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From Copenhagen to Paris at the UN Human Rights Council

When climate change became a human rights issue

Felix Kirchmeier and Yves Lador

Introduction

Over the last decade, the evidence that climate change already has and will continue to have an impact on the enjoyment of human rights has become an increasingly important issue on the agenda of the Human Rights Council (HRC) and of its Special Procedures.

This discussion progressively established a rather broad consensus, acknowledging the impact of climate change on the enjoyment of human rights, as well as the contributions that human rights–based approaches can bring to the adaptation to and the mitigation of climate change.

Also interesting has been the outreach efforts made by the HRC and its Special Procedures toward the negotiations at the UN Framework Convention on Climate Change. It indicates an awareness that actions on human rights need to cut across institutional boundaries.

This process at the HRC has been carried out mainly by States that are most immediately affected by climate change. The Maldives first introduced the issue in 2007. In 2011, other States, including Bangladesh and the Philippines, carried the resolution further. Members of the Climate Vulnerable Forum (VCF), a group of 20 States directly concerned with the impact of climate change, have also been very active in making the bridge between the HRC and the negotiation of the Paris Agreement. They were supported by intergovernmental organizations, such as the South Center, which provided an analysis of what could be at stake for Developing States in such a bridge.

Of course, these attempts to emphasize the need for urgent action by States to address the transboundary impact of greenhouse gas (GHG) emissions had to overcome quite some resistance.

This progress was also promoted and made possible by the contributions of a number of civil society organizations, as well as academics. They provided expertise, strategic advice and opportunities for dialogue among States. In Geneva, three initiatives around the work of the HRC on climate change brought organizations together. The Geneva Interfaith Forum on Climate Change, Human Rights and Environment (GIF) was established in 2010 with organizations representing a large spectrum of faiths; the Geneva climate change consultative group came out
of regular informal NGO meetings on climate change hosted by the Friedrich-Ebert-Stiftung (FES), which formalized itself as a group, the GeCCco, in 2014. INTLawyers, based in Geneva, echoed concerns about equitable development from networks of the global South, in particular from Africa. All of these contributions made individually or collectively are an integral part of the process and would deserve a specific study. They are not well documented, and in this paper, we will be able to mention only those initiatives that were made public and directly involved in the general process of the negotiation.

The aim of this paper is to provide basic factual information about some of the key events of this process, which saw the issue of human rights and climate change from doubts and even denial to an acknowledgement at both the UN Human Rights Council and the UNFCCC, in particular, at the adoption of the Paris Agreement.³

Opening the discussion

First call (2007)

It’s interesting to note that the very first reference to human rights and climate change in the HRC documents did not come from one of the members of the Council, but from one of the UN HRC Special Procedures.⁴

The first to have referred to climate change in his report was Paul Hunt, Special Rapporteur on the right to health, who in his 2007 Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health called on the “Human Rights Council to urgently study the impact of climate change on human rights generally and the right to the highest attainable standard of health in particular”.⁵

Later, several other Special Procedures followed and also called on the Council to consider the linkages between climate change and other issues such as displacement, migration, extreme poverty and the right to food, adequate housing, drinking water and sanitation.

The first HRC resolution (2008)

On 28 March 2008, at the seventh session of the HRC, the Maldives, together with 78 co-sponsors from all regional groups, tabled a resolution on “Human Rights and Climate Change”, which was adopted by consensus by the Human Rights Council (Resolution 7/23).⁶

Resolution 7/23, for the first time in an official UN resolution, stated explicitly 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” (Preambular §1).

The members of the Council agreed to give further consideration by mandating the Office of the High Commissioner for Human Rights (OHCHR) to prepare a detailed analytical study on the relationship between climate change and human rights.

The origin of this action was the Malé Declaration, adopted by representatives of the Small Island Developing States, who met in Malé from 13 to 14 November 2007, where they had solemnly requested:

The Office of the United Nations High Commissioner for Human Rights to conduct a detailed study into the effects of climate change on the full enjoyment of human rights, which includes relevant conclusions and recommendations thereon, to be submitted prior to the tenth session of the Human Rights Council.⁷
The United Nations Human Rights Council to convene, in March 2009, a debate on human rights and climate change. This 2008 HRC 7/23 Resolution was the first of a long list.

**Other relevant discussions and reports**

Olivier de Schutter, the Special Rapporteur on the right to food, followed the first step made by Paul Hunt, the Special Rapporteur on the right to health, and identified the impacts of climate change that fell within the scope of his mandate. On 3 September, the HRC Social Forum 2008 also devoted one of its discussions about global challenges to climate change.

In October, the OHCHR, while preparing the study mandated by the Human Rights Council (Resolution 7/23), also held a one-day consultation meeting on the relationship between climate change and human rights.

Besides these UN bodies, the International Council on Human Rights Policy (ICHRP), an independent think-tank based in Geneva and focusing on trends and emerging human rights issues, published its own study titled “Climate Change and Human Rights: A Rough Guide”. It was a first mapping of a range of research agendas, assessing the adequacy of human rights to the larger justice concerns raised by anthropogenic climate change and by the strategies devised to address it. It pointed to areas where climate change will have direct and indirect human rights impacts, and where human rights principles might sharpen policy-making on climate change, including in the two core policy areas of adaptation and mitigation.

**Preparing for COP15 in Copenhagen (2009)**

**A landmark report**

The Report of the Office of High Commissioner on Human Rights on “the relationship between Climate Change and Human Rights”, as requested by the HRC in its Resolution 7/23, came out as a landmark report. It was the first UN analytical study on the relationship between climate change and human rights. It was submitted to the Council’s 10th session in March 2009.

