

## REGIONAL BASELINE STUDY



The Integration of Human Rights in  
the Nationally Determined  
Contributions in Asia-Pacific to the  
Paris Agreement on Climate Change

Pin Pravalprukskul, Cannelle Gueguen-Teil,  
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# **Regional Baseline Study on the Integration of Human Rights in the Nationally Determined Contributions in Asia-Pacific to the Paris Agreement on Climate Change**

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## About The Study

This study is the result of a collaborative research between the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI), under its Regional Asia Programme on Human Rights and Sustainable Development (2017-2021), and the Stockholm Environment Institute (SEI). The study is intended to provide a baseline for future regional policy development and standard setting related to human rights protection within the framework of environment and climate change. In particular, it aims at supporting the Paris Agreement process by analysing the Nationally Determined Contributions of 32 countries in the Asia Pacific Region. The central question addressed is to what extent states in the Asia Pacific region have included references to human rights (both direct and indirect) in their NDCs/INDCs submitted to the UNFCCC Secretariat. By surveying the inclusion of human rights references in NDCs/INDCs, this study hopes to identify concrete opportunities for follow up actions.

RWI's regional programme, which provides the framework both for the study and for the suggested follow-up actions, is supported by the Swedish International Development Cooperation under the Strategy for Sweden's regional development cooperation in Asia and the Pacific region 2016-2021.

SEI is one of RWI's key strategic partners in this programme, aims to contribute to a just, inclusive and sustainable development in the region through mutually reinforcing the protection of human rights, gender equality and the environment. It sets out to do so by means of (1) *Strengthening knowledge on the connections between human rights, gender equality and the environment* with the aim to clarify linkages and application in the region, and underpin and influence policy and legal development; (2) *Strengthening multi-sector synergies*, pursuing constructive collaboration and inclusive and rights-based action towards Agenda 2030 targets and building bridges and offering platforms for exchange, learning and dialogue; and by (3) *Promoting fair and efficient justice* for all in society, in relation to the environment and for cross-border violations and actions of non-state/private actors, providing adequate measures for marginalised and discriminated groups.

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## INTRODUCTION

There is an increasing global consensus that climate change will cause a range of adverse consequences on people and their rights. Despite this recognition, climate change was not considered as a human rights issue until quite recently. As a result of intense lobbying by small island states and other vulnerable states, the Human Rights Council adopted a resolution on climate change and human rights in 2009 and requested the Office of the High Commissioner for Human Rights to prepare a report on the relationship between climate change and human rights.<sup>1</sup>

In its report issued in 2009, the Office of the High Commissioner for Human Rights (“OHCHR”) discussed the relationship between climate change and human rights in considerable detail.<sup>2</sup> The report was an important first step in recognizing climate change as a human rights issue. This integration culminated in the Paris Agreement, which became the first environmental treaty to incorporate human rights.<sup>3</sup>

## CLIMATE CHANGE AND HUMAN RIGHTS

The impact of climate change on people is quite obvious. From sea level rise to droughts and desertification, from floods to water and food scarcity, the adverse consequences on people worldwide are well documented. Despite this, climate change was not treated as a human rights issue until recently. Although the international community has been discussing climate change since the late 1970s, the human rights community has been slow to join the discussion.

The report of the OHCHR acknowledged that “global warming will potentially have implications for the full range of human rights”<sup>4</sup> and elaborated on the specific rights that would be affected. These include: the right to life, right to adequate food, the right to water, right to health, right to adequate housing and the right to self-determination with regard to the people of small island states. The report also identified certain groups (women, children, and indigenous people) that are more vulnerable than others because already in vulnerable situations or subject to existing marginalization. The report also called for the need to carry out more research at the country level to identify other vulnerabilities.

The report referred to the very first report of the Intergovernmental Panel on Climate Change which cautioned us that the greatest single impact of climate change could be on human migration estimating that, by 2050, there could be up to 200 million people displaced due to increased severe weather events, desertification, flooding and water scarcity.<sup>5</sup> Currently, however, there is no legal framework to govern those who cross international borders due to climate change-related factors.

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<sup>1</sup> Human Rights Council resolution 7/23 (2008), available at:

[http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_7\\_23.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_23.pdf)

<sup>2</sup> Report of the Office of the High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights (2009), A/HRC/10/61, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/103/44/PDF/G0910344.pdf?OpenElement> (referred to as OHCHR report).

<sup>3</sup> Paris Agreement, 2015, available at:

[http://unfccc.int/files/essential\\_background/convention/application/pdf/english\\_paris\\_agreement.pdf](http://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf).

<sup>4</sup> OHCHR report, supra note 2.

<sup>5</sup> J.T Houghton, G.J. Jenkins and J.J. Ephraums (eds) (1990). *IPPC First Assessment Report, Climate Change: The IPCC Scientific Assessment*. Cambridge University Press, Cambridge, Great Britain, New York, NY, USA and Melbourne, Australia, overview available at:

[https://www.ipcc.ch/ipccreports/1992%20IPCC%20Supplement/IPCC\\_1990\\_and\\_1992\\_Assessments/English/ipcc\\_90\\_92\\_assessments\\_far\\_overview.pdf](https://www.ipcc.ch/ipccreports/1992%20IPCC%20Supplement/IPCC_1990_and_1992_Assessments/English/ipcc_90_92_assessments_far_overview.pdf).

The link between climate change, conflict, and peace and security was also discussed. The report highlighted that climate change related conflicts could be the drivers of forced displacement, although more empirical data is necessary to establish the causal link between climate change consequences and violent conflicts.

