The UN Climate Change Conference UK 2021

Background, Developments, and Prospects

REPORT

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Written By: Charlotte von Bremen-Kühne

The UN Climate Change Conference - UK 2021

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R E P O R T

Written by Charlotte von Bremen-Kühne, LL.M.

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All correspondence should be directed to:
Geneva International Centre for Justice
Route de Ferney 150, 1218 Genève
Tel: 0041 22 788 19 71
Email: info@gicj.org
Website: www.gicj.org

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Introduction

Background

The **2021 United Nations Climate Change Conference (COP26)** was the 26th Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC), the 16th meeting to the Kyoto Protocol (CMP16) and the 5th session to the Paris Agreement (CMA3).[1]

Originally scheduled for April 2020, COP26 was delayed due to the COVID-19 pandemic and eventually took place between the 31 October and 12 November 2021 at the Scottish Event Campus in Glasgow, United Kingdom, under the presidency of Alok Sharma.

It was the first time since COP25 in 2019 that representatives of the parties gathered to discuss global climate policy. During COP25, many subjects – including matters regarding Article 6, reporting requirements for transparency, and timeframes for national pledges – were discussed without reaching a consensus, and were thus virtually postponed to

[1] Note that the first three sessions were tripartite, see UNFCCC Process and Meetings – Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, available at <https://unfccc.int/process/bodies/supreme-bodies/conference-of-the-parties-serving-as-the-meeting-of-the-parties-to-the-paris-agreement-cma> (last accessed 7 December 2021).

COP26.[2] Generally, the conference in 2019 has been perceived as 'disappointing', hence why global attention and hope has been directed towards COP26.

For several reasons, the year 2021 has been regarded as **make-or-break for climate action**.[3] That is especially because of the devastating weather events which have started to become more visible across the globe. According to the provisional report of the **World Meteorological Organization (WMO)**, during the past two years the atmospheric concentrations of the major greenhouse gases (i.e. carbon dioxide, methane, and nitrous oxide) has only continued to rise, the rate of global sea level rise has increased, and ocean heat content has reached new record highs. Due to extreme heatwaves and exceptional heat records, which have often also resulted in wildfires, the global north has felt the consequences of global warming as Lytton in British Columbia reached 49.6 °C on 29 June, Death Valley in California reached 54.4 °C on 9 July, and Syracuse in Sicily reached 48.8°C on 11 August, the latter establishing a European record high temperature.[4] Additionally, both China and western Europe experienced some of their most severe flooding on record. In Europe, Germany was particularly affected where the highest daily rainfall was 162.4 mm at Wipperfürth-Gardenau. Several surrounding towns were deluged, resulting in 179 reported deaths in Germany and 36 in Belgium, not to mention both the private material and the economic losses, the latter exceeding US$ 20 billion.[5] It is suggested that these extreme events are likely caused by human-induced climate change.[6] Another reason is the increased awareness of the issue that has been noticeable in 2021. This is partly because of the relentless and unremitting work of activists and protesters such as the 'Fridays for Future' movement, civil society activities, and broad media coverage; and partly due to the work of scientists that have only emphasised the claims and demands by continuing to provide irrefutable evidence.

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2 See S Evans/J Gabbatiss, 'COP25: Key outcomes agreed at the UN climate talks in Madrid' in CarbonBrief, published 15 December 2019, available at <https://www.carbonbrief.org/cop25-key-outcomes-agreed-at-the-un-climate-talks-in-madrid> (last accessed 7 December 2021).

3 UNFCCC, Press Release 'Greater Climate Ambition Urged as Initial NDC Synthesis Report is Published', published 26 February 2021, available at <https://unfccc.int/news/greater-climate-ambition-urged-as-initial-ndc-synthesis-report-is-published> (last accessed 7 December 2021); WMO, Media 'Warming stripes show that climate change is here and now', published 21 June 2021, available at <https://public.wmo.int/en/media/news/warming-stripes-show-climate-change-here-and-now> (last accessed 7 December 2021).

4 World Meteorological Organization, State of Global Climate 2021 WMO Provisional Report.

5 *Ibid.*

6 *Ibid.*

Notable in this regard is the **Sixth Assessment Report by the Intergovernmental Panel on Climate Change (IPCC)**[7] that was released on 9 August 2021and that drew attention to the devastating consequences of manmade climate change while offering solutions to the crisis.

When COP26 kicked off, around 120 leaders gathered in Glasgow as Alok Sharma called for immediate action in order for COP26 to fulfil the promises of Paris. The strong need for effective and rapid measures to stop the climate crisis were underlined by the words of British poet Yrsa Daley-Ward, recalling that "**anything less than your best is too much to pay. Anything later than now, too little, too late. Nothing will change without you**."[8] Around 100,000 protesters marched through Glasgow, demanding action on climate justice.[9] Media, civil society, and individuals followed and scrutinised every step of negotiations. Unsurprisingly therefore, during the two-week summit the conference itself, its attendees, participating states and its representatives were faced with plenty of criticism – such as Greta Thunberg's judging of COP26 as a 'failure',[10] or the accusations of fossil fuel lobbying at the conference.[11]

Outline

This report aims to provide an overview of COP26 in the context of human rights in the United Nations (UN) system. Therefore, key developments of COP26 will be covered and viewed in light of the climate targets of the UN. The report will begin by analysing the UN's role in the area of climate change separately, and then more specifically in the

7 IPCC, Sixth Assessment Report, available at <https://www.ipcc.ch/assessment-report/ar6/> (last accessed 7 December 2021).

