelman, Sam. (2017). Human Rights in the Paris Agreement: Too Little, Too Late?. Transnational Environmental Law. 7. 1-20. 10.1017/S2047102517000280. online access: https://www.researchgate.net/publication/322082106_Human_Rights_in_the_Paris_Agreement_Too_Little_Too_Late

Agreement does not adequately address the magnitude of the threat posed by climate related harm to human rights.[173]

Most obviously, and as follows from the findings of the those advocating for the rights approach, a human rights perspective may address the climate impacts on the rights to life, health, access to food and water, property ownership and so on, rather than on human rights protection in other states or on the global environment as a whole. As Daniel Bodansky observes, the effectiveness of an international regime depends upon the ambition of its commitments, the level of state participation and the degree to which the parties comply.[174]

In 2014, the Intergovernmental Panel on Climate Change (hereafter – the IPCC) concluded that the impacts of climate change will be "severe, pervasive and irreversible".[175] When analyzing the Paris Agreement language on human rights, Sam Adelman had reached some important conclusions, e.g. the right to life, a precondition for all other human rights, is threatened by systemic risks from extreme weather events resulting in severe infrastructural damage to electricity, water supplies, and health and emergency services. Injuries, diseases, and fatalities will be caused by more intense heatwaves and forest fires; malnutrition will result from diminished food production; the right to health will be undermined by increased risks from food-, water-, and vector-borne diseases; ecosystems face heightened risks of abrupt and irreversible change that undermines food and water security, and triggers new poverty traps; the right to food will be threatened as food security is undermined; rural livelihoods and incomes will be harmed by insufficient access to water for drinking, irrigation and sanitation, resulting in reduced agricultural productivity[176] etc.

Building on the negative momentum assumed above, the existing human rights obligations of states might play a leading role in the process of tackling global warming elaborated under the Paris Agreement framework.

On the other hand, besides the real risks that basic human rights can be adversely impacted by climate change itself, the measures adopted to tackle climate change may themselves have (and indeed have already had) negative impacts on the enjoyment of human rights.[177] This is particular true for those measures that potentially interfere with a range of human rights listed above, considering that it can severely affect the key natural resources that build the basis for human rights. In the words of Patrícia Ferreira, the actions to address climate

[173] Supra note 169.
[174] D. Bodansky, The Legal Character of the Paris Agreement: A Primer (2016) 25(2) Review of European, Comparative & International Environmental Law, pp. 142–150.
[175] Intergovernmental Panel on Climate Change (IPCC), Climate Science 2013: The Physical Science Basis (Cambridge University Press, 2013), p. 14. online access: https://www.ipcc.ch/report/ar5/wg1/
[176] Supra note 169.
[177] See the OHCHR Report on the Relationship between Climate Change and Human Rights, UN Doc A/HRC/10/61 (2009) 65–68.

change based on the Paris Agreement may also provoke unintended human rights consequences (such as large-scale hydro or biofuel energy projects displacing local communities and affecting food security), if not implemented with appropriate safeguards.[178]

Elaborating on these suggestions it is also worthy to note that the carefully circumscribed language on the human rights in the Agreement` preamble is supposed to be applicable only with regard to human rights aspects of responsive measures. Indeed, the formulation of the respective provision is to call on States to respect, promote and consider the listed human rights "when taking actions", but not to protect against climate change itself. Therefore negotiators of the Paris Agreement adopted the limited-in-scope rights approach, which could not be applicable in case of human rights infringement resulting from climate change. In this regard Lavanya Rajamani points out that while the Paris Agreement's narrow approach recommends that states should respect, promote, and consider human rights when taking response measures, but is silent with respect to whether they should take human rights considerations into account in determining the ambition, scope, and scale of their mitigation or adaptation actions.[179]

i. Explicit endorsement of human rights: right to health and right to development analysis

a) Right to health

Right to health[180] is explicitly mentioned in the preamble, since apparently it constitutes a reason to act on climate change, as well as is relevant to any climate responsive actions. In view of this there exist quite distinct opinions among climate justice scholars and policy makers whether the Paris Agreement protects the human right to health. In words of Dr. Diarmid Campbell-Lendrum, Would Health Organization Team Lead on Climate Change and Health: "We see the Paris Agreement as a fundamental public health agreement, potentially the most important public health agreement of the century. If we don't meet the climate challenge, if we don't bring down greenhouse gas emissions, then we are undermining the environmental determinates of health on which we depend: we undermine water supplies, we undermine our air, we undermine food security."[181]

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[178] See Patrícia Galvão Ferreira, Did the Paris Agreement Fail to Incorporate Human Rights in Operative Provisions? Not If You Consider the 2016 SDGs; CIGI Papers No.113 — October 2016, online access: https://www.cigionline.org/sites/default/files/documents/Paper%20no.113.pdf

[179] See Rajamani, L. (2018). Human Rights in the Climate Change Regime. In J. Knox & R. Pejan (Eds.), the Human Right to a Healthy Environment (pp. 236-251). Cambridge: Cambridge University Press. doi:10.1017/9781108367530.013

[180] The right to health is anchored in article 25 of the Universal Declaration of Human Rights.

[181] UNFCCC website, online article, available at: https://unfccc.int/news/the-paris-agreement-is-a-health-agreement-who

Indeed the normal state of human health is composed of a wide array of subsequent factors. The Committee on Economic, Social and Cultural Rights has clarified the "underlying determinants of health" such as safe water resources and sanitation, food security, adequate nutrition and housing, healthy working and environmental conditions, health related education and information as well as gender equity.[182] All these aspects constitute the basic and elementary preconditions for human health and therefore fall into the ambit of the right to health from the legal perspective.

Direct or indirect effects of climate change apparently will have a detrimental effect on human health and other related areas on which it depends, but climate protection measures may in turn also cause serious infringement of human health, in particular of those in vulnerable positions and lead to increased instances of climate injustice. For these reasons, ambiguous and fair climate policies could manage to minimize the health burden of climate change and the measures taken to cope with it.

In this sense the explicit articulation of the right to health in the Paris Agreement may represent a positive step forward in terms of the strengthening of human health protection within the current climate change regime. Important to note here is that neither the UNFCCC itself nor the Kyoto Protocol[183] include the human right to health, although the Convention mentioned health in Article 4.1(f). The Convention requires the State-Parties to "employ appropriate methods with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment",[184] but did not elaborate on the concept of public health further since it was viewed strictly within the dimension human rights.

In comparison to previous modest developments of the right to health within the UNFCCC regime, as some may observe, in the Paris Agreement this right was given higher priority. Beside of the explicit reference put in the preamble of the Agreement, it refers to the right of health as a part of "respective human rights obligations" of States already taken under other international treaties. First and foremost, therefore, it is important that the 1948 Universal Declaration of Human Rights as well as the 1966 International Covenant on Economic, Social and Cultural Rights both of general application have addressed the right to health as a human right. Moreover the right to health has been embodied in almost all international human rights

[182] See the right to health, fact sheet no.31, published by the OHRC and WHO

[183] Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 11, 1997, 2303 U.N.T.S. 162

[184] UN General Assembly, United Nations Framework Convention on Climate Change: resolution / adopted by the General Assembly, 20 January 1994, A/RES/48/189, article 4.1. (f), available at: https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf

treaties concluded on behalf of specific vulnerable groups such as women, children, indigenous people, people with disabilities etc.[185]

The mention of the right to health in the preamble arguably does not guarantee the enforcement of this right since preamble texts are not part of the operative language of the agreement and hence non-binding. The preamble rather serves to communicate a spirit and an aspiration which may be referred to as a guiding principle to add context and background when interpreting provisions of the substantive text seeking to effectively protect the right to health.

Moreover the explicit mention of the right to health matters in terms of creating the context where this right can be effectively protected. Considering the overall aim of the Paris Agreement, it might be observed that the effective realization of human right to health in the context of responsive measures to climate change is highly dependable on the success of universal efforts to hold the temperature increase below 2 degrees. It also makes sense in view of the presented INDCs, as they stand, argues Dietzel, since they put the human right to health at substantial risk, and should be revised by policy makers as a matter of urgency.[186]

b) Right to development

"Every man has a right to live and a right to live better."

Keba M'Baye

The preamble of the Paris Agreement acknowledged the cornerstone right to development that has been embodied in article 55 of the UN Charter and urges States to promote "conditions of economic and social progress and development." The right to development comprises both individual and collective rights and, as noted in the report of the Special Rapporteur on the right to development, it refers to "ability to participate in, contribute to and enjoy development – including economic, social, cultural or political."[187] All aspects relevant to the right of development directly or indirectly effect and contribute to the effective protection of human rights.

The core norm of the UN Declaration on the Right to Development (hereafter – UNDRTD), adopted in 1986, has defined the right to development as "an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human

[185] See for example the 1965 CERD art. (5) (iv), the 1979 CEDW art. 11 (1) (f), 12 and 14 (2) (b), the 1989 CRC art. 24, the 2006 CRPD art.25 and others.
[186] Dietzel, Alix (2017), The Paris Agreement – Protecting the Right to Health?, Global Policy, 8 (3), 313-21
[187] See United Nations Special Rapporteur on the right to development: an introduction to the mandate, 2017, p.4.

rights and fundamental freedoms can be fully realized."[188] Historically the evolution of the right to development into a human right took place in the 1970s and commenced with a movement described as "the structural approach". This approach emanated from the appreciation that certain "large-magnitude conditions" were necessary for the realization of human rights, which could not be ensured from the "micro-perspective" of individual human rights.[189]

The human rights-based approach to development in the environmental context is arguably justified by virtue of the fact that the right to development has interdependent indivisible ties with achievement of basic human needs. On the normative level, it is also significant that the Rio Declaration did expressly recognize the right to development, although not in terms of an individual human right, but as a context for environmental actions. Principle 3 of the Declaration envisages that "the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations".[190] Arguably, if it does not directly identify the subject on which this Principle is aimed, the right to development enshrined at the Rio Declaration may be treated as collective right and as equally applicable to individuals.

In the context of the UNFCCC, as says Scholz, the right to development was translated into the principle of common but differentiated responsibilities and respective capabilities (hereafter - CBDR-RC), which reveals a limited understanding of its universal approach.[191] The right to development has been a critical importance with regard to the distribution of responsibilities among states. While the Kyoto Protocol illustrated the strict adherence to the CBDR-RC principle, which obligated developed countries to reduce their greenhouse gas emissions, the Paris Agreement reinterpreted the differential treatment into the formulation "in the light of different national circumstances."[192] That reflects the understanding of policy-makers how the burden of far-reaching impacts of global climate change and the action it requires states to undertake should reflect the right to development in development of burden-sharing

[188] See Declaration on the Right to Development, Adopted by General Assembly resolution 41/128 of 4 December 1986, art.1.

[189] See Anja Lindroos, The right to development (Erik Castrén Institute of International Law and Human Rights, 1999) 5; UNCHR Res 5 (XXXV) (2 March 1979) UN Doc A/RES/5(XXXV); Proclamation of Tehran, Final Act of the International Conference on Human Rights, Tehran (13 May 1968) UN Doc A/CONF32/41 at 3; Christian Tomuschat, Human rights: Between Idealism and Realism (Oxford UP, 2003) 52.

[190] See the 1992 Rio Declaration, Principle 3.

[191] Scholz, Imme, Reflecting on the Right to Development from the Perspective of Global Environmental Change and the 2030 Agenda for Sustainable Development, The Author(s) 2020 M. Kaltenborn et al. (eds.), Sustainable Development Goals and Human Rights, Interdisciplinary Studies in Human Rights 5, https://doi.org/10.1007/978-3-030-30469-0_11

[192] Voigt C, Ferreira F (2016), Dynamic differentiation: the principles of CBDR-RC, progression and highest possible ambition in the Paris Agreement. Transnational Environmental Law 5(2):285–303. https://doi.org/10.1017/S2047102516000212

mechanism. The right to development and principle of equity have been the central concepts to shape the taken approach.

Considering the mention of the right to development in the preamble recital of the Paris outcome, it may be noted that given its overall context and pursued object, the right to development is mentioned here in its human dimension and may be treated as the right to human development. The right to development as it is articulated in the UNDRTD "is a universal and inalienable right and an integral part of fundamental human rights."[193] Arguably, the right to development is a distinct human right and has significant human rights implications in the context of climate change.