The report acknowledged that response measures to climate change (mitigation measures) could also have an impact on human rights. Examples include biofuels<sup>6</sup> and the REDD program.<sup>7</sup> The Clean Development Mechanism, one of the flexibility mechanisms identified in the Kyoto Protocol, has also given rise to many human rights abuses.<sup>8</sup> Thus, adopting a human rights framework to these mitigation measures is imperative to ensuring that the rights of people are not violated.<sup>9</sup> Moreover, adaptation measures too could run the risk of infringing upon rights, if not implemented with the participation of those affected and if the most vulnerable people in society are not given special protection.<sup>10</sup>

Despite the close relationship between climate change and human rights, and the “obvious implications for the enjoyment of human rights”, the OHCHR report states that, “it is less obvious whether, and to what extent, such effects can be qualified as human rights violations in a strict legal sense.”<sup>11</sup> This conclusion is valid with regard to damage caused by historic emissions. However, with regard to mitigation options that states adopt to give effect to their emission reduction commitments and adaptation measures that states have to take to protect their citizens from adverse consequences of climate change, as well as in relation to severe weather events, states are required to give effect to their human rights obligations.

## PARIS AGREEMENT, HUMAN RIGHTS AND NDCs

After months of lobbying by NGOs, the human rights and environmental academics and UN special procedures mandate holders, the Conference of Parties to the UNFCCC finally included a provision on human rights in the Paris Agreement. While this was a major victory for the recognition of the link between human rights and climate change, its non-inclusion would not have meant that states have no obligations under human rights law in relation to climate change. On the contrary, most states have signed on to human rights treaties and they must fulfil these obligations in relation to climate change. In other words, neither international human rights law nor international environmental law (which includes climate law) operates in a vacuum.

During the last few days of the Paris Conference, draft article 2 which contained a reference to human rights obligations was deleted. However, the Preamble, which referred to human rights, remained untouched.

**“Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity...”<sup>12</sup>”**

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<sup>6</sup> OHCHR report, supra note 2.

<sup>7</sup> Ibid.

<sup>8</sup> See Atapattu, S. *Human Rights Approaches to Climate Change: Challenges and Opportunities* (2016, Routledge), 134.

<sup>9</sup> Ibid, chapter 5.

<sup>10</sup> Ibid.

<sup>11</sup> OHCHR report, supra note 2, page 23.

<sup>12</sup> Preamble, Paris Agreement (2015), available at:

[http://unfccc.int/files/essential\\_background/convention/application/pdf/english\\_paris\\_agreement.pdf](http://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf).

While this provision is a mix of principles and a list of vulnerable communities, and written in very soft language, it does endorse that states should consider their human rights obligations when taking action on climate change. The typology adopted here – “respect, promote, and consider” – is also a departure from that used in relation to human rights – respect, protect and fulfil. Despite this dilution of obligations, the explicit recognition of human rights obligations in relation to climate change is a significant development.

Before the Paris Agreement, Parties were required to submit their Intended Nationally Determined Contributions (INDCs) to the UNFCCC Secretariat. Approximately 175 countries representing 95% of Greenhouse Gas emissions submitted INDCs prior to the Conference. The Paris Agreement then encapsulated these INDCs in a binding agreement. This is probably the first time that this hybrid approach to making treaties was utilized. Subsequent to the adoption of the Paris Agreement, state parties were invited to submit their Nationally Determined Contributions (NDCs). While many states also submitted NDCs, others simply kept their original INDCs.

This report surveys NDCs/INDCs for their inclusion of human rights, either directly or indirectly, in order to identify concrete opportunities for follow up actions.

### Objective of the study

The objective of the study was to ascertain to what extent states in the Asia Pacific region (see description below for a list of countries surveyed) have included references to human rights (both direct and indirect) in their NDCs/INDCs submitted to the UNFCCC Secretariat.



# METHODOLOGY

## 2.1 COUNTRIES AND DATA SOURCES

This study analysed the NDCs of countries in the Asia Pacific region. We used the Swedish International Development Cooperation Agency's (Sida) definition of Asia Pacific that comprises South Asia (7 countries), Southeast Asia (11 countries) and the Pacific Islands (14 countries). A total of 32 NDCs were analysed.

The first NDCs of the Asia-Pacific countries were compiled from the UNFCCC interim NDC registry (<http://www4.unfccc.int/ndcregistry/Pages/All.aspx>). For countries without a first NDC in the interim registry, their INDC was obtained from the UNFCCC INDC registry (<http://www4.unfccc.int/submissions/indc/Submit%20Pages/submissions.aspx>).

Table 1. List of Countries for Which NDCs were Analysed

South Asia	Southeast Asia <sup>13</sup>	Pacific Islands
Bangladesh	Brunei Darussalam	Cook Islands
Bhutan	Cambodia	Fiji
India	Indonesia	Kiribati
Maldives	Lao PDR	Marshal Islands
Nepal	Malaysia	Micronesia
Pakistan	Myanmar	Nauru
Sri Lanka	Philippines	Niue
	Singapore	Palau
	Thailand	Papua New Guinea
	Timor-Leste	Samoa
	Viet Nam	Solomon Islands
		Tonga
		Tuvalu
		Vanuatu

## 2.2 DATA ANALYSIS

### CODING OF NDCs

The analysis was undertaken by coding references on human rights in *Dedoose*, a qualitative software with codes corresponding broadly with the rights specified in the articles of the Universal Declaration of Human Rights (UDHR). Although the UDHR is a soft law instrument, it was chosen as the basis for this study because it is considered as reflecting customary international law<sup>14</sup> and because it incorporates both civil and political rights, and economic, social and cultural rights, without distinguishing between these two sets of rights. Each article has a code (see Annex 1 for the full list of rights and their descriptions). As the NDC texts were retrieved and entered into *Dedoose*, the coding was refined on an on-going basis.

