**Submission to the UN Special Rapporteur on Human Rights and Climate Change regarding “Promotion and protection of human rights in the context of mitigation, adaptation, and financial actions to address climate change, with particular emphasis on loss and damage”**

**June 2022**

The Climate Litigation Network, of the Urgenda Foundation, welcomes the opportunity to provide input to the UN Special Rapporteur on Human Rights and Climate Change (UN Special Rapporteur) to inform the forthcoming report on ‘actions to address climate change, particularly in the context of loss and damage’ which will be presented at the seventy-seventh session of UN General Assembly (2022) (Report).

Our submission addresses questions 5 and 7 jointly. We focus on the **mitigation measures** that States must adopt in order to “protect current and future generations and achieve intergenerational justice” (question 5) and to “dramatically increase efforts to reduce emissions of greenhouse gases … to limit the human rights impacts [of climate change]” (question 7), in line with their obligations under international human rights law.

**The Climate Litigation Network**

The [Climate Litigation Network](https://www.urgenda.nl/en/themas/climate-case/global-climate-litigation/) is a project of the Urgenda Foundation, a Dutch sustainability non-profit organisation. We provide legal and scientific expertise to support litigation by communities around the world to challenge States’ inadequate mitigation efforts, drawing upon a growing body of jurisprudence globally.[[1]](#endnote-2)

**Introduction**

We welcome the UN Special Rapporteur’s focus on the topic of loss and damage in the forthcoming Report. In this submission, we respectfully invite the UN Special Rapporteur to elaborate on the content of States’ obligations to mitigate climate change as an important, and complementary, aspect of his work on loss and damage. Mitigation of climate change – through the rapid reduction of greenhouse gases (GHG) – is the primary mechanism by which toprevent further dangerous climate change and thus further loss and damage.

In **Part One**, we outline the legal recognition of States’ human rights obligations to mitigate climate change. In **Part Two**, we summarise emerging best practice from national courts, and from international law and best available science regarding the *content* of such obligations. Our submission presents the findings of our recent peer-reviewed [article](https://www.elgaronline.com/view/journals/jhre/13/1/article-p35.xml) ([open-access](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3955144)) in summary form, which we attach to our submission.[[2]](#endnote-3)

We would greatly welcome the engagement of the UN Special Rapporteur on this topic in the Report.

# States’ human rights obligations to mitigate climate change

In the past decade, courts and UN human rights institutions have recognised that States have legal obligations to mitigate climate change in order to protect human rights.

National[[3]](#endnote-4) and regional[[4]](#endnote-5) courts and UN human rights institutions[[5]](#endnote-6) have recognised that climate change is *already* having, and *will* have, a significant impact on the enjoyment of a wide range of human rights. In light of these impacts, courts in the [Netherlands](http://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/), [Germany](http://climatecasechart.com/non-us-case/neubauer-et-al-v-germany/), [Colombia](http://climatecasechart.com/non-us-case/future-generation-v-ministry-environment-others/), [Nepal](http://climatecasechart.com/non-us-case/shrestha-v-office-of-the-prime-minister-et-al/), [Belgium](http://climatecasechart.com/non-us-case/vzw-klimaatzaak-v-kingdom-of-belgium-et-al/) and the [Czech Republic](http://climatecasechart.com/non-us-case/klimaticka-zaloba-cr-v-czech-republic/) have determined that the respective State must adopt more ambitious GHG mitigation efforts. Crucially, these judgments establish that the State’s duty exists *notwithstanding* that climate change is a global problem, which cannot be solved by any individual country.[[6]](#endnote-7)

These cases form part of a “wave of … climate change litigation across the world”, which has followed landmark decisions issued by courts in the Netherlands[[7]](#endnote-8) and Pakistan[[8]](#endnote-9) in 2015.[[9]](#endnote-10) These legal developments have offered a new avenue of accountability for States’ weak climate action. As the Intergovernmental Panel on Climate Change (IPCC) recently identified, “[t]he outcomes of climate litigation can affect the stringency and ambitiousness of climate governance”.[[10]](#endnote-11)

Nevertheless, this field remains at an early stage of development. To date, only a handful of national courts (those mentioned above) have analysed the *content* of States’ human rights obligations to mitigate climate change,[[11]](#endnote-12) namely: what constitutes ‘reasonable’ and ‘appropriate’ mitigation efforts to protect human rights from the harm posed by climate change? This issue is central to Questions 5 and 7 in the Call for Input.

