

Usha Tandon (Ed.)

CLIMATE CHANGE  
LAW, POLICY AND GOVERNANCE

# CLIMATE CHANGE

## LAW, POLICY AND GOVERNANCE

Foreword by Justice A.K. Sikri  
Editor: Usha Tandon

Introduction by Mohan Parasaran  
Epilogue by Sidharth Luthra



### *Contributors*

*Mr. Akash Anand*  
*Mr. Amar Roopanand Mahadew*  
*Mr. Amrendra Kumar*  
*Ms. Anam Soomro*  
*Mr. Benoît Mayer*  
*Ms. Chandreshwari Minhas*  
*Prof. Dian Agung Wicaksono*  
*Mr. Ghassem Mayah*  
*Mr. Hesamaddin Rahabri*  
*Mr. Esameil Shahsavandi*  
*Dr. Gloria Erimma Orie*  
*Mr. Hyginus Uchenna Okoronkwo*  
*Prof. Liuyong*  
*Mr. Moatoshi AO*  
*Dr. Moshiur Rahman*  
*Dr. Puneet Pathak*  
*Dr. Redwanur Rahman Shabnam*  
*Prof. Riccardo Pavoni*  
*Prof. Saru Arifin*  
*Dr. Shabnam*  
*Mr. Sidhant S. Kondarwar*  
*Prof. Usha Tandon*  
*Mr. Vijay Prasad Jayshwal*  
*Prof. Wahyu Yun Santosa*  
*Mr. Younes Charbgo*



Eastern  
University

---

## CHAPTER 14

---

# HUMAN RIGHTS AND CLIMATE CHANGE

---

[PUNEET PATHAK]  
[ASSISTANT PROFESSOR, CENTRE FOR  
ENVIRONMENTAL LAW SCHOOL OF  
LEGAL STUDIES AND GOVERNANCE,  
CENTRAL UNIVERSITY OF PUNJAB,  
BATHINDA, PUNJAB INDIA.]

---

### 1. INTRODUCTION

The starting points of the linkage between human rights and climate change is that climate change will undermine or already undermining the realization of a range of internationally protected human rights such as right to life, health, right to food, water, shelter, property, livelihood and culture with migration and resettlement. Moreover, the inter-linkages between climate change and human rights are deep and complex. The most dramatic effects of climate change are expected to occur in the world's poorest countries, where human rights protections are too weak for a variety of reasons.<sup>1</sup> Low-lying, socio-economically disadvantaged small island developing states are among those most vulnerable to the harm posed by climate change which resulted in the rise of sea level and extreme weather conditions threatening the habitability of their territory and the enjoyment of fundamental human rights.<sup>2</sup> With the rise of the concern regarding climate change at international level, the justice issue raised due to the nature of climate change, drew a direct line between the wealth and lifestyle of some and the suffering of others. It raised the question on the continued economic expansion in poor countries along the lines rich countries had followed in the past was no longer sustainable.<sup>3</sup> The destruction or disappearance of a state without an immediate successor and its implications for statehood, sovereignty, self-determination and the protection of basic human rights- represents an unprecedented challenge to the international community and contemporary human rights framework.<sup>4</sup>

International human rights law is potentially well placed to address that challenge and highlight some of the human and equity dimension of climate change. The Human rights approach to climate change places the human rights principles in the center of international climate change policy making in order to save the present and future generation.<sup>5</sup> Focusing on the rights of those who are already vulnerable and marginalized due to poverty and discrimination, a human rights approach to climate change can be useful tool to complement international efforts aimed at tackling the adverse effect of climate change.

1. Stephen Humphreys, "Introduction: Human Rights and Climate Change" in Stephen Humphreys (ed.), *Human Rights and Climate Change* (2010) 1.
2. Susannah Willcox "A Rising Tide: The Implication of Climate Change Inundation for Human Rights and State Sovereignty" 9 (1) *Essex Human Rights Review* (2012) 1-19.
3. Stephen Humphreys, "Competing Claims: Human Rights and Climate Harms". *Supra* n 1 at 38.
4. *Supra* n 2 at 2.
5. Kate Raworth, "Climate Wrongs and Human Rights: Putting People at the Heart of Climate-Change Policy" *Oxfam International Briefing Page* available at: <http://www.oxfam.org/sites/www.oxfam.org/files/bp117-climate-wrongs-human-2011-17-2011.pdf>

