Andrea Schapper

II. Climate Justice: Legal, Institutional and Policy Aspects

1. Introduction

In the face of anthropogenic climate change, we need to rethink justice. New reflections on the temporal and spatial aspects of justice are gaining importance.[1] It becomes increasingly relevant to consider how just relations between state actors, societies, and generations in the context of climate challenges can be construed. Who bears the responsibility for and who are the ›recipients‹[2] of climate justice? What obligations does climate justice entail? How can just climate policies look like?

Normative considerations on climate justice are often characterised by conceptual uncertainty. Commonly shared is the departure from a situation of injustice and the acknowledgement that climate change exacerbates existing inequalities.[3] Those who are least responsible for greenhouse gas (GHG) emissions and have the fewest resources to adapt are often most affected by and most vulnerable to climate change consequences.[4] The character of justice relations discussed in the literature varies with respect to scale, temporal dimension, actors involved and normative political claims. Whereas some authors highlight injustice concerns between states (international injustice), others point to injustice between social groups (intrasocietal injustice), or to injustice between past, present or future generations (intergenerational injustice).[5] Accordingly, normative claims to en-

1 Cf. Beckman / Page 2008.
2 Page 2006: 50.
3 Cf. Vanderheiden 2008.
4 Cf. Robinson 2014.
5 Cf. Schapper 2018.

hance climate justice and to shape substantial climate policies also differ considerably.

International injustice emphasises the historically grown differences between developing and developed states.[6] The main concern is that developed countries have utilised carbon-intensive industries to foster growth, whereas developing countries (as well as emerging economies) shall not be able to do the same.[7] Many developing countries are severely confronted with the consequences of climate change as they face changes in precipitation, extreme weather events, increasing floods and intensified droughts. Hence, there is an imbalance between responsibility for climate change, resulting harm and lacking resources to adapt. This dimension of injustice is historically grown. It has its roots in colonial times, has been reinforced through globalisation processes and is reflected in current institutions.[8] In the case of the United Nations Framework Convention on Climate Change (UNFCCC), it should be noted that the historic dimension was acknowledged through the principle »common but differentiated responsibilities«.[9] Corresponding claims are that GHG emissions must be reduced, energy use and other consumption patterns need to be altered, adaptation and mitigation costs have to be more equally distributed and fair institutions should be created.[10]

However, a sole focus on the international dimension might neglect relevant other justice dimensions. Thus, it has been suggested to »[…] open up the traditionally closed box of ›the state‹, [to] see that the real divide is not so much between developed and developing states as it is between affluent and poor people«.[11]

Intrasocietal injustice concerns the relationship between groups within society that are unequally exposed to the impacts of climate change to which they have contributed to a differing degree. Those who are neglected and excluded from political processes by their governments often suffer the most, and already existing inequalities between different societal groups are deepened in the face of

6 Cf. Shue 2014.
7 Cf. Robinson 2014.
8 Cf. Humphreys 2014.
9 UNFCCC 1992.
10 Cf. Hiskes 2009.
11 Harris / Chow / Karlsson 2012: 301.

a changing climate.[12] A report by the *UN Human Rights Council* (UNHRC) identified women, children, Indigenous Peoples, the elderly, and persons with disabilities in developing countries to be particularly vulnerable.[13] Claims to diminish societal injustice comprise participation on the basis of comprehensive information, access to judicial remedies and compensation. Under pressure of civil society networks such procedural rights were first institutionalised as a prerequisite for the implementation of ›Reducing Emissions from Deforestation and Forest Degradation‹ (REDD+) measures at the *Conference of the Parties* (COP16) in Cancún.[14]

Finally, *intergenerational injustice* pertains to the relationship between past, present and future generations. The argument maintains that current lifestyles, marked by the consumption of fossil fuels and GHG emissions, lead to injustice toward future generations who might not be able to enjoy a healthy environment anymore.[15] Hence, the current generation needs to be held accountable for not imposing risks and dangers on future generations. Demands in this respect comprise the establishment of environmental rights[16] and rights-protecting institutions.[17]

In addition to these three dimensions of climate justice that focus on the relationship between actors, i.e. nation states, societal actors, and generations, it is helpful to draw on the four-part characterisation of environmental justice proposed by Kuehn when analysing concrete climate justice policies. This characterisation comprises (a) distributive justice, (b) procedural justice, (c) corrective justice, and (d) social justice.[18] Distributive justice requires equal treatment and equal access to resources and lowering of environmental risks, while procedural justice requires the participation of all stakeholders in decisions that affect them. Corrective justice requires punishing wrongdoers and remedying harm inflicted on individuals and communities. Social justice comprises an analysis of how groups within

12 Cf. Humphreys 2014: 138.
13 Cf. OHCHR 2009.
14 Cf. UNFCCC 2010.
15 Cf. Hiskes 2009; Shue 2014. Cf. also section 2 (»Climate Change and Intergenerational Justice«) of the first part (Ethical Aspects) of this expert report.
16 Cf. Hiskes 2009.
17 Cf. Shue 2014.
18 Cf. Kuehn 2000.

society are affected by climate change and climate policies in different ways. It also means to integrate environmental and climate concerns into a broader agenda that emphasises social, racial, and economic justice.[19]

In the following, climate change impacts as well as political responses to it, including intergovernmental agreements and policies, will be evaluated from the perspective of climate justice. After analysing basic international and regional agreements, concrete policies like mitigation, adaptation, and loss and damage will be assessed. New institutionalisation processes to foster climate justice will be described but also the climate justice movement and the potential of climate litigation.

2. Principles of Climate Justice in Governmental Agreements and Policies

Climate justice principles have increasingly found their way into intergovernmental agreements. Whereas the focus was initially on establishing justice between states, much more emphasis is now placed on intrasocietal and intergenerational justice concerns.

2.1 International Agreements

2.1.1 United Nations Framework Convention on Climate Change (UNFCCC)

In 1992, the United Nations Framework Convention on Climate Change (UNFCCC) was adopted. The Convention sets the broader framework for action on climate change with the ultimate objective of stabilizing GHG concentrations to »prevent dangerous anthropogenic interference with the climate system.«[20] In the preamble of the UNFCCC, it is noted that human activities have largely contributed to increased GHG concentrations in the atmosphere endangering natural ecosystems and humankind. It is also acknowledged that

19 Cf. Kuehn 2000.
20 UNFCCC 1992: Art. 2.

GHGs have historically mainly been emitted by developed countries and that developing countries' energy consumption and emissions will increase with their attempts to foster economic growth. At the same time, the UNFCCC recognises that developing countries may be particularly vulnerable to adverse climate change consequences. Thus, the UNFCCC mainly addresses aspects of international climate (in-)justice,[21] although some references to future generations can be found in the text, indicating that intergenerational justice aspects have been considered, albeit marginally, when the Framework Convention was adopted. The main focus of this agreement, however, were intergovernmental concerns while adverse climate impacts on particularly vulnerable individuals and communities were still largely neglected.[22]

International climate justice (or injustice) considerations have found entry into the UNFCCC as it differentiates between Annex I (developed country Parties and those with economies in transition),[23] Annex II (developed country Parties) and non-Annex I Parties, which are developing countries. Based on the principle of »common but differentiated responsibilities«[24], the text of the UNFCCC promotes cooperation and partnership in maintaining a healthy climate system but, at the same time, recognises that, due to varying contributions to GHG concentrations in the atmosphere, differing responsibilities need to be outlined. These have been formulated as commitments under Article 4.

The text of the Convention stipulates that Annex I Parties commit themselves to establishing national mitigation policies and limiting anthropogenic GHG emissions. The overall aim of mitigation by Annex I Parties should be to return to 1990 levels of GHG emissions.[25] All Parties included in Annex II shall provide financial resources for

21 Cf. Shue 2014: 185.

22 Cf. Atapattu / Schapper 2019.

23 Strictly speaking, these are industrialised countries that were members of the *Organisation for Economic Co-operation and Development* (OECD) in 1992, when the UNFCCC was adopted, including economies in transition, like the Russian Federation, Eastern and Central European countries, and the Baltic States.

