

VOLUME 6

# Climate Change Violates Human Rights

By Theodor Rathgeber





# **CLIMATE CHANGE VIOLATES HUMAN RIGHTS**

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Climate Change Violates Human Rights

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## PREFACE

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 currently 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. In doing so, the North must take on a dual responsibility. While the nations of the North have been polluting the atmosphere for quite some time, the effects of climate change are mainly felt among the poorest levels of society in the nations of the South. These peoples are faced with the destruction of their living space, and their already tenuous rights to water, food, housing, and education are further threatened by climate change. Thankfully, the human rights dimension of climate change is gaining ground in the minds of both politicians and the public at large. For the first time ever, the UN Human Rights Council addressed the connection between climate change and human rights in 2009.

This publication is intended to share this discussion with a wider audience. The report describes examples from various regions and illustrates how the effects of climate change can lead to human rights violations. The publication both complements and defines more precisely the Heinrich Böll Foundation's long-standing and worldwide dedication to social and environmentally conscious development. Here we would like to express our sincere thanks to Theodor Rathgeber for his contribution to this cause.

Berlin, October 2009

Barbara Unmüßig  
*President of the  
Heinrich Böll Foundation*

Jost Pachaly  
*Head of Department  
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# Climate Change Violates Human Rights

## Introduction

In 2007 and early 2008, the Intergovernmental Panel on Climate Change (IPCC) issued several reports on the current status of climate change.<sup>1</sup> Since 1990 there had been no lack of warnings from the IPCC of the irreversible changes to the vital ocean and atmospheric currents affecting the Earth's climate and their profound effects on the conditions for life on Earth. However, since the new reports predicted much graver effects of climate change than previously, even their rather moderately formulated statements resulted in considerable commotion. Indeed, the dramatic nature of the issue set off alarm bells among both politicians and the public at large. There is no longer any doubt that we are heading for catastrophic climate changes that are largely the result of human activity. Both politicians and civil society must therefore act quickly and decisively to take precautions against even potential dangers, for the effects of climate change threaten to be irreversible.

One need not study every disaster scenario before it becomes obvious that 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. Such scenarios indicate that the struggle for survival might well result in radical solutions ultimately leading to mutual annihilation.<sup>2</sup> 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.<sup>3</sup> Hence, a climate policy that

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1 See IPCC 2007a, 2007b, 2007c, and 2008. The IPCC and Al Gore received the 2007 Nobel Peace Prize for their efforts to further understanding of human-induced climate change and for their key role in stepping up efforts to combat it. For an appraisal of the economic effects of climate change, see Nicolas Stern 2006, Oxfam International 2007, UNDP 2007, Diakonisches Werk der EKD et al. 2008.

2 See Harald Welzer 2008.

3 Global Humanitarian Forum 2009. See also the risk analyses published by the WHO 2009 and WHO/Health Care Without Harm 2009 as well as the reports published by Oxfam International 2009.

responds adequately to these challenges must also include acceptable conflict-resolution procedures.

Public awareness increased as 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. Policymakers, however, continue to believe that conventional disaster-management was sufficient to deal with the foreseeable effects of climate change – as if physics itself were negotiable. There is no doubt that major adjustments are required and that these must involve financial cooperation, technology transfer, and the use of patents, although even here it is difficult enough to reach agreement.<sup>4</sup> In the wake of the preliminary negotiations on the follow-up treaty to the Kyoto Protocol – the last of which took place in Bonn in 2009 – it is still not evident that a technical understanding of the problems at hand will lead to a practical result. Only a handful of industrial nations have shown their willingness to engage in substantial financial and technological cooperation with the Global South.<sup>5</sup>

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 assumption would seem to be that better, sounder environmental management will be sufficient. The tough wrangling seen during the Kyoto Protocol negotiations – which came into effect only in 2005, thirteen years after the adoption of the United Nations Framework Convention on Climate Change (UNFCCC) – is still symptomatic of the way states approach the issue even today. The necessary shift in thought and action ought to extend to the negotiating strategies employed in climate change policy. To date, however, 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.

How can the challenge of finding an appropriate political solution in the form of large-scale cooperation be met without simply falling back on the efforts of engaged individuals and ethical tenets? Here, too, there is more than one approach, even though – in the author’s opinion – the most convincing answers will include the concept of “justice” as a central principle of such considerations.<sup>6</sup>

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4 See Germanwatch/Brot für die Welt 2008, CIDSE and Caritas Internationalis 2009. For an overview of the individual factors as well as possible countermeasures see chapters 3 and 4 in Worldwatch Institute/Heinrich Böll Stiftung/Germanwatch 2009.

5 Norway and Switzerland, for example. See Christoph Bals and Larissa Neubauer 2009.

6 See Tilman Santarius 2007 and 2008, Oxfam International 2007 and 2009 (on the issue of humanitarian assistance), Deutsche Kommission Justitia et Pax/MISEREOR 2008, Guillermo Kerber’s recent summary of this document for the World Council of Churches (2009), VENRO 2009, and the position papers presented at the conference by various NGOs.

No one has more of a right to use the common global asset known as “the climate” than anyone else. Climate change is a problem for everyone, but the responsibilities are distributed unevenly. In the sphere of climate policy, justice means that – compared with the western nations responsible for global warming – populations and countries affected by poverty as well as social and political marginalization should not only be treated differently with respect to their contribution to climate protection, but should also be given additional development support. This requires not only technical know-how but also a fundamental rethinking of how the world should be organized in the future.

Where can we find a framework for this alternative approach to politics and negotiation? The concept of fairness contends that there is a fundamental right to a dignified existence and a right to the resources that enable this existence. From here it is only a small step to discovering that human rights are the key to mastering this 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 in cases of resettlement and migration.<sup>7</sup> Broad public appreciation of the suffering, fears, and hardships brought about by climate change can be achieved if these are couched in terms of human rights violations. At the same time, internationally recognized norms, procedures, and mechanisms are available that can be used to tackle a variety of tasks simultaneously. These will be discussed below.<sup>8</sup> In several of their position and discussion papers, the Diakonisches Werk der EKD (the social charity of the Protestant Church in Germany), Brot für die Welt (Bread for the World), and Germanwatch have introduced a human rights approach into the discussion surrounding adjustment programs that has highlighted the right to food and water. This approach has been discussed further internationally within the Food and Agriculture Organization (FAO).<sup>9</sup>

The International Covenant on Economic, Social and Cultural Rights (ICESCR) – which include the right to food and water – 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 Frame-

7 Nicolas Stern (2006) estimates that about 200 million people will have been displaced by 2050 as a result of climate change. See also IOM 2008.

8 In 2007, Mary Robinson, the former UN High Commissioner for Human Rights, expressed this concern as follows: “We can no longer think of climate change as an issue where we the rich give charity to the poor to help them cope. Rather, this has now become an issue of global injustice that will need a radically different approach.” See <http://www.realizingrights.org/?option=content&task=view&id=227>, accessed 08.18.2009.