## 2. LINKAGE BETWEEN HUMAN RIGHTS & CLIMATE CHANGE

### 2.1 Conceptual Questions Regarding the Linkages

The debate relating to the linkage of human rights and climate change can be sketched to the well-established body of literature relating to environmental protection and human rights<sup>6</sup> and growing recognition in the resolution and the reports of international bodies as well the soft and hard law relating to human rights and environment. Safe and healthy environment is the pre-condition for the enjoyment of fundamental human rights. Both regime relating to environmental protection and human rights are concerned with the development of human well-being. To live in a healthy and quality environment is the fundamental and basic human rights. While human rights are necessary to the overall development of human personality, the quality environment is equally necessary to safeguard to conditions conducive to such a personality development. The present scenario of unsustainable development has the potential to oust millions of people in one stock without taking into account their economic, social and cultural aspect of life.<sup>7</sup> Focusing on the human rights approach to environmental protection provides theoretical basis for making linkage between climate change and human rights. The recognition of the right to a clean and healthy environment in numerous international and regional human rights treaties is another basis of the linkages between climate change and human rights. More recently it can be identified in efforts specifically aimed at highlighting the human dimension of climate change.

There are two features of climate change make it distinctive from other crisis relating to environment to which the international community has yet confronted. First, due to the raise of global temperature there are numerous

6. Boyle et. al. *Human Rights Approach to Environmental Protection* (1996); A. Boyle "Human Rights and the Environment: Where Next?" 23 (3) *Environmental Journal of International Law* (2012) 613-642; P. Cullet, "Definition of Environmental Right in a Human Rights Context" 3 *Netherlands Quarterly of Human Rights* (1995); S.Giorgetta "The Right to a Healthy Environment, Human Rights and Sustainable Development" *International Environmental Agreements: Politics, Law and Economics* (2002) 173-194; S. Paula, "The La Oroya Case: the Relationship between Environmental Degradation and Human Rights Violations" 18(1) *Human Rights Brief* (2010) 19-23; Q. Diego "The Environment and Human Rights: Making the Connections" 50(2) *Scottish Human Rights Journal* (2010) 1-12.
7. D. Shelton, "Developing Substantive Environmental Rights" 1(1) *Journal of Human Rights and the Environment* (2010); Y.K. Sabharwal, "Human Rights and the Environment" (2005) Retrieved from [http://supremecourtindia.nic.in/speeches/speeches\\_2005/humanrights.doc](http://supremecourtindia.nic.in/speeches/speeches_2005/humanrights.doc) (last visited on March 23, 2014); P. Pathak "Human Rights Approach to Environmental Protection" 7 (01) *OIDA International Journal of Sustainable Development* (2014) 17-18.

impacts including the increase of the severity of droughts, desertification, land degradation, tropical cyclones and the intensity of floods, the incident of malaria and heat related mortality and decrease the availability of potable water, crop yield and food security.<sup>8</sup> Second, the distribution of climate change is uneven. Some regions are more vulnerable than other regions including the Arctic, because of the impacts of high rates of projected warming on natural systems and human communities; Africa because of low adaptive capacity and projected climate change impacts; small islands where there is high exposure of population and infrastructure to projected climate change impacts; and Asian and African mega deltas, due to huge population and high exposure of sea level rise, storm surges and river flooding. These two distinctive features of the climate change provide the necessary context within which human rights impacts should be explored.<sup>9</sup>

There are some conceptual as well as analytical questions persist while linking human rights and climate change. How to link these two issues in a coherent manner is a challenge before international community. How to place the pervasive phenomenon of climate change with its aggregated causes and diffuse effects within the normative framework of human rights regime is a challenge. How the physical manifestation of climate change can be connected to the human rights of peoples and the responsibilities of state.<sup>10</sup> Other conceptual question is that for the purpose of human rights one must identify a right holder and a duty bearer so as to permit an actionable claim in the court of law which must be supplemented by some legal provision according to one of the traditional source of public international law or domestic law. Other issues include the concept of violation in relation to human rights in more oriented toward past harm than future harm as in the case with respect to climate change.<sup>11</sup>

While conceptualizing the connection between climate change and human rights one of the aspect is to focus on the number of rights that will be impacted adversely by climate change including the right to life, food, health, housing and self-determination. According to World Bank, the impact of the climate change are already being felt with more droughts, floods and other natural disasters drawing resources away from development. If the warming of the climate continues at current rates, it will pose

8. World Bank, *World Development Report 2010: Development and Climate Change*. Washington, DC, Chapter 2, 11, available at: <http://siteresources.worldbank.org/INTWDR2010/Resources/5287678-1226014527953/WDR10-Full-Text.pdf> (last visited on February 25, 2014).
9. *Ibid.*
10. Siobhan McInerney Lankford "Climate Change and Human Rights: An Introduction to Legal Issues" Volume 33, *Harvard Environmental Law Review* (2009) 431-437, 433.
11. *Supra* n 8 at Chapter 2, 11-12.

