

**United Nations Framework Convention on
Climate Change**

HUMAN RIGHTS REPORT

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INTRODUCTION TO THE CONVENTION

The **United Nations Framework Convention on Climate Change**, (hereinafter UNFCCC), is an international treaty created at the Earth Summit in Rio in 1992 to challenge the rising problem of global warming and associated harmful changes in the climate.

It should be emphasized that:

- Is not a strong international legal text. Is what in legal language they call soft-law. It is more a political agreement, rather than legally binding.
- It does not explicitly include human rights concerns within its legislative framework.

To talk about human rights exclusion at this point is useful to specify what these involve:

- they include forced mass migration;
- increased disease incidence and strain on healthcare systems;
- threatened food and water security;
- the disappearance and degradation of shelter, land, livelihoods and cultures; and
- the threat of conflict;
- the right to self-determination;
- the right to life and health, a healthy environment; and
- the guarantee of these rights for the future generations, amongst many other.

History:

The UNFCCC entered into force in 1994, and has close to universal participation, with 192 countries as ratifying parties. In 1997, the Convention established its Kyoto Protocol, ratified by 184 parties, by which a number of wealthy countries accepted the obligation to reduce their greenhouse gas emissions, according with agreed legally binding objectives. The Kyoto Protocol entered into force in 2005. States must provide certain evidence on emissions and emission reduction measures, and the Kyoto Protocol designates a series of instruments to assist in this process.¹

Following agreements have called for consideration of the social and economic results of response measures, as well as for more global cooperation.² However, the slow pace of the international negotiations, and the political and economic differences among developed and developing countries, does not add into the enhancement of the human rights regime, the safeguard and assurance of the most vital human rights, like the right to life, food, healthy environment, and also the potential for this legal regime (UNFCCC) to ward versus the harmful and utterly foreseeable climate harm effects.³

- **Unlike the international human rights regime, the UNFCCC and the Kyoto Protocol do not include express provisions for remedial measures for individuals, groups of individuals or communities in case of a particular environmental harm.**

CONNECTING HUMAN RIGHTS TO CLIMATE CHANGE

- **Climate change's links to the human rights regime, rise from the simple fact that man-made climate change affects the human rights of all.**

The language used in human rights discourse is different from the vocabulary employed in climate change negotiations, each has a unique referential background and connotations. In the present report, 'Human rights', mean to indicate an organized set of claims about the entitlements of all human beings regardless of any possible differentiation.

The **1948 Universal Declaration of Human Rights** (hereinafter UDHR), has originally laid out these claims and they are understood to carry both an extensive universalist moral authority and a legal weight. However the UDHR is not legally binding, the principal source writings under international law are:

- The **1966 International Covenants on Civil and Political Rights (ICCPR)**; and
- The **Economic, Social and Cultural Rights (ICESCR)**.

The two Treaties are legally binding on the majority of the world's countries, or in legal terms on all States that have ratified them, and are complemented by additional human rights binding agreements, in the National, Regional and International arena. All these texts are supported by the legal precedent and established case law of international, regional and national tribunals, by a body of 'soft law', referring to non-binding resolutions and other texts from transnational organizations such as the UN General Assembly.

For instance, the statement in the first Article of both laws clearly says that: **'[i]n no case may a people be deprived of its own means of subsistence'**:

- This is noticeably applicable where a changing climate is having exactly this result.
- One could argue that basic subsistence needs: water, food, healthcare, shelter and so on and so forth. Yet, by the terminology of rights it is not required to assume a legal language in place of an altruistic one.
- However it implies to reach out to an umbrella of intercontinentally established rules that have elevated those basics to the level of claims for all.

While the UNFCCC includes in its mandate the "protection of the climate system for the benefit of present and future generations of humankind," **it is not designed to offer human rights protection, humanitarian aid or redress to individuals or communities caused by environmental harms.** This is a shortfall of the law in question.

While this law has great difficulties in practice due to its nonbinding nature, it generated a number of concepts, including:

- **Intergenerational equity;**
- **Sustainable development;** and the
- **Precautionary principle.**

The UNFCCC is an agreement amongst States to:

- ‘anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects.’⁴
- The violations of human rights due to the man-made effects of climate change fall easily into that category, stated in the UNFCCC, of obligations imposed on States. This is not a broad misinterpretation but a matter of fact, rising from many current legal cases like Inuit, and the Small Islands cases.

