

# SDG 13: CLIMATE ACTION



# A LEGAL GUIDE



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This Legal Guide to the Sustainable Development Goals (SDGs) was first published by Advocates for International Development (A4ID).

## Disclaimer

The information contained within this guide is correct at the date of publication.

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## About A4ID

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



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## Foreword

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### The SDG Legal Initiative

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

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

### Legal Guide to the SDGs

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

### Role of Law in Advancing Climate Action

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

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

Sustainable Development Goal 13 echoes the climate

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

Climate change also poses a fundamental justice concern. Developed countries are the largest emitters of greenhouse gases - but people in developing countries are worst affected.

**Yasmin Batliwala**

**Chief Executive**

The concept of 'climate justice' links climate change and human rights. It strives to protect the rights of the most vulnerable people and ensure the burdens and benefits of climate change are shared fairly.

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

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# The Sustainable Development Goals

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

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

Compared to the Millennium Development Goals (MDGs),

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

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

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

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

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## Key Terms

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

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

**'Climate Change'**, is defined in the United Nations Framework Convention on Climate Change (UNFCCC) (1992), as the 'change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate

variability observed over comparable time periods'.<sup>1</sup>

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

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

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



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## Overview of the targets

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

Faced with this global challenge, the international community

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

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3 The Intergovernmental Panel on Climate Change (IPCC), (n.d.). Reports. [online]. Available at: <https://www.ipcc.ch/reports/>

4 United Nations, (2015). *Transforming our world: the 2030 Agenda for Sustainable Development*. [Online]. Available at: <https://bit.ly/39wTZ8o>

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

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

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

change and the adverse effects thereof’.

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

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

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

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

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5 Core Writing Team, Pachauri, R.L.; Meyer, L., (2015). *Climate Change 2014 Synthesis Report*, Intergovernmental Panel on Climate Change (IPCC). Available at: <https://bit.ly/3u3WYbn>

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

7 United Nations (2016). *One Day to Combat Desertification, UN calls for action to restore land resources*. [Online]. Available at: <https://bit.ly/3CH4hz0>

**TARGET 13-1****Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries**

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

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

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

- i. understanding disaster risk
- ii. strengthening disaster risk governance
- iii. investing in disaster risk reduction

- iv. enhancing disaster preparedness

It also sets seven non-binding targets.<sup>9</sup> Among these targets, two serve as indicators for the SDG target 13.1:

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



Climate activist Greta Thunberg

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

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

TARGET 13-2

## Integrating climate change measures into national policies, strategies and planning



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

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

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

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

TARGET 13-3

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



Raising awareness among the public and private sectors, as well as individuals, is essential to combat climate change. Moreover, capacity building is needed to implement mitigation and adaptation strategies. This target is in line with Article 12 of the Paris Agreement. This states that ‘parties shall cooperate in taking measures, as appropriate, to enhance climate change

education, training, public awareness, public participation and public access to information’. UN Member States have pledged to integrate climate change mitigation, adaptation, impact reduction and early warning into school curricula. As of September 2021, no data is available on the countries that have done so.

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

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## Key actions lawyers can take

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The final section of this chapter provides more details on how the international legal community can engage in efforts to advance SDG 13. However, the following short summary

describes some of the key actions that lawyers can take to contribute to the sustainable development agenda on climate action.

### Learn and educate

Climate change poses a fundamental justice concern. By enhancing their understanding of climate change – as well as the policy and programmatic efforts to mitigate its impact and to adapt to its consequences – lawyers can play a key

role in promoting ‘climate justice’. Law firms with expertise in this area can consider organising seminars and workshops on international climate change obligations to raise awareness of the existing laws relevant to climate change.

### Integrate

In many law firms, climate change has become a specialised area of practice. However, all legal departments can now consider the ways in which climate change can affect their practice areas. Law firms can use their unique positioning and expertise to ensure that the burdens and benefits of

climate change are shared equitably; to encourage their clients to introduce and monitor carbon management strategies; and to safeguard the rights of the communities most vulnerable to climate change.

### Act

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

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

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## Elements of the international legal framework

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### The United Nations Framework Convention on Climate Change

**Adopted:** 9 May 1992

**Entered into force:** 21 March 1994

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

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

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

greenhouse gases that are the result of human activity (Article 4.2).

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

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## The Kyoto Protocol

**Adopted:** 11 December 1997

**Entered into force:** 16 February 2005

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

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

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

Nearly every industrialised country ratified the Protocol, with the notable exception of the United States. According to the principle of 'common but differentiated responsibilities', the Protocol does not impose new obligations on developing

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

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

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## The Paris Agreement

**Adopted:** 12 December 2015

**Entered into force:** 4 November 2016

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

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

- i. to limit global warming to less than 2°C above pre-industrial levels and pursue efforts to limit the rise to 1.5°C
- ii. to improve the ability to adapt to climate change and foster climate resilience
- iii. to make finance flows consistent with the above objectives

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

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States withdrew from the Paris Agreement. However, the United States re-entered the agreement under the Biden administration on 20 January 2021.<sup>11</sup>

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

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

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

Agreement’s long-term goals.

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

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

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

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11 The White House (2021). *Briefing on Paris Climate Agreement*. [Online]. Available at: <https://bit.ly/3EDQcUS>

12 UNFCCC (n.d.), *Katowice climate package*. [Online] Available at: <https://bit.ly/3i11lp9>

13 UNFCCC (n.d.), *Subsidiary Body for Implementation*. [Online] Available at: <https://unfccc.int/process/bodies/subsidiary-bodies/sbi>



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## Vienna Convention for the Protection of the Ozone Layer

**Adopted:** 22 March 1985

**Entered into force:** 22 September 1988

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

On the initiative of the UNEP, the Vienna Convention was

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

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## Montreal Protocol on Substances that Deplete the Ozone Layer

**Adopted:** 16 September 1987

**Entered into force:** 1 January 1989

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

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

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



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## Soft law and declarations

### UN General Assembly Resolutions

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

On 8 October 2021, the Human Rights Council recognised for the first time that having a clean, healthy and sustainable

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

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### Intergovernmental Panel on Climate Change Reports

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

significant influence on its assessment reports.

