



# Protest, Climate Emergency and International Human Rights – Part II

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## TRANSCRIPT

In Part I of this Blog we examined recent massive demonstrations relating to numerous matters in different parts of the World. In particular, we examined those demonstrations relating to climate change, or global warming to be more accurate, and considered how such change presents challenges for the traditional approach of human rights law. That is, a State must be responsible for there to be a breach of human rights. The question, however, is how or when is a State responsible for the consequences of climate change on its territory for breaches of internationally recognised and protected human rights? In Part I of the blog we queried could, for example, Maldives be responsible for the displacement of its population when it is submerged under the sea in the next 20-30 years as it almost certainly will be? These are not questions that can be answered with traditional approaches.

As was noted in Part I of this Blog, in September 2019 five UN Human Rights Treaty Bodies, also known as committees, issued a joint statement on human rights and climate change. The Treaty Bodies involved were: the Committee on the Elimination of Discrimination Against Women; the Committee on Economic, Social and Cultural Rights; the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families; the Committee on the Rights of the Child; and the Committee on the Rights of Persons with Disabilities. Mary Robinson, who previously served as the President of Ireland and the United Nations High Commissioner for Human Rights and who had been the Special Envoy of the Secretary-General of the United Nations on Climate Change, has called climate change the greatest threat to human rights in the twenty-first century. This is an alarming but not overstated position to adopt. In 2016 the UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment issued a report (A/HRC/31/52) which set out some key observations. It was noted in that report that climate change threatens the full enjoyment of a wide range of rights, including the rights to life, health, water, food, housing, development and self-determination. The following examples illustrate the pressing nature of the issue. As average temperatures rise, death, injuries and displacement of persons from climate-related disasters such as cyclones increase, as do mortality and illness from heat waves, drought, disease and malnutrition. The greater the increase in average temperature, the greater the detrimental effects on human rights. The foreseeable consequences of a 2°C rise in average global temperature (which most scientists agree is now probable) are dramatic. Climate change will compound the problem of access to safe drinking water, currently denied to about 1.1 billion people. It has been estimated that about 8 per cent of the global population will see a severe reduction in water resources with a 1°C rise in the global mean temperature, rising to 14 per cent at 2°C. If you wish to put that into perspective, 14 per cent is a billion people who will not have the access to the fresh water they do now. With respect to the right to food, climate change is already impairing the ability of some communities to feed themselves, and the number affected will grow as temperatures rise. If there is less fresh water and rain, there will be a direct impact

on the production of major crops, such as wheat, rice and maize, in both tropical and temperate regions. These three crops are the staple for the diet of billions. So, the threat is imminent and severe.

The UN Human Rights Treaty Bodies working in isolation have previously referred to climate change and the consequences for protected rights under specific treaty regimes. The Women's Committee, for example, adopted CEDAW General Recommendation 37 in 2018 on climate change and its disproportionate impact upon women and girls. Similarly, there is the statement of the Committee on Economic, Social and Cultural Rights on Climate Change and the Covenant also adopted in 2018. This noted that human rights mechanisms have an important role to play in ensuring that States avoid taking measures that could accelerate climate change, and that they dedicate the maximum available resources to the adoption of measures aimed at mitigating climate change.

In a similar manner to how human rights can be used a prism to focus on global poverty and seek its eradication, so they can also be used to focus on global warming. So how does the Statement of the five UN Treaty Bodies (the Committees) address the key question of climate change and its relationship with the protection of human rights? Well, the short answer is the joint statement does not offer a radically new approach to rights and responsibility. But how can it? But the operative parts of the joint statement are key. First, the statement recognises that the risk of harm to human rights from climate change is particularly high for those segments of the population already marginalised or in vulnerable situations. Thus, those who already suffer discrimination and other pre-existing inequalities. Such persons, who have limited access to decision-making or resources, include women, children, persons with disabilities, indigenous peoples and persons living in rural areas. Children, for example, are particularly at heightened risk of harm to their health, due to the immaturity of their body. Some scientists have already illustrated that rates of asthma, caused by pollution, among children have rocketed in recent years. Second, the joint statement requires those who are marginalised and most likely to be affected by climate change to be involved in decision-making around policy and decision-making at the national level. So, a key issue is to avoid the compounded impact upon the marginalised.

The most important operative part of the statement relates to States' human rights obligations. Under the five treaties, State parties have obligations, including extra-territorial obligations, to respect, protect and fulfil all human rights of all peoples. The statement makes clear that a failure to take measures to prevent *foreseeable* human rights harm caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States' human rights obligations. The statement notes that for States to comply with their human rights obligations, and to realize the objectives of the Paris Agreement, they *must* adopt and implement policies aimed at reducing emissions, which reflect the *highest possible ambition*, foster climate resilience and ensure that public and private investments are consistent with a pathway towards low carbon emissions and climate resilient development. Further, as part of international assistance and co-operation towards the realisation of human rights, high-income States are required to support adaptation and mitigation efforts in developing countries, by facilitating transfer of green technologies, and by contributing to financing climate mitigation and adaptation. In addition, States must co-operate in good faith in the establishment of global responses addressing climate-related loss and damage suffered by the most vulnerable countries, paying particular attention to safeguarding the rights of those who are at particular risk of climate harm.

These obligations are interesting but they are also difficult to pin down and identify. What is foreseeable for example, and the highest possible ambition and how will private investments be

regulated? Further, on what basis will high income States transfer green technologies? Do high income States have to transfer at cost, for example, and will the intellectual property rights of private entities be respected? All of these matters will have to be determined in time. Legally speaking, reference to the Paris Agreement on climate change is interesting and how the different Committees approach this over time will be fascinating. The Committees have to refer to the treaties that establish them and not to other instruments that exist out there. What will happen in the Committees remains to be seen but the first determined steps have been taken to address what is clearly going to be one of the, if not the, most pressing human rights issue of our time. It is little surprise that demonstrations on a global level against climate change are still spreading.