HUMAN RIGHTS AND CLIMATE CHANGE: MOVING FROM AN INTRINSIC TO AN INSTRUMENTAL APPROACH

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It is the predicament of mankind that man can perceive the problematic, yet, despite his considerable knowledge and skills, he does not understand the origins, significance, and interrelationships of its many components and thus is unable to devise effective responses.[1]

I. INTRODUCTION

Four decades since the publication of *Limits to Growth*, climate change stands virtually unrivaled as the most problematic global challenge with potentially catastrophic consequences for habitats, biodiversity, and ecosystem services, including those that regulate temperature and water on our fragile planet.

We are only beginning to understand the significance of climate change, in particular the enormity of the complex social impacts and responses, including, *inter alia*, on poverty, hunger, livelihoods, health, migration, and conflict.

Efforts to devise an effective response have been beset by failures of analysis, communications, governance, instrument design, policy implementation, and political will.[2] James MacNeill, the former Secretary of the World Commission on Environment and Development claimed, "[p]erhaps the greatest weakness of sustainable development . . . lies in the fact that we have not yet begun to invent a politics to go with the concept."[3] Today, the great tragedy of climate change is that we have not reshaped governance to heed the warnings of science and the voices of the vulnerable. In the words of Maumoon Abdul Gayoom, former President of the Republic of Maldives, our efforts to stabilize the global climate over the course of the past two decades constitutes a series of "failed promises and missed opportunities."[4]

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[1] DONELLA H. MEADOWS ET AL., LIMITS TO GROWTH: A REPORT FOR THE CLUB OF ROME'S PROJECT ON THE PREDICAMENT OF MANKIND 11 (1972).

[2] ANN DALE, AT THE EDGE: SUSTAINABLE DEVELOPMENT IN THE 21ST CENTURY 110 (2001) (providing a quote from Brian Emmett's report to the Canadian Parliament expressing concern that agencies are deeply divided and questioning whether shared decision-making power can occur).

[3] *Id.* at 103.

[4] Maumoon Abdul Gayoom, Former President of the Republic of the Maldives, Address at the Royal Commonwealth Society, Is There a Right to a Safe Environment (July 17, 2007), *available at* http://www.maldivesmission.ch/fileadmin/Pdf/Environment/Speech_by_President_Gayoom_to_Royal_Commonwealth_Society_July_07.pdf.

In recent years this picture has begun to change. Climate change is no longer the exclusive preserve of natural scientists and ministries of environment.[5] Today the study of climate change is a complex web of disciplines and professions, while efforts to design effective responses occupy the resources of representatives from government, civil society, academia, business, and many other stakeholder groups. Our understanding of the components of climate change now spans ecology, economics, social sciences, medicine, and strategic studies.

Recently, a new discourse examining the link between climate change and human rights has begun to emerge. This new debate asks three important questions: First, do climate change impacts undermine the realization of rights? Second, does climate change policy potentially undermine the realization of rights? Third, does the human rights lens offer a method for making climate-smart decisions and transitioning communities at the forefront of climate change impacts from vulnerability to greater resilience?

Our predicament as a global community is how to integrate these diverse disciplines, stakeholders, and components so that the scale and scope of our response to climate change is commensurate with the size and seriousness of the challenge. Our aim is to ensure that stabilizing the global climate is consistent with the wider goal of long-term sustainable development.

Proponents of the human rights-based approach to climate change argue that this method provides intrinsic and instrumental value to this pursuit. Opponents argue that it adds an additional layer of complexity and constraints without offering anything new.

This Article is an appraisal of the interface between development, climate change, and human rights. The purpose is to assess the recent emergence of the discourse linking climate change and human rights, its viral progress, its prospects for shaping climate change analysis, processes, and policy responses, and the overall implications for development practitioners.

The scope of this Article is to look at what David Kennedy calls the "vocabularies, expertise and sensibilit[ies]" from a political economy perspective and to explore its relevance for development practitioners.[6] Kennedy proposes that a "vocabulary of arguments" is critical in shaping

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[5] Alan S. Manne, *Energy, the Environment and the Economy: Hedging Our Bets*, *in* GLOBAL CLIMATE CHANGE: THE SCIENCE, ECONOMICS AND POLITICS 187, 187 (James M. Griffin ed., 2003).

[6] David Kennedy, *Challenging Expert Rule: The Politics of Global Governance*, 27 SYDNEY L. REV. 5, 7 (2005).

"expert knowledge," which in turn informs "how problems are defined and narrow[s] the range of solutions considered."[7] Clearly, knowledge from a range of disciplines is vital for analysis, process, instrument design, operational and policy implementation, and ultimately substantive outcomes. It is therefore relevant to explore how the new arguments advanced by proponents of a human rights lens contribute to enhancing expert knowledge in dealing with the challenge of climate change.

This Article is not an advocacy piece. It is not seeking to be normative or prescriptive in recommending a human rights-based approach to developing climate change interventions. An impartial analysis of the arguments for and against linking climate change and human rights is provided and the reader is left to determine whether this approach has utility in tackling the climate change crisis.

A purely legal argument does not adequately address the political and ethical issues involved in incorporating a human rights approach to climate change.[8] Therefore, a more holistic approach, taking into account political economy, is necessary in order to address the feasibility of a relationship between human rights and climate change.[9] In the words of human rights scholar Peter Uvin, "it makes little sense to counter an ethical [and political] debate with a purely legal argument."[10]

The methodology for this Article involved interviews with academic and policy practitioners who have shaped this emerging discourse; a wide-ranging literature review of texts relevant to the fields of development, climate change, and human rights; discussions with development professionals who have the daily responsibility of operationalizing approaches to reduce vulnerability and build resilience; and finally an examination of the author's own experience in leading the government of the Maldives' initiative on the Human Dimensions of Climate Change and working for the Social Dimensions of Climate Change Cluster at the World Bank's Social Development Department.

Part II of this Article will present the problem of climate change and its significance for human and social systems. Part III will look at the origins and progress of the human rights-based approach to climate change and explore two fundamental questions: First, do human rights help to base climate change in the most widely shared set of international laws, obligations, and values?

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[7] *Id.* at 17–18.

[8] PETER UVIN, HUMAN RIGHTS AND DEVELOPMENT 22 (2004).

[9] *See id.* (arguing that this approach involves issues of both philosophy and ethics).

[10] *Id.*

Second, do climate change impacts and responses undermine the realization of rights? Part IV will ask what, if any, instrumental value do human rights offer to climate change and development policy practitioners?

This Article recognizes that the nexus between climate change and human rights may have substantial implications that stretch far beyond the realm of international public law and could shape our diagnosis of climate change; our understanding of vulnerability; the nature of advocacy and lobbying; the composition of communities of practice and coalitions; the design of process and instruments; the monitoring and review of these instruments; the determination of targets and thresholds; and the identification of benchmarks for success.

II. FROM SILENCE TO SALIENCE: CLIMATE CHANGE AND DEVELOPMENT

This Part paper sets the scene for the appraisal of the interface between development, climate change, and human rights. The section is structured as follows:

A. *The Threat of Global Climate Change* looks at the science of climate change and the impacts on natural systems.
B. *The Human and Social Significance* examines a range of complex social impacts and responses to climate change.
C. *Vulnerability: A Key Transmission Mechanism*, studies how exposure to risk, sensitivity to risk, and adaptive capacity determine the resilience of a socio-ecological system.
D. *Devising an Effective Response* explores the main building blocks for crafting climate change policies and operations. It further looks at how to craft interventions that generate co-benefits with sustainable development while avoiding negative social impacts.

A. The Threat of Global Climate Change

The scientific study of the global climate dates back almost two centuries. During the last five decades, the rate at which scientists have added to the body of knowledge of atmospheric and oceanic processes has accelerated dramatically. The gradual scaling up of our global response to climate change is largely the result of pioneering work in a range of disciplines from climate science and health to economics and development. As a result, today the

impacts of global climate change are accepted as the most immediate and far-reaching danger to our natural and social systems. The degradation and destruction of these systems will undermine economic development and compromise efforts to alleviate poverty. The effects will reach into every neighborhood on the planet, but the world's most vulnerable communities will be hit first and hit hardest.

In December 2007 the Intergovernmental Panel on Climate Change (IPCC) published its landmark Fourth Assessment Report, which concluded that climate change is "unequivocal,"[11] accelerating, and very likely human-induced.[12] Various human activities associated with energy, transport, industrial production, consumption, and land-use (principally changes in croplands, pastures, and forests) alter the chemical composition of the atmosphere by increasing the prevalence of a range of greenhouse gases, including carbon dioxide, methane, nitrous oxide, and halocarbons.[13] The current concentrations of these greenhouse gases are projected to lead to increases in mean global temperatures in the range of 2°C by the end of the century with potentially "dangerous" consequences.[14]

According to the International Union for Conservation of Nature and Natural Resources (IUCN) up to 35% of the world's bird species, 52% of the amphibian species, and 71% of the coral reef systems display traits that make them potentially susceptible to climate change.[15] Some species are even faced with the risk of extinction.[16] It is also relevant to consider the damage done by the degradation of coral reef systems because coral reefs provide a "critical

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[11] INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2007: SYNTHESIS REPORT 30 (2007) [hereinafter IPCC REPORT], *available at* http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf.

[12] *See id.* at 36 (stating that greenhouse gas (GHG) emissions are the main driver of climate change).

[13] *Id.* at 36–37.

[14] UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 2007/2008: FIGHTING CLIMATE CHANGE: HUMAN SOLIDARITY IN A DIVIDED WORLD 26 (2007) [hereinafter UNDP HUMAN DEVELOPMENT REPORT], *available at* http://hdr.undp.org/en/media/HDR_20072008_EN_Complete.pdf; WORLD BANK, THE COSTS TO DEVELOPING COUNTRIES OF ADAPTING TO CLIMATE CHANGE: NEW METHODS AND ESTIMATES (Consultation Draft, 2009) [hereinafter WORLD BANK, GLOBAL REPORT], *available at* http://beta.worldbank.org/climatechange/content/economics-adaptation-climate-change-study-homepage.

[15] INT'L UNION FOR THE CONSERVATION OF NATURE [IUCN, WILDLIFE IN A CHANGING WORLD: AN ANALYSIS OF THE 2008 IUCN RED LIST OF THREATENED SPECIES 80–81 (2008) [hereinafter IUCN ANALYSIS], *available at* http://data.iucn.org/dbtw-wpd/edocs/RL-2009-001.pdf.

[16] *Id.*

habitat to approximately 25[%] of marine species."[17] The economic gain in tourism and fisheries from coral reefs worldwide is estimated to be worth $30 billion per year.[18] Therefore, destruction of coral reef systems will have devastating consequences for coastal populations and economies that are highly dependent on revenues from tourism and fisheries.

