

Addressing Climate Change through Sustainable Development and The Promotion of Human Right



Hemant Kumar Singh
MA [NET] Department of Geography,
University of Allahabad

ABSTRACT

Climate change poses a risk to the human rights of millions of people--such as their rights to life, health, food and water. The risks are highest in developing countries, where extreme weather events, crop failures and other emergencies related to climate change are projected to occur with greater frequency. Most developing countries also lack the necessary technological and financial resources to adapt to climate change. Indeed they are already facing increased difficulties in realizing the economic, social and cultural rights of their people due to the financial, economic and food crises and growing populations. This paper sets out the relevance of international human rights obligations in light of the multiple constraints climate change poses to the sustainable development of developing countries. These legally binding obligations have been agreed upon by states since the creation of the United Nations and are incorporated in widely ratified human rights treaties. Legal human rights obligations specifically require states to act to protect peoples and individuals from violations of their human rights and for states to cooperate to this end. Climate change will impact a wide range of these human rights and could potentially lead to their serious and widespread violation.

KYEWORDS: - Technologies, Financial Resources, International Human Rights, United Nation, Climate Change

INTRODUCTION

It is well accepted that climate change is caused by human beings. The Intergovernmental Panel on Climate Change (IPCC) has confirmed in several reports climate change is manmade and caused by the excessive emission of greenhouse gases (GHGs) since industrialization.¹ One hundred and ninety four (194) states have agreed with this assessment in ratifying the United Nations Framework Convention for Climate Change (UNFCCC) ² in which a legal definition of climate change is found in Article 1 that states “a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.”³ International law not only recognizes that there is evidence that climate change is caused by human beings, but generally that human beings or countries have been the greatest contributors to climate change. Historically, developed countries – as a result of their industrialization process and its associated production and consumption patterns – have accounted for around three-fourths of total anthropogenic emissions of greenhouse gases into the atmosphere since the start of the Industrial Revolution (i.e. from around 1850 to the present). Developing countries – despite their larger populations but as a result of their lower industrialization levels – have contributed much less to such anthropogenic emissions. Currently, with just 15 per cent of the world

population, developed countries account for 45 per cent of CO₂ emissions.⁴ By 2030, “developing countries are projected to account for just over half of total emissions” from less than half in 2004,⁵ largely as a result of increasing populations and economic growth.⁶ Notably, per capita emissions in developed countries (with a population of approximately 1.2 billion) is almost four times higher (at 16.1 tons of CO₂ equivalent) than in developing countries (with a population of approximately 5.6 billion and per capita emissions of 4.2 tons of CO₂ equivalent).

IMPACT ON EARTH

In terms of regional impacts of climate change, following are some examples of major projected impacts: • Africa, where most LDCs are located, is projected to be hard hit by increased water related stresses such as droughts which could reduce yields from rain-fed agriculture by 50%. This could severely compromise food production and security. Projected sea level rise is likely to affect low lying coastal areas with large populations (such as Alexandria, Egypt; Lagos, Nigeria; Abidjan, Cote d’Ivoire¹²).¹³ • Likewise, most parts of developing Asia will likely see decreased freshwater availability, and coastal areas with large populations are likely to face increased flooding from sea surges or rivers (such cities as Kolkata and Mumbai, India; Dhaka, Khulna, and Chittagong, Bangladesh; Guangzhou, Shanghai, Tianjin and Ningbo, China; Ho Chi Minh City and Hai Phong, Vietnam; Jakarta, Indonesia; Bangkok, Thailand; and Yangon, Myanmar¹⁴).¹⁵ • In Latin America, projections are that the Amazonia will start drying out by midcentury, turning from tropical forest to savanna. Agricultural productivity is projected to decrease, and water availability could also be significantly affected.¹⁶ • SIDS are expected to be most adversely affected by sea level rise exacerbating inundation, storm surge, erosion and other coastal hazards, “thus threatening vital infrastructure, settlements and facilities that support the livelihood of island communities.” Availability of coastal resources (such as fisheries) is projected to be adversely affected due to, inter alia, beach erosion and coral bleaching. Water availability in many small islands in the Caribbean and the Pacific is expected to become insufficient to meet demand during low-rainfall periods by mid-century.

