

## ***Human Rights and Climate Change***

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### **Introduction**

1. Over the past 60 years, the world has developed a modern human rights system founded in international law. The primary instruments that comprise that framework are the:
  - United Nations Declaration on Human Rights 1948 (***UNDHR***);
  - International Covenant on Civil and Political Rights 1966 (***ICCPR***); and
  - International Covenant on Economic Social and Cultural Rights 1966 (***ICESCR***).
2. States that have ratified human rights instruments are responsible for the implementation of those instruments. Obligations to respect, protect and fulfil the human rights of all human beings are contained in various instruments. This includes refraining from interfering with, or curtailing the enjoyment of, human rights and positive obligations to protect individuals and groups against human rights abuses – whether by private or government actors. The obligation to fulfil the human rights of all human beings means that positive action must be taken to facilitate the enjoyment of basic human rights and uphold those rights against threats.
3. Each of these major human rights treaties was developed before environmental degradation and climate change were recognised as threats to human security. Nevertheless, current human rights frameworks do capture a range of concerns that are pertinent to climate change, a primary example of which is found in the first article of the two main international human rights covenants – that is, the UNDHR and the ICCPR – where it states that “in no case may a people be deprived of its own means of subsistence”.<sup>i</sup> This is clearly relevant where climate change is affecting access to basic subsistence needs such as water, food, shelter, and healthcare.<sup>ii</sup>
4. In 2008, the UN Human Rights Council adopted by consensus a resolution on human rights and climate change.<sup>iii</sup> The resolution was co-sponsored by 69 countries. The resolution recognises that climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights. The resolution requests that the Office of the United Nations High Commissioner for Human Rights (OHCHR) conduct a detailed study on human rights and climate change.
5. The 2009 Report on the relationship between climate change and human rights undertaken by the OHCHR outlined several significant points in relation to this subject. Most importantly, it concluded that States have duties to protect the human rights of those affected by climate change (including those who have been displaced) regardless of whether or not they are ‘responsible’ for the problem (e.g. regardless of their level of GHG emissions).<sup>iv</sup>

## Where do human rights and climate change intersect?

6. All persons, including those displaced by climate change, are entitled to the enjoyment of the full range of civil, political, economic, social and cultural rights directly established in international and regional human rights treaties and customary international law. These rights are also covered indirectly through other mechanisms, such as principles of international environmental law.<sup>v</sup>
7. The enjoyment of certain rights can be significantly affected by the impacts of climate change. This relationship is discussed in relation to some of the cornerstone rights protected by the UNDHR, ICCPR and ICESCR.

### *Right to life*

8. Article 3 of the UNDHR states that “everyone has the right to life, liberty and security of person”. Similarly, Article 6 of the ICCPR provides that “every human being has the inherently right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” These provisions have been interpreted to require States to take positive measure, including to reduce matters such as infant mortality and increase life expectancy.
9. Climate change may have a direct and indirect impact on human life. This is evidenced through the immediate impacts of climate induced disasters and the slow and gradual deterioration in health due to disease, access to safe drinking water etc.

### *Standard of Living*

10. The ICESCR establishes rights for all persons to adequate standard of living, adequate food, water and housing and to continuously improving living conditions.<sup>vi</sup> In the context of the right to food, the UN Special Rapporteur has noted the need to ensure freedom from hunger and malnutrition. Although a right to water is not expressly articulated in the treaties, it is nevertheless inextricably linked to the preservation of a number of rights, including to health and to food and an adequate standard of living.
11. These rights can be compromised when the effects of climate change, such as coastal flooding and damage of previously arable, agricultural land, restrict people’s ability to access sufficient food and clean water, hunt, fish and gather.<sup>vii</sup>

### *Health*

12. All people have the right to enjoy the ‘highest attainable’ standard of physical and mental health.<sup>viii</sup> However, these rights are compromised for many people by the impacts of climate change, such as the increased occurrence and severity of droughts, floods, storms and tsunamis increasing the prevalence of malaria, malnutrition, diarrheal disease, cardio-respiratory diseases and injury.<sup>ix</sup>

## *Culture*

13. A range of indigenous and cultural rights, including not to be derived of subsistence<sup>x</sup> and the right of indigenous groups and minorities to enjoy their own culture, religion and language<sup>xi</sup> are also implicated by the effects of climate change. The Inter-American Commission on Human Rights has recognised the enjoyment of cultural rights and the survival of indigenous communities are dependent on the physical environment.<sup>xii</sup> This is particularly relevant for small island states that are facing the real threat of extinction. If indigenous communities are forced to migrate as a result of rising sea levels, their cultural rights would very likely be violated.
14. Similarly, the UN Declaration on the Rights of Indigenous Peoples 2007 (UNDRIP) recognises the rights of indigenous communities to practice and revitalise their cultural practices, customs and institutions. The UNDRIP also notes the intrinsic link between culture and land. Climate change impacts upon land can fundamentally affect rights to practice traditional ways of living.

