

Theodor Rathgeber

## Climate Change Violates Human Rights

Contribution to the panel discussion by Heinrich-Böll-Foundation  
Moscow, February 1, 2010

### What are the main arguments

Speaking in relation to climate change and its impacts, many stakeholders, a lot of experts and interested parties are speaking. There are only few moments or systematic approaches to assess the problem in a comprehensive way, and very few instances where problems are assessed and solutions discussed in terms of the most affected parts of the people.

Thus, Human Rights are a genuine platform to address the impacts of climate change  
human rights provide relatively exact figures about already existing impacts in terms of climate change on nature and peoples;  
human rights are based on an internationally agreed language, so, we are talking everywhere about the same issues;  
if there is a dispute about the exact meaning of the common notions, the interpretation is not only up to the national government or governments in general, but there are United Nations bodies to also contribute with the opinion of experts, and the attributions of the experts are rather pre-dominant and calved within an also agreed procedure (in form of General Comments); such UN bodies are the UN Treaty Bodies, the mandate holders of the Special Procedures, and the Office of the High Commissioner for Human Rights;  
human rights open even the participation of none-state actors in different ways, as e.g. by generating so called parallel reports to be sent to the United Nations expert bodies and / or making use of the complaint procedures;  
in addition, the human rights approach launches the participation also in terms of methodology as the affected people's view turns into the main reference for the analysis and assessment of impacts;  
particularly so called *vulnerable groups* are enabled to speak with their own voices – who in many cases do face not only the lack of social infrastructure but also lack of access to public opinion, to public decisions making and even to legal procedures;  
so far, human rights are in substance an instrument to accelerate the political process on countering the impacts of climate change as well as the political reasons behind earth warming itself.

### Introduction

Despite some dispute on details of the forecasted earth warming, there is no longer any doubt that we are heading for climate changes that are largely the result of human activity. Climate change will lead to a steadily worsening situation with respect to access to land, water, and resources and that this, in turn, will trigger massive movements of refugees, violent conflicts,

and wars. The Global Humanitarian Forum, founded by former UN Secretary General Kofi Annan, published a study in 2009 which estimates that the effects of climate change already felt today are resulting in 300.000 deaths each year in the world's poorer regions with a further 300 million people directly affected in some way. The report predicts that four billion people are vulnerable to the effects of climate change and 500 million at extreme risk.

Public awareness increased as also the nations of the Global North found themselves faced with lasting and omnipresent problems resulting from the ecological, economic, and social consequences of hurricanes, floods, and droughts. The European heat wave of 2003 in particular caused the public to sit up and take notice, but also an increase in parasites and plant diseases on trees – affecting in a last instance also fairy tales as the symbolical meaning e.g. of trees.

So, most of the world's nations have by now included global warming and the immediate effects of climate change on their political agendas. They are wrangling over a climate treaty that should finally enact drastic cutbacks in the carbon dioxide emissions produced by industrial as well as a handful of developing nations. The international community also finds itself in tough negotiations over financial transfers from the global North to the global South that are necessary to help developing nations protect themselves from the effects of climate change.

Within this general context: what might be the role of human rights? It helps to exactly identify the already existing impacts and the already affected population and peoples

## COP 15, Copenhagen

The Conference of Parties (COP) 15 of the UN Framework Convention on Climate Change (UNFCCC) took place in Copenhagen, December 7-18, 2009. Many headlines in newspapers, TV news and media in general referred to this COP in different ways.

The relevance of COP 15 was that it should have reached an agreement after the first commitment period of the Kyoto Protocol (KP) which comes to an end in 2012. The Kyoto Protocol, the binding instrument that applies the UNFCCC, had agreed on targets for this period. The meeting in Copenhagen was supposed to agree on what would be the commitments of the industrialized countries (Annex I countries of the KP), who are compelled to reduce their emissions.