The OHCHR report outlined the many ways climate change undermines a range of internationally recognized human rights, in particular the rights to life, adequate food, safe and drinkable water, health, adequate housing and self-determination. It also pointed to the concerns about the rights of specific vulnerable groups like women, children and Indigenous Peoples.

The report also addressed the human rights implications of climate change-induced displacement and conflicts, as well as the human rights implications of the measures taken to address climate change.

It referred to the factual elements identified by the IPCC reports and underlined the basis of the UNFCCC process in pursuing response measures (mitigation and adaptation), such as the recognition of an unequal burden of impact between states and regions, as well as the need for an equity principle, formulated as “common but differentiated responsibilities (CBDR)”.

It analyzed the concepts of climate justice and of “common yet differentiated responsibilities” and their implication for the obligations of high-income countries to provide assistance to particularly affected regions. On such a basis, the study also discussed international cooperation...
as a legal obligation “of a state towards other states, as well as towards individuals”. Unfortunately, this characterization of the binding nature of obligations to cooperate was rejected in the Council resolution in order to secure consensus.

**Building on the OHCHR report**

Another report received some attention from the press and confirmed the work of the OHCHR. The Global Humanitarian Forum issued its own report, “The Anatomy of a Silent Crisis”, with the aim to give a human face to climate change, at a time when it was still mainly synonymous with a white bear. It documented the most critical impacts of climate change on human society worldwide, namely on food, health, poverty, water, human displacement and security. It highlighted the massive socio-economic implications of those impacts, in particular, that the worst affected are the world’s poorest groups, who cannot be held responsible for the problem.

In the perspective of the discussion of the OHCHR report at the coming HRC 10th session, two organizations held an expert meeting to set out approaches on how the linkages between climate change and human rights might be made operational or institutionalized, and how human rights aspects could be mainstreamed into the Copenhagen Climate Conference. Its conclusions were forwarded to countries for possible use in the Council debate in March 2009 to follow up the previous 2008 Resolution 7/23.

**The second HRC resolution on climate change**

Based on the key points of the OHCHR report, a second resolution on climate change and human rights was adopted by the Human Rights Council on 25 March 2009 (Resolution 10/4), noting that climate change has both direct and indirect implications for the enjoyment of human rights and recognizing that vulnerable individuals and communities will be the most acutely affected.

In this Resolution, the Council also affirmed that “human rights obligations and commitments have the potential to inform and strengthen international and national policy making in the area of climate change, promoting policy coherence, legitimacy and sustainable outcomes” (Preambular §10).

The HRC decided to hold a panel discussion on the relationship between climate change and human rights at its following session, in order to contribute to the realization of the goals of the Bali Action Plan (the road map providing the framework for a two-year negotiation process under the UNFCCC) and to make the summary available to the Conference of the Parties to the UNFCCC for its consideration.

**The HRC’s first panel discussion on human rights and climate change**

The panel discussion requested by Resolution 10/4 took place on 15 June 2009, during the HRC 11th session. After hearing experts from different backgrounds, Member States and Observers generally agreed that climate change has implications for a wide range of internationally protected human rights, that climate-vulnerable countries are most at risk and that the human rights impacts do not fall evenly across a given population, but affect first the more vulnerable groups. Several States even argued that such issues could be considered as a form of “climate injustice”.

The discussion is furthered outside the HRC

This discussion was continued outside the HRC, the following week, in a workshop during the 2009 Global Humanitarian Forum, chaired by Mary Robinson, Former President of Ireland and Former UN High Commissioner for Human Rights. The workshop acknowledged that the climate change and human rights linkage had moved from the periphery to the mainstream. It underlined the added value of human rights by bringing a focus on the most vulnerable, who are paying the price for the activities of the most privileged and by providing arenas where such issue can be raised, like it has been done at the Inter-American Commission on Human Rights.

The HRC special procedures foreseeing COP15 in Copenhagen

In the run-up to COP15 to be held in Copenhagen, a group of 20 UN Special Procedures mandate holders issued a joint statement, entitled “An Ambitious Climate Change Agreement Must Protect the Human Rights of All”, in which they argued that “A weak outcome of the forthcoming climate change negotiations threatens to infringe upon human rights”. Rising sea levels, increasing ocean and surface temperature and extreme weather events like storms, droughts and cyclones have and will continue to have a range of direct and indirect implications for the enjoyment of human rights.

They called on mitigation and adaptation policies to be developed in accordance with human rights norms and reminded the Conference that the adverse effects of climate change are felt most acutely in the poorest countries of the world.

Finally, they urged participants at the Copenhagen Climate Change Conference to step up their efforts to achieve a new agreement that prevents further climate change, protects affected individuals from its adverse impact and leads to the formulation of global and national mitigation and adaptation responses based on internationally recognized human rights norms and standards.

On her side, the Special Rapporteur on the right to adequate housing, Raquel Rolnik, had announced her intention to consider the impact of climate change in her annual report to the UN General Assembly. This was welcomed by the Human Rights Council in its March Resolution 10/4, which also encouraged other relevant Special Procedure mandate holders to give consideration to the issue of climate change within their respective mandates, having in mind the upcoming COP15.

Her report was published in the summer 2009 for the session of the General Assembly. It provided an overview of the scope and severity of climate change, its implications with extreme weather events and its impact on urban and rural areas, including unplanned and unserviced settlements, on human mobility and on small islands and low-lying coastal zones. It also outlined the relevant international human rights obligations in connection to the right to housing. The Special Rapporteur also urged States to uphold their human rights obligations when mitigating climate change and adapting to its inevitable impacts.

It gave a particular attention to urban areas, seen as key players both in the generation of greenhouse gases and in strategies to reduce emissions and also as places needing urgent action to reduce the vulnerability of urban dwellers to the impact of climate change.