severe challenges to development. World Bank reveals that by the end of century, it could lead to warming of 5 degree centigrade or more compared with preindustrial times and to a vastly different world to from today, with more extreme weather events.<sup>12</sup> IPCC fourth Assessment Report reveals that the warming of the climate system is unequivocal and accelerating. The global average temperature has increased by 0.74 degree centigrade in the last century which is the fastest warming trend in the history of the earth.<sup>13</sup> There are serious consequences of such change in the climate system including the severity of drought, land degradation, deforestation, intensity of floods and tropical cyclones, decrease crop yield and food security etc. These impacts are undermining millions of peoples' rights to life, security, food, water, health, shelter and culture.

The Human Rights Council (HRC) in its resolutions<sup>14</sup> on the basis of the study conducted by United Nations High Commissioner for Human Rights (OHCHR)<sup>15</sup> emphasized how climate change will negatively impact the enjoyment of specific human rights in many countries particularly in small island and low-lying state of their very existence and areas at risk for increased deforestation and drought. The Human Development Report notes that climate change is hampering efforts to fulfill the Millennium Development Goals (MDG) promise and that failure to address the climate change problem will consign the poorest 40% population of the world to a future of diminished opportunity.<sup>16</sup> Stern review pointed out that the cost of climate change in India and Southeast Asia could be as high as 9 to 13% loss in GDP by 2100 as compared to what could have been achieved in a world without climate change.<sup>17</sup>

The report of OHCHR describes the implication of climate change for a wide range of human rights but at the same time also states that "while climate change has obvious implications for the enjoyment of human rights, it is less obvious whether, and to what extent, such efforts can be qualified as

12. *Ibid.*

13. S Solomon, et. al. (eds.), *Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, 2007.

14. U.N. Human Rights Council Res. 7/23, U.N. Doc. A/HRC/7/78 (July 14, 2008); U.N. Human Rights Council Res. 10/4, U.N. Doc. A/HRC/10/L.11 (March 31, 2009).

15. United Nations Office of the High Commissioner for Human Rights (OHCHR), *Report on the Relationship Between Climate Change and Human Rights*, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009).

16. Human Development Report 2007/2008, United Nations Development Programme available at [http://hdr.un dp.org/ sites/default/files/hdr\\_20072008\\_summary\\_english.pdf](http://hdr.un dp.org/ sites/default/files/hdr_20072008_summary_english.pdf) (last visited on March 12, 2014).

17. Nicholas Stern, *Stern Review on the Economics of Climate Change* (2006) available at: [http://mudancasclimaticas.cptec.inpe.br/~rmclima/pdfs/destaques/sternreviewreport\\_complete.pdf](http://mudancasclimaticas.cptec.inpe.br/~rmclima/pdfs/destaques/sternreviewreport_complete.pdf) (last visited on March 05, 2014).

a human rights violations in a strict legal sense."<sup>18</sup> In the context of climate change there may be serious challenges in disentangling the complex casual relationships between emissions from a particular country and a particular harm caused by climate change in another country, and in segregating the harm due to climate change from other possible causes.<sup>19</sup> Despite such contrast issues underpinning the connection between human rights and climate change, there may be complementarily identifiable in principle which can be identified in both the UNFCCC & the ICESCR such as duty of cooperation, do not harm or equity. The rising nexus between human rights and climate change is meaningful because demonstrating climate change's numerous negative impacts on human rights particularly for already vulnerable population is a way of measuring the harm. It is also meaningful because it connects this harm to obligations which the state has already undertaken. Thus it exposes the potential for using developing supranational human rights legal system to impose a duty on states to prevent further climate change and protect individuals from its negative impacts.<sup>20</sup>

## 2.2 Human Rights Approach to Climate Change

There is a substantial body of evidence which specifies that climate change interferes with internationally protected human rights. Such link has been acknowledged by numerous international bodies under the United Nations.. The UN Deputy Commissioner for human rights while addressing at the conference of parties to the United Nations Framework Convention on Climate Change (UNFCCC) observed that "there are many predictions that global warming could result in hundreds of millions of people suffering from hunger, malnutrition, water shortages, floods, droughts, heat stress, diseases triggered by extreme weather events, loss of livelihoods and permanent displacement. These human consequences are already visible and real in many corners of the world. The human rights approach compels us to look at the people whose lives are most adversely affected and to urge governments to integrate their human rights obligations into policies and programs to deal with the climate change as well as to the international community to assist in this process."<sup>21</sup> In the Conference on Climate Change and Migration: Addressing Vulnerabilities and Harnessing Opportunities,

18. *Supra* n 15 at para 70.