Ecosystems are not only important in their own right, but they also provide essential services to human populations. Provisioning services supply food, water, minerals, medicines, construction materials, and fibers. Regulating services control climate, irrigation, disease vectors, and wastes. Cultural services interact with human spirituality and provide recreational, artistic, and aesthetic benefits. Supporting services refer to assistance with nutrient cycles and crop pollination.[19]

The collapse of these ecosystem services would have profound long-term implications for human and social systems. Safeguarding the full range of ecosystem services is therefore vital for providing the basis for long-term sustainable development and achieving the Millennium Development Goals.[20] In addition to the collapse of ecosystems, changes to the climate system create other transmission mechanisms capable of seriously undermining human development. These include an increase in intensity and frequency of extreme weather events, changes in the hydrological cycle, and a rise in global sea levels. First, the intensity and frequency of extreme weather events, including storms, hurricanes, floods, health waves and, droughts, may be increased.[21] Hurricanes gather strength from the heat of the oceans, so as the world's oceans warm, more intense storms with higher peak wind speeds and heavier precipitation are a predictable outcome.[22] In addition, the sheer number of weather-related disasters is increasing.[23] According to the World Disasters Report, the number of people affected by disasters is up from 740 million in the 1970s to over two billion in the 1990s.[24] Secondly, changes in the

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[17] ROBERT W. BUDDEMIER ET AL., CORAL REEFS AND GLOBAL CLIMATE CHANGE: POTENTIAL CONTRIBUTIONS OF CLIMATE CHANGE TO STRESSES ON CORAL REEF ECOSYSTEMS, at ii (2004), *available at* http://www.pewclimate.org/global-warming-in-depth/all_reports/coral_reefs.

[18] *Id.* at 30.

[19] U.N. DEV. PROGRAMME, SUSTAINING THE ENVIRONMENT TO FIGHT POVERTY AND ACHIEVE THE MDGS: THE ECONOMIC CASE AND PRIORITIES FOR ACTION 4, box 1 (2005), *available at* http://www.unpei.org/PDF/SustainingEnvironmentFightPoverty.pdf.

[20] *Id.* at 3.

[21] UNDP HUMAN DEVELOPMENT REPORT, *supra* note 14, at 75–78.

[22] *Id.*

[23] *Id.*

[24] Torben Juul Andersen, *Globalization and Natural Disasters: An Integrative Risk*

hydrological cycle may occur. The landmark Economics of Climate Change study prepared by Sir Nicolas Stern predicted that temperature rises of 2°C will lead to as many as four billion people experiencing more severe water shortages.[25] The most heavily impacted populations would be in Africa, the Middle East, Southern Europe, and Latin America.[26] This will have consequences for the availability of safe drinking water, irrigation, and urban water supply.[27] On the other side of the spectrum, many other populations will be inundated with excessive flooding.

Finally, sea-levels are likely to rise.[28] The IPCC scenarios warn that sea levels could rise by as much as ninety centimeters by the end of the century.[29] This will increase the amount of land lost and people displaced due to permanent inundation.[30] South and East Asia will be most vulnerable because of their large coastal populations in low-lying areas.[31] A report prepared by the New Economics Foundation predicts that the "human drama of climate change will largely be played out in Asia, where over 60[%] of the world's population . . . live[s]. Over half of those live near the coast, making them directly vulnerable to sea-level rise."[32] In small islands, sea level rise is expected to exacerbate storm surges, erosion, and coastal hazards, threatening several important ecosystems on which local communities depend. These ecosystems are vital to the infrastructure, settlements, and livelihood sectors, including tourism and fisheries.[33] In the case of the Maldives, where three quarters of the land is no more than one meter above sea level, the IPCC prediction would lead to the death of the nation by the end of the century.[34]

Management Perspective, *in* BUILDING SAFER CITIES: THE FUTURE OF DISASTER RISK 57, 58 (Alcira Kreimer et al. eds., 2003).

[25] NICHOLAS STERN, THE ECONOMICS OF CLIMATE CHANGE: THE STERN REVIEW 64, 76 (2007).

[26] *Id.*

[27] *Id.* at 76, 87.

[28] IPCC REPORT, *supra* note 11, at 30.

[29] *Id.* at 45, tbl. 3.1.

[30] *Id.* at 50–52.

[31] *Id.* at 50.

[32] THIRD WORKING GROUP ON CLIMATE CHANGE & DEV., UP IN SMOKE? ASIA AND THE PACIFIC: THE THREAT FROM CLIMATE CHANGE TO HUMAN DEVELOPMENT AND THE ENVIRONMENT 3 (2007), *available at* http://www.iied.org/pubs/pdfs/10020IIED.pdf.

[33] IPCC REPORT, *supra* note 11, at 82.

[34] *60 Minutes: Goodbye Paradise* (CBS television broadcast May 14, 2008).

B. The Human and Social Significance

A series of complex social impacts and responses are set in motion as a result of extreme weather events, changes in hydrological cycles, and a rise in sea level. These include worsening of poverty and hunger; loss of livelihoods; deteriorating health conditions; involuntary displacement and migration; and increased incidence of violent conflict.

Temperature rises beyond 2°C will increase the number of people at risk to poverty and hunger, leaving an additional 600 million facing acute malnutrition by 2080.[35] This is in addition to the projections in the absence of climate change. Drought, cyclones, floods, and sea level rise will reduce agricultural yields, destroy key infrastructure (irrigation and storage systems), increase soil and water salinity,[36] and reduce areas suitable for agriculture and livestock. Previously fertile lands will be less productive and consequently require a different type of farming infrastructure to produce sufficient yields. An analysis by the World Bank, which examined twelve food-insecure regions indicates that without adaptation Asia and Africa will suffer particularly severe drops in agricultural yields by 2030.[37] In East Africa, more than twenty-three million people are currently living on the brink of starvation due to four successive years of failed rains and recurring drought. For example, Ethiopia must "feed 6–8 million chronically food insecure people every year, even when weather conditions are good."[38] Therefore, climate change will exacerbate this insecurity and lead to increased incidence of poverty.[39]

The livelihoods of roughly 450 million of the world's poorest people are entirely dependent on managed ecosystem services.[40] About 2.6 billion people depend on agriculture for their livelihoods.[41] Other livelihood sectors will also

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[35] UNDP HUMAN DEVELOPMENT REPORT, *supra* note 14, at 27.

[36] *See id.* at 157 (claiming that climate change will likely lead to a rise in sea level, harming investments made on the land and that aid by the United States will be utilized to counter the increase in salinity of the soils).

[37] WORLD BANK, GLOBAL REPORT, *supra* note 14, at 58–62.

[38] IRISH AID, CLIMATE CHANGE AND POVERTY REDUCTION 4 (2007), *available at* http://www.irishaid.gov.ie/Uploads/5-Environment-Climate-Change-and-Poverty-Reduction.pdf.

[39] *See id.* (providing that climate change will lead to more and more severe droughts, floods, food shortages, and poverty).

[40] INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2007: IMPACTS, ADAPTATION AND VULNERABILITY 380 (2007), *available at* http://ipcc.ch/publications_and_data/ar4/wg2/en/ch5s5-1.html.

[41] MILLENNIUM ECOSYSTEM ASSESSMENT, ECOSYSTEMS AND HUMAN WELL-BEING: CURRENT STATES AND TRENDS 229 (2005).

be hit hard by climate change. Climate change threatens to undermine the long-term viability of the tourism industry in many developing and least-developed countries.[42] For those involved in fisheries, increased incidence and intensity of floods and cyclones, as well as gradual sea level rise due to climate change, may lead to accelerated coastal erosion and to the destruction of key infrastructure and assets (e.g., fishing boats for fishermen to pursue their livelihoods). In the Maldives, more than 20% of the population depends on fisheries as the major income earning activity.[43]

Generally, livelihood sources of the poor are often more limited and more "climate-sensitive."[44] In "periods of stress," the poor may be forced to draw down on a variety of assets and resources leaving them further exposed to risk.[45] Climate change not only has implications for today's poor, but it also affects the earning potential of many generations.[46] This impacts educational attainment and creates a cycle of poverty.[47]

Climate change is likely to have many diverse impacts on human health, with significant repercussions for social and economic systems. Poor health can be a personal tragedy for an individual; for households it can perpetuate vulnerability by limiting members' scope to pursue education and livelihood activities. At a national level, it can contribute to a reduction in productivity of the national workforce and undermine development.

Vector-borne diseases such as malaria, dengue, and yellow fever are sensitive to temperature, humidity, and rainfall patterns.[48] As temperature and

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[42] Integrated Climate Change Strategy, Republic of Maldives, Vulnerability and Adaptation Assessment of the Fisheries Sector in the Maldives – NAPA Project 2 (revised draft Oct. 2006), *available at* http://www.apfic.org/modules/xfsection/download.php?fileid=420 (finding that due to the large impact of the fishing industry in many of the developing countries, any harm to the fishing industry may have a profound impact on tourism rates).

[43] *Id.*

[44] U.N. DEV. PROGRAMME ET AL., POVERTY AND CLIMATE CHANGE: REDUCING THE VULNERABILITY OF THE POOR THROUGH ADAPTATION 6 (2006) [hereinafter POVERTY AND CLIMATE CHANGE], *available at* http://www.undp.org/energy/docs/poverty-and-climate-change-72dpi-part1.pdf.

[45] *Id.*

[46] *See* GLOBAL HUMANITARIAN F., HUMAN IMPACT REPORT: CLIMATE CHANGE—THE ANATOMY OF A SILENT CRISIS 36 (2009) [hereinafter HUMAN IMPACT REPORT], *available at* http://www.ghf-geneva.org/Portals/0/pdfs/human_impact_report.pdf (claiming that it has this effect because it lessens the family income and increases the number of children who are hungry).

[47] *Id.*

[48] KADAMBARI ANANTRAM, NOTE 3: CLIMATE CHANGE AND HEALTH IN AFRICA: INCIDENCE OF VECTOR-BORNE DISEASES AND HIV/AIDS 158 (2006), *available at* http://www.ilri.org/ILRI

precipitation patterns change, these diseases will spread to areas traditionally outside the disease vectors.[49] At present, approximately 40% of the world's population is at risk from malaria but this number is projected to rise to 80% by 2080.[50] Exposure to extreme weather events such as heatwaves, floods, and droughts can also impact human health in a variety of ways including worsening malnutrition, heat stroke, and the spread of communicable diseases.[51] Weather related disasters and gradual environmental decline will likely lead to about 500,000 deaths per year.[52]

Worsening environmental conditions combined with political and financial instability may force populations to migrate. Migration can then become a catalyst for social unrest if increased population density in the host community perpetuates resource scarcity. The Stern Review states that by 2050, between 150 million to 200 million people may be permanently displaced due to climate change,[53] while the UN Development Programme (UNDP) estimates that global temperature increases of 3–4°C could result in 330 million people being permanently or temporarily displaced as a result of flooding.[54] Bangladesh is often cited as the doomsday scenario in regard to migration.[55] More than seventy million people live in areas that could be affected by extreme weather events, prolonged flooding, and sea-level rise.[56] A mass-migration of this scale would be unprecedented. The consequences of such a movement of people into neighboring lands that are already overstressed are uncertain but potentially highly volatile. Displacement affects not only those physically displaced but also the sending and receiving populations.[57]

PubAware/Uploaded%20Files/Note%203.pdf.

