

Climate Change as a Human Rights Issue: Litigating Climate Change in the United Nations Human Rights Committee

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Abstract

This paper delves into the convergence of climate change and human rights, with a specific focus on the avenue of litigation within the United Nations Human Rights Committee (UNHRC). In recent years, the escalating impacts of climate change have posed significant threats to human rights, including the rights to life, health, food, water, and a healthy environment. Recognizing the urgency of addressing these challenges, there is a growing discourse on utilizing human rights mechanisms to hold states and other actors accountable for their contributions to climate change and their failure to mitigate its effects. By examining pertinent legal frameworks, including international treaties such as the International Covenant on Civil and Political Rights (ICCPR)



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and the International Covenant on Economic, Social and Cultural Rights (ICESCR), alongside evolving case law and emerging legal strategies, this paper evaluates the potential for leveraging the UNHRC as a forum for litigating climate change as a human rights issue. It scrutinizes the complexities, obstacles, and opportunities inherent in such litigation, emphasizing its potential to advance climate justice and bolster accountability. Ultimately, this paper underscores the imperative of reframing climate change as not solely an environmental concern but also a profound human rights imperative. By advocating for the recognition of individuals' rights in the face of climate change impacts, litigating before the UNHRC offers a promising avenue for driving systemic change, safeguarding vulnerable communities, and fostering a more equitable and sustainable future.

KEYWORDS *Environmental Justice, Human Rights, Environmental Protection, UNHCR, Climate Change*

Introduction

When placed side by side, the Human Right Law and Environmental law seem to have evolved as a separate entity. This is largely due to the misconception that the only proprietary right a man has is purely fundamental i.e., rights requiring a high degree of protection from the government—unlike environmental actions that are largely based on environmental affairs.

According to the United Nations General Assembly, Human Rights and the environment are intimately connected and in order to fully exercise our human rights, safe, clean and sustainable environment is necessary.¹ The Assembly further declared that everyone on the planet has a right to a healthy and safe environment.

¹ See Human Rights and the Environment <<https://www.genevaenvironmentnetwork.org/resources/updates/human-rights-and-the-environment>>

Although the Universal declaration of Human right was adopted in 1948² while the International Environmental Law happens to be a younger field dated back to 1972,³ both areas of law have relied on each other in actionable matters before the court. This presupposes that environmental law has a nexus with the human right law. Environmental law is a variety of protection with the aid of regulations, policies and directives which share the goal of protecting the environment.

The aim of environmental law is to protect the environment and form abiding rules to protect the environment from harm and humans from harm. Human rights law on the other hand is a series of international rules largely established by treaty on the basis of which individuals can claim certain right that must be respected and other rights as lawfully provided as fundamental.

The evolution of international environmental law⁴ expanded amongst different nations of the world including the African nations.⁵ This later triggered governments of different institutions to pass laws protecting the human health from environmental contamination. Agreements between countries, conventions by advocates to protect commercially valuable species amongst others were reached in order to maximize the safety of the human person and the human life.

People are experiencing a large significant impacts of climate change including change in weather pattern and rising sea level amongst others. Preliminary Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment further reiterated sustainable development goals

² See the Universal Declaration of Human Rights (UDHR) (adopted 10 December 1948) UNGA Res 217 A(III)

³ For example, M Fitzmaurice, DM Ong and P Merkouris (eds), *Research Handbook on International Environmental Law* (Elgar 2010) 15.

⁴ For example, E Brown Weiss, 'The Evolution of International Environmental Law' (2011) 54 *Japanese Year book of International Law* 1.

⁵ M FERIA - TINTA and S MILNES, 'The Rise of Environmental Law in International Dispute Resolution' (2016) 27 *Yearbook of International Environmental Law* 64

which refers to climate action.⁶ Climate action is a means of reducing greenhouse gas emissions and strengthening adaptive capacity to reduce the effects of climate change.

One of the greatest threats to human right is climate change. Climate change poses a severe threat to life, adequate standard of living and food which are the basic essentials for human existence. Further to the above, climate change exacerbates water shortages, changes water availability making accessible to water scarcer in more regions across the world. Other impacts and implications of climate change includes: oceans getting warmer, sea levels on the rise, intense drought, heatwaves and melting glaciers which directly harm humans and animals including the places they live. Regrettably, the world, including the flarers, polluters, emitters of gas and innocent victims are at risk of changing climate.

Based on the aforesaid, the balance between environmental law and human rights law in addressing the impacts and implications of climate change in our contemporary world might seem impossible based on the complexities of climate change.