8 UK COP26, 'Around 120 Leaders gather at COP26 in Glasgow for "last, best chance" to keep 1.5 alive", published 1 November 2021, available at <https://ukcop26.org/around-120-leaders-gather-at-cop26-in-glasgow-for-last-best- chance-to-keep-1-5-alive/> (last accessed 7 December 2021).

9 BBC News, 'COP26: Thousands march for Glasgow's biggest protest', published 6 November, available <https://www.bbc.com/news/uk-scotland-59185007> (last accessed 23 November 2021).

10 BBC News, 'COP26: Greta Thunberg tells protest that COP26 has been a "failure"' published 5 November 2021, available at <https://www.bbc.com/news/uk-scotland-glasgow-west-59165781> (last accessed 7 December 2021).

11 BBC News, 'COP26: Fossil fuel industry has largest delegation at climate summit' published 8 November 2021, available at <https://www.bbc.com/news/science-environment-59199484> (last accessed 7 December 2021); CNN World, 'Fossil fuel companies have over 500 people at COP26, more than any single country, report says', published 8 November 2021, available at <https://edition.cnn.com/2021/11/08/world/cop26-climate-fossil-fuel-lobbying-intl/index.html> (last accessed 7 December 2021).

context of human rights, before proceeding to scrutinise and assess the main outcomes of COP26.

However, this report cannot claim to be exhaustive in regards to covering all existing UN instruments regarding climate change, nor in respect to all topics discussed at COP26.

COP26 against the Backdrop of Human Rights

Before delving deeper into the specific content of agreements and negotiations, in order to answer the ultimate question of whether the COP26 agreement is fit for purpose – that is, able to tackle threats caused by manmade climate change – it is essential to take a closer look at the climate targets. In this regard, the climate aims of the UN will serve as a benchmark.

© Eric Sales, 2019

Climate Change within the UN System

In recent decades, the UN has done a lot to raise awareness about the devastating impact climate change has and will have on both the environment and individuals (and their rights). It has established programmes, conventions, and goals, whilst sub-organs

have monitored the coherence between climate inaction and human rights. The following shall give a non-exhaustive overview of the most relevant institutions and mechanisms of the UN in regards to climate change and human rights, noting that further UN bodies and mechanisms, such as special procedures or Human Rights Treaty Bodies, as well as sub-institution like the Adaptation Fund and the Green Climate Fund are not mentioned here, though they equally play a significant role in tackling climate change within the UN.

Patricia Espinosa, Executive President of the UNFCCC, Source: https://www.flickr.com/people/32605673@N03

■ As early as 1994, the **United Nations Framework Convention on Climate Change (UNFCCC)** entered into force with the objective to combat hazardous human interference with the climate system. As of now, 197 states have ratified the UNFCCC, which meet annually at a COP to discuss climate action. The first legally binding instrument implementing the UNFCCC was adopted at COP3 in Japan when the **Kyoto-Protocol** was established, committing state parties to reduce greenhouse gas emissions. The Kyoto-Protocol entered into force on 16 February 2015, expired on 31 December 2020, and was superseded by the **Paris Agreement**. This agreement was negotiated during COP21 and entered into force on 4 November 2016 and is still in effect. The Paris Agreement pursues the goal to contain the rise in mean global temperature to well below 2°C above pre-industrial levels, and ideally limit the increase to 1.5°C as this is the key threshold to reduce the effects of climate change. Greenhouse gas emissions should be reduced as early as possible to reach carbon neutrality ('net-zero') by the middle of the 21st century.

■ Regarding the environmental aspect, worth highlighting is the **United Nations Environment Programme (UNEP)** that was created 1972 during the UN Conference on the Human Environment (Stockholm Conference). UNEP is a global authority setting out the environmental agenda and promoting the implementation of the environmental

dimension of sustainable development within the UN system.[12] However, UNEP does not solely focus on the environmental perspective as it has released a report on climate change and human rights, elaborating on the human rights implications of climate change.[13]

■ The **IPCC** was created 1988 by UNEP 'to provide policymakers with regular scientific assessments on climate change, its implications and potential future risks, as well as to put forward adaption and mitigation options.'[14] Making available objective science-based findings to the public, the IPCC represents an indispensable tool for climate action.

■ In 2015, the 17 **Sustainable Development Goals (SDGs)** were established,[15] a 'universal call to action to end poverty, protect the planet and improve the lives and prospects of everyone, everywhere.'[16] It was adopted by all UN Member States as part of the 2030 Agenda for Sustainable Development. These goals stand out as they mention the direct link between climate change and human rights.