24 UNFCCC 1992: Art. 3.1.

25 Cf. ibid.: Art. 4.2.

technology transfer, adaptation and capacity-building.[26] In the text of the UNFCCC, it is also acknowledged that economic and social development as well as poverty eradication constitute the overriding priorities of developing country Parties (non-Annex I Parties). The vulnerabilities of small island states, countries prone to natural disasters, or areas affected by droughts, desertification and fragile ecosystems have been particularly emphasised in the Framework Convention.[27] Still, the main focus of this key instrument remains on areas and states; the justice situation of vulnerable individuals and communities are not mentioned.[28]

The text of the UNFCCC also encourages all State Parties to start preparing to adapt to climate change impacts, and to cooperate in sharing technical, scientific, socio-economic and legal information and research relating to the climate system and climate change. The UNFCCC also established, among others, the Conference of the Parties (COP), the *Secretariat, and the Subsidiary Bodies for Scientific and Technological Advice* (SBSTA) and for *Implementation* (SBI) as platforms for further cooperation.

2.1.2 Kyoto Protocol

Whereas the UNFCCC sets the broad framework for action by establishing an institutional basis and stipulating commitments, the Kyoto Protocol operationalises the Framework Convention. This means the Protocol is based on the principles—like common but differentiated responsibilities—and the annex-based structure of the UNFCCC.[29] It was adopted in 1997 but only came into force in 2005, after a sufficient number of Annex I State Parties had ratified it.

Following from the Framework Convention that stipulates that developed State Parties should adopt mitigation policies, the Kyoto Protocol sets binding emission reduction targets for industrialised countries, economies in transition, and the European Union. These are quantified emission limitations or reduction commitments determined in Annex B of the Protocol. For the first commitment

26 Cf. UNFCCC 1992: Art. 4.3.
27 Cf. ibid.: Art. 4.7 and 4.8.
28 Cf. Atapattu / Schapper 2019.
29 Cf. Kyoto Protocol 1997.

period, which lasted from 2008–2012, the targets were, on average, 5 % emission reduction compared to the baseline level in 1990.[30]

For the second commitment period, from 2013–2020, the Doha Amendment to the Kyoto Protocol was adopted in Doha (Qatar) in 2012. It sets a more ambitious target of reducing GHG emissions by 18 % compared to 1990 levels. The amendment only formally entered into force in 2020, after the 144th instrument of acceptance was deposited.[31]

In addition to GHG emission reductions, the Kyoto Protocol also established flexible market mechanisms based on trading emission permits. Although State Parties are requested to primarily focus on national measures to reduce emissions, they can also rely on market-based mechanisms to meet their agreed targets. These market-based mechanisms comprise International Emissions Trading, the Clean Development Mechanism (CDM), and Joint Implementation. One problem with market-based mechanisms, such as the CDM, was that developed countries and companies from the Global North could continue to pollute if they bought credits from sustainable development projects in the Global South that were designed to decrease emissions. Purchasing these offsets helped developed countries to achieve their emission reduction targets determined under the Kyoto Protocol in addition to the national measures these countries were taking on their own territory. Many large-scale carbon-offset projects, however, resulted in land grabbing, environmental degradation, and social rights violations.[32]

One example is the Barro Blanco hydroelectric dam in Panama. An environmental impact assessment study and consultation of the affected indigenous Ngäbe and Buglé communities led to a cooperation agreement for building the dam in 2007 and registration of Barro Blanco as a CDM project in 2011.[33] From 2009 on, suggestions to increase Barro Blanco's capacity were discussed. This raised critical questions about the impact assessment studies that had been conducted for a smaller dam. At the same time, there were disagreements about mining projects under a new legislation proposed by

30 Cf. Kyoto Protocol 1997: Art. 3.1.
31 Cf. IISD 2020.
32 Cf. Atapattu / Schapper 2019.
33 Cf. CDM 2011.

the Panamanian government that would severely affect indigenous territories. These new proposals triggered conflict between the affected indigenous communities and the government of Panama.[34] Deficient consultations, lack of Free, Prior, and Informed Consent (FPIC) by affected indigenous communities, violent police reaction to protests and other human rights infringements, make Barro Blanco an important case in discussions about the justice dimensions concerned when considering market-based mechanisms under the Kyoto Protocol, like the CDM. Many advocacy organisations argued that the example of Barro Blanco demonstrates that the modalities and procedures of the CDM, the Sustainable Development Mechanism (SDM)—and other market-based mechanisms designed after Kyoto—need to be reformed to include strong environmental and social safeguards on the basis of human rights. In their rhetoric, even environmental *Non-Governmental Organisations* (NGOs) that sought to improve CDM projects have started to use human rights language and argue from the perspective of climate justice.[35]

Thus, we can observe several climate injustice dimensions when taking a closer look at the Kyoto Protocol. The Kyoto Protocol stipulates binding GHG emission targets for those developed states that have historically contributed more to the existing GHG concentration in the atmosphere. Developing countries, in contrast, do not need to legally commit to reduction targets and can prioritise development efforts. This is an attempt at addressing international climate injustice concerns that emphasise the historically grown unjust relationship between developed and developing countries, in which developed countries have almost exclusively used the cumulative carbon budget.[36] However, offsetting via market-based mechanisms can lead to a delay in meaningful climate action in developed countries. This can put both developed and developing countries at risk in the future. Faced with the increasing energy demands in developing countries, it is also questionable whether offsets reduce or actually increase GHG emissions overall.[37] Therefore, the question needs to

34 Cf. Schapper / Unrau / Killoh 2020.
35 Cf. Kuchler 2017.
36 Cf. Shue 2014. Cf. also section 3 (»Climate Change and Distributive Justice«) of the first part (Ethical Aspects) of this expert report.
37 Cf. CTW 2018.

be raised whether market-based mechanisms do not actually pose a risk to future generations, thereby exacerbating intergenerational climate injustice.[38] Furthermore, neglecting the concerns of those adversely affected by large-scale sustainable development policies within societies, such as local population groups and indigenous communities, can also aggravate intrasocietal climate justice concerns.[39]

2.1.3 Paris Agreement

The 2015 Paris Agreement is a legally binding international climate instrument. It was adopted by the *Conference of the Parties* (COP21) in Paris in December 2015 and entered into force in November 2016. The Paris Accord is very different from the UNFCCC and the Kyoto Protocol in many respects. From a climate justice perspective, it does not only consider aspects of international justice but also acknowledges the situation of future generations in the climate system, and adverse effects of both climate change and policy responses to individuals, communities but also ecosystems.

The Paris Agreement directly recognises climate justice and the different meanings of climate justice around the world in the preamble, which refers to: »[…] noting the importance for some of the concept of ›climate justice‹, when taking action to address climate change […].«[40]

The main objective of the Paris Agreement, stated in Article 2, is to keep the global temperature increase to well below 2°C and to aim at limiting the increase to 1.5°C above pre-industrial levels. Other objectives are enhancing adaptation, fostering climate resilience, and providing finance for climate-resilient development, lowering GHG emissions and eradicating poverty. The Agreement shall be implemented on the basis of equity and »common but differentiated responsibilities« and respective national capacities.[41]

The Paris Agreement is considered a landmark multilateral treaty, which—in the face of scientific facts that call for urgent climate

38 Cf. Hiskes 2009; Page 2006.
39 Cf. Harris / Chow / Karlsson 2012.
40 UNFCCC 2015: Preamble.
41 Cf. ibid.: Art. 2.

action—requires commitments from both, developed and developing countries. Under the agreement, increasingly ambitious climate action is institutionalised, and all countries will now make nationally determined contributions (NDCs). This means that State Parties will determine their own NDCs, i.e. their concrete commitments to reducing GHG emissions via mitigation measures, and will communicate these to the UNFCCC Secretariat. Therefore, the Paris Agreement is a hybrid document that combines voluntary commitments with binding obligations. This approach was necessary to embrace the common but differentiated responsibility principle and receive support for the agreement from developing countries.[42]

After countries have first submitted NDCs, the successive NDCs, after a five-year cycle, for those countries will then have to be even more ambitious than the previous ones, including increased reduction targets. A reported NDC shall also entail information on adaptation measures to build climate resilience in that particular country.