[49] *Id.*

[50] *Id.* at 161.

[51] *Id.*

[52] *Id.*; HUMAN IMPACT REPORT, *supra* note 46, at 13.

[53] STERN, *supra* note 25, at 77.

[54] UNDP HUMAN DEVELOPMENT REPORT, *supra* note 14, at 9.

[55] OXFAM INTERNATIONAL, RETHINKING DISASTERS: WHY DEATH AND DESTRUCTION IS NOT NATURE'S FAULT BUT HUMAN FAILURE 16 (2008), *available at* http://www.preventionweb.net/files/1764_oxfamindiarethinkingdisasters.pdf.

[56] Dept. for Int'l Dev., *Bangladesh Poverty and Climate Change*, Oct. 19, 2009, *available at* http://www.dfid.gov.uk/MEdia-Room/News-Stories/2009/Bangladesh----poverty-and-climate-change/.

[57] Susana B. Adamo, Ctr. for Int'l Earth Sci. Info. Network & Population and Env't Res. Network, Environment Induced Population Displacements 6 (2009), *available at* http://www.ciesin.org/documents/environment-induced-adamo-openmtg-apr09.pdf.

Climate change can lead to an increase in the incidence of violent conflict.[58] According to Thomas Homer-Dixon at the University of Waterloo, climate change itself does not launch wars, rebellions, or campaigns of ethnic cleansing, but instead, " 'what climate change does is decrease the resilience of a society. It makes it more brittle and more vulnerable to shock and various kinds of pathologies, including major violence.' "[59] The CNA Corporation's analysis states that climate change acts as a "threat multiplier" that heightens the conditions for internal conflict, creates the seeds of instability in already volatile regions, and increases the likelihood of failed states.[60] Moreover, International Alert has identified disputes over access to water, productive agricultural land, and methods for managing migration as potential sources of conflict.[61]

C. Vulnerability: A Key Transmission Mechanism

Vulnerability is the variable that determines how significant climate change will be for efforts to achieve the Millennium Development Goals (MDGs) and secure long-term sustainable development.

The term "vulnerability" is derived from the Latin root "*vulnerare*," meaning to wound. Accordingly, "vulnerability" in simple terms means the capacity to be wounded.[62] In the past, this was understood as exposure to climate risks. Today *exposure* is viewed as one-third of a tripartite of factors that determines vulnerability, with sensitivity and adaptive capacity completing our understanding. Together, these three factors determine who is wounded by climate change, how, and why.

Vulnerable populations are exposed to multiple risks including changing hydrological patterns, impacts on agricultural productivity, dangers to unique systems, extreme weather events, and sea-level rises. Sensitivity results from a high level of dependency on environmental services for livelihoods, food,

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[58] STEPHAN FARIS, FORECAST: THE CONSEQUENCES OF CLIMATE CHANGE, FROM THE AMAZON TO THE ARCTIC, FROM DARFUR TO NAPA VALLEY 27 (2009).

[59] *Id.* at 28.

[60] CNA CORPORATION, NATIONAL SECURITY AND THE THREAT OF CLIMATE CHANGE 6 (2007), *available at* http://securityandclimate.cna.org/report/.

[61] DAN SMITH & JANANI VIVEKANANDA, INITIATIVE FOR PEACEBUILDING, CLIMATE CHANGE, CONFLICT AND FRAGILITY 2 (2009), *available at* http://www.international-alert.org/pdf/Climate_change_conflict_and_fragility_Nov09.pdf (stating the varying factors that make adaption to climate change difficult and drive conflict).

[62] HUMAN IMPACT REPORT, *supra* note 46, at 13.

energy, and shelter; lack of human, social, natural, physical, financial, cultural, and technological assets; geographical context; and governance deficits (including discrimination, lack of access to information, decision-making, and justice, and weak institutions). Adaptive capacity involves changes in processes, practices, or structures that moderate or offset potential damages associated with changes in climate. From a development perspective, building adaptive capacity refers to interventions that improve governance and enhance the assets, which an individual, household, or community may mobilize to build resilience in the face of climate change.

All societies are vulnerable to one extent or another, but some societies, and some of the more marginalized groups within societies, are more vulnerable than others. The world's most vulnerable people live on the margins and climate change will push them closer to the edge.[63] Although they have the dubious honor of being the first to suffer the myriad impacts of global warming, "last and least" accurately describes their position in international discussions on climate change.[64] They have contributed least to the growing concentrations of CO2 and other greenhouse gases in our atmosphere and so have the least responsibility for the crisis we now face.[65] They are the last to be heard at the negotiating table as they lack the political weight of the major emitters. As a result, their vulnerability goes unnoticed and their voices go unheard.[66] They are also least likely to be the beneficiaries of climate funds, as they are last in line for climate financing behind some of the more politically weighty major emitters. As a consequence, most of the scarce climate funds are spent on mitigation (particularly energy projects) and relatively small amounts are then dispersed on adaptation.[67] And when action is taken they are least likely to be involved in the consultations.[68]

The most vulnerable populations are heavily reliant on climate sensitive sectors (agriculture, fisheries, etc.) and are frequently driven on to marginal lands to exploit degraded natural resources when local economic and social conditions deteriorate.

The world's Small Island Developing States (SIDS) are often cited as the most vulnerable countries to climate impacts and the first nations on Earth to

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[63] Edward Cameron, *Small Island Developing States at the Forefront of Global Climate Change, in* 2009 STATE OF THE WORLD: INTO A WARMING WORLD 71 (Linda Starke ed., 2009).

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *Id.*

face critical climate change thresholds.[69] SIDS are particularly vulnerable because of their "small size, remoteness, geographical dispersion, and exposure to natural disasters, fragile ecosystems, constraints on transport and communication, lack of natural resources, and limited freshwater supply . . . ."[70] The Caribbean states provide a good example of the vulnerability of SIDS. According to the New Economics Foundation, the increased strength of storms and hurricanes and the surge in their destructive forces have affected hundreds of thousands of victims and led to multi-million dollar damages.[71] In 2004, Grenada, an island considered to be outside the hurricane belt, was devastated when Hurricane Ivan struck, destroying over 90% of the country's infrastructure and housing stock and causing over $800 million[72] in damages, the equivalent of 200% of Grenada's GDP.[73] The Caribbean has the largest proportion of corals in high extinction risk categories, but reefs in the Indian Ocean and the Pacific are also likely to be decimated.[74]

The bulk of evidence suggests that climate change is hardest on women as they are often constrained by social and cultural norms that prevent them from acquiring appropriate skill-sets; restrict their access to assets (including land); prevent them from having adequate access to governance (including access to decision-making and information); place them in inferior social positions; and prevent them from acquiring education and appropriate healthcare.[75] The 1991 cyclone in Bangladesh illustrates many of these issues.[76] More than 90% of the estimated 140,000 fatalities were women; their limited mobility, skills set and social status exacerbated their vulnerability to this extreme weather event.[77]

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[69] Cameron, *supra* note 63, at 71.

[70] Edward Cameron, *The Human Dimension of Global Climate Change*, 15 HASTINGS W.-NW. J. ENVTL. L. & POL'Y 1, 6 (2009).

[71] WORKING GROUP ON CLIMATE CHANGE AND DEV., UP IN SMOKE? LATIN AMERICA AND THE CARIBBEAN: THE THREAT FROM CLIMATE CHANGE TO THE ENVIRONMENT AND HUMAN DEVELOPMENT (2006), *available at* http://www.neweconomics.org/sites/neweconomics.org/files/Up_in_Smoke_Latin_America_and_the_Caribbean.pdf.

[72] *Id.* at 10.

[73] *See* U.S. Central Intelligence Agency, CIA World Facebook, https://www.cia.gov/library/publications/the-world-facebook/ (last visited Aug. 4, 2010) (select Grenada from the drop-down menu).

[74] Cameron, *supra* note 63.

[75] OXFAM INTERNATIONAL, *supra* note 55, at 1.

[76] *Id.*

[77] *Id.*

Indigenous Peoples are extremely vulnerable to the impacts of climate change as they often live in ecosystems particularly prone to the effects of climate change including polar regions, humid tropical forests, high mountains, small islands, coastal regions, and arid and semi-arid deserts.[78] Their dependence on local environmental services for homes, medicines, livelihoods, and cultural sustenance means they are disproportionately affected both by climate change and by climate action. They are also among the poorest and most socially excluded people in the world.[79]

Vulnerability is not a uniform taxonomy; for example, not all women, farmers, and fishing communities are equally vulnerable. Recognizing the differences as well as the common vulnerabilities of various groups is an essential prerequisite for having a complete understanding of vulnerability and, thus in devising successful and sustainable interventions.

D. Devising an Effective Response

Confronting climate change requires action to avoid unmanageable impacts such as large-scale temperature and sea-level rise; widespread devastation of ecosystems, species and habitats; and the shutting down of vital earth services. It further requires taking steps to manage unavoidable impacts by making socioecological systems more resilient to the implications for poverty and hunger, livelihoods, health, migration, and conflict.

Sound climate change policy and sound development interventions are therefore linked, since both attempt to minimize exposure, reduce sensitivity, and build adaptive capacity. The preferred methods for achieving these goals have been translated into four climate change building blocks. These are: mitigation, adaptation, financing, and technology.[80]

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[78] INT'L BANK FOR RECONSTRUCTION AND DEV. & THE WORLD BANK, SOCIAL DIMENSIONS OF CLIMATE CHANGE: EQUITY AND VULNERABILITY IN A WARMING WORLD 18 (Robin Mearns & Andrew Norton eds., 2010).

[79] *Id.*

[80] PETER AKONG MINANG ET AL., INT'L INST. FOR SUSTAINABLE DEV. [IISD], THE REDD NEGOTIATIONS: MOVING INTO COPENHAGEN 1 (2009), *available at* http://www.iisd.org/pdf/2009/redd_negotiations.pdf (claiming that the Bali Action Plan of 2007 crystallized the goal announcing the four "so-called" climate policy building blocks which include mitigation, adaption, technology, and finance). The United Nations Framework Convention on Climate Change (1992) and its Kyoto Protocol (1997) provide the framework for stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate systems.

Mitigation is the term used to describe reducing greenhouse gas emissions at the source; enhancing the capacity of sinks and reservoirs; sequestering emissions underground; and transitioning to low-carbon substitutes. It further involves designing sustainable approaches to land-use, including reducing emissions from deforestation.

