Introduction

(1) Since the Intergovernmental Panel on Climate Change (IPCC) released its first assessment in 1990, the consequences and impacts of climate change have been widely known and have become manifest in many regions of the world. In its fourth assessment report in 2007, the IPCC identified a number of impacts in terms of human rights, for instance, related to agriculture and food supply in many countries.\(^1\) Despite some dispute on details, there is no doubt that climate changes leads to a worsening situation with respect to access to land, water, and resources, and this, in turn, will trigger e.g. massive movements of refugees and violent conflicts. Like in a nutshell, the current situation of climate change and its detrimental effects can easily be studied at the Pacific islands, in particular, at the atoll islands of Kiribati, Tuvalu, Vanuatu, the Carteret Islands of Papua New Guinea or the Marshall Islands. Their inhabitants are confronted with rising sea level, an increasing number of extreme weather conditions (cyclones, hurricanes, floods), coastal erosion, a growing lack of freshwater, higher temperatures in surface waters, and a growing acidification of the sea. They face an existential threat to their livelihoods. In 2006, the Stern Report estimated the possible costs of climate change at up to 20% of global Gross National Product by 2100 while also saying that the costs of effective climate protection or the immediate reduction in emissions now might be lower than the failure to act.\(^2\)

I. Human Rights as a Normative Platform

(2) In the context of the UN human rights system, the report of the OHCHR in 2009 showed that the effects of climate change are interfering with a wide range of human rights, including the rights to life, health, food, water, housing and shelter, the preservation of specific cultural characteristics in cases of resettlement and migration, but also touched political and civil rights as freedom of information and opinion, the right to dissent or dispute a certain climate change approach taken, access to a legal review of decisions, and participation in the political opinion-forming and decision-making process, as well as self-determination.\(^3\) Moreover, states would be obliged that their efforts to mitigate and adapt to climate change are in accordance with their duties under human rights law.

\(^1\) IPCC 2007a, 2007b, 2008; see also the famine in Somalia in fall 2011.
\(^2\) Stern 2006.
\(^3\) OHCHR 2009.
(3) Several mandates of the Special Procedures have started to involve climate change and its adverse effects into their reports; namely the Special Rapporteur on the Rights of Indigenous Peoples, on the Right to Safe Drinking Water and Sanitation and on the Right to Food.\(^4\) The Special Rapporteur on the Right to Safe Drinking Water and Sanitation elaborated in 2010 a position paper specifying benchmarks on the subject.

(4) In addition, UN Treaty Bodies started to take climate change into their considerations; e.g. the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee on the Elimination of Racial Discrimination (CERD), and the Committee on the Rights of the Child (CRC). The CRC urged Grenada in 2010 to evolve a programme for natural disasters and to adequate its policy on environment issues and cooperation with regional and international partners in the context of climate change. In 2009, the CESCR expressed its concern on the negative impact of climate change affecting in particular indigenous peoples. The CESCR encouraged the government to reduce its greenhouse gas emissions and to mitigate the adverse effects of climate change as well as to adequately consult the affected Aboriginal and Torres Strait-Islander peoples.\(^5\)


I.1. Victim’s Perspective

(6) The assessments of human rights situations made in the context of climate change allow to adequately assess the impacts and to gain a fairly accurate picture of how urgent and serious an infringement is. Human rights provide an internationally agreed language, a pertinent platform to discuss the scope of the problem, and they also entail the ethical compass in the transformation of society and economy. Although adverse impacts of climate change do not automatically translate into violations of state duties under international human rights law, the human rights norms constitute a framework of accountability. Non-state actors have promoted this and insisted to involve human rights into the climate change regime; as for instance by indigenous peoples.

(7) Moreover, a set of different complaint procedures can be used to demand protection and a fair compensation based on minimum standards. The implementation of the standards are checked by independent experts. Non-state stakeholders are entitled to provide critical. In sum, human rights provide an adequate set of tools to deal with climate change and in particular to make the perspective of victims the core element of consideration.