The peak of GHG emissions needs to be reached as soon as possible, in accordance with scientific recommendations provided by the *Intergovernmental Panel on Climate Change* (IPCC), and it is recognised in the Paris Agreement that this peaking will take longer for those countries that are still in the process of development.[43] To maintain the objective of limiting global warming to 1.5°C, as indicated in the agreement, this peak has to be reached before 2025 and emissions need to decrease by 43 % until 2030.[44]

The Paris Agreement also addresses questions of climate justice by providing a framework for financial, technological, and capacity-building cooperation. This should, for example, ensure that lower-income countries that are often also more vulnerable to climate change impacts, receive financial assistance for developing and implementing mitigation and adaptation policies. Technology development and transfer is relevant for reducing GHG emissions and strengthening climate resilience in both, developed and developing countries. The Paris Agreement specifically highlights the need for climate-related capacity-building in developing countries

42 Cf. Atapattu / Schapper 2019.
43 Cf. UNFCCC 2015: Art. 4.1.
44 Cf. IPCC 2022: 17.

and encourages support from developed countries to realise this.[45] Under the Paris Agreement, information will be gathered through an enhanced transparency framework, which feeds into a Global Stocktake to assess what progress has been made collectively towards achieving the objectives set out in the agreement.[46]

From a climate justice perspective, the Paris Agreement is unique as it departs from the mere focus on interstate concerns and recognises intrasocietal and intergenerational justice concerns. It is also the first binding environmental instrument that specifically includes a reference to human rights[47] as stated in its preamble:

> »Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity, […].«[48]

This demonstrates that, compared to the 1992 UNFCCC and the 1997 Kyoto Protocol, climate justice concerns within society and between generations have received increased attention in political decision-making.

2.2 Regional Agreements

The debate on interlinkages between climate change and human rights received significant impetus by a petition of the Inuit posed before the Inter-American *Commission on Human Rights* (IACHR) in 2005. In this petition, Inuit from the United States of America and Canada claimed that climate change—to a major extent caused by the U.S.—leads to serious rights infringements of Indigenous Peoples in the Arctic region. To voice their concerns, they received legal support from two internationally operating civil society organisations, the *Center for International Environmental Law* (CIEL)

45 Cf. UNFCCC 2015.
46 Cf. ibid.
47 Cf. Atapattu / Schapper 2019.
48 Cf. UNFCCC 2015: Preamble.

and *Earthjustice*. Although the IACHR decided to halt the petition's proceeding in 2006, it had initiated a ›thematic hearing‹ that can be viewed as a starting point for further, more systematic, investigations of the link between climate change and human rights.[49] Hence, the Inuit petition marked an important starting point, which triggered broader discussions and refocused the climate change debate towards implications for individual and community rights holders.[50] Civil society organisations continued to fuel these debates and started to advocate for an integration of human rights into the climate regime.

In 2007, the first states raised concerns in this respect. Representatives of the Small Island Developing States (SIDS) adopted and signed the Malé Declaration on the Human Dimensions of Climate Change. The Declaration constitutes the first international agreement stating that »climate change has clear and immediate implications for the full enjoyment of human rights«.[51] In the operative clauses of this declaration, the states formulate the request that the *Conference of the Parties* (COP) of the UNFCCC shall seek the cooperation of the *Office of the United Nations High Commissioner for Human Rights* (OHCHR) and the *United Nations Human Rights Council* (UNHRC) to further investigate the human rights implications of climate change.[52] Therewith, the Malé Declaration demanded first institutional interlinkages between the climate and the human rights regime. It calls upon both regimes to cooperate, first of all, to investigate the issue at stake in greater detail.

From the Inuit Petition and the Malé Declaration, several further institutionalisation processes between the human rights and the climate regime followed, which also intensified debates on climate justice. Particularly important to mention is that several regional human rights systems embrace a human right to a healthy environment. These are the 1981 *African Charter on Human and Peoples' Rights*, the 2003 *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, the 2004 *Arab Charter on Human Rights* and the 1988 *Additional Protocol to the*

49 Cf. Orellana / Johl 2013: 4.
50 Cf. ibid.
51 CIEL 2007: 1.
52 Cf. ibid.; Limon 2009: 442.

American Convention on Human Rights. Whereas the right is clearly stated in the above-mentioned charters and protocols, the European *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* from 1998, also known as Aarhus Convention, only implicitly refers to it.[53] The Aarhus Convention rather emphasises that appropriate information, participation in decision-making and access to justice in environmental matters should be guaranteed.[54] Therewith, it focuses on procedural rights pertinent to climate (and other environmental) concerns. The Regional Agreement on *Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*, better known as the Escazú Agreement, is the relevant instrument for Latin American and Caribbean region, adopted in 2018. Procedural rights play a significant role in designing just climate policies, specifically those that rely on market-based mechanisms, as we will see in the following section. Integrated into policies under the CDM, SDM or REDD+ programmes, access to information, participation, judicial remedies and compensation, can reduce intrasocietal inequalities by strengthening procedural justice.

3. The United Nations and Climate Justice

In recent years, climate justice has been increasingly debated in various fora of the United Nations, in particular the *Conferences of the Parties* of the UNFCCC but also the *United Nations Environment Programme* (UNEP) and the *United Nations Human Rights Council* (UNHRC). Demands to address (and realise) climate justice via international fora are often coined by local societal experiences with climate change and climate policies in countries of the Global South or Small Island Developing States.[55] Often, those who are already economically, socially, and politically marginalised within society are those who are the most adversely affected—and often also have the fewest resources and capacities to adapt.[56] In the following,

53 Cf. UNHRC 2012: 5.
54 Cf. UNECE 1998.
55 Cf. Schapper 2020.
56 Cf. Schapper 2018.

mitigation, adaptation, and loss and damage will be analysed from a climate justice perspective.

3.1 Mitigation, Adaptation, and Loss and Damage

The Paris Agreement specifies concrete policy action to be taken in the face of increasingly adverse climate change impacts. These include mitigation action to reduce GHG emissions in the atmosphere, adaptation to adjust to changing climate conditions, and loss and damage to avert, minimise and/or manage serious climate change effects.[57] All of these strategies can be analysed from various climate justice dimensions highlighting international, intrasocietal and intergenerational justice aspects.

3.1.1 Mitigation Policies

Climate change mitigation comprises actions to reduce or prevent GHG emissions. Mitigation strategies can be complex and range from switching to renewable energy, employing innovative technologies or managing forests to changing consumer behaviour. Examples for mitigation policies as defined in the Kyoto Protocol are activities under the Clean Development Mechanism (CDM) and Reducing Emissions from Deforestation and Forest Degradation (REDD+) programmes.

Clean Development Mechanism (CDM) and Sustainable Development Mechanism (SDM)

The Clean Development Mechanism (CDM) was established under the Kyoto Protocol. It combines two main objectives: emission reductions and sustainable development. At the same time, it provides industrialised countries with some flexibility on how to meet their binding emission reduction targets. Annex I countries under the Kyoto Protocol, i.e., industrialised countries that were members of the OECD in 1992 and (former) economies in transition, can meet

57 Cf. UNFCCC 2015.

their commitments by investing in emission reduction projects and by buying Certified Emission Reduction units (CERs). The projects are implemented in non-Annex I countries, i.e. developing countries, and are supposed to contribute to their sustainable development, e.g. by enhancing access to energy for the domestic population.[58]

Research and advocacy practice have revealed negative human rights consequences of CDM projects for local population groups,[59] which need to be examined in closer detail when analysing the CDM from a climate justice perspective. A compilation of case studies by the NGO *Carbon Market Watch* (CMW) (cooperating with other organisations in the Carbon Market Watch Network) has demonstrated that the local realities of CDM projects often go hand in hand with constraints in the realisation of substantive and procedural human rights. Empirical evidence for these rights constraints can be found mainly in Asia and in Latin America.[60]

One relevant example is Panama's Barro Blanco hydroelectric dam, a project that was registered under the Clean Development Mechanism. Prior to project implementation, the developing company *Generadora del Istmo S. A.* (GENISA) commissioned an environmental impact assessment study and consulted the affected Indigenous Ngäbe and Buglé communities. In 2007, GENISA and representatives of the Ngäbe and Buglé signed a cooperation agreement including the observation of safeguards and Indigenous Peoples' rights. Based on this study, the *Panamanian Environmental Authority* approved the dam project and a validation team by the consulting team *AENOR* confirmed for the *UN CDM Executive Board* that Free, Prior, and Informed Consultations had taken place. In 2009, suggestions to increase Barro Blanco's capacity from 19 megawatts to 28.8 megawatts were discussed. This raised critical questions about the impact assessment studies that had been conducted for a smaller dam. At the same time, there were disagreements about mining projects under a new legislation proposed by the Panamanian government that would severely affect indigenous territories. These new proposals triggered conflict between the affected indigenous communities and the government of Panama. Social mobilisation