Investments in renewable energies may provide wider, more affordable, more secure, and more reliable access to energy; reduce greenhouse gas emissions; and create opportunities for new investments and jobs. The global market for environmental products and services is projected to double from $1,370 billion per year at present to $2,740 billion by 2020.[81] More than 2.3 million people have found new jobs in the renewable energy sector alone in recent years, and the potential for job growth in the sector is huge.[82] Employment in alternative energies may rise to 2.1 million in wind and 6.3 million in solar power by 2030. Renewable energy already generates more jobs than employment in fossil fuels.[83]

However, poorly-conceived and implemented mitigation interventions could also lead to negative social impacts. Policies supporting the diversion of land from agricultural production for biofuel production, may carry numerous direct and indirect risks for the lives and livelihoods of poor and vulnerable groups across many countries. Negative impacts may include subsequent increases in the cost of basic agricultural commodities and food staples, which in turn heightens the vulnerability of food-insecure households. Biofuel production may also lead to the expropriation of landholdings as the most vulnerable groups such as women and Indigenous Peoples often have ill-defined property rights as well as insufficient access to decision-making and means of redress.

The United Nations Food and Agriculture Organization (FAO) reported in 2006 that deforestation accounts for 25%–30% of greenhouse gases.[84] The bulk of this deforestation is due to clearing for the cultivation of food crops to feed demand from growing populations.[85] Reduced Emissions from Deforestation and Degradation (REDD) has therefore become an important

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[81] U.N. ENV'T PROGRAMME, GREEN JOBS: TOWARDS DECENT WORK IN A SUSTAINABLE, LOW-CARBON WORLD 13 (2008), *available at* http://www.ilo.org/wcmsp5/groups/public/---dg reports/---dcomm/---webdev/documents/publication/wcms_098487.pdf.

[82] *Id.*

[83] *Id.*

[84] *Deforestation Causes Global Warming*, FAO NEWSROOM, Sept. 4, 2006, *available at* http://www.fao.org/newsroom/en/news/2006/1000385/index.html.

[85] *Id.*

mitigation priority. Effective forest governance is key to REDD's success but remains elusive. Poorly-designed interventions may actually contribute to forest clearing, lead to political instability, corruption, and violence. In addition, there is a danger that looking at forests from a purely climate change perspective may result in treating the homes and livelihood sources of more than 1.6 billion people as "lucrative forest carbon 'reservoirs.' "[86]

Adaptation policy is defined as changes in processes, practices, or structures to moderate or offset potential damages or to take advantage of opportunities associated with changes in climate.[87] "Hard" adaptation measures usually involve the use of infrastructure such as coastal and flood defenses and reinforced buildings, whereas "soft" adaptation focuses on governance, capacity building, assets, and institutions.[88]

There are two main approaches to adaptation. First generation adaptation is often referred to as "climate-proofing" and typically refers to interventions in infrastructure that attempt to minimize the consequences of exposure to climate change risks (e.g., flood defenses or seawalls). This approach may only address the symptoms rather than the root causes of vulnerability. Second generation adaptation is a more development-oriented approach that tackles the underlying drivers of vulnerability including factors that make populations sensitive to climate change impacts. In addition, this type of adaptation helps build resilience not only to climate change but also to other stressors. These adaptation measures include investments in local early warning systems; health care and education; governance and legal reform; institutional capacity building; investment in gender initiatives; and social safety nets.

Maladaptation, on the other hand, increases vulnerability to climate change-related hazards, often by drawing on incomplete analysis of vulnerability and prioritizing short-term gains or economic benefits over long-term resilience. Examples may include building infrastructure that responds to exposure to risk rather than sensitivity; relocating populations on to sensitive lands; and concentrating economic development on narrow sectors or crops.

Technology and finance are both critical for making the transition to low-carbon climate-resilient growth. Models show that four future key technology areas could be at the core of a solution: energy efficiency; carbon capture and

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[86] Oscar Reyes, *REED: Growing Money On Trees*, INDIGENOUS ENVIRONMENTAL NETWORK, Feb. 2008, http://www.ienearth.org/reddmoneyontrees.html.

[87] U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE [UNFCCC], TECHNOLOGIES FOR ADAPTATION TO CLIMATE CHANGE 7 (2006), *available at* http://unfccc.int/ttclear/pdf/tech_for_adaptation.pdf.

[88] *Id.* at 35.

storage; next-generation renewables, including biomass, wind and solar power; and nuclear power. These existing technologies and best practices could reduce energy consumption in industry and the power sector by 20%–30%, shrinking carbon footprints without sacrificing growth.[89]

In developing countries mitigation could cost $140 to $175 billion a year over the next twenty years.[90] According to the Global Report of the Economics of Adaptation to Climate Change Study, the cost of adapting to an approximately 2°C warmer world by 2050 is in the range of $75 billion to $100 billion a year, from 2010 and 2050.[91] This sum is of the same order of magnitude as the foreign aid that developed countries now give developing countries each year, but it is still a very low percentage of the wealth of countries as measured by their GDP.[92]

Just as climate change impacts can have significant implications for lives, livelihoods, homes, and potentially for human rights; climate change policies and operations can also lead to adverse human and social effects. In recent years proponents of a human rights-based approach to climate change have been encouraging the international community to examine impacts and interventions using this new lens.

III. FROM HUMAN IMPACTS TO HUMAN RIGHTS: A VOCABULARY OF ARGUMENTS FOR AND AGAINST A HUMAN RIGHTS-BASED APPROACH TO CLIMATE CHANGE

> *Greater than the tread of mighty armies is an idea whose time has come.*
>
> – Victor Hugo

In her forward to the International Council on Human Rights Policy's *Rough Guide*, Mary Robinson writes "[h]uman rights law is relevant because climate change causes human rights violations. But a human rights lens can also be helpful in approaching and managing climate change."[93] This view,

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[89] WORLD BANK, WORLD DEVELOPMENT REPORT 2010: DEVELOPMENT AND CLIMATE CHANGE (2010) [hereinafter 2010 WORLD DEVELOPMENT REPORT], *available at* http://go.worldbank.org/ZXULQ9SCC0 (follow links for full text).

[90] *Id.* at 257.

[91] *Id.* at 1.

[92] *Id.*

[93] Mary Robinson, *Foreword, in* INT'L COUNCIL ON HUMAN RIGHTS POLICY, CLIMATE CHANGE AND HUMAN RIGHTS: A ROUGH GUIDE, at iii (2008), *available at* http://www.ichrp.org/

while embraced by proponents of a human rights-based approach to climate change, is not shared by all. Some see the interface between human rights and climate change as being uncertain, divisive, lacking in conceptual rigor, and devoid of any practical or instrumental value. It is therefore timely to ask if this is an idea whose time has come.

This section looks at the origins and progress of the human rights-based approach to climate change and explores two fundamental questions. First, do human rights help to base climate change in the most widely shared set of international laws, obligations, and values? Second, do climate change impacts and responses undermine the realization of rights?

A. From Human Impacts to Human Rights

Much of the international human rights framework as it stands today can be traced back to the immediate aftermath of the Second World War. The Universal Declaration of Human Rights, which continues today to serve "as a common standard of achievement for all peoples and all nations" was designed to heal the wounds caused by the blatant "disregard and contempt for human rights [that] ha[d] resulted in barbarous acts which . . . outraged the conscience of mankind."[94] Sixty years later a new generation of political leaders have turned to the human rights framework to heal the wounds caused by global climate change. Many question who their leaders are; why they have pushed for this link; how they have argued their case; and what progress they have made.

Heightened vulnerability to climate change provides a bond between seemingly unrelated communities across the world. From the farmers in the Sahel to the tourism workers in the Caribbean, the fishermen in the Maldives, and the Inuit hunters in the Arctic, climate change is experienced as a daily reality and a far-reaching challenge to their survival. If there is a second bond between these groups, it is the frustration at the scale and urgency at responding to the existential threat posed by climate change. Almost two full decades from the signing of the United Nations Framework Convention on Climate Change (UNFCCC), mitigation targets remain inadequate and unfulfilled; adaptation responses appear insufficient to deal with climate

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files/reports/45/136_report.pdf.

[94] G.A. Res. 217A, pmbl., U.N. GAOR, 3d Sess., U.N. Doc A/810 (Dec. 10, 1948) [hereinafter Universal Declaration].

impacts; finance remains sparse and difficult to access; and technology development and deployment is fragmented.

To these vulnerable populations, the conclusion of the recently published 2010 World Development Report, which stated "the window of opportunity to choose the right policies to deal with climate change and promote development is closing," rings true.[95]

A human rights-based perspective was first brought forth in 2005 when the Inter-American Commission on Human Rights received a petition by the Inuit people requesting relief for a violation of human rights resulting from global warming, which "has an impact on their rights to life, health, culture and [means of] subsistence" allegedly caused by acts and omissions of the United States.[96] The Inuit people of Alaska and Canada, supported by the Center for International Environmental Law (CIEL) and Earthjustice, "argued that the adverse impact on wildlife from climate change—changes in the location number and health of plant and animal species—violates their fundamental human rights to life, property, culture, and means of subsistence."[97] Although the petition was rejected without prejudice in November 2006, the Commission did invite the petitioners to provide testimony on the link between human rights and climate change at a hearing in February 2007.[98]

In 2007, CIEL was approached for a second time to provide assistance to the government of the Maldives in launching the Human Dimensions of Climate Change initiative,[99] which sought to inject urgency and ambition into efforts to shape a global response to climate change by altering the diagnosis, decision-making process, instrument design, and public engagement with climate change. Persuading policy practitioners to establish a link between climate change and human rights became a key focus of this work. To this end, the Maldives government set about pushing for an international declaration through the Alliance of Small Island States (AOSIS) and for the adoption of two United Nations Human Rights Council Resolutions.

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[95] 2010 WORLD DEVELOPMENT REPORT, *supra* note 89, at 38.

[96] Svitlana Kravchenko, *Right to Carbon or Right to Life: Human Rights Approaches to Climate Change*, 9 VT. J. ENVTL. L. 513, 523 (2008).

[97] *Id.* at 534.

[98] *Id.* at 535.

[99] *See* CTR. FOR INT'L ENVTL. LAW [CIEL], A PRO-POOR AND PEOPLE-CENTERED RESPONSE TO CLIMATE CHANGE 1 (2008), *available at* http://capri.cgiar.org/pdf/CC-CIEL.pdf (declaring that CIEL assisted Maldives in constructing the Male' Declaration on the Human Dimension of Climate Change, adopted in November 2007 during a meeting of Small Island States).

