Human Rights, the Environment and Climate Change

Volume 5

Edited by
Azmi Sharom, Sriprapha Petcharamesree and Kalpalata Dutta

ASEAN University Network
Human Rights Education (AUN-HRE)

Institute of Human Rights and Peace Studies
Mahidol University

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Volume 5 in Human Rights and Peace Textbook Series, 2024

By

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Introduction

The earliest and clearest officially accepted international expression that a clean environment is a human right can be found in the Stockholm Declaration of 1972. Over the last fifty-three years, this concept has developed tremendously. The development has not been clear-cut as fledgling ideas may take seed in documents only to evolve later into something more substantial and specific, blossoming into firm principles and hard law. The idea of sustainable development, for example, could be found in the Stockholm Declaration, but it obtained its most accepted definition in the Brundtland Report only in 1987 and then was further strengthened as an international principle in the Rio Declaration 0f 1992. Sustainable development concepts were further reiterated and reinforced in the Millenium Development Goals (MDGs) and Sustainable Development Goals (SDGs) in 2000 and 2015 respectively, the latter emphasizing the balance between people, planet, and prosperity.

The genesis of this learning material emanated from a meeting of members of the ASEAN University Network- Human Rights Education (AUN-HRE) with the primary objective of providing students and lecturers with readings prepared by scholars from within Southeast Asia focusing on issues of human rights, the environment and climate change. There was a consensus among AUN-HRE members that from a human rights perspective, States have an obligation to prevent foreseeable adverse effects of environmental degradation and climate change as well as to ensure that different groups of peoples affected by climate change and environmental issues have access to effective remedies and means to sustain their livelihoods. Despite the importance of this issue, there seems to be a scarcity of learning materials prepared for students and lecturers in the region.

With generous support from the Norwegian Centre for Human Rights (NCHR) at the University of Oslo, the 5th Volume of the Textbook project was conceived and finalized with contributions of experts and scholars from the Southeast Asian region and foreign scholars who have been living in and researching relevant issues in the region. The topics identified are based not only on the issues which are critical within the region but also include concepts and standards to ensure that the users are well equipped with both conceptual and legal frameworks and the reality on the ground. Throughout the Volume, cases and examples from the region are highlighted so that the users are aware of the seriousness of the issues and can take part in mitigating violations of human rights, specifically the right to a clean and sustainable environment and climate change. The 5th Volume is composed of 8 chapters:

1. Concepts and Standards: Human Rights, the Environment and Climate Change
2. Gender, Ecofeminism and Climate Governance
3. Climate Induced Displacement: the Nexus between the Environment, Climate Change and Displacement in Southeast Asia
4. The Role of Responsible Business with regard to the Right to a Clean Environment and Climate Change
5. Indigenous Peoples, the Environment and Climate Change
6. Human Rights and Land in Southeast Asia
7. Water, Rivers and Human Rights
8. Defending Environmental Human Rights Defenders

The history of international environmental declarations and reports has given rise to a plethora of concepts and terminology which are described in detail in the first chapter by Kalpalata Dutta entitled “Concepts and International Human Rights Standards – The Environment, Human Rights and Climate Change”. Apart from helping the reader understand the many technical terms in this field, this chapter is interesting in tracing the development of human rights and the environment. The road was not all smooth. For example, the term “rights” is clearly lacking in the Rio Declaration, the drafters choosing instead to use the term “entitled” to a clean environment. This aversion to human rights may be due to the greater involvement and outspokenness of nations like Malaysia and Singapore which at the time were not the greatest defenders of human rights. Be

that as it may, Kalpalata delves into concepts such as sustainable development, the polluter pays principle, the precautionary principle and more. With regard to climate change, she illustrates how the international climate change regime introduced the world to ideas and concepts, such as common but differentiated responsibilities, which are now commonplace.

In the few years after the Stockholm Declaration there was a burst of activity worldwide in relation to the environment. The founding of the United Nations Environment Programme is a notable development. Far from being just another UN agency, the UNEP was instrumental in the creation of the key environmental treaties that exist today. The concept of the right to a clean environment also gained traction in this period. Although there were no treaties which specifically mention it, the idea was taking root worldwide. Countries like the Philippines and South Africa enshrined this right in their constitutions, while countries like India interpreted the constitutional right to life as including the right to a clean environment.

Along with these, which can be described as substantive rights to a clean environment, there was also growing concern in ensuring that there are sound procedural rights to a clean environment. These include the right to participate in environmental decision-making, the right to information and access to a just dispute settlement mechanism. However, over time, human rights and the environment took on a far more detailed and nuanced form. One of the things that this book does is to introduce the reader to those details and nuances by looking at specific areas of intersection between human rights and the environment.

Gender is one of those areas and it is covered in the chapter “Gender, Ecofeminism and Climate Change” by Melizel Asuncion and Tesa de Vela. Women and girls are often on the front lines of environmental disasters and climate change-induced problems. This is particularly so in agrarian and rural communities. Farming is an occupation shared by all genders but in some specific ways women are more affected by men; the duty to carry water, for example, tends to fall on women, and drought and similar climate change-induced problem makes this duty especially arduous. Yet the voices of women are not sufficiently heard, especially in societies where patriarchy is dominant. Meaningful participation is key to ensuring that the class of people who are at least equally but often even more affected by environmental degradation are heard.

One approach is what is known as the gender-differentiated approach where there is an acknowledgement that there is a difference of experience between men and women and that this must be taken into account in policy development and creation. International law does acknowledge this with women being given special mention in treaties such as the Convention of Biological Diversity 1992, the United Nations Convention to Combat Desertification 1994 and the United Nations Framework Convention on Climate Change 1992 along with its Protocols. There are some similar measures taken in Southeast Asian countries and these are discussed by Melizel and Tesa.

They also explore another approach to gender and the environment which is the postcolonial ecological feminist approach. This approach states that the world is currently in the grip of a neoliberal status quo in which business and money essentially reigns supreme. Ideas coming from the G7 such as the Global Shield, which provides funding to countries facing climate change induced problems, looks altruistic but in fact merely plasters over serious cracks in the system. The capitalist economic system which is the root cause of climate change remains in place and untouched. Instead, individuals, not governments or big business, are burdened with the responsibility of trying to “fix” the problem while the root causes are unquestioned. Ecological feminism challenges this systemic mind set and Melizel and Tesa discuss the alternatives proposed.

Climate change has brought a particularly serious societal problem to the fore and that is the displacement of peoples. This is a problem which has been acknowledged by the United Nations High Commissioner for Refugees, and whether you take a maximalist perspective, where it is estimated that up to a billion people may be displaced by climate change, or a minimalist view which says that it is reductionist to lay the blame completely at the doorstep of climate change, the fact remains that the displacement of peoples will occur and climate change will play a role in it.

Displacement can happen suddenly because of large scale environmental disasters brought about by climate change, such as extreme flooding, or it can happen slowly. For example, rising sea levels causes the salination of freshwater which in turns causes the loss of arable lands leading to crop failures and famine. Rising sea levels can indeed cause the loss of land itself in the case of low-lying island states. These issues are discussed by Sriprapha Petcharamesree and Chunya Primrose Boonyawan in their chapter "Climate Induced Displacement: the Nexus between the Environment, Climate Change and Displacement in Southeast Asia''.

In this chapter, Sriprapha and Chunya raise the worrying question of the protection of people in such situations. International law does not recognise refugees as people who cross borders because of environmental disasters and thus the usual international norms that can be used to protect them are not available. Meanwhile there is also the question of internally displaced persons. They are subject to whatever domestic policies and laws of the country they are in, along with a few very weak international guidelines. Clearly this is an area which needs further study, key amongst which is the issue of definition. Knowing how to define what makes an environmental refugee or internally displaced person is crucial in calculating the actual scale of the problem.

In Kalpalata's chapter on concepts, there was an interesting point which stated that the Stockholm Declaration came under some criticism for not sufficiently dealing with the question of private sector responsibility when it comes to the environment. This is a matter dealt with in Patricia Rinwigati Waagstein's chapter "The Role of Responsible Business with Regard to the Right to a Clean Environment and Climate Change". When it comes to the protection of human rights, the State is of course the primary responsibility holder and ultimately any obligations placed on business is only as effective as the will of the state to enforce such obligations. Having said that, what could these obligations on business be?

The United Nations Guiding Principles on Business and Human Rights (2011) provides a starting point. In it, businesses are said to have a responsibility to respect human rights protection provisions; to practice due diligence to ensure that human rights abuses do not occur; and to not cause, contribute or be linked to human rights abuses. Linkage here means having working relationships with human rights abusers even when one does not necessarily commit such acts. Although not specifically dealing with human rights and the environment, Patricia asserts that the Guiding Principles are broad enough to encompass human rights concerns related to the environment and climate change. It would be interesting for the reader to examine this chapter alongside Melizel's and Tesa's discussion on postcolonial ecofeminism.

In Southeast Asia there are indigenous communities in Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Vietnam. The primary international law on the rights of indigenous peoples is the United Nations Declaration on the Rights of Indigenous Peoples (2007). Unfortunately, this is a declaration not a treaty, and as such does not have the latter's binding power. Still, it establishes many principles upon which firmer laws can be built. The UNDRIP is discussed in the chapter "Indigenous Peoples, Environment and Climate Change" by Jerald Joseph and Kamal Solhaimi Fadzil. The main thrust of their chapter however is how the rights of indigenous peoples are intrinsically linked to land. The writers assert that indigenous practices of land use are far more environment-friendly in general and do more to prevent climate change in particular. Yet their legal claim to land is tenuous at best as conceptually their idea of "ownership" is fundamentally different and contradicts mainstream concepts. This emphasis on land segues nicely to the chapter by Philip Hirsch titled "Human Rights and Land in Southeast Asia". Philip looks at the issue of land through a more general lens as the issue affects the broader community and not just indigenous peoples. Concerns such as tenure rights, land law, violence against occupiers of land and access to justice all have serious human rights implications and these are discussed here along with the interesting philosophical question as to the meaning of the right to land.

Whereas ownership is an important issue with regard to land, the same is not necessarily so with what flows through land, i.e. rivers. Water is linked to several human rights such as the rights to life, livelihood, health, and a clean environment. "Rivers and Human Rights in Southeast Asia" by Carl Middleton examines the right to water and the human rights issues related to rivers from the perspective of human rights principles, laws and politics. He also looks at more specific water- and river-related issues such as climate change and gender.

The environment is a concern for all people and it follows that the human rights issues linked to the environment are too. Even though this may be the case, the reality is that there are individuals and groups who work specifically on these rights, and it is they that are the focus of the last chapter, "Defending Environmental Human Rights Defenders" by Sriprapha Petcharamesree. Cases abound of environmental human rights defenders (EHRD) being killed. As tragic as these tales are, they are merely the tip of the iceberg when it comes to the threats that EHRD face. The use of non-violent means like Strategic Lawsuits Against Public Participation (SLAPP) by corporations and individuals with the means, can scupper attempts at protecting environmental human rights just as much as physical threats. Apart from case studies on EHRD and the dangers and problems they face, this chapter also looks at international laws, principles and standards that ought to apply in protecting EHRD. These include the United Nations Environment Programme's Defenders Policy and the United Nations Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders 1998).

As mentioned in the beginning of this introduction, this textbook is meant primarily for students and teachers, hence the sections such as "discussion points". However, it is hoped that researchers, activists, and the general public will also find it useful. This is especially so for those who are concerned with Southeast Asia. The distinctive slant towards the region in all the chapters is due to AUN-HRE's and the editors' strong belief that our unique experience, specifically in this field, needs expression: and that generally, Southeast Asian voices must be heard in any conversation on human rights. By studying the chapters, one can see not only the development of the concept of the right to a clean environment but also how all these different branches intersect and interconnect. Naturally there is much to be done, but it is fair to say that things have come a long way from the basic statement found in the Stockholm Declaration. It is hoped that this book goes some way in pushing the human rights and environment agenda even further along.

Azmi Sharom and Sriprapha Petcharamesree

8 February 2024

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Chapter 1

Standards - Human Rights, the Environment and Climate Change

Kalpalata Dutta

Reader's Guide

This chapter presents the historical evolution of the concepts and standards on the environment, human rights and climate change. It discusses the: concept of human environment as presented in the Stockholm Declaration 1972; the concept of sustainable development as presented in the Brundtland Report (1987); the founding principles of environmental governance as laid out in the Rio Declaration on Environment and Development, 1992; the fundamental concepts relating to climate change and the framework of action as laid out in the United Nations Framework Convention on Climate Change (UNFCCC); the Kyoto Protocol and Paris Agreement; the links between human rights and climate change; the recognition by the Human Rights Council in 2021 of the right to a safe, clean, healthy and sustainable environment; the 2030 Sustainable Development Goals Agenda and its links to human rights, the environment and climate change; and last but not the least, instruments and mechanisms developed at the ASEAN level on the inter-linking issues of human rights, the environment and climate change.

1.1 The Human Environment

The concept of the human environment describes how humans and their environment co-exist and interact with each other. The concept of the human environment and human rights was linked for the first time at the United Nations Conference on the Human Environment held in Stockholm in 1972.

The 1960s saw a series of environmental disasters around the world: an estimated 750 people died as a result of the smog that engulfed London for four days in December 1962; the 1969 oil spill in Santa Barbara channel, California, which killed at least 3,500 birds; the series of droughts in the Sahel region in Africa that began in the late 1960s and which caused approximately 10,000 deaths; and mercury poisoning caused by discharge of toxins in Minamata Bay, Japan, led to 2,265 officially recognized deaths (Chasek, 2020). In 1962, Rachel Carson's *Silent Spring* was published. The book, that went on to become a bestseller, documented the damaging effects of the indiscriminate use of chemical pesticides on the environment and awakened a new consciousness about the environment in the United States and beyond. Against this background, Sweden proposed in 1968 that since changes in the natural environment brought about by human actions had become an urgent problem for both developed and developing countries, and as these problems could only be solved through international cooperation, a United Nations conference on the environment should be organized so that substantive discussions could be held at the global level on environmental problems ("The Question of Convening an International Conference on the Problems of Human Environment," 1968). Consequently, the Stockholm conference was organized and the Declaration of the United Nations Conference on the Human Environment was adopted in 1972.

The Declaration consists of a Preamble and a set of 26 principles calling upon governments and peoples to take action for the preservation and the improvement of the human environment for the benefit of present populations and future generations. While it is acknowledged that the Stockholm Declaration acted as a catalyst in the development of modern environmental law and international institutional mechanisms (such as the establishment of the United National Environment Programme), there have been criticisms of some of the assumptions underlying the Declaration and some exclusions from the Declaration.

The first paragraph of Preamble outlines the concept of human environment:

> *"Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights-even the right to life itself."*

First, as seen from this citation, the Declaration uses the term "man". Critics have argued that use of the term "man" excludes the voices and experiences of indigenous peoples and women from discussions and decision-making on matters that deeply impact their lives (Bratspies, 2022).

Second, paragraph 4 of the Preamble states:

> *"In developing countries most of the environmental problems are caused by under-development. Millions continue to live far below the minimum levels required for a decent human existence, deprived of adequate food and clothing, shelter and education, health and sanitation. Therefore, the developing countries must direct their efforts to development, bearing in mind their priorities and the need to safeguard and improve the*

environment. For the same purpose, the industrialized countries should make efforts to reduce the gap between themselves and the developing countries. …"

Paragraph 4 reflects the tensions between developed and developing countries with regard to development and environmental protection. In the preparatory discussions to the conference, the developing countries argued that environmental problems had been caused the by industrialized nations of the North, and that new found environmental concerns of the North must not be used as an excuse to restrict the development of the South (Chasek, 2020; Ellison, 2014; Garth, 1973). Rather, they stated that the focus should be on issues related to underdevelopment and poverty. Indira Gandhi, the Prime Minister of India, in her speech at the conference stated:

"The environmental problems of developing countries are not side effects of excessive industrialisation but reflect the inadequacy of development. The rich countries may look upon development as the cause of environmental destruction, but to us it is one of the primary means of improving the environment for living, or providing food, water, sanitation and shelter; of making the deserts green and the mountains habitable" (DTE Staff, 2022).

This tension between developed and developing countries regarding environmental protection was partly addressed in the Stockholm Declaration by recognition of the obligation of developed states to provide financial and technical assistance to developing countries to assist them in incorporating environmental safeguards in their development planning (Principle 12). Another point of concern raised by countries in the global south was the understanding that continuous population growth presented problems for the preservation of the environment (Paragraph 5, Preamble). Regarding this, Prime Minister Gandhi observed:

"It is an over-simplification to blame all the world's problems on increasing population. Countries with but a small fraction of the world population consume the bulk of the world's production of minerals, fossil fuels and so on. Thus we see that when it comes to the depletion of natural resources and environmental pollution, the increase of one inhabitant in an affluent country, at his level of living, is equivalent to an increase of many Asian, Africans of Latin Americans at their current material levels of living" (DTE Staff, 2022).

The call by Prime Minister Gandhi regarding unsustainable consumption patterns in developed countries did not find acknowledgement in the Stockholm Declaration. Rather, these were addressed twenty years later with the emergence of the idea of sustainable development. However, the notion of the ecological debt of developed nations continues to act as a stumbling block in climate negotiations.

The Declaration was also criticized for its anthropocentric approach, or for focussing on the environment not for its intrinsic value, but for the value that it provides to mankind and development. For example, Principle 3 of the Declaration states that "the capacity of the earth to produce vital renewable resources must be maintained and where possible, restored or improved". Critics argue that the notion that the earth is composed of resources which inevitably have to be extracted remained uncontested by the Declaration (Bratspies, 2022). A contrasting understanding of the earth is presented by Bolivia's Law of Mother Earth which was adopted in 2012 and is rooted in an indigenous Andean spiritual worldview which places the environment and the earth deity at the center of all life (*Law of Mother Earth, n.d.)*. The Law defines "Mother Earth" as a "living dynamic system made up of the undivided community of all living beings, who are interconnected, interdependent and complementary, sharing a common destiny". With this understanding, the Law establishes a series of specific rights for Mother Earth, such as the rights to life, diversity of life, water, clean air, pollution-free living, etc. The Law is based on the guiding principles of harmony (between human activities and nature), the collective good, the guarantee of regeneration, respect for and defence of the rights of Mother Earth, no commercialism, and multiculturalism.

Last but not the least, the Declaration was critiqued because of its omission of the role of businesses, including transnational businesses, in environmental protection. Principle 6 of the Declaration states:

> *"The discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems. The just struggles of the peoples of all countries against pollution should be supported."*

It has been critiqued that the wording of the principle does not mention the actors who have the responsibility to take action - such as who has the obligation to take steps to "halt" damage to the environment, and the nature of such obligations. It took many more decades to develop and adopt international standards on the obligations of business actors with regard to environmental protection and this remains a work in progress.

Despite these criticisms, the Stockholm Declaration contributed considerably to the development of international environmental law. It laid the foundations for recognition of intergenerational obligations (Principles 1 and 2), sustainable development (Principles 3. 5 and 6), and extra-territorial obligations of States (Principle 21).

Key Terms

Ecological debt: Acción Ecológica has defined ecological debt as the "debt accumulated by northern industrial countries towards third world countries on account of resource plundering and use of environmental space to deposit wastes". The Environmental Justice Organisations, Liabilities and Trade (EJOLT) has explained that ecological debt arises from: (1) exports of raw materials and other products from relatively poor countries or regions at prices which do not include compensation for local or global externalities; and (2) rich countries or regions making disproportionate use of environmental space or services without payment (for instance, to dump carbon dioxide). The concept of ecological debt is designated as public debt which a country has towards other countries (foreign debt) and can also be used to calculate the debt (or liability) of a company or the debt a nation has towards future generations (generational debt).

Anthropocentric: Anthropocentrism in literal terms means human-centeredness. Anthropocentrism in the context of the environment is usually understood in contrast to ecocentrism. Ecocentric perspectives in the environment focuses on protecting the environment for its own sake.

1.2 The Environment and Sustainable Development

In 1987, "Our Common Future: Report of the World Commission on Environment and Development" was released. The document came to be known as the Brundtland Report, after the Commission's Chairperson, Gro Harlem Brundtland. The Commission had been established by the United Nations General Assembly with the mandate of: proposing, amongst others, long term environmental strategies for achieving sustainable development.

During the working period of the Commission (October 1984 - April 1987), the world saw the peaking of an environmental development crisis in Africa triggered by drought, putting 36 million people at risk, a gas leak from a pesticides factory in Bhopal, India, killing 2000 people and injuring over 200,000, the explosion of liquid gas tanks in Mexico City killing 1,000 and leaving thousands

homeless, the explosion of the Chernobyl nuclear reactor, the release of chemical pollutants into the Rhine River during a warehouse fire in Switzerland killing millions of fish and threatening drinking water in Germany and Netherlands, and millions of people dying because of unsafe drinking water ("Report of the World Commission on Environment and Development: Our Common Future," 1987). The work of the Commission was informed by these crises around the world.

The Commission helped define sustainable development as development that "*meets the needs of the present without compromising the ability of future generations to meet their own needs*". Further, it stated that the concept of sustainable development implied limits on the power of humans to transform the environment. Such limits included the capacity of the biosphere to absorb the effects of human technology. The Commission also acknowledged the need of developing countries to provide for the essential needs of the people. It stated:

> *"Meeting essential needs requires not only a new era of economic growth for nations in which the majority are poor, but an assurance that those poor get their fair share of resources required to sustain that growth. Such equity would be aided by political systems that secure effective participation in decision making and by greater democracy in international decision making"* ("Report of the World Commission on Environment and Development: Our Common Future", 1987, para. 28).

It further observed:

> *"Sustainable global development required that those who are more affluent adopt lifestyles within the planet's ecological means - in their use of energy, for example"* (Report of the World Commission on Environment and Development: Our Common Future, 1987, para. 29).

The Commission also noted the dynamism implicit in the idea of sustainable development and stated:

> *"… sustainable development is not a fixed state of harmony, but rather a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development, and institutional change are made consistent with future as well as present needs. We do not pretend that the process is easy or straightforward. Painful choices have to be made. Thus, in the final analysis, sustainable development must rest on political will"* ("Report of the World Commission on Environment and Development: Our Common Future", 1987, para. 30).

Noting that the environment and development were inseparable from each other, the Commission noted a number of directions in the spheres of population and human resources, food security, resources for development, energy, industry; urban populations, international co-operation and institutional reform, and environmental insecurity.

The concept of sustainable development articulated in the Brundtland report influenced discussions at the **United Nations Conference on Environment and Development held in Rio de Janeiro in 1992 (Earth Summit)**. The Rio Declaration on Environment and Development adopted at the conference further strengthened the links between the environment and development.

Principle 1 of the Declaration recognised human beings to be at the center of concerns for sustainable development and Principle 3 affirmed that the right to development had to be fulfilled to equitably meet developmental and environmental needs of present and future generations. Principle 4 stated that environmental protection had to constitute an integral part of the development process and could not be considered in isolation from it. Further, the Declaration enumerated some important standards in environmental governance: participation of concerned

citizens; participation of women in environmental management and development; participation of indigenous peoples; the polluter pays principle; internalization of environmental costs; the precautionary principle; and environmental impact assessments. Most of these principles have been reaffirmed in subsequent international instruments and have been incorporated in legal instruments at the national level.

Focus On: Rio Declaration on Environment and Development, 1992

Participation: Principle 10 of the Rio Declaration stresses the importance of participation of all concerned citizens at the relevant level. Participation is understood to include: appropriate access to information concerning the environment held by public authorities; opportunities to participate in decision-making processes; the availability of information so as to encourage public awareness; and effective access to judicial and administrative proceedings. The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 1999 (also known as Aarhus Convention) further clarified these standards.

Precautionary Principle: Principle 15 of the Rio Declaration elucidates the precautionary principle. This principle requires decision-makers to adopt precautionary measures when scientific evidence about an environmental or human health hazard is uncertain and stakes are high. The precautionary principle can be traced back to the early 1970s in the German principle "vorsorge", or foresight, which was based on the belief that society should seek to avoid environmental damage by careful planning.

Polluter Pays Principle: Principle 16 of the Rio Declaration elucidates the polluter pays principle. This principle was first introduced by the Organisation for Economic Cooperation and Development (OECD) in the OECD Guiding Principles on the International Economic Aspects of Environment Policies (1972). Simply, it is a principle of environmental policy that requires the polluter to bear the expenses of pollution prevention and control measures introduced by public authorities so as to ensure an acceptable environment. Mostly, it is in the form of a tax levied by the government per unit of pollution emitted into the environment.

Internalization of Environmental Costs: Principle 16 of the Rio Declaration states that national authorities should endeavor to promote the internalization of environmental costs. As explained in the 1972 OECD Guiding Principles, internalization of environmental costs implies that market prices should reflect the environmental costs of the production and use of a product in terms of natural resource utilization, pollution, waste generation, consumption, disposal and other factors. The concept of "internalization of environmental costs" is a focal point of environmental economics.

Environmental Impact Assessments: Principle 17 of the Rio Declaration mandates the conduct of environmental impact assessments (EIA). The United Nations Environment Programme has defined EIA as a structured approach for defining and evaluating environmental information prior to its use in decision-making in the development process (Abaza et al., 2004). The relevant information consists of predictions of how the environment is expected to change if certain actions are taken and advice on how best to manage environmental changes if one alternative is selected and implemented.

Another important instrument adopted at the Earth Summit was Agenda 21, so called as it embodied a comprehensive plan of action that addressed the problems of the day and aimed to prepare the world for the challenges of the coming 21st century. Divided over four sections, it outlined thirty-nine chapters for action, each chapter further divided into program areas, objectives and proposed activities.

Table 1: Elements of Agenda 21 adopted at the Earth Summit

Section 1: Social and Economic Dimensions	**Section II: Conservation and Management of Resources for Development**
Chapters: 2. International cooperation to accelerate sustainable development in developing countries and related domestic policies 3. Combating poverty 4. Changing consumption patterns 5. Demographic dynamics and sustainability 6. Protecting and promoting human health conditions 7. Promoting sustainable human settlement development 8. Integrating environment and development in decision making	Chapters: 9. Protection of the atmosphere 10. Integrated approach to the planning and management of land resources 11. Combating deforestation 12. Managing fragile ecosystems: combating desertification and drought 13. Managing fragile ecosystems: sustainable mountain development 14. Promoting sustainable agriculture and rural development 15. Conservation of biological diversity 16. Environmentally sound management of biotechnology 17. Protection of the oceans, all kinds of seas, etc. 18. Protection of the quality and supply of freshwater resources 19. Environmentally sound management of toxic chemicals 20. Environmentally sound management of hazardous wastes 21. Environmentally sound management of solid wastes and sewage-related issues 22. Safe and environmentally sound management of radioactive wastes
Section III: Strengthening the Role of Major Groups	**Section IV: Means of Implementation**
Chapters: 23. Preamble 24. Global action for women towards sustainable and equitable development 25. Children and youth in sustainable development 26. Recognising and strengthening the role of indigenous people and their communities 27. Strengthening the role of non-governmental organisations 28. Local authorities' initiatives in support of Agenda 21 29. Strengthening the role of workers and their trade unions 30. Strengthening the role of business and industry 31. Scientific and technological community 32. Strengthening the role of farmers	Chapters: 33. Financial resources 34. Transfer of environmentally sound technology., cooperation and capacity-building 35. Science for sustainable development 36. Promoting education, public awareness and training 37. National mechanisms and international cooperation for capacity-building in developing countries 38. International institutional arrangements 39. International legal instruments and mechanisms 40. Information for decision-making.

A review of the implementation of Agenda 21 was conducted under a project of the Division for Sustainable Development of the United Nations Department of Economic and Social Affairs (UN DESA) in 2011. The report published in 2012 revealed varied progress in achievement of the plan of action (Stakeholder Forum for a Sustainable Future, 2012). While good progress had been made with regard to: strengthening the involvement of NGOs and local authorities (Chapters 27 and 28), science for sustainable development (Chapter 35), international institutional arrangements (Chapter 38) and international legal instruments (Chapter 39, no progress had been made or there was even regression with regard to some (Chapter 4 on changing consumption patterns; Chapter 7 on promoting sustainable human settlement; and Chapter 9 on protection of the atmosphere). The assessment identified several successes of Agenda 21: such as its strong influence on international agreements and instruments adopted subsequently;[1] strengthening the role of participation in decision making and affirming the important role of non-governmental actors; linking of the global with the local through strengthening participation of local authorities in sustainable development; and last but not least, putting the concept of sustainable human development at the heart of development as opposed to rapid industrialisation strategies that were the focus of the development in the 1960s and 1970s. The review report also identified several challenges. These included: segmentation of issues in Agenda 21 preventing the interlinking of connected goals thereby creating policy incoherence and confusion; inertia and resistance of institutional structures at all levels to the principle of sustainable development; exclusion of sectors such as energy and mining from Agenda 21; continued unsustainable patterns of consumption in the developed world and countries such as Brazil, India and China, while the basic needs of a large section of humanity remained unmet; and failure to explore the role and impact of transnational corporations and global economic institutions in embracing sustainable development.

1.3 Climate Change

In 1988, the World Meteorological Organisation and the United Nations Environment Program set up the Intergovernmental Panel on Climate Change (IPCC) to provide policymakers with regular assessments of the scientific basis of climate change, its impacts and future risks, and options for adaptation and mitigation. The assessments of the IPCC provided the groundwork for the United Nations Framework Convention on Climate Change (UNFCCC) that was opened for signature at the Earth Summit and which came into force two years later in 1994. The assessments of IPCC continue to provide guidance to governments and policy makers at the United Nations climate conferences.

The UNFCCC defines climate change as change that 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 (Article 1).*" Human activity has been identified to be the main driver of climate change. Such activity includes the burning of fossil fuels like coal, oil and gas which generates greenhouse gasses that envelop the earth like a blanket trapping the sun's heat causing a rise in temperatures.

The UNFCCC is an important instrument as for the first time the international community recognised that there was a problem of climate change and adopted the objective of stabilizing greenhouse gas (GHG) concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system (Article 2). It also set down principles and a legal framework to guide international co-operation on climate change.

[1] The international agreements and instruments include: the Preamble of the WTO, the Cairo Declaration on Population and Development (1994), the outcomes of the World Summit on Social Development (1995), the Beijing Declaration and Platform for Action of the World Conference on Women (1995), the Habitat Agenda (1996) and the Rome The Rome Declaration on World Food Security (1996).

Focus On: Overview of the United Nations Framework Convention on Climate Change (1992)

Key Principles (summarized from Article 3)

* Parties should protect the climate system for the benefit of present and future generations on the basis of equity and in accordance with common but differentiated responsibilities and respective capabilities. Developed countries should take the lead in combating climate change.
* Full consideration should be given to specific needs and special circumstances of developing countries. Attention should be given to countries who are particularly vulnerable to the adverse effects of climate change, and those that have to bear a disproportionate burden under the Convention.
* Precautionary measures should be taken to anticipate, prevent or minimize the causes of climate change and its adverse effects.
* Parties have the right to sustainable development.
* Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development of all, particularly developing country parties.

Common but differentiated responsibilities

The Convention divides countries into two main groups: Those listed in Annex I, known as Annex I Parties, and those that are not listed in Annex I, known as non-Annex I Parties. Some Annex I countries are also listed in Annex II of the Convention and are known as Annex II parties.

Annex I parties: These are the industrialized countries who have historically contributed the most to climate change. They include the industrialized countries that were members of the OECD (Organisation for Economic Co-operation and Development) in 1992, and countries with economies in transition (EIT), including the Russian Federation, the Baltic states, and several states of Central and Eastern Europe. Since the per capita emissions of Annex I countries are higher than most developing countries, and they have greater financial and institutional capacity to address climate change, the principles of equity and “common but differentiated responsibilities” embodied in the UNFCCC requires these parties to take a lead in modifying longer-term trends in emissions. ETI countries were granted some flexibility because of economic and political upheavals experienced in these countries in the 1990s. Annex I countries are required to submit regular reports called “national communications” detailing the climate change policies and measures taken by them, and an annual inventory of their greenhouse gas emissions.

Non-Annex I Parties: These are mostly developing countries and they are required to report on the actions they take to address climate change and adapt to its effects.

Annex II Parties: Countries in Annex II consist of the OECD members mentioned in Annex I, but not the EIT countries. Annex II parties are required to provide financial resources to developing countries to enable them undertake emission reduction activities under the Convention and to help them to adapt to adverse effects of climate change.

Annex B is an adjusted list of 39 countries identified under the Kyoto Protocol. Annex B countries have their reduction targets formally stated.

Conference of the Parties (COP)

Under the UNFCCC, parties meet annually at a Conference of the Parties (COP) to monitor the implementation and engage in discussion on how best to address climate change. The decisions taken by the COP in its annual meetings make up a detailed rulebook for the effective implementation of the Convention.

1.3.1 The Kyoto Protocol

In 1997 the Kyoto Protocol was adopted to operationalise the UNFCCC and came into force in February 2005. The Protocol required industrialized countries and economies in transition to make commitments to achieve quantified emission reduction targets for a basket of six GHGs. The Kyoto Protocol's commitment period (2008 - 2012) was followed by the second commitment period (2013 - 2020) agreed upon under the Doha Amendment in 2012.

Under the Kyoto Protocol, countries had to achieve their reduction targets primarily through national measures. In addition, the Kyoto Protocol also introduced three market-based mechanisms and provided countries with additional means to achieve their targets. These mechanisms were the Clean Development Mechanism, Joint Implementation, and Emissions Trading.

Clean Development Mechanism (CDM): Established under Article 12 of the Protocol, a country which has an emission-reduction or emission-limitation commitment can implement an emission-reduction project in developing countries and earn saleable Certified Emission Reduction (CER) credits. These credits, each equivalent to one tonne of CO2 (carbon dioxide), can be counted towards meeting Kyoto targets. An example of a CDM in Southeast Asia is the project of the Republic of Korea to distribute improved cooking stoves (ICS) in regions of Myanmar which are highly dependent on fuelwood for the purpose of cooking. The purpose of the project is to introduce cleaner energy by replacing traditional stoves which cause GHG emissions and indoor pollution with ICS (Clean Development Mechanism, n.d).

Joint Implementation (JI): Article 6 of the Kyoto Protocol allows a country (Annex B party) with an emission reduction or limitation commitment to earn emission reduction units (ERUs) from an emission-reduction or emission-removal project in another Annex B party. An example is the YARA Tertre Uhde 2 abatement project in Belgium whose objective was to significantly reduce levels of nitrous oxide in the production of nitric acid at YARA's plant at Tertre in Belgium. France was party to the project as an investor. (Joint Implementation, n.d.).

Emissions Trading (EI): Signatories to the Kyoto Protocol accept targets for limiting or reducing emissions. These targets are known as levels of allowed emissions. Under Article 17 of the Kyoto Protocol, countries that have emission units to spare (meaning emissions permitted to them but not "used" by them) can sell this excess capacity to countries that are over their targets. In this way, a new commodity was created in the form of emission reductions or removals. Since carbon is the principal GHG, this market is known as the "carbon market". ERU generated by a JI project, or CER generated from a CDM project can also be traded under the scheme.

1.3.2 The Paris Agreement

In 2015, at the UN Climate Change Conference (COP 21) held in Paris, a legally binding international treaty on climate change known as the Paris Agreement was adopted. The Preamble of the Paris Agreement acknowledged that climate change is a common concern of humankind, and mandated that States should:

> *"… when taking action to address climate change, respect promote and consider their respective obligations on human rights, the right to health, the right 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."*

The Paris Agreement sets long term goals of reducing greenhouse gas emissions to: hold global temperatures below 2 degrees Celsius above pre-industrial levels and pursue efforts to limit it to 1.5 degrees; periodically assessing collective progress towards achieving the long-term goals; and providing financing to developing countries to mitigate climate change, strengthen resilience and enhance abilities to adapt to climate impacts. The Paris Agreement works on a five-year cycle of progressive climate action. Every five years, each country is expected to submit an updated national climate action plan known as the Nationally Determined Contribution (NDC). In the NDC, a country has to communicate the actions that it will take to reduce greenhouse gas emissions in order to reach the goals of the Paris Agreement. Further, a country has to report on the actions that it plans to take to build resilience to adapt to the impact of rising temperatures.

Article 5 of the Paris Agreement reiterates the commitment to implement REDD+ activities. Forests absorb vast amount of carbon dioxide and if destroyed can be a source of GHG emissions. Reducing Emissions from Deforestation and Forest Degradation in Developing Countries or REDD+ is a climate mitigation solution developed under the UNFCCC. The Warsaw Framework for REDD+ was first adopted at COP 19 in Warsaw in 2013. REDD+ is aimed at activities by national governments to reduce human pressure on forests which result in emissions of greenhouse gasses at the national level. The implementation of REDD+ activities depends on the capacities and capabilities of each developing country. Under the Warsaw Framework significant resources were mobilized to enable developing countries to enhance their forest monitoring and management capacities so that they could achieve the goal of sustainable management of forests. The three phases of REDD+ implementation are: 1) development of national strategies or action plans; 2) effective implementation of national strategies and action plans; and 3) result-based payments following the verification of emission reductions.

The Paris Agreement also introduced the Article 6 framework that puts in operation the functioning of international and voluntary carbon markets. The Article 6 framework comprises two systems: a bilateral system that allows countries to trade credits to enable them to meet their decarbonisation targets (Article 6.2), and a centralized system that is open to public and private actors (Article 6.4). It is planned that the mechanisms established under the Kyoto Protocol would transition to the Article 6 framework by the year 2025.

Key Terms

Climate change mitigation refers to actions taken by governments, businesses or people to reduce or prevent greenhouse gas emissions or to enhance carbon sinks that remove these gases from the atmosphere.

Climate change adaptation refers to actions that help reduce vulnerability to the current or expected impacts of climate change.

Climate resilience refers to the capacity of a community or society to anticipate and manage climate impacts, minimize their damage and recover and transform as needed after the initial shock.

Carbon footprint is a measure of the greenhouse gas emissions released into the atmosphere by a particular person, organization, product or activity. A bigger carbon footprint indicates more emissions of carbon dioxide and methane, implying a greater contribution to the climate crisis.

Climate justice implies putting equity and human rights at the core of decision-making and action on climate change.

Climate finance refers to financial resources and instruments that are used to support action on climate change.

Net zero means ensuring that carbon dioxide released from human activity is balanced by human efforts to remove carbon dioxide emissions (such as by creating carbon sinks), thus stopping further concentrations of greenhouse gasses in the atmosphere.

Carbon sink refers to processes, activities or mechanisms that absorb more carbon dioxide from the atmosphere than they release. Forests, oceans and soils are the natural carbon sinks.

Carbon markets are trading schemes that create incentives for activities that reduce or remove greenhouse gas emissions. Emissions are quantified in the form of carbon credits that can be bought or sold. One carbon credit equals one tonne of carbon dioxide or the equivalent amount of another greenhouse gas that has been reduced, sequestered or avoided.

