Bond Law Review

Volume 21
Issue 3 *20th Anniversary Edition*

Article 4

12-1-2009

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Recommended Citation

Naser, Mostafa Mahmud and Afroz, Tanzim (2009) "Human Rights Implications of Climate Change Induced Displacement," *Bond Law Review*: Vol. 21: Iss. 3, Article 4.
Available at: http://epublications.bond.edu.au/blr/vol21/iss3/4

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Human Rights Implications of Climate Change Induced Displacement

Abstract
Climate change and migration are two cross-cutting issues demanding immediate and appropriate responses from duty-bearers. According to the Intergovernmental Panel on Climate Change (IPCC), human-induced climate change will transform the ecological balance of our planet and lead to calamitous consequences for the human rights of millions of people all over the world. The threat of climate change encompasses the livelihoods of peoples in distant corners of the world contributing to the rise of sea levels, altered patterns of desertification, and to the increase in number and intensity of disastrous environmental events. Climate change induced droughts, flooding, wildfires, extreme weather, soil erosion, desertification, deforestation and natural disasters are likely to further intensify pre-existing stresses in vulnerable regions in the world. Consequently, there are apprehensions of problems like food insecurity, scarcity of water, reduced agricultural production, population pressures, unequal access to resources, poverty, break-out of epidemics and spreading of diseases. Each and all of these factors and risks can lead to displacement and migration on an unprecedented scale. In turn, such climate-induced movements can also carry a wide range of implications for the enjoyment of human rights.

This article is available in Bond Law Review: http://epublications.bond.edu.au/blr/vol21/iss3/4

HUMAN RIGHTS IMPLICATIONS OF CLIMATE CHANGE INDUCED DISPLACEMENT

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Introduction

Climate change and migration are two cross-cutting issues demanding immediate and appropriate responses from duty-bearers. According to the Intergovernmental Panel on Climate Change (IPCC),[1] human-induced climate change will transform the ecological balance of our planet and lead to calamitous consequences for the human rights of millions of people all over the world.[2] The threat of climate change encompasses the livelihoods of peoples in distant corners of the world contributing to the rise of sea levels, altered patterns of desertification, and to the increase in number and intensity of disastrous environmental events. Climate change induced droughts, flooding, wildfires, extreme weather, soil erosion, desertification, deforestation and natural disasters are likely to further intensify pre-existing stresses in vulnerable regions in the world. Consequently, there are apprehensions of problems like food insecurity, scarcity of water, reduced agricultural production, population pressures, unequal access to resources, poverty, break-out of epidemics and spreading of diseases. Each and all of these factors and risks can lead to displacement and

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1 For a general overview of the most recent findings of the IPCC, see Robert T Watson et al (eds), Climate Change 2001: Synthesis Report: A Contribution of Working Groups I, II and III to the Third Assessment Report of the Intergovernmental Panel on Climate Change (IPPC) (2002); John T Houghton et al (eds), Climate Change 2001: The Scientific Basis: Contribution of Working Group I to the Third Assessment Report of the Intergovernmental Panel on Climate Change (IPPC) (2002); James J McCarthy et al (eds), Climate Change 2001: Impacts, Adaptation and Vulnerability: Contribution of Working Group II to the Third Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) (2002); Bert Metz et al (eds), Climate Change 2001: Mitigation: Contribution of Working Group III to the Third Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) (2002).

2 See Intergovernmental Panel on Climate Change, Climate Change 2007: Impacts, Adaptation and Vulnerability, Summary for Policymakers 12 (2007), available at http://www.ipcc.ch/ipccreports/ar4-wg2.htm.

migration on an unprecedented scale. In turn, such climate-induced movements can also carry a wide range of implications for the enjoyment of human rights.[3]

In spite of these predictions and the surprising level of consensus that has developed on them over time,[4] regrettably, human rights have remained a peripheral concern in negotiations, discussions and research related to climate change. In responding to climate change while the environmental, technical, economic, and more recently, developmental aspects of climate change have been explored, the social and human rights implications of climate change have received little attention to date.[5] The governments have traditionally approached it as an ecological problem or more recently, as an economic one.[6] Yet the human cost of climate change directly threaten fundamental human rights; rights to life, to food, to water, to a place to live and most importantly right to safe and clean environment, that governments have a positive obligation to protect. As Kyung-wha Kang, the UN Deputy High Commissioner for Human Rights has stated:

> Global warming and extreme weather conditions may have calamitous consequences for the human rights of millions of people…ultimately climate change may affect the very right to life of various individuals…[countries] have

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[3] Kyung-wha Kang, Conference on Climate Change and Migration: Addressing Vulnerabilities and Harnessing Opportunities, Geneva, 19 February 2008, (UN Press Release on Climate Change, Migration and Human Rights: Address by Ms. Kyung-wha Kang Deputy High Commissioner for Human Rights Office of the United Nations High Commissioner for Human Rights),1, at <http://www.unhchr.ch/huricane/huricane.nsf/0/BA5B630BFFAD7FC1C12573F600386398?opendocument> 20 April 2009.

[4] For a comparison of the science between 1997 and 2001, compare the second and third assessment reports of the IPPC. For the second IPPC assessment reports, see John T Houghton et al (eds), Climate Change 1995: The Science of Climate Change: Contribution of Working Group I to the Second Assessment of the Intergovernmental Panel on Climate Change (IPPC) (1996); Robert T Watson, Marufu C Zinyowera and Richard H Moss (eds), Climate Change 1995: Impacts, Adaptations and Mitigation of Climate Change: Scientific-Technical Analyses: Contribution of Working Group II to the Second Assessment of the Intergovernmental Panel on Climate Change (IPPC) (1996); James P Bruce, Hoesung Lee and Erik F Haites (eds), Climate Change 1995: Economic and Social Dimensions of Climate Change: Contribution of Working Group III to the Second Assessment of the Intergovernmental Panel on Climate Change (IPPC) (1996).

[5] Meinhard Doelle, 'Climate Change and Human Rights: The Role of the International Human Rights in Motivating States to take Climate Change seriously' (2004) 1(2) *Macquarie Journal of International and Comparative Environmental Law* 179.

[6] See Sara Aminzadeh, 'A Moral Imperative: the human rights implications of climate change' (2007) 30 *Hastings International and Comparative Law Journal* 231.

> an obligation to prevent and address some of the direst consequences that climate change may reap on human rights.

The most effective means of facilitating this obligation is to adopt a 'human rights-based approach' *normatively* based on international human rights standards and *practically* directed to promoting and protecting human rights to policy and legislative responses to climate change.[7]

The current and predicted impacts of climate change, when considered from a human rights perspective, raise a number of issues that require serious consideration and are the focus of my study. By focusing on migrations led by climate change and specific vulnerabilities stemming from it, this study emphasises human rights-based strategies to address the displacement dimensions of climate change. In this milieu, the study tries to foster a deeper understanding of the human rights implications for the people who are already displaced or feared to be displaced in the days to come due to climate change and formulate pragmatic legal tools, consistent with international standards and jurisprudence, to address these implications. Pertinently, it also examines the need for adequate domestic institutional frameworks to protect the rights of forced climate migrants. The study also seeks to illuminate issues of justice, equity and international human rights standards in policy responses of climate change. It does this by developing a conceptual framework through analysis of the concepts of justice and equity, re-interpreting existing adaptation responses and by formulating policy-recommendations.

Climate change induced displacement: no more prediction but a *reality*!

Global climate change is likely to affect everyone on Earth to some degree, whether in the form of social, psychological, economic or environmental change, or a combination of these.[8] The possible consequences of climate change are many and varied, and some of them are potentially very serious. Dr. James Hansen of the NASA Goddard

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[7] John Von Doussa, Allison Corkery and Renee Chartres, 'Human Rights and Climate Change' Background Paper, Human Rights:Everyone, Everywhere, Everyday, 2008, Human Rights and Equal Opportunity Commission (HREOC)12 at <http://www.hreoc.gov.au/pdf/about/media/papers/hrandclimate_change.pdf > 26 April, 2009.

[8] Jock Baker, Charles Ehrhart and David Stone, 'Hotspots- Predictions and action, Climate change and Displacement', ed Marion Couldrey & Maurice Herson, *Forced Migration Review*, Oct 2008, Issue 31, 44.