The subsequent Male' Declaration on the Human Dimension of Global Climate Change states that

> climate change has clear and immediate implications for the full enjoyment of human rights including *inter alia* the right to life, the right to take part in cultural life, the right to use and enjoy property, the right to an adequate standard of living, the right to food, and the right to the highest attainable standard of physical and mental health.[100]

The Declaration further called on the Conference of the Parties of the United Nations Framework Convention on Climate Change (UNFCCC) and the UN human rights agencies in Geneva to work with partners in assessing the human rights implications of climate change.[101]

In March 2008, the government of the Maldives, working in tandem with seventy-eight co-sponsors, secured the adoption, by consensus of a resolution on climate change and human rights at the UN Human Rights Council in Geneva.[102] It called on the Office of the High Commissioner for Human Rights (OHCHR) to conduct an analytical study exploring the interface between human rights and climate change.[103] United Nations Human Rights Council Resolution 7/23 represented the first time that a UN resolution recognized 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.' "[104]

The resulting study from the OHCHR provides a comprehensive and authoritative assessment of how climate change is already affecting individuals around the world and how those effects are likely to get progressively worse over the coming years.[105] The OHCHR Report

> was based on written and oral submissions by over thirty states and thirty-five international organizations, national human rights

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[100] Male' Declaration on the Human Dimension of Global Climate Change, Nov. 14, 2007, *available at* http://www.ciel.org/Publications/Male_Declaration_Nov07.pdf.

[101] *Id.*

[102] Cameron, *supra* note 70, at 10.

[103] Marc Limon, *Human Rights and Climate Change: Constructing a Case for Political Action*, 33 HARV. ENVTL. L. REV. 439, 444 (2009).

[104] *Id.*

[105] *Id.*

> institutions, NGOs, and academic bodies, mark[ing] a first attempt by the United Nations human rights machinery to undertake a comprehensive assessment of the complex and multifaceted inter-linkages between climate change, environmental degradation, and human rights.[106]

The OHCHR Report asserts that global warming "will potentially have implications for the full range of human rights" but that certain rights are most directly implicated by climate change-related impacts.[107] These rights include the right to life, adequate food, water, health, adequate housing, and self-determination.[108]

A second Human Rights Council Resolution on climate change and human rights, adopted on March 20, 2009, echoed the findings of the OHCHR Report and "affirm[ed] that human rights obligations and commitments have the potential to inform and strengthen international and national policy-making in the area of climate change, promoting policy coherence, legitimacy and sustainable outcomes."[109]

As these vulnerable states and peoples have advanced the climate change and human rights interface through the UN and international legal system, a number of civil society organizations have also become prominent in this field, promoting a rights-based approach in the court of public opinion. This includes Realizing Rights, spearheaded by Mary Robinson, former Irish President and United Nations High Commissioner for Human Rights;[110] and the Global Humanitarian Forum, headed by Kofi Annan, former United Nations Secretary-General.[111] Both have placed "climate justice" at the heart of their work and at the foreground of the climate change debate.

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[106] *Id.* at 444–45.

[107] U.N. Human Rights Council [HRC], *Report of the Office of the High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights*, ¶ 20, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009) [hereinafter HRC, *Report on the Relationship Between Climate Change and Human Rights*].

[108] *Id.* ¶¶ 21–41.

[109] Human Rights Council Res. 10/4, U.N. GAOR, 10th Sess., U.N. Doc. A/HRC/10/L.30 (Mar. 20, 2009).

[110] For more information, see Realizing Rights, http://www.realizingrights.org (last visited July 10, 2010).

[111] *See Global Humanitarian Forum Shuts Down*, VOA NEWS, Apr. 1, 2010, http://www1.voanews.com/english/news/environment/Global-Humanitarian-Forum-Shuts-Down-89685302.html (discussing the dissolution of the foundation due to lack of funds).

Political and legal advances on climate change and human rights have been matched by a significant expansion in research and academic outputs. A large number of experts from law, anthropology, political science, economics, and development have produced scholarly articles, focused primarily on how this discourse emerged and whether there is indeed a link between climate change and human rights. The most significant contributions to this field have been by the International Council for Human Rights Policy (ICHRP) and Oxfam. The body of work looking at how to operationalize human rights for the purpose of equitable climate stabilization, is relatively small by comparison.

With these growing initiatives it is fair to say that a detailed debate on the nexus between climate change and human rights has now been launched. The stage is now set to explore the three fundamental questions at the heart of this discourse. First, do climate change impacts undermine the realization of rights or even violate human rights? Second, does climate change policy potentially undermine the realization of rights or even violate human rights? Third, does the international human rights framework offer a method for transitioning vulnerable populations to greater resilience? Answers to these questions will be explored in the next section.

B. Do Human Rights Provide a Common Base to Understand and Respond to Climate Change?

Proponents argue that human rights help to base climate change in the most widely shared set of international laws, obligations, and values. Opponents counter that laws, obligations, and values are not necessarily shared by all, and when shared, they do not translate into the resources and capacity required to address climate change.

The international human rights framework is composed of the Universal Declaration of Human Rights and nine core international human rights treaties (signed between 1965 and 2006), eight of which have since come into force.[112] Some of the treaties are supplemented by optional protocols.[113] Human rights law also includes many other global and regional agreements; customary law;

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[112] United Nations Documentation: Research Guide, http://www.un.org/depts/dhl/resguide/ (last visited July 10, 2010).

[113] U.N. DEV. PROGRAM [UNDP], INDICATORS FOR HUMAN RIGHTS BASED APPROACHES TO DEVELOPMENT IN UNDP PROGRAMMING: A USER'S GUIDE 7 (2006) [hereinafter UNDP USER'S GUIDE], *available at* http://www.undp.org/oslocentre/docs06/hrba%20indicators%20guide.pdf.

general principles and other sources of international law; and domestic constitutions and legal frameworks.

The core instruments assign substantive rights (defining rights and duties e.g., the right to life) and procedural rights (tools or processes for enforcing substantive rights, e.g., right to information, decision-making, and justice).[114] While the body of recognized human rights continues to evolve, at present a total of fifty-eight rights are protected under international human rights law.[115] These include civil, political, economic, social and cultural rights.[116]

Human rights are distinguished from other rights because they adhere to four basic principles, namely that they are viewed as being universal, inalienable, indivisible and interdependent.[117] The concept of universality means that everyone is entitled to these rights simply by virtue of being human.[118] "Inalienable" means that human rights can neither be given away nor can they be taken away from the rights holder.[119] "Indivisible" and "interdependent" together mean that all rights are co-equal in importance and can only be achieved collectively.[120]

The fact that human rights have found their way into legally binding treaties, ratified voluntarily by a majority of states, means that they have been given the force of law, give rise to entitlements, and increasingly carry weight in international and national contexts.[121] As Caroline Moser and Andy Norton point out, this " 'global architecture' of UN conventions, declarations and world conference documents provides an internationally legitimised set of agreements on social, economic and political issues."[122]

When signing international human rights conventions, states commit themselves to respect, protect, and fulfill human rights obligations. This means that states must refrain from interfering with people's enjoyment of their rights; they must also prevent people's rights from being violated by

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[114] *See id.* at 14–15 (stating that substantive rights include the right to one's health, to water and life, while procedural rights encompass the right to participate and having the ability to access and redress).

[115] *Id.* at 9.

[116] *Id.*

[117] *Id.* at 2.

[118] *Id.* at 22.

[119] *Id.* at 21.

[120] *Id.*

[121] *Id.* at 7.

[122] CAROLINE MOSER & ANDY NORTON, TO CLAIM OUR RIGHTS: LIVELIHOOD SECURITY, HUMAN RIGHTS AND SUSTAINABLE DEVELOPMENT, at vii (2001), *available at* http://www.odi.org/uk/resources/download/1192.pdf.

third-parties; and they must take action—including legislative, administrative, budgetary, and judicial measures—towards the full realization of people's rights.

Although there is no formal or explicit human right to a safe and secure environment, the fundamental right to an environment capable of supporting human society and the full enjoyment of human rights is recognized in varying formulations by the constitutions of 118 countries around the world.[123]

At the international level, recognition of the relationship between the quality of the human environment and the enjoyment of basic human rights dates back at least to the 1960s, when UN General Assembly Resolution 2398 expressed concern about the effects of environmental degradation on "the condition of man, his physical, mental and social well-being, his dignity, [and] his enjoyment of basic human rights . . . ."[124] In 1972, the first United Nations Conference on the Human Environment, held in Stockholm, made a direct link between the environment and human rights. At the concluding session of the Conference, the participants adopted a final declaration with the Preamble proclaiming that:

> Man is both creature and molder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth . . . . Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights[,] the right to life itself.[125]

In the three decades since the Stockholm Declaration, international legal instruments and decisions of human rights bodies have elaborated the links established by the delegates gathered in Stockholm. The Advisory Council of Jurists of the Asia-Pacific Forum on National Human Rights Institutions recently endorsed the idea that the protection of the environment is a "vital part

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[123] *See* Kravchenko, *supra* note 96, at 538–44 (including the various countries' constitutions that state the right to a healthy environment).

[124] G.A. Res. 2398 (XXIII), U.N. GAOR, 23d Sess., Supp. No. 18, U.N. Doc A/7218 (Dec. 3, 1968).

[125] United Nations Conference on the Human Environment, Stockholm, Swed., June 5–16, 1972, *Declaration of the United Nations Conference on the Human Environment*, ¶ 1, U.N. Doc. A/CONF.48/14/Rev.1 (June 14, 1972).

of contemporary human rights doctrine and a *sine qua non* for numerous human rights, such as the right to health and the right to life."[126]

As proponents argue that climate change undermines the realization of human rights, both through impact and also potentially through poorly conceived policies and interventions, they are advocating two broad conceptual linkages. The first, which can be called the "environmental approach" to human rights, is perhaps closest to that of the Stockholm Declaration.[127] It understands that protecting environmental quality is a "precondition" to the enjoyment of internationally recognized human rights, especially the rights to life and health.[128] Therefore, protecting environmental services from climate change becomes an essential instrument in the effort to secure the effective universal enjoyment of human rights.[129]

The second approach, sometimes referred to as a "human rights-based approach," is also instrumentalist, but instead of viewing environmental protection as an essential element of human rights, it views certain human rights as essential precursors to achieving environmental protection.[130] The focus here is on procedural rights dealing with access to information, decision-making, and justice.[131] Moreover, this approach suggests that states' obligations under international human rights law could also be interpreted in the climate change context where the duty to respect could be interpreted as an obligation to mitigate climate change by reducing greenhouse gas emissions in line with the UNFCCC commitment to avoid "dangerous anthropogenic interference with the climate system." The word "protect" could be interpreted as an obligation to pursue adaptation policies to avoid the climate change impacts that are already inevitable; and "fulfill" could imply a requirement to engage in international negotiations in good faith and ensure adequate finances and technology transfer.

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[126] HUMAN RIGHTS AND EQUAL OPPORTUNITIES COMM'N [HREOC], HUMAN RIGHTS AND CLIMATE CHANGE 3–4 (2008), *available at* http://www.hreoc.gov.au/about/media/papers/hrandclimate_change.html.

[127] Christopher Holmes, *The New Future of Human Rights and Environment: Moving the Global Agenda Forward – High Level Experts Meeting*, MEA BULLETIN, Mar. 4, 2010, *available at* http://www.iisd.ca/mea-l/guestarticle87.html.

[128] *Id.*

[129] *Id.*

[130] *See id.* (providing that the second approach is focused on an individuals involvement with matters of environmental concern).

