

Institute for Governance & Sustainable Development (IGSD)

SECONDARY SOURCES REVIEW

9 August 2023

This research summarizes law review articles and other secondary sources related to human rights and climate change and relevant to the advisory opinion (AO) for the Inter-American Court of Human Rights (IACtHR).

Secondary Sources

1. Rafaela Sena, [*The Intersection of Human Rights and Climate Change in the Inter-American Human Rights System: What to Hope for?*](#), 38 WIS. INT'L L. J. 331 (2021).
 - This article analyzes climate change actions taken by human rights bodies in Latin America, specifically the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court on Human Rights (IACtHR).
2. Sarah Dávila A., [*The Escazú Agreement: the Last Piece of the Tripartite Normative Framework in the Right to a Healthy Environment*](#), 42 STAN. ENV'T L. J. 63 (2023).
 - This article outlines a path forward for addressing climate change by asserting environmental human rights in the Inter-American System for the Protection of Human Rights ("Inter-American System"). This article specifically discusses the Escazú Agreement.
3. Agnes Chong, [*The Positive Obligation to Prevent Climate Harm Under the Law of State Responsibility*](#), 34 GEO. ENV'T L. REV. 275 (2022).
 - This article analyzes human rights cases developing jurisprudence on states' positive obligation to mitigate climate change.
4. Benoit Mayer, [*Climate Change Mitigation as an Obligation Under Human Rights Treaties?*](#), 115 AM. J. INT'L L. 409 (2021).
 - This article argues against interpreting human rights treaties as imposing a broad positive obligation on states to mitigate climate change. Instead, the article argues that human rights treaties only implies an obligation to the extent that climate change mitigation protects the enjoyments of treaty rights by individuals within the state.
5. Sarah Dávila A., [*Time to Wake Up! Pushing the Boundaries in the Americas to Protect the Most Vulnerable*](#), 50 DENV. J. INT'L L. & POL'Y 89 (2022).
 - This article argues that the Inter-American right to a healthy environment can and should be used to protect the most vulnerable individuals in the Americas from environmental harm and climate change. The article further argues that the "greening" of human rights does not sufficiently protect vulnerable non-indigenous communities.

6. Samvel Varvastian, [*The Advent of International Human Rights Law in Climate Change Litigation*](#), 38 WIS. INT'L L.J. 369 (2021).
 - This article provides a summary of the use of human rights law in climate litigation and an analysis of future opportunities for success.
7. Rosa Celorio, [*The Kaleidoscope of Climate Change and Human Rights: the Promise of International Litigation for Women, Indigenous Peoples, and Children*](#), 13 ARIZ. J. ENV'T L. & POL'Y 155 (2023).
 - This article argues that international case litigation can be used to address climate change-related human rights violations suffered by women, Indigenous peoples, and children. The article also discusses cases before various international human rights bodies (including the IACHR), the areas in which case litigation can aid in defining the boundaries of state obligations, and human rights treaties (including the Escazú Agreement). The author seeks to advance scholarship exploring the relations between climate change, climate justice, human rights law, and the human rights of women, Indigenous peoples, and children.
8. Natalia Jiménez Alegría, [*The Relevance of Climate Change Related Mobility Soft-law Developments to the Dry Corridor of Central America*](#), 43 HOUS. J. INT'L L. 75 (2020).
 - This article discusses soft-law developments around climate change-related displacement, the characteristics of climate change in the Northern Triangle, and the legal frameworks of humanitarian protection in Mexico and the United States for displaced people from the Northern Triangle.
9. Ved P. Nanda, [*The Environment, Climate Change, and Human Rights: The Significance of the Human Right to Environment*](#), 50 DENV. J. INT'L L. & POL'Y 89 (2022).
 - This article includes a discussion of the IACtHR's establishment on the right to a healthy environment as a fundamental human right. The article also discusses the establishment of a right to a health environment by the UN Human Rights Council (HRC) and the ICJ.
10. Maria Antonia Tigre, [*Indigenous Communities of the Lhaka Honhat \(Our Land\) Association v. Argentina. Merits, Reparations, and Costs, Judgment. Inter-American Court of Human Right*](#), 115 Am. J. Int'l L. 706 (2021).
 - This piece, published by the Sabin Center, provides a summary of a decision by the IACtHR, *Lhaka Honhat Association v. Argentina*. The case addresses Indigenous groups' rights to communal property, a healthy environment, cultural identity, food, and water under Article 26 of the American Convention.
11. Anxhela (Angela) Mile, [*Emerging Legal Doctrines in Climate Change Law-Seeking an Advisory Opinion from the International Court of Justice*](#), 56 TEX. INT'L L. J. 59 (2021).
 - This article assesses the international campaign for an advisory opinion from the ICJ on states' climate change obligations. Though much of the article focuses on framing the question and the potential benefits of the ICJ advisory opinion, the article also discusses human rights doctrines and summarizes several recent notable

