İklim değişikliğinin etkilerini sınırlamasında uluslararası insan hakları hukukun politika ile bağlantılılandırılması

Linking international human rights law to policy in protecting adverse effects of climate change

Ilhami Alkan Olsson, Johanna Alkan Olsson

ÖZET

Makale, iklim değişikliğinin başta insan sağlığı olmak üzere insan hakları üzerinde yarattığı olumsuz sonuçlarını sınırlaması ve bu konusunda ilgili politika yapımında uluslararası insan hakları hukukun etkin şekilde kullanılması konusuna odaklanmaktadır. Dört bölümlü makalenin ilk bölümünde, iklim değişikliğinin insan haklarının etkilerini analiz etmek ve uluslararası politikanın hukuki temelini araştırmak amaçlanmaktadır. İkinci bölümünde ise, uluslararası insan hakları ile iklim değişikliği arasında talimatlar ve politikalara olan etkisini ve bu etkilerin insan hakları çerçevesinde değerlendirilmesini amaçlamaktadır. Üçüncü bölümde ise, bu konuda uluslararası politikanın insan hakları çerçevesinde etkinlikleri ve perdeyi açmak istenmektedir. Son bölüm ise, uluslararası insan hakları hukukundan iklim değişikliği politikanın etkilerini ve bu etkilerin politikanın hukuki temelini kavramak ve analiz etmek istenmektedir.

ABSTRACT

The article aims to illustrate the multifaceted interlink between climate change, heat, and human rights and discuss in what ways international human rights law may be used to support the development and implementation of policy at various levels to limit adverse effects of climate change on humans in general and right to health in particular. This is done by overviewing the possibilities and limits international law offers and displays in the fields of the environment, climate change and health. Moreover, through emphasising the inter-linkages between international law and domestic law and policy, the article sets out how and by what means international human rights law is and may be incorporated and used in national law and policy-making in the area of climate change. The article concludes that human rights norms and principles could be used to promote a right-based national climate change regime in six different ways.

INTRODUCTION

Climate change debates have traditionally focused on scientific, environmental and economic aspects. However, whilst the adverse effects of climate change and increasing temperature on human lives and living conditions have become and incorporated fact in the human rights discourse, as shown in ‘Human Rights Council resolution 7/23 on human rights and climate change’ (1), the focus of the debates has progressively broadened with increasing attention being given to human and social dimensions of climate change.

Indeed, in the last two decades, we have witnessed a growing volume of reports and studies drawing attention to the direct and indirect impacts of climate change on various human rights. A particular focus has been on global health, through an increased concern of changing patterns of disease, water and food insecurity, vulnerable human settlements, population growth, economic crises, pandemics, poverty, migration, and violence and conflict (2, 3, 4).

Correspondingly, according to 2013 Report of Intergovernmental Panel on Climate Change (IPCC), increasing environmental heat in most parts of the world is one of the most prominent effects of climate change (5). In this report it also reads that, “Each of the last three decades has been successively warmer...
at the Earth's surface than any preceding decade since 1850. In the Northern Hemisphere, 1983–2012 was likely the warmest 30-year period of the last 1400 years” (5, p. 21). The frequency of heat waves has increased in some parts of the world, for example Europe. These trends will seemingly continue with widespread and ever more negative effects on populations, societies, animal health and terrestrial and aquatic ecosystems (6, 7, 8). The physiological limits of the human body in coping with high heat exposure and heat stress are scientifically well established. However, the implications of climate change and in particular the effects of extreme increase in temperature have only recently been analysed and include heat exhaustion (which reduces work capacity and labour productivity), clinical heat stroke, exacerbation of certain chronic diseases and acute fatalities (9, 10).

In addition physical work adds to heat stress due to the intra-body heat production from muscle work, an extra factor to consider when assessing the impact of climate change on human population and its capacity to work without being sick in an increasingly hot climate (11).

However, despite such obvious impacts of climate change on humans, whether and in what way, international human rights law may be employed to limit the negative effects of climate change is still a fairly undebated subject. One reason for this situation lies in the fact that the international human rights regime does not specifically refer to a right to a safe and healthy environment, even though the United Nations human rights treaty bodies recognise the intrinsic link between the environment and the realization of a range of human rights, such as the right to life, to health, to food, to water, and to housing (2, p. 18).

Likewise, the links between international law and national and local policy-making and implementation processes and the factors influencing this linkage are relatively under explored. This is even truer when it comes on the role of international human rights law to create and strengthen policy measures at different geographical scales in the climate change area.