(Source: Climate Dictionary: An everyday guide to climate, UNDP)

1.4 Relationship between Climate Change and Human Rights

In 2008 the UN Human Rights Council, recognising that climate change had implications for the full enjoyment of human rights, requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to conduct a detailed analytical study on the relationship between climate change and human rights (Human Rights Council, 2008). As requested, the OHCHR conducted the study in consultation with States, intergovernmental organizations, national human rights institutions, non-governmental organizations and individual experts, and presented its report in 2009 (Office of the United Nations High Commissioner for Human Rights [OHCHR], 2009). The report outlined the relationship between climate change and human rights. A summary of the report is presented in Table 2. In 2021 the Human Rights Council established the mandate of a Special Rapporteur on the promotion and protection of human rights in the context of climate change (Human Rights Council, 2021)

Table 2: Relationship between climate change and human rights (Summarised from Report of OHCHR, 2009)

Human Rights Impacted by Climate Change	Nature of Impact by Climate Change
Right to life	Heat waves, floods, storms and droughts that may be caused by climate change may result in human suffering, death, disease, hunger, malnutrition etc. impacting the right to life, particularly in the developing world.
Right to food	Climate change may decrease crop productivity, increasing the risks of hunger and food insecurity in developing countries as they are disproportionately dependant on climate sensitive resources for their foods and livelihoods.
Right to water	Loss of glaciers and reduction in snow cover may affect water availability. Extreme weather conditions such as drought and flooding may also impact water supplies. Thus climate change will increase stress on water resources, especially safe drinking water.
Right to health	Climate change may increase malnutrition and disease. Increased vulnerabilities with respect to health may reduce the capacity of individuals and groups to adapt to climate change.
Right to adequate housing	A rise in sea levels and an increase in the number and intensity of storms will impact coastal settlements, requiring relocation of peoples and communities. Erosion of livelihoods caused by climate change may act as a push factor for rural to urban migration leading to increased numbers of informal settlements in urban areas. People living in such informal settlements are vulnerable to forced evictions.
Right to self-determination	Rising sea levels threaten the habitability and territorial existence of a number of low-lying states. Climate change also threatens to deprive indigenous peoples of their territories and sources of livelihood. The disappearance of small island states will impact the right to self-determination.
Interlinked issues	
Women:	Existing gender discrimination and inequality make women especially vulnerable to climate change related risks. Such vulnerability is exacerbated by factors such as unequal rights to property, exclusion from decision making and difficulties in accessing information and financial services.
Children:	The health burden of climate change may mostly be borne by children, as malnutrition, infant and child mortality and morbidity may increase. Stress on livelihoods may impact on children's ability to attend school, particularly girl children.
Indigenous Peoples	Indigenous peoples living in fragile ecosystems may be particularly vulnerable to the risks of climate change such as loss of traditional lands and livelihoods upon which their cultural identity is dependent.
Displacement	The greatest impact of climate change may be on human migration. It is estimated that by 2050, 150 million people may be displaced by climate change related phenomena.
Conflict and security risks	It is estimated that the interaction of climate change with economic, social and political problems will create a high risk of violent conflict. Such conflicts could be one of the drivers of forced displacement.

Human Rights Impacted by Climate Change	Nature of Impact by Climate Change
Climate change response measures	Climate change response measures adopted under the UNFCCC and the Kyoto Protocol may also have human rights implications. For example, agro-fuel production has been adopted as a mitigation measure. However, agro-fuels contribute to increased prices of food commodities as it puts pressure on scarce arable land and creates competition whether such land is to be used for food, feed or fuel. The demand for biofuels may also lead to increased encroachment into indigenous lands.

1.5 Right to a Safe, Clean, Healthy and Sustainable Environment

In 2021, the Human Rights Council recognised the right to a safe, clean, healthy and sustainable environment as a human right (Human Rights Council, 2021b). It also established the mandate of a Special Rapporteur on the promotion and protection of human rights in the context of climate change (Human Rights Council, 2021).

The right to a clean, healthy and sustainable environment includes two sets of rights (Knox, 2012):

a. Substantive rights, or rights whose enjoyment is particularly vulnerable to environmental degradation. These include clean air, safe and sufficient water, healthy and sustainably produced food, healthy ecosystems and biodiversity, a safe climate, and a toxic-free environment.

b. Procedural rights or rights whose exercise support better environmental policymaking. These include: access to information, participation in decision-making, and access to justice with effective remedies.

While the elements of procedural rights are common to all rights, different elements of the substantive rights are interlinked and interdependent.

Table 3: Rights and obligations: right to a safe, clean, healthy and sustainable environment

Substantive Rights					
1. Right to clean air Exposure to polluted air causes a wide range of health effects (right to health).	**2. Right to safe and sufficient water** Safe and sufficient water is necessary for good health and food security.	**3. Right to healthy and sustainably produced food** Food systems support livelihoods. Highly processed, nutrient-poor foods impact the right to health.	**4. Right to healthy eco systems and biodiversity :** Human rights depend on a healthy biosphere. A healthy biosphere protects the rights to food, health and water.	**5. Right to a safe climate** Climate change creates adverse health impacts (right to health), impacts food production and food security (right to food), and threatens sanitation (right to water).	**6. Right to a non toxic environment: free from pollution and toxic substances**
Intersectionality: People whose vulnerabilities are caused by poverty, gender, age, disability, geography and cultural or ethnic backgrounds are disproportionately impacted by harm caused to the environment.					

Generic State Obligations: **Obligation to respect:** States must not violate the right to a safe, clean, healthy and sustainable environment. **Obligation to protect:** States must protect the right to a safe, clean, healthy and sustainable environment from being violated by third parties, particularly businesses. The United Nations Guiding Principles on Business and Human Rights clarifies the States' obligation to protect, and business' obligation to respect human rights in their operations. **Obligation to fulfill:** States must establish, implement and enforce laws, policies and programmes to fulfil the right to a safe, clean, healthy and sustainable environment.
Procedural rights and State obligations: **Right to information:** States should provide the public with accessible, affordable and understandable information. **Right to participation:** States should ensure inclusive, equitable and gender-based public participation. In order to facilitate participation assessments should be conducted to assess potential environmental, social, health, cultural and human rights impacts of plans, policies and proposals. Such impact assessment reports should be made public. **Right to access justice:** States should enable affordable and easy access to justice by all. States should provide for effective remedies against violation of rights by States and businesses. Furthermore, States should provide strong protections for environment and human rights defenders. **Gender equality**: States should integrate gender equality in all actions. **Indigenous Peoples:** States should respect the rights of indigenous peoples.

Apart from the generic obligations identified in the above table, the Special Rapporteur on human rights and the environment has identified a set of framework principles outlining the obligations of States in relation to the right to a safe, clean, healthy and sustainable environment (Knox, 2018). The principles are grounded in the understanding that human rights and environmental protection are interdependent. While a safe, clean, healthy and sustainable environment is necessary for the full enjoyment of human rights (such as the rights to life, to health, to an adequate standard of living, to water, and to culture), at the same time enjoyment of rights such as the rights to freedom of speech, to association, and to education are vital to the protection of the environment.

Focus On: Framework principles regarding obligations of states with respect to the right to a safe, clean, healthy and sustainable environment

1. States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfill human rights.
2. States should respect, protect and fulfill human rights in order to ensure a safe, clean, healthy and sustainable environment.
3. States should prohibit discrimination and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy and sustainable environment.
4. States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.
5. States should respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters.

6. States should provide for indication and public awareness on environmental matters.
7. States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request.
8. States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects the enjoyment of human rights,
9. States should provide for and facilitate public participation in decision-making related to the environment and take the views of the public into account in their decision-making processes.
10. States should provide access to effective remedies for violations of human rights and domestic laws relating to the environment.
11. States should establish and maintain substantive environmental standards that are non-discriminatory, non-retrogressive and which respect, protect and fulfill human rights.
12. States should ensure the effective enforcement of their environmental standards against public and private actors.
13. States should cooperate with each other to establish, maintain and enforce effective international legal frameworks in order to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights.
14. States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.
15. States should ensure that they comply with their obligations to indigenous peoples and members of their traditional communities by: recognising and protecting their rights to their lands; consulting with them and obtaining their free, prior and informed consent; respecting and protecting their traditional knowledge and practices in relation to conservation and sustainable use of their lands; and ensuring that they get a fair and equitable share of the benefits from activities relating to their lands, territories or resources.
16. States should respect, protect and fulfill human rights in the actions they take to address environmental challenges and pursue sustainable development.

1.6 Environmental Rule of Law

Since the 1972 Stockholm Declaration was adopted, many countries adopted laws on the environment and institutional mechanisms to oversee their implementation. While much progress has been made to address environmental degradation, considerable implementation gaps were also identified in both developed and developing countries, between requirements under environmental laws and their implementation and enforcement. To address such an implementation gap, the concept of environmental rule of law was articulated.

Simply, environmental rule of law integrates the essential elements of the rule of law with critical environmental needs and provides the foundation for environmental governance. Thus, environmental rule of law holds that:

"all entities are equally accountable to publicly promulgated, independently adjudicated laws that are consistent with international norms and standards for sustaining the planet"

(UNEP, 2019).

The concept of environmental rule of law reaffirms the importance of the rule of law in the field of the environment and helps to strengthen the mechanisms for environmental protection.

1.7 Sustainable Development Goals

In 2012, the United Nations Conference on Sustainable Development (Rio+20) was held in Brazil. The outcome document, "The Future We Want," adopted at the conference contained the commitment to develop a set of sustainable development goals to build upon the achievements of the millennium development goals. Subsequently, in 2015, the United Nations Member States adopted the 2030 Agenda for Sustainable Development. The 2030 Agenda was structured around the five pillars of people, planet, prosperity, peace and partnership. With a focus on economic growth, social inclusion and environment protection, the 2030 Agenda outlined 17 interconnected goals (also known as Sustainable Development Goals or SDGs) for action by governments.

Focus On: Five Ps of the 2030 Agenda for Sustainable Development

- People: declaring the determination to end poverty and hunger in all forms and dimensions and to ensure that human beings can fulfill their potentials in dignity, equality and in a healthy environment.
- Planet: declaring the determination to protect the planet from degradation through sustainable consumption and production, sustainably managing its natural resources and taking urgent action on climate change so that the plant can support present and future generations.
- Prosperity: declaring the determination that all human beings can enjoy prosperous and fulfilling lives and that economic, social and technological progress occurs in harmony and with nature.
- Peace: declaring the determination to foster peaceful, just and inclusive societies which are free from fear and violence.
- Partnership: declaring the determination to mobilize the means required to implement the agenda.

Implicit in the 2030 Agenda was the recognition that climate change was adversely impacting food and water security, public health, migration, and peace. There was acknowledgement that if no actions were taken to address climate change, the gains made with regard to development in past decades would be slowly eroded. Thus, the 2030 Agenda put the focus on sustainable development and identified goals that would not only address the core drivers of climate change, but also strengthen capacities to address climate change and mitigate its impacts. The 2030 Agenda is not legally binding. However, States are expected to develop relevant policies, plans and programs for achieving the 17 SDGs. The targets developed under each goal, and the global indicator framework act as guidelines for implementation of the SDGs at the national level. Based on the global framework, governments are expected to develop their own set of indicators for action at the national level. A High-Level Political Forum known as the SDG Summit is held by the UN General Assembly every four years. At the Second SDG Summit held in 2023, the world leaders noted:

"The achievement of the SDGs is in peril. At the midpoint of the 2030 Agenda, we are alarmed that the progress on most of the SDGs is either moving much too slowly or has regressed below the 2015 baseline. Our world is currently facing numerous crises. Years of sustainable development gains are being reversed. Millions of people have fallen into poverty, hunger and malnutrition are becoming more prevalent, humanitarian needs are rising, and the impacts of climate change are more pronounced. This has led to increased inequality exacerbated by weakened international solidarity and a shortfall of trust to jointly overcome these crises"

General Assembly, 2023, para. 8).

With these words, the world leaders renewed their commitment to implement the 2030 Agenda and to revitalize global partnerships towards that end.

1.8 Standards and Instruments in ASEAN

With the problem of transboundary haze, ASEAN has experienced the brunt of environmental degradation. Rising sea levels and global temperatures makes the region, with its long coastlines and heavily populated low-lying areas, highly vulnerable to the impact of climate change. It has long taken cognisance of these challenges and has been making statements as a regional body at the COPs to share the concerns of the ASEAN Member States. The main instruments, frameworks and mechanism adopted by ASEAN relating to the interlinking issues of human rights, environment and climate change are:

- The ASEAN Agreement on Transboundary Haze Pollution 2002, adopted with the objective of preventing and monitoring haze pollution through concerted national efforts and regional and international co-operation under the overall context of sustainable development.
- The ASEAN Human Rights Declaration adopted in 2012 recognises the right to a safe, clean and sustainable environment (Article 28 f). It also recognises the right to development and states that the right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations (Article 35).
- The ASEAN Community Vision 2025 was launched at the 27th ASEAN Summit in 2015. Underlining the complementarity with the United Nations 2030 Agenda for Sustainable Development, the ASEAN Community Vision outlined the road maps for the three pillars of the ASEAN Community: the ASEAN Political-Security Community, the ASEAN Economic Community and the ASEAN Socio-Cultural Community. The Vision of the ASEAN Socio-Cultural Community focuses on human rights, environmental protection and addressing climate change.

Focus On: ASEAN Socio-Cultural Community: ASEAN Community Vision 2025

11. Our ASEAN Socio-Cultural Community by 2025 shall be one that engages and benefits the peoples, and is inclusive, sustainable, resilient and dynamic.
12. We, therefore, undertake to realize:
    - 12.1. A committed, participative and socially responsible community through an accountable and inclusive mechanism for the benefit of our peoples, upheld by the principles of good governance.
    - 12.2. An inclusive community that promotes high quality of life, equitable access to opportunities for all and promotes and protects the human rights of women, children, youth, the elderly/older persons, persons with disabilities, migrant workers and vulnerable and marginalized groups.
    - 12.3. A sustainable community that promotes social development and environmental protection through effective mechanisms to meet the current and future needs of our peoples.
    - 12.4. 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; and
    - 12.5. A dynamic and harmonious community that is aware and proud of its identity, culture, and heritage with the strengthened ability to innovate and proactively contribute to the global community.

- Declaration on ASEAN Post-2015 Environmental Sustainability and Climate Change Agenda adopted in November 2015 at the 27th ASEAN Summit. The Declaration affirmed ASEAN's commitment to work towards achieving the Sustainable Development Goals and support global efforts towards addressing climate change.
- The ASEAN State of the Environment Report (SOER) published by the ASEAN Senior Officials on Environment every 3-5 years presents a comprehensive review of the situation of the environment, the pressures on it, the structural factors that impact the environment, and national and regional initiatives taken to address environmental concerns in ASEAN. The main purpose of the SOER is to provide information on environmental issues to the public and to decision-makers. The Sixth SOER was published in 2023. It assessed the progress and contribution towards the ASEAN Community Vision 2025, the Sustainable Development Goals (SDGs), the Paris Agreement of the United Nations Framework Convention on Climate Change (UNFCCC), and other multilateral environmental agreements (ASEAN Secretariat, 2023).
- The ASEAN State of Climate Change Report. Under the Chairmanship of Brunei in 2021, ASEAN identified climate change as one of its regional priorities. In the same year it launched the ASEAN State of Climate Change Report (ASEAN Secretariat, 2021). The report aimed to provide an overview on the state of play of climate change in the ASEAN region, and to support the policy-making process of ASEAN member states as well as ASEAN as a regional organization. The report, to be published periodically, also aims to contribute to the periodic global stocktaking exercise under the Paris Agreement and assess the collective progress towards achieving the goals under the Agreement.

- The ASEAN Intergovernmental Commission on Human Rights established the ASEAN Environmental Rights Working Group in 2022 with the purpose of developing a regional framework or an appropriate document on environmental rights for further consideration by ASEAN Sectoral Bodies before adoption by leaders of ASEAN.

1.9 Conclusion

As seen in this chapter, norms and standards relating to the environment, climate change and human rights have evolved slowly over the years. In the 1970s, the focus was on protection of the environment from degradation by human activities. In the late 1980s a consciousness emerged that the earth and its resources could not be "exploited" indiscriminately, and that people had an obligation to preserve life on the planet for future generations as well. Thus, the concept of "sustainable development" emerged. By the beginning of the 21st century, consciousness had also developed over the phenomena of climate change and mechanisms to reduce emissions of greenhouse gasses started evolving through discussion and dialogue among the international community. Regional intergovernmental organizations such as ASEAN also played an important role in shaping these discussions. By 2010, the adverse impact of climate change on the enjoyment of the rights of the people could no longer be ignored, and the United Nations Human Rights Council started focussing attention on the links between climate change and rights. It took ten more years for the Human Rights Council to recognise the right to a safe, clean, healthy and sustainable environment as a human right. This chapter has also highlighted some tensions, such as the role of transnational business entities with regard to obligations in protecting the environment and human rights. Though the Stockholm Declaration mentioned the need to address the release of pollutants into the atmosphere, it refrained from identifying the duty bearers in this regard. It was critiqued that one of the reasons why Agenda 21 accompanying the Rio Declaration failed to achieve the desired objectives was because of its failure to address the role and impact of transnational corporations in furthering sustainable development. In the 21st century, this challenge has been addressed through the development of standards on business and human rights, or responsible business. Lastly, the 2030 Sustainable Development Agenda through its 17 goals interlinks human rights (in terms of social inclusion, access to justice), economic growth and environmental protection and lays down a path for concerted action.

A. Questions

What were the main highlights of the Stockholm Declaration? On what issues was there tension between developed and developing countries?

Explain the precautionary principle and the polluter pays principle?

What are the main principles governing the United Nations Framework Convention on Climate Change?

In what ways does climate change impact human rights?

The right to a safe, clean, healthy and sustainable environment contains both substantive and procedural rights. Explain these rights with examples.

Explain the concept of sustainable development. Give a short explanation on the 2030 Agenda for Sustainable Development and its connections with human rights and climate change.

Describe some of the instruments and mechanisms adopted by ASEAN to address human rights, the environment and climate change.

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Chapter 2

Gender, Ecofeminism and Climate Governance

Melizel Asuncion and Tesa Casal de Vela

Reader's Guide

The degrading state of the ecology, the dehumanizing conditions of poverty, and the normalized culture of violence, are urgent and desperate calls for change. Within this context and call for genuine social transformation, discussions on gender, feminism, and climate governance are presented for critical reflection and scrutiny. This chapter presents two general approaches to gender/feminism and climate governance.

First is the gender-differentiated approach, which refers to initiatives that seek to identify, examine, and respond to the differentiated impact that climate change has on women and men. This approach often highlights the risks and vulnerabilities that women from marginalized sectors of society experience because of climate change. It also examines and seeks to address the gender inequalities that shape the division of work at the community level, further exacerbated by climate change. Lastly, this approach challenges the gender inequalities in decision-making processes that respond to climate change, and places emphasis on the importance of women's agency and leadership for local and global actions in building climate change resilience.

The second approach is the postcolonial ecological feminist interrogation of dominant climate change actions and discourses. This approach resists the normative neoliberal frameworks that have de-politicized the public discourse on climate change. Instead, it puts forward an ecological political counter-discourse, largely shaped by the principles and practices of ecological feminism as experienced by the Global South/Majority World.

In examining these two general approaches, this chapter begins with an overview of three key concepts, namely, gender-differentiation, postcolonialism, and ecological feminism.

2.1 Key Concepts and Theories

While the term **gender differentiation** broadly refers to the differences in the status and lived realities of females and males, this chapter focuses on the dimension of gender inequality within gender differentiation. It adopts the way in which gender differentiation is applied in Nussbaum's capabilities approach to human development discourse, where she asserts that "unequal social and political circumstances give women unequal human capabilities" (Nussbaum, 2000). The social, pollical, and economic inequalities in the gender-differentiated circumstances in relation to climate governance are deemed imperative to understanding and addressing climate change in the region.

The term **postcolonial** is another key term used in this chapter to refer in a general way to the centrality of a country's colonial history when endeavoring to interpret the contemporary issues it confronts. Contrary to the common usage of the prefix "post-", postcolonial thought does not refer to the period after the end of colonialism, rather it refers to the persistent presence of a colonial mentality, structures, and practices, despite the formal decolonization of states in the region. Among the lingering remnants of postcolonialism are the social constructs of its binary analytics, which positioned "West as best". An elaboration of such postcolonial thought can be found in the work of Chandra Mohanty in her essay Under Western Eyes: Feminist Scholarship and Colonial Discourses (1988).

The third key concept is **ecological feminism** or **ecofeminism**. Ecofeminism was introduced in the early nineties by Maria Mies and Vandana Shiva (1993), i.e. around the time of the United Nations Earth Summit in Rio de Janeiro. It emerged as both a form of activism and as a theoretical discourse that resists and critiques the hegemonic global order. As a framework, ecofeminism highlights the connectedness of the exploitative power relations founded on and reproduced by the free market system, patriarchal values and beliefs, and western imperialist ideologies. Through the years, this capitalist, patriarchal, and imperialist superstructure has evolved into what we refer to as neoliberalism. Ecofeminist discourses and actions on climate change are inevitably counter-discourses that resist the neoliberal development strategies that have shaped the dominant climate governance discourse.

2.2 Desired Outcomes

The chapter hopes to spark debate and facilitate critical discussion on the nature of these two approaches, namely gender-differentiated and postcolonial ecofeminism, and their implications for shaping climate governance and upholding human rights and meaningful peace in the region.

2.3 The Gender-Differentiated Approach to Environment and Climate Change

The gender-differentiated approach is best understood when illustrating the inequalities and inequities of mitigating the impact of climate change. Climate change affects, and will affect everyone, but to varying degrees and intensities. Sex-segregated data of research studies in the last two decades have shown that climate change negatively and disproportionately affects marginalized and vulnerable groups, particularly women of low economic status. It has had the added impact of intensifying gender inequalities, discrimination, and gender-based violence, reinforcing and even widening systemic gender gaps.

In a 2007 UNDP report, it was shown that women's more unfavorable position, reflected in limited access to resources and absence from decision-making, makes women extremely vulnerable to the effects of climate change, which can in turn increase existing inequalities.

In prefacing a focus on gender in the Philippine national climate change action plan, for instance, it was recognized that women's vulnerability to different climate-related events arises from their roles, where women are located, their capacity to influence how decisions are made and how resources are allocated (Republic of the Philippines, Climate Change Commission, 2010). It cited the following situations:

- Women manage, control and own fewer resources – especially land – than men. Thus, when harvests collapse either because of floods or droughts, women have fewer assets to sell to cope with the situation.
- Women are the main borrowers in agricultural households because they have greater access to micro-credit and are under strong pressure to bridge resource gaps. Hence, more women than men fall into chronic indebtedness related to climate-induced crop failures.
- When food shortages arise from poor harvests linked to weather problems, women are the last to eat in their households, prioritizing the food needs of male household members and children over their own.

The United Nations Environmental Programme (UNEP) was formed in 1972, and although the Convention on the Elimination of Discrimination Against Women (CEDAW) in 1979 already referred to equality between women and men, including in development planning, political representation, and participation in the formulation of policies, it was not until 1992, through the UN Conference on Environment and Development Agenda 21 that the role of women and youth in sustainable and equitable development was explicitly recognized as a global political commitment on development and environmental cooperation. This was followed by the Beijing Platform for Action in 1995 that adopted gender mainstreaming as a strategy to promote gender equality.

This set the framework for how gender is seen in environmental policymaking and subsequently in climate change discourse, where the emphasis was on the disproportionate effects of environmental degradation and climate change on women, how these exacerbate gender inequality, and the role of women in conservation, biodiversity, environmental protection, and climate action. During this decade, gender action plans were formulated by various UN environmental agencies to support the goal of greater gender equality. The following section highlights five key gender-differentiated approaches that were developed under the UN architecture, namely: (i) the Convention on Biological Diversity (CBD) Gender Plan of Action (2015-2020); (ii) the Post-2020 Framework: Adopting a Gender-Responsive Approach; (iii) the UN Convention to Combat Desertification (UNCCD) Gender Action Plan (2017); (iv) the United Nations Framework Convention on Climate Change (UNFCCC) Gender Action Plan (2017); and (v) the Enhanced Five-Year Lima Work Programme on Gender (2019).

2.3.1 Convention on Biological Diversity Gender Plan of Action (2015-2020)

The current Gender Plan of Action (2015-2020) was an update of the 2008 plan to align with the Strategic Plan for Biodiversity (2011-2020) and its Aichi Biodiversity Targets. The plan includes four strategic objectives in integrating gender in the implementation of the CBD, which State parties are requested to report on:

1. to mainstream a gender perspective in the implementation of the Convention and the associated work of Parties and the Secretariat;
2. to promote gender equality in achieving the objectives of the Convention, the Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets;
3. to demonstrate the benefits of gender mainstreaming in measures towards the conservation of biodiversity, the sustainable use of the components of biodiversity and the fair and equitable sharing of benefits arising out of the utilization of genetic resources; and
4. to increase the effectiveness of the work under the Convention.

In April 2020, a review of the CBD Gender Action Plan (2015-2020) was conducted, and concluded that:

> *"The analysis of sixth national reports and the survey data suggests that there is increasing awareness and understanding among Parties of gender and biodiversity linkages and the relevant steps that need to be taken to enable more gender-responsive implementation of actions to halt biodiversity loss. However, Parties' efforts need to be maintained and strengthened, including through developing the capacity of policymakers and practitioners, engaging partners, collecting and applying relevant data and allocating adequate financing, to ensure stronger and sustained outcomes for gender and biodiversity going forward. … Persistent challenges include lack of gender-disaggregated data, availability of financing, and insufficient capacity to address, monitor and report on gender-responsive measures to halt biodiversity loss."*

2.3.2 Post-2020 Framework: adopting a gender-responsive approach

In articulating the CBD Post-2020 Framework, the adoption of a gender-responsive approach was indicated. It was defined as an approach "that moves beyond only identifying or raising awareness of gender issues ("do no harm"), to taking measures to actively address gender inequalities ("do better")." It elaborated further that:

> *Through this approach women may move from being considered only as vulnerable stakeholders, to being valued as active biodiversity stewards, managers and agents of change. … Increasingly, efforts to address gender considerations in respect to biodiversity and environmental issues emphasize women's roles and contributions as agents of change, to support the achievement of biodiversity and environmental objectives. This goes beyond considering women as only vulnerable, and emphasizes the need for approaches to ensure women have the capacity, resources and opportunity to contribute to biodiversity conservation and sustainable use, as well as ensuring a rights-based approach to access to ecosystem services and biological resources. … Ensuring that women play a full and equal role in these activities requires that they have equal access, ownership and control over biological resources and associated benefits. Equitable access to land, water and resources and distribution of equitable benefits from nature, are therefore important considerations in fulfilling the vision of delivering benefits essential for all people. (CBD/WG2020/1/INF/1 27 July 2019)*

Focus On: Gender responsive approach

Gender Responsive: A term used to describe laws, policies, programmes and public services that are formulated and/or delivered to: (a) take into account existing structures and relations of gender inequality and seek proactively to overcome and remove them; (b) identify and bring attention to women's contributions and critical roles as agents and leaders, in order to facilitate gender equality, the empowerment of women and women's enjoyment of human rights.

Elements of a gender-responsive approach

Stakeholder consultation: identifying women and men likely to be affected by project activities, and ensuring inclusive, equal and effective participation and decision-making opportunities across the project cycle. To help ensure equal and effective participation of women, this may necessarily involve building the awareness and capacity of women respondents/stakeholders to engage the issue and process, and arranging for travel funds to physically bring women stakeholders to meeting venues.

- Gender analysis: collection and analysis of sex-disaggregated data and gender information to inform project design, implementation, monitoring and evaluation.
- Gender-responsive action: ensuring project activities proactively address gender differences and promote gender equality and women's empowerment.
- Gender-responsive monitoring and evaluation: identifying and incorporating gender-sensitive indicators and targets to measure project results in monitoring, evaluation, reporting and learning

2.3.3 United Nations Convention to Combat Desertification (UNCCD) Gender Action Plan (2017)

The UNCCD Gender Action Plan was formed as an outcome of decision 30/COP.13 to support and enhance the implementation of the gender-related decisions and mandates adopted in the UNCCD process. In defining the importance of including the gender aspect in addressing land degradation, the plan says:

> *When land is degraded and usable land becomes scarce, women are uniquely and differentially affected due to their substantial role in agriculture and food production, their reliance on forests, their greater vulnerability to poverty, and their typically weaker legal protection and social status.*
>
> *The fact that almost a third of women's employment globally is in agriculture and that women are at the frontline, struggling to salvage the large area of agricultural land already affected by degradation makes women and girls the most natural allies in implementing UNCCD.*
>
> *Building effective responses to combat desertification, land degradation and drought (DLDD) requires an understanding of how gender inequality affects multiple issues:*
>
> *Access to, and control of, resources and knowledge*
> *Institutional structures*
> *Social, cultural and formal networks*
> *Decision-making processes*

Therefore, women's input, knowledge and guidance are indispensable to any productive, sustainable efforts to avoid, reduce and reverse degraded land as mandated under the UNCCD. When women are empowered, entire families benefit, and these benefits often have an effect on future generations.

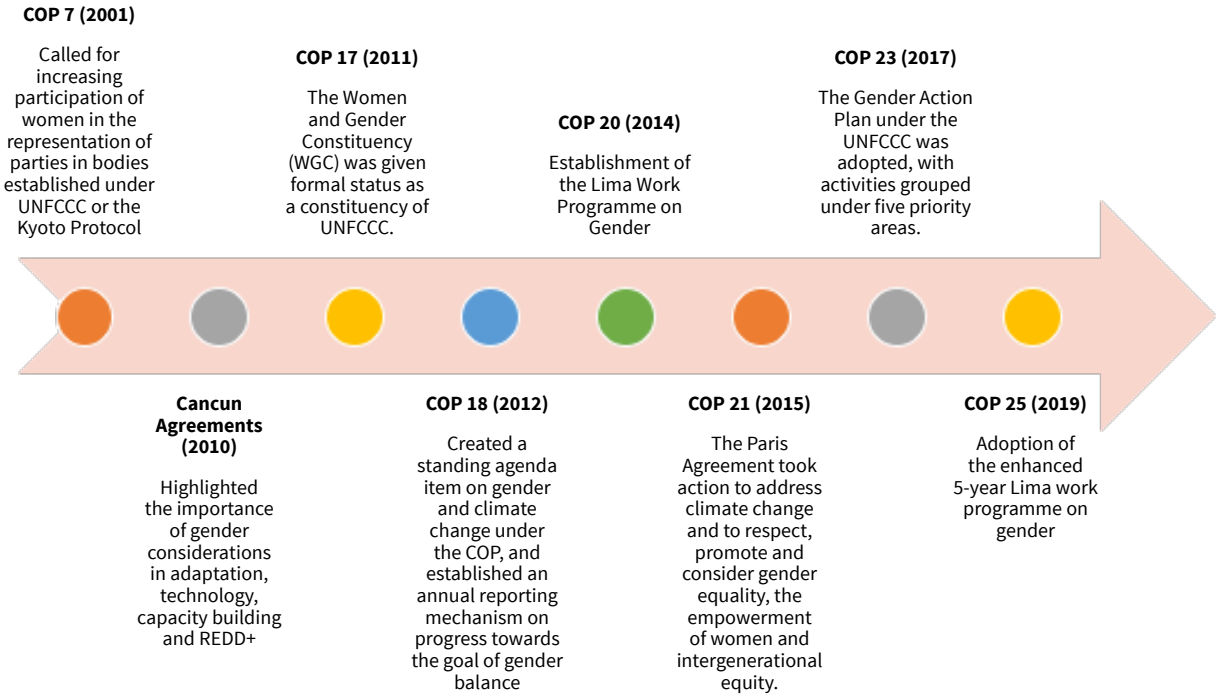
(https://www2.unccd.int/actions/gender-action-plan)

Compared to the CBD approach, the UNCCD is more sophisticated in its understanding of the systemic issues faced by women affected by increased desertification: (a) women rarely own land so their access to critical resources is mediated by their relationship with men, which makes it difficult to access credit without their husband's or father's cooperation, for example; (b) women are generally engaged in subsistence and small economies so they are less able to easily migrate from areas affected by drought and desertification; and (c) women continue to bear the majority of care responsibilities, even as they are expected to contribute to the family's income.

2.3.4 United Nations Framework Convention on Climate Change (UNFCCC) Gender Action Plan (2017)

There are no specific gender equality provisions in the United Nations Framework Convention on Climate Change (UNFCCC) or the Kyoto Protocol, so to ensure the integration of gender perspectives within the UNFCCC, a Gender Action Plan was adopted in Bonn in 2017 by UNFCCC signatories and includes the following areas(Baćanović and Murić, 2018):

1. **Capacity-building, knowledge sharing and communication** to enhance understanding and dissemination of knowledge on gender aspects of climate change and to provide a gender perspective in the application of international documents and national measures;
2. **Gender balance, participation and women's leadership** in the processes of decision-making, creation and implementation of policies, as well as all other activities in the implementation of the UNFCCC;
3. **Coherence,** that is, the coherence and coordination of the activities of all bodies and stake-holders;
4. **Gender-responsive implementation and means of implementation** by which all measures and also the means of implementation must be planned and implemented in a gender-responsive manner;
5. **Monitoring and reporting** to include gender aspects in monitoring of all activities related to the Convention.



2.3.5 Enhanced Five-Year Lima Work Programme on Gender (2019)

At COP 25, Parties agreed on the five-year enhanced Lima work programme on gender and its gender action plan (FCCC/CP/2019/13/Add.1). It adopted the same objectives and priority areas as the original Lima work programme, and committed to specific activities in the gender action plan.

In line with the UNFCCC mandates including the gender action plan, Parties are expected to develop their national action plans. Below is a short discussion of the national action plans from the Philippines and Indonesia, two countries in Southeast Asia that are identified as most vulnerable to climate change. The area of inquiry below is how much gender has been mainstreamed in national climate change policies.

2.3.6 Gender and climate change in ASEAN

ASEAN is very much aligned with the international community in understanding that climate change impacts are gendered and that climate action needs the knowledge and lived experiences of women and girls to make it sustainable. Its main strategy is to advance from gender-responsive to gender-transformative measures particularly in terms of delineating structural inequalities that impede gender equality and social inclusion.

The most recent reports on this are the ASEAN State of Climate Change Report (October 2021) and the State of Gender Equality and Climate Change in ASEAN (2022). Annex 1 of the State of Gender Equality and Climate Change in ASEAN is a gender review of regional climate change and gender-related policy documents in ASEAN (pp. 114-123) that evaluates how much gender has been integrated into key ASEAN policies and framework documents.

Case Study: Gender in national climate change policies, Philippines

In 2009, the Philippines enacted into law the Climate Change Act (Republic Act 9729) that mainstreams climate change into government policy formulations, establishes the framework strategy and programme on climate change, and creates the Climate Change Commission. In line with this, the National Climate Change Action Plan (2011-2028) was drawn up. Given how the Philippines is extremely vulnerable to climate change, the Philippines formulated its framework strategies and actions towards adaptation and mitigation.

Consistent with the National Framework Strategy on Climate Change, the action plan's ultimate goal is to build the adaptive capacities of women and men in their communities, increase the resilience of vulnerable sectors and natural ecosystems to climate change, and optimize mitigation opportunities towards gender-responsive and rights-based sustainable development. The action plan has the following seven (7) priorities: food security, water sufficiency, ecological and environmental stability, human security, climate-friendly industries and services, sustainable energy and knowledge and capacity building. In addition to specific mention of gender considerations under human security and knowledge and capacity building, the action plan recognizes gender and development as a cross-cutting issue.

Overall, the gender-focused methodology can be classified into three types:

1. Gendered vulnerability and risk assessments
2. Development of gender-based knowledge products, like gender-fair innovative financing mechanisms
3. Dissemination of gendered information, education and communication material on climate change adaptation, mitigation and disaster risk reduction

Recognizing Filipino women's specific vulnerability to climate change due to historical marginalization and systematic impoverishment, gender will be highlighted in the following areas:

1. *Research and Development*: To improve the understanding of gender and climate change, the plan will:
    a. conduct gender impact analyses to identify gender-specific needs and protection measures related to floods, droughts and other climate change-related disasters particularly those that enhance food security along the framework of sustainable agriculture and organic farming; and
    b. conduct gendered vulnerability and adaptation assessments, which require that the assessments integrate gender analyses to identify specific the vulnerabilities of men and women.
2. *Planning and Policy Making:* Gender mainstreaming will be done at all levels of planning and programming for climate change adaptation and mitigation as well as in disaster risk reduction management, and financial instruments and mechanisms.
3. *Knowledge and Capacity Development:* The NCCAP recognizes that planned activities on capacity and knowledge development must enhance the roles and status of women as participants and agents of change, build on their strengths and experiences, knowledge and coping capacity, and ensure women's access to information.
4. *Enhancing Women's Participation in Climate Change Adaptation:* Actions on food security, green jobs, and integrated ecosystem-based management should be able to strengthen women's participation, ensure poor women's access to livelihood opportunities, and ensure women's access to assets.

Aligning with the Magna Carta of Women (Republic Act 9170) which institutionalized gender mainstreaming as the national strategy for women's empowerment and gender equality, the Commission works closely with the Philippine Commission on Women (PCW) to strengthen the implementation of gender mainstreaming in the action plan itself and the programme implementers' capacities on engendering climate actions.

In 2019, the Commission released its Gender Mainstreaming Evaluation Framework (GMEF) which highlighted the efforts done to ensure that climate actions are gender-responsive, but which eventually concluded that gender is not yet fully mainstreamed, eight (8) years after the action plan was formulated. Key areas for improvement were identified:

- Develop and adopt a Gender and Development (GAD) Agenda/ Strategic Framework;
- Increase the participation of top management in GAD basic trainings;
- Ensure that all programme focal persons are trained in gender analysis and tools;
- Collect sex-disaggregated data and gender statistics to be utilized in gender analysis;
- Make the GAD database readily accessible to all stakeholders;
- Conduct deepening sessions on GAD for staff;
- Incorporate a gender perspective in the Commission's human resource orientation module.

In terms of financial resources, ten (10) percent of the Climate Change Commission's budget is allotted for Gender and Development. In 2021, it was able to utilize only 31.76% of the allotted budget - which was equivalent to only 3.20% of the total budget of the Commission – with the following results: only one (1) activity was conducted that involved the collection of sex-disaggregated data, a few information materials published and one (1) gender sensitivity training was partially done, with the Gender and Development Agenda still not done.

While the Philippines is ahead of other Southeast Asian countries in integrating gender in climate action, particularly in the agricultural sector, several issues remain.

There is a gap between policy ambitions and meaningful implementation: Stakeholders interviewed for this report said there are challenges in gender mainstreaming and integration in climate action. Limited gender issues have been taken into consideration in policy processes because of limited awareness of women's legal rights, including their entitlement to membership in decision-making bodies. This is a broader issue, but particularly visible in agriculture (Ani and Casasola 2020). Such challenges are also greater in rural areas than in cities, as the process of gender integration there is slower.

Persistent gender norms hinder effective gender integration: Interviewees said women's contributions to rice farming or fisheries are often regarded as an extension of their domestic tasks and thus rendered invisible. Furthermore, due to predefined gender roles, women have limited opportunities to participate in skills training or decision-making in their communities. They also mentioned that women are considered "weak" and hence obstructed from participating in more technical activities, such as developing irrigation systems. Many see women as caregivers and housewives rather than as farmers and fisherfolk.

Lack of awareness and capacity around integration of gender issues: Those norms can also lead to general unawareness about integrating gender in climate change, within implementing agencies and at the community level. As one interviewee pointed out, in the communities there is little awareness about the harm done by gender stereotypes, because they have been present for centuries. From a policy perspective, an interviewee said those responsible for implementing projects do not always recognize the need to integrate gender in every project and programme.

Case Study: Gender in national climate change policies, Indonesia

Climate change is anticipated to have a significant impact on Indonesia manifesting in extreme weather events, loss of critical biodiversity, and loss of livelihood due to forest fires, crop failures and clean water shortages. At the same time, Indonesia is still contributing to greenhouse gas (GHG) emissions, with the energy sector as the highest contributor to national GHG emissions at 48%, followed by forestry and peat fires at 26% and agriculture at 11%. During COP 21 in Paris, it committed to reducing emissions by 29% voluntarily and 41% with international support.

Under the latest National Action Plan for Climate Change Adaptation (Rencana Aksi Nasional Adaptasi Perubahan Iklim/ RAN API), released in 2019, there are four (4) priority sectors for climate change adaptation: marine and coastal, water, agriculture and health, which will be implemented using adaptation strategies in the clusters of infrastructure, technology, capacity building and governance. Just like the Philippines, gender is recognized as a cross-cutting issue.

In a gender assessment of the climate policies of Indonesia by Aksi for gender, social and ecological justice, it concluded that "the national climate change policies do not integrate gender in all climate change policies and actions in Indonesia, even though a gender perspective would contribute to addressing gender inequality in the context of climate change." It further explained:

> *"The lack of studies about the impact of climate change on women and other vulnerable groups, and the lack of the involvement of gender experts in the formulation of climate policies and actions, particularly mitigation, indicates the non-compliances with those gender policies. Women carried out climate adaptation activities, such as disaster programs, waste banks, climate village programs, [and] tree planting. However, those activities increased their household workload and time. Moreover, women did not receive clear and complete information about the connection among the climate actions taken to reduce GHG emissions, the importance of women's involvement, and the benefits. Women are also not respected to have the right, experience and knowledge for making decisions on matters related to their lives, families and communities in dealing with climate change. They are not involved in the decision-making process, from the design, implementation and up to the evaluation phase."*

The authors suggested the following actions to improve gender mainstreaming in Indonesia's climate policies and actions:

- Develop gender assessments, disaggregated data guidelines, and conduct regular checks to assess the impact of gender considerations, social co-benefits, and costs of climate change adaptation and mitigation policies and programs/actions at national, provincial, and city levels.
- Ensure gender-responsive budgeting with allocations for gender mainstreaming, gender analysis, capacity building, gender experts, and gender action plans for climate change at national, provincial, and municipal levels.
- Increase awareness and capacity on gender in climate change, and develop gender indicators to ensure the contribution of climate change adaptation strategies in addressing gender gaps.
- Ensure meaningful representation and involvement of women and other vulnerable groups across sectors (agriculture, coastal and urban), as well as gender experts in the consultation process throughout the discussion of NDC, adaptation and mitigation

policies, and strategic steps all through the planning, implementation, monitoring and evaluation levels.