THE INTERNATIONAL LAW FRAMEWORK FOR GLOBAL ACTION TO ADDRESS CLIMATE CHANGE

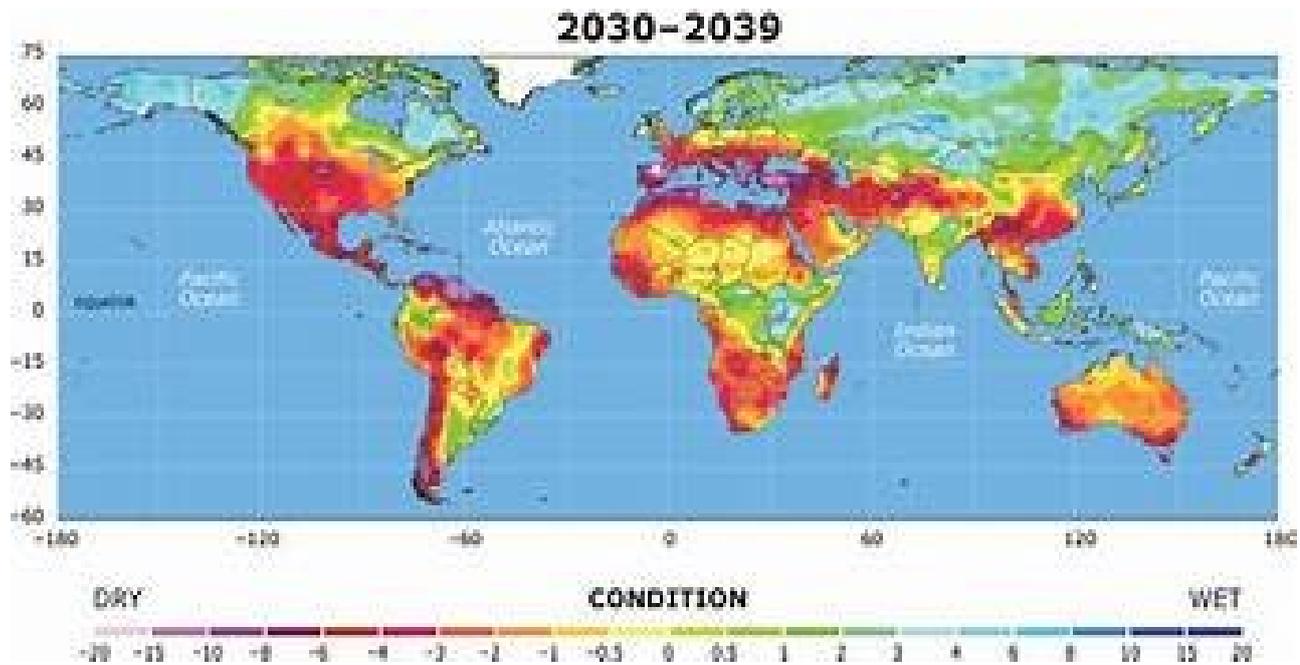
In this section we demonstrate that international human rights law and the UNFCCC framework provide parallel legal obligations that are mutually reinforcing. We also outline how these legal obligations provide a sufficient legal basis for state responsibility for actions that contribute to the adverse effects of climate change. We pay particular attention to those obligations of international human rights law that relate to sustainable development. A. the UN Framework Convention on Climate Change There is currently only one single universally legally-binding treaty governing international action to address climate change. This is the UN Framework Convention on Climate Change (including its Kyoto Protocol). The UNFCCC contains principles that balance concerns for the development needs of developing countries with the responsibilities and obligations that all countries have to address climate change. Achieving this balance was not an easy task. The negotiations in the Intergovernmental Negotiating Committee (INC)²⁷ that eventually resulted in the UNFCCC lasted five sessions between February 1991 and May 1992. More than 150 States participated. They discussed the need for a binding commitment to and the setting of measurable objectives and timelines for greenhouse gas reductions by developed countries, establishing a financial mechanism for climate action, ensuring technology transfer from developed to developing countries, and defining different levels of responsibilities among developed and developing countries to meet the climate change challenge. The negotiations were based on an increasingly apparent need for international cooperation to take effective action to adapt to and mitigate the effects of climate change. Negotiations on these topics, and other issues, eventually resulted in a multilateral treaty, the UNFCCC, which was adopted and opened for signature in May 1992. It entered into force on 21

March 1994²⁸ with more States Parties than almost any other existing treaty, including the Charter of the United Nations. The UNFCCC erects an architecture with the following core features: • the requirement that decision making be based on a strong foundation of the science of climate change; • the requirement of that equity be a guiding principle of decision making and the apportionment of responsibility for acting on climate change that stresses: o recognition and allocation of both historical and current responsibility for anthropogenic greenhouse gas emissions; understanding of the relationship between greenhouse gas emissions and economic development, especially insofar as developing countries are concerned; • obligations relating to the mitigation of greenhouse gas emissions, the provision of financing, technology transfer, and cooperation among countries that are based on common but differentiated responsibilities and developed countries' respective capabilities; • a linking of developing countries' obligations to developed countries fulfillment of their obligations to provide financing and technology to developing countries; and • mechanisms for measurement, reporting and verification of actions.