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

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

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

16 Core Writing Team, Pachauri, R.L.; Meyer, L., (2015). *Climate Change 2014 Synthesis Report*, Intergovernmental Panel on Climate Change (IPCC). Available at: <https://bit.ly/3u3WYbn>

17 Ibid. p. Foreword

18 Ibid. p. 17

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along with adaptation measures.

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

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

1850-1900 levels, by 2.1°C to 3.5°C in the intermediate scenario, and by 3.3°C to 5.7°C under the very high emissions scenario.<sup>20</sup>

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

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

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

<sup>20</sup> Ibid.

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# Regional legal and policy frameworks

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## African Union

### Agenda 2063 – The Africa We Want (2015)

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

One of the key goals is to 'act with a sense of urgency on

climate change and the environment'.<sup>21</sup> Whilst African countries pledge to take part in global mitigation efforts, Africa is contributing to less than 5% of global emissions. The priority therefore, is set on adaptation to reduce the adverse consequences of climate change, especially for vulnerable populations (paras 16 and 17).

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### Draft Africa Climate Change Strategy (2016-2020)

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

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



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

22 United Nations. (2014). *Draft African Union Strategy on Climate Change*. [Online]. Available at: [http://www.un.org/en/africa/osaa/pdf/au/cap\\_draft\\_auclimatestrategy\\_2015.pdf](http://www.un.org/en/africa/osaa/pdf/au/cap_draft_auclimatestrategy_2015.pdf)

### Association of South East Asian Nations

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

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

collaboration and coordination in climate change responses.<sup>24</sup>

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

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

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## European Union

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

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

Member States.<sup>27</sup>

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

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<sup>23</sup> ASEAN, (2015). *Community Vision 2025* [Online]. Available at: <https://bit.ly/3AGdA1w>

<sup>24</sup> ASEAN, (2015). *Regional Guidelines on Promoting Climate Smart Agriculture (CSA) Practices*. [Online]. Available at: <https://bit.ly/3AHrFvY>

<sup>25</sup> Reports available here: <https://bit.ly/3zDgfl0> and here: <https://bit.ly/3o3FqS3>

<sup>26</sup> ASEAN, (2021). *ASEAN State of Climate Change Report*. [Online] Available at: <https://asean.org/wp-content/uploads/2021/10/ASCCR-e-publication-Final-12-Oct-2021.pdf>

<sup>27</sup> European Union, (2009). *Decision No 406/2009/EC of the European Parliament and of the Council on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020*. [Online]. Available at: <https://bit.ly/3lWd0qW>

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

In line with the objective set in the Paris Agreement, the European Union adopted a new regulation setting a more ambitious target of 30% reduction of emissions by 2030 compared with 2005 levels. The Regulation sets new binding

national emission reduction targets for sectors outside of the EU Emission Trade System. These range from 0% for Bulgaria to a target of 40% for Luxembourg and Sweden.<sup>28</sup>

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

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

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

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



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

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## Communication 2019/640 on the European Green Deal

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

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



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

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

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## Examples of relevant national legislation

### Denmark

#### Climate Change Act (2014)

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

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

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### Germany

#### Climate Action Law (2021)

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

In 2019, Germany adopted the Climate Action Law at the Federal level. Following a landmark ruling by the German Constitutional Court,<sup>34</sup> the Parliament decided in 2021 to

strengthen the Climate Action Law and to align it with new EU targets. The reform brings forward the target date for climate neutrality to 2045. It makes this target legally binding, while also introducing stricter greenhouse gas reduction targets on the way.<sup>35</sup>

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31 European Parliament Think Tank. (2021). *Climate action in Denmark: Latest state of play*. [Online]. Available at: <https://bit.ly/2W8zewA>

32 Offshore Wind, (2015). *Denmark Passes Climate Change Act*. [online]. Available at: <https://www.offshorewind.biz/2015/01/14/denmark-passes-climate-change-act/>

33 Ministry of Climate, Energy and Building (2013). *The Danish Climate Policy Plan: Towards a Low Carbon Society*. [Online]. Available at: <https://bit.ly/3IU4rMN>

34 Bundesverfassungsgericht. (2021). *Constitutional complaints against the Federal Climate Change Act partially successful*. [Online Press Release]. Available at: <https://bit.ly/3i1o6Jw>

35 Clean Energy Wire. (2021). *Germany's Climate Action Law*. [Online]. Available at: <https://www.cleanenergywire.org/factsheets/germanys-climate-action-law-begins-take-shape>



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## United Kingdom

### Climate Change Act (2008) Environment Bill (2021)

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

In 2019, the Climate Change Act 2008 (2050 Target Amendment) Order 2019 was passed, increasing the UK's commitment to a 100% reduction in emissions by 2050, as

opposed to the original commitment of 80% reduction of greenhouse gas emissions by 2050.<sup>38</sup>

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

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## Philippines

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

Contrary to other legislation, the Philippine Climate Change Act<sup>41</sup> and its Action Plan (2011–2028)<sup>42</sup> have no legally binding targets on greenhouse gas emissions. Instead, they

prioritise adaptation to reduce vulnerability. Philippine's legislation is remarkable for its cross-sectoral approach: it involves all ministries and State entities at the national and local levels.