9 See Diakonisches Werk der EKD et al. 2008, Germanwatch/Brot für die Welt 2008, and FAO 2008 and 2009. See also Oxfam International 2007, UNDP 2007, Christoph Bals 2009, and VENRO 2009.

work Climate Change Convention assigns states a similar task: to organize international assistance directed at adjustment programs and technology transfer. The “right to development” – which until now has only existed as a declaration of intent – and the Millennium Development Goals are two additional sets of norms based on human rights. In the context of the discussion on climate policy, these two documents provide a point of reference for evaluating the effects of climate change on the development of countries and peoples according to internationally agreed minimum standards and to assist in implementing specific policies.<sup>10</sup>

Climate change does not only affect material livelihoods, however. 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, 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 of authentic interests of local and in particular threatened population groups. For example, natural disasters result in much higher mortality rates for women than for men.<sup>11</sup> Yet the effects of climate change and specific hazards have until now been viewed primarily in terms of the costs entailed for particular sectors – such as health – but not in terms of the effect on entire populations such as indigenous peoples, minorities, women, and children.

Within the context of climate change this gives rise to the maxim that the actions needed to minimize and adapt to the effects of climate change must not infringe upon human rights. The climate-neutral production of energy must not compete with food production, nor should it be allowed to have a negative impact on food security. The construction of large dams, the expansion of monocultures, and the changing use of land and water resources must take the land and water rights of the local population into consideration. This requires a fair system of conflict resolution. A climate policy based on fairness must place access to grievance mechanisms, legal recourse, and generally putting states on a rule of law footing on the agenda. For example, the participation of affected populations in evaluating the damage resulting from climate change must be ensured. This publication will elucidate the connection between climate change and human rights, using case examples to illustrate this relationship.

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10 On the subject of the right to development in the context of the climate change debate, see Paul Baer et al. 2007.

11 See IPCC 2007a, Eric Neumayer and Thomas Plümper (2007), and “The Gendered Nature of Natural Disasters: The Impact of Catastrophic Events on the Gender Gap in Life Expectancy, 1981–2000,” in *Annals of the American Association of Geographers*, 97 (3), pp. 551–66, cited by the OHCHR 2009.

## Development of a Supplementary Framework for Negotiation and Action

At the 1992 Earth Summit in Rio de Janeiro, efforts to maintain a life-sustaining environment came together in two international agreements: the United Nations Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (CBD). Most experts agree that the conclusion of these agreements was an important step towards protecting the environment and the atmosphere, while assessments of their effectiveness – meaning the implementation of the agreements in terms of practical policy – differ considerably.<sup>12</sup>

In the run-up to the 2009 Copenhagen Climate Change Conference geared towards achieving a global climate agreement that would take effect in 2012, several publications have traced the status of climate negotiations to date.<sup>13</sup> The main thrust of these publications (we need not go into detail here) is that industrial nations are continuing to show little willingness to negotiate a reduction in their emissions by 25 to 40 percent by 2020 based on 1990 levels. What is more, the negotiators from the various nations have lost sight of the fact that even adherence to the target of limiting global warming to two degrees Celsius would still entail human rights violations. The main negotiations aimed at large-scale financial and technological cooperation with the countries of the Global South – adjustment assistance, adjustment funds and mechanisms for allocating such funds, risk management and international insurance models for groups particularly threatened by climate change, and the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD) – seem to be taking a “wait and see” approach.<sup>14</sup> In other words, we need political “climate change” as well.

Politics “as usual” and entrenched ways of thinking will never produce an adequate climate policy. At the heart of these ways of thinking is a fundamental misconception prevalent among Christian societies and supported by a view of science based on a belief in progress. This misconception hinges on the belief that in creating man to rule over the Earth (Genesis 1:28) God intended not the violent exploitation of the Earth’s resources but rather their conservation.<sup>15</sup> Many Church publications and appeals advocate a new direction in world politics focusing on human dignity, respect for human rights, and the common good. The Bible states that life on Earth is by no means safe, but is always threatened by disasters. What is required is determined political will, not an “after me, the deluge” attitude. The Churches’ engagement does indeed harbor a considerable

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12 For a summary see Christopher Flavin and Robert Engelmann 2009.

13 Germanwatch/Brot für die Welt 2008, Christoph Bals 2009, Christoph Bals and Larissa Neubauer 2009, VENRO 2009.

14 A human -rights-based approach would grant greater legitimacy to the demands of forest peoples and increase their bargaining position within the REDD.

15 See EKD 1995, World Council of Churches 2006, Wolfgang Huber 2007, Robert Zollitsch 2009.

ethical potential that is desperately needed if the victims' voices are to be heard and such things as the protection of "climate refugees" abroad organized.

However, since representatives of particularly vulnerable groups have only observer status at 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.<sup>16</sup> 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. It is clear that either states' political and legal institutions are not sufficient to adequately identify and solve the problems at hand or existing steering capacity does not function properly. Hence civil complaints mechanisms and instruments arising from civil initiatives to fill this gap within the framework of intergovernmental cooperation are of paramount importance.<sup>17</sup>

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 (UNHRC) to use this body together with the UN human rights system 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 Resolution A/HRC/7/23 ("Human rights and climate change"), which officially 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.<sup>18</sup>

Alongside these efforts directed at obtaining an explicit reference to human rights in climate-change policy, the International Council on Human Rights Policy (ICHRP) published a study in 2008 that investigated the potential benefits

<sup>16</sup> See Germanwatch/Brot für die Welt 2008, Christoph Bals 2009.

<sup>17</sup> In the area of climate change, such procedures and instruments can be found at a regional level in the Arctic Council, or, in the area of complaint mechanisms, in the UN treaty bodies that focus on various human rights agreements as well as at the inter-American and European human rights courts and the African Commission for Human and Peoples' Rights.

<sup>18</sup> UN Human Rights Council 2008. The resolution was primarily supported by Latin American and Caribbean nations, whereas western nations such as Canada, Australia, and the United States, at the time led by President George W. Bush, were extremely reluctant to lend their support. The Organization of American States passed Resolution 2429 with a nearly identical title requesting international agencies to help the countries of the region develop more effective policies to counter the effects of climate change, particularly for groups at greatest risk. The Alliance of Small Island States passed the Male' Declaration on the Human Dimension of Global Climate Change in the Maldivian capital, Male, in November 2007.

of introducing the human rights system and the experiences gained in the implementation of this system into the climate debate.<sup>19</sup> The study 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.<sup>20</sup>

The authors of the ICHRP study, Stephen Humphreys and Robert Archer, also point out that the majority of the poorer countries and populations affected by climate change are also 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. These are primarily populations with limited access to information and to decision-making and opinion-forming processes who usually have no insight into the international mechanisms for exerting influence. Furthermore, such populations suffer from the uneven distribution of wealth and income and a lack of access to political structures within these countries. As a result, the effects of climate change not only constitute an additional burden, but these populations also have very little – if any – means of actively responding to these threats.

Conversely, reversing these precarious situations by implementing individual human rights norms generally allows these individuals and populations to make a concise evaluation of the hardships and damage they face. 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 they are able to identify local knowledge that can be employed to adapt to changing climate conditions in the long term and to pinpoint the external causes for the threatened damage and take these into account in seeking solutions.<sup>21</sup> Such an approach can help sensible governments to arrive at an accurate evaluation of the current situation, and have a beneficial knock-on effect in negotiations involving financial and technological cooperation.

The authors of the ICHRP study see the human rights approach 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. Less would be impossible even with an international climate regime. In view of the challenges for the development of the world's poorer nations resulting from the effects of climate change, human

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19 International Council on Human Rights Policy 2008.