The interest in the human rights dimensions of climate change has been ignited mainly by the **Inuit**⁵ and the **Small Island States** cases. In their 2005 petition before the Inter-American Commission on Human Rights the Inuit argued that the effects of climate change could be credited to actions and omissions of the U.S., and violated their fundamental human rights. The rights to:

- The benefits of culture;
- To property;
- To the preservation of health;
- To life;
- Physical integrity;
- Security; and
- A means of subsistence; and
- To residence;
- Movement; and
- Inviolability of the home.⁶

These rights, it was argued, were protected under several international human rights instruments, including the American Declaration of the Rights and Duties of Man.⁷ The Commission declined to review the merits of the petition, stating that the “information provided does not enable us to determine whether the alleged facts would tend to characterize a violation of rights protected by the American Declaration.”⁸

Although the Inuit Petition did not proceed in the next legal step, it drew attention to the links between climate change and human rights and led to a ‘Hearing of a General Nature’ on human rights and global warming.⁹ The Hearing was held on March 1, 2007, and included statements from the Chair of the Inuit Circumpolar Conference (ICC) and its lawyers but not representatives of the U.S.¹⁰ The Commission has taken no further action, but the ICC petition did generate considerable debate in the academic literature.¹¹

Furthermore, **in the climate negotiations, indigenous groups** delivered statements on the effects of climate change on indigenous peoples health, society, culture and well-being.¹² These groups have been admitted to the Convention process as NGOs with electorate status.¹³ The Permanent Forum on Indigenous Issues under the ECOSOC at its 2nd Session suggested the formation of an *ad hoc* working group on indigenous peoples and climate change,¹⁴ which did not come to pass.¹⁵ In its 7th Session of 2008, devoted to climate change, the Forum suggested that the **Declaration on the Rights of Indigenous Peoples serve as a “key and binding framework” in efforts to curb climate change**, and that the human rights-based approach guide the design and implementation of local, national, regional, and global climate policies and projects.¹⁶

Meanwhile, **the Small Island States, and the Maldives** in particular:

- Launched a campaign to link climate change and human rights.
- Representatives of Small Island Developing States met in November 2007 to adopt the *Male' Declaration on the Human Dimension of Global Climate Change*, requesting, among others that the UN Human Rights Council must organize a discussion on climate change and human rights.¹⁷
- The Council adopted a Resolution tabled by Maldives titled *Human Rights and Climate Change* in March 2008 that requested the OHCHR to conduct a detailed analytical study on the relationship between climate change and human rights.¹⁸

The OHCHR published its study in January 2009.¹⁹

- **The study argued that climate change threatens the enjoyment of a wide spectrum of human rights**, including rights to life, health, food, water, housing, and self-determination.
- It fell short of finding that climate change necessarily or categorically *violates* human rights,²⁰ but it did accept that States have duties under human rights law to address climate change.
- The Human Rights Council decided in March 2009 to hear a panel debate on the topic, and **encouraged its Special Procedures mandate-holders to consider the implications of climate change for the human rights within their mandates.**²¹

In a similar vein, in the Americas, Argentina drafted and tabled a resolution on human rights and climate change that was adopted by the General Assembly of the Organization of American States in June 2008.

- The Resolution instructs the Inter-American Commission on Human Rights to **“determine the possible existence of a link between adverse effects of climate change and the full enjoyment of human rights.”**²² Argentina expressed concern that the inequitable impacts of climate change will place an undue strain on vulnerable States that will need to introduce climate policies and measures to ensure that they meet their human rights obligations.²³

The emerging interest in human rights in the climate change terrain can possibly be credited to a certain point, to a blossoming international condemnation of the pace and directions of multilateral diplomacy.²⁴

- Yet, the slow advancement of international negotiations are not in line to the urgent necessity that streams from the sufficient, while worrying, scientific knowledge, about the harms of climate change and the pace of climate change itself.