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36 Committee on Climate Change (CCC), (n.d.). *UK regulations: the Climate Change Act*. [online]. Available at: <https://bit.ly/3kAKyul>

37 Committee on Climate Change (CCC), (n.d.). *About the Committee on Climate Change*. [online]. Available at: <https://www.theccc.org.uk/about/>

38 UK Parliament: House of Lords Library (2021). *Climate change targets: the road to net zero?* [Online]. Available at: <https://bit.ly/3u9OGVV>

39 UK Parliament, (2021). *The Environment Bill*. Available at: <https://bills.parliament.uk/bills/2593>

40 Smith, T. (2012). *Is the Philippines' climate law the best in the world?* Climate Home News. [Online]. Available at: <https://bit.ly/2W7W4V0>

41 Republic of the Philippines. (2009). *Philippines Republic Act No. 9729*. [online] Manila. Available at: <https://www.ifrc.org/docs/IDRL/RA209729.pdf>

42 Climate Change Commission. (n.d.). *Change Action Plan 2011-2028*. [online] Manila: Climate Change Commission. Available at: <https://bit.ly/3i3RG18>

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## Mozambique

### National Climate Change Strategy (2012)

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

- i. adaptation and climate risk management
- ii. mitigation and low carbon development
- iii. cross-cutting issues<sup>43</sup>

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

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## China

### National Plan (2015)

In 2015, China adopted a National Plan for Tackling Climate Change.<sup>45</sup> This plan covers mitigation, adaptation, scientific research and public awareness. The plan proposes to 'achieve the peaking of carbon dioxide emissions around 2030, increase the share of non-fossil fuels in primary energy consumption to around 20% in 2030, to lower carbon dioxide emissions per unit of GDP in 2030 by 60% to 65% compared with the level in 2005, increase the forest stock volume by

around 4.5 billion cubic meters compared to the 2005 level, and to improve the ability to adapt to climate change in a comprehensive manner.'<sup>46</sup>

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

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43 Grantham Research Institute on Climate Change and the Environment. (2015). *Climate Change Legislation in Mozambique*. [Online]. Available at: <http://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2015/05/MOZAMBIQUE.pdf>

44 Ibid.

45 The National Development and Reform Commission, (2015). *China's Policies and Actions on Climate Change*. [online]. Available at: <https://bit.ly/3kyNZ5c>

46 Briggs, H. (2015). *China climate change plan unveiled*. BBC News. Available at: <https://www.bbc.co.uk/news/science-environment-33317451>

47 Ogden, Pete. (2020). *Climate change and biodiversity take center stage at the 75th session of the UN General Assembly*. United Nations Foundation. [Online]. Available at: <https://unfoundation.org/blog/post/climate-change-biodiversity-take-center-stage-75th-session-general-assembly/>

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## Papua New Guinea

### Climate Change Management Act (2015)

The Papua New Guinea Climate Change Management Act establishes a Climate Change and Development Authority (CCDA) to promote and manage 'climate compatible development through climate change mitigation and adaptation activities'. The CCDA has extensive powers. These include administering the Climate Change and Green Growth Trust Fund. It also raises money through fees and levies for the Fund. The CCDA establishes planning committees within regulated sectors to plan sectoral regulation for mitigation

and adaptation. The Act also provides for mitigation targets to be set by the minister in charge, on the advice of the CCDA and relevant government departments. The targets are to be set to allow for economic growth in a developing country. At the same time, they aim to minimise carbon intensity within particular sectors. The latter aim is pursued by setting mitigation and adaptation standard and performance level regulations for high-carbon sectors and establishing fuel and building 'climate standards'.

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## Seychelles

### Disaster Risk Management Act (2014)

The Act specifies that the Disaster Risk Management Division of government shall develop and maintain a database on disaster related information, including climate change and

other emerging threats. The inclusion of climate change in planning laws should strengthen the resilience and adaptive capacity of the country to climate-related hazards.



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# Insights for the legal profession

## a) Examples of Relevant Litigation and Cases

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### USA

#### Massachusetts v. Environmental Protection Agency (2007)

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

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

In 2007, the US Supreme Court ruled against the EPA. According to the Supreme Court, the CAA wording of ‘air pollutants’ is large enough to encompass carbon dioxide. The Court also rejected EPA’s policy arguments for delaying

its intervention by stating that: ‘EPA can avoid promulgating regulations only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do’.

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

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

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

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

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## The Netherlands

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

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

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

On 9 October 2018, The Hague Court of Appeal issued its judgment<sup>50</sup>, holding that, by doing too little to prevent climate change, the state failed to fulfil its duty of care under

Articles 2 and 8 of the European Convention on Human Rights. These protect, respectively, the right to life and the right to private and family life. It ordered the state to reduce emissions by at least 25% by end-2020. On 20th December 20, 2019, the Supreme Court of the Netherlands upheld the decision under Articles 2 and 8 of the ECHR.<sup>51</sup>

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

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## Pakistan

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

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

food security.

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

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50 The Hague District Court, Chamber for Commercial Affairs. (2015). *Urgenda Foundation v Kingdom of the Netherlands*, C/09/456689 Available at: <https://bit.ly/2XK1Bl4>

51 Climate Case Chart, (2015). *Urgenda Foundation v. State of the Netherlands* [Online]. Available at: <https://bit.ly/2XZMg06>

52 Lahore High Court (2015). *Asghar Leghari v Federation of Pakistan, Order Sheet, Case No. 25501/2015*, Lahore Judicial Department. [Online]. Available at: <https://bit.ly/3CCkHsu>

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responsible for the implementation of the Climate Change Policy and to constitute a climate change commission

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comprising representatives of the key ministries, NGOs and technical experts.

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## The Netherlands

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

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

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

The oil giant was ordered by the Hague District Court to reduce its emissions by 45% by the end of 2030 compared to 2019 levels, as per the Paris Climate Agreement.<sup>54</sup> This case built on the principles applied in the landmark Urgenda case. In applying a duty of care on Shell, the court concluded that the standard of care included the need for companies to take responsibility for all CO2 emissions produced, including direct emissions, indirect emissions, and emissions produced

as a result of third-party use. This case is considered to be a landmark case amongst climate litigation, as the first example of a judge ordering a large polluting corporation to comply with the Paris Climate Agreement. Furthermore, it is the first major example of a successful climate litigation case against a corporation which is based on human rights approach.

