

# A Human Rights-Based Approach to Climate Change

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The level of international cooperation which is required to effectively address the issue of climate change is unprecedented since global strategies to limit human-induced climate change and to adapt to its consequences are a major challenge. The degree of sophistication and specialization involved in tackling climate change has prompted researchers to qualify the international climate change regime as a “*highly specialized area of international law*”<sup>1</sup>. The first preamble clause of the United Nations Framework Convention on Climate Change (UNFCCC) read together with the Kyoto Protocol has acknowledged that changes in the climate of Earth and its resulting adverse effects are a common concern for humankind. Furthermore, and arguably more importantly, the UNFCCC advocates for a common international legal and normative framework with the view of stabilizing “*the greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system*” in accordance with its Article 2. These unique treaty provisions are also supported by preexisting rules of international law such as international environmental law, international human rights law and State responsibility forming the foundational basis of international climate change regulation<sup>2</sup>. Identifying pertinent and relevant international rules and determining the scope of their applicability in the combat against climate change requires a comprehensive framework and an interpretation process which is governed by actors such as States, international organisations, civil society organisations, jurisprudence and the legal scholastic community<sup>3</sup>.

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<sup>1</sup> E. HOLLO et al., “Climate change and the law”, in HOLLO E., KULOSEVI K., MEHLING M. (eds.), *Climate Change and the Law*, Springer, 2012, p. 2.

<sup>2</sup> S. MCINERNEY-LANKFORD et al. *Human rights and climate change: A review of the international legal dimensions*, World Bank Publications, 2011, pp.11-19.

<sup>3</sup> F. KNUR, “Climate change as a threat to peace”, in S. VON SCHORLEMER, S. MAUS, *The United Nations human rights-based approach to climate change - introducing a human dimension to international climate law*, Frankfurt: Peter Lang AG, 2014, p. 38.

This article reviews the human rights-based approach to climate change as proposed by the United Nations spearheaded by its Office of the High Commissioner for Human Rights (OHCHR). It highlights the relationship between human rights and climate change as per the OHCHR. It also underlines certain conceptual questions on the subject of further development of this approach in combating climate change as well as examines the contribution of this approach to the global discourse on climate change.

## **I. Background to the Relationship Between Climate Change and Human Rights-based approach**

In November 2007, the “*Malé Declaration on the Human Dimension of Global Climate Change*” was adopted by a group of Small Island Developing States through which an assessment of the human rights impacts and implications of climate change was requested<sup>4</sup>. This Declaration is considered as the starting point of the conceptual link between human rights and climate change. The United Nations Human Rights Council (UNHRC) recognized and endorsed the nexus between climate change and human rights and requested the OHCHR to initiate a study on this new dimension through a UNHRC resolution<sup>5</sup>. A report entitled “*Report on the relationship between climate change and human rights*” was published in January 2009 based on submissions made by states, non-governmental organizations, international institutions and scientific groups<sup>6</sup>. Subsequently, the UNHRC opted to hold an interactive panel discussion on the subject matter whereby it was underlined that it was relevant and valuable to “*look at the climate change-related effects from a human rights perspective*”<sup>7</sup>. In spite of the above recognition of the UNHRC, it was clear that a consensus among states could not be reached as to whether or not international human rights laws impose state obligations to address the causes and consequences of climate change. However, the positive outcome of the above development was that the international community at least agreed that a human rights-based approach to

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<sup>4</sup> Malé Declaration, 13-13 November 2007, Available online at:

[www.ciel.org/Publications/Male\\_Declaration\\_Nov07.pdf](http://www.ciel.org/Publications/Male_Declaration_Nov07.pdf), accessed 03 May 2021.

<sup>5</sup> UN Human Rights Council, Res 7/23, *Human rights and climate change*, UN Doc A/HRC/7/78, 28 March 2008.

<sup>6</sup> UN Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, UN Doc A/HRC/10/61, 15 January 2009.

<sup>7</sup> UNHRC, “Panel Discussion on the Relationship between Climate Change and Human Rights: Summary of Discussions”, 15 June 2009, Available online at:

[www.ohchr.org/Documents/Issues/ClimateChange/SummaryPanelDiscussion.doc](http://www.ohchr.org/Documents/Issues/ClimateChange/SummaryPanelDiscussion.doc), accessed 03 May 2021.

climate change was valuable and meaningful. The next section briefly outlines the principal essence of such an approach.

### **A. The Human Rights-based Approach**

According to the OHCHR, a human rights-based approach is “*a conceptual framework that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights*”. The primary aim is to “*analyze obligations, inequalities and vulnerabilities and to redress discriminatory practices and unjust distributions of power that impede progress and undercut human rights*”<sup>8</sup>. The OHCHR has made an authoritative statement on the structure and importance of this approach as follows: “*Under a human rights-based approach, plans, policies and programmes are anchored in a system of rights and corresponding obligations established by international law. This helps to promote sustainability, empowering people themselves (right-holders), especially the most marginalized, to participate in policy formulation and hold accountable those who have a duty to act (duty-bearers)*”<sup>9</sup>.

It further added that the United Nations agencies have nevertheless agreed on essential attributes to such an approach which is as follows: “*(1) As policies and programmes are formulated, the main objective should be to fulfill human rights; (2) A human rights-based approach identifies rights-holders and their entitlements and corresponding duty-bearers and their obligations, and works towards strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations and (3) Principles and standards derived from international human rights treaties should guide all policies and programming in all sectors and in all phases of the process*”<sup>10</sup>.

The OHCHR Report argues “*how the observed and projected impacts of climate change have implications for the enjoyment of human rights and for the obligations of States under international human rights law*”<sup>11</sup>. What is not clear is whether climate change in itself would amount to a human rights violation as per the following passage from the OHCHR Report: “*While climate change has obvious implications for the enjoyment of human rights, it is less obvious whether, and to what extent, such effects can be qualified as human rights violations*”<sup>12</sup>.

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<sup>8</sup> OHCHR, *Applying a human rights-based approach to climate change negotiations, policies and measures*, Available online at :

<https://www.ohchr.org/documents/issues/climatechange/infonotehrba.pdf>, accessed 03 May 2021

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> UN Doc A/HRC/10/61, *op. cit.*, Summary.

<sup>12</sup> *Ibid.*, § 70.

Therefore, to be able to assess whether climate change is a human rights violation, directly or indirectly, it is important to consider the various dimensions of human rights law and climate change.

## **B. The Dimensions of Human Rights Law and Climate Change**

In practical terms, a human rights-based approach can be employed to guide measures and policies of climate change mitigation and adaptation. It can inform and influence assessments as well as consolidate processes with the aim