Soft law standards provide invaluable guidance to courts in determining the content of States’ human rights obligations in the context of climate change. The Dutch Supreme Court in *Urgenda v. the Netherlands* referred to a report by the UN Special Rapporteur on Human Rights and the Environment when determining the content of the State’s obligations to mitigate climate change under the European Convention on Human Rights.[[12]](#endnote-13)

Authoritative guidance from the UN Special Rapporteur on this issue could make a significant contribution to ongoing accountability efforts globally.

# Elaborating the content of States’ human rights obligations to mitigate climate change

National courts and UN human rights bodies have recognised that, in interpreting States’ obligations to protect human rights in the context of climate change, it is instructive to refer to norms of international environmental law and best available science.[[13]](#endnote-14)

In line with this, scholars have examined international environmental law and best available science, and have identified obligations and principles regarding States’ mitigation obligations (under human rights law or other legal bases).[[14]](#endnote-15) We have undertaken a similar exercise in our article, drawing upon emerging best practice from national courts.

We have identified a set of standards that can be used to assess whether a State is taking ‘reasonable’ and ‘appropriate’ mitigation measures in order to protect human rights, in light of the harm posed by climate change. Among these, a core standard is that each State must do its ‘fair share’ in reducing its GHG emissions in order to prevent dangerous levels of climate change.[[15]](#endnote-16)

A number of national courts have already recognised that these standards provide a basis against which to assess the reasonableness of a State’s mitigation measures pursuant to human rights law.[[16]](#endnote-17)

What follows is a summary of these standards:

*In order to discharge its legal obligations to take reasonable measures to protect persons or things within its jurisdiction from the foreseeable and severe harm posed by climate change, a State**must adopt**measures to mitigate climate change by reducing its greenhouse gas emissions.*

*Such mitigation measures should:*

1. *be based on a long-term temperature goal of at least 1.5°C;*
2. *be informed by the principles of equity and common but differentiated responsibilities (CBDR), on the basis of which each country needs to do its ‘fair share’ as informed by best available science;*
3. *include a date by which to achieve carbon neutrality, which for developed countries should be well before 2050;*
4. *be internally consistent (that is, short-term mitigation measures should be scientifically consistent with long-term mitigation measures);*
5. *represent a ‘progression over time’, with regular increases in ambition;*
6. *not rely excessively on negative emissions technology; and*
7. *be sufficiently detailed to indicate how emissions reductions will be achieved.*

The basis of each standard is outlined in the table:

|  |  |
| --- | --- |
| **Standard** | **Legal and scientific bases** |
| *based on a long-term temperature goal of at least 1.5°C* | * Long-term temperature goal in the Paris Agreement, and subsequent recognition by States Parties in the Glasgow Climate Pact (2021) that “the impacts of climate change will be much lower at the temperature increase of 1.5°C compared with 2°C and resolve[d] to pursue efforts to limit the temperature increase to 1.5°C”.[[17]](#endnote-18) * Scientific consensus regarding the heightened risks to individuals and societies at large of exceeding 1.5°C global warming (IPCC’s Special Report on 1.5°C and Sixth Assessment Report). * Judicial recognition: District Court of the Hauge, *Milieudefensie v Royal Dutch Shell*;[[18]](#endnote-19) Dutch Supreme Court, *Urgenda*;[[19]](#endnote-20) Irish Supreme Court, *Friends of the Irish Environment v Ireland;*[[20]](#endnote-21)Administrative Court of Paris, *Notre Affaire à Tous v France;*[[21]](#endnote-22)First Instance Court of Brussels, *Klimaatzaak v Belgium*.[[22]](#endnote-23) |
| *informed by the principles of equity and CBDR* | * Legal obligation of States Parties to the UN Framework Convention on Climate Change (UNFCCC) and the Paris Agreement to undertake mitigation measures consistent with the principles of equity and CBDR-RC and the duty of developed countries to “take the lead” in mitigating climate change.[[23]](#endnote-24) * Range of scientific sources which can indicate whether a State’s mitigation efforts are in line with its ‘fair share’ (e.g. effort-sharing literature; Climate Action Tracker (CAT),[[24]](#endnote-25) and Rajamani et al (2021)[[25]](#endnote-26)). * Judicial recognition: Dutch Supreme Court, *Urgenda*;[[26]](#endnote-27) Supreme Administrative Court (Council of State), *Commune de* *Grande-Synthe v France*;[[27]](#endnote-28)Administrative Court of Paris, *Notre Affaire à Tous v France*.[[28]](#endnote-29) |
| *carbon neutrality* | * States Parties’ commitments in the Paris Agreement (Art 4(1)), as reiterated in the Glasgow Climate Pact.[[29]](#endnote-30) * Scientific consensus that all States must design their mitigation policies around goal of reaching carbon neutrality (IPCC)[[30]](#endnote-31). * Judicial recognition: German Constitutional Court, *Neubauer*.[[31]](#endnote-32) |
| *internally consistent (short-term measures should be scientifically consistent with long-term measures)* | * Cumulative nature of climate change; finite carbon budget; delays in emissions reduction reduce overall budget. * Judicial recognition: German Constitutional Court, *Neubauer*.[[32]](#endnote-33) |
| *‘progression over time’* | * State Parties’ commitment under the Paris Agreement,[[33]](#endnote-34) and reiterated in Glasgow Climate Pact, including to “strengthen” 2030 targets by 2022.[[34]](#endnote-35) * Judicial recognition: German Constitutional Court, *Neubauer*.[[35]](#endnote-36) |
| *no excessive reliance on negative emissions* | * Precautionary principle (UNFCCC, Art 3(3)) * Well-documented risks and uncertainty involved in the use of negative emissions technology (IPCC),[[36]](#endnote-37) as well as well-documented human rights violations in their implementation in certain contexts.[[37]](#endnote-38) * Judicial recognition: German Constitutional Court, *Neubauer*;[[38]](#endnote-39) Dutch Supreme Court, *Urgenda*;[[39]](#endnote-40) Irish Supreme Court, *Friends of the Irish Environment*.[[40]](#endnote-41) |
| *sufficiently detailed to facilitate public engagement* | * Public participation and access to information are central to the UNFCCC and the Paris Agreement.[[41]](#endnote-42) * Judicial recognition: German Constitutional Court, *Neubauer*;[[42]](#endnote-43) Irish Supreme Court, *Friends of the Irish Environment.*[[43]](#endnote-44) |

# We would greatly welcome the engagement of the UN Special Rapporteur with such standards in the Report and in his forthcoming work.

# Conclusion

Thank you for the opportunity to contribute to the call for input.

We would be very happy to elaborate on any of the matters addressed in this submission.

