

Human Rights and Climate Change: Shifting the Burden to the State?

Anne Parsons

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/sdlp>



Part of the [Environmental Law Commons](#), and the [Human Rights Law Commons](#)

Recommended Citation

Parsons, Anne. "Human Rights and Climate Change: Shifting the Burden to the State?" *Sustainable Development Law & Policy*, Winter 2009, 22, 68.

This Feature is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in *Sustainable Development Law & Policy* by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

HUMAN RIGHTS AND CLIMATE CHANGE:

SHIFTING THE BURDEN TO THE STATE?

by Anne Parsons*

In March 2008, the United Nations Human Rights Council passed Resolution 7/23 requesting intergovernmental and international organizations to conduct “a detailed analytical study on the relationship between climate change and human rights.”¹ Resolution 7/23 is indicative of the recent global trend that incorporates a human rights framework in climate change mitigation and adaptation policies.²

Underlying the human rights approach to climate change is the notion that vulnerable populations that contributed little to the stocks of carbon emissions that cause global warming, should not have to bear the brunt of the burden in addressing global climate change.³ Correspondingly, protecting human rights will better enable individuals and communities to take steps to adapt on their own.⁴ Under a human rights framework, the state is traditionally the duty-bearer, and advocates of a rights-based approach to climate change urge governments to integrate climate change concerns into existing development policies and set minimum human rights thresholds around which new mitigation and adaptation policies can be developed.⁵ While the rights-based approach to climate change raises many useful methodological insights, it also raises a fundamental question: how will states that currently lack the resources or political will to fulfill basic human rights tackle the problem of climate change?

The essential hope of orienting climate policy around human rights is that this orientation will generate moral and legal force within the global climate change regime.⁶ To start, it distinguishes between “perpetrators” of climate change and “victims” of climate change.⁷ This framing of the relationship has two key advantages from a human rights perspective. First, it highlights litigation as a viable mechanism for holding reluctant-to-change developed nations accountable to their climate change commitments.⁸ Second, it also helps provide new impetus for wealthier nations to assist vulnerable states to adapt by providing resources and technology.⁹ For example, to date, few wealthy countries have met the agreed international aid target for adaptation funding, which currently stands at 0.7% of Gross Domestic Product.¹⁰ In contrast, one study estimated the financing needed for “immediate ‘climate proofing’” at between US\$1.1 billion and US\$2.2 billion for least developed countries.¹¹

At the national level, the logistics of implementing a rights-based climate change policy are tricky. A rights-based approach to climate change takes universally accepted human rights norms as minimum thresholds by which to gauge the effects of climate change and direct adaptation funding to where it is most needed.¹² At the same time, these thresholds ensure that the policies implemented by governments to address the effect of

climate change do not themselves infringe upon human rights.¹³ A recent total ban on charcoal in the West African country of Chad exemplifies the latter point: the government’s response to the pressing problem of deforestation has been widely criticized as overly harsh by the public and human rights activists alike.¹⁴ Paradoxically, then, a human rights approach to climate change may be hardest to implement in the countries that need it most.¹⁵ If a government of a resource-poor state faces a pressing environmental concern, the state’s only viable option within the human rights framework may be to appeal to the international community for aid.

Ultimately then, whether the human rights framework for climate change offers anything new to the states most vulnerable to climate change depends on those states’ ability to leverage this discourse in negotiations vis-à-vis the international community. This will require these states to invoke human rights discourses in new ways, since human rights have traditionally been concerned with the state-individual relationship.¹⁶ In the past, climate change negotiations have marginalized resource-poor countries in need of adaptation funding.¹⁷ Resource-poor states may be able to invoke procedural rights (right to participation, right to information) as a means of gaining access to these negotiations.¹⁸ Similarly, asserting the right to development may help developing nations articulate their concerns about the impacts of climate change on their ability to protect their citizens’ human rights.¹⁹ Integral to the human rights framework on climate change is the notion that powerful nations should recognize developing states’ right to actively participate in the development of a global strategy on climate change as both an ethical obligation and the only means of attaining a sustainable solution.