opinions. In addition, the article discusses climate migrants, domestic actions around the world, constitutional protections, and future generations.

12. Rosa Celorio, [*Several Steps Forward, One Backward: Climate Change, Latin America, and Human Rights Resilience*](#), 34 MD. J. INT'L L. 96 (2019).
 - This article discusses four ways in which international human rights law can help Latin American governments: providing language on key state obligations, offering an international avenue to discuss and document, addressing vulnerable groups, and identifying an adequate gender perspective in addressing climate change.
13. Elizabeth Thomas, [*Protecting Cultural Rights in the South Pacific Islands: Using UNESCO and Marine Protected Areas to Plan for Climate Change*](#), 29 FORDHAM ENV'T L. REV. 413 (2018).
 - This article discusses remediation of the loss of cultural rights for indigenous Pacific Islanders as island nations disappear due to climate change.
14. Maxine Burkett, [*Behind the Veil: Climate Migration, Regime Shift, and a New Theory of Justice*](#), 53 HARV. C.R.-C.L. L. REV. 445 (2018).
 - This article argues for a relevant theory of justice to address climate migration, indigenous rights, environmental justice, and climate justice in the new world created by climate change.
15. [*International Human Rights Law--extraterritorial Jurisdiction-- Committee on the Rights of the Child Extends Jurisdiction Over Transboundary Harms; Enshrines New Test.-- Sacchi V. Argentina, No. Crc/c/88/d/104/2019 \(Oct. 8, 2021\)*](#), 135 HARV. L. REV. 1981 (2022).
 - This article discusses extraterritorial applications of human rights law and specifically comments on Sacchi V. Argentina, No. CCR/C/88/D/104/2019 (Oct. 8, 2021).
16. Juan Auz, [*'So. This is Permanence': The Inter-American Human Rights System as a Liminal Space for Climate Justice*](#), 22 MELB. J. INT'L L. 187 (2021).
 - This article discusses the potential of the Inter-American Human Rights System (IAHRS) to respond to the climate crisis. The article specifically discusses the IAHRS's norms and contrasts these norms with International Human Rights and Environmental Law scholarship. This paper proposes an approach to the IAHRS but still posits that IAHRS fails to provide climate justice.
17. Beatriz Garcia & Lucas Lixinski, [*Beyond Culture: Reimagining the Adjudication of Indigenous Peoples' Rights in International Law*](#), 15 INTERCULTURAL HUM. RTS. L. REV. 127 (2020).
 - This article discusses self-determination, culture, and environment as the tripartite system under which Indigenous rights are adjudicated. The article argues that though these three frames of adjudication have strengths, they also have limitations. The author suggests that the right to life, the right to integrity (physical or cultural), procedural rights, and economic, social, and cultural rights might be other avenues

to better address Indigenous rights. The author explores these concepts primarily within the IAS.