She reminded all States to comply with their commitments to the global atmosphere by reducing their harmful warming emissions, with industrialized countries having a leading role...
to play in this reduction of emissions levels and in supporting developing countries in pursuing low-carbon development paths.23

In parallel to this report, Special Rapporteur Rolnik also made the first country visit, clearly addressing climate change, with a mission in February 2009 to the Maldives, a country directly affected and threatened to disappear by sea level rise. A preliminary note was issued in March 200924 for the HRC session and the final report was published in January 2010.25

The main purposes of the mission was to examine the difficulties encountered in the post-tsunami reconstruction process and the impact of climate change on the right to adequate housing. According to what she witnessed, climate change has aggravated and will amplify some of the problems linked with Maldives characteristics, which include land scarcity and vulnerability of the islands to natural phenomena. The Special Rapporteur stated that there is an international responsibility to urgently support adaptation strategies for the impact of climate change on Maldives.

That same year, Walter Kälin, the Representative of the Secretary-General on the human rights of internally displaced persons, devoted the thematic part of his report to the General Assembly to climate change and displacement.26 He reaffirmed the normative framework that protects persons displaced by the effects of climate change and described the human rights challenges when protecting internally displaced persons in the context of climate change (evacuations, prohibition of return, permanent relocations and durable solutions).

The Special Rapporteur on the right to safe drinking water and sanitation, Catarina de Albuquerque, produced for the COP15 a first version of a position paper, to be finalized in 2010 and updated for the following COP16 in Mexico.

All these documents from the Special Procedures mandate holders provided background material to their joint statement to COP15.

Bridging with the UNFCCC at COP15

In order to inform the UNFCCC about the work done by the human rights bodies, a side event27 was organized in June at the UNFCCC Bonn Climate Talks, preparing for COP15 at the end of the year.

On 7 to 18 December 2009, the 15th Conference of the Parties of the United Nations Framework Convention on Climate Change (UNFCCC COP15) took place in Copenhagen, Denmark. Its outcome was quite below all expectations, raising severe concerns about the capacity of multilateralism to deliver in front of global challenges.

Reflection after Copenhagen (2010)

The failure of the Copenhagen Conference on Climate Change had of course some impacts on the work of the human right bodies. For example, no resolution on climate change was adopted at the HRC in 2010. But it did not prevent the reflection to continue, as climate change impacts remained persistent on the ground.

The HRC 2010 social forum

It is only in the HRC Resolution 13/17 on “The Social Forum”, adopted on 25 March, that climate change was addressed in 2010.28 The HRC Social Forum brings together States representatives and a broad range of other stakeholders, especially from developing countries.
The HRC decided that the Social Forum 2010 would consider the adverse effects of climate change on the full enjoyment of human rights, including the right to life and economic, social and cultural rights, and the international assistance and cooperation needed to address these impacts, including those on the most vulnerable groups, particularly women and children.

The Social Forum 2010, chaired by Ambassador Laura Dupuy, the Permanent Representative of Uruguay, met in Geneva on 4 to 6 October and heard several round tables on setting the scene about the adverse effects of climate change on the full enjoyment of human rights; on measures and actions addressing the impact of climate change on the full enjoyment of human rights (including on most vulnerable groups, particularly women and children); and on going forward with a rights-based approach to climate change.

In her concluding remarks, the Chairperson-Rapporteur of the 2010 HRC Social Forum noted that the discussions reaffirmed the findings of HRC Resolution 10/4 that “human rights obligations and commitments have the potential to inform and strengthen international and national policy-making in the area of climate change, promoting policy coherence, legitimacy and sustainable outcomes” (Preambular §10).

In its report, the Social Forum recommended that the Human Rights Council establish a new mechanism, which could take the form of a Special Rapporteur or Independent Expert dedicated to human rights and climate change; that it continues holding an annual discussion with the view to tracking the rapidly evolving impacts of climate change on human rights; and that the 16th Conference of the Parties in Cancun be informed of the deliberations of the 2010 Social Forum.

It also recommended that REDD and REDD+ programs adopt a more rights-based approach, create legal awareness programs along with other support programs for Indigenous Peoples that may be affected by REDD programs, and improve participatory and access-to-justice provisions; that a human rights-based approach be applied to intellectual property and technology transfer in order to facilitate adaptation and even mitigation efforts; and finally that a mechanism be put in place for measuring performance on climate change, which should include human rights indicators to create awareness and promote sustainable development options.

The special procedures cover more and more areas

Special Procedures mandate holders also continued to give a strong attention to the impact of climate change on the rights and issues they monitor.

Walter Kälin reiterated his recommendations about the nexus between climate change and displaced persons, in his 2010 report.

Olivier de Shutter, the Special Rapporteur on the right to food, reported on how agro ecology improves resilience to climate change and thus contributes to the protection of the right to food.

The Special Rapporteur on adequate housing, Rachel Rolnik, as a component of the right to an adequate standard of living, continued to report on the impact of climate change in her 2010 report.

The Independent Expert (later Special Rapporteur) on extreme poverty, Magdalena Sepúlveda Carmona, explained that environmental degradation disproportionally affects people living in extreme poverty in her 2010 report.

On her side, the Special Rapporteur on the right to safe drinking water and sanitation produced the definitive version of her position paper for the UNFCCC COP16 to be held in December 2010 in Mexico.
The Special Rapporteur called on the UNFCCC negotiators to not forget that improved water resource management should be a central component of climate change adaptation strategies. She provided a range of recommendations to guide the climate negotiations and climate policy more broadly. She underlined that the rights to water and sanitation must be properly and adequately reflected within the agreement to be reached by COP16, as well as in processes beyond COP16, to ensure any successful climate mitigation and adaptation.

