19th-21st November 2024

# Litigation and Dispute Resolution in Transnational Ecological Conflicts

## The role of judicial and non-judicial mechanisms

**MS Training Centre for Development Cooperation**

Arusha, Tanzania| Hybrid

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# About

The growth of litigation related to climate and ecosystems' protection (also framed in human rights terms) draws attention to the need of understanding the factors driving this development. It also underscores the need to assess the effectiveness of litigation in achieving its objectives, particularly concerning environmental justice and access to remedies for people, ecosystems and territories affected or threatened by environmental degradation.

The workshop will focus on transnational ecological conflicts and related litigation. These conflicts can occur at multiple scales or governance levels (from local to international and transnational), being the result of cross-border environmental *impacts* (such as biodiversity loss, water pollution, and global warming) or *activities* involving actors under multiple state and/or international jurisdictions (e.g., multinational corporations, international NGOs, or development/investment banks).

A central theme of inquiry and discussion will revolve around identifying the courts and dispute resolution mechanisms that serve as forums for the tentative resolution of these conflicts. The workshop seeks to understand what kinds of mechanisms are used (judicial or non-judicial), what are their main advantages and drawbacks, as well as whether transnational litigation (bringing cases to other territorial jurisdictions) has granted effective remedies for victims who have been unable to obtain redress in the country where the harm occurred.

# Programme

Day 1

## 19 November 2024

**ROOM MANDELA - 09:00 Opening Speech**

**João Teixeira de Freitas**, ERC Curiae Virides, Brussels School of Governance, Vrije Universiteit Brussel, Belgium

**ROOM MANDELA - 09:30 Panel 1A - Assessing the Role of Alternative Dispute Resolution | Chair: Stefaan Smis**

**Special Session by IPIS: Accessing Remedy through Company-level Remediation Mechanism for Victims of the Williamson Diamond Mine Tailings Dam Breach**

- Community Experiences in Seeking Remedy for Harm caused by the Williamson Diamond Mine Tailings Dam Breach (Tanzania) 👤 Hans Merket, Researcher, International Peace Information Service (IPIS)
- Best Practices in Financial Literacy Training for Recipients of Compensation for Harm caused by the Williamson Diamond Mine Tailings Dam Breach (Tanzania) 👤 Jonathan Kifunda, Executive Director, Thubutu Africa Initiatives
- Lessons Learned from Public Legal Education for Communities Impacted by Diamond Mining Operations in Shinyanga (Tanzania) 👤 Rose Ugulumu, Project Coordinator & Interim Executive Director, Business and Human Rights Tanzania
- Gender-Specific Challenges in Accessing Remedy for Harm around the Williamson diamond mine (Tanzania) 👤 Regina Makomba, Project Officer, Core of Equality and Development

**11:00 Coffee Break**

**ROOM MANDELA - 11:15 Panel 1B - Assessing the Role of Alternative Dispute Resolution | Chair: Stefaan Smis**

- Meaningful Stakeholder Engagement in Environmental Disputes according to the Soft Case-Law of the OECD NCPs 👤 João Teixeira de Freitas, PhD Researcher at Curiae Virides Project, Vrije Universiteit Brussel, Belgium

## 12:00 Lunch

**ROOM MANDELA - 13:30 Panel 2 (Session 1) - The Role and Capacity of National Courts in addressing Transnational Ecological Conflicts | Chair: Jérôme Vanwelde**

- The Role of Home State Courts in Providing Remedies for Human Rights Abuses Committed by Multinational Corporations Abroad . 🌐 Sebastian Smart, Senior Research Fellow, Anglia Ruskin University, UK | 🌐 Angus Nurse, Professor of Law and Environmental Justice, Anglia Ruskin University, UK

- Paths to Justice: Charting Legal Avenues for DRC Communities in Corporate Environmental Litigation 🌐 Bonheur Minzoto, Legal Researcher, RAID (Rights and Accountability in Development)

## 15:00 Coffee Break

**ROOM MANDELA - 15:15 Panel 2 (Session 2) - The Role and Capacity of National Courts in addressing Transnational Ecological Conflicts | Chair: Sarah El Amouri**

- The Role of the Principle of Solidarity in Litigating Climate Change in Asia 🌐 Giacomo Giorgini Pignatiello, Research Fellow in Comparative Public Law, University of Naples L'Orientale, Italy

- Local Knowledge as Climate Resiliency to Adjust the Rights-Based Framework in Pakistan . 🌐 Zara Salman, International Human Rights Fellow, Perseus Strategies LLC and Alumnus of University of Chicago, USA

**16:45 Coffee Break**

**ROOM MANDELA - 17:00 Roundtable - Conflict of Uses over Water and other Natural Resources: A (Southern) African Perspective**

- 🌐 Zukiswa Mqakanya, South African Human Rights Commission; Deputy Director for Africa for the GNHRE
- 🌐 Clive Vinti, Regional Director for Africa for the GNHRE, Associate Professor, University of the Witwatersrand, South Africa

# Programme

Day 2

## 20 November 2024

**ROOM MANDELA - 09:00 Panel 3 - The Protection of Environmental and Human Rights Defenders | Chair: Hans Merket**

- Climate Change, Caribbean Large Ocean States & Community Defenders: Experiences with Article 9 of the Escazú Agreement in the Caribbean Region 🌐 Alana Malinde S. N. Lancaster, Lecturer in Law & Head of the Caribbean Environmental Law Unit, The University of the West Indies, Barbados

- The situation of Human Rights Defenders in Addressing Transnational Environmental Conflicts: the case of Oil Development Projects in Uganda and Tanzania 🌐 Bashir Twesigye, Executive Director, Civic Response on Environment and Development

- Forced Displacement in Africa: Could the Tanzanian Maasai Obtain Justice? The EACJ Case under the lens of the Ogiek case before the ACtHPR 🌐 Cristiano d'Orsi, Lecturer, Senior Research Fellow, Senior Consultant, University of Johannesburg, South Africa

- Biosphere Defenders Operationalising Prevention in Climate Adaptation. 🌐 Claudia Ituarte-Lima, RWI, Thematic lead on Human Rights and Environment / GNHRE, Director | 🌐 Indraraj Gunasekara, Lawyer, Sri Lanka

**10:45 Coffee Break**

**ROOM MANDELA - 11:00 Panel 4 - Role of Regional and Sub-Regional Bodies in Adjudicating Ecological Conflicts | Chair: Liliana Lizarazo-Rodriguez**

- Analysing the role of Regional Courts in cases of Climate-Induced Displacment and Climate Justice 🌐 Ateka Hasan, Academic, Jamia Millia Islamia, India

- Access to Environmental Justice for indigenous peoples and the Inter-American Human Rights System: Assessing the Implications of the Escazú Agreement 🌐 Ricardo Pereira, Academic & Associate Professor (Reader in Law), Cardiff University, UK

- Measuring the Impact of Litigation beyond Victory in Court: Learnings from Indigenous Peoples Human Rights Litigation 🌐 Jeremie Gilbert, Professor of Human Rights, University of Roehampton, UK

**12:30 Lunch**

AfCHPR (Arusha) **- 14:30 In-Person Activity: Visit to the African Court of Human and Peoples' Rights**

**18:00 - Conference Dinner (Andrew's House No. 9, Jandu Road, Arusha 255)**

# Programme

Day 3

**21 November 2024**

**ROOM MANDELA - 09:00 Panel 5 - Implementation of Judicial Decisions - Post-decision Dynamics | Chair: Stefaan Smis**

- Protecting Indigenous Rights to Land and Natural Resources: Perspectives on the Carbon Market in Kenya. 👤 Xanne Bekaert, Research and Teaching Assistant, Faculty of Law (Department of Public Law) Vrije Universiteit Brussel, Belgium

- Human Rights and Environmental Lawyer - The Right to a Clean and Healthy Environment in Kenya: Implementation of Judicial Decisions.🌐 Christine Nkonge, Constitutional and Human Rights Expert, Consultant (former immediate employer - Katiba Institute) | 🌐 Mark Odhiambo Odaga

- Post-Decision Dynamics in Transnational Ecological Litigation: The Critical Role of African NHRIs. 👤 Foluso Adgalu, Programme Officer, Network of African National Human Rights Institutions

**10:30 Coffee Break**

**ROOM MANDELA - 10:45 Panel 8 - Curiae Virides: Actors, Risks, Hazards, Harms and Methodological Challenges | Chair: João Teixeira de Freitas**

- The fuzzy path of Transnational Ecological Conflicts through the Courts. 👤 Liliana Lizarazo-Rodriguez, ERC Curiae Virides and EcoTrilemma Projects, Brussels School of Governance – Vrije Universiteit Brussel, Belgium