Contentious Judicial Precedents: Sheila Watt-Cloutier et al v United States⁷

In the matter of Sheila Watt-Cloutier et al. v. United States, a petition for relief from violations deriving from global warming caused by the United States' actions and omissions was decided.⁸ The Sheila's case happen to be the first climate change case brought before the Inter-American System.

The Inuit indigenous people filed a petition against the United States before the Inter- American Commission in 2005, explaining the effects of global warming on the Arctic which was seen to be affecting the

⁶ UN Human Rights Council, 'Preliminary Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' UN Doc A/ hrc/ 22/ 43, para 10

⁷ IACHR, *Sheila Watt-Cloutier et al. v. USA*, petition rejected on 7 December 2005

⁸ Petition Seeking Relief from Violations resulting from Global Warming caused by Acts and Omissions of the United States <<https://climate-laws.org/cclow/geographies/9/litigationcases/7052>> accessed 10 November 2022

fundamental rights of the Inuit indigenous people. The Inuit people further provided comparative details of the alleged violations and expatiated the manner in which global warming was affecting the Inuit life including how ice is a supporter of life. Sea animals brought from the north becomes extinct upon reaching the Inuit land.⁹

It was further alleged that the effects of global warming in the Inuit land had already visibly transformed the Arctic, altering land conditions,¹⁰ decreasing water levels in the lakes and rivers and many more. The claim furthered that some previously navigable rivers in Inuit land are now rather impossible to use for transportation.

Unfortunately, the case was dismissed even before the consideration of its admissibility. The complaint was dismissed on the sole ground that the fact therein does not satisfy the requirements set forth in the Inter-American Commission on Human Rights.¹¹ Notwithstanding the missed opportunity of the Inuit case, the case marked a turning point as regards climate Change litigation under the Inter America Commission.

Further to the above, the claim reiterated that the United States continued to be the world largest emitter of greenhouse related gases and that regulations of the United States on environmental control were misleading coupled with plans to meet ineffective targets caused the disappearing of Arctic ice thereby threatening the survival of the Inuits and violating their constitutionally guaranteed rights under the American Declaration of the Rights and Duties of Man.¹²

Notwithstanding the dismissal of the suit, the case recognized the need to address existential threats such as climate change within the purview of Human Right. This further led to American system to link the issues cutting across climate change and human right thus becoming a

⁹ *Ibid*

¹⁰ *Ibid*

¹¹ Inter- American Commission on Human Rights, Letter dated 16 November 2006 <<https://graphics8.nytimes.com/packages/pdf/science/16commissionletter.pdf>> accessed 6 November 2022.

¹² These rights include right to enjoy land which the Inuit have traditional and ancestral, right to use and enjoy their personal property and most importantly, right to the preservation of health amongst other rights that an average person is entitled to.

good legal mechanism in addressing climatic action and other environmental issues.

As a result of this landmark case, the connection between the business sector and climate change has also received attention. For instance, the Inter American Commission released a report on business and human rights around the year 2020 that discusses state responsibility to control the private sector, environmental damage, and climate change.¹³ The report highlighted the right of access to justice to remediate the impact of climate change.¹⁴

Climate Change as an Issue of Human Rights in the UN Charter Based Bodies and in the Reporting Mechanisms of the UN Treaty Bodies

Climate change is a basic human rights issue, having been frequently underlined by the Human Rights Committee, a quasi-judicial body of independent experts that oversees the application of the International Covenant on Civil and Political Rights.

In a bid to combating climate change and environmental pollution, the United Nation's Office of the High Commissioner for Human Right (OHCHR) codified some series of considerations that states must follow in their (in)actions to addressing climate change. The considerations include:

1. mitigating climate change and preventing negative effects on human rights;

¹³ S García Muñoz, *Empresas Derechos Humanos: Estándares Interamericanos* (InterAmerican Commission on Human Rights 2019) <<https://www.oas.org/es/cidh/informes/pdfs/EmpresasDDHH.pdf>> accessed 5 November 2022. See, in particular, paras 233– 53

¹⁴ It stated: 'Access to justice and compensation for harm caused by climate change are also top priorities for the Commission. In order to fulfill this obligation, States must ensure that there are effective, timely, affordable, and accessible mechanisms for challenging any state or private sector actions or inactions that could jeopardize human rights due to environmental degradation and climate change. States must also ensure that damages caused by these risks and the resulting policies are compensated.' (Adeniyi's translation)