20 IPCC 2007a, 44–47.

21 To this day, delegates from the Pacific island nations or the indigenous peoples of the Amazon continue to report that the members of local communities are in many instances completely unaware of the concept of global warming, although they are able to provide very precise information regarding changes in water and precipitation levels, changing rainy seasons, the frequency of storms, and the length of storm periods.



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.

Human rights standards should also play a role in the debate concerning forest preservation or biofuels. They are relevant not only for the short-term effects that these 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. Human rights standards identify both responsibilities and the procedures required to repair damage incurred. Suggestions for climate regulation can be clearly evaluated using human rights benchmarks. The same goes for the evaluation of adaptation measures (such as the resettlement of populations living in disaster areas), technology transfer (for instance, introducing cash crops to traditional subsistence farming areas), the institutional strategies adopted to implement such measures, as well as avoidance strategies.

According to the authors, the right to information is an essential political instrument that can be used to provide early and adequate warning to those at risk from climate change and inform them of possible adaptation measures. Conversely, the systematic implementation of this right opens up direct access to information from the affected areas. In this regard the authors refer to experience with the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Areas. This convention makes states responsible for the active collection of and proactive dissemination of information as well as the participation of those affected in regulatory bodies and suggests the steps that must be taken to implement these goals. Furthermore, the Aarhus Convention obligates the signing nations to inform their populations about international negotiations. Many European nations meet these requirements by informing their populations about environmental threats and briefing them on state responses.<sup>22</sup>

## Climate Change in the UN Human Rights System

Within the United Nations, only a handful of institutions included the subject of climate change on their agendas prior to 2008. In an early statement in 1972, the UN Conference on the Human Environment (or Stockholm Declaration) propounded the right to “adequate conditions of life in an environment of a quality that permits a life of dignity and well-being.”<sup>23</sup> In 2002, the High Commis-

<sup>22</sup> This also includes the extent to which precautions are taken to combat foreseeable risks. In Germany, for example, if the state is grossly negligent in failing to issue adequate storm warnings, it is possible to claim compensation from the responsible state authorities.

<sup>23</sup> In accordance with Principle 1 of the declaration. Similar proclamations can be found in the African Charter on Human and Peoples’ Rights as well as in the San Salvador Protocol to the American Convention on Human Rights. See OHCHR 2009.

sioner for Human Rights together with the UN Environment Programme (UNEP) led a seminar on human rights, environmental protection, and sustainable development.<sup>24</sup> Within the UN human rights system,<sup>25</sup> the UN Working Group on Indigenous Populations, appointed by the former Commission on Human Rights,<sup>26</sup> addressed the issue of man-induced changes to the natural environment and the effects of these changes in indigenous territories.<sup>27</sup> The UN Special Rapporteur for indigenous peoples began to address these issues in his annual reports in 2005.<sup>28</sup> In its annual meeting in 2008, the UN Permanent Forum on Indigenous Issues, an advisory board to the UN Economic and Social Council, focused on climate change, biological diversity, living environment, the stewardship role of indigenous peoples as preservers of the environment, and new challenges.<sup>29</sup>

Based on the Human Rights Council's Resolution 7/23, the Office of the High Commissioner for Human Rights (OHCHR) produced a report on the relationship between climate change and human rights that was accepted by the tenth session of the Human Rights Council.<sup>30</sup> This report begins by referring to the IPCC's Fourth Assessment Report and, based on the scenarios described in it, specifies human rights norms taken from various international agreements, identifying particularly vulnerable populations. Undisputed are the effects of climate change on human rights in the areas of health, the right to a dignified existence (housing, food security, access to clean water), as well as certain group rights of indigenous peoples or national minorities. The OHCHR report also includes chapters focusing on the effects of climate change with respect to displacement and resettlement as well as the resulting conflicts and risks that could pose a threat to national security. A further chapter deals with the national and international obligations stemming from prevailing human rights standards.

Given the enduring reservations of western nations, the study is on politically thin ice and remains rather vague in its findings. In view of the growing number of specific state obligations in an environment in which states exercise legal jurisdiction while increasingly third parties are responsible for environmental

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24 See UNCHR 2002.

25 The UN human rights system essentially consists of the UN Treaty Bodies, the Human Rights Council as well as its subsidiary bodies, and the OHCHR. The UN Security Council and the International Criminal Court also play a role, albeit a more peripheral one. The latter is not actually a UN body but is contractually linked with the Security Council.

26 The UN Commission for Human Rights was dissolved in 2006 and replaced with the current UN Human Rights Council. The Working Group on Indigenous Populations was also dissolved and replaced with the Expert Mechanism on the Rights of Indigenous Peoples.

27 Françoise Hampson 2004 and 2005.

28 Rodolfo Stavenhagen 2005 and 2007. UN Special Rapporteurs are independent experts temporarily appointed to examine either specific issues (such as freedom of opinion or the right to health) or the situation in individual countries; see Theodor Rathgeber 2007.

29 UNPFII 2008.

30 OHCHR 2009.

damage, the OHCHR reports calls on states to cooperate internationally in order to implement human rights norms.<sup>31</sup> 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<sup>32</sup> 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<sup>33</sup> – to reliably provide international assistance and cooperation, and to guarantee that human rights will be adequately anchored in international agreements and that no such agreements shall harm human rights. However, western governments have so far refused point blank to accept extra-territorial state obligations, in a manner comparable with their attitude in climate policy negotiations concerning adjustment and offset measures.

While the fact that this report exists at all is of institutional significance, it does not contain anything fundamentally new. What is new, however, is that the report – which carries the authority of the High Commissioner’s office – was unanimously approved by the Human Rights Council (and, thus, by the governments represented in the Council). In other words, it has now been officially confirmed that climate change has a concrete negative effect on human rights. Although this might not sound like sensational news, it endows the governmental negotiations with an additional legally binding framework enshrined in international law and with jointly agreed wording.

In 2009, by way of 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

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31 This means it is a state's obligation to seek out support, but it also implies a derived obligation on the part of other states to provide this assistance. See UN Charter Articles 1.3, 55, and 56; ICESCR Articles 2.1, 11.2, 15.4, 22, and 23 plus General Comment No. 3 of the CESCR; UNCRC Articles 4 and 24.4 plus General Comment No. 5 of the CESCR; CRPD Article 32; the Declaration on the Right of Development Articles 3, 4, and 6.

32 Article 2.1 of the ICESCR obligates signatories to implement the rights stipulated by the convention “either alone or on the basis of international cooperation.” The CESCR is of the opinion that this stipulation not only describes obligations at a national level, but that other extraterritorial obligations arise from the signatories’ obligation to engage in international cooperation. Regarding this issue, see CESCR General Comments Nos. 12, 13, 14, and 15.