- Empirical legal studies and the issue of representativeness: An epistemological reflection on the use of environmental litigation databases. 👤 Jérôme Vanwelde, ERC Curiae Virides and EcoTrilemma Projects, Brussels School of Governance – Vrije Universiteit Brussel, Belgium

- Actors and Environmental Litigation in Africa: A Social Network Analysis of Actors and Courts in Transnational Ecological Conflicts. 🌐 Daniel Alejo, ERC Curiae Virides Project, Brussels School of Governance – Vrije Universiteit Brussel, Belgium

**12:00 Lunch**

**ROOM MANDELA - 13:00 Panel 6 - Climate Litigation in Africa and from a Global South Perspective | Chair: Xanne Bekaert**

- Litigating Climate Change in the Global South.🌐 Jolene Lin, Associate Professor, National University of Singapore, Singapore
- Towards a Protocol to the ECHR on the Right to a Healthy Environment? Lessons from the ACHPR and the San Salvador Protocol 👤 Linnéa Nordlander, Assistant Professor, University of Copenhagen, Denmark
- - A Global Outlook on Climate Litigation involving Children - Successes and Pitfalls. 🌐 Kata Dozsa, Postdoctoral Researcher, Brussels School of Governance, Belgium
- Transformación de conflictos ecológicos transnacionales en litigios en el siglo XXI: Los múltiples roles de los inversionistas. 🌐 Carolina Garrido, Researcher, JUMA / NIMA / PUC-Rio, Brazil

**14:30 Coffee Break**

**ROOM MANDELA - 14:45 Panel 7 - Multilateralism to Advance the Right to a Healthy Environment and Environmental Democracy | Chair: Claudia Ituarte-Lima**

- The Aarhus Convention: A Framework for Transforming Environmental Governance—The Case of Uzbekistan. 🌐 Bobir Turdiev, PhD Candidate, Law Enforcement Academy of Uzbekistan, Uzbekistan
- From Africa to Latin America & the Caribbean: Trans-Atlantic Tradeoffs of the Twenty First Century. 🌐 Alana Malinde S. N. Lancaster, Lecturer in Law & Head of the Caribbean Environmental Law Unit, The University of the West Indies, Barbados
- Litigating Forests: International Mechanisms for Protecting Forests through Trade and Environmental Law.🌐 Yilly Pacheco, Postdoctoral Researcher, University of Göttingen, Germany
- Defending Nature, Defending Rights. 🌐 Samwel Meng'anyi, Human Resource Manager, Might Society Against Poverty

## 16:00 Coffee Break

**ROOM MANDELA - 16:15 Roundtable (Avocats Sans Frontières) - Opportunities and Challenges faced by Regional and Sub-Regional Courts in the Adjudication of Environmental Cases | Moderator: Michael Musiime**

- Kavita Modi, Leigh Day
- Dr Mwiza Nkhata, ACtHPR
- Mark Odaga, Natural Justice
- Frank Tumusiime, ANARDE
- Nicole Kaneza, Avocats Sans Frontières

**ROOM MANDELA - 18:00 Closing Event - Concluding Remarks by the Co-Organisers**

## 19:00 Reception Dinner (River Trees Rd, Usa River)

# >>>Abstracts

## Panel 1

### Assessing the Role of Alternative Dispute Resolution

In an era where transnational ecological conflicts are increasingly prevalent, non-judicial grievance mechanisms (NJGMs) and other forms of alternative dispute resolution (ADR) have emerged as vital tools for resolving disputes outside traditional court systems. These mechanisms, which include mediation, arbitration, and multistakeholder initiatives, offer flexible and relatively accessible options for stakeholders seeking to address environmental and social grievances. This panel seeks to explore the effectiveness of these mechanisms in providing justice and remedies for communities affected by environmental harm. We will examine the advantages and limitations of these mechanisms, particularly in contexts where judicial avenues may be inaccessible or ineffective. Key areas of discussion will include the legitimacy and accountability of ADR mechanisms, their capacity to address complex ecological issues, and their role in ensuring access to justice for marginalized groups. Through a comparative analysis of various ADR mechanisms and case studies, we aim to identify best practices and areas for improvement in the resolution of transnational ecological conflicts.

#### Meaningful Stakeholder Engagement in Environmental Disputes according to the Soft Case-Law of the OECD NCPs

👤 ***João Teixeira de Freitas, PhD Researcher at Curiae Virides Project, Vrije Universiteit Brussel*** 🇧🇪

The advent of Value Chain Due Diligence obligations raises a number of legal questions concerning the interpretation to be given to these norms by those interpreting it. This presentation focuses on selecting a relevant sample of environmental disputes unfolding in OECD NCPs to try and uncover what is the interpretation given by NCPs to the concept of 'meaningful stakeholder engagement'. The presentation contributes to an increased understanding of the way in which value chain due diligence norms are being interpreted and applied to concrete disputes.

## Special Session by IPIS

### Accessing Remedy through Company-level Remediation Mechanism for Victims of the Williamson Diamond Mine Tailings Dam Breach

#### Community Experiences in Seeking Remedy for Harm caused by the Williamson Diamond Mine Tailings Dam Breach (Tanzania)

👤 ***Hans Merket, Researcher, International Peace Information Service (IPIS)***

This presentation delves into the lived experiences of communities affected by the November 2022 Williamson diamond mine tailings dam breach and their interactions with the mechanisms set up by the mine to remediate harm. Drawing on extensive field research and interviews with impacted community members, the presentation will highlight the challenges faced by victims in navigating the remediation process, including barriers to accessing information and the complexities of corporate redress. The analysis underscores the importance of community agency in seeking justice and offers insights into how the effectiveness of corporate mechanisms can be evaluated through the lens of those most impacted. By centering the voices of affected community members, this presentation aims to inform best practices for corporate accountability and the design of more equitable remediation processes.

## Best Practices in Financial Literacy Training for Recipients of Compensation for Harm caused by the Williamson Diamond Mine Tailings Dam Breach (Tanzania)

👤 ***Jonathan Kifunda, Executive Director, Thubutu Africa Initiatives***

This presentation examines the critical role of financial literacy training as a supporting measure to empowering recipients of compensation following the Williamson diamond mine tailings dam breach. Recognizing that financial knowledge is essential for victims to effectively manage compensation awards, this presentation will discuss the design and implementation of tailored training programs aimed at enhancing financial literacy among affected communities. Drawing on lessons learned from successful initiatives, the presentation will explore the positive impact of such training on community resilience and long-term recovery. By addressing the intersection of economic empowerment and corporate responsibility, this discussion will contribute to the development of comprehensive remedy frameworks that ensure lasting benefits for victims.

## Lessons Learned from Public Legal Education for Communities Impacted by Diamond Mining Operations in Shinyanga (Tanzania)

👤 ***Rose Ugulumu, Project Coordinator & Interim Executive Director, Business and Human Rights Tanzania***

This presentation will focus on the vital importance of public legal education in equipping communities affected by negative impacts of mining operations (such as the Williamson diamond mine) with the knowledge and tools needed to navigate corporate grievance mechanisms. The session will highlight successful strategies for legal empowerment, including workshops and community outreach initiatives designed to demystify grievance and remediation processes and clarify victims' rights. By analyzing the challenges and successes of public legal education efforts, the presentation will offer recommendations for enhancing legal literacy among impacted communities. The aim is to foster a more informed citizenry that can actively engage with corporate accountability frameworks and advocate for their rights effectively.

## Gender-Specific Challenges in Accessing Remedy for Harm around the Williamson diamond mine (Tanzania)

👤 ***Regina Makomba, Project Officer, Core of Equality and Development***

This presentation will explore the unique obstacles that women face in seeking remedy following the Williamson diamond mine tailings dam breach. It will address how entrenched social inequalities, cultural norms, and limited access to resources create additional barriers for women in the grievance process. Through qualitative research and case studies, the session will highlight specific gender-related challenges, such as lack of representation in decision-making processes and the influence of gender-based violence. The presentation aims to shed light on the necessity of integrating a gender perspective into corporate remediation mechanisms to ensure that all victims receive fair and equitable access to justice.