2. ensuring that all persons have the necessary capacity to adapt to climate change;
3. ensuring accountability and effective remedy for human rights harms caused by climate change;
4. mobilizing maximum available resources for sustainable, human rights- based development;
5. ensuring equity in climate action; and
6. guaranteeing equality, non- discrimination, and meaningful and informed participation in decision- making.¹⁵

The OHCHR stressed that: ‘States have an affirmative obligation to take effective measures to prevent and redress these climate impacts, and therefore, to mitigate climate change, and to ensure that all human beings have the necessary capacity to adapt to the climate crisis.’¹⁶

This interpretation that some States have made regarding climate change and human rights obligation under the United Nations obligations within the UN system are relevant to construing State obligations under the ICCPR because of the interrelated and interdependent nature of rights¹⁷ and the systemic nature of international law.

Another committee that has acknowledged that climate change constitutes a great threat to the ecosystem is the Committee on Economic, Social and Cultural Rights (ICESCR). The committee reiterated that a failure to stop and or prevent human right harm caused by climate change could serve as a breach of the obligation.¹⁸

¹⁵ OHCHR, ‘Understanding Human Rights and Climate Change: Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change’ (27 November 2015) <<https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf>> accessed 10 November 2022

¹⁶ *Ibid*

¹⁷ ‘Vienna Declaration and Programme of Action’ World Conference on Human Rights (Vienna 14 June– 25 June 1993) (12 July 1993) UN Doc A/ CONF.157/ 23 <<https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>> accessed 10 November 2022.

¹⁸ UN Committee on Economic, Social and Cultural Rights, ‘Climate change and the International Covenant on Economic, Social and Cultural Rights’ (31 October 2018) UN Doc E/ C.12/ 2018/ 1, para 6

The Committee on the Elimination of Discrimination Against Women published General Recommendation No. 37 on Gender-Related Aspects of reducing disaster risk in the Context of Climate Change in February 2018.

This outlines many of the important climate change issues that States should take into account when implementing CEDAW, such as reducing the use of fossil fuels and greenhouse gas emissions, the detrimental environmental effects of extractive industries like mining, and the distribution of climate finance.¹⁹

Further to the above, the United Nations Human Rights Council reiterated that Climate change has contributed to and continues to contribute to the increased frequency and intensity of both sudden-onset natural disasters and slow-onset events, and that these events have adverse effects on the full enjoyment of all human rights.²⁰ It also called for the full implementation of the United Nations Framework Convention and the Paris Agreement.²¹

In a statement on the responsibilities under human rights law relating to climate change, with a special emphasis on the right to life, David Boyd, the UN Special Rapporteur on Human Rights and the Environment, emphasized the obligation to take proactive and successful measures to prevent the human rights harm caused by climate change.²² In Australia, the CESCR stated that:

The Committee is concerned about the continued increase of carbon dioxide emissions in the State party, which run the risk of worsening in the coming years, despite the State party's commitments as a developed country under the United Nations Framework

¹⁹ UN Committee on the Elimination of Discrimination Against Women, 'General Recommendation No 37 on Gender- related dimensions of disaster risk reduction in the context of climate change' (7February 2018) UN Doc cedaw/C/GC/37, para 13.

²⁰ UN Human Rights Council, 'Human Rights and Climate Change' Res 38/ 4 (5 July 2018) UN Doc A/ HRC/ RES/ 38/4, recitals and para 2.

²¹ *Ibid*

²² *Ibid*

*Convention on Climate Change and the Kyoto Protocol, as well as its national determined contribution under the Paris Agreement. The Committee is also concerned that environmental protection has decreased in recent years as shown by the repeal of the emissions scheme trading scheme 2013, and the State party's ongoing support to new coal mines and coal-fired power stations. The Committee is also concerned that climate change is disproportionately affecting the enjoyment of the Covenant rights by indigenous peoples.*²³

It suggested that Australia review its energy and climate change policies, take immediate action to stop the current rise in absolute greenhouse gas emissions, reevaluate its support for coal mines and coal exports, and better address the effects of climate change on indigenous people.²⁴

It furthered that Australia in reducing greenhouse emissions especially those resulting from coal consumption need to adopt a human right – based approach. The approach would help protect citizens both within and outside Australia, including when those result from export of fossil fuels gets into other territory.²⁵

In reviewing Cabo Verde's report, the Human Rights Committee cited General Comment 36 on the right to life and requested that the delegation explain how it ensured meaningful and informed participation of all populations in the process of developing strategies, policies, and