33 With the establishment of the UN norms as well as the introduction of an independent expert for the UNHRC the former sub-commission of the UNCHR (2003) created a model designed to bind private enterprises more closely to the UN human rights regime. See John Ruggie 2009.

findings in their reports to the Council.<sup>34</sup> During the podium discussion on the subject of climate change at the same Council session, 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. At the same time, the non-governmental organizations the Centre for International Environmental Law (CIEL) and the Friedrich-Ebert-Stiftung (FES) made the pragmatic suggestion to begin with a joint report by the various mandate holders representing the rights to food, adequate housing, drinking water, and sanitary facilities.<sup>35</sup> On international Human Rights Day (10 December), all the special procedures mandate holders issued a joint declaration stating that both the financial crisis and climate change posed new challenges that could potentially have an enormous impact on both human rights and development.<sup>36</sup> Furthermore, groups linked with the Human Rights Council are considering whether the Council's Advisory Committee should also turn its attention to the subject of climate change.<sup>37</sup> 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.<sup>38</sup>

In addition to this broad concern with climate change and human rights, the United Nations' human rights system has specific instruments at its disposal designed to address problems precisely and adequately. In the case of indigenous peoples, a group considered to be at particular risk, there is an assortment of basic principles anchored in international law that can be used to introduce international standards into climate change negotiations. The Human Rights Council has investigative and evaluative instruments at its disposal – in the form of the office of Special Rapporteur (currently held by James Anaya) and the expert mechanism for indigenous rights – that it can use to clearly identify the negative effects of climate change on living standards, to quickly render complaint mechanisms functional, to organize participation, and to determine the extent of necessary aid.

With respect to indigenous peoples, one standard that should be mentioned here is the 2007 United Nations Declaration on the Rights of Indigenous Peoples (DRIP).<sup>39</sup> The right to self-determination (Article 3), the protection of traditional political decision-making systems, traditional knowledge, land, and the resources located within indigenous territories (Articles 25–31), and the right to free, prior, and informed consent (FPIC, Articles 10, 11, 19, 28, and 29) allow

34 UNHRC 2009. This resolution was supported by more than eighty countries including the industrial nations of the European Union, while Canada, Australia, and the United States continued to express their reservations from the previous year during negotiations.

35 CIEL/FES 2009.

36 UN Special Procedures 2008: "New challenges include ensuring global access to food, and those presented by climate change and financial crisis have potentially massive human rights and development implications."

37 CIEL/FES 2009, for example.

38 UNICEF 2008, FAO 2008 and 2009, and WHO 2009.

39 See UN General Assembly 2007.

the UN 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 in climate change negotiations. However, this declaration does not represent a binding treaty under international law.

Convention 169 of the International Labour Organization (ILO) concerning indigenous peoples, which is legally binding for its signatories, enables the protection of social environments of indigenous peoples that have historical traditions, although it has little to say, about the protection of the natural environment or of resources in indigenous territories<sup>40</sup> Nevertheless, Article 6 of the Convention does have some practical relevance, since it prescribes a sophisticated consultation process for dealing with actions of third parties in indigenous territories. In Latin America this instrument has been applied by the Inter-American Court of Human Rights in several instances pertaining to the actions of national governments. It reinforces the principle of consultation and participation, which indigenous peoples have demanded be included in the new climate agreement. Such participation has to a certain extent already been established in the Convention on Biological Diversity in the form of an informal working group.<sup>41</sup> However, in some regional forums the participation of indigenous representatives has already been taken up by institutional structures, most notably by the Arctic Council, the Arctic Climate Impact Assessment, and the South Pacific Forum. To sum up: here we have identified the broad selection of instruments based on human rights standards that can apply norms and procedures to help address problems that for those affected are very grave indeed.

## **Human Rights Violations in the Course of Climate Change**

The report of the International Panel on Climate Change (IPCC) addresses individual 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.<sup>42</sup> At the forefront of these concerns are the rights to water, food, and health. Without going into details here, the report dealing with the right to water stated that worldwide 20 percent of people living on river estuaries are threatened by flooding, hundreds of millions of people in India, China, and the Andes who depend on water provided by melting glaciers are vulnerable to periods of flooding followed by drought, and local populations in the Mediterranean region, the western United States, southern Africa, and

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40 1989 ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries.

41 Working groups of this kind address the protection of traditional knowledge from patent laws, for example. Several meetings between indigenous representatives and high-ranking politicians took place at the most recent signatory conference in Bonn in 2008.

42 IPCC 2007a:44–47. See also UNDP 2007.

northeast Brazil face periods of intense drought. All in all, the distribution of and access to water will change dramatically in the coming years.

With respect to the right to food, the IPCC 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 IPCC 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. Malaria is predicted to increase by between 220 and 400 million additional cases and might well spread to Britain, 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.<sup>43</sup>

The human rights agreements that have come out of the United Nations to date do not include an explicit right to a safe and healthy environment.<sup>44</sup> Nevertheless, the UN treaty bodies, which oversee the implementation of conventions, have in several instances stressed the connection between the environment and the implementation of human rights standards. The right to life is anchored in Article 6 of the International Covenant on Civil and Political Rights (ICCPR).<sup>45</sup> In its General Comments Nos. 6 and 14, the Human Rights Council, which oversees 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 Covenant on Civil and Political Rights explicitly included the right to food among economic, social, and cultural rights (Article 11). The same is true of the Convention on the Rights of the Child (Article 24.c.), the UN Convention on the Rights of Persons with Disabilities (UNCRPD) (Articles 25.f. and 28.1.), provisions concerning standards of living in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (Article 14.2.h.), as well as those of the Committee on the Elimination of Racial Discrimination (CERD) (Article 5.e.). In General Comment No. 12, the Committee on Economic, Social and Cultural Rights (CESCR) called on the signatory governments to implement appropriate economic, social, and environmental policies designed to enable citizens to feed themselves using their own local resources. Hunger should be

<sup>43</sup> See also WHO 2009.

<sup>44</sup> For an overview of the individual agreements, structures, and obligations, see Theodor Rathgeber 2007.

<sup>45</sup> For details, see IPCC 2007a and OHCHR 2009.

prevented even in cases of disaster, and particularly vulnerable populations should be better protected. The Convention on the Rights of the Child emphasizes in Article 24.2.c. the signatories' obligation to adequately combat malnutrition (and illness) among children and to heed the threat of environmental pollution. In his 2008 annual report, the UN Special Rapporteur on the right to food documented several examples of how disasters resulting from climate change or ostensibly climate-friendly crops and methods – such as biofuels or palm oil plantations – threaten people's food security.<sup>46</sup>

The right to water is not explicitly mentioned in the International Covenant on Economic, Social and Cultural Rights, but the committee monitoring the covenant (CESC) considers it to be covered by the Covenant's Articles 11 and 12 (health) as well as by General Comment No. 15, which postulates the right to clean, sufficient, and accessible water and tasks governments with guaranteeing this right. The Convention on the Rights of the Child refers to "clean drinking water" in Article 24.2.c. as a means of preventing illness and malnutrition. The Convention on women's rights (Article 12.2.h.) and the Convention on the rights of the disabled (Article 28.2.a.) both include access to water in their definition of adequate living standards.

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 (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 this right as the entitlement to a secure, peaceful, and dignified existence as well as the right to access to necessary services, material, and infrastructure. The Committee's General Comment No. 7 states that the right to property also encompasses protection from displacement or resettlement in dangerous areas. The UN Special Rapporteur argued along similar lines when he discussed the issues of climate change and displacement in his 2008 annual report.<sup>47</sup>

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.<sup>48</sup> The right to health is also addressed in the Convention on women's rights (Articles 12 and 14.2.b.), in the Convention on the Rights of the Child (Article 24), by the Committee on the Elimination of Racial Discrimination (Articles 16.4, 22.2, and 25), as well as in the Convention on migrant workers (Articles 43.1.e., 45.1.c., and 70). In General Comment No. 14,

<sup>46</sup> Jean Ziegler 2008.