A review of the politics of human rights in the international negotiations on climate change does not yield straightforward answers. Yet a consideration of certain political issues is deemed necessary. For example a total of **88 UN member States supported the Human Rights Council's** consensus resolution 10/4 (2009), encouraging greater involvement by human rights expert bodies in the UNFCCC process.²⁵ Co-sponsoring States, particularly those most immediately threatened by climate change, typically highlight the importance of human rights in stressing the human face and impacts of

climate change, as part of a legal or moral claim for strengthened international mitigation commitments and adaptation support from wealthier countries and major emitters.

Still explicit human rights arguments have yet to gain traction to any visible extent within the climate change negotiations under the UNFCCC framework. While a number of States have raised explicit human rights arguments, a revised negotiating text for the outcome document for the fifteenth Conference of the Parties (COP 15) released following the Bonn climate change talks in June 2009 **contained only two relatively modest explicit human rights references.**²⁶

Certain States conceive differently the potential effect of human rights inclusion in the climate change setting and the reaction of such a legal symbiosis:

- The proportional influence and emphasis to be given to human rights obligations on States and regional groups of States;
- Human rights might jeopardize an already over-burdened and unstable climate change agenda.
- Human rights have also been described as a source of mistrust between governments, with certain developing countries expressing the concern that human rights could be used as a way of either preventing their development; or
- Human rights may be operating as conditionalities on climate change adaptation funds.²⁷
- Some developed countries, argue that an official recognition of human rights and climate change linkages, could be used as a “political weapon against them.”²⁸

These evolving political dynamics form an important part of the context in which the international legal analysis and policy needs to be considered.

Yet, as is the case with the majority of international treaties:

- **Under the UNFCCC the primary obligations of the signatory States are held toward one another.**
- However **in human rights treaties, their duties are principally held on citizens**, and in some cases other residents or applicants, and so are generally reserved, violated, or challenged firstly at national level, up until the international human rights courts.

Conclusively, it is not possible to moderate and tackle the man-made effects of climate change without ensuring climate justice, and we cannot ensure climate justice without the inclusion of human rights into the UNFCCC process.

What human rights application to the climate change regime can bring:

- Would expand the mandate and legal reach of the laws in question, for instance, by the principle that wants the States obligations not to stop at their own borders;
- States have a distinctive obligation to screen and regulate the conduct of private bodies within their reach, even if these entities are operating abroad.
- This is exceptionally essential in the paradigm of climate change, where the direct roots of harm are commonly originate in private doings.

CLIMATE CHANGE AND HUMAN RIGHTS: Reasons of silence

The human rights at stake are difficult to enforce:

- Climate change disturbs categories of human rights that have already problematic enjoyment, since they have in practice weak application systems under international law. For instance;
- Social and economic rights;
- The rights of migrants;
- Rights protections during conflicts.²⁹
- The rights of future generations.

In practice even rights with solid safeguards, such as rights to life and to property, cannot be claimed through their customary application and enforcement methods, since the damages caused by climate change cannot be attributed directly.

To constitute extraterritorial responsibility is a difficult task.

- Human rights law, traditionally places the primary duty to act in a case that rights are infringed, on the claimant's government.
- However in the case of climate change, responsibility for harming effects in the most weak and vulnerable States, the restoration of justice and the protection of rights becomes a rather complicated issue, regularly this function is assumed by another government, or an international institution.
- The universality of human rights law is not as powerful in practice, as it is in theory, in other words, cannot easily extend across international borders.³⁰
- Local culpability is difficult to establish. Although poor countries, are not major emitters of greenhouse gases, is anticipated that they are likely to suffer more of the harmful effects of climate change, and also the severity and consequences of these effects will be more detrimental given their inability to adapt.

For example:

- Undeveloped countries have fewer resources;
- These inadequacies to protect the basic human rights, have engendered the principle of 'progressive realization' of those rights under international law.
- However, it is possible that climate change will lead to a progressive worsening of those equivalent rights.
- It is common sense that in a government incapable to ensure basic human rights for its people, any form of accountability for this shortage is in vain, consequently it will certainly be impossible to hold it liable for conditions it did not generate.³¹

There is also the context of emergency conditions, which is neighboring with rules generated by sovereignty and national security, which are cases that constraint and limit the function of human rights law.