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

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

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53 WILMAP. (2018). *Article 6:162 Dutch Civil Code*. Stanford University. [Online]. Available at: <https://wilmap.stanford.edu/entries/article-6162-dutch-civil-code>

54 Rechtbank Den Haag (2021). *ECLI:NL:RBDHA:2021:5339*. [Online]. Available at: <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339>

55 Climate Case Chart, (2019). *Milieudefensie et al. v. Royal Dutch Shell plc*. [Online]. Available at: <https://bit.ly/3kCsrEL>

## b) Legal context and challenges



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

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

The principle of 'common but differentiated responsibilities' first formulated in the UNFCCC implies that all states share an obligation to protect the climate system. However, this equity means taking into consideration the different responsibilities

and respective capabilities. The UNFCCC states that developed countries 'should take the lead in combating climate change' (Art. 3.1). It also says the 'specific needs and special circumstances' of developing and most vulnerable countries 'should be given full consideration' (Article 3.2). The concept of 'climate justice' links climate change and human rights with the purpose of safeguarding the rights of the most vulnerable people and ensuring that the burdens and benefits of climate change are shared equitably.<sup>56</sup>

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

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

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

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

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

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The Paris Agreement has been criticised for not imposing binding emissions reduction targets. Its predecessor, the Kyoto Agreement, did contain binding commitments to

reduce greenhouse gas emissions. However, these applied only to developed countries. They excluded major emitters, such as China or India. The mandatory nature of these emission reduction targets prevented the ratification of Kyoto by parties, in particular the United States.

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

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

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

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



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## c) So, what can lawyers do?

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This section highlights several areas for action. It encourages lawyers to use their expertise and influence to contribute to

the fight against climate change.

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### Learn and Educate

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

The Grantham Research Institute on Climate Change and Environment, at the London School of Economics and Political Science, offers a free global database on legislation and litigation linked with climate change. This is of definitive interest to the practitioner.<sup>60</sup> The Law and Climate Change Toolkit is an online and open database. It is being developed by a partnership among the UN Climate Change secretariat, UN Environment, and the Commonwealth Secretariat working in close collaboration with partner countries, other

international organisations, and research institutions. The toolkit aims to provide a global resource to help countries put in place the legal frameworks necessary for effective domestic implementation of the Paris Agreement and their nationally determined contributions (NDCs).<sup>61</sup>

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

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

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59 International Bar Association (IBA), (2012). *Achieving Justice and Human Rights in an Era of Climate Disruption*. Available at: <https://bit.ly/3u615Ki>

60 Grantham Research Institute on Climate Change and the Environment, (n.d.). *Climate Change Laws of the World*. Available at: <https://bit.ly/3zi7fkR>

61 The Commonwealth, UNEP and UNFCCC (n.d.). *Law and Climate Change Toolkit*. [online] Available at: <https://climatelawtoolkit.org/>

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## Integrate

The adoption of the UN Sustainable Development Agenda is good reason for law firms, corporate legal departments, and other law-related organisations to examine and realign their own policies and practices. The work of an increasing number of lawyers is closely intertwined with climate change and it has become an area of practice for many law firms. For instance, lawyers can specialise in carbon markets and the trading of emissions allowances or focus on the renewable energy market and advise clients on environmental regulations. Within law firms, all departments should

now be assessing the way climate change will affect their practice areas. This could be related to pensions, mergers and acquisitions, energy, financial regulation, property, or planning. When completing internal and client-facing work, all commercial lawyers should assess mitigation and adaptation strategies, and corporate social responsibility policies that consider climate change and its impact on the enjoyment of human rights, especially for vulnerable communities.

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## Act

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

forcing states to commit to more ambitious climate action policies.

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

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62 See for instance: A group of young people in USA sued the Federal Government on the grounds that the government has allowed CO2 emissions to increase causing 'climate instability that injures their prospects for long and healthy lives'. Available at: <https://bit.ly/3I2v80P>

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

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

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

The SDGs also present an opportunity for law firms, corporate legal departments, and other lawyers to expand their pro bono legal activities domestically and abroad. Resources and skills should be used by law firms to support the fight against climate change. They can bring their legal expertise to mitigation and adaptation strategies. Many developing countries, which are most affected by the consequences of global warming, are elaborating adaptation plans, DRM strategies and environmental regulations. They are mainstreaming climate change into their policy and legal frameworks. This is in line with SDG 13 and the Paris

Agreement. The provision of pro bono expertise on legal issues related to these climate change strategies can be very valuable. For instance, during climate change negotiations, Legal Response International (LRI) provides free legal support to poor and particularly climate vulnerable developing countries, as well as civil society observers organisations. This work helps create a more level playing field between negotiators. Once an international agreement is reached, LRI also helps developing countries' governments to implement it into national legislation.<sup>67</sup>

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

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65 Brook, N. and Beresford, N. (2019). *Report: Climate change – the evolving landscape of litigation*. Clyde & Co. [Online] Available at: <https://bit.ly/3uaeTmU>

66 Lord R., Goldberg S., Rajamani L., Brunnee J., (2011). *Climate Change Liability – Transnational Law and Practice*. Cambridge University Press. Available at: <https://bit.ly/3o5dpcD>

67 Legal Response International (n.d.). *Lawyers Responding to Climate Change*. [Online]. Available at: <https://legalresponse.org/>



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# SDG 13: CLIMATE ACTION



# 2022 GUIDE UPDATE



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This 2022 Update to the Legal Guide to the Sustainable Development Goals (SDGs) was first published by Advocates for International Development (A4ID).

## **Disclaimer**

The information contained within this update is correct at the date of publication.

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## **About A4ID**

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



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# SDG 13: Climate Action- 2022 Update to the Legal Guide

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This update follows from the original SDG Legal Guide 13 published by Advocates for International Development in November 2021. It forms part of a wider collective of Legal Guides covering the entire SDG Agenda, comprising of 17 chapters for the 17 goals.

One year on, and coinciding with COP 27, SDG 13 on 'Climate Action' is more prevalent than ever. It is therefore timely that Advocates for International Development, in conjunction with CMS, have produced an update to the SDG 13 guide,

providing a summary of key changes for legal professionals and the wider industry in supporting future initiatives and contributions towards climate action.

