



JUST ATONEMENT INC.

Climate Change and Human Rights

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CLIMATE CHANGE AND HUMAN RIGHTS

On April 2, 2020, Finnish Environment Minister Krista Mikkonen announced via Twitter that the United Nations Framework Convention on Climate Change, 26th Conference of the Parties (COP26) would be postponed by one year due to the Coronavirus pandemic. (Mikkonen 2020) Consequently, there was significant hope and anticipation that COP26 would produce a breakthrough or breakthroughs with respect to climate action. This stems from the fact that even with the economic downturn associated with the pandemic, 2020 still goes down in history as the warmest year since data collection began in 1880. (NASA 2021). In addition, a record-breaking hurricane season hit many Latin American countries particularly hard; some of the largest wildfires in decades raged in Australia, California, and the Pantanal Wetlands in South America; and historic droughts and floods hit communities worldwide. (Irfan 2020). In light of this development, CNN World headlined that “2020 was meant to be the year of climate action. Instead, it crowned a wasted decade.” (Kottasová 2021).

Increasing numbers of people are suffering from the consequences of climate change, including with respect to their human rights. This paper examines potential human rights violations associated with climate impacts. This analysis is based on the findings of resolution 7/23 of the Human Rights Council (HRC) from 2008 and the Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment issued in 2019. Next, this paper will examine the “likelihood that international human rights bodies, particularly the regional human rights systems, will in the foreseeable future hold states accountable for climate change.” (Chapman 2010, p. 37). Three major regional human rights systems—the African system, the American system, and the European system—will be examined concerning their respective abilities to confront climate change.

WHICH HUMAN RIGHTS ARE THREATENED BY CLIMATE CHANGE?

Resolution 7/23 was adopted unanimously in 2008, which, in hindsight, is remarkable given that it would take several more years for the connection between human rights and climate change to find deeper expression in academia and in other human rights bodies. The HRC expressed its concern “that climate change poses an immediate and far-reaching threat to people and communities around

the world and has implications for the full enjoyment of human rights.” (UNHRC 2008, p. 1).^(FN1) The HRC cited the “Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Vienna Declaration and Programme of Action” (*Ibid.*) as positive law sources for the enforcement of human rights obligations in the face of climate change.

Since resolution 7/23 in 2008, the HRC has (with a few exceptions) issued a resolution related to the interplay of climate change and human rights every year. In these subsequent resolutions, the list of human rights threatened by climate change has typically included, “the right to life, the right to adequate food, the right to the enjoyment of highest attainable standard of physical and mental health, the right to adequate housing, the right to self-determination, the rights to safe drinking water and sanitation, the right to work.” (UNHRC 2021, p. 2).

We consider some of these rights now in turn.

Right to Life (including right to food, right to water and sanitation, and the right to health)

Article 3 of the UDHR (1948) states that “[e]veryone has the right to life, liberty and security of person.” In very similar wording, the ICCPR (1966) affirms that “[e]very human being has the inherent right to life. This right shall be protected by law.” (ICCPR, OHCHR 1966, Art. 6(1)). The right to life is threatened in many ways by climate change. In a 2008 submission made by the Maldives to the Human Rights Council, the Maldives grouped the impacts of climate change under four measurable changes, all of which pose an imminent threat to the exercise of the right to life: Sea Level Rise, Temperature Increase, Extreme Weather Events, and Changes in Precipitation.

SEA LEVEL RISE

Sea Level Rise directly threatens human life through flooding. (Maldives 2008, p. 21). This is especially true in low lying island nations such as the Maldives itself, where “even partial flooding of the islands is likely to result in drowning, injury, and loss of life.” (*Ibid.*). Yet Sea Level Rise also has a threatening

⁰¹ This formulation would be subsequently included in the preamble of all other HRC resolutions on the interplay of human rights and climate change, including the most recent resolution 47/24 in 2021. See, e.g., HRC Res. 10/4 (25 March 2009), HRC Res. 26/27 (27 June 2014), HRC Res. 42/21 (12 July 2019).

effect on the coastal regions of higher lying states, as rising salt water makes arable land infertile and groundwater undrinkable. (*Ibid.*, p. 22). This impacts access to food and water, including subsistence and agricultural livelihood. (*Ibid.*). The right to food and the right to water, while considered independent human rights, are ultimately related to the right to life, and the Human Rights Committee has recognized the close link between the right to life and the rights to food and water. (UNHRCt, Gen. Comment 36, para. 26). Thus, negative effects on food and water from Sea Level Rise will impact and infringe on the right to life.