58 Cf. Atapattu / Schapper 2019.
59 Cf. Schade / Obergassel 2014; Obergassel et al. 2017.
60 Cf. CMW 2013.

against the dam was organised within the *Movimiento 10 de Abril* (M-10) and reached out to transnational advocacy networks. In 2012 and 2013, the international protest campaign continued and led to an inspection conducted by the *United Nations Development Programme* (UNDP), and subsequently to a follow-up complaint to an Independent Experts Panel of the involved international development banks. UNDP's assessment report found major flaws in the initial consultation process and confirmed that the continuation of this dam project will flood Indigenous Peoples' homes as well as cultural sites, and also turn the Tabasará River into a stagnant lake ecosystem, adversely affecting the means of subsistence of the Ngäbe communities. Thus, the economic, social, and cultural rights of the communities would be violated as a result of dam construction and dam operation. Finally, a temporary suspension order was issued for the project in 2015, which was later overruled by Panama's Supreme Court.[61]

Despite continuing protests often culminating in violent confrontations with the police, dam construction continued. In 2016, Panama formally withdrew support for Barro Blanco and cancelled its registration as a CDM project.[62] In December 2016, Panama's Supreme Court ruled in favour of the project declaring that it was in the »public's interest«,[63] despite opposition by the Ngäbe communities. As the Supreme Court's decisions cannot be appealed, the dam became operative in 2017.

The human rights violations in relation to Barro Blanco, including deficient consultations, lack of Free, Prior, and Informed Consent (FPIC) by affected indigenous communities, infringements on social and cultural rights, as well as violent police reaction to protests, make Barro Blanco an important case in discussions on how to improve projects under market-based instruments.

The Paris Agreement, under Article 6, established the Sustainable Development Mechanism (SDM) to replace existing carbon-market instruments developed within the framework of the Kyoto Protocol, such as the CDM and Joint Implementation. The CDM is currently in transition to the SDM (or article 6.4) mechanism. In line with

61 Cf. Schapper / Unrau / Killoh 2020.
62 Cf. CMW 2016.
63 Giraldo 2017.

the main idea that all countries contribute to the reduction in GHG emissions and to the overall ambition of limiting global warming to 1.5°C, all State Parties can now host SDM projects. Very important from a climate justice perspective is that a group of experts, called *Article 6.4 Supervisory Body*, is currently working on rules to regulate carbon markets as stipulated in the Paris Agreement under article 6.4. These rules will be proposed and debated in 2023, during COP28 in Dubai (United Arab Emirates).

Environmental and human rights groups highlight that the SDM must contribute to reducing GHG emissions, instead of offsetting or shifting them from one country to another, a critique that had often been raised in relation to the CDM.[64] From a climate justice perspective, it is important that carbon market rules are established, which protect human rights and prevent adverse effects on vulnerable population groups that are often severely impacted by climate change and by climate policies at the same time. *Human Rights Watch* (HRW) therefore suggests that any new projects registered under the SDM should have undergone an environmental and social impact assessment, including an explicit consideration of human rights risks. The NGO also emphasises that it should be a requirement under the SDM to conduct consultations with local population groups and Indigenous Peoples in alignment with Indigenous Peoples' right to Free, Prior and Informed Consent (FPIC), in addition to procedural rights, like access to information and participation in decision-making. It should be a requirement to abide by these standards when registering SDM projects even if domestic law does not require this.[65] Other civil society organisations, like the Centre for International Environmental Law (CIEL) and *Carbon Market Watch* (CMW) as well as HRW recommend that a grievance and appeals procedure should be operational before SDM projects can be approved to guarantee that rights holders will be able to contest the approval or implementation of new projects and provide locally affected population groups with the opportunity to appeal decisions made without their consultation.[66]

64 Cf. CMW 2017.
65 Cf. HRW 2023.
66 Cf. ibid.

Reducing Emissions from Deforestation and Forest Degradation (REDD+)

REDD+ programmes can be understood to be a voluntary climate mitigation approach as part of the UNFCCC. The scheme has been developed against the background that 17 % of global net emissions result from deforestation and forest degradation. Under the REDD+ framework, countries that take action to reduce deforestation and forest degradation will be financially rewarded according to their achieved emission reductions. Since 2010, not only emission reductions from deforestation and forest degradation, but also the conversion and enhancement of forest carbon stocks, and the sustainable management of forests have become components of REDD+. At COP16 in 2010, procedural criteria for the realisation of REDD+ programs were introduced into the Cancún Agreements.[67] The institutionalisation of these social and economic safeguards comprised recommendations including respect for the knowledge and rights of Indigenous Peoples and local communities as stipulated in the 2007 United Nations Declaration on the Rights of Indigenous People[68] and other obligations anchored in international law. Moreover, the complete and effective participation of all affected people, particularly Indigenous Peoples and local communities, with reference to their Free, Prior and Informed Consent (FPIC) has been emphasised.[69]

In an empirical study on the implementation of REDD+ in Peru, Johanna Steudtner has demonstrated how programme realisation—despite these safeguards—can go hand in hand with severe rights infringements of local communities.[70] These often occur in the context of conflicts around property, land, and resources.[71] Forest protection and management measures can affect the people who live on the territories at stake and who use the forest as a source of subsistence. Often, these are indigenous population groups whose

67 Cf. UNFCCC 2010.
68 Cf. UNDRIP 2007.
69 Cf. UNFCCC 2010.
70 Cf. Steudtner 2012.
71 Cf. ibid.: 124.

right to self-determination[72] conflicts with the forest management measures under REDD+. Similarly at risk (and closely related) is their right to their own means of subsistence, also incorporated in the International Covenant on Economic, Social and Cultural Rights (ICESCR).[73] Additionally, other rights—adopted with the aim of explicitly protecting Indigenous Peoples—can be threatened by the activities initiated through REDD+. These rights are anchored in the 1989 *International Labour Organization* (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries[74] and the 2007 United Nations Declaration on the Rights of Indigenous People.[75] In article 5 of the Paris Agreement, State Parties reiterated their commitment to REDD+ programmes as sinks and reservoirs of GHGs.[76]

The CDM and REDD+ are examples of mitigation approaches under the UNFCCC that can have adverse human rights effects and that can exacerbate situations of climate injustice. At the national and local level, implementation of these policies can lead to very serious human rights violations that severely affect those who are already negatively impacted by climate change, who have the fewest resources to adapt, who are the most vulnerable within societies and who have very few capacities and expertise to contest these policy decisions.

3.1.2 Adaptation Policies

Adaptation policies are of utmost importance because the consequences of climate change, including extreme weather events, floods, changes in precipitation and droughts have severe impacts on the lives of many people, especially in developing countries. Sea level rise, for instance, can lead to the loss of land, lack of clean drinking water, damage to coastal infrastructure, homes and properties, loss of agricultural lands, damage to beaches, and threats to tourism.[77]

72 Cf. ICCPR 1966: Art. 1; ICESCR 1966: Art. 1.
73 Cf. ICESCR 1966: Art. 1.2.
74 Cf. ILO 1989.
75 Cf. UNDRIP 2007.
76 Cf. UNFCCC 2015: Art. 5.
77 Cf. Schapper / Lederer 2014.

From a human rights perspective, this means that in severe cases, the right to life and the right to self-determination can be affected, as well as the rights to water, health, adequate housing, means of subsistence, culture, and property.[78] Coastal areas, low-lying island states, and the Arctic region are the most affected by these climate change impacts resulting from sea level rise.