Icons of the 17 Sustainable Development Goals, Source: https://en.unesco.org/sustainabledevelopmentgoals

[12] UNEP, About the UN Environment Programme, available at <https://www.unep.org/about-un-environment> (last accessed 7 December 2021).

[13] UNEP, Report 'Climate Change and Human Rights', available at <https://www.unep.org/resources/report/climate-change-and-human-rights> (last accessed 7 December 2021).

[14] IPCC, available at <https://www.ipcc.ch/> (last accessed 7 December 2021).

[15] UN General Assembly, A/RES/70/1, 21 October 2015.

[16] UN Sustainable Development Agenda, available at <https://www.un.org/sustainabledevelopment/development-agenda/> (last accessed 7 December 2021).

■ The **UN Office of the High Commissioner for Human Rights (OHCHR; UN Human Rights)**, as the leading UN entity on human rights, takes up the task to promote a human rights-based approach to climate action, and hence to scrutinise the human rights dimension of climate change. Specifically, it spells out the duties of states in respect to human rights harms caused by environmental degradation. The OHCHR 2018-2021 Office Management Plan[17] aims to ensure that climate policies are implemented with international human rights standards. Alongside a range of analytical studies, joint publications, and statements, UN Human Rights released a fact sheet about human rights and climate change, demonstrating their role, ambition, and approach to tackle the human rights crisis caused by climate change.[18]

■ The **Human Rights Council (HRC)** is an inter-governmental body by the UN Member States to strengthen and promote human rights on a global scale. It has broad jurisdiction towards promoting and protecting human rights, addressing human rights violations, and making recommendations on them, whilst serving as a forum to discuss all thematic human rights issues and situations that require attention.[19] On 8 October 2021, the HRC recognised, for the first time, that **having a clean, healthy and sustainable environment is a human right**.[20] Prior to the recognition of this human right, climate change had been regarded as having adverse impacts on certain human rights such as the right to life (Article 6 of the ICCPR), the right to food (Article 2 of the ICESCR), the right to water (recognised by Resolution 64/292),[21] the right to housing (Article 11(1) of the ICESCR),

[17] UN Human Rights Management Plan 2018-2021, available at <https://www2.ohchr.org/english/ohchrreport2018_2021/OHCHRManagementPlan2018-2021.pdf> (last accessed 7 December 2021).

[18] UN Human Rights, Factsheet 'Human rights and climate change', available at <https://www.ohchr.org/Documents/Issues/ClimateChange/FactSheetClimateChange.pdf> (last accessed 7 December 2021).

[19] See UN Human Rights Council, Welcome to the Human Rights Council, available at <https://www.ohchr.org/en/hrbodies/hrc/pages/aboutcouncil.aspx> (last accessed 7 December 2021).

[20] UN General Assembly, A/HRC/RES/48/13, 18 October 2021.

[21] UN General Assembly, A/RES/64/293, 3 August 2010.

the right to development (recognised by Resolution 41/128),[22] the right to self-determination (Article 1(1) of the ICCPR), and the right to health (Article 12 of the ICESCR).

Climate Change and Human Rights

Climate Change Russian Art Contest, 2010; Source: https://www.flickr.com/photos/undpeuropeandcis/4444871307

The last bullet point is of particular importance since the correlation between climate change and the impacts on the human rights of specific states, particularly the global south, has long been overlooked and only recently gained increased attention,[23] most notably cited under the buzzwords 'climate Justice'[24] or 'environmental justice'.[25] It is

[22] UN Declaration on the Right to Development, available at <https://www.ohchr.org/Documents/Issues/Development/DeclarationRightDevelopment_en.pdf> (last accessed 7 December 2021).

[23] See V Rotman, 'The Inequality of Climate Change' in Human Rights Pulse, published 22 January 2021, available at <https://www.humanrightspulse.com/mastercontentblog/the-inequality-of-climate-change> (last accessed 7 December 2021).

[24] See C T Beer, 'Climate Justice, the Global South, and the Policy Preferences of Kenyan Environmental NGOs' in The Global South Vol. 8 No. 20 (2014), 84-100.

[25] See C Gonzales, 'Environmental Justice, Human Rights, and the Global South' in 13 Santa Clara J. INT'L L (2015), 151 et seqq.

mainly due to the HRC that the relationship between human rights and the environment is as present as it is in the UN framework: Climate-related concerns were virtually non-existent during the UN discussions on the Universal Declaration of Human Rights and the later negotiated international covenants. Although environmental concerns were not entirely alien to the predecessor to the HRC, the UN Commission on Human Rights, these concerns were eventually suppressed by the large opposition from both developing and developed states, and only taken up once the HRC was established in 2006.[26]