Articles that were likely to be irrelevant or would not come up in the documents were deleted such as the freedom from slavery or torture. Article 22 on economic, social and cultural rights was expanded to add sub-codes (child codes) on the rights of minorities/indigenous people, the right to livelihood, cultural rights (Article 27), and the right to social security.. Article 25 of the UDHR on adequate standards of living was expanded to include the rights to energy, water, adequate food, health and medical care, and housing and shelter. Based on the Knox (2012) report,<sup>15</sup> references to the survival of low-lying nations were coded under 'right to self-determination' and the right to life. Third-generation rights (the rights to peace, development and a healthy environment) were added to the UDHR structure

'Direct references' are all references in which the term 'right' is stated in relation to human rights. Indirect references are all references having the effect of expressing a human right but are not direct statements of

<sup>13</sup> The INDCs of Brunei Darussalam and the Philippines were not converted to NDCs upon ratification of the Paris Agreement per the countries' request (Brunei Darussalam 2016; Republic of the Philippines 2017). We included the INDCs in the analysis.

<sup>14</sup> De Schutter, O. (2010). *International Human Rights Law: Cases, Materials, Commentary*. Cambridge University Press, New York.

<sup>15</sup> Knox, J. H. (2012). *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, John H. Knox. A/HR/22/43. United Nations General Assembly. [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-43\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-43_en.pdf). Human Rights Council, Twenty-second session, Agenda item 3.



a ‘right’. Coding practice was harmonised between coders but still subject to further improvement for subsequent analyses.

The analysis was supplemented by a traditional survey of NDCs/INDCs for their human rights preferences (‘human rights’ were interpreted broadly to include references to vulnerable communities). These were included in a spread sheet with their human rights references highlighted.

### CODE ANALYSIS

State parties to the UNFCCC were not given official guidelines on how NDCs should be drafted or formulated, but the NDCs of most countries seemed to follow an unofficial template such as the one developed by CDKN for least developed countries.<sup>16</sup>

Although the format of NDCs varies from country to country, they generally contain the following key sections:

- ✓ The **national context** describes how the NDC fits with national development objectives, plans and strategies;
- ✓ The **mitigation** section describes the country’s contribution to reducing greenhouse gas emissions in terms of actions and/or outcomes;
- ✓ The **adaptation** section describes actions and plans to adapt to climate change. Although this section is optional, many countries included it in their NDCs. In the CDKN INDC guide for least developed countries, this is the only section that refers directly to rights in an example text: “equity and equal rights and opportunities for women and men”;<sup>17</sup>
- ✓ **Planning process** gives an overview of processes for formulating, adopting, implementing and monitoring the implementation of the NDC; and,
- ✓ **Means of implementation** is included mainly by developing countries to indicate the technological, financial and capacity support they require to implement mitigation and adaptation actions.

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<sup>16</sup> Holdaway, E. and Dodwell, C. (2015). *A Guide to INDCs, Second Edition*. CDKN. Available at: <https://cdkn.org/wp-content/uploads/2015/04/CDKN-Guide-to-INDCs-Revised-May2015.pdf>.

<sup>17</sup> Ibid.

## RESULTS

### 3.1 NDCs WITH HUMAN RIGHTS PROVISIONS

Seven out of the 32 NDCs surveyed had direct references to human rights. Four NDCs had provisions in the text on the national context, 1 in the text on adaptation, and 3 in the text on means of implementation. None of the NDCs had human rights provisions in the mitigation section.

Table 2. Summary of Human Rights Provisions in Asia Pacific Country NDCs

NDC Section	Human Right References	Countries
<b>National context</b>	General reference to human rights	India, Philippines
	All are born free and equal in dignity and rights	Nepal, Philippines
	Entitlement to rights and freedoms without distinction of any kind	Nepal, Philippines
	Right to adequate standard of living	Philippines
	Right to participate in government and to access public service	Philippines
	Economic, social and cultural rights	Nepal
	Right to a healthy environment	Indonesia, Nepal, Philippines
<b>Mitigation</b>	-	-
<b>Adaptation</b>	General reference to human rights	Marshall Islands
	Right to life, liberty and security	Marshall Islands
<b>Planning process</b>	General reference to human rights	Indonesia
	Entitlement to rights and freedoms without distinction of any kind	Indonesia
	Right to adequate standard of living	Indonesia
	Right to development	Indonesia
<b>Means of implementation</b>	Entitlement to rights and freedoms without distinction of any kind	Tuvalu
	Right to self-determination	Tuvalu
	Right to development	Kiribati, Tuvalu

#### NATIONAL CONTEXT

Four countries included human rights provisions in the National Context section of their NDCs: India, Indonesia, Nepal, and the Philippines, as shown in the Table 3 below:



Table 3. Human Rights Provisions in Asia-Pacific NDCs: National Context Section

NDC Section	Coding	Right	Specifications	Countries
National context	UDHR	General reference to human rights	-	India, Philippines
	Article 1, UDHR	All are born free and equal in dignity and rights	-	Nepal, Philippines
	Article 2, UDHR	Entitlement to rights and freedoms without distinction of any kind	All people National or social origin Gender	Nepal, Philippines
			Vulnerable groups	Nepal
			Children and future generations	Philippines
	Article 21, UDHR	Right to participate in government and to access public service	-	Philippines
	Article 22, UDHR	Economic, social and cultural rights	Rights of minorities/indigenous peoples	Nepal
	Article 25, UDHR	Right to adequate standard of living	Right to water Right to adequate food	Philippines
	-	Right to a healthy environment	-	Indonesia, Nepal, Philippines

In this section, the NDCs of India and the Philippines referred to the countries' duties to the overall human rights of their citizens. India acknowledged its duty in meeting its citizens' "rightful aspirations". The Philippines cited its "respect for, protection, promotion, and fulfilment, as well as, the full enjoyment of human rights by all", emphasizing its citizens' entitlements to rights without distinction of any kind (Article 2, UDHR). The Philippines' NDC further mentioned the rights of specific groups of people, including indigenous peoples, local communities, women, and future generations ("intergenerational equity"). Nepal stated that its existing Biodiversity Strategy and Action Plan recognizes the rights of all people, and also mentions specific groups including indigenous peoples, local communities, women, Dalits, and vulnerable groups. Although the statement was specific to a plan, it indicates that there is commitment to human rights at the national level.

### Right to participation

The Philippines' wording of women's rights ("gender equality and the full participation of women") seems to refer to the right to participation in decision-making and could be interpreted in this case as the right to participate in government and to access public services (Article 21, UDHR).

## Right to adequate standard of living

The right to an adequate standard of living (Article 25, UDHR) was included in the Philippines' NDC as the right to "food and water security".

## Economic, social and cultural rights

Nepal's statement on the rights of indigenous peoples and local communities to local biological resources could also be interpreted as a reference to economic, social and cultural rights (Article 22, UDHR).

## Right to a healthy environment

The right to a healthy environment, an emerging third generation right under international law,<sup>18</sup> was acknowledged by Indonesia, Nepal, and the Philippines. Indonesia cited its constitutional provision: "every person shall have the right to enjoy a good and healthy environment", while the Philippines used a more indirect approach by associating "sustainable and responsible use of natural resources" and "biodiversity conservation" with the human rights provision described above in meeting the country's climate change challenges. Nepal recognized the rights of all people to access "local biological resources".

The inclusion of the right to a healthy environment in the national context of an NDC, which describes the policy and legal environment within which the NDC operates, might reflect the country's constitutional commitment to environmental rights. Among Asia-Pacific countries, the Philippines and Indonesia have constitutions that draw the strongest links between human rights and a healthy environment.<sup>19</sup> Section 16 of Article II of the Philippines Constitution states that "the State shall protect and advance the right of people to a balanced and healthful ecology in accord with the rhythm and harmony of nature". Indonesia's NDC provision directly cites Article 28H (1) of the Indonesian Constitution.

In addition, Article 65 of the Law on Environmental Protection and Management states that the "right to a proper and healthy environment" is a human right, and refers to procedural rights related to the right to a healthy environment:<sup>20</sup>

- "(1) Everybody shall be entitled to proper and healthy environment *as part of human rights*.
- (2) Everybody shall be entitled to environmental education, access to information, access to participation and access to justice in fulfilling the right to a proper and healthy environment.
- (3) Everybody shall reserve a right to submit recommendations and/or objectives against businesses and/or activities predicted to affect the environment"

## Indirect References to Rights

There were also indirect references to human rights in the National Context sections of the NDCs. India's NDC stated that it had "a lot to do to provide a dignified life to its population". Indonesia, on the other hand, connected economic development and poverty reduction to the realization of the right to a healthy environment.

<sup>18</sup> It is an established right at the regional level. See: the African Charter of Human and People's Rights and the San Salvador Protocol to the American Convention of Human Rights.

<sup>19</sup> B. Boer, (2014). Environmental Law and Human Rights in the Asia-Pacific. In *Environmental law dimensions of human rights*. B. Boer (ed.). Oxford University Press, UK. <https://papers.ssrn.com/abstract=2463525>.

<sup>20</sup> Ibid.

## Constitutional and legal contexts

Among the three countries, the Philippines acknowledged the widest range/most number of rights and did so with the most detail.

## MITIGATION

None of the NDCs contained human rights provisions in their Mitigation section.

## ADAPTATION

Only the NDC of the Marshall Islands contained a general reference to human rights in its section on adaptation to climate change (Table 4). The country stated its commitment “to the strongest possible efforts in safeguarding security and human rights, as well as advancing development aspirations”, invoking human rights in general and specifically the right to security (Article 3, UDHR). It also referred to protecting traditional culture, regularly updating vulnerability assessments and minimizing impacts on Marshallese people and protecting their livelihoods.

Table 4. Human Rights Provision in Asia-Pacific NDCs: Adaptation Section

NDC Section	Coding	Right	Specifications	Countries
Adaptation	UDHR	General reference to human rights	-	Marshall Islands
	Article 3, UDHR	Right to life, liberty and security	Right to security	Marshall Islands

## PLANNING PROCESS

Only Indonesia included human rights provisions in the planning process section of the NDC (Table 5). In Indonesia’s case, the section was titled “Strategic approach”. Indonesia cited its obligation to protecting human rights in general, and also acknowledged the rights of specific groups of people: indigenous peoples, local communities, migrants, children, people with different abilities, and vulnerable people. It also referred to the right to health as part of its human rights provisions in this section and to the right to development. While Cambodia cited the ‘right to the sustainable development of developing countries’, this was not interpreted as a human rights provision as it referred to the context of inequity between developing and developed countries, rather than the rights of Cambodia’s people.

