

# Characterising Climate Change As A Human Rights Issue

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## I Introduction

As the link between climate change and human rights becomes more evident,<sup>1</sup> calls to consider the issue in a human rights context are getting louder. The human rights implications of climate change are significant, and the relationship between the two has been examined by the UN Human Rights Council and the High Commissioner for Human Rights. This paper argues that a human rights framework offers a broader-reaching vision and direction to the problem,<sup>2</sup> and advocates that to ignore a human rights framework in this debate would deeply impoverish the environmental agenda.

Traditionally, the human rights of climate change have been divided into two approaches. The first is the creation of a distinct right to environmental health enshrined in one of the existing international human rights instruments. This approach is not the focus of this paper. The second approach is a 'green' interpretation of existing human rights, recognising that substantive rights guaranteeing food, health and adequate housing are threatened by extreme weather. This 'green' view extends to procedural rights that need to be protected to pursue the issue, including the right to free speech to engage in a genuine climate change debate.<sup>3</sup>

This paper first explores how a human rights approach to climate change would contrast with the existing framework, then addresses the latter two of these traditional arguments – the 'green' interpretation of existing rights. There is a brief examination of substantive rights

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<sup>1</sup> The UN's statements on human rights and the environment date back to as early as 2003 and include *Human Rights and the Environment*, HRC Res 19/10, UN HRCOR, 19<sup>th</sup> sess, 53<sup>rd</sup> mtg, UN DOC A/HRC/RES/19/10 (19 April 2012), one of the definitive resolutions on the topic, lists the following additional resolutions: 2003/71 of 25 April 2003, 2005/60 of 20 April 2005, 7/23 of 28 March 2008, 9/1 of 24 September 2008, 10/4 of 25 March 2009, 12/18 of 2 October 2009, 16/11 of 24 March 2011, 18/11 of 29 September 2011 and 18/22 of 30 September 2011.

<sup>2</sup> Stephen Tully, 'The Contribution of Human Rights as an Additional Perspective on Climate Change Impacts Within the Pacific' (2007) 5 *New Zealand Journal of Public and International Law* 169, 182.

<sup>3</sup> Sara Aminzadeh, 'A Moral Imperative: The Human Rights Implications of Climate Change' (2007) 30 *Hastings International and Comparative Law Journal* 231, 245.

vulnerable to climate change; this is a fundamental aspect of the argument, and therefore has already received significant scholarly attention. While it would be remiss to ignore it entirely, this essay does not add to the existing literature on this point in great depth. The final part of the paper discusses the class of rights identified by the United Nations as ‘procedural’, empowering people to tackle climate change in a human rights context. Ultimately, each part of this paper bolsters the overall argument that a human rights approach offers real hope for the international community to finally take meaningful action on climate change.

## II New Approach

To date, climate change has been analysed in economic, technical and ecological dimensions.<sup>4</sup> Aside from litigation based on domestic environmental laws,<sup>5</sup> climate change issues have resided in the sphere of international environmental law.<sup>6</sup> In contrast, a human rights framework could address everything missing from that equation – ‘environmental impacts on the life, health, private life, and property of individual humans rather than on other states or the environment in general’.<sup>7</sup>

Without a global context of a human rights framework that crosses borders, developed countries are only mobilising to fulfil their own commitments under the *United Nations*

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<sup>4</sup> Mostafa Mahmud Naser and Tanzim Afroz, 'Human Rights Implications of Climate Change Induced Displacement' (2009) 21(3) *Bond Law Review* 139, 140; see also Aminzadeh, above n 2; Meinhard Doelle, 'Climate Change and Human Rights: The Role of the International Human Rights in Motivating States to take Climate Change Seriously' (2004) 1(2) *Macquarie Journal of International and Comparative Environmental Law* 179.

<sup>5</sup> Aminzadeh, above n 2, 234.

<sup>6</sup> Stephen Tully, 'Like Oil and Water: A Sceptical Appraisal of Climate Change and Human Rights' (2008) 15 *Australian International Law Journal* 213, 215.

<sup>7</sup> Alan Boyle, 'Human Rights and the Environment: Where Next?' (2012) 23 *European Journal of International Law* 613, 613.