One could argue that climate change could fall within the purposes of emergency conditions. In such an argument it is important to clarify that the international human rights law, just as national domestic law, customarily permits the interruption of human rights, and "puts them in ice".³² Conflict of rights, conversely, between different parties is

also an expected problematic, however, the conflict and struggles in legal cases of that nature are a normality and are expectable.

The legal reasoning above is not insignificant. A necessity exists to recognize, the dichotomy between formal and substantive justice.

- The firm canon of human rights law, versus the soft-law, policy orientated, political agreement with weaker legal enforceability of the UNFCCC.
- ‘Equity’ in the UNFCCC, is not as strong as the ‘equality’ in human rights law, similarly the distinctions in the UNFCCC between ‘Annex I’ and ‘non-Annex I’ countries, as a method, is contrary to the universal human rights legal approach imposing obligations to all countries irrespectively their special conditions.
- Climate change law and policy, develops with a very anemic pace, and is observable that the philosophy guiding its path, could be characterized by compromise, political consensus and economic interests.

Human rights law is applicable and appropriate to climate change since the latter affects the former.

- Plus for predictive reasons.
- Climate change harms, will eventually lead more people affected, to turn to human rights language, and enforcement mechanisms for protection. (Inuit)
- This is a new legal paradox, and there is not sufficient legal precedent to guide the evolvement of the unification of these two regimes.

CONCLUSIVE REMARKS

Climate change must be addressed in earnest urgency.

- This requires measures that go beyond the existing Kyoto Protocol.
- It is critical to ensure that climate change is conceived in a broader manner that goes beyond the environmental and economic dimensions that have been central to the existing regime.
- Giving a central place to human vulnerability and incorporating the human rights language in climate change law is crucial.
- This must be achieved alongside a broader rethinking of the place of differential treatment in the climate change regime, to ensure that it better reflects countries’ and people’s vulnerabilities in the future.

Climate change is undermining the fulfillment of a number of internationally protected human rights, like the:

- Rights to health and life;
- Rights to food, water, shelter and property;
- Rights associated with livelihood and culture;
- Migration and resettlement; and
- Personal security in the event of conflict.

The worst effects of climate change are likely to be felt by those individuals and groups whose rights protections are insufficient.

- The most harmful and immediate effects of climate change are expected to occur in the world's poorest countries, where rights protection is still weak.
- But this effect is also causal and mutually reinforcing.

In conclusion, the terrain of climate change has an inherent crucial urgency that justifies the calls for necessary further research through a multidisciplinary methodology, as well as for deeper examination of the links of climate change with human rights claims, equity for future generations, of the problematic rising from the questions on sustainable development, and the vulnerability principle in legal terms. Questions related to the dominance of climate change in environmental law and to the debates over climate justice, between global and international justice.

By closing this report, it should be highlighted that:

- Human rights appear to have a more evident role in each succeeding rights-sensitive suggestion on climate change;
- The relevant negotiations on law-making global organs have sustained their discussion agendas with a, predominantly, utilitarian philosophy;
- Having as a mutual understanding on the issues in question, based as depending on cost– benefit and other welfare hypothesizing paths.
- Up-to-date is observable, that the negotiating States have utilized human rights language principally for their normative value, to boost paradigms of distributional justice, but without admitting their status as positive international law.

Ideally, the current attitudes should employ human rights vocabulary to support a fairer international climate change system:

- However, they have not proceeded to-date into examining in-depth specific human rights damages rising from climate change, or pursue to introduce human rights rules into climate change law.
- At the end of the day, they call for human rights in order to move uncertain action on climate change, instead of supporting climate change action in order to prevent human rights costs.³³

Scanning for human rights language is, undeniably not the strongest tool of analysis and examination, since is rather a poor diagnostic utensil.

- However the preliminary findings of such an analytical exercise are more than indicative of the unjustified absence of human rights, which is a well established legal structure that as all the evidence show, ought to be part of the climate justice regime with a more active role. All the requirements for justifying such an inclusion are present in the climate change phenomenon, namely the harm to human beings, by acts that could otherwise been avoided.

- Climate change have a human source since is partly man-made, and this contributory connection makes climate change an area of study uniquely suitable for human rights assessment.