# Panel 2

## The Role and Capacity of National Courts in addressing Transnational Ecological Conflicts

National courts are crucial in adjudicating transnational ecological conflicts, which often involve multiple jurisdictions and complex legal issues. These conflicts, ranging from pollution incidents to resource exploitation, frequently transcend national borders, necessitating an effective legal framework to ensure accountability and justice. This panel will investigate the capacity of national courts to address these challenges, examining their jurisdictional reach, the effectiveness of their rulings, and their ability to enforce international environmental norms. We will explore how national courts navigate the intricacies of transnational environmental cases, including issues related to cross-border pollution, biodiversity loss, and climate change impacts. The discussion will also cover the interplay between national legal systems and international environmental law, highlighting how national courts contribute to the enforcement of global environmental and human rights standards and the protection of social-ecological systems. Key areas of focus will include the challenges faced by national courts in addressing transnational ecological conflicts, such as jurisdictional limitations, legal standing, resource constraints, and political pressures. We will also consider the role of national courts in fostering environmental justice and their potential to drive policy changes at both the national and international levels. By examining case studies and legal precedents, this panel aims to identify best practices for enhancing the effectiveness of national courts in dealing with transnational environmental issues and ensuring that justice is served for affected communities and ecosystems.

### The Role of Home State Courts in Providing Remedies for Human Rights Abuses Committed by Multinational Corporations Abroad

***Sebastian Smart, Senior Research Fellow, Anglia Ruskin University | Angus Nurse, Professor of Law and Environmental Justice, Anglia Ruskin University***

Multinational corporations (MNCs), particularly those in the extractive sector, often operate in regions with weak regulatory frameworks, leading to significant human rights abuses and environmental degradation. When local remedies are inaccessible or ineffective, affected communities increasingly turn to the courts in the headquarters (HQ) locations of these corporations, particularly in the UK and Europe, to seek justice. This paper explores the jurisdictional reach of national courts in holding MNCs accountable for violations committed by their subsidiaries abroad. Using key cases such as Vedanta and Royal Dutch Shell as a foundation, this study critically examines the legal principles that enable courts in MNC home states to provide redress for overseas human rights violations. Despite legal and procedural challenges—such as piercing the corporate veil and overcoming jurisdictional barriers—recent judicial developments have created opportunities for victims to pursue remedies in home state courts. This paper also explores the evolving role of these courts in enforcing international human rights norms and the implications for corporate accountability. By analysing the capacity of national courts to navigate the complexities of transnational litigation, the study aims to shed light on their effectiveness in fostering corporate responsibility and delivering justice for affected communities. Additionally, this research highlights the barriers still faced by claimants and offers insights into strengthening legal frameworks to better address the human rights impacts of global corporate activity.

## The Role and Capacity of National Courts in Addressing Transnational Ecological Conflicts: A Legal and Contextual Analysis of Selected East African Countries

***Anthony Odur, Practising Human Rights Attorney/Senior Litigation Associate, Centre for Strategic Litigation (CSL), Tanzania***

This paper explores the capacity and role of national courts in East Africa, specifically in Uganda, Tanzania, and Kenya, in addressing transnational ecological conflicts. Such conflicts, arising from environmental degradation that transcends national borders, present complex challenges due to shared ecosystems like Lake Victoria and the Serengeti-Maasai Mara. Domestic courts in these countries are empowered by constitutional provisions, national environmental laws, and regional frameworks such as the East African Community (EAC) Treaty to adjudicate environmental disputes. National legislations, like Uganda's National Environment Act (2019) and Kenya's Environmental Management and Coordination Act (EMCA) (1999), provide legal mechanisms for addressing transboundary environmental issues, while Tanzania leverages constitutional provisions on the right to life for environmental protection.
Courts also invoke international environmental instruments like the UNFCCC, the Basel Convention, and the African Charter on Human and Peoples' Rights to resolve these conflicts. However, challenges persist, including the difficulty of enforcing judgments across borders and political or economic pressures. The paper concludes by emphasising the need for strengthened judicial collaboration and enhanced capacity for courts to effectively manage and resolve transnational ecological disputes, ensuring environmental justice across East Africa.

## Paths to Justice: Charting Legal Avenues for DRC Communities in Corporate Environmental Litigation

***Bonheur Minzoto, Legal Researcher, RAID (Rights and Accountability in Development)***

This paper explores the capacity and role of national courts in East Africa, specifically in Uganda, Tanzania, and Kenya, in addressing transnational ecological conflicts. Such conflicts, arising from environmental degradation that transcends national borders, present complex challenges due to shared ecosystems like Lake Victoria and the Serengeti-Maasai Mara. Domestic courts in these countries are empowered by constitutional provisions, national environmental laws, and regional frameworks such as the East African Community (EAC) Treaty to adjudicate environmental disputes. National legislations, like Uganda's National Environment Act (2019) and Kenya's Environmental Management and Coordination Act (EMCA) (1999), provide legal mechanisms for addressing transboundary environmental issues, while Tanzania leverages constitutional provisions on the right to life for environmental protection. Courts also invoke international environmental instruments like the UNFCCC, the Basel Convention, and the African Charter on Human and Peoples' Rights to resolve these conflicts. However, challenges persist, including the difficulty of enforcing judgments across borders and political or economic pressures. The paper concludes by emphasising the need for strengthened judicial collaboration and enhanced capacity for courts to effectively manage and resolve transnational ecological disputes, ensuring environmental justice across East Africa.

## Solidarity in Action: Unveiling the Role of Asian Constitutionalism in Global Climate Governance

***Emma Imparato, Associate Professor of Institutions of Public Law, University of Naples L'Orientale***

The climate emergency represents one of the most significant challenges for contemporary constitutionalism, requiring a rethinking of existing legal frameworks to adequately address environmental crises. In this context, comparative law serves as a vital tool for identifying emerging trends in various constitutional systems related to climate change issues. This research aims to conduct an in-depth analysis of the complex legal framework governing climate change in Asia, considering both international and domestic levels. The study will address the delicate balance between conflicting principles and interests in responding to climate emergencies, with particular attention to the interplay between rights and duties in Asian climate constitutionalism. From a normative perspective, the research will explore how Asian constitutional systems seek to reconcile economic, environmental, and social needs. Special emphasis will be placed on the principle of solidarity, which stands out as a fundamental feature of Asian constitutionalism. This principle not only shapes national policies but also promotes transnational cooperation and regulatory harmonization among Asian states, fostering a coordinated response to climate challenges.

The primary objective of this study is to identify the distinctive features of Asian climate constitutionalism in the 21st century, with a particular focus on the principle of solidarity. To illustrate these dynamics, the study will use China and Pakistan as case studies, two countries that are emblematic due to their geopolitical influence and their approach to climate issues. Ultimately, the research seeks to highlight the unique contribution that Asian constitutionalism can offer to global climate governance, emphasizing the central role of solidarity in promoting a collective and effective response to the climate emergency.

## The Role of the Principle of Solidarity in Litigating Climate Change in Asia

***Giacomo Giorgini Pignatiello, Research Fellow in Comparative Public Law, University of Naples L'Orientale***

Climate emergencies are reshaping contemporary constitutionalism, pushing legal systems to develop new strategies to address the effects of climate change on societies. This study adopts a comparative constitutional approach to explore the role of climate litigation in combating climate change within the Asian context. Through an analysis of relevant case law from apex courts, the research identifies key features of Asian climate constitutionalism, focusing on China, South Korea, and the Philippines as prototypical cases warranting further investigation.

A central aspect of the analysis is the principle of solidarity, which emerges as particularly relevant in emergency contexts. The study examines how courts in various Asian countries interpret and apply constitutional principles to tackle climate-related challenges, highlighting how these judicial decisions reflect broader socio-political and cultural frameworks. This distinct approach to environmental governance contributes to a unique understanding of how the law responds to climate crises in the region.

Specifically, the research underscores the crucial role of the principle of solidarity, often rooted in Asian legal traditions, in shaping judicial responses to climate emergencies. It fosters a collective responsibility towards environmental protection, aligning judicial decisions with a broader ethical framework. These court rulings not only address immediate needs but also represent an attempt to integrate a holistic vision of environmental governance, with potential global implications.

By providing valuable insights into the evolving dynamics of constitutional law in Asia, this study highlights its impact on international efforts to mitigate climate change. It contributes to the broader dialogue on global strategies, emphasizing the role of solidarity and environmental justice as foundational elements of a legal response to the climate crisis.