*Framework Convention on Climate Change*.<sup>8</sup> An advantage of a human rights framework is that government obligations apply not just to citizens of the state in question, but also non-nationals.<sup>9</sup> The drawback, of course, is that states do not owe human rights obligations to individuals beyond their own territory,<sup>10</sup> making jurisdictional issues a major criticism of the approach, particularly as environmentally corrosive acts of one state spread easily to others through air or water, and existing human rights instruments define their jurisdiction in various parameters.<sup>11</sup> To counter this, many UN materials recognise that climate change concerns require global co-operation,<sup>12</sup> and calling on international co-operation is natural within the network of human rights – but not so natural for a state-to-state economic problem. The great advantage of this is access to a rich history of laws, obligations and language codified in various human rights instruments that countries are already party to.<sup>13</sup> Additionally, this utilises the vast human rights agencies for monitoring and enforcement, as they are much more developed than their environmental counterparts.<sup>14</sup> Furthermore, because all government organs have obligations under international law in relation to climate change,<sup>15</sup> incorporating human rights empowers the judiciary to rely on human rights law in arbitrating environmental rights. Examples have already emerged in Europe, where courts used language

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<sup>8</sup> *United Nations Framework Convention on Climate Change*, opened for signature on 4 June 1992, 1771 UNTS 107 (entered into force 21 March 1994) (“*UNFCC*”); Tully, ‘The Contribution of Human Rights’, above n 3, 179.

<sup>9</sup> Naser and Afroz, above n 4, 150.

<sup>10</sup> Tully, ‘Like Oil and Water’, above n 6, 220.

<sup>11</sup> John H Knox, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, preliminary report, UN Doc A/HRC/22/43 (24 December 2012) 16 [48].

<sup>12</sup> *UNFCC*, preamble.

<sup>13</sup> Naser and Afroz, above n 4, 152.

<sup>14</sup> Aminzadeh, above n 2, 259.

<sup>15</sup> John von Doussa, Allison Corkey and Renee Chartres, ‘Human Rights and Climate Change’ (2007) 14 *Australian International Law Journal* 161, 168.

from the European Human Rights Convention in deciding cases that deal with the environment and human rights.<sup>16</sup>

Certainly, complications can occur in the evidentiary burden of linking climate change to particular human rights violations and particular states,<sup>17</sup> as well as state intervention options, jurisdictional issues, litigation strategies and specific remedies.<sup>18</sup> The existing approach's advantage is underpinned by tort and administrative law, which offers a domestic framework, and litigation has offered community relief, increasing public awareness and executive action, despite little progress in actually stemming climate change.<sup>19</sup>

When the human rights instruments emerged, environmental rights were not factored in, and the link between human actions, human dependence on the environment and degradation of that environment were not well understood.<sup>20</sup> Therefore, to make use of the existing legal system of human rights, treaties would need to be 'reinterpreted in a fashion not envisaged at the time when they were negotiated'.<sup>21</sup> However, this process is already underway, and combining the human rights approach with the existing international environmental law framework could at least produce greater interest and urgency in a political debate that has become stagnant.<sup>22</sup> The political value of a human rights approach cannot be overstated – by

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<sup>16</sup> See Margaret DeMerieux, 'Deriving Environmental Rights from the European Convention for the Protection of Human Rights and Fundamental Freedoms' (2001) 21 *Oxford Journal of Legal Studies* 521 – DeMerieux argues that the common practice of using human rights law in environmental cases shows that there do not need to be explicit additions of environmental rights to the Convention, a discussion that is related to, but ultimately beyond the scope of, this essay.

<sup>17</sup> Boyle, above n 7, 618.

<sup>18</sup> Aminzadeh, above n 2, 264.

<sup>19</sup> For a deeper critique of the human rights approach, see Tully, 'Like Oil and Water', above n 6.

<sup>20</sup> John H Knox, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, preliminary report, UN Doc A/HRC/22/43 (24 December 2012) 4 [7]; Aminzadeh, above n 2, 259; Doussa, Corkey and Chartres, above n 15, 163.

<sup>21</sup> Lavanya Rajamani, 'The Increasing Currency and Relevance of Rights-Based Perspectives in the International negotiations on Climate Change' (2010) 22 *Journal of Environmental Law* 391, 406; Tully, 'Like Oil and Water', above n 6, 218.

