
CLIMATE CHANGE AND INTERNATIONAL LAW: TOWARDS A JUST AND ENFORCEABLE GLOBAL FRAMEWORK

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ABSTRACT:

Climate change is being a most pressing global issue in present 21st century, which is threatening not only ecosystems but also human rights, economic stability, and international peace. The nature of this issue has needed collective global efforts, primarily through the international legal frameworks. This paper discovers the about how the international agreements like UN Framework Convention for climate change (UNFCCC), the Kyoto Protocol, and the Paris Agreement has attempted to create a full structure response to the climate change. It also evaluates the legal frameworks and what are there in those frameworks like sustainable development and different responsibilities. Even after working the enforcement of these agreements remains as a big challenge because of state sovereignty, obligations and the division between the developed-developing countries. Through this analysis this paper will show the strengths and weaknesses in the present legal framework while suggesting some ways to enhance the present environmental governance in heating up the planet.

Keywords: Climate Change, International Law, Paris Agreement, UNFCCC, Sustainable Development.

1. Introduction:

Climate change means to the long-term changes in the global temperature, rain fall, and weather patterns, which has been majorly affected by some human activities like fossil fuel storing, deforestation, and industrial emissions¹. Its impact is reflective- which affects biodiversity, sea levels, agriculture, public health and geopolitical stability². By recognizing the boundaries nature, climate change till now which has been a major point of international discussion for many ages³. The need to collaborate in order to find legal answers is recognized by the international community.⁴ By coordinating the national efforts, establishing environmental targets, and guaranteeing towards the sustainable development, they have developed a few frameworks to reduce emissions and adjust to the climate change. The Paris Agreement, the Kyoto Protocol, and the UNFCCC are a few of these.⁵ Collectively, these lay out a legal framework for solving problems caused because of the climate change via fairness in general, common duty, and diplomacy.⁶ The paper analyses how the international legal frameworks contribute to the shaping of global climate policy. Also considered are their effectiveness, legal principles within them, and roadblocks to the actual implementing of these frameworks.⁷ It aspires, in this light, to contribute to the larger understanding of environmental law within international law and to put forth further considerations for a stronger legal response to this existential crisis.⁸

2. Major International Legal Frameworks:

The establishment of the UNFCCC was in 1992 during the adoption of the United Nations Framework Convention on Climate Change in international legal proceedings over climate change. The Earth's Summit held at Rio de Janeiro in that year endorsed this treaty considering the dangers that climate change will entail and to prevent dangerous anthropogenic interference

¹ Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2021: The Physical Science Basis* (Cambridge University Press, 2021).

² United Nations, *The Paris Agreement*, UNFCCC, December 2015, <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>.

³ United Nations Framework Convention on Climate Change (UNFCCC), *The Kyoto Protocol*, UNFCCC, December 1997, https://unfccc.int/kyoto_protocol.

⁴ United Nations Framework Convention on Climate Change (UNFCCC), *The United Nations Framework Convention on Climate Change*, UNFCCC, 1992, <https://unfccc.int/essential-background/convention>.

⁵ Paris Agreement art. 2, Dec. 12, 2015, https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

⁶ Kyoto Protocol art. 3, Dec. 10, 1997, https://unfccc.int/kyoto_protocol.

⁷ Bodansky, Daniel. *The Paris Climate Change Agreement: A New Hope?* 110 *American Journal of International Law* 288 (2016).

⁸ United Nations, *Sustainable Development Goals*, UN, 2015, <https://sdgs.un.org/goals>.

in the climate system.⁹ Although UNFCCC had no legally binding limits on emissions of gases known as greenhouse gases, it did provide an elastic framework in which nations could cooperate in joint efforts and accountability through reporting and periodic gatherings of Conference of Parties.¹⁰

Continuing from the UNFCCC, the Kyoto Protocol was established in 1997 for the purpose of binding targets for emission reductions for industrialized countries.¹¹ This marked a huge advancement for holding developed countries responsible considering their historical contributions to emissions from the developed-world perspective.¹² It was further built rationally by adding mechanisms such as the Emissions Trading, Joint Implementation, and the Clean Development Mechanism to allow some economic flexibility in achieving these targets.¹³ Nevertheless, the success of the Kyoto Protocol was severely impaired by the various withdrawals of major emitters such as the U.S. and the absence of binding commitments for developing countries, thus rendering the Protocol only a partial success.¹⁴