This Update includes progress against indicators as noted by the United Nations (UN) and the Intergovernmental Panel on Climate Change (IPCC), alongside examples of climate change law and policy passed in 2022, and a summary of a selection of 'new' climate change cases and legal precedent.

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## Introduction

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As with preceding years, the UN Sustainable Development Goals Report (published on 7 July 2022), provides an overview of progress against implementation of the 2030 Agenda for Sustainable Development. In the case of progress towards climate action, the findings are clear - further attention is still urgently required, as climate change marks what the UN are terming “humanity’s code red’ warning.”<sup>1</sup>

Progress, or a lack thereof, was noted by a series of factors pointing to shortfalls as climate change worsens and climate action falls short of intended outcomes.

Rising global greenhouse gas emissions have resulted in record-breaking temperatures and more extreme weather, with 2021 having witnessed extreme weather events across all continents, demonstrating the impacts of climate action as not simply confined to certain countries, but to the global north and south alike; a point emphasised throughout various COP negotiations.

At the same time, the unequitable impacts of climate change have been felt across the globe. An estimated 3.3 to 3.6 billion people are currently living in contexts that are highly vulnerable to climate change. Many of these regions

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<sup>1</sup> United Nations (2022). *The Sustainable Development Goals Report 2022*. p.53 [online] Available at: <https://bit.ly/3hllKXo>

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are concentrated within small island developing States, the Arctic, Southern Asia, Central and South America and much of sub-Saharan Africa.<sup>2</sup> At an individual level, it is estimated that by 2030, 700 million people will be at risk of displacement by drought alone.

In fact, these extreme weather conditions have a role to play within the landscape of many other SDG targets. Droughts, severe flooding and heatwaves threaten livelihoods as much as they do lives, putting the provision of decent shelter and personal welfare at risk.

Extreme weather has even added pressure on food production in many regions of the world at a time when food security is already under threat from geopolitical tensions including the war on Ukraine. It is clear therefore that the significance of progress towards SDG 13 will only become more and more relevant to progress against many other goals under the SDG Agenda..

If the current trend continues, the UN Office for Disaster Risk Reduction project that medium- to large- scale disaster events could reach up to 560 a year,<sup>3</sup> as sea levels are measured to have risen faster than in any preceding century, and as biodiversity loss is accelerating.

The global annual mean temperature is projected to rise beyond 1.5 °C above pre-industrial levels in at least one of the next five years, and fossil fuel emissions rebounded to a record high in 2021, erasing pandemic-related declines.

Against this backdrop, climate financing is just a fraction of what the UN says is needed to avert the worst scenarios. The

IPCC estimates that \$1.6 trillion to \$3.8 trillion will be needed annually, until 2050, for the world to transition to a low-carbon future and avoid warming exceeding 1.5°C.

“The scientific evidence is unequivocal: climate change is a threat to human well-being and the health of the planet. Any further delay in concerted global action will miss a brief and rapidly closing window to secure a liveable future.”<sup>4</sup>

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2 United Nations (2022). *The Sustainable Development Goals Report 2022*. p.53 [online] Available at: <https://bit.ly/3hllKXo>

3 Ibid.

4 The Intergovernmental Panel on Climate Change (2022). *IPCC Sixth Assessment Report: Impacts, Adaptation and Vulnerability*. [online]. Available at: <https://bit.ly/3taU4bF>

## Overview of the targets

TARGET 13-1



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

Target 13.1 aims to strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries. Progress is consequently measured against:

- i. **The number of deaths, missing persons and directly affected persons attributed to disasters per 100,000 population**
- ii. **The number of countries that adopt and implement national disaster risk reduction strategies in line with the Sendai Framework for Disaster Risk Reduction 2015–2030; and**
- iii. **The proportion of local governments that adopt and implement local disaster risk reduction strategies in line with national disaster risk reduction strategies.**

The Sendai Framework<sup>5</sup> guides countries on how best to reduce existing disasters and prevent future disaster risks, namely by adapting and implementing disaster risk reduction strategies. In October 2022, the United Nations Disaster Risk Reduction (UNDRR) and the World Meteorological Organisation (WMO) reported that half of all countries in the world have no early warning systems to help prepare against natural disasters drawing data from the Sendai Framework Monitor which measures progress.

Less than 50% of Least Developing Countries (LDCs) and only 33% of Small Island Developing Countries (SIDS) were equipped with Multi-Hazard Early Warning Systems

(‘MHEWS’). The WMO is now spearheading a plan to ensure that, in the next five years, every person on Earth is protected by an MHEWS. This initiative, ‘The UN Early Warnings for All Initiative’, will be presented as a roadmap at COP 27, outlining the steps needed for how to achieve this goal.<sup>6</sup>



<sup>5</sup> United Nations Office for Disaster Risk Reduction (UNDRR), (2015). *Sendai Framework for Disaster Risk Reduction 2015-2030*. [online]. Available at: <https://bit.ly/3UnYR5m>

<sup>6</sup> A limitation of the survey highlighted by the authors of the report was that several countries may have a working MHEWS, but have not reported as such to the SFM.

TARGET 13-2



## Integrating climate change measures into national policies, strategies and planning

Target 13.2 focuses on integrating climate change measures into national policies, strategies and planning. Progress is consequently measured against:

- i. **The number of countries with nationally determined contributions, long-term strategies, national adaptation plans and adaptation communications, as reported to the secretariat of the United Nations Framework Convention on Climate Change; and**
- ii. **The total greenhouse gas emissions per year.**

In March 2022, the International Monetary Fund (IMF) reported the poorest countries in the world as facing the greatest risks from climate change, pointing to the need for greater international support to finance adaptation. Three further papers<sup>7</sup> published by the IMF went on to set out the manner in which well-crafted policies may be able to produce large

returns.