<sup>22</sup> Aminzadeh, above n 2, 258.

giving a 'human face'<sup>23</sup> to the issue, a moral imperative could substantially increase international scrutiny.<sup>24</sup> Human rights violations sound much graver, politically, than environmental harm, and, whereas environmental regulations can easily be amended, human rights exist on an 'inviolable' pedestal.<sup>25</sup> In such a framework, claims become 'entitlements' that are owed by states to people,<sup>26</sup> forcing governments to act on climate change, despite the economic or technical burdens, or competing requests for resources that are limited.<sup>27</sup> There is a counter-argument suggesting that climate change issues take away from 'real' human rights like freedom from torture, but such claims are difficult to prove, and indeed, new debate and jurisprudence in one area of human rights tends to enrich the entire body.<sup>28</sup> This suggests that the power of discussing climate change is not simply in expanding a legally defined concept, but also in mounting political pressure based on a moral imperative, particularly from developing states and vulnerable groups within a state. Simply put, 'its utility is rhetorical rather than juridical',<sup>29</sup> and that is an important point, as it spans changes in government regimes and the economy. In contrast to the current approach, a rights context humanises the issue, recasts state obligations as harder to escape, encompasses a rich tradition of law and a sophisticated network of implementation and enforcement bodies, and calls for international co-operation for an international issue.

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<sup>23</sup> Doussa, Corkey and Chartres, above n 15, 173.

<sup>24</sup> Aminzadeh, above n 2, 260; Tully, 'Like Oil and Water', above n 6, 216.

<sup>25</sup> Tully, 'Like Oil and Water', above n 6, 217.

<sup>26</sup> Tully, 'The Contribution of Human Rights', above n 3, 187.

<sup>27</sup> Doussa, Corkey and Chartres, above n 15, 173; Tully, 'The Contribution of Human Rights', above n 3, 184. It is curious to consider how this approach would have affected the argument of Australia and the Kyoto Protocol.

<sup>28</sup> Aminzadeh, above n 2, 263.

<sup>29</sup> Boyle, above n 7, 618-9.

### III Substantive Rights

Discussion of substantive rights and climate change generally focuses on a *new* specific right to healthy environment, or on already recognised rights which are strained by climate change.<sup>30</sup> As to the former approach, any human rights context emphasises the value of the environment to humans, rather than assigning value to the environment of itself or recognising that ‘the environment possesses rights derived from its own intrinsic value, distinct from human use of the environment’.<sup>31</sup> However, this paper focuses on the already recognised basic human rights that are reliant on a healthy environment – this method can force action immediately, rather than hoping to one day realise a new right, or the environment’s own rights. Insofar as enjoyment of human rights depends on a ‘supportive environment’,<sup>32</sup> all human rights are subject to climate change and many rights violations can be traced back to the effects of climate change.<sup>33</sup>

However, those most oft mentioned as particularly susceptible are those with a clearer chain of evidence, and they are already widely known and discussed, so they will not be addressed at length in this paper.<sup>34</sup> Briefly, they are contained in articles 11 and 12 of the *International Covenant on Economic, Social and Cultural Rights* (“ICESCR”)<sup>35</sup> and article 6 of the

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<sup>30</sup> John H Knox, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, preliminary report, UN Doc A/HRC/22/43 (24 December 2012) 5 [11], 7 [51].

<sup>31</sup> Aminzadeh, above n 2, 263; see also John H Knox, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, preliminary report, UN Doc A/HRC/22/43 (24 December 2012) 17 [53].

<sup>32</sup> John H Knox, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, preliminary report, UN Doc A/HRC/22/43 (24 December 2012) 7 [19]; for a full discussion of UN statements and resolutions affirming which human rights are susceptible to climate change, see 7 – 9 [18] – [24] of the same document.

<sup>33</sup> Hurricanes destroying schools and thus the right to an education; see Naser and Afroz, above n 4, 144.

<sup>34</sup> For a detailed discussion on the particular rights in question, see, e.g., Naser and Afroz, above n 4, 145-9; Doussa, Corkey and Chartres, above n 15, 164-8; Aminzadeh, above n 2, or any of the other countless scholarly articles on climate change and human rights.

<sup>35</sup> *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 November 1976) (“ICESCR”).

*International Covenant on Civil and Political Rights* (“*ICCPR*”),<sup>36</sup> as well various articles of the *Universal Declaration of Human Rights* (“*UDHR*”).<sup>37</sup> The specific rights include the right to an adequate standard of living, including the explicit right to food<sup>38</sup> and an implicit right to water, and a right to health.<sup>39</sup> Climate change affects the supply of goods needed for these rights to be met,<sup>40</sup> with extreme weather such as droughts, floods and fires creating ‘food insecurity, scarcity of water, reduced agricultural production, population pressures, unequal access to resources, poverty [and] break-out of epidemics’.<sup>41</sup> Malnutrition from destroyed crops, and disease from destroyed infrastructure and access to sanitation<sup>42</sup> lead directly back to article 6 of the *ICCPR*, the right to life.