Three country visits also generated concerns about the impact of climate change

The Independent Expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, undertook a mission to Viet Nam from 23 to 31 August 2010. She witnessed that even though the authorities have strong policies to combat poverty, there is a high risk of groups that had progressed falling back into poverty as a consequence of natural disasters, which may only become more frequent with climate change. Therefore, the Independent Expert called on the international community to continue providing to Viet Nam the necessary funds for climate change mitigation and adaptation measures.

The Special Rapporteur on the right to food, Olivier De Schutter, made the second country visit relating to climate change with his mission to Syria from 29 August to 77 September 2010. His report titled “Drought and Climate Change: The Need for a Human Rights-Based Response” was published in January 2011. He reported that the effects of climate change in the country are already evident from the cycles of drought, which have shortened from a cycle of 55 years in the past to the current cycle of seven or eight years. In this context, he noted the importance of human rights standards and principles, particularly individual empowerment, community participation in decision-making processes, equality and non-discrimination, and accountability mechanisms.

The government has taken measures. However, two factors have limited its ability to react effectively. First, the Government was slow to recognize the scale of the problem and thus to take all the measures required and to call upon foreign assistance. Second, there was a lack of capacity. He urges expanding international cooperation, including financial and technical support, with the Government of the Syrian Arab Republic when addressing the impact of drought and climate change.

De Schutter also undertook the third 2010 country visit referring to climate change when he went to China from 15 to 23 December 2010. He published a preliminary note on the mission in February 2011 and the final report in January 2012, for its presentation at the 19th session of the Human Rights Council in March 2012.

He found that while the agricultural system in China has achieved impressive results over the past 30 years, it must now focus on becoming more resilient to climate-related shocks and on making more efficient use of scarce resources. He called on the authorities to use this opportunity in some of the concerned regions to engage with nomadic herders to improve their security of land tenure and to combat climate change through participatory agro ecological methods.

The work of the Independent Expert on extreme poverty received support with the report, “Exposed – The Human Rights of the Poor in a Changing Global Climate”, describing the general links between global climate change and extreme poverty. Climate change, including weather extremes and the accelerated degradation of lands, will impact certain vulnerable groups, with particular severity for people living in poverty, resulting in the violation of a range of human rights. The report calls the Parties of the UNFCCC to use human rights as guiding
principles for any international agreement, as well as for domestic measures taken in response to climate change.

Beside the Special Procedures, a new track was opened with the report titled “Climate Change in the Work of the Committee on Economic, Social and Cultural Rights”. The CESCR can play a particularly prominent role in finding remedies for the expected harms that the most vulnerable communities will suffer, as the Committee oversees most of the rights at the core of the debate on climate change and human rights. The CESCR is likely to be increasingly challenged by the issue of climate change, as some of the State reports it receives will likely point to climate change–related environmental degradations as causes for non-compliance with human rights obligations.

A political turning point (2011–2012)

No substantial HRC resolution on climate change was adopted during 2010, and in 2011, it is only at its September session that the Human Rights Council adopted its third resolution on “human rights and climate change”, Resolution 18/22.

The resolution changes hands

This time, Resolution 18/22 was tabled by the Philippines and Bangladesh and not by the Maldives. But the Maldives remained among the 43 co-sponsors of the resolution.

The Maldives had joined another group of countries tabling another resolution addressing the larger issue of human rights and the environment. The objective was to integrate climate change in its wider environmental context and to cover all its dimensions. The hope was also to initiate stronger action by the HRC, which was indeed achieved in March 2012 with the creation of the mandate of the Independent Expert (and afterwards in 2015 of a Special Rapporteur), on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

The countries that continued to table the resolution on human rights and climate change wanted to keep the HRC’s attention focused on it, including its economic and social aspects. They also remained interested by having a special procedure at some point that would be devoted to this issue only, as climate change–induced events are increasingly affecting territories and populations.

Resolution 18/22 asked the OHCHR to convene a seminar to

(a) To convene, prior to the nineteenth session of the Human Rights Council, a seminar on addressing the adverse impacts of climate change on the full enjoyment of human rights, with a view to following up on the call for respecting human rights in all climate change–related actions and policies, and forging stronger interface and cooperation between the human rights and climate change communities.

Reflections for a HRC at a crossroad

Considering the new situation in the HRC, now with two tracks, one on climate change and one on environment, an expert meeting was organized on 25 to 27 January 2012, with the aim to bring together State representatives, academics and civil society organizations to identifying concrete inroads for human rights to both debates and to propose future action within the Human Rights Council.
Despite climate change being also an environmental issue, the HRC debates have treated as distinct topics “human rights and climate change”, and “human rights and environment”, which led to separate Council resolutions with the possibility of separate mechanisms to advance the respective linkages.

The expert meeting considered various possibilities regarding the nature of any future mandate: the establishment of a “Human Rights and Environment” mandate and/or a “Human Rights and Climate Change” mandate, or a combination of both. In view of the political and financial constraints in the HRC, the discussion focused especially on the question of whether merging the initiatives into one mandate was a better or more feasible option.52

The HRC seminar on human rights and climate change

The Human Rights Council seminar on human rights and climate change requested by Resolution 18/22 was held 23–24 February 2012, in the Palais des Nations. In the conclusions of the seminar, it was highlighted that all the experts had acknowledged the adverse impacts of climate change on people and communities and on their human rights.

Some statements even claimed that “climate change can be considered as the single most important threat to food security in the future” and that “climate change is the biggest threat to the enjoyment of a safe and healthy environment”.