TEMPERATURE INCREASES

Temperature Increases are another climate impact highlighted by the Maldives. (Maldives 2008, p. 24). “Heatwaves [directly] affect human health worldwide, leading to increased morbidity and mortality.” (Eckstein 2020, p. 16). Even in a temperate climate such as in Germany, heat deaths reached a record high in 2020, with more than 1,200 people dying from heat stress. (*Ibid.*, p. 7). In tropical areas, “[t]emperature increase can lead to an increased risk of both water and vector-borne diseases.” (Maldives 2008, p. 25). Again, the relationship between different kinds of human rights must be underscored—in this case, the right to life and the right to health, protected by Article 12(1) of the ICESCR. Lack of clean drinking water (a violation of the right to water), affects the right to health, which in combination with temperature increases, threatens the right to life.

EXTREME WEATHER EVENTS

Extreme Weather Events are another climate impact highlighted by the Maldives. (Maldives 2008, p. 29). Here, too, the threat to the right to life can be perceived in both direct and indirect ways. The record-breaking hurricane season in 2020, as mentioned above, is an explicit example of how extreme weather events can harm the right to life: More than 400 people died as a result of that year’s Atlantic hurricane season alone. (CDP 2020). Globally, the fatality rate of all extreme weather events combined is even higher than the one provided for the Atlantic Hurricane Season, with an estimated 15,000 deaths in total for 2020. (CRED 2021). In the last 20 years, more than half a million people have lost their lives due to the consequences of climate change. (McCarthy 2019). Extreme Weather Events also indirectly contribute to a threat to the right to life “because of the physical damage they cause to services and infrastructure” (Maldives 2008, p. 31) including “[h]ospitals[,] sanitation and water systems.” (*Ibid.*). In addition, “[e]xtreme weather events have a marked impact on the mental health of the affected population.” (*Ibid.*, p. 33).

CHANGES IN PRECIPITATION

The fourth and last climate impact highlighted by the 2008 Maldives submission focused on Changes in Precipitation. In this submission, the Maldives argued that the right to life is threatened from increased disease outbreaks associated with higher precipitation, which “can promote the transmission of some communicable diseases.” (Maldives 2008, p. 37). Globally speaking, “(c)limate science predicts that, in general, wet regions will become wetter, and dry regions will . . . become even drier.” (Schulze 2011, para. 3.1.2). In both wet and dry regions, this development poses massive threats to several human rights. The Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque, affirmed this conclusion in 2009, writing that “changes in precipitation . . . result in water scarcity, contamination of drinking water and exacerbation of the spread of disease.” (de Albuquerque 2009, p. 1). Flooding from increased precipitation is also directly threatening the right to life: in the summer of 2021 exceptionally heavy rainfall in Western Europe led to massive flooding that caused the deaths of over 200 people. (Kreienkamp 2021).

Changes in Precipitation threaten the right to life by also threatening the right to food. “Precipitation anomalies have detrimental effects on agriculture, mainly in developing nations.” (Malhi 2021, p. 4). Especially in already dry regions, “the productivity of rain-fed agriculture will decrease significantly.” (Schulze 2011, p. 6). For example, climate change in general and Changes in Precipitation in particular are “projected to reduce the global cereal production of maize and wheat by 3.8% and 5.5%, respectively.” (Malhi 2021, p. 4). Access to food is threatened through spikes in food prices, which increase immensely after extreme weather events such as droughts—driving more people into hunger. (US EPA, n.d.).