## Local Knowledge as Climate Resiliency to Adjust the Rights-Based Framework in Pakistan

***Zara Salman, International Human Rights Fellow, Perseus Strategies LLC and Alumnus of University of Chicago***

As climate catastrophes rise in severity around the world, an international human rights framework is being mobilized to remedy the impact of climate change on vulnerable populations. This study seeks to investigate the efficacy of applying a universal human rights-based approach to the material consequences of climate change in a given locality. Using Pakistan's 2022 catastrophic floodings a case study, I explore the following question: What is the dissonance between the implementation of the rights-based framework at various levels of governance and local experiences of accessing redress nominally offered by the framework? Building upon in-depth interviews with twelve internally displaced persons in Pakistan, I argue that the failure of implicated actors to guarantee my interlocutors' basic human rights following climate catastrophe complicates the realization of the framework on a local level. Ultimately, this study finds three overarching reasons for the dissonance between multilateral governance of human rights and local experiences of climate change: (1) the human rights regime favours a paradigmatic view of global climate change impact to the detriment of remedying local harms; (2) local experiences of climate change are alienated from their source, dislocating responsibility for climate change; and (3) the collective experience of climate change in Sindh and Gilgit-Baltistan challenges a system which privileges universalist models of climate justice. Thus, the dissonance occurs between narrow models of climate change responsibility and the communal experience of climate change in Sindh and Gilgit-Baltistan. These findings illuminate how the rights-based framework requires reimagining so local communities facing unique climate challenges like those in Pakistan can benefit from growing avenues for climate protection

# Roundtable

## Conflict of uses over Water (and other Natural Resources): An (Southern) African Perspective

### Roundtable

***Zukiswa Mqakanya, South African Human Rights Commission; Deputy Director for Africa for the GNHRE Ntando Ncamane - Senior Lecturer, Rhodes University Clive Vinti, Regional Director for Africa for the GNHRE, Associate Professor, University of the Witwatersrand***

The Treaty on the Lesotho Highlands Water Project between the Government of the Kingdom of Lesotho and the Government of the Republic of South Africa (LHWP) has an underlying transnational ecological conflict in respect of the water that is traded between the countries. The LHWP solely seeks to ensure the supply of water to South Africa from the Orange River in return for royalties. This inflexibility is confirmed by the Phase II Agreement which does not tolerate any interruption to the supply of water to South Africa. However, climate change projections predict that eventually, Lesotho will be unable to meet its water supply obligations to South Africa under the LHWP. Lesotho's National Adaptation Programme of Action (NAPA) on Climate Change under the United Nations Framework Convention on Climate Change of 2015 predicts periods of water scarcity by 2062 and the World Bank projects that the average amount of unmet water transfers increases from about 500 million cubic metres in the 2016–2020 period to almost 2 billion cubic metres in the 2046–2050 period, in the absence of implementation of the additional phases envisaged. Vinti notes that this will eventually lead to a 'conflict of uses' in the LHWP. It is unclear if that will spell the end of the agreement. The LHWP suggests that the supply of water to South Africa precedes the water uses of Lesotho residents. However, Lesotho legislation requires that the 'domestic water uses' i.e. water for personal and household needs of Lesotho, trump all other uses in a conflict of uses. In this regard, the LHWP regime requires that the domestic legislation of both countries must be brought into line with the LHWP. Vinti then reviewed this a disjuncture between the domestic legislation of Lesotho and the LHWP by assessing whether the LHWP is in line with the key underlying transboundary water principles that address the anticipated conflict of uses such as the principles of equitable and reasonable utilisation, sustainable development and permanent sovereignty over natural resources, which address the projected conflict of uses. To this end, Vinti found that the LHWP is inequitable, unsustainable and violates Lesotho's right to permanent sovereignty over the water in the LHWP. However, what is left unexplored in Vinti's thesis is the question of what would be the appropriate platform for resolution of this transnational dispute between the largest economy in Africa and its neighbour which is wholly located in South Africa. The yet to be constituted Southern African Customs Union (SACU) tribunal and the seemingly transient Southern African Development Community (SADC) tribunal offer useful starting for a discussion the jurisdiction, capacity, and effectiveness of these tribunals and explore if there are quasi-judicial bodies to help manage and resolve this and other transnational environmental conflicts relating to natural resources with transboundary water as an apt entry point into this discussion. We will also conduct a comparative analysis of African regional judicial approaches on ecological conflicts to shed light on the evolving landscape of regional environmental adjudication and its implications for environmental governance in Africa.

# Panel 3

## The Protection of Environmental and Human Rights Defenders

Environmental human rights defenders (EHRD)/biosphere defenders play a crucial role in advocating for the protection of ecosystems and communities affected by ecological degradation and environmental injustice. However, these defenders who are vital agents of change for healthy ecosystems and climate action often face significant risks, including threats, harassment, and violence, which hinder their ability to effectively carry out their work. This panel will focus on the legal and non-legal measures in place to respect, protect and fulfil the rights of biosphere defenders. We will explore the effectiveness of international, regional, and national frameworks in safeguarding the rights of these individuals, groups and organizations. Discussions will also cover the roles of civil society, international organizations, and governments in supporting defenders' initiatives on healthy ecosystems and biodiversity and climate adaptation. By examining case studies and discussing strategies for an enabling environment for Earth stewardship, we aim to identify actionable recommendations for strengthening the support systems for environmental and human rights defenders globally.

### The situation of Human Rights Defenders in Addressing Transnational Environmental Conflicts: the case of Oil Development Projects in Uganda and Tanzania

👤 ***Bashir Twesigye, Executive Director, Civic Response on Environment and Development***

Uganda is developing a major oil project in western Uganda, a region of high ecological sensitivity. The project is touted as a key component of the country's energy transition plan, namely, that oil revenues will be used to finance an elaborate transition from fossil fuels to cleaner energy. The EACOP project, which connects Uganda's oil fields to the Tanzania port of export is a major infrastructure project that will allow the evacuation of crude to the international market. Both the upstream and midstream phases of the projects' development have been contested by civic groups, and have implications for peace relations, rule of law, environmental sustainability. The proximity of upstream operations to the DRC, alongside transboundary environmental ecosystems and shared resources calls for deliberate interventions that will promote peaceful relations and sustainable development of the resources. The situation of human rights defenders has been of particular interest. Human rights defenders across the industry's value chain have been accused and, in some cases, arrested, and prosecuted in Courts of Law, in what is seen as SLAPP suits costing environmental defenders their freedoms, time and money. National and regional courts have not been particularly helpful in facilitating timely hearing of cases and supporting the aggrieved to access justice. In some situations, the courts have been accused of not doing enough to address the cases that are brought before them. This has not only had a chilling effect on the efforts of the human rights defenders but also undermined access to justice and rule of law. Increasingly, the recourse of many aggrieved human rights defenders has been the administrative frameworks often at the international level, which may not address underlying problems.

We will use two case studies to illustrate the situation of human rights defenders and the worrying trends for environmental sustainability and regional peace and stability. One of the case studies relates to the environmental challenges arising from the upstream oil and gas operations and their transboundary nature. The other case study relates to the development of the EACOP project and the risks for environmental conservation and biodiversity preservation as well as the implication for human rights defenders in both Uganda and Tanzania. In the broader context of civic space, the panel presentation will provide insights on practical approaches to addressing transnational conflicts but also galvanizing civil society efforts for enhancing accountability and sustainable development solutions.

### Forced Displacement in Africa: Could the Tanzanian Maasai Obtain Justice? The EACJ Case under the lens of the Ogiek case before the ACtHPR

🌐 ***Cristiano d'Orsi, Lecturer, Senior Research Fellow, Senior Consultant, University of Johannesburg*** 🇿🇦

In October 2022, the East African Court of Justice (EACJ) ruled in favour of the Tanzanian Government in a case brought by Tanzanian Maasai villages in the Ngorongoro area. The Maasai brought the case before the EACJ after several instances in which the Tanzanian Government orchestrated forced evictions of Maasai people from their ancestral lands. The government undertook these evictions under the stated purpose of conservation. We can, however, call this purported purpose into question on two key bases. First, the Tanzanian Government has since given this land to the United Arab Emirates' (UAE) Otterlo Business Corporation for the development of a private airport and game reserve for trophy hunting. Second, the Maasai have proven themselves a people uniquely capable of furthering conservation efforts. The EACJ claimed that the Maasai people did not provide sufficient evidence that the forced evictions were violent or that they were carried out on legally registered land. In the aftermath of this decision, the Maasai were considering what alternative avenues they could access to obtain justice against the Tanzanian Government. The most evident next step would have been to pursue a case in the African Court on Human and Peoples' Rights (ACtHPR). The suitability to go to before the ACtHPR was made clear by its ruling in the case of the Ogiek people against the Kenyan Government in 2017 (Application 006/2012, African Commission on Human and Peoples' Rights v Republic of Kenya: Judgment of 26 May 2017). In that circumstance, the ACtHPR ruled in favour of the Ogiek people finding that the Kenyan Government could not hold them accountable for the destruction of the Mau Forest and, more importantly, found that the Ogiek were entitled to recognition as an indigenous people with fundamental rights. Many claims of violations of the African Charter on Human and Peoples' Rights (Banjul Charter) parallel claims that the Maasai could bring against the Tanzanian Government. Yes, the precedent of Kenya need to be better analysed because in October 2023 the Kenyan local authorities have informed the Ogiek community residing in the Maasai Mau Forest in south-western Kenya that eviction orders have been processed. These evictions were happening against the backdrop of the Kenyan Government not abiding by also its legal obligations from an ACtHPR 23 June 2022 ruling in favour of the Ogiek. In June 2023, the ACtHPR unanimously dismissed all objections from the Government of Kenya to the 2017 ruling and delivered a pioneering reparation judgment concerning the rights of the Ogiek Peoples to their ancestral land (African Commission on Human and Peoples' Rights v. Republic of Kenya, Judgment of 23 June 2022 (Reparations)).