19. *Supra* n 8 at Chapter 2, 12.

20. Megan S. Chapman, "Climate Change and the Regional Human Rights Systems" *Sustainable Development Law & Policy* (2010) 37-38.

21. Kyung-wah Kang Deputy High Commissioner for Human Rights, *Address at Conference of the Parties to the UNFCCC and its Kyoto Protocol*, 3-14 December 2007, Bali, Indonesia, available at: <http://www.ohchr.org /EN/NewsEvents /Pages/DisnlavNews.aspx?NewsID=200&LangID=E> (last visited on March 12, 2014).

2008, it was reiterated that “research points out that global warming and extreme weather conditions may have calamitous consequences for the human rights of millions of people. They can be among the leading causes or contributing factors that trigger hunger, malnutrition, lack of access to water and adequate housing, exposure to disease, loss of livelihoods and permanent displacement. Ultimately, climate change may affect the very right to life of countless individuals.”<sup>22</sup>

Another effort in this regard was the resolution of Human Rights Council (HRC) 7/23 of 2008 on human rights and climate change which called for a study to be undertaken by OHCHR. This study devoted specifically to the question of human rights and climate change will certainly help to advance the conceptual understanding and legal underpinning of this area.<sup>23</sup> Further the HRC in 2009 adopted a resolution 10/4 in which it, inter alia, notes that “climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights and the effects of climate change “will be felt most acutely by those segments of the population who are already in a vulnerable condition.” Further it recognizes that “effective international cooperation to enable the full, effective and sustained implementation of the UNFCCC is important in order to support national efforts for the realization of human rights implicated by climate change-related impacts”, and affirms that “human rights obligations and commitments have the potential to inform and strengthen international and national policy-making in the area of climate change.”<sup>24</sup> The council in this resolution also announced its decision to hold a panel discussion on the inter-linkage between climate change and human rights and welcomed the exchange of information between the OHCHR and UNFCCC secretariat.<sup>25</sup>

In September 2011, the Human Rights Council adopted its third resolution on “human rights and climate change,” resolution 18/22. The resolution

22. Deputy High Commissioner for Human Rights, OHCHR *Address at Conference on Climate Change and Migration: Addressing Vulnerabilities and Harnessing Opportunities* 19 February 2008 Geneva, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9162&LangID=E> (last visited on March 12, 2014).
23. U.N. Human Rights Council Res. 7/23, in U.N. Human Rights Council, *Report of the Human Rights Council on Its Seventh Session* U.N. Doc. A/HRC/7/78 (July 14, 2008) 65-66, 1.
24. U.N. Human Rights Council Res. 10/4, in U.N. Human Rights Council, *Draft Report of the Human Rights Council on its Tenth Session*, U.N. Doc. A/HRC/10/L.11 (March 31, 2009) 13.
25. In resolution 10/4, the Human Rights Council decided to hold a panel discussion on the relationship between climate change and human rights at its eleventh session in order to contribute to the realization of the goals set out in the Bali Action Plan. The panel discussion was held on June 15, 2009 at the Palais des Nations, Geneva.

affirmed that human rights obligations, standards, and principles 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.<sup>26</sup> Pursuant to resolution 18/22 OHCHR organized a seminar<sup>27</sup> to address the adverse impacts of climate change on the full enjoyment of human rights, with a view to following up on the call for respecting human rights in all climate change-related actions and policies and forging stronger cooperation between the human rights and climate change communities.<sup>28</sup> The Committee on the Elimination of Discrimination against Women (CEDAW) also adopted a statement on gender and climate change in 2009.<sup>29</sup> At the regional level some regional bodies recognized such linkage in its resolution. The general assembly of Organization of American state in 2008 adopted a resolution on human rights and climate change.<sup>30</sup> Similar resolution was passed by the African Commission on Human Rights & Peoples’ Rights in 2009.<sup>31</sup>

However, such clear evidence of the recognition about the linkage between human rights and climate change is growing at international level and a more systematic application of the human rights approach to climate change is possible which can be based on existing legal obligation but this recognition has remained rather ad hoc and apparently uncoordinated.<sup>32</sup> International human rights bodies may interpret and apply states’ obligations to specific situation involving the harm done by climate change and state obligation to act.