Table 5. Human Rights Provision in Asia-Pacific NDCs: Planning Process Section

NDC Section	Coding	Right	Specifications	Countries
Planning process	UDHR	General reference to human rights	-	Indonesia
	Article 2, UDHR	Entitlement to rights and freedoms without distinction of any kind	National or social origin Gender Different abilities Children and future generations Vulnerable groups	Indonesia
	Article 25, UDHR	Right to adequate standard of living	Right to health	Indonesia
	Article 1, Declaration on the Right to Development (1986)	Right to development	-	Indonesia

## MEANS OF IMPLEMENTATION

Two countries included human rights provisions in the Means of Implementation section of their NDCs: Kiribati and Tuvalu (Table 6).

### Protection of vulnerable groups

Tuvalu's NDC specified the rights of future generations and of migrants, making references to the challenges posed by the "unavoidable out migration of some of her people" in ensuring their rights to life, liberty and security; economic, social and cultural rights; and the right to development.

### Right to self-determination

Tuvalu recognized that the consequences of climate change will threaten the very survival and sovereignty of its country and undermine its efforts towards achieving sustainable development. While sea level rise could result in the "unavoidable out-migration of some of her people, they have a right to pursue any and all means to ensure their nations survives (sic) and the legacy remains with future generations living productive lives on these islands."<sup>21</sup>

### Right to development

Both Kiribati and Tuvalu invoked the right to development in this section. Kiribati stated that it "has a right to develop its economy and improve the well-being of its population", while Tuvalu emphasized the rights of future generations to live "productive lives on these islands". It also referred to sustainable development.

<sup>21</sup> Tuvalu, INDC, page 9.

Table 6. Human Rights Provision in Asia-Pacific NDCs: Means of Implementation Section

NDC Section	Coding	Right	Specifications	Countries
Means of implementation	Article 2, UDHR	Entitlement to rights and freedoms without distinction of any kind	Children and future generations	Tuvalu
	Article 1, International Covenant on Civil and Political Rights & International Covenant on Economic, Social and Cultural Rights	Right to self-determination	-	Tuvalu
	Article 1, Declaration on the Right to Development (1986)	Right to development	-	Kiribati, Tuvalu

### 3.2 NDCs WITH INDIRECT REFERENCES TO HUMAN RIGHTS

Regarding indirect references, our study found 810 indirect references to human rights across the NDCs of the Asia-Pacific region. This, however, is subject to the harmonization of our coding following which we expect to have significantly fewer references once the harmonization and categorization is carried out.

#### *SUBSTANTIVE RIGHTS*

The article which was most referenced was Article 25 on adequate standard of living. The study found 149 indirect references to the right to adequate food, 127 indirect references to the right of water, and 107 indirect references to the right to medical care. The emerging third generation right to development was referenced 118 times. Within indirect references to Article 2 of the UDHR, “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction...”, vulnerable people were referenced most often (47 times), poverty 42 times, and national or social origin 27 times. Gender, age, race and disabilities were the least referenced. Sri Lanka’s NDC referred to the growing aging population in the country but did not frame it as the need to protect their rights. India’s NDC referred to gender equality and women’s empowerment, as did the Philippine’s NDC with its reference to gender equality and the full participation of women.

The right to security was indirectly referenced 91 times. The right to a clean and healthy environment was indirectly referenced 68 times and the study also found 83 references to environmental justice in general. The right to a livelihood was indirectly referenced 54 times.

Rights with 20 to 50 references across the documents included cultural rights, the right to own property, equality before the law, and equal protection of the law.

Finally, freedom of movement, residence and return was referenced only 10 times.

The country with the most overall indirect references to human rights was Nepal, followed by Kiribati, Timor-Leste and Tonga.

## PROCEDURAL RIGHTS

Regarding procedural rights, 48 references were made to the inclusion of the general public, civil society or communities to the decision-making or environmental-protection process. Kiribati referenced the most to the inclusion of the public in the decision-making process (9 times) followed by Nepal and Vietnam. Many countries, however, made no reference to public inclusion, namely, Singapore, Papua New Guinea, Palau, Nauru, Fiji, the Cook Islands, Bhutan, and Pakistan. Freedom of opinion, expression and information (Article 19) was referenced 72 times across the study. The Marshall Islands referred to its commitment to local stakeholder participation in developing adaptation plans (“At all steps of the way, local stakeholders will be consulted to ensure community needs are best served”<sup>22</sup>), and to continually update vulnerability assessments.

## OTHER THEMATIC ANALYSES

Our study has identified a number of features within the NDCs that pose interesting questions to the ability of the human rights framework to capture all concerns in relation to climate change.

### *Recognising the linkages between human rights and environmental issues*

In their indirect references, NDCs generally acknowledged both human rights and environmental protection as concerns, but seldom referenced the integration and relationship between them. An example of this is Vietnam’s NDC which states that “The National Climate Change Strategy has identified that priorities are food security, energy security, water security, poverty reduction, gender equality, social security, public health, livelihood improvements and the protection of natural resources”. In this quote, although Vietnam acknowledged a variety of goals such as poverty reduction and the protection of natural resources, it does not suggest that it will analyse or take into account the inter-linkages between each goal. This pattern was recurring across NDCs.