- Conduct gender studies on the risks and vulnerabilities of women and other marginalized groups to the impacts of climate change. The priority strategies and climate change mitigation actions will then become more gender-responsive and will be better in addressing gender gaps in dealing with climate change.
- Ensure the integration of Presidential Instruction No. 9/2000 on gender mainstreaming into all mitigation and adaptation policies and actions.
- Develop strategies to increase government knowledge and awareness on gender and climate change so that NDCs, climate policies, mitigation, and adaptation actions become more gender-responsive.
- Ensure the representation of women, other vulnerable groups, and gender experts in formulating, implementing, and evaluating climate policies and actions at national, provincial, and municipal levels.

In addressing climate change impacts in the agricultural sector, there are several challenges that need to be addressed:

Persistent cultural and gender norms limit women's access to knowledge and capacity-building: In some areas, stakeholders said, women are not able to participate in training programmes related to adaptation because their time is used up in performing daily household chores, such as cooking and cleaning. Similarly, patriarchal restrictions limit women's ability to attend relevant meetings and trainings.

Limited access to land restricts women's decision-making power: Indonesian women are half as likely as men to own land, which makes it difficult for them to be involved with or lead decision-making processes pertaining to agricultural land (Kieran et al. 2015). For instance, stakeholders said that women are typically excluded from discussions about whether to sell off land to be converted to oil palm plantations.

Government-sponsored training on technology adoption is often not accessible to women: Interviewees said training on climate-smart agriculture, including the use of technical equipment, usually targets men. This suggests lower capacity-building opportunities for women and a lack of explicit intention to incorporate women into the technical training. Stakeholders also said that gender integration was often treated as a formality by partners who were engaged in project planning and implementation.

2.3.7 Discussion

In this section, we learned that the climate crisis is not gender-neutral. In several studies cited, we saw how women – because of historical and systemic marginalization – become more vulnerable to climate change than men. There is now a recognition that while poor and marginalized men and women are affected more adversely by environmental degradation and climate-induced crises compared to privileged men and women, poor women are disproportionately more affected than poor men. Women's vulnerability is driven by poverty in terms of lack of access to resources - in what we can already see as resulting from traditional gender roles and systematic impoverishment through political and economic decisions deliberately taken to keep the majority of women poor. It is also driven by lack of access to information, mobility and training that could have enabled them to mitigate the worst effects of climate-induced disasters. Climate change also threatens to multiply the threat of sexual violence, human trafficking, and other forms of violence and abuse that women are systemically more vulnerable to.

We also learned of two early tools that women's rights advocates used to ensure that gender equality becomes a strategic agenda not just in environmental protection but also in climate action at the UN level, through what Deborah Stienstra calls as *dancing resistance* to describe how engaging at the UN meant partnering, co-opting, pushing away and sidestepping States, international finance institutions and multinational corporations at various points (Stienstra, 2000). It meant organizing as women's caucuses to directly influence the language in the conventions, ensuring that governments take on gender analysis and evaluation when they implement their policies, and that particular attention is given to addressing poverty, health care, labor rights and violence against women and the international community's commitment to keep engaging with civil society actions especially grassroots organizations.

The first tool was gender balance to ensure that women are represented and their voices heard in decision-making processes, from the international to the local. The key question here was – where are the women? For the first ten years since the UNFCCC explicitly included gender equality as a goal, the focus was in ensuring that women were able to be present (both physically and discursively) in important deliberations, through capacity building at the local level to prepare them to lobby and engage not just State parties but also other women's advocates usually in the North, and in providing travel support funds especially for advocates from the South.

The second tool is gender mainstreaming to ensure that once represented and heard, women's voices are not subsequently lost in translating issues into international commitments and actionable policies. There was significant success in embedding this strategy in key environmental conventions that sought to reverse environmental collapse. However, as we also learned in this section, gender mainstreaming is not self-realizing, and there are explicit steps that need to be taken to embed gender. An analysis of two national climate action plans shows that it is not enough to recognize gender as a cross-cutting issue. Gender mainstreaming happens by first understanding gender gaps and then using gender-responsive tools and approaches in consulting stakeholders, planning, monitoring and evaluating progress towards gender equality.

In the course of the twenty years following UNFCCC COP 7 with the first call to include women in bodies established under the Kyoto Protocol, there came a slow realization that women are not just a group that needs to be protected but that they can be agents of change themselves, and that women have vital knowledge and a critical role in conservation, adaptation and mitigation. This opens up an opportunity towards a more transformative approach in shaping responses to climate change. The next key question then became – which women? As Marchand and Runyan framed it, "by highlighting women in varying social locations who speak to their own experiences, understandings and actions, these contributions privilege women's subjectivity and agency in relation to global restructuring, thereby avoiding presenting them as only "victims" (Runyan and Marchand, 2000).

As in most cases, simply adding "gender" has not resulted in gender equality, much less social justice. Poor women are still poor, and they are still left largely on their own to try to survive the (already acute) early manifestations and impacts of climate change. There is also an apparent and stark absence of urgency in how States plan to address the gender-differentiated impacts of climate change. As seen in the two national climate action plans discussed above, States have not progressed beyond looking for women, even as more and more women lose their lives to climate-induced disasters. In the aftermath of Typhoon Haiyan in the Philippines, an estimated 64% of the victims were women (APWLD, no date).

As a final point: the term "gender" has up to this point been exclusively referring to heteronormative men and women. During the last twenty years, the concept of gender has evolved to recognize individuals of non-conforming sexualities and gender identities, including the LGBTQI+ community.

This is a community that remains significantly invisible in the gendered discourse on environment and climate change, as shown by the heteronormativity of humanitarian programs and recovery efforts (Thuringer, 2016). More research and deep listening are needed to understand how the marginality of the LGBTQI+ community creates a specific vulnerability to climate change and how we can have a more gender-inclusive approach to mitigation and adaptation.

2.4 A Postcolonial Ecological Feminist Approach to Climate Governance

This section of the chapter unpacks what is meant by a postcolonial feminist ecological interrogation of climate change discourse. It begins with examining neoliberalism as a largely unquestioned global social order within dominant discourses on climate change. It demonstrates the ways in which the normative neoliberal framing of climate governance has positioned and de-politicized the public discourse on climate change. A postcolonial ecological feminist analysis is explored and put forward as a counter-discourse. This counter-discourse is largely shaped by the principles and practices of ecological feminism to re-politicize climate governance debates that brings to the forefront the plurality of everyday realities experienced by the most marginalized sectors in the Global South/Majority World.

2.4.1 Neoliberal climate governance

The recently concluded annual climate summit of state parties, also referred to as the Conference of Parties (COP), COP27, was dubbed as a breakthrough, with the agreement to establish a loss and damage fund for countries deemed most vulnerable to the impact of climate change (cite wri.org). This breakthrough includes the launch of the Global Shield established by the Vulnerable 20 (V20) and Group of 7 (G7) providing financial protection for responding to the losses and damages due to climate related shocks. The Global Shield is a financial facility intended to efficiently and systematically expand the financing of climate risks within V20 countries to better design and manage the impact of climate change. This includes financially supporting governments of the V20 to conduct dialogues with the various sectors of their societies, and to facilitate the design of "effective protection packages" in addressing the specific needs of each country. The design of these "protection packages" are directed at strengthening adaptive safety nets based on climate change data analysis. The Global Shield provides funds for the response to climate related disasters, insurance to farmers against droughts, and even offers premiums. The Global Shield is described as a kind of insurance system based on providing social protection from the grave impacts of climate change. With the Global Shield, the V20 countries are supported to better prepare for and respond to the loss and damages that are expected, in an effort to increase the resilience of the V20 against climate change.

The Global Shield as a financial facility and the language of protection packages, insurance policies, and premiums that is used to describe its adaptive strategies, demonstrate the highly economic management approach to climate governance. The loss and damage fund, clearly a compensatory measure for V20 countries, is a mitigating strategy that translates to protection packages against climate change shocks.

This so-called breakthrough agreement undermines, or has perhaps given up on the question, how do we end or reverse climate change in the first place? COP27 was premised on mitigating the impact of climate change in the best possible way. This strategy was simply reiterated in COP28, with a commitment to assess the world's progress in mitigating climate change. It has positioned climate change as the culprit that we need protection from. Mentioned in passing are the industrialized countries, as the main contributors to the cause of climate change, positioned as either having to pay up for their outrageous carbon emissions, or as saviors of V20 countries via providing fund assistance to finance climate risks, or as both. What is further minimized or taken for granted as a given is the political and economic system of neoliberalism that fuels the way of

life of industrialized countries, at the economic, political, social cost of the Global South/Majority World (Mies and Shiva, 1993).

To re-politicize climate change debates is to question market economy activities as a non-negotiable in climate governance. To look beyond protection from climate change threats, and endeavor to question the behavior of the global political economy as a systemic cause of climate change. A re-politicized approach to climate governance places the spotlight on the deeply embedded systemic relations of power, dependency, and exploitation of our global governance system. It is from this standpoint that a postcolonial ecological feminist interrogation of climate change commits to problematize, negotiate, and transform normative climate governance.

2.4.2 Ecological feminism and re-thinking climate governance

As early as the year after the first Earth Summit in 1992, feminist scholars Vandana Shiva and Maria Mies released their work and made public an ecological feminist analysis that explicitly pointed to the patriarchal, colonial, market-driven practices that shaped and led to globalization -- the global economic system Shiva and Mies held responsible for the degradation of the environment (Mies and Shiva, 1993). Shiva and Mies referred to this analysis as the ecofeminism approach. Scholars and social movements have referenced and built on the critical premises of ecofeminism to bring to the forefront the neoliberal climate governance approach that is premised on capitalist masculinist logic, deemed not only problematic for addressing climate change beyond management and mitigation, but as the systemic culprit of climate change.

Central to the critique of the dominant neoliberal climate governance discourse is the work of MacGregor (2014) on building feminist ecological citizenship as a form of resistance. MacGregor's analysis is premised on a resistance to relations of domination, including domination of knowledge claims. She exposes the masculinist, imperialist and neoliberal epistemologies in climate change discourses that are dominated by technocratic scientific explanations intended to control nature, to universalize truth and construct grand narratives derived from such technocratic analysis, all of which are directed at ensuring that climate mitigating strategies support and protect market-driven interests (MacGregor, 2014).

Feminist scholars have critiqued the dominant climate discourse of techno-scientific solutions to climate change as neglecting and obscuring the differently structured and felt experiences of societies around the world. They stress that the framing of climate change as a problem of science, facilitates the intensification of an unbridled process of capitalist accumulation of wealth, of natural resources to build that wealth, and the control over the management of those resources and wealth (Bee, Rice, and Trauger, 2015). Dubbed as the "business as usual" approach to climate governance, the techno-scientific ways of understanding climate change will in turn position individual and community behavioral change as the solution to the grave and colossal problem that is climate change (Rice 2014). There is much attention placed on the power of individual choices to overcome the impact of climate change -- to recycle, reuse, and reduce consumption, to 'go green' where and when possible, and to promote the ABC approach, that is, focus on changing Attitudes, Behaviour, and Choice (Shove, 2010).

Such approaches would have the public believe that change in the lifestyles of individual citizens holds the power to respond, reverse, and overcome climate change. This transfers the responsibility of addressing climate change to the individual, minimizing, and to an extent, absolving government from its responsibility to intervene in holding accountable the economic institutions whose manner of doing business was unsustainable, or as Shove would say, "… it obscures the extent to which governments sustain unsustainable economic institutions and ways of life" (2010, p. 1274).

The feminist critique and advocacy for stronger states to stand up to and against market-driven governments is a longstanding one, as market-driven governance was quickly developing as the creeping (and creepy) world order. The "Marketization of Governance," a groundbreaking work of activist-scholar Vivienne Taylor and Development Alternative of Women for a New Era (DAWN), is evidence of this. Rooted in social movement politics, the feminist interrogation of Taylor and DAWN (2000) asserts:

> *"Constructs, such as state sovereignty, political identity and security when viewed through feminist's lenses, reflect patterns of power, control and exploitation over women and poor people. Against the backdrops of historical, cultural, economic and political forces women in the South are beginning to claim spaces to contest the shifting terrain of politics and governance. The search for real political alternatives, to challenge notions promoted by proponents of liberal pluralism, and economic fundamentalism is beginning to gain momentum. Across regions of the South women challenge the notion of the state as a static entity because within this perspective is the assumption that states and state led processes are inviolate. The state as a monolithic organization that cannot be pressurized to change from within, poses limits to our engagement. This tendency has immobilized and alienated women from the state and its power. Significantly, feminists in the South are beginning to see the state as a contested terrain and are refusing to leave the state and the state machinery unchecked. (Taylor, 2000)"*

Faced with the reality that governments were not acting in the interests of the people but rather in the interests of private transnational corporations, these feminist thinkers from the Global South/ Majority World sought to reframe traditional political constructs, such as sovereignty and security (among others) through feminist lenses (Taylor, 2000). To reframe, rethink, and reconstruct the taken-for-granted constructs born from a western, masculinist, capitalist logic is the space in which postcolonial feminist thought is intended. When linked to MacGregor's assertion for feminist ecological citizenship (2014), the call to complexify the global climate change agenda with the differences and diversity of local struggles can be illuminated, to complexify climate governance discourse with the involvement of social movements to carry the diversity of voices from marginal sectors, to complexify climate governance against the normative neoliberal climate governance that is supported and substantiated by technological scientific explanation, and to complexify climate governance and allow the lived realities and interests of those living at the fringes of society to shape a counter climate governance discourse.

In the following section a postcolonial ecological feminist analysis is explored and put forward as a counter-discourse. This counter-discourse is largely shaped by the principles and practices of ecological feminism to re-politicize climate governance debates. It brings to the forefront the plurality of everyday realities experienced by the most marginalized sectors in the Global South/ Majority World.

2.4.3 Ecofeminism, intersectionality, and ordinary life: evolving an embodied counter-discourse to neoliberal climate governance

A complexified postcolonial ecological feminist counter-discourse to normative neoliberal climate governance begs to be broken down into digestible parts. It is deemed helpful to locate three domains wherein feminist practice generally operates. According to Mohanty (2003): "…at the level of daily life through the everyday acts that constitute our identities and relational communities; at the level of collective action in groups, networks, and movements constituted around feminist visions of social transformation; and at the level of theory, pedagogy, and textual creativity in the scholarly and writing practices of feminists' engagement in the production of knowledge" (p. 5, Mohanty, 2003).

The level of the everyday, the level of collective action, and the level of knowledge production are key to understanding the ways in which to evolve a postcolonial ecofeminist counter-discourse. Part of this complexified view is to understand that these levels of feminist practice overlap, interact, and engage with each other. While the discussions in this chapter may be primarily focused on knowledge production, it is not limited to that level, but rather informed by the other levels of feminist practice.

2.4.4 The feminist politics of the everyday and collective action

The everyday as a feminist lens proves central to shaping an ecofeminist counter-discourse captured in the work of scholars Bee and colleagues (2015). An application of the everyday critiques the universal grand narrative analysis of climate governance, drawing attention to the importance of differences and differentiated social realities. This approach is articulated with numerous examples provided in the first part of this chapter on the Gender-Differentiated Approach to Environment and Climate Change. Linked to the critique of an undifferentiated approach to neoliberal climate governance, are the distant and disembodied social relations that serve as a foundation of the neoliberal climate discourse. It is a discourse that is distant and excludes the realities of those already exploited by and vulnerable to capitalist operations. It makes ecofeminist sense therefore, to flip the narrative and insist instead on a governance approach that embodies the everyday realities of those most vulnerable to climate change. Within this narrative the state is positioned to be intimately engaged with the vulnerable communities and environmental activist-scholars that can provide a systematic account of experiential knowledge from the ground, among other marginalized actors in climate governance. Applying the feminist politics of the everyday can transform climate governance relations that place vulnerable communities at the side-lines, and place at the center detached techno-scientific analysis and (non) solutions.

2.4.5 Feminist intersectional analysis and governance of the climate change crisis

At the core of the ecofeminist framework is an intersectional analysis of power. As mentioned in the section on Ecological Feminism and Re-Thinking Climate Governance, central to ecofeminist analysis is the way in which the numerous sources of privilege are identified as intersecting to create a superstructure of dominance. The intersectional power, privilege, and bias for masculinist, western imperialist, and market-driven logics are deeply rooted in colonial histories, and reinforced in the modernization, globalization, and liberalization of everyday life. Black feminists were among the first to assert an intersectional analysis of power, exposing the ways in which race, class, gender, and sexuality were intersecting sources of oppression for black women from low economic backgrounds. Black lesbian feminist Audre Lorde said it best -- there is no such thing as a single-issue struggle because we do not live single-issue lives (Lorde, 2007). It follows that an ecofeminist intersectional analysis of climate change needs to interrogate the reasoning of the privileged few on climate governance. An intersectional power analysis that does not minimize and dismiss the fact that the social causes of climate change remain unchanged by the dominant discourse on climate governance. A counter-discourse to climate governance is obligated to problematize, break down, and unpack the intersecting power complexities that have shaped the logic of dominance and produced the climate change crisis.

2.4.6 Constructing care ethics as a feminist theory of change

It is important to immediately distinguish between the two approaches to feminist theorizing of care. There is the ethics of care advocated by feminists that essentializes care as a feminine value and practice, and as a model of moral reasoning for women (Gilligan, 1993). The assertion of this ethics of care approach is for care to be adopted in political life and leadership, primarily by those who are experts in care – women. While this approach has valuable insights into our understanding and valuation of care as a society, it is often limited and critiqued for its association of care with the practice of women in personal and public spheres of life. Then there is care-based ethics directed

at creating a theory of knowledge, or a feminist virtue epistemology (Dalmiya, 2016). This feminist approach to care is focused on exemplifying practices of positive caring and relational humility, which can be derived from a variety of community practices (not solely from women), as a source and theory of knowledge. It is this latter feminist approach to care that this chapter wishes to highlight to (re)shape the various ecosystems of political life. This construction of care-based ethics as a theory of change frames and guides an ecofeminist approach to climate governance.

2.5 Conclusion

This chapter has distinguished between a gender approach to climate change, and a feminist (ecofeminist) approach to climate governance. The former, that is the gender-differentiated approach, has been successfully mainstreamed into dominant climate governance discourse. It serves a crucial purpose of recognizing the importance of addressing the unique needs and conditions of women from the most marginalized communities and recognizing them as among the most vulnerable to the climate change crisis. The gender-differentiated approach has supported women and vulnerable communities to literally stay afloat in managing, mitigating, and building resilience amidst the climate crisis.

On the other hand, ecofeminism, or the postcolonial feminist ecological approach, seeks to gain ground as a viable counter-discourse to climate governance. At the core of the ecofeminist analysis of climate change is the resistance and rejection of the neoliberal system of governance. The ecofeminist approach reveals neoliberal climate governance as a logic of dominance that justifies the systemic subordination of those who lack power, by those who have power and control. It exposes how this logic of domination continues to justify the systemic exploitation of people and the environment, in the name of combating climate change.

A. Key Discussion Questions

What are the points of convergence between the gender-differentiated approach to climate change and the ecofeminist approach to climate governance?

What are fundamental points of divergence of the two approaches in confronting the climate change crisis?

How have the feminist approaches influenced your stance on climate governance?

What are the implications of the feminist discourses on climate change to human rights and peace practices in the region?

How would you formulate a campaign call directed at world leaders, that would reflect your (feminist) stance on climate governance?

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Chapter 3

Climate-Induced Displacement: the nexus between the Environment, Climate Change and Displacement in Southeast Asia

Sriprapha Petcharamesree and Chunya Primrose Boonyawan

3.1 Introduction

> *"We cannot leave millions of displaced people and their hosts to face the consequences of a changing climate alone."*
>
> (UN High Commissioner for Refugees Filippo Grandi).

In a press release issued by the UNHCR, Filippo Grandi reminded world leaders prior to COP 27 that they should not forget displaced people. "Over 70 per cent of the world's refugees and displaced people come from the most climate-vulnerable countries including Afghanistan, the Democratic Republic of the Congo, Syria, and Yemen. They have an enormous stake in discussions about the climate crisis, but they are too often excluded" (UNHCR, 2022). Climate crises disproportionately affect communities that may already be vulnerable, many of which live in "hotspots" of climatic change and often lack the means to cope with an increasingly hostile environment. Depletion of natural resources which are used for subsistence or income generation may lead to antagonism between different communities and often exacerbate pre-existing tensions across communal identity lines, leading to violent conflict. This creates a complex and dynamic interplay between

climate change and other root causes of displacement (European Union Agency for Asylum, 2023). Climate-induced displacement often takes place within countries but also causes displaced populations to cross borders in pursuit of a liveable environment. Such cross-border mobility moves the issue of providing protection into an international context (European Union Agency for Asylum, 2023).

For more than 3 decades, a discourse on environmentally induced migration has been going on without much empirical or conceptual clarity, especially regarding the existence and number of environmentally displaced persons. Terminology has been debated, even though the term "environmental refugees" is frequently used at international and national levels (McAdam (ed), 2010). However, during the past 20 years, the focus has shifted from environmentally induced migration in general to migration induced by climate change. These two discourses and concepts need to be distinguished from the social, economic, and political factors compelling people to move (McAdam (ed), 2010). Nevertheless, there seems to be no clear borderline between all these factors, including environment and climate change induced displacement.

This chapter focuses on climate induced displacement. While no one denies a relationship between the degree of global warming, the number of disasters causing displacement and the magnitude of the number of people affected by it, two different approaches have been employed to analyze the situation (Kalin, 2010). From a maximalist approach, it is expected that hundreds of millions of people, even up to a billion, will be displaced because of climate change (Myers, cited by Kalin, 2010). By contrast, a minimalist school of thought stresses that displacement is triggered by complex and multiple causes, among which climate change is just one, and predicts that the number of cases where displacement can be directly linked to the effects of climate change will be few (Kalin, 2010). Whichever school of thought we refer to; it is undeniable that more and more people around the globe will be forced to displace due to climate change.

This chapter aims to examine the nexus between climate change and displacement by focusing on various climate change scenarios that trigger populations to move. It also looks at the nature of the movements and those who are affected. The chapter further examines the existing normative framework and strategies that protect the displaced persons. It pays attention to the risks of climate induced displacement and factors that exacerbate displacement in Southeast Asia (SEA). A few cases from the region are included in the chapter. The chapter concludes with some observations on how people forcibly displaced can be protected both within and across international borders.

3.2 Climate Change Scenarios and the Nature of Movements

In his study, Kalin (2010) proposed different typologies of possible scenarios that distinguish the situation of climate change and displacement.

1. *Sudden-onset disasters,* which include flooding, windstorms (typhoons and cyclones in the case of Asia-Pacific) and mudslides caused by heavy rainfalls, can trigger large scale displacement and incur huge economic costs. In this scenario, displacement may not need to be long-term, and return remains possible in most cases (Kalin, 2010). While all these disasters are climate-related, they are not necessarily an effect of global warming and the ensuing change of climate patterns (Kalin, 2010). In fact, many hydro-meteorological disasters triggering displacement would occur regardless of climate change, and even where they are linked to climate change, such causality is difficult, if not impossible, to prove in a specific case (Kalin, 2010). Furthermore, disasters such as volcanoes or earthquakes with similar impacts on people and on their movements are not linked to climate or to climate change (Kalin, 2010).

These sudden-onset disasters can cause forced displacement inside the country and/or across borders. According to Kalin (2010), in most cases of sudden-onset disasters, the large majority of displaced people remain inside their own country, as internally displaced persons (IDPs). However, some people may decide to cross the international borders when the protection and assistance capacity of their own country are exhausted, or some may be simply seeking a better life.

Key Terms: Definition of IDPs

IDPs refer to "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of ... natural or human-made disasters, and who have not crossed an internationally recognized State border." (UN Guiding Principles on Internal Displacement, 1998).

2. *Slow-onset environmental degradation* caused, inter alia, by rising sea levels, increased salinisation of groundwater and soil, long-term effects of recurrent flooding and thawing of permafrost, as well as droughts and desertification or other forms of reduced water availability, will see a dramatic decrease of water availability in some regions and recurrent flooding in others (Kalin, 2010). This will impact upon economic opportunities and conditions of life will deteriorate in affected areas. Such deterioration may not necessarily cause displacement, but it may prompt people to consider "voluntary" migration as a way to adapt to the changing environment and be a reason why people move to regions with better living conditions and income opportunities (Kalin, 2010).

   General deterioration of the conditions of life and economic opportunities as a consequence of climate change may prompt people to look for better opportunities and living conditions in other parts of the country or abroad, before the areas in which they live become uninhabitable. At some points, if areas start to become uninhabitable because of complete desertification, salinisation of soil and groundwater or the "sinking" of coastal zones, movement may amount to forced displacement and become permanent, as inhabitants of such regions no longer have a choice except to leave. Their movement can be seen as a particular strategy to cope with and adapt to environmental and ensuing economic changes triggered by the effects of climate change (Kalin, 2010).

3. So-called "*sinking" small island* states present a special case of slow-onset disasters. As a consequence of rising sea levels and their low-lying topology, such areas may become uninhabitable. In extreme cases, the remaining territory of affected states may no longer be able to accommodate their population, and such states may disappear entirely from the surface of the earth. When this happens, the population would become permanently displaced in other countries (Kalin, 2010). Clear examples include the in-country relocation in Papua New Guinea and international displacement from Kiribati to Fiji (McAdam, 2010). This scenario, in some cases, would render return impossible, and the population would become permanently displaced to other countries. They may become stateless persons.

4. Some areas may be designated by the government *as high-risk zones* and too dangerous for human habitation because of environmental dangers. Thus, people may (either with their consent or against their will) be evacuated and displaced from their lands or, if they have already left, be prohibited from returning, or be relocated to safe areas. This could occur, for example, along rivers and coastal plains prone to flooding, but also in mountain regions

affected by an increased risk of flooding or mudslides due to the thaw of permafrost. The difference between this situation and the case of sudden-onset disasters is that governmental action makes return impossible (Kalin, 2010). One study identified 308 planned relocations globally in 2021, of which more than half were in Asia (160). This included 29 cases in the Philippines, and 17 each in Vietnam and Indonesia (Soo-Chen and McCoy, 2023).

Without durable solutions, displaced persons remain in protracted situations or may decide to spontaneously return to high-risk zones because of a lack of viable alternatives, exposing them to risks to health, injury and even life. Some people may decide to leave their country because they reject relocation sites offered to them, or because their government does not provide them with sustainable solutions (Kalin, 2010).

Unrest seriously disturbing public order, violence, or even armed conflict may be triggered by a decrease in essential resources due to climate change (such as water, arable land, or grazing grounds). This is most likely to affect regions that have reduced water availability and cannot easily adapt due to poverty (Kalin, 2010). In such situations, people have no other choice but to leave for safety and better lives either within a national border or across borders.

The effects of climate change, in particular dwindling resources, can contribute to social tensions, which in turn may degenerate into violent conflicts and may trigger forced displacement. People who move within their own countries are IDPs. Those fleeing abroad may qualify as refugees protected by the Refugee Convention or regional refugee instruments or be people in need of complementary forms of protection or temporary protection available for those fleeing armed conflict (Kalin, 2010).

The five scenarios and the nature of movements of people caused by climate change show clearly that people are obliged to move due to climate change and climate related risks and the displacements can be within a national territory or across international borders. There are three "climate mobility" terms to describe three forms of climate-induced movement of populations:

- displacement, where people are forced to leave their homes;
- migration, where movement is to some degree voluntary; and
- planned relocation, where movement is proactively instigated, supervised and carried out by the state (Soo-Chen and McCoy, 2023).

The different nature of movements, in many ways, defines what protection framework is made available to protect their rights.

3.3 Existing Normative Framework and Strategies that Protect Climate-Induced Displaced Persons

When examining the protection framework and strategies to protect climate induced displacement, the point of departure lies in the assumption that states have various duties and owe positive obligations, under international law, including international human rights treaties, to protect different categories of migrants, particularly those compelled to migrate (Zetter, 2011). However, there seems to be "an uncertainty" about the instruments that might be applicable to persons forced to move because of environment or climate change. Since a significant proportion of them migrate within their own country, and probably permanently for many, they should be protected by national law. Apart from international human rights treaties that apply to "everyone" regardless of who they are, other international protection frameworks are applied in accordance with different categories of people, such as stateless persons, refugees and asylum seekers, migrant workers,

ethnic minorities, and indigenous peoples. The challenges here lie in the lack of "a common protection norm" but differentiated protection responsibility based on how they are classified or defined. With a few exceptions, such as New Zealand where the government granted "refugee status" to those forced to leave their sinking small islands, the "climate migrants" who cross international borders do not benefit from any appropriate protection under existing international law, as they do not fulfill legal conditions to be treated as "refugees"(Mayer, 2011).

There is no agreed category or terminology to describe people compelled to move because of climate or environmental change. This is because it is difficult to attribute this movement solely to these conditions. In addition, a continuum of processes of movement – from voluntary to forced – in relation to environmental drivers make such a definition hard to determine. The ILO, nevertheless, defines climate/environmentally displaced persons as:

> "*persons or groups of persons who, for reasons of sudden or progressive change in the environment that adversely affects their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad"*
>
> (ILO cited by Zetter, 2011, p.11).

The lack of agreed terminology to describe those who are displaced due to climate or environmental changes leads, in many ways, to a lack of norms and legal protection which places a large number of them at higher risks. There are, however, some measures that have been put in place by international actors through policies of adaptation and sustainability (Zetter, 2011). These include the 2005 Hyogo Framework for Action that addressed the need for governments to develop disaster risk and vulnerability reduction strategies and to ensure that disaster-induced displacement did not increase vulnerability risks, and the proposals at the 2009 United Nations Climate Change Conference that sought to substantially enhance an adaptation fund, a major gap in the UN Framework Convention on Climate Change (UNFCCC), to name just two.

As mentioned earlier, despite the lack of any specific international legal framework to protect climate displaced persons, they are entitled to enjoy the full range of civil, political, economic, social and cultural rights that are enunciated in international and regional human rights treaties and customary international law (Naser, 2013). Various reports and studies reveal that most people displaced by climate change will remain within the borders of their country. They are IDPs as defined in the UN Guiding Principles on IDPs (GPs), and thus entitled to full range of rights and responsibilities included therein (Naser, 2013). Those who move across the borders may benefit from the following soft law.

UN Guiding Principles on IDPs were adopted in 1998 and subsequently universally recognized by member states of the United Nations in 2005 during the World Summit. As pointed out, the definition of IDPs includes people forced to leave their homes as a result of (a) the effects of armed conflict; (b) situations of generalized violence; (c) violations of human rights; or (d) in order to avoid natural or human made disasters, and who have not crossed a state border" (Naser, 2013). Manifestly, the term "natural or human made disasters" envisages that victims of natural disasters as a result of climate change would be covered by such protection provided that they are within their country of origin (Naser, 2013). The GPs follow a distinctive approach of restating and tailoring the international human rights norms and guarantees that are relevant to the protections of displaced persons. According to Naser (2013), regional organizations, including the African Union (AU), the Organization of American States (OAS) and the Council of Europe, have called upon their member states to use the GPs and incorporate them into their domestic laws and policies. This is still a gap in SEA.

The Operational Guidelines on Human Rights and Natural Disasters (OGs) was initiated by the Inter-Agency Standing Committee (IASC) for humanitarian actions. Based on the OGs, protection is not limited to merely securing the survival and physical security of people affected by natural disasters; rather it covers all relevant guarantees – civil and political, as well as economic, social and cultural rights – attributed to them by international human rights and humanitarian law. With the proclamation of the list of the rights of persons enunciated in international law, the OGs provide a guideline to humanitarian actors to implement a rights-based approach to humanitarian action in the context of natural disasters (Naser, 2013).

The Hyogo Framework for Action- HFA (2005-2015). Another non-legally binding document that can be used to protect the rights of climate displaced persons. The HFA affirms the duty of states to try to reduce the risk of disasters and indicates priorities for risk reduction in both natural and human-made disasters. Under this framework, additional vulnerabilities of developing countries to natural disasters are recognised and so preventive measures such as disaster risk reduction (DRR) programs, early-warning systems, and public safety awareness and preparedness are suggested to reduce vulnerability (Naser, 2013).

The *United Nations Framework Convention on Climate Change (UNFCCC.* was adopted at the Earth Summit in Rio de Janeiro, Brazil in 1992. The main objective of the UNFCCC is to achieve "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner" (Gao, Gao, and Zhang, 2017). Although the UNFCCC tends to focus on technical and scientific aspects of climate change, some propose that climate displaced persons should be formally recognised and protected under this framework. The existing institutions of the UNFCCC can be invoked to satisfy most of the concerns raised. However, there needs to be continuing convergence between various international law instruments and institutions to move beyond the "path dependency" or "path exclusivity" that has existed to date (Lyster, 2015).

Acknowledging climate change as a real and existing challenge, as well as its role in shaping protection needs worldwide, the international community has intensified efforts over the past years to develop effective responses. Through the Strategic Framework for Climate Action, the UNHCR works together with affected communities, host governments, UN country teams, international organizations, financial institutions, the private sector and academia to increase resilience among displaced populations in the face of climate change (UNHCR, 2020). In March 2022, the UN Human Rights Council appointed the first Special Rapporteur on the promotion and protection of human rights in the context of climate change. The rapporteur's overall mandate is to contribute towards ongoing efforts to address the adverse impact of climate change on the enjoyment of human rights, including people displaced for climate-related reasons (OHCHR, 2022). A challenge in providing protection solutions to these populations is that no legal definition exists for persons displaced due to environmental reasons and, derivatively, what the qualification criteria are.

In November 2022, the 27th UN Climate Change Conference of Parties (COP27) highlighted the need to include refugees and displaced persons from the most climate-vulnerable countries in the debate. Refugees and displaced persons from countries affected by climate-induced displacement addressed the audience for the first time in the history of the conference, warning that current attempts to adapt to the changing environment were being outpaced by the speed of climate change (UNHCR, 2022).As highlighted by the UNHCR, there is a need to scale-up financing for the countries at the frontlines of climate emergencies, but also to ensure that resources reach not only climate-vulnerable countries but displaced people and host communities as well (European Union Agency for Asylum, 2023).

It can be seen from this section that even though states have obligations under international human rights treaties to protect the rights of all people, including those forced to displace, within or across international borders, the narrow definition of legally binding law such as the 1951 Convention relating to status of refugees leaves a wide margin for states to interpret the law the ways they seem fit. In addition, migration and displacement in themselves are complex processes conditioned by social, economic and political factors and so a direct mono-causal link between climate change and migration can be discounted (Zetter, 2011). This may be the reason why no specific international framework has yet been realized. Moreover, it is hard to define if the displacement is voluntary or forced; temporary or permanent; and how protection needs differ between internal and cross-border displacement. Of these challenges, the distinction between voluntary and forced displacement in the context of climate and environmental change is the most complex and delicate one to draw, particularly in the context of slow-onset climate change (Zetter, 2011). Therefore, determining which normative frameworks might be invoked to afford the most appropriate protection for displaced people and, accordingly, which agencies are responsible to provide this protection is a challenge which is even more serious in the context of Southeast Asia.

3.4 Contextualizing Southeast Asia and Climate Change

The Southeast Asia region is composed of eleven countries, namely Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, The Philippines, Singapore, Thailand, Timor-Leste, and Vietnam. The region is located in the tropics and is a seismically active zone with several tectonic plate boundaries (ESCAP, 2015). The region can be divided into the mainland with a long shoreline and island countries (ESCAP, 2015).

Due to its geography, the SEA region is naturally prone to a wide range of natural hazards such as storms, floods, earthquakes, volcanic eruptions, and tsunamis. Indonesia and the Philippines are part of the Ring of Fire, which has high seismic and volcanic activity (Overland, 2017). The region is also affected by typhoons and cyclones because of its proximity to warm Ocean waters (the Pacific and the Indian Ocean). Hence, countries in the region often experience heavy rainfall, leading to floods and landslides (Overland, 2017). For example, Thailand has been suffering from mega-floods during the wet season, and the temperature rise from climate change has significantly increased the frequency and severity of flooding in the country (Asian Development Bank (2021). According to the Global Climate Risk Index (CRI), Myanmar, Thailand, the Philippines, and Vietnam were in the top 10 countries most affected by extreme climate events from 1999-2018.

Apart from a wide range of natural hazards, the SEA region is also vulnerable to the impact of natural deterioration and the slow impact of climate change, such as rising sea levels, land degradation, increasing temperatures, and loss of biodiversity (Prakash, 2018). Rising sea levels and shoreline erosion are major threats to the region (Prakash, 2018). A report from the Panel on Climate Change (IPCC) shows that sea levels in Southeast Asia are rising faster than any other region as a result of melting glaciers from global warming. The Philippines has experienced a sea level rise of 14.4 millimeters per year, which is three times faster than the global average (CNN Philippines,2023). Jakarta, Indonesia, is also ranked as the world's fastest-sinking city, and is expected to be completely submerged underwater by the end of 2050 (Renaldi, 2022).

Although there has been no up-to-date calculation of the number of people negatively affected by climate change in SEA, a report from the Centre for Research on the Epidemiology of Disasters of UC-Louvain indicates that from 1902-2021, a total of 259,362 people were killed and 13.83 million people were made homeless by 1,544 natural hazard events comprising storms, floods, droughts, landslides, and wildfires. In 2021 alone, natural disasters caused more than massive displacements in the Philippines (5,681,1000), Indonesia (749,000), Vietnam (780,000), and Myanmar (158,000) (Internal Displacement Monitoring Center-IDMC, 2021).

3.5 Factors Exacerbating Climate Change in Southeast Asia

Apart from its geographical location, other factors exacerbate the impact of climate change in the SEA region. Rapid urbanization (Renaldi, 2016) and drastic economic growth also play a crucial role. Ten out of eleven countries in the region are members of the Association of the Southeast Asia Nations (ASEAN), a political and economic union (Council of Foreign Relations, 2022). This has played a significant role in the rapid growth of GDP in the region, with however, some adverse impacts on the environment (ASEAN Taxonomy Board, 2021).

According to the Sixth ASEAN State of the Environment Report, rapid economic growth leads to mass deforestation and changes in land use (ASEAN, 2023). The total forest cover in ASEAN shrank from about 200 million ha to 150 million ha due to increasing demand for energy (Overland et. al (2021). Such deforestation increases the chance of landslides and flooding during the monsoon season (Taylor, 2022). Mangrove forests were also cleared along the coastline to construct fishponds (FEBIS, 2023). Without mangrove forests to protect it, the shoreline can erode faster than usual.

With rapid GDP growth and urbanization in ASEAN, there was a shift in consumption patterns. Urbanization increases the need for land, fuel, and natural resources. Available information indicates that ASEAN has seen a significant increase in greenhouse gas (GHG) emissions (United Nations, n.d.). From 1990 to 2010, CO^2 emissions in ASEAN increased faster than anywhere else in the world (Prakash, 2018) and the energy demand will continue to grow by 60% in 2040 (International Energy Agency, 2019). The major sources of GHG emissions in ASEAN come from fuel burning, agricultural practices, and deforestation for palm oil. With deforestation, large amounts of CO^2 can be released from the soil, leading to land degradation and smog from the fire, contributing to transboundary haze pollution, from which Malaysia and Singapore have been suffering (The Straits Times, 2016). The transportation sector is also responsible for GHG emissions in ASEAN, as available information indicates that 24% of carbon emissions in ASEAN are from land, sea and air transportation (Lau, 2022).

Furthermore, densely populated areas and underground water extraction are some of the causes of the sinking of ASEAN major cities such as Bangkok, Manila, and Jakarta. Underground water extraction causes land to sink as aquifers collapse, while global warming will cause the glaciers to melt leading to sea level rising (Tsui, 2022).