Institute for Space Studies has said that a global tipping point could be reached by 2016.[9] According to Hansen:

> If global emissions of carbon dioxide continue to rise at the rate of the past decade,… there will be disastrous effects, including increasingly rapid sea level rise, increased frequency of droughts and floods, and increased stress on wildlife and plants due to rapidly shifting climate zones.[10]

In Fourth Assessment Report (2007) [hereafter AR4], the IPCC concluded that 'warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level.'[11] It projects that temperatures are likely to increase by a further 1.1C to 6.4C by 2100, and sea levels by between 0.18 and 0.59 metres.[12] Turning to impacts, the AR4 concludes that climate change has already influenced environmental systems[13] and therefore unabated climate change is likely to cause some small island states to disappear as a result of sea level rises.[14] Evidently, islanders from Vanuatu and the Bay of Bengal have already been forced to move to mainland fearing the risks of submerge.[15] As a result of climate change, the magnitude and frequency of floods may increase in many parts of the world. Floods in coastal Bangladesh and India, for example, are expected to affect several million people leading to mass displacement.

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9 Earth Climate Approaches Dangerous Tipping Point, Environmental News Service, June 1, 2007, http://www.ens-newswire.com/ens/jun2007/2007-06-01-01.asp.

10 Ibid.

11 U N Intergovernmental Panel on Climate Change (IPCC), Climate Change 2007: Synthesis Report 72 (2007) (hereinafter IPCC Synthesis Report), at http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf. The Synthesis Report is the fourth element of the IPCC Fourth Assessment Report.

12 These are probably conservative projections, as they exclude the potential for positive feedback processes to produce rapid, runaway climate change far in excess of these ranges: James Hansen et al, 'Climate Change and Trace Gases' (2007) 365 Philosophical Transactions of the Royal Society A 1925.

13 Intergovernmental Panel on Climate Change, 'Climate Change 2007: Climate Change Impacts, Adaptation and Vulnerability, Summary for Policymakers', Contribution of Working Group II to the Fourth Assessment Report (2007).

14 It also projects that sea-level rise is expected to threaten vital infrastructure and structures supporting the livelihood of many Pacific island communities. By the middle of the 21st century, climate change is expected to reduce their water supplies to the point where they become insufficient to meet demand in low rain periods.

15 Maryanne Loughry and Jane McAdam, 'Kiribati-relocation and adaptation' (2008) 31 *Forced Migration Review* 51.

HUMAN RIGHTS IMPLICATIONS OF CLIMATE CHANGE INDUCED DISPLACEMENT

The international community now increasingly recognises that the impacts of climate change leading to permanent displacement of hundreds of millions people, forced or otherwise, will undoubtedly appear before humankind as one of the greatest human rights challenges in decades to come.[16] By 2050, some 25 million people will be threatened by coastal flooding, 180 to 250 million by malaria, and 200 to 300 million by water shortages.[17] The melting or collapse of ice sheets alone threatens the homes of 1 in every 20 people.[18] Increased desertification and the alteration of ecosystems, by endangering communities' livelihoods, are also likely to trigger large population displacements.[19] While predictions of the potential scale of displacement are fraught with difficulties, current estimates point to between 200 million and one billion people who may face the loss of home, land and livelihood in the 21st Century due to rising sea levels, floods, droughts, famine and hurricanes.[20] Many research findings confirm that large numbers of people are already on the move, with millions more expected to follow as evidence of climate change accelerates.[21]

Human rights implications of climate change: an ignored agenda?

The rich body of international human rights norms and jurisprudence that have been developed over the past six decades since the adoption of the Universal Declaration of Human Rights[22] provides the most effective framework in addressing the human

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16 As early as 1990 the Intergovernmental Panel on Climate Change (IPCC) was arguing that the greatest single impact of climate change could be on human migration. See also, Andrew Morton, Philippe Boncour and Frank Laczko, 'Human Security Policy Challenges' (2008) 31 *Forced Migration Review* 5.

17 M L Parry 'et al', 'Effects of climate change on global food production under SRES emissions and socioeconomic scenarios'(2004) 14(1) *Global Environmental Change* 53-67.

18 Stern Review Report on the Economics of Climate Change, Part II: Impacts of Climate Change on Growth and Development 56.

19 Kang, above n 3, 1.

20 Stern Review Report on the Economics of Climate Change, Part II: Impacts of Climate Change on Growth and Development, p. 56; Christian Aid, Human tide: the real migration crisis, May 2007, 6.