Human rights law is applicable because the man-made impacts of climate change causes human rights violations.

- A human rights approach can be beneficial in dealing with climate change.
- The human rights context redirects the analysis of the phenomenon in its essential effects on humanity, and since climate change is about suffering, is connected with the harm humans are doing to nature.
- Numerous populations experience the adverse effects of warming temperatures, yet little solutions are to-date available to them. The human rights regime can offer a solution to that injustices.

In summary:

- The future of Climate Justice depends on the inclusion of human rights.
- We need immediate action in order to prevent the disaster scenarios.
- The human rights regime can offer to Climate Justice the best possible framework for accountability, law-enforcing tools, individual and collective justice claims, and the real and actual implementation of environmental law.
- Climate change should not be conceived solely by environmental law, politics and economic interests. As a man-inflicted harm it must be addressed as bearing responsibility.

If we assemble human rights standards into our climate justice's prospect advance, then it will be easier to identify the ones under threat and how to protect them.

Climate change texts, shows up myriad failings in our existing established design, including its human rights means.

- Tackling these drawbacks will involve a makeover of the global policies;
- From information-gathering and collective decision;
- From law-making to practice and enforcement, up-to resource distribution.

According to the Universal Declaration of Human Rights, 'everyone is entitled to a social and international order in which [their] rights and freedoms ... can be fully realized'. Climate change interrupts this process and the realization of fundamental basic human rights.

However as some scholars argue, maybe the times of emergency arrived, that no compromises are allowed, in the sense that now is the time to design the international and social order of which the writers of the Universal Declaration envisaged. Intergenerational justice and the rights of the future generations are earning ground in the human rights legal regime, and these cannot be ensured without safeguarding a habitable environment and a healthy planet, is as simple as that.

*I attempted to provide a basic outline of the prospective relevance and linkages between the UNFCCC, and the human rights regime. My focus was on the UNFCCC, meaning that I did not enter into a detailed analysis of the newly emerged agreements, UN Resolutions, or Conferences promises; this would require further research, detailed and up-to-date analysis and in-to-depth examination, through a more systematic and committed scholarly engagement.

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ENDNOTES

¹ See: Kyoto Protocol, Articles 6, 7, and 12 correspondingly. Under the CDM, States can collect supplementary emission credits if they set up plans tackle climate change in developing countries.

² United Nations Climate Change Conference, Dec. 3-15, 2007, Report of the Conference of the Parties on its Thirteenth Session, U.N. Doc FCCC/CP/2007/6/Add.1 (Mar. 15, 2008).

³ This is not to belittle UN Member States' successes unethically. The Kyoto Protocol has arguably demonstrated real results in rousing action on climate change. EU is also assisting the adaptation responses in certain developing countries. There are however problematic challenges that are creating obstacles in the further development of the climate justice's regime due to the political interests, or economic stakes.

⁴ UNFCCC Articles 3(1) & 3(3). A range of preventive measures, including technology transfer, emissions reduction measures, education and scientific studies, are set forth in Articles 4-6 & 9.

⁵ See: Watt-Cloutier, Sheila, Climate Change and Human Rights, in HUMAN RIGHTS DIALOGUES: "ENVIRONMENTAL RIGHTS" (Apr. 22, 2004).

⁶ Organization of American States, Inter-American Commission on Human Rights, Petition Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States (2005). See: <http://www.inuitcircumpolar.com/files/uploads/icc-files/FINALPetitionICC.pdf>. (Accessed on 20/Oct/2013).

⁷ American Declaration on the Rights and Duties of Man, Apr. 1948, OAS Resolution XXX, OEA/Ser.L.V/II.82 doc.6 rev.1.

⁸ George, Jane, ICC Climate Change Petition Rejected, NUNATSIAQ NEWS (2006), See: http://www.nunatsiaq.com/archives/61215/news/nunavut/61215_02.html. (Accessed on 22/Oct/2013).

⁹ Press Release, Inter-American Commission on Human Rights, IACHR Announces Webcast of Public Hearings of the 127th Regular Period of Sessions, No 8/07 (Feb. 26, 2007), See: <http://www.cidh.org/Comunicados/English/2007/8.07eng.htm>. (Accessed on 21/Oct/2013).