26. U.N. Human Rights Council Res. 18/22, in U.N. Human Rights Council, *Report of the Human Rights Council on its Eleventh Session*, U.N. Doc. A/HRC/RES/18/22 (October 17, 2011).
27. The seminar’s objectives were to further awareness and enhance understanding of the relationship between climate change and human rights, suggest actions and identify best practices that address the adverse effects of climate change on human rights; and enhance cooperation between human rights and climate change-awareness advocates. The seminar was held from 23-24 February 2012, at Palais des Nations and a summary report will be presented at the June 2012 session of the Council and made available to the 18th session of the Conference of Parties to the UNFCCC (COP18).
28. *Supra* n 15.
29. UN CEDAW, Statement of the CEDAW Committee on Gender and Climate Change, adopted at the 44th Session, held in New York, USA (20 July to 7 August 2009).
30. General Assembly of the Organization of American States, *Human Rights and Climate Change in the Americas*, OAS Doc. AG/RES. 2429 (XXXVIII-O/08), adopted at the Fourth Plenary Session, held on 3 June 2008.
31. African Commission on Human and Peoples’ Rights, *Climate Change and the Need to Study Its Impacts In Africa*, adopted at the 46th Ordinary Session on 25 November 2009.
32. M. Wewerinke, “Exploring the Legal Basis of a Human Rights Approach to Climate Change,” *Journal of Human Rights* (2011) 141-160.



### 3. CLIMATE CHANGE THREATENS FUNDAMENTAL HUMAN RIGHTS

Climate change has particularly serious implications for the realization of individual and collective rights of inhabitants of low-lying small Island developing state. These states are vulnerable to the effects of sea level rise and other climate change impacts. Their primary source of income depends of environmental context like fishing, agriculture and tourism and highly dependent on foreign aid and imports. Countries which are most vulnerable to climate change are Bangladesh, Cambodia, Democratic Republic of Congo, Haiti, Sierra Leone, Malawi, Mozambique, Madagascar, Malawi, Philippines, and Zimbabwe. The Maldives consists of around 1,200 islands, 80 percent of which are less than one meter above sea level. Its economy largely depends on tourism and fishing, both of which are highly vulnerable to climate change, account for a substantial proportion of GDP and government revenue.<sup>33</sup> Most of low lying small Island developing states are therefore both geographically and socio-economically vulnerable to a range of climate change related impacts including rising food and fuel prices; adverse weather events; and sea level rises - which is predicted to range from 0.18-0.59 meters by 2100, and up to 7 meters thereafter.<sup>34</sup> These may result in a number of short- and long-term harms, including increased rates of mortality and disease; damage to basic infrastructure; destruction of arable land through erosion; contamination of freshwater supplies; loss of traditional livelihoods and sources of income; temporary or permanent displacement; and, eventually, loss of political sovereignty in the event that a state's territory becomes uninhabitable.<sup>35</sup> These climate change-related impacts have adverse consequences for a range of internationally recognized human rights such as right to life, food, health, housing and portable water with other human rights are at risk due to the impact of climate change. The analysis of these rights and the climate impact on such rights is pertinent to discuss.

#### 3.1 The Right to Life

The right to life is inseparably linked to other human rights which is protected by numerous international and regional human rights treaties.<sup>36</sup>

33. World Bank, *Maldives: Sustaining Growth and Improving the Investment Climate* (2006) 60.
34. Intergovernmental Panel on Climate Change (IPCC), IPCC Fourth Assessment Report (AR4): Climate Change 2007 - Synthesis Report (2007).
35. *Supra* n 2.
36. Article 6 of International Covenant on Civil And Political Rights, 1966; Article 4 of American Convention on Human Rights, 1969; Article 2 of European Convention on Human Rights, 1950; Article 4 of African Charter on Human and Peoples' Rights, 1981.

The Human Rights Committee (HRC) in its general comment on the scope and content of the right to life under Article 6 of International Covenant on Civil and Political Rights (ICCPR) emphasized that the right to life cannot be interpreted in a restrictive manner and the protection of the right to life requires positive measures. The HRC also stated that a failure by state institutions to take action to prevent, mitigate or remedy life-threatening harms from climate change constitute a violation of the right to life.<sup>37</sup> At the regional level, the Human Rights bodies have considered cases involving the right to life in relation to environmental harm, although the relevance to this jurisprudence to climate change is open to debate.<sup>38</sup>