21 Achim Steiner, 'Foreword' on 'Climate change and Displacement', (2008) 31 *Forced Migration Review* 4.

22 The realisation of human rights is a principal aim of the United Nations Charter which declares in the preamble that its members shall 'reaffirm faith in fundamental human rights' and in setting out the purposes of the UN in Article 1(3). These purposes include 'promoting and encouraging respect for human rights'. Another important further reference to the rights of peoples is in Article 55(c) which states that:

consequences of climate change.[23] However, the Australian Human Rights and Equal Opportunity Commission states that:

> As the major human rights treaties were developed before climate change was understood to be a looming threat to human security, the environmental dimension of these rights has not been extensively articulated and the precise connection between climate change and the international human rights law system is as yet undeveloped.[24]

Still, there is little doubt now that climate change poses serious and immediate threats to a wide range of inter-related universally recognised human rights.[25] Given the complexity of the climate change issue and the interconnectedness of various human rights to the numerous expected impacts of climate change, the list of possible human rights violations is long.[26] If we focus on the displacement dimensions of climate change, a variety of rights found within the international human rights legal code, which are particularly relevant to the discussion of climate change-induced

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> 'The United Nations shall promote … universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.'

The latter article together with Article 56 (which requires members to pledge their cooperation for the achievement of Article 55) have been described as establishing legal obligations. The General Assembly of the UN adopted the Universal Declaration of Human Rights which can be used to assist in the interpretation of the articles on human rights in the Charter. Bearing the same spirit the international community has adopted many international human rights instruments which include but not limited to- ICCPR, ICESCR, CEDAW, CRC, CAT etc.

23 Kang, above n 3, 1.

24 Australian Human Rights and Equal Opportunity Commission Report, 3.

25 Stephen Humphreys, 'Climate change and Human Rights : A Rough Guide', International Council on Human Rights Policy, 2008) 1.; See also, A human rights approach to tackling climate change, at <http://www.ohchr.org/EN/NEWSEVENTS/Pages/TackingClimateChange.aspx> at 05 April, 2009; Ksentini indicates in her report that environmental destruction has direct effects on the satisfaction of many human rights including the right to life, the right to health, and the rights to food, to housing to work, to culture, to education, to peace and to non-discrimination.

26 While a complete assessment of various impacts of climate change is impossible at this stage, scientific impacts predicted for areas such as small island states and polar regions include deterioration of human health and well being, displacement of people and communities and threats to culture and development as likely outcomes of human induced climate change. Procedural human rights, including access to information or justice and participation in decision-making processes may also become increasingly relevant in a context of climate change, particularly for those being affected by it.

displacement. The rights found within the international human rights legal code which are particularly relevant include the full spectrum of civil, cultural, economic, political and social rights. More specifically, rights such as the right to life, the right to water, the right to freedom of expression, the right to health, the right to food, the right to an adequate standard of living, the right to political participation, the right to information, the right to be free from discrimination, the right to equal treatment, the right to security of the person and a host of other rights that have a direct bearing on individual rights-holders affected due to impacts of climate change.[27] All of these rights, entitlements and obligations are grounded on norms that each and every person, wherever she or he is, able to live safely and securely on a piece of land, to reside within an adequate and affordable home with access to all basic services and to feel safe in the knowledge that these rights will be fully respected, protected and fulfilled.[28]

However, the effects of climate change though potentially impinge upon enjoyment of a bundle of internationally protected human rights in a myriad of ways, some of them are as outlined below.

Right to life

The right to life is protected in both the Universal Declaration of Human Rights (UDHR)[29] and the ICCPR.[30] The right to life of children also receives specific protection in article 6 of the Convention of Rights of Child (CRC).[31] In its General Comment on the right to life, the UN Human Rights Committee warned against interpreting the right to life in a narrow or restrictive manner. It stated that protection of this right requires the State to take positive measures and that 'it would be desirable for state parties to take all possible measures to reduce infant mortality and

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27 Scott Leckie, 'The Human Rights Implications of Climate Change Where Next?' [3] at <http://www.mv.undp.org/Images/Leckie%20Paper%20%20The%20Human%20Rights%20Implications%20of%20Climate%20Change.pdf.> 26 April, 2009.

28 Scott Leckie, 'Human Rights Implications' (2008) 31, *Forced Migration Review* 18.

29 General Assembly Resolution 217A (III) 10 Dec, 1948. Article 3 of the UDHR provides 'everyone has the right to life, liberty and security of person'.