²³ UN Committee on Economic, Social and Cultural Rights, 'Concluding observations on the fifth periodic report of Australia' (11 July 2017) UN Doc E/C.12/aus/co/5, para 11

²⁴ *Ibid* para 12

²⁵ UN Committee on the Elimination of Discrimination Against Women, 'Concluding Observations on the eighth periodic report of Australia' (25 July 2018) UN Doc cedaw/C/aus/co/8, paras 29–30

programs, and how it planned to put in place a more inclusive and gender-sensitive climate change policy.²⁶

Thus, General Comment 36²⁷ is a crucial tool for understanding the obligations of States in respect of the right to life in the context of environmental claims.²⁸

More recently, as part of its reporting procedures, the Committee urged the Guyanan government to reply to worries that large-scale oil extraction had greatly increased greenhouse gas emissions, contributed to ocean acidification, and raised sea levels.²⁹ To put it another way, the ICCPR mandates that in order to defend the right to life, States must assess their energy strategies and take steps to reduce the release of potentially harmful greenhouse gases into the atmosphere.

Human Rights General Comment No 36— Article 6 (Right to Life)

The committee in the General Comment 36 stated that climate change constituted the most pressing threat to the right to life. The committee posited:

'Environmental degradation, climate change and non-sustainable development constitute some of the most

²⁶ OHCHR, 'In dialogue with Cabo Verde, Human Rights Committee Experts raise concerns about anti-discrimination legislation, gender-based violence, the court system and corruption' (OHCHR, 23 October 2019) <<https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25190&LangID=E>> accessed 9 October 2022

²⁷ See United Nations Human Rights on General comment No. 36 on article 6: right to life <<https://www.ohchr.org/en/callsforinput/generalcommentno36article6rightlife#:~:text=The%20right%20to%20life%20is%20a%20right%20that%20should%20not,enjoy%20a%20life%20with%20dignity.>>>

²⁸ General Comment No 36

²⁹ 'United Nations Human Rights Committee Responds to Guyana's Carbon Bomb' (Center for International Environmental Law, 10 August 2020) <<https://www.ciel.org/news/unitednations-human-rights-committee-responds-to-guyanas-carbon-bomb/>> accessed 7 November 2022

*pressing and serious threats to the ability of present and future generations to enjoy the right to life. Obligations of States parties under international environmental law should thus inform the contents of Article 6 of the Covenant, and the obligation of State parties to respect and ensure the right to life must reinforce their relevant obligations under international environmental law. The ability of individuals to enjoy the right to life, and in particular life with dignity, depends on measures taken by State parties to protect the environment against harm and pollution.*³⁰

The Committee has confirmed that the right to life under Article 6 ICCPR is not to be interpreted narrowly;³¹ that it includes a right to 'life with dignity'; and that the serious threat of climate change requires States to act to protect the ability of citizens to enjoy a life with dignity.³² This right to life has been judiciously applied in the Portillo case.

The Portillo Case

In Portillo Cáceres and Others v Paraguay,³³ a "campesino" farming family in Paraguay filed a complaint with the UN Human Rights Committee alleging that the widespread use of agrotoxins by adjacent large agro companies had poisoned many local citizens and resulted in the death of their relative, Ruben Portillo Cáceres.

There are two elements of the case that are very pertinent for potential climate change cases. The approach to the right to life as a duty to protect is the first issue. The communication's writers claimed that the State Party had transgressed the right to life because it had:

³⁰ General Comment No 36 (n 18) para 62

³¹ General Comment No 36 (n 18) para 3

³² General Comment No 36 (n 18) para 65.

³³ UN Human Rights Committee, Portillo Cáceres and Others v Paraguay (25 July 2019) UN Doc ccpr/C/126/D/2751/2016 (Portillo case)

failed to discharge its duty to protect their lives and physical integrity because it was not diligent in enforcing environmental standards and laws. The authors also claim that their right to a life with dignity has been violated owing to the circumstances in which they live, as they are surrounded by uncontrolled crop dusting that has a detrimental impact on their daily lives and has resulted in their being poisoned, since it pollutes the waterways in which they fish and the well water that they drink, has ruined the crops that they use for food and has caused the death of their farm animals.³⁴

The Committee held in that respect:

The Committee observes that a narrow interpretation does not adequately convey the full concept of the right to life and that States must take positive action to protect that right. The Committee recalls its general comment No. 36, in which it has established that the right to life also concerns the entitlement of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death. States parties should take all appropriate measures to address the general conditions in society that may give rise to threats to the right to life or prevent individuals from enjoying their right to life with dignity, and these conditions include environmental pollution.³⁵