In 2019, the Special Rapporteur on human rights and climate change confirmed many of the threats to the right to life outlined by the Maldives in 2008. (Boyd 2019, hereinafter, the “Boyd report”). The Boyd report unequivocally concluded that “[c]limate change has many direct and indirect effects on the full enjoyment of the right to life.” (*Ibid.*, para. 29). In accordance with the conclusions reached by the Maldives, the Boyd report affirms that threats to the right to life come from “extreme weather events, heat waves, floods, droughts, wildfires, water-borne and vector-borne diseases, malnutrition and air pollution.” (*Ibid.*).

Regarding the right to food and climate impacts on agriculture, the Boyd report cited a study from the Food and Agriculture Organization of the United Nations, which shows that in 2019, the number of people in hunger increased for the first time in decades as a consequence of climate change. Should the climate rise by 2°C, the study predicts an increase of up to 400 million more people suffering from hunger annually, as well as up to three million additional deaths from hunger. (*Ibid.*, para. 35). The report also emphasizes that “[t]he negative impacts of climate change on food production and availability are unequally distributed both among and within states.” (*Ibid.*, para. 36). The Boyd report also confirmed that “[t]he four key elements of the rights to water and sanitation are threatened: availability, accessibility, acceptability and quality.” (*Ibid.*, para. 38). In this respect, “small island developing States and parts of Africa, Asia and Latin America” (*ibid.*) are considered to be particularly vulnerable.

Finally, the Boyd report highlighted impacts on the right to health, intimately related to the right to life: “The adverse health impacts of climate change include not only premature deaths but also increased incidences of respiratory disease, cardiovascular disease, malnutrition, stunting, wasting, allergies, heat stroke, injuries, water-borne and vector-borne diseases and mental illness. (*Ibid.*, para. 31). The gravity of the impact of climate change on health is illustrated by a reference to a statement by the Lancet Commission on Health and Climate Change. The Commission “warned that climate change is the greatest global health threat of the twenty-first century and could reverse five decades of progress in global health.” (*Ibid.*, para. 32). The Boyd report further noted that “[h]ealth is also affected by climate-related displacement, migration and limited access to health services.” (*Ibid.*, para. 31).

Right to Housing

The right to life has generally had the most significant analysis to date with respect to climate impacts, but other human rights have also been identified, including the right to housing. The Boyd report, for example, expressed concerns about the right to housing being threatened by climate change (Boyd 2019, para. 26) and refers to a report by Raquel Rolnik from 2009, then Special Rapporteur on adequate housing. The Rolnik report emphasizes that “[c]limate change-related impacts have a range of implications for the effective implementation of the human right

to adequate housing. The implications will be severe, particularly for low-income groups and those living in countries that lack the resources, infrastructure and capacity necessary to protect their populations.” (Rolnik 2009, para. 65).

The right to housing is guaranteed in Article 11 of the ICESCR. Analysis of how this human right will be impacted by climate change has mostly focused on coastal regions due to sea level rise. For example, the 2008 submission from the Maldives confirms that “[s]evere flooding is likely to damage and destroy homes, rendering them uninhabitable” (Maldives 2008, p. 24) when “located near the shorelines” (*Ibid.*, p. 21). Additionally, Extreme Weather Events pose a great threat to the right to adequate housing. Hurricane Eta alone, which hit Central America in November 2020, left more than 140,000 people homeless in Honduras. (BBC News 2020).

Right to Work

The right to work is set out in Articles 6, 7 and 8 of the ICESCR. Of particular interest in the context of climate change is that the right to work includes the “right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.” (ICESCR, OHCHR 1966a, Art. 6(1)). Dignified work becomes at risk in a world with an unstable climate. This is especially true for the agricultural sector, which may be affected by long-lasting droughts or floods. Entire industries could become at risk because of climate change. For example, the entire sector of (non-industrial) fishing is deeply threatened. Because “[t]he warming of sea temperatures will harm [...] fisheries [...], which has implications for the right to work, the right to a means of subsistence and [ultimately] the right to an adequate standard of living.” (Maldives 2008, p. 25). As climate impacts worsen, it is likely that other labor sectors will be affected as well.