Meanwhile, the IPCC reported that greenhouse gas emissions are continuing to rise, and it will be “impossible” to stay below 1.5C with “no or limited overshoot” without stronger climate action this decade.<sup>8</sup> Specifically the IPCC state with ‘high confidence’ that during the decade spanning 2010-19, human-driven emissions of greenhouse gases (GHGs) “were higher than at any previous time in human history”; and that the strongest drivers of increased emissions from fossil fuel combustion were increases in per-capita GDP and population growth.<sup>9</sup>

In the same report, the IPCC also recognised that improved energy efficiency has led to some “decarbonisation gains” in certain sectors, with the energy needed to generate each unit of GDP falling by 2% per year. However, decarbonisation gains through energy efficiency are being wiped out by increases in demands for goods and services. In-country emissions reductions are therefore being driven by both climate and non-climate policies and factors, including structural changes.

TARGET 13-3



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

Target 13:3 focuses on improving education, awareness-raising and human and institutional capacity on climate change

mitigation, adaptation, impact reduction and early warning.

Under this target, Climate Change Education (CCE) is seen as a catalyst for long term change, by way of facilitating changes in behaviour. Whilst there are challenges in tracking CCE commitments on a global scale, UNESCO continues in its efforts to help people better understand the impact of global warming and increase ‘climate literacy’ among young

7 [Economic Principles for Integrating Adaptation to Climate Change into Fiscal Policy](#), [Macro-Fiscal Implications of Adaptation to Climate Change](#), [Planning and Mainstreaming Adaptation to Climate Change in Fiscal Policy](#) (All Papers Published in March 2022)

8 The Intergovernmental Panel on Climate Change (2022). *Climate Change 2022: Mitigations of Climate Change*. [online]. Available at: <https://bit.ly/3taU4bF>

9 Ibid.

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people through its Climate Change Education for Sustainable Development programme.

In May of this year, Eurostat produced a further update report on the SDGs, providing a quantitative assessment of the progress of the EU Towards reaching the SDGs. The overall assessment of progress towards SDG 13 is reported as

“moderately positive, even though the trends in monitored areas – climate mitigation, adaptation and finance – show a somewhat mixed picture.” Specific reference was also made to the increase in the monetary losses from weather- and climate-related disasters.<sup>10</sup>



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<sup>10</sup> Eurostat, (2022). *Sustainable development in the European Union: Monitoring report on progress towards the SDGs in an EU context*. [online]. Available at: <https://bit.ly/3EasCjp>

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# Elements of the international legal framework

## Soft law and declarations

In the last year, the IPCC has published two lengthy reports on climate change and climate action.

### The AR6 Climate Change 2022: Impacts, Adaptation and Vulnerability (February 2022)

This report focuses on the risks to human and natural systems if global warming exceeds 1.5°C in the coming decades or later; including the associated risks of cascading impacts across to other sectors and/or regions. The report notes that whilst there has been progress towards strengthened adaptation planning, it is unevenly distributed, and worldwide climate resilient development action is more urgent now than as assessed in AR5.

The IPCC endorses that: “Enabling conditions are key for implementing, accelerating and sustaining adaptation in human systems and ecosystems. These include political commitment and follow-through, institutional frameworks, policies and instruments with clear goals and priorities, enhanced knowledge on impacts and solutions, mobilization of and access to adequate financial resources, monitoring and evaluation, and inclusive governance processes.”<sup>11</sup> Notably, importance is also placed on the role of effective cooperation by way of partnerships for enhancing climate resilience.



Simon Kofe, Tuvalu's foreign minister, filmed a speech knee-deep in the ocean, during COP 26 in November 2021.

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<sup>11</sup> The Intergovernmental Panel on Climate Change (2022). *Climate Change 2022: Mitigations of Climate Change*. [online]. Available at: <https://bit.ly/3taU4bF>

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## The AR6 Climate Change 2022: Mitigation of Climate Change (April 2022)

The report notes that there has been continual increase in policy and legislation addressing mitigation since AR5, thereby avoiding emissions which would otherwise have occurred, and resulting in increased investment in low-GHG technologies and infrastructure. However, policy coverage of emissions was uneven across sectors and progress on the alignment of financial flows as per the goals of the Paris Agreement remained 'slow.' Where climate finance flows were identified, they were similarly uneven in distribution across regions and sectors. Greater streamlining of policy and laws may therefore be warranted and may form part of future legislative and public policy landscapes.

The report also considered system transformations to limit global warming by way of different modelled pathways. These included mitigation options which were deemed feasible, albeit it was recognised that feasibility would be subject to

the different contexts across sectors and regions, including the level of available capacity as well as the speed and scale at which implementation could realistically take place. The removal of barriers, be they geophysical, environmental-ecological, technological, economic, institutional or socio-cultural was therefore identified as critical for strengthening any and all mitigation options available. Once again therefore, new laws and policies may be expected to feature as part of wider mitigation efforts for climate change. This includes changes at both the national and international level, with another critical enabler for mitigation efforts having been cited by the IPCC as that of international cooperation.

The IPCC is due to publish a Synthesis Report (the final instalment of the Sixth Assessment Report) in late 2022 to early 2023.





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## Examples of relevant national legislation

The number of climate change policies and laws passed in 2022 exceeded 100 at the time of writing this Update (November 2022). Only a small selection of key changes have therefore been outlined below.

In addition drafts of proposed legislation which fall within the goals of the European Green Deal and 'Fit for 55' proposal (as referenced in the 2021 Legal Guide) continue to be negotiated.

For further details on changing policies and laws, the Grantham Research Institution on Climate Change and

the Environment, at the London School of Economics and Political Science, offers a free global database on legislation (and litigation) linked with climate change.

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**The number of climate change policies and laws passed in 2022 exceeded 100 at the time of writing this Update (November 2022).**

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### Australia

#### Climate Change Bill 2022

On 14 September 2022, the Climate Change Act 2022 (Cth) (Climate Act) and the Climate Change (Consequential Amendments) Act 2022 (Cth) (Consequential Amendments Act) commenced.

This legislation implements Australia's net-zero commitments and codifies Australia's net 2030 and 2050 GHG emissions reductions targets under the Paris Agreement (a net GHG emissions reduction to 43% below 2005 levels by 2030, and to zero by 2050). Whilst the legislation does not impose direct obligations on companies, it will provide the backdrop for sector-based reforms aimed at implementing the 2030 target and emissions budget, which will have a corresponding impact on businesses.