Temperature increase affects many regions in the world, but is most severely felt in Sub-Saharan Africa, Northern Africa, South Asia, Latin America, and the Middle East.[79] In those regions, the rise in temperature leads to the spread of disease, changes in fisheries and agriculture, loss of biodiversity, and threats to tourism. Mostly affected are the rights to life, health, and an adequate standard of living, including means of subsistence.[80]

A report published by the OHCHR identified women, children, and Indigenous Peoples, disabled people, and the elderly—in all of these regions—as the most vulnerable population groups to climate change impacts.[81] It is important to acknowledge that these impacts severely differ between a scenario of 1.5°C and 2°C global warming—a temperature increase of 1.5°C will already severely threaten human rights.[82] The difference between a 1.5°C and a 2°C temperature increase is also addressed in the 2018 report by the IPCC.[83] The IPCC report, which directly refers to human rights, states that the difference between both scenarios will be dramatic and that »rapid, far-reaching and unprecedented changes in all aspects of society« are necessary to protect human and ecosystem health. To keep the temperature increase below 1.5°C, further commitment that even goes beyond the level of ambition agreed upon in the 2015 Paris Accord, will be necessary.[84]

Adaptation is a response to these climate change impacts with the aim of reducing the vulnerabilities of the above-mentioned social groups (and entire ecosystems) and thereby minimising the effects of climate change. The problem for many local population groups from

78 Cf. ICCPR 1966; ICESCR 1966.
79 Cf. OHCHR 2009.
80 Cf. ICCPR 1966; ICESCR 1966; Orellana / Johl 2013.
81 Cf. OHCHR 2009.
82 Cf. OHCHR 2015.
83 Cf. IPCC 2018.
84 Cf. ibid.

developing economies is that those who are the least responsible for climate change impacts are often the ones most affected, but they have the fewest resources and least capacities to adapt. From a perspective of climate justice, this makes it even more important to include these people in policymaking, to ensure meaningful participation in decision-making processes, and develop their capacities to adapt. The OHCHR has, in a submission to the Conference of the Parties prior to the Paris negotiations, highlighted capacity-building, especially for vulnerable communities: states must build adaptive capacities in vulnerable communities, by recognising the manner in which factors, such as discrimination and disparities in education and health affect climate vulnerability, and by devoting adequate resources to the realisation of the economic, social and cultural rights of all persons, particularly those facing the greatest risks.[85] According to the IPCC, adaptive capacity in relation to climate impacts is very closely linked to social and economic development.[86] The IPCC itself does not use a human rights-based approach in relation to adaptation (even though the IPCC report launched in October 2018 makes several references to human rights), but it has linked its scientific findings of Working Group II (Impacts, Adaptation, and Vulnerability) to the concept of human security. It reveals that there is ample evidence to suggest that human security will be severely threatened by the impacts of climate change. Moreover, it asserts that cultural values, which are necessary for individual and community wellbeing, are at risk. This is in line with empirical studies emphasising damaging effects of a changing climate on cultural heritage, and thus cultural rights.[87] The IPCC also points to migration movements caused by climate impacts and compromising human security. Finally, one of the strongest arguments for adopting a human rights-based approach to climate adaptation is robust scientific evidence for the fact that indigenous, local, and traditional knowledge and experiences can serve as a major resource for adaptation.[88] Thus, by meaningfully developing and employing a rights-based approach, and enabling local population groups to participate

85 Cf. OHCHR 2015.
86 Cf. IPCC 2007.
87 Cf. Maus 2014.
88 Cf. Harmeling 2018; IPCC 2007.

in policymaking, adaptation can be considerably strengthened from a climate justice perspective in many parts of the world.

In the Paris Agreement, states acknowledged that they need to »respect, promote and consider their respective obligations to human rights«[89] in all climate-relevant action they take. This includes mitigation as well as adaptation. Article 7 of the Paris Agreement can be understood as a door-opener to a human rights-based approach to adaptation action for several reasons. First, parties acknowledge that adaptation should follow a »country-driven, participatory and fully transparent approach« that should be »based on and guided by, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems«.[90] Second, there is a strong link to the Sustainable Development Goals (SDGs). This is viewed by some scholars as an indirect human rights dimension in the operative part of the agreement because the SDGs are very strongly linked to core human rights.[91] Third, international cooperation in adaptation is emphasised. Article 7(6) states that the needs of developing countries that are particularly vulnerable need to be considered. The obligation of international cooperation is a human rights principle that is anchored in the International Covenant on Economic, Social and Cultural Rights.[92] In one of his reports, the UN former Special Rapporteur on Human Rights and the Environment, John Knox, states that international cooperation is particularly relevant with regard to »global environmental threats to human rights, such as climate change«.[93] From a climate justice perspective, international cooperation can be considered crucial in order to address international, intrasocietal and intergenerational justice concerns.

3.1.3 Loss and Damage

Considering loss and damage means acknowledging that not all harm resulting from climate change can be avoided through mitiga-

89 UNFCCC 2015: Preamble.
90 Ibid.: Art. 7.
91 Cf. Harmeling 2018.
92 Cf. ICESCR 1966.
93 Knox 2012: 18.

tion and adaptation measures. Loss and damage has been defined as »negative effects of climate variability and climate change that people have not been able to cope with or adapt to«.[94] The term »damage« refers to monetary harm, whereas the term »loss« is used to take non-monetary harm into account.[95] The latter includes not only physical, but also social, cultural, and psychological harm. These negative effects had been emphasized by Small Island Developing States (SIDS) since the beginnings of the UNFCCC negotiations. Despite this, it took more than 20 years for the Warsaw International Mechanism on Loss and Damage to be established. The Paris Agreement included the loss and damage mechanism as the fifth pillar of climate action. Under Article 8, State Parties acknowledged the importance of averting, minimising, and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage.[96] Both extreme weather events and slow onset events are covered by the loss and damage mechanism. Many of the aspects discussed in the context of adaptation are also relevant with respect to loss and damage, first and foremost the obligation to cooperate, and the protection of vulnerable regions, sectors, and population groups. Areas that will be prioritised in terms of cooperative action relating to loss and damage include, among others, early warning systems, emergency systems, comprehensive risk assessment and management, risk insurance, and non-economic losses, as well as resilience of communities, livelihoods, and ecosystems.[97] By devoting an entire article to it in the 2015 Paris Agreement, loss and damage has become an important pillar of the international climate regime, next to mitigation, adaptation, technology, and finance. It has also received considerable attention in the NDCs, with 44 % of the SIDS and 34 % of the Least Developed Countries mentioning loss and damage.[98] The fact that not a single industrialised country has referred to it demonstrates how differently developed and developing

94 Warner et al. 2012: 20.
95 Cf. Adelman 2016: 33.
96 Cf. UNFCCC 2015: Art. 8.
97 Cf. ibid.: Art. 4.
98 Cf. Kreienkamp / Vanhala 2017: 2.

states are affected by climate-related impacts and harm, and the difficulty of cooperating in this regard. The Paris decision accompanying the 2015 Agreement, for example, explicitly excludes the use of Article 8 as a »basis for any liability or compensation«.[99] Compensation and effective remedies for the harm caused, however, is exactly what is relevant when considering loss and damage from a climate justice perspective. A submission by the OHCHR to the UNFCCC in 2016 highlights that those who suffer from harm caused by climate change must have access to meaningful remedies, such as judicial and other redress mechanisms. In the context of climate change, states have an obligation to protect rights holders, and they are responsible for harm that occurs inside and outside their territory. Moreover, they are obliged to regulate businesses under their jurisdiction to prevent further harm being caused.[100] Scholars like Sam Adelman argue that developed countries have an ethical obligation to compensate SIDS for loss and damage caused by climate change.[101] He suggests that compensation can be granted without admitting liability, from which many developed states have shied away in the past. However, the principles of climate justice provide an ethical justification for compensation as a measure of corrective justice.[102] Today, there are still strong disagreements between developed and developing countries regarding loss and damage. At COP27 in Egypt (2022), the international community finally agreed to create a loss and damage fund, which will be operationalized at COP28 in the United Arab Emirates (2023). The issue of compensation and effective remedies is at the heart of a human rights-based approach to climate change and will be further advocated for by vulnerable countries and the climate justice movement.

3.2 Sustainable Development and Climate Justice

In 2015, the *United Nations General Assembly* (UNGA) adopted the 2030 Agenda for Sustainable Development entitled »Transform-

99 Harmeling 2018: 99.
100 Cf. OHCHR 2016.
101 Cf. Adelman 2016.
102 Cf. ibid.

ing Our World«.[103] The UN's 2030 Agenda for Sustainable Development is based on three dimensions of sustainable development for »people, planet and prosperity«: economic, social, and environmental.[104] The centrepiece of the agenda are the 17 Sustainable Development Goals (SDGs), adopted by member states in 2015. Although not legally binding, the SDGs represent a vision of the transformation required to achieve sustainable development.