Yet, on 29 November 2023, in Appeal No. 13 of 2022 (Ololosakwan Village Council and 3 Others vs Attorney General of the United Republic of Tanzania) the EACJ Appellate Division ordered to remit to the 1st instance division the case to be adjudicated again in accordance with the applicable laws and determine the following three issues: whether the eviction was conducted in Serengeti National Park or their respective villages; whether the acts, omissions, and conduct of the Respondent violated the 1999 East African Community Treaty; the remedies the parties are entitled to. For the Tanzanian Masaai, however, the option of the ACtHPR is still valid, thanks to the precedent of the Ogiek case. That is why, in our work we will try to understand the extent of implementation and the influence that the Ogiek case could have on a possible case involving the Maasai of Tanzania and the eviction of the lands where they have been living for centuries. We need to carefully reflect on this because, by the first judgement delivered by the EACIJ on the Maasai situation does not seem that the ACtHPR Ogiek case was kept into great consideration by the regional court.

## Climate Change, Caribbean Large Ocean States & Community Defenders: Experiences with Article 9 of the Escazú Agreement in the Caribbean Region

***Alana Malinde S. N. Lancaster, Lecturer in Law & Head of the Caribbean Environmental Law Unit, The University of the West Indies***

In 2017, the island of Barbuda – one of the two major islands that make up the Caribbean nation of Antigua and Barbuda – was approximately 95% destroyed by Category 5 Hurricane Irma. This climate-induced impact, set of a chain of events, which led to one of the most audacious land grabs in the English-speaking Caribbean. Obfuscated by the emergency evacuation, the population of approximately 1,634, of the 62 square miles (160 km2) isle, soon realised that heavy machinery had moved in to construct a private airport for billionaire US investors who had luxury mansions and exclusive hotels already planned. Much of this construction would impact the Ramsar sites and many coastal ecosystems critical to the tourism and fisheries industries which serve as the island's main economic activities. To achieve this land and coastal grab, the government passed legislation to abolish the only example of commonhold extant in the Caribbean, a remnant of colononisation, when the entire island had been covered by a single land grant, allowing Barbudans to keep autonomous cultivation on communal property after slavery's abolition in 1834. Since 2018, a group of Barbudans became the Caribbean's most celebrated environmental defenders to commence a series of legal challenges to the construction of the airport and its impact on the island's fragile ecosystem. In November 2023, the U.K's Privy Council handed down a decision in the Mussington case, in what should ideally a final judgment on the issue, and referenced directly the role of the Escazú Agreement to which Antigua and Barbuda had ratified since 2020. While friction between coastal communities, States and the developers are not new in the Caribbean, there is an increasing awareness of the importance of the ocean-climate change nexus in Caribbean States, including small island developing states (SIDS) of the Caribbean Community (CARICOM) and the Organisation of Eastern Caribbean States (OECS). The proliferation of the Escazú Agreement within the promises to significantly enhance the procedural rights of the Caribbean's populace, which offering protection and recognition to environmental defenders. The Presentation will analyses the significance of the Mussington decision and opportunities for the safeguarding of human rights and healthy environment in the Caribbean.

## Biosphere Defenders Operationalising Prevention in Climate Adaptation

***Claudia Ituarte-Lima, RWI, Thematic lead on Human Rights and Environment / GNHRE, Director | Indraraj Gunasekara, Lawyer, Sri Lanka***

Human rights depend on a healthy biosphere- the sum of all ecosystems or the zone of life on Earth. Healthy and functioning ecosystems provide humans and other living beings with clean air to breathe, water to drink and nutritious food to eat which are vital for the realization of the right to a clean, healthy and sustainable environment and interconnected human rights.1 Once significant harm to ecosystems occurs, it can be irreversible with cascading risks and tipping points of no return. For example, exceeding biodiversity-climate tipping points can lead to reduced stability of crop yields that generate food crises.2 Therefore the prevention principle is a cornerstone of international environmental law and human rights law. Yet, this principle remains abstract and elusive in terms of what is required of states to prevent ecosystem's harm and climate-related risks. The research question of this article is how can biosphere defenders' public participation in the context of climate sensitive-sensitive land use planning help operationalise the prevention principle? The article uses a composite of methods including legal doctrinal method3 and conceptual analysis of academic and grey literature. The doctrinal legal method serves to conceptualize the normative content of the prevention principle based on legal instruments that have a bearing on public participation in climate adaptation including legal obligations deriving from international human rights law and the UN Convention on Biological Diversity, the UN Framework Convention on Climate Change and the Partis Agreement. Using the living instrument method of legal interpretation which entails interpreting human rights treaties in the light of present-day conditions4, these rights are weaved with the GBF targets (in particular Target 22 and 23) adopted in 2022 and interpreted in a way that responds to contemporary social-ecological challenges.

## Defending Nature, Defending Rights

***Samwel Meng'anyi, Human Resource Manager, Might Society Against Poverty***

The protection of environmental and human rights defenders in Mtwara, Tanzania, is crucial in addressing the region's social, economic, and environmental challenges. This panel will explore the unique threats faced by defenders in Mtwara, a region rich in natural resources but plagued by conflicts over land, natural gas, and other resources. The panel will delve into the intersection of environmental protection and human rights, examining the local and systemic pressures that put defenders at risk. Through a combination of case studies, expert insights, and testimonies from local activists, the panel will shed light on the dynamics of resistance in Mtwara, where defenders often confront powerful state and corporate actors. The discussion will also address the role of local and international organizations in advocating for stronger legal frameworks, offering protection, and supporting the resilience of these defenders. By focusing on Mtwara, the panel aims to bring regional issues into the broader conversation about global strategies for protecting environmental and human rights defenders. This presentation will focus on the specific challenges faced by environmental and human rights defenders in Mtwara, Tanzania.

It will examine the complex interplay of factors that make this region particularly volatile, including disputes over natural gas exploitation, land rights, and environmental degradation. The presentation will highlight the vulnerabilities of defenders who oppose large-scale projects that threaten the environment and local communities, often facing harassment, legal persecution, and violence. It will also showcase successful examples of community mobilization and advocacy that have managed to protect both the environment and human rights in Mtwara. The presentation will conclude by proposing actionable strategies to enhance the protection of defenders in the region, emphasizing the importance of legal support, international solidarity, and local empowerment.

## Panel 4

### Role of Regional and Sub-Regional Bodies in Adjudicating Ecological Conflicts

Regional or sub-regional bodies, such as the African Court on Human and Peoples' Rights, the African Commission on Human and People's Rights, the East African Court of Justice, or the Court of the Economic Community of West African States play a significant role in the adjudication of environmental disputes that transcend national borders. These courts provide forums for addressing violations of environmental and human rights and contribute to the development of international environmental law. This panel will delve into the jurisdiction, capacity, and effectiveness of regional bodies in managing and resolving environmental conflicts. We will discuss the impact of landmark decisions on national policies, the challenges faced by these courts in handling complex environmental cases, and their role in ensuring justice for affected communities. Through a comparative analysis of various regional judicial approaches, this panel aims to shed light on the evolving landscape of regional environmental adjudication and its implications for global environmental governance.

#### The Imperative for an Autonomous Right to a Healthy Environment in the European Human Rights System

***Francesca Cerulli, Postdoctoral Researcher, University of Florence*** 🇮🇹

On 18 April 2024, the Parliamentary Assembly of the Council of Europe (PACE) adopted a resolution stressing the urgency of a legally binding instrument recognizing an autonomous right to a healthy environment. Among the regional human rights mechanisms, the Council of Europe is currently the only one in which the right to a healthy environment has not been directly provided for or reconstructed through interpretation by the competent human rights court. This study will attempt to show why, despite the process of "greening" human rights traditionally undertaken by the European Court of Human Rights (ECHR) in its jurisprudence, the recognition of this right is the only feasible way to fill the gaps in environmental protection in the European system. The analysis will be based on an examination of the text proposed by the PACE as an additional protocol to the European Convention on Human Rights, and on the work of the Drafting Group on Human Rights and the Environment of the CoE Steering Committee on Human Rights. The legal implications of its possible inclusion will therefore be analyzed. For example, it will be asked whether and to what extent its adoption could break with the utilitarian and individualistic approach to environmental protection typical of the European paradigm of human rights protection.