30 Article 6(1) of the ICCPR provides 'every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life'.

31 Convention on the Rights of the Child (adopted 20 Nov. 1989, entered into force 2 Sept. 1990) 1577 UNTS 3 (CRC), Article 6 states '(1) state parties recognise that every child has the inherent right to life. (2) state parties shall ensure to the maximum extent possible the survival and development of the child.'

to increase life expectancy... .'[32] So the right to life requires that humans not be arbitrarily deprived of their lives but also that they are able to achieve a decent quality of life by having the means available for subsistence and an adequate standard of life.[33] However, the right to life can be viewed more broadly because of the interrelationship between the right to life and the right of living.[34]

The potentially severe impacts of climate change on the physical environment[35] may threaten this fundamental human right in affected regions.[36] These impacts include both the 'immediate' consequences of climate change, such as the aftermath of climate-change induced extreme weather, and the 'gradual' effects, such as erosion and desertification caused by global warming, and the consequential disruption to livelihoods. As articulated by the Deputy High Commissioner for Human Rights, climate change can have both a direct and indirect impact on human life. The effect may be immediate, as in the aftermath of climate-change induced extreme weather, or may appear gradually, as deterioration in health, diminishing access to safe drinking water and susceptibility to disease increases.[37]

The right to health

Another fundamental human right which is likely to be violated due to climate change is the right to health.[38] Article 25(1) of the UDHR states: 'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family ... .' Furthermore, the ICESCR enshrines each person's right to enjoyment of

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32 UN Human Rights Committee, General comment No. 6 - the Right to Life (1982) UN Doc HRI/Gen/1/Rev.7 at 128, at paras. 1 and 5.

33 A A C Trindade, *The Contribution of International Human Rights Law to Environmental Protection, with Special Reference to Global Environmental Change*, Brown Weiss, 272.

34 Ibid. Note the Draft Declaration of Principles on Human Rights and the Environment Principle 2.

35 The Inter-American Commission on Human Rights has recognised that the realisation of right to life is necessarily linked to and dependent on the physical environment.(Report on the Human Rights Situation in Ecuador OEA/Ser.L/V/II.96 Ch 8; Yanomami case (case 7615 of 5).

36 Ben Saul 'et al', 'Climate Change and Human Rights' (2008), Submission to the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights, September 2008, 2, at http://www.law.usyd.edu.au/scil/pdf/Sub-ClimateChangeHRSept08.pdf 20 April, 2009.

37 Doussa, above n 7, 4.

38 Laura Horn, 'The Implications of the Concept of Common Concern of a Human kind on a Human Rights to a Healthy Environment' (2004) 1 *Macquarie Journal of International and Comparative Environmental Law* 263.

the highest attainable standard of physical and mental health.[39] The right to health is also referred to in a number of articles in the CRC and CEDAW.[40] The Draft Declaration of Principles on Human Rights and the Environment states in Principle 7: 'All persons have the right to the highest attainable standard of health free from environmental harm.'[41] Other references in environmental instruments include the *Stockholm Declaration*[42] and the *Rio Declaration* which states that human beings 'are entitled to a healthy and productive life in harmony with nature'.[43] There is an emphasis on human health in *Agenda 21* which examines methods of promoting human health as part of the means of fulfilling the aims of sustainable development and environmental protection.[44]

Climate change poses significant risks to the right to health causing many impacts on human health.[45] The IPCC, for example, has projected that climate change-related exposures are likely to affect the health of millions of people, especially in states with low adaptive capacity, through increased instances of malaria, diarrheal disease, cardio-respiratory diseases, malnutrition, increased deaths, disease and injury due to heat waves, floods, storms, fires, and droughts.[46] A 2003 joint study by the World Health Organisation (WHO) and the London School of Hygiene and Tropical Medicine states that global warming may already be responsible for more than

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39 Article 12(a) of the ICESCR recognises the right of everyone to 'the enjoyment of the highest standard of physical and mental health'.

40 Article 24of the CRC stipulates that state parties must ensure that every child enjoys the 'highest attainable standard of health'. It stipulates that every child has the right to facilities for the treatment of illness and rehabilitation of health. Article 12 of the CEDAW states '*(1) States parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. (2) Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.'*

41 Horn, above n 38, 263.

42 Declaration of the United Nations Conference on the Human Environment (Stockholm) UN Doc A/CONF/48/14/REV.1. Principle 1.