Now, **climate change, as a consequence of the (colonial) exploitation of humans and nature, is acknowledged to be facilitating the reinforcement of social, racial, and gender injustice and inequalities**.[27] It affects nearly every aspect of life, having adverse effects on a broad range of different human rights. As of now, **climate change proves to be deadly for some people**, and if we fail to stop the negative impacts, it is likely that the earth will continue to heat at the expense of human lives. In order to tackle these implications on human rights, ensuring a safe and healthy environment is indispensable. States are the duty-holders under specific international human rights treaties, having both negative and positive obligations towards the protection of human rights in the context of climate change. All states are party to at least one core international human rights treaty that **oblige them to respect, protect, and fulfil human rights**.[28] Although states do have responsibility to perform their human rights duties, certain states are either unwilling or unable to comply with their obligations. In the case of the latter in particular, it is the role of monitoring bodies to ensure state compliance. In this regard, worth highlighting is the **Universal Periodic Review (UPR)** as one of many human rights mechanisms that review state performance in respect to their obligations.[29] By way of example, between 2008 and 2018, states made 114 recommendations explicitly addressing climate change.[30]

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[26] See M Limon, 'The Politics of Human Rights, the Environment, and Climate Change at the Human Rights Council' in J H Knox and R Pejan (eds.), *The Human Right to a Healthy Environment* (CUP 2018), 186.

[27] See ECCHR, Climate, available at <https://www.ecchr.eu/en/climate/> (last accessed 7 December 2021).

[28] See OCHR, Status of Ratification Interactive Dashboard, available at <https://indicators.ohchr.org/> (last accessed 7 December 2021).

[29] See UN Human Rights, 'Human rights mechanisms addressing climate change' for an overview of UN Human Rights mechanisms that address climate change, available at <https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HumanRightsMechanisms.aspx> (last accessed 7 December 2021 2021).

[30] *Ibid.*

Evaluation of the Key Outcomes of COP26

It can be undoubtedly stated from the outset: The results of negotiations, the agreements, and most importantly the **Glasgow Pact**, appear to promise the desired and hoped-for reduction of greenhouse gases. Having said that, it is an invariable criticism that **an announcement does not equal an implementation**. Whilst states announce their intention to reduce greenhouse gases, there is a long way to go until these reductions are implemented. Additionally, although in many instances states have pledged to reduce or phase out environmentally harmful practices, the states that actually commit these practices the most are often absent.

Generally, the final outcomes of the summit have been perceived quite differently. While it says on the COP26's official twitter account that 'the Glasgow Climate Pact sets out the historic agreements made at the summit', UN Secretary-General Antonio Guterres noted that the text included '**important steps, but unfortunately the collective political will was not sufficient to overcome some deep contradictions**'.

That said, steps in the right direction were definitely taken. More than 130 states signed the **Glasgow leaders' declaration on forests and land use**, while more than 100 states committed themselves to a **Global Methane Pledge** – an initiative of the USA and the EU to slow down global warming by reducing their methane emissions by 30% by 2030. About 30 countries signed a **statement regarding the halting of all financing for fossil fuel development overseas** and diverting the spending to green energy. A coalition of countries, cities, car manufacturers and other organisations announced a declaration on accelerating the **transition to 100% zero-emission cars and vans**. Approximately 450 companies in 45 countries committed US$130tn towards the net-zero transition when the **Glasgow Financial Alliance for Net-Zero** was launched. The newly formed **Beyond Oil and Gas Alliance** unites states that aim to cease fossil fuel subsidies. What is more, the **US-China Joint Glasgow Declaration** surprised many observers when on 10 November the largest CO2 committers globally agreed to address the climate crisis by way of reducing methane emissions, phasing down coal, promoting decarbonisation,

protecting forests, and conducting technical cooperation.[31] And for the first time since the Kyoto-Protocol, 197 states committed to end fossil fuels in an official document. Certain countries, most notably China, have pledged to phase out coal for the first time. As early as next year, states must revise their climate plans, keeping the aim of meeting the 1.5°C limit. The Glasgow Pact itself provides for the gradual phasing down of coal. Notably, it refrained from using the words 'phase out' which would have suggested a cessation, rather than a mere reduction.

COP26 and its final agreement were shaped by strong momentum: There has been a lot of pressure regarding the **phase out of fossil fuels**, and the **1.5°C limit**.
However, does the Glasgow Pact take into account the relationship between climate change and human rights? Will the legacy of COP26 prompt states to finally tackle the challenges of climate change?

■ **Mitigation**[32] In order to sufficiently contain the adverse effects on human rights, climate change itself needs to be mitigated – first and foremost by **reducing greenhouse gas emissions**. There are several sources that contribute to the excessive greenhouse gases within our atmosphere, but in order to minimise current emissions effectively, those emissions that contribute to climate change most must be reduced first. Therefore, particular focus must be placed on **phasing-out fossil fuels** (including the financial dimension of this subject, e.g., financial subsidies) and **deforestation**. The latter, in particular, is associated with serious human rights violations as environmental deforestation often includes violence against Indigenous communities

[31] US Department of State, US-China Joint Glasgow Declaration on Enhancing Climate Action in the 2020s, available at <https://www.state.gov/u-s-china-joint-glasgow-declaration-on-enhancing-climate-action-in-the-2020s/> (last accessed 7 December 2021).
[32] Icon Source available at <https://commons.wikimedia.org/wiki/File:Climate_change_mitigation_icon.png> (last accessed 7 December 2021).

and other populations that are crucial for the protection of forests.[33] While the final text of the Glasgow Pact included, for the first time ever, calls to 'phase down' unabated coal use, the agreement does not make any reference to the second largest cause of greenhouse gas emissions, deforestation. That said, more than 130 states signed the above-mentioned declaration to halt and reverse forest loss and land degradation by 2030.