There is an explicit goal for climate action—SDG 13—which entails concrete targets like improving capacity for mitigation, adaptation, early warning, and impact reduction, in addition to raising awareness and strengthening education in climate-related matters as well as operationalising the Green Climate Fund to address the needs of developing countries.[105] Recent research, however, indicates that SDGs can also conflict with one another. Although the economic, social, and environmental pillars of sustainable development and the SDGs as a whole may be balanced, individual goals have been designed independently and trade-offs between goals can occur, leading to negative impacts. Thus, decision-makers will always prioritise some goals over others and there is a continuous risk of policy inconsistency when implementing the SDGs.[106]

Renewable energy projects are often discussed as the prime example of conflicts in SDGs.[107] Especially in developing countries, renewable energy infrastructure is established with the objective of meeting rising energy demands (in a changing climate) and of substantially fostering economic growth (e.g. by selling electricity to neighbouring countries) but they often lead to severe ecological and social consequences.[108] A large-scale renewable energy project could therefore be implemented to meet the targets of SDG 13, climate action, but could, at the same time, increase (and not reduce) inequalities (SDG 10). One important example is the GIBE III hydroelectric energy dam that has been established to increase climate resilience in Ethiopia but has led to severe human rights and Indigenous

103 UNGA 2015.
104 Cf. Celermajer / Churcher / Gatens 2021.
105 Cf. UNDP 2023.
106 Cf. Machingura / Lally 2017.
107 Cf. Pradhan et al. 2017.
108 Cf. Moran et al. 2018.

Peoples' rights violations, thereby exacerbating intrasocietal climate injustice.[109] Recent research results, therefore, suggest that human rights and the SDGs should be integrated, which could potentially strengthen both normative agendas and could ensure that SDG 13 does not exacerbate forms of injustice between different countries and societal groups.[110]

3.3. New Institutional Developments

Since the 2005 Inuit Petition before the Inter-American Commission on Human Rights and the 2007 Malé Declaration on the Human Dimensions of Climate Change, many institutional interlinkages between the human rights and the climate regime have been fostered,[111] which are all relevant from a climate justice perspective. Following the Malé Declaration, the Human Rights Council adopted its first resolution on »Human rights and climate change« (Resolution 7/23) in March 2008.[112] The resolution recognises that climate change poses a threat to people and communities and bears implications for the enjoyment of human rights. This means it can be considered the first United Nations Resolution substantiating the claim brought forward earlier by civil society organisations and certain (particularly affected) states[113] that climate change leads to situations of injustice. Furthermore, it requests the OHCHR—in consultation with the IPCC, the Secretariat of the UNFCCC and other stakeholders—to conduct a detailed empirical assessment on the relationship between climate change and human rights.[114] In addition to many resolutions on human rights and climate change that followed in the Human Rights Council until today, the OHCHR in Geneva used the first resolution (Resolution 7/23) to systematically investigate the relationship between human rights and climate change.

109 Cf. Schapper 2021a.
110 Cf. Bexell / Hickmann / Schapper 2023.
111 Cf. Schapper / Lederer 2014.
112 Cf. UNHRC 2008.
113 Cf. Limon 2009: 444.
114 Cf. UNHRC 2008.

The resulting analytical study of the OHCHR was presented at a Human Rights Council session in January 2009. Despite the fact that several states had previously voiced hesitance against clearly stating that climate change bears implications to the enjoyment of human rights (for instance Canada and the United Kingdom), the report »[…] marks a definitive break with [such] arguments […]«.[115] Although it avoids pointing out any clear causality, it refers to the implications »[…] global warming will potentially have […] for the full range of human rights […]«.[116] To carve out these implications in greater detail, it has based its human rights assessment on the scientific foundations of the IPCC's Fourth Assessment Report.[117] It uses the projections of the IPCC and elaborates how these developments will affect specific rights and pertinent state obligations anchored in the human rights instruments of the United Nations. According to the analysis of the OHCHR, the right to life, the right to food, the right to water, the right to health, the right to adequate housing and the right to self-determination are most severely threatened by the implications of climate change.[118] The poorest countries and communities, due to limited adaptive capacities, will be the most affected by respective rights constraints. Particular societal groups within these countries, among them women, children and Indigenous People—but also the elderly and persons with disabilities—are considered to be particularly vulnerable in this respect.[119]

Until today, the OHCHR has also produced analytical studies on climate change and the right to health, children's and women's rights, the rights of cross-border migrants and disabled people.[120]

In 2010, during COP16 in Mexico, the member states of the UNFCCC decided to further the institutionalisation of human rights into the climate regime in the long run.[121] In the Cancún Agreements, the states announced that: »[…] Parties should, in all climate-change related actions, fully respect human rights«.[122] This shaped the ex-

115 Limon 2009: 445.
116 OHCHR 2009: 8.
117 Cf. IPCC 2007.
118 Cf. OHCHR 2009: 8–15.
119 Cf. ibid.: 15–18.
120 Cf. OHCHR 2020.
121 Cf. Orellana / Johl 2013: 9.
122 UNFCCC 2010: I, 8.

pectations of all actors involved, especially pertinent to the design of future climate policies. In addition to this, the Cancún Agreements also include procedural safeguards that need to be observed when implementing REDD+ programmes. These are highly relevant from a climate justice perspective as they are intended to protect particularly vulnerable groups, among them Indigenous Peoples, from the negative consequences of REDD+ mitigation policies.[123]

The year 2012 saw the initiation of a new mandate at the United Nations Human Rights Council, an Independent Expert on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. The first officeholder, Professor John Knox, was appointed as UN Special Rapporteur on Human Rights and the Environment in 2015 for another three-year term.[124] Together with a significant number of diverse civil society organisations, the Special Rapporteur successfully advocated for the inclusion of human rights in the 2015 Paris Agreement.[125] His mandate as Independent Expert and Special Rapporteur focused on drafting the Framework Principles on Human Rights and the Environment. The Framework Principles, which were presented to the Human Rights Council in March 2018, set out the legal obligations of states under existing human rights law in relation to a safe, healthy and sustainable environment.[126] From August 2018 on, the mandate of the second UN Special Rapporteur on Human Rights and the Environment, Professor David Boyd, concentrated on the recognition of a new Human Right to a Clean, Healthy and Sustainable Environment at the international level. The new international human right was then recognised by governments in the UN Human Rights Council in October 2021 and in the UN General Assembly in July 2022. In the following years, this new human right will be further institutionalised and legally interpreted, also from a perspective of climate justice. For example, the *UN Committee on the Rights of the Child* (CRC) drafted a general comment on children's rights and the environment, specifically focusing on climate change, which was adopted in May 2023.[127]

123 Cf. UNFCCC 2010.
124 Cf. OHCHR 2023a.
125 Cf. UNFCCC 2015.
126 Cf. Atapattu / Schapper 2019.

In October 2021, the Human Rights Council also established a new mandate for a »Special Rapporteur on the promotion and protection of human rights in the context of climate change«.[128] The first officeholder, Ian Fry, started his mandate in May 2022 and will focus his work during the coming years on human rights protection in the context of climate change, exploring further opportunities to promote climate justice among those population groups that are heavily affected by climate change and climate policies.

It can certainly be observed that the link between human rights and the environment, and more specifically climate change, is increasingly being strengthened at the United Nations. The continuing progress in institutionalisation processes at the intersection of climate change and human rights demonstrates that climate justice is now at the heart of the United Nations Human Rights Council and other UN bodies.

4. The Climate Justice Movement

Claims for just(er) climate practices, comprising distributive and procedural justice, are central demands of civil society actors engaged in the climate movement.[129] Conceptions of the climate movement correspond with a more general understanding of a social movement: it is an action system of mobilised networks comprised of groups and organisations that—for a certain period of time and based on a collective identity—aims at initiating, preventing or reversing social change through various means.[130] These transnational networks are often marked by a complex and decentralised organisational structure. They may bring together groups from diverse countries, which are ideologically motivated and pursue common objectives through collective action. By creating influential dynamics through political and medial pressure, they can decisively contribute to social change.[131]

127 Cf. OHCHR 2023b.
128 OHCHR 2023c.
129 Cf. Garrelts / Dietz 2013.
130 Cf. Rucht 1994.
131 Cf. Garrelts / Dietz 2013.

Since the end of the 1990s, the focus of the climate movement has shifted from utilising a *climate change frame* to employing a *climate justice frame*.[132] This reframing comes with at least two advantages for the climate movement. First, it helps to integrate local concerns and more radical groups into the network. Second, it allows for processes of frame bridging with other movements.[133]

4.1 Moderate vs. Radical: The Climate Justice Movement Inside and Outside the UNFCCC Negotiations

The climate justice movement does not function homogeneously, nor does it speak with one voice. Instead, it is characterised by a dominant antagonism:[134] it is divided into a more *moderate wing* accepting capitalism and lobbying for change within this system and the established climate institutions, and into a *radical wing* viewing capitalism as a root cause for climate change that needs to be transformed.[135] This leads to cooperative and conflictive activities of transnational networks inside and outside of the UNFCCC process.[136] Its participants all mobilise a climate justice discourse but do so with different emphases.