In 2015, the international community made a new approach through Paris Agreement.¹⁵ Unlike the before treaty, this treaty has empowered the countries to make their own climate action plans, which is called as Nationally Determined Contributions (NDC's) which will be updated every 5 years.¹⁶ Its aim is to keep the global temperature below 2 degrees Celsius. And, to make it into 1.5 degrees.¹⁷ This agreement explains on the mutual accountability, transparency in climate actions, and support for the developing nations, even these reduction commitments are not legally enforceable.¹⁸

COPs are the main decisions making body under the UNFCCC. These annual gatherings play a major role in deal with updates, assessing progress, and adopting new strategies.¹⁹ Like COP3

⁹ United Nations Framework Convention on Climate Change (UNFCCC), The United Nations Framework Convention on Climate Change, UNFCCC, 1992, <https://unfccc.int/essential-background/convention>.

¹⁰ UNFCCC, The Conference of the Parties (COP), UNFCCC, <https://unfccc.int/cop>.

¹¹ United Nations, Kyoto Protocol to the United Nations Framework Convention on Climate Change, UNFCCC, 1997, https://unfccc.int/kyoto_protocol.

¹² Bodansky, Daniel. The Kyoto Protocol: A New Global Climate Agreement. 108 *American Journal of International Law* 111 (2007).

¹³ UNFCCC, Kyoto Protocol Mechanisms, https://unfccc.int/kyoto_protocol/mechanisms.

¹⁴ Kyoto Protocol, art. 10, Dec. 10, 1997, https://unfccc.int/kyoto_protocol.

¹⁵ Paris Agreement, art. 2, Dec. 12, 2015, https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

¹⁶ UNFCCC, Nationally Determined Contributions (NDCs), <https://unfccc.int/NDC>.

¹⁷ Paris Agreement, art. 2, Dec. 12, 2015, https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

¹⁸ UNFCCC, The Paris Agreement, 2015, <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>.

¹⁹ UNFCCC, The Conference of the Parties (COP), <https://unfccc.int/cop>.

made Kyoto Protocol and COP21 made Paris Agreement. In recent meetings the community as focused on climate finance and enhancing the frameworks to evolve their attempt to stop the global climate effectively.²⁰

3. Principles in International Environmental Law:

The evolution of the international law was guided by many Core legal principles which has shaped the climate action and promotes environmental sustainability. The Widley recognized principle of sustainable development, which is made to balance environmental sustainability and social progress. This principle was made on 1987 Brundtland Report and later covered in the Rio Declaration of 1992; this principle encourages the countries to meet their present needs without compromising the ability of future generation to meet theirs.²¹ It has become a major idea in international agreements and national environmental policies.²²

Another principle is precautionary principle which makes the countries to take preventive measures to face the environmental harm even when scientific certainty is lacking²³. Particularly when it comes to the climate-related issues, which can have a long-term and irreversible effects,²⁴ this authority influences decisions by promoting some active measures addressing potential hazards²⁵. Those who support such actions must develop denials to the allegation that they are damaging. It calls for action rather than providing evidence in relation to harm, which results in a more cautious evolution²⁶.

The Polluter pays principle is equally important as it says about environmental degradation and the one who does it has to bear the cost of doing it²⁷. This principle defines about the fairness, accountability, encouraging industries and government to internalize environmental costs

²⁰ UNFCCC, Climate Finance, <https://unfccc.int/topics/climate-finance>.

²¹ Report of the World Commission on Environment and Development: Our Common Future, United Nations, 1987, available at <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>.

²² Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26 (Vol. I), 1992, available at https://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.151/26.

²³ The Precautionary Principle, World Health Organization, available at <https://www.who.int/health-topics/precautionary-principle>.

²⁴ The Precautionary Principle, European Commission, available at https://ec.europa.eu/environment/legal/law/precautionary_principle.htm.

²⁵ Rio Declaration on Environment and Development, Principle 15, 1992, available at https://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.151/26.