A crucial aspect of climate change is that it disproportionately affects the developing nations and the global poor,<sup>43</sup> making the human rights framework even more important. Extreme weather is likely to exacerbate ‘pre-existing stresses in vulnerable regions in the world’,<sup>44</sup> including shortages of food, water and medical supplies. Developing and low-lying island countries, like the Pacific Islands, are particularly at risk from weather phenomena such as rising sea levels (the gradual loss of territory will eventually destroy these countries),<sup>45</sup> raising the question of what to do with their populations. Here, the phrase ‘climate change refugee’

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<sup>36</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (“*ICCPR*”).

<sup>37</sup> *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3<sup>rd</sup> sess, 183<sup>rd</sup> plen mtg, UN Doc A/810 (10 December 1948).

<sup>38</sup> Explicit in article 11 of the *ICESCR* is the fundamental right to be free from hunger, and the article specifically mentions terms such as *nutrition, clothing and housing*, as well as *the continuous improvement of living conditions*.

<sup>39</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No 12: On the Right to Adequate Food*, UN Doc, E/1999/5 (1999) confirms that the right to health cannot be met without a healthy environment.

<sup>40</sup> Rajamani, above n 21, 392.

<sup>41</sup> Naser and Afroz, above n 4, 139.

<sup>42</sup> Tully, ‘Like Oil and Water’, above n 6, 216.

<sup>43</sup> *Human Rights and Climate Change*, HRC Res 7/23, UN HRCOR, 41st mtg, UN Doc A/HRC/Res/7/23 (28 March 2008); Rajamani, above n 21, 392.

<sup>44</sup> Naser and Afroz, above n 4, 139.

<sup>45</sup> See, e.g., Tully, ‘The Contribution of Human Rights’, above n 3; *UNFCCC*, preamble.

has emerged, and though this is not specifically explored in this paper,<sup>46</sup> it does provide a further demonstration of how climate change impacts human rights, and therefore, how human rights frameworks need to be involved in the dialogue. Similarly, the climate change impact on cultural minorities, and particularly indigenous peoples who have closer connections to territory, is better addressed with a human rights framework, where an argument for redress under article 27 of the *ICCPR* could be made.<sup>47</sup> The indigenous population in the Amazon rely significantly on the resources of that region and are highly vulnerable to its destruction, much more so than the population of greater Brazil.

A human rights context helps identify exactly where states should focus their attention. Compensation and relocation are the most oft-identified remedies to climate change-related rights violations, and both raise their own concerns of calculation and source of payment, and of relinquishing one right to maintain another, respectively.<sup>48</sup> However, regardless of the cause of the human rights violations, the obligations of the articles upon states are positive.<sup>49</sup> That means the state has more than a negative obligation not to cause death, but rather to actively prevent it – a key argument to adopt this framework.

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<sup>46</sup> See, e.g., David Keane, 'The Environmental Causes and Consequences of Migration: A Search for the Meaning of "Environmental Refugees"' (2004) 16 *Georgia International Environmental Law Review* 209.

<sup>47</sup> *ICCPR* art 27 guarantees the rights of Indigenous minorities.

<sup>48</sup> These are particularly complex issues, warranting a depth of discussion that this paper cannot provide, but see Tully, 'Like Oil and Water', above n 6,.

<sup>49</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No 3: On the Nature of State Parties' Obligations*, UN Doc, E/1991/23 (1990). The positive nature of the obligation to protect rights, rather than merely a negative obligation not to infringe upon them, is long-standing and has been confirmed several times by the European Court of Human Rights – for a good description of some of the relevant cases, see Doussa, Corkey and Chartres, above n 15, 169.