[131] *Id.*

Opponents counter that laws, obligations, and values are not necessarily shared by all, and when shared they do not translate into the resources and capacity required to address climate change.

Far from applying a common and admired standard, the human rights framework is actually a patchwork of very different texts, obligations, monitoring, and enforcement mechanisms. Countries' preferences often lead to specific rights, rather than applying universal standards. Some countries have a preference for first generation rights (including civil and political), whereas others prefer second (economic, social, and cultural) and third generation (dealing with issues such as development, environment, and community) rights. These preferences mean that the international instruments often have different signatories, varying states of ratification, fragmented implementation, and frequently lack binding force. Bridging the considerable gap between those who prefer to focus on civil and political rights and those favoring economic, social, cultural, and environmental rights, remains a challenge today and is reflected in the debate on climate change and human rights.

Moreover, the responsibility for implementing shared values with regard to climate change and human rights is unlikely to be shared. As a result, many opponents argue that it makes little sense to impose obligations on states which cannot be met. Many countries lack the appetite to pursue such obligations and so any resolution would be devoid of sufficient force; whereas others, particularly in the developing world, lack the capacity to fulfill their obligations.

Scholar Peter Uvin argues that second and third generation human rights have been largely ignored and neglected with the exception of some marginal UN Committees.[132] He further states that the "Geneva-based UN human rights mechanisms constitute some of the most powerless, under-funded, toothless, formulaic, and politically manipulated institutions within the United Nations.[133] He goes on to say, "for development work to be discussed there, or for development workers to read these discussions, is about as useful to on-the-ground change as knowing the lyrics for 'We Are the World' is to ending world hunger."[134] This assessment may seem harsh but it does reflect the views of many climate change policy-makers and practitioners who wonder

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[132] UVIN, *supra* note 8, at 140.

[133] *Id.*

[134] *Id.*

what practical difference a human rights approach can make to resolving the climate crisis.

Opponents often claim that the right to food and development have neither provided food for the hungry nor facilitated development for those living in poverty. There are more hungry people in the world today than at any other time in human history,[135] and the right to development is without binding force, has no support among rich countries, and so represents little other than a hollow, rhetorical victory for developing country negotiators. At a time when focus, urgency, and ambition are required in constructing a global architecture for climate change, opponents argue that little time can be wasted for scoring yet another hollow victory.

C. Do Climate Change Impacts and Responses Undermine the Realization of Rights?

Proponents argue that climate change impacts and policies potentially undermine the realization of rights. Opponents counter that undermining rights is not the same as a violation of rights and as a result the new discourse adds little to what is already known and contributes little to the armory of choices available for decision-makers.

Part II outlined a series of complex social impacts and responses resulting from climate change including the loss of lives; damage to human health; destruction of homes; loss of livelihoods; and disproportionate impacts on particularly vulnerable segments of the population. Proponents of a human rights lens argue that these complex impacts and responses translate into the undermining of a set of agreed international human rights including, *inter alia*, the right to life; health; food; an adequate standard of living; and self-determination.

The right to life is protected in both the Universal Declaration on Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Article 3 of the UDHR provides "[e]veryone has the right to life, liberty and security of person."[136] Article 6(1) of the ICCPR provides "every human being has the inherent right to life."[137] The right to life imposes an

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[135] *See 1.02 Billion People Hungry*, FOOD AND AGRIC. ORG. OF THE UNITED NATIONS, June 19, 2009, http://www.fao.org/news/story/en/item/20568/icode/ (claiming that the number of hungry people was expected to rise by 11% in 2009 and those primarily affected live in developing countries).

[136] Universal Declaration, *supra* note 94.

[137] International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966,

obligation on states to take positive steps to ensure its protection, including reducing infant mortality, malnutrition, and epidemics.[138] Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right to the "enjoyment of the highest attainable standard of physical and mental health."[139] Article 12 of the Covenant further creates obligations of parties to take progressive steps toward the "prevention, treatment and control" of preventable diseases.[140]

Climate change can have both a direct and indirect impact on the rights to life and health. The effect may be immediate—the loss of life caused by hurricanes, cyclones, floods, or heatwaves, or slow-onset—death resulting from malnutrition, vector- or water-borne diseases.[141] Climate change can also impact human life indirectly. Thomas Homer-Dixon, quoted in Forecast, has said "if a starving man succumbed to tuberculosis or was shot while stealing a piece of bread, you wouldn't say he died because he didn't eat. But hunger played a part in his death."[142] Climate change plays a part in loss of life by making people less resilient.

The right to food is explicitly mentioned in Article 24(c) of the Convention on the Rights of the Child (CRC) and Article 11 of the ICESCR. Article 24 of the CRC provides that states shall take appropriate measures "[t]o combat disease and malnutrition . . . and through the provision of adequate nutritious foods . . . ."[143] In addition to a right to adequate food, the Article 11 of the ICESCR also enshrines "the fundamental right of everyone to be free from hunger."[144]

The right to food is likely to be undermined as climate change alters hydrological patterns, the frequency of droughts, land salinization, soil erosion,

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999 U.N.T.S. 171.

[138] INTERNATIONAL COMMISSION OF JURISTS, SUBMISSION BY THE INTERNATIONAL COMMISSION OF JURISTS TO THE OFFICE OF HIGH COMMISSIONER FOR HUMAN RIGHTS: PURSUANT TO THE NOTE VERBAL REGARDING HUMAN RIGHTS COUNCIL RESOLUTION 11/8 ON PREVENTABLE MATERNAL MORTALITY AND MORBIDITY AND HUMAN RIGHTS 7 (2010), *available at* http://www2.ohchr.org/english/issues/women/docs/responses/ICJ.pdf.

[139] International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966) [hereinafter ICESCR].

[140] *Id.*

[141] OXFAM INTERNATIONAL, *supra* note 55, at 13 (claiming that drought, cyclones, hurricanes, and earthquakes occur more often may be attributed to climate change).

[142] FARIS, *supra* note 58, at 28.

[143] Convention on the Rights of the Child, G.A. Res. 44/25, Annex, U.N. GAOR 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (Nov. 20, 1989).

[144] ICESCR, *supra* note 139.

nutrient depletion, and water scarcity. These threaten to undermine the core factors that provide a basis for food production, namely productive soil and fresh water.

The right to an "adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions" is set forth in Article 11 of the ICESCR.[145] Drought, for example, affects livelihood strategies based on rain-fed agriculture, with dire implications for crop yield across the globe. This could reduce cultivation of vital staples and the availability of cash crops. For example, the Nampula region in Mozambique has experienced recurring drought and related problems of decreased crop productivity and degradation of irrigation systems for two successive years.[146] This has contributed to widespread malnutrition and forced many subsistence farmers to migrate to the city of Beira to look for work. Rising food prices and rampant unemployment in Beira make livelihood diversification and income generation difficult and compounds existing social problems and stresses in the city. Other livelihood sectors including tourism, fisheries, trade, and commerce, and agro-forestry are also potentially undermined by climate change.

Many of the low-lying atoll states may face extinction by the end of the century, resulting in loss of citizenship and nationality for the inhabitants. This in turn will have vast implications for civil and political rights. As Francoise Hampson has pointed out, nationality and citizenship are rights in and of themselves, but they are also precursors to the bulk of other internationally recognized human rights.[147] Is it possible to maintain a right to culture if an entire population is displaced and dispersed?[148]

Just as climate impacts can undermine the realization of rights, proponents of a rights lens also posit that climate change responses (policies, interventions, and operations) can undermine rights.

Marcos Orellana of the Center for International Environmental Law has prepared a paper examining how various mitigation policies impact human

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[145] *Id.*

[146] U.S. AGENCY INT'L DEV., MOZAMBIQUE FOOD SECURITY OUTLOOK UPDATE: DROUGHT CONDITIONS PERSIST IN SOUTH AND CENTRAL MOZAMBIQUE 1 (2010), *available at* http://pdf.usaid.gov/pdf_docs/PNADS379.pdf.

[147] U.N. Comm'n on Human Rights, Sub-Comm'n on Promotion and Protection of Human Rights, Working Group on Indigenous Populations, *Working Paper: The Human Rights Situation of Indigenous Peoples in States and Territories with Extinction*, U.N. Doc. E/CN.4/Sub.2/AC.4/2004/CRP.2 (July 13, 2004) (*prepared by* Francoise Hampson).

[148] *Id.*

rights. The right to food may be undermined by changes in land use, on the one hand, and by increasing prices of food where biofuels derive from food products, on the other. The right to water may be affected by lowering of the water table that affects community wells. The right to health may be infringed where aerial spraying of pesticides of the biofuel plantations affects neighboring communities and surrounding crops. The application of pesticides without adequate safety measures may also compromise workers' rights.[149]

Questions also persist about how Reduced Emissions from Deforestation and Degradation (REDD) will interact with human rights. Indigenous Peoples are concerned that REDD will lead to expropriation of their lands, leading to displacement and migration. The Permanent Forum on Indigenous Issues argues that new proposals for REDD " 'must address the need for global and national policy reforms . . . respecting rights to land, territories and resources, and the rights of self-determination and the free, prior and informed consent of the indigenous peoples concerned.' "[150]

Adaptation policies also have explicit rights implications. The relocation of populations from indigenous lands threatened by rising sea-levels is a case-in-point that could have impacts on indigenous rights.

Undermining rights is not the same as a violation of rights and this distinction is crucial in terms of establishing responsibility and providing remedies. Paul Joffe from the World Resources Institute has stated "a plethora of obstacles exists to addressing climate change through human rights law."[151]

The first obstacle seems to be identifying whether environment or climate change-related human rights even exist under international law. In its submission to the OHCHR report on climate change and human rights, the United States government stated that it "does not share the view that an environment-related human right exists."[152] The submission argues that no such right exists in either the Universal Declaration of Human Rights (UDHR),

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[149] Marcos Orellanas, *A Rights-based Approach to Climate Change Migration, in* CONSERVATION WITH JUSTICE: A RIGHTS-BASED APPROACH (Thomas Greiber ed., 2009).

[150] HRC, *Report on the Relationship Between Climate Change and Human Rights, supra* note 107, ¶ 68.

[151] Paul L. Joffe, *Conscience and Interest: Law, Rights, and Politics in the Struggle to Confront Climate Change and the New Poverty*, 6 RUTGERS J. L. & PUB. POL'Y 269, 291–92 (2009).

[152] THE UNITED STATES GOVERNMENT, OBSERVATIONS BY THE UNITED STATES OF AMERICA ON THE RELATIONSHIP BETWEEN CLIMATE CHANGE AND HUMAN RIGHTS, ¶ 12 (2009) [hereinafter U.S. MISSION TO UN IN GENEVA], *available at* http://www2.ohchr.org/english/issues/climatechange/docs/submissions/USA.pdf.

the International Covenant on Economic, Social and Cultural Rights (ICESCR), "nor any other universal human rights treaty of which the United States is aware."[153] The submission goes on to state that international climate change agreements, such as the United Nations Framework Convention on Climate Change, "do not speak of . . . human rights obligations."[154] Other countries share this assessment and the debate amongst legal scholars has been ongoing for decades.