²⁶ The Precautionary Principle, European Commission, available at https://ec.europa.eu/info/food-farming-fisheries/animals-and-animal-products/animal-health/precautionary-principle_en.

²⁷ Polluter Pays Principle, OECD, available at <https://www.oecd.org/env/pollution-pays-principle.htm>.

rather making into action in the society²⁸. It also supports the regulations on environmental pollution and imposes penalties or taxes for causing pollution²⁹.

The most influential principle in the climate negotiations is the doctrine of common but differentiated responsibilities and respective capabilities (CBDR-RC)³⁰. This concept was first recognized by the UNFCCC, it acknowledges the climate changes while considering its capacities and sees the historical contributions made³¹. This principle forms the moral and legal basis for developed countries to take lead in justification and also provide financial and technological help to developing countries. Together these principles have created a very flexible and cooperative legal foundation which seeks justice to the environment in tackling the ongoing climate crisis³².

4. Challenges in enforcement:

Even after the existence of all these international legal frameworks the climate change is still being tough to compete. And the enforcement still remains as a great struggle. One of the major issues is that the non-binding nature of commitments under the Paris convention agreement. Countries submit their Nationally Determined Contributions (NDCs) and there is no penalty for not able to complete them. This lack in accountability and also creates room for countries to delay their climate actions without consequences³³.

State sovereignty complicates enforcement. Most reliance on cooperation among states makes international environmental laws very hesitant; full compliance with the states would most usually come when they do not see, even in terms of their national interests or economic development, any infringement³⁴. Most developing countries have argued that stringent

²⁸ The Polluter Pays Principle, European Commission, available at <https://ec.europa.eu/environment/legal/law/polluter-pays-principle.htm>.

²⁹ United Nations Environment Programme (UNEP), Polluter Pays Principle, available at <https://www.unenvironment.org/resources/report/polluter-pays-principle>.

³⁰ The United Nations Framework Convention on Climate Change, UNFCCC, 1992, available at <https://unfccc.int/essential-background/convention>.

³¹ UNFCCC, Common but Differentiated Responsibilities (CBDR), available at <https://unfccc.int/topics/climate-finance/the-big-picture/common-but-differentiated-responsibilities-cdbr>.

³² UNFCCC, The Paris Agreement: Achievements and Shortcomings, available at <https://unfccc.int/topics/finance/the-paris-agreement>.

³³ Paris Agreement, art. 4, Dec. 12, 2015, available at https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

³⁴ International Environmental Law: A Short Introduction, Andreas Philippopolis, 2021.

measures on climate change either promote or hinder development goals³⁵. That is the reason why there always exists a huge gap between international obligations and their domestic implementation; this, in turn, weakens their overall impact³⁶.

Another crucial barrier is the difference in the resources and technologies of the developed countries along with the developing countries. Wealthy nations can afford the technology and finance to create clean energy and sustainable infrastructure, while the less developed countries can hardly meet their basic climate obligations³⁷. Specifications for international agreements often need financial and technology assistance; however, such assistance is hardly ever granted in a timely fashion or is tied up with bureaucratic conditions, therefore coming in the way of the vulnerable nations' is the fast and effective response³⁸.

Then, these monitoring and reporting tools are facing these treaties are involved in the challenges of transparency and accuracy. While the Paris Agreement brought about a global stocktake and a transparency framework, inconsistencies which still persist in how the countries report their emissions and pace of progress³⁹. This has slowed down the assessments of collective progress and the identification of areas which is in the need for urgent attention⁴⁰. All these factors have further resulted in the framework in which the legal provisions do exist, but it still has a weak enforcement which restricts the successful operation of the international climate change improvement scheme⁴¹.

5. Role of Developed and Developing Countries

The division between the developed and developing countries are still a struggle in the climate negotiations. This division has been a starting point for the principle of common but differentiated responsibilities, it says that all the nations have their duty to fight climate change,

³⁵ Climate Change and Development: A Global Perspective, International Institute for Environment and Development, available at <https://www.iied.org/climate-change-development>.

³⁶ United Nations Environment Programme (UNEP), The State of the Environment Report, 2020, available at <https://www.unenvironment.org/resources/report>.