On the other hand, development is a process that can help to fulfil human rights, therefore the inclusion of the right to development into the Paris Agreement potentially adds value in complementing the current climate policy framework with human rights considerations. Indeed it helps to promote a people-centered and participatory process of individuals in climate actions. According to Imme Scholz, it compels states also to engage in international cooperation in order to remove obstacles for development and the achievement of human rights.[194]

The included right to development is sound and synergetic with other included concepts as poverty eradication[195], sustainable development[196], equity[197] and climate justice[198], that in turn underlie core preconditions for the effective protection of human rights.

ii. Rights of diverse vulnerable groups under the Paris Agreement

"We cannot continue to avoid the injustice faced by the poorest, the most vulnerable, and those on the front line"

Anote Tong, President, Republic of Kiribati

Article 1 of the Universal Declaration of Human Rights proclaims that "all human beings are born equal in dignity and rights", that explicitly appears to prohibit any discriminatory treatment and provides for equity. However some categories of people require higher level of protection of their rights given their vulnerable positions so they can have similar access to opportunities as others in the community.

Over the decades of development of human rights law the majority of states have committed to a large number of international treaties designed to protect human rights of

[193] Vienna Declaration and Programme of Action, para. 5.
[194] Supra note, 132
[195] See Paris Agreement, pmbl. 8, art. 2(1), 4(1), 6(8)
[196] See Paris Agreement, pmbl. 8
[197] See Paris Agreement, pmbl. Para.3, art. 2(2), 4(1), 14(1)
[198] See Paris Agreement, pmbl. 13

different groups of people, their communities or other categories of people, who are more vulnerable and in need of higher levels of protection for the preservation of their rights. These include the International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of the Child (CRC), the International Convention on the Rights of Persons with Disabilities and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). These instruments require States to respect, protect, promote, and fulfil the rights of these peoples, particularly since they face (or might have face) added social, economic or political vulnerabilities, even extraterritorially.[199] This approach reflects on the philosophic concept of equity in rights for all humans, which is to say that persons disadvantaged by some factors in rights shall be compensated for it to be equal. The same is true for environmental rights, as constantly insisted upon by the different United Nation organs: People have to benefit from enhanced protection in face of adverse climatic events.

The UN treaty bodies mandated to deal with matters encompassed under the abovementioned human rights treaties, have urged States to comply with their human rights obligations, and to realize the objectives of the Paris Agreement. In the Joint statement they have emphasized the necessity to "adopt and implement policies aimed at reducing emissions, which reflect the highest possible ambition, foster climate resilience and ensure that public and private investments are consistent with a pathway towards low carbon emissions and climate resilient development". [200] In addition, as observed by the Office of the United Nations High Commissioner for Human Rights, Parties can adopt new measures to mainstream consideration for the right to non-discrimination of historically vulnerable groups across their climate policies and climate-related legislation, and take the necessary affirmative actions to ensure that climate change harms and climate response measures do not impact on substantive equality.[201]

The necessity to take the climate-vulnerability approach has been stressed also by the Resolution 10/4, already discussed in the previous part of this writing. It has also clarified that the impacts of climate change "will be felt most acutely by those segments of the population who are already in a vulnerable situation."

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[199] Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change, online access: https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf

[200] Joint Statement on "Human Rights and Climate Change" reflecting on states` human rights obligations, para 2, issued on 16 September 2019, online access: https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E#_edn10

[201] OHCHR (2009) UN Doc A/HRC/10/61 para 42.

Hence in pursuing the attempts to protect the rights of the most vulnerable the Paris Agreement reflected in the preamble recital the rights of various groups especially vulnerable to climate change and disproportionately impacted by its adverse consequences. The preamble clause listed, inter alia, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities, people in vulnerable situations, and women.

a) Rights of indigenous and tribal people

"Indigenous people[s] are among the most culturally endangered communities."

Victoria Tauli-Corpuz, United Nations Special Rapporteur on the rights of indigenous peoples

Indigenous and tribal people[202], who are among the poorest of the poor,[203] are threatened the most in view of their territorial placement, high level of dependence on the limited natural resources, and low adaptive capacity to the impacts of anthropogenic warming.

Krakoff observes that there is no authoritative definition of indigenous peoples, but they are nonetheless distinguishable from other minority groups: "First, indigenous peoples assert associational structures that link religious, cultural and economic ties to ancestral lands and resources. Second, indigenous communities adopt the term "peoples" to reflect core concerns with group identity and accompanying communal and collective self-determination".[204] The term developed by José R. Martinez Cobo, however, provides a more enhanced and clear understanding of the concept and reads as follows: "Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system."[205]

As numerous reports suggested, they are uniquely at risk of being placed at the forefront of the direct impacts from both climate change and climate-related mitigation and adaptation

[202] The term "indigenous peoples" is preferred in different sources as most commonly used one. For more information, see, "Who are "indigenous peoples"?" (ILO, 2017a, p.5).
[203] World Bank: Still among the poorest of the poor, Indigenous Peoples country brief (Washington DC, 2011).
[204] S. Krakoff, Indigenous Peoples and Climate Change, in D.A. Faure & M. Peeters (eds), Climate Change Law, Vol. 1 (Edward Elgar, 2016), pp. 627–36, at 628.
[205] UN Permanent Forum on Indigenous Issues (UNPFII), "State of the World's Indigenous Peoples", 2010,available at: http://www.refworld.org/docid/4b6700ed2.html

actions, despite being among those who have contributed the least to climate change.[206] More recently the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)[207] acknowledged that "indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights, which are indispensable for their existence, well-being and integral development as peoples".

Particular vulnerability, and, in turn, the enhanced necessity to protect the rights of indigenous people derive from diverse risky factors. Bellow there are cited findings of the International Labor Organization that identified some common features, which threaten indigenous peoples in face of climate change:

First, indigenous peoples are among the poorest of the poor, the stratum most vulnerable to climate change. Second, they depend on renewable natural resources most at risk to climate variability and extremes for their economic activities and livelihoods. Third, they live in geographical regions and ecosystems that are most exposed to the impacts of climate change, while also sharing a complex cultural relationship with such ecosystems. Fourth, high levels of exposure and vulnerability to climate change force indigenous peoples to migrate, which in most cases is not a solution and can instead exacerbate social and economic vulnerabilities. Fifth, gender inequality, a key factor in the deprivation suffered by indigenous women, is magnified by climate change. And finally, many indigenous communities continue to face exclusion from decision-making processes, often lacking recognition and institutional support. This limits their access to remedies, increases their vulnerability to climate change, undermines their ability to mitigate and adapt to climate change, and consequently poses a threat to the advances made in securing their rights.[208]

In achieving strong and meaningful commitments to the rights of indigenous people During the Paris Conference, Patricia Espinosa, the Executive Secretary of the UNFCCC, delivered a speech reaffirming that "indigenous people must be part of the solution to climate change. This is because you have the traditional knowledge of your ancestors. The important value of that knowledge simply cannot—and must not—be understated. You are also essential in finding solutions today and in the future. The Paris Climate Change Agreement recognizes this. It recognizes your role in building a world that is resilient in the face of climate impacts."[209]

The important role of indigenous people in combating climate change, isn't just mentioned in the preamble, but is also recognized in article 7(5) of the Agreement: "adaptation

[206] ILO, 2017a; IPCC, 2018; IPCC, 2014
[207] UN General Assembly, Resolution adopted 13 Sept. 2007, UN Doc. A/RES/61/295, 2 Oct. 2007, online access: http://www.refworld.org/docid/471355a82.html.
[208] ILO, 2017 Annual Report, p. 7, online access: https://www.ilo.org/empent/Publications/WCMS_618853/lang--en/index.htm
[209] Available at: https://unfccc.int/LCIPP#eq-1

action should follow a gender-responsive, participatory and fully transparent approach taking into consideration vulnerable groups, communities and ecosystems" and based on and guided by "traditional knowledge" and "knowledge of indigenous peoples". The language used is instructive, implying that the traditional knowledge of indigenous peoples and local communities could be a valuable source for planning climate actions at the domestic level.

Moreover, article 9(c), among others, requires States-Parties in formulating priorities in their adaptation planning to take into account "vulnerable people, places and ecosystems." These commitments make a difference since they encourage the participation of indigenous people in climate adaptation projects that may affect their territories, despite the failure of negotiators to explicitly safeguard the rights of indigenous people. It therefore falls into ambit of discretionary powers of national governments whether the above mentioned commitments in adaptation measures will actually be implemented.

Remarkably, the initially suggested prioritization in funding the needs of vulnerable groups were also cut from the core of the Paris Agreement. In a similar way negotiators of the Paris Agreement excluded from the operative text unambiguous language which would have explicitly addressed the rights of indigenous peoples even though those texts had been discussed among them.[210] Megan Davis, UN Permanent Forum on Indigenous Issues Chair, said in her statement to the COP21: "Sadly, the agreement asks States to merely consider their human rights obligations, rather than comply with them."[211]

b) Rights of migrants

Another category of vulnerable people explicitly mentioned within the preamble recital are migrants who suffer (or could potentially suffer) from the disproportional effects of climate change that threaten to result in huge infra and extra borders migration of refugees. Human migration is expected to be one of the greatest consequences of climate change and therefore the Paris Agreement`s mention of the rights of migrants is clear evidence that the drafters are aware of the great risk posed by the increasing possibility of climate-induced migration.

As early as 1990 the IPCC noted that the greatest single impact of climate change might be on human migration—with millions of people displaced by shoreline erosion, coastal flooding and agricultural disruption.[212] Since then, successive research has led to the argument that

[210] "What the Paris Climate Agreement Means for Indigenous Rights and Hydroelectric Dams", EcoWatch, 14 Dec. 2015, available at: http://ecowatch.com/2015/12/14/indigenous-rights-cop21

[211] Indigenous Peoples and Climate Change: Emerging Research on Traditional Knowledge and Livelihoods, online report: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/publication/wcms_686780.pdf

[212] Lonergan, S., 1998, "The role of environmental degradation in population displacement", Environmental Change and Security Project Report, Issue 4 (Spring 1998): 5.

environmental degradation, and in particular climate change, is poised to become a major driver of population displacement — a crisis in the making.[213] In words of the joint statement of the UN treaty bodies, migrant workers and members of their families are forced to migrate because their States of origin cannot ensure the enjoyment of adequate living conditions, due to the increase in hydro meteorological disasters, evacuations of areas at high risk of disasters, environmental degradation and slow-moving disasters, the disappearance of small island states due to rising sea levels, and even the occurrence of conflicts over access to resources.[214] Furthermore it has stressed that migration is a normal human adaptation strategy in the face climate change and natural disasters, and may in many circumstance be the only option for entire communities.[215]

Climate change is anticipated to displace as many as 200 million people by 2050, both within and across national borders, argues Warner.[216] According to Nicholls and Lowe, the number of people adversely affected from climate change impacts per year is expected to increase by between 10 and 25 million per year over the next 3 decades and between 40 and 140 million per year by 2100s, depending on the future emissions scenario.[217]

Although scientists predict ever growing numbers of people to be displaced and forced to relocate by climate change impacts, the Paris Agreement apparently comes up short on addressing mobility issues caused by global warming, in particular on climate change induced migration. Such terms as "climate refugee" or "environmental refugee", however, are still not legally defined neither under the human rights law nor environmental law. Marine Franck, a climate change officer at the UN's refugee agency, UNHCR on this point observes that "there is a protection gap involving climate change refugees, but we don't call them climate refugees for the reason that they are not covered by the 1951 [Refugee] Convention".[218] As result, people being "climate migrants" cannot be protected under any instrument of international law, as they do not fulfill legal conditions to be regarded as "refugees."

Most displacement in the context of climate change and disasters will occur within countries, rather than across international borders.[219] Those forced to displace within a territory of one single state (as opposed to trans-border) can be regarded as internally displaced persons

[213] Migration and Climate Change No. 31, Prepared for IOM by Oli Brown, Geneva 2008, p.11
[214] Joint Statement on "Human Rights and Climate Change" reflecting on states` human rights obligations, para 5, issued on 16 September 2019, online access: https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E#_edn10
[215] Ibid.
[216] See Koko Warner et al., In Search of Shelter: Mapping The Effects Of Climate Change On Human Migration and Displacement 21 (2009), https://www.ciesin.columbia.edu/documents/clim-migr-report-june09_final.pdf
[217] Nicholls, R.J., and J. Lowe, 2004, Benefits of mitigation of climate change for coastal areas, online access: https://www.academia.edu/1141929/Benefits_of_mitigation_of_climate_change_for_coastal_areas
[218] online access: https://www.aljazeera.com/indepth/features/2015/11/climate-refugees-151125093146088.html
[219] Human rights, climate change and cross-border displacement: the role of the international human rights community in contributing to effective and just solutions, 2015 policy report by Jane McAdam and Marc Limon, online access: https://www.universal-rights.org/wp-content/uploads/2015/12/CC_HR_Displacement_pge.pdf

and benefit from the general human rights protection, which is more precisely addressed within the soft law framework – the UN Guiding Principles on Internal Displacement.