18. Deepa Badrinarayana, [*A Constitutional Right to International Legal Representation: The Case of Climate Change*](#), 93 TUL. L. REV. 47 (2018).
 - This article discusses the nature of international law and the avenues available under domestic and international law for climate change litigation. The article proposes that the constitutional challenges invoked by climate change should be addressed in future international human rights documents.
19. Itzhak Kornfeld, [*The Impact of Climate Change on American and Canadian Indigenous Peoples and Their Water Resources*](#), 47 ENV'T L. REP. NEWS & ANALYSIS 10245 (2017).
 - This article provides a detailed summary of actions brought by Indigenous communities in Canada and the United States, including actions brought to the Inter-American Commission on Human Rights (*Mary and Carrie Dann v. United States* and the Inuit petition).
20. Tekau Frere, Clement Yow Mulalap & Tearinaki Tanielu, [*Climate Change and Challenges to Self-determination: Case Studies from French Polynesia and the Republic of Kiribati*](#), 129 YALE L.J. FORUM 648 (2020).
 - This article examines the right to self-determination (established through declarations by the UN General Assembly and other international human rights covenants and applied by the ICJ), the right to self-determination in the face of climate change, and two case studies (French Polynesia and the Republic of Kiribati). The article concludes that climate change challenges the right to self-determination and poses challenges for both non-self-governing territories such as French Polynesia and fully independent states like the Republic of Kiribati. The author argues that the international community must uphold the fundamental right to self-determination by addressing climate change.
21. Autumn Skye Bordner, [*Climate Migration & Self-determination*](#), 51 COLUM. HUM. RTS. L. REV. 183 (2019).
 - This article seeks to outline a framework for decolonizing states to protect their right to self-determination in the face of climate change, using the Republic of the Marshall Islands as a case study. The article also espouses a climate justice theory that connects colonialism and the threat of climate migration to argue that colonial powers have moral and legal obligations to assist former colonies with adaptation strategies that protect the former colonies' right to self-determination. Finally, the author suggests specific legal strategies that Marshallese communities and similarly situated communities could pursue in accordance with this theory.
22. Maria L. Banda, [*Regime Congruence: Rethinking the Scope of State Responsibility for Transboundary Environmental Harm*](#), 103 MINN. L. REV. 1879 (2019).
 - This article explores whether those harmed by transboundary pollution can seek redress under domestic or international law. The article first outlines the evolution and structure of international human rights and environmental regimes, then

considers the regime nexus in the context of transboundary issues, examines existing jurisprudence on extraterritorial State obligations under human rights treaties, analyzes the general duty to prevent transboundary harm, and finally argues that the nature of states' human rights obligations must be considered in light of international environmental law. In doing so, the article addresses the scope of extraterritorial obligations in international law for transboundary environmental harm (including but not limited to climate change), outlines a viable mechanism for victims of environmental law through international human rights law, analyzes the scope of State obligations in inter-regime relations, and focuses specifically on the IAS.

23. M. Alexander Pearl, [*Human Rights, Indigenous Peoples, and the Global Climate Crisis*](#), 53 WAKE FOREST L. REV. 713 (2018).
 - This article begins by discussing the distinctive qualities of the climate crisis: its status as a tragedy of the commons and its delayed consequences and gradual changes. The article next discusses the unique positioning of Indigenous groups in the climate crisis. The article briefly discusses FPIC, historical redress, and self-determination as bases for unifying human rights and Indigenous rights, and argues for bringing restitution-based claims against oil and gas companies.
24. Rebecca Bratspies, [*Claimed Not Granted: Finding A Human Right to A Healthy Environment*](#), 26 TRANSNAT'L L. & CONTEMP. PROBS. 263 (2017).
 - This article discusses the creation of a human right to a healthy environment. The author briefly discusses a variety of different cases, courts, and documents, including the Inuit petition, the IAS, the ECtHR, the Paris Agreement, *Gbemre v. Shell Petroleum Development Co.* (the Ogoniland case), and the Male' Declaration.
25. Verónica de la Rosa Jaimes, [*Climate Change and Human Rights Litigation in Europe and the Americas*](#), 5 SEATTLE J. ENV'T L. 165 (2015).
 - This article examines jurisprudence from the ECtHR, the IACtHR, and the IACHR, considers the connection between climate change on human rights (including American Convention's right to life, right to use and enjoyment of property, right to private and family life, right to public information), compares jurisprudence between the ECtHR and the IAS, examines the Inuit petition and the Athabaskan petition, and finally reflects on the extent to which human rights claims around climate change can be expected to succeed.
26. Rebecca Bratspies, [*Do We Need a Human Right to a Healthy Environment?*](#), 13 SANTA CLARA J. INT'L L. 31 (2015).
 - This article discusses the threat climate change poses to human rights and explores the development of a right to a healthy environment. The article includes a discussion of the strengths and weaknesses of using existing human rights norms to address climate change and other environmental challenges. In this discussion, the author discusses the IACtHR's "environment as precondition" concept, in which there is a right to an environment that permits the enjoyment of the human