³⁷ The Paris Agreement on Climate Change: Ambitions and Responsibilities, National Geographic, available at <https://www.nationalgeographic.com/environment/global-warming/understanding-climate-change/>.

³⁸ The Green Climate Fund: Finance for Climate Change Mitigation and Adaptation, UNFCCC, available at <https://unfccc.int/topics/climate-finance/the-green-climate-fund>.

³⁹ The Paris Agreement: Transparency and Accountability, UNFCCC, available at <https://unfccc.int/topics/transparency-and-reporting/the-paris-agreement-transparency-framework>.

⁴⁰ Global Climate Stocktake and Transparency in the Paris Agreement, United Nations Framework Convention on Climate Change, available at <https://unfccc.int/topics/transparency-and-reporting/global-stocktake>.

⁴¹ Enforcing International Environmental Law: Challenges and Opportunities, Journal of International Environmental Law, 2019.

and for their roles and capacities which are not equal⁴². Developed countries have contributed to the historical greenhouse gas emissions through decades because of industrialisation where it expected to take the lead for reducing the emission and provide support to others. This is an exception which includes financial assistance, technology transfer, and capacity for less developed countries⁴³.

Developing countries, on the other hand, often had highlight about their limited resources and a need for an urgent developmental need by arguing for their own priorities like poverty Elimination, energy access, and economic growth⁴⁴. While these countries are getting involved in the climate actions, many still rely on fossil fuels to realize about their growth and have not got the infrastructure to make a quick change to renewable energy. Hence, they often demand for flexibility in their climate obligations and also need support from richer nations to fulfil their expectations⁴⁵.

Nations may generate tensions within the international community in the climate talks as some rich nations do not want to accept what they consider to be an insufficient burden, and poor countries want to have equity and justice for themselves⁴⁶. Above all, the climate financing conflicts most of the time arise when the question of whether the developed countries have kept their pledge to mobilize 100 billion US dollars a year to support efforts for climate mitigation in the Global South⁴⁷. This promise has become a central issue in the negotiations since the Copenhagen Accord in 2009 and remains largely unfulfilled across negotiation blocks⁴⁸.

However, overcoming all these challenges will always require a commitment between the rich and developing countries for some effective changes in the climate advancement. Many treaties like the Paris Accord actually indicates about the mutual assistance indeed which entails with going ahead with sustainable policies of the developed countries, for all such financial

⁴² United Nations Framework Convention on Climate Change, Article 3: Principles, available at <https://unfccc.int/resource/docs/convkp/conveng.pdf>.

⁴³ The Paris Agreement, art. 4, Dec. 12, 2015, available at https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

⁴⁴ Climate Change and Development: A Global Perspective, International Institute for Environment and Development, available at <https://www.iied.org/climate-change-development>.

⁴⁵ Climate Action for Development: The Role of Renewable Energy, UNDP, 2019, available at <https://www.undp.org/climate-action-development>.

⁴⁶ Common But Differentiated Responsibility: A Review, World Resources Institute, 2015, available at <https://www.wri.org/publication/common-but-differentiated-responsibility>.

⁴⁷ United Nations, Copenhagen Accord, Dec. 2009, available at <https://unfccc.int/cop15>.

⁴⁸ The \$100 Billion Climate Finance Commitment: A Critical Review, Climate Finance Review, 2021, available at <https://www.climatefinancereview.com>.

resources, help as proven by wealthier countries⁴⁹. all these would make the gap closed for a truly global response which is both equitable and viable in relation to the climate change⁵⁰.

6. Case Studies and Recent Developments

Examining particular cases helps to clarify about how the international climate law should be used in practice. The European Union Emissions Trading Scheme (EU ETS) is one of the most important examples of a plan like this. In fact, it's a "cap and trade" system where the companies must have purchase permits to emit pollutants, and the EU has set some limits on the emissions from a particular sector. Businesses can sell their unsold permits to others if they lower pollution. Over time, if the total emission decreases in line with the limit. Despite its weaknesses, it has undoubtedly outperformed the previous systems of its kind and encouraged business to embrace greener technologies⁵¹.

