

International Human Rights Law Standards in the Face of Climate Change: What Effectiveness?

المعايير الدولية لقانون حقوق الإنسان في مواجهة تغير المناخ: أية فعالية؟

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Abstract:

The immense challenges posed by climate change to human rights have intensified efforts to identify and respond to risks. Against this backdrop, a movement has emerged that advocates considering the intersection between international law and climate change, particularly with regard to human rights. The aim is to explore the possibility of leveraging these intersections to mitigate the impacts of climate change from a rights-based perspective.

This research paper therefore aims to examine the potential of applying the findings of international human rights protection to effect effective and equitable change within the context of climate law. Despite considerable efforts by various UN bodies and mechanisms to activate this approach and achieve positive outcomes, the study concludes that the fragility of legal systems related to human rights has been highlighted. These systems must be adapted to address the challenges posed by climate change, and efforts must be directed towards international cooperation to tackle the phenomenon.

Keywords: International Human Rights Law; International Standards; Climate Change; International Cooperation; Human Rights; Protection.

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Introduction:

Professor Cinnamon Carlarne begins his study of climate change and human rights with the statement, ‘We stand on the brink of an environmental crisis’¹, which encapsulates the complexity of the global environmental problem. This problem has become a multifaceted challenge with economic, social, political and security dimensions. It relates to various aspects of our daily lives. Climate change can impact everything from access to food and water to public health, biodiversity, urban planning, human security and, ultimately, human rights.

As this phenomenon intensifies, it is essential to find solutions that mitigate its destructive effects, which threaten the sustainability of our planet. The United Nations has therefore sought to address the crisis from the outset based on the idea that the international community can act collectively, guided by shared standards intertwined with the evolution of international law — from a system focused on peaceful coexistence to one aimed at facilitating cooperation on issues of common concern. However, intensifying climate change patterns and setbacks in cooperation efforts have revealed the enormous challenges climate change poses to human rights. This necessitates doubling efforts to identify and respond to risks through frameworks and tools that protect human rights.

In light of the above, any systematic and ambitious approach to reducing the causes and consequences of climate change is destined to fail unless it considers the various intersections between international law and climate change, particularly with regard to human rights. This research paper therefore aims to explore the relationship between climate change and human rights, investigating the potential of leveraging this relationship to derive effective climate change solutions. It also considers the possibility of extending human rights frameworks and integrating them into climate law by embedding a rights-based perspective as a foundation for addressing climate change issues.

Problem statement:

To achieve the desired objective, the following problem statement has been formulated:

Based on the strengthening of the normative and legal links between climate change and human rights, can the findings in the field of international human rights protection be used to effect effective and equitable change within the context of climate law?

What are the key points of interaction between climate change and human rights?

Can international climate frameworks be designed from a rights-based perspective? Or, conversely, must human rights law adapt to climate change?

Hypothesis of the study:

The study’s problem statement is based on the hypothesis that establishing climate law on the principles and frameworks of the human rights system can yield effective solutions to climate change problems.

Methods and structure of the study:

To address the problem statement and subsidiary questions, a descriptive-analytical approach has been adopted. This involves examining the various intersections between human rights and climate change, presenting and describing the areas of influence and interaction between the two, and analysing legal systems and their responsiveness to climate change issues. A comparative approach between global and regional frameworks may also be employed.

The research paper is divided into two main sections:

Firstly: The links and intersections between human rights and climate change.

Secondly: The adequacy and suitability of human rights standards for climate governance.

Firstly: The Links and Intersections between Human Rights and Climate Change

Before exploring solutions to climate change issues and previous attempts to leverage the normative power of human rights frameworks within the context of climate law, it is important to first consider the possible connections and common ground between human rights and the challenges posed by climate change. This section is therefore divided into two subsections. The first examines the relationship between human rights and the environment, and the second addresses the links between human rights and climate change.

1. The Relationship Between Human Rights and the Environment

This relationship has been recognised within the United Nations for some time, dating back to the early days of modern environmental law at the 1972 United Nations Conference on the Human Environment. The Stockholm Declaration included one of the earliest references to this connection by mentioning the fundamental human rights to freedom, equality and adequate living conditions, as well as the right to a quality environment that allows for a dignified life and well-being². However, little was done during the first two decades of legal development to explore the links between the environment and climate change.

Between the Stockholm Conference and the 1992 United Nations Conference on Environment and Development in Rio de Janeiro, discussions surrounding human rights and environmental protection became marginalised in efforts to address an increasing array of environmental and economic development challenges. Consequently, the initial emphasis on a human rights perspective in the Rio Declaration was lost, and instead of emphasising ‘human rights’, it was declared that humans are at the centre of concerns regarding sustainable development³.