Numerous efforts have been made by ASEAN and its member states in response to the impact of climate change. According to the ASEAN joint statement at the recent UNFCCC COP 28, climate change issues are acknowledged and work is being undertaken on them. Several plans have been initiated in cooperation with the international community to address and mitigate the impact of climate change in the region, including plans to enhance the capacity to address climate-related disasters, reduce carbon emissions to the goals set in the Paris Agreement, promote clean and renewable energy, provide funding, build capacity, and transfer technology to address issues including shoreline erosion, deforestation, transboundary haze pollution, and sea-level rise (ASEAN 2023).

The situation described above shows that pushing for economic growth at the expense of natural resources seems to be the key cause of increasingly frequent natural disasters, environmental degradation and rapid climate change. While governments and the international community are actively working to mitigate the impact of climate change, people's lives and well-being are at risk. To survive, people on the ground will have to come up with hasty ad-hoc solutions for the adverse impact of climate change. Migration is one of them.

3.6 Climate Change/Environmental Deterioration and Displacement in Southeast Asia

As discussed in the second section, humans have always used migration as a method to escape threats to life, avoid discomfort, or search for better living conditions. Thus, natural hazards and environmental deterioration are not new drivers for human movement (Brown, 2008). In the past, events have forced people to migrate due to environmental and natural disasters. According to the UNHCR, approximately 21.5 million people are forcibly displaced yearly due to weather-related events such as storms, flooding, landslides, extreme weather, and drought (UNHCR-UK, 2023).

However, it is important to reiterate that the relationship between climate change and human mobility is rather complex and multifaceted as climate change interacts with and sometimes influences other displacement factors (Foresight, 2011). One cannot stress enough that social contexts such as poverty, inequality, or marginalization may reduce people's ability to handle the impact of climate change, leaving migration the only available option. In some circumstances, climate change may fuel a pre-existing problem and people's desire to migrate (Intergovernmental Panel on Climate Change IPCC, 2014). For example, environmental deterioration due to climate change, such as rising temperatures, drought, and water resource contamination, would affect occupations resulting in economic migrants moving to a different area for better lives and more income.

Furthermore, as briefly mentioned in the earlier section, it is also difficult to draw the line between forced and voluntary movements. There are a variety of factors that lead to people's movement, and very often, choice and coercion coexist (Bakewell, 2021). In situations where the impact of climate change is more subtle, an economic incentive may outshine the fact that an individual cannot sustain a livelihood of good quality in his or her original place of residence due to environmental deterioration and that a reasonable choice is to leave. To understand the phenomenon better, the chapter focuses on two types of climate change impact, sudden-onset natural disasters and slow-onset climate change, in order to understand the context of climate induced displacement in Southeast Asia. Case studies are also provided.

3.6.1 Sudden-onset climate change and its impacts

As highlighted in the study of Kalin (2010) elaborated in the second section, sudden onset refers to a natural disaster or natural hazard such as storms, tsunamis, floods, and landslides. It is noted that not all natural hazards are the results of climate change; however, climate change can disrupt the pattern of natural disasters or amplify their severity (IPCC, 2012). For example, global warming may increase the amount of annual rainfall, which can lead to landslides or mudslides. This sudden onset disaster may force people to migrate immediately for their safety. Available information indicates an average of 26.4 million people per year have been displaced due to natural hazards (IPCC, 2015).

It is acknowledged that most sudden-onset displacements are often temporary, and people are willing to return home after the event. One clear example is Typhoon Haiyan, which hit the Philippines in November 2013. Available information indicates that most displaced people returned home shortly after the incident (Gemenne et al, 2021). However, other social, economic, and political factors may make temporary displacement permanent because climate-induced displacement depends not only on the severity of the impact but also on people's resilience. Poor and marginalized communities usually have "the least buffer to face even modest climatic hazards" (IPCC, 2014). It cannot be ignored that in some circumstances, political unrest could impact displacement. The flooding in Myanmar after the February 2021 military coup shows that armed conflict hindered humanitarian aid and recovery, leading to permanent displacement (IDMC and Norwegian Refugee Council, 2022).

Case Study: Myanmar – climate change in time of conflict

A clear example of how the impact of climate change is closely intertwined with the country's political situation as an underlying factor that leads to displacement is the February 2021 military coup in Myanmar, which led to mass displacement. People affected by the clash between the Burmese military and ethnic armed groups dispersed around the country in search of a safe place. In June and September 2021, there was flooding in the southeast and northwest regions of the country, which had already been affected by the conflict (IDMC and Norwegian Refugee Council, 2022). The flood caused people who were already displaced to flee again. Thousands of people in Magway, Rakhine, and other regions had to abandon their temporary shelters (IDMC and Norwegian Refugee Council, 2022). Most disaster displacements were pre-emptive evacuations because people's resilience decreased during armed conflict. As a further illustration, the Rakhine area is already home to 215,000 long-term IDPs, and the basic sanitary infrastructure in the area is of poor quality due to armed conflicts. They had limited access to basic goods, and their temporary shelters were prone to flooding (IDMC and Norwegian Refugee Council, 2022). Therefore, when the flooding hit, the impact intensified.

Case Study: Typhoon Haiyan – The Philippines

In 2013, super typhoon Haiyan (locally known as Yolanda) caused the displacement of over 4 million people and severe damage to housing and infrastructure in the affected area (IOM, 2015). It was one of the strongest cyclones in history and the strongest ever to hit the Philippines. It is important to highlight that the severity of the storm was not the only reason for the high number of displaced persons but the capacity of the country to handle the situation also played a crucial role. Although as mentioned earlier, many people returned to their homes shortly after the storm, many others were permanently displaced due to the pre-existing situation in the country and the non-inclusive post-recovery plan (Tuhkanen, 2023). It is noted that the affected residents were moved into temporary shelters while the government reconstructed basic infrastructure in the area. However, the temporary shelters were far from their coastal livelihood, and the basic infrastructure was inadequate. An economic crisis caused the price of basic goods in the area to increase sharply (known as the Yolanda prices). Inadequate infrastructure, coupled with the economic crisis and reduction in income may have led many people to decide to relocate in order to find a better livelihood (Tuhkanen, 2023).

3.6.2 Slow-onset climate change and displacement

As pointed out in the second section, the second category of climate change is slow onset. Examples of slow onset include sea-level rise, salinization of agricultural land, contamination of water resources, declining abundance of fish, seashore erosion, desertification, and haze pollution (UNFCCC, 2011). These gradually decrease the quality of life, undermine people's ability to remain in their place of residence, and eventually lead to migration. People whose livelihoods depend on natural resources, such as farmers, fishers, and some indigenous peoples, would be especially affected by the impact of climate change. As a result of environmental degradation, they might not be able to stick to their occupation to sustain life. They may migrate to another region to secure other occupations for better living conditions. At first glance, slow-onset induced migration may look like "voluntary" economic migration as it only amplifies pre-existing socio-economic or political societal issues.

It is also important to emphasize that as the impact of climate change becomes more severe, some slow onsets not only decrease the quality of life but possibly shrink a whole area, leaving its residents homeless. Clear examples of this are rising sea levels and seashore erosion that will completely submerge small islands in the Pacific by the end of the century (Gallagher, 2019). For the SEA region, Bangkok and Jakarta, together home to more than 20 million people, are sinking. Jakarta is ranked as one of the world's fastest-sinking cities and could completely disappear by the end of 2050 (Al Jazeera, 2022). Despite its gradual nature, the impact of this climatic process may be irreparable.

Case Study: Jakarta, Indonesia – the sinking city

Jakarta, Indonesia, is home to around 11 million people and is the world's fastest-sinking city. Like many other Southeast Asian countries, Indonesia is a coastal country with parts located below sea level which often experience water surges and floods during the wet season. Underground water extraction, which is the city's main source of clean water, causes the land surface to sink, while heavy monsoons and cyclones, exacerbated by climate change, cause sea levels to rise. Jakarta has been sinking at a concerning pace. Available information shows that the city falls around 2 inches yearly and has fallen 2.5 meters in the past decade. Jakarta is estimated to be submerged by 2050 (Al Jazeera, 2022). This will lead to millions of climate-induced displacements. The government has implemented several measures to mitigate the impacts, such as regulation of groundwater extraction, construction of sea walls, and relocation plans for vulnerable communities. The President of Indonesia announced in 2019 that the capital of Indonesia would be moved from Jakarta to Nusantara (Al Jazeera, 2022).

Case Study: The disappearing Mekong river

The Mekong River is important to many countries in the SEA region, such as Thailand, Myanmar, Lao PDR, Vietnam, and Cambodia, as it provides key resources such as water, sediment, nutrient flows, and wild fisheries. It contributes significantly to the livelihood and economic development of the region as it is used for hydropower production, agriculture, and fisheries (Al Jazeera, 2022). The Mekong River is now under serious threat of drying up and periodic flooding in the region due to unpredictable monsoon rains, which is a result of climate change and dam construction.

In 2022, the river entered its fourth year of drought and available information indicates that it is in the worst condition in 60 years (Hunt, 2022). The severe drought affects the livelihood of people in the region, as their incomes depend on fishing and farming. A drastic decline in fish catches has been reported in northeast Thailand and Cambodia, causing an economic crisis for fishers in the area (Renaldi, 2021). The reason is that one key ecological feature that contributes to the Mekong River's diversity in natural resources and fisheries is its seasonal pulse with periodic floods and low water levels (Mekong River Commission, 2010). During the drought season, the river banks turn into agricultural land and return to a haven for fisheries during the flooding season (IDMC and Norwegian Refugee Council, 2022, p.48). However, due to climate change, the formerly predictable river pulse has been disrupted.

Rising sea levels and unpredictable monsoon seasons also make flooding more drastic and severe. According to the Mekong River Commission, damage due to flooding has increased in the past three years, and many farmers in Cambodia and Vietnam have deserted their farms to find jobs in urban areas (IDMC and Norwegian Refugee Council, 2022). Apart from the economic impact, flooding can also increase the risk of infectious disease and environmental pollution and hinder access to social welfare for people in the area (IDMC and Norwegian Refugee Council, 2022), which could contribute to people's desire to migrate in search of better living conditions.

3.7 Conclusions

This chapter has demonstrated that the nexus between climate change and displacement is complicated, making it hard to attribute any instance of displacement or forced migration to only one set of factors. This is the case with slow-onset climate change. Other factors such as economic incentives, political instability, and quality of life might overshadow the impact of climate change. Similarly, migration attributed to economic forces or armed conflict may have an underlying relationship to environmental degradation (Soo-Chen and McCoy, 2023). It seems that a "minimalist" approach may be considered more well-grounded to explain and analyze the causal relationships between climate change and displacement. Due to this complexity compounded with the lack of a normative framework that can be applied to protect the rights of people displaced because of climate change, their rights tend to be overlooked.

SEA is known as a "hot spot" for acute severe weather events; it is also vulnerable to the effects of chronic environmental degradation. Although projections of the scale of future climate mobility are uncertain, significant increase is indicated. Already we have seen the number of internal displacements increase from 3.9 million per year in 2008-2010 to 6.4 million in 2019-2021(Soo-Chen and McCoy, 2023). The lower Mekong subregion in SEA is projected to see between 3.3 million and 6.3 million new climate migrants between now and 2050 (1.4% to 2.7% of national populations) depending on different scenarios (Soo-Chen and McCoy, 2023). While most climate mobility occurs within a country, there will be growing pressure on national borders as climate change worsens. Such pressure might be expected on land borders within the Greater Mekong sub-region affecting Vietnam, Cambodia, Thailand and Laos (Soo-Chen and McCoy, 2023). However, there appears to be little attention in the region to cross-border migration caused by climate change and environmental breakdown.

As analyzed in the section on international protection, cross border migration due to climate change will pose international security as well as humanitarian challenges. Unfortunately, despite efforts made by the UNHCR, the 1951 Refugee Convention does not give people fleeing environmental disasters or climate-related threats the right to be recognized as refugees, even though the term "climate refugees" is increasingly used in popular and academic discourse. The Global Compact for Migration and the Global Compact on Refugees adopted in 2018 may be a good starting point for strengthening international cooperation in tackling the challenges and human rights-related aspects of cross-border climate change migrants , including in SEA where climate-induced mobility is a pressing issue. "Even if everything is done to mitigate further global warming, millions of people in the region will likely be forced to move from their current settlements over the next few decades" (Soo-Chen and McCoy, 2023).

Therefore, it is time to reconsider whether the number of climate-induced displacements in the report really reflects the reality of people fleeing climate-related disasters and to come up with long-term solutions for climate mobility (Saha, 2023). The other aspect that should be taken into consideration is the trapped population or people who do not have enough resources to flee the

impact of climate change. The fundamental human rights of this population can be at risk as they are forced to withstand the impact of climate change with low resilience and very limited resources and protection framework.

A. Questions

How do you understand environmental migration, climate mobility and climate-induced displacement?

How do you assess the nexus between displacement and climate change in your own country?

Is there any domestic framework that can be applied to protect the rights of climate-induced displacement?

Do you think ASEAN should do something and how?

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Chapter 4

The Role of Responsible Business with regard to the Right to a Clean Environment and Climate Change

Patricia Rinwigati Waagstein

Reader's Guide

The chapter aims to provide a concise overview of the applicability of human rights particularly on environment human rights and climate change in relation to the business activities. The chapter comprises several sections: introduction, theoretical/legal foundations, context, and key issues, followed by case studies in the Southeast Asia region. Additionally, there are further readings for those interested in additional learning.

4.1 Introduction

Climate change, environment and human rights are closely interconnected. Climate change is a global environmental problem that is caused by activities such burning of fossil fuels, deforestation, and industrial processes which has significant impacts on the environment and human rights. Rising sea levels for example can displace communities living in low-lying coastal areas, and changing weather patterns can negatively impact agriculture and food security.

Business plays a central role in human rights, climate change, and environment protection. Businesses indeed have a significant impact on the environment, and their operations can contribute to climate change and harm human rights, particularly those related to access to clean air and water, land, and livelihoods. In fact, they are the major contributors to greenhouse gas emissions, through their activities and suppliers such as the burning of fossil fuels, deforestation, and industrial processes.

At the same time, business can also contribute to innovation and solutions to prevent, mitigate, and adapt to climate change and its adverse impacts on the planet and its people by engaging in sustainable practices and supporting vulnerable communities. This can include taking steps to prevent pollution and protect the environment, respecting the rights of indigenous people, and ensuring that workers in their supply chains are treated fairly and have access to safe working conditions. In other words, to avert future climate harms and ensure climate justice, enterprises must be part of the solution. Hence, it is important to view these issues from a holistic and right-based approach calling for all States as the primary duty holder to protect human rights as well as businesses to respect human rights including the right to life as well as the right to a safe, clean, healthy, and sustainable environment, and should involve the meaningful participation of stakeholders, including affected communities and civil society.

This chapter aims to provide an introductory insight into the intricate relationship and complexities between the concepts of human rights particularly the right to healthy environment and climate change as well as corporate responsibility. It will commence by elucidating the evolution leading to the adoption of the United Nations Guiding Principles on Business and Human Rights. These principles underscore the significant endeavor to establish businesses as accountable entities for upholding human rights. Furthermore, the chapter will delve into crucial aspects, including human rights abuses, leading to a discussion about extraterritorial obligations of States to regulate business activities as well as the relationship between business, right to healthy environment, and climate change. Lastly, the chapter will highlight landmark cases in the Southeast Asian region, accompanied by thought-provoking questions designed to stimulate further contemplation and discourse.

4.2 Legal Theories & Context

Discussing responsibility of corporations in the context of climate changes and right to environment, there are several issues which need to be highlighted.

4.2.1. The United Nations Guiding Principles on Business and Human Rights: to protect, respect, and remedy framework

The United National Guiding Principles on Business and Human Rights (UNGPs) which was adopted unanimously by the Human Rights Council in June 2011, is the first international document addressing the issue of business and human rights comprehensively and widely accepted by government, business, and civil society across the globe. The Guideline which was prepared by the U.N. Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Professor John Ruggie, after six years of extensive research and consultations with stakeholders on five continents marked a watershed moment particularly in several different contexts:

First, the UNGPs provides answers to the long-standing debate in the past on whether a corporation has human rights responsibilities. Comprising a total of 31 Principles along with comprehensive commentary, the UNGP is built upon three fundamental pillars: the obligation of States to protect against abuses by third parties, the corporate responsibility to respect human rights, and the assurance of access to effective remedies for victims of human rights abuses.

Second, the UNGPs confirm that the responsibility of business to respect human rights does not shift human rights obligations away from a State, nor does it confer equivalent duties upon businesses to protect, respect, promote, and fulfill human rights, as it does for States. The UNGPs state clearly the distinct duties of States and responsibilities of business.

Thirdly, concerning content, the UNGPs provide a universally accepted and agreed upon expectation of what companies should do regarding human rights. It states an expectation that business should respect human rights (do no harm) and have in place appropriate policies, due diligence measures and remedial mechanisms to manage risk to human rights. This expectation applies to all businesses regardless of size, sector, or operating context.

Fourthly, the UNGP is not a treaty or a binding document; rather, it is in the form of guidelines, formulating soft law, although it was accepted by the Human Rights Council without a vote on June 16, 2011. Hence, no ratification is needed. Nevertheless, it has gained global acceptance at different levels. Currently, at least 34 countries have adopted and published national action plans on business and human rights to implement the UNGPs. Moreover, 18 countries are in the process of developing one. Several countries, such as the European Union and OECD countries, have incorporated the UNGPs framework into national/regional regulations, requiring corporations to respect human rights. At the corporate level, both corporations and business associations have also adopted the UNGP framework into their self-regulations, creating a regulatory framework among businesses.

Fifth, the UNGPs does not explicitly address the issue of environment as well as climate change. However, as a framework focusing on the impacted people due to business activity, they are relevant to climate mitigation efforts on the part of States, businesses and other stakeholders including to provide access to victims of environment harm and climate change. The connection between UNGPs and environmental harm and climate change will be further discussed.

4.2.2 Pillar I: State's obligation to protect

State's obligation to protect is the first pillar in the UNGPs. This responsibility is derived from the typology of various state obligations: to respect, to protect, and to fulfill which exists under the major human rights treaties and customary international law (Eide, 1987; Shue, 1980). Here, the obligation to protect is defined as the duty of States to protect human rights in relation to a third-party including businesses (Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect, and Remedy" Framework, 2011). This obligation operates in two different levels namely at the national and regional/international levels. At the national level, the UNGPs determine the States to take any necessary and appropriate preventive, adjudication, and punitive measures to ensure that human rights are not infringed. This also covers the obligation to regulate and develop legislation including not only the adoption of new legislation, but the duty to reform, amend, and repeal legislation that is manifestly inconsistent with the progressive realization of human rights (Committee on Economic, Social and Cultural Rights, 2006). This includes establishing boundaries by which corporations and other actors can operate, limit permissible behavior by other actors, define and create conditions for the protection of human rights, and provide legal consequences for violations by private actors. The second level of duty to protect refers to the obligation of the State as a member of the international community. In this context States are obligated to ensure that the international investment agreements or any State-to-State bilateral investment treaties spell out the protection of human rights from any other infringement from third parties such investors.

4.2.3 Pillar II: Corporate responsibility to respect

Responsibility to respect

Pillar II emphases on business responsibility rather than corporate obligation as the responsibility here refers to the social norms rather than legal duties. It is already clear that businesses have legal obligations to comply with all applicable law to obtain and sustain their license to operate in both host and home States. But this responsibility to respect human rights as derived from social norms exists over and above compliance with laws and regulations. It is about the expectation of what corporations should do although social norms and expectations may become law over time.

This type of responsibility exists independently of the State's abilities or willingness to fulfill their own duties. However, it complements the state's obligation to protect. In other words, businesses should behave well and respect human rights even if States are not willing or able to meet their duty to protect human rights. Businesses through its activities and/or supply chains are expected not to infringe human rights of others, or to not contribute, or involved in human rights abuses - put simply to do "no harm". Here, UNGPs expands the ambit of that responsibility to embrace the concepts of due diligence, sphere of influence, and the role of corporations including being complicit with human rights abuses (Ruggie, 2008a).

Due Diligence

The concept of due diligence entails business to continuously identify, prevent, mitigate, and address adverse impacts of human rights due to business operations. This implies a more active role set out for companies to have a clear policy that looks at all potential human rights impacts using the international Bill of Human Rights and the principles concerning fundamental rights set out in various human rights treaties. Moreover, businesses should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or because of their business relationships involving meaningful consultation with potentially affected groups and other relevant stakeholders. Finally, such assessment should be integrated into company's operations and culture and the performance should continuously be tracked and monitored (Sherman and Lehr, 2010).

Causing, contributing, and linking

In practice, the involvement of businesses in human rights abuses can be categorized into three possible ways:

1. Direct Causation: Businesses, through their operations, can directly cause human rights abuses. An example is evident when a business denies workers the right to organize themselves and join a labor union.
2. Contribution to Adverse Impact: Businesses can contribute or may contribute to adverse human rights impacts. For instance, a business providing financing to a construction project that results in forced evictions or agreeing to purchase orders with suppliers whose timelines make it impossible to adhere to international labor standards.
3. Linked Operations or Services: Businesses may have operations or services linked to adverse human rights impacts through their relationships with other entities. In this context, a company may not directly cause or contribute to human rights abuses, but its supply chain or business partner does. Due to this link, a corporation still bears a responsibility to act and seek to prevent and mitigate such impacts.

These different types of involvement in adverse human rights impacts necessitate varied responses. When a company causes, contributes to, or is linked to human rights abuses, it is required to prevent, stop, or mitigate the human rights impact. To comprehend a company's involvement

and formulate responses, it is essential for the corporation to conduct due diligence, identifying company involvement, risks, and responses to salient human rights abuses (Ruggie, 2008b). This task is far from simple, given that corporations often encounter intricate situations, and discerning the appropriate course of action can be challenging. For instance, a corporation operating in a corrupt country faces the dilemma of whether to continue operations in that country or relocate to other nations, despite the risk of profit loss. Unfortunately, there is no universal formula applicable to all scenarios. Nonetheless, the UN Guiding Principles on Business and Human Rights (UNGPs) explicitly state that businesses must refrain from contributing to, providing practical assistance for, or endorsing human rights violations by others. A comprehensive understanding of a company's role in various human rights abuses will empower businesses to define their responsibilities and take appropriate measures.

Within its own sphere of influence

The notion of "sphere of influence," initially put forth by the Global Compact and the Draft Norms referring to the boundaries of its social responsibility. This concept underscores that businesses bear responsibilities within the scope of their influence. However, within the context of the UNGPs, the term "sphere of influence" amalgamates two distinct interpretations of influence: one relates to the impact created when a company's actions or associations lead to human rights abuses, while the other pertains to the leverage a company holds over entities responsible for such abuses. Therefore, the scope of due diligence to meet the corporate responsibility to respect human rights is not a fixed sphere. Rather, it depends on the potential and actual human rights impacts resulting from a company's business activities and the relationships connected to those activities.

4.2.4 Pillar III: Access to remedy

Effective grievance mechanisms play a crucial role in fulfilling both the State's duty to protect and the corporate responsibility to respect, encompassing both legal and policy aspects. For effective implementation, state regulation governing corporate conduct and human rights safeguarding should be accompanied by mechanisms enabling the investigation, punishment, and remedy. Concurrently, the responsibility of businesses to respect human rights necessitates the establishment of channels through which victims of corporate abuses can notify the company of grievances and seek remedies. In essence, ensuring that victims of corporate misconduct can access remedies forms an essential component of both the duty to protect and the responsibility to respect.

The concept of access to remedies primarily revolves around individuals and civil society organizations impacted by corporate activities. Even when States and businesses strive to meet their obligations and responsibilities optimally, unforeseen challenges might lead to adverse human rights impacts stemming from corporate activities. Therefore, it becomes imperative to establish mechanisms through which such harm can be mitigated or restored, granting affected parties access to effective remedies through judicial, administrative, legislative, or other suitable means.

The UNGPs clearly applies the broad definition of access to remedy including any range of forms that aim to counteract or correct any human rights in harm that have occurred. That includes states based judicial and non-judicial mechanisms as well as non-state based mechanisms. Non-judicial mechanisms play an important role alongside judicial processes. They may be particularly significant in a country where courts are unable, for whatever reason, to provide adequate and effective access to remedy. Moreover, company-level grievance mechanisms through dialogue and engagement rather than the company itself acting as adjudicator of its own actions should be encouraged as they may provide alternative access to justice for victims of human rights abuses.

In short, any diversity of mechanisms to seek remedy should be developed and encouraged providing that they are immediate, accessible, effective, affordable, impartial, protected from corruption and free from political or other attempts to influence the outcome. In other words, principles of legitimacy, accessibility, predictability, rights-compatibility, equitability, and transparency have to be upheld (Ruggie, 2008a). Moreover, the concept of remedy should also be broadly defined to include the availability of access to seek for compensation, restitution, guarantees of non-repetition, and changes in relevant law and public apologies.

4.2.5. Extraterritorial Obligations

The concept of extraterritoriality has been acknowledged by various branches of international law. In the case of environmental issues, this concept has been articulated in various international conventions on the transboundary environment harms and hazardous wastes. In the context of human rights, there is a growing focus on extraterritorial human rights obligations in diverse contexts, such as economic and social rights, business and human rights, and in the work of some of the special procedures of the Human Rights Council. In the context of economic, social and cultural rights, Maastricht Principles on Extraterritorial Obligations of States is one example. Initiated by civil society, the Principles have reconfirmed some important issues:

First, the impact of human rights to individuals, groups, and people may be transcending the boundaries. This is driven by the advent of economic globalization in particular, has meant that States and other global actors exert considerable influence on the realization of economic, social and cultural rights across the world. In other words, one action/policy of a State or non-state actor in one jurisdiction may give implication to the enjoyment of human rights in another state. The situation is complicated by the fact that poverty remains pervasive and socio-economic inequalities endure across the world. Individuals and communities continue to face the continuing deprivation and denial of access to essential lands, resources, goods and services by State and non-State actors alike in a State or beyond. In this case, the global problem requires global solutions of States to take actions within or beyond its jurisdiction that have effects on the enjoyment of human rights outside its jurisdiction. Such obligations include to take measures separately and jointly through international cooperation to realize human rights universally. This also covers state actions to regulate their entities including businesses which operate overseas or may have implications abroad. Therefore, the Maastricht Principles clarify the human rights obligations of States beyond their own borders, especially their obligation to avoid causing harm and to protect human rights extraterritorially.

Secondly, the Maastricht Principles provides guidelines on the scope of jurisdiction expanding the concept of territoriality. In principle, this document may bring a justification for a state to regulate business operating abroad providing that a State has capacity to exercise effective control over an entity including business or has capacity to effectively influence or exercise decisive influence over an entity [business] or territory.

The last point refers to the limitation of extraterritorial principle. As confirmed by various jurisprudence, the extraterritorial obligation exists as a general exception to international law. It implies that despite the extraterritorial impact of human rights to people, State's obligation to the State's obligation to respect, protect and fulfill economic, social and cultural rights extraterritorially does not authorize a State to act in violation of the UN Charter and general international law.

4.3. Business, Rights to Healthy Environment and Climate Change

As mentioned earlier, businesses play a significant role in safeguarding both human rights and the environment. Businesses possess the capacity to make favorable contributions to human rights preservation through the generation of employment opportunities, advancement of economic growth, and encouragement of innovation. The adoption of conscientious and principled business approaches can further result in equitable labor circumstances, improved working environments, and the upholding of workers' rights. However, businesses can also be implicated in, contribute to, or even directly cause a range of human rights transgressions, including environmental deterioration and a diverse array of human rights violations particularly affecting local communities, notably indigenous populations (Letnar, 2008).

While the UNGPs do not explicitly mention any international legal framework concerning environment, climate change or specifically address the topic itself, their interpretation can encompass a comprehensive perspective, extending to cover human rights concerns for which corporations should assume responsibility, including climate change. The Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises (the Working Group) believes that the UNGPs offer valuable and practical guidance to both States and business enterprises in addressing the human rights implications of climate change. Furthermore, it's emphasized that the responsibility of business enterprises outlined in the UNGPs, which involve respecting human rights and refraining from causing, contributing to, or being directly connected to human rights impacts resulting from business activities, inherently contain the duty to address real and potential effects related to climate change. In fulfilling this responsibility, business enterprises should implement measures such as

a. To integrate climate change considerations into their policies, processes, governance structures and decisions to identify, prevent, mitigate and account for adverse human rights and environmental impacts, and do so throughout all their operations;

b. Develop and publish policies and action plans in relation to all their actual and potential climate change-related impacts on human rights and the environment;

c. Integrate climate change considerations in all aspects of the human rights due diligence process throughout their operations; Working Group on the issue of human rights and transnational corporations and other business enterprises

d. Identify all their Scope 1, 2 and 3 greenhouse gas emissions throughout their operations, with such identification being science-based, verifiable and informed by input from experts;

e. conduct effective and meaningful consultation with all relevant stakeholders, including ensuring free, prior and informed consent by Indigenous Peoples, on their actual and potential climate change-related impacts on human rights and the environment;

f. Take urgent remedial action, including ceasing any climate change-related human rights impacts that they cause or contribute to; and

g. Use their leverage over their business relationships to prevent, reduce or mitigate any climate change-related human rights impacts that they contributed to or are directly linked to through operations, products or services (Working Group on the issue of human rights and transnational corporations and other business enterprises, 2023).

Particularly, the Working Group places notable emphasis on responsible financing, underscoring the responsibility of global, national, and regional financial institutions, as well as investors, to reorient their support away from financing projects related to fossil fuels. Both individual and institutional investors should integrate the evaluation of climate change's impacts on both human rights and the environment within their decision-making procedures for investments (Macchi, 2020). In this context, it is underscored that the scrutiny of climate-related aspects should be an intrinsic facet of human rights assessment and shouldn't be treated in isolation. This is because measures aimed at mitigating climate change can potentially jeopardize human rights protection, and vice versa. As a result, climate-related diligence takes on a parallel structure to human rights due diligence, as outlined in the corporate responsibility to respect human rights - Pillar II (Working Group on the issue of human rights and transnational corporations and other business enterprises, 2023).

In the context of ASEAN, the right to a safe, clean, and sustainable environment has been recognized in the ASEAN Human Rights Declaration. Despite its non-binding nature, it has inspired ASEAN Member States (AMS) to incorporate these rights into their constitutions, regulations, and policies. Four AMS, namely Indonesia, the Philippines, Thailand, and Vietnam, explicitly mention the right to a healthy environment in their constitutions. The constitutions of Cambodia, Lao PDR, and Myanmar contain explicit references to the protection of the environment and natural resources by the State and/or its citizens. Brunei Darussalam, Malaysia, and Singapore have enacted laws for environmental protection, biodiversity conservation, and control of pollution and waste. Additionally, several ASEAN Member States have established specialized courts or tribunals to handle environmental matters. Various cases, as mentioned below, deal with corporations in the context of the environment and climate change.

Moreover, the ASEAN Intergovernmental Commission on Human Rights (AICHR) has initiated the drafting of a Regional Declaration on Environmental Rights in ASEAN. Simultaneously, AICHR has made efforts to engage with non-state actors, including businesses, to promote corporate responsibility in respecting the right to a safe, clean, and sustainable environment.

Case Study: Indigenous Karen people's fight against a coal mining project in Omkoi, Thailand

On April 4, 2020, plaintiffs representing more than 600 members of Kabeudin village, an indigenous Karen community located in Omkoi District, Chiang Mai Province, Thailand, filed a lawsuit at the Chiang Mai Administrative Court against the Expert Committee on Environmental Impact Assessment (EIA) Consideration and the Office of Natural Resources and Environmental Policy and Planning (ONEP). They requested the Court to revoke the approval of a 2011 EIA report for a lignite coal mining project proposed by 99 Thuwanon Co., Ltd., a Thai company (Gefeke *et al.*, 2022). The planned mining area would cover 45,3 ha of land, overlapping with a large farming area in Kabeudin village (Mamo, 2020). To support the operation, the mining project would also require a transportation route for coal which would pass through at least six communities (Gefeke *et al.*, 2022). The lawsuit aimed to protect the right to live in a good and safe environment for the health of the people and protect the natural resources and the environment of the Omkoi people (Gefeke *et al.*, 2022).

The company had been applying for a coal mining concession since 2000 to the Department of Primary Industries and Mines (DPIM), Ministry of Industry without gaining any attention from the villagers (Residents of Omkoi v. Expert Committee on EIA Consideration and the Office of Natural Resources and Environmental Policy and Planning). The company surveyed the proposed land between 2008 and 2011 and hired a third-party consultant to produce

the EIA report in 2010. The Expert Committee on EIA Consideration approved the report on August 16, 2011. Although the Thai law explicitly stated that the company was required to inform the affected community regarding EIA and hold at least two public consultations with the community, the Kabeudin villagers were not involved, or even informed, on the mining EIA process (Residents of Omkoi v. Expert Committee on EIA Consideration and the Office of Natural Resources and Environmental Policy and Planning). The villagers also alleged that the EIA report did not include some important information regarding the community and the natural resources they depended on, including "their rights to clean air and water" (Cowan, 2022). The report instead contained misleading or incorrect information, including forged signatures of the villagers which were intended to falsify public participation (Residents of Omkoi v. Expert Committee on EIA Consideration and the Office of Natural Resources and Environmental Policy and Planning). They had only been made aware about the project after an announcement from the DPIM on April 26, 2019, eight years after the EIA report had been approved.

In response to the planned project, the indigenous community and several concerned civil society organizations joined together to protest the EIA report under the banner of Omkoi Anti-Coal Mine Network (Mamo, 2020). Noting the many flaws of the EIA report, they also created their own Community Health Impact Assessment (CHIA) report. This report highlighted several adverse impacts of the proposed coal mining project, including the irreversible loss of natural resources and biodiversity, loss of farmlands threatening the community's food security, loss of access to water resources, health problems caused by water and air pollution, and the destruction of Indigenous Karen community's way of life (Atpradit, 2022). They also noted the significant role of coal as the major contributor to global emission. The company pushed back through Strategic Litigation against Public Participation (SLAPP). They filed defamation charges against seven protesters, consisting of village leaders and university students (Gefeke *et al.*, 2022).

In 2020, Thailand's National Human Rights Commission (NHRC) found human rights violations in the EIA process. They highlighted the lack of public participation in the EIA process and recommended the EIA report to be revised with proper public participation and adequate compensation for the affected villagers *(Residents of Omkoi v. Expert Committee on EIA Consideration and the Office of Natural Resources and Environmental Policy and Planning, 2022).* This was in line with the plaintiff's other request for the Court to order the Expert Committee on EIA Consideration and ONEP to produce a new EIA report with meaningful public participation.

On September 30, 2022, the Court ordered a temporary injunction which suspended the activities of the coal mining project until the Court had issued the final decision. This order "reaffirmed the right to live in a good environment and recognized the right to meaningful participation of the community" and was in accordance with the UN Council Resolution and UN General Assembly Resolution which recognized the right to a clean and healthy environment (Gefeke *et al.*, 2022).

Case Study: Transboundary class action from Cambodians against Thai sugar firm over land grabbing practice

On July 30, 2020, Bangkok South Civil Court delivered the Appeals Court's decision in permitting a class action lawsuit filed by two Cambodians, Hoy Mai and Smin Tet who represented 711 Cambodian families in Samrong District, Oddar Meanchey Province, Cambodia against Mitr Phol Sugar Co,, Ltd., a Thai company which was one of the largest sugar producers in the world, supplying for world-famous brands like Coca Cola (Chaumeau, 2022). The company was accused of conducting land grabbing, forcing population displacement, and destroying private property for their planned sugar plantation in Samrong District through its subsidiary, Angkor Sugar Co., Ltd. The plaintiffs alleged that from 2008 to 2015, the company had caused significant harm to the Cambodian families, including "loss of houses, loss of farmland, damage to properties, loss of opportunity to make use of community forests, and being assaulted", leading to violations of their human and environmental rights *(Thai Appeal Court decision on Mitr Phol paves the way for Asia's first transboundary class action on human rights abuses, 2020)*. More than 2000 families were forcibly displaced *(Cambodia: Challenging Mitr Phol land grab*).

This is the first transboundary class action lawsuit on human rights abuses in Asia, although similar transboundary cases have been previously brought to Thailand's Human Rights Commission (Koh Kong sugar plantation case) and Malaysia's National Human Rights Commission (Don Sahong Dam construction case). The lawsuit was initially rejected by the lower court due to the difficulties in communicating with the plaintiffs as they lived in remote regions in Cambodia and did not speak Thai (Sivasomboon, 2020). This decision was then overturned by the Appeals Court.

Amnesty International commented that the Appeals Court's decision was a historic moment for human rights and corporate accountability in Southeast Asia. It would also test Thailand's commitment to their National Action Plan (NAP) on Business and Human Rights - the first NAP adopted by ASEAN countries - particularly on its extraterritorial application (Debevoise & Plimpton LLP, 2021). As a redress mechanism, the plaintiffs demanded the company to pay compensation in a total amount of 5,845,204 Baht to cover medical and related expenses, health problems due to physical and mental suffering, damage to property, as well as damages for violations of human rights, including the right to live in a good environment, right to natural resources, and children's rights to education *(Announcement of the Bangkok South Civil Court Regarding Permission for Class Action Lawsuit, 2018)*

Case Study: The Philippines' National Inquiry on the impacts of climate change and the responsibility of carbon majors

Fourteen civil society organizations working on diverse issues, including the environment, workers, rural development, human rights, and youth, filed a petition for the Philippines' Commission on Human Rights to investigate the responsibility of the Carbon Majors for human rights violations or threats of violations resulting from the impacts of climate change on September 22, 2015 (Soriano & Mayo-Anda, 2016). Carbon Majors referred to a group of 51 investor-owned companies which were the world's largest producers of crude oil, natural gas, coal, and cement which collectively contributed to 21,57% cumulative global carbon and methane emissions between 1751 and 2013 (Soriano & Mayo-Anda, 2016). These companies included Chevron, Royal Dutch Shell, Exxon Mobil, and BP. Central to their petition was the issue of whether or not the Carbon Majors should be held accountable for the human rights implications of climate change and ocean acidification (Soriano & Mayo-Anda, 2016).

The petitioners alleged that the Carbon Majors' activities had violated or threatened to violate Filipino's rights to life, the highest attainable standard of physical and mental health, food, water, sanitation, adequate housing, and self-determination (Soriano & Mayo-Anda, 2016). The petitioners described how the Philippines was highly vulnerable to the impacts of climate change. They also highlighted the particular rights of the vulnerable groups, including women, children, people with disabilities, those living in extreme poverty, indigenous communities, displaced persons, and workers. At the time of the filing, the petition managed to garner support from 31,841 Filipinos (Boom, Prihandono and Hosen, 2022).

After four years of the inquiry process, the Commission presented their initial report in December 2019. The Commission concluded that the corporations bear a responsibility to respect human rights in the context of a climate emergency. It cited the UNGPs as the primarily reference on business and human rights, regardless of its non-binding nature (Kerschner *et al.*, 2023). Additionally, it demonstrated its jurisdiction over the inquiry. This case is significant as it marks the first instance globally that a government body has accepted and processed an investigation of the human rights responsibility of fossil fuel producers for climate change (Boom, Prihandono and Hosen, 2022).

The Commission released its final report on May 6, 2022. Addressing the issue raised by the petitioners, the Commission determined that Carbon Majors, either directly or indirectly, individually and/or collectively, engaged in deliberate distortion of climate science, thereby impeding the public's right to make informed decisions regarding their products. They concealed the significant environmental and climate-related harms posed by their products. (Kerschner *et al.*, 2023). The Commission observed that despite scientists' awareness of the climate change impacts of fossil fuels as early as 1965, the Carbon Majors undertook measures to persuade the public that their products would not result in significant harms, including extensive climate denial campaigns (Muffett, 2022). These actions could justify liability. Furthermore, the Commission expanded the scope of responsibility to respect human rights, applying it not only to the Carbon Majors themselves but also to their entire value chains. It required the Carbon Majors to conduct human rights due diligence and provide appropriate remedies for individuals affected by their business operations (Muffett, 2022).

According to several scholars, this inquiry process represents an innovative legal strategy from Global South aimed at holding fuel-intensive corporations in the Global North accountable for their contributions to climate change (Setzer and Benjamin, 2019). This inquiry stands out among existing climate change litigation cases for its focus on the extraterritorial impacts of climate change and for targeting foreign companies rather than States, which were based outside of the Philippines (Savaresi and Auz, 2019).

