
REVISITING CONTEMPORARY HUMAN RIGHTS CHALLENGES RELATING TO THE CLIMATE CHANGE

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ABSTRACT

Human dignity and equality cannot be waived or taken away since people are all equal, indivisible, linked and interdependent. The legal protection and imposition of responsibilities in connection to actions and omissions, in particular by States and State actors, are significant aspects of human rights. Human-caused climate change has now been proven to have harmful effects on the full enjoyment of human rights beyond any reasonable doubt. Rights to life, self-determination and growth, as well as food and water security and shelter are directly impacted by climate change. However, states are required by the UDHR, ICCPR, and ICESCR to offer an effective remedy in the event of human rights abuses. Legal provisions representing human rights in these treaties have made it clear that these remedies also apply to violations of human rights resulting from environmental consequences. This article will discuss the human rights implications of climate change and the obligations to address the human rights concerns of climate change by referring to the relevant legal provisions and global mandates.

Introduction

When it comes to human rights, climate change is our generation's biggest challenge on this earth. Individuals and communities all across this planet face serious and unpredictable threats to their fundamental rights to life, health, food, and a decent quality of living because of this. In general sense, human rights can be characterised by a clean, healthy, and functional environment. The right to life, health, food, and a decent quality of living are also all included in this concept.¹ There has never been a greater threat to the natural world and human societies than anthropogenic climate change. Human rights, climate change concerns and environmental issues have been linked for decades. As a result, it has long been recognised that a healthy environment is essential to human rights, including the right to life, health, food, and a decent quality of living. Ensuring public access to information and involvement in decision-making is one way to guarantee that environmental resource use and preservation choices are made in a more equitable manner.² As a result, it safeguards against the possibility of environmental action being misused. The consequences of climate change are already being felt across a wide range of ecosystems, including animals, natural resources, and the biological processes that ensure that people have access to clean water, food, and other necessities. People, property, and physical infrastructure are directly harmed as a result of these and other negative consequences by putting human rights at risk. The international community has reached a unanimous agreement on all of these concerns during the past decade.³ There has been less unanimity, however, on government and private sector responsibilities for addressing this challenge, despite the fact that UN agencies and national governments have clearly recognised that climate change and responses to climate change might damage human rights. This essay will highlight the concerning issues relating to climate change, and discuss how human rights need rethinking while fulfilling the state obligations.

The Human Rights Implications of Climate Change

Across the globe, individuals and communities are at risk because of climate change. Some of these negative effects are immediate, such as natural disasters that put people's lives in danger, while others are gradual, such as environmental deterioration that makes it harder to get essentials like clean water, food, and other necessities. Climate change is already causing

¹ MAYERBENOÛT, *THE INTERNATIONAL LAW ON CLIMATE CHANGE* (2018).

² DANIEL BODANSKY, JUTTA BRUNNÉE & LAVANYA RAJAMANI, *INTERNATIONAL CLIMATE CHANGE LAW* (2017).

³ CINNAMON PIÑON CARLARNE, KEVIN R GRAY & RICHARD TARASOFSKY, *THE OXFORD HANDBOOK OF INTERNATIONAL CLIMATE CHANGE LAW* (2016).

drought, deforestation, and food shortages throughout the countries. Climate change has a greater impact on certain locations than others, and some regions are more strongly linked to climate change.⁴ Rising sea levels and temperatures in the Arctic, where many indigenous populations depend on the ecosystem for their livelihoods, is one of the examples of how climate change is affecting their way of life and threatening their safety. The ocean's chemistry, physics, and biology are changing as a result of global climate change. Large-scale changes in the distribution of species and the composition of marine ecosystems have already been seen due to ocean warming. Extreme weather events and other climate-related hazards are directly damaging people's livelihoods by causing agricultural losses and natural resource devastation, as well as displacing people.⁵ The rise in the cost of food, energy, and other essential goods can be a result of climate change, as well as political instability and large-scale warfare. Poverty, political unrest, and violence all reduce people's capacity to secure their physical assets or relocate to less susceptible areas in the face of climate change. A vicious cycle of poverty, hardship, and inequality may be perpetuated in part by climate change.