In the end, despite serious international concerns on the lack of regulation on climate migration, the Paris Conference elected to use weak language such as the neutral term "migrants" and talked about protection of their rights only in the context of "taking actions". The preamble of the Agreement acknowledged also the interests of migrants by calling governments for "just transition of the workplace and the creation of decent work and quality jobs". Therefore, for purposes of this writing, it appears that they saw no need to cover a huge body of human rights violations of migrants caused by on-going climate change occurrence but rather kept focus their on those violations which resulted from implication of the responsive measures.

According to the UNHCHR, there are instances when mitigation and adaptation measures themselves can adversely affect the enjoyment of human rights such as hydroelectric and biofuel projects that result in forced evictions. Even the planned relocation of those exposed to the adverse effects of climate change involves high risks to human rights.[220] The statement is also true given the construction of large infrastructure projects etc. In the words of Nadine Walicki & Marita Swain, "the impacts on the lives of people driven from their homes by such ventures can be just as severe in scope and duration as those experienced by people displaced by conflict, violence and disasters."[221] These impacts include not only the loss of jobs, lands, and livelihoods, but also the severance of ties to places essential to the community's spiritual and cultural practices and self-definition.[222]

Regarding the "respective obligations" of states, the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (hereafter - CRMW) is of particular relevance as it may offer protection to some who were driven from their home because of negative impacts of climate change. However, existing legal tools only provide limited protection and recourse to some categories of individuals; moreover, such tools are not widely available across states[223] and protection they provide only apply if the individual concerned is a "migrant worker", i.e. a "person who is to be engaged, is engaged or has been engaged in a

[220] UN Human Rights Council, 2018

[221] Nadine Walicki & Marita Swain, Norwegian Refugee Council & Internal Displacement Monitoring CTR 8(2016), http://www.internal-displacement.org/sites/default/files/publications/documents/201607-ap-india-pushed-aside-en.pdf

[222] See Dayna Nadine Scott & Adrian A. Smith, The Abstract Subject of the Climate Migrant Displaced by the Rising Tides of the Green Energy Economy, at 44–49

[223] 68 States-Parties have ratified the UN CRWM, data valid on March 30 2020, online access: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4

remunerated activity in a State of which he or she is not a national" and his or her family members. [224]

In view of framing human rights language in the Preamble, the UNHCHR pointed out that the failure of a government to undertake effective climate change mitigation and adaptation in these situations may constitute a violation of its duty to respect, protect and fulfill the human rights of its citizens.[225]

Nevertheless, the Preamble recital plays a prime role in linking the measures to respond to the adverse effects of climate change, its impacts on acceleration of human mobility[226] and human rights protection.

The first significant milestone in international climate policy on human mobility driven by adverse impacts of climate change took place at COP16 in 2010, when Parties to the UNFCCC adopted the Cancun Adaptation Framework. Its para 14(f) mentions displacement, migration and planned relocation induced by climate change in the context of mitigation actions - it "invited all Parties to move forward on adaptation under the Cancun Adaptation Framework by undertaking, inter alia, measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at national, regional and international levels." [227] The COP decision, however, is not a legally binding document for the parties but rather serves as an advisory guideline.

Beyond the preamble reference of rights of migrants in the Paris Agreement, the decision adopting the Paris Agreement instructs the Warsaw Mechanism's executive committee [228] to establish a task force on Displacement to "develop recommendations for integrated approaches to avert, minimize, and address displacement related to the adverse impacts of climate change." [229] Decision 1/CP.21 [230], as some may observe, regarded displacement in the context of loss and damage regulation that was among the most important issue to be negotiated in Paris. But the Paris Agreement does not mention relocation and

[224] Protecting people crossing borders in the context of climate change, Normative Gaps and Possible Approaches, Study on behalf of the Swiss Ministry of Foreign Affairs by Prof. Walter Kälin and Nina Schrepfer, Bern, 28 April 2011, online access: https://www.shareweb.ch/site/Migration/Resources_Migration/library/Documents/resourcessharewebResource_en_9245.pdf

[225] UN Human Rights Council, 2018

[226] "Human mobility can be viewed as a continuum from completely voluntary movements to completely forced migrations" (IPCC report, 2012).

[227] Conference of the Parties, United Nations Framework Convention on Climate Change, "United Nations Framework Convention on Climate Change Decision 1/CP.16, The Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention"

[228] COP 19 established the Warsaw International Mechanism to address loss and damage associated with the adverse effects of climate change through its three main functions: enhancing knowledge and understanding of comprehensive risk management approaches; strengthening dialogue, coordination, coherence and synergies among relevant stakeholders; and enhancing action and support, including finance, technology and capacity-building.

[229] Paris Agreement, para. 50

[230] Decision 1/CP.21, paras 49–51, online access: https://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf

resettlement – an omission that signifies a significant failure to protect the human rights of the citizens of Small Island Developing States, observes Sam Adelman.[231] He concluded that there is an urgent need to protect the human rights of climate-displaced persons under international law, preferably within the UNFCCC.[232]

Further developments included the recommendations, passed by a task force that asked countries to consider creating new laws and policies "that recognize the importance of integrated approaches to avert, minimize, and address displacement related to adverse impacts of climate change and issues around human mobility."[233]

Although the Paris Agreement represents an important step forward in terms of the protection of rights of so called climate migrants, the mere reference in the Preamble does not suffice to prevent mass displacement and, as highly probable, to redress the human rights violations caused while taking measures to combat climate change. On the other hand the preamble of the Paris Agreement matters when there is an increasing awareness that all efforts taken to tackle both the direct and indirect consequences of climate change can only be maximized if they are adopted within the context of a comprehensive human rights approach. Consequently, the issue of people displacement caused by climate change shall be settled within an international legal framework on climate change-induced migrations, which is designed to provide a sustainable solution, guarantee the protection to affected groups of individuals, secure international guidance and facilitate local decision-making etc.

c) Rights of children

"Climate justice requires that States look beyond their responsibility to their own people, to accept their responsibility to those living beyond their shores, who are particularly vulnerable to climate change. And also, to the generations to come."

Mary Robinson, President, Mary Robinson Foundation – Climate Justice

The preamble recital of the Agreement mentions also the rights of children, assigning responsibility to governments to ensure the adequate protection their human rights while formulating policy addressing the impacts climate change.

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[231] Adelman, Sam. (2017). Human Rights in the Paris Agreement: Too Little, Too Late?. Transnational Environmental Law. 7. 1-20. 10.1017/S2047102517000280. online access: https://www.researchgate.net/publication/322082106_Human_Rights_in_the_Paris_Agreement_Too_Little_Too_Late

[232] Ibid.

[233] UNFCCC. (n.d.). Migration, displacement and human mobility. Retrieved June 26, 2019, from: https://unfccc.int/process/bodies/constituted-bodies/executive-committee-of-the-warsaw-internationalmechanism-for-loss-and-damage-wim-excom/areas-of-work/migration-displacement-and-human-mobility

Children, particularly the most destitute, are especially vulnerable to climate change.[234] According to the World Health Organization, the large-scale and global environmental hazards to human health, including climate change, influence the risks of vector-borne diseases, water and food-borne diarrhoea, and malnutrition, which are among the major burdens of disease in the developing world, and are disproportionately concentrated in children.[235] As Perera observes "children are more vulnerable than adults to pollution from the burning of fossil fuels that causes global climate change, since exposure to climate pollution results in, among other things, increased infant mortality, asthma, developmental disorders and impaired lung function."[236]

Indeed, children are particularly sensitive to health problems aggravated by climate change that would increase the adverse physical, mental, and emotional impacts on them and may lead to deprivation of their fundamental human rights. "Beyond simply threatening children's lives and physical health, climate change poses a threat to children's identities, their cultures, their livelihoods, and their relationship with the natural environment," said Peggy Hicks, a director at the Office of the UN High Commissioner for Human Rights.[237]

Several scholars have pointed out that because children will experience the brunt of projected mid-century impacts of climate change, there is a moral imperative to prepare future generations to address those impacts.[238] The Committee on the Rights of the Child has implored States to address climate change, "as this is one of the biggest threats to children's health and exacerbates health disparities".[239]

As far as real facts of environmental harm to children`s rights are concerned, the allegations raised in the case – cited already by Juliana v. United States – are worth recalling once again.[240] The plaintiffs alleged that the climate change impacts pose a threat to children`s right to health because algae blooms harm the quality of drinking water, and hot, dry conditions caused by forest fires aggravate plaintiff`s asthma; the right to personal safety because of increased wildfires and extreme flooding; the right to life and shelter after the storm destroyed her home and so on. This particular case once again witnesses the growing interest and active

[234] The Guardian, Children's rights must be at the heart of the Paris climate agreement, online access: https://www.theguardian.com/global-development-professionals-network/2015/nov/27/childrens-rights-must-be-at-the-heart-of-the-paris-climate-agreement

[235] see WHO official website, Children's environmental health, online access: https://www.who.int/ceh/risks/cehchange/en/

[236] See, Federica P. Perera, Children Are Likely to Suffer Most from Our Fossil Fuel Addiction, 116 Envtl. Health Persp. 987, 987-988 (2008)

[237] online source: https://www.ciel.org/climate-policy-must-protect-childrens-rights-experts-tell-un-panel/

[238] Curren, 2007; Lombardi et al., 2016; Schlottmann, 2012

[239] Safe Climate Report of the Special Rapporteur on Human Rights and the Environment, A/74/161, p. 22, citing General comment No.15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)

[240] See text of the filed complaint available online: https://static1.squarespace.com/static/571d109b04426270152febe0/t/57a35ac5ebbd1ac03847eece/1470323398409/YouthAmendedComplaintAgainstUS.pdf

involvement of children as an individually defined vulnerable group in the context of climate change policies, and the readiness to push governments for the stronger protection of their human rights.

Integration of human rights of the children in the preamble of the Paris Climate Agreement refers to the respective obligations of states by the virtue of the international human rights instruments they have already ratified. The framework document – the 1992 Convention – despite the fact that it does not contain explicitly mention of children, while defining the principles of climate governance urges the states to preserve the global climate for present and future generations.[241] This concept is much broader in scope than child rights, as they even encompass the rights of the next generations yet to be born.

The most widely accepted and more subject specific international treaty on protection of children`s rights, however, is the 1989 UN Convention on the Rights of the Child (hereafter – the CRC).[242] The Convention establishes a set of inalienable rights for all children around the globe, including the rights to life, health, and peace etc. and articulates four main principles to be followed by responsible duty-bearers namely the principles of nondiscrimination (Article 2, best interests of the child (Article 3), survival and development (Article 6), and child participation (Article 12). According to Elizabeth D. Gibbons, the CRC not only stipulates that children's best interests be a "primary consideration" in all actions by public and private authorities, but that children have a right to be heard and to participate in decisions which affect them.[243]

Children involvement in climate policy design culminated in 2008 when within the United Nations Joint Framework Initiative on Children, Youth and Climate Change (Joint Framework Initiative) was launched within the UN system, enabling youth engagement in the intergovernmental climate change process and coordinating the actions of youth organizations in tackling climate change. Notably, in 2009, the UNFCCC extended a constituency status to admitted youth NGOs allowing them to receive official information, participate in meetings, request speaking slots and receive logistical support at UNFCCC conferences. As some alleged, the work undertaken with and by youth was crucial to raise ambition of governments to come to an agreement on a new climate change regime by 2015 in Paris.[244]

Notwithstanding some other positive developments have happened, children, however, remain among the most vulnerable, least protected and most marginalized groups in face of

[241] The UNFCCC, art.3.1.

[242] Convention on the Rights of the Child, Adopted 20 November 1989, online access: https://www.ohchr.org/en/professionalinterest/pages/crc.aspx

[243] See Elizabeth D. Gibbons, Climate Change, Children's Rights, and the Pursuit of Intergenerational Climate Justice, 16/1 (June 2014), pp. 19-31, online access: https://cdn1.sph.harvard.edu/wp-content/uploads/sites/2469/2014/06/Gibbons1.pdf

[244] See the fact sheet prepared by the United Nations Joint Framework Initiative on Children, Youth and Climate Change, online access: https://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-climatechange.pdf

climate change. Elizabeth D. Gibbons points out that the de facto discrimination against children was compounded by de jure exclusion of their concerns from global UNFCCC instruments and policy processes, and from national policies and instruments of climate change adaption.[245]

As discussed, the Paris Agreement requires the states-parties` national policies and programs must be guided by human rights, prioritizing attention to the most vulnerable and disproportionately affected.