The legislation also brings with it increased accountability to track progress against the targets, as the Minister for Climate

and Energy is now required to prepare and table an annual climate change statement, with advice from the Climate Change Authority. At least once every five years, the Climate Change Authority will need to advise the Minister on the targets it considers should be included in the Nationally Determined Contribution.

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## United States of America

### Inflation Reduction Act 2022

Whilst this legislation aims to curb inflation through policies that will reduce the cost of energy and the federal deficit, US President Biden has called it the “largest investment ever in combatting the existential crisis of climate change.”

The Act boosts and supports renewables, whilst also

introducing a number of new credits to support climate technologies, including energy storage and green hydrogen. \$369 billion will be invested in climate solutions and environmental justice, with the aim of putting the US on a path to 40% emissions reduction by 2030.<sup>12</sup>

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## Sweden

### Statement of Government Policy

In October 2022, Sweden’s new Prime Minister transposed the coalition’s political agreement into government. This included a change to Sweden’s climate targets, from achieving 100%

‘renewable energy’ to 100% ‘fossil free energy’, so that the government can pursue its nuclear ambitions. The commitment to retain the net zero target for 2045 remains.

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## Nigeria

### Energy Transition Plan

In August 2022, the government of Nigeria launched a new Energy Transition Plan, seeking to use a data driven approach to generate new funding and investment opportunities for the energy transition in Nigeria. This was made in line with the country’s goal of achieving Carbon Neutrality by 2060.

The plan sets out emissions reduction pathways and investment needs in order to achieve emissions reductions in energy, transport, oil and gas, cooking, and industry.

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<sup>12</sup> Statement by President Biden on Senate Passage of the Inflation Reduction Act, (August 2022). Available at: <https://bit.ly/3UmNuKS>

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## The Bahamas

### Climate Change and Carbon Market Initiatives Act 2022

This legislation seeks to enable the Government of the Bahamas to create incentives and implement initiatives to support the overall global target of GHG emissions reduction consistent with its Nationally Determined Contributions. It is intended to ensure compliance by The Bahamas of its

obligations under the Paris Agreement (acknowledging the UNFCCC provisions for small island developing states); and enable the establishment of a market in The Bahamas to trade in carbon credits.

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## Chile

### Framework Law on Climate Change

This legislation aims to meet the challenges posed by climate change, so as to move towards a low-carbon development, prior to reaching and maintaining carbon neutrality by 2050. It also seeks to set out the necessary legislation for Chile to adapt to climate change, reduce vulnerability and increase resilience to the adverse effects of climate change, and comply with international commitments.

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## Portugal

### Framework Climate Law No 98/2021

This legislation recognises the climate emergency, and sets out climate rights and duties, climate policy governance, planning and evaluation instruments, economic and financial instruments, and sector climate policy instruments.



Mother-Son farmer duo in Chile using solar panels on their farm.

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## Examples of Relevant Litigation and Cases

In its June 2022 publication,<sup>13</sup> 'Global trends in climate change litigation: 2022 snapshot', it was reported that litigation is growing in importance year-on-year "as a way of either advancing or delaying effective action on climate change." Reference was made to the more than doubling of climate change-related litigation cases since 2015. To date the majority of these cases have been brought in the Global North, however this trend in litigation continues to grow in the Global South.

The snapshot's findings mirror what can be found in various case law trackers,<sup>14</sup> namely that there has been an increase in litigation against companies and governments over their climate change commitments, often with a human rights angle, as well as in cases alleging 'climate-washing' or 'greenwashing.' The need for greater clarity as to the legal obligations of both private and public companies with respect to their 'portfolio emissions' continues to be required.

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### United Kingdom

#### Friends of the Earth, ClientEarth, Good Law Project v Secretary of State for Business, Energy and Industrial Strategy [2022] EWHC 1841 (Admin)

In January 2022, Client Earth, Friends of the Earth and the Good Law Project brought an application for judicial review to the High Court, arguing that the UK government had failed to show that its policies will reduce emissions sufficiently to meet its legally binding carbon budgets. It was argued that the net zero strategy failed to include sufficient information about the policies and their expected effects to allow Parliament and the public to properly scrutinise its plans; the UK Government was therefore criticised for breaching its legal duties under the 2008 Climate Change Act.

In a July 2022 judgment, the High Court found that the net zero strategy, which sets out plans to decarbonise the economy, does not meet the Government's obligations under

the 2008 Climate Change Act to produce detailed climate policies that show how the UK's legally-binding carbon budgets will actually be met. It also found that parliament and the public were not told about a shortfall in meeting a key target to cut emissions.

The UK Government must now update its climate strategy to include a quantified account of how its policies will actually achieve climate targets. These will need to be based on a realistic assessment of what it actually expects them to deliver. The updated strategy will have to be presented to parliament for scrutiny by MPs and should include sound policies that stand up to the scrutiny of the Committee on Climate Change (CCC).

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<sup>13</sup> Setzer, J., Higham, C. (2022). *Global trends in climate change litigation: 2022 snapshot*. London School of Economics. [online]. Available at: <https://bit.ly/3fOUwcp>

<sup>14</sup> Grantham Research Institution on Climate Change and the Environment, at the London School of Economics and Political Science, offers a free global database on legislation (and litigation) linked with climate change.

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## ClientEarth takes legal action against Shell

In March 2022, the environmental NGO, ClientEarth, wrote to Shell's board of directors informing them of its intent to bring a claim (by way of a derivative action) on behalf of the company for the board's alleged failure to implement a Paris Agreement aligned strategy. This pre-action letter follows Friends of the Earth Netherlands's successful claim against Shell in the Netherlands in 2021, in which the Dutch Court ruled that the company must reduce its overall global CO2 emissions by net 45% by the end of 2030 (relative to 2019 levels).