#### IV Procedural Rights

This UN-designated class of rights that, when exercised, help protect the substantive rights discussed earlier,<sup>50</sup> are crucial to environmental care. A human rights framework in this respect encourages accountability, transparency and input, especially from marginalised populations,<sup>51</sup> and in turn creates policies that are more responsive and better informed.<sup>52</sup> This field has attracted less scholarly attention, and is largely pushed by the UN itself. The rights in question are enshrined in the *ICCPR* and the *UDHR* – freedom of expression and association, the right to legal remedies and to receive information and participate in decision-making, as well as obligations on states to investigate and study an issue as part of the decision-making process, and give the public access to those findings.<sup>53</sup> Although the instruments do not tie these rights to environmental issues specifically, they protect exercising those rights for any ends, including climate change.<sup>54</sup> Exercise of these rights helps ensure ‘governance structures that enable society to adopt fair decision-making processes with respect to environmental issues’<sup>55</sup> especially by encouraging the voices of those worst affected.

Two other instruments are particularly relevant. The first is the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally*

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<sup>50</sup> John H Knox, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, preliminary report, UN Doc A/HRC/22/43 (24 December 2012) 6 – 7 [16].

<sup>51</sup> Doussa, Corkey and Chartres, above n 15, 171.

<sup>52</sup> John H Knox, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, preliminary report, UN Doc A/HRC/22/43 (24 December 2012) 10 [25].

<sup>53</sup> John H Knox, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, preliminary report, UN Doc A/HRC/22/43 (24 December 2012) 14 [41]; see also *Taşkin and Others v Turkey* (2006) 42 EHRR 50, 119.

<sup>54</sup> *Ibid* 10 [26].

<sup>55</sup> UN High Commissioner for Human Rights, *Analytical Study on the Relationship between Human Rights and the Environment*, UN Doc A/HRC/1b9/34 (16 December 2011) [8].

*Recognized Human Rights and Fundamental Freedoms*,<sup>56</sup> which guarantees the right to seek, obtain and disseminate information about human rights, draw attention to their observance, meet to promote and protect human rights, have access to government, and have access to remedies for violations. The second is the *1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (“*Aarhus Convention*”), which works to promoting ‘environmental democracy’,<sup>57</sup> and focuses on ‘public participation in environmental decision-making and access to justice and information’.<sup>58</sup> It notes a requirement for adequate remedies and the right for all decision-making participants to seek administrative or judicial review of resulting decisions, as well as empowering individuals to bring forth complaints and encouraging participation in decision-making by those who are likely to be affected.<sup>59</sup> The *Aarhus Convention* also provides for the involvement of NGOs,<sup>60</sup> which have long been fixtures in the human rights debate often have greater success in public interest legislation and enforcement than individuals or states.<sup>61</sup> Giving standing to NGOs in climate change has proven successful, as seen in the Inuit cases in the Inter-American Commission on Human Rights.<sup>62</sup>

These procedural rights encourage better policy-making, which reflects the views of those most at risk, enabling policy-makers to more thoroughly protect substantive rights from

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<sup>56</sup> *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, GA Res 53/133, UN GAOR, 53<sup>rd</sup> sess, UN Doc A/RES/53/144 (8 March 1999).

<sup>57</sup> Boyle, above n 7, 622, attributes this phrase to former UN Secretary-General Kofi Annan.

<sup>58</sup> Boyle, above n 7, 622.

<sup>59</sup> *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, opened for signature on 25 June 1998, 2161 UNTS 447 (entered into force 30 October 2001) (“*Aarhus Convention*”) arts 6, 9(3), (4), 15.

<sup>60</sup> *Aarhus Convention* arts 4, 6, 9.

<sup>61</sup> Boyle, above n 7, 626.

<sup>62</sup> Aminzadeh, above n 2, 240; see also Doelle, above n 4.

climate change.<sup>63</sup> The focus is on individuals as having rights, and states having an obligation to allow those affected by rights violations to partake in the process of conciliation.<sup>64</sup> By incorporating universal procedural human rights to a human rights problem that disproportionately affects the vulnerable, the new framework ensures that the voices of the marginalised will be considered.<sup>65</sup> In doing so, the framework recognises that empowering groups and individuals to participate is a crucial first step, giving an opportunity for all to influence 'the balance of environmental, social, and economic interests'.<sup>66</sup>

Of equal relevance are protections that procedural rights provide to human rights and environmental defenders, who are at risk of assaults, threats and murder from state and non-state actors when attempting to exercise rights such as free speech in relation to the environment.<sup>67</sup> These threats are real and evident in developed and developing countries around the world.<sup>68</sup> In 1999, anti-logging environmentalists Rodolfo Montiel and Teodoro Cabrera were arrested in Mexico and allegedly beaten and tortured on fabricated charges. Dai Qing, a journalist and activist against the Three Gorges Dam in China, was imprisoned for just under a year. Sister Dorothy Stang, an activist for protection of the Amazon, was shot and killed in 2005. The net result of this is serious, to say the least:

Needless to say, the primary effect of these human rights violations is felt by the individuals and communities who suffer from them. But the violations also have secondary effects on the environment that the individuals were trying to protect

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<sup>63</sup> John H Knox, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, preliminary report, UN Doc A/HRC/22/43 (24 December 2012) 10 [25], 12 [34].