43 Declaration of the UN Conference on Environment and Development UN Doc A/CONF.151/26/Rev.1 Principle 1.

44 Agenda 21(1992), para 6.1.

45 Saul, above n 36, 2.

46 Intergovernmental Panel on Climate Change, 'Summary for Policymakers' in Climate Change 2007: Impacts, Adaptation and Vulnerability. Working Group II Contribution to the Intergovernmental Panel on Climate Change Fourth Assessment Report (Cambridge: Cambridge University Press, 2007), 7.

160,000 deaths a year from malaria and malnutrition a number that could double by 2020.[47]

The right to water

Although not expressly articulated in the ICESCR, the right to water is intricately related to the preservation of a number of rights underpinning the right to health in article 12 and the right to food in Article 11. The right to water is also specifically articulated in the Article 24 of the CRC and Article 14(2)(h) of the Convention on the Elimination of Discrimination against Women (CEDAW).[48] In 2002 the UN Committee on Economic, Social and Cultural Rights recognised that water itself was an independent right.[49] Drawing on a range of international treaties and declarations it stated, 'the right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival'.[50]

As evidence of climate change, there will be lower and more erratic rainfall in the tropical and sub-tropical areas of the Asia and the Pacific. This will be exacerbated by the recession of the Himalayan glaciers, which flow in into the Ganges, Indus, Brahmaputra, Salween, Mekong, Yangtse and Yellow Rivers.[51] The consequent water shortages will make access to safe drinking water difficult.[52]

The right to adequate food

The right to adequate food is recognised in several international instruments; most comprehensively in the ICESCR.[53] The UN Special Rapporteur on the Right to Food has defined the right as follows:

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47 Shaoni Bhattacharya, 'Global warming kills 160,000 a year', *New Scientist*, 1 October 2003.

48 Convention on the Elimination of Discrimination against Women, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 August 1981).

49 UN Committee on Economic, Social and Cultural Rights, General comment No. 15 - the Right to Water (2002) UN Doc E/C.12/2002/11.

50 Ibid, at para. 3.

51 Alan Dupont and Graeme Pearman, Heating up the Planet: climate change and security (Lowy Institute Paper 12, 2006) at pp. 34. Available at: http://www.lowyinstitute.org/Publication.asp?pid=391.

52 Doussa, above n 7, 6.

53 Pursuant to article 11(1), state parties recognise 'the right of everyone 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', while pursuant to article 11(2) they recognise that more immediate and urgent steps may be needed to ensure 'the fundamental right to freedom from hunger and malnutrition'.

> The right to adequate food is a human right, inherent in all people, to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of people to which the consumer belongs, and which ensures a physical and mental, individual and collective fulfilling and dignified life free of fear.[54]

There is little doubt that climate change will detrimentally affect the right to food in a significant way.[55] Global food production is likely to decline because of increased temperatures and frequency of extreme weather events accelerating grain sterility and disrupting agriculture. The major shift in rainfall patterns will render previously productive land infertile and reduce crop and livestock yields accelerating erosion and desertification. The sea level rise will make coastal land unusable and cause fish species to migrate substantially affecting natural food resources.[56]

Obligation of states under international human rights framework: merely a legal vocabulary?

Human rights therefore capture a range of concerns that are evidently relevant while impacts of climate change are precisely having effect. Climate change with other many aspects has undoubtedly appeared as one of the biggest human rights issues of this century.[57] As climate change will inevitably affect the enjoyment of human rights, safeguarding of human rights should be a key consideration in efforts to address the impacts of climate change. International human rights law imposes several obligations on States to protect and promote a bundle of internationally agreed human rights norms which are likely to be violated due to obvious threats of climate change.[58] For example, each state that has ratified the ICESCR has a duty to 'respect, protect and

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54 Jean Ziegler, The Right to Food (Report by the Special Rapporteur on the right to food to the Commission on Human Rights 57th session, 2001) UN Doc E/CN.4/2001/53, 2, at http://daccessdds.un.org/doc/UNDOC/GEN/G01/110/35/PDF/G0111035.pdf?OpenElement 04 April 2009.

55 Doussa, above n 7, 5.

56 Dupont, above n 50, 30-31.

57 Sarah Sharples, 'Human Rights lobby seeks tougher stance on Climate', *Lawyers weekly*, Issue 420, 23 January 2008, 1.