Moderate organisations aim to influence climate politics[137] through advocating, campaigning, and providing expertise at climate conferences.[138] Those organisations with strong ties to state delegations have the most advanced access opportunities, engage with governmental institutions and become part of the official UNFCCC process by acting as accredited observers.[139] Through close interaction with governments they may exert pressure for negotiating, ratifying, enforcing and complying with international envir-

132 Cf. della Porta / Parks 2013.
133 Cf. ibid.
134 Cf. Bedall / Görg 2013.
135 Cf. della Porta / Parks 2013.
136 Cf. Dietz 2013; Brunnengräber 2013.
137 When it comes to implementing climate policies, these groups can also engage in consulting, monitoring and control functions, e.g. through issuing project certificates.
138 Cf. Brunnengräber 2013; Bernauer / Betzold 2012.
139 Cf. Bedall / Görg 2013.

onmental agreements.[140] Thus, internationally operating non-state observers consult informally but are sometimes also granted the opportunity to speak during the official negotiations. In some cases, individuals from these non-state groups also become members of national delegations and therewith are »formally granted a ›seat at the table‹«.[141] This increases their opportunities to influence governmental decisions since it provides them with access to closed sessions, official state documents and the possibility to present own proposals in decision-making circles.[142] In general, moderate civil society groups accept existing international institutions, including underlying norms, organisational structures and decision-making procedures. These actors lobby state governments and try to improve existing policies within the UNFCCC by initiating reforms.[143] More moderate groups include *Friends of the Earth*, *Greenpeace* and *Earthjustice*. Governmental delegations, in turn, are interested in including those actors because they might receive additional information and expertise[144] and because they can enhance the legitimacy of their decisions.[145]

More radical networks often oppose the underlying ideological, normative, and economic foundations that build the basis of the climate regime. They politicise climate change and criticise historic, social and political relations between states as the root causes of climate injustice. The main argument they bring forward is that, historically and currently, industrialised nations have been and are mainly responsible for GHG emissions and have exploited the resources of developing nations, especially during times of colonisation, but also after that, to accumulate wealth. Now industrialised countries promote market-based solutions that prevent a real change in the unjust world system and do not lead to a substantial decrease in GHG emissions but reproduce asymmetric economic and power relations. These market-based solutions include mechanisms introduced under the Kyoto Protocol, such as International Emissions Trading (IET), the Clean Development Mechanism (CDM), and

140 Cf. Böhmelt / Koubi / Bernauer 2014.
141 Ibid.; Bernauer / Betzold 2012: 63.
142 Cf. Böhmelt / Koubi / Bernauer 2014.
143 Cf. Schapper / Wallbott / Glaab 2023.
144 Cf. Betsill / Corell 2008.
145 Cf. Bernauer / Betzold 2012.

Joint Implementation (JI), or under the Paris Agreement, such as the Sustainable Development Mechanism (SDM).

The problem with the CDM, for instance, was that industrialised countries and companies from the Global North could continue to pollute, if they bought credits from sustainable development projects in the Global South that were meant to decrease emissions. Through purchasing these offsets, developed countries could achieve their emission reduction targets determined under the Kyoto Protocol. To qualify for accreditation by the CDM Board, projects needed to demonstrate ›additionality‹, i.e. developers had to prove additional GHG reductions that would be achieved with the respective project. Many of these projects, however, did not meaningfully prove this ›additionality‹, nor did they contribute to development, but were large-scale carbon-offset projects that resulted in land grabbing, environmental and human rights degradation, and social rights violations. Offsetting leads to a delay in meaningful climate action in developed countries.

Faced with the increasing energy demands in developing countries, it is questionable whether offsets reduce or actually increase GHG emissions overall.[146]

Many groups of the more radical wing of the climate justice movement do not just suggest to reform market-based mechanisms, they view them as a completely false solution to the problems posed by climate change. They highlight that market schemes lead not only to exacerbated climate injustice between developed and developing countries, but also to increased inequalities within societies, often at the expense of Indigenous Peoples, pastoralist groups, and other minorities. They claim that we need to profoundly change our economic and political system, first and foremost capitalism, to initiate a real change towards more climate justice. More radical climate justice networks suggest that moderate policy changes are not enough to address climatic challenges, but that a system change hand in hand with altering production and consumption patterns is required. Important examples of this more radical wing are *Rising Tide*, *Klimacamp*, and *Climate Justice Action Network*.[147]

146 Cf. CTW 2018.
147 Cf. della Porta / Parks 2013.

4.2 Climate Justice Demands in UNFCCC Negotiations

Traditionally, the UNFCCC has been described as a technocratic environment[148] coined by the negotiations of intergovernmental concerns. Since more than a decade, however, various climate justice concerns have increasingly played a role at the annual *Conferences of the Parties* (COPs). At COP21 in Paris (2015), for example, references to intergenerational equity, gender equality, Indigenous Peoples' rights, just transition of the workforce, food security, ecosystem integrity and human rights were institutionalised in the Preamble of the 2015 Paris Agreement. The final text also notes the importance of justice for some of the State Parties and social groups that were part of the negotiations.[149] Although the initial ambition of the inter-constituency alliance, a network of various non-governmental organisations that advocated for these rights and justice demands, was to secure a commitment to these principles in the operative part, specifically in Article 2 defining the purpose of the agreement, many civil society organisations evaluated this result as a success. They argued that the debate around Article 2 will lead to a consideration of justice concerns in future climate policymaking. In fact, the Paris Agreement is the first binding environmental instrument comprising human rights[150] and referring to climate justice. It has already been used for climate litigation cases and to enforce governmental obligations to reduce GHG emissions via national courts.[151] In addition, human rights have been institutionalised with the finalisation of the Paris implementation guidelines in the 2021 Glasgow Climate Pact.[152] This illustrates that climate justice claims can indeed materialise in concrete justice practices.

Unsurprisingly, organisations of the climate justice movement within the UNFCCC draw attention away from inter-governmental concerns, towards injustices within and between societies. They also highlight the need to address intergenerational justice aspects. At the same time, however, it can be observed that networks within the UNFCCC pursue a reformist approach. This means they accept

148 Cf. Busch 2009.
149 UNFCCC 2015: Preamble.
150 Cf. Atapattu / Schapper 2019.
151 Cf. Wegener 2020.
152 Cf. Schapper 2021b.

the basic normative foundations of the UNFCCC, they engage in its processes, reproduce its order and meanings by making submissions, interventions and by directly engaging with governmental delegates. They accept the established policy instruments but want to improve them. Furthermore, they accept institutional limits to realising their justice claims; they often narrow down their initial demands to maintain productive interactions with governmental delegates and become more pragmatic (and less radical) in their demands over time.[153]

5. Climate Justice and Litigation

Climate litigation has become one important way to hold governments accountable for mitigation and adaptation action. Building on the Paris Agreement, which helps to reflect domestic laws and policies in light of nationally determined contributions, litigants often claim that mitigation and adaptation efforts do not go far enough to protect citizens.[154] In climate litigation cases, intergenerational (but also intrasocietal) justice considerations are often at the forefront. Many of the organisations that are part of the climate justice movement are also supporting plaintiffs by offering expertise in climate science and legal counselling.