HUMAN RIGHTS AND CLIMATE CHANGE – RECENT INITIATIVES

Turning to human rights is not a novel idea. Already in 2007, in a first attempt to link human rights and climate change explicitly in an international agreement, several Small Island Developing States convened a conference on the human impacts of climate change. The Small Island Conference resulted in the adoption of an outcome document that outlined the “clear and immediate implications” of climate change on human rights.⁴⁰ Several months later the United Nations Human Rights Council addressed the link between climate change and human rights in a specific resolution.⁴¹ This resolution determined that climate change “poses an immediate and far-reaching threat to people and communities around the world” and requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to undertake “a detailed analytical study of the relationship between climate change and human rights.”

Human Rights and Climate Change – The Normative Linkage a. Human Rights Providing Parallel Legal Obligations International human rights law is of significance for states dealing with climate change for several reasons. It provides relevant legal obligations that serve as a basis for state responsibility because they have been defined in treaties or by the consensus of states as obligations which when violated give rise to specific legal consequences. As such, international human rights law strengthens the legal framework of the UNFCCC by providing parallel legal obligations. International human rights law also provides, together with principles of general public international law, for a duty of cooperation between states. Finally and perhaps most significantly, international human rights law provides forums for interpreting states obligations and applying them to specific situations. This may include interpreting the general duty to prevent or compensate for harm. The general importance of legal obligations – whether derived from international human rights law or from the law on climate change - emanates from their character as 'legally' binding on all states to whom they apply. This means that at the very least a state that fails to abide by its international legal obligations or commits an international wrongful act can be labeled a 'pariah state', a 'hostis humanitatis generis', or a 'threat' to the international community. And at best concrete legal consequences will be incurred by the state acting wrongfully that can range from compensation to injured states to the right of other states to action being taken against the recalcitrant state. In other words, a violation of a legal obligation is not without consequences.



Warning leading to draught threatening much of planet earth.

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A number of specific human rights are implicated by climate change. In each case because climate change can be attributed to the actions of individuals acting on behalf of states or with the implicit or explicit consent of states, when it causes harm to these human rights state responsibility for a violation of human rights may be incurred. Several of these human rights are discussed below. Other human rights, including the right to self-determination, which may be violated when a people's total territory is inundated by rising sea-levels caused by climate change, are not discussed.

CONCLUSION

Climate change undermines internationally protected human rights, especially in developing countries. Steep and rapid emission reductions by developed countries are necessary (possibly even leading to “negative emissions”¹⁸²) – especially for the period between now and 2050 – in order to limit the committed warming to the lower end of the range rather than the upper end, which would mitigate some of the future human rights harm projected by the IPCC. To prevent future human rights violations, however, intensive international cooperation is needed to ensure that developing countries are able to mitigate and adapt to climate change. The threat that climate change poses to human rights will very likely amplify without increased compliance with and strengthening of the UNFCCC framework. For this reason, the legal duty of all states to cooperate to ensure that human rights are protected is a relevant obligation, as it cements the general legal obligations that states have undertaken under international climate change law and requires that the principles of equity and common but differentiated responsibilities and respective capabilities be fully respected. Legal human rights obligations also reinforce the emission reduction obligations of developed states, as well as their obligations to provide adequate finance and technology transfer to ensure that each state is able to guarantee a minimum standard of human rights protection for individuals under its jurisdiction. A large number of legally binding human rights obligations have been agreed upon by states since the creation of the United Nations.¹⁸³ Many of these human rights treaties contain legal obligations that require states to act to protect peoples and individuals from violations of their human rights and for states to cooperate to this end. Climate change will impact a wide range of these human rights and could potentially lead to their serious and widespread violation.¹⁸⁴ Citing the

Universal Declaration of Human Rights, which although not a legally binding instrument itself is a reflection of customary international law that recognizes all the rights just mentioned, the United Nations Development Programme (UNDP) has recently concluded that “[c]limate change is a human tragedy in the making. Allowing that tragedy to evolve would be a political failure that merits the description of an “outrage to the conscience of mankind.”¹⁸⁵ In this contribution we have highlighted that the full protection and promotion of human rights can only be achieved if the economic, social, political and ecological inequities that currently characterize global relationships between developed and developing countries and their peoples are adequately addressed. This requires consistent application of the principles of differentiation and affirmative action. Indeed, equal rules when applied to subjects with unequal capacities will only tend to further strengthen the stronger subject. Treating unequal equally is just as unjust both morally and normatively as treating equals unequally. Ultimately, claims could be placed before international tribunals that would require it to clarify the legal obligations of states under international human rights law in relation to climate change and climate change legislation. This opportunity for encouraging timely and adequate action on climate change will become all the more viable as developed countries continue to fail to comply with their obligations under the UNFCCC and the threat to human rights intensifies as a result of this failure.

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