A big question was also what would happen with “emerging developing countries” like China, India and Brazil, who are not part of the Annex I but whose CO<sub>2</sub> emissions at the national level are important. Another expectation was in relation to the USA (who quit the Kyoto Protocol during George W. Bush time) under the new Barack Obama administration and his proposal to cut US emissions by 17% for 2020 (compared to 2005 levels). The broad civil society movement was advocating for a “fair, ambitious and binding” deal in Copenhagen.

What were the results of Copenhagen? A “Copenhagen accord”, negotiated mainly by USA, China, India, Brazil, South Africa, EU and then opened to signatures. The accord is not a binding document and calls for voluntary reductions to be communicated by January 30, 2010.

Most civil society organizations and many states, especially the poorest, strongly criticized the accord: it is not fair, it is not ambitious, and it is not binding.

## REDD / Indigenous peoples

What is more, there appears to be neither the political will to take decisive climate protection measures nor a readiness commensurate with the seriousness of the situation to change the “business as usual” approach. The tough wrangling seen, is still symptomatic of the way states approach the issue. The necessary shift in thought and action ought to extend to the negotiating strategies employed in climate change policy. Many political representatives have continued to act according to familiar patterns, meaning they are willing to offer only the minimum of concessions necessary to keep the negotiating process moving forward. Such a strategy simply does not do enough to meet the immense challenge, nor does it recognize the urgency of the situation.

At the same time Copenhagen also had some positive outcomes: the mobilization of the civil society reached incredible numbers all over the world. For instance: the 350.org campaign in previous months, demonstrations in many cities, with the 100,000 people demonstration in Copenhagen on December 12, a strong awareness raising of peoples and governments in the global South, especially, should be seen as positive signs. The presence of 110 heads of state showed the relevance governments are giving to climate change, though the outcome was quite deceiving.

There is still the need to keep the target of a fair, ambitious and binding treaty to adequately respond to the challenges posed by climate change, building on the momentum created in the civil society at large.

## Why human rights in the context of climate change?

Human rights are a key element to mastering the task. The urgency of the problem is already inherent in the instrument at hand: the direct protection of fundamental rights. In the context of climate change, these are predominately the rights to life and health, food and water, housing and property, a healthy environment, and – in the case of indigenous peoples, for example – the preservation of specific cultural characteristics including land rights e.g. in cases of resettlement and migration or the rights of access to natural resources.

The authors of the International Council on Human Rights Policy (ICHRP) study of 2008, Stephen Humphreys and Robert Archer, point out that the majority of the poorer countries and populations affected by climate change are faced with precarious human rights situations. In particular, local populations find themselves in a vicious circle whereby limited access to resources and education and a poorly developed infrastructure amplify their susceptibility to climate change and the damage it causes and vice versa.

At the same time, internationally recognised norms, procedures, agreed language and mechanisms are available that can be used to tackle a variety of tasks simultaneously although the ICHRP study of 2008 first determined that almost none of the literature on climate change deals with the issue of human rights. Even the IPCC’s Fourth Assessment Report, which deals intensively with the social implications of climate change and strives to

adopt an interdisciplinary approach, has little to say on the right to food, housing, and health. At the United Nations, UNICEF, the FAO, and the WHO are explicitly dealing with the issue of climate change and the resulting threats to human rights.

Thus, in 2009, by way of a Resolution A/HRC/RES/10/4, the Human Rights Council charged UN Special Rapporteurs possessing expertise in this field with carrying out a study of the effects of climate change and instructed them to include the findings in their reports to the Council. During a panel discussion on the subject of climate change, several podium participants and national representatives supported granting a new mandate for special procedures in the Council which would systematically address the effects of climate change. The pragmatic suggestion is to begin with a joint report by the various mandate holders representing the rights to food, adequate housing, drinking water, and sanitary facilities.

What does this mean in reality? We will have an independent procedure for the analysis and an expert assessment which clearly will state the reality on the ground, will identify the problems in the terms of the affected people.

## Phenomenology of climate change in terms of economic, social and cultural rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) tasks states and governments with providing a minimum of material and cultural security to prevent fears of a loss of livelihood eroding or eliminating social participation. In essence, countries should employ the maximum of available resources and seek international support in order to reduce poverty and promote development. The Framework Climate Change Convention too assigns states a similar task: to organise international assistance directed at the adjustment programs and technology transfer.