¹⁰ Harrington, Joanna, Climate Change, Human Rights and the Right to be Cold, 18 *FORDHAM ENVTL. L. REV.* 513 (2007).

¹¹ Many Articles have been inspired by the Inuit Case. See: Sinden, Amy, Climate Change and Human Rights, 27 *J. LAND RESOURCES & ENVTL L.* 255 (2007); Osofsky, Hari M., The Inuit Petition as a Bridge? Beyond the Dialectics of Climate Change and Indigenous Peoples' Rights, 31 (2), *AM. INDIAN L. REV.* 675 (2007); Abate, Randall S., Climate Change, the United States and the Impacts of Arctic Melting: A Case Study in the Need for Enforceable International Environmental Human Rights, 26 *STAN. ENVTL. L.J.* 3 (2007); Koivurova, Timo, International Legal Avenues to Address the Plight of Victims of Climate Change: Problems and Prospects, 22 *ENVTL. L. & LITIG.* 267 (2007); Aminzadeh, Sara C., A Moral Imperative: The Human Rights Implications of Climate Change, 30(2) *HASTINGS INT'L COMP. I. LAW REVIEW* 231 (2007); and Middaugh, Marguerite E., Linking Global Warming to Inuit Human Rights, 8 *SAN DIEGO INT'L L.J.* 179 (2006).

¹² See e.g. statements made in response to the four-year international study leading to the Arctic Climate Impact Assessment (ACIA). Statement, Representatives of Arctic Indigenous Peoples Organizations on the Occasion of the 11th Conference of Parties to the Framework Convention on Climate Change (Dec. 6, 2005), available at <http://UNFCCC.int/resource/docs/2005/cop11/stmt/ngo/011.pdf>. (Accessed on 18/Oct/2013).

¹³ See: <http://UNFCCC.int/resource/docs/2005/cop11/stmt/ngo/011.pdf>. (Accessed on 18/Oct/2013).

¹⁴ See: Note, Secretariat of the UN Framework Convention on Climate Change, Promoting Effective Participation in the Convention Process, UNFCCC/SBI/2004/5 (Apr. 16, 2004) para. 39-47.

¹⁵ United Nations Framework Convention on Climate Change, Report of the Subsidiary Body for Implementation on its twentieth session, UNFCCC/SBI/2004/10 (Aug. 31, 2004), para. 105.

¹⁶ United Nations Permanent Forum on Indigenous Issues, Report on the seventh session, Economic and Social Council, E/2008/43, e/c.19/2008/13 (Apr. 21-May 2, 2008) at 3-4.

¹⁷ Malé Declaration on the Human Dimension of Global Climate Change (Nov. 14, 2007), See: <http://www.meew.gov.mv/downloads/download.php?f=32>. (Accessed on 20/Oct/2013).

¹⁸ United Nations Office of the High Commissioner for Human Rights, Human Rights and Climate Change, Resolution 7/23 (Mar. 28, 2008), See: http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_23.pdf. (Accessed on 17/Oct/2013).

¹⁹ United Nations Office of the High Commissioner for Human Rights, Report on the Relationship Between Climate Change and Human Rights, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009).

²⁰ *Id.*

²¹ United Nations Human Rights Council Resolution 10/4 para. 3, in United Nations Human Rights Council, Draft Report of the Human Rights Council on its Tenth Session, U.N. Doc A/HRC/10/L.11 (Mar. 31, 2009).

²² Organization of American States, Human Rights and Climate Change in the Americas, Resolution 2429, AG/RES. 2429 (XXXVIII-O/08) (June 3, 2008).

²³ Press Release, Centre for Human Rights and Environment, OAS Approves Human Rights and Climate Change Resolution (June 4, 2008).

²⁴ See: Limon, Marc, Human Rights and Climate Change: Constructing a Case for Political Action, 33 *HARV. ENVTL. L. REV.* 439 (2009).

²⁵ Res. 10/4 (Mar. 2009).