<sup>64</sup> Doussa, Corkey and Chartres, above n 15, 174.

<sup>65</sup> Naser and Afroz, above n 4, 152.

<sup>66</sup> Boyle, above n 7, 625.

<sup>67</sup> See Margaret Sekaggya, *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, UN Doc A/HRC/19/55 (21 December 2011) [64] - [92]. The report describes death threats, assaults, kidnappings and even killings of human rights defenders perpetrated by state and non-state actors.

<sup>68</sup> Russia's Grigory Pasko, a journalist who reported on dumping of radioactive waste by Russia was convicted of treason and sentenced to four years in prison. Korea's Yul Choi endured house arrest after speaking on nuclear waste disposal. India's Medha Patkar, an anti-dam activist, was arrested and beaten. Kenya's Nobel Peace Prize winning environmentalist Wangari Maathai has faced repeated beatings and imprisonments.

and on all of those whose full enjoyment of human rights depends upon that environment.<sup>69</sup>

Connecting procedural rights in a human rights-climate change context creates a self-fulfilling system: protecting procedural rights encourages better policies, which in turn protect substantive rights, whereas failing to protect procedural rights results in the opposite.<sup>70</sup> This nexus shows that tackling climate change in a human rights context focuses not just the individual's right to a healthy environment, but also the power of the individual to ensure these rights are met. Incorporating a human rights framework on climate change opens up procedural human rights as tools to address the environment.<sup>71</sup>

## V Conclusion

This paper has sought to address the implications of considering climate change in a human rights paradigm. Despite sceptics of climate change continuing to insist that it does not affect human rights, or those who argue that conjuring upon new human rights merely confuses the broader social issue of climate change,<sup>72</sup> international law cases<sup>73</sup> and the UN<sup>74</sup> have repeatedly confirmed the connection.

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<sup>69</sup> Margaret Sekaggya, *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, UN Doc A/HRC/19/55 (21 December 2011) in John H Knox, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, preliminary report, UN Doc A/HRC/22/43 (24 December 2012) 10 – 11 [28].

<sup>70</sup> John H Knox, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, preliminary report, UN Doc A/HRC/22/43 (24 December 2012) 13 [40], 14 [42].

<sup>71</sup> UN High Commissioner for Human Rights, *Analytical Study on the Relationship between Human Rights and the Environment*, UN Doc A/HRC/19/34 (16 December 2011) [8].

<sup>72</sup> Doussa, Corkey and Chartres, above n 15, 163.

<sup>73</sup> *Ibid*, 169 describes several of these cases.

<sup>74</sup> *Human Rights and Climate Change*, HRC Res 7/23, UN HRCOR, 41st mtg, UN Doc A/HRC/Res/7/23 (28 March 2008).

Certainly, criticisms of the new approach remain, particularly that such an approach may ignore environmental concerns that do not relate directly to humans.<sup>75</sup> However, as climate change increasingly affects human rights, there is cause to at least restart the debate, and eventually work towards a broader solution. And in the meantime, safeguarding human rights from climate change needs to be at the forefront of climate change solutions.<sup>76</sup> By utilising a vast existing framework of legal and procedural mechanisms, the avenues for redress of violations increase dramatically in a human rights context rather than merely the existing context. The added political pressure, as well as a focus on procedural rights that complement the substantive rights, clarifies the debate, enlivens it, and broadens its participants to include those who are most affected but previously had the least input.

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<sup>75</sup> John H Knox, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, preliminary report, UN Doc A/HRC/22/43 (24 December 2012) 17 [53].

<sup>76</sup> *Human Rights and the Environment*, HRC Res 19/10, UN HRCOR, 19<sup>th</sup> sess, 53<sup>rd</sup> mtg, UN DOC A/HRC/RES/19/10 (19 April 2012); Naser and Afroz, above n 4, 149.