The Committee found that the authors' lives were reasonably foreseeable to be in danger due to the authors' heavy use of harmful agrochemicals in the affected area, which has been abundantly recorded.³⁶

When finding a violation of the right to life for those who were still alive in this case, which was a second crucial aspect of the case, the Human Rights Committee reaffirmed the basic concept that Member Nations may

³⁴ Portillo case (n 19)

³⁵ Portillo case (n 19)

³⁶ Portillo case (n 19)

be in violation of article 6 of the Covenant even if such threats and circumstances do not result in the loss of life.³⁷

The Torres Strait Islanders Case

The Torres Strait Islanders case, which was brought by a group of Torres Strait Islanders against Australia over its inaction on climate change, is a significant case that is currently before the Human Rights Committee and has been referred to as a "world-first" case on climate change and human rights.³⁸

Two of the authors file a complaint on their own behalf and on behalf of their kids. The claimants contend that the islands, which serve as their home, are low-lying islands that are seriously affected by sea level rise, and that the prospect of being uprooted poses a serious threat to their way of life and culture being seriously threatened by the prospect of becoming displaced.

The northernmost portion of the Great Barrier Reef is located in the Torres Strait, a pristine wilderness area. One of the oldest existing societies in the world, as well as endangered turtles and dugongs, are found in the region.

There are no remedies that can be utilized up in Australia, according to the case, because local government should implement them. Instead of seeking compensation from Australia, the plaintiffs ask for mitigation and adaption actions.

The authors claim that their country, Australia, is failing in its duty to uphold their children's and their own human rights by:

1. ignoring the hazards posed by climate change adaptation, particularly sea level rise, and failing to take necessary precautions to safeguard their lives, way of life, property, and culture;
2. failing to implement adequate domestic measures to meet that ndc and encouraging the extraction and use of fossil fuels, particularly coal for electricity generation, in order to reduce Australia's national

³⁷ Portillo case para 7.3

³⁸ Torres Strait Islanders v Australia, Communication 3624/2019 (Torres Strait Islanders case)

greenhouse gas emissions (also known as "mitigation"), particularly coal for electricity

According to the Torres Strait Islanders, present effects of climate change include changes in weather patterns and draughts, extreme floods and erosion, deforestation, as well as the extinction of some marine animals that are essential sources of food for the authors. Additionally, they claim that their access to the natural resources they have historically relied on to survive as an indigenous group with a distinct culture and racial identity in Australia is being negatively impacted, making it difficult for them to maintain their way of life and practice their culture.

The Critical Risk to the Indigenous Torres Strait Islanders' Culture Posed by Climate Change

The Authors claim that they and their communities are among the most vulnerable in the world to the current and future impacts of climate change and they raise a deep concern that their culture and way of life—which are inextricably linked to their traditional land and sea territories—are gravely threatened by the effects of climate change and sea level rise in particular.³⁹

This communication demonstrates the critical role that the Committee has in upholding the civil and political rights of those most vulnerable to the impacts of climate change. When decided this will be the leading case on climate change justice before international human rights organs/courts and a relevant precedent for other climate change cases currently pending before the UN organs and European Court of Human Rights.

³⁹ J Banister, 'It's our right to be here': the Torres Strait Islanders fighting to save their homes from a rising sea' *The Guardian* (29 February 2020). <<https://www.theguardian.com/australia-news/2020/mar/01/its-our-right-to-be-here-the-torres-strait-islandersfighting-to-save-their-homes-from-a-rising-sea>> accessed 12 November 2022

Conclusion

The rise of climate change as a human rights concern in the activities of the UN bodies has been examined in this article. People who are harmed by the negative impacts of climate degradation are exercising their right to access justice, as evidenced by the legal decisions made by these bodies and the growing number of contested cases in the domain of climate change. The right to a remedy cannot be made illusory if we are to acknowledge that climate change may constitute human rights violations.

Even though the Inuits made an early attempt to bring a climate change-related case before the Inter-American System, it is obvious that the system's jurisprudence has advanced to the point where such a case would not only be justiciable but also, if it were to be successfully framed, would be decided with the benefit of recent jurisprudential developments.

Such regional developments have been a major source of inspiration for the UN organization. A prime illustration of that is the Human Rights Committee's substantive approach to the right to life, which is represented in General Comment 36. One of the most important instances for the future of humanity is the Torres Strait Islanders case, which is also known as the Portillo case.

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