A number of observed and projected effects of climate change will pose direct and indirect threats to human lives as reflected by OHCHR 2009 report on climate change and human rights.<sup>39</sup> Some communities, such as those living in the Arctic and in coastal regions, are particularly at risk, and are already starting to experience the adverse effects of climate change on their right to life.<sup>40</sup> The Maldives' 2008 submission to the OHCHR as part of its preparation of its study on climate change and human rights described how climate change threatens its right to life. Global warming causes sea levels to rise, both because water expands as it warms and because water from melting glaciers flows into the ocean.<sup>41</sup> Although rising sea levels threaten all coastal regions, small islands are particularly vulnerable. Islands also face increasing frequency and severity of flooding from sea surges, as warming oceans lead to more extreme weather. Warmer waters and eroding beaches undermine fishing and tourism, two critical economic bases for most small island states.<sup>42</sup>

#### 3.2 The Right to Adequate Food

The right to adequate food as an element of the right to an adequate standard of living recognized in International Covenant on Economic Social

37. The Human Rights Committee (HRC) re-affirmed in its General Comment No. 31(2004), that States parties' duties are of both a positive and negative kind available at: <http://www.unhcr.ch/tbs/doc.nsf/0/58f5d464e861359c1256ff600533f5f> (last visited on March 08, 2014).

38. *Supra* n 8 at Chapter 2, 13.

39. *Supra* n 15 at paras 22-23.

40. Petition to the Inter American Commission on Human Rights seeking relief from violations resulting from global warming caused by acts and omissions of the United States available at: <http://www.inuitcircumpolar.com/files/uploads/icc-files/FINALPetitionICC.pdf> (last visited on March 10, 2014).

41. *Supra* n 13 at 323-324.

42. John H. Knox, "Linking Human Rights And Climate Change at The United Nations" 22 *Harvard Environmental Law Review* (2009) 477-498, 480.

and Cultural Rights (ICESCR).<sup>43</sup> The Committee on Economic Social and Cultural Rights (CESCR) has maintained that the right to food<sup>44</sup> is fundamental to the inherent dignity of the human person and indispensable for the fulfillment of other human rights enshrined in the International Bill of Rights. To realize this right appropriate economic, environmental and social policies are required.<sup>45</sup> The threats caused by climate change to the right to food have been apparent. United Nations Framework Convention on Climate Change (UNFCCC) highlights the importance of ensuring availability of food. It entails the stabilization of GHG in the atmosphere to be achieved within a time frame sufficient to “ensure that food production is not threatened.”<sup>46</sup> Climate impacts, and possibly climate response measures may impend both availability and accessibility to food. Increases in extreme weather events, including droughts and floods, will also negatively affect crop production,<sup>47</sup> thereby placing both availability and accessibility at risk. Agriculture is important for food security in two ways: First, it produces the food people eat; and it provides the primary source of livelihood for a large portion of the population of the world particularly in developing countries. If agricultural production in the low-income developing countries of Asia and Africa is adversely affected by climate change, the livelihoods of large numbers of the rural poor will be put at risk and their vulnerability to food insecurity increased.<sup>48</sup>

43. International Covenant on Economic Social Cultural Rights, 1966 Article 11. Article 11 provides that (1) The States parties to the present Covenant recognize 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. The States parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. (2) The States parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes.

44. Article 25 Universal Declaration of Human Rights, 1948; Article 11 of International Covenant on Economic Social Cultural Rights, 1966; Article 12(2) of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) 1979; Articles 24(2)(c) & 27 of the Convention on the Rights of Child, 1989. In addition, the right to food has been incorporated or read into many national Constitutions including those of Bangladesh, Brazil, Colombia, India, Iran, Pakistan, Sri Lanka and South Africa. For example in India it is recognized explicitly by Supreme Court of India in *People's Union for Civil Liberties v. Union of India*, (1997) 1 SCC 301.

45. CESCR General Comment No. 12, The Right to Adequate Food, E/C.12/1999/5 (1999) available at: <http://www.unhcr.ch/tbs/doc.nsf/0/3d02758c707031d58025677f003b73b9> (last visited on March 08, 2014).