The right to work is also threatened by climate change through chaotic forms of displacement and migration. By 2020, climate change was already the determining factor for about three-quarters of all Internally Displaced People (IDP) to migrate. (Lombrana 2021). The newly published report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Tomoya Obokata (hereinafter the “Obokata report”), found that “[d]isplaced persons are vulnerable to contemporary forms of slavery as a result of personal, situational and structural factors.” (Obokata 2021, para. 18). Factors such as poverty, discrimination on the basis of age, gender, and/or race, living conditions in the country of arrival, or exposure to criminal groups, traffickers and people smugglers

during the displacement itself make displaced people vulnerable to slavery. Thus, climate change presents the possibility of new forms of slavery, which would dramatically violate Articles 6, 7 and 8 of the ICESCR, all of which cover certain aspects of the right to work. These new forms of slavery could manifest themselves in forced labor, domestic servitude, forced marriage and sexual slavery. Critically, climate migrants lack legal protection under international law, which places them at acute risk: Obokata noted that “[d]isplaced persons with an irregular or uncertain migration status are particularly vulnerable to contemporary forms of slavery.” (Obokata 2021, para. 23). Without action to mitigate climate impacts, severe infringements on the right to work, including the development of new types of slavery, are imminent and foreseeable.

Right to Self-Determination

Common Article 1 of the ICCPR and ICESCR affirms that “[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” (ICCPR/ICESCR, OHCHR 1966(a), Art. 1(1)). As a prerequisite for exercising this right, the Human Rights Committee has identified “inter alia, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence.” (HRCt 1999, para. 8). However, due to the consequences of climate change, it is quite possible that peoples will be denied the disposal of their natural wealth and resources. As explained in the previous section, climate change may also deny the right to work and thus ultimately deny access to a means of subsistence. Ultimately, these issues culminate in the observation that the consequences of climate change must be seen as a threat to the right to self-determination.

OTHER HUMAN RIGHTS (EDUCATION, CULTURE, RIGHT TO HOME LIFE AND PRIVATE LIFE)

Other human rights such as the right to education (ICESCR, OHCHR 1966a, Art. 13) or the right to culture (ICCPR, OHCHR 1966, Art. 27) are potentially at risk from climate change. (Jodoin 2013, p. 84 and p. 93). Special attention has recently been given to the “right to home life and private life” as provided for under Article 8 of the European Convention on Human Rights as well as under Article 17 of the ICCPR by the court ruling in the *Urgenda v. Netherlands* case. In *Urgenda*, the Dutch Supreme Court confirmed that an “obligation to take measures exists [for the state] if there is a risk that serious environmental contamination may affect individuals’ well-being and prevent them from enjoying

their homes in such a way as to affect their private and family life adversely. That risk need not exist in the short term.” (Urgenda Foundation 2020, para. 5.2.3).

REGIONAL HUMAN RIGHTS SYSTEMS AND CLIMATE CHANGE

Existing regional human rights systems “may offer the best forum for individuals to confront states that fail to . . . take steps to combat climate change” (Chapman 2010, p. 37). and “allow for the possibility of regional values to be taken into account” (Heyns 2006). We can look at potential avenues of redress under the African, American, and European regional systems.

AFRICAN SYSTEM

The African Charter on Human and Peoples’ Rights was adopted in 1981 and entered into force in 1986. In addition to civil and political rights (similar to the ICCPR) and economic and social rights (similar to the ICESCR), the so-called Banjul Charter also includes “group rights, such as the right of indigenous peoples to self-determination and to collectively develop natural resources.” (Georgetown Law, n.d.).

The Charter creates the African Commission on Human and Peoples’ Rights as well as, through a related protocol, the African Court on Human and Peoples’ Rights. The African Commission “is a quasi-judicial body made up of eleven independent experts and tasked with promoting and protecting human rights and collective (peoples’) rights throughout the African continent.” (URG, n.d.). The Commission’s mandate includes evaluating complaints brought by individuals about alleged violations of the Charter, “conduct[ing] on-site visits and fact-finding missions, and issu[ing] recommendations based on its findings.” (Georgetown Law, n.d.).

