

WHAT IS THE MOST PRESSING CONCERN OF INTERNATIONAL HUMAN RIGHTS LAW? : CLIMATE CHANGE?

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1. INTRODUCTION

This essay makes the point based on existing documentary evidence, that although International Human Rights Law (IHRL) is challenged in many ways, its most pressing challenge is the problem of climate change. The essay concludes that if governments around the world do not address climate change, IHRL will hang on a precarious plane. The essay first considers the challenges of IHRL and then makes a case for why climate change is the most pressing of the challenges confronting human rights.

2. INTERNATIONAL HUMAN RIGHTS LAW AND ITS CHALLENGES

The development of human rights law (HRL)¹ ranks amongst the most important accomplishment in international relations.² Since 1945 the United Nations have been instrumental in the process of standard setting, and creating documents that sets out universally recognized human rights.³ At the last count, there are nine core international human rights instruments and several optional protocols.⁴ The UN has also created internal institutions to monitor and supervise the implementation of human rights.

Despite the multiplicity of international human rights instruments and institutions created to supervise their implementation, IHRL is challenged in a variety of ways. The first of these challenges is the fact that international human rights law lacks a guardian body similar to the ICRC to determine the research agenda.⁵ Scholars also reflect a consensus that international human right is also plagued with some contemporary challenges like ‘transitional justice’, non-state actors, terrorism, poverty and environmental degradation including climate change.⁶ Other wider ranges of challenges that have been identified are the challenge of content and scope⁷, the application of human rights to social

¹ Human rights are rights that every human being has by virtue of his or her human dignity. See United Nations Office of the High Commissioner (UNHC), ‘Human Rights handbook for Parliamentarians’ (United Nations 2016) 19-21; See also S. P. Marks, ‘Human Rights: A Brief Introduction’ (Harvard University Press 2014) 1.

² H. Hannum, ‘Reinvigorating Human Rights for the Twentieth Century’ (2016) 16 Human Rights Law Review, 409-451, 409.

³ In the United Nations Charter 1945, the UN included in Article 1 (3) ‘the promotion and encouragement of human rights and fundamental freedom’ as one of its core purposes.

⁴ United Nations Human Rights Office of the High Commissioner (UNOHC), ‘The Core human Rights Instruments and Their Monitoring Bodies’, available on <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>> last accessed on the

⁵ M.T. Kamminga, ‘challenges in international human rights law in Kamminga (ed), challenges in international human rights law: library of essays in human rights vol. III (Ashgate, 2014) 1-2

⁶ Steiner Ashton and Goodman (ed), ‘International Human Rights in Context (Oxford University press 3rd ed 2010).

⁷ This problem revolves around the controversy of whether human rights is universal or geographical. See Osiatynski T. ‘ The universal Declaration of Human Rights, in Andras Sajó (ed) ‘ Human rights With Modesty: The Problem of Universalism’ (Nijoff, 2004) 33-50

issues⁸ and the problem of implementation and enforcement.⁹ Other challenges include the fact that IHRL tolerates the traits of complexity, fragmentation, and under-inclusiveness including the unhealthy paradox of states acting both as primary protector and violator of human rights.¹⁰ While these challenges identified require attention, it is the challenge of climate change that requires the most attention. This is because as the next paragraph reveals, evidence from scientific studies supports the argument that CC is bound to affects a broad spectrum of human rights.

3. CLIMATE CHANGE AND HUMAN RIGHTS

The subject of climate change sits on the front burner of global environmental discusses. From a concept of relative obscurity in the late 1980 when it was first conceptualized in the UN General Assembly¹¹, it has come to be characterized as ‘the defining human development challenge of the 21st century’.¹² Scientific evidence reveals that the warming of the climate system is accelerating and that sustained increases in atmospheric concentrations of selected greenhouse gases due to human activities will lead to an enhanced greenhouse effect and global climate change.¹³ The Inter-governmental Panel on Climate Change Report (IPCC) suggests that under the current emission scenario, global temperatures have risen by 0.74 degrees centigrade in the last century constituting the largest and fastest warming trend in the history of the earth.¹⁴

The impacts of climate change are extensive¹⁵ and it has sustained a growing consensus amongst scholars that it is bound to affect a broad spectrum of human rights. In 2008 the Human Rights Council in its Resolution 7/23 expressed concern that CC poses far-reaching threat to peoples and communities around the world and have implications for the full enjoyment of human

⁸ A Nolan, B. Porter and Malcolm Langford, ‘The Justiciability of Socio-Economic Rights: An Updated Appraisal, NYU school of Law. Centre for Human Rights and Global Justice Work Paper No. 15 (2007).