An essential goal regarding mitigation is to '**keep 1.5°C alive**'. States must meet the 1.5°C limit to avoid further devastating impacts on human and nature. The necessity of this benchmark becomes apparent given that the earth's heat has already reached over 1°C above pre-industrial levels and is now experiencing severe weather events. COP26 seems to set the course towards this direction as para. 15-17 of the Glasgow Pact read that the Conference of the Parties …

> ***15.*** *Reaffirms the long-term global goal to hold the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;*
>
> ***16.*** *Recognizes that the impacts of climate change will be much lower at the temperature increase of 1.5 °C compared with 2 °C, and resolves to pursue efforts to limit the temperature increase to 1.5 °C;*
>
> ***17.*** *Also recognizes that limiting global warming to 1.5 °C requires rapid, deep and sustained reductions in global greenhouse gas emissions, including reducing global carbon dioxide emissions by 45 per cent by 2030 relative to the 2010 level and to net zero around mid-century, as well as deep reductions in other greenhouse gases*

However, as has been often criticised, agreements are futile without following action. To put it in Alok Sharma's words as COP26 drew to an end: 'we can now say with credibility that we have kept 1.5 degrees alive. But, its pulse is weak and it will only survive if we keep our promises and translate commitments into rapid action."

[33] D Wilkinson, 'COP26 is Over – What's Next for Forests, Coal, and Fossil Fuel Finance?' published 16 November 2021 at Human Rights Watch, available at <https://www.hrw.org/news/2021/11/16/cop26-over-whats-next-forests-coal-and-fossil-fuel-finance> (last accessed 7 December 2021).

■ **Adaption**[34] Along with mitigating mechanisms (e.g. reducing emissions), another essential pillar is to adapt to the impacts of climate change. It is necessary for all states to adjust to global warming in order to reduce or avoid further harms. Since all states will need to take steps, regardless of their GDP or the amount of greenhouse gases they emit, there is a strong disproportionality of global-south nations facing the most severe implications of climate change while not having any resources at their disposal to tackle these. This problem, however, concerns the question of 'Adaption funding' which will be evaluated under 'Support'.

In order to measure states' adaption, a two-year '**Glasgow-Sharm el-Sheikh work programme on the global goal on adaption**' was launched. According to the Glasgow text, the COP …

> ***11.*** *Recognizes the importance of the global goal on adaptation for the effective implementation of the Paris Agreement, and welcomes the launch of the comprehensive two-year Glasgow–Sharm el-Sheikh work programme on the global goal on adaptation;*
>
> ***12.*** *Notes that the implementation of the Glasgow–Sharm el-Sheikh work programme will start immediately after the third session of the Conference*

By aid of this work programme, states shall be able to provide submissions with metrics to measure and track their adaption status. This will be compiled into reports to analyse the progress against the global goal.[35]

[34] Icon Source available at <https://en.wikipedia.org/wiki/File:Climate_change_adaptation_icon.png> (last accessed 7 December 2021).

[35] See Carbon Brief Staff, 'The UN climate conference, COP26, finally took place in Glasgow, with expectations and tensions running high after a year-long delay due to the Covid-19 pandemic' published 15 November 2021, available at <https://www.carbonbrief.org/cop26-key-outcomes-agreed-at-the-un-climate-talks-in-glasgow> (last accessed 7 December 2021).

■ **Compensation**[36] While the first two points focus on mechanisms to tackle climate change, the **loss and damage** that has already happened or is going to happen must not be disregarded. These include both economic impacts, such as damage to crops, homes, and infrastructure, and non-economic impacts like the harm to human health and mobility, loss of access to territory, cultural heritage, traditions, indigenous and local knowledge, as well as damage to biodiversity and habitats.[37] Although adaption remains the first step in order to avoid harm, loss and damage may occur when adaption limits are reached, be it because actions are unaffordable, not physically or technically feasible, socially difficult or not considered sufficient.[38] According to the Global Climate Risk Index, the countries most affected by climate change are developing nations,[39] whereas the world's biggest carbon polluters, and therefore likely the states most responsible for climate change, are developed countries.[40] This issue was approached in 2013 when the UN negotiators agreed on a **Warsaw International Mechanism (WIM)**, intending to strengthen dialogue and enhance action and support, without providing money to vulnerable states. In COP25, the **Santiago network** was created, which intends to connect vulnerable developing countries with providers of technical assistance, knowledge, and resources. Nonetheless, a consensus of the interpretation of current judicial framework, i.e. **Article 8 of the Paris Agreement**, could not be reached at COP25, further debate was virtually postponed to COP26. This issue is perhaps one of the most delicate ones: Vulnerable

[36] Icon Source available at < https://thenounproject.com/icon/compensation-3873274/> (last accessed 7 December 2021).

[37] See London School of Economics and Political Science, 'What is climate change "Loss and Damage"?' published 13 January 2021, available at <https://www.lse.ac.uk/granthaminstitute/explainers/what-is-climate-change-loss-and-damage/> (last accessed 7 December 2021).