<sup>47</sup> Miloon Kothari 2008.

<sup>48</sup> See General Comment No. 12 on the ICECSR, No. 12 on the CEDAW, and No. 4 on the UNCRC.

the Committee for Economic, Social, and Cultural Rights lists a “healthy environment” as one of the preconditions for this right to be fulfilled. Adequate access to food, housing, clean drinking water, and sanitary facilities are also key preconditions. 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.<sup>49</sup> 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 self-determination is one of the fundamental principles of international law. The two central human rights agreements – the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) – each use the same wording to articulate this right in Article 1.<sup>50</sup> Provisions such as the principle that no one should be forced to give up his or her means of subsistence against his or her will are clearly relevant in the context of climate change. The signatories are also obliged to ensure the right of self-determination for peoples who do not actually live within their national territories.<sup>51</sup> The imminent threat to island nations posed by rising sea levels resulting from climate change hence obligates the other signatories to counter this danger, for it prevents people from exercising their right to self-determination. It is also generally considered that the social and cultural identities of indigenous peoples are protected by Article 27 of the ICCPR and Article 15 of the ICESCR.

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. Article 6 of the Framework Climate Convention also provides for these rights. Article 19 of the ICCPR includes the right to access to information. According to Article 25 of the same document, 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, these two agreements contain mechanisms for implementation to be monitored by panels of independent experts to allow those affected to initiate grievance procedures under certain conditions.

Most international human rights standards establish a complaints mechanism either in the actual text of the documents or in the form of an additional 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

49 Paul Hunt 2008.

50 The same wording can be found in Article 1 of the UN Charter, Article 1.2 in the UN Declaration on the Right to Development, and Articles 3 and 4 of the DRIP.

51 See the UNHRC’s General Comment No. 12 and the CERD’s General Comment No. 21.



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 lodging the complaint this is an easier path to take, for it does not require them first to go through all national instances as the two conventions mentioned above do.<sup>52</sup> In this regard the most important offices 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, and the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises.

In order for effective use to be made of these instruments for dealing with the effects of climate change, they must first be systematically integrated into the negotiation process as well as in the results of such negotiations. Some of the proposals to date have attempted to sensitize human rights instruments to the issue of climate change and thus to assert pressure on climate change negotiations. Special procedure mandate holders have for instance been asked to develop guidelines for the responsibilities of the Special Rapporteurs and independent experts pertaining to the connection between human rights and climate change. A second proposal asks the UN treaty bodies to author General Comments and present member states with standards for their periodic reports. A third proposal is for the UNHRC to systematically gather information on the effects of climate change and make recommendations in the Council's Universal Periodic Review (UPR).<sup>53</sup> In addition to refining human rights instruments that address the issue of climate change, there have also been discussions concerning the establishment of a human rights institution within the Framework Climate Convention. There is no doubt, however, that human rights standards and their associated mechanisms offer a wide variety of treaty- and diplomacy-based instruments for making a legal and political assessment of the consequences of climate change and responding in an appropriate way.

## Case Examples

The effects and dangers posed by human-induced climate change are already being felt today, particularly by inhabitants of the world's poorer countries. When it comes to assigning responsibility, it is not possible to schematically differentiate between the Global North and South. Some nations of the Global

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<sup>52</sup> For an overview of the complaint mechanisms, see Theodor Rathgeber 2009.

<sup>53</sup> On the proposals, see CIEL / FES 2009.

South – such as China, India, or Brazil – contribute significantly to the emission of greenhouse gases, yet these nations are also threatened by climate change as a result of unequal patterns of development in the global economy and the failure of domestic policies to adequately combat poverty. Rich, oil-producing nations such as Kuwait or the United Arab Emirates also play a dual role as nations of the Global South but with emissions levels resembling those of the industrialized countries.<sup>54</sup> At the same time, the inhabitants of the Global North are certainly threatened by global warming as well, although those living in Western Europe have so far faced only minor changes to their way of life – even if the 2003 heat wave in Central Europe was viewed by many as the writing on the wall.<sup>55</sup> At any rate, public discussion in Germany seems to be focused on training courses aimed at the relocation of wine, grain, and fruit crops or the redevelopment of former winter sports areas. Compared with Europe, climate change will impose a much heavier burden on Africa, Asia, and the “poorhouses” of Latin America and the Caribbean.

## Africa

The IPCC estimates that between 75 and 250 million people in Africa alone will be affected by flooding in 2020, depending on the actual rate of global warming. The foreseeable effects of this flooding will include the destruction of traditional living environments; more limited access to clean water, decreasing food production from farms, forests, and aquaculture; threats to food security based on autonomous local production; and loss of agrarian identity.<sup>56</sup> Although model calculations do not provide uniform results regarding the potential negative effects, even the most favorable calculations leave little room for doubt that Africa is highly susceptible to the effects of climate change. Owing to their low economic potential and limited ability to adapt to changes, the Sahel Belt, the semiarid grazing lands, the coastal areas of East Africa, the areas surrounding the great lakes, and the traditionally arid areas of southern Africa are all highly threatened geographical zones. One already visible effect of climate change is the mass migration from rural to urban areas and the concentration of social problems in megacities. When these cities are located on estuaries, these problems may be compounded by rising sea levels. If sea levels were to increase by only one meter, the capital of Gambia, for example, would lie underwater.

One of the populations facing the greatest dangers is East Africa’s nomadic herdsman. Pastoral farming has always been a precarious activity as a result of meager rainfall, sparse vegetation, and limited diversification in the food chain. A sophisticated interaction between plants, animals, and people has developed to adapt to conditions in these regions, where water is a decisive factor that deter-

<sup>54</sup> See Tilman Santarius 2007.

<sup>55</sup> See Global Humanitarian Forum 2009 as well as the other case examples described there.

<sup>56</sup> IPCC 2007a. Diakonisches Werk der EKD et al. 2008.

mines all aspects of social and economic life. Success depends on neighbors reaching agreements that are of benefit to all parties: When one clan is affected by drought, other clans traditionally come to its aid by lending animals in order to replenish grazing stocks. But when climate and environmental change happen too quickly, these mutual support mechanisms no longer function sufficiently to counteract the damage and the ability of these people to lead a self-determined existence based on their own experience is lost. The roughly fifty million people living in pastoral communities in the greater sub-Saharan region are now experiencing a sustained decrease in precipitation levels, lower levels of plant growth, an increase in extreme weather changes, and a loss of pastures and watering holes. At the same time, competition for resources is increasing – in part as a result of the planting of biofuel crops, a program being pursued aggressively by the governments of China and Japan.<sup>57</sup>

However, these processes are by no means one-dimensional. In Kenyan society, pastoral peoples have always been considered backward rustics, and the Kenyan government and bureaucracy have enacted policies that limit the herdsmen's mobility. However, the first signs of large-scale climate change and the desertification of large areas have sparked a reversal among parts of the Kenyan government and bureaucracy. The sophisticated systems of arid or semiarid pastoral economies are now considered rational survival strategies in these areas.