Kind regards

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1. For an overview of jurisprudence, see Lucy Maxwell, Sarah Mead and Dennis Van Berkel, ‘Standards for Adjudicating the next Generation of Urgenda-Style Climate Cases’ (2022) 13(1) Journal of Human Rights and the Environment. 35 – 63 <<https://www.elgaronline.com/view/journals/jhre/13/1/article-p35.xml>> and cases referred to on our website <<https://www.urgenda.nl/en/themas/climate-case/global-climate-litigation/>> [↑](#endnote-ref-2)
2. Ibid. See also: Lucy Maxwell, Sarah Mead and Dennis van Berkel, ‘Legal Standards for Judging States’ Mitigation Efforts’ (*Blog - Global Network for Human Rights and the Environment*, 5 April 2022) <https://gnhre.org/community/legal-standards-for-judging-states-mitigation-efforts/>. [↑](#endnote-ref-3)
3. For full national case references, see Maxwell, Mead and Van Berkel (n 1) p 44 [footnote 59]. [↑](#endnote-ref-4)
4. See e.g. The Inter-American Court of Human Rights, *The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity – Interpretation and Scope of Articles 4(1) and 5(1) of the American Convention on Human Rights) (Advisory Opinion) OC-23/18* (2017) (ser A) No 23 Inter-Am Court Hum Rights (IACtHR) [47, 54]. [↑](#endnote-ref-5)
5. See e.g. ‘Joint Statement of Five UN Human Rights Treaty Bodies on Human Rights and Climate Change’ (2019) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E>. *Sacchi et al v Argentina et al* (2021) UN Doc CRC/C/88/D/104-108/2019 Commun No 1042019 Argent Commun No 1052019 Braz Commun No 1062019 Fr Commun No 1072019 Ger Commun No 1082019 Turk (Committee on the Rights of the Child). UN Human Rights Committee (HRC), ‘General Comment No. 36, Article 6 (Right to Life), 3 September 2019, CCPR/C/GC/35’. UN Human Rights Committee (HRC), *Communication submitted by Ioane Teitiota* [2015] Human Rights Committee Communication No 2727/2016, UN Doc CCPRC127D27282016 7 January 2020. [↑](#endnote-ref-6)
6. See Maxwell, Mead and van Berkel (n 1), p 45. [↑](#endnote-ref-7)
7. *Urgenda Foundation v The State of The Netherlands* (2015) ECLI:NL:RBDHA:2015:7196 (English translation) (District Court). [↑](#endnote-ref-8)
8. *Ashgar Leghari v Federation of Pakistan* [2015] Case No WP No 255012015 (Lahore High Court). [↑](#endnote-ref-9)
9. IPCC, Sixth Assessment Report (AR6), Chapter 13, 13.4.2. [↑](#endnote-ref-10)
10. Ibid. See also, SPM-59 E.3.3. [↑](#endnote-ref-11)
11. On the test of ‘reasonable’ and ‘appropriate’ measures, See Maxwell, Mead and Van Berkel (n 1) 40 at [2.2]. On the small number of courts, see ibid 46 at [3.3]. [↑](#endnote-ref-12)
12. See *State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v Stichting Urgenda* (2019) ECLI:NL:HR:2019:2007 (official translation) (Supreme Court of the Netherlands, Civil Division) [5.7.9], footnote 37. The Supreme Court refers to the opinion of its independent legal advisors, the Procurator General and Advocate General, which contained detailed analysis of UN human rights materials (see para 2.79-2.80, 2.31-2.33, 2.70-2.73). An English translation of this opinion is available here: <<https://www.urgenda.nl/wp-content/uploads/ENG-Dutch-Supreme-Court-Urgenda-v-Netherlands-20-12-2019.pdf>> [↑](#endnote-ref-13)
13. For national case references, see Maxwell, Mead and Van Berkel (n 1) 47-49 [footnotes 76 and 89]. [↑](#endnote-ref-14)
14. See Lavanya Rajamani and others, ‘National “Fair Shares” in Reducing Greenhouse Gas Emissions within the Principled Framework of International Environmental Law’ [2021] Climate Policy. [↑](#endnote-ref-15)