By the same token, we know that climate changed induced temperature increase will create adverse effects that will be costly due to increased illness and reduced capacity to work in a large number of countries especially in the tropical and sub-tropical areas (12). A large share of these costs will be carried by the health sector, another under explored area.

Given what has been said above, the present article seeks to (i) illustrate various implications of climate change for the enjoyment of several human rights, especially the right to health, protected under international human rights law; (ii) explore the linkage between international human rights law and national law and policy making in the case of climate change.

Thus, the article addresses four intertwined themes under the following sections:

i. Climate change, human rights and international human rights law;

ii. The use of international human rights instruments to protect rights, most of all, the right to health, threatened by climate change and extreme warming

iii. Challenges in incorporating human rights into discussions of climate change; and

iv. The role of human rights to generate and strengthen policy measures to handle adverse effects of climate change. This section offers a general outlook on the multidimensional complexity of the process of translation of rights (and obligations) derived from international law to national law and policy without engaging in the process of implementation and monitoring process of the domesticized international norms.

CLIMATE CHANGE, HUMAN RIGHTS AND INTERNATIONAL HUMAN RIGHTS LAW

This section aims to provide an overview of the human rights that are influenced by climate change and warming and presents international and regional legal standards related to these conditions. It is important to note that this section does not give a comprehensive list of all the potential links between the human rights realm and climate change, but presents rights linkable to direct, indirect and through societies effects of climate change.

Impacts and risks climate change creates on human rights are reasonably well documented. According to the Intergovernmental Panel on Climate Change (IPCC), for instance, if climate change continues as projected, first and foremost the poor and vulnerable groups, including women, children and the elderly, especially in the poor countries will experience adverse effects due to the impacts of climate change (13). This impact may occur either directly through increase mortality and morbidity due to extreme heat waves, floods, and other extreme weather events; or indirectly and gradually, through environmental and ecosystem changes, such as shifts in patterns of disease carrying mosquitoes and ticks, or increases in waterborne diseases due to warmer conditions and increased precipitation and runoff affecting food production systems also in. A third type of effect, are effects mediated through society such as increasing
stress on health systems, social unrest and climate induced migration but also discrimination and unequal power relationship. All types of effects include the deterioration of the realisation and enjoyment of various human rights.

The right to health and the right to life, both protected under various international human rights legal regimes, are among the rights that may be directly affected by climate change, as in the case of extreme weather, including heat waves, fires, drought, and heavy rain, which cause and create greater risk of injury, disease, and mortality. Unless otherwise stated, all examples of possible adverse effects of climate change on human rights given in this section are to be found in the latest IPCC report (13). While the right to life is seen as the “basic to all human rights”, (14) the right to health refers to “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (15). In addition, the right to health is recognised, inter alia, in article 25.1 of the Universal Declaration of Human Rights, article 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, in articles 11.1 (f) and 12 of the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and in article 24 of the Convention on the Rights of the Child of 1989. Several regional human rights instruments also recognise the right to health, such as the European Social Charter of 1961 as revised (art. 11), the African Charter on Human and Peoples’ Rights of 1981 (art. 16) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 (art. 10). Similarly, the right to health has been proclaimed by the Commission on Human Rights (resolution 1989/11), as well as in the Vienna Declaration and Programme of Action of 1993.

Evidently, the right to health is closely related to and dependent upon the realisation of other human rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, and access to information (16).

According to the Committee on Economic, Social and Cultural Rights, which is the body responsible for monitoring the International Covenant on Economic, Social and Cultural Rights, the underlying determinants of health include safe drinking water and adequate sanitation, safe food, adequate nutrition and housing, healthy working and environmental conditions, health-related education and information, and gender equality (17).

Indeed, indirect impacts of climate change relate to most of to such integral components of the right to health. It is a well-known fact that one of the foremost indirect effects of climate change is the increased risk of food- and water-borne diseases due to ingestion of contaminated water or food. In the 2014 IPCC report, it is stated that changed climate may influence growth, survival, persistence, transmission, or virulence of climate-sensitive pathogens (14, p 713). The UN High Commissioner for Human Rights explained in detail the normative content of the right in the report *The Right to Health* (18).