### *Vulnerability*

There appears to be an emerging trend to use the language of ‘vulnerability’ rather than ‘rights’ when referring to the protection of specific groups of people. The relationship between the framework of ‘vulnerability’ and ‘human rights’ should therefore be kept in mind when developing this issue, does the focus on vulnerability overshadow rights-based approaches or is the vulnerability framework better than a rights framework in relation to climate change?

### *Environmental Justice*

The study identified a large number of references to environmental justice in general. Many of the NDCs also referred the need for international assistance in achieving their mitigation and adaptation goals, reflecting the common but differentiated responsibility principle.

For example, we found the following references:

- Timor-Leste’s NDC: “As an LDC, the ability of Timor-Leste to pursue the proposed adaptation and mitigation actions identified in this INDC will be dependent upon the receipt of technology transfer, finance and capacity building support.”
- Nepal’s NDC: “However, Nepal requires bilateral and multilateral grant support in the following priority areas to meet both qualitative and quantitative targets as mentioned above.”

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<sup>22</sup> Marshall Islands, INDC, page 9.



- Kiribati's NDC: "All commitments are premised on: (a) a fair and ambitious agreement being reached, reflecting Common but Differentiated Responsibilities and Respective Capabilities; and (b) timely access to international climate change financing, capacity building and technology."
- Pakistan's NDC: "It must be underscored that under the CBDR (common but differentiated responsibilities) principle of the UNFCCC Paris Agreement, the indicated mitigation potential can only be realized through international support in the form of financial grants, technical assistance, technology development and transfer and capacity building."

Although environmental justice is not a human right, these references pose an interesting question as to whether the third generation right to a 'healthy and clean environment' should/could integrate to 'environmental justice'. Integrating environmental justice in the right to a healthy and clean environment would apply an additional standard to a right to clean, healthy and 'environmentally just' environment with fair access and use of resources. Hence the relationship between environmental justice and human rights is important to keep in mind. It is also related to the issue that historic emissions of developed countries have exacerbated climate change related human rights violations in developing countries.

#### *The Right to Grow*

India's NDC referred to the right of its population to 'grow', rather than 'develop' advancing the notion of the right to growth:

"Nations that are now striving to fulfil this 'right to grow' of their teeming millions cannot be made to feel guilty of their development agenda as they attempt to fulfil this legitimate aspiration. Just because economic development of many countries in the past has come at the cost of environment, it should not be presumed that a reconciliation of the two is not possible."<sup>23</sup>

#### *Inter- and Intra-generational Equity*

India's NDC referred to the inter- and intra-generational equity principles as well as the public trust doctrine:

"Environmental sustainability, which involves both intra-generational and inter-generational equity, has been the approach of Indians for very long. Much before the climate change debate began, Mahatma Gandhi, regarded as the father of our nation had said that we should act as 'trustees' and use natural resources wisely as it is our moral responsibility to ensure that we bequeath to the future generations a healthy planet."<sup>24</sup>

#### *Rights v. Security*

In many instances, states referred to food security and water security (or food scarcity and water scarcity) rather than to a right to water and right to food. India also referred to universal access to education and health (although not in rights language) and achieving the sustainable development goals for its 1.2 billion people.

#### *Capitalism*

India's NDC is notable in that it made one of the only references to not only to environmental degradation but also to its relationship with capitalism. Indeed, India's NDC claims that: "The removal of such barriers of thought and the creation of a regime where facilitative technology transfer replaces an exploitative market driven mechanism could pave the way for a common understanding of universal progress. If climate change is a calamity that mankind must adapt to while taking mitigation action withal, it should not be used as a commercial opportunity. It is time that a mechanism is set up which will turn

<sup>23</sup> India, INDC, page 1.

<sup>24</sup> Ibid.

technology and innovation into an effective instrument for global public good, not just private returns”. India’s NDC linked sustainable development and tradition. Its NDC claimed to aim to “To put forward and further propagate a healthy and sustainable way of living based on traditions and values of conservation and moderation.” Could this have implications for relating sustainable development with cultural rights?

#### *Loss and Damage*

Both Niue and Nauru’s NDCs requested that loss and damage to be included in the Paris agreement.

#### *Climate justice*

India’s NDC is titled “working towards climate justice.”



## CONCLUSION AND RECOMMENDATIONS

There are a handful of countries (notably India, Indonesia, the Marshall Islands, Nepal, and the Philippines) that have included direct reference to human rights but, as the above analysis shows, there are numerous indirect references to human rights in other NDCs. Thus, there are four areas that we can immediately follow up. *First*, we need to assess to what extent India, Indonesia, the Marshall Islands, Nepal, and the Philippines are implementing the human rights they have highlighted in their NDCs and identify ways to support them. We could offer insights on the challenges encountered in integrating human rights in the NDCs; thus, in the process, also inform how the future facilitative dialogues could address them. Where ‘best/good practices’ are available, it is worthwhile packaging these into compact and accessible knowledge products for other countries to emulate.

*Second*, making sense of the indirect references is also an important next step. We need to identify key themes in these references and adjust the coding to filter out the weakest references to human rights and concentrate on the references with the most potential for more meaningful integration, as our first round of coding was lenient in determining what constituted an indirect reference to a right. In many cases, the indirect references identify themselves with the concept of human rights but without actually using the term “right”. These present an opportunity to strengthen the integration of human rights into the NDCs. Third, for countries that have no reference to human rights at all, we could undertake a program to better analyse and inform them of the need to integrate human rights into their climate change action plans (both mitigation and adaptation). The Paris Agreement requires them to do so.