rights explicitly guaranteed by the American Declaration and American Convention.

27. Timo Koivurova, Sébastien Duyck, Leena Heinämäki, [*Chapter 12: Climate Change and Human Rights*](#), 21 IUS GENTIUM 287 (2013).
 - This chapter discusses the relationship between human rights and climate change. It specifically discusses the conclusions of the IACHR on the right to life, the environment as precondition concept, and the right to health. The chapter also discusses the Inuit petition.
28. Carol Y. Verbeek, [*Free, Prior, Informed Consent: The Key to Self-determination: An Analysis of the Kichwa People of Sarayaku v. Ecuador*](#), 37 AM. INDIAN L. REV. 263 (2012–13).
 - This article discusses Indigenous rights in the context of the IACtHR and specifically argues that the precedent that the IACtHR has established on free, prior, informed consent (“FPIC”) is essential to self-determination. The article considers specifically the case of the *Kichwa People of Sarayaku v. Ecuador*.
29. Varun K. Aery, [*The Human Right to Clean Air: A Case Study of the Inter-American System*](#), 6 SEATTLE J. ENV’T L. 15 (2016).
 - This article articulates a theory for clean air as a human right, develops the positive content for that right, and argues for the right's importance, all within the context of the IAS. The article concludes by proposing two legal strategies for the elimination of procedural barriers for victims of air pollution pursuing remedies within the IAS. The first of these calls for enforcement under the American Convention, while the second relies on the Additional Protocol to the American Convention (“Additional Protocol”).
30. Maria Grahn-Farley, [*The Human Rights Claim in Climate Justice: An Argument for Reintroducing the Principle of Anti-Discrimination and to Strengthening the Anti-Domination Principle When Children Go to Court*](#), 25 J. GENDER RACE & JUST. 439 (2022).
 - This article discusses Indigenous groups, persons with disability, gender, and petitions brought by children, primarily in the context of the Paris Agreement.
31. Ian Falefuafua Tapu, [*Finding Fonua: Disappearing Pacific Island Nations, Sea Level Rise, and Cultural Rights*](#), 62 ARIZ. L. REV. 785 (2020).
 - This article examines the effects of climate change on the Pacific islands, UNCLOS, cultural rights, and freezing maritime boundaries.
32. Jaya Ramji-Nogales, [*Slow-Onset Climate Justice and Human Mobility*](#), 93 TEMP. L. REV. 671 (2021).
 - This article discusses the slow violence of climate change and its creation of climate migration, looking at a case study of smallholder farmers in Guatemala. The article argues for an international law approach that addresses slow-onset climate migration and centers climate justice.