The Paris Agreement therefore created a new substantial paradigm in the international climate regime since it represents the increasing inclusion of children as a special group, requiring unique consideration in in the climate change debate. The obligations under the CRC, taken together with the Paris Agreement prescribe that national governments consider their national adaptation plans and policies to be made in the best interests of the child, and that they take a rights-based approach on climate change adaptation measures.

d) Rights of persons with disabilities

"While the eyes of the world have been riveted on polar bears, Antarctic penguins, and other endangered inhabitants of the Earth's shrinking ice caps, relatively few researchers have turned serious attention – until recent years – to quantify the prospective long-term effects of climate change on human welfare."

Emmanuel Skoufias, the Poverty and Welfare Impacts of Climate Change: Quantifying the Effects, Identifying the Adaptation Strategies

Like other vulnerable groups in the Paris Agreement, language pertaining to persons with disabilities[246] resides solely in the preamble of the document. However, as a matter of justice, such an inclusion makes a difference in terms of equality for this group of persons.

Further, negative impacts of climate change fall hardest on the poor and while all humans are affected, the impact is asymmetrical. According to the IPCC findings, "people who are socially, economically, politically, institutionally or otherwise marginalized are especially vulnerable to climate change and also to some adaptation and mitigation responses."[247] Similarly, Skoufias notes that "climate change impacts tend to be regressive, falling more heavily on the poor than the rich."[248] As a matter of fact, climate change implications particularly

[245] Supra note 159, p.27
[246] Definition of persons with disabilities includes "long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others, Convention on the Rights of Persons with Disabilities art. 1, Dec. 13, 2006. 2515 UNTS 3
[247] IPCC, AR5, p. 54.
[248] See Skoufias, Emmanuel, ed. (2012), p.5. The Poverty and Welfare Impacts of Climate Change: Quantifying the Effects, Identifying the Adaptation Strategies. Washington, D.C.: World Bank

affect people with a pathologies, impairments or functional inabilities, and thus make human disability dependable on and sensitive to the state of surrounding environment, in which person lives. The understanding of their enhanced vulnerability and respectively low adaptive capacity to climate change impacts can be gained even relying on the clear example of their unequal capacity to protect themselves in face of different weather events associated with climate change like rising sea levels, heatwaves, flows, hurricanes, droughts etc.

Indeed, persons with disabilities are often among those most adversely affected in an emergency, sustaining disproportionately higher rates of morbidity and mortality, while being among those least able to have access to emergency support.[249] Above all, persons with disabilities are recognized as one of the most marginalized segments of the population — they experience disproportionate levels of poverty and unemployment, lack access to transportation, education, healthcare, and other basic services, and are underrepresented in social and political institutions and spaces.[250] The World Bank estimates that persons with disabilities make up twenty percent of the world's poorest people.[251] Given the fact that this particular minority group, because of their handicap, is regular confronted by barriers complicating their access to a variety of benefits, they are considered particularly vulnerable and acutely affected by the impacts of climate change.

Though the disability issues have seldom been considered for the purposes of the UNFCCC governed regime, some earlier climate change related commitments of policy makers, including the 2010 Cancun Agreements and the 2013 Warsaw International Mechanism for Loss and Damage, highlighted the issue of the perceived vulnerability of disabled people and introduced it into the international climate agenda.

Given the poor protective capacity of the rights of people with disabilities in the UNFCCC instruments and especially embodied in the Paris Agreement principle of voluntarism, focus should be on those relevant international human rights mechanisms, which constitute an indispensable part for the full protection of their rights. Arguably, the UN Convention on the Rights of Persons with Disabilities (hereafter - CRPD), adopted in 2006, represents the most significant achievement in the field of protection of people with disabilities and, thus, has a potential to inform and shape the national and international agenda of climate change response.

[249] The impacts of climate change on the rights of persons with disabilities, the OHCHR website, online article, accessible: https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/PersonsWithDisabilities.aspx

[250] United Nations Department of Economic and Social Affairs, Disability and Development Report (2018), available online: https://social.un.org/publications/UN-flagshipreport-disability-7June.pdf

[251] Factsheet on Persons with Disabilities, accessible online: https://www.un.org/development/desa/disabilities/resources/factsheet-on-persons-with-disabilities.html

The CRPD requires its Member-States to afford people with disabilities the right of protection and safety in situations of risk, including situations of natural disasters.[252]

The preamble to the Convention involves twenty-five key facts arguing for the need to codify of rights of people with disabilities under the international framework document, including "the fact that the majority of persons with disabilities live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities."[253] Poverty is viewed to be among the core factors making people with disabilities vulnerable to the impact of climate change, and contributes to that group's increasing possibility of human rights impairment. Above all, climate change apparently undermines the years of progress achieved on the pathway towards sustainable development. The Paris Agreement, therefore, in line with the UNFCCC, reflects the concerns on sustainable development and eradication of poverty "emphasizing the intrinsic relationship it has with climate change impacts and responses to it".[254]

Furthermore, the preamble recital of the Convention highlights the "importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development" and urges states to "actively involve people with disabilities in decision-making processes about policies and programs, including those directly concerning them". This is critical for the effective realization of a disability-inclusive approach and the informed participation of people with disabilities in planning for climate change mitigation and adaptation measures.

Clearly, the observance of the disability-inclusive approach in the context of the international response to climate change - including mitigation, adaptation, or capacity building dimensions - could make a difference in the empowering this vulnerable segment of society and advance the adequate promotion and protection of their human rights. As noted by Abbott and Porter: "the failure to engage with disabled people in contemporary climate adaptation planning, disaster relief and recovery efforts overlooks their potential as knowledgeable and powerful agents of change."[255] Ironically, people with disabilities are among those who contributed the least to global warming, and therefore must be granted meaningful participation in climate policy development and opportunity to benefit from its outcome.

At first sight, the social inequity of people with disabilities and climate change doesn't appear to have a common nexus; and yet upon closer examination they intricately affect each

[252] Article 11 of the CRPD reads as States Parties shall take, in accordance with their obligations under international law ... all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations ... of natural disasters; available at: https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf

[253] See Convention on the Rights of Persons with Disabilities, preamble, para 20

[254] See the Paris Agreement, preamble, para.8

[255] See Abbott, D., and S. Porter. 2013. Environmental Hazard and Disabled People: From Vulnerable Expert to Interconnected. Disability & Society 28(6): 839–852. doi:10.1080/09687599.2013.802222

other in so many ways. The carefully circumscribed language used in the Paris Agreement language could serve to minimize the negative impacts of disadvantaged people as far as it urges governments to consider the special needs of these people when taking adaptation and mitigation measures. The term "respective obligations" accordingly refers to human rights of disabled people embodied at other relevant international treaties that potentially compensate for the lack of strong legal regulation on this issue within the UNFCCC climate regime. Thus, under the Paris Agreement national governments have the duty to afford climate justice for those in vulnerable situations and to ensure that climate actions are consistent with existing human rights agreements, obligations, standards and principles for the benefit and core needs of disadvantaged people in general.

On the other hand the environmental change can be either an enabling or strictly disabling factor for people with disabilities. The Paris Agreement, inter alia, argues that national governments should seek to promote the rights of these people in their quest for the best solution in their effort to promulgate reasonable, effective, ambiguous and non-discriminatory climate governing policies. Consequently, responsive national climate measures must be informed by the needs of disadvantaged people and take due account to their positions. The inclusion and leadership of persons with disabilities and their organizations in climate-related management could and should ensure that this particular segment of society has the capacity to adapt to the new environmental conditions affected by climate change.

iii. Recognition of interests

a) Gender equality and empowerment of women

"The challenge of climate change is unlikely to be gender-neutral, as it increases the risk to the most vulnerable and less empowered social groups."

Report of the Secretary General (A/62/644), January 2008

The Preamble of the Paris Agreement highlights the importance of observing and respecting other related commitments to principles of gender equality and empowerment of women since it is a well-established paradigm that the climate change threatens men and women differently. Female segments of communities, due to some naturally inherent factors, will experience more difficulties in face of climate change impacts in terms of their sensitivity and to a lesser degree of adaptive capacity. Moreover, women especially in rural areas of developing countries, constitute the most poor and vulnerable part of society because of their dependence on local natural resources needed for themselves and their family`s livelihood. By comparison with men in poor countries, women face historical disadvantages, which include limited access to decision-making and economic assets that compound the challenges of climate change, as

emphasized by the Commission on the Status of Women in 2008.[256] According to the findings of the African Working Group on Gender and Climate Change, women typically have less control over land, lower levels of education, more restricted mobility (due to their engagement inside the home), and play minor roles in the decision-making processes. Gender vulnerability therefore primarily results because of the limited access of women to the social, financial and environmental resources that are required for adaptation.[257]

However, women are not just helpless victims of climate change – they are powerful agents of change and their leadership is critical, as was stressed in the CEDAW Committee` s statement on Gender and Climate Change.[258] Indeed, one of the most prominent manifestations of women`s leadership, namely powerful collective resistance, took place in 1999, when women of the Niger Delta took collective action to prevent environmental disasters caused because of the destructive effects of oil resource exploitation resulting from the pollution of transnational companies in the region. After seven years of continuing violence against female activists, their struggle for justice and to end the destruction of the environment finished with great success: in 2006 the Nigerian Courts called the licenses off and stopped the flaring of natural gas that had led to abnormal environmental pollution.

Meaningful scientific findings have led human rights supporters to advocate a gender analysis applicable to any and all climate responsive measures. Gender aspects have to be reflected, as it was suggested, in climate change processes at all levels, so that women's and men's specific needs and priorities can be identified and addressed. As the Secretary General has observed in its report, in the formulation of global and national approaches, as well as in the strategic responses to specific sectors, gender awareness: substantive analysis and inclusive engagement will be necessary.[259]

Although any specific reference to gender equality or women empowerment cannot be found in the UNFCCC text, the link between gender equality and climate change has been evident through numerous global commitments and outcomes of official high-level meetings. The appearance of gender perspectives in climate change discussions can be clearly traced from the moment of the Cancun Agreements adoption in 2010, which acknowledged women and

[256] 52nd session of the Commission on the Status of Women (2008) "Gender perspectives on climate change," Issues paper for interactive expert panel on Emerging issues, trends and new approaches to issues affecting the situation of women or equality between women and men, online access: http://www.un.org/womenwatch/daw/csw/csw52/issuespapers/Gender%20and%20climate%20change%20paper%20final.pdf

[257] African Working Group on Gender and Climate Change (AWGGCC), Briefing Note, online access: https://idl-bnc-idrc.dspacedirect.org/bitstream/handle/10625/56478/IDL-56478.pdf?sequence=2&isAllowed=y

[258] Statement of the CEDAW Committee on Gender and Climate Change, 20 July – 7 August 2009, online access: https://www2.ohchr.org/english/bodies/cedaw/docs/Gender_and_climate_change.pdf

[259] Overview of United Nations activities in relation to climate change - Report of the Secretary General (A/62/644), January 2008.

gender equality as integral to effective actions in mitigating and adapting to climate change. At the COP18 in Doha, climate policy makers committed to promote participation and gender balance through adoption of Decision 23/CP8. That established a pathway for "promoting gender balance and improving the participation of women in UNFCCC negotiations and in the representation of Parties in bodies established pursuant to the Convention or the Kyoto Protocol".[260] Furthermore, it recognized the importance of a balanced representation of women in the UNFCCC process so that gender responsive climate policy responds to the differing needs of men and women in national and local contexts.

Next, significant step towards developing and implementing gender-responsive climate policy within the UNFCCC governed regime happened in 2014 at COP20 in Lima, where negotiators adopted Decision 18/CP.20 (also known as the Lima Work Program on Gender). The parties agreed to advance gender balance and integrate gender considerations into the Convention and the Paris Agreement in order to achieve gender-responsive climate policy and action.[261]

The foregoing developments suggest that gender dimension of climate change had great potential of being anchored as one of the core principles of the new climate governed agreement under the auspices of the UNFCCC regime. In that regard the UNFCCC's Women and Gender Constituency said that it was necessary that this principle was part of the core operative section of the Paris Agreement, so that it had legal basis and therefore could influence all other actions set out in the rest of the Agreement.[262] Despite those mentioned commitments in the COP including earlier decisions regarding integration of gender equity into climate policy agenda, further inquiry is necessary to determine whether the Paris Agreement represents any progress on the gender equity and the concept of women empowerment.