Thus, the report of the *International Panel on Climate Change* (IPCC) addresses human rights violations, particularly those relating to the shrinking of snow-covered areas on land and of ice-covered regions of the sea, rising ocean levels and water temperatures, an increase in extremely hot weather and heat waves, rising levels of precipitation, increased periods of drought, and a surge in the numbers of severe tropical storms.

At the forefront of these concerns are the rights to water, food, and health. The report of the *International Panel on Climate Change* stated that world wide 20 percent of people living on river banks are threatened by flooding, hundreds of millions of people in India, China, and the Andes-mountains in Latinamerica who depend on water provided by melting glaciers. They all are already vulnerable to periods of floods followed by drought, Local populations in the Mediterranean region, the western United States, southern Africa, and Northeast Brazil also already face periods of intense drought. Moving from bad to worse, the distribution of and access to water will change dramatically in the coming years.

With respect to the right to food, the *International Panel on Climate Change* predicts that the number of people facing starvation could rise from fifty million people in 2020 to 266 million by 2080. In addition to an increase in extreme weather patterns, the right to food is threatened by a rising incidence of fires and plant damage. This will primarily affect small, family-based, self-sustaining groups of farmers and fishermen – primarily in Africa and Asia, but also in Australia – whereas food production in other parts of the world will most likely increase.

Regarding the right to health, the *International Panel on Climate Change* fears that there will be a drastic increase in cases of malnutrition in Africa, Asia, and tropical regions that will have a fatal effect on the growth of children; among others. Malaria is predicted to increase by between 220 and 400 million additional cases and might well spread to United Kingdom, Australia, and Portugal. The rising incidence of dysentery will hit families with little income particularly hard. Up to 3.5 billion people will be threatened by dengue fever. The WHO has estimated that at present approximately 150,000 additional people die every year as a result of climate change.

The right to the highest possible standard of physical and mental health is comprehensively covered by Article 12 of the International Covenant on Economic, Social, and Cultural Rights and other international Conventions as on women's rights (Articles 12 and 14.2.b.), the Convention on the Rights of the Child (Article 24), the Convention on the Elimination of Racial Discrimination (Articles 16.4, 22.2, and 25), the Convention on migrant workers (Articles 43.1.e., 45.1.c., and 70). In General Comment No. 14, the Committee for Economic, Social, and Cultural Rights lists a "healthy environment" as one of the preconditions for this right to be fulfilled.

In 2008, the UN Special Rapporteur on the right to health warned the UN General Assembly that insufficient measures to counter climate change would further endanger the lives of millions of people already at risk. According to his report, the extent to which education and public health facilities were expanded would determine the severity of the effects of climate change.

The right to life is anchored in Article 6 of the International Covenant on Civil and Political Rights (ICCPR). In its General Comments Nos. 6 and 14, the Human Rights Committee, which monitors the convention, postulated the right to life as the supreme right, which may not be infringed upon even in times of emergency. In General Comment No. 7 on early childhood, the Convention on the Rights of the Child (UNCRC) set a healthy environment as an inalienable standard for ensuring the survival and development of children.

The right to adequate housing is covered by the Universal Declaration of Human Rights (Article 25), the International Covenant on Economic, Social, and Cultural Rights (Article 11), the Committee on the Elimination of Racial Discrimination (Article 5.e.iii.), the Convention on women's rights (Article 14.2.), the Convention on the Rights of the Child (Article 27), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Article 43.1.d.), and the Convention on the Disabled Persons (Articles 9.1.a., 28.1., and 28.2.d.).

In its General Comment No. 12 the Committee on Economic, Social and Cultural Rights defines the right to adequate housing as the entitlement to a secure, peaceful, and dignified existence as well as the right to access to necessary services, material, and infrastructure. The General Comment No. 7 of the same Committee states that the right to property also encompasses protection from displacement or resettlement in dangerous areas. The UN Special Rapporteur on the same right to adequate housing argues along similar lines when he discussed the issues of climate change and displacement in his 2008 annual report.