Reflection and Discussion: Substantive and procedural rights

A. Substantive Rights: Human Rights to a Healthy Environment and Climate Change:

1. How should the implementation gap between regulations aimed at safeguarding human rights and the environment and the practices of business actors be addressed?
2. What roles can human rights play in the context of responsible investment, including foreign investments?
3. How can a human rights approach be beneficial for local communities, particularly indigenous people, in protecting their way of life and access to natural resources from harmful business activities?
4. What other roles can national human rights institutions play in safeguarding human rights and the environment from business operations?

B. Procedural Rights: Litigation

1. What are the opportunities and challenges of bringing a lawsuit against a parent company in its host country to protect human rights and the environment?
2. How can extraterritoriality also be applicable for similar cases in other Southeast Asian countries?
3. In what ways can human rights arguments be useful in extraterritorial climate change litigation against corporations?
4. How can Strategic Lawsuits Against Public Participation (SLAPP) be effectively stopped to protect environmental human rights defenders?

4.4 Conclusion

Several key points can be highlighted:

- It is widely acknowledged that businesses play a significant role in human rights impacts, particularly in the right to a healthy environment. Their operations can cause, contribute to, or be linked to the degradation of the right to a healthy environment and climate change. Simultaneously, businesses have the capacity to prevent, mitigate, and address environmental damage and climate change. Therefore, businesses are expected to integrate human rights policies into their day-to-day operations and consistently conduct human rights due diligence to assess both actual and potential risks arising from their business activities.
- The United Nations Guiding Principles on Business and Human Rights (UNGPs), with its three pillars emphasizing the state's obligation to protect human rights, corporate responsibility to respect, and victims' right to remedy, provide a global standard and tools for states, corporations, and civil society. Despite their non-binding nature, the UNGPs have been utilized as a reference for states to regulate and make necessary efforts to prevent human rights abuses by corporations. The UNGPs also offer guidelines on how corporations are expected to prevent, mitigate, and address human rights abuses, including those related to the right to a healthy environment and climate change. Finally, this instrument also emphasizes the right to effective remedy for victims of human rights abuses.
- In the context of ASEAN, the right to a safe, clean, and sustainable environment, as stated in the ASEAN Human Rights Declaration, has inspired ASEAN Member States (AMS) to incorporate this right into their constitutions, regulations, and policies. Additionally, specialized courts or tribunals have been established to address environmental matters.

While there are numerous cases on the ground, a selection of cases is presented to offer a holistic view of the complex issues and problems involving the role of businesses in addressing climate change in the region. These cases signify the states' responses to tackle these issues. Reflective questions have been included to stimulate further discussion.

- This section aims to provide a concise overview of the role of responsible business in addressing the right to a healthy environment and climate change. Numerous issues remain to be addressed, and suggested readings are provided for further exploration.

A. Suggested Readings

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Chapter 5

Indigenous Peoples, the Environment and Climate Change

Jerald Joseph and Kamal Solhaimi Bin Fadzil

Reader's Guide

The rights of indigenous peoples have not been recognised by legally binding international human rights treaties. However, by references to "everyone" in human rights conventions, they are included. At the same time, indigenous peoples should enjoy some "specific rights" that are inherent to them. This module first unpacks the understanding of the rights and principles contained in the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP), and indigenous peoples in Southeast Asia and common issues they have been facing. The module particularly looks at indigenous peoples and land rights, which form a critical part of their rights. It also examines indigenous peoples and forests, the sea, and climate change as their rights and lives are connected to nature. The last part of this module looks into questions of inclusion and justice through a multi-country study. Each section contains case studies and discussion boxes.

5.1 Indigenous Peoples: Standards within UNDRIP

The basic objectives of this section are to understand who indigenous peoples are and how they are different from minorities. The rights and principles contained in UNDRIP, as well as its adoption, are explained and analyzed. The section further introduces indigenous peoples in Southeast Asia and the rights issues that they face and offers case studies for analysis and reflection.

5.1.1 Who are indigenous peoples?

There is no universal definition of indigenous peoples. However, International Labour Organization (ILO) Convention No. 169, the Indigenous and Tribal Peoples Convention, defines indigenous peoples as descendants from the populations which inhabited a country, or a geographical region to which a country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

Jose R. Martinez Cobo, the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in his study on the Problem of Discrimination Against Indigenous Populations, provides a definition of indigenous communities, peoples and nations as "those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions, and legal system" (Cobo, 1981).

5.1.2 What is the difference between indigenous peoples and ethnic minorities?

Often we are confused as to what differentiates ethnic minorities from indigenous peoples. Ethnic minorities also often do face discrimination in the country they live. However, there is a distinction.

Indigenous peoples are recognized by the UNDRIP (adopted by the UN General Assembly in 2007) which enumerates a set of basic principles in the protection of the collective rights of indigenous peoples and which provides the necessary measures to correct the historical injustices and discrimination committed against them (AIPP, IWGIA, FORUM-ASIA, 2010).

In contrast, ethnic minorities are people with common traits which distinguish them from dominant groups or the majority within a society (AIPP, IWGIA, FORUM-ASIA, 2010). These common traits can include language, ethnicity, or religion. Minorities, like indigenous peoples, often suffer from discrimination while they also struggle for the recognition and protection of their rights within the larger society. Within international frameworks, for example, they are given recognition in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The IWGIA makes an important observation that under the Declaration, an ethnic minority is referred to as persons, rather than as collectives, or peoples (AIPP, IWGIA, FORUM-ASIA, 2010).

5.1.3 The adoption of the United Nations Declaration on the Rights of Indigenous Peoples

On 13 September 2007, the General Assembly passed the UNDRIP with 144 states voting in favor, 4 states voting against (Australia, Canada, New Zealand, and the United States), and 11 states abstaining (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa, and Ukraine). The four nations that voted against the UN Declaration have now changed their minds and are now in favor of it.

The Declaration is currently the most extensive international document on indigenous peoples' rights. The Declaration covers both individual and collective rights, cultural rights, and rights to one's own identity, as well as other rights including language and employment. Indigenous peoples are encouraged to fully and effectively participate in all decisions that affect them, and discrimination against them is outlawed. Additionally, it protects their freedom to maintain their individuality and to prioritize their own economic, social, and cultural advancement. In a significant move, Article 3 of the UNDRIP recognises the right to self-determination of indigenous peoples, which includes the freedom "to freely determine their political status and freely pursue their economic, social and cultural development." In accordance with Articles 4 and 5, indigenous peoples are guaranteed the right "to autonomy or self-government in matters relating to their internal and local affairs," as well as the "to maintain and strengthen their distinct political, legal, economic, social, and cultural institutions." According to Article 26, "Indigenous Peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired," and it instructs states to recognise these territories legally. The Declaration strongly advocates peaceful coexistence between States and indigenous peoples.

The Declaration was drafted based on 9 clusters (*United Nations Declaration on the Rights of Indigenous Peoples, no date*), namely foundational rights (Articles 1 to 6), life and security (Articles 7 to 10), language, cultural and spiritual identity (Articles 11 to 13), education, information and employment (Articles 14 to 17), participation, development and economic and social rights (Articles 18 to 24), rights to country, resources and knowledge (Articles 25 to 32), self-governance (Articles 33 to 37), implementing the declaration (Articles 38 to 42) and lastly interpreting the declaration (Articles 43 to 46).

5.1.4 A brief introduction to the indigenous peoples in Southeast Asia

Below is a list of the many different indigenous peoples who live in the different countries in Southeast Asia (AIPP, IWGIA, FORUM-ASIA, 2010).

These countries include Vietnam, Laos, Cambodia, Myanmar, Thailand, Malaysia, Indonesia, Philippines, Brunei and Singapore. Although not exhaustive, the list below offers a glimpse at the rich diversity of indigenous peoples in Southeast Asia.

Countries	**Indigenous Peoples**		
Malaysia	Peninsular	Proto-Malay	Jakun, Temuan, Semelai, Temoq, Orang Kuala, Orang Kanaq, Orang Seletar
		Negrito	Kensiu, Kintaq, Lanoh, Jahai, Mendriq, Batek, Mintil
		Senoi	Cheq Wong, Temiar, Semai, Jah Hut, Semaq Beri, Mah Meri
	Sarawak	Dayak (Iban, Bidayuh, Kenyah, Kayan, Kedayan, Murut, Punan, Bisayah, Kelabit, Berawan, Penan)	
	Sabah	Kadazan – Dusun, Bajau, Murut	

Countries	Indigenous Peoples	
Indonesia	Java	Javanese, Sundanese, Betawi, Bantanese, Tengger, Osing, Badui, Ciptagelar, Cirebonese
	Madura	Madurese
	Sumatra	Batak, Minangkabau, Malays, Acehnese, Lampung, Kubu
	Kalimantan	Dayak, Banjar, Kutai
	Sulawesi	Makassarese, Buginese, Mandar, Minahasa, Buton, Gorontalo, Toraja, Bajau, Mongodow, Buroko, Bolango
	Lesser Sunda Island	Balinese, Sasak, Rotenese, Atoni
	Maluku	Nuaulu, Manusela, Wemale
	Papua	Dani, Bauzi, Asmat
Thailand	Chao Ley, Mani, Hmong, Karen, Lisu, Mien, Akha, Lahu, Lua, Thin, Khamu	
Philippines	Igorot (North – Luzon)	Ifugao, Bontoc, Kankanay, Ibaloi, Kalinga, Tinguian, Isneg, Gaddang, Ilongot, Negrito (Aeti, Ati)
	Lumad (South – Visaya)	Ata, Bagobo, Guiangga, Mamanwa, Magguangan, Mandaya, Banwa-on, Bukidnon, Dulangan, Kalagan, Kulaman, Manobo, Subanon, Tagabili, Takakaolo, Talandig, Tiruray/Teduray
Myanmar	Bamar, Chin, Kachin, Kayin, Kayah, Mon, Rakhine, Shan, Nagas, Pa-O, Wa, Kokang, Palaung, Akha, Lahu	
Vietnam	Northern Vietnam	Tay, Thai, Muong, Dzao, Nung
	Montagnard	Austronesian family language (Gia Rai, Ede, Rag Lai, Cham), Mon-Khmer language (Ba Na, Bru-Van Kieu, Gie Trieng, M'Nong, Xe Dang, X Tieng), Ede, Brahnar, Jarai, Rhade, Bahnar, Koho, Mnong, Stieng
Cambodia	Kuy, Mnong, Stieng, Brao, Tampuan, Pear, Jarai and Rade	

Map of Indigenous Landscapes in Southeast Asia (Ismail, 2018)

5.1.5 Common issues faced by indigenous peoples

The term “indigenous peoples” refers to several socioeconomic and cultural groups that have shared ancestral links to the lands and natural resources that they currently reside on or have been displaced from. The land and natural resources they rely on are integral to their identities, cultures, ways of life, and overall bodily and spiritual health. They frequently follow their traditional leaders and groups for representation, which are different or distinct from those of the majority community or culture. However, many indigenous peoples have also lost their languages or are on the verge of extinction because they have been evicted from their lands and/or relocated to other territories.

Many indigenous peoples still speak a language that is distinct from the official language or languages of the nation or region in which they live. indigenous peoples are thought to number 476 million worldwide. They represent around 19% of the extremely poor, despite making up only 6% of the world’s population. The average life expectancy of indigenous peoples is up to 20 years lower than that of non-indigenous people globally. Indigenous peoples frequently face numerous obstacles to full participation in the formal economy, access to justice, and participation in political processes and decision-making. They frequently lack formal recognition of their lands, territories and natural resources, are frequently the last to receive public investments in basic services and infrastructure, or later than other groups. Indigenous peoples are more susceptible to the effects of climate change and natural disasters, including disease outbreaks like COVID-19, as a result of the legacy of injustice and marginalization. The lack of access to national health, water, and sanitation services, the closure of markets, and travel limitations that have had a significant impact on their livelihoods, food security, and well-being, can sometimes make people more vulnerable to an epidemic (Hanson, no date).

Even though many governments recognise only a small portion of their land as formally or legally belonging to indigenous peoples, a large portion of the land occupied by indigenous peoples is under customary ownership. Even when indigenous peoples' territories and lands are recognised, there are frequent problems with resource exploitation and boundary protection. Conflict, environmental deterioration, and sluggish economic and social progress are all caused by insecure land tenure. A loss of these lands increases the likelihood of fragility and biodiversity loss, and compromises health (or ecological and animal health) systems, all of which endanger the ecosystem services on which they rely. This also threatens cultural survival and the preservation of crucial knowledge systems.

Reflection and Discussion: Understanding the context of indigenous peoples

Identify a country as your case study and reflect on the following questions.

- Who are the indigenous peoples in your case study?
- Are there national legal frameworks recognizing indigenous rights there?
- Discuss the key human rights issues they face.
- How are indigenous peoples different from ethnic minorities?
- What are the key principles in the UNDRIP?
- Identify a relevant legal case from your country and discuss if the formation of the nation-state extinguishes claims of indigenous customary land claims?

Learning Activity 1

Indigenous groups have taken proactive measures to bring their struggles to court. In doing so they have had to learn how to produce customary land maps, write narrative reports and create media content for raising public awareness. Based on examples from your own country, identify the following online material:

- Videos narrating indigenous stories of returning or internal migration back to their customary landscapes.
- Use of social media, such as google maps, twitter, Facebook ,etc. to create public awareness of indigenous legal struggles over customary land.
- Identify an indigenous icon who celebrates indigenous struggle over customary land rights in their art or platform.

Using these materials, discuss what measures have indigenous peoples from your country taken in their struggle for recognition of their customary land rights. Do you feel they have been successful in raising public interests and in bringing their struggle to court?

5.2. Indigenous Peoples and Land Rights

This section touches upon the significance of customary land to indigenous peoples, their rights to land, and the concept of collective rights especially with regard to land rights and conflicts between the State and indigenous peoples over land use and ownership. The section also showcases the utilization of legal instruments in recognising indigenous people's ownership of their land as well as issues and challenges in customary land issues in Southeast Asia, and how legal approaches can be applied in addressing indigenous customary Land.

5.2.1 Overview

Indigenous peoples have fundamental ties to their lands, territories, and resources on a spiritual, cultural, social, and economic level that are essential to their very existence. In contrast to prevalent conceptions of individual ownership, privatization, and development, their legacy of collective rights to lands and resources—through the community, the region, or the state—stands in opposition to these ideas.

It is becoming better understood that promoting indigenous peoples' collective rights to lands, territories, and resources benefits society by addressing issues like climate change and biodiversity loss. Collective rights here refer to rights that are enjoyed by virtue of sharing a collective identity. Around 20% of the earth's surface is made up of indigenous lands, which also contain 80% of the world's remaining biodiversity. This statistic shows that indigenous peoples are the best environmental stewards (Gilbert, 2016).

As a result, the demand by indigenous peoples for the acknowledgement of their lands and territories is a notable convergence in their legal rights. Even though indigenous peoples live in some of the most remote regions of the world and reflect its immense diversity, it is striking to realize how they all share the same attachment to their lands, which is fundamental to indigenous societies across the globe in terms of culture, social structure, and economics. Indigenous peoples' representatives from all over the world have converged on the United Nations headquarters in Geneva or New York and emphasized this crucial point. As Rodolfo Stavenhagen, a former UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples puts it: "*[T]he threads that weaves these factors together is the indigenous peoples' attachment to land and territory*." Even though the need to find resources forms the basis of indigenous peoples' relationships with their lands, these relationships have deeper, non-physical characteristics. The majority of indigenous communities have emphasized that lands and territories serve as a foundation for their spiritual, cultural, and social identity in addition to providing a means of subsistence. As noted by the United Nations Permanent Forum on Indigenous Issues: "*Land is the foundation of the lives and cultures of indigenous peoples all over the world. ... Without access to and respect for their rights over their lands, territories and natural resources, the survival of indigenous peoples' particular distinct culture is threatened.*" In response, it is critical that international law recognizes the unique bond that exists between indigenous peoples and their home countries as being essential to their survival as well as to all of their cultures, customs, beliefs, and traditions (Gilbert, 2016).

5.2.2 What are the legal approaches in addressing indigenous customary land?

One of the claims presented in this document is that there have primarily been two legal approaches to the issue of land rights and indigenous peoples, one based on a right of land ownership and the other on a right of use. The first strategy, which recognizes indigenous peoples' right to land ownership, is founded on property rights, whereas the second strategy, which is based on the idea that indigenous peoples' survival as distinct cultural entities depends on maintaining access to lands they have occupied since the dawn of time, is known as the right to use.

The right to property is one of the few rights under human rights legislation that can be categorized as both a political and civil right and an economic, social, and cultural right. It is challenging to articulate a universal legal understanding of property since the concept of property is saturated with philosophical and social-cultural ideas. As captured by Tsosie: "*[P]roperty rights are, by nature, social rights; they embody how we, as a society, have chosen to reward the claims of some people to finite and critical goods, and to deny the claims to the same goods to others''*(Tsosie, 2001). Indigenous peoples' land claims are being brought to the forefront of the conversation on property rights thanks to this social rights approach to property rights (Gilbert, 2016).

Article 26 of the UNDRIP takes a very wide approach by putting together notions of ownership, possession, and use. Article 26.2 states:

> *"Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired."*

Therefore, even though the U.N. Declaration does not specifically mention collective property rights, it recognizes traditional forms of land tenure used by indigenous peoples. Additionally, the Declaration's section on land rights recognizes indigenous peoples as the owners of those rights because all of its articles begin with the phrase, "Indigenous peoples have the right …". The concept of collective rights is not universally accepted, though; for instance, the United Kingdom government has made it clear that it does not. The US, Australia, and New Zealand have all voiced a similar disapproval of the acknowledgment of collective rights. States that oppose recognizing indigenous peoples' right to collective ownership frequently advocate for the acknowledgment of the rights of individuals who are members of indigenous communities based on the framework of minority rights. However, whether based on individual or collective rights, the text of the Declaration is clear that States must recognize the customs, traditions, and land tenure systems of indigenous peoples.

Realizing indigenous peoples' rights to lands, territories, and resources has advanced in a few nations. Examples include Australia, where native title and statutory land rights schemes give indigenous peoples legal ownership of over 20% of the land, most of which is located in remote regions, and in 2013, Indonesia's Constitutional Court reinstated indigenous groups' ownership rights over what had previously been referred to as "State forests" (Gilbert, 2016).

5.2.3 Customary land issues in Southeast Asia: issues and challenges

Indigenous communities in Asia are confronted with the ongoing loss of their ancestral lands and the devastation of their traditional territories due to extensive development initiatives and the exploitation of resources by both governmental and private enterprises. This is evident in the rapid expansion of extractive industries, infrastructure development, the establishment of national parks, and other projects encroaching on indigenous lands, a phenomenon that indigenous peoples have termed "development aggression" (AIPP, 2015).

Development Aggression

In Cambodia's Prey Lang Forest region, home to the indigenous Kui, official land grants of tens of thousands of hectares of forests have been given for mineral extraction, timber harvesting, and rubber plantations. This has forced many Kui people to give up their traditional livelihoods. Likewise, the expansion of oil palm plantations in Malaysia (Mickute, 2018) and Indonesia (Human Rights Watch, 2019) is also taking away forestlands of Indigenous Peoples.

Another major source of destruction of indigenous lands and resources is large-scale mining. More than a hundred corporate mines are currently operating in indigenous territories in Asia. However, not a single company has undertaken a credible process of obtaining the free, prior and informed

consent of affected communities. In Northern Maluku, Indonesia, PT Nusa Halmahera Minerals (PT NHM), an Australian gold mining company, has been operating in the indigenous Pagu territories since 1997. The company started its work without any consultation with the indigenous Pagu. The mining activities caused the loss of forests and the livelihoods of community members. Rivers and ocean areas in the Pagu territories are poisoned with cyanide and mercury resulting in health problems among the community people, as they consume fish and water from the rivers (AMAN and AIPP, 2017).

Imposition of National Parks and Conservation Areas

Many countries in Asia are vying to increase the size of their terrestrial protected areas (parks and conservation areas), to 10 – 12 percent of their total land area. These protected areas often overlap with forest areas that indigenous communities have been preserving for generations. However, due to the non-recognition of traditional land tenure systems, these areas are often gazetted as protected areas without the free, prior and informed consent of communities *(Prachatai English*, 2014). Such an imposition will result in the restriction of indigenous communities' access rights, or the denial of their land tenure rights, with serious implications on the food security of indigenous peoples. There are many cases of eviction of indigenous communities from national parks in Thailand, Malaysia, Indonesia, and Lao PDR. Likewise, indigenous women and girls are also being subjected to sexual violence by guards and personnel of national parks when they go to gather non-timber forest products, as in the case of Nepal and Cambodia.

Misunderstanding indigenous peoples' traditional land use and livelihoods

Indigenous peoples' traditional land use systems, particularly shifting cultivation as practiced in most countries in Asia, have long contributed to sustainable livelihoods, food security, natural resource management, and biodiversity conservation and enhancement. The traditional knowledge, and cultural, spiritual, and nutritional values attached to these livelihood systems demonstrate that they are not merely a technique of land use but a way of life for indigenous peoples. However, government policies are still in place that directly aim to eradicate shifting cultivation or rotational agriculture and prohibit the gathering of non-timber forest products in the name of environmental conservation. This has resulted in the criminalization of indigenous peoples' livelihoods and many of them have been jailed and penalized, for example in Indonesia and Thailand. Further, indigenous communities are often resettled resulting in loss of land and the traditional knowledge attached to land use (Erni, 2009).

Energy projects displacing indigenous peoples from their lands

Indigenous peoples' lands and forests are being expropriated for large-scale energy infrastructure developments, like mega hydropower dams, without their free, prior and informed consent. Meanwhile, the energy to be generated will be transmitted to urban and industrial centers or exported to neighboring countries. The classification of large dams as clean energy under climate change mitigation has been taken as a license to build more than 200 large dams across Asia. The construction of large dams has already displaced at least 40 million people worldwide, many of whom are indigenous. These activities are causing adverse environmental, economic, social, and cultural impacts on indigenous peoples' livelihoods and traditional occupations. In Vietnam, over 90,000 people, mostly ethnic Thai, were relocated to make way for the Son La Hydropower plant, which a Vietnamese scientist said left many without access to agricultural land by 2010 (AIPP, 2014).

In the Malaysian state of Sarawak, the Sarawak Government and state-owned Sarawak Energy Berhad are collaborating to build a series of up to twelve large-scale hydroelectric dams as part of an industrial development initiative called the Sarawak Corridor of Renewable Energy. Inundating an area of more than 2,100 square kilometers, the dams will submerge forests, cultivated areas, and villages, forcibly displacing tens of thousands of indigenous peoples from their customary lands. The hydropower projects are proposed for the purposes of exporting electricity to neighboring Brunei and Indonesia, and to generate power for resource-intensive industries, including steel,

aluminum, silicon, and timber processing. To date, three large hydroelectric projects, the Batang Ai, Bakun and Murum dams, have already been built in Sarawak. However, the recently completed Murum Dam is yet to begin operating due to technical design flaws, while the Bakun Dam is not operating at full capacity because of an insufficient demand for electricity. The existence of excess unused power potential and the lack of evidence of demand-side needs for more power mean that there is no clear rationale for proceeding with the construction of more dams (Lee, Jalong and Meng-Chuo, 2014).

Likewise, the proposed construction by PhilCarbon of a series of huge commercial wind farm towers in the fragile mountain ranges of Sagada and Besao in the Cordillera Region, the Philippines, for power generation will have serious adverse impacts on the environment and sustainable livelihoods of Indigenous Peoples. While wind is supposed to be a form of renewable energy, it is not automatically viable and socially acceptable, especially if it threatens Indigenous Peoples, is destructive to the environment and is driven by business interests over the indigenous communities' interests, needs, control, and management of their resources.

Increasing insecurity of indigenous leaders and activists

Indigenous peoples have long been fighting to defend their lands and forests against mining, logging, plantations, and other extractive industries in the region. However, human rights violations against indigenous persons who have been protecting their territories and forests are increasing. The report "Deadly Environment" by Global Witness has reported the killing of 102 environment and land defenders including indigenous persons in the ASEAN region from 2002-2013. The culture of impunity for the perpetrators and the lack of political will to deliver justice for those killed in conflict is prevalent, which in turn is deterring others from protecting their rights to the environment and land. Human rights violations of indigenous peoples, including killing, land grabbing, militarization, torture, rape and the sexual harassment of indigenous women, are also prevalent in South Asia.

Concerns of indigenous women

Indigenous women possess rich indigenous knowledge in protecting, developing, and using forest resources. Indigenous knowledge contributes to the maintenance and preservation of biodiversity and sustainable forest development. Indigenous women's traditional knowledge and practices have been found to be a suitable way to secure food, conserve their culture and traditions, and contribute to sustainable natural resource management in their community. Indigenous knowledge on forest management has proven to be applicable and appropriate to local conditions. It is comprehensive because it has been developed over a long period of time and can be easily applied as a basis for solutions to local problems.

Generally, except in a few cases, indigenous women do not have ownership of land, even though they are usually the ones who manage and work on the land. Even under the customary law of Indigenous peoples, it is the men who mostly occupy leadership and decision-making positions in the community. Indigenous women are often not allowed the same rights as indigenous men in decision-making on community matters, including land ownership.

Indigenous women are disproportionately affected by the loss of land and the advent of private companies for resource extraction in indigenous territories. Because they are the ones who collect forest resources and fetch water for their families, indigenous women are the first to be affected and are the most disadvantaged by environmental degradation of forests and limited access to natural forest resources. It is understandable that their concerns about forest degradation are increasing as logging activities and mining proceed on an enormous scale in their lands. Women also become vulnerable to exploitation once displaced from the forest and their traditional livelihoods because they are usually not skilled to do other jobs. Indigenous women are losing

their important role and traditional knowledge on food production and natural resource management, especially as they cannot continue to practice and transfer this knowledge to the younger generation. They become vulnerable to problems like sexual abuse, harassment and, increasingly, violence against women and girls as they become economically disempowered when displaced outside their homes and territories.

Reflection and Discussion: Indigenous peoples and customary land rights

- What are issues related to indigenous peoples and recognition of their customary land rights?
- Select two countries from Southeast Asia and explore the legal frameworks related to customary rights in these countries. What structural changes do you feel are needed to improve indigenous peoples' access to their customary land?

5.3. Indigenous Peoples and Forests, the Sea and Climate Change

This section aims to reaffirm the importance of the natural environment as crucial ecosystems for community and planet survival and an understanding of the relationship between indigenous people and the natural environment, in particular those aspects that are crucial to their identity and survival. The section covers:

a. issues and challenges faced by the indigenous peoples of Southeast Asia;

b. Indigenous peoples and sustainable forest use from a global perspective;

c. the way indigenous people mitigate climate change issues and challenges faced in their regions.

5.3.1 Indigenous peoples and sustainable forest use

The territories where indigenous and tribal peoples engage in communal forest governance are critical due to their huge size, the large amounts of carbon they capture and store, their great biodiversity, their great wealth and cultural diversity, and their potential for culturally appropriate forms of rural development and for meeting the Sustainable Development Goals (SDGs). Extreme poverty would be greatly reduced, food security would be increased, and human health would be improved by a comprehensive approach to reducing deforestation and forest degradation in indigenous and tribal lands. Additionally, it would aid in enhancing democratic participation, the rule of law, and conflict resolution (FAO and FILAC, 2021).

The forests in the territories of indigenous and tribal peoples have a vital role in stabilizing the local, regional, and global climate because of the vast amount of carbon they store, the water they pump from their roots into the atmosphere, and their growing sensitivity. Not only do the trees in these forests store carbon, but they also actively absorb more carbon from the atmosphere. According to Walker et al. (2020), between 2003 and 2016, the carbon sequestered by the Amazon Basin's indigenous territories was equal to 90% of the carbon emitted from these territories as a result of deforestation or forest degradation. In other words, there are essentially no net carbon emissions produced in these indigenous lands.

The loss of a sizable portion of the forests found in indigenous and tribal lands in the Amazon Basin could cause a tipping point. The removal of the trees would result in less rain falling locally

and higher temperatures. A negative feedback loop would be created because of the ensuing droughts and forest fires, which would further decimate the forest cover. Furthermore, most zoonotic infections that have produced epidemics globally in recent decades are connected to deforestation and forest degradation (Guégan et al., 2020).

Many indigenous territories are effective at halting deforestation, some even more so than non-indigenous protected areas (Porter-Bolland et al., 2012). A clearer understanding of the whole situation can be obtained by examining the combined effects of all the processes that affect forest carbon. This covers tree growth in existing forests as well as deforestation, forest degradation, reforestation, and forest regeneration. That shows that between 2003 and 2016, forest destruction in indigenous territories was significantly lower than in other areas, including non-indigenous protected areas, across the entire Amazon Basin, where many forests in indigenous territories are found. Even though indigenous areas make up 28% of the Amazon Basin, they only contributed 2.6% of the region's carbon emissions (Walker et al., 2020). Between 2003 and 2016, the Amazon Basin's indigenous territories lost less than 0.3 percent of the carbon stored in their forests, compared to 0.6 percent loss in non-indigenous protected areas and 3.6 percent loss in places that were neither indigenous territories nor protected areas.

Focus On: Traditional knowledge of indigenous and tribal peoples and forest management

As per the study done by FAO and FILAC (2021), referred earlier, on the opportunities for climate action in Latin America and the Caribbean, traditional knowledge of indigenous and tribal peoples can offer solutions in forest management. It identifies six factors which help to explain as to why forests in communally managed indigenous and tribal territories are better conserved than other forests. These factors are:.

Cultural factors and traditional knowledge: The traditional knowledge of indigenous and tribal peoples about flora and fauna and their uses, pests and diseases, fire, climate, and soils, not only help in forest management, but also in adapting to new situations.

Recognition of collective territorial rights: Formal recognition by the State of the collective territorial rights of indigenous peoples and tribal communities helps to prevent encroachment on forests by others. Such recognition also empowers indigenous and tribal peoples and legitimizes their efforts to demarcate their territories and even question concessions given by governments to mining, oil and gas, or logging companies.

Forest incentive policies: economic benefits given by governments to communities which care for the forests creates an extra incentive not to destroy the forests. For example, community forestry policies on sustainable timber production have generated substantial incomes for indigenous communities in Mexico and creates an incentive for the communities to maintain the forest cover.

Land use restrictions: Laws that restrict land use changes lower the risk of deforestation.

Limited accessibility and low profitability of agriculture: in general, the rate of deforestation is typically lower in areas with limited access to markets and services, infertile soils, steep slopes, and high precipitation. In Latin America and the Caribbean, such forest areas are mostly inhabited by indigenous and tribal peoples.

Limited access to capital and labor: The fact that indigenous and tribal peoples lack the means necessary to clear huge forest areas and plant crops and pastures is another argument for why these regions have lower deforestation rates. Large-scale deforestation is necessary for farming and ranching and costs a lot of money and/or labor which indigenous communities typically do not have.

In ASEAN, some similar efforts have been made. For example, in Malaysia, Adam Farhan together with RimbaWatch have made efforts in using google maps and other open sources to analyze deforestation. (BFM, 10 May, 2023, RimbaWatch-citizen science and data on deforestation). Kamal Sf and Lim VC (2019) have called for the recognition of indigenous customary land as a means for effective participation by indigenous peoples in co-management of protected areas. However, much more work needs to be done within the ASEAN region to demonstrate that indigenous management of landscapes offer better protection to forest management. It is also important to use such documented knowledge in shaping the future in forest management in the region. The current reliance on western science is showing some limitations. However, such a framework remains the conventional model employed in forest management in many countries in the ASEAN region.

Learning Activity 2

A common cause for encroachment into indigenous customary landscape has been from conversion of tropical forest into productive landscapes. These can be in the form of logging, mining, land development, etc.

Using a relevant online case study from your country, explore the role played by citizens in combining indigenous partnership in forest conservation advocacy as well as using an evidence based approach to argue for recognition of indigenous customary land.

5.3.2 Indigenous rights and mitigating climate change

Forests

With their marginal status, the denial of their rights and a lack of respect for their traditions, indigenous peoples of Asia are easily deprived of the resources they depend on by more powerful interests. But they are far from passive in the face of adversity.

From Pakistan to the Pacific islands, the ethnically distinct peoples who inhabit the forests of the Asia-Pacific are developing new responses to the encroachment of the global market in the region and the experience of land loss, human rights abuse, and economic and cultural impoverishment. The region has lost more than half its forest cover, resulting in a dramatic decline in biological diversity, unpredictable and more severe floods and droughts, loss of topsoil and farmland, and increasing vulnerability to forest fires.

The forest fires of 1997 and 1998 destroyed several million hectares of forest, mainly in Indonesia, and were a repeat of earlier conflagrations. Whereas in previous years Asian governments had blamed the fires on shifting cultivators, this time satellite imagery proved that many large fires in Indonesia began with land clearing operations promoted for the government's transmigration programme and the establishment of large-scale plantations. Government ministers noted that forest-dwellers had previously been unfairly blamed for such fires and published a list of 176 companies implicated in the blazes. Malaysia's Prime Minister Mahathir threatened to publicly name Malaysian plantation companies that were involved. There was little discussion of the impact of the fires on the indigenous forest peoples, where the impact is long lasting.

'Scientific forestry', developed under British and Dutch colonists, led to the establishment of forestry reserves managed by forestry departments and the restriction of tribal peoples' rights. Forest departments today control 22 per cent of India's territory (exactly those areas most densely inhabited by Indigenous Peoples) and 74 per cent of Indonesian lands. In the Philippines, forest

reserves cover 55 per cent of the country and include almost all indigenous ancestral domains. In Thailand the 40 per cent of the country managed by the forest department includes almost all the "hill tribe" homelands.

"Scientific forestry" has led to the catastrophic degradation and loss of forests. Large logging companies have overwhelmed the capacity or intention of states to restrain exploitation. Mining, hydropower and other developments have also displaced forest peoples, flooding and destroying large areas; access roads have encouraged settlers to occupy indigenous domains; and plantations have meant the widespread annexation of indigenous lands. Conservation zones established to protect forests have alienated yet more areas from indigenous control.

Industrial-scale projects are often accompanied by resettlement schemes seeking to concentrate dispersed indigenous communities under government supervision and encourage in-migration from elsewhere. Such schemes have targeted indigenous lands in Bangladesh, India, Nepal, Malaysia, and Vietnam. Indigenous peoples have also experienced the rapid encroachment of market economies, and the assertion of cash values has eroded traditions of sharing, exchange, and mutual support. The creation of land markets has posed severe problems to peoples lacking political connections and experience in handling money. Women have suffered hardship as their societies become increasingly enclosed and subject to the legal and cultural impositions of outsiders (Minority Rights Group International, 1999).

Sea

Due to their remote location and lack of awareness, children's births are often not registered. As a result, due to their lack of identity documents, they are deprived of basic rights, including education and health care. Indigenous peoples also have limited freedom of movement. Local authorities refrain from providing any form of assistance to communities whose vulnerability is further increased since they are not reached by humanitarian actors. Furthermore, they are among the most discriminated-against groups in Indonesia, Malaysia, and the Philippines. In Indonesia and Malaysia, they are at risk of involuntary deportation to their supposed country of origin, which is the Philippines.

The Bajau Laut people also live within an area of high conservation and tourism value. As a result, they have had various restrictions imposed on them by tourism and conservation authorities. This further affects stateless children's access to education. Iskul Sama DiLaut Omadal, a community organization, was formed in 2015 to provide children with education, mainly in literacy, hygiene practices and learning the Bahasa Malaysia language. The school also provides free meals for up to 30 Bajau Laut children per class. Women on the islands can earn an income by preparing these meals (Spearman, 2023).

Climate Crisis

The SEA region is among the world's regions most vulnerable to climate change, because the majority of its population and economic activity is concentrated on its long coastlines and its economies are still largely agriculture-based and dependent on natural resources. A study conducted by the Asian Development Bank in 2009 concluded that the region "is likely to suffer more from climate change than the rest of the world, if no action is taken." The predicted rise of sea levels poses an imminent threat to millions of people living in coastal cities and key agricultural areas in fertile deltas. According to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change of 2007, most of the Southeast Asian region is expected to experience an overall increase of rainfall and more extreme downpours, resulting in more frequent floods, and an intensification of strong winds caused by tropical cyclones.

Southeast Asia is already heavily affected by existing climatic fluctuation because of the El Niño-Southern Oscillation (ENSO) phenomenon. ENSO is predicted to become more frequent and of

greater intensity in the future, resulting in prolonged droughts, crop failures and even larger forest fires than already experienced in the region.

For many indigenous peoples in the region, climate change is already a reality. Erratic rainfall and longer droughts reduce the productivity of fields and pastures, storms and floods destroy crops and homes, and warming sea temperatures harm coral reefs and thus threaten fish stocks. And the predicted rise of sea levels poses serious threats to communities living along the coast and on small islands. While indigenous peoples' diverse and resilient livelihood systems have enabled them to survive in difficult environments, the speed at which the climate is changing is putting the adaptability of indigenous communities to the test. In addition, the indigenous communities throughout the region report worsening food and water insecurity, an increase of water- and vector-borne diseases and increasing problems with pests.

Belonging to the world's most marginalized, impoverished, and vulnerable peoples, Indigenous peoples have only minimal access to resources to cope with climate change. Therefore, for indigenous peoples, climate change poses a threat that goes beyond mere economic hardship to encompass the destruction of traditional livelihoods and indigenous cultures that are intrinsically linked with nature and agricultural cycles.

Climate change poses many other problems for indigenous peoples besides putting their livelihood systems under stress. Many of the mitigation and adaptation schemes devised by governments and international organizations to cope with climate change – like the expansion of biofuel plantations, building of dams under the Clean Development Mechanism, uranium extraction for nuclear power plants, and the inclusion of indigenous peoples' forests in REDD without their consent –often directly violate the rights of indigenous peoples (IWGIA and AIPP, 2011).

Reflection and Discussion: Role of indigenous peoples in co-management of protected areas

- Can indigenous peoples play a role in co-management of protected areas?
- Identify a relevant case study and discuss whether the recognition of indigenous rights can offer solutions to addressing climate change.
- How do indigenous peoples apply technology to counter climate change?

5.4 Justice and Inclusion

This section provides an understanding of the mechanisms for protecting the rights of indigenous peoples and access to justice for them that considers the role of national courts and criminal justice systems and the recognition of indigenous peoples' justice systems. It also attempts to understand the legal questions around the protection of indigenous peoples in the Southeast Asia region.

For almost 70 years, Indigenous Nations and government initiatives have demanded the establishment of an impartial procedure for resolving claims. The only way to eliminate the institutionalized conflict of interest and settle claims in a fair and impartial manner is through an independent mechanism.

It will take time to develop an independent procedure, which requires complete collaboration with Indigenous Nations. Every state can, in the meantime, act to assist claims resolution that supports the larger transformative change towards independence and the equity of a genuine Nation-to-Nation alliance. Important actions that can be taken include planning and conducting research to integrate indigenous laws and legal processes, supporting the Tribunal's procedures and

authority, and ensuring fair access to information. In the meantime, three UN bodies have been set up with a mandate to deal specifically with indigenous people's issues. These three bodies are the Permanent Forum, the Expert Mechanism on the Rights of Indigenous Peoples, and the Special Rapporteur on the Rights of Indigenous Peoples.

Indigenous Nations must participate fully and equally in all facets of any reform process as the legitimate owners of rights. The UNDRIP is built on this kind of equality, which also serves as the cornerstone of a genuine nation-to-nation interaction. Historic injustices will not be corrected unless an independent process is established and equal alliances between nations are formed. (OHCHR, 2013).