Another indirect outcome of climate change related to "the right to adequate food" is its impact on ecosystems due to changed rain patterns and altered access to water, which in turn may create problems with ‘food security’ that may result in income losses and price instability in the food market and consequently under-nutrition (19). The ‘right to adequate food’ is recognised, inter alia, in article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); article 24 of the Convention on the Rights of the Child; article 14, para. 2 (h) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); and article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

Yet another example of indirect negative impact of climate change on human rights is displacement, both forced and voluntary migration following, diminished food security, and increased poverty as well as diseases related to overcrowding such as measles, meningitis, and acute respiratory infections; sexually transmitted diseases; increased maternal mortality; and mental health disorders (20). Furthermore and related to what is said above, security and human security can be pointed out as another possible negative impact that climate change related displacement and migration may cause. Such impacts can range from civil-war and inter-group violation, to stress and conflict between different groups in the regions/countries from where the displacement took place as well as in the regions/countries where people seek security. Added to this, the infrastructure failure resulting in faltering energy and water supplies due to severe climate conditions will reduce society’s ability to subsist changes significantly.

Diminishing labour productivity or lost work capacity due to rising temperature can also be pointed out as another indirect impact of climate change and warming, influencing various human rights but above all occupational health. As persistently pointed out, health risks are greater under extreme heat conditions.
particularly for manual labour and farmers being obliged to work outside, with little or no access to shade and sometimes scarce availability to drinkable water (21, 22).

Despite several well documented impacts of climate change on various rights, as concisely illustrated above, there is hitherto no specific human right formulated against the adverse effects of climate conditions. In fact, the linkage made between human rights and the situation of the environment is relatively new and sometimes categorised as the ‘third generation’ human rights (or occasionally named, ‘collective’ or ‘solidarity’ rights), such as “the right to a healthy environment”, “the right to development”, “the right to cultural heritage”, and so forth. Though not by all and though with a strong emphasis on the principle that “all human rights are universal, indivisible, interdependent and interrelated”, considerable amount of scholars within international law, tend to categorise the development of international human rights law into three groups. Accordingly, civil and political rights on one hand and economic, social and cultural rights on the other are termed respectively first and second generation rights, while the so-called collective and/or solidarity rights are termed third generation rights, see for example (23, 24, 25). Although there have been attempts to develop international environmental law in the nineteenth century, it was not until the 1972 Stockholm Declaration on the Human Environment that the right to a healthy environment was explicitly recognised in an inter-national document. Even though it is, being a declaration, a legally non-binding instrument, the Preamble of this Declaration recognises a healthy environment as the basis of the enjoyment of many other human rights (26). The UN General Assembly declaration of 1990 is another example of a legally non-binding international instrument indicating the linkage between the environment and individual’s health and well-being (27).

Although the specific nature of the right to environment still needs clarification, it may suffice to say without further elaborating here that environmental rights are gradually considered less and less human-centric and accepted as accommodating two different (and sometimes conflicting) rights: the right to (a healthy) environment (the protection of the environment for the fulfillment of human rights), and the right of the environment (the legal protection of the environment in its own right, such as the protection biodiversity and endangered species For an early proponent of this approach see for example Dinah Shelton’s article on the topic (28). It can be maintained that even the Stockholm Declaration linked environmental protection to human rights norms reflects relatively a more human - centred – or anthropocentric approach than environmental. Principle 1 of the Declaration reads: Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. Thus, protection of the environment is pointed out being imperative for the (benefit of) present and future generations and not for the protecting the environment in its own right. This somewhat utilitarian view of the environment, i.e. seeing the environment as ‘natural resources’ for human being, appears even more clearly in Principle 2 and 3 of the Declaration. For a comprehensive study on the uneasy relationship normative of international environmental law and human rights law see (29).

While the fields of international environmental law and human rights law have continued to develop since their appearance in the 1960s, an interest in the relation between climate change and human rights begun in the mid-1980s, in parallel to the emergence of climate change as an international issue. One example of an international normative instrument drawing attention to the relationship between climate change and human rights, a regional and legally non-binding declaration, The Male’ Declaration on the Human Dimension of Global Climate Change, adopted 14 November 2007 by the Organization of American States and the Alliance of Small Island States, can be named (30).

Also, the Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights is particularly worth to mention (1). This is the first and an important global instrument, clearly establishing the link between climate change and human rights. The report, prepared upon the request of the Human Rights Council, comprises a detailed analytical study on the relationship between climate change and human rights (2). According to the report, the poorest countries and communities, due to low adaptive capacities, will be the most affected and subdue the largest rights constraints. Certain societal groups within these countries, among them women, children and indigenous peoples—but also the elderly and people with disabilities—are particularly vulnerable (2, p. 15–18 and p. 30).