[38] *Ibid*.

[39] See Germanwatch, Global Risk Index 2021, available at <https://germanwatch.org/en/19777> (last accessed 7 December 2021).

[40] Noting that there are inconsistent results due to the many different ways to compare national responsibility for climate change. The preferred way, however, seems to measure the fossil fuels burned and cement produced in each nation and convert it into CO2. Most sources will then include China, the USA, India, Russia, Japan, and Germany in their lists. It is noteworthy that India is represented in both top 10 lists of the largest emitters, and in those of the most affected countries.

countries, most of them hardly responsible for the devastating effects of climate change, suffer from great destruction of lives, livelihoods, and infrastructure, and thus claim the 'moral right' of compensation from rich parties – those most responsible for the distress caused. These developed states, however, are generally reluctant to grant these compensations, fearing exposure to unlimited financial liabilities.[41] However, while the first two pillars – mitigation and adaption – have specific funding schemes, there has not been anything comparable regarding the compensation of 'loss and damage'.

The key agenda item for loss and damage at COP26 was the Santiago network, more precisely to 'operationalise' the network so as to provide it with money and staff, and assign it responsibilities so that nations can use it to request assistance, e.g. by filling in a form on the website.[42] Although technical work deciding on the function of the network was concluded early in the second week, the final decision text reads that the COP …

> *"**66.** Welcomes the further operationalization of the Santiago network for averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including the agreement on its functions and process for further developing its institutional arrangements"*
>
> ***67.** Decides that the Santiago network will be provided with funds to support technical assistance for the implementation of relevant approaches to avert, minimize and address loss and damage associated with the adverse effects of climate change in developing*
>
> ***70.** Urges developed country Parties to provide funds for the operation of the Santiago network and for the provision of technical assistance as set out in paragraph 67 above*

The funding, however, is not expected to be particularly large.[43]

[41] See The Guardian, 'What is "loss and damage" and why is it critical for success at Cop26?' published 13 November 2021, available at <https://www.theguardian.com/environment/2021/nov/13/what-is-loss-and-damage-and-why-is-it-critical-for-success-at-cop26> (last accessed 7 December 2021).

[42] See Carbon Brief Staff, 'The UN climate conference, COP26, finally took place in Glasgow, with expectations and tensions running high after a year-long delay due to the Covid-19 pandemic' published 15 November 2021, available at <https://www.carbonbrief.org/cop26-key-outcomes-agreed-at-the-un-climate-talks-in-glasgow> (last accessed 7 December 2021).

[43] *Ibid.*

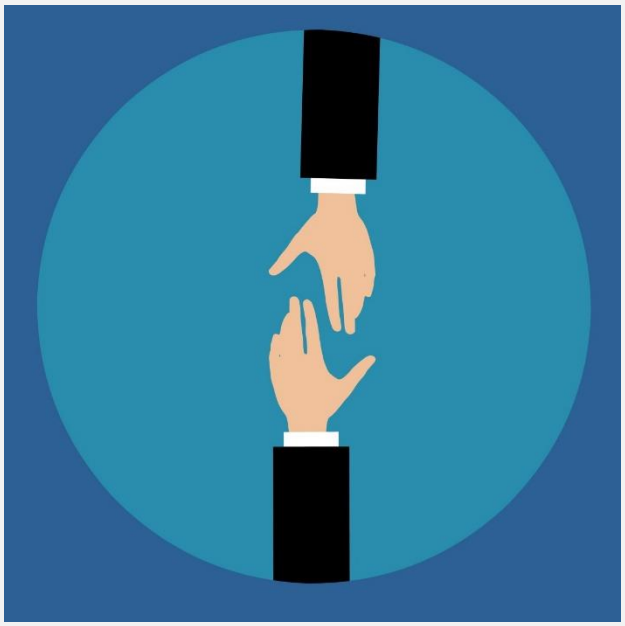
In terms of general compensation for loss and damages, Scottish first minister Nicola Sturgeon was the only one to pledge separate funding for climate-induced loss and damage in the global south. Although her pledge of £2m is relatively little compared to the financial sums granted within the other pillars and given that the costs are already many billions every year, it was welcomed since it was the first money ever committed specifically towards this issue.

The demand of the establishment for a '**Glasgow financial facility for loss and damage**' resulted in para. 67 of the final text. Although the text provides for financial support for technical assistance, this is likely not to include money given directly to vulnerable nations to assist recovery but rather suggests funds to pay consultants for help with capacity building in poorer regions.[44] Rather than to establish a 'Glasgow facility', the final text now reads that the COP …

> ***73.*** *Decides to establish the Glasgow Dialogue between Parties, relevant organizations and stakeholders to discuss the arrangements for the funding of activities to avert, minimize and address loss and damage associated with the adverse impacts of climate change, to take place in the first sessional period of each year of the Subsidiary Body for Implementation, concluding at its sixtieth session (June 2024)*

While the end result of the inclusion of pledges regarding loss and damages are still disappointing, the issue is now an integral part of the political agenda and likely to be rekindled at COP27.