In some cases, like Vanuatu and Tuvalu, which is a small island nations which has faced the threat of submersion due to the rising of sea levels. Since these states lack some political and economic influence, they have used the international legal mechanisms as their most powerful weapon in 2023 to urge the UN to adopt a resolution which request that the International Court of Justice (ICJ) to clarify about the nations' legal duties to prevent environmental harm. The ICJ's strong advisory opinion might give ideas like governmental responsibility for the climate challenges, and some are common sense and possibly even legality. For nations which has limited time, it is the best possible law⁵².

Apart from that India's renewable energy push is also considered as an example of a developing country which is trying to contribute its part even when they are focusing their growth. Programs like National star mission and its leadership in the International solar alliance, India became an example which has proved that even the countries with limited sources can also invest clean energy. Even though India faces challenges there has been some clear progress

⁴⁹ The Paris Agreement on Climate Change: Ambitions and Responsibilities, National Geographic, available at <https://www.nationalgeographic.com/environment/global-warming/understanding-climate-change/>.

⁵⁰ Climate Change and Justice: Bridging the Gap Between Developed and Developing Countries, Journal of International Environmental Law, 2020.

⁵¹ European Commission, The EU Emissions Trading System (EU ETS), 2020, available at https://ec.europa.eu/clima/policies/ets_en.

⁵² International Court of Justice, Request for an Advisory Opinion on Climate Change, 2023, available at <https://www.icj-cij.org/en/case/143>.

especially in relation to the solar installations and rural electricity⁵³.

Climate lawsuits which is a new trend where people and NGOs has started taking their own governments to court for not doing enough to stop climate change. In Netherlands, a group called Urgenda actually won a case that forced the Dutch government to adopt a stronger climate policies. Even in Germany and Columbia have some similar ruling like this. Courts are now trying to make some effort to treat these climate change issue as a human rights issue which could completely change the way where the governments are held liable⁵⁴.

Cases like these appear that the international climate enactment is not as it were almost enormous the conferences and adjusts; it too includes what happens in ordinary life, from the court debate and renewable vitality activities to more solid resistance from the most powerless countries. As a result of this the legitimate environment is changing. Indeed, in spite of the fact that the enforcement is still a major issue, these progressions are continuously giving us the optimism that the framework may alter and develop in light of expanding demands from over the world⁵⁵.

7. Climate Justice and Human Rights

Climate change is barely fair and natural issue; it is a horrifying violation of human rights. With climate impacts such as temperature rise, floods, droughts, and extraordinary climate occasions- communities that are most defenceless to these impacts are as of now feeling the warm. Individuals living in destitution in destitute nations or having a place to Inborn bunches and marginalized low-income communities cannot gather financial assets to either adjust or recover. Very sadly, these bunches have contributed the littlest sums to worldwide outflows. Hence comes climate equity: decency, not fair recuperating the environment⁵⁶.

The connection between climate and human right is very serious right now. The UN Rights Council has made several solutions by recognizing that a clean, healthy and sustainable environment is a major basic right. This shift says that governments can be held liable not only

⁵³ International Solar Alliance, India's Leadership in Renewable Energy, available at <https://www.irena.org/International-Solar-Alliance>.

⁵⁴ Urgenda Foundation v. The State of the Netherlands, Supreme Court of the Netherlands, 2019, available at <https://www.urgenda.nl/en/themas/climate-case/>.

⁵⁵ Climate Change Litigation: A Global Overview, Oxford University Press, 2021, available at <https://www.oup.com/oxfordjournals/intl-litigation/climate-change>.

⁵⁶ United Nations Environment Programme, Climate Change and Human Rights, 2021, available at <https://www.unep.org/resources/report/climate-change-and-human-rights>.

under environmental law and also under human rights if any inaction is made to people's lives, health and access to resources⁵⁷.

In addition to the creation of the UN Special Rapporteur on Human Rights and Climate Change which is a significant turning point. This approach serves to guarantee that the states are held responsible for safeguarding the citizens from the effects of the climate change. Additionally, it gives communities which are experiencing food shortages, health problems, or dislocation as a result of climate change a chance to speak. These stories provide emotional weight to normally scientific, data-driven conversations as they make their way into the judicial and diplomatic proceedings⁵⁸.