²⁶ At the Fifth Session (Mar. 29-Apr. 8, Bonn) of the Ad-Hoc Working Group on Long-Term Cooperative Action under the Convention (a supplementary group of the UNFCCC tasked under the Bali Action Plan to pursue the full, effective, and sustained implementation of the Convention), the Maldives delegation initiated the course of trying to integrate human rights language into the draft negotiating text being arranged by the Chair of the AWG-LCA. See: Maldives Delegation to the Fifth Session of the Ad-Hoc Working Group on Long-Term Cooperative Action, Proposed Draft Wording to Be Sent as National Submission to Be Included in the Negotiating Text Under Shared Vision (Apr. 2009), http://www.maldivesmission.ch/fileadmin/Pdf/Environment/Maldives_wording_AWG-LCA_April_09.pdf. (Accessed on 22/Oct/2013). A text dated June 22, 2009 (FCCC/ AWGLCA/2009/INF.1) which was prepared by the chair of the AWG-LCA and designed to offer a departing point for the negotiations towards

an Agreed Outcome at COP15 in Copenhagen, echoing viewpoints and suggestions suggested by Parties to the UNFCCC. The two draft provisions were: paragraph 2, reflecting proposals made by small island States, stating that adverse effects of climate change “have a range of direct and indirect implications for the full and effective enjoyment of human rights including the right to self determination, statehood, life, food and health and the right to a people not to be deprived of its own means of subsistence, particularly in developing countries; and paragraph 22 (a)(iii) adding a new condition or regulatory norm for adaptation measures: “The respect for, protection and promotion of fundamental human rights and basic rights as outlined in the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and other relevant conventions and treaties.” The text also explicitly incorporated the recognition reflected in the UN Human Rights Council’s resolution 10/1 (March 2009) that the adverse “effects of climate change will be felt most acutely by those segments of the population who are already in vulnerable situations owing to such factors as geography, poverty, gender, age, indigenous or minority status and disability,” facilitating the turn of standpoint and attention, from authorities and markets to individuals and societies affected by climate change.

²⁷ Limon, *supra* note 24, at 461.

²⁸ *Id.* at 460-1, citing submissions of the U.S. and the UK to the UN Office of the High Commissioner for Human Rights in connection with the report of the latter to the Human Rights Council in 2009.

²⁹ Some human rights bodies, notably the European Court of Human Rights, have found rights violations due to environmental impacts, including of the right to health. See Shelton (2001), 225–31; Robb (2001). In a recent case, *Öneryıldız v. Turkey* (App. No. 48939/99, decision of 30 November 2004), the Court found against Turkey for failing to act on an environmental impact assessment, and for contributing to deaths caused by a methane explosion.

³⁰ Legal precedent suggests that states have responsibility for: (i) state actions taken in other countries; (ii) human rights protections in countries where they exercise ‘effective control’; and (iii) some violations committed abroad by private actors who fall under their jurisdiction. See, for example, *Lopez Burgos v. Uruguay*, HRC Comm. No. R12/52 (1979), Views of 29 July 1981; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Advisory Opinion of 9 July 2004; *Coard et al. v. United States*, IACHR Case No. 10.951, Reports No. 109/99, 29 September 1999; *Banković v. Belgium* (App. No. 52207/99, Decision of 12 December 2001). However, the case law is sparse and its applicability to climate-related harms is unclear. Alternative mechanisms involving ‘long-arm’ domestic jurisdiction – such as the US Alien Tort Claims Act – may be of limited value. Although state responsibility for extraterritorial violations of social and economic rights has not been widely discussed, the particular harms caused by global warming may generate plausible claims of this kind.

³¹ Certain vulnerable countries are developing into bigger GHG emitters, for example China, India and Brazil. Hence, the importance and relevance of human rights law will depend on the domestic legal texts and safeguarding capabilities of human rights rules in the States in question. Variables that change significantly from country to country.

³² For accounts of the applicability of human rights during emergencies see IASC (2006) and OHCHR (2003), ch. 16.

³³ The adaptation funding calls, as ‘compensation’ for harms inflicted by the actions of the Annex I countries. In this line of reasoning, they call for human rights as an ethical rather than legal imperative. See, for example: Oxfam International, ‘Adapting to Climate Change: What’s Needed in Poor Countries and Who Should Pay’, Oxfam, Briefing Paper, 104 (2007).