58 Kyung-wha Kang, Climate Change and Human Rights, 2007, Bali, Indonesia, Address by Ms Kyung-wha Kang Deputy High Commissioner for Human Rights, Office of the United Nations High Commissioner for Human Rights, Conference of the Parties to the United Nations Framework Convention on Climate Change and its Kyoto Protocol 3-14 December 2007,Bali, Indonesia, 1, at http://www.unhchr.ch/huricane/huricane.nsf/view01/013DC0FAA475EC87C12573B10074796A?opendocument 20 April 2009.; above n 26,13.

fulfil' the rights laid down in that treaty for those coming within their jurisdiction, and these duties have their own specific scope under the treaty.[59] The obligation to *respect* a right means the state must take no steps that would violate that right; the obligation to *protect* requires states to ensure that other actors, including private and international actors, are not permitted to violate the right; the obligation to *fulfil* connotes that states take steps over time to 'progressively realise' citizens' rights to food, shelter, health, education and so on.[60] Similarly, the ICCPR and almost all others human rights covenants and conventions contain obligation on state parties to protect life. The individual right to life and the corresponding state obligation to protect life in the context of climate change induced calamities require that the relevant authorities must enact and implement laws dealing with all relevant aspects of disaster risk mitigation and set up the necessary mechanisms and procedures.[61] They are also obliged to take the necessary administrative measures including supervising potentially dangerous situations, inform the population about possible dangers and risks, evacuate potentially affected populations and resettle them so that their right to life in broader range is not further jeopardised.[62]

As climate change poses potential risks of cross border human movement, human rights law makes sure that government obligations do not stop at their own borders. Existing international human rights standards apply not only to nationals of a country but also to non-nationals, irrespective of their legal status. In this context, it is especially relevant to recall that the Committee on Economic, Social and Cultural Rights, the treaty body that monitors the implementation of the International Covenant on Economic, Social and Cultural Rights, has clearly specified that States are under an obligation to respect the economic, social and cultural rights of migrants,

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59 The Committee on Social, Economic and Cultural Rights, which is the UN body that oversees the ICESCR, commonly requests that states demonstrate constant progress in the fulfilment of these rights. (UN Doc. E/C.12/1991/1) Revised general guidelines regarding the form and contents of reports to be submitted by states parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights (17 June 2001).

60 See for example UN Docs, E/C.12/1999/5, CESCR General Comment No. 12, The right to adequate food (Article 11) (12/05/99); E/C.12/2002/11, CESCR General Comment No. 15, The right to water (Articles 11 and 12) (2002); E/C.12/2000/4, CESCR General Comment No. 14, The right to the highest attainable standard of health (Article 12) (11/08/2000). There are 149 states parties to the ICESCR. The United States is not among them, having signed but not ratified it.

61 Humphreys, above n 25, 17-27.

62 Walter Kalin and Claudinne Haenni Dale, 'Disaster Risk Mitigation - Why Human Rights Matter' (2008) 31 *Forced Migration Review* 39.

including irregular migrants.[63] This is particularly important with respect to their right to have access to health services CESCR general comment No. 14 (2000), para 34, their right to food CESCR general comment No 12 (1999), para. 18, their right to adequate housing CESCR general comment No 4 (1991), para. 6 and their right to water CESCR general comment No 15 (2002), para 16.[64] These human rights standards are of great practical import as they empower actual and potential victims of climate change to demand the states to fulfil their obligations invoked under both domestic and international legislations.

Human rights policy orientation: a durable and sustainable solution

In today's world, however, there exists the international consensus that instances of vulnerabilities have to be measured against the already developed norms to guarantee the fundamental rights of every human person.[65] Under present international human rights framework, people attain certain rights by birth for protecting their dignity, irrespective of their nationality or cultural affiliation. These rights are universal, equal and inalienable.[66] Combining the sentiments of the Universal Declaration on Human Rights (UDHR), the Covenant on Civil and Political Rights (ICCPR), the Covenant on Economic, Social and Cultural Rights (ICESCR) and a range of other treaties, together with a vast array of equally important instruments and interpretive standards[67] lead to a very considerable body of international human rights laws and standards which can be followed by governments to build the legal, policy and institutional frameworks required to ensure the rights likely to be violated due to climate change.[68] Taking a human rights approach to climate change, grounded on the international human rights regime - upholding the principle of *the inherent dignity of the human person*, implies that it is not so much the total numbers of those displaced that matters, but

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63 In this context, irregular migrants include people who crossed border instantly aftermath of natural disaster like Cyclone, Tsunami etc. or gradually move to other countries apprehending future risks of climate change, for example, disappearing of island due to sea level rise.