33. Jacqueline Peel & Jolene Lin, [*Transnational Climate Litigation: The Contribution of the Global South*](#), 113 AM. J. INT'L L. 679 (2019).
- This article aims to offer a comprehensive look at climate cases in the Global South and identifies trends in the claims.
34. Rina Kuusipalo, [*Exiled by Emissions-Climate Change Related Displacement and Migration in International Law: Gaps in Global Governance and the Role of the Un Climate Convention*](#), 18 VT. J. ENV'T L. 614 (2017).
- This article considers how international law can address climate migration within the bounds of international refugee law and international environmental law. The article focuses on the UNFCCC and the Paris Agreement.
35. Hari M. Osofsky, [*The Geography of Emerging Global South Climate Change Litigation*](#), 114 AJIL UNBOUND 61 (2020).
- This article surveys climate change litigation in the Global South and identifies the countries with the most litigation.
36. Carmen G. Gonzalez & Sumudu Atapattu, [*International Environmental Law, Environmental Justice, and the Global South*](#), 26 TRANSNAT'L L. & CONTEMP. PROBS. 229 (2017).
- This article is based around the publication of *International Environmental Law and the Global South*, a book that argues that international environmental law must overcome the North-South divide in order to succeed. This article considers frameworks for analyzing and overcoming this divide, including environmental justice (distributive, procedural, corrective, and social justice) and human rights. The article then summarizes other articles (some of which are included in this table) that provide frameworks for international environmental law.
37. Luis E. Rodríguez-Rivera, [*The Human Right to Environment in the 21st Century: A Case for Its Recognition and Comments on the Systemic Barriers It Encounters*](#), 34 AM. U. INT'L L. REV. 143 (2018).
- This article looks at the development of the human right to the environment within the UN framework, and at the regional level (including within the IAS), and barriers to the right's application.
38. Isabella Zink, [*Storm Warning: New Zealand's Treatment of "Climate Refugee" Claims as a Violation of International Law*](#), 37 AM. U. INT'L L. REV. 441 (2022).
- This article argues that New Zealand violated ICCPR Articles 6 and 7 by denying refugee claims of persons from island nations fleeing due to climate change. The article also looks at the major treaties by which New Zealand is bound, analyzes how New Zealand violated Articles 6 and 7 through its prohibition against refouled, and finally recommends that New Zealand reform its Immigration Act and system. This article thus offers a specific perspective on the human rights of persons from island nations attempting to seek refugee status.

39. Lydia Slobodian, [*Defending the Future: Intergenerational Equity in Climate Litigation*](#), 32 GEO. ENV'T L. REV. 569 (2020).
- This article examines intergenerational equity in the context of climate change and includes a discussion of a 2018 case in Colombia's Supreme Court wherein the Court recognized the intergenerational equity principle.
40. Cosmas Emeziem, [*Miserable Comforts or Concrete Protections: Human Rights Conventions, Treaties, Declarations, and the Rights of Indigenous/othered Communities- Quo Vadis?*](#), 21 SANTA CLARA J. INT'L L. 47 (2022).
- This article argues for more meaningful expression of and respect for the human rights of Indigenous communities. Though this is focused generally on Indigenous rights and is not solely concerned with climate change, the article does lay out a complete view of human rights foundations, including critical race theory, and outlines a ten principle approach for moving forward with Indigenous rights.
41. Christopher Barbera, [*Protecting Native Human Rights During Natural Disasters Through Free, Prior, and Informed Consent: A Case Study on Arguing FPIC as a Tool for Human Rights*](#), 48 DENV. J. INT'L L. & POL'Y 107 (2020).
- This article explores FPIC as an emerging human right. This article is focused on Indigenous groups within the United States, but the article still provides an overview of FPIC in international law, including under the American Convention.
42. Sava Jankovic, [*Conceptual Problems of the Right to Breathe Clean Air*](#), 22 GERMAN L. J. 168 (2021).
- This article discusses the human right to clean air, including the source of the right, the type of the right, and problems with the right.
43. Caelyn Radziunas, [*Missing the Mark: A Critical Analysis of the Rights of Nature as a Legal Framework for Protecting Indigenous Interests*](#), 35 TUL. ENV'T L. J. 115 (2022).
- This article examines the rights of nature and indigenous rights and discusses human rights as an alternative to these principles.
44. Elisa Morgera, [*Dawn of A New Day? The Evolving Relationship Between the Convention on Biological Diversity and International Human Rights Law*](#), 53 WAKE FOREST L. REV. 691 (2018).
- This article examines the relationship between international human rights law and biodiversity, particularly looking at the influence of the Convention on Biological Diversity (CBD) on international human rights law. The author argues for embracing biological diversity within the international human rights framework.
45. Julian Montoya, [*Global Water Crisis and Human Rights: A Glass Half Empty*](#), 13 INTERCULTURAL HUM. RTS. L. REV. 175 (2018).
- This article examines the human right to water, including in the IAS, and argues for increased recognition of the right, increased nuclear desalination, investment in