## Political and civil rights

Climate change does not only materially affect livelihoods. When entire Pacific island nations are threatened by rising oceans, questions of citizenship and the guarantee of civil freedoms also arise. Political and civil human rights should give everyone the same right of participation in political opinion-forming and decision-making processes, to guarantee their right to dissent or dispute the approach taken, and enable access to the legal review of decisions. The guarantee of these rights is integral to the formulation of a climate policy that seeks to take account the authentic interests of local and in particular threatened population groups.

In the area of political human rights, freedom of information and opinion are of the utmost importance when it comes to informing the public or issuing warnings about foreseeable dangers; guaranteed by Article 19 of the ICCPR. The right to information is an essential political instrument to be used in order to provide early and adequate warning to those at risk from climate change and inform them of possible adaptation measures. The Framework Climate Convention also provides for these rights in its Article 6.

According to Article 25 of ICCPR, affected persons have an unalienable right to be consulted and to participate in opinion-forming and decision-making processes – for instance, concerning programs to resettle people living in high-risk areas. This right is also covered by Article 19 of the Declaration on the Rights of Indigenous Peoples and Article 12 of the Convention on the Rights of the Child.

Unlike Article 6 of the Framework Climate Convention, the two agreements of the Declaration on the Rights of Indigenous Peoples and the Convention on the Rights of the Child contain mechanisms which allow that the implementation of the right is monitored by panels of independent experts. According to the two agreements, there should particularly be room for those people affected in making use of grievance procedures. The systematic implementation of these rights open up direct access to information from the affected areas.

## Participation

Victims suffering from impacts of climate change, and particularly vulnerable groups, have only observer status at the international climate negotiations. These groups have no institutional means of introducing their specific concerns into negotiations in order to influence and adapt projects and programs such as adjustment funds tailored to fit their needs. At the December 2008 climate change conference in the Polish city of Poznan, a spontaneous demonstration took place in the conference building after an attempt to anchor the rights of indigenous peoples and their fair participation in the emissions-reducing (REDD) mechanism in the draft text for the Copenhagen conference failed. Hence, the participation of affected populations in evaluating the damage resulting from climate change must be ensured.

The slow progress in negotiations together with the lack of proper participation for the groups most directly affected by climate change were indirectly responsible for an initiative taken within the UN Human Rights Council (UN HRC) to use this body in order to accelerate negotiations on climate change.

The chief impetus for this initiative came from the Maldives supported mainly by other Pacific and Caribbean island nations that will be physically threatened by rising sea levels over the coming decades. In March 2008, they launched a Resolution on “Human rights and climate change” (A/HRC/7/23), which requests the UN High Commissioner for Human Rights (OHCHR) to carry out a detailed analytical study focusing on the relationship between human rights and climate change.

## Viewpoints of effected people and a contribution to self organising

The human rights approach demands to legally and politically evaluate the effects of climate change from the perspective of those groups at risk and enact provisions that must be addressed. The inquiry into the actual causes of climate change provides them with the opportunity to explain the effects using familiar terms and experiences. In some cases Human Rights are the most appropriate mechanism being able to identify local knowledge that can be employed to adapt to changing climate conditions in the long term.

## Complaint procedures

Most international human rights standards establish a complaint mechanism either in the text of the document or in the form of a so called *optional protocol*. Although the use of such mechanisms is tied to certain criteria, they nevertheless provide individuals with a legal channel that is independent of the laws and political parameters set by national governments. Furthermore, such complaints mechanisms can give a pretty accurate idea of just how serious and pressing a human rights violation is.

Most UN Special Procedure mandate holders as well as the High Commissioner for Human Rights can operate in a similar fashion. For the person or group launching the complaint, this is an easier path to take, for it does not require them to go through all national instances. In this regard, the most important Special Procedures are the mandate holders for the right to housing, food, health, drinking water, and sanitary facilities, the Independent Expert on extreme poverty, the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and waste, the mandate holder for the right to development, the Special Rapporteur for indigenous peoples, the Independent Expert on minority issues, the Representative of the Secretary-General on the human rights of internally displaced persons, the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises.