Climate change has already been linked to health issues in certain locations, and this is expected to worsen if climate change continues as predicted. As a result of more extreme heat waves, there has been an increased rate of injury, sickness, and death in many regions. As a result, there has been an increased threat of under-nourishment in least developed countries, as well as the health effects of lower labour productivity among vulnerable people.⁶ Food, water, and vector-borne illnesses are spreading at an epidemic level sometimes as a result of this. Health concerns have been exacerbated in places where the combination of increased average temperatures and greater humidity already exceeds the international threshold for safe job activity during the warmest months. The extent and severity of the negative health effects have vastly exceeded any potential benefits in terms of health. Water, food, land, and other natural resources are becoming more and more limited due to climate change, putting livelihoods at risk, eroding cultural identity, causing more people to flee their homes, and making it more difficult for governments to maintain the circumstances essential for human security.⁷ Human safety has been directly affected by any of these effects, and political instability and violent conflict can be exacerbated as a result. Aside from the apparent environmental harm caused by

⁴ ADEMOLA OLUBORODE JEJEDE, *THE CLIMATE CHANGE REGULATORY FRAMEWORK AND INDIGENOUS PEOPLES' LANDS IN AFRICA : HUMAN RIGHTS IMPLICATIONS* (2016).

⁵ S R J SHEPPARD, *VISUALIZING CLIMATE CHANGE : A GUIDE TO VISUAL COMMUNICATION OF CLIMATE CHANGE AND DEVELOPING LOCAL SOLUTIONS* (2012).

⁶ DAVID COEN, JULIA KREIENKAMP & TOM PEGRAM, *GLOBAL CLIMATE GOVERNANCE* (2020).

⁷ DENIS GORDON ARNOLD, *THE ETHICS OF GLOBAL CLIMATE CHANGE* (2011).

climate change, human-induced climate change also has the added benefit of undermining human rights. For example, it may cover essentials like the right to food and water and the right to appropriate shelter, as well as the right to exist and self-determination for a number of tiny island states and coastal towns.⁸ As a result of climate change, chronic food insecurity in several developing countries has effectively paralysed their governments, reversing human rights achievements to appalling levels.

Adverse Impacts of Mitigation and Adaptation on Human Rights

It is imperative that governments throughout the globe work together to ensure that all human rights are protected and upheld in the face of the threats presented by climate change and its repercussions. A precautionary approach should be taken where there is a risk of significant or permanent damage, even if complete scientific assurance is not yet available, following Principle 15 of the Rio Declaration on Environment and Development 1992.⁹ There is no room for doubt when it comes to global warming. Climate change has already wreaked havoc on the world. The only remaining question is how much more devastation it will inflict. In light of the abovementioned human rights implications of climate change, immediate preventative measures are required. Climate change mitigation and adaptation must be prioritised while also preserving the human rights of those who may be harmed by it, as all participants agreed must be done as quickly as possible.¹⁰ Ironically, human rights can also be affected by how governments and other actors respond to climate change problems. For example, efforts to reduce greenhouse gas emissions and programmes aimed at adapting to the effects of climate change both fall under this umbrella of responsible action.

Many mitigation strategies concerning climate change implemented in the recent years have failed to uphold human rights. For instance, projects to decrease or sequester GHG emissions have been shown in multiple cases to violate the rights of marginalised populations. Hydroelectric projects and biofuels programmes have also been the worst offenders in terms of human rights breaches. Projects like hydroelectric dams, which often lead to the relocation of local people and the loss of ecosystems on which they depend, can also impact the health and livelihoods of those living downstream from the project by limiting river flow.¹¹ Land

⁸ KERRI WOODS, HUMAN RIGHTS AND ENVIRONMENTAL SUSTAINABILITY (2010).

⁹ SUMUDU ATAPATTU, HUMAN RIGHTS APPROACHES TO CLIMATE CHANGE : CHALLENGES AND OPPORTUNITIES (2015).

¹⁰ STEPHEN HENRY SCHNEIDER ET AL., CLIMATE CHANGE SCIENCE AND POLICY (2010).