5.4.1 Protecting indigenous rights in Southeast Asia

Malaysia

Malaysia consists of several states on the Malayan Peninsula and the two East Malaysian states of Sarawak and Sabah in Borneo, with indigenous peoples living on the Peninsula and in Borneo. They are subject to the differing laws of each state and experience different living conditions. In Peninsular Malaysia, the Aboriginal Peoples Act 1954 (No. 134) does not establish the right of the Orang Asli people in Peninsular Malaysia to own the lands and reserves that they have traditionally occupied. However, there is some progress in legal protection of the rights of indigenous peoples where courts have ruled that the Orang Asli have rights to their customary lands under the constitution. In 2022, a federal court judge ruled that issues with regards to the customary rights of the Orang Asli was a triable issue which could not be decided by mere affidavits alone (Nambiar, 2022). This decision reduces the vulnerability of the Orang Asli and provides a certain legal protection to their customary land rights. Often land is a contentious matter, made more complicated by the federal and State divide. Orang Asli land is also often the site for rich natural resources, be it for mining or logging, or for land conversion to mono-crop estates. Land is also often seen as an income for State development. Thus, the issue over recognition of indigenous customary land is also one of contestation with the state over ownership and rights. Nicholas (2000) and Y. Subramaniam (2013) have written extensively on contestation of customary land and access to natural resources as well as on the legal matters concerning indigenous rights and on the legal framing of customary land, respectively.

In Sabah and Sarawak, the law recognises that indigenous peoples have native customary rights over the lands they have been occupying and cultivating.[1] Although such rights do not amount to ownership, they form the basis for a flexible arrangement that gives a degree of control to indigenous peoples over their lands. Even though the recognition of these rights in Sabah and Sarawak is a positive step, it continues the historic patterns of discrimination against indigenous peoples. In the hierarchy of rights to land, native customary rights are still considered to be inferior to the rights of the state; hence, the state can restrict or extinguish them. This unequal treatment of indigenous and non-indigenous land rights contradicts the International Convention on the Elimination of All Forms of Racial Discrimination.

In Peninsular Malaysia, the Aboriginal Peoples Act (APA), offers a legal framework in addressing the indigenous minority groups of Peninsular Malaysia (referred to as Orang Asli). Y. Subramamiam (2013) describes the APA as an affirmative action which offers provisions for their protection and advancement. However, in practice, often the APA serves to grant the state the authority to order any community to leave their land, even without compensation.[2] The dual system for indigenous and non-indigenous land rights leads to confusion, which prompts further abuse of indigenous

[1] Land Ordinance 1930 (Sabah, Malaysia) s,15; Land Code 1958 (Sarawak, Malaysia) s.5.

[2] The legislation specifies that if land in an aboriginal area or reserve is disposed of, or if rights granted in respect of these lands are revoked, the relevant authority may grant such compensation as, in its opinion, is appropriate.

rights. For example, although the Sabah Land Ordinance 1930 gives priority to applicants claiming customary rights,[3] in practice, their applications are often ignored in favor of applications for the same land made by government authorities, cooperatives, international companies, and individuals.

Thailand

In Thailand, individual ownership is protected, although indigenous peoples may not always be afforded this protection in practice, due to legal restrictions and the lack of citizenship. The absence of legislation allowing collective ownership dilutes the control indigenous communities have over their lands. Population increase, the expansion of commercial farms and plantations, and the migration of lowland Thais into the northern provinces have made problems regarding indigenous land acute. (Colchester *et al.*, 2001).

Although inhabited and cultivated by indigenous peoples, lands in the highland areas of Thailand have been declared protected areas and consequently fall under the jurisdiction of the Royal Forest Department. Official responsibility for these areas is vested in this agency rather than in the indigenous peoples living there (Laungaramsri, 2000).

Philippines

In the Philippines, the Indigenous Peoples' Rights Act does not comprehensively protect indigenous land. Recognized indigenous lands can be acquired under other competing legal frameworks, such as the National Integrated Protected Areas System Act 1992 (Republic Act No 7686) or the existing property rights, both which allow the state to license or lease indigenous customary land over to mining and logging interests, as well as to alienate indigenous land for the purpose of creating national parks and ecotourism reserves (Xanthaki, 2003).

Xanthaki (2003) adds that traditional livelihood activities carried out by indigenous peoples are now considered illegal. These include harvesting forest produce for commercial gains.

Also, The Mining Act 1995 (Republic Act No 7942, Philippines) is contested by indigenous activists, local communities and churches. The Act liberalized mineral exploitation in areas in which mining activity was previously prohibited and provided attractive incentives for international enterprises. Since the Mining Act was passed, foreign investors have expressed intense interest in mining projects. This act was created in response to pressure from the Word bank.

Indonesia

Xanthaki (2003) writes that similar to the Philippines, in Indonesia state-sanctioned land use in indigenous customary territories cannot be opposed, even though such activities like mining or logging have shown catastrophic consequences to the everyday lives of indigenous peoples. For example, Kalimantan, the Indonesian part of the island of Borneo, represents one of the most important sources of tropical hardwood in the world with businesses and transmigrants dominating the timber, mining, and gas industries. This has resulted in the relocation of indigenous peoples into the mountains. Despite a ban on the export of raw logs and the introduction of a National Forestry Action program, logging has continued in Kalimantan as well as across Indonesia. Consequently, land disputes between tribal peoples and the state or private logging interests have become frequent and intense (Clarke, 2001). Similar reports can be found on the impact of mining on the environment of indigenous customary landscapes in Indonesian Papua (Lembaga Pedulikan Masyarakat Wilayah Mimika Timur Jauh (LEPEMAWIL-MIMTIM)-KAB.MIMIKA-PAPUA Undated).

[3] Section 13 provides that upon receipt of any application for land, the Collector of Land Revenue must publish a notice calling upon any claimants to native customary rights to make a statement of claim on the land.

Cambodia

A positive story of state led protection of indigenous customary land and rights to livelihood can be found in Cambodia. Xanthaki (2003) writes that in 1998 the Cambodian government responded to concerns raised by the Committee on the Elimination of Racial Discrimination regarding the violations of rights among the highland peoples due to logging and industrial activities. The Cambodian government took measures to rein in illegal logging and by doing so offered protection to the citizens whose livelihood and way of life were interwoven into these landscapes. The government, in 2001 protected specific trees significant to the livelihood of resin collectors by imposing a temporary suspension over logging of these trees.

The Department of Ethnic Minority Development which was established in 2002, revived a draft policy on indigenous peoples. The Department also has taken measures to address the rights of indigenous customary land and forest, protecting them from commercial plantations, logging, and migration. Nevertheless, challenges to fully implement protection of indigenous customary rights remain with new fears coming from across the border in Vietnam. The construction of the Tali Falls Dam in Vietnam threatens to risk the resources and traditional livelihoods of indigenous peoples in Cambodia. Thus, the challenge to ensuring states recognize and respect the legitimate rights of indigenous customary land and their right to their way of life, is often not only a material challenge within the nation-state, but also one which involves trans-national interests (adapted from Xanthaki, 2003). ASEAN as a regional instrument is in a unique position to pivot the 11 ASEAN nation-states, towards the direction of respecting indigenous rights, particularly in relation to recognition of indigenous customary land and their rights to access their customary livelihood.

The discussion shows that an independent mechanism is the only fair and impartial manner to resolve any institutionalized conflict of interest. There are some mechanisms in place now to protect the rights of indigenous peoples such as the Permanent Forum, the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the Rights of Indigenous Peoples. The question moving forward remains, is there a special role ASEAN can play as a regional organization in taking lead for improving the recognition and respect for indigenous rights in this region?

Focus On: Role of the Human Rights Commission of Malaysia in strengthening recognition of indigenous peoples' rights

Established in 1999, SUHAKAM, the Human Rights Commission of Malaysia, was gazetted by Parliament under the Human Rights Commission Malaysia Act 1999 (Act 597). SUHAKAM primarily serves as a watchdog overseeing compliance with human rights in Malaysia. In 2010, SUHAKAM published a report prepared by Dr Colin Nicholas on the state of the Orang Asli with recommendations for moving forward. The report is titled *Orang Asli: Rights, Problems, Solutions.* The document is a good example of collaboration between a government body with a non-state actor in looking for a structural solution to the expression and practice in recognition of indigenous rights. While there remain gaps and challenges in the implementation of the recommendations, having such an institution allows for formal conversations between civil society and the state, specifically the responsible implementing agencies. In the absence of established forums and townhall mechanisms, such reports also offer a platform for voices 'from the communities' to be heard.

Reflection and Discussion: Mechanisms to protect indigenous peoples rights in Southeast Asia

- Are adequate structural and institutional mechanisms to protect indigenous rights in place in Southeast Asia?
- Do a quick analysis of the capacity of such institutions or mechanisms in protecting indigenous rights. Identify opportunities, partners and strengths as well as barriers, limitations and gaps.

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Chapter 6

Human Rights and Land in Southeast Asia

Philip Hirsch

Reader's Guide

This chapter explores rights issues related to land, many of which are inextricably linked to environmental questions. The chapter draws a basic distinction between neoliberal approaches to property rights in land versus claims to land as a right that is often infringed and around which social movements coalesce. It also distinguishes between rights to land as a source of livelihood versus process-related rights such as transparency, participation and recourse to law. Different cultural, livelihood, and market-related meanings of land and multiple dimensions of rights serve as a backdrop to conflicts. The changing significance of land in the context of rapid social, economic, environmental and political change means that rights need to be understood in context as well as with reference to more universal values and principles.

6.1 Introduction

We start this chapter with some provocative questions: is access to land a human right in and of itself? In other words, is everybody somehow entitled to own or otherwise have a secure ability to make use of a plot of land? Or does land only become a human right when existing access is denied or otherwise infringed? Is the right to land necessarily based on prior occupation and use, or is it a universal right even in urban areas and industrial societies? If rights are context-bound rather than universal, how are the limits of such rights drawn, and by whom? How are they distinguished from

universal human rights? And what do we mean by land in these different contexts? Do concerns for the environment always act in tandem with human rights to land, or are there cases where these clash?

Clearly, rights issues around land are complex, full of paradoxes and dilemmas. The simplified version of human rights concerns related to land is closely associated with land grabbing discourses, representing a reality faced by many marginalized people in Southeast Asia and beyond. But in rapidly developing capitalist societies, security of tenure achieved by neoliberal property rights in land, which seek to transform land into a freely marketable commodity, presents a different perspective on rights questions. In order to understand contemporary human rights issues around land we also need to pay attention to history and the evolution of agendas of land reform, land capitalization, agrarian change, (peri)urbanization, infrastructure development, expansion of protected areas and other non-agrarian demands on land as well as commodification and financialization of land in increasingly marketized economies.

Before addressing questions of rights with respect to land in the Southeast Asian context, we first explore some theoretical and legal issues. We then address context, first by looking at historical injustices around land and various measures taken by governments and social movements to address them. We go on to explore specific instances of land injustice and conflict, starting with the issue of shifting cultivation whose practice is often associated with otherwise marginalized ethnic minorities who face multiple rights infringements. We then address manifestations of land grabbing in Southeast Asia. These include not only commercial concessions but also what is sometimes called green grabbing, that is land-based conflicts associated with environmental agendas. They also include forced displacement for infrastructure, in particular large resource projects such as dams, mines and transport links. Land grabbing is thus not only about the transfer of agricultural land from smallholders to large scale estates and agribusiness, but also about the repurposing of land.

We go on to look at the particularly complex question of land titling, which on the one hand provides security of tenure recognised by law and state agencies, but on the other hand facilitates accumulation as land becomes commodified. We address the changing meanings of land, from land as a source of food and subsistence or income based on cash cropping, to land as a commodity in its own right and the associated speculative value of land. Land rights are also closely associated with gender questions, and indigenous people's rights, concerns over which underlie social movements in response to infringement of land rights. Infringements are longstanding but have changed in form as new issues have arisen. Similarly, the landscape of land governance has evolved in response to neoliberal trends that deepen market relations with respect to land, and as state power has been exercised in increasingly authoritarian ways. We explore all of these questions with reference to examples drawn mainly from Southeast Asia.

The chapter concludes by reiterating some of the key dilemmas associated with land as a human right in an age of rapid social and occupational change.

6.2 Conceptual Issues underpinning Human Rights and Land

Key concepts help us to understand specific instances of human rights in land, rights-based claims and rights violations in Southeast Asia. Here we outline six such conceptual underpinnings. This list of concepts is not exhaustive. A deeper analysis of human rights with respect to land requires further theoretical exploration.

6.2.1 Land as an environmental concern

Land rights and environmental rights are often discussed as if they were part of the same issue. Indeed these rights can sometimes be inextricable, for example when discussing the rights of indigenous people to access, manage and make use of their customary territories that include both farmland and other environmental assets. Land itself is materially a part of the environment, and its *in situ* degradation is therefore an environmental issue. Furthermore, use of land in particular ways, for example the use of chemicals by agribusiness or the clearing of upland forests for commercial crop production, creates environmental impacts that impinge on the rights to health and livelihood of people living downstream. Expansion of protected areas for forest, wildlife and wetland conservation has consequences for rights to make a living from newly gazetted land in areas where people may have been farming for many generations. In this chapter, we consider these dimensions of environment with respect to human rights as they relate specifically to land, acknowledging however that not all human rights issues with respect to land are environmental in nature.

6.2.2 Tenure security

Rights to land are closely associated with the conditions under which access is achieved and secured. Both formal and informal systems determine who is allowed and able to use, live on, sell, inherit or otherwise benefit from land. These arrangements are termed tenure. Tenure security is the assurance that such rights will continue to be recognized. Land may be held under individual, state or community tenure arrangements. Customary forms of tenure often come into conflict with more formal and legalistic forms, and these conflicts can be the source of rights infringements. The Rights and Resources Initiative tracks tenure arrangements and their evolution in most Southeast Asian countries.

6.2.3 Land rights vs property rights

Security of tenure can be achieved in various ways. In the dominant context of neoliberal development, which sees commodification as the underpinning of inclusive economic growth, fully marketized property rights in the form of land titles have been supported as a means to achieve secure access to land. These take various forms in Southeast Asia, the least restricted of which is NS4 or *chanood* title in Thailand. This is the most complete form of documenting land as private property and requires accurate ground surveying and the placement of permanent marker posts along with the issuance of title deeds that can be bought and sold through the Department of Lands. Elsewhere, constitutional provisions place such titles under the management or ownership of the state, for example *bai taa din* titles in Laos. In Myanmar and Vietnam respectively, the Form 7 and “red book” land use rights certificates approximate to title in some ways, but with restrictions on how the land is to be used. The World Bank and the Australian government aid program have played an important role in supporting land titling in the region, on the basis that they are a fundament of market-oriented economic development.

While they back up security of tenure, neo-liberal property rights also have the potential to threaten broader human rights in land in a number of ways (Beban, 2021). In some cases, they entrench inequity by formalizing legal rights to land that has been acquired by powerful people through past injustices, for example the historical acquisition of large sugar estates in northern and eastern Negros in the Philippines. Formalisation in some areas can increase the degree of insecurity in those areas that are left out of land titling programs by entrenching the notion that legitimate rights to land require formal title, and hence that occupation and use of untitled land is therefore illegitimate and hence illegal. Furthermore, under capitalist paths of development, easing the buying and selling of land has almost always resulted in long-term concentration of

ownership in the hands of wealthier groups. This presents a dilemma to smallholders, who are often keen to achieve the security of tenure that titling brings but are then also subject to the wider systemic inequalities associated with such programs.

It is therefore useful to make a distinction between property rights in land, on the one hand, and land rights as a socially progressive agenda. In capitalist market economies, the former can both bring security to individual land holders but also accelerate longer term alienation of land and its concentration in the hands of the wealthy. Land rights conceived more broadly may be achieved through pushback by social movements against land alienation, by progressive land reform or by recognition of customary land ownership.

6.2.4 Enclosure and exclusion

The so-called global land grab has sometimes been referred to as the final enclosure of remaining common lands (Neef et al., 2023). Enclosure is a term often associated with the precursor to the industrial revolution in Europe as peasants were forced off the land. It refers to the literal and metaphorical fencing off of land and related resources previously open to poorer rural groups dependent on them for their livelihoods. Exclusion is a more general phenomenon that always has a so-called "double edge" (Hall et al., 2011), in the sense that any productive secure use of land requires a degree of exclusion. Yet exclusion occurs on a very uneven playing field based on structures of power in various country contexts. The power to exclude is a product of regulation (laws and customary rules), markets (in land itself and in its economic return), force (not only actual violence but also threats) and legitimation (based on claims that justify exclusion with reference to societal norms). From a rights perspective, the key question is that of who holds and exercises these powers at the expense of whom.

6.2.5 Land and environmental justice

Human rights in land are closely related to systems of justice. Employing Schlosberg's tripartite approach to environmental justice (Schlosberg, 2007), we can identify distributional, procedural and recognitional constraints on rights to land (Hirsch et al., 2022). Distributional justice requires a degree of equality in access to land among the wider population and is threatened by over-concentration in the hands of a few, particularly when this occurs at the expense of those whose livelihoods are most dependent on farming and other land-based activity. Procedural constraints are related to unequal access to courts and other means of redress when rights are infringed. Recognitional justice requires respect of rights in land irrespective of gender, ethnicity, caste or other attributes. Such equality is often lacking in modern nation states whose legal systems governing land infringe rights based on recognition.

More generally, human rights with respect to land are often closely linked to environmental questions. Two main contexts link land and environmental rights. One is the significance of environmental resources in land-based livelihoods, so that environmental degradation caused by large scale projects impinge on the continuing ability of the rural poor to access such resources. The other is the impact of exclusionary environmental policies on continuing access to land and associated resources on the part of the rural poor. In both cases, the human rights-environment interface is closely linked with questions of social justice (Zarsky, 2002).

6.2.6 Inequality

Inequality of wealth is part and parcel of the market-oriented, capitalistic path of development in the neoliberal era in which market transactions rather than proximate social relations govern access to land. This is both reflected in, and shaped by, unequal levels of land ownership and access. However, it is difficult to argue for absolute equality in landholding within the dominant

norms, so inequality as a rights issue tends to be relative rather than absolute and one where there is ongoing debate. Various measures to address inequality include the establishment of land ceilings and various redistributive land reform programs, but to date their impact has been quite limited.

6.2.7 Extraterritorial rights

Access to land, and associated rights infringements, increasingly involve cross-border processes such as the granting of land concessions in the form of long-term leases to corporate actors from other countries. As a result, rights infringements may be addressed not only within the countries where they occur, but also with recourse to legal measures in the country of origin of such corporate actors. To date only a few cases have made it to the courts in Southeast Asia, mainly in Thailand with respect to actions of Thai companies in neighboring countries. There is yet to be a successful challenge to such extraterritorial rights infringements.

6.3 Legal Issues associated with Human Rights and Land

Human rights with respect to land depend on both the adequacy of law itself and the nature of its implementation. Law can be either a source of land justice or a means by which injustice is perpetuated. International treaties are not explicit over whether access to land is a human right. Within the United Nations framework, the *General comment No. 26 (2022) on land and economic, social and cultural rights*, described in more detail below as a broad governance measure, deals specifically with land as a right, albeit one that is not enforceable through any legal mechanism. The *United Nations Declaration on the Rights of Indigenous Peoples (2007)* makes extensive reference to land and territory, but it is similarly non-binding. It is therefore mainly within the area of national law that rights issues associated with land arise. While national law also makes little specific reference to land as a human right, national legislation has important implications for security of access to land and redress in the case of land alienation. Both of these underpin basic rights to fulfilling livelihood needs, and they also touch on environmental and cultural rights related to land.

6.3.1 Tenure rights

Many formal systems in Southeast Asia do not recognize customary tenure, and in some cases this has resulted in evictions. For example, protected areas have been declared in many areas where ethnic minorities have lived and farmed for generations. Also, land concessions have been granted to large companies without reference to pre-existing settlement and farming by local communities. In other cases, access to prior knowledge and sometimes outright corruption has allowed wealthy and well-connected groups to gain access to formal titles at the expense of local inhabitants. Examples in Thailand include Lipe Island in the Andaman Sea where Urak Lawoi people have been denied access to land and have had their paths blocked off and Rawai Beach in Phuket where Moken people had the land on which they were living claimed by a developer.

6.3.2 Constitutional provisions

The constitutions of most countries in Southeast Asia put land in the hands of the state, the Crown, or “the people” to be managed by the state. This means that ultimate rights to land rest in the hands of government authorities, so provisions for fair compensation, consultation and other procedures in the case of land appropriation are important for human rights in land. In Vietnam, for example, land appropriation for conversion of peri-urban housing and industrial development is termed “land recovery” (Thu hồi đất đai) even where farmers have “red book” land use rights certificates, the implication being that the state has the ultimate right to land and that the “red book” land use rights certificates are in effect a secondary right granted to individuals.

6.3.3 Expropriation

Most legal systems have provisions for "eminent domain", where land is required for public interest activities. However, the criteria for expropriation under such provisions vary from one legal system to another. In Vietnam, for example, land can only be expropriated for national security, public infrastructure and "socio-economic development" purposes. The latter is open to interpretation and is hence an object of contestation by those who have to make way for housing estates, golf courses or other commercial activities. In extreme cases, this has led to violent conflict between state authorities and local farmers, for example in the case of Đồng Tâm near Hanoi. Compensation is usually an important point of contention where land is expropriated for public purposes, given that the land values stipulated by state authorities as a basis for compensation are usually lower than the current market price of land. In turn, this means that those losing land in such instances are unable to secure an equivalent plot of land elsewhere. Many farmers in Laos displaced by road and rail projects, for example, have been offered compensation for their land at outdated agricultural rates, which are insufficient for them to purchase a similar amount of land of a similar quality nearby.

6.3.4 Selective enforcement and impunity

Legal systems in mainland Southeast Asia have been subject to unequal enforcement, nowhere more so than in the case of land. Encroachment by wealthy individuals on forest lands, and sometimes on land under customary management by ethnic minorities, has rarely been punished with custodial sentences. In contrast, many smallholders have been imprisoned for relatively minor offenses such as collection of non-timber forest products in protected areas near their homes. In Cambodia, large scale land acquisitions by well-connected individuals (*Oknhya*) include encroachment on protected areas. In Thailand, government party parliamentarians have secured illegal access to land reform and forest land, but they remain outside the prisons where small farmers often find themselves for similar or lesser offenses.

6.3.5 Extra-juridical violence

Land settlement in frontier areas of mainland Southeast Asia has long been associated with violence on the part of powerful individuals. In Cambodia, communities in Prey Lang forest pushing back on timber extraction and land grabbing have seen the murder of their leaders and advocates campaigning on their behalf, with impunity on the part of those behind such resource and land grabs and those enacting such murderous violence. Military land grabs in Myanmar in both Burman and ethnic minority areas have often been accompanied by wholesale violence against local populations, especially since the 2021 coup d'etat but also over a longer period of time. Elsewhere, land rights defenders have been targeted, including high profile cases such as the enforced disappearances of Sombath Somphone in Laos in 2012 and of Porlajee Rakchongcharoen ("Billy") in Thailand in 2014. Neither has been heard from since their abductions, but remains tested as matching Billy's family's DNA were found in Kaeng Krachan Reservoir in 2019.

6.3.6 Governing through voluntary guidelines

Attempts to "govern" land grabbing and related human rights violations through voluntary measures have had very limited effect to date (Neef et al., 2023). The most significant principles for voluntary action on the part of state and corporate actors are the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (VGGT), published in 2012 by the Food and Agricultural Organisation of the United Nations. To date, however, there has been limited buy-in to such guidelines in the region. Related to such guidelines are principles for free, prior and informed consent (FPIC) in cases where land

is expropriated for developmental purposes, for example in the case of a dam whose reservoir floods large areas of land. Even in cases where safeguards of institutions such as the World Bank are enacted, however, FPIC has not been genuinely applied where national legal systems do not recognise such principles, for example in the case of the Nam Theun 2 dam in Laos (Shoemaker & Robichaud, 2018).

6.4 Evolving Contexts of Rights in Land

Land conflicts have proliferated in Southeast Asia, both in number and type of instances. The context and hence the nature of such conflict has evolved over time as meanings in land have changed in line with economic, social and political development and as environmental concerns have taken on ever greater importance. Examples of such conflicts and the human rights issues related to land that they raise shed light on issues and implications in more detail.

Rights issues are closely related to the diverse and evolving meanings that land has for different social, economic and political actors. For subsistence farmers, rights to land are closely associated with rights to food and other forms of sustenance. For small-scale commercial farmers, rights to land are the basis for making an income. In both cases, however, land is also a source of identity, so that dispossession creates alienation not only from the means of making a living but also in terms of rootedness in place, kinship and other social ties, and overall security of life and livelihood. Land is also a place to live, either in a full-time sense or, in the case of increasingly mobile livelihoods, as a place of refuge (Neilson 2023….). On the other hand, for urban investors, land takes on meaning as a speculative asset, and in the case of financial institutions such as sovereign wealth funds and pension funds land values provide leverage for generation of wealth by and for those who have little or no attachment to the land in question.

6.4.1 Historical injustices and land reform in Southeast Asia

During colonial times, land alienation served the interests of colonial powers, backed up by such legislation as the 1894 Land Acquisition Act in Burma under British rule. Concentration of land in the hands of elites created grievances that played a large role in anti-colonial and revolutionary movements. As a result, land reform became an important agenda during the 1950s and 1960s, with the aim of redistributing land in favor of smallholders and often under the banner of "land to the tiller" programs. Although such programs were not framed in terms of human rights *per se*, they were driven by grievances on the part of the rural poor associated with past land alienation and hence rights violations. In some cases these reforms were part of post-revolutionary socialist programs, for example in northern Vietnam during the 1950s and, in an extreme form, under the Khmer Rouge in Cambodia during the 1970s. The violent nature of these land redistribution campaigns in turn raised their own human rights concerns. Elsewhere, for example in the Philippines, in southern Vietnam and in Thailand during the 1960s and 1970s, land reforms were pre-emptive measures carried out by pro-western regimes seeking the support of the rural peasantry in attempts to stave off challenges by leftist movements.

6.4.2 Shifting cultivation

During colonial times, but also in post-independence states, ethnic minorities have faced human rights abuses in close connection with their upland farming practices. In particular, shifting cultivation has been criminalized, ostensibly on environmental grounds and sometimes as part of opium eradication programs. Often these measures to stop shifting cultivation are a result of deeper motivations on the part of state authorities to sedentarise and hence control minority groups and to take control over upland land and forest resources for their own economic and political ends.

6.4.3 Concessions and land grabbing

Reforms in the late 1980s re-oriented the economies of post-socialist states in Southeast Asia toward more outward-looking, market-based production. At the same time, broad swathes of territory remained under state ownership. From the 1990s onwards, large scale land concessions were granted in Cambodia, Laos and Myanmar in particular, often to companies from the neighboring countries of China, Thailand and Vietnam (Hirsch et al 2022). Meanwhile, the boom in demand for palm oil and the influence of large scale corporations in Indonesia led to the establishment of enormous oil palm estates, some of whose ownership was from neighboring Malaysia and Singapore. Labour conditions and encroachment on indigenous lands by such estates have become major rights issues (Li & Semedi, 2021). Concern over the global land grab after 2008 was translated in the region to significant mobilization against large scale concessions, whether these were granted to large corporations investing across borders or whether they were granted to national cronies in deals between politico-military and business elites.

6.4.4 Conservation-induced displacements including protected areas

The first national parks in mainland Southeast Asia were created in the 1960s. Since then, expansion of protected areas without reference to prior occupation of the territory gazetted for their establishment has placed many communities in a precarious situation. In some cases this has led to displacement, violent conflict and blatant human rights abuses, such as in the notorious case of the enforced disappearance of Karen leader “Billy” over his mobilization of villagers threatened with eviction from the Kaeng Krachan National Park in Thailand. On a much wider scale, rights abuses involve relocation of villages and restrictions on use of land and hence of livelihood. Militarized conservation is the province not only of state authority but also of some international conservation organizations operating in countries such as Cambodia, which support harsh enforcement by armed rangers.

6.4.5 Infrastructure-induced displacement

In addition to conservation, a more general context of displacement arises with the rapid growth in infrastructure that is “land hungry” in the sense of requiring the conversion of farmland to other uses. Hydroelectric dams create reservoirs often measured in tens of thousands of hectares. Special economic zones impact the livelihoods not only of those scheduled for relocation to make way for industrial zones, but also those whose continuing settlement and farming is made tenuous by the enactment of laws that short-circuit social and environmental assessment and that allow conversion of land in areas previously zoned for agriculture, for example land reform areas in Thailand.

6.4.6 Land titling and its ambivalence with regard to tenure security

The trend toward formalization of land tenure in the form of issuing as secure and alienable (mortgageable and salable) title deeds is double-edged in terms of land rights. On the one hand, such land titling programs are specifically enacted in the name of providing tenure security. On the other hand, their effect is often to concentrate land in the hands of the economically powerful by facilitating market transactions in land. The micro-credit crisis in Cambodia, where many poor smallholders have used their land as collateral, has seen widespread foreclosure and hence further concentration of land in the hands of lenders. Furthermore, the demarcation of areas subject to formal title has the mirror effect of reducing security in areas left out, opening such areas to the granting of land concessions to non-local interests. Titling programs can also entrench existing patterns of landholding, which in cases such as the Philippines reflects historical injustices.

6.4.7 Land as refuge from crisis

While there has been an overall move away from land-based livelihoods as countries in Southeast Asia have urbanized and industrialized, and as migrants have sought non-farm work away from their home villages in rural areas, a series of crises has demonstrated the importance of land as a site of refuge in hard times. The financial crisis of 1997 and 2008, together with the COVID-19 pandemic of 2020-2022, saw many urban migrants losing their jobs and returning to their home villages to ride out the hard times. In this case, the family homestead and in some cases the family farm takes on particular importance in the absence of other safety nets.

6.4.8 Gender and land rights

Access to land in many societies is quite gender-specific. There are both cultural and legal dimensions to the different ways in which land is held or controlled differently by men and women. Formalization of land rights through titling or other means of demarcation and documentation may or may not conform with long-held practices. A common tendency on the part of state authorities to define men as heads of household can lead to discriminatory practices. Ensuring rights to land for women in various land governance programs is a complex issue, and it is one that requires a nuanced understanding of different cultural contexts.

6.4.9 Ethnicity and land rights

In Southeast Asia, ethnic minorities have long faced discrimination in achieving formal recognition of their rights to land. In part this is due to citizenship issues and hence absence of formal rights to own land within the national space where they live. In part it is due to land use practices, particularly shifting cultivation, that are criminalized by state authorities. Especially in upland forested areas where many ethnic minorities live and farm, expansion of conservation areas also criminalizes those who find themselves living on and farming land that has been gazetted as national parks and wildlife sanctuaries. While ethnic minorities are not the only ones targeted or affected by such policies, they are disproportionately affected both because of their concentration in upland forested areas and also because of ethnic discrimination on the part of majority populations and state authorities.

A particularly difficult issue for many ethnic minorities is the lack of recognition of indigenous status by government authorities. In Southeast Asia, only Cambodia and the Philippines have provision for indigenous land rights. In Cambodia this provides for indigenous communal land title, whereas in the Philippines it gives territorial recognition to ancestral domains. Elsewhere, governments push back on the notion that ethnic minorities are indigenous in the sense of being the original inhabitants of a given area. There are complex reasons for this, but the key historical factor is that the demarcation of national territory in countries with a dominant ethnic group means that minority groups within the respective country boundaries are not seen as having any special claim to areas where they had been living prior to the formation of modern nation states.

6.4.10 Social movements

Land has long been the basis for mobilization and, sometimes, for revolutionary movements. This is both because land has been fundamental to life, livelihood and identity in a region where the great majority of people were until recently largely dependent on farming and because colonialism and market-based development have historically led to alienation of lands. “Land to the tiller” was a popular slogan during anti-colonial movements and among leftist movements of the 1960s and 1970s. While the nature of the grievances expressed by social movements has evolved over time, land continues to be at the heart of mobilization by organizations associated with the international

movement *Via Campesina*, such as the Assembly of the Poor in Thailand, the Indonesian Peasants Union and PARAGOS in the Philippines. Many non-governmental organizations (NGOs) such as the Land Alliance in Vietnam, KESAN in Myanmar and LICADHO in Cambodia have land at the center of their campaigns for a more just approach to development.

6.4.11 Governance

As land is recognized as being entwined with so many aspects of human rights, so a range of programs and measures have been adopted to protect those rights. Among these:

- Various measures have been implemented over time in national legislation to protect people's rights in land. These measures are sometimes double-edged in their effects. As early as the colonial era, authorities established various "protections" for ethnic minorities seen to be vulnerable, for example in the Dutch *adat* policy in the Dutch East Indies (now Indonesia). While the intention may have been to preclude land alienation, these protections sometimes also shut out some groups from rights to use land in the same way that more entrepreneurial majority peoples were able to achieve. In a more contemporary context, there are restrictions on the right to buy, sell and mortgage land in indigenous communities in Cambodia or even in land reform areas in Thailand.
- Financial institutions such as the World Bank and Asian Development Bank, whose project support has the potential to impinge on human rights with respect to land, have established safeguard policies and requirements. This has in part been in response to past critique by civil society rights advocates of the behavior and impacts of such institutions and the projects they have financed. Social and environmental safeguard policies often include the principle of free, prior and informed consent (FPIC) by affected individuals and communities, but the authoritarian political contexts in which projects are often implemented make such consent difficult to achieve.
- The most comprehensive international governance mechanism oriented toward protection of land rights is the set of *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (VGGT), first published by the Food and Agricultural Organisation of the United Nations in 2012 and updated in 2022. The VGGT explicitly makes reference to consistency with the Universal Declaration of Human Rights and other human rights instruments, emphasizing not only to the human right to access land as a means of livelihood but also the human rights of defenders of such access against unjust alienation and dispossession. An important context for VGGT is an initiative toward more responsible agricultural investment to eliminate the human rights violations associated with land grabs. Another is to ensure that where land alienation occurs for truly public purposes, just provisions and compensation are afforded in a manner that does not trample on the rights of the poor to make a living. A related "soft law" is the Committee on World Food Security's Principles *for Responsible Investment in Agriculture and Food Systems* (also known as the CFS-RAI), set out in 2018 in the context of the Sustainable Development Goals.
- One governance mechanism to promote human rights in land is the certification of land-based products in such a way that consumers can be assured that such products are sourced from land and from producers without impingement on human rights. There are two dimensions to this. The first is to ensure that the land in question has not been alienated, for example through concessions to large scale plantation owners at the expense of small-scale farmers who previously worked the land. The second is to ensure that the conditions of production in terms of labor conditions, health, environmental practices and other measures affecting the well-being of producers, do not impinge on human rights. One of the biggest such programs is the Sustainable Palm Oil Initiative.

- Within the United Nations framework, the UN Social and Economic Council's Committee on Economic, Social and Cultural Rights issued a *General comment No. 26 (2022) on land and economic, social and cultural rights*. Among the range of rights associated with land covered under the comment are rights to an adequate standard of living, the right to a clean and healthy environment, and the right to development. The comment recognizes the cultural as well as material significance of land in many different contexts. It details many instances of threats to those rights associated with competition for land and related resources and with the marketisation and financialization of land. The comment identifies women, indigenous peoples and smallholders as particularly vulnerable to infringement of rights.

6.5 Conclusion

Land is closely linked to livelihood, culture and identity. As such, it is fundamental for life and is linked to human rights in a number of ways. Land is also at the heart of economic development and accumulation of wealth. These very different meanings and values attached to land are a basis for conflict and rights infringement when different groups exercise competing claims over land use and ownership.

Some aspects of human rights with respect to land are clearly universal. Others, however, need to be understood in context, with reference to cultural norms, histories of agrarian relations and paths of economic development. Moreover, diverse and changing meanings associated with land also suggest that land-related land issues are dynamic and are closely linked with patterns of economic, societal and political development.

A. Questions, key points for debate and discussion

Assignment/essay questions

1. What are the main human rights issues associated with land in your own country? Discuss ways in which such issues are related to diverse and changing values associated with land.
2. Does formalization of land tenure through titling increase security and provide protection against infringement of human rights associated with land?

Debate topics

1. Is access to or ownership of land in itself a universal human right?
2. Should legal systems that restrict farmers' ability to sell or mortgage their land be liberalized to give them rights to do so?

Topics/case studies for group discussions

Many well-known instances of land disputes help exemplify human rights issues associated with land. Through online searches, explore the following types of cases from several Southeast Asian countries and discuss the rights issues raised by each. Each member of the class may be assigned one country/case to research and bring to the discussion.

1. Cambodia: Urban wetland development and displacement (eg Boeng Kok)
2. Indonesia: Plantation development (eg West Kalimantan province)
3. Laos: Hydropower and its displacement effects (eg Nam Theun 2 Dam)
4. Malaysia: Conservation-related land deals (eg Sabah)

5. Myanmar: Military land grab (eg Rakhine State)
6. Philippines: Indigenous land claims (eg Ancestral Domain Rights)
7. Thailand: tourism (eg Koh Lipe)
8. Vietnam: peri-urban development and "land recovery" (eg Đồng Tâm)

B. Further reading

For more in-depth reading on human rights and land, see the following:

Readings referenced in the chapter

Beban, A. (2021). *Unwritten Rule: State-Making through Land Reform in Cambodia*. Cornell University Press. https://books.google.co.th/books?vid=ISBN9781501753640&printsec=index&redir_esc=y

Hall, D., Hirsch, P., & Li, T. (2011). *Powers of Exclusion: Land dilemmas in Southeast Asia*. Singapore University Press.

Hirsch, P., Woods, K., Scurrah, N., & Dwyer, M. (Eds.). (2022). *Turning Land into Capital: Development and dispossession in the Mekong Region*. University of Washington Press.

Li, T. M., & Semedi, P. (2021). *Plantation Life. Corporate Occupation in Indonesia's Oil Palm Zone*. Duke University Press. https://www.dukeupress.edu/plantation-life

Neef, A., Ngin, C., Moreda, T., & Mollett, S. (2023). *Routledge Handbook of Global Land and Resource Grabbing* (A. Neef, C. Ngin, T. Moreda, & S. Mollett (Eds.)). Routledge.

Schlosberg, D. (2007). *Defining environmental justice*. Oxford University Press.

Shoemaker, B., & Robichaud, W. (2018). *Dead in the Water: Global Lessons from the World Bank's Model Hydropower Project in Laos*. University of Wisconsin Press. http://deadinthewaterbook.org/about.html

Zarsky, L. (2002). *Human Rights and the Environment:conflicts and norms in a globalizing world*. Earthscan.

Online resources

An important resource for exploring rights and related land issues is to be found at

www.mekonglandforum.org

The VGGT can be found at https://www.fao.org/policy-support/mechanisms/mechanisms-details/en/c/448858/

The General Comment on Land and Economic, Social and Cultural Rights can be found at https://www.ohchr.org/en/documents/general-comments-and-recommendations/ec12gc26-general-comment-no-26-2022-land-and

Rights and Resources Initiative tenure tracking page is a useful country-level data source: https://rightsandresources.org/tenure-tracking/

Chapter 7

Water, Rivers and Human Rights

Carl Middleton

Reader's Guide

This chapter presents the human right to water and relates it to transboundary water governance. The chapter first introduces challenges and crises in access to water globally. It then details the human rights to water and sanitation (HRWS), which has been recognized by the UN since 2010. Given the importance of water and river-related resources to livelihoods, it then extends the HRWS to transboundary water governance and addresses the implications of large water infrastructure such as hydropower dams. The implications of the HRWS for legal pluralism, international water law, and the commons are also explored. Finally, extending the human rights approach, the 'rights of rivers' is introduced as a recent innovation.

7.1 Introduction

Without water, life cannot survive. Water also underpins all human economic activities, and in many ways plays a central role in social practices and culture. Some groups may have particularly unique relationships with water, such as indigenous groups, while in some cases water pollution, water scarcity and water-related disasters affect social sub-groups differently, for example based on age or gender. Since 2010, the UN has formally recognized the human rights to water and sanitation (HRWS).

The Sustainable Development Goals (SDGs) have been put forward as a global agenda to be achieved by 2030 to holistically address development challenges, including on biodiversity loss, climate change, poverty, inequality, and realizing the human rights of all. SDG 6 is intended to "ensure availability and sustainable management of water and sanitation for all." The six targets of SDG 6 address: using safely managed drinking water services; using safely managed sanitation services; safely treated wastewater and water bodies with good water quality; water use efficiency and levels of water stress; Integrated Water Resource Management (IWRM) implementation; and water and sanitation related official development assistance. Unfortunately, globally, states are not on track to attain SDG6 (figure 1).