\(^5\) CRC 2010 para 52; CESCR 2009, para. 27.
\(^6\) For further details consult the web page of CIEL (Center for International Environmental Law) at http://www.ciel.org or Earth Justice at http://earthjustice.org.
I.2. International Cooperation

(8) The OHCHR report of 2009 also took up the second constitutive element of the human rights system, the issue of international cooperation. The study noted that climate change is a truly global problem that disproportionately affects poorer countries with the weakest capacity to protect their populations. The report refers to the disputed principle of ‘extraterritorial state obligations’ (ETO). The report quotes General Comment No. 3 of the UN Committee on Economic, Social, and Cultural Rights (CESCR), that affluent nations are obliged to assist poorer nations. According to this General Comment, states are requested, for instance, to provide reliable international assistance and co-operation, and to guarantee that human rights will be adequately anchored in international agreements, and that none of such agreements shall harm human rights.

I.3. Right to Development

(9) The genuine norm within the human rights system which stresses in particular international cooperation is the UN Declaration on the Right to Development. It provides a conceptual structure and normative substance combining international cooperation, core human rights norms and calls for equity and justice. Its normative structure aims to redirect the macro-level and its sources of wealth towards the primary subject of development, the human person and its dignity. It is within this logic to establish human rights as a key element in order to get access to minimum standards and justice to underprivileged people. The Right to Development requires within the context of climate change, that human rights violations would not be justified in order to reduce emissions or to adapt measures. The functions and characteristics attributed by the Right to Development to international cooperation are likewise the call for international cooperation by the UNFCCC, where it is considered a key element.

(10) Is the promotion of development in terms of economic growth contradictory to the reduction of greenhouse gas emissions? As there is only few space left in the atmosphere to increase emissions of greenhouse gases without further damaging the climate system, the question arises how to deal with the imperative of climate protection and the distribution of the resources which made the wealthy countries wealthy.


(11) Within the debate on climate protection and fair access to resources, the organisation EcoEquity and the Stockholm Environmental Institute developed the concept of the “Greenhouse Development Rights Framework” which addresses main aspects in bridging climate protection, poverty reduction and human rights. The approach starts from the premise that climate change imposes inherent limits on development, national economies and global

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7 CESCR 1990.

8 The preamble of the UN Framework Convention on Climate Change (UNFCCC) affirms that, “responses to climate change should be coordinated with social and economic development in an integrated manner with a view to avoiding adverse impacts on the latter.” The ultimate objective should be achieved in a way “to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.”

9 Baer et al. 2010.
economy. In the context of climate constraints, fundamental public goods such as energy access, which are vital to achieve basic human rights, needs to be primarily assigned to developing countries in portions that allows them to prosper. In order to allocate the minimal development needs in a fair way, the Greenhouse Development Rights (GDR) framework identifies a threshold which marks the level of welfare, below which individuals and countries are exempted from contributions to reduce greenhouse gas emissions. Conversely, people above the development threshold are perceived as having realised their right to development, and therefore are subject to bear differentiated responsibility. Thus, the GDR framework proposes the Responsibility and Capacity Index (RCI) which corresponds to the UNFCCC principle of ‘common but differentiated responsibilities and respective capacities’.

I.5. Development Aid

(12) The issue of mitigation and adaptation is increasingly taken up by bi- and multilateral relationships based on development aid. Within this context, international cooperation is understood as responsibility in order to address the asymmetric allocation of resources, capacities and chances and, conversely, that wealthier countries have a historical and ethical obligation to provide international assistance and cooperation. The principle of differentiated responsibility is at least implemented into the practice of development aid though not legally binding. With the Paris Declaration of 2005 and the Accra Guidelines of 2008, guidelines have been developed in order to make development aid a more binding activity and bringing the recipient countries at least nominally into an egalitarian position. Such an approach could be made more fruitful for the scope of discussion on international cooperation within the context of climate change. In addition, all donor countries meanwhile relate to human rights as a primordial base for any development aid activity.

(13) These few examples may be sufficient in order to spotlight the aspect of international cooperation, how it may be enhanced, what means are already available in order to measure good practice, and how the discussion on improving the international cooperation within the climate change regime might be enforced. How it may be implemented and worked out might be deduced from the dispute between Micronesia and the Czech Republic. The Federated States of Micronesia has challenged plans to expand a coal fired power station in the Czech Republic (Prunerov Two plant), arguing the power station expansion would threaten the future of their archipelago.\(^\text{10}\)