The African Court, in turn, complements the Commission’s mandate and adjudicates “applications seeking redress for the violation of rights guaranteed under the Charter and other human rights instruments. It also issues advisory opinions.” (*Ibid.*). “Anyone [individuals, NGOs, states] may bring a complaint to the attention of the African Commission on Human and Peoples’ Rights.” (ACHPR n.d., p. 2). In general, the same is true for the African Court, which permits petitions from “NGOs with observer status before the Commission and individuals.” (ACHPR, n.d., B). However, “cases brought directly before the Court by individuals and NGOs are admissible only when the state against which the complaint is brought has made a declaration under article 5(3) of the Court’s Protocol accepting

the competence of the court to receive such complaints.” (*Ibid.*). Out of the 30 member states, only 10 have ever made such a declaration, and of those 10, four have subsequently withdrawn—Rwanda, Tanzania, Benin and Cote d’Ivoire—such that in 2021 only six states will allow petitions from individuals and NGOs before the African Court on Human and Peoples’ Rights—Burkina Faso, Ghana, Mali, Malawi, The Gambia and Tunisia. (Coalition for an Effective African Court on Human and Peoples’ Rights 2020, p. 1). The decisions of the African Court, in contrast to the recommendations of the Commission, are considered legally binding.

The African Charter on Human and Peoples’ Rights specifically mentions the right to environment, in contrast to its American and European counterparts. Article 24 of the Banjul Charter (OAU 1981) states that “[a]ll peoples shall have the right to a generally satisfactory environment favorable to their development.” This has already been adjudicated: in one case which was “filed by two nongovernmental organizations on behalf of the people of Ogoniland, Nigeria” (Shelton 2002, p. 937), Nigeria was held in breach of Article 24, among others (further discussed below). (*The Social and Economic Rights Action Center/Center for Economic and Social Rights v. Nigeria*, ACHPR 2002). Article 4 guarantees the right to life, and Article 16 the right to health. In addition, “the right to housing . . . is implied in the duty to protect the family (Article 18(1)) [and] the right to food [is] implicit in Articles 4, 16, and 22.” (*Ibid.*).

Interestingly, to date, no climate lawsuit has yet been filed before the ACHPR. In *The Social and Economic Rights Action Center/Center for Economic and Social Rights (on behalf of the people of Ogoniland) v. Nigeria* (ACHPR 2002, hereafter “Ogoniland case”), the plaintiffs alleged environmental degradation and health problems resulting from environmental pollution, but not the consequences of climate change in particular. More specifically, the NGOs alleged that Nigeria’s military government was “condoning and facilitating the operations of oil corporations in Ogoniland” (ESCR, n.d.) and that “the oil consortium’s exploitation of oil reserves in Ogoniland [in turn] resulted in contamination of water, soil and air” (OHCHR 2013, para. 18) which led to “serious short and long-term health impacts, including skin infections, gastrointestinal and respiratory ailments, and increased risk of cancers, and neurological and reproductive problems” (ACHPR 2002, para. 2). The African Commission agreed that Nigeria was in breach of various rights of the Banjul Charter, including Article 16 (right to health) and Article 24 (right to environment). The Commission confirmed that “an environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory

living conditions and the development as the breakdown of the fundamental ecologic [sic] equilibria is harmful to physical and moral health." (*Ibid.*, para. 51). This case could present the possibility of a climate case under the Banjul Charter, but a petitioner would have to extend concepts of direct environmental pollution and degradation towards adverse impacts of climate change on the right to environment, which may be more indirect. Moreover, any ruling of the African Commission is not legally enforceable.

INTER-AMERICAN SYSTEM

The Charter of the Organization of American States entered into force in 1948 and recognizes in Article 5(j) the "fundamental rights of the individual without distinction as to race, nationality, creed or sex." What these "fundamental rights" are, however, is not defined in the Charter itself. This gap was closed in the same year by the American Declaration of the Rights and Duties of Man, which formulates, among others, the right to life (Article 1), the right to health (Article 11), and the right to work (Article 14). Although the American Declaration on the Rights and Duties of Man was not considered legally binding at the time of its adaptation, "[t]hrough time, however, some of its rights began to acquire normative value, either because they are valid means of interpretation . . . or by operation of customary international law." (Grossman 2010, para. 11). All 35 member states of the Organization of American States are bound by it. The supplementary American Convention on Human Rights, adopted in 1969, which recognizes core civil and political rights, has been ratified by only 23 states to date. The First Protocol, adopted in 1988, which recognizes social and economic rights, has also been ratified by only 16 states.