Figure 1: SDG's Infographic on the challenges of achieving goals on water management and sanitation for all

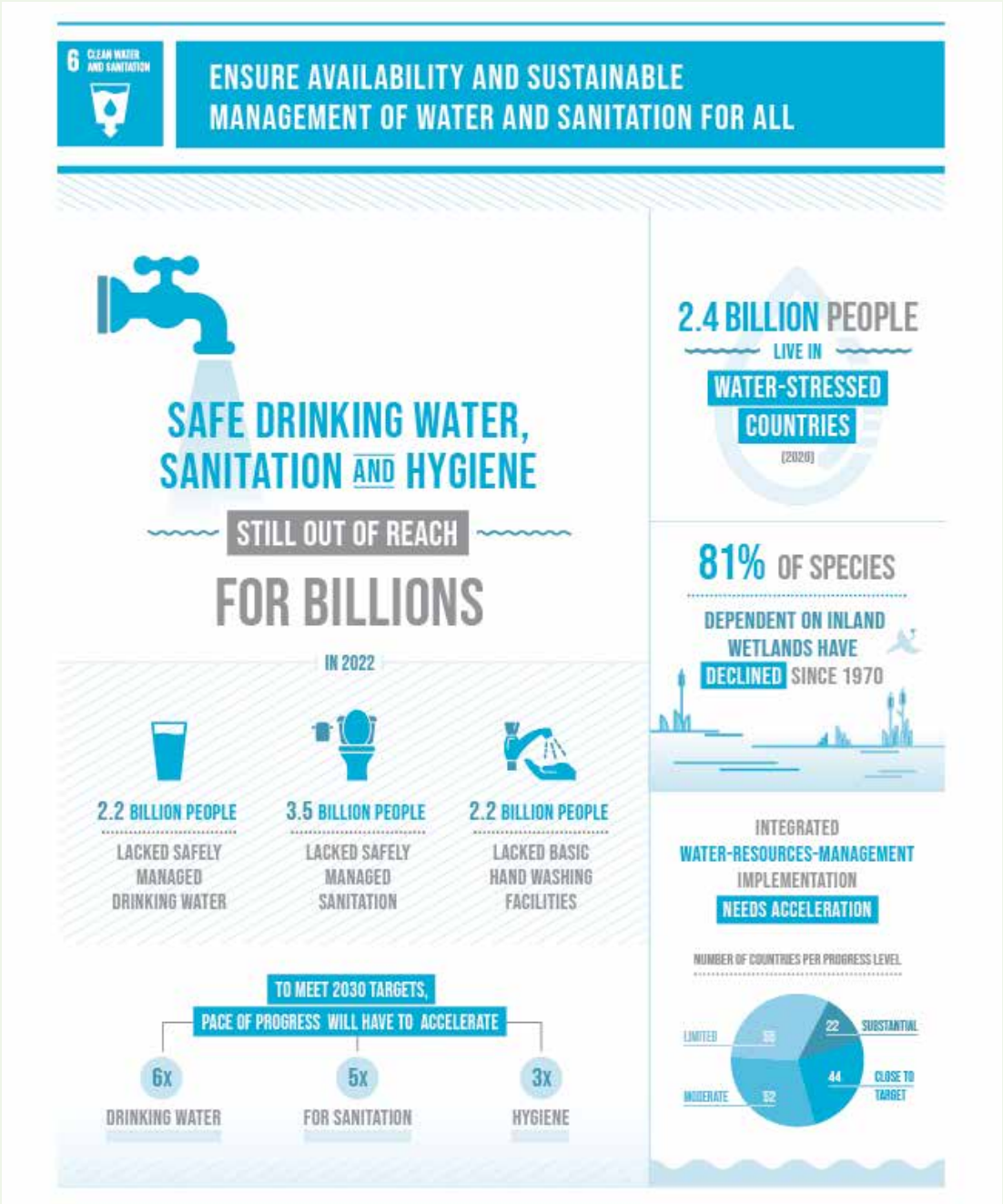

Figure 1: SDGs infographic on the challenge of achieving goals on water management and sanitation for all (https://sdgs.un.org/goals/goal6).

The relationship between water, people, and human rights is complex. All human rights are interlinked and interdependent. The growing challenges of water pollution, water scarcity and water-related disasters have impacts on many human rights. Lack of access to safe and sufficient water and exposure to water-related harms often reflects broader social, economic, and political inequalities. The Special Rapporteur on the Right to a Clean, Healthy and Sustainable Environment in a recent report identified the following water-connected human rights that are at risk (Boyd, 2021).

- Right to Life: Polluted water and water scarcity can cause death,
- Right to Water and Sanitation: Ensuring safe and sufficient water for personal and domestic use underpins the fulfillment of many other human rights.
- Right to Health: A range of water-borne diseases are associated with poor quality water and lack of sanitation, including cholera, diarrhoea, dysentery, soil-transmitted helminth infections, hepatitis A and typhoid.
- Right to Food: Is fundamentally dependent on access to safe and sufficient water, most directly for those engaged in subsistence farming and fishing activities. Water related disasters, including extreme floods and droughts, increase risks to food production.
- Right to a safe, clean, healthy and sustainable environment: Safe, sufficient water and healthy aquatic ecosystems are substantive components to this human right recognized by the UN General Assembly in July 2022.
- Rights of Children: According to the WHO, more than 700 children under the age of 5 die from water- and sanitation- related diseases (WHO 2019). Children are also particularly vulnerable to the impacts of water pollution, for example from sewage, mining, and agrochemicals.

In the above, there is a disproportionate impact upon vulnerable and marginalized groups. The Special Rapporteur on the Right to a Clean, Healthy and Sustainable Environment has emphasized the special attention needed by states to vulnerable or marginalized groups whose rights may be threatened by water-related risks, including women, indigenous peoples, minority groups, refugees, persons with disabilities, older persons, and people living in poverty (Boyd, 2021).

7.2 The Human Rights to Water and Sanitation

- The human rights to safe drinking water and sanitation (HRWS) have been recognized as human rights. The HRWS is derived from binding obligations in the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC), together with various treaties, declarations, resolutions and general comments. The following human rights treaties are important to the HRWS (Grönwall et al., 2017: 48-49):
- Articles 1 and 3 of the Universal Declaration of Human Rights indicate the right to dignity and the right to life respectively;
- Article 11 (para 1) of ICESCR indicates that signatory states recognize the right to an adequate standard of living, including adequate food, clothing and housing and the continuous improvement of living conditions.
- Article 12 (para 1) of ICESCR indicates that signatory states recognize the right to the enjoyment of the highest attainable standard of physical and mental health;
- Article 12 (para 2) of CEDAW indicates that rural women have the right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity, water supply, transport and communications;

- Article 24 (para 2) of the CRC recognizes the right of a child to the highest attainable standard of health, including combating disease and malnutrition which involves the provision of clean drinking water.

In 2002, the Committee on Economic Social and Cultural Rights published General Comment Number 15 on the right to water, which affirmed that water for personal and domestic uses is a human right. Article I.1 states that: "The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights". It goes on to state:

> *"The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements."*

Connecting the HRWS water to other rights, it states (para 6):

> *"Water is required for a range of different purposes, besides personal and domestic uses, to realize many of the Covenant rights. For instance, water is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health). Water is essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life). Nevertheless, priority in the allocation of water must be given to the right to water for personal and domestic uses. Priority should also be given to the water resources required to prevent starvation and disease."*

On 28 July 2010, through Resolution 64/292, the United Nations General Assembly recognized the human right to water and sanitation (HRWS). Subsequently, there was significant debate as to whether this should be understood as separate Rights to water and sanitation. The acknowledgement of two separate rights was affirmed by a Resolution adopted by the UN General Assembly on 17 December 2015.

The UN Human Rights Council initially established the mandate of the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation in March 2008. The mandate was extended in March 2011 and the title changed to Special Rapporteur on the human rights to safe drinking water and sanitation.[1]

Within the HRWS, the state as primary duty bearer has obligations to: the principle of progressive realization, the principle of non-retrogression, and the principles to respect, protect and fulfil the rights. The Special Rapporteur on the Right to a Clean, Healthy and Sustainable Environment summarizes the procedural obligations of states as follows (Boyd, 2021):

- Incorporate water in the educational curriculum at all levels and provide the public with accessible, affordable information about the intrinsic value of water, the importance of safe, sufficient water and healthy freshwater ecosystems, and the causes and consequences of water pollution, water scarcity and water-related disasters;
- Ensure an inclusive, equitable and gender-based approach to public participation in all planning and actions related to the allocation, conservation and sustainable use of water;
- Enable affordable and timely access to justice and effective remedies for all, to hold States and businesses accountable for fulfilling their obligations and responsibilities related to safe, sufficient water and healthy freshwater ecosystems;

[1] https://www.ohchr.org/en/special-procedures/sr-water-and-sanitation/about-mandate

- Assess the potential environmental, social, health, cultural and human rights impacts of all plans, policies, projects and proposals that could pollute, waste, damage, destroy or diminish water and freshwater ecosystems;
- Integrate gender equality into all plans and actions to allocate, use, conserve, protect, restore and equitably share the benefits of safe, sufficient water and healthy freshwater ecosystems, empowering women to play leadership roles in water governance;
- Respect the rights of indigenous peoples, local communities, Afro Descendants and peasants in all actions related to water and healthy aquatic ecosystems, including legal recognition of traditional knowledge, customary laws, collective ownership, and indigenous peoples' right to free, prior and informed consent;
- Provide strong protection for environmental human rights defenders working on water-related issues.

With regard to substantive obligations, States must not violate the HRWS through its own actions, must establish, implement and enforce laws, policies and programs to the right, and also ensure that non-state actors, such as the private sector, do not violate the rights. The Committee on Economic, Social and Cultural Rights in general comment No. 15 (2002) on the Human Right to Water summarized the substantive obligations of states as follows (para 28):

> *"States parties should adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations. Such strategies and programmes may include: (a) reducing depletion of water resources through unsustainable extraction, diversion and damming; (b) reducing and eliminating contamination of watersheds and water-related ecosystems by substances such as radiation, harmful chemicals and human excreta; (c) monitoring water reserves; (d) ensuring that proposed developments do not interfere with access to adequate water; (e) assessing the impacts of actions that may impinge upon water availability and natural-ecosystems watersheds, such as climate changes, desertification and increased soil salinity, deforestation and loss of biodiversity; (f) increasing the efficient use of water by end users; (g) reducing water wastage in its distribution; (h) response mechanisms for emergency situations; and (i) establishing competent institutions and appropriate institutional arrangements to carry out the strategies and programmes."*

People's procedural rights under the HRWS include: the right to information; the right to participation; the right to enjoyment without discrimination; and the rights of present and future generations. People's substantive rights include: the right of access to existing water supplies, the right to be free from interference, the right to be free from arbitrary disconnections and the right to be free from water supply contamination.

Focus On: Women and Water

Decision-making and practices that determine the control, access and use of water is gendered. In recent decades, there has been growing recognition that women play a critical role in managing and safeguarding water resources in communities around the world. Yet, there is a lack of recognition of these roles in policies and programs on water management - that overall remains a male dominated expert sector - leads to the reinforcement of unequal and unjust social structures (IUCN and Oxfam, 2018). Women's leadership is, however, increasingly visible through advocacy and awareness building, working towards transforming unjust social structures and redressing longstanding inequalities (Delfau and Yeophantong, 2020).

7.3 HRWS in the Context of the Right to a Clean, Healthy and Sustainable Environment and Climate Change

There is a growing acknowledgement that sustainable development and the protection of the environment can contribute to human well-being and the enjoyment of human rights, and conversely environmental damage can have negative implications, both direct and indirect, for the effective enjoyment of human rights (Knox and Boyd, 2018). More than 80 per cent of States globally have recognized the right to a clean, healthy and sustainable environment through legal documents such as constitutions, legislation, court decisions and/or regional treaties (Boyd, 2021). In ASEAN, the right to safe and clean drinking water and sanitation and the human right to a safe, clean and sustainable environment are acknowledged in Article 28.e and Article 28.f of the ASEAN Human Rights Declaration respectively.

The Right to a Clean, Healthy and Sustainable Environment provides an important context to the HRWS. On 8 October 2021, the UN Human Rights Council adopted resolution 48/13 that recognized that having a clean, healthy and sustainable environment is a human right, which was subsequently also adopted by the UN General Assembly on 28 July 2022 in resolution A/76/L.75 with a vote of 161 in favor and zero against, with eight abstentions.

Professor John Knox, previously Special Rapporteur on the Right to a Clean Healthy and Safe Environment, proposed three types of environmental human rights obligations of states (Knox, 2014):

- Procedural obligations, including to assess environmental impacts, share information, facilitate public participation, and provide access to effective remedies for environmental harm
- Substantive obligations to protect against environmental harm that interferes with the enjoyment of human rights, including to life, health, food and water. States should adopt and implement an appropriate legal framework that strikes a reasonable balance between environmental protection and other priorities.
- An obligation to take account of groups who may have particular vulnerabilities to environmental harm. This may include the impacts of environmental pollution to children's health, situations that may have disproportionate effects on women, and impacts on indigenous people.

To further the protection and promotion of the Right to a Clean, Healthy and Safe Environment by States, Professor Knox proposed 16 Framework Principles (Knox, 2017). As referred to above, the second Special Rapporteur on the Right to a Clean Healthy and Safe Environment, Associate Professor David Boyd, produced an analysis on "Human Rights and the Global Water Crisis" in 2021 (Boyd, 2021).

Climate change due to human activity is transforming weather systems and linked hydrological systems, including long term trends for rising temperatures and more regular and extreme disastrous floods and droughts. Climate change has major consequences for water resources and the range of human activities dependent upon them. For example, globally each 1°C increase caused by global warming could result in a 20 per cent reduction in renewable water resources (Jiménez Cisneros and Oki, 2014). With the 'Paris Agreement' adopted in 2015 as a legally binding international treaty, climate action has reached the highest levels of global recognition, although it is still inadequate including in terms of ensuring climate justice for the Global South. The relationship between climate change and human rights has also grown in prominence over the past fifteen years (Boyd, 2019)[2]. The first of a series of resolutions on the connection between climate change and human rights was issued by the Human Rights Council in 2008 (Resolution 7/23). The Preamble to the Paris Agreement calls on States, when taking action to address climate change, to "respect, promote and consider their respective obligations on human rights…. ". The centrality of water – and implicitly the HRWS - to successfully acting on the commitments of the Paris Agreement has also been increasingly recognized by states (UNCC and Marrakech Partnership 2020), although more action is urgently needed (UN News, 2022).

7.4 Water Governance, Rivers, and Human Rights

The HRWS is fundamentally connected to how water is allocated between competing uses. These include: to meet societal demands for personal and domestic needs and for subsistence-type food production; to meet use in economic sectors such as tourism, agriculture and various industry (manufacturing, mining, energy etc); and to ensure enough water for the sustenance of non-human life (i.e. maintaining "environmental flows" or "e-flows"). Water allocation is often contested, however, especially at times of scarcity. Despite this, a fundamental implication of the HRWS is that there must be an absolute minimum allocation of water to meet the substantive rights associated with the HRWS. This absolute minimum reflects the requirements of related human rights, including: the human right to food; the human right to a safe, healthy and sustainable environment; and the human rights of indigenous people.

Water "scarcity" may not always be due to an absolute shortage of water, for example due to extreme drought. Water scarcity can also be "socially produced", when water policy – and more broadly development policies – over allocate existing available water resources and privilege the interests of some water users - often the economic sector - over ensuring that the minimum water allocation required to meet the HRWS. In other words, the process of water governance needs to reflect a prioritization of HRBA and the HRWS and its interconnected human rights.

7.4.1 Water governance

Defining water governance is subject to many interpretations, reflecting underpinning values and assumptions about institutional structures, social relations and state and non-state capacity and agency. The UNDP, for example, defines water governance as "the political, social, economic and administrative systems that are in place, and which directly or indirectly affect the use, development and management of water resources and the delivery of water service delivery at different levels of society" (UNDP, 2013). Critical scholars, meanwhile, have defined water governance as "The

[2] https://www.ohchr.org/en/climate-change/integrating-human-rights-unfccc

practices of coordination and decision making between different actors around contested water distributions" (Zwarteveen, Kemerink-Seyoum et al., 2017). Water governance is "nested" and in principle if not in practice connects across scales between the local, sub-national and national level, and at the transnational level for transboundary rivers.

"Good" water governance is proposed by the UNDP Water Governance Facility to ensure "water integrity" and includes transparency, accountability and participation, and core values of honesty, equity and professionalism. There is a growing recognition that a rights-based approach for water governance can better protect from water pollution, water scarcity, damage to freshwater ecosystems and water-related disasters (Boyd, 2021). This involves: capacity-building, public engagement and empowerment, monitoring, legal mapping and strengthening, development of rights-based plans, implementation and evaluation. For the HRWS to be achieved, relevant national laws must be aligned with a HRBA. Grönwall et al., (2017: 44) observe "Since 2002, international and national laws, policies, strategies and coordination mechanisms of the water sector have become increasingly anchored to human rights standards and mechanisms."

7.4.2 Human rights and "integrated" approaches to water governance

"International best practices" in water management have influenced the policy, politics and practices of water governance in Southeast Asia and globally. Most prominent has been "Integrated Water Resources Management" (IWRM), which proposes concurrent goals of economic efficiency, social equity, and environmental sustainability, and the river-basin scale as the appropriate level of management. First proposed in 1992 at the UN/World Meteorological Organization Dublin Conference, the principles of IWRM consider water as a finite resource, promote stakeholder participation, especially women and indigenous peoples, and treats water as an economically valuable good. To implement IWRM, river basin organizations are required including a "council" or committee, as well as a technical agency, which for transboundary rivers such as the Mekong River must be intergovernmental. At the local level, water user associations are formed. The UN adopted IWRM as part of Millennium Development Goals, and subsequently they are also promoted through SDG6. While not mainstreamed, there is a nascent discussion connecting IWRM to a human rights based approach (Grönwall, Schmitz et al., 2017).

Critical literature has also examined the extent to which IWRM can succeed in practice. For example, while participatory approaches exist within the IWRM, their potential to negotiate the trade-offs inherent to IWRM – such as the construction of large dams for economic development against the maintenance of fisheries important to local livelihoods – has been questioned (Cooper, 2012). More fundamentally, IWRM has been critiqued for its universalism towards water management, which assumes a modernist and instrumentalist approach towards the value of water (Linton and Budds, 2014). Molle (2008) emphasizes the power of IWRM as a discourse which has privileged expert knowledge and global development agendas.

Recognizing the limitations of focusing on water as the entry point to a more complex set of relationships with water-related resources, the "Water-Energy-Food-Climate Nexus" is a more recent "international best practice" seen by some as the successor to IWRM. While "the nexus" has been discussed among international experts, it has tended to emphasize a depoliticized reading of resource politics while concerns for ethics and social justice are peripheral (Allouche, Middleton et al., 2019). Some, however, in linking "the nexus" to the SDGs have proposed that it has the potential to secure non-negotiable human rights to water and food (Simpson and Jewitt, 2019).

Focus On: Water Rights and the Right to Water

Water rights can connote two very different meanings that are sometimes confused in the context of human rights. The first meeting is the Human Rights *to* Water and Sanitation, discussed above. The second - very different - meaning regards the right to *use or own* water, which may be granted (by the state) to individuals, groups or other legal entities such as private businesses. This latter is termed water rights. Both "rights" reflect social organization and norms, as they are assertions of the control, ownership and use toward water that is a vital resource for many human activities. However, contrasting the human right to water versus a water right, the former is inalienable and not subject to state approval, while the latter is temporary and can be withdrawn by the state (Grönwall et al., 2017:47). Water rights may be contested in the context of legal pluralism, if indigenous peoples' assertions for collective rights to land, territories and natural resources that they have traditionally used and occupied is not acknowledged by states.

7.4.3 Customary law and legal pluralism

In the modern (Westphalian) state system, it is most common that the State asserts ultimate authority over the ownership, access, use and control of water. As such, the State also claims public authority to make decisions on the allocation of water and to manage the contested and complex tradeoffs involved. These decisions are guided by priorities as detailed in the law for different categories of water use. The state issues water use licenses/ permits, and exemptions such as water for domestic use and subsistence food production. Exemptions will often include those uses also prioritized in the HRWS.

However, given the centrality of water to social, cultural and economic activities, there are also in many places customary arrangements practiced by indigenous peoples, tribes, rural communities and other groups. These are "customary water law" that may be formal, but more often are informal (i.e. non-codified) arrangements. They reflect a traditional and broadly accepted set of practices, reflecting the codes of conduct, norms, cultural and sacred practices of a particular community. These values typically do not match with the Western liberal individualistic value system towards water implicit to the HRWS (Fantini, 2020). There is a deep critique rooted in political ecology and anthropology on the need for a relational reading of water, underpinned by plural water ontologies (i.e. there are many "water realities") (Linton 2010, Yates, Harris et al., 2017). Furthermore, these plural ontologies may underpin more visible contestations over water (Boelens, Escobar et al., 2023).

Where state statutory (i.e. written and formal) law and customary law exist concurrently, this can be understood as "legal pluralism" or "mixed systems". How to approach legal pluralism in the context of water governance is presently an open and active debate. Grönwall et al., (2017:68) summarize the dilemma within legal pluralism as "Elements of distrust are possible on both sides — proponents of the customary system do not necessarily see the state as a credible trustee that can be entrusted to manage water resources for the common good. Adherents to institutionalized law may associate customary arrangements with inequality and non-inclusive practices." From a HRBA, significantly, Section 21 of General Comment Number 15 (2002) requires states to refrain from arbitrarily interfering with customary or traditional arrangements for water allocation, under the principle of the obligation to respect.

Focus On: Indigenous people, water and human rights

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly in September 2007. Although this is not a legally binding document, it has received broad-based global support. In terms of procedures on water-related decisions, the Free Prior and Informed Consent (FPIC) of indigenous communities is required. Furthermore, given that many indigenous communities are dependent on subsistence food production, the HRWS also requires that states ensure a minimum amount of water available as a priority in water allocation. More broadly, it requires protecting indigenous rights over lands, territories and cultures, as well as redressing historical injustices.

Many indigenous people live in areas where large-scale water infrastructure such as hydropower dams are proposed, and therefore are at risk from the impacts of these projects. For example, the Lower Sedan 2 dam in Cambodia, began construction in 2013 and commenced operation in 2018. It displaced nearly 5,000 people, mostly indigenous peoples and other ethnic minorities who had lived alongside the impacted rivers for generations and has caused ecological harm to the rivers including wild capture fisheries. Human Rights Watch documented inadequate consultation with communities, no FPIC sought, and severe impacts on livelihoods (HRW 2021)

7.4.4 International water law and human rights

International law on watercourses provides a framework detailing how States can cooperate and jointly manage shared water resources. There are currently two global water conventions: The Convention on the Law of the Non-Navigational Uses of International Watercourses (UNWC) (1997); The Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1992). Current international water law is founded on the legal principle of limited territorial sovereignty. From this is derived the two foundational rules of international water law: equitable and reasonable utilization; and the due diligence obligation not to cause significant harm. States also have a duty to cooperate in good faith.

An important implication of the HRWS is that all states sharing a transboundary watercourse have the duty to ensure a minimum amount of water to ensure fulfillment of the rights. Article 10(2) of the UNWC provides for special regard to be given to “the requirements of vital human needs”, which suggests – without explicitly stating – a human rights approach to water for meeting basic needs such as drinking water and food production. On this point, Cinelli (2013:185) suggests that “Although it is true that, from a theoretical point of view, the UNWC does not explicitly recognize a (human) right to water, it does concurrently support the practical application of such a right with respect to water access and sanitation. “

As mentioned above, among the state’s obligations on the HRWS is for states to develop an appropriate legal framework. However, it is not common that transboundary water agreements specifically address or are organized to ensure the HRWS explicitly. The water allocation trade offs as discussed above in a domestic context become even more complex on a transboundary river where each state accounts for its national interest – including to meet domestic water needs – which may undermine another states ability to meet its own domestic water needs, despite the expectation for “collective action” (Bidabadi, 2020). For example, the 1995 Mekong Agreement that mandates the Mekong River Commission, does not refer to human rights at all (MRC, 1995). A handbook titled “Understanding the 1995 Mekong Agreement and the five MRC Procedures” refers only to “human needs”, stating with reference to reasonable and equitable use that “Social or human needs and economic dependency” include “Vital human needs, the water required for basic

human needs like drinking and sanitation" (MRC, 2020:16). While predating the UN's recognition of the HRWS, the 1995 Mekong Agreement has not been revised accordingly, while the handbook is published in 2020 a decade after the UN formally acknowledged the HRWS.

In the context of transboundary river basins, the HRWS take on an extraterritorial character. Rieu-Clarke (2015) asks under these conditions whether "an upstream State be held responsible for a breach of an individual's right to water in a downstream State, if the upstream State's storage of water meant that there was insufficient water to meet personal and domestic water uses in the downstream State? If so, who and where might a right be upheld?" (also Bulto, 2014).

7.4.5 Human rights and water/ rivers as commons

Water, such as rivers and lakes, and connected resources such as wild fisheries have been traditionally managed as commons. The "commons" most often refers to communal management of shared natural resources, the associated property rights regimes, and their institutional basis and organizational structure (Ostrom, Burger et al., 1999). There has also been a vibrant discussion on "commoning" which pays greater emphasis to the social relations and processes around producing and maintaining commons (Bollier and Helfrich, 2019).

Transboundary rivers, such as the Mekong River, can be considered as a commons at multiple scales. At the transnational level, transboundary rivers can be understood as being held in common between the governments of the countries through which the river flows. Transboundary rivers, however, are nested commons, supporting local-scale commons, including water, fisheries, land, and forests. Examining the contradictions within the governance of multi-scaled commons in the Mekong River basin, Hirsch (2020) argues that the dominant institutional bounding of the commons as being at the country-to-country scale downplays the significance of local commons that are important to individual communities.

There has been a vigorous discussion on whether human rights-based approaches are most strategic to protect community interests in terms of access, control and use of water and related resources from risks of exclusion associated with water privatization. In an influential article, Karen Bakker (2007) argued that because the HRWS are individualistic and liberal in approach, they are consistent with market-based approaches and privatization by large corporations. She argued that 'commons-based strategies' are more likely to be successful and conceptually coherent. Others have argued, however, that human rights based approaches can be effective when locally situated and supported by diverse coalition seeking social and environmental justice (e.g. Sultana and Loftus, 2012) (see Fantini (2020) for an outline of this debate).

7.5 Water Infrastructure and Human Rights

Large water infrastructure projects, such as large hydropower dams, irrigation dams, and flood defence require particular attention given the potential harms and impacts to human rights that can occur. Many large dams have attracted significant controversy at the global level, including in Southeast Asia such as the Pak Mun dam in Thailand, the Lower Sesan 2 dam in Cambodia, and the Nam Theun 2 and Xayaburi Dam in Laos (Middleton, 2022). In a joint statement issued in November 2021, four Special Rapporteurs commenting on the impacts of large dams globally stated "The human rights of those affected have continued to be transgressed: forced displacement that violates several human rights, such as rights to housing, food, water and sanitation, education; the rights of affected indigenous peoples over their territories and their rights to free, prior and informed consent; violations of the rights to life and freedom of expression through the criminalization of protests, threats, attacks and even murders of individuals opposing dams" (Agudo, Boyd et al., 2021).

Reflecting the growing controversy around large dams globally during the 1980s and 1990s, the World Commission on Dams (WCD) was undertaken as a global multi stakeholder dialogue and assessment of the relationship between dams and development (WCD 2000). Among its key findings were that between 40 and 80 million people had been forcibly displaced by large dams, and more than 470 million had their livelihoods severely affected downstream. Its overarching conclusions included that "Dams have made an important and significant contribution to human development, and the benefits derived from them have been considerable. [Yet] In too many cases an unacceptable and often unnecessary price has been paid to secure those benefits, especially in social and environmental terms, by people displaced, by communities downstream, by taxpayers and by the natural environment." The WCD proposed a "rights and risks" approach to water and energy resources development, which is founded on a "framework of internationally accepted norms on human rights, the right to development, and sustainability."[3]

Principles included: demonstrable acceptance of affected people and the free, prior and informed consent of indigenous peoples; comprehensive and participatory assessment of water, food and energy needs; and that affected people are beneficiaries, fairly compensated, including retroactively, and effectively restore damaged ecosystems. Building from the WCD's approach, civil society groups such as International Rivers have sought to further the protection of human rights in the planning, construction, operation and decommissioning of large hydropower dams, as recognized in international law (Hurwitz, 2014).

As many large dams are promoted and implemented by private-sector actors, the UN Guiding Principles on Human Rights are applicable.[4] The three core principles are: the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies. In the Mekong Region, for example, the Thai government has acted on the UNGPs, designating the Ministries of Foreign Affairs, Justice and Trade to implement the UNGPs, and formulating a National Action Plan. Thailand's first National Action Plan on Business and Human Rights was adopted by the Cabinet on 29 October 2019, which includes priority focus areas relevant to hydropower and rivers, namely on: 1) Labor; 2) Community, Land, Natural Resource and Environment; 3) Human Rights Defenders; 4) Cross Border Investment and Multinational Enterprises.

As many major rivers are transboundary, as well as subject to cross-border investments, human rights extraterritorial obligations (ETOs) are also relevant. ETOs can be defined as "Obligations relating to the acts and omissions of a State, within or beyond its territory, that have effects on the enjoyment of human rights outside of that State's territory" (ETO Consortium 2013). Given the range of human rights at risk in planning and building large dams on transboundary rivers and involving foreign direct investment, ETOs could be a significant transboundary justice mechanism, acted on through national human rights institutions, national justice systems and the ASEAN Intergovernmental Commission on Human Rights (Middleton and Pritchard, 2016). Conducting a Transboundary Environmental/Social Impact Assessment, for example as detailed in the 1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context, could be an important means to assess, avoid and mitigate impacts, although in practice they are not systematically established to date (Grönwall, 2020). However, gaps still remain on how states should regulate the private sector's role in large dams to ensure just and sustainable development (Rieu-Clarke, 2020). Meanwhile, as discussed above, the implications of ETOs for the HRWS on transboundary rivers requires further research and consideration (Bulto, 2014).

[3] See Water Alternatives (2010) Vol 3, issue 2 for a special issue reflecting on the impact of the WCD ten years on from its launch.

[4] Another relevant UN initiative is the CEO Water Mandate under the UN Global Compact that issued a report titled "Bringing a Human Rights Lens to Corporate Water Stewardship" in 2015.

Focus On: Large dams and the transboundary Mekong River

Livelihoods and culture in Southeast Asia are closely entwined with the region's rivers. Since the early 1990s, the Mekong basin has been transformed from a largely free-flowing basin to one that is increasingly impounded by large hydropower dams. As of 2019, there were 89 medium and large dams in the lower Mekong basin (Cambodia, Laos, Thailand and Vietnam), with a further 14 dams under construction and 30 at a planning stage. In China, 11 medium and large hydropower dams have been constructed on the mainstream with another 11 planned, wile 95 more dams have been built on the tributaries.

Intergovernmental transboundary water governance of the Mekong River is institutionalized within the Mekong River Commission (MRC), about which much has been written (Middleton, 2022). Some have argued the MRC's unfulfilled potential to enable deliberate decision-making. Others have acknowledged the MRC's contribution to governance via its technical knowledge and planning tools but noted limitations in its influence to manage accelerating environmental degradation. Much scrutiny has been placed on the MRC in the decision-making process around Mekong mainstream dams' planning and construction, including on the implementation and outcome of the Procedures for Notification, Prior Consultation and Agreement (PNPCA) (Rieu-Clarke, 2015).

For the first project constructed on the lower Mekong River mainstream, the Xayaburi Dam, the human rights of affected communities were prominently discussed. This included in a law suit filed against five Thai state agencies for their role in approving the project's Power Purchase Agreement (PPA) filed in 2012 and finally dismissed in 2022 (Sohsai and Lee, 2022). It also included a case brought by 15 civil society groups to Finland's National Contact Point on the OECD Guidelines for Multinational Corporations on the role of the Finland-listed engineering firm Pöyry in 2012. While the case was not upheld, the NCP did state that the company should have addressed ambiguities relating to environmental issues and human rights more clearly in its report to the government of Laos (EnvironmentalAnalyst, 2013).

7.6 Rights of Rivers

An increasingly raised critique towards the HRWS and human rights in general is that it is anthropocentric (Fantini, 2020). In the age of the Anthropocene, anthropocentrism has been suggested as a root cause of the current global environmental crisis. Ecocentric approaches have proposed an ontological shift in which the rights of nature are recognized as having intrinsic value. This represents a legal shift from environmental laws existing to regulate uses of rivers, to recognizing nature as a rights holder itself. The Rights of Nature have been legally recognized in a growing number of cases globally (Cano Pecharroman, 2018). Early examples were in Bolivia in 2008 where the Constitution recognized rights of Pacha Mama or nature, and in Bolivia where The Law of the Rights of Mother Earth was passed in 2010. A leading case regarding rivers is the Whanganui River in New Zealand, recognized as having legal personhood in 2017 under a treaty settlement agreement reached between Maori tribes and the New Zealand government (Chapron, Epstein et al., 2020). Civil society and community movements have also organized around the concept (for example, see www.rightsofrivers.org). Rivers have also been recognized as having rights in Ecuador, Colombia and India, although in the later case for the Ganges the Supreme court stayed the decision of the lower court. While conceptually and legally innovative, challenges remain, including how the interests of more-than-human actors are represented in court, and whether this ontological shift is sufficient to actually reverse past destructive practices towards nature.

7.7 Conclusion

The human rights to water and sanitation have been recognized since 2010, which also acknowledges the entwined relationship between water and the protection of other human rights. Yet, globally and in Southeast Asia access to safe water, water pollution, water scarcity and water-related disasters all still remain as major challenges in which there are disproportionate impacts upon vulnerable and marginalized groups.

The HRWS places a range of procedural and substantive obligations on states to progressively realize the right, with implications for the planning, allocation, and legislation of water. To protect the HRWS, states should protect water quality to ensure access to safe water for personal and domestic uses. Furthermore, the right to water for personal and domestic uses should receive top priority within allocation systems. In this sense, wider considerations on the right to a clean, healthy and sustainable environment, and on a human rights approach to water governance are salient. There are clearly challenges and seemingly a shrinking space for human rights-based approaches in some states in Southeast Asia at present. Yet, building from the HRWS, there is a potential to strengthen community resilience in the context of climate change through a human rights based approach to water governance. There are still, however, active and important debates on the HRWS including on the implications of legal pluralism, how to progressively realize the HRWS into international water law, and on potential tensions between commons-based and human rights-based governance approaches.

Given the intensive large dam construction in Southeast Asia over the past several decades, a human rights approach must also be applied to the project cycles of water and (hydro)energy infrastructure. As most large dams now involve the private sector, the guiding principles on business and human rights must be drawn on. Furthermore, given that projects involve cross-border investments and may be located on transboundary rivers, extraterritorial obligations on human rights are also relevant.

In the context of the Anthropocene, the construction of large dams epitomizes the disruption of earlier nature-society relations. The HRWS is nowadays discussed at a time when sustainability and nature-society relations are being rethought. In this context the rights of rivers is an important recent legal innovation. Indeed, it may also further the HRWS.

A. Questions, key points for debate and discussion

Assignment/ essay questions

- In a country or region of your choice, what are the opportunities and challenges for progressively recognizing the HRWS?
- What are the implications of legal pluralism for furthering the HRWS?

Debate topics

Argue in favor/ against of the following:

- The Human Right to Water is at the center of addressing global climate injustice.
- The Rights of Nature are more likely to succeed in protecting the environment and community livelihoods than anthropocentric environmental regulations.

Topics/ case studies for group discussion

- Discuss the extent to which human rights have influenced the water governance of a river that you know, for example the Mekong River
- Discuss in what ways large hydropower dams are a threat or an opportunity to the progressive recognition of the HRWS.

B. Further reading

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Online sources

Waterlex website, conducting research and analysis on water law and policy frameworks to connect water governance with human rights law: www.waterlex.org

The website of the Special Rapporteur on the Right to a Clean, Healthy and Sustainable Environment: www.srenvironment.org/

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Chapter 8

Defending Environmental Human Rights Defenders

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Reader's Guide

This chapter intends to present who human rights defenders and environmental human rights defenders are, their roles, and the risks they are facing. The chapter begins with discussing who human rights defenders are and how they are different from environmental human rights defenders. The chapter also looks at international and regional standards for the protection of human rights defenders and environmental human rights defenders before assessing environmental issues as well as climate change in Southeast Asia. The section that follows demonstrates the situation of the rights of human rights defenders globally and particularly in Southeast Asia. Particular attention is paid to assessing the situation of environmental human rights defenders in the region through a few cases. The chapter concludes with some observations and strategies to address the issues.

8.1 Introduction – Who are Human Rights Defenders?

Often, when people hear the term "human rights defenders" they think about social justice activists, community leaders, non-governmental organization (NGO) workers, community lawyers, unionists, journalists and academics working in human rights. Indeed, all these roles and professions play important roles in defending human rights. But who actually are "human rights defenders"?

The UN Special Rapporteur on human rights defenders describes human rights defenders as "people who, individually or with others, act to promote or protect human rights in a peaceful manner" (OHCHR, n.d. a). Interestingly, in the UN Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, the term "Human Rights Defenders" is not mentioned or defined. However, this Declaration is often referred to as the "Declaration on Human Rights Defenders". It refers to "everyone" "who has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" (General Assembly, 1999). By everyone, the Declaration emphasizes that "there is a global human rights movement that involves us all and that we all have a role to fulfill in making human rights a reality for all" (OHCHR, n.d. b). Not only does the Declaration recognize their rights to promote and protect human rights but also stresses responsibilities and encourages "all of us" to be human rights defenders.

What are the roles of human rights defenders? Since "all of us" can be human rights defenders, we can play a role in advocating and striving for positive change in protecting and promoting human rights of everyone everywhere. Specifically, we may:

- speak up for a colleague that has been treated unfairly at work;
- protest about sexism that women everywhere continue to face;
- promote reforms to ensure everyone can access the health care they need;
- help to change outdated attitudes about gender identity and sexual orientation;
- raise awareness about the need to dismantle the systemic racism that still holds back so many people of colour;
- try to ensure that there are free, fair and informed public debates about the policies that affect us (International Service for Human Rights, n.d.).

This list of roles that human rights defenders can play is not exhaustive. Essentially, the work of human rights defenders is crucial for the advancement of human rights, democracy, and the rule of law. Human rights defenders play a central role in making state policies compliant with human rights and making authorities accountable. Human rights defenders are also instrumental in defending victims of human rights violations and ensuring their access to redress and remedy (Council of Europe, n.d.).

Since human rights defenders are expected to promote and protect rights that are universally recognized, then who are environmental human rights defenders?

8.2 Environmental Human Rights Defenders

It is recognized that human rights and the environment are intrinsically intertwined: a clean, healthy and sustainable environment is essential in the enjoyment of our human rights (Geneva Environmental Network, n.d.). The UN defines environmental human rights defenders as "individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna" (UNEP, n.d. b). They may be ordinary people living in remote villages, forests or mountains, who may not even be aware that they are reacting as environmental human rights defenders. In many cases EHRDs are representatives of indigenous and tribal peoples as well as local communities whose lands and ways of life are threatened by large projects such as dams, logging, mining or oil extraction (Environmental human rights defenders (EHRDs)). In brief, they are those who strive to protect and promote human rights relating to the environment (Geneva

Environmental Network, n.d.). What they all have in common is that they work to protect the environment on which a vast range of human rights depend. They may come from different backgrounds and work in different ways. Whilst these environmental human rights defenders are trying to tackle environmental challenges, evidence suggests that they remain highly vulnerable and under attack across the globe.

8.3 Rights of Environmental Human Rights Defenders - Standards

The United Nations Environment Programme (UNEP) states "Over 100 countries around the world have so far guaranteed their citizens the right to a healthy and clean environment; however, the enforcement of such initiatives has been a challenge" (UNEP, n.d. a). By recognizing the rights of citizens to a healthy and clean environment, it can be inferred that the rights of these peoples to protect the environment are likewise enshrined. UNEP has recognized the threats to environmental defenders and called for their protection. UNEP builds on this work to support environmental defenders through its **Defenders Policy** to promote greater protection for individuals and groups who are defending their environmental rights and identifies solutions to mitigate the abuse of environmental rights which affects a growing number of people in many parts of the world. The policy includes, but is not limited to:

- denouncing the attacks, torture, intimidation and murders of environmental defenders;
- advocating with states and non-state actors, including businesses, for better protection of environmental rights and the people standing up for these rights;
- supporting the responsible management of natural resources;
- requesting government and companies' accountability for the different events where environmental defenders have been affected/murdered (Geneva Environmental Network, n.d.)