¹¹ ALIX DIETZEL, GLOBAL JUSTICE AND CLIMATE GOVERNANCE : BRIDGING THEORY AND PRACTICE (2019).

acquisition by large corporations may result in the displacing of indigenous peoples and small-scale farmers as a side effect of some biofuel policies and initiatives as well as a rise in water stress and scarcity. More than 30 million people have fallen into poverty as a result of the race to produce biofuels like palm oil, which was partially pushed by EU biofuel objectives, according to an Oxfam report in 2008.¹² A number of human rights breaches and negative repercussions on local stakeholders have been recorded in relation to certain biofuel initiatives. Indigenous peoples and other local stakeholders have been adversely impacted by the REDD/REDD+ program's possible impact on their communities. People whose lives and livelihoods are affected by REDD/REDD+ initiatives do not have enough opportunity for feedback and consent. Forest carbon sequestration services have been commercialised in many cases, which has further led to land grabs and the displacement of communities who do not have proper legal safeguards or secure tenure of their land. Local stakeholders have not got an equitable share of the costs of these sequestration services.¹³ In general, there are worries regarding the distributional effects of climate change mitigation initiatives too. Indigenous peoples, the poor, and other vulnerable groups may bear the brunt of higher energy, fuel, and product costs under carbon pricing regimes, for example. Carbon emissions rights may actually worsen rather than improve economic imbalances already present between and within nations.¹⁴ To address these issues, adequate regulation design, such as incorporating relief from increasing costs or fostering distributional equality, may be necessary.

Human rights have also been jeopardised by both the inability to adapt and the deployment of adaptation measures by many governments and policymakers. Some adaptation initiatives, such as coastal fortifications, may help one group while putting another at greater danger of erosion and/or floods, which is a potential threat to the human rights of those people. There is also a threat that adaptation measures may be implemented without the appropriate public engagement and may have unintended consequences for those they are intended to protect.¹⁵ To avoid human rights breaches during relocation and resettlement programmes, it is necessary to guarantee that persons who are relocated have a say in the process and that their feedback is taken into account. There are not adequate environmental and social safeguards in place,

¹² THOMAS A KERNS & KATHLEEN DEAN MOORE, *BEARING WITNESS: THE HUMAN RIGHTS CASE AGAINST FRACKING AND CLIMATE CHANGE* (2021).

¹³ BRIDGET LEWIS, *ENVIRONMENTAL HUMAN RIGHTS AND CLIMATE CHANGE : CURRENT STATUS AND FUTURE PROSPECTS*. (2019).

¹⁴ ROSEMARY RAYFUSE & SHIRLEY SCOTT, *INTERNATIONAL LAW IN THE ERA OF CLIMATE CHANGE* (2012).

¹⁵ CHRISTIANA FIGUERES & TOM RIVETT-CARNAC, *THE FUTURE WE CHOOSE : SURVIVING THE CLIMATE CRISIS* (2020).

despite having the Adaptation Fund and the Green Climate Fund. Furthermore, using techniques like solar radiation management and ocean iron fertilisation, geo-engineering aims to avoid or mitigate the consequences of climate change by deliberately and massively altering natural processes.¹⁶ Geo-engineering technology has yet to be put to substantial field testing or large-scale projects, but it is crucial to remember that such projects might significantly interfere with the enjoyment of human rights by millions or even billions. These geo-engineering technologies, for example, might have a devastating effect on ocean and terrestrial ecosystems if used in high GHG emissions scenarios. These disruptive impacts might have a negative impact on the provision of ecosystem goods and services, affecting food, water, and other essential resources. Proposals to regulate solar radiation might result in significant regional variations in precipitation.¹⁷ Some locations may see a rise in extreme weather, while others are likely to see a decrease. This might have a negative impact on both natural ecosystems and human populations. Geo-engineering initiatives cannot be coordinated with the international community, nor can they be made public to enable for public engagement or disclosure of relevant information.