The claim would be brought under Section 172 of the UK Companies Act 2006, which requires company directors to act in a manner which would "promote the success of the company for the benefit of its members as a whole", having regard to factors including the impact of the company's operations on the community and the environment. Before the matter is escalated however, the directors have the opportunity to respond to the letter, and court consent would be required for the claim to progress.

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## Australia

### PCWP and Others v. Glencore

A legal complaint was lodged on behalf of The Plains Clan of the Wonnarua People (PCWP) and Lock the Gate Alliance, with the Australian Competition and Consumer Commission (ACCC) and Australian Securities and Investments Commission (ASIC) regarding Glencore's misleading claims about climate impact and its behaviour towards Traditional Owners.

Glencore is Australia's largest coal producer (17 mines) and biggest contributor to emissions from coal mining. The company has publicly claimed to have decarbonisation plans in place, however a legal investigation by the Environmental Defenders Office (EDO) found no evidence to support these claims, with reference made to Glencore's expansion in coal production. The complaint put forward that the company's claims would therefore amount to greenwashing under the Corporations Act 2001 or Australian consumer law.



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## The Netherlands

### FossilVrij NL v. KLM

In July 2022, following a pre-action letter delivered to KLM during its Annual General Meeting in May, FossilVrij NL filed a claim in the Amsterdam District Court against Dutch airline company KLM over alleged misleading advertising claims, specifically that KLM is making flying sustainable through carbon-offsetting schemes (the 'Fly Responsibly' campaign).

This case follows a decision by the national Advertisement Code Commission in April 2022, which ruled that elements of the KLM promotion telling customers they could fly carbon-emission free is misleading. Reference was made to the slogans "Be a hero, fly CO2 ZERO" or "CO2 neutral:

KLM compensates for the CO2 emissions of your KLM Holidays flight" as absolute claims, which to be made, must be accompanied by independent, verifiable and generally recognised evidence.

This is one example of a number of alleged misleading environmental claims which have been made this year, alongside the numerous referrals to advertising standards authorities in different jurisdictions, where companies are held to task over the making of environmental claims in their product marketing campaigns and associated literature.

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## Switzerland

### Four Islanders of Pari v. Holcim

Like the Luciano Lliuya v RWE AG case, this claim focuses on the civil liability of major GHG emitters for climate change-related damages suffered in a different jurisdiction. In this case, four Indonesian fishermen from the island of Pari (supported by three NGOs) have filed an application in Switzerland to hold buildings materials company Holcim accountable for its CO2 emissions, requesting proportional compensation for climate change-related damages on Pari, reduction of CO2 emissions by 43% by 2030, compared to 2019 levels (or according to findings of climate science in order to limit global warming to 1.5°C) and financial contribution to adaptation measures on Pari.



### Conectas Direitos Humanos v. BNDES and BNDESPAR

The Environmental NGO, Conectas, has filed a claim against BNDES (Brazil's Development Bank) and BNDESPar, the bank's investment arm responsible for managing its shareholdings in various Brazilian companies held by the bank claiming that BNDESPar, which is publicly owned, has no rules or protocols in place for assessing the impacts of its investments on the climate crisis. This was purported to be in violation of the commitments made by Brazil under the Paris Agreement and the country's own National Policy on Climate Change (among other provisions).

Conectas is requesting that BNDESPar and its parent company, BNDES, create rules and mechanisms that bind their investments and divestments to the reduction of greenhouse gas emissions by the companies they finance. An expert opinion filed alongside the claim is said to show that at least 65% of the assets held by BNDESPar are in companies that have intensive GHG emissions.<sup>15</sup> The technical opinion also asserts that BNDESPar is not very transparent and does not include climate criteria and risks in its investment and divestment analysis.

An accompanying expert opinion also claims that BNDESPar has a legal duty to assist Brazil in achieving the climate targets and obligations established under the Paris Agreement and the country's own climate policy, as well as an indirect duty to facilitate public oversight of its decisions and to improve information governance.

The following injunctions have been sought:

- i. Publicly inform, within a period of 30 days, about the adoption of climatic criteria in investment and divestment decisions and about the monitoring of progress on the reduction of emissions by the companies in its portfolio;
- ii. Present, within 90 days, a Plan for the Reduction of Greenhouse Gas Emissions that guarantees alignment by BNDESPar with Brazil's targets under the Paris Agreement and the rules of the PNMC; and
- iii. Install, within 60 days, a Climate Situation Room to assess the implementation of the Plan for the Reduction of Emissions transparently and with the participation of representatives of civil society, traditional peoples and communities, the Public Prosecutor's Office, the Public Defender's Office, academics and members of the Judiciary.

BNDES group has issued a statement, noting that the requested actions are already part of the strategic planning of BNDES and its subsidiaries, BNDESPar and Finame, and are published on the institution's website. It further stated that the bank has already started to incorporate the analysis of climate aspects into its operations, seeking to assess the impact of physical and transition risks on financing activities. The bank references the fact that existing legislation does not allow current rules to change contracts signed prior to the beginning of their term (93% of BNDESPar's current portfolio of investees was acquired by 2016), noting that the banks divestment plan for mature companies has been made clear.

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<sup>15</sup> The calculation made from an analysis of reports published by the companies, and based on a sample of 85% of the investment portfolio of BNDESPar that, until March 2021, was concentrated in ten companies from the oil and natural gas, electrical energy, meat production, mining and pulp and paper sectors.

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## France

### Greenpeace France and Others v. Total Energies Se And Totalenergies Se Electricité Et Gaz France

In March 2022, three French NGOs, led by Greenpeace France and supported by ClientEarth, commenced proceedings against TotalEnergies Electricité et Gaz France and the head of its corporate group, TotalEnergies SE (TotalEnergies), alleging that TotalEnergies' advertising campaign has misled French consumers. Compensation and an injunction to stop

the campaign are now being sought. It is asserted that false claims have been made about the companies' aims for carbon neutrality by 2050, along with misleading assertions as to the environmental virtues of other fuels, such as biofuels being a "low-carbon alternative" that "emit half as much CO<sub>2</sub> as their fossil equivalents".



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