*Finally*, we need to understand the aims of the countries that have integrated human rights in the NDCs. What do the countries hope to achieve by doing this? Are these aims clear to those ministries or departments tasked with implementing or monitoring the NDCs? Or are they just including those rights references as a concession to other sectors but are not actually planning to implement them? This analysis will also help us offer ways to improve their integration to reach their aims. This analysis would involve consultation with national and international human rights and climate change experts. We also envision the use of case studies from Asia-Pacific countries to address these questions. The case studies would comprise 1) parties that have integrated human rights in their NDCs in different ways and 2) parties that have not specifically integrated human rights in their NDCs.

For each case study, we would conduct semi-structured interviews with actors responsible for designing and reviewing the NDCs, actors who are engaged in implementing the NDCs (e.g. adaptation or mitigation program officers), and national human rights experts. The interviews would focus on the aims of integrating (or not integrating) human rights into the NDCs. They would also explore practical aspects on how human rights integration would be carried out on the ground, the (potential) positive and negative impact of planned NDC actions on human rights, and the challenges in integrating human rights into action plans stipulated in the NDCs. We would then draw conclusions on best practices and key challenges for integrating human rights in NDCs.

Furthermore, to support the Paris Agreement processes, we plan to analyse the current integration of human rights in the Paris Agreement Rule Book and identify ways on which such integration may be strengthened. We would also analyse the current integration of human rights in monitoring and evaluation tools (Measuring, Reporting and Verification or MRVs) for the Paris Agreement and assess the applicability of human rights indicators to the MRVs. This is useful in evaluating the extent to which the pursuit of the commitments also deepened fundamental respect for human rights so that climate change is considered as a human rights issue.

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## ANNEXES

### ANNEX 1: LIST OF HUMAN RIGHTS USED FOR ANALYSIS

Declaration	Article	Category/Coding	Description of Right
<b>UDHR</b>		General reference	General reference to 'human rights'
<b>UDHR</b>	Article 1	All are born free and equal in dignity and rights	All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
<b>UDHR</b>	Article 2	Entitlement to rights and freedoms without distinction of any kind	Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.
<b>UDHR</b>	Article 3	Right to life, liberty and security	Everyone has the right to life, liberty and security of person.
<b>UDHR</b>	Article 4		No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.
<b>UDHR</b>	Article 5		No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
<b>UDHR</b>	Article 6		Everyone has the right to recognition everywhere as a person before the law.
<b>UDHR</b>	Article 7		All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.
<b>UDHR</b>	Article 8		Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.
<b>UDHR</b>	Article 9		No one shall be subjected to arbitrary arrest, detention or exile.
<b>UDHR</b>	Article 10		Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and



			obligations and of any criminal charge against him.
<b>UDHR</b>	Article 11		<p>(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.</p> <p>(2) No one shall be held guilty of any penal offence on account of any act or omission, which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.</p>
<b>UDHR</b>	Article 12		No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.
<b>UDHR</b>	Article 13	Right to freedom of movement and residence within state, and right to leave and return to state	<p>(1) Everyone has the right to freedom of movement and residence within the borders of each state.</p> <p>(2) Everyone has the right to leave any country, including his own, and to return to his country.</p>
<b>UDHR</b>	Article 14		<p>(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.</p> <p>(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.</p>
<b>UDHR</b>	Article 15	Right to nationality	<p>(1) Everyone has the right to a nationality.</p> <p>(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.</p>
<b>UDHR</b>	Article 16		<p>(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.</p> <p>(2) Marriage shall be entered into only with the free and full consent of the intending spouses.</p> <p>(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.</p>
<b>UDHR</b>	Article 17	Right to property	<p>(1) Everyone has the right to own property alone as well as in association with others.</p> <p>(2) No one shall be arbitrarily deprived of his</p>



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property.

<b>UDHR</b>	Article 18		Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.
<b>UDHR</b>	Article 19	Right to freedom of opinion, expression and information	Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.
<b>UDHR</b>	Article 20		(1) Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association.
<b>UDHR</b>	Article 21	Right to participate in government and to access public service	(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections, which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.
<b>UDHR</b>	Article 22	Economic, social and cultural rights	Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.
<b>UDHR</b>	Article 23	Right to work, choice of work, and just and favourable work conditions	(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests.

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<b>UDHR</b>	Article 24		Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.
<b>UDHR</b>	Article 25	Right to adequate standard of living	<p>(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.</p> <p>(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.</p>
<b>UDHR</b>	Article 26	Right to education	<p>(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.</p> <p>(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.</p> <p>(3) Parents have a prior right to choose the kind of education that shall be given to their children.</p>
<b>UDHR</b>	Article 27	Right to culture	<p>(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.</p> <p>(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.</p>
<b>UDHR</b>	Article 28		Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.
<b>UDHR</b>	Article 29		<p>(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.</p> <p>(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the</p>

			rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.
<b>UDHR</b>	Article 30		Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.
<b>International Covenant on Civil and Political Rights</b>	Article 1	Right to self-determination	All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
<b>International Covenant on Economic, Social and Cultural Rights</b>	Article 1		All peoples have the right of self-determination, including the right to determine their political status and freely pursue their economic, social and cultural development.
<b>Declaration on the Right to Development (1986)</b>	Article 1	Right to development	The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.
<b>Declaration on the Right of Peoples to Peace</b>	Article 1	Right to peace	Solemnly proclaims that the peoples of our planet have a sacred right to peace.
-	-	Right to a healthy environment	-