Obligations to Address the Human Rights Concerns of Climate Change

Impacts of climate change on human rights have already been faced by millions and maybe billions of people throughout the world. People and settlements have been directly affected, as well as ecosystems and environmental resources, on which many people's lives and livelihoods are dependent, have been degraded. Government across the world owe it to their population to respect, safeguard, and fulfil their human rights commitments, which include reducing domestic GHG emissions, shielding them from the adverse impacts of climate change, and making sure that any measures taken to combat climate change do not violate human rights.¹⁸ Moreover, they must raise their ambitions in climate change mitigation and adaptation, and work together to guarantee that human rights are protected for all populations across the world. It is the duty of every state to ensure that all citizens have equal access to and protection of their fundamental human rights. Climate change-related human rights impacts, especially long-term harms that may be predicted, can be prevented only by proactive efforts. Governments' responsibilities under international human rights law are typically described as consisting of

¹⁶ MARGARETHA WEWERINKE-SINGH, STATE RESPONSIBILITY, CLIMATE CHANGE AND HUMAN RIGHTS UNDER INTERNATIONAL LAW. (2020).

¹⁷ TRACEY SKILLINGTON, CLIMATE JUSTICE AND HUMAN RIGHTS (2017).

¹⁸ Julie H. Albers, *Human Rights and Climate Change*, 28 SECURITY AND HUMAN RIGHTS 113–144 (2017).

three distinct sorts of commitments.¹⁹ It includes refraining from taking measures that limit or restrict the exercise of human rights is a negative requirement imposed on nations. Human rights defenders have a responsibility to keep others from violating such rights, and it is the job of the state to implement steps to guarantee that the rights of all citizens are fully realised.

Governments face a variety of procedural requirements under human rights law when it comes to environmental concerns. Some of these obligations are responsibility to obtain and distribute information about the environmental implications, to promote public participation in the decision-making process and to provide remedies for environmental harm. Civil and political rights underpin these commitments, which have been clarified and enlarged in light of the whole spectrum of human rights threatened by environmental degradation in the environmental context.²⁰ Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and Article 19 of the Universal Declaration of Human Rights (UDHR) both acknowledge that everyone has the right to seek, receive, and transmit information. States are required by the ICCPR and UDHR to make available any information held by the government that is relevant to the general public. There has been no discussion of whether nations have a responsibility to perform environmental impact assessments (EIA) as a result of the right to access information in the Human Rights Committee (HR Committee), the treaty body for the International Covenant on Civil and Political Rights (ICCPR).²¹ International Court of Justice (ICJ) has ruled that, as a matter of customary international law, states must conduct environmental assessments where there is the potential for significant adverse impact in a cross-border environment, and must disclose the results of that EIA to countries which may be adversely affected. Because climate change is a common resource, governments should examine how their own actions may impact the climate, and give the world community with sufficient warning.²² GHG assessments should be conducted by states for actions that might have major GHG implications, such as programmatic choices concerning fossil fuel development, big gas-fired power plants, and fuel efficiency regulations.

¹⁹ Sumudu Atapattu, *Climate change and displacement: protecting "climate refugees" within a framework of justice and human rights*, 11 JOURNAL OF HUMAN RIGHTS AND THE ENVIRONMENT 86–113 (2020).

²⁰ Derek Bell, *Climate change and human rights*, 4 WILEY INTERDISCIPLINARY REVIEWS: CLIMATE CHANGE 159–170 (2013).

²¹ Siddiquir Rahman, *Human Rights Forum: Climate Change and Human Rights in Bangladesh*, 51 ANTHROPOLOGY NEWS 30–31 (2010).

²² M Joel Voss, *Contesting human rights and climate change at the UN Human Rights Council*, 11 JOURNAL OF HUMAN RIGHTS AND THE ENVIRONMENT 6–29 (2020).