Moreover, hypotheses will be developed on the approach to victim status and legal standing that can better guarantee the operability of this right. As has recently been pointed out in KlimaSeniorinnen, the complexity of climate change and the need to take into account the interests of future generations and intergenerational burden-sharing would make collective action by associations or other interest groups crucial. Likewise, looking at regimes that already provide for a right to a healthy environment, possible criteria for establishing the legal standing of individual claimants in defense of the environment will be identified.

### Access to Environmental Justice for indigenous peoples and the Inter-American Human Rights System: Assessing the Implications of the Escazú Agreement

***Ricardo Pereira, Academic & Associate Professor (Reader in Law), Cardiff University***

This paper articulates the need for strengthening access to environmental and climate justice for indigenous peoples before the Inter-American Human Rights System. The Inter-American Court (IACtHR) has articulated a connection and interdependency between indigenous peoples and environmental rights and the human right to a healthy environment. According to a 2021 study, almost half of the remaining intact forests (large undegraded forest areas) in the Amazon Basin are in indigenous territories. Although the first climate change case brought before the inter-American system was rejected on evidentiary grounds, it helped to advance the debate on the accountability of States for the displacement of Indigenous populations due to the impacts of climate change. More recently, in January 2023, Chile and Colombia requested an IACtHR Advisory Opinion to clarify the scope of the obligations of States in responding to the climate emergency in the context of human rights law. From the perspective of regional access to environmental justice, a landmark development was the adoption of the 2018 Regional Agreement on to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) Although only two articles of the Agreement explicitly address indigenous peoples, particularly significant is Article 9 on the protection of human rights and environmental defenders. This paper will argue that the adoption of the Escazú Agreement should ignite reforms to improve access to environmental and climate justice for indigenous peoples not only before national courts but also before the Inter-American Human Rights System, particularly to improve the remedies available to parties, relaxing the rules of standing and the enforcement mechanisms for implementation of decisions and recommendations.

## Opportunities and Challenges faced by Regional and Sub-Regional Courts in the Adjudication of Environmental Cases

👤 ***Nicole Kaneza, Lawyer, Avocats Sans Frontières***

In 2012, the Economic Community of West Africa States Court of Justice issued a landmark judgment on the obligations of member states to hold multinationals accountable for environmental violations in the case of SERAP v. Nigeria. The Court established a crucial precedent and held that Nigeria had violated article 21 (the right to natural wealth and resources) and article 24 (the right to a satisfactory environment) of the African Charter of Human and People's Rights by failing to protect the Niger Delta and its people from the operations of oil companies that had devasted the region's environment. This case is also illustrative of the growing mandate of sub-regional courts in the adjudication of human rights cases. The majority of sub-regional courts, e.g. the East African Court of Justice, the ECOWAS Court or the Tribunal of the Southern African Development Community were initially established to ensure economic and political integration, and to resolve conflicts between member states. The incorporation of human rights into their agenda is fairly new as they had no specific human rights mandate. With time, the broad interpretation of treaty provisions, as well as the incorporation of international human rights standards in judgements, have allowed for NGOs and individuals to file complaints for human rights violations. What is the role of regional and subregional courts in the advancement of human rights? What are the challenges to access justice at regional or sub-regional level? In some cases, obstacles are enshrined in the law, the time limits or the obligation to exhaust all available domestic remedies. In other cases, especially environmental suits, obstacles arise in building up and presenting a compelling case against a state and powerful multinational, especially where access to evidence and proof of violations is difficult to establish.

## Analysing the role of Regional Courts in cases of Climate-Induced Displacment and Climate Justice

🌐 ***Ateka Hasan, Academic, Jamia Millia Islamia*** 🇮🇳

Judicial Mechanisms have emerged as vital tools for resolving various environmental-related issues. Among them, climate-induced displacement has come to be a major challenge across the globe. As Climate-induced displacement escalates in vulnerable regions of the world like Africa and South Asia- it becomes vital for International, regional, and sub-regional judiciary bodies to become involved and play a critical role in resolving and adjudicating transnational environmental threats. This paper explores the capacity and efficacy of these organizations in addressing climate-related impacts, particularly climate-induced displacement. The study will cover and compare landmark decisions on this issue, examining how regional courts influence and shape national policy and promote climate justice. The paper aims to highlight these judicial bodies' potential to foster climate justice and peacebuilding in various types of traditional and non-traditional climate-related threats. It will compare cases from around the world narrow down what methods and policy can eventually be adopted by countries, and eventually conclude with a set of recommendations that could potentially lead to global solutions for this issue.

### Measuring the Impact of Litigation beyond Victory in Court: Learnings from Indigenous Peoples Human Rights Litigation

*Jeremie Gilbert, Professor of Human Rights, University of Roehampton*

Across the globe indigenous peoples are increasingly using litigation to seek remedies for violation of their fundamental human rights. The rise of litigation is also to be placed in the larger issue of increased land grabbing, and the general fact that most indigenous peoples live on territories where protected areas are located, leading to their forced displacement, loss of access to essential natural resources and cultural appropriation. Ass reaction many Indigenous communities have turned to regional human rights courts, notably the Inter-American Court of Human Rights and the African Court on Human and Peoples' s Rights, leading to the emergence of a significant jurisprudence from these regional huma rights courts.

Many of these cases have been 'victorious' for the concerned communities, with courts affirming their fundamental rights in such disputes. However behind the headlines of victory, for many communities these decisions have failed to materialised and have remain victory only on paper. Implementation of judgements in favor of indigenous communities is uniformly poor. In several instances, indigenous peoples won a case in court, but reaped no material benefits due to the state's failure to enforce the judgment.

Building on a research project that has examined several of these instances of victory in court but lack of proper implementation, my paper proposes to reflect on methodologies to measure and understand what are the impact of these case of litigation beyond the simple victory in court. The paper will share some findings for the project about how, even if implementation was absent, winning a case proved to be significant vehicle to support changes in jurisprudence and government policies, as well as changes in attitudes and behaviors.

## Panel 5

### Implementation of Judicial Decisions - Post-decision Dynamics

Regional or sub-regional bodies, such as the African Court on Human and Peoples' Rights, the African Commission on Human and People's Rights, the East African Court of Justice, or the Court of the Economic Community of West African States play a significant role in the adjudication of environmental disputes that transcend national borders. These courts provide forums for addressing violations of environmental and human rights and contribute to the development of international environmental law. This panel will delve into the jurisdiction, capacity, and effectiveness of regional bodies in managing and resolving environmental conflicts. We will discuss the impact of landmark decisions on national policies, the challenges faced by these courts in handling complex environmental cases, and their role in ensuring justice for affected communities. Through a comparative analysis of various regional judicial approaches, this panel aims to shed light on the evolving landscape of regional environmental adjudication and its implications for global environmental governance.

## Protecting Indigenous Rights to Land and Natural Resources: Perspectives on the Carbon Market in Kenya

👤 ***Xanne Bekaert, Research and Teaching Assistant, Faculty of Law (Department of Public Law) Vrije Universiteit Brussel*** 🇧🇪

The expansion of carbon markets, a rapidly growing but controversial area, forms the cornerstone of this research. With ongoing discussions on carbon markets at the forefront of international negotiations, particularly at COP28 in Dubai and the upcoming COP29 in Baku, the importance of understanding the broader implications of these markets is of utmost importance. Carbon markets work through a trading system in which carbon credits generated by entities that reduce greenhouse gas emissions are bought and sold. These credits, generated by projects such as renewable energy initiatives and REDD+ programmes, are used by companies and individuals to offset their own emissions. The controversies surrounding carbon markets reflect a dichotomy - some see them as crucial in the fight against climate change, providing vital funding for forest protection, while others see them as tools for greenwashing and worse, instruments that lead to the dispossession of indigenous peoples and local communities. A stark illustration of this controversy occurred in November 2023, when approximately 1,000 Ogiek people were evicted from Kenya's Mau Forest, an act justified by the Kenyan government as necessary for forest conservation and climate mitigation. This incident, which may be linked to a carbon credit scheme involving the Kenyan government and a Dubai-based company, highlights the profound impact that carbon market policies can have on indigenous peoples. Such incidents are not isolated, but reflect a wider trend in which indigenous communities, particularly in the Global South, are bearing the brunt of carbon market expansion. These communities often lack awareness and understanding of these projects, resulting in significant disruptions to their livelihoods and cultural heritage. This paper explores the concept of 'green colonialism', where carbon market initiatives, primarily driven by the Global North, disproportionately impact indigenous communities in the Global South. Looking back at the Ogiek case law and its implementation, this study explores how the integration of international human rights standards and the principle of Free, Prior and Informed Consent (FPIC) into carbon market policies can safeguard the rights of indigenous peoples and ensure that these initiatives contribute to equitable and sustainable climate action.