II. Climate Change Regime and Human Rights

(14) Most of the world’s nations have included climate change and its immediate effects into their political agendas. In the framework of UNFCCC, the nations are wrangling over a climate treaty that should enact drastic cutbacks in the carbon dioxide (greenhouse gas) emissions as well as over agreements on e.g. financial transfers from the global North to the global South in order to help developing nations to adapt to climate change. Originally, within the UNFCCC negotiations, industrialised countries acknowledged their greater contribution to climate change as well as their responsibility and greater capacity to deal with. The UNFCCC speaks of „common but differentiated responsibilities and respective capacities.“ The

industrialised countries further recognised to assist poorer countries in managing the transit to low-carbon economies. Still, there is no comprehensive policy in place although being a key principle of the climate change regime. In addition, although the IPCC started a research programme in 2007 in terms of a human rights assessment, there is yet no agreed assessment tool existing within the climate change regime. Obviously, climate change encompasses complex situations and scientific projections at global level, which hamper the determination of causation, attribution and apportionment of responsibility in singular cases.11

(15) The 16th session of the Conference of the Parties (COP) on the UN Framework Convention on Climate Change (UNFCCC) took place in Cancún (Mexico) in December 2010 and identified human rights as a major reference point for further deliberations. There was consensus that climate change signifies a vital challenge for the protection of human rights. Despite such encouraging set up, COP 17 in Durban did barely add anything further in discussing the future regime on climate change within human rights benchmarks and to settle the climate change regime on a victim’s orientated, normative platform. Climate change policy must take human rights into account in order to make the deliberations on climate change to function effectively.

III. Lessons Learnt

(16) Human rights are relevant for shaping climate change policy. From the viewpoint of – potential – victims suffering from adverse impacts of climate change, there is no reliable recourse to address those impacts in an internationally agreed language than human rights. And according to the Vienna Declaration on Human Rights and its Action Plan of 1993, human rights are the first obligations to be complied with by States. Also the UN Security Council recognised in its Presidential Statement from 20 July 2011 that the adverse effects of climate change aggravate threats to global peace and security.12 Some of the world’s most powerful countries agreed to identify climate change as aggravating threat to international peace and security. The Presidential Statement reiterates the centrality of the UNFCCC and other pertinent UN organs as the platforms where the focus on climate change should remain.

(17) Human rights norms should set the minimum thresholds for qualifying climate change impacts. The UNFCCC and its institutions are currently insufficient to adequately address such adverse impacts of climate change on human rights while it is within the logic of the UNFCCC to introduce a complementary normative framework on accountability. The next assessment report by the IPCC in 2014 may include such a chapter explicitly involving a human rights approach.

(18) For the time being, the human rights system establishes a procedural structure and provides a relatively efficient tool for
➢ clearly identifying the adverse affects of climate change,
➢ setting the priorities for critical areas of intervention, in particular in relation to vulnerable people,
➢ converting the instruments of assessment into a monitoring system,
➢ clarifying responsibilities of states and seeking a fair settlement in the area of international cooperation,

12 UN Security Council 2011; it was the first Presidential Statement ever on climate change issues.
addressing the asymmetry between powerful emitters and vulnerable victims.

IV. Conclusions

(19) The current human rights system can be further strengthened vis-a-vis the human rights standard setting as well as related to the international policy-making in the area of climate change. The HRC Social Forum at its session on October 2010 recommended to establish a new mechanism under the Special Procedures on climate change and human rights. The mandate should clarify the responsibilities of states in the area of climate change at national and international level, contribute to identify linkages between the Right to Development and the climate change regime, monitor the adverse effects of climate change and corresponding measures on the realisation of human rights.13

(20) Such a mandate could provide expertise and support in order to

- clarify legal issues and to interpret obligations in the context of climate change, for instance, in analogy to the outcomes of the mandates on right to food, right to water and sanitation, or business and human rights;
- undertake fact finding missions;
- address silent disasters and to give silent victims a voice;
- systematise the existing environmental assessment obligations;
- elaborate on specific effects caused by climate change14 and evolve a genuine guideline for both institutions, the HRC and the UNFCCC;
- streamline other relevant mandate holders of the Special Procedures and pertinent UN agencies;
- serve as a focal point and to systematise good practices;
- specifically consult the climate change regime;
- institutionalise the communication between both the human rights and the climate change regime;
- make UNFCCC and its process consistent with the obligations on human rights;
- gradually develop a legal instrument build upon case studies, again in analogy to the mandate of John Ruggie on business and human rights.

References


13 Social Forum 2011, para 60; further reflections on institutionalising climate change into the human rights regime have been developed by CIEL and FES 2009.
14 like sea level rise and the destruction of harvest or the entire livelihood by salt water.


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