[44] *Ibid.*



■ **Support**[45] As has been previously highlighted, states affected most by global warming are generally not only least responsible for it but also often have the fewest resources available to tackle its impacts. Therefore, (financial) support from developed countries was a top priority for COP26. This support includes both financial assistance, e.g. adaption funding, and other means of aid, such as technology transfer and capacity building.

In terms of adaption funding, developing countries succeeded in including a call in the final text of the Glasgow Pact for developed nations to 'at least double their collective provision of climate finance for adaption' while providing both a baseline and a target date for this aim. Specifically, the text reads that the COP …

> ***18.*** *Urges developed country Parties to at least double their collective provision of climate finance for adaptation to developing country Parties from 2019 levels by 2025, in the context of achieving a balance between mitigation and adaptation in the provision of scaled-up financial resources, recalling Article 9, paragraph 4, of the Paris Agreement*

In order to clarify the specific financial aim, the vague language of earlier drafts was discarded.

Additionally, developed states made great pledges to the Adaption Fund, with the EU pledging US$ 116.4m, followed by Germany (US$ 58.2m) and the US (US$ 50m).[46]

[45] Icon available at <https://pxhere.com/en/photo/1453671> (last accessed 7 December 2021).

[46] Adaption Fund, 'Adaption Fund Raises Record US$ 356 Million in New Pledges at COP26 for its Concrete Actions to Most Vulnerable', available at <https://www.adaptation-fund.org/adaptation-fund-raises-record-us-356-million-in-new-pledges-at-cop26-for-its-concrete-actions-to-most-vulnerable/> (last accessed 7 December 2021).

A total of 21 paragraphs were dedicated to the subject of finance, technology transfer and capacity-building for mitigation and adaption (para. 40 – 60).

Evaluation and Prospects

There is no definite answer to the initial questions of whether the Pact takes account of the relationship of climate change and human rights and whether the legacy of COP26 will prompt states to finally tackle the challenges of climate change. As has often been concluded elsewhere, COP26 ended with 'mixed results'.[47] This becomes evident when viewing one of the Pact's key elements of re-visiting emission reduction plans in 2022. While this is a step in the right direction, it is only one step of many more to follow. The commitment to revise emission reduction plans is patently not as sufficient as the commitment to reduce emissions itself. This notion was not only prevalent during the summit, but is also reflected in the final text of the Glasgow Pact. As is well known, the language of the final text softened compared to prior drafts, most remarkably the commitment to 'phase out' was changed to 'phase down' coal. That said, this agreement still constitutes the first ever inclusion of the commitment to limit the use of coal. Overall, there were many first-ever additions to either the agenda, or even the final text, as well as many 'first time' pledges of countries regarding the reduction of emissions. Evidently, every enhancement towards climate change is an enhancement towards human rights. There is always more to be done; however, during a conference this large, there is also always the risk of 'no deal'. While this does not suggest that every agreement is in and of itself already a victory, it must be considered that compromises

[47] See only Just Security, 'Good COP, Bad COP: After the Mixed Results of COP26, What's Next?', published 24 November 2021, available at <https://www.justsecurity.org/79313/good-cop-bad-cop-after-the-mixed-results-of-cop26-whats-next/> (last accessed 7 December 2021); National Post, 'We were at COP26: It had mixed results', published 30 November 2021, available at <https://nationalpost.com/pmn/news-pmn/we-were-at-cop26-it-had-mixed-results> (last accessed 7 December 2021); National Geographic, 'COP26 nears conclusion with mixed signals and frustration', published 12 November 2021, available at <https://www.nationalgeographic.com/environment/article/cop26-conclusion-mixed-signals-and-frustration> (last accessed 7 December 2021); Nuclear Engineering International, 'Mixed Results from COP26', published 18 November 2021, available at <https://www.neimagazine.com/news/newsmixed-results-from-cop26-9260585> (last accessed 1 December 2021); Daily Sabah, 'Success or Failure? COP26 Climate Summits Draws Mixed Reactions', published 8 November 2021, available at <https://www.dailysabah.com/life/environment/success-or-failure-cop26-climate-summit-draws-mixed-reactions> (last accessed 7 December 2021).

are expected and, perhaps, inevitable. Having said that, for future summits it is desirable that those compromises are more balanced, that less compromises bear the hallmarks of the fossil fuel industry, and that vulnerable communities get to have a voice.

Ultimately, it remains to be seen whether states adhere to their commitments, keep their words, and implement their pledges. Only if *a)* the impacts of climate change can be further mitigated, *b)* states further adapt to current implications, and *c)* developed states take responsibility, support and compensate developing states, can human rights violations caused by climate change be reduced.

GICJ Position

Geneva International Centre of Justice (GICJ) believes that climate change has profound and irreversible implications on both the environment and humans. Given the correlation between climate change and human rights, GICJ further believes that states must effectively address climate change in order to **comply with their state obligations to respect, protect and fulfil specific human rights duties**. As has been emphasised previously, all states are party to at least one human rights agreement, and do therefore owe at least those obligations that directly derive from the respective treaty. In other words, it is the responsibility of every state to adhere with its corresponding treaty obligation and safeguard human rights that are negatively affected by the adverse effects of climate change, e.g. by reducing greenhouse gas emissions.