From the herdsmen's perspective, there is a need for technical and institutional solutions that take into account fundamental aspects of human rights: recognition of collective and, to some extent, unwritten land rights, increased freedom of movement for communities and herds as well as the freedom of movement across state borders (Kenya–Tanzania, Kenya–Somalia, Mali–Burkina Faso), secure access to water and pastures, alternative income programs to deal with effects of increasingly frequent drought, and a disaster-management system to address the problems faced by pastoral economies. These problems can only be identified and solutions found if representatives of the pastoral communities are allowed to participate in the process. If the herdsmen themselves are allowed to participate in developing alternative strategies and studies, there is a greater chance that these negotiations will result in sound pastoral practices adapted to changing climate conditions. Such negotiations, however, require mutual respect for different ways of life and must include a civil conflict-management system. Governments unfortunately do not always carry out their promises, and the herdsmen thus require external support for their political self-organization as well as an international monitoring system acquainted with the particularities of nomadic and pastoral communities that can guarantee their human rights. The UN human rights system has an array of instruments at its disposal and could

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57 See Joseph Ole Simel 2008. Similar reports have come from the Saami of northern Europe, who are no longer able to use traditional knowledge to effectively adapt to increasing changes posed by weather fluctuations and who see their traditional grazing and settlement areas challenged by competing non-indigenous reindeer.

also act as a communications channel and source of basic information regarding social planning directly in the affected area

## Asia

In many Asian countries, climate change threatens the results of a development strategy based on urbanization and industrialization and – regardless of how we wish to evaluate this type of development strategy – poses a danger to any reductions in poverty levels that these strategies may have achieved. Heavy flooding as well as droughts is predicted for the eastern, southern, and southeastern regions of the continent. Megacities such as Shanghai, Singapore, Jakarta, and Bangkok all face the threat of flooding. Many fear that large expanses of fertile agricultural land in the estuaries and coastal areas will be contaminated by salt water. Other areas are threatened by the melting of the Himalayan glaciers. If global warming continues unabated, these glaciers will lose 80 percent of their mass by 2030, resulting in floods followed by drought even for the areas on the banks of the great glacier-fed rivers. It is estimated that by 2050 a total of one billion people could suffer from a lack of water. Researchers fear that Central and South Asia will suffer famines, while East and Southeast Asia may indeed see greater levels of agricultural output. Climate change threatens to wipe out the advances that have thus far been made in Bangladesh as a result of the Millennium Development Goals. The capacity of individual nations to adapt to and manage the effects of climate change also plays a role in the scale of the threat. For example, Bangladesh's early warning system helped to minimize the number of victims claimed by Tropical Cyclone Sidr (approximately 3,400 people died). One year later, however, Tropical Cyclone Nargis was responsible for the deaths of nearly 150,000 people in Myanmar, where an effective early warning system was not in place. The same holds true when it comes to countries' ability to create protective structures, conduct reforestation schemes, and establish disaster-management programs.<sup>58</sup>

The Indian states dependant on the Himalayan water cycle – Arunachal Pradesh, Assam, Meghalaya, and Nagaland – possess a wide variety of flora and fauna and are home to a large number of ethnicities. Some of these indigenous groups are relatively self-sufficient and have their own systems of self-management. The melting of the glaciers would affect water supplies – primarily in the dry months – in these remote areas on the Indian side of the Himalayas that are home to these indigenous peoples. Not only would water supplies be affected, however. As is the case in Africa, the communities of northeast India contribute significantly to biological diversity at a local level, and their culturally specific existence and food security are derived from this. If water supplies dramatically alter in line with current predictions, this would overburden these peoples' tradi-

<sup>58</sup> See IPCC 2007a, Diakonisches Werk der EKD et al. 2008, and Global Humanitarian Forum 2009.

tional ability to adapt. Furthermore, the Indian national and state governments do little, if indeed anything at all, to involve or consult these peoples – much less allows them a participatory role – when devising solutions to the foreseeable effects of climate change. The first resettlement programs were carried out in Arunachal Pradesh without the local population even being properly informed, let alone asked.

Indigenous peoples are often viewed by the government merely as an obstacle to development. One example of the discrimination and existential threat that these indigenous peoples face are the plans to construct hundreds of large-scale dams in the Himalayas, which would threaten the indigenous peoples of north-eastern India. If the governments of India, Pakistan, Nepal, and Bhutan have their way, hydroelectric dams with a total capacity of 150,000 megawatts will be constructed over the course of the next twenty years. In the name of clean energy and the regulation of water supplies, the dams' proponents would virtually cover the entire Himalayas with concrete. One of these projects is the Dibang power project in Arunachal Pradesh with a projected capacity of 3,000 megawatts. Owing to the length and breadth of the backwater area, the communities in this area would be relocated to a completely different kind of agricultural area. Local protests have accordingly been vehement, and the legally specified consultation mechanisms have not been adhered to. An impact assessment study investigating the effects of global warming and the coming phases of flooding followed by dwindling water supplies has apparently not yet been conducted, or at least has not been made public. However, a lack of financial resources has proven to be a major obstacle to the project moving forward.<sup>59</sup>

These conflicts are taking place in a part of India, the vast northeastern region of the country, in which there is a serious potential for violence posed by armed insurgencies and state security forces operating with impunity.<sup>60</sup> Protesters against the dam project fear that their protest will be criminalized. In addition to the right to life and housing, a self-determined form of food security, traditional knowledge of healthcare, and the right to an environment that can provide for these rights, such actions also impinge upon indigenous peoples' right to political self-administration. The right to information – which is actually guaranteed in India under laws covering public access to records – the freedoms of assembly and opinion, and the right to political self-administration are all under serious threat. Impact studies limited to a consideration of budget concerns do not take these rights into account, and the impact climate change has does not automatically play a role in these studies. Nevertheless, these rights can serve as an important basis for local communities to defend their specific ways of life.

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59 International Rivers Network/Shripad Dharmadhikary 2008.

60 The Armed Forces (Special Powers) Act of 1958 grants soldiers and police forces immunity against all legal obligations when combating insurgents, even in instances in which civilians are harmed.

For the regions of South and Central America, researchers predict that climate change will lead to an increase in the number of hurricanes in the Caribbean. Haiti has already felt the effects of these dramatic changes. Whereas in the past Haiti was visited by full-strength hurricanes approximately every fifteen years, in late August and early September 2009 the island was struck by no fewer than four hurricanes, resulting in the deaths of several hundred people as well as massive flooding and landslides. As the sea's temperature measurably continues to rise, we must assume that the strength of these storms will also increase. Although climate change might enable an increase in soybean production, the island will see a decrease in rice production – an important component of the Haitians' basic diet. Forecasts estimate that the number of people threatened by famine in these regions will rise continually from five million in 2020 to eighty-five million in 2080. Constantly rising temperatures and sinking groundwater levels could mean that tropical rainforests in the eastern Amazon will be transformed into a savannah by mid-century. In some Latin American countries, maize production – an important part of the region's cultural identity – is threatened with a 15-percent drop. In general, climate change will cause Latin America to lose a great deal of its biodiversity. Some states have undertaken serious measures to protect important ecosystems, set up early warning systems for rivers and coastal areas, and establish sound agricultural risk-management systems, and have also taken steps to monitor pandemic diseases among both people and plants more closely. However, the positive effects of these programs could be greater if more were done to integrate and educate the local population.<sup>61</sup>