## *Self determination and nationality*

15. International human rights instruments provide for the right to self-determination, to have a nationality and not become stateless.<sup>xiii</sup> The definition of a 'stateless person' only covers individuals who are not considered as a national by any State under the operation of its law, and does not anticipate that the territory of a State may become inhabitable or extinct as a result of climate change.<sup>xiv</sup>
16. As states are responsible for ensuring that the human rights of persons within their territory or jurisdiction are protected, it is clear that those suffering climate-induced internal displacement should be protected. However, international human rights law illustrates a significant gap in the protection of those who are forced to migrate. People suffering climate-induced external displacement do not enjoy refugee status and the legitimacy of their migration on the ground of violations of human rights is unclear. The question therefore remains as to how those displaced by climate change can enjoy the full range of civil, political, economic, social and cultural rights, particularly in the most severe of cases where states disappear and people are left 'stateless'.

## **Legal challenges based on human rights and climate change**

17. The growing recognition that climate change has the potential to interfere with the enjoyment of fundamental human rights has led to a number of legal challenges based on infringements of those human rights.
18. In 2005 the Inuit Circumpolar Conference (*ICC*) brought a case in the Inter-American Commission of Human Rights, petitioning the court to remedy violations of the *American Declaration of the Rights and Duties of Man (American Declaration)*<sup>xv</sup> by the United States of America. The Inuit, the traditional inhabitants of the Arctic region of North America and Greenland, alleged that the US had violated a number of their rights encapsulated in the *ICCPR*, the *ICESCR* and the *American Declaration*. In particular, they alleged that their rights to practise and enjoy the benefits of their culture, to use and enjoy traditional lands, to enjoy personal property, to maintain cultural intellectual property, the rights to health and life, the rights to residence, the inviolability of the home and the right to means of subsistence, were being infringed. The *ICC* claimed that the US, as the world's largest emitter of greenhouse gases, should be accountable for these violations.

19. Although the Commission chose not to resolve the issues raised,<sup>xvi</sup> the petition succeeded in drawing attention to issues of long-term liability for climate change and the obligation to protect those most vulnerable to climate change. Climate change raises interesting questions about the extent to which human rights obligations might be owed by one State to the citizens of another, whether compensation should be payable for a violation of rights and the extent to which the international community might be able to intervene to protect certain rights.
20. Subsequently, the local community of Kivalina commenced a public nuisance case against nine oil companies and a number of power companies (*Kivalina v ExxonMobil et al*). The village had suffered significantly from melting Arctic ice no longer being able to protect the coast from erosion. As a result, the village may need to be relocated or abandoned. The village sought damages for interference with the ability to enjoy ownership and occupation of land and homes. The petition was dismissed in 2009 on the basis that the petitioners did not have legal standing to bring the case.
21. Most recently, on 3rd December 2009, the Federated States of Micronesia (FSM) requested the Czech Environment Ministry to conduct a transboundary Environmental Impact Assessment (EIA) of the plan for the modernization of the Prunerov II power plant, in accordance with § 11, article 1(b) of the Czech EIA Law. In its request letter, the FSM state that the lignite-fired power plant Prunerov is the biggest industrial source of CO<sub>2</sub> emissions in the Czech Republic, and that its eventual modernisation and extension would cause 0.021 % of global CO<sub>2</sub> emissions for another 25 years. The FSM state further that it “has reasonable grounds to believe that its territory will be affected by the significant environmental impacts” of the plan.
22. There are a number of examples where cases have successfully been brought as a result of environmental harm suffered. For example, in the case of *Lopez Ostra v Spain* (2004) the European Court of Human Rights noted that severe environmental pollution may affect individuals' well-being and prevent their enjoyment of their homes in a way that affects their private life and family. The pollution from a waste treatment plant was held to be in breach of Article 8 of the European Convention on Human Rights and the government of Spain was under a positive duty to regulate pollution to prevent the infringement of the rights of local citizens.
23. As these cases demonstrate, one of the main difficulties with challenging activities of state or private companies on the basis of their climate change impacts is the need to demonstrate first, standing, and second, causation. That is, that the action of the defendants is causing or contributing to the harm suffered by the plaintiff. Where impacts can be directly attributed to the act or omission of a government or company, it may be possible to successfully bring a legal challenge. However, without that direct causal link it is much more difficult.

### **State Responsibility**

24. Generally, responsibility for human rights protection is attributed to individual States and extends to all persons within that State's territory or jurisdiction.<sup>xvii</sup> However, in most developing countries, the State is not directly responsible for the impacts of climate change and the potential violation of rights associated with the impacts of global warming.
25. One area of human rights law that is not well developed is whether States have obligations to protect non-citizens outside their jurisdiction. The ICESCR calls upon State parties to ‘take steps

individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means.<sup>xviii</sup> This includes ensuring that States, and private actors in their jurisdiction, do not interfere with the enjoyment of human rights in another country; and that states work cooperatively and provide development assistance, such as disaster relief, to promote the fulfilment of human rights abroad.<sup>xix</sup>

- 26. Chimni is of the view that the ICESCR creates an international obligation on developed States parties to cooperate and grant assistance to developing countries to help realise the right to development.<sup>xx</sup> Whether this obligation extends to a duty to accept migrants and afford them protection has not yet been explored in any detail.