## The Right to a Clean and Healthy Environment in Kenya: Implementation of Judicial Decisions

🌐 ***Christine Nkonge, Constitutional and Human Rights Expert, Consultant (former immediate employer - Katiba Institute)*** | 🌐 ***Mark Odhiambo Odaga, Human Rights and Environmental Lawyer***

The paper will analyse the observance and protection of the right to a clean and healthy environment in Kenya through the implementation of judicial decisions. The paper will also provide a snapshot of the breadth and scope of environmental rights recognised in Kenya and the administrative and judicial procedures for their enforcement. The paper will examine decisions from domestic courts and regional human rights mechanisms related to Kenya. The paper will ultimately address challenges, glean the best practices and offer recommendations for effective post-judgment implementation of environmental court decisions.

The Constitution of Kenya recognises the right to a clean and healthy environment and provides broad guidelines on using and managing land, natural resources and the environment. The guidelines include imperatives to ensure sustainable utilisation, conservation, protection of ecologically sensitive areas, and protection of genetic resources and biological diversity. The Constitution empowers the courts and administrative tribunals to prevent or stop any act or omission harmful to the environment and to offer compensation to any victim whose right is violated. Furthermore, the Constitution also provides for expanded standing, allowing individuals and groups not directly affected by violation of the right to institute proceedings on behalf of those affected. As a result, since 2010, individuals and civil society groups in Kenya have filed suits alleging environmental rights violations. The litigation has addressed issues such as pollution of the Nairobi river, dumpsites in residential areas, lead poisoning from effluent from a factory, proposed construction of a coal power plant and construction of a port in an ecologically sensitive area. The purpose of the litigation is to protect the environment, restore its health, and indemnify persons for their loss. However, this purpose and the intent of the Constitution can only be realised if court decisions are fully implemented.

## Post-Decision Dynamics in Transnational Ecological Litigation: The Critical Role of African NHRIs

👤 ***Foluso Adgalu, Programme Officer, Network of African National Human Rights Institutions***

The enforcement of judicial decisions in transnational ecological disputes faces significant challenges, especially in terms of compliance across multiple jurisdictions. In Africa, where climate change and environmental degradation disproportionately affect vulnerable populations, National Human Rights Institutions (NHRIs) play a critical role in bridging legal decisions with practical enforcement. Through their unique legal mandate, NHRIs monitor government adherence to national and international court rulings, while providing oversight and pushing for stronger enforcement mechanisms, particularly in cases involving powerful multinational corporations or resistant governments.

NHRIs engage in public advocacy and legal reform and serve as crucial intermediaries between local communities, governments, and international bodies, ensuring that victims of environmental harm receive appropriate remedies, such as compensation or ecosystem restoration. They also collaborate with African human rights bodies to address ecological conflicts and promote greater accountability across borders. This article will examine key climate-related rulings within the African human rights system, showcasing the potential of NHRIs in enforcing transnational environmental justice. By analysing the challenges NHRIs face—such as political interference, resource limitations, and the overwhelming influence of multinational corporations—the article will also offer practical recommendations to strengthen NHRIs mandates, ensure their independence, and improve the implementation of rulings of African human rights bodies on ecological disputes.

# Panel 6

## Climate Litigation in Africa and from a Global South Perspective

Climate litigation is emerging as a powerful tool for addressing climate change and holding actors accountable for their contributions to environmental degradation. In Africa, where climate impacts are particularly severe, litigation is increasingly being used to seek justice and promote climate resilience. This panel will examine the landscape of climate litigation in Africa, focusing on key cases, the role of regional and international legal frameworks, and the unique challenges and opportunities faced by litigants on the continent. We will discuss the strategies employed by African communities and organizations to leverage litigation for climate justice and explore the implications of these efforts for global climate governance. By highlighting the diverse experiences and innovative approaches in African climate litigation, this panel aims to foster a deeper understanding of the potential and limitations of litigation as a tool for climate action in the region.

### Litigating Climate Change in the Global South

🌐 ***Jolene Lin, Associate Professor, National University of Singapore*** 🇸🇬

Drawing from our recently published book, “Litigating Climate Change in the Global South” (Oxford University Press, June 2024), we seek to share our findings about the opportunities, barriers and trends in the area of climate litigation in Africa.

### Towards a Protocol to the ECHR on the Right to a Healthy Environment? Lessons from the ACHPR and the San Salvador Protocol

👤 ***Linnéa Nordlander, Assistant Professor, University of Copenhagen*** 🇩🇰

The European Court of Human Rights (ECtHR) has long acknowledged the critical role of the environment in ensuring the full enjoyment of rights protected by the European Convention on Human Rights (ECHR). Most recently, in Verein KlimaSeniorinnen and Others v Switzerland, the ECtHR recognized the adverse effects of climate change as a violation of the right to private and family life. However, the Court’s anthropocentric approach limits its ability to fully address the complex relationship between climate change and human rights. Against this backdrop, the negotiation of a protocol to the ECHR on the right to a healthy environment raises important questions regarding how such a development could reshape the Court’s jurisprudence, particularly in relation to standing requirements and the substantive obligations owed by states. This paper explores these issues by drawing lessons from two other regional human rights instruments that explicitly enshrine the right to a healthy environment: Article 24 of the African Charter on Human and Peoples’ Rights (ACHPR) and Article 11 of the Protocol of San Salvador to the American Convention on Human Rights (ACHR). It examines how the African Commission and Court on Human and Peoples’ Rights and the Inter-American Commission and Court of Human Rights, have interpreted environmental rights in connection with life, health, and culture, establishing key principles that offer a more ecocentric approach. The paper argues that adopting a justiciable right to a healthy environment in the ECHR context would enable the ECtHR to develop holistic jurisprudence, fully recognizing the interconnection between environmental protection and human well-being. With climate change litigation on the rise, adopting a broader perspective, informed by African and Inter-American jurisprudence, could empower the ECtHR to more effectively safeguard both human rights and environmental well-being.

## A Global Outlook on Climate Litigation involving Children - Successes and Pitfalls

***Kata Dozsa, Postdoctoral Researcher, Brussels School of Governance***

Climate change and its effects are a major concern for children: evidence shows that children around the world seek to exhaust all kinds of transformative pathways that challenge the system and demand more climate action that considers their rights. In the pursuit of climate justice, children often strive to amplify their voices, raise awareness and hold duty-bearers of climate action accountable - including in courts. However, legal procedures are often fraught with constraints, especially for the most vulnerable and marginalised communities where children are even more likely to lack channels to have their voice heard Through analysing landmark cases globally which involve children as plaintiffs - regardless of whether actively or symbolically -, the presentation will assess both the legal process and the outcome, focusing on several critical aspects: 1) the status and role of children as plaintiffs: the presentation will provide and insight the strategic and symbolic significance of child plaintiffs and the implications for their representation in court 2) the strategic connection between children and future generations: do children have a moral burden to shoulder intergenerational justice? Furthermore, how do courts consider standing and rights of future generations in different jurisdictions? 3) extraterritoriality of climate responsibilities: the discussion will focus on strategic implications for addressing global climate challenges in litigation, and how these affect children's rights. 4) Finally, the legal representation of children v. the right to be heard: the presentation will critically approach the question whether courts can serve as empowered spaces for children to express their views and will contrast the legal representation (also for future generations) with the right to be heard. The presentation will conclude by assessing how these diverse aspects of litigation balance children's advocacy and the broader implications for climate justice.

## Transnational Climate Litigation: Addressing Climate Injustices Between the Global North and South

***Carolina Garrido, Researcher, JUMA / NIMA / PUC-Rio***

The climate justice movement exposes the unequal contribution by the Global North to the climate crisis. Corporate accountability is also stressed: 90 transnational corporations in the fossil fuels and cement industry –predominantly headquartered in the Global North– are responsible for 63% of cumulative emissions from 1751 to 2010. The injustice also reflects distinct capacities to respond to impacts of climate change. Global North's industrialization and colonization processes – which are intrinsically related to the climate crisis' causes– resulted in greater resources that can be applied in adaptation. Climate change also affects human rights (e.g. the right to life, health, food, water, land and a healthy environment) and the most vulnerable are the most affected. This represents a challenge to legal institutions, that must respond to human rights violations in an unequal and transnational climate change context. Dominant legal frameworks need to be adapted to address the issue of climate justice and contemplate the disparities between Global North and South. One way, already being paved, is through climate litigation.