Youth have been fighting for the climate justice from the beginning of climate change, claiming that the current slow climate action which is taken by the government is nothing more than the robbery of their future. In addition to Greta, activists from the Global South are also pursuing the legal action, claiming that their fundamental rights are being clearly violated. The situation changes when climate change is seen as a human rights concern. It becomes more about individuals, their homes, future, and health rather than numbers or emissions. Maybe this fundamental change will force the governments to take decisive action at last⁵⁹.

8. Alternative Recommendations for Strengthening International Climate Law

On the first hand there is a need for fixing the reaction of the international law. Climate change is becoming very fast but the agreements in the global is still very slow. We are in the need for a faster update system where treaties and protocols can be modified often in relation to the new science, but only when every 10 years the leaders meet⁶⁰.

Apart from that setting an international climate court or Tribunal is in need now. Because if a country is affecting another country there is no legal place to challenge that. An international court which only deals with climate issues would let the affected countries and communities

⁵⁷ UN Human Rights Council, Resolution on the Right to a Healthy Environment, 2020, available at <https://www.ohchr.org/en/resolutions/resolution-right-healthy-environment>.

⁵⁸ United Nations, Special Rapporteur on Human Rights and Climate Change, 2023, available at <https://www.ohchr.org/en/special-procedures/climate-change>.

⁵⁹ Youth for Climate Justice: Activism and Legal Action, Global South Climate Coalition, 2022, available at <https://www.globalsouthclimate.org/youth-legal-action>.

⁶⁰ United Nations Framework Convention on Climate Change, The Need for an Updated System in International Climate Law, 2022, available at <https://www.unfccc.int/need-for-updated-system>.

can approach and seek justice⁶¹.

Next, international climate law which should directly include corporate responsibility where big companies are some major polluters but most of the climate agreements deals only within the states. If laws are created it could clear global framework to hold multinational companies accountable for their carbon emissions and greenwashing which can close the huge gap⁶².

In addition, there is another where we have to push for a Global Carbon Budget Treaty. This would put out a condition on the emissions which should be done globally and then to divide it on the basis of its fairness. By checking the history, current needs, and development levels can stop the rich countries from overusing the carbon space while the poor countries are still in lag⁶³.

And lastly, climate law needs to protect the rights of nature itself. Some countries have already given legal rights to rivers, forests and ecosystems. If the international law is recognized as a legal subject rather than a resource, it would change the planet completely⁶⁴.

9. Conclusion

In present climate change is an issue which should not be ignored anymore or pushed aside. This issue is affecting major factors like weather, food, water, health and also especially the people who did not have a hand in causing all these. International climate law has done some work like making Paris Agreement but still all the action taken by the agreement is not enough to tackle this issue⁶⁵.

We are in the need for stronger rules, real accountability, and also support for the countries and people who are in risk. Climate justice means understanding that the affected are not treated equally and the need for the law to react on the same⁶⁶.

⁶¹ International Climate Tribunal Initiative, Proposal for an International Climate Court, 2023, available at <https://www.climatecourt.org>.

⁶² Environmental Accountability Coalition, Corporate Responsibility and Climate Law: The Missing Link, 2021, available at <https://www.environmentalaccountability.org>.

⁶³ Global Carbon Budget Initiative, A Proposal for a Global Carbon Budget Treaty, 2023, available at <https://www.globalcarbonbudget.org>.

⁶⁴ Earth Rights International, Legal Rights of Nature: A Global Movement, 2020, available at <https://www.earthrights.org/nature-rights>.

⁶⁵ Paris Agreement, Status and Impact, 2023, available at <https://www.unfccc.int/Paris-Agreement>.

⁶⁶ United Nations, Climate Justice and Accountability, 2022, available at <https://www.un.org/climatejustice>.

If the global leaders are actually listening to the science, support vulnerable nations which includes youth and local communities and make the law work in more binding and fair manner. Because in the end its not about only saving the plant but also the lives, rights and futures⁶⁷.

⁶⁷World Resources Institute, Equity and Justice in Global Climate Law, 2021, available at <https://www.wri.org/climate-justice>.