Peru is one of the most biodiverse countries in the world, and protected natural areas account for approximately 15 percent of its territory. Although this might seem a positive development, it usually means that the local population is prevented from using the (rain) forest and its traditional products. Furthermore, whereas the local population is denied land-usage rights, the government makes large concessions to oil companies. At the first session of the UN Social Forum – a subsidiary body of the Human Rights Council – representatives from the Andes gave a presentation that described the relationship between the Pacific Ocean, the desert-like coastal areas responsible for large-scale cloud formation, the Andean slopes and orographic rainfall, and glacier formation and the numerous springs on the eastern side of the Andes that flow into the Amazon region. The conclusion arrived at by the representatives was that in order to protect the natural environment of the Amazon and its abundance of water, flora, and fauna, conditions on the Pacific coast and in the deserts west of the Andes must also be taken into account. Whereas the economic activities and culture of the local population consciously or intuitively reflect this complex relationship, the predicted effects of climate change combined with the government's plans for

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<sup>61</sup> IPCC 2007a.

the large-scale redirection of mountain rivers and agricultural development of the desert areas will ultimately deny the local population of the Amazon access to water and hence of the wherewithal to run their traditional economies. The UN Committee on the Elimination of Racial Discrimination has demanded the Peruvian government at least change its practice of enacting government plans without consulting the local population.<sup>62</sup>

In the case of Peru, it appears as if, along with the effects of climate change, government action will also lead to sustained negative changes in the natural and social environment affecting the local population. Whereas pursuing a particular course in the name of the greater good is nothing new in the development policy discourse, it does not accord with a human-rights based political approach. Here governments are obliged to employ all possible means to respect the rights in question and to protect and guarantee them against third-party encroachments.

There will of course be trade-offs when it comes to implementing human rights, particularly given that financial resources are not endlessly available. Such trade-offs must not, however, prevent the enjoyment of these rights. In the case of Peru, it is clear that the Peruvian government has not fulfilled its obligations – and not only in terms of protecting social rights. The exclusion of the local population from the government’s decision-making process as well as the government’s propensity to ignore alternative and historically rooted ways of life constitutes an act of discrimination according to the UN Committee on the Elimination of Racial Discrimination. If nothing else, a human rights-based approach can generate an array of questions and investigative procedures that can help tailor development to the needs of the local population.

## Island Nations

The dramatic effects of climate change can already be seen in some island nations, particularly those in the Pacific and the Caribbean. Among those countries threatened by rising sea levels are Tuvalu, Nauru, Kiribati, the Solomon Islands, the Maldives, and the Bahamas. If adequate steps are not taken to combat climate change, large parts of the island nation of Tuvalu – with an average elevation of 4.5 meters above sea level – will be subject to flooding. The government of Tuvalu has provisionally applied for asylum in New Zealand and Australia for its circa 11,000 residents. But who will pay the resettlement costs? And what citizenship will the inhabitants of the sunken kingdom of Tuvalu adopt?

Damage to tourist beaches, roads (that are now sometimes impassable), schools, hospitals, airports, or agricultural areas (grazing areas and coconut plantations) resulting from flooded or damaged coastlines is now an everyday occurrence. Saltwater is increasingly seeping into groundwater near the coast. The inland areas of larger islands are subject to longer dry periods and more

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<sup>62</sup> See the clause on climate change, Social Forum 2008.

extreme droughts. These are only a few of the consequences of more frequent and longer periods of extreme weather. The hurricane season has increased in length by more than a month. Diseases proliferate among humans and animals as a result of increased periods of humidity. This has also meant an increase in cases of malaria. The first migrants have already been forced to leave the Maldives, Kiribati, Tuvalu, and Vanuatu and seek out a new existence in more secure surroundings.<sup>63</sup>

In May 2009, representatives from Vanuatu described their changing everyday life in the Human Rights Council's Universal Periodic Report. One of Vanuatu's eighty-three islands has already been evacuated, and two further islands are in acute danger of disappearing completely. The decision to evacuate was a difficult one: even though the evacuees were "only" forced to resettle to a neighboring island where they were welcomed, they still felt like "strangers" there. Only after the government had guaranteed access to water and food security did the evacuees agree to be resettled. Conversely, the government of Vanuatu feels that circumstances require it to do a better job of informing its citizens and include them in avoidance and adaptation strategies, although in some instances the government finds it must first make the population aware of the importance of these issues. Many local residents are certainly aware of the changes taking place, but they do not associate them with the concept of global climate change. Seminars have been introduced to instruct the local population that traditional measures to counter the "caprices of the weather" are most likely no longer sufficient and are in need of reevaluation.<sup>64</sup>

It is clear that the government of Vanuatu is not responsible for these climate changes and the resulting damage. Nevertheless, additional funds have been set aside over the last two years to address this damage and implement precautionary measures. One of the programs used by the government to adapt its infrastructure in the threatened areas is the Pacific Adaptation to Climate Change (PACC) program. The PACC is financed by the Global Environment Facility (GEF) and its implementation supported by the UN Development Programme (UNDP). Vanuatu is also a member of the UN's Alliance of Small Island States (currently consisting of forty-three nations). Conversations with government representatives in Berlin and Geneva made it clear that human rights benchmarks would assist in measuring which expenditures need to be made to take precautionary measures and rehabilitate the affected parties.

## Indigenous Peoples

This paper has often referred to "populations subject to particular risk." While there is no conclusive definition for this term, in the context of climate change it includes nomadic peoples, fishing families, rainforest and shifting cultivation

<sup>63</sup> Holley Ralston et al. 2004, IPCC 2007a, and FAO 2008.

<sup>64</sup> Personal notes from May 2009.



farmers, subsistence farmers, slum residents, marginalized residents in river and coastal areas, indigenous peoples and ethnic minorities, people with disabilities, women, children, and senior citizens insofar as they are directly exposed to the dangers posed by changing weather and possess only limited means to adapt to the changing climate. Here I will examine the plight of indigenous peoples in more detail in order to make clear the importance of this classification in developing an appropriate political approach to climate change.<sup>65</sup>

The great majority of the world's 400 million indigenous people live in marginalized regions and fragile ecosystems that are particularly sensitive to changes in the physical environment. This fact has already been satisfactorily demonstrated in cases regarding the exploitation of natural resources. Within the UN human rights system, the first reports on the subject of climate change began to be written in 2002. Françoise Hampson, independent expert for the former UN Sub-Commission on the Promotion and Protection of Human Rights, led the way in addressing the loss of endangered lands, the effects of natural disasters, resettlements resulting from global warming, and the desertification of large swathes of land due to more frequent extreme weather conditions. Indigenous territories in the Arctic, in boreal and tropical forest regions, in mountain regions, and on Pacific islands were shown to be particularly fragile areas. The UN Special Rapporteur on the rights of indigenous peoples addressed these issues in his 2005 report.<sup>66</sup>

However, there are rather interesting discrepancies in the evaluation of data. For example, scientists have determined that temperatures among Alaska's Athabascan communities have been changing by one-tenth of a degree in the fall and by as much as five degrees in winter over a longer time period. Although scientists chose to focus on this five-degree change in temperature in their discussions, for the Athabascan representatives the one-tenth of a degree change was a more crucial issue. Winter temperatures are in any case very low, reducing outdoor work to a minimum, so that a change of five degrees is deemed insignificant. Fall, on the other hand, is the harvesting and hunting season, and the moose the Athabascan like to hunt apparently change their migratory routes even with the slightest changes in temperature due to the effect these changes have on soil conditions.<sup>67</sup> Had discussions between Athabascan representatives and scientists not taken place and the Athabascan's local systems of evaluation been ignored, the result would have most likely been a completely inappropriate approach based solely on the data.