46. UNFCCC Article 2.

47. IPCC Climate Change Report 2007, *Supra* n at 13.

48. Climate Change and Food Security: A Framework Document, Food and Agriculture Organization of the United Nations Rome, 2008 available at: [http://www.fao.org/for-estry/15538\\_0706314450816\\_0\\_2\\_2\\_66734\\_1907\\_4\\_361](http://www.fao.org/for-estry/15538_0706314450816_0_2_2_66734_1907_4_361)

### 3.3 The Right to Health

The ICESCR recognizes the right to the “highest attainable standard of physical and mental health,”<sup>49</sup> and the CESCR considers this right crucial for the enjoyment of other human rights.<sup>50</sup> The right to health is widely protected in other international and regional treaties<sup>51</sup> and under national constitutions.<sup>52</sup> As interpreted by the CESCR and other international bodies, the substantive content of this right includes timely and appropriate health care, access to safe and potable water, adequate sanitation, nutrition and housing etc.<sup>53</sup> All these are considered the basic determinants of health which, in the assessment of the World Health Organization (WHO), climate change will place at risk.<sup>54</sup> Climate change is likely to have significant health impacts, including malnutrition; the number of people suffering from death, disease and injury from heat waves, floods, storms, fires and droughts; and cardio-respiratory morbidity and mortality associated with ground-level ozone. The IPCC also foresees that the adverse health impacts will be greatest in low-income countries. It would appear that climate impacts will only increase the onerous burdens developing countries already experience in addressing health issue.

49. Article 12 of the ICESCR provides: (1) The States parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. (2) The steps to be taken by the States parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

50. CESCR General Comment No. 14, The Right to Adequate Food, E/C.12/1999/5 (1999) available at: <http://www.unhcr.ch/tbs/doc.nsf/0/3d02758c707031d58025677f003b73b9>; and CESCR General Comment No. 14, The right to the highest attainable standard of health, E/C.12/2000/4 (2000), available at: [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En) (last visited on March 10, 2014).

51. Article 25 of UDHR, Article 12 of ICESCR, Article 5(e)(iv) of ICERD, Articles 11(1)(f) & 12 of CEDAW, Article 24 of CRC, Article 11 of European Social Charter, Article 16 of African Charter on Human and Peoples' Rights, Article XI of The American Declaration on Human Rights.

52. *Consumer Education and Research Centre v. Union of India*, (1995) 3 SCC 42; AIR 1995 SC 922; *Paschim Banga Khet Mazdoor Samity v. State of W.B.*, (1996) 4 SCC 37; AIR 1996 SC 2426.

53. Paul Hunt, *Report of the Special Rapporteur on the Right of Everyone to the Highest Attainable Standard of Physical and Mental Health*, U.N. Doc. E/CN.4/2003/58 (2003), paras 10-36, available at: <http://www.un.org/womenwatch/ods/E-CN.4-2003-58-E.pdf> (last visited on March 05, 2014).

54. WHO, *Protecting Health from Climate Change* (2008) 6, available at: [http://www.who.int/health\\_topics/climate\\_change/protect\\_health.pdf](http://www.who.int/health_topics/climate_change/protect_health.pdf) (last visited on March 06, 2014).

### 3.4 The Right to Water

The right to water,<sup>55</sup> is an essential condition for human existence. It is not just a self-standing right,<sup>56</sup> but is documented as inextricably associated with other human rights such as the right to an adequate standard of living, the right to the highest attainable standard of health, and the rights to adequate housing and adequate food.<sup>57</sup> Climate change is projected to seriously affect the availability of water. The Stern Review records that even a 1 degree Celsius rise in temperature will threaten water supplies for 50 million people, and a 5 degrees Celsius rise in temperature will result in the disappearance of numerous Himalayan glaciers threatening water shortages for a quarter of China's population, and hundreds of millions of Indians.<sup>58</sup> OHCHR report cited that "Loss of glaciers and reductions in snow cover are projected to increase and to negatively affect water availability for more than one-sixth of the world's population supplied by melt water from mountain ranges. Climate change will thus exacerbate existing stresses on water resources and compound the problem of access to safe drinking water, currently denied to an estimated 1.1 billion people globally and a major cause of morbidity and disease."<sup>59</sup>

### 3.5 Other Possible Human Rights

Climate change may influence the progressive realization of a range of other human rights as well. Climate impacts such as extreme weather events, increased flood and drought risk, changing weather and crop patterns will likely hamper the realization of the rights to private and family life,<sup>60</sup>

55. CESCR, General Comment No. 15: The Right to Water, E/C.12/2002/11 (2003) available at: <http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94> (last visited on March 06, 2014).

56. Article 14(2)(h) of CEDAW, Article 24(2)(c) of CRC, Articles 20, 26, 29 & 46 of Fourth Geneva Convention (Treatment of Prisoners of War), Articles 85, 89 & 127 of Third Geneva Convention (Treatment of Civilian Persons in Time of War); Report of the Special Rapporteur of the Sub-Commission on the Right to Drinking Water Supply and Sanitation, 2002 (U.N. Doc E/CN.4/ Sub.2/2002/10); Preamble, UN Water Conference, Mar. 14-25, 1977; Paragraph 18.47 of Agenda 21, 1992; UN International Conference on Population and Development, Sept. 5-13, 1994; and Resolution 2002/6 of the United Nations Sub-Commission on the Promotion and Protection of Human Rights on the promotion of the realization of the right to drinking water (E/CN.4/2002/200).