Nonetheless, the limits of state jurisdictions can be a barrier to its potential to achieve climate justice across borders. This paper assesses transnational climate litigation as a strategy. It analyses cases filed in Global North against corporations questioning harms suffered in the Global South. Two typologies of cases are explored: damages cases, questioning losses associated to the impacts of climate change, and due diligence cases, questioning the impacts of activities that contribute to climate change. It concludes that its transnational aspect has the potential to promote climate justice and accountability for human rights violations resulting from the causes and consequences of climate change. They pursue access to justice to the most vulnerable to climate change, while making an effort to hold high emitting companies responsible.

## Panel 7

### Multilateralism to Advance the Right to a Healthy Environment and Environmental Democracy

This theme aims to facilitate a cross-regional dialogue on the right to a healthy environment and related procedural environmental rights, as recognised in Principle 10 of the Rio Declaration. We seek to assess how regional human rights treaties might interact with treaties protecting environmental rights. How the path taken by the Escazu and Aarhus Conventions, adopted within the UN regional economic organisations ECLAC and UNECE, can inform the debate in Africa. Some of the important issues to be discussed are: the possibilities of developing a regional instrument that develops Principle 10 of the Rio Declaration in Africa and the views of UNECA on this; the synergies that could exist between these regional initiatives and the regional human rights treaties, commissions and courts; how the Compliance Committees of the Escazu and Aarhus Conventions can play a role in their effective enforcement, among other related topics.

#### The Aarhus Convention: A Framework for Transforming Environmental Governance—The Case of Uzbekistan

🌐 ***Bobir Turdiev, PhD Candidate, Law Enforcement Academy of Uzbekistan***🇺🇿

This study explores the potential impact of the Aarhus Convention on enhancing environmental governance in Uzbekistan, a country facing significant challenges related to environmental degradation and climate change. By employing a mixed-methods approach that includes policy reviews, legal analysis, and comparative studies with Kazakhstan, the research assesses the alignment of Uzbekistan's national legislation with the Convention's provisions on access to information, public participation, and access to justice. The findings highlight the gaps in current environmental governance frameworks in Uzbekistan and emphasizes the importance of adopting the Aarhus Convention to promote transparency, accountability, and public engagement to foster a more sustainable and participatory approach to environmental governance in Uzbekistan. The study provides actionable recommendations to foster a more sustainable and participatory approach in environmental governance and to strengthen enforcement mechanisms.

## From Africa to Latin America & the Caribbean: Trans-Atlantic Tradeoffs of the Twenty First Century

**Alana Malinde S. N. Lancaster, Lecturer in Law & Head of the Caribbean Environmental Law Unit, The University of the West Indies**

Africa and Latin America & the Caribbean are two of the three regions which have regional human rights court systems, and in differing ways, have trailblazed in the area of international human rights law. As the role of human rights becomes more prominent in addressing the triple planetary crises of climate change, biodiversity loss and pollution, the importance of Rio Principle 10 rights is even more critical in safeguarding the rights of peoples, communities and vulnerable populations. While the regional systems have evolved differently, both systems will be increasing confronted by similar challenges, which transcend a broad diversity of rules, including international human rights law, law of the sea, international biodiversity law, and climate law. The Presentation will utilise the historical context of the connection between Africa and the Latin America & Caribbean Regions to emphasise that in the contemporary context, there are positive cross-regional lessons which can be traded between the two regions to ensure the right to a healthy ocean and its sustainable management.

## International Mechanisms for Protecting Forests through Trade and Environmental Law

**Yilly Pacheco, Postdoctoral Researcher, University of Göttingen**

Forests play a crucial role in mitigating climate change, preserving biodiversity, and sustaining the livelihoods of millions. However, their protection at the international level has been fragmented across various Multilateral Environmental Agreements (MEAs), such as the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Agreement, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), among others. In recent years, forest protection has expanded beyond environmental treaties to encompass bilateral trade instruments, such as Free Trade Agreements (FTAs), and unilateral legal measures with extraterritorial impact, such as the European Union Deforestation Regulation (EUDR). Each of these instruments contains distinct compliance and enforcement mechanisms, creating a complex web of litigation and dispute resolution in relation to forest conservation. This paper explores these mechanisms in the context of transnational forest-related litigation in both the Global South and the Global North, combining legal doctrinal analysis with case studies. Through selected cases, it examines the strengths and limitations of forest litigation within the framework of bilateral FTAs and assesses how the EUDR and EU FTAs may complement or overlap in their approaches to forest protection. By analyzing different enforcement approaches applicable to forest provisions in FTAs, the paper will highlight the multi-layered governance framework that has emerged. Ultimately, this research aims to offer insights into how judicial and non-judicial mechanisms can be coordinated to enhance global efforts to combat deforestation and safeguard critical forest ecosystems.

# Panel 8

Curiae Virides: Actors, Risks, Hazards, Harms and Methodological Challenges

## The fuzzy path of Transnational Ecological Conflicts through the Courts

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We are witnessing an exponential increase in litigation that in one way or another seeks to protect ecosystems or territories. These lawsuits often link the need to protect ecosystems or territories to human rights. This is traditionally referred to as the greening of human rights, but perhaps it is better to speak of the humanization of ecological concerns. It is a wicked problem because rights holders are not necessarily human and the way in which ecological concerns are framed is not straightforward. Multiple legal and conceptual frameworks are used to shape these claims, and there is a multiplicity of legal actions that are not necessarily initiated by the actual affected persons or rights holders.

This presentation will outline, from a multidisciplinary perspective, the meaning and scope of transnational ecological conflicts and how they are formulated at the level of legal action. This is, the Curiae Virides project team has developed a typology of these conflicts and how this characterization may shape the legal avenues for bringing these cases to court. This analysis is grounded on diverse legal sources, policies, and other non-legal frameworks that have influenced the understanding of this concept. This conceptualization of transnational ecological conflicts allows for a better understanding of the fuzzy path that they navigate in legal fora in search of remedies or action from states or from leading companies of global value chains.

## Empirical legal studies and the issue of representativeness: An epistemological reflection on the use of environmental litigation databases

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A fast-growing strand of the 'legal studies' literature turns to quantitative methods to try and shed a new light on a variety of subjects. Of particular interest are litigation databases, which have been instrumental in understanding conflicts (and the judicial mechanisms they use) in a more structured way – in an attempt to go beyond the typical case-study analysis. These databases, while informative in their own right, come with many challenges when used for quantitative analysis. he dataset's structure and variables, I show how it contributes to research on transnational environmental litigation as an enhanced repository allowing for complex, fine-tuned searches based on a variety of criteria (litigation trajectory, triggered mechanisms, actors involved and their degree of centrality within the dataset, geographical criteria, …) – effectively establishing a detailed typology of the various paths transnational litigation can take. Finally, I address the challenges and obstacles to further statistical analysis and bring a broader discussion on representativeness, the dangers of confirmation bias and the pitfalls of fallacious inference.

## A Social Network Analysis of Actors and Courts in Transnational Ecological Conflicts

**Daniel Alejo, ERC Curiae Virides Project, Brussels School of Governance – Vrije Universiteit Brussel**

Legal actions are increasingly being pursued in response to growing environmental degradation, injustices, and concerns. Across the globe, various actors have turned to environmental litigation to obtain remedies for affected communities and ecosystems, hold allegedly responsible parties accountable, demand action from governments and corporations, advocate for the recognition of nature's rights, or address governance gaps in environmental issues. Environmental litigation is often framed within a human rights context, effectively bridging the divide between these two legal frameworks and domains. The rise in environmental and human rights litigation has sparked debates about the roles of non-state actors, government agencies, private initiatives, and courts in safeguarding ecosystems and communities impacted by environmental harm. As part of the ERC Curiae Virides project, I will present the results of a comprehensive mapping and categorization of the actors and courts involved in environmental litigation arising from transnational ecological conflicts in Africa. Using social network analysis, I examined the roles and positions of actors and courts within the environmental litigation network, identifying patterns of conflict and collaboration. The analysis reveals the diversity of actors and courts engaged in environmental litigation and highlights transnational collaboration patterns, especially among civil society organizations, including NGOs, grassroots movements, and individuals. The presentation aims to spark conversations and future research about the role of actors, courts, quasi-judicial mechanisms, and transnational advocacy networks in addressing environmental injustices through environmental litigation

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