It was not until 1994 that the UN Special Rapporteur on Human Rights and the Environment, Fatma Zohra Ksentini, presented a draft declaration of principles on human rights and the environment to the United Nations Economic and Social Council⁴. Although the declaration proposed establishing a new category of human rights that recognises the right to a safe and healthy environment, this did not result in any clear legal changes within the UN human rights system⁵.

Culminating international efforts to link human rights and the environment resulted in the Human Rights Council establishing a mandate on human rights and the environment in early 2012. This mandate was tasked with studying human rights obligations related to ensuring a clean, healthy and sustainable environment, and promoting best practices for utilising human rights in environmental policymaking⁶.

To this end, John Knox was appointed as an independent expert on human rights and the environment. During his tenure, he demonstrated a renewed focus on the intersection of the two, including the relationship between climate change and human rights⁷. He concluded his term as Special Rapporteur by presenting a report that set out framework principles to help states ensure the enjoyment of a safe, clean, healthy and sustainable environment in the context of human rights⁸.

Notably, the report emphasised that the interconnection of human rights and the environment is beyond doubt. The rights to life, health, food, water and development highlight the countless aspects of the relationship between human rights and the environment, and our understanding of this will continue to evolve for many years to come⁹.

While the Office of the High Commissioner is spearheading the UN's efforts to recognise the connection between human rights and the environment, complementary steps have also been taken worldwide. Over 100 states have recognised the right to a healthy environment at a national level through constitutional or legislative provisions¹⁰, and this right has been incorporated into various regional human rights agreements and environmental treaties¹¹.

2. Environmental Rights in the Context of Climate Change

The links between human rights and the environment are clear, and urgent action is required in the context of climate change. This is evident in the Special Rapporteur David Boyd's current report on human rights and the environment, which details the devastating impact of the global climate emergency on human rights enjoyment and the vital role of human rights in motivating climate change action. Boyd concludes that 'a safe climate is a vital component of the right to a healthy environment and is essential for human life and well-being'¹².

Efforts to establish the relationship between climate change and human rights have expanded significantly over the years, beginning in earnest in 2005 when the Inuit group submitted a petition to the Inter-American Commission on Human Rights (IACHR). They claimed that the United States' failure to reduce greenhouse gas emissions had resulted in climate change that violated their human rights, including their rights to property, culture, and traditional ways of life¹³.

Although the IACHR declined to rule on the complaint, it invited the petitioners to testify to the commission about the links between climate change and human rights. This led to several initiatives addressing these links¹⁴.

In 2007, leaders from some of the world's most vulnerable small island developing states gathered in the Maldives to discuss the connection between human rights and climate change. One of the key outcomes was the Male Declaration on the

Human Dimension of Climate Change, which was released as part of an international agreement and stated that ‘climate change clearly and immediately affects the full enjoyment of human rights’. The UN human rights system was urged to address the issue with urgency. Based on this agreement¹⁵, the Human Rights Council adopted a resolution on human rights and climate change in 2009 that emphasised the implementation of various rights, including the rights to life, adequate food, health, housing, self-determination, safe drinking water and sanitation¹⁶.

The Council also stressed that human rights obligations and responsibilities have the potential to inform and enhance international and national climate policymaking. Consequently, the Council sought to continue working to understand the relationship between these two legal domains¹⁷.

Secondly: The adequacy and suitability of human rights standards for climate governance

In an effort to recognise and respond to the critical links between climate change and human rights, there were increased efforts in the years following 2009 to establish the foundations of a new global environmental charter¹⁸. This charter aimed to address the gaps in the existing system and solidify environmental law worldwide. Consequently, human rights became a central focus of negotiations surrounding every climate system. From this perspective, it is essential first to explore the rights-based approach to climate law (Subsection One), and then to examine the possibility of implementing this approach in climate governance (Subsection Two).

1. Establishing the Climate System on Human Rights

In light of the slow progress in achieving international consensus on a global climate change agreement, climate change activists bolstered their cause by relying on strong normative arguments. They framed climate change campaigns in terms of ‘human rights’ to add normative power to their advocacy for regulation. However, Humphreys observed that invoking human rights language in the context of climate change is primarily an attempt to stimulate action for climate mitigation, rather than to protect human rights¹⁹.

In other words, human rights arguments can be used to strengthen the case for climate action²⁰. Some commentators have suggested that promoting human rights standards could breathe new life into stagnant environmental discussions by highlighting the human cost of environmental degradation. This could garner more support for marginalised groups who are likely to be the most affected by climate change²¹.