Based on this report, the Human Rights Council adopted Resolution 10/4 in March 2009, noting that “climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights including, inter
The present section describes what human rights discourse and approach says about climate change and discusses the potentials of using human rights discourse and regime to tackle the adverse effects of climate change. As reviewed above, climate change has and will increasingly continue to have implications for a number of human rights. Hence, it is not surprising that the question whether, and if so, to what extent the existing human rights law and instruments may be useful in limiting and at least partly responding to the adverse effects of climate change.

The idea that human rights obligations may provide protection to the individuals whose rights are affected by climate change is broadly sustained. For instance, it is held that a human rights perspective can help assign obligations, mostly derived from existing human rights treaties, by providing a framework for identifying rights-holders and duty-bearers. Obligations States have assumed under international law can primarily be found in international and regional human rights instruments, such as the Universal Declaration of Human Rights, the Charter of the United Nations, the International Covenant on Economic Social and Cultural Rights, the Convention on the Rights of the Child, and the European Social Charter.

Based on the international obligations assumed under international law, States might be required to take action by invoking procedural rights that are of relevance to a proper development of climate change related policy design and implementation. The Aarhus Convention of 1998 comprises such procedural rights as "access to information regarding the environment", "public participation in decision making", which includes the selection, design, implementation and monitoring processes, and lastly, "access to judicial or administrative resources". Hence, the transparent access to climate change relevant data and the possibility to participate in decision-making may be a duty that can be assigned to states under international law.

At this point, it may also be useful to remind the difference between human rights-based approach to climate change and claims based on already existing international human rights law, hence, on positive law. What has been said under this sub-section is related to law and legal mechanisms. That is to say, appealing to human rights 'law' in protecting and promoting human rights is to focus on substantive outcomes of the legal process grounded in positive law using judicial mechanisms. On the other hand, a human rights-based approach to climate change can also draw on normative moralistic understanding of Human Rights and its principles, including participation, accountability, and non-discrimination, offering guidance for a human rights-related decision making and implementation.
processes (36, p. 15). For example, the principle of accountability can help an increasing compliance, hence credibility, in the future development of climate regime. As observed, international environmental treaties have not embodied much judicial instruments or other mechanisms of direct accountability. Experiences from other human rights areas regarding accountability mechanisms can be used in the climate change area, for instance, to determine the institutional gaps in prosecuting transnational private actors for human rights violations (37, p. 7).

Nonetheless, it is important to note that the question whether there is really any additional benefit of addressing climate change through a human rights-based approach instead of simply addressing the social or human impacts of climate change by invoking the already existing human rights protection machinery is far from being settled. In other words, what could be the “value-added” of using a human rights lens to the developing legal and policy tools to address the problem of climate change requires more consideration (38).

Lastly, although its content and significance as a legal concept is contested, it is worth to add that human rights approach to climate change might be considered relevant for discussions involving climate justice. Climate justice entails not only an international dimension on the climate change issue a discussion of justice between developing and developing countries, but also an intra-generational as well as intra-societal aspect of interpreting and acting on the effects of climate change within the same country (36, 39).

CHALLENGES IN INCORPORATING HUMAN RIGHTS INTO DISCUSSIONS OF CLIMATE CHANGE

As viewed above, there is room to employ human rights discourse and law to limit the adverse effects of climate change. However, this application is not always straightforwardly easy. Aside from the on-going complexity and uncertainties inherent to climate change, challenges in incorporating human rights law into the discussions of climate change may rank from the vague and indeterminate content of climate change related human rights instruments to the difficulties in establishing direct connection between violating such a vague / indeterminate right (i.e. legal obligations of States) and how the violation is related to climate change.

The predominantly negative impacts of climate change on the effective enjoyment of human rights are obvious. However, the extent to which such effects can be qualified as human rights violations in strict legal terms is more difficult to establish in concrete terms. As clarified by the Human Rights Committee in the, Aalbersberg versus the Netherlands case; for a person to claim to be a ‘victim’ of a violation of a right within the meaning of article 1 of the Optional Protocol, “he or she must show either that an act or an omission of a State party has already adversely affected his or her enjoyment of such right, or that such an effect is imminent, for example on the basis of existing law and/or judicial or administrative decision or practice” (40). In other words, legal duties of States under international law are limited to the fact that the adverse result has to arise directly from a well-defined act (legal obligation) or lack of it of the State in question.