As the most recent climate related instrument, it uses the term "gender" only three times throughout the whole text, namely in the preamble as well as in the context of adaptation[263] and capacity-building.[264] Previous versions of draft texts, inter alia, suggested applying gender

[260] FCCC/CP/2012/8/Add.3, Decision 23/CP.18, Promoting gender balance and improving the participation of women in UNFCCC negotiations and in the representation of Parties in bodies established pursuant to the Convention or the Kyoto Protocol, online access: https://unfccc.int/sites/default/files/resource/docs/2012/cop18/eng/08a03.pdf

[261] FCCC/CP/2014/10/Add.3, Report of the Conference of the Parties on its twentieth session, held in Lima from 1 to 14 December 2014, available at: https://unfccc.int/documents/8613

[262] Woman and gender constituency, Women and Gender Constituency: Position paper on the 2015 Climate Agreement, 2015, p.1, available at: http://womengenderclimate.org/wpcontent/uploads/2015/06/WGC_FINAL_1June.pdf.

[263] Article 7, paragraph 5 of the Paris Agreement states "Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach…"

[264] Article 11, paragraph 2 of the Paris Agreement states that "Capacity-building should be an effective, iterative process that is participatory, cross-cutting and gender-responsive".

references to mitigation, finance and technology transfer, but were removed by request of some Parties.

The emphasis on gender in the preamble recital, alongside other listed human rights, refers to already existing commitments accepted by governments through the signing and ratification of other human rights or relevant instruments. In the context of climate change governance the particular relevance is the Convention on the Elimination of Discrimination against Women (hereafter - CEDAW). Under the present Convention parties are obligated to take all appropriate measures to eliminate discrimination against women in the political and public life, and to ensure that women are on equal terms with men in regards to the development and implementation of policy.[265] Similarly, the CEDAW encompasses the principle of non-discrimination against women with respect to healthcare, employment, economic and social life, all of which are of particular importance for the practical realization of gender-distinctive policies.

The CEDAW also guarantees the rights of women in rural areas, where such rights are of heightened importance. The recital of article 14 holds that "States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas."[266]

After all, the Paris Agreement is consistent with gender equity principles developed by other conventional instruments of international law. The principle of gender equity can be found in the preamble of the Charter of the United Nations "reaffirming the determination of peoples of the United Nations to the faith in the equal rights of men and women"[267], in the Universal Declaration of Human Rights "prohibiting distinction in rights and freedoms of any type, including sex"[268], in the International Covenant on Economic, Social and Cultural Rights ensuring "the equal right of men and women"[269] and many others.

That said, these commitments from the Paris Agreement, accomplished with the set of other relevant instruments, aimed to promote and develop gender-tailored climate responsive actions, providing a strong foundation for gender-balanced and women empowering implementation of the Paris Agreement.

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[265] Art. 7. Ibid.
[266] The Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p.13.
[267] Charter of the United Nations, preamble, para 1, 24 October 1945, United Nations Treaty Series XVI.
[268] Universal Declaration of Human Rights, 10 December 1948, 217 A (III).
[269] International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p.3.

The cited above suggestions and findings illustrate how socially constructed gender roles might contribute to the vulnerability of women against the background of climate change, particularly considering that women across different societies frequently belong to world's poor. Different groups of men and women need different support to build their resilience and experience adaptation and mitigation interventions in different ways.[270] That said, to guarantee gender-sensitive climate policies the interests of women and men need to be carefully examined and adequately integrated into international and domestic climate change responsive measures. In view of the proactive role women play and their requisite capacity to take leadership in their communities in times of crisis, the integration of principles of gender equity and empowerment of women in the Paris Agreement has a great potential to strengthen the local communities` resilience to climate change and contribute positively to the developments of national climate policies. National climate change adaptation planning and its outcomes would potentially increase in its efficiency if properly and adequately informed by women and if reflecting their needs.

b) Intergenerational equity

"The dedication to future generations is visible worldwide and across cultures. It is a universal value shared amongst humanity."

UN Secretary-General, Report on Intergenerational Solidarity and the Needs of Future Generations, 2013

Climate change occurrence raised a serious question of environmental justice and equal access to natural resources for future generations. Given that, the concept of intergenerational equity gained recognition primarily in the process of international environmental law development. While visible pollution and efforts at controlling industrially driven environmental degradation are predicated to improve the quality of life now, the Climate Change Justice and Human Rights Task Force Report emphasizes that the effects of climate change often aren't visible until after the damage has already occurred.[271] Yet, despite this common knowledge, law and policy-makers are reluctant to take responsibility to safeguard the welfare of future generations. [272]

In the context of the environment focused agenda, the rights of future generations weren't of real concern until first mentioned in the 1972 Stockholm Declaration on the Human

[270] See Fisher, Susannah, et al. Planning and Implementing Climate Change Responses in the Context of Uncertainty: Exploring the Importance of Social Learning and the Processes of Decision-Making. International Institute for Environment and Development, 2016, p. 5, www.jstor.org/stable/resrep02707. Accessed 4 Apr. 2020.
[271] Climate Change Justice and Human Rights Task Force Report: Achieving Justice and Human Rights in an Era of Climate Disruption, International Bar Association, 2014, p.123
[272] Ibid, p.124

Environment, which expressed the conviction that "humanity bears a solemn responsibility to protect and improve the environment for present and future generations."[273] During the debate in the plenary session, it was said that "the Declaration represented an important milestone in the history of the human race," and that it was "a starting point in the task of making the planet a fit place for future generations."[274] The importance of protecting the planet for present and future generation has been highlighted also in Principle 3[275] of the 1992 Rio Declaration on Environment and Development, which stated that the right to development must be fulfilled in order to equitably meet the developmental and environmental needs of present and future generations.

Although formulated in terms of right to development, it effectively established the conceptual link between the rights of future generations and the goal of sustainable development. Importantly, in view of the World Commission on Environment and Development the concept of sustainable development was determined as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".[276] The UNFCCC instruments, therefore, have contributed much in terms of incorporating the idea that present generations have certain duties towards future generations and linking them to the core concept of sustainable development.

Principles of intergenerational justice and human rights of future generation impaired by climate change impacts have proven difficult to enforce and redress which why the lawsuit against the Philippines in 1992 (long time before Juliana case cited in the context of the child rights) was a surprising and encouraging event, and involved the rights of future generation indirectly established in the UNFCCC. 43 children, acting as representatives of succeeding generations, petitioned the Federal Constitutional Court of the Philippines and sued the government of the Philippines for failing to prevent the destruction of the country's rainforests. The children framed the case as an issue of intergenerational justice in relation to the management of environmental resources by adults and the implications of these actions for their own future.[277] This particular case, as many others, served to stimulate public opinion, bringing

[273] Principle 1 of the 1972 Stockholm Declaration reads as "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."
[274] LOUIS B. SOHN, The Stockholm Declaration on the Human Environment, Reprinted from THE Harvard international law journal, volume 14, number 3, summer 1973, available at: http://wedocs.unep.org/xmlui/bitstream/handle/20.500.11822/28247/Stkhm_DcltnHE.pdf?sequence=1
[275] Rio Declaration on Environment and Development 1992, Principle 3 reads as "The right to development must be fulfilled so as to equitable meet developmental and environmental needs of present and future generations".
[276] Report of the World Commission on Environment and Development, 'Our Common Future', UN Doc. A/42/427, 4 Aug. 1987; Report of the UN Conference on Environment and Development, Rio Declaration on Environment and Development, UN Doc. A/Conf.151/26, 14 Jun. 1992.
[277] L. Stone and K. Lofts, Climate Change, Child Rights and Intergenerational Climate Justice IDS In Focus Policy Briefing, Issue 13, November 2009: (Oposa v. Factoran, 224sCRa 792, 808 -1993).

the issue of future generations` rights and interests into the consideration of climate policy makers.

The issue has gained some momentum in the way it is looked at and treated even by other UN bodies. "Concerned by the fate of future generations in the face of the vital challenges of the next millennium", the General Conference of UNESCO on 12 November 1997 adopted the Declaration on the responsibilities of the present generation towards future generations[278] - the first international legal instruments to address directly the needs of future generations. Its preamble asserts the necessity "for promoting inter-generational solidarity for the perpetuation of humankind" and two articles[279] expressly urge present generations to avoid irreversibly damage to natural resources and harmful modifications of the ecosystems of the Earth in the interests of future generations.

Despite the promising earlier achievements in the attempts to integrate the intergenerational justice concept into the international environment agenda, the extent to which the guarantees of the rights of future generations are secured within the global climate regime under the Paris Agreement remains rather vague and invocatory. In the preamble to the Paris Agreement, there are two references to equity and intergenerational equity, which also appear in the preamble of the adoption decision of COP21. The preamble reference to human rights, however, is of a more general and diluted nature, failing to specify the future generations' rights, though it appears to promote the sense of fairness among generations.

In spite of its symbolic meaning, the mentioned concept of intergenerational equity could be interpreted to imply states' duty to respect, promote and consider the rights of future generations in implementing their resolutions. That said, all people are entitled to the same human rights, even the ones jet to be born, by the virtue of principles of equity, including intergenerational equity, and non-discrimination. Moreover, as observed by Nienke van der Have, intergenerational equity may have a role in adjusting general rules to specific cases, filling gaps or being a catalyst or guiding force of changing custom.[280]

[278] Declaration on the Responsibilities of the Present Generations Towards Future Generations, 12 November 1997, available at: http://portal.unesco.org/en/ev.php-URL_ID=13178&URL_DO=DO_TOPIC&URL_SECTION=201.html

[279] See Article 4. Preservation of life on Earth; Article 5. Protection of the environment

[280] Van der Have, N. (2014). 12 The Right to Development: Can States be Held Responsible? In 12 The Right to Development: Can States be Held Responsible?, p.206, Leiden, The Netherlands: Brill. doi: https://doi.org/10.1163/9789004269729_014

IV. Significance and legal meaning of human rights inclusion into the Preamble to the Paris Agreement

"Simply put, climate change is a human rights problem and the human rights framework must be part of the solution."

Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the UNFCCC

There can be no doubt that the human rights insertion in the global environmental agreement, which has been designed to coordinate global response to climate change, represents a great achievement for humans all around the world. The first and foremost significance lies in the fact that it ultimately recognized the adverse effects of climate change on the enjoyment of human rights, especially of vulnerable groups. The acknowledged human rights paradigm has the potential to inform and guide the implementation of the Paris Agreement at the local, national, and international levels. It also provides an entry point for considering human rights issues in the context of climate adaptation, mitigation measures and any other way adversely affecting its enjoyment and realization.

Behind the symbolic revelation of the connections between human rights and climate change, the human rights mention constitutes the authoritative reference to the existing human rights obligations of states. Importantly, this commitment has been inserted into the text of the Agreement, not solely into the COP decision adopting it. Therefore the second important achievement of the Paris climate Agreement is the legal recognition of the duty to comply with human rights obligations. Given the fact that the Paris Agreements is binding in nature, the human rights articulation represents a powerful and strong statement that can define and shape the context of states` climate actions.

However, as far as the human rights reference has been negotiated out of the operative text of the treaty, its placement into the preamble is frequently defined in academic literature as the weakness or the failure of the civil society advocacy. Therefore the issue of legal recognition, though of great importance, is only one factor in assessing the perspectives of human rights protection within the post-Paris climate governance regime. The preamble recital of the Paris Agreement on human rights will not have the effect of putting the action or inaction of national authorities under judicial scrutiny, but the human rights protection within the climate regime will definitely be strengthened and reinforced.

According to Sam Adelman, a single reference to human rights does little to facilitate the justiciability of human rights or to put them at the core of the UNFCCC.[281] The narrative on the articulation of human rights language illuminates the paradigm of its justifiability and elaborates on adequate and decent protection from dangers posed by climate change.

In contrast to the Copenhagen and Cancun Agreements, the Paris Agreement appears to primarily follow the legal approach. Although its structure represents a sophisticated combination of hard and soft law instruments, the Paris Agreement is the first universal agreement on climate change governance with "real teeth" since its provisions are legally binding.[282] Importantly, the Paris Agreement is a treaty within the definition of the Vienna Convention on the Law of Treaties. Yet as Bodansky observes, not every provision of the agreement creates a legal obligation.[283] The *travaux préparatoires* also argue in favor of its legal force; specifically, the 2011 Durban Platform mandated state-parties to develop "a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all parties."