The UN Framework Convention on Climate Change (UNFCCC) lays forth comparable responsibilities for the assessment and disclosure of climate change information. It is specifically stated in Article 4(1)(h), which mandates states to support and work cooperatively in the full, open and prompt sharing with each other information that is relevant to the climate system, climate change, as well as to various response strategies, as well as the economic and social consequences of each.²³ At the national, regional, and sub-regional levels, Article 6 of this Convention also urges the Parties to encourage or facilitate public access to information on climate change and its implications. According to a number of additional clauses, the Parties are required to report information on national GHG emissions as well as steps taken to combat climate change and its consequences. Furthermore, all citizens have a basic right to participate in their country's administration and public affairs, according to both article 25 and 21 of the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Declaration on Human Rights (UDHR) respectively.²⁴ Governments must encourage public engagement in environmental decision-making to protect human rights against environmental harm, as defined by a number of treaty organisations. According to UNFCCC, countries must encourage and support public engagement in addressing the consequences of climate change and devising suitable solutions. Public engagement is also a feature of other global environmental agreements. With Resolution 67/210 (2013), the United Nations General Assembly recognises the importance of mobilising a wide range of stakeholders at the global, regional, national, and local levels to address climate change, including the private sector, civil society, and people with disabilities, as well as the importance of gender equality and the active participation of women and indigenous people.²⁵

In addition, the Rio Declaration 1992, the Aarhus Convention 1998, and a number of other international environmental and human rights accords state that everyone has the right to receive justice and effective redress.²⁶ This commitment has both a procedural and substantive component. Access to administrative and judicial processes to assess accusations of human rights violations is first and foremost required by states (the procedural element). State

²³ OTTAVIO QUIRICO & MOULOU BOUMGHAR, CLIMATE CHANGE AND HUMAN RIGHTS : AN INTERNATIONAL AND COMPARATIVE LAW PERSPECTIVE (2018).

²⁴ KAREN L O'BRIEN, ASUNCION LERA & BERIT KRISTOFFERSEN, CLIMATE CHANGE, ETHICS AND HUMAN SECURITY (2014).

²⁵ Klaus Steigleder, *Climate risks, climate economics, and the foundations of rights-based risk ethics*, 15 JOURNAL OF HUMAN RIGHTS 251–271 (2016).

²⁶ Ottavio Quirico, *Disentangling Climate Change Governance: A Legal Perspective*, 21 REVIEW OF EUROPEAN COMMUNITY & INTERNATIONAL ENVIRONMENTAL LAW 92–101 (2012).

governments must, however, also ensure that victims of abuses can get compensation or other kinds of remedy (the substantive dimension). When massive infrastructure projects and deforestation result in the displacement of indigenous tribes and other groups, the International Covenant on Economic, Social and Cultural Rights (ICESCR) recommends that states give sufficient compensation, alternative housing, and relocation possibilities.²⁷ People do not have any explicit right to obtain justice or remedies under the UNFCCC. Disagreements among member nations about how the Convention should be interpreted or applied are addressed under Article 14 of this convention. In addition, the Cancun Agreements 2010 provide in Paragraph 92 that input from individuals impacted and proof of the effects of response actions must be taken into account (adaptation and mitigation). A clear mandate for governments, climate financing institutions, or other entities has also been established by these frameworks; however anyone who suffers damage as a result of climate change's consequences or reactions can still file complaints.²⁸

State parties are required by the ICESCR to take steps, independently and through support from the United Nations and international co-operation, especially economic and technical, to the highest of its available resources, with a view to gradually realising the full realisation of rights recognised in the present Covenant by all appropriate means. It also promotes universal respect for, and observance of human rights and freedoms is a requirement of the ICCPR as well as the UDHR. Finally, the UN member states pledge themselves to take combined and independent action in cooperation with the Organization for the realisation of [inter alia] universal respect and observance of human rights and basic freedoms for all.²⁹ A state's duty to remedy the extraterritorial consequences of environmental degradation produced by activities within its authority is based on this terminology, according to both the Committee on Economic, Social and Cultural Rights (CESCR) and the Office of the United Nations High Commissioner for Human Rights (OHCHR). They have been characterised as obligations of international cooperation, and they ask governments to refrain from interfering with other countries' enjoyment of human rights. These obligations include stopping third parties (such private enterprises) from interfering with other nations' enjoyment of human rights over which they

²⁷ Sebastian Oberthür, Lukas Hermwille & Tim Rayner, *A sectoral perspective on global climate governance: Analytical foundation*, EARTH SYSTEM GOVERNANCE 100104 (2021).