The ethical issues we face as a result of climate change are so profound that human rights are considered the most appropriate response²². This approach is based on the idea that the link between human rights and climate change is not only practical, useful or strategic, but also ethical, relating to fairness, justice and rights.

Simon Caney has previously discussed the argument that climate change gives rise to compelling ethical responsibilities based on the premise that climate change threatens the enjoyment of rights²³. Therefore, individuals have a duty not to engage

in activities that undermine the rights of others. He argues that a human rights-based approach can serve as a foundation for compensation wherever harm occurs²⁴. In an effort to allocate corresponding duties to the rights arising from climate change, Caney advocates a hybrid approach combining the principles of contribution and ability to pay.

However, in practical terms, although Caney's argument is appealing in its theoretical form, its success is directly linked to the will of states²⁵, and it is unlikely that an agreement will be reached within the current structure of international law and diplomacy. This is particularly evident in light of the ongoing difficulties faced in attempts to build comprehensive international agreements on climate change across traditional lines of developed and developing countries²⁶.

Based on the above, the continued efforts of the United Nations to recognize and respond to the links between climate change and human rights have led to a shift in the right to litigate concerning climate change. As suggested by Professors Hari M. Osofsky and Jacquelin Peel, "Litigants in courts around the world have sought to establish state obligations to address climate change as a fundamental constitutional issue, as well as recognizing its connection to human rights."²⁷

The Paris Agreement is the first legally binding text to explicitly integrate human rights language into an international agreement, urging parties to respect, promote, and consider each state's obligations regarding human rights²⁸. However, this process was preceded by numerous efforts within the Human Rights Council, which issued a resolution in 2015²⁹ focusing on the need to identify the various harmful effects of climate change. In 2016,³⁰ it reaffirmed that human rights principles, rules, and obligations can guide the formulation of international, regional, and national policies on climate change. In its 2018 report, it addressed issues related to the rights of people displaced due to climate conditions and continued its efforts to address the negative impacts of climate change on the enjoyment of human rights³¹, culminating in the adoption of resolution 13/84 in 2021, which declared that the enjoyment of a clean, healthy, and sustainable environment is a human right. It also established the mandate of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, reflecting the necessity of creating a legal framework for the interactive relationship between human rights and climate change³².

The Office of the High Commissioner for Human Rights has also worked to raise awareness of the issue and contribute to directing international climate negotiations by establishing the link between "human rights and climate change." The Office has drawn the international community's attention to the protection of children from climate change, given that they are among the most vulnerable and fragile groups³³. It has also developed an expert study on the impact of climate change on health, presenting a report to the Human Rights Council based on data from the World Health Organization regarding deaths that are likely to increase due to climate change, such as heat-related illnesses and air pollution³⁴.

Perhaps the most significant achievement at the United Nations level was the General Assembly's declaration, through its resolution 300/76 in 2022, that access to a clean, healthy, and sustainable environment is a universal human right³⁵. This resolution called upon states, international organizations, and businesses to intensify efforts to ensure a healthy environment for all, aiming to address the triple crisis of the planet, which consists of interrelated environmental threats: climate change, pollution, and biodiversity loss.

Resolution 1/CP.16, resulting from the Cancun Conference, for the first time explicitly recognized the necessity for parties to fully respect human rights within all measures related to climate change³⁶. However, there has been a regression in addressing this issue in subsequent conferences, as human rights were not integrated into their agendas. In light of this omission, some parties, influenced by representatives of international organizations, attempted to include explicit references to human rights in the agreements emerging from the Paris Conference, ensuring that they included genuine commitments that belong to hard law, unlike previous non-binding declarations³⁷. However, despite the inclusion of a provision in the draft agreement requiring states to implement climate adaptation measures focusing on human rights, the agreement lacked a clear obligation and included only some direct and indirect references to human rights.

Additionally, it is worth noting the renewed call by UN experts after several Conference of the Parties meetings following the Paris Summit to integrate human rights standards into the 27th Conference held in Sharm El Sheikh, Egypt, in 2022. This conference announced the establishment of the so-called Loss and Damage Fund to assist poor countries suffering from climate change³⁸. However, due to the lack of reference in the agreement to substantive bases that establish state responsibility in cases of non-payment and making it voluntary, it does not constitute a significant achievement in the journey to integrate human rights into the climate change framework.