Opposing this line of thinking, Anne-Marie Slaughter, former president of the American Society of International Law, while discussing the nature of the Paris Agreement notes that it represents "essentially a statement of good intentions rather than law".[284] Richard Falk too views the Paris Agreement as a rather "voluntary" commitment, and hence no commitment at all.[285] Therefore the structure of the agreement and the framing of its legal language directly affect the efficiency of human rights protection and justifiability under the established climate change framework since it is axiomatic that international law significantly affects State behavior.[286]

i. Some comments on legal force of the acknowledgment of human rights under the Preamble to the Agreement

The legal nature of the human rights reference found in the preamble, as highlighted in the previous parts of this thesis, from the very beginning all the way to the Paris final draft has been a controversial point of contention between COP negotiators, mandated UN bodies, human

[281] See Adelman, Sam, Human Rights in the Paris Agreement: Too Little, Too Late?. Supra note 169.
[282] The Paris Agreement has been referred to as the first-ever universal, legally binding global climate deal. See Paris Agreement, EUROPEAN COMM'N, available at: https://perma.cc/2Q5D-KYUQ
[283] See Bodansky, Daniel, The Legal Character of the Paris Agreement (March 22, 2016). Review of European, Comparative, and International Environmental Law, Forthcoming. Available at SSRN: https://ssrn.com/abstract=2735252
[284] A.-M. Slaughter, The Paris Approach to Global Governance, Project-Syndicate (28 December 2015), available at:
https://www.project-syndicate.org/commentary/paris-agreement-model-for-global-governance-by-anne-marieslaughter-2015-12.
[285] See R. Falk, Voluntary International Law and the Paris Agreement (16 January 2016), available at:
https://richardfalk.wordpress.com/2016/01/16/voluntary-international-law-and-the-paris-agreement/.
[286] J.L. Goldsmith and E.A. Posner, The Limits of International Law (Oxford University Press, 2006).

rights representatives and other concerned stakeholders who shaped the language and its interpretation. Further when the treaty was adopted to lead global climate actions taken from 2020 onwards the human rights concept forced holistic academic debates. According to Ajibade, the reference to human rights in the preamble is a "laudable step", though the treaty does not solidify implementation measures and reference to it is falls short of making it "self-operational", hence requiring further interpretation.[287] Sam Adelman emphasizes that the Paris Agreement does not adequately address the magnitude of the threat posed by climate related harm to human rights.[288] He says that the single reference to human rights does little to facilitate the justiciability of human rights or to put them at the core of the UNFCCC.[289]

But despite the fact that the reference in the preamble to the Paris Agreement does not create any self-standing rights or obligations related to human rights, state-parties have obligations to comply with their existing human rights duties when fulfill their obligations under the Agreement.

Among other challenges identified, the effective compliance with human rights obligations under the Paris Agreement is critically dependent on substantive measures taken at the national level. The preamble recital on human rights then seems to serve as a basis to enforce existing substantive and procedural rights contained in other fundamental international and regional human rights instruments and therefore promotes human rights protection only in and indirect and ambiguous matter. The scrutiny, accountability and sound governance of right issue in climate policies depends, however, on the national government`s goodwill. Concerning to chose the "voluntarism" approach, the *pacta sunt servanda* principle, embodied in the 1969 Vienna Convention on the Law of Treaties,[290] forms the part of customary international law applicable to every state irrespective of the Convention ratification and is aimed to constrain noncompliance with undertaken obligations under any international public treaty.

The key question really is what exact obligations, if any, the preamble imposes on the states-parties. Examining the phrasing of language on human rights it suggests that its scope in fact is strictly limited to threefold corresponding duties.

Arguably, the carefully tailored preamble language "to respect, promote and consider the respective obligations on human rights" was chosen to secure that parties, while entering into the Agreement, do not subscribe to additional human rights obligations. The earlier versions of

[287] Ajibade 2016 JSDLP 73.
[288] See Adelman, Sam. (2017). Human Rights in the Paris Agreement: Too Little, Too Late?. Transnational Environmental Law. 7. 1-20. 10.1017/S2047102517000280. online access: https://www.researchgate.net/publication/322082106_Human_Rights_in_the_Paris_Agreement_Too_Little_Too_Late
[289] Ibid, p.27;
[290] Vienna Convention on the Law of Treaties (Vienna, 23 May 1969; in force 27 January 1980), Article 26

the draft text, however, suggested including into the Preamble a reference for the need for states to "promote, protect and respect" human rights.[291] That alteration consequently affected the legal force of the provision in question.

Indeed, the theory of human rights law clarifies the states obligations, owed to any person within their jurisdiction, through three different categories: the duty "to respect", the duty "protect" and the duty to "fulfil". From the legal point of view, the obligation "to respect" requires states to abstain from interference directly and indirectly with human rights; and those obligations are mostly negative in nature. Similarly the obligation "to protect" requires to prevent others - any third parties - both private and public actors, from interfering with human rights. And the last type, - the duty "to fulfil" – requires the adaptation of appropriate measures towards the full realization of the rights.[292] All three formulations are considered to imply legal liability and were thus met with strong opposition from part of some state-parties.

Just as the wording "to protect" was deleted at the final stage of negotiations, policy-makers also skipped over and failed to add to the provision for an obligation "to fulfil", although twenty-eight special rapporteurs and independent experts of the Human Rights Council had urged the states to do so. [293] According to some scholars, including Lavanya Rajamani and Daniel Klein, the absence of phrasing to "protect" and "fulfill" is not happenstance,[294] but by inference 'intent'. During negotiations, the Parties of the UNFCCC often seek flexible language to accommodate the diverging positions of parties and to arrive at an acceptable formulation. In view of opponents to the rights-inclusive approach, the terms "fulfil" and "protect" were considered "too operative, that is requiring specific actions, for a preamble paragraph". [295] Remarkably, the suggested terms "promote" and "consider" entail the considerable lower level of legal obligations.

In the light of the above, it is hard to infer that the human rights language used in the Paris Agreement could serve as a remedy to seek redress for rights violations associated with

[291] Draft Text on COP-21 Agenda Item 4(b), Durban Platform for Enhanced Action (Decision 1/CP.17), Adoption of a Protocol, another Legal Instrument, or an Agreed Outcome with Legal Force under the Convention Applicable to all Parties, 9 Dec. 2015, Proposal by the President, Preamble, available at: http://unfccc.int/resource/docs/2015/cop21/eng/da02.pdf.

[292] See Committee on Economic, Social and Cultural Rights, The right to adequate food (art. 11), UN Doc. E/C.12/1999/5 (May 12, 1999), para. 15.

[293] See OHCHR, An Open Letter from Special Procedures mandate holders of the Human Rights Council to the State Parties to the UNFCCC on the occasion of the meeting of the Ad Hoc Working Group on the Durban Platform for Enhanced Action in Bonn (October 17, 2014), www.ohchr.org/Documents/HRBodies/SP/SP_To_UNFCCC.pdf

[294] See the Human Right to a Healthy Environment, By Lavanya Rajamani, Edited by John H. Knox, downloaded from Cambridge University Press, DOI: https://doi.org/10.1017/9781108367530.013

[295] The Paris Agreement on Climate Change: Analysis and Commentary, Daniel Klein, María Pía Carazo, Meinhard Doelle and others, P. 115, Oxford: Oxford University Press. Google Book online access: https://books.google.com.ua/books?id=I28sDwAAQBAJ&printsec=frontcover&hl=ru#v=onepage&q=human%20rights&f=false

design or implementation of climate measures. Had it been adopted in the operative part of the treaty, the human rights perspective would have imposed an obligation on states to implement their climate change obligations in a manner consistent with the respect, protection, promotion and fulfilment of human rights. The effect of final language of the Paris Agreement preamble recital however, serves only as a reminder and an aspiration to States to consider in their existing human rights undertakings. So while the language encourages compliance with existing human rights obligations, it is too weak and non-obligatory by itself to safeguard enforceability[296] given the lack of a regulatory mechanism.

Considering other relevant provisions of the Paris Agreement, that could promote and facilitate the advancement of human rights, such as gender equality, participation, sustainable development and poverty eradication, it should be noted that they are framed also in week normative language.

Additionally, Stevenson and Dryzek pointed out that common ambiguities of the Paris Agreement include the frequent use of "shall" and "should" instead of more peremptory words like "will" or "must",[297] strongly suggesting that the Paris Agreement is not able to impose any real human rights obligations on states-parties.

ii. Territorial application of human rights protection

Another shortcoming arises from the territorial application of human rights protection under the Paris Agreement in the traditional sense of the concept. Traditionally the core international human rights instruments require a state party only to secure the relevant rights and freedoms for everyone within its territory or subject to its jurisdiction.[298] However, in its Advisory Opinion on the "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory", the ICJ asserted extraterritorial application.[299] Though the case concerned the human rights applicability on the territory under occupation, it exemplifies a broader understanding pertaining to the territorial applicability of all the main human rights treaties, because human rights are universal and everyone is entitled to enjoy it irrespective of which state has sovereignty over the territory.

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[296] Enforcement typically involves the application of sanctions to secure compliance according to D. Bodansky, supra note 200

[297] Stevenson, H. and Dryzek, J. S. (2014) Democratizing Global Climate Governance. Cambridge: Cambridge University Press.

[298] 1966 ICCPR, Art. 2. Art. 1 of the AmCHR and Art. 1 of the ECHR make no reference to territory, but require parties to ensure to everyone 'subject to' or 'within' their jurisdiction the rights set out therein.
See generally O. De Schutter, International Human Rights Law (2010), at 142–179.

[299] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion ('Palestine Wall Case') [2004] ICJ Rep 136, at para. 109.

There is not clear answer for the question of whether the Paris Agreement`s commitments to human rights would suffice to involve extraterritorial application, even assuming the national climate actions transboundary effect of human rights. Further, the Article 13 (3) of the Paris Agreement states that the States` compliance with their obligations under the Agreement must be "implemented in a facilitative, non-intrusive, non-punitive manner, respectful of national sovereignty, and avoiding the placement of undue burdens on the Parties."[300]

The legal imperative that States provide protection of human rights to individuals only within their sovereign jurisdiction undermines its efficiency in an increasingly globalized world.

The Paris agreement is an instrument applicable only to State actors, meaning that multi-national corporations and private individuals fall outside of its direct jurisdiction. While this is not ideal, the States to which the agreement is applicable, that are both empowered and encouraged to exercise jurisdiction over these subjects and have responsibility to ensure that they respect environmental and human rights standards. The recent Guiding Principles on Business and Human Rights,[301] endorsed by the Human Rights Council in 2011, determined a set of 31 principles on how to respect, protect and remedy human rights in the context of multinational business enterprises. The document explains that not only states, but also corporations have a responsibility to respect human rights in both their national and international activities.[302] Furthermore, it states that victims of business-related abuses should have access to appropriate and effective remedies.

iii. Applicability for interpretation purposes

In spite of non-binding nature of human rights language in the implementation of the Paris Agreement, the content of its preamble is highly relevant to the interpretation of the entire agreement. Annalisa Savaresi and Jacques Hartman, similarly argued that reference to human rights in the preamble of the Paris Agreement would "merely draw Parties' attention to obligations they have already undertaken under the human rights treaties they ratified and to

[300] See S. Adelman, "Cosmopolitan Sovereignty", in C. Bailliet & K. Franko Aas (eds), Cosmopolitan Justice and its Discontents (Routledge, 2011), pp. 11–28

[301] Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", which were developed by Ruggie J.G., the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. The Special Representative annexed the Guiding Principles to his final report to the Human Rights Council (A/HRC/17/31), which also includes an introduction to the Guiding Principles and an overview of the process that led to their development. The Human Rights Council endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011.

[302] See UN Guiding Principles on Business and Human Rights, HR/PUB/11/04 (setting out guidelines for companies' responsibilities to respect human rights; Human Rights Council Resolution 17/4, Human rights and transnational corporations and other business enterprises para 1, 17th Session, 6 July 2011, UN Doc A/HRC/RES/17/4 (endorsing the UN Guiding Principles on Business and Human Rights, HR/PUB/11/04).

relevant customary norms and domestic laws."[303] By forging an explicit link to human rights law, the Paris Agreement recalls and strengthens the expectation that Parties will take into account their existing human rights obligations concerning matters such as public participation or the rights of women and indigenous peoples. (See Sébastien Duyck et al.).[304] The preamble of the Paris Agreement does not have any binding legal value jet contains a framework on how to interpret the operative body of the text, making it aspirational in nature.