The Inter-American Commission on Human Rights (IACHR) "plays a dual role, functioning as both a 'charter organ' and as a 'treaty organ.'" (Georgetown Law, n.d., B). The mandate of the IACHR under the Charter of the Organization of American States includes monitoring "the compliance of member states with their human rights obligations," establishing "thematic rapporteurships" and adjudicating "individual petitions alleging violations of rights guaranteed under the Charter, as enumerated in the Declaration." (*Ibid.*). The IACHR's mandate under the American Convention on Human Rights includes addressing the admissibility of individual petitions alleging violations of rights guaranteed by the Convention, making recommendations, if violations are found, and referring petitions to the Inter-American Court of Human Rights for adjudication, if a state party fails to comply with its recommendations. (*Ibid.*). That said, the recommendations of the Inter-American Commission on

Human Rights themselves are not legally binding. (Matibag, p. 479). In the event that the IACHR under its Convention-tethered mandate refers petitions to the Inter-American Court of Human Rights (IACtHR), however, legally binding decisions may follow. “The Court’s principle role is to act as the final adjudicator of petitions seeking redress for the violation of rights guaranteed under the Convention. It also issues advisory opinions.” (Georgetown Law, n.d., B).

The Inter-American system witnessed a climate lawsuit that was filed before the Inter-American Commission on Human Rights (IACHR) in 2005 by Sheila Watt-Cloutier “on behalf of all Inuit of the arctic regions of the United States and Canada.” (Watt-Cloutier 2005, p. 1). She alleged that the United States, then the world’s largest greenhouse gas emitter, was threatening “the enjoyment of numerous human rights guaranteed by the American Declaration of the Rights and Duties of Man to the Inuit living in the arctic regions.” (Chapman 2010, p. 37). Watt-Cloutier invoked rights that should by now be familiar, namely “their rights to the benefits of culture, to property, to the preservation of health, life, physical integrity, security, and a means of subsistence.” (Watt-Cloutier 2005, p.5). However, the petition was rejected by the IACHR because “the information provided [did] not enable [the IACHR] to determine whether the alleged facts would tend to characterize a violation of rights protected by the American Declaration.” (IACHR 2006). Nonetheless, although Watt-Cloutier *et al.* were “aware that the Commission has dismissed that petition and [they did] not seek here to reopen that decision.” (Watt-Cloutier 2007, p. 1). Watt-Cloutier requested “that the Inter-American Commission on Human Rights convene a hearing [during one of the ordinary periods of sessions] on the issue of global warming and human rights. The purpose of this hearing would be to assist the Commission in exploring and better understanding the relationship between global warming and human rights.” (*Ibid.*). The IACHR subsequently invited Watt-Cloutier to a hearing (IACHR 2007) to discuss “the challenges that future litigation over human rights violations as a consequence of climate change [would] face before a regional human rights body” (Chapman 2010, p. 37). At this purely informational hearing, some of the challenges to a successful climate lawsuit included:

1. the attribution or division of responsibility for climate change among states in the region;
2. providing proof for close ties between concrete acts or omissions of specific states and human rights violations; and
3. exhaustion of domestic remedies if possible (a requirement for admissibility)

(*Ibid.*).