green infrastructure and alternative energy, and aid from developed countries towards developing countries.

46. Jootaek Lee & Maraya Best, [*Attempting to Define the Human Right to Water with an Annotated Bibliography & Recommendations for Practitioners*](#), 30 GEO. ENV'T L. REV. 75 (2017).
 - This article examines the right to water and includes a discussion of IACtHR decisions related to water.
47. Dr. Daniel Rietiker, [*Indigenous Peoples' Right to Water in Times of Covid-19: Assessment of the Protection Under International Law and Recommendations for Human Rights Litigation*](#), 44 SUFFOLK TRANSNAT'L L. REV. 1 (2021).
 - This article discusses Indigenous peoples' right to water and includes a discussion of the jurisprudence of the IACtHR and IACHR, particularly under Articles 21 and 4 of the American Convention.
48. Sara Kaufhardt, [*Impunity for Burning the Earth's Lungs: The Legality of Deforestation Under International Law and the Quest to Preserve the World's Biodiversity*](#), 59 COLUM. J. TRANSNAT'L L. 469 (2021).
 - This article discusses the extent to which international law provides redress for deforestation and biodiversity loss by using Brazil and Indonesia as case studies. It analyzes states' obligations under the transboundary harm principle, international criminal law, the sustainable development principle, and the human right to a healthy environment. The article concludes that none of the doctrines directly address biodiversity loss and that these doctrines are insufficient for dealing with private actors. Therefore, the author argues for direct regulation of private conduct.
49. Sarah Dávila-Ruhaak, [*Making a Case for the Right to a Healthy Environment for the Protection of Vulnerable Communities: A Case of Coal-Ash Disaster in Puerto Rico*](#), 9 MICH. J. ENV'T & ADMIN. L. 379 (2020).
 - This article argues for the application of the right to a healthy environment in order to protect vulnerable groups. The article analyzes a case study of Puerto Rico's coal-ash harms. The author begins by introducing the harm the coal-ash industry has caused to Puerto Rican communities, then introduces the relationship between human rights and the environment (including the "greening" of rights), the origins of the right to a healthy environment, the protection offered to vulnerable populations by a right to a healthy environment (including in the IAS), the procedural protections of the right, and finally discusses the case study.
50. James R. May, [*The Case for Environmental Human Rights: Recognition, Implementation, and Outcomes*](#), 42 CARDOZO L. REV. 983 (2021).
 - This article analyzes and promotes the right to a healthy environment by looking at environmental rights' recognition in law, analyzing the extent to which courts reach results due to an environmental right, and finally discusses the extent to which environmental human rights recognized in law improved environmental outcomes.

The author looks at the right's recognition in domestic constitutional law globally (and includes an appendix with 84 countries' constitutional language), recognition in global domestic legislation, recognition in international law, and recognition in regional law.

51. Meredith Wilensky, [*Climate Change in the Courts: An Assessment of Climate Litigation*](#), 26 DUKE ENV'T L. & POL'Y F. 131 (2015).
 - This article aimed to do a large-scale assessment of climate change litigation outside of the United States. The article also analyzes trends across global litigation.
52. Hari M. Osofsky, [*The Geography of Climate Change Litigation: Implications for Transnational Regulatory Governance*](#), 83 WASH. U. L. Q. 1789 (2005).
 - This article first discusses the transnational energy production process and challenges within, and then examines climate change litigation within the context of descriptive geography.