Just as, the interconnection between the concrete physical manifestations of climate change in relation to peoples’ entitlements to certain rights and the legal responsibilities of states is often complicated to establish. It is beyond doubt hard to attribute specific climate change events (say ‘a heat wave’) to particular state action, or lack of it. Indeed, as pointed out in the Office of the United Nations High Commissioner for Human Rights report, it is virtually impossible to disentangle the complex causal relationships linking historical greenhouse gas emissions of a particular country with a specific climate change-related effect, let alone with the range of direct and indirect implications for human rights. In addition, climate change is often one of several contributing factors to the effects of hurricanes, environmental degradation and water stress. It is often impossible to establish to what extent a concrete climate change-related event with implications for human rights is attributable to global warming (2, p. 23). To complicate the issue, discussions around climate change are centred projections of future impacts, whereas human rights violations are normally established after the harm has occurred. Hence linking projections of probable outcomes with the need of proof of actual harm or levels of harm becomes a complex exercise.

Another difficulty in applying human rights instruments in climate change related cases have roots in the norm structures of several human rights instruments, including international human rights treaties, protecting different types of rights. It is increasingly held that many international human rights instruments display soft character, either as a result of their form, or due to their content, or the actor that issued them. Accordingly, States are not legally bound by declarations and resolutions of international organisations, decisions of international conferences, guidelines and comments of international
organisations and committees, and so forth regardless how much normative authority these instruments may carry. Likewise, although an international treaty is legally binding upon a State, which is a party to it, many provisions of these treaties are often vague/indeterminate, thus lack precise legal obligations, or do not contain any enforcement mechanisms, creating enforcement problems and implementation challenges. This is so especially for international treaties related to economic, social and cultural rights of individuals and groups. “Highest attainable standard of health” as formulated in Article 12 of the International Covenant on Economic, Social and Cultural Rights may exemplify this point. Similarly, private actors’ norm-like activities, such as codes of conduct of multinational enterprises or similar self-regulatory normative activities, can hardly be considered as instruments creating legally binding obligations over the non-state actors adopting them even if there have been some attempt otherwise (41).

THE ROLE OF HUMAN RIGHTS TO GENERATE AND STRENGTHEN POLICY MEASURES RELATED TO HANDLE ADVERSE EFFECTS OF CLIMATE CHANGE

This section aims to explore the relationship between international (human rights) law and the national law/policy making areas of climate change by systematising key factors determining the quality and degree of implementation of international legal and moral obligations into the domestic legal and policy order. Based this systematisation the aim of this section is also to identify how international (human rights) law could be functional to develop and strengthen legal/policy measures in the climate change area at both international and national/local level.

The incorporation of international obligation into the domestic legal system is a complex process and entails two distinctively different transformation steps: the vertical step, which refers to a transformation (and translation) from international law (and often accompanied by global politics) to national law and secondly, the horizontal step, which concerns the transformation of these norms into relevant and operating national legislations, guidelines, standards and policies, and from policy to action on the ground.

From a legal perspective, States have the primary obligation to respect, protect, and fulfill the defined and guaranteed human rights by international customary law and treaties, which create binding obligations on the States that have ratified them to give effect to these rights within their jurisdiction. However International treaties generally say little about how states should translate or implement international norms into the national legal order. Naturally a specific challenge occurs, when a normative content, from above and outside (international law), meets the undercurrent of existing legal and social norms in a specific society (42).

The Vienna Declaration of 1993 maintains that each state has the right “to choose the framework which is best suited to its particular needs at the national level” (43). Consequently, there is no universal or ideal model of how national institutions should implement or domesticate international law (44). Instead different countries have adopted different approaches as to how international law “enters” national law, traditionally categorised as the “dualist” and the “monist” systems see for example (45). The dualist approach or the transformation approach, gives effect to international law by translating international provisions into the national legal system. The monist system or the incorporation approach, gives effect to international law provisions at national level as soon as the requirements for signing and ratifying the international treaty has been satisfied. This section will not include a discussion of this doctrinal systematisation of these different types of “translation processes”. A major reason is that several scholars argue that there are as many ways of implementing international law as there are national legal systems, and entering into this discussion would practically involve a country-based assessment of possible translation process (46). Instead we just conclude that legal cultures differ between countries and integrating a convention into a national legal system could be seen as a multi-layered dilemma, built into the core of international law (47).

Technically, even though international law requires a State to carry out its international obligations, most international instruments do not specify how a state should implement treaty provisions, leaving it up to the state to choose the appropriate procedure for the implementation in the domestic plane. As should be expected, the incorporation process is far from being straightforward and encounters wide-ranging challenges depending on various factors.

One important challenge is the soft character of most international human rights instruments. The soft character of these instrument mean that it will be up to the political or administrative will to what extent the instruments will be taken into consideration. However, according to article 26 of the Vienna Convention it is stated that, its parties must implement every international treaty in force in “good faith”. Article 27 of the same convention additionally states that this obligation “in good faith” is valid irrespectively of any conflicting national law. Hence an existing national
law cannot be used as an excuse for not performing.