Interpretation, is informed also by the International Court of Justice's illustrative approach, which has repeatedly referred to preamble provisions when dealing with cases.[305] Furthermore, by virtue of customary international law, embodied in the 1969 Vienna Convention on the Law of the Treaties, the interpretation is a process of progressive encirclement where the interpreter determines: (1) the ordinary meaning of the terms of the treaty, (2) in their context and (3) in light of the treaty's object and purpose. Than, by cycling through this three step inquiry iteratively closes in upon the proper interpretation.[306]

Nevertheless, there have been always concerns about the shared understanding of the human right approach among states-parties. Indeed, not all listed human rights are universally accepted or regarded as *jus cogens* norms of international law - so some parties may have corresponding obligations with respect to any pertaining rights or none at all. In those cases, however, where states-parties to the Paris Agreement do not participate in any relevant human rights instruments, the treaty would trigger the application of human rights obligations defined by the domestic law or law which constitute a part of customary international law. In this regards it makes sense to refer to the UN Charter as it contains a set of references to human rights, declares the realization of human rights as one of the main Organization`s purpose and provides that Member States shall cooperate to take joint and separate action with the UN to promote respect for and observance of human rights.[307]

These thoughts also seem to suggest that not every listed right is given the same meaning in its scope and nature. Explicit proof of that thesis is "the right to development", which has got different interpretations in the submission of different parties. As noted by Lavanya Rajamani, some parties, the Least Developed Countries, for example, conceived the right to

[303] Annalisa Savaresi & Jacques Hartman, Human Rights in the 2015 Agreement (2015), online access: legalresponseinitiative.org/legaladvice/human-rights-in-the-2015-agreement/
[304] Human Rights and the Paris Agreement's Implementation Guidelines: Opportunities to Develop a Rights-based Approach, Sébastien Duyck, Erika Lennon and others.
[305] See, among others authorities, the United States Nationals in Morocco case, I.C.J. Reports 1952, pp. 183, 184, 197 and 198 or Gabčíkovo-Nagymaros Project (Hungary/Slovakia), I.C.J. Reports 1997, p. 17.
[306] Richard Gardiner, Oxford Public International Law: Part II Interpretation Applying the Vienna Convention on the Law of Treaties, A The General Rule, 5 The General Rule: (1) The Treaty, its Terms, and their Ordinary Meaning, online access: https://www.icc-cpi.int/RelatedRecords/CR2018_04585.PDF
[307] United Nations, Charter of the United Nations (24 Oct. 1945) 1 UNTS XVI. See especially Arts 1, 55 and 56

development as an "individual right", while others might conceive of it as a "collective right." Ecuador considers this right as belonging to developing countries.[308]

General rules of interpretation provide also command that the treaty interpretation process take into account, "any relevant rules of international law applicable in the relationships between parties".[309] Given that, the Paris Agreement adopted within the UNFCCC governed regime cannot be understood as a separate body revoked from the designed framework. The International Court of Justice has ruled that international treaties are to be interpreted and applied in harmony with the entire legal system prevailing at the time of the interpretation.[310]

That said, the human rights concept referred to in the preamble of the Paris Agreement affirmatively encompass the internationally recognized human rights, which are at the core of international law and are given the well-established common meaning. The implementation of the Paris Agreement strongly suggests that national governments should not depart from human rights obligations commonly attributed to all democratic states and that they must undertake climate actions without curtailing the enjoyment of human rights.

iv. Effects of the Paris Agreement on domestic climate change litigation with respect to human rights protection

The regional human rights courts have already paved the way of 'environment concerned' jurisprudence operating through already existing human rights. Given the fact that climate change represents the biggest factor seriously and adversely affecting the environment, it respectively impacts the enjoyment of wide array of human rights. The adoption of the Paris Agreement, however, has not led to the rapid prosperity of climate change litigation; neither internationally nor territorially.

Apparently, the Paris Agreement`s recognition of the link between climate change and human rights does not go so far as to expressly protect human rights and does not specifically address the issue, but it tends to make a real difference in litigation trends. As it was described in previous charters, the human rights reference in the Agreement lacks the political commitment in respect to its implementation and enforcement, but it still may be operationalized and harnessed by means of domestic climate change jurisprudence. Therefore the latter plays a vital role in achieving the human right protection in face of climate change.

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[308] Rajamani, L. (2018). Human Rights in the Climate Change Regime. In J. Knox & R. Pejan (Eds.), The Human Right to a Healthy Environment (pp. 236-251). Cambridge: Cambridge University Press. doi:10.1017/9781108367530.013

[309] See the VCLT, art. 31 (3) (c)

[310] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, [1971] ICJ Rep 16 at para 53.

As one may observe, climate litigation in the era of pre- and even post-Paris Agreement is more influenced by domestic and constitutional sources than any international instruments. Two relatively new landmark cases – *Leghari v. Federation of Pakistan in Pakistan*[311] and *Urgenda Foundation v. The State of the Netherlands* case[312] - bear testimony to the fact that the national courts are to obtain more effective human rights protection dealing with certain aspects of domestic regulation.

In Urgenda the judiciaries broke new ground by requiring the other governmental branches to take stronger action to immediately reduce greenhouse gas emissions.[313] The Dutch court managed to involve the scientific findings[314] and legal commitments to the international agreement in order to review the sufficiency of national efforts to reach the overall global warming goal, established in Article 2.1 (a) of the Paris Agreement as "to hold the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels."[315]

That said based on the climate science findings highlighted in the IPCC report[316], it attempted to alter the national legal commitments, which are viewed to be critical also for the decent human rights protection.

The litigants initially came up with arguments based on the well-established jurisprudence of the ECtHR and its interpretations of the Convention. The petitioners claimed that the current Dutch emissions targets were not consistent with Article 2 (right to life) and 8 (right to private and family life) of the ECHR. However, addressing these claims the Court ruled

[311] See Leghari v. Federation of Pakistan, W.P. No. 25501/2015, Lahore High Court Green Bench, Orders of 4 Sept. and 14 Sept. 2015 and Judgment of 25 Jan. 2018, available at: https://elaw.org/pk_Leghari.

[312] See Urgenda v.Government of the Netherlands (Ministry of Infrastructure and the Environment), ECLI: NL:RBDHA:2015:7145, Rechtbank Den Haag [District Court of The Hague], C/09/456689/HA ZA 13-1396, available at: https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2015:7196; and Urgenda v. Government of the Netherlands (Ministry of Infrastructure and the Environment), ECLI:NL:GHDHA:2018:2591, Gerechtshof Den Haag [The Hague Court of Appeal], C/09/456689/HA ZA 13-1396, available at: https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI: NL:GHDHA:2018:2610; on 20 Dec. 2019, the Dutch Supreme Court rejected the government's appeal and thus upheld the previous decisions: Urgenda v. Government of the Netherlands (Ministry of Infrastructure and the Environment), ECLI:NL:HR:2019:2006, Hoge Raad [Supreme Court], C/09/456689/HA ZA 13-1396, available at: https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL: HR:2019:2006, and press release in English, available at: https://www.rechtspraak.nl/Organisatie-en contact/Organisatie/Hoge-Raad-der Nederlanden/Nieuws/Paginas/Dutch-State-to-reduce-greenhouse-gasemissions-by-25-by-the-end-of-2020.aspx (Urgenda).

[313] Bluebook 20th ed. Eleanor Stein & Alex Geert Castermans, Urgenda v. the State of the Netherlands: The Reflex Effect - Climate Change, Human Rights, and the Expanding Definitions of the Duty of Care, 13 McGill J. Sust. Dev. L. 303 (2017), p.305.

[314] See the 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, Summary for Policymakers. (IPCC Special Report on 1.5˚C, SPM), available at: https://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf.

[315] See Paris Agreement, supra note 1, art. 2(1) (a)

[316] Urgenda, District Court, supra note 312, para 4.12.

that Urgenda cannot be held a victim[317] for the purposes of Article 34 ECHR and human rights instruments cannot be applied in the ruling on the merits of the case.

The Court of Appeal, however, in 2018 overruled the District Court judgement stating that it had misinterpreted the article 34 of the ECHR and it should have permitted Urgenda to directly invoke the ECtHR findings on behalf of its members.[318] When examining the ECHR provisions it held that articles 2 and 8 impose an affirmative obligation on the state to protect its citizens from "all activities - public and non-public, which could endanger the rights protected in these articles".[319] Given that, Court believes that it is appropriate to speak of a real threat of dangerous climate change, resulting in the serious risk that the current generation of citizens will be confronted with such as loss of life and/or a disruption of family life.[320]

The key point here is that the Dutch Court involved the national private law provisions to resolve the case, in particular the duty of care under the Civil Code of the Netherlands, which requires parties to take precautionary measures to mitigate a hazardous situation.[321] Dutch Constitution defines this duty as "relating to the livability of the country and the protection and improvement of the living environment."[322] Generally speaking, this duty was interpreted as an extension of the affirmative obligation of government under the human rights law and constitutional principles to protect from risk of violation by climate change.

Despite numerous references to human rights norms[323], the substance of the case was not resolved either by means of human rights law or by multilateral environmental instruments. The domestic court was confronted with the assessment of whether the duty of care derives from the Dutch Constitution, the UNFCCC, the ECHR, or the Treaty on the Functioning of the European Union. Eventually it found these instruments only to be helpful to define the scope of the state's duty of care with respect to climate change.[324] The Court ruled that international obligations and principles have rather a "reflex effect" in national law,[325] which means that international law obligations and principles are taken into consideration by domestic courts when interpreting legal standards incorporated in national laws.

In defining the scope of duty of care the Court of Appeals referred partly to the Paris Agreement commitments as well. Urgenda claimants raised the issues of the transparency and

[317] Ibid, paras. 4.36, 4.45.
[318] Urgenda, App. Decision, para.36.
[319] Urgenda, District Court, para 43.
[320] Ibid, para 45.
[321] Ibid, para. 4.54.
[322] Ibid, para 4.36.
[323] Ibid, paras 4.45-4.50.
[324] Ibid, paras. 4.52.
[325] Ibid, para. 4.43.

sufficiency of Dutch government actions to fulfil its ambitious target at the international level,[326] which is decisive for the enjoyment of basic human rights. Having admitted the positive obligation to protect human rights in light of articles 2 and 8 of the ECHR, the success of the temperature goal under the Paris climate Agreement has been considered directly relating to the securement of rights protection. Thus, the Dutch Court of Appeals treated the Paris Agreement temperature goal as a minimum necessary to protect internationally or nationally recognized individual rights against the threats posed by climate change. Eventually it has delivered the landmark ruling, holding that the duty of care at stake entails the decent protection of the rights of Dutch citizens and requires the State to reduce its emissions by at least twenty-five percent from 1990 levels by the end of 2020.[327]

Although not referred to specifically, the human rights language in the Preamble of the Paris Agreement played also an important role. The temperature goal it established may not be sufficient to protect human rights from the impact of climate change, but attaining that goal is certainly a minimum step forward from the status quo.[328] Hence it could be argued that if the striving to achieve the overall 1.5˚C temperature goal of the Agreement is the way to ensure the conditions when human rights are protected, promoted and fulfilled, than the failure of national governments to put sufficient attempts to realize the indicated goal might be viewed as the breach of duty of care. Furthermore, national obligations of states to cut their emissions under the Paris Agreement should be interpreted also in light of the language of the preamble, which requires "Parties…, when taking action to address climate change, [to] respect, promote and consider their respective obligations on human rights."[329] These findings are quite promising in shaping future climate litigation trends.

Above all, the Urgenda case as the most illustrative and significant one explains how the judiciary can function as a tool in averting climate change: for the first time a government has been held accountable to its citizens for a climate policy that is substandard according to

[326] See Lennart Wegener, Can the Paris Agreement Help Climate Change Litigation and Vice Versa?, Transnational Environmental Law, 9:1 (2020), pp. 17–36; the author is arguing that this particular case certainly has to be seen against the background that Dutch courts tend to be very active in resorting to international law and that the Dutch legal order itself is characterized by a particular proximity to international law, available at: https://www.cambridge.org/core/terms. https://doi.org/10.1017/S2047102519000396

[327] Urgenda App. Decision, para 76.

[328] See David Hunter, Wenhui Ji, & Jenna Ruddock, The Paris Agreement and Global Climate Litigation after the Trump Withdrawal, 34 Md. J. Int'l L. 224 (2020). Available at: https://digitalcommons.law.umaryland.edu/mjil/vol34/iss1/9

[329] See F. Sindico & K. McKenzie, Human Rights Threshold in the Context of Climate Change: A Litigation Perspective in the Wake of the IPCC Special Report on 1.5°C or the Week in which Everything Changed, University of Strathclyde Centre for Environmental Law and Governance, Policy Brief No. 15, Oct. 2018, available at: https://www.strath.ac.uk/media/1newwebsite/departmentsubject/law/strathclydecentreforenvironmentallawandgovernance/pdf/policybriefs/Human_Rights_Thresholds_in_the_Context_of_Climate_Change.pdf.

international norms.[330] This case demonstrate also a new shift in the climate induced jurisprudence, which proves to be more receptive to admit the legal relevance of human rights approach to climate mitigation measures. In the past, when similar arguments were brought, for example, before the judicial bodies in the Inter-American system, the petitioners usually did not succeed in establishing the requisite link between governments' inadequacy of climate mitigation actions and associated risks of human rights violations, and thus the argument failed not on the merits, but on the lack of "standing", a technicality.