57. *Supra* n 55.

58. *Supra* n 17.

59. *Supra* n 15 at para 29.

60. Article 12 of UDHR Article 17 of ICCPR, Article 16 of CRC, Article 8 of European Convention and Article V of American Declaration

property,<sup>61</sup> means of subsistence,<sup>62</sup> freedom of residence<sup>63</sup> and movement. For indigenous groups like the Inuit, climate impacts will fundamentally alter their way of life, affecting a further set of protected rights and interests,<sup>64</sup> in particular the right to the benefits of their culture,<sup>65</sup> and the right to freely dispose of natural resources.<sup>66</sup> There are serious concerns among certain groups that policies and measures to reduce emissions from deforestation, a significant contributor to climate change, may have direct relevance to indigenous peoples' rights particularly in relation to traditional rights to forest produce.<sup>67</sup> For these communities whose very existence is threatened, such as those living in small island states, climate change threatens their right to self-determination, protected by both the ICCPR and the ICESCR.<sup>68</sup> The effects of climate change will be felt most acutely by those segments of the population who are already in vulnerable situations due to factors such as poverty, gender, age, minority status, and disability. Another particularly vulnerable group is children. The OHCHR reports that: "the health burden of climate change will primarily be borne by children in the developing world."<sup>69</sup> Extreme weather events and reduced quantity and quality of water already are leading causes of malnutrition and child death and illness.

## 4. CONCLUSION

The world is already witnessed for the climate change related impacts have a range of implications for the effective enjoyment of a series of individual and collective rights. The impact of climate change particularly those which threaten the existence of low lying small island developing states with inundation and thus extinction have adverse implication for the realization of the right to self-determination. Significant loss of territory undermines the enjoyment of human rights. Most importantly loss of territory jeopardize

61. Article 17 of UDHR, Article XXIII of American Declaration of the Rights and Duties of Man, 1948; Article 21 of American Convention on Human Rights, 1969.

62. Article 1(2) of ICCPR.

63. Article 13 of UDHR.

64. Convention Concerning Indigenous and Tribal Peoples, 1989, (ILO Convention 169); United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, (A/RES/61/295, 2007); Article 27 of ICCPR.

65. Article 27 of UDHR; Article 15 of ICESCR and Article XIII of American Declaration.

66. Article 1 of ICCPR.

67. A plan for negotiating positive incentives for reducing emissions for deforestation and forest degradation in developing countries was one of the key features of the Bali Road Map negotiated at the Thirteenth Conference of the Parties (COP13) to the UNFCCC in December 2007.

68. Article 13 of UDHR, Articles 1 & 12(1) of ICCPR, Article 1 of ICESCR, Article 22(1) of American Convention, and Article VIII of American Declaration.

69. *Supra* n 15 at para 48.

a people's recognition as a state under international law. Without territory and potentially statehood- the individual and collective rights of people of the state are no longer adequately protected by their state and are thus increasingly vulnerable to potential violations. Thus it is essential to ensure the meaningful participation and empowerment of those individuals and communities most affected by climate change inundation, particularly those already socio-economically and political marginalized within the global community.

Human rights framework having binding obligations and commitments which have the potential to inform and strengthen international and national policymaking in the area of climate change as recognized by Human Rights Council in its resolution 10/4 of 2009. Human rights approach to climate change is helpful as it identifies rights-holders and their entitlements and corresponding duty-bearers and their obligations, and works for strengthen the capacities of rights-holders to make their claims and of duty- bearer to meet their obligations. Integration of human rights approach to climate change will help to consider in what ways and to what extent, the changes in climate will impede economic and social development at relevant level including consideration of poverty reduction, strengthening human rights and improving human health and well-being. The international environmental regime particularly the climate change regime must be taken into account the importance of strengthening the social dimension, integrating a gender perspective and the human rights approach in UNFCCC negotiations.

---

## CHAPTER 15

---

### CLIMATE CHANGE, MIGRATION AND ENVIRONMENTAL JUSTICE

---

[ANAM SOOMRO]  
[INDEPENDENT RESEARCHER, ADVOCATE,  
SINDH BAR COUNCIL, PAKISTAN.]

---