The role of Special Procedures in bridging the gap between the human rights and climate change communities was welcomed. Special Procedures can clarify legal issues, carry fact-finding missions on the ground and develop legal instruments responding to some of the challenges. It was also proposed that an HRC Special Procedure be specifically devoted to the issue of climate change. It could address the problem as a whole and more coherently and also facilitate the work of other concerned Special Procedures.

A summary report53 was addressed to the June session of the Council and made available to the 18th session of the Conference of Parties to the UNFCCC in November 2012 in Doha (COP18).

Special procedures continue to document the issue

Special Procedures continued to include in their annual reports to the UN HRC and the UN General Assembly information about the impact of climate change on human rights.

The Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, in August 2011 continued the work of his predecessor and devoted the thematic part of his report to the UN General Assembly to the “Protection of and assistance to internally displaced persons”.54

His report explored the linkages between climate change and internal displacement from a human rights perspective. He argued that climate change is already acting as “an impact multiplier and accelerator”.

In addition to its negative impact on social and economic rights, which will itself provoke some displacement, climate change, interacting with other pressures or social and political factors, will exacerbate the risk of conflicts, which could then act as a driver of further displacement.55

Therefore, he considered that “durable solutions for displaced populations should be part of national adaptation plans, and local and national capacity-building programs, and be supported by funds made available for adaptation measures”56.
In January 2012, he included further considerations in his annual report\textsuperscript{57} to the HRC.

The erosion of livelihoods, in part provoked by climate change, is considered a key “push” factor for the increase in rural to urban displacement and migration, most of which is likely to be to urban slums and informal settlements offering precarious living conditions. The Special Rapporteur believes that the urban dimensions of climate-change-induced displacement should be a key consideration in medium- and long-term national development strategies, as well as adaptation.\textsuperscript{58}

In August 2012, the Special Rapporteur on the human rights of migrants, François Crépeau, presented his report to the General Assembly on climate change and migration.\textsuperscript{59} He underlined that with climate change, the rate and scale of migration could be multiplied.\textsuperscript{60} But, “although environmental transformations experienced as a result of climate change may contribute to migratory movements, environmental migration, like every kind of migration, is essentially a complex, multicausal phenomenon which may be driven by a multiplicity of push-and-pull factors”.\textsuperscript{61} “Therefore, only with precise knowledge of the scope and nature of environmental migration will States be able to develop and agree upon common policies in this regard”.\textsuperscript{62} What is required, however, is a more concerted and concrete application of the existing human rights law to the situation of climate-change-induced migrants.\textsuperscript{63} But one category of climate-change-induced migrants that international law needs to consider urgently is the one of the inhabitant of low-lying island States.\textsuperscript{64} To date, the international legal framework appears to be largely inadequate to address their situation.\textsuperscript{65}

Country visits to address concerns on climate change were also conducted. The Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquer-

due in 2012 to threatened Pacific Small Island Developing States: Tuvalu, on 17–19 July 2012,\textsuperscript{66} and Kiribati, on 23–26 July 2012.\textsuperscript{67} The Special Rapporteur paid particular attention to the impacts of climate change on the enjoyment of the human rights to water and sanitation.

The atolls of Kiribati are only a few meters above sea level, which means that most of the people are directly exposed to extreme weather events intensified by climate change.\textsuperscript{68} Therefore, the Special Rapporteur recommends that adaptation plans put the human rights to water and sanitation at the center to respond to people’s actual needs without discrimination and that international assistance to adaptation also be based on such plans.\textsuperscript{69}

Tuvalu has attracted international attention as one of the states most vulnerable to potential “disappearance” due to climate change, facing risks to their sovereignty or existence.\textsuperscript{70} Climate change will further increase vulnerability to climatic events such as cyclones and drought and hence exacerbate water scarcity, saltwater intrusions, sea level rise and frequency of extreme weather events.\textsuperscript{71} The Special Rapporteur saw little evidence that affected populations, including women and children, were informed of or given opportunities to participate in discussions on the impacts of climate change and policy-making related to them.\textsuperscript{72} This disconnection should be addressed in order for Tuvaluans to adapt to climate change and tackle its adverse effects in ways that would enable them to make their own decisions.\textsuperscript{73} At the same time, she called on those countries most responsible for the current climate change situation to comply with their legal obligations to prevent or remedy the impacts of climate change on the human rights of individuals and communities\textsuperscript{74} and to take immediate action to assist Tuvalu and small island States with possible adaptation measures, as well as planning for potential scenarios in the very near future.\textsuperscript{75}

The Special Rapporteur on the right to food, Olivier de Schutter, visited Canada on 6–16 May 2012. In the part of his report\textsuperscript{76} examining specific problems faced by Indigenous Peoples,
he notes that accessing traditional foods includes now the impacts of climate change on migratory patterns of animals and on the mobility of those hunting them.

The Special Rapporteur also went in a mission to Cameroon on 16–23 July 2012.78 He noted that the coastal regions, as well as the Sahelian regions in the north of Cameroon, are particularly hard hit by climate change.79 He recommended to the government to develop a program to introduce structural improvements in the northern region, because of its vulnerability to climate change.80

The Special Rapporteur on internally displaced persons, Chaloka Beyani, conducted an official visit to the Maldives on 16–21 July 2011, during which he examined the situation of persons internally displaced as a result of the 2004 tsunami and studied issues related to risks of potential internal displacement in the future, including due to the effects of climate change.81

He found that climate change and other factors specific to the low-lying island environment of the Maldives were already affecting the livelihoods and rights of residents of many islands, including the rights to housing, safe water and health. Moreover, other factors, such as more frequent storms and flooding, coastal erosion, salination, overcrowding and the existential threat posed by rising sea levels, point to increased risks of potential internal displacement in the future.