64 Kang, above n 3, 1.

65 Wolfgang Sachs, 'Climate Change and Human Rights', World Economy & Development in Brief, WDEV Special Report 1/2007, Luxemburg, 5.

66 See generally, Jack Donnelly, *Universal Human Rights in Theory and Practice*, (2003) Ithaca: Cornell University Press.

67 Such as the UN Committee on Economic, Social and Cultural Rights General Comment No. 4 on the Right to Adequate Housing, General Comment No. 7 on Forced Evictions and General Comment No. 15 on the Right to Water and the UN's Guiding Principles on the Rights of Internally Displaced Persons, the UN 'Pinheiro' Principles on Housing and Property Restitution for Refugees and Displaced Persons and many others.

68 Leckie, above n 27, 4.

rather the fact that each and every single person who is forced from their home, against their will, must have a remedy available to them which respects and protects their rights and, if necessary, fulfils their rights as recognised under international human rights law.[69] Essentially, a human rights-based approach gives a 'human face' to the issue.[70] It also provides legal rationale and grounds to advocate the integration of human rights obligations into policies and programmes countering the negative effects of the climate change related challenges.[71] In addition, human rights provide a shared and legally codified moral language around which consensus can be built.[72] Human rights framework also ensures both accountability and transparency, essential elements for the promotion and protection of human rights itself, by holding governments and the duty-bearers accountable to reducing the vulnerability of their citizens likely to arise due to climate change and assisting them in adapting to the consequences. A focus on human rights also encourages participatory and democratic processes which signify that the views of those who will be disproportionately affected by climate change – the poor, vulnerable and marginalised - must be taken into account in responses devised to address the causes and consequences of global climate change.[73] According to article 2 of the ICCPR and the ICESCR, the governments are bound to follow the principles of non-discrimination and substantive equality. Thus, before making a climate change policy, decision-makers are under obligation to identify its likely impact on those who are the most disadvantaged or vulnerable in the community according to the prohibited grounds of discrimination, eg, race, colour, sex or national origin, who must be given sufficient opportunity to participate in the policy making process.[74] This could be achieved by requiring that all new legislative-based policies concerning climate-change adaptation be accompanied by a human rights compliance statement. Where either the policy or enabling legislation does not meet recognised human right norms, for example, by disproportionately impacting minority or indigenous people, the statement must

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69 Ibid, 3.

70 In the words of the Maldives President Maumoon Abdul Gayoom 'It is time to put people back at the heart of climate change diplomacy': Jeremy Laurence, 'Climate change threatens human rights -small island states', Reuters, 13 November 2007.

71 United Nations Office of the High Commissioner for Human Rights, A human rights approach to tackling climate change, at http://www.ohchr.org/EN/NEWSEVENTS/Pages/TackingClimateChange.aspx 20 April, 2009.

72 Humphreys, above n 26, vi.

73 Leckie, above n 28, 18; Kang, above n 69,1.

74 Doussa, above n 7, 15.

identify and explain the reasons for the shortcoming and the policy should be reconsidered.[75]

Conclusion

The human impact of climate change carries important challenges related to equality, non-discrimination, access to information, access to justice and other core principles of human rights.[76] This paper has shown that many of broadly recognised rights contained in the UDHR and other international instruments will be significantly threatened by the impacts of climate change. As a matter of law, the human rights of individuals must be viewed in terms of state obligations. It is the state that is responsible for human rights fulfilment. As most of the states are signatories to the international human rights instruments, they have agreed to *respect, protect and fulfil* the rights contained within them, so that they are placed under a positive obligation to respond to the impacts of climate change which are likely to violate most of these internationally recognised human rights. These international human rights laws and standards, which are significant in number, can be used by governments to construct the legal, policy and institutional frameworks required to ensure that the impinged rights relating to climate change, particularly those related to durable solutions to displacement, are fully respected, protected and fulfilled.[77]

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[75] This type of policy formulation process is analogous to the procedures enacted in the Human Rights Charters now in place in the United Kingdom, New Zealand, the Australian Capital Territory and Victoria.

[76] Kang, above n 58, 1.

[77] Kang, above n 3, 1; See, Doussa, above n 8, 24.