²⁸ Fiona MacVane Phipps, *The climate change emergency: impacts on health governance*, 25 INTERNATIONAL JOURNAL OF HEALTH GOVERNANCE 387–392 (2020).

²⁹ Sarah Giest & Michael Howlett, *Comparative Climate Change Governance: Lessons from European Transnational Municipal Network Management Efforts*, 23 ENVIRONMENTAL POLICY AND GOVERNANCE 341–353 (2013).

have influence. It also emphasise on assisting in the realisation of human rights in other nations, including disaster relief, emergency aid and support for refugees or displaced individuals, through international help and collaboration, depending on the availability of resources.³⁰ They must also make certain that international agreements do not have an unfavourable effect on human rights and that human rights are given fair consideration in such agreements.

Another obligation that states have in connection with and predicated in part on their responsibilities of international cooperation is to resolve transboundary environmental damages. A state's responsibilities to other states, rather than its obligations to persons, are the focus of customary international law, which imposes similar obligations on nations. The International Court of Justice (ICJ) has made it clear that every State has a duty under customary international law to ensure that its territory is not utilised for conduct that violate the rights of other States. There is a concept of prevention that states must employ all measures at their disposal to prevent actions that take place in their territory, or any region under their authority, causing severe damage to another state's environment. According to the concept of *sic utere* (commonly known as the "no harm" rule), ICJ's decision is in accordance.³¹ Other international declarations and comments from authoritative authorities reinforce the view that nations have extraterritorial responsibility to avoid transboundary environmental damage. According to Principle 21 of the Stockholm Declaration 1972, governments are responsible for ensuring that activities within their jurisdiction or control do not harm the environment of other States or places outside of national authority. States have a duty to address the impact of their actions on global resources, including as the climate, oceans, and biodiversity. As the UN Framework Convention on Climate Change (UNFCCC) notes, those that are most responsible for climate change are expected to take the lead in addressing climate change's severe consequences on ecosystems and people all over the world, not only inside their own borders.³² To guarantee that climate change mitigation or adaptation does not infringe on human rights, international law compels governments and other governmental actors to ensure that their activities do not infringe. Both particular initiatives and wider policy decisions are subject to this requirement. According to Article 2 of the United Nations Framework Convention on Climate Change, States Parties are required to address the structural causes of the global food

³⁰ Harriet Bulkeley, *Climate policy and governance: an editorial essay*, 1 WILEY INTERDISCIPLINARY REVIEWS: CLIMATE CHANGE 311–313 (2010).

³¹ Scott Barrett, *Rethinking Climate Change Governance and Its Relationship to the World Trading System*, 34 THE WORLD ECONOMY 1863–1882 (2011).

³² LISA OWINGS, CLIMATE CHANGE (2020).

crisis, including by implementing strategies to combat global climate change that do not negatively impact the right to adequate food and freedom from hunger.³³ Concerns regarding biofuel initiatives and their impact on food security undoubtedly influenced the Committee on Economic, Social and Cultural Rights' suggestion in this context.

Conclusion

Universal legal protections for persons, communities, and nations' fundamental liberties and rights are found in the concept of human rights. Nations and other public officials are required by human rights law to respect, preserve and fulfil all of the rights of the people they serve. Human rights standards and values such as openness, accountability, fairness, and non-discrimination must lead global efforts to reduce and adapt to climate change. The international community has not taken significant action to avert climate change, despite the obvious human rights consequences. Human rights have been negatively impacted by some of the climate change mitigation and adaptation initiatives now in use, particularly for those who are most vulnerable. According to current climate change mitigation and adaptation efforts, States and other duty-bearers are falling far short of their commitments to avoid and/or repair the negative human rights consequences of climate change. Higher ambition and more effective and inclusive mitigation and adaptation measures are required to include human rights into climate activities.

³³ Stephan A. Schwartz, *Climate Change, Preparedness, and Consciousness*, EXPLORE (2020).