In the context of the **Panel Discussion on Climate Decision of the 47th session of the HRC**, GICJ has expressed its concern regarding the (non-)compliance of the Paris Agreement and has urged nations to participate at COP26, to accelerate all actions towards the objectives of the Paris Agreement, and to put in place internationally binding instruments to ensure full respect for international environmental and human rights law.[48]

Against this backdrop, GICJ welcomes all agreements and pledges that have been made during the fortnight of the summit, most notably the Glasgow Pact as an agreement of all participating states, and the bilateral agreement between the United States and China. We register the incentive and notion of this conference as a step in the right direction, but equally note that many commitments still fall well short of what is required to avert and avoid the adverse effects of climate change, and hence human rights violations. The gap is still too big between what states can do and what states are actually doing to prevent further harm caused by climate change. Considering the devastating implications rising temperatures will have on

[48] Geneva International Centre for Justice, Discussion Report – Panel Discussion on Climate Change – 47th HRC, available at <https://www.gicj.org/conferences-meetings/human-rights-council-sessions/discussion-reports/2141-panel- discussion-on-climate-change-47th-hrc> (last accessed 7December 2021).

both the environment and vulnerable communities, GICJ considers limiting global warming to 1.5°C as an indispensable step. A step that was, however, only very tentatively taken given that COP26 did not result in a firm commitment to reach this goal by a certain date.

Appendix
Human Rights and Climate Change

Climate Change is a Human Rights Issue. With recourse to several UN sources, this appendix shall illustrate the correlation between climate change and human rights.

- **UNEP** has published a report on climate change and human rights, stating: "*Climate change is one of the greatest threats to human rights of our generation, posing a serious risk to the fundamental rights to life, health, food and an adequate standard of living of individuals and communities across the world. This report aims to support government and private decision makers by assessing the relationship between climate change and human rights law*."[49]

- The **OHCHR** compiles information regarding climate change and human rights on its website, providing an overview of the issues, its role in climate change issues, reports, information materials, resolutions, statements, and videos amongst other information.[50]

  "**The impacts of climate change on the effective enjoyment of human rights**
  The Intergovernmental Panel on Climate Change (IPCC) has unequivocally confirmed in its reports that climate change is real and that human-made greenhouse gas emissions are its primary cause. The increasing frequency of extreme weather events and natural disasters, rising sea levels, floods, heat waves, droughts, desertification, water shortages, and the spread of tropical and vector-borne diseases have been identified as some of the adverse impacts of climate change. These phenomena directly and indirectly threaten the full and effective enjoyment of a range of human rights by people throughout the world, including the rights to life, safe drinking water and sanitation, food, health, housing, self-determination, culture, work and development – as affirmed by the IPCC and Human Rights Council resolution 41/21.

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[49] UNEP, available at <https://www.unep.org/resources/report/climate-change-and-human-rights> (last accessed 3 January 2022).

[50] OHCHR, available at <https://www.ohchr.org/en/issues/hrandclimatechange/pages/hrclimatechangeindex.aspx> (last accessed 3 January 2022).

The negative impacts of climate change are disproportionately borne by persons and communities already in disadvantageous situations owing to geography, poverty, gender, age, disability, cultural or ethnic background, among others, that have historically contributed the least to greenhouse gas emissions. In particular, persons, communities and even entire States that occupy and rely upon low-lying coastal lands, tundra and Arctic ice, arid lands, and other delicate ecosystems and at risk territories for their housing and subsistence face the greatest threats from climate change.

A human rights-based approach to climate change

The negative impacts caused by climate change are subject to increase exponentially according to the degree of climate change that ultimately takes place. Climate change, therefore, requires a global rights-based response. The Human Rights Council, the human rights mechanisms (the special procedures, the human rights treaty bodies and the Universal Periodic Review), and the Office of the High Commissioner for Human Rights have sought to bring renewed attention to human rights and climate change through a series of resolutions, reports, and activities on the subject, and by advocating for a human rights-based approach to climate change.

The Preamble of the Paris Agreement to the United Nations Framework Convention on Climate Change makes it clear that all States "should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights".

As the Human Rights Council has stressed, it is critical to apply a human rights-based approach to guide global policies and measures designed to address climate change. The essential attributes of a human rights-based approach are the following:

As policies and programmes are formulated, the main objective should be to fulfil human rights.

The rights-holders and their entitlements must be identified as well as the corresponding duty-bearers and their obligations in order to find ways to strengthen the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations.

Principles and standards derived from international human rights law – especially the Universal Declaration of Human Rights and the core universal human rights treaties, should guide all policies and programming in all phases of the process."[51]

[51] OHCHR, available at <https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/AboutClimateChangeHR.aspx> (last accessed 3 January 2022).

Geneva International Centre for Justice (GICJ)

Office: Route de Ferney 150, 1218 Genève
Tel: 0041 22 788 19 71 Email: info@gicj.org

Website: www.gicj.org