Denunciation, advocacy and support of the UN agencies and other actors to protect the rights of human rights defenders are realized in various forms, including multilateral standards, agreements/mechanisms.

8.3.1 Guarantee of the rights of environmental human rights defenders in regional and international law

"States have obligations to protect against environmental harm that interferes with the enjoyment of human rights. Those obligations extend to everyone, including EHRDs," confirmed John H. Knox (2017). The first UN document that outlines the scope of the rights of HRDs was adopted in 1998 - **the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human rights and Fundamental freedoms** (known as the Declaration on Human rights Defenders). The right to be protected by States is recognized by the Declaration. "The Declaration reaffirms rights that are instrumental to the defence of human rights, including, inter alia, freedom of association, freedom of peaceful assembly, freedom of opinion and expression, and the right to gain access to information, to provide legal aid and to develop and discuss new ideas in the area of human rights" (OHCHR, n.d. b). This Declaration addresses the protection of the rights and responsibilities of human rights defenders in general. The Office of the United Nations High Commissioner for Human Rights (OHCHR) explains further that the Declaration requires that States:

- recognize the value and important contribution of human rights defenders to peace, sustainable development and human rights;

- respect human rights defenders on a non-discriminatory basis, protect them against any arbitrary action as a consequence of the legitimate exercise of the rights referred to in the Declaration, and ensure access to effective remedies in the case of violations and prompt and impartial investigations of alleged violations;
- reinforce their work by creating an enabling environment, through legislative, administrative and other steps, promoting public understanding of human rights, creating independent national institutions for the promotion and protection of human rights and promoting the teaching of human rights.

Obligations of States relating to environmental protection and the protection of EHRDs were further elaborated by Knox (2017). He describes the obligations of states relating to the environment as falling into three principal categories: procedural obligations, substantive obligations and obligations relating to those in vulnerable situations.

- The procedural obligations of states in relation to environmental protection include the duties: (a) to assess environmental impacts and make environmental information public; (b) to facilitate public participation in environmental decision-making, including by protecting the rights of expression and association; and (c) to provide access to remedies for harm. These obligations have bases in civil and political rights, but they have been clarified and extended in the environmental context based on the entire range of human rights at risk from environmental harm.
- Substantive obligations specify that states have obligations to adopt legal and institutional frameworks that protect against, and respond to, environmental harm that interferes with the enjoyment of human rights. These obligations have been derived from several human rights, including the rights to life, health, and water, among others. The obligation to protect human rights from environmental harm does not require the cessation of all activities that may cause any environmental degradation. But the balance cannot be unreasonable, or result in unjustified, foreseeable infringements of human rights.

Both the procedural and substantive obligations described above are facilitating factors for environmental human rights defenders to act. Knox specifically states clearly why States owe obligations to EHRDs: "because environmental harm interferes with the enjoyment of human rights, those who work to guard against such harm are working to promote and protect human rights as well, whether or not they initially see themselves as 'human rights defenders'" (2017). Likewise, the UN Human Rights Council has recognized the important role played by human rights defenders in "the promotion and protection of human rights as they relate to the enjoyment of a safe, clean, healthy and sustainable environment," and has recognized that environmental and land defenders are among the human rights defenders most at risk (Human Rights Council).

As human rights defenders, EHRDs are entitled to the rights set out in the UN Declaration on Human Rights Defenders, adopted by the UN General Assembly in 1998. Those rights include:

- the right to promote and to strive for the protection of human rights (the right to defend rights);
- the right to be protected;
- the right to freedom of opinion, the right to freedom of expression, and the right to develop and discuss new human rights ideas;
- the right to access and communicate with international bodies, and the right to access funding;

- the right to freedom of assembly, the right to freedom of association, and the right to protest; and
- the right to an effective remedy.

Although the Declaration is not a legally binding standard, clearly the rights outlined above are protected under the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Political and Civil Rights. The Committee on Economic, Social and Cultural Rights has emphasized that states must "ensure that human rights defenders are effectively protected against any and all forms of abuse, violence and reprisal which they might experience while carrying out their work" (Knox, 2017). Under the ICCPR, no restrictions on the right to hold opinions are permitted, and restrictions on the right of freedom of expression are permitted only if they are provided by law and necessary either for respect of the rights or reputations of others, or for the protection of national security, public order, public health or morals (Knox, 2017).

In addition, the UN Human Rights Council established various mechanisms under UN Special Procedures. These include:

A) Special Rapporteur on the situation of human rights defenders: The UN Special Rapporteur on the situation of human rights defenders, first established by the Human Rights Commission in 2000 and renewed by the Human Rights Council in 2020, aims to promote the effective implementation of the UN Declaration on Human Rights Defenders. Mary Lawlor has been the Special Rapporteur on the situation of human rights defenders since 1 May 2020. Part of her mandate is to seek, receive and respond to information on the situation of human rights defenders, including environmental defenders.

B) Special Rapporteur on the rights of indigenous peoples: As a significant number of environmental human rights defenders are from indigenous communities, the work of the UN Special Rapporteur on the rights of indigenous peoples allows an independent expert to examine and respond to information on the situation of human rights defenders, to engage with governments and others on the implementation of the Declaration and to recommend strategies to protect human rights defenders. Created in 2001 by the Human Rights Commission, the Special Rapporteur also regularly draws attention to the threats against indigenous human rights defenders in country visits, reports and statements. The mandate also emphasizes how protected areas and conservation measures to protect biodiversity have also been associated with human rights violations against indigenous peoples in many parts of the world (OHCHR, 2016).

C) Special Rapporteur on human rights and the environment: The mandate on human rights and the environment exists to examine the human rights obligations relating to the enjoyment of a clean, healthy and sustainable environment. The Special Rapporteur is tasked to identify the challenges and obstacles to the global recognition and implementation of such a right, and to report human rights violations.

David Boyd is the Special Rapporteur on human rights and the environment, whose mandate was extended in March 2021. In his report to the 43rd session of the Human Rights Council, "Right to a healthy environment: good practices" (A/HRC/43/53), the Special Rapporteur emphasized that "a crucial aspect of public participation involves the protection of environmental human rights defenders, who are often harassed, intimidated, criminalized or even murdered" (Geneva Environmental Network, n.d.).

A Resolution entitled "Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development" was adopted unanimously (without vote) by the UN Human Rights Council on 21 March 2019. Not only does the Resolution recognize the important roles that human rights defenders play in protecting the environment and ensuring sustainable development, but also condemns increasing violations against environmental defenders, including killings, gender-based violence, judicial harassment, threats and intimidation, to name a few. The Resolution calls on States to adopt laws guaranteeing the protection of human rights defenders, put in place holistic protection measures, and ensure investigation and accountability for threats and attacks against environmental human rights defenders. It also calls on business to carry out human rights due diligence and hold meaningful and inclusive consultations with rights defenders, including potentially affected groups and relevant stakeholders.

Another significant milestone relating to human rights and the environment was the adoption, in October 2021, of the landmark recognition of the right to a clean, healthy, and sustainable environment at the 48th session of the Human Rights Council (2021). As was already stated earlier, there was a close link between the right to a healthy environment and EHRDs. The then Human Rights High Commissioner, Michelle Bachelet, noted that there is no separation between environmental action and protection of human rights (UN News, 2021). The human rights of environmental human rights defenders, especially within the context of business and corporate activities, were also emphasized. Recalling the Guiding Principles on Business and Human Rights, which underscore the responsibility of all business enterprises to respect human rights, including the rights to life and liberty and the security of human rights defenders working in environmental matters, referred to as environmental human rights defenders (Geneva Environmental Network, n.d.), the first, and in some ways the simplest, path to linking human rights and the environment is to recognize the human right to a healthy environment.

Before global recognition, about 100 states had already recognized some form of the right in their constitutions, including most of the member states of the Council of Europe. At the regional level, the African Charter on Human and Peoples' Rights, which has 54 parties, was the first human rights treaty to include the right, in 1981; the San Salvador Protocol to the American Convention, which has 19 parties, was the second, in 1988. Other regional instruments that recognize the right include the 2004 Arab Charter on Human Rights (John Knox, 2022).

At the regional level, Latin America and the Caribbean as well as Europe seem to be more advanced than other regions. The best-known examples include:

A) Escazú Agreement: The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, or the Escazú Agreement, was adopted in Escazú, Costa Rica, on 4 March 2018, and entered into force on 22 April 2021. A landmark agreement for the region, the treaty is also the first legally binding instrument to include specific provisions for the protection and promotion of human rights defenders in environmental matters. Under Article 9 "Human rights defenders in environmental matters", member States must guarantee a safe and enabling environment for environmental defenders, protect and promote their rights, including the freedom to participate in activities regarding environmental matters, and take measures to prevent, investigate and punish attacks, threats or intimidation against them (Geneva Environmental Network, n.d.).

B) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention): The Aarhus Convention – or the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of the UN Economic Commission for Europe (UNECE)

– was adopted in the city of Aarhus, Denmark on 25 June 1998. It is considered a unique agreement that sets out legal obligations linking human rights and the environment for its 47 Parties. These include the European Union and all its member countries, the vast majority of countries in Eastern Europe and Central Asia, all of the countries in the Caucasus and South-Eastern and Northern Europe, and Guinea-Bissau following its accession in 2023. All UN Member States can join the Convention. By joining the Aarhus Convention and fulfilling its obligations, all United Nations Member States can demonstrate their commitment to environmental rights, transparency and accountability, and the public's crucial role in protecting a shared, sustainable future (Geneva Environmental Network, n.d.).

In October 2021, the UNECE adopted a Decision on a rapid response mechanism to deal with cases related to Article 3 (8) of the Convention. In addition to confirming the commitments of state parties to promote and strengthen the protection of environmental defenders against penalization, persecution, harassment and other forms of retaliation for their involvement, the decision called on Parties to review their legal frameworks and practical arrangements in line with the Convention's obligations and to take all necessary measures to ensure that persons exercising their rights in conformity with the Convention's provisions are not penalized, persecuted or harassed in any way for their involvement; as well as to appoint an independent Special Rapporteur on environmental defenders, a position to which Mr. Michel Forst was finally elected in 2022. We should not, of course, confuse Michel Forst's mandates with the UN Special Rapporteur on Human Rights and Environment established by the UNHRC in 2012, currently Dr David R. Boyd, whose mandate also touches upon environmental human rights defenders (UNECE, 2021).

The role of the UNECE Special Rapporteur on Environmental Defenders is to take measures to protect any person experiencing or at imminent threat of penalization, persecution, or harassment for seeking to exercise their rights under the Aarhus Convention. This is the first such mechanism specifically safeguarding environmental defenders to be established within a legally binding framework either under the United Nations system or other intergovernmental structure.

There are also efforts made by non-governmental organizations. These include the International Union for Conservation of Nature (IUCN) Resolution on EHRDs (WCC 2020 Res 115) adopted by members of the IUCN, which calls for "protecting environmental human and peoples' rights defenders and whistleblowers", and urges governments to adopt and uphold laws aimed at protecting them. The resolution also encourages the IUCN Director General, in collaboration with State and non-State members, and with EHRDs, to develop an IUCN policy and action plan to protect environmental defenders and whistleblowers (Geneva Environmental Network, n.d.).

Another effort is found in Asia-Pacific in the form of the provision of a platform for discussions and learning. The 1st Asia-Pacific Environmental Human Rights Defenders Forum was organized in November 2021, followed by a 2nd Forum in October 2022. These meetings successfully connected hundreds of EHRDs from the Asia-Pacific region and facilitated peer-to-peer learning on a variety of topics such as advocacy and security. The 3rd Forum took place from 20 to 21 September 2023 in Bangkok (UN Conference Centre, 2023).

The objectives of the Asia Pacific EHRD Forum are:

- to serve as a safe space for EHRDs to discuss ongoing challenges and regional trends in the promotion, protection, and realization of environmental rights;
- to provide a platform for peer learning amongst EHRDs across Asia and the Pacific;
- to provide access to information on good practice, success stories, and information on addressing violations of environmental rights;

- to encourage understanding amongst EHRDs of the benefits of data collection for advocacy;
- to build capacity on data collection on the situation of EHRDs in Asia and the Pacific by exploring existing opportunities, barriers, and risks and interrogating the processes behind data collection in Asia and the Pacific;
- to provide networking spaces for EHRDs to strengthen their networks across sub-regions;
- to learn and understand how EHRDs can safely and effectively engage with the media (UN Conference Centre, 2023).

In Southeast Asia, the ASEAN Human Rights Declaration was adopted by the ASEAN Member States in 2012. The chapter relating to the right to development, especially Articles 35 and 36, include the right to development as an inalienable right of human persons and the peoples of ASEAN. The two Articles emphasize the concepts of participation to "contribute to, enjoy and benefit equitable and sustainably from economic, social, cultural and political development" (AHRD, 2012). Article 35 further states "The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations" (AHRD, ibid.) while Article 36 encourages the ASEAN Member States to "adopt meaningful people-oriented and gender-responsive development programmes aimed at poverty alleviation, the creation of conditions including the protection and sustainability of the environment for the peoples of ASEAN" (AHRD, ibid.). So far, there is no regional legally binding framework to protect the rights of EHRDs in Southeast Asia. Many countries have however enacted national laws to restrict their activities. It will be seen in the section that follows how environmental issues and the rights of EHRDs have been treated in the region.

8.4 Environmental Issues in Southeast Asia

Matt Hershberger (n.d.) identifies 6 environmental challenges facing Southeast Asia:

1. Endangered species conservation. This results from various factors, from poaching to deforestation. Many native species are endangered.
2. Air pollution. Although this is a global issue, Southeast Asia has some of the worst air pollution in the world, behind only East Asia and India. The region is prone to relatively frequent "hazes", which are the result of widespread fires. The hazes in Southeast Asia have become an increasingly frequent occurrence and can spread across many countries, causing serious health and safety concerns. The 2013 haze — mostly originating from fires in Indonesia — caused problems in Singapore, Brunei, Malaysia, Thailand, and Indonesia. Transboundary haze has increased every year.
3. Destruction of coral reefs. Reefs have been seriously degraded over the past several decades due to many factors, including the carbon which is converted into carbonic acid, increasing the ocean's acidity level over time. This acidification fundamentally weakens coral reefs, making them more prone to disease, and less likely to recover from disturbances. Overfishing not only leads to the widespread disappearance of fish species, negatively affecting the coral reef ecosystems, but many of the methods used to catch fish harm the system itself, such as blast fishing (the use of dynamite) and cyanide fishing (using sodium cyanide to stun the fish and capture them for personal aquariums). Dive tourism often interferes with the ecosystem in a way that can damage it.
4. Deforestation. As cities and populations grow, more land is taken over. In Southeast Asia specifically, given its position in the tropics, much of the forest that has been destroyed is rainforest, one of the most biologically diverse ecosystems on the planet. The effects of the destruction of rainforests can be catastrophic — not only does it destroy plant and animal

habitats, but it also accelerates climate change and potentially deprives us of undiscovered life-saving medicines.

5. Water security. This concern is acute in Southeast Asia. The Himalayan glaciers that serve as the sources for many of the major Asian rivers — including the Mekong, which passes through China, Myanmar, Laos, Thailand, Cambodia, and Vietnam — are melting faster due to global warming. Rivers such as the Mekong are already heavily dammed, which gives upriver countries huge power over the water supply for downriver nations. As much of this water is used for crops, this raises food security issues as well. Moreover, of the fresh water that is readily available, much of it is polluted or inadequately sanitized. Indonesia is the worst in the region, with only 30% of city residents and 10% of village residents having access to clean water.
6. Increased urbanization. Southeast Asia is not immune to the global shift away from rural living and towards city living, and this shift carries a good number of potential environmental consequences. Urbanization can result in overcrowding, pollution, poor sanitation, and political instability — which in turn could lead to violent conflict, which is never good for the environment. Additionally, if cities are planned poorly, massive urban sprawl is often the result, which in Southeast Asia would bring about more deforestation, habitat destruction, and carbon emissions.

The issues identified above are confirmed by a report issued by the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) stating the deficient urban infrastructure, degradation of the marine environment, land degradation, forest fires and atmospheric pollution caused by what UNESCAP termed “grow now, clean later” development policies. These development policies have been reinforced by external development drivers as well as the internal pressures of population growth and poverty (UNESCAP, 2023).

The environmental issues in Southeast Asia are compounded with climate change. A report prepared by the IMF pointed out that average temperatures in Southeast Asia have risen every decade since 1960. Vietnam, Myanmar, the Philippines and Thailand are among 10 countries in the world most affected by climate change in the past 20 years (Prakash, 2018). The World Bank counts Vietnam among five countries most likely to be affected by global warming in the future (ibid.). Southeast Asia is facing increasing issues of growing energy demand, vanishing forests, rising sea levels and policy conflicts.

Both environmental and climate change issues in Southeast Asia are worrying. Loss and damage caused by geographical vulnerabilities that are exacerbated by manmade disasters push environmental human rights defenders to stand up to protect the environment and their communities. Struggling for a clean, healthy and sustainable environment and climate justice put them at high risk.

8.5 The Rights Situation of EHRDs

Referring to the first report produced by Global Witness, Knox highlighted that “there are without doubt more cases than we have been able to verify because in places with under-reported conflicts, information is almost impossible to gain without detailed field investigations” (2017). Between 2002-2013, it found that at least 908 people had been killed as a consequence of protecting their rights to land and the environment. More than 90% of the killings listed in the Global Witness report occurred in nine countries. The largest number of deaths was reported in Brazil, which experienced 448 (nearly half of the total). The second largest was in Honduras, with 109. Other countries with more than ten included Cambodia (13), Colombia (52), Guatemala (21), Mexico (40), Peru (58), the Philippines (67), and Thailand (16) (Knox, 2017).

The most recent Global Witness report indicated that 1,910 land and environmental defenders were killed between 2012 and 2022 for protecting the planet. At least 177 land and environmental defenders around the world were killed in 2022 (Global Witness, 2023). Global Witness further reported:

- Almost nine in 10 recorded killings in 2022 were in Latin America, with more than a third of all fatal attacks taking place in Colombia – more than in any other country.
- The majority of recorded killings in 2022 took place in Latin America, the site of 88% of lethal attacks. Other deadly countries last year within the region include Brazil, with 34 killings, Mexico with 31, and Honduras with 14. A total of 11 defenders were killed in the Philippines.
- One in five murders of defenders worldwide took place in the Amazon Rainforest last year, with violence, torture and threats a shared reality for communities across the region.
- Indigenous communities around the world face a disproportionate level of lethal attacks, as indigenous people comprised more than a third (34%) of victims of global killings last year whilst making up only around 5% of the world's population. "The UN Special Rapporteur describes a 'global crisis' of escalating violence and legal harassment against indigenous people linked to agriculture, mining, infrastructure and extraction projects" (Denton, 2018).
- In addition to lethal attacks, defenders are also being increasingly subject to criminalization as a strategy for silencing those who speak out, with laws being weaponized against them.

Although killings may be the most shocking form of human rights violations against EHRDs, Knox stated that killing is in itself an inadequate means of conveying the scale and nature of the challenges and risks faced by EHRDs, as there are myriad of other human rights violations suffered by EHRDs, including violent attacks and threats to their families, enforced disappearances, illegal surveillance, travel bans, blackmail, sexual harassment, judicial harassment and use of force to dispel peaceful protests (Knox, 2017). EHRDs are all too often subjected to threats that are meant to instil fear and prevent activism. In many cases, intimidation can quickly escalate into violence (ibid.). In his report, Knox (2017) emphasized that EHRDs confronted threats and/or suffered reprisals against themselves and, in many cases, against family members or communities. These included physical threats or reprisals, including assault, death threats, sexual assault, and kidnapping, as well as non-physical threats or reprisals, such as defamation and stigmatisation. Most EHRDs attributed the extreme nature of these threats and reprisals to the strong economic interests at stake coupled with a high level of corruption and lack of the rule of law. In addition, indigenous peoples are also commonly represented in struggles for land and political autonomy. Front Line Defenders' 2018 Global Analysis reported that 77% of the 321 HRDs murdered worldwide were defenders of land, environmental and indigenous peoples' rights (APF, 2021). In the same vein, women HRDs face a significantly greater risk of violence and reprisals than their male counterparts. They often work against patriarchal stereotypes and can be stigmatized for their work by family members, their community and society, leading to alienation and unequal access to justice and other informal protection mechanisms of HRD social networks (APF, 2021).

8.6 Environmental Human Rights Defenders in Southeast Asia

What has been happening in Southeast Asia mirrors the global challenges faced by EHRDs.

Jenny Denton (2018) wrote that environmental human rights defenders were under pressure across Southeast Asia. Denton referred to a report released in 2017 by Global Witness which documented the killing around the world in 2016 of 207 environmental defenders – the term includes ordinary citizens, often from indigenous or ethnic minority groups, who peacefully protect their land, together with more organized activists or advocates. Fifty of the documented killings occurred

in Asia, 48 of them in the Philippines, which became one of the deadliest countries in the world for activists under President Rodrigo Duterte. The Philippines figure represented a 71 percent increase on environment-related killings in 2016 and the highest tally ever for an Asian nation – with suspected military involvement in 56 percent of cases (Denton, 2018).

Case Study: Mass killings in Mindanao (Report of Global Witness (2017)

One of seven mass killings recorded in the report of Global Witness (2017) took place on the island of Mindanao, where eight members of an indigenous farming community resisting the confiscation of land for a coffee plantation were gunned down by a team of soldiers and marines at Lake Sebu. The military had falsely claimed the massacre occurred in a confrontation with the Communist New People's Army (Denton, 2018). Victoria Tauli-Corpuz, a Filipina appointed as the United Nations Special Rapporteur on the Rights of Indigenous Peoples (2014 to 2020), herself became a victim of persecution in the Philippines after speaking out about the massacre in Mindanao. Her name, together with those of many other rights advocates and indigenous leaders, appeared on a list of people identified as members of the Communist Party and New People's Army, which the government is seeking to outlaw as terrorist organizations (Denton, 2018).

Around the region there is a "proliferation of legislation" restricting fundamental freedoms, according to Katia Chirrizi, from the UN Office of the High Commissioner for Human Rights, Southeast Asia – including laws on counterterrorism, security and NGOs (Denton, 2018). In Cambodia, former members of Mother Nature Cambodia, an activist group, have been heavily targeted by the Cambodian authorities for their exposure of environmental abuses and outspoken criticism on social media of the government ministers responsible (Denton, 2018). Between 2015 and 2017, five members of the organization spent months in jail awaiting trial on charges related to their peaceful activism, while co-founder Alex Gonzalez-Davidson was deported from the country (Denton, 2018).

The Computer-Related Crime Act in Thailand, the Official Secrets and Telecommunications acts in Myanmar, and lèse majesté laws in Cambodia and Thailand are all examples of legislation framed so broadly that they enable almost anything to be interpreted as an offense (Denton, 2018). SLAPP (Strategic Litigation Against Public Participation) suits tied people up for years, drained them financially and often resulted in imprisonment when courts lacked independence.

Even more concerning was Vietnam's draconian cybersecurity law which aims to force critical comment offline, and the fact that a number of governments in the region would like to emulate "the China model" of mass internet control and intensive surveillance (Denton, 2018).

In addition to killings and other forms of harassment and intimidation, EHRD are the victims of enforced disappearances, such as rural development advocate Sombath Somphone in Laos and Karen land activist Porlajee "Billy" Rakchongcharoen in Thailand – both of whom were detained by the authorities and have not been seen since.

One high-profile case that was never credibly investigated is that of Cambodian forest activist Chut Wutty.

Case Study: Case of Chut Wutty, forest activist, Cambodia

Chut Wutty was the founder of the Natural Resource Protection Group, a civil society organization that monitored and reported on illegal logging in Cambodia. According to those who knew him, "his life work was to defend the rights of forest communities and speak out against the rampant deforestation that is destroying Cambodia's natural heritage". He was killed in April 2012 while escorting two journalists near a protected forest in Koh Kong province. He was shot after refusing to turn over his memory card and camera, allegedly by a military police officer. The officer was also shot during the incident, apparently by accident by another security guard. The guard was convicted of the officer's killing but served only a few months. No one was charged with killing Chut Wutty. Other environmental defenders continue his work. Ouch Leng, for example, continues to investigate and issue reports on illegal logging in Cambodia, despite concerns that his work makes him a target of violence. He received the 2016 Goldman Environmental Prize, an award that honours grassroots environmental defenders from each continent, recognising individuals for 'sustained and significant efforts to protect and enhance the natural environment, often at great personal risk'. (Knox, 2017).

Case Study: HRDs in Thailand

In Thailand, HRDs frequently face threats and intimidation from the private sector for speaking out against environmentally and socially destructive development projects. In April 2020, a group of local villagers from the Bamnet Narong community in central Thailand engaged in a peaceful protest against a large, foreign-owned potash mining company which was planning to commence operations in the area. The protests were coordinated by local trans activist and anti-mining campaigner, Sunthorn Duangnarong, who was arrested by police and held in detention without access to a lawyer (APF, 2021).

These three cases reveal deep concern in the region over the rights and plight of human rights defenders in general and EHRDs in particular.

It is worth noting that in the Asia-Pacific region, multinational companies conducting business across borders are frequent participants in violations against HRDs. Private sector involvement in human rights violations is particularly common among EHRDs and grassroots indigenous defenders, who have taken on leading advocacy roles against large international corporations on behalf of communities affected by mining, logging, and other resource extraction projects. In its March 2020 Annual Briefing, the Business & Human Rights Resource Centre (2020) reported a 48% increase in judicial harassment of HRDs investigating the conduct of business activities globally, with Southeast Asia a global hotspot for SLAPPs – the manipulation of national legal systems to illegitimately target otherwise valid claims or protest movements.

8.6.1 Strategic litigation

Litigation is the term used to describe proceedings initiated between two opposing parties to enforce or defend a legal right. Usually, the aim is to go to court for a legal victory, but sometimes you can win by losing a case. Where injustice is exposed and publicity generated, there is often an opportunity to move closer to the end goal regardless of the outcome of the case.

"Strategic litigation enables us to advocate for human rights for all" says Amnesty International (Amnesty International-AI, n.d.). Indeed, AI has been using strategic litigation to support victims of human rights violations and human rights defenders, and to achieve systemic change. By

supporting victims of human rights violations and safeguarding human rights defenders, it is often involved in legal proceedings (AI, ibid).

The goal of strategic litigation is not so much winning a case for a particular client, but the impact that the legal procedure can have on broader interests. For this reason, strategic litigation is also known as impact litigation. Strategic litigation is a supplement to other ways of bringing about change; from lobbying and advocacy to community organizing and protests. An organization focused on strategic litigation should therefore act as an ally to activists, NGOs and grassroots organizations (AI, n.d.).

So, in human rights, litigation is 'strategic' when it is consciously designed to advance the clarification, respect, protection, and fulfillment of rights. The idea is to change laws, policies and practices, and to secure remedies or relief following violations. Strategic litigation is also often about raising public awareness of an injustice. Strategic litigation should be capable of drawing attention to human rights abuses and violations and emphasizing the duty of the State to fulfill its national and international obligations. This does not mean that every rights violation can, or should, be handled with strategic litigation.

8.6.2 The use of SLAPP against environmental rights defenders

When strategic litigation or lawsuits are used to silence academics, human rights defenders, media people and other civil society actors, it turns into SLAPP. SLAPPs are often used to intimidate reporters and rights advocates with the threat of endless legal action and costs. It results in fear of reporting cases, impunity, and difficulty in uncovering the identity of those behind the ordering and conducting of such acts. SLAPP is used not only by the business sector but also by states. States and business have legal and extra-legal tools to silence human rights defenders. Examples were manifested during the Covid 19 pandemic. While governments used the pandemic as an excuse to further censor free speech, some companies took advantage of the restrictions to file more cases against critics. "The cases filed by companies against human rights defenders are a clear example of businesses abusing the legal system in order to censor, intimidate, and silence criticism through SLAPPs as a method of judicial harassment" (Business & Human Rights Resource Centre, 2020). SLAPPs have an impact on the role of public watchdogs, including rights defenders; they hinder public scrutiny, decrease transparency and prevent public debate on topics of general interest.

Michel Forst, the first Special Rapporteur on environmental defenders under the Aarhus Convention, said in a report "Strategic litigation against public participation consists not only of the trial itself, but also of pre-trial strategies, including threats and other forms of intimidation, that in themselves frequently serve to silence the victim. It should be acknowledged that it is not just the SLAPP trial itself that is harmful to public participation, but also pre-trial and other litigation strategies outside trial" (UNEP, 2023). In addition, he emphasized that the victims of SLAPPs frequently expand beyond the named defendant to include the defendant's family members and lawyers acting on his or her behalf (ibid.).

Violent attacks are hardly the only problem facing environmental defenders today. Increasingly, governments view and characterize environmental organizations as suspicious and pass legislation or measures with the aim of limiting their scope for action. A prime example of such legislation disproportionately affecting legitimate environmental activism are the so-called foreign agent-type laws and NGO laws. Such laws force many environmental defender organizations to either avoid official registration altogether or to discontinue their operations, or pay heavy fines and impose other punitive measures, including criminal prosecution, judicial harassment, or dissolution.

A UNEP report released in July 2023 pointed out that the use of SLAPPs is increasing globally, with the Asia Pacific region having one of the highest rates of SLAPPs. Commonly SLAPPs are filed by

businesses, charge defamation, and/or are environment-linked. The report revealed that a 2021 study on the global use of SLAPPs identified more than 3000 recorded "attacks worldwide against community leaders, farmers, workers, unions, journalists, civil society groups, and other defenders who have raised concerns about irresponsible business practices". Key findings of the 2021 study reported on the incidence of SLAPPs between 2015 and 2021:

- 355 cases were identified as: (i) bearing the "hallmarks of SLAPPs"; and (ii) "brought or initiated by business actors against individuals and groups related to their defence of human rights and/or the environment".
- More than 60% of cases "involved criminal charges, the majority libel or other defamation charges".
- Over 80% of SLAPPs were brought against individuals.
- More than 60% of individuals and groups facing SLAPPs' had "raised concerns about projects in four sectors": (i) mining; (ii) agriculture and livestock; (iii) logging and lumber; and (iv) palm oil.
- "Many of the lawsuits include aggressive and disproportionate remedies, such as an excessive claim of damages, a hallmark of SLAPP cases", e.g., damages sought in SLAPP cases - in only 82 of the 355 cases identified in this study - amounted to "more than US$1.5 billion" (UNEP, 2023).

In 2021, the Asia Pacific region was reported as having the second highest incidence of SLAPPs globally after Latin America with 39%. According to the report, Thailand recorded the highest number of cases, amounting to 40% of cases filed in Asia followed by India and the Philippines. The UNEP report refers to a 2022 briefing on human rights defenders which confirmed the ongoing nature of this disturbing trend of abuse; nearly 70% of attacks recorded in the region were against land, environmental, and climate rights defenders, and almost three in 10 attacks were against women HRDs (UNEP, 2023).

Southeast Asia is one of the deadliest regions in the world for environmental human rights defenders, many of them from indigenous groups, says Cynthia Veliko, Regional Representative of the OHCHR in Southeast Asia (Kuentak, 2020). For her, the complex human rights issues regarding land and the environment are linked, largely due to a pressing quest to exploit natural resources. The threats and attacks are most frequently connected to mining projects, oil and gas development, agribusiness, logging and deforestation, hydropower, and large-scale infrastructure projects. Southeast Asia had 167 cases of judicial harassment, or 48% of the total of 345 business-linked attacks. In Thailand alone, the Human Rights Lawyers Association, reported that from 1997 to May 2019 there were 212 SLAPP cases, 196 of which were criminal cases with potentially severe consequences, including imprisonment. 41% of SLAPP targets are human rights defenders and communities/groups/workers, and of the issues prosecuted, 32% involved the environment and development projects (mining, factories, power plants), 5% labor issues, 2% public health, and 2% energy (Kuentak, 2020). Usually, a significant number of SLAPPs take the form of civil proceedings or simultaneous proceedings in civil, administrative, or criminal courts. In the case of Southeast Asia, SLAPPs are mostly criminal actions. The longer an abusive court proceeding goes on, the greater the financial, psychological, and other tolls on the defendant.

8.7 Conclusion: Are there any strategies to defend environmental human rights defenders?

ASEAN Parliamentarians for Human Rights (2022) issued an Open Letter on the situation of human rights and human rights defenders in Southeast Asia ahead of the inaugural ASEAN – EU Summit. The group expressed their concern over the fact that human rights defenders continue to suffer reprisals for their work, too often at the hands of the states that are meant to protect them. The Open Letter referred to the report of the Human Rights Memorial project which documented the killings of 25 human rights defenders in Myanmar, the Philippines and Thailand in 2021, and noted that the real number is likely to be several times higher. 2022 was the 10th anniversary of the enforced disappearance of Sombath Somphone in Lao PDR, who contested development projects initiated by his government. The situation for human rights defenders, including environmental human rights defenders in many countries across the region has only worsened.

As detailed in Front Line Defenders' 2021 Global Analysis, human rights defenders in the region face a wide range of threats, including: judicial harassment; defamation and smear campaigns, most notably the infamous practice of red-tagging in the Philippines; the abuse of Covid-19 related laws, like Cambodia's widely criticized Preventive Measures law; and the weaponization of legislation like Indonesia's Electronic Information and Transactions Law to silence defenders, especially anti-corruption activists (ASEAN Parliamentarians for Human Rights, 2022).

Digital surveillance is a growing concern, using technology that is both domestically produced as well as imported from countries such as China and Russia, that have weak human rights safeguards and due diligence. Thai human rights defenders and pro-democracy protesters have been targeted with NSO Group's Pegasus spyware, as reported by Citizen Lab at the University of Toronto and Amnesty International. However, no sophisticated software is required to target human rights defenders through technological means, as illustrated by the increasing practice of doxing in Indonesia.

Some of the defenders most targeted are those working on labour rights, environmental rights, indigenous rights, women's rights, and those advocating for democracy and working on abuses of counter-terrorism legislation

The ASEAN-EU Parliamentarians reiterate the importance of protecting human rights defenders and of properly investigating offenses committed against them, including killings and enforced disappearances. They call for the improvement and development when necessary of national human rights policies, including specific policies addressing the protection of human rights defenders. It is crucial that states and business sectors stop using libel and defamation laws to silence government critics, activists, human rights defenders and parliamentarians in opposition (ASEAN Parliamentarians for Human Rights, 2022).

Regarding the increasing use of SLAPP, the European Union (2023) proposed three approaches to address the issue:

- Legislation for civil procedural safeguards against SLAPP, such as early dismissal of lawsuits and accelerated proceedings. In fact, Anti-SLAPP legislative mechanisms were introduced by several Asia-Pacific states that provide examples of good practices in the region. Such good practices include the procedural safeguards against environment-linked SLAPPs expressly provided for in the Philippines Supreme Court Rules. These could be followed by other states.

- There have been efforts to address SLAPPs that tend to focus on reforming the laws that govern such suits. In a short opinion written by Jacob Bogart (2023), a human rights lawyer specializing in business and human rights in SEA, he described that in Thailand, the Government amended key sections of their criminal and civil procedural codes following recommendations to do so from the U.N. Human Rights Committee, the Working Group on Business and Human Rights, and civil society. The reforms have proven inadequate: in the years since the change in law, SLAPP suits continue to be brought, and it is not clear that judges have relied on the new provisions to dismiss SLAPP suits. Indeed, even when Thai defence lawyers raised the provisions to request a dismissal in some of the cases above, judges sometimes did not consider them and allowed the cases to continue to trial. Therefore, while legal reforms are worthwhile, the experience of Thailand demonstrates that such measures cannot be the only tool activists use to oppose SLAPP suits. What he advocates is human rights due diligence as one of the strategies that we need to advocate more.
- A combination of legislation and non-legislative measures such as legal aid to targets of SLAPP; third-party interventions and allowing representative organizations to act on behalf of targets of SLAPP; raising awareness of SLAPP; training of legal professionals; sharing good practices among countries and among legal professionals; monitoring SLAPP in the region.
- Financial support for bodies that specialize in supporting targets. This is straightforward but difficult in Asia as human rights organizations and human rights defenders, including environmental defenders rely on funding from outside the region. Raising funds for the purpose presents a big challenge.
- Reports of attacks, risk assessment, trend mapping and timely and targeted support for those facing threats.
- Strengthening the roles of NHRIs across the region to address SLAPPs.

A. Questions

1. In your opinion, what is/are the sharp distinction(s) between human rights defenders and environmental human rights defenders?
2. Are you aware of any legislation in your country that restricts or protects the rights of environmental human rights defenders and/or human rights defenders in general? Please explain.
3. What are the most serious environmental issues in your own country and how do environmental human rights defenders address them?
4. How do you define your own roles in protecting the environment and environmental human rights defenders as a citizen in your own country?

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About ASEAN University Network - Human Rights Education (AUN-HRE)

ASEAN University Network
Human Rights Education (AUN-HRE)

Recognizing that respect for human rights and fundamental freedoms is one of the key principles for ASEAN Community building, the ASEAN University Network - Human Rights Education (AUN-HRE) was established by the ASEAN University Network Board of Trustees in 2009 with the objective of building a culture of human rights and peace in the region. The specific objectives of AUN-HRE are:

* To further efforts by different bodies in promoting human rights and peace education in ASEAN/SEA;
* To mainstream human rights and peace education envisioned by ASEAN Vision 2025 and to support the realization of SDGs (4.7);
* To strengthen capacities of lecturers/ students on research and education;
* To provide platform for exchange and collaboration within and beyond SEA region; and
* To develop materials and human resources for human rights and peace education.

With these objectives AUN-HRE has been organising: training workshops for lecturers at regional and national levels; essay competitions amongst undergraduate students in the region; and colloquiums on issues of interest expressed by its network members. It has also been producing textbooks and teaching manuals on human rights and peace.

AUN-HRE has 30 members and 2 associate members. The secretariat of AUN-HRE is hosted by the Institute of Human Rights and Peace Studies at Mahidol University in Thailand.

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About the Institute of Human Rights and Peace Studies (IHRP), Mahidol University

Institute of Human Rights and Peace Studies
Mahidol University

The Institute of Human Rights and Peace Studies (IHRP) was established in 2011 by the merging of two centres at the Mahidol University: Center for Human Rights Studies and Social Development and Research Center for Peacebuilding.

The Center for Human Rights Studies and Social Development (CHRSD) was established in 1998. For more than ten years, it served as an academic institution specialized in human rights, with a track record in providing postgraduate education as well as training programs to students, human rights workers, human rights defenders, members of civil society organizations and government

officials. The MA in Human Rights started by the CHRSD is the longest running graduate degree program in Human Rights in Asia.

The Research Center for Peacebuilding was founded in November 2004 as a research center with the impetus to be part of the peaceful solution to conflicts in Thailand especially the conflict in three southernmost provinces: Pattani, Yala, and Narathiwat. The Center developed and implemented considerable action and participatory research projects. These projects focussed on facilitating cooperative efforts to deal with the conflicts through opening space for dialogue at all levels and identifying needs of community and society. Also, the projects provided inputs to policy makers on transforming conflicts and building just and peaceful societies.

Combining the experience and perspective of both these centres, IHRP is uniquely interdisciplinary in its approach and is committed to the advancement of human rights and peace by: educating human rights and peace practitioners; promoting outreach programs to community and international organizations; and conducting cutting edge research on important issues. The four academic programs implemented by it are:

1. Ph.D Human Rights and Peace Studies (International Program)
2. M.A. Human Rights (International Program)
3. M.A. Human Rights and Democratisation (International Program)
4. M.A. Human Rights and Peace Studies (Thai Program)

IHRP also hosts the secretariat of ASEAN University Network - Human Rights Education (AUN-HRE) and Strengthening Human Rights and Peace Research and Education in ASEAN / Southeast Asia (SHAPE-SEA).

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About Norwegian Centre for Human Rights (NCHR), University of Oslo

UiO : Norwegian Centre for Human Rights
University of Oslo

The Norwegian Centre for Human Rights (NCHR) is a multi- and interdisciplinary centre. Through research, teaching, and dissemination, the Centre shall promote the subject of human rights as an academic field, and strengthen its international position as a central actor and attractive collaborative partner within the human rights field. The NCHR emphasizes the connection between research, education, and practical application, among other things through international projects and programmes.

Website:
https://www.jus.uio.no/smr/english/about/