The Saami of northern Europe have produced similar reports. Owing to the fragile ecosystems in the regions they inhabit, even the slightest changes in temperature can have an effect on the growth of the herbs and mosses that the Saami plant and collect for everyday use along their traditional grazing routes.

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<sup>65</sup> See Global Humanitarian Forum 2009.

<sup>66</sup> Françoise Hampson 2004 and 2005, Rodolfo Stavenhagen 2005 and 2007, and IWGIA 2008.

<sup>67</sup> See Mirjam Macchi et al. 2008.

The Inuit of the Arctic region are no longer able to use several traditional hunting routes, because the ice has become too thin to bear weight. Furthermore, food stockpiles now tend to rot in the ground as a result of the melting permafrost. The impact of these changes on daily life is so severe that at the Inter-American Commission on Human Rights (IACHR), Sheila Watt-Cloutier, former president of the Inuit Circumpolar Conference, instituted proceedings against the United States, claiming its greenhouse gas emissions violated human rights. Watt-Cloutier went to Washington with sixty-two Inuit hunters and elders. Their aim was to obtain a ruling obligating the United States to set maximum limits for greenhouse emissions, resume international cooperation, and develop a plan to help the Inuit compensate for the effects of climate change. The IACHR did not adopt the petition, but it did initiate hearings on the subject of climate change and human rights in March 2007.<sup>68</sup>

The loss of land and resources for the coming generations, and of regional particularities and religious sites threatens to deprive these groups of fundamental certainties, even going so far as to call into question these people's status as indigenous peoples if they are displaced or forced to resettle outside their traditional territories or even seek asylum in other countries. Anthropologically speaking, this is not an issue, but in political and legal terms these groups are threatened with reduced rights – to land and other resources, for example. In the context of the debate on climate change, this is of importance to instruments of the Framework Climate Convention such as the Clean Development Mechanism (CDM) or the emissions-reducing mechanism (REDD), which to date have not taken into account the rights of indigenous peoples to land and resources or indigenous communities' traditional mechanisms of political self-determination.<sup>69</sup>

## Conclusions and Perspectives

Human-induced climate change encroaches upon and violates human rights. Its primary victims are the peoples in the countries of the Global South. At the same time, the UN human rights system places instruments in the hands of these peoples, and indirectly in the hands of states, which they can use to demand protection of their rights and to negotiate fair compensation in an international context. Since these instruments are based on human rights, this is not a matter of rich nations dispensing charity to poor ones. The protection of these rights is based on contractual agreements with jointly agreed wording. The human rights approach underpins the ambition to find specific forms of just compensation. The cooperation between differing interests rightly invoked by all sides can find a genuine platform based in human rights standards. As a frame of reference,

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<sup>68</sup> Jan Salick and Anja Byg 2007, IPCC 2007a, Mirjam Macchi et al. 2008, and Global Humanitarian Forum 2009.

<sup>69</sup> European Parliament 2009.

human rights allow political options and their likely consequences to be closely scrutinized, particularly with respect to their impact on the weakest members of society.

At the same time, a human rights-based political approach is not an all-purpose instrument that can automatically solve the most 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, questions concerning future development, and many other issues relating to climate change primarily serves, in this author's opinion, to sensitize 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 a useful theoretical construct with which to embed human rights in climate negotiation procedures.<sup>70</sup>

Those who argue against taking a human rights approach in climate discussions on the grounds that human rights are the responsibility of national states and that this would therefore lead to states being held responsible for human rights violations resulting from climate change, even if they have played little or no part in the infringement of these rights, cannot plausibly sustain their case. Agreements dealing primarily with economic, social, and cultural rights state that poorer nations can assert the implementation of these rights in negotiations over adjustment measures and financial and technological transfers, citing national commitments and signatory states' obligation to participate in international cooperation. Recourse to human rights would generally tend to strengthen their negotiating position and provide a necessary addition to the negotiating process within the Framework Climate Convention.

A human rights approach is also a good way of ensuring that the concerns of those directly affected are included in any evaluation of the problems posed by climate change and may open up new negotiating options. The assertion of legitimate rights increases the chance of articulating common interests. Although no right to direct participation in signatory negotiations can be derived from the human rights canon, non-governmental actors could do much to bring their case to bear in official negotiations simply by organizing themselves. In order to create institutions and structures aimed at a fair reduction of emissions with a high level of financial transfers and a vital emissions trading scheme, such demands must be actively pursued. A human rights-based political approach would do much to encourage a debate to achieve these ends.<sup>71</sup>

Complaints mechanisms provide a channel to better identify particular threats and come up with specific measures and solutions. What are required are

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70 See Tilman Santarius 2008.

71 See Philipp Alston 2001, and Achim Brunnengräber et al. 2007 and 2008.

systematic analyses of the effects of climate change on populations at particular risk and research that goes beyond the already well-covered health and transport sectors. The Millennium Development Goals and their human rights-oriented poverty-reduction programs were a successful step in this direction. Traditional knowledge about sustainable use of the environment also has a better chance of being heard, now that the Universal Declaration of Human Rights obliges signatories to heed it.

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.

A question that remains unanswered is how private companies are to be included in the human rights system. Although the UN Sub-Commission on the Promotion and Protection of Human Rights did develop the so-called UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, they were soon officially dropped. Follow-up negotiations with Special Representative of the Secretary General John Ruggie have so far produced little of practical value relevant to the climate debate.

A human rights approach that identifies concrete violations of human rights tends to get more public recognition than one that does not. More media coverage and a greater focus on real human suffering, hardships, and fears would help to raise public awareness of the problem and encourage individuals to consider the true impact of western lifestyles and high energy consumption in the world's wealthiest regions. Better management of the economy, the introduction of disaster-prevention measures, and insurance coverage of damage are unlikely to be sufficient on their own to counter the threat posed by climate change. Only once it becomes clear that in some parts of the world the minimum requirements for a dignified existence are being violated – and this comes to be viewed as a criminal act as opposed to a mere misdeed – will there 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.

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It is mainly the inhabitants of the global South who suffer from the effects of climate change. They are faced with the destruction of their living space and the violation of their human rights. At the same time, existing human rights standards offer the possibility of establishing points of reference during international climate negotiations to address such questions as adjustment programs designed to confront the effects of climate change, the reduction of greenhouse gas emissions, technology transfers, and the

future of development. As a frame of reference, human rights standards can serve to accurately evaluate policies and to pinpoint their failures, particularly regarding how these policies affect the world's weakest inhabitants. This publication by the political scientist Theodor Rathgeber uses case examples to illustrate the dangers faced by indigenous peoples in particular, as well as the tools the UN human rights system gives them to support their struggle for just climate policies.

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