15. See Maxwell, Mead and Van Berkel (n 1) pp 53–56. [↑](#endnote-ref-16)
16. See ibid p 51 onwards (Part 4.3). [↑](#endnote-ref-17)
17. Glasgow Climate Pact, 1/CMA.3 [21]. See also CP.26 [16]). [↑](#endnote-ref-18)
18. *Shell Milieudefensie v Royal Dutch Shell* [2021] District Court of the Hague ECLR:NL:RBDHA:2021:5339 (official translation) [2.3.3].: a “safe temperature increase should not exceed 1.5°C”. [↑](#endnote-ref-19)
19. *Urgenda Supreme Court* (n 12) [4.3]. [↑](#endnote-ref-20)
20. *Friends of the Irish Environment CLG v The Government of Ireland (Irish Climate Case)* [2020] Supreme Court of Ireland Appeal No. 2015/19 [3.4]. [↑](#endnote-ref-21)
21. *Notre Affaire à Tous and Others v France* [2021] Administrative Court of Paris N°1904967, 1904968, 1904972 1904976/4-1 (unofficial translation) 28 at [16].: “a warming of 2°C rather than 1.5°C would seriously increase these various phenomena and their consequences”. [↑](#endnote-ref-22)
22. *VZW Klimaatzaak v Kingdom of Belgium & Others* [2021] Belgium, Court of First Instance of Brussels (unofficial translation) 66. [↑](#endnote-ref-23)
23. UNFCCC, Art 3.1, Art 4.1; Paris Agreement, Preamble, Art 4.1, 4.2 and 4.4. [↑](#endnote-ref-24)
24. For details, see Maxwell, Mead and van Berkel (above n 1), p 53 ff. [↑](#endnote-ref-25)
25. Rajamani et al (n 14). [↑](#endnote-ref-26)
26. *Urgenda Supreme Court* (n 12) para [6.3]. For more details, see Maxwell, Mead and Van Berkel (n 1) p 48. [↑](#endnote-ref-27)
27. *Commune de Grande-Synthe v France* (France, Council of State) 8 at [12]. [↑](#endnote-ref-28)
28. *Notre Affaire à Tous* (n 21) 29 at [18]. [↑](#endnote-ref-29)
29. Glasgow Climate Pact, CMA/3 [32] and [22]. See also CP.26 [17]. [↑](#endnote-ref-30)
30. IPCC Special Report, ‘Global Warming of 1.5°C' (2018) p 108 [↑](#endnote-ref-31)
31. *Neubauer and Others v Germany* [2021] German Federal Constitutional Court 1 BvR 2656/18, 1 BvR 96/20, 1 BvR 78/20, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20 (official translation) [155]. [↑](#endnote-ref-32)
32. ibid [117] and [183]. [↑](#endnote-ref-33)
33. Paris Agreement, Arts 3 and 4(3). [↑](#endnote-ref-34)
34. Glasgow Climate Pact, 1/CMA.3 [27]. See also [22]-[29]. [↑](#endnote-ref-35)
35. *Neubauer and Others v Germany* (n 31) para 167. :“ever-increasing reduction quotas”. [↑](#endnote-ref-36)
36. See e.g. IPCC (n 30) 95 (Chapter 2, Executive Summary). [↑](#endnote-ref-37)
37. See e.g. Centre for International Environmental Law, *Rights, Carbon, Caution: Upholding Human Rights under Article 6 of the Paris Agreement* (published February 2021) (online, accessed 11 February 2022) < https://www.ciel.org/reports/rights-carbon-caution/>; Nature-Based Solutions Initiative, *On the misuse of nature-based carbon offsets* (online, accessed 11 February 2022) <https://www.naturebasedsolutionsinitiative.org/wp-content/uploads/2021/04/Greenwashing-response-final-version.pdf>. [↑](#endnote-ref-38)
38. *Neubauer and Others v Germany* (n 31) para 33. [↑](#endnote-ref-39)
39. *Urgenda Supreme Court (2019)* (n 12) para 7.2.5. [↑](#endnote-ref-40)
40. *Irish Climate Case* (n 20) para 3.4. [↑](#endnote-ref-41)
41. UNFCCC, Art 4(1)(h)(i)(j), (2)(b), Art 6; Paris Agreement, preamble, Art 4(8), Art 12, Art 13. [↑](#endnote-ref-42)
42. *Neubauer and Others v Germany* (n 31) paras 253 and 251. [↑](#endnote-ref-43)
43. *Irish Climate Case* (n 20). In this case, the need to specify was a statutory requirement. [↑](#endnote-ref-44)