Maximum tension at the HRC (2013)

The logical step after a seminar such as the one held early 2012 is to have a thematic resolution that takes stock of the discussion and of any progress made. But there was no follow-up in 2012. In March 2012, the HRC did adopt a resolution on human rights and the environment, creating a new mandate on this issue, addressing just minimal references to climate change but not making it a specific priority for the mandate.

It was only in June 2013 that Philippines and Bangladesh considered it possible to table a draft resolution on climate change. After a month of long and intense discussions and negotiations during the HRC session, just a few days before the Council was going to take action on the resolution, it had to be withdrawn, as the conditions for its adoption by consensus did not seem secured.

A split vote on such a resolution would be sending a very negative signal and could make a contentious issue of the human right and climate change nexus. The countries tabling the resolution did not want to take such a risk.

The difficulties encountered in the HRC were partly reflecting those of the UNFCCC process, as the final discussion in Paris for a possible new instrument was approaching, which had failed in Copenhagen. Resistance was coming from all sides, with speculations about how this or that formulation could perhaps have an influence on the discussions in the UNFCCC and with a rising level of mistrust on this issue among the regional groups in the HRC.

The process would resume only a year later.

For the Special Procedures in 2013, the annual report82 of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, includes a situation and a general issue relating to climate change.

The Special Rapporteur noted that Sudan continued to experience a variety of causes and contexts of internal displacements. These include displacement due to conflicts over resources because of climate change and natural disasters. He therefore urged the government to embrace a comprehensive framework for the protection of the human rights of IDPs by ratifying the Kampala Convention.83

Noting also the increased attention devoted to the adverse effects of climate change on potentially vulnerable groups, including women, the Special Rapporteur acknowledged that
climate change impacts men and women differently at all stages, from preparedness to reconstruction.\(^84\) He therefore recommended to all States to closely examine the gender dimensions of displacement linked to the effects of climate change, in order to identify specific vulnerabilities and good practices in gender-sensitive protection, assistance, adaptation, mitigation, relocation and reconstruction processes.\(^85\)

**A new momentum before Paris (2014–15)**

**The HRC resolution on climate change comes back**

In 2014, the resolution was tabled again by the Philippines and Bangladesh at the June session of the HRC. The discussions and negotiations were rough during the session, but finally a wording was found that made it possible to adopt Resolution 26/27 without a vote.\(^86\)

The resolution reiterated the concerns that “climate change has contributed to the increase of both sudden-onset natural disasters and slow-onset events, and that these events have adverse effects on the full enjoyment of all human rights” (§2).

The HRC also decided to include into its program of work for the 28th session a full-day discussion on two specific themes relating to human rights and climate change: on the realization of all human rights for all, in particular those in vulnerable situations, and on States’ efforts to realize the right to food.

In addition, the Council addressed briefly the issue of the impact of climate change in the resolutions on human rights and the environment 25/21 (2014) and 28/11 (2015).

**The HRC full-day discussion on climate change**

The full-day discussion took place during the 28th HRC session in March 2015 on the basis of Resolution 26/27, requesting two panels on international cooperation and on the right to food. Depicting climate change as one the greatest human rights challenge of the 21st century, panelists and participants left no doubt as to the terrible reality of its impacts.

The right to food was identified as a right particularly affected by climate change and requiring concrete action, not only by the reduction of emissions but also by changing agricultural patterns. The Human Rights Council was called to assume responsibility for safeguarding those whose rights were undermined and destroyed by the impacts of climate change, as such impacts could exceed the capacity of many States to protect their people. A human rights–based approach demands the inclusion of climate justice, as well as international cooperation and solidarity, all of which are essential in supporting affected countries, including through finance and technology.\(^87\)

**The last resolution before Paris**

In the June session of the HRC, the 2015 Resolution 29/15\(^88\) on climate change and human rights reached consensus more easily and was co-sponsored by 110 countries. The resolution welcomed the establishment of the Climate Vulnerable Forum and welcomed the holding of the 21st Conference of the UNFCCC in Paris in December 2015 (COP21). It mandated the Office of the UN High Commissioner for Human Rights (OHCHR), together with other key stakeholders, to prepare a detailed analytical study on the relationship between climate change and the human right to health for the March 2016 HRC session. The resolution also called for a panel discussion on climate change, human rights and health to be held at the 31st session (March 2016) of the Human Rights Council.\(^89\)
Special procedures make their voiced heard

The Special Rapporteur on human rights and the environment, John Knox, has been particularly active on the question of climate change, and in 2014 for the 25th session of the HRC in March, he issued a mapping report of statements made by human rights mechanisms regarding the numerous human rights that are threatened by climate change, as well as human rights obligations related to climate change.90 In his report to the 28th session of the Human Rights Council in March 2015, Knox identified good practices, particularly on climate change.91

The Special Procedures also made several important joint advocacy efforts in view of the upcoming COP21 in Paris and the possible adoption of a new instrument.

On 17 October 2014, 28 Special Procedures wrote an “Open Letter”92 to State parties to the UNFCCC that urged them “to adopt urgent and ambitious mitigation and adaptation measures to prevent further harm” and to include in the 2015 Paris climate agreement a commitment that “the Parties shall, in all climate change related actions, respect, protect, promote and fulfill human rights for all, and to launch a work program to ensure that human rights are integrated into all aspects of climate actions”.