We see, there is quite a bundle of instruments in order to properly and legally address the impacts of climate change and the climate change as such. In order to make effective use of these instruments, they should be systematically integrated into the negotiation process on climate change.

## Benchmarks in terms of an internationally agreed language

The human rights approach is as a useful way of creating an international regulation mechanism for tackling the effects of global warming in a manner that focuses on real problems. Human rights fundamentally describe the minimum provisions and freedom for development that states are obliged to provide. Such an approach can even help governments

to arrive at an accurate evaluation of the current situation, and have a beneficial knock-on effect in negotiations involving financial and technological co-operation.

In view of the challenges for the development of the world's poorer nations resulting from the effects of climate change, human rights standards provide a useful benchmark for addressing questions of fairness and the appropriate distribution of financial and technical resources to promote development, particularly for the most disadvantaged persons or populations.

Also, human rights standards are helpful in relation to assess actions needed to minimise and adapt to the effects of climate change which may infringe human rights. The climate-neutral production of energy some times compete with food production and threatens the food security of thousands. Human rights oblige the interested parties to take into consideration the fundamental rights of the local population when the construction of large dams, the expansion of mono-cultures, and the changing use of land and water resources need the land and water rights of this local population. The entire procedure requires a fair system of conflict resolution and identifies both responsibilities and the procedures required to repair damage incurred.

Human rights standards are relevant not only for the short-term effects that measures may have on food security and the availability of water and health care, but also in identifying the possible long-term denial of access to the basic resources necessary for human survival and the threats to autonomous local survival strategies or culturally determined ways of life.

### Extraterritorial obligations

According to General Comment No. 3 of the UN Committee on Economic, Social, and Cultural Rights (CESCR) (the body that monitors implementation of the International Covenant on Economic, Social, and Cultural Rights), affluent nations are obliged to assist poorer nations. Although western nations accept this task, they reserve the right to provide assistance voluntarily and within the framework of bilateral relationships.

The OHCHR report takes up the disputed principle of extraterritorial state obligations by quoting the CESCR agreement. According to this agreement, states are requested not to exert any influence on other countries that would negatively affect human rights, to prevent private companies from doing the same – insofar as they are subject to national laws – to reliably provide international assistance and co-operation, and to guarantee that human rights will be adequately anchored in international agreements and that no such agreements shall harm human rights. Human rights endow the governmental negotiations with an additional legally binding framework enshrined in international law and with jointly agreed wording.

### Conclusions and Perspectives

A human rights-based political approach is not an all-purpose instrument that can automatically solve the fundamental problems posed by climate change. The incorporation of human rights norms and procedures into negotiations concerning adaptation, avoidance, technology transfer, the implementation and endowment of funds, primarily serves, to sensitise negotiations and perspectives to the diversity of local conditions, pave the way for the participation of non-governmental actors previously excluded from official negotiations, and increase the pressure to achieve results commensurate with the urgency as well as the

magnitude of the challenge. The Greenhouse Development Rights framework provides such a useful theoretical construct with which to embed human rights in climate negotiation procedures.

Nevertheless, this approach is likely to encounter difficulties too. For a start, it is difficult to identify causal chains of events and responsibilities for local environmental damage induced on the other side of the globe. Complex relationships make it impossible in some cases to locate the exact causes of climate change, thus making it impossible to speak of a human rights violation in the strict sense of the term. This, however, is more a matter of determining responsibility and not a human rights issue per se. A fund-based model would seem to point in the right direction, while in such cases the task of the human rights-based political approach would be to lay down minimum standards for housing, income generation, and social livelihood and to specify the obligations of national governments versus those of the international community in assisting the victims of climate change.

Only once it becomes clear that the minimum requirements for a dignified existence are being violated, there will be sufficient momentum for an approach to negotiations aimed at true change: in other words, human rights as an instrument to accelerate the political process.