A second obstacle is determining whether climate change violates human rights or undermines the realization of rights. This has implications far beyond mere semantics. The human rights framework "requires identifiable violations, identifiable harms attributable to the violations, and for remedies to be provided by the government to individuals within its territory and jurisdiction."[155] According to the U.S. government, climate change does not meet these criteria.[156]

The report of the UN Office of the High Commissioner for Human Rights (OHCHR) appears to concur. According to the OHCHR, qualifying climate change as a human rights violation poses a series of difficulties.

> First, it is virtually impossible to disentangle the complex causal relationships linking historical greenhouse gas emissions of a particular country with a specific climate change-related effect, let alone with the range of direct and indirect implications for human rights. Second, global warming is often one of several contributing factors to climate change-related effects, such as hurricanes, environmental degradation and water stress. Accordingly, it is often impossible to establish the extent to which a concrete climate change-related event with implications for human rights is attributable to global warming. Third, adverse effects of global warming are often projections about future impacts, whereas human rights violations are normally established after the harm has occurred.[157]

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[153] *Id.*

[154] *Id.*

[155] *Id.* ¶ 24 (emphasis removed).

[156] *Id.*

[157] HRC, *Report on the Relationship Between Climate Change and Human Rights*, *supra* note 107, ¶ 70.

Other obstacles include the difficulty in assigning responsibility and causation; resolving conflicts across rights; and enforcing rather than merely endorsing the link between climate change and human rights.

The International Council on Human Rights Policy (ICHRP) shares concerns over responsibility. The Rough Guide on Climate Change and Human Rights explains that "[e]xtraterritorial responsibility is hard to establish," as human rights law "does not easily reach across international borders to impose obligations . . . ."[158] Moreover, the complex nature of climate science means that tracing the link from a specific social response, to the breakdown of a particular ecosystem service, to a unique climate-induced event, caused by a readily identifiable greenhouse gas, from a specific source in one country, is next to impossible.

ICHRP also concludes that these rights are easy to endorse, but difficult to enforce as climate change "affects categories of human rights that have notoriously weak enforcement mechanisms under international law . . . ."[159] For these reasons, ICHRP hypothesizes, that "[i]n the absence of strong enforcement institutions, either at [a] national or international level, it is not immediately obvious what human rights can add to a policy discussion that is already notably welfare-conscious, even if focused on the general good rather than on individual complaints."[160]

Finally, whose human rights should take precedence? Human rights may not only protect the rights of those vulnerable to climate impacts but also those who stand to lose their livelihoods from the transition to low-carbon growth (e.g., workers in the energy sector).

According to opponents, the obstacles described above therefore mean that the human rights system is ill equipped to address global climate change. The final section of this Article will examine whether or not the human rights lens holds instrumental value for climate change and development responses or whether it is as ill equipped as opponents contend.

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[158] INT'L COUNCIL ON HUMAN RIGHTS POLICY, CLIMATE CHANGE AND HUMAN RIGHTS: A ROUGH GUIDE 4 (2008) [hereinafter ICHRP], *available at* http://www.ichrp.org/files/reports/45/136_report.pdf (emphasis removed).

[159] *Id.*

[160] *Id.*

IV. FROM THE MARGINS TO THE MAINSTREAM: AN INSTRUMENTAL ASSESSMENT OF THE INTERFACE BETWEEN CLIMATE CHANGE, DEVELOPMENT, AND HUMAN RIGHTS

The emergence of the discourse on climate change and human rights has implications beyond legal debate or rhetorical importance. Proponents argue that human rights have instrumental as well as intrinsic value. Opponents, on the other hand, suggest that the rights lens has little to offer beyond stirring rhetoric and can in fact distract from the main goal of climate stabilization and adaptation.

Over the past two years, great strides have been made in demonstrating the linkage between climate change and the realization of human rights. There has been less success in demonstrating that the principles and tools of human rights can be translated into improved practice of climate change policy and development interventions. The section below begins that process.

A. Is a Human Rights Lens Helpful in Approaching and Managing Climate Change?

Development interventions are strengthened by relevant and comprehensive analytical work that ensures proper diagnosis of development challenges; sound and inclusive governance processes to determine responses; and effective and equitable interventions that improve the opportunities, choices, and capacities of vulnerable populations. Does a human rights lens add to this process?

1. Are Human Rights Useful as an Analytical Tool for Assessing Social and Environmental Impacts?

The International Council on Human Rights Policy (ICHRP) has proposed using human rights as an analytical tool to determine thresholds that specify minimum acceptable levels of protection against climate change; assist in mobilizing, targeting and dispersing funds; planning and refining mitigation strategies; and assessing approaches to adaptation.[161] At the core of this argument is the belief that "identifying likely transgressions of human rights

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[161] *Id.* at 18–19.

thresholds" will lead to improved policies and provide criteria for their adoption or rejection.[162]

One of the most important analytical questions relates to Article 2 of the UNFCCC, which states that the ultimate goal of climate change interventions is to secure the "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system."[163] Of course the term "dangerous" is a matter of perspective. As ICHRP illustrates an average rise of 2°C from pre-industrial levels may be reasonable and feasible as a global goal, but to communities living in low-lying coastal areas or that are dependent on coral reef systems for livelihoods, a 2°C rise will result in disaster.[164] "While a cost-benefit analysis might conclude that hardships in one place can be set off against benefits in another, such calculations are impermissible for human rights, which views each individual harm on its own terms."[165] As a result, thresholds which are identified using a human rights-based approach are more likely to focus on the most vulnerable, and orient policy interventions in their favor.

Human rights also help to develop a sound analytical understanding of vulnerability by addressing sensitivities and inequalities. This understanding is crucial as climate change is first and foremost intertwined deeply with patterns of inequality, both intra-state as well as inter-state. Within countries, climate change acts as a multiplier of existing vulnerabilities, particularly those related to assets and cultural status. When Hurricane Mitch landed in Honduras in 1998, wealthy households had greater exposure; however poor households lost proportionally more.[166] Among affected households, the poor lost 15% to 20% of their total assets, while the rich lost only 3%.[167] Impact also depended upon gender: male-headed households rebounded quickly due to greater access to new homes and sources of livelihood, while female-headed households struggled to find work and leave the disaster shelters.[168]

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[162] *Id.* at 19.

[163] United Nations Framework Convention on Climate Change, *opened for signature* May 9, 1992, S. TREATY DOC. NO. 102-38, 1771 U.N.T.S. 107 [hereinafter UNFCCC].

[164] ICHRP, *supra* note 158, at 19–20.

[165] *Id.* at 20.

[166] WORLD BANK, WORLD DEVELOPMENT REPORT 2010: DEVELOPMENT AND CLIMATE CHANGE 42 (2010) [hereinafter WORLD DEVELOPMENT REPORT 2010], *available at* http://siteresources.worldbank.org/INTWDR2010/Resources/5287678-1226014527953/WDR10-Full-Text.pdf.

[167] *Id.*

[168] *Id.* at 42.

Recognizing climate change as principally an issue of social justice and development provides scope for policy makers to develop a more comprehensive diagnosis of the origins, significance, interrelationships, and potential solutions for climate change. This method provides a route to examine the intersecting inequalities that contribute to vulnerability and allows for an exploration of a variety of approaches that offer redress and capacity-building to marginalized populations.

A human rights lens can contribute to effective Poverty and Social Impacts Assessments (PSIA) by illustrating how climate change impacts will have significant poverty and social consequences on poor and vulnerable groups. Identifying thresholds, beyond which ecosystems will decline and rights will become compromised, helps to overcome gaps in existing analysis or shortcomings in current operations.

2. Are Human Rights a Useful Tool for Good Governance, Consultation, and Participation?

A human rights lens requires a voice for the most vulnerable and provides methodologies for engaging the participation of, and consultation with, key stakeholders in the formulation of climate change and development strategies.[169]

The human rights' framework provides for a number of procedural entry points that can strengthen governance and provide opportunities to vulnerable populations to account for their experiences and shape outcomes in their favor. Access to information provides opportunities to understand the impact of climate change;[170] to gain insight into what inputs are shaping policy-making; and to remain up-to-date on how policy is being implemented and enforced. Access to decision-making provides for participatory policy-making, with vulnerable populations counted among those shaping climate change interventions.[171] Access to justice provides the scope for dispute settlement and redress when policies are poorly conceived, processes are not respected, or outcomes are harmful.

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[169] *See* ICHRP, *supra* note 158 (providing that climate change may adversely affect communities already in need and that lack the ability to successfully combat climate change).

[170] *See id.* at iv (declaring that if adequate information is provided to those likely to be affected by climate change, people may be more likely to engage in climate control efforts).

[171] *Id.*

Improving governance may also help to address "asymmetries of power," and "the phenomenon known as 'elite capture,' "[172] while contributing to the break down of what ICHRP describes as "disciplinary path dependenc[y]," whereby the study and response to climate change is guided by a narrow number of disciplines, perspectives, and interests.[173] By providing a more equitable process, centered on a human rights-based approach, proponents argue that these asymmetries will be corrected.

Uvin describes human rights as "heuristic devices"—experienced-based techniques that help in problem solving, learning, and discovery.[174] In the context of climate change, human rights can help alter diagnosis by focusing attention on human and social drivers, impacts, and thresholds; contribute to improved process by bringing vulnerable and marginalized communities into policy-making; contribute to the design and deployment of new instruments and dispute settlement mechanisms; and ultimately provide a framework for securing substantive outcomes for those most immediately threatened by climate change.

Proponents argue that a human rights lens improves governance and consequently helps to shape better approaches to poverty reduction and country assistance. This can have an impact on two important development strategies—Poverty Reduction Strategy Papers (PRSPs) and Country Assistance Strategies (CAS). PRSPs dominate international development practices. They are based on sound analysis of the origins, prevalence, drivers, and impacts of vulnerability and poverty. They are tools for inclusive and participatory social and economic planning. The CAS identifies key areas where development agencies can provide assistance. These typically look at the state of institutional development, implementation capacity, governance, and other sectoral and cross-cutting issues in a country.

3. Will a Human Rights Lens Help Us to "Act Now, Act Together, Act Differently"?

The recently published World Development Report invites the international development community to "[a]ct now, act together, act differently" to make climate-smart decisions and safeguard sustainable development in the face of

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[172] Mac Darrow & Amparo Tomas, *Power, Capture and Conflict: A Call for Human Rights Accountability in Development Cooperation*, 27 HUM. RTS. Q. 471, 472 (2005).

[173] ICHRP, *supra* note 158, at 3.

[174] UVIN, *supra* note 8, at 176.

global climate change.[175] Does a human rights lens provide any instrumental value in this endeavor?