Five thematic Special Rapporteurs prepared a report for the Climate Vulnerable Forum, entitled “The Effects of Climate Change on the Full Enjoyment of Human Rights”. On behalf of the Forum, the Philippines submitted the report on 1 May 2015 to the Conference of Parties to the UNFCCC. This report underlined that the increase of global warming also inevitably increases the negative impacts on the enjoyment of human rights. With this report in hand, the Forum urged the COP21 to adopt a more ambitious target in the climate agreement under negotiation to avoid the devastating effects of a rapidly warming planet on the basic rights of all persons.93 Several Parties that were Members of the Climate Vulnerable Forum referred several times to this report during the negotiation in Paris for the inclusion of the target of 1.5°C in the Paris Agreement.

For the World Environment Day on 5 June 2015, the group of 28 Special Procedures issued a “Joint Statement”94 drawing attention to the grave harm even a 2°C increase in average global temperature would cause to the enjoyment of human rights. The Special Rapporteurs urged climate negotiators in the UNFCCC to reach an agreement at COP21 in Paris concerning obligations human rights law places on States to protect and promote human rights in the context of climate change.

On 10 June, the Universal Rights Group,95 together with the Climate Vulnerable Forum and the government of Costa Rica, organized an event to present and build on a Joint Statement (Friday 5 June) by UN Special Procedures drawing attention to the CVF-commissioned report on climate change and human rights submitted to the UNFCCC ahead of the UN Climate Change Conference at Bonn, Germany (1–12 June 2015).

The UNFCC COP20 in Lima and COP21 in Paris

At COP20 in Lima, the first UN Human Rights Day during a UNFCC COP was celebrated on the 10th of December. Such an initiative was notably supported by the Mary Robinson Foundation for Climate Justice (MRFCJ),96 marking the day with meetings between ministers, ambassadors, experts and representatives of local and international civil society. Several organizations also held on that day a side event97 to give an opportunity to UN Human Rights Special Rapporteurs to present their joint Open Letter to the UNFCCC made by 28 of them.

Between the COP20 in Lima and the COP21 in Paris, several inter-sessional meetings and negotiations were held. Usually such meetings take place in Bonn. But one of them, the eighth
part of the second session of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP 2–8), met in Geneva on 8–13 February.

This meeting was clearly preparing the first drafting steps of what became the Paris Agreement at COP21. As most of the human rights UN bodies are in Geneva, as well an important number of diplomatic experts and NGOs, it provided a unique opportunity to discuss the linkages between climate change and human rights and foresee what should be included in the future agreement on this matter. Actually, the very first proposals were made by a number of States at the opening of the meeting in the Palais des Nations taking place in the room facing the one of the HRC.

Having a session in Geneva was not only beneficial for the governmental delegations. It was also an opportunity for NGOs from the two fields to work together. The “NGO Working Group on Human Rights and Climate Change”, created at the 2008 COP14 in Poznan to promote the inclusion of human rights in climate change actions, met with the GeCCco and the GIF. This joint work greatly helped consolidate the collaboration between the networks and would be pursued up to Paris.

It was also in Geneva, at the February 2015 Climate Justice Dialogue invited by the Mary Robinson Foundation (MRFCJ), that Costa Rica proposed to create the “Geneva Pledge for Human Rights in Climate Action”, a voluntary initiative for States to facilitate the sharing of best practices and knowledge between human rights and climate experts at the national level. The Geneva Pledge has since held regular discussions at HRC sessions.

For Paris and its COP21 in December 2015, the OHCHR made a submission: “Understanding Human Rights and Climate Change”, to inform the ongoing negotiations of the 21st Conference of the Parties to the UNFCCC. It contained the OHCHR’s “Key Messages on Human Rights and Climate” highlighting the essential obligations and responsibilities of States and other duty-bearers (including businesses) and their implications for climate change-related agreements, policies and actions. It aims to foster policy coherence and help ensure that climate change mitigation and adaptation efforts are adequate, sufficiently ambitious, non-discriminatory and otherwise compliant with human rights obligations, considerations which should be reflected in all climate action.

Also in view of COP21, Human Rights Watch released its first report on the impact of climate change on the human rights. It analyzed the situation of the people in the Turkana region of Kenya. It described the increased difficulty they face in getting water, as many water sources have dried out, making every day a struggle for survival. Women and girls often have to walk longer distances to dig for water in dry riverbeds. The report included key recommendations to the Kenyan authorities, as well as donor countries, on integrating climate change into development plans and including affected communities in the planning process.

At the COP21 in Paris, on 10 December, Human Rights Day, an important round table was held on “Climate Change: One of the Greatest Human Rights Challenges of Our Time”. It brought on the panel Mary Robinson, several Special Procedures, a civil society representative from the Pacific Islands and the OHCHR, who all called the State delegations to bring COP21 to a meaningful conclusion in terms of human rights.

The Paris Agreement

How much exactly have all these efforts impacted on the drafting of the Paris Agreement will remain an issue for discussion. But clearly some of the contributions of the HRC have been used as arguments or as references in the negotiations. Of course, the result of having human rights language mainly in the preamble of the Agreement is seen by some organizations and
observers as too weak. Some parties were asking for an inclusion in the operative part, which
would have ensured a more direct implementation.

Nevertheless, the Paris Agreement contains the strongest language on human rights in any
environmental treaty to date. The agreement states that countries should “respect, promote and
consider” human rights in their response to climate change and underlines the rights of Indig-
enuous Peoples, women, migrants, children and those in vulnerable situations.103

Some of this wording sounds like an echo of the HRC resolutions. The variety of rights and
issues referred to in the preamble is similar to the issues discussed at the HRC and covered by
mandates of HRC Special Procedures.

Only the notion of intergenerational equity can be perhaps considered as not been addressed
very clearly yet by the HRC.

The preamble also makes reference to crosscutting issues where the HRC cooperates with
specialized institutions and agencies, such as the World Health Organization (WHO), the Inter-
national Labour Organization (ILO), the United Nations Development Program (UNDP), the
International Organization for Migrations (IOM) and the Food and Agriculture Organization
(FAO).104 These references to rights open a web of connections that can contribute usefully to
the effective and correct implementation of the Agreement.