Another challenge relates to the so-called necessity of progressive realisation of some rights, especially demanding financial resources, know-how capacity and knowledge. As underlined in Article 2(1) of the International Covenant on Economic, Social and Cultural Rights, States have the obligation to progressively achieve the full realisation of the rights under the Covenant. This is an implicit recognition that States have resource constraints and that it necessarily takes time to implement treaty provisions. Consequently, some components of the rights protected under the Covenant, including the right to health, are deemed to progressive realisation at national level.

The horizontal dimension of the implementation of international law concerns the implementation of in this case the international human rights norms into different legal arenas representing different legal cultures supported by different institutions. A legal system can broadly be divided into four categories: regulation of civil society; the market; the political administrative system and as a forth category, linked to welfare state, “responsive law” (48).

Human right norms and principles have different relations with and impacts on almost all of these legal categories to a varied degree. The regulation of civil society has to do with identity and citizenship, including rules about immigration, rights of asylum, birth registration, national registration, as well as fundamental rules about what is accepted and not in society. The regulation of the political/administrative system sets up rules for the division of power, between political decision-making, executive and judicial functions. This category of law defines the administrative agency. Responsive law is an intervention from the political system into the social, economic or natural systems of a society (49, 50). Laws within this category recognize the principles of private production, while at the same time putting restrictions and obligations on private actors, such as employment, work health protection, consumers’ protection, protection of nature and all requirements in relation to sustainable development. The role of responsive law is to perform a balancing act between different interests in society. Human rights, which potentially could be threatened by a changing climate, is most directly protected within the last category of national law but the other areas are more and less indirectly involved. As a consequence human rights standards and principles would have to inform a multitude of legal areas and their implementing institutions, transcend structural and functional, sectorial boundaries, administrative organizational levels, and distinctions between political actors and traditional policy, a fact which makes balancing difficult and frequently controversial (51).

Closely interrelated to this dilemma is a set of other factors complicating the translation of international law in this case human right provisions into the climate change law and policy into the national context:

1. Human right provisions are often passed down to agencies without precision, as policy formation often is a result of political compromise.
2. Lack of scientific knowledge about adverse effects of climate change at the national and local context, and especially about the relation between climate change and implication on basic human rights.
3. Fast developing scientific knowledge base in the climate change area creating a discrepancy of the knowledge base used by scientific and bureaucratic actors.
4. Use of multiple knowledge bases simultaneously, creating a potential trans-disciplinary confusion.
5. Lack of bureaucratic competence incorporating or relating human rights principles into climate change law and policy.
6. Degree of economic development.

In this specific case, we also have two areas of international law entering the national level, having different legal structure and implementation history at both international and national level.

Based on what has been discussed above regarding the challenges as to ‘how’ and ‘to what extent’ international human rights standards and principles could inform and strengthen policy measures to adopt country strategies and policies, the last part of this section continues by outlining how international human rights law could be functional to develop and strengthen legal/policy measures in the climate change area at both international and national/local level.

In a UN report on the relationship between climate change and human rights, produced in 2009, it is argued that, “human rights standards and principles should inform and strengthen policy measures in the area of climate change” (2). In practice however, climate change mitigation and adaptation discourse has been largely silent about rights at both national as well as international level. The question is then how could human rights principles inform policy measures in the area of climate change?

The protection from adverse effects of climate change in a particular country is primarily (though not
exclusively) a national concern and relates to the protection from all types of climate change threats. From this perspective, human rights principles could function as a goal towards which national climate change policies could be striving. Human rights analysis and advocacy has always paid particular attention to those who are in the margins of society as a result of poverty, powerlessness, or systemic discrimination. An increased focus on human rights in the climate change perspective could also highlight the importance of analysing power relationships, addressing underlying causes of inequality and discrimination in a society.

One way to implement this idea could be to embed human rights criteria, transformed into concrete thresholds (minimum acceptable level of protection), when present and future harm of climate change is assessed. Such thresholds could clarify assessment of threats to basic social rights – water and food security, exposure to diseases, access to housing, shelter and land, availability of resources on which livelihoods depend and they could also be country specific related to the degree of development in each country. A threshold approach could facilitate the identification of vulnerability patterns in a specific country in relation to various scenarios but also policy measures available for handling identified climate change challenges to identify specific human costs across time and in different places. A threshold approach could also serve as the footing for a more specialised data collection at country level. Data collection and monitoring schemes focusing on human rights principles already exist both at an international and national level, but they would need to be developed or repackaged in a climate change perspective, including improved focus on the environmental determinants of human health (such as provision of water and sanitation), infectious disease surveillance, and strengthening the understanding of resilience of health care systems and in relation to emerging challenges in both urban and rural areas in relation to different patterns of vulnerability adaptive capacity as well as power. Such a use of human rights principles in the climate change area could help us understand if provincial and local governments, and eventually communities – are equipped to respond (socially, financially, technologically and institutionally) to adverse effects of climate change.