**Link to UNFCCC**

- 27. The United Nations Framework Convention on Climate Change (UNFCCC) does not directly address obligations to protect human rights that may be impacted by the adverse effects of climate change. Whilst a number of countries have highlighted the fact that their human rights may be infringed in their high level statements to the conference of the Parties to the UNFCCC, this has not led to specific recognition of particular rights.
- 28. The most recent version of the draft negotiating text of the Ad-hoc Working group on Long-term Cooperative Action (AWG-LCA) notes Resolution 10/4 of the UNHRC on human rights and climate change, which recognises that the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights and that the effects of climate change will be felt most acutely by those segments of the population that are already vulnerable, owing to geography, gender, age, indigenous or minority status or disability.
- 29. In addition, the draft decision in the AWG-LCA text relating to reducing emission from deforestation and forest degradation includes a specific safeguard to respect the knowledge and rights of indigenous persons, taking into account international obligations, including those contained in the UNDRIP. However, the text does not operationalise steps to prevent the enjoyment or infringements of human rights more generally.
- 30. Parties have traditionally been reluctant to address human rights issues in the UNFCCC framework. This is largely because there are already well established human rights forums. Nevertheless, working with the UNHRC to identify how climate change impacts can affect the enjoyment of human rights and sharing that knowledge can inform the development of mitigation and adaptation strategies.

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<sup>i</sup> See article 1(2) in both the *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 177 (entered into force 23 March 1976), art.1(2) (**ICCPR**) and the *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 U.N.T.S 3 (entered into force 3 January 1976) (**ICESR**).

<sup>ii</sup> Humphreys, Stephen, 'Introduction' in Stephen Humphreys (ed) *Human Rights and Climate Change* (2010), 9.

<sup>iii</sup> UN General Assembly Human Rights Council 'Human Rights and Climate Change' A/HRC/7/L.21/Rev.1 March 26, 2008

<sup>iv</sup> *Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights*, (2009) UN Doc A/HRC/10/61 (hereinafter 'OHCHR Report'), 28.

<sup>v</sup> Human Rights and Equal Opportunities Commission *Background Paper: Human Rights and Climate Change* (2008) at p. 3

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<sup>vi</sup> ICESCR, art. 11.

<sup>vii</sup> Saul, B "An Insecure Climate for Human Security? Climate Induced Displacement and International Law" Legal Studies Research Paper No.08/131, at 10.

<sup>viii</sup> ICESCR, art. 12

<sup>ix</sup> Saul, at p. 10.

<sup>x</sup> ICESCR, art. 1(2); ICCPR art.1(2)

<sup>xi</sup> ICCPR, art. 27.

<sup>xii</sup> *Maya Indigenous Communities of the Toledo District (Belize Maya)* Case 12.053 IACHR (2004), para. 120, in Saul at p.10.

<sup>xiii</sup> See e.g. The right to self determination: ICCPR art 1(1); ICESCR art 1(1); The right to have a nationality and not become stateless: UN Declaration on Human Rights (adopted 10 Dec 1948) UNGA Res217 (III), art 15 (*UDHR*); ICCPR, art24(3); American Convention on Human Rights (adopted 22 Nov 1969, entered into force 13 Dec 1975) 989 UNTS 175

<sup>xiv</sup> *Convention relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 1171 (entered into force 6 June 1960), art 1(1);

<sup>xv</sup> Petition to the Inter American Commission on Human Rights Seeking relief from Violations resulting from Global Warming caused by Acts and Omissions of the United States (7 December 2005) available at <http://www.inuitcircumpolar.com/files/uploads/iccfiles/FINALpetitionICC.pdf>

<sup>xvi</sup> The Petition was dismissed without prejudice. however the ICC requested and were granted the opportunity to address the IACHR on 1

March 2007 see [http://www.ciel.org/Publications/IACHR\\_Response\\_1Feb07.pdf](http://www.ciel.org/Publications/IACHR_Response_1Feb07.pdf)

<sup>xvii</sup> General Comment No.31[80] Nature of the General Legal Obligation Imposed on State Parties to the Covenant 26.05.2005 CCPR/C/21/Rev.1/Add 13 (General Comments) in particular para 3 and para 10.

<sup>xviii</sup> ICESCR

<sup>xix</sup> OHCHR Report, 28; Marc Limon, 'Human rights and climate change: constructing a case for political action', (2009) 33 *Harvard Environmental Law Review*, 454.

<sup>xx</sup> BS Chimni, 'Development and Migration' in T Alexander Aleinikoff and Vincent Chetail (eds), *Migration and International Legal Norms* (2003) 256-7.