## ANNEX 2: NDC EXCERPTS CONTAINING HUMAN RIGHTS PROVISIONS

Country	Section	Human Rights Provisions
<b>INDIA</b>	1. National Circumstances	“With a HDI of 0.586 and global rank of 135, India has a lot to do to provide a dignified life to its population and meet their rightful aspirations.”
<b>INDONESIA</b>	1. National Context	“To lift people out of poverty, the Government of Indonesia (GOI) is promoting economic development projected to average at least 5% per year in order to reduce the poverty rate to below 4% by 2025, as mandated by the Indonesian Constitution, inter alia, that “every person shall have the right to enjoy a good and healthy environment.”
	4. Strategic Approach	“In line with the Paris Agreement, Indonesia respects, promotes and considers its obligation on human rights, the right to health, the right of adat communities (Indonesia: Masyarakat Hukum Adat and internationally known as indigenous people), local communities, migrants, children, persons with different abilities, and people in vulnerable situations, and the right to development, as well as gender equality, empowerment of women and intergenerational equity. Engagement of non-party stakeholders, including local government, private sectors, civil societies will continuously be enhanced.”
<b>KIRIBATI</b>	Means of Implementation: Equity	“The Republic of Kiribati is a smallest contributor to the greenhouse gas emissions by any measurable indicator and yet it is at the frontline of the wrath of climate change and sea level rise. Kiribati has a right to develop its economy and improve the well being of its population. Thus Kiribati’s contribution towards limiting the global temperature to below 20C relative to preindustrial levels provides a moral imperative as a global citizen.”
<b>MARSHALL ISLANDS</b>	Adaptation	“RMI is committed to the strongest possible efforts in safeguarding security and human rights, as well as advancing development aspirations, in light of projected climate impacts and risks.”
<b>NEPAL</b>	B. Nepal’s enhanced Actions to Address Climate Change	2. Policies, Strategies and Frameworks <i>b. Forestry Sector Policies and Strategies</i> “The Nepal Biodiversity Strategy and Action Plan (2014-2020) emphasizes biodiversity conservation and ecosystem resilience as keys to national prosperity. The Strategy recognizes legitimate rights of all Nepali people such as indigenous people and local communities, women, Dalits and other disadvantaged social groups over local biological resources.”
<b>PHILIPPINES</b>	National Context	“Recognizing the critical and complex challenges posed by climate change, the Philippines continuously pursues institutional reforms factoring sustainable and responsible use of natural resources, respect for, protection, promotion,

		and fulfilment, as well as, the full enjoyment of human rights by all, including the indigenous peoples and local communities, gender equality and the full and equal participation of women, intergenerational equity, biodiversity conservation, food and water security.”
<b>TUVALU</b>	Means of Implementation	The Government of Tuvalu believes that climate change is real and is the greatest threat to its low-lying atolls and people. Negative effects are already taking place and these will gravely undermine efforts towards sustainable development and threaten the survival and the sovereignty of the nation and her people. While longer term impacts such as sea level rise could result in the unavoidable out-migration of some of her people, they have a right to pursue any and all means to ensure their nation survives and the legacy remains, with future generations living productive lives on these islands.

## About Raoul Wallenberg Institute

The Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) is an independent academic institution established in 1984. RWI has since 1990 carried out a wide range of research, academic education, and institutional capacity development programmes internationally in the human rights field, mainly with the support of Swedish Development Cooperation.

The RWI Regional Asia Programme on Human Rights and Sustainable Development manages and coordinates the implementation of a new regional programme (2017-2021), which focuses on linkages between human rights and environment and climate change, and on human rights and gender equality in the framework of Agenda 2030. The programme supports research, intersectoral synergies, and access to justice, approached from the perspectives of RWI's four thematic focus areas: human rights and economic globalisation, inclusive societies, people on the move, and fair and efficient justice.

The programme is implemented from Jakarta in coordination with other RWI offices and programmes in the region and with a wide range of regional partners and networks, including relevant UN Agencies, CSOs, academic institutions, NHRIs, judicial institutions, and regional bodies such as the AICHR, with which RWI has consultative relationship since 2016.

## About The Stockholm Environment Institute

The Stockholm Environment Institute (SEI) is an independent research institute with a reputation for rigorous and objective scientific analysis. SEI has over 25 years of experience engaging in environment and development issues at local, national, regional and global policy levels. SEI's goal is to bring about change for sustainable development by bridging science and policy. Over the past four years, SEI has been consistently ranked as one of the top two most influential environmental think tanks in the world in the Global Go To Think Tank Index compiled by the University of Pennsylvania.

The Asia Centre of the Stockholm Environment Institute (SEI Asia) is located in Bangkok, one of eight SEI centres distributed around the world: Sweden (Stockholm), the UK (York and Oxford), Estonia (Tallinn), United States (Boston, Seattle, California), Colombia (Bogota) and Kenya (Nairobi).

SEI's Asia Centre's work includes: mapping the integration of the UN Sustainable Development Goals; climate change, disasters and development; gender and social equality; agriculture and water resources management; urbanization, health and well-being; and energy systems planning. Working with RWI, SEI implements case studies on domestic displacement in Asia and the Pacific, the integration of human rights in the nationally determined contributions to the Paris Agreement, and a number of projects on different aspects of environmental rights.