2. Evaluating the Role of Human Rights Norms in the Development of Climate Law

The vision that positions human rights as a reliable normative foundation is rooted in an understanding of international law that is firmly established in human rights. Consequently, the emphasis on human rights in climate law arises from the idea that human rights principles and institutions form a solid and supportive basis upon which reliable arguments, actionable responses, and remedies for climate-related violations can be constructed³⁹. This is the same vision that the United Nations has adopted and sought to develop. Undoubtedly, its effects have become apparent in international law as a whole; however, the foundation itself is subject to scrutiny.

A. this perspective can be initiated from what Professors James Coeffer and Millaversteeg described: that despite the rapid advancement of the human rights agenda over the past two decades, the golden age of human rights has been

accompanied by growing concerns about the utility and legitimacy of human rights, along with related studies of human rights⁴⁰.

According to some recent studies, human rights law has failed to achieve its intended purpose of enhancing respect for human rights and alleviating harms on the ground. The human rights project has come under increased scrutiny due to its failures to meet its objectives⁴¹. It suffices to cite the warning from the Council of Europe regarding the rising instances of states ignoring their international obligations and the constitutional constraints related to human rights⁴².

While “human rights” continue to be a central doctrine in the international system, the ongoing challenges facing that system raise questions about the integrity of texts that envision climate law intertwined with a rights-based framework. This recognition of the fundamental links between climate change and the realization of human rights becomes crucial⁴³.

B. the human rights-based approach in the context of climate change encounters concerns about the individualistic nature of human rights and the limited capacity of human rights to consider the interests of future generations, as well as the inherent difficulties in articulating the “right to a healthy environment.” Therefore, the success of the human rights-focused approach to climate change must acknowledge the pressures facing the human rights project and respond to these challenges while questioning the centrality of human rights within legal frameworks.

As a result, the human rights system itself must adapt to climate systems. Proving human rights violations and states’ failures to meet their obligations due to participation in global warming is not without difficulty, as establishing a causal link between human-induced emissions and the recorded impacts on human rights is challenging. Additionally, the issue that may arise from climate changes crossing state boundaries complicates the determination of state obligations related to human rights outside its borders, which is a sensitive matter that international law has yet to prepare to address with solutions beyond state borders.

C. The relationship between climate change and human rights undeniably provides opportunities to elevate climate-related claims and offer remedies for violations, as well as respond to the genuine connections between climate and human rights. However, at the same time, we cannot ignore the contemporary pressures concerning human rights norms and the gaps they suffer from. The international human rights system, despite efforts to integrate the human rights approach into complaints submitted to judicial bodies, often faces challenges due to the optional nature of most mechanisms, which can render them ineffective. Even when cases are presented, they encounter hurdles, as observed in the Human Rights Committee’s decision on January 7, 2020, following a complaint by Ioane Teitiota in 2015. The Committee acknowledged the necessity to consider climate change before a state makes decisions regarding deportation, yet it rejected the establishment of the right to life on the grounds that the authorities of Kiribati had taken necessary protective measures⁴⁴.

Conclusion:

Climate change interferes with the realization of basic human rights for millions of the poor, and there is no doubt about the fundamental relationship between climate change and human rights. The climate crisis is undoubtedly a rights crisis. Therefore, the study concludes with a call for a fundamental approach to advance climate law by establishing a direct link between climate change and the human rights system, leading to a series of findings and recommendations outlined as follows:

Findings:

1. There is a clear link between climate change and human rights that has been acknowledged from the outset, connecting human rights to the right to a healthy environment, which extends to issues of climate change.
2. The United Nations has sought to activate the approach that links human rights and climate change through all its mechanisms, which has reflected in states' negotiations on climate issues, but without significant progress across various conferences.
3. There is a proven inability of human rights norms to address climate change, as they themselves suffer from fragility in their normative foundations and need to be adapted to the challenges posed by climate change.
4. There is a lack of genuine obligations imposed on states to address climate change arising from human intervention, hindering the realization of the right to climate litigation at the international level, despite some contemporary experiences.

Recommendations:

1. In the absence of a binding law capable of governing climate change, internal responses to climate change through filing lawsuits before national judicial bodies can serve as an ideal solution to the problem, and movements in this direction have already begun.
2. International cooperation in climate action is currently the available means, not only between states but also with the contribution of non-state actors in managing global climate issues. This is not a new concept; a global portal for climate action (NAZCA) was launched, discussing the role of non-state actors in achieving national contributions under the Paris Agreement, and efforts in this area should continue.

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- ³⁸ - FCCC/CP/2022/L.18, FCCC/PA/CMA/2022/L.20 (November 19, 2022).
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