Human rights principles could also serve as a bridge-maker over fragmented legal and policy areas where adverse effects of climate change are addressed at the national level. As a bridge-maker or a framework human right principles can be used to think through the risks of climate change and the policy structures and mechanisms required to provide effective responses to those that most need them serving as a basis for a broad-based dialogue on burden sharing of a kind that has frequently lacked in climate change debates. One way, this could work in practice could be to mainstream human rights norms and standards into climate change related policy at the national level into for example, urban development, public health and work health policies. Mainstreaming is here understood as the “reorganization, improvement, development and evaluation of policy processes, so that a human rights perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policy-making” (52, p 1). Mainstreaming should not be seen as an end in itself but rather a strategy, an approach, to achieve the goal of considering human rights when developing future climate change policy. Mainstreaming in this case would involve the protection of human rights in all climate change activities - policy development, research, advocacy/ dialogue, legislation, resource allocation, and planning, implementation and monitoring of programmes and projects.

It is generally known that agreement between State and its citizens is especially important if policies involve sacrifice, the allocation of scarce resources, or government interference in the day-to-day dealings of ordinary people. Adverse effects of climate change will generate policy challenges in all these ways. It is therefore clear that securing public consent for programmes of adaptation or mitigation will be essential if they are to succeed. Human right standards and principles also provide an internationally-recognised and formally constructed framework and to some extent a body of practice that could helpful when designing consultation and decision-making processes and assessing the quality of public participation in adaptation and mitigation programmes. This is a framework that helps to underline the importance of efficient participation of individuals and communities in the decision-making the development of accountability mechanisms in relation to the implementation of measures and policies, focusing on the empowerment of marginalised and vulnerable members in society. Human rights principle could consequently toil to strengthen the development of existing or new administrative processes at both national international levels to reach targeted goals.
As mentioned earlier, the protection from adverse effects of climate change in a particular country is primarily a national concern, the same accounts for the protection of human rights. Nevertheless, hand in hand with the growing global strength of several companies, an interest in as well as a request for an increased responsibility of non-state actors has been raised, based on the argument that holding only states responsible for human rights violation may not be enough (53). In the context of climate change, it is well acknowledged that work conditions may be severely altered especially in the sectors of agriculture, construction and manufacturing. In these sectors an increasing amount of workers would need to work under extreme hot conditions leading to reduced work capacity as well as different types of health issues (54). The responsibility of business has also been addressed by the UN in the so-called Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (Guiding Principles), which were endorsed by the UN Human Rights Council in June 2011 (55). In this document it is argued that in relation to the adverse effects of climate change, it is essential that business also assume a bigger responsibility to protect Human Rights, especially in poorer countries, where the state has little possibility and / or knowledge to ensure that the intervening rules are applied for the protection of for example, the environment and workers’ health.

Even if climate change in an international law perspective is perceived as a global issue, its effects are geographically specific. Current models of the IPCC indicate that effects will not be evenly distributed and geographical locations being hit by the effects of climate change are not always the ones that have been causing it. There is consequently a social, geographical and intergenerational dimension to the causes and effects of climate change (13). Human rights standards underline as mentioned the need to prioritize access of all persons to at least basic levels of economic, social and cultural rights addressing vulnerability, injustices within a country. However human rights principles do not have any clear solutions to how to handle global injustice. The framework convention on climate change and its adjacent Kyoto Protocol have built in structures where the economic situation of signatory countries is taken into consideration and were countries with different levels of economic development have different responsibilities (the principle of Common but Differentiated Responsibilities). It is also generally argued that alleviation of poverty is an essential condition for successful adaptation to climate change (56). Human right norms could, if introduced into global climate change initiatives serve as guiding principles for how to develop a more just international climate change regime, including policy actions that are able to handle both economic injustices as well as the injustices related to the adverse effects of climate change of a specific country. This could strengthen the case for amending and improving relevant areas of international law (human rights) through its practical use in the climate change area through increasing pressure to review and re-organise international rights and duties. The encounter between climate change law and policy area and human right principles could hence have the potential to influence the human rights discourse by promoting the development of a new normative structure specific to climate change. It could also give a more concrete or new content to already existing rights through developing a stronger focus on the violation of basic needs at both substantial and procedural levels. This could influence the legal developments at both national and international level, to in a more conscious way include consideration of effects of climate change.