Endnotes:

¹ H.R.C. Res. 7/23, ¶ 15, U.N. Doc. A/HRC/RES/7/23 (Mar. 28, 2008).

² See, e.g., Mary Robinson, *Climate Change Is An Issue of Human Rights*, THE INDEPENDENT (London), Dec. 10, 2008, <http://www.independent.co.uk/opinion/commentators/mary-robinson-climate-change-is-an-issue-of-human-rights-1059360.html> (last visited Feb. 26, 2009).

³ See *id.*

⁴ See Press Release, Office of the High Comm’r for Human Rights, The Human Rights Impact of Climate Change, U.N. Doc. DPI/2483 (Nov. 2007), available at <http://www.un.org/climatechange/pdfs/bali/ohchr-bali07-19.pdf> (last visited Feb. 17, 2009).

Endnotes: Human Rights and Climate Change *continued on page 68*

*Anne Parsons is a J.D. candidate, May 2011, at American University, Washington College of Law.

ENDNOTES: HUMAN RIGHTS AND CLIMATE CHANGE *continued from page 22*

⁵ See INT'L COUNCIL ON HUMAN RIGHTS POLICY, CLIMATE CHANGE AND HUMAN RIGHTS: A ROUGH GUIDE 13 (2008) [hereinafter ROUGH GUIDE], available at http://www2.ohchr.org/english/issues/climatechange/docs/submissions/136_report.pdf (last visited Feb. 17, 2009).

⁶ See Sara C. Aminzadeh, Note, *A Moral Imperative: The Human Rights Implications of Climate Change*, 30 HASTING INT'L & COMP. L. REV. 231, 258-59 (2007).

⁷ INT'L COUNCIL ON HUMAN RIGHTS POLICY, SUBMISSION TO THE OFFICER OF THE HIGH COMM'R FOR HUMAN RIGHTS IN REGARD TO HUMAN RIGHTS COUNCIL RESOLUTION 7/23 2, available at <http://www2.ohchr.org/english/issues/climatechange/docs/submissions/ICHRSubmission.pdf>.

⁸ See ROUGH GUIDE, *supra* note 5, at 59.

⁹ See *id.* at 85.

¹⁰ See KATE RAWORTH ET AL., OXFAM, CLIMATE WRONGS AND HUMAN RIGHTS: PUTTING PEOPLE AT THE HEART OF CLIMATE CHANGE POLICY 20 (2008), available at <http://www.oxfam.org/files/bp117-climate-wrongs-and-human-rights-0809.pdf> (last visited Feb. 17, 2009) (estimating the annual cost of adaptation in all developing countries to be \$50 billion).

¹¹ See UNITED NATIONS DEVELOPMENT PROGRAM, FIGHTING CLIMATE CHANGE: HUMAN SOLIDARITY IN A DIVIDED WORLD 192 (2007/2008), available at http://hdr.undp.org/en/media/hdr_20072008_en_complete.pdf (last visited Feb. 17, 2009).

¹² See ROUGH GUIDE, *supra* note 5, at 7.

¹³ See *id.* at 7 n.15.

¹⁴ See Celeste Hicks, *Chad Charcoal Ban Enflames Public*, BBC NEWS, Jan. 27, 2009, <http://news.bbc.co.uk/2/hi/africa/7853250.stm> (last visited Feb. 14, 2009) (estimating that more than 60% of Chad's natural tree cover has been cut for the production of charcoal).

¹⁵ See ROUGH GUIDE, *supra* note 5, at 19.

¹⁶ See *id.* at 76.

¹⁷ See *id.* at 52.

¹⁸ *Cf. id.* at 52 (noting criticism levied at donor countries for attempting to avoid a participatory process that includes developing countries).

¹⁹ See *id.* at 76.