Another path-breaking decision worth recalling here has arisen in *Leghari v. Republic of Pakistan*,[331] filed in 2015, where the national High Court of Justice found its government obligated to do more to protect its citizens from climate change. Similar to the Urgenda case, the legal basis here was the government`s commitment to climate change adaptation and accordingly the lack of undertaken efforts.

The petitioner claimed that the Government of Pakistan and the Ministry of Climate Change had adopted a framework for climate change policy, however, no implementation on the ground had taken place.[332] It was argued that the governmental failure violated the plaintiff's fundamental rights under the Pakistani Constitution (in particular Articles 9 and 14) and international environmental principles including the doctrine of public trust, sustainable development, the precautionary principle, and intergenerational equity.[333] Notwithstanding the relatively small part of Pakistan`s contribution to global greenhouse gas emissions,[334] the country is a responsible member of the global community with the duty to combat climate change through mitigation efforts in such areas as energy, industry, and agriculture.

In Leghari the Court admitted that "climate change is a defining challenge of our time and leads to dramatic alterations in our planet's climate system". Hereby it has ruled that "on a legal and constitutional plane this is a clarion call for the protection of fundamental rights of the citizens of Pakistan, in particular, the vulnerable and weak segments of the society who are unable to approach this Court."[335] Accordingly, the delay and lethargy of the State in implementing the Framework policy offend the fundamental rights of the citizens[336] as stipulated in Pakistani Constitution.[337] Looking at climate change through a rights lens the Court recalled,

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[330] See Marc Loth, Climate Change Liability After All: A Dutch Landmark Case, 2016, 21 Tilburg Law Review, 5

[331] Leghari v. Federation of Pakistan, W.P. No. 25501/2015 (Lahore High Ct.) (2015) (Pak.). available at: http://climatecasechart.com/non-us-case/ashgar-leghari-v-federation-of-pakistan

[332] Ibid, para 4.

[333] Ibid, para 4.

[334] Ibid, para 8.

[335] Ibid, paras 6-7.

[336] Ibid, para 8.

[337] See the Constitution of the Islamic Republic of Pakistan, Article 9 (right to life – originally security of person), article 14 (human dignity), article 19A (information), and article 23 (property), available at: http://www.na.gov.pk/uploads/documents/1333523681_951.pdf

that "environment and its protection has taken a center stage in the scheme of the Pakistani constitutional rights".[338]

Eventually the Court ruled to establish a Climate Change Commission to "expedite the matter and to effectively implement the fundamental rights of the people of Punjab."[339]

Unlike the Urgenda judgment, the Leghari case represents a successful use of rights arguments as the legal foundation of a climate change suit.[340] It examines human rights consequences of climate change, exacerbated by governmental inaction, using the public interest litigation model derived from constitutional provision. The Leghari way might reinforce a new jurisprudential approach different in substance from Urgenda, where the the right to contest the adequacy of emission reduction target was at stake.

Following the success of the Urgenda and Leghari petitions, the climate change-concerned claim, which, among others, involved the human rights arguments, was filed again Austria[341]. In *Third Runway at Vienna International Airport case* plaintiffs were seeking to challenge authorizations granted for emissions-intensive projects, namely the construction of the third runway at the Vienna-Schwechat international airport. The legal bases for the court's decision included domestic and international law, in particular provisions of Austria's Climate Protection Act of 2011, Austria's constitution and its international commitments under EU law and the Paris Agreement. The Court, however, overruled these arguments by stating that they are "directed primarily at legislators not arbitrators, and that they can be non-authoritatively serve in the interpretation of undefined provision of legislation such as public interests".[342]

The Court took the Paris Agreement commitments into due account. It held that construction and operation of the third runway would increase Austria`s annual CO2 emissions and that this would not be consistent with its climate change mitigation goals both under the Paris Agreement and its domestic law on climate protection. Moreover, the Court stated that the construction would be contrary to the public interests of environmental protection, and in particular climate protection.[343]

Arguably, the Paris Agreement`s entry into force and court victories in climate cases such as Urgenda and Leghari, have signaled the development of a new wave of climate

[338] See Leghari v. Federation of Pakistan, at paras 5-6.
[339] Ibid, para 11.
[340] See J. Peel & H. Osofsky, A Rights Turn in Climate Change Litigation?, Transnational Environmental Law, 7:1 (2018), pp. 37–67.
[341] Third Runway at Vienna International Airport case, Case No. W109 2000179-1/291E, Federal Administrative Court, Austria, 2 Feb. 2017, An unofficial English translation available at: http://climatecasechart.com/non-us-case/in-re-vienna-schwachat-airport-expansion/
[342] Ibid, p.126.
[343] Ibid, para.4.5.8.

jurisprudence, [344] which strives to persuade its governments to reach more ambitious overall emission targets using rights-based claims.

The current international regulation is missing the clear right to an environment or to a stable climate. The abovementioned cases, however, evidence the increasing receptiveness of courts to consider the casual relationship between GHG emissions, climate change occurrence and its impacts on human rights. By extending the other available remedies courts have recognized that insufficient efforts to adapt to climate change may cause severe environmental harm that would undermine the effective enjoyment of human rights. Therefore, the judiciary went as far as to recognize the need of individuals' protection and hold governments responsible for the prevention of human rights violations due to with climate change.

The Paris Agreement initially was designed as a purely environmental treaty within the UNFCCC governed regime, but its comprehensive approach represents the useful tool for human rights protection against the backdrop of climate change. When envisaging the bottom-up approach, it enabled the domestic policies and regulations to play a critical role, thereby enabling the national climate commitments to become subject to judicial review on their adequacy and sufficiency. The science-based, generally accepted overall temperature goal defined in the Paris Agreement informs the national courts on how to evaluate national climate mitigation efforts, which reflect on human rights protection efforts. However, no court has yet found a causal nexus between a particular greenhouse gas emissions and particular adverse climate change impacts from that emission for the purpose of establishing liability.[345]

[344] E.g., Case T-330/18, Carvalho and Others v. Parliament and Council, Order of 8 May 2019, ECLI:EU: T:2019:324. See also the applications in the following cases: ENVironnement JEUnesse v. Canada (available at: http://climatecasechart.com/non-us-case/environnement-jeunesse-v-canadian-government); Notre Affaire à Tous and Others v. France (available at: http://climatecasechart.com/non-us-case/notre-affaire-a-tous-and-others-v-france); Pandey v. India (available at: http://climatecasechart.com/non-us-case/pandey-v-india); Friends of the Irish Environment v. Ireland (information available at: https://www.climatecaseireland.ie/climate-case); VZW Klimaatzaak v. Kingdom of Belgium, et al. (information available at: https://affaire-climat.be/en); Union of Swiss Senior Women for Climate Protection v. Swiss Federal Council and Others (available at: http://climatecasechart.com/non-us-case/union-ofswiss-senior-women-for-climate-protection-v-swiss-federal-parliament); and Family Farmers and Greenpeace Germany v. Germany, Verwaltungsgericht Berlin [Administrative Court of Berlin], 31 Oct. 2019, 10 K 412.18, see the Application and Complaint from 25 Oct. 2018, available at: https://www.greenpeace.de/sites/www.greenpeace.de/files/20181101-greenpeace-german-climate-case-summary-of-pleas.pdf.

[345] United Nations Environment Programme, May 2017, The Status of Climate Change Litigation – A Global Review, ISBN No: 978-92-807-3656-4, Job No: DEL/2110/NA, p.20.

Conclusions:

Almost two decades ago already, the UN Human Rights Council recognized that "climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights". These words were a monumental achievement both for climate change policy and human rights policy and ushered in a new era. The international movement for drawing the nexus between these two fields finally bore some fruits as climate policy makers reconsidered the utility and value of rights-based approach. What began as a concern of a lose organization of consisting of vulnerable states, civil societies, human rights bodies and some individuals, grew into an organized movement advocating for the inclusion of human rights into the climate framework. The recognition of climate change's devastating effect on human rights and vital human ecosystems coupled with a frightening scientific prognosis of future climate change evolution caused the political focus to shift away from viewing the problem from politico-scientific approach and towards the plight of peoples and their rights.

The Paris Agreement represents a culminating event for the entire climate change policy agenda since it finally recognizes a clear link to human rights, and refers to the rights of vulnerable groups, climate justice, intergenerational equity and other components of the rights-based approach. It is a historic, multilateral environmental treaty which subtly promotes respect for and consideration of human rights principles and their values.

Importantly, before the Paris Agreement`s recognition of the human rights dimensions, the multilateral environmental treaties were strictly viewed to serve only the environmental purposes. The calls for human rights protection pertaining to environmentally-caused violations of human rights were based on core human rights treaties or domestic legal instruments, not on environmental regulation. Moreover, the invocation of human rights based on core environmental treaties would have been futile as those treaties were generally silent or consciously ignored this issue. Furthermore, the contested human rights to a healthy and decent environment has found its recognition only in part at few regional legal instruments. The only workable way to seek redress for specific climate-related violations of human rights was deemed to lie in the plane of human rights instruments themselves. Indeed, while the human rights bodies took the leading role in advancing the normative framework, judicial organs have made good progress in deploying the human rights norms to environmental cases by means of interpretation techniques. And yet despite promising developments, these organs fell short of legally recognizing the interdependence between human rights and climate change.

The Paris Agreement played a valuable and useful role in helping to fill this gap. Above all, it set out the legal imperative acknowledging the universal value of human rights which the states are bound to consider in all climate action. Unlike smaller predecessor treaties which were

impotent on the human rights aspect, the Paris Agreement strives to establish a forward-looking rights-based paradigm for climate adaptation and mitigation actions, which determines their limits and sets out the context. In practical terms, the integration of this rights-based approach within the new climate governance regime is critical for how the climate change phenomenon is perceived and what measures are taken to address it.

Apart from that, the human rights inclusion endorses principles of equity and recognizes climate vulnerability. The Paris Agreement strives to ensure climate justice and the elimination of the asymmetrical climate impacts with regard to the rights and interests of the most vulnerable people and communities. This commitment serves as justification of the explicit reference to human rights of major marginalized segments of population, who should enjoy the primacy in terms of the protection of their rights.

Nevertheless, in the final version of the draft, the issue of human rights was kept outside of the treaty's corpus and was explicitly addressed only in its preamble recital. Despite numerous pleas of the civil societies and others human rights advocates for the full integration of human rights under the new climate change discourse, this idea was received ambivalently by policy makers. The political reluctance to undertake any human rights obligations under the multilateral environmental treaty and complexity of the process of building a climate agenda itself appeared to be decisive for the future of human rights concerns. Thus, if considering the Paris Agreement's reference to human rights in the preamble in isolation, it rather represents a reminder of the states' moral (but not legal) obligations. It can be described as aspirational in its nature since its non-inclusion in the operational language also implicates that there is no effective enforcement mechanism.

The framing of the Paris Agreement's language on the human rights gave rise to extensive discussions on the achievements and losses of human rights advocacy and the role of this paradigm in shaping the future of climate change regime. However, notwithstanding all doubts emerging from the non-binding nature of explicit rights reference in the preamble of the Agreement, its utility for the purposes of interpretation and guidance of the operational provisions in the treaty cannot be underestimated. Viewed in this way, it has a potential power of filling normative gaps and to assess the operative provisions from the human rights perspective. Although this reference cannot be enforced directly in case of allegation of human rights impingement, it supplements human rights arguments brought before judicial bodies and underpins the legal reasonings. As the recent trends have shown, the national states` commitments under the Paris Agreement may successfully guide judicial organs in interpretation of domestic legal instruments and in finding governments accountable for human rights abuses.

Although indirectly, the Agreement`s rights-based approach can influence and challenge national climate policies and set out the context of global and domestic climate-response actions. The recent progressive decisions of courts by invoking human rights argument have already ruled on the inadequacy of a states' mitigation and adaptation measures, like they did in the *Urgenda* case, or hold their governments accountable for the omission to adapt to climate change, like they did in the *Leghari* lawsuit. Therefore it may be argued that by complementing national legislation in conjunction with international human rights law the Paris Agreement represents an influential tool to safeguard and protect the fundamental values of human rights law against the climate change threat. The considerable success of rights-based climate change cases also evidences that this instrument may open up a different perspective on the protection of human rights at domestic and regional levels. By virtue of interpretative techniques the human rights language integrated into the preamble may provide for the range of alternative pathways and interpretive flexibility for rights argumentation in climate change litigation. However, the full potential of the Paris Agreement for these purposes remains yet to be seen.

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