CONCLUDING REMARKS

This article attempted to inform on three points: the first was that climate change is undermining the realisation of a broad range of internationally protected human rights, above all, rights to life, health, food, water, shelter and property. The second was on the possibilities of and limits to using international human rights law and principles in limiting the adverse effects of climate change on such rights. Thirdly, the transformation process of international law into domestic law and policies in the construction of a right based national climate change regime.

The article illustrated first the immediate and likely human rights harms of climate change in order both to display the close linkages between climate change and its adverse human rights consequences and to identify the specific rights guaranteed under international law that are violated by climate change.

It can be concluded that human rights principles could be used to promote a right-based national climate change regime in six different ways. They could serve as; a goal towards which we should develop climate change policies, a basis for a new approach towards how to package and collect data on adverse effect, a devise for developing integrated policies in the area of climate change both targeting states but also, broadening the responsibility towards non-state actors, strengthening the focus on procedural rights as well as indirectly promote the development of international law in the area of climate justice which in a longer run could strengthen the national climate change governance.
The need to understand at what temperature increase we might expect severe droughts to occur or sea-levels to rise is well acknowledged. In this article we conclude that it is not less important to learn, who these events will affect and where precisely; what institutional or other support is available; and how this support might be strengthened. Human rights law and principles is relevant, not only because climate change causes human rights violations, but also a human rights lens can provide a framework to reconstruct and manage climate change regime, in both core policy areas, adaptation to and mitigation of human induced climate change, which may lead to better policy responses regarding climate change related violated human rights.

Employing human rights in climate change area could provide several benefits to facilitate the implementation of defined goals. It could add considerable normative power to arguments in favour of strong mitigation and adaptation policies and ensure that mitigation and adaptation policies take account of human rights consequences from the outset to decrease the possibility that we develop future policies undermining human rights. A human rights focus could also help to pinpoint areas where climate change will have direct and indirect human rights impacts, and in that way help to target where there is a need to focus and sharpen policy- making on climate change. This point is particularly important in a number of areas where climate sensitive climate change scenarios could identify the threats to basic rights, such as right to health, food and water security, and access to housing, especially for the most vulnerable groups and allocate the maximum of the available resources to protect and fulfill those rights (57). In each of these areas, human rights-sensitive climate change scenarios could help to locate risks and to assess the existing base of institutions and resources for mitigating those risks. Such an risk assessment may in turn draw attention to policy gaps, prod states to take action individually or collectively; tease out complex questions of liability and accountability; or provide an opportunity for detailed discussion of the allocation of benefits and burdens under a given climate change policy.

A human right perspective would also help to formulate a detailed research agenda needed to inform the development of more overarching climate change policy options, including both strategies for mitigation and adaptation, an approach that would involve thinking through the long-term human rights impacts of policy choices, already on the table. We already know that more research would be needed on a wider spectrum of health risks and key health determinants, including climate change-related social, demographic, and economic disruptions. And such research may provide valuable input to policy debates and help to identify priorities for future adaptive strategies both in relation to what to prioritise as well as in relation to processes of managing adverse effects of climate change.

Addressing the first five areas could be seen as a first step to strengthen climate change law and policy and increase our understanding of the linkages between human rights and climate change law and policy. As second step the sixth issue, promote the development of international law could be addressed which is outside the scope of this text. This should include development of the legal philosophy around the right to environment and environmental justice to strengthen conceptual clarity, which in turn could help with the normative development in this area (towards positive law). The development of the seventeen UN sustainable development goals could be seen as one step in this direction, as they highlight the relation between basic rights and the environment in the context of development (58). It is however too early to say in what way they could assist in producing any substantial change but any reframing of a topic has the potential to serve as a new start for new governance approaches to tackle an policy issue.

To sum up, it can be held that introducing human rights discourse into climate change by invoking already adopted international human rights standards at substantive and procedural levels can open up new roads. International human rights standards may also offer guidance to governments, as to how they should engage in climate change decision-making, partly due to high level of legitimacy human rights discourse enjoy. However, it is also important to remember that human rights obligations may only play a complementary role in limiting the adverse effects of climate change, due to the fact that finding solutions to climate change, at the end of the day, is a matter of choice of politics and economics as to how we will continue to live.
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