Anthony Giddens has written about the need to make climate change a "front-of-the-mind issue."[176] He describes this approach as "foregrounding," or the use of the various political devices that can be deployed to keep global warming at the core of the political agenda.[177] His basic argument is that climate change is easily knocked off the front pages.[178] Linking climate change with human rights has been effective as a tool for public diplomacy. Concentrating on lives, jobs, homes, and rights has certainly captured public imagination, broadened the number of stakeholders involved in the debate, and focused the minds of governments who are keen to resolve the climate challenge in the negotiation rooms rather than the courtrooms. Despite the disappointing outcome at the UNFCCC meeting in Copenhagen, there is little doubt that climate change is now a "front of the mind issue."

When it comes to acting together, a human rights lens is effective in bringing the vulnerable to the forefront and promoting their inclusion in devising effective responses.[179] Writing for Oxfam International, Kate Raworth argues that human-rights help to base international climate change policymaking on the most widely shared set of international laws and values.[180] They focus attention on the people who are most vulnerable to climate impacts, yet whose voices are often heard least in debates.[181]

Perhaps the greatest potential is in the realm of acting differently. Rights are "inherent goods," but they also have instrumental value.[182] Steiner argues that the right to free speech serves as "a means of enriching the marketplace of ideas and hence cultural and political processes."[183] Meanwhile, "[a]dequate food and housing reduce the need for health care, adequate health care enables people to undertake work and education, and education in turn

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[175] WORLD DEVELOPMENT REPORT 2010, *supra* note 166, at 4.

[176] ANTHONY GIDDENS, THE POLITICS OF CLIMATE CHANGE 71 (2009).

[177] *Id.*

[178] *Id.*

[179] *Id.* at 4.

[180] KATE RAWORTH, OXFAM INT'L BRIEFING PAPERS, CLIMATE WRONGS AND HUMAN RIGHTS 1 (Sept. 2008), *available at* http://www.oxfam.org.uk/resources/policy/climate_change/downloads/bp117_climatewrongs.pdf.

[181] ICHRP, *supra* note 158, at 8.

[182] Henry J. Steiner, *Social Rights and Economic Development: Converging Discourses?*, 4 BUFF. HUM. RTS. L. REV. 25, 30 (1998).

[183] *Id.*

improves health and spurs the economy."[184] Rights can also provide the tools and guidance necessary to build resilience. Signatories to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) do not only commit to end the discrimination faced by women, they are also presented with methods to achieve the goals, including the transformation of "existing cultural patterns and underlying beliefs" and detailed views on education, employment, and family.[185]

4. How Can Development Agencies Integrate Human Rights into Efforts to Make Climate-smart Decisions?

A number of states and international organizations have already begun to use a human rights lens in response to global climate change.

The government of Finland has identified gender inequalities as a key aspect of vulnerability. Women living in poverty are the most vulnerable to climate impacts.[186] However they are also key actors in ensuring their communities' ability to cope with and adapt to climate change. Finland has determined that defending the full range of women's human rights within the context of addressing climate change is essential both to protecting women themselves and to cultivating their capacity for leadership. The government is therefore actively promoting the application of gender rights in its development policy.[187] Policies include

> giving the gender perspective significant political visibility in our climate and development related positions and statements[;] [s]upporting women's participation in international and national climate talks[;] [e]mphasizing women in support for capacity building in developing countries[;] . . . and [s]treamlining the gender perspective into all of our climate co-operation, both bilateral and multilateral.[188]

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[184] *Id.* at 29.

[185] *Id.*

[186] THE GOVERNMENT OF FINLAND, REPLIES TO THE QUESTIONNAIRE TO MEMBER STATES PREPARED BY THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, PURSUANT TO HUMAN RIGHTS COUNCIL RESOLUTION 7/23 ON HUMAN RIGHTS AND CLIMATE CHANGE 4 (2009), *available at* http://www2.ohchr.org/english/issues/climatechange/docs/submissions/Finland.pdf.

[187] *Id.*

[188] *Id.*

Within the UN family, UNICEF and UNDP are considered to be pioneers of a human rights lens. UNICEF's approach involves integrating five different steps during its programming work, namely:

1. Causality analysis to identify basic causes such as gender discrimination;
2. Analysis of the complex web of social and political relationships between rights-bearers and duty-bearers;
3. Analysis of capacity gaps that prevent duty holders from fulfilling their obligations;
4. Identification of candidate actions to equip both rights-holders and duty-bearers in relation to a specific issue; [and]
5. Program design, which involves aggregating the priority actions into programs and projects.[189]

UNDP has identified four ways in which a human rights lens influences and improves development programming, stating: First, it forces program staff and policy-makers to reflect upon the *why* and *how* of their actions beyond the questions of *what* should be done; second, the global legitimacy of human rights provides an objective starting point for dialogue and discussions with government, the people and external partners; third, it helps policy-makers and citizens to recognise the power dynamics of the development process; and fourth, the accountability structure pursued through a human rights-based approach facilitates the development of quantitative and qualitative benchmarks and indicators for measuring progress in development planning and delivery.[190]

There are other methods for integrating a human rights lens into development and climate change responses. These include political conditionality and positive support.

Political Conditionality involves threatening to seize financial support to countries who fail to respect human rights.[191] Clearly this approach is not feasible from a political standpoint and may be counter-productive.

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[189] Andrea Cornwall & Celestine Nyamu-Musembi, *Putting the 'Rights-Based Approach' to Development into Perspective*, 25 THIRD WORLD Q. 1415, 1425 (2004).

[190] UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN RIGHTS IN UNDP: PRACTICE NOTE 15 (2005), *available at* http://www.undp.org/governance/docs/HRPN_English.pdf.

[191] UVIN, *supra* note 8, at 50.

Positive support typically offers an alternative conceptual approach to integrating principles of human rights (such as good governance) into development practices by advancing a range of incentives and disincentives.[192] These include building capacities, changing stakeholder relations, and rewarding positive steps that improve process and tackle inequality.

These approaches are being pursued at a time of general convergence of concepts in looking at human development, climate change, and human rights. There is a growing understanding of how these three disciplines, and the various conceptual, political, and legal frameworks accompanying them, intersect. While some organizations cannot explicitly adopt a human rights-based approach to climate change, they can—and are—enhancing choices, opportunities, and capacities of vulnerable populations. This is being done by creating a new vision of climate change that looks at social as well as environmental factors; the development of new tools that address sensitivity and inequality as well as exposure; reforming processes so that they are more inclusive and provide access to information, decision-making, and justice; and the availability of systems of support and redress for those most impacted by climate change.

V. CONCLUSION: AVOID THE "ALLURE OF SIMPLISTIC RECIPES" AND A NEW VOCABULARY OF ACTION MAY EMERGE

A human rights lens holds some promise for approaching and managing climate change, however proponents of a human rights-based approach need to make a more persuasive instrumental argument in order to move this lens from the margins to the mainstream of the global response to climate change.

Darrow and Tomas have argued that the "allure of simplistic recipes or templates must be resisted along with 'checklists' that risk reducing a human rights-based approach to a technocratic rather than transformative enterprise."[193] This allure points both ways. Proponents of the human rights lens should be careful not to promote a rights-based approach as a silver bullet—criticizing existing climate change and development practices, while providing a free pass to the considerable and long-standing deficiencies of the human rights architecture.

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[192] *See id.* (claiming that human rights objectives contribute to the goals of developmental agencies and the intention behind the formation of new programs is to further the established principles of human rights).

[193] Darrow & Tomas, *supra* note 172, at 482.

Each of the above-mentioned arguments in favor of a human rights lens as a helpful tool in managing climate change, has an effective counter argument. For example, while human rights are appropriate means to identify inequalities, they do not necessarily provide mechanisms for addressing them. The ICESCR "reveals no scheme or strategy about economic development or about a socio-economic transformation."[194] Steiner goes on to draw comparisons between many of the international human rights instruments that appear to be of static character and lack guidance on how to get from vulnerability to resilience.[195] This criticism was reflected in the United States' submission to the OHCHR, which claims that a human rights approach to climate change provides "virtually no guidance or insight on how to mitigate and adapt to climate change.[196] Consequently it is not likely to "contribute to the underlying need to slow, stop, and reverse worldwide emissions and reduce societal vulnerabilities to climate change or generally advance the broader cause of human rights internationally."[197]

Similarly, the key players involved in climate change may not have a mandate to use human rights thresholds. As mentioned earlier, the United States' submission to the OHCHR study on human rights and climate change, specifies that none of the climate change instruments, including the UNFCCC, Kyoto Protocol, and Bali Action Plan contain any provisions for a human rights lens. The use of human rights-based approaches within the wider UN family has also been a subject of debate and controversy for some considerable time with many scholars arguing that founding texts expressly prohibit decision-making based on human rights criteria.

Finally, opponents argue, with some authority, that the human rights framework has not been successful in safeguarding human rights. The 2010 edition of Freedom in the World claims that civil and political liberties across the globe suffered a decline in 2009—"the longest continuous period of decline for global freedom in the nearly 40-year history of the report."[198] Only eighty-nine countries (46% of the total) are considered "free."[199] The majority

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[194] Steiner, *supra* note 182, at 28.

[195] *Id.*

[196] U.S. MISSION TO UN IN GENEVA, *supra* note 152, at 6.

[197] *Id.* at 7.

[198] Press Release, Freedom House, Freedom in the World 2010: Global Erosion of Freedom (Jan. 12, 2010), *available at* http://www.freedomhouse.org/template.cfm?page=70&release=1120.

[199] Arch Puddington, *Freedom in the World 2010: Erosion of Freedom Intensifies*, *in* FREEDOM OF THE WORLD 2010 SURVEY RELEASE 1, 4 (2010), *available at* http://www.freedom

of countries are categorized either as "partly free" (30%) or "not free" (24%). Moreover, in spite of nearly five decades of economic, social,[200] and cultural rights, rising incidences of poverty, and hunger persist; widespread lack of access to education and healthcare continue to blight development opportunities; and discrimination and inequality continue to restrict choice and chances for poor and marginalized populations.[201]

On the other hand, there has also been a misguided and hasty rush to dismiss a human rights lens entirely. Breaking down disciplinary path dependency does not just mean bringing more disciplines into the climate change tent. It really means getting them to talk to each other once they are all in the tent. This in turn requires that they take the time, and show the necessary mutual respect, to learn each other's vocabularies and respond to each other's professional needs. This has yet to occur. The stage is now set however, and the possibility of shaping operational tools based on this new vocabulary looks promising.

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house.org/template.cfm?page=505.

[200] *Id.*

[201] *See* The Secretary-General Report, *Report of the Secretary-General on Promoting an Integrated Approach to Rural Development in Developing Countries for Poverty Eradication and Sustainable Development, delivered to the Economic and Social Council*, U.N. Doc. E/2003/51 (Apr. 2, 2003) (providing some of the solutions proposed to combat many of these problems such as hunger, eradicating poverty, satisfying health care needs, etc.).