EUROPEAN SYSTEM

The European Convention on Human Rights (ECHR) entered into force—under its former name “Convention for the Protection of Human Rights and Fundamental Freedoms”—in 1953 and has today been ratified by all 47 member states of the Council of Europe (distinct and separate from the European Union). The 11th Protocol, ratified by all member states of the Council of Europe in 1995, amended the Convention on Human Rights to replace, among others, Article 19, which originally set up the Commission and the Court. (Council of Europe 1994, p. 2). Under amended Article 19 of the Convention, a single European Court of Human Rights (ECtHR) was created in 1998, “taking over from the earlier Commission and Court.” (Heyns 2006a, p. 166). “The ECHR gives the ECtHR both contentious jurisdiction [including private petitions and interstate complaints] and advisory jurisdiction.” (Oetheimer 2009, para. 15). The ECtHR’s judgments are legally binding.

Although the European Convention on Human Rights (ECHR) does not provide for explicit protection of the environment in any of its articles, the ECtHR is nevertheless considered to be rather progressive as far as environmental protection is concerned. This is because “the Court has found ways to fill this environmental human rights gap by allowing compensation for damage to the environment in the context of other rights, such as the right to life (Article 2), privacy and family life (Article 8), the right to a fair trial (Article 6), and freedom of expression (Article 10).” (Blzaogiannaki 2009, p. 12). The Council of Europe states “that where a state is aware of a threat to human rights, regardless of the cause, it has a positive obligation to act because state inaction would exacerbate the situation.” (*Ibid.*, p. 13). In environmental law, therefore, the ECtHR has often rendered decisions in favor of plaintiffs.

This background gives some hope then for the recent case of six young people from Portugal before the ECtHR (*Duarte Agostinho and others v. Portugal and others*). These six young people sued the 33 member states of the Council of Europe emitting the largest amounts of CO₂ on the basis of Article 2 (right to life) and Article 8 (right to private and family life), alleging that the accused states have not fulfilled their climate commitments and thus are breaching these articles. “They also argue that the increasing effects that they are set to suffer over the course of their lifetimes entail discrimination on grounds of age, and therefore breach Article 14 [prohibition of discrimination], when read with Articles 2 and 8.” (Clark 2020). So far, the case has proceeded in their favor as they have been able to satisfy the three challenges identified by the IACHR that foreclosed a remedy

for Sheila Watt-Cloutier in her suit in the Inter-American system. First, the ECtHR held that the six young people circumvented the challenge of attributing or dividing the responsibility for climate change among specific states in the region by “bringing a petition against several or all states in a region.” (Chapman 2010, p. 38). Secondly, based on the best available science, there exists some independent consensus that states’ inaction on climate change mitigation exacerbates climate impacts, which in turn violates a number of human rights. The six young plaintiffs should thus be in a position to explain how some of their human rights are and will be violated. Thirdly, the ECtHR upheld the argument that “the status of the Applicants as children and young adults [...] militates against any assertion that they ought to be required to pursue remedies in the domestic courts of each and every Respondent.” (GLAN 2020, p. 20). For now, it appears that the ECtHR may be continuing its progressive line from environmental policy, as “[i]n a landmark decision on Nov. 30, the court announced it would take the case to the next step— forwarding it to defendant countries and ordering them to respond to the case’s arguments— and granted it priority status.” (Nugent 2020). Moreover, “the court took the unusual step of extending the scope of the case” (*Ibid.*) by additionally citing Article 3 (prohibition of torture) in the letter to the defendant states.

CONCLUSION

HRC resolution 7/23 from 2008, the submission of the Maldives, and the Boyd report have identified concrete human rights violations from climate change, particularly affecting vulnerable groups. The Boyd report specifically concluded that “[t]he worst impacts afflict those who have contributed least to the problem and who have the fewest resources to adapt to, or cope with, the impacts.” (Boyd 2019, para. 46).

There is an increasing recognition from human rights institutions that human rights can only be guaranteed if climate action from governments is forthcoming, and pursued with the utmost care, speed, and efficacy. At the opening of the 48th Human Rights Council meeting in September 2021, UN High Commissioner for Human Rights, Michelle Bachelet, once again placed the nexus of human rights and climate change as the absolute focus of attention for her agenda. She concluded that “[a]s these environmental threats intensify, they will constitute the single greatest challenge to human rights in our era. All this is now painfully clear. The greatest uncertainty about these challenges is what policy-makers will do about them.” (Bachelet 2021).

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