⁹ See D. Akande and S. Shah, Immunities of state officials, International Crimes and Foreign Domestic Courts (2010) 21 EJIL, 815-852

¹⁰ F. Viljoen, ‘Contemporary Challenges to International Human Rights Law and the Role of Human Rights Education’ Inaugural Address Delivered as Head of Department (Director) of the Centre of Human Rights, Faculty of Law, University of Pretoria (2011).

¹¹ G.A. Res. 44/228, U.N. Doc. A/RES/44/228 (Dec. 22, 1989).

¹² S McInerney-Lankford, M Darrow and L. Rajamani, *Human Rights and Climate Change: A review of the International Legal Dimensions* (2011) 1; See also United Nations Development Programme, *Human Development Report 2000: Human Rights and Human Development* (2000) [hereinafter Human Development Report 2007/8], available at < <http://hdr.undp.org/en/reports/global/hdr2007-2008/>>.

¹³ Sand P. and Peel J. with Fabra A. and Mackenzie R, *Principles of International Environmental Law* (Cambridge university Press 3rd edition) 275; see also Intergovernmental Panel on Climate Change (IPCC), Fourth Assessment Report, *Climate Change 2007*.

¹⁴ IPCC, Fourth Assessment Report, 8.

¹⁵ Mark Maslin, *Climate Change: A Short Introduction* (3rd Edition Oxford University Press 2014) 68-98

rights.¹⁶ Similar concerns were expressed in subsequent documents.¹⁷ The impacts of CC are expected to affect the following rights to life, the right to health, the rights to housing and immovable properties and the rights to food, water and sanitation.¹⁸ The possibility that CC will impact these rights raises the probability that an escalation of distributive concerns is imminent. There is also a concern that future generations will be handed down an environment that is diminished in its quality putting their rights in harms way.

Reducing CC is therefore a major challenge for our global society for which a lot of institutional prescription as it concerns the obligations of states exists.¹⁹ The failure of international climate negotiation continues to reverse meaningful global cuts in GHGs. A notable example is the withdrawal of the United States from the Paris Agreement 2015 even when it placed the responsibility of reducing GHG on the Environmental Protection Agency.

Despite the lack of political will, there is strong economic and political argument to take action on CC. It is projected that tackling CC now would cost 2.3 percent of world GDP as opposed to 20 percent if action is postponed to the middle of the century.²⁰ On the Political side, CC now affects national security,²¹ escalates global poverty and by extension, global security. These are concerns critical to the sustainable health of international human rights law.

CONCLUSION

The only conclusion to be drawn is that phenomenon of CC is a pressing challenges and should not be treated with kids gloves. Doing so will undermine a broad spectrum of human rights. The only way out of the impending threat is for state parties to fulfil their obligations as provided under the Framework Convention on CC and subsequent agreements. This will require states to delimit

¹⁶ Human Rights Council (HRC), *Report of the Special Rapporteur on the issue of Human Rights Obligations Relating to the Enjoyment of a safe, Clean, healthy and Sustainable Environment* A/HRC/31/52 of February 1st 2016.

¹⁷ HRC, Resolutions 18/22, 26/27 and 29/15; See also the preamble to the Paris Agreement on Climate Change 2015.

¹⁸ Amnesty International, 'Climate Change: Overview', Available on < <https://www.amnesty.org/en/what-we-do/climate-change/>> last accessed 28/07/2019.

¹⁹ Office of the High Commissioner on Human Rights, 'Understanding Climate Change' being submission of the High Commissioner on Human Rights to the 21st Conference of the parties to the United Nations Framework Convention on Climate Change, available on < <https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf>>

²⁰ Mark Maslin (note 14) xvii-xix

²¹ See the National Security Strategy, White House February 2015, available on < https://obamawhitehouse.archives.gov/sites/default/files/docs/2015_national_security_strategy_2.pdf >, this report concludes that 'CC is an urgent and growing threat to the national security of the United States contributing to increased national disasters, refugee flows and conflict over basic resources such as food and water'.

conservation areas, sponsor renewable energy projects and enhance a proper pricing of carbon through regulation. While several factors may hamstrung the full realization of these solutions, they are critical to the future survival of IHRL.

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