5.1 Landmark Climate Litigation Cases

In the following, some meaningful climate litigation cases will be introduced and discussed in the light of climate justice. In a landmark constitutional climate case called *Juliana v. United States*, 21 youths and children filed a lawsuit which asserted that action of the US government has caused climate change and led to the violation of the constitutional rights to life, liberty, and property, and failure to protect public trust resources. The lawsuit was filed against the US government in the *Federal District Court of Oregon* in 2015. *Earth Guardians* is a civil society plaintiff in this case and another NGO,

153 Cf. Schapper / Wallbott / Glaab 2023.
154 Cf. UNEP 2017.

Our Children's Trust, acts as a supporter.[155] The plaintiffs emphasise that there is only a very short window of opportunity to phase out reliance on fossil fuels in order to reduce GHG emissions. Therefore, they are seeking a declaration confirming that their constitutional rights and public trust rights have been violated, and a court order that halts these violations and directs the government to develop a plan for substantially reducing GHG emissions.[156] Initially, the US government—in partnership with representatives from the fossil fuel industry—tried to have the case dismissed. This led to several interesting developments, such as a recommendation to deny both motions to dismiss issued by US Magistrate Judge Thomas Coffin and upheld by US District Court Judge Ann Aiken, who released an historic opinion and order in November 2016. Therein, she held: »Exercising my ›reasoned judgement‹, I have no doubt that the right to a climate system capable of sustaining human life is fundamental to a free and ordered society«.[157] Many activists of the climate movement have interpreted this as the first time ever a fundamental right to a safe climate has been recognised. The case is still ongoing; plaintiffs are currently amending the complaint.

The *Urgenda Climate Case* against the Government of the Netherlands is considered the first climate case worldwide establishing that a government has a legal obligation to prevent further climate change. In 2015, the District Court of the Hague ruled that the Dutch Government must reduce GHG emissions by 25 %, compared to the 1990 baseline levels, by 2020. The District Court's decision was appealed by the Government in 2018 but the Court of Appeal decided to uphold the judgement. Following upon this, the State appealed to the Supreme Court. However, the Supreme Court also ruled in favour of Urgenda on 20 December 2019.[158] This case, which was initiated by 886 Dutch citizens, is relevant from a climate justice perspective as it seeks to protect the interests of future generations by preventing further climate change. It also demonstrates that, based on human rights law, for example, the right to life according to the European Convention on Human Rights (Art. 2), society can effectively demand a change in governmental climate policies.

155 Cf. OCT 2018.
156 Cf. Aiken 2016: 2.
157 Ibid.: 32.
158 Cf. Urgenda 2023.

In March 2021, the German Federal Constitutional Court made a fundamental decision for protecting future generations. In *Neubauer v. Germany*, the court ruled that the Federal Climate Change Act, which was adopted in 2019, does not conform with Germany's Basic Constitutional Law. The Climate Change Act stipulated a reduction of GHG emissions of 55 % until 2030. Youth groups, who were the plaintiffs in this case argued that the Climate Change Act does not sufficiently protect them against the consequences of climate change and thus violated basic rights, such as the right to life, the right to health and the right to a decent future. The Constitutional Court agreed and ruled that the plans presented in the German Climate Change Act are not ambitious enough and exert immense pressure on younger generations to still meet the 1.5°C ambition of the Paris Climate Agreement (and German Basic Constitutional Law). The suggested target will lead to a situation in which all aspects of life of future generations will be affected by the pressure to reduce GHGs in the atmosphere and this will limit fundamental freedoms. Against this background, the Court obliged the German legislator to take further measures to reduce emissions after 2030.[159]

Within one week after the court ruling was announced, the German government increased its emissions reduction goals from 55 % to 65 % (compared to 1990 baseline levels) and further changes in the Federal Climate Change Act, like establishing a carbon-neutral society by 2045, have followed.[160]

This successful climate case has been supported by environmental and youth organisations, including *Fridays for Future*, *Germanwatch* and *Greenpeace*. It demonstrates how a human rights-based approach and the idea to protect fundamental freedoms of future generations has successfully changed climate law and policy.

5.2 The Future of Climate Litigation

Climate litigation will play an increasingly important role in the future. It provides societal actors with the opportunity to use regional and national courts to legally enforce protection mechanisms and

159 Cf. BVerfG 2021.
160 Cf. Urgenda 2022.

increased ambition in mitigation and adaptation. Institutionalisation of human rights in the climate regime,[161] e.g. the reference to human rights obligations in the Paris Agreement, are advantageous for these lawsuits as most states have ratified the UN core human rights treaties. Climate lawsuits do not only require governments to change their course of action, they can also be addressed at private companies.

One important example for climate litigation targeting private businesses is the ›Carbon Majors‹ petition. In September 2015, *Greenpeace Southeast Asia*, the *Philippine Rural Reconstruction Movement*, and other non-governmental organisations requested an investigation of the responsibility of 50 major fossil fuel companies for human rights violations resulting from the impact of climate change in the Philippines. The population of the Philippines is already suffering from severe adverse effects of climate change on their human rights, particularly in relation to extreme weather events like Typhoon Haiyan, which is considered the strongest tropical cyclone recorded in human history.[162] The ›Carbon Majors‹ are multinational corporations including *Chevron*, *Exxon*, *British Petroleum*, and *Royal Dutch Shell*, among others. The Commission on Human Rights of the Philippines accepted the petition, and in 2015 launched the first-ever investigation into the responsibility of these companies for the impact of climate-related consequences on the human rights of its population. The Philippines' Commission on Human Rights, after a nearly 3-years-investigation, concluded that ›Carbon Majors‹ could be held responsible for violating human rights by severely contributing to GHG emissions and global warming.[163] Governments are, of course, also responsible for regulating the conduct of private businesses operating on their state territory. The ›Carbon Majors‹ petition is considered an important step towards strengthening climate litigation cases that are addressed at private businesses.

One of the most recent developments that is also likely to significantly advance climate litigation is a UN General Assembly resolution led by the small Pacific nation Vanuatu and supported by 17 coun-

161 Cf. Schapper / Lederer 2014.
162 Cf. Atapattu / Schapper 2019.
163 Cf. Kaminski 2019.

tries, including Angola, Bangladesh, Germany, Mozambique, New Zealand, Portugal, and Vietnam and a number of small island states, seeking an advisory opinion of the *International Court of Justice* (ICJ) on the obligations of states with respect to climate change.[164] Although the Court has no binding authority, its advisory opinion can inform lawsuits, can guide climate action and foster cooperation between states to support those who are the most vulnerable to climate change impacts. The General Assembly resolution received the support of more than 100 countries and was adopted in March 2023, and the ICJ advisory opinion is expected about 12 months later. The advisory opinion is considered a crucial way forward to clarifying legal obligations in the context of a changing climate and enhancing climate justice for particularly vulnerable countries and for future generations.[165]

6. Conclusion

In sum, it can be observed that justice considerations in climate policy debates and practice have made a shift within the last decades. Whereas earlier climate justice concerns are merely focused on the impacts of climate change and distributive justice between developed and developing countries, as reflected in the 1992 UNFCCC, the focus of justice deliberations is now much more on intrasocietal and intergenerational concerns.[166] This also means that not only climate change consequences, but also our political responses to climate change, i.e. concrete climate policies, are evaluated from a justice perspective. Advocates of the climate justice movement criticise market-based mechanisms, including policies like the CDM, the SDM and REDD+, and they demand that these should either be abolished (more radical groups) or reformed (more moderate groups). Reform proposals suggest stronger consideration of procedural justice in climate policies, demanding access to information, participation in decision-making, judicial remedies, and compensation.[167]

164 Cf. Farand 2022.
165 Cf. UNGA 2023.
166 Cf. Schapper / Wallbott / Glaab 2023.

Many of these climate justice demands are based on a human rights approach to climate change.[168] Since the 2005 Inuit Petition that was presented before the Inter-American Commission of Human Rights, institutionalisation of human rights in the international climate regime has progressed significantly.[169] With the new Human Right to a Healthy Environment, recognised by the UN General Assembly, and the recently established mandate of the Special Rapporteur for Human Rights and Climate Change, in addition with the expected ICJ Advisory Opinion on the obligations of states in the context of climate change, new impetus for climate justice, in particular intergenerational justice, can be expected. One of the predominant issues that needs to be resolved in the future is climate finance, first and foremost in relation to loss and damage. This is an issue that demonstrates how several (in-)justice dimensions, i.e. international, intrasocietal and intergenerational justice, overlap.

Last but not least, it should be mentioned that this report has merely focused on anthropocentric dimensions of justice as these are still dominant in current climate justice debates. However, claims for multi-species justice, considering the relationship between human and non-human beings and natural entities, are becoming increasingly relevant.[170] For truly sustainable solutions to the triple environmental crisis, comprising climate change, pollution and biodiversity depletion, new approaches to justice between the human and the non-human world will need to be developed.

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167 Cf. Atapattu / Schapper 2019.
168 Cf. Schapper 2018.
169 Cf. Schapper / Lederer 2014.
170 Cf. Celermajer et al. 2021.

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