Another concern of the human rights bodies has also been taken into consideration. Mitiga-
tion and adaptation projects are at times the cause of human rights abuses.105 Human rights
experts have repeatedly reminded States that developing “green energy” alternatives for the
benefit of climate stability should not be done at the expense, for example, of food security or
be the cause of unlawful forced displacement. Funding for climate change, which will be an
increasing issue in the coming years, must not fuel discrimination. It must be done with proper
and effective consultation and participation of all affected populations.

Keeping in mind the influence that they have been able to have in this process from Copen-
hagen to Paris, human rights bodies, in particular the HRC and its Special Procedures, now will
have to see how they can continue to struggle against climate change by supporting the imple-
mentation of the Paris Agreement, by easing the communication among bodies of both fields,
by bringing facts about the impacts of climate actions on the ground and by evaluating progress
made in preventing human rights violations relating to climate change.106

Notes

1 M. Wewerinke and V. PYu III, *Addressing Climate Change Through Sustainable Development and the Promotion of
Human Rights*, Research Paper 34 (November 2010), available online at www.southcentre.int/wp-content/
uploads/2013/05/RP34_Climate-Change-Sustainable-Development-and-Human-Rights_EN.pdf.

2 Among the very involved civil society organizations around the HRC on this issue, we can mention
the Friedrich-Ebert-Stiftung (FES), the Center International for Environmental Law (CIEL), Earthjust-
tice, The Universal Rights Group (URG), Franciscans International, the World Council of Churches,
Brahma Kumaris, and INTLawyers.

3 United Nations Framework Convention on Climate Change (UNFCC), *Adoption of the Paris Agreement*,

4 The Special Procedures of the Human Rights Council are independent human rights experts (Special
Rapporteur, Independent Expert, Working Group) with mandates to report and advise on human
rights from a thematic or country-specific perspective. The system of Special Procedures is a central

5 General Assembly (GA), *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the

RES/7/23 (adopted without a vote on 28 March 2008).

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8 Ibid., at para 5.
12 UN Office of the High Commissioner of Human Rights (OHCHR), Report of the OHCHR on the Relationship Between Climate Change and Human Rights, UN Doc. A/HRC/10/61 (15 January 2009). The report had benefited from written and oral submissions by over 30 States and 35 international agencies, national human rights institutions, NGOs and academic bodies.
14 The Global Humanitarian Forum was a non-profit foundation that was active from 2007 to 2010 and presided over by former United Nations Secretary-General Kofi Annan. The Forum intended to serve as an independent platform for debate and collaboration on global humanitarian issues.
22 Ibid., at para 66.
23 Ibid., at para 70.
27 Side Event on ‘Climate Change and Human Rights’, organized by the Centre for International Environmental Law (CIEL) and the Friedrich-Ebert-Stiftung (FES), in Bonn, on 2 June 2009.


Ibid., at para 7.

Ibid., at para 10 (d)(i).


Ibid., at para 21.

Ibid., at para 23.

Ibid., at para 66(a).


Ibid., at para 24.

Ibid., at para 38.


HRC Res. 18/22, Human Rights and Climate Change, UN Doc. A/HRC/RES/18/22 (adopted without a vote on 30 September 2011).

This group of countries included also Costa Rica and Switzerland, later joined by Slovenia and Morocco.


Expert meeting organized by the Center for International Environmental Law (CIEL), the Geneva office of the Friedrich–Ebert–Stiftung (FES) and Earthjustice (adding “environment” as a new related issue to the debate), Château de Bossey, Geneva, on 25–27 January 2012.


Ibid., at para 29.

Ibid., at para 80.


Ibid., at para 35.


Ibid., at para 31.

Crépeau, supra note 59, at para 32.

Ibid., at para 34.

Ibid., at para 54.

Ibid., at para 66.

Ibid., at para 67.

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Ibid., at para 46.

Ibid., at para 63(k).

Ibid., at para 42.

Ibid., at para 39.

Ibid., at para 44.

Ibid., at para 45.

de Albuquerque, 28 June 2013, supra note 66, at para 53.

Ibid., at para 54.


Ibid., at chapter VIII.


Ibid., at para 54.

Ibid., at para 73 (e).


Ibid., at para 19.

Ibid., at para 52.

Beyani, 30 January 2012, supra note 81, at para 93.


The Universal Rights Group (URG) is an independent think tank based in Geneva dedicated to analyzing and strengthening global human rights policy.

Mary Robinson Foundation for Climate Justice, founded and chaired by Mary Robinson, former President of the Republic of Ireland and former United Nations High Commissioner for Human Rights.

Side event for the UN Human Rights Day on ‘Climate Change Threatening Human Rights: Challenges and Actions’ organized by the World Council of Churches, Religions for Peace, Quaker United...


102 The round table was organized by the Human Rights & Climate Change Working Group, the Geneva Climate Change Consultation Group, CARE International, Center for International Environmental Law, Earthjustice, Franciscans International, Friedrich-Ebert-Stiftung and Human Rights Watch.

103 Paris Agreement, supra note 3, at Preamble: “Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and inter-generational equity”.

104 Paris Agreement, supra note 3, at Preamble: “Recognizing the fundamental priority of safeguarding food security and ending hunger, and the particular vulnerabilities of food production systems to the adverse impacts of climate change,” & “Taking into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities”.

105 Paris Agreement, supra note 3, at Preamble: “Recognizing that Parties may be affected not only by climate change, but also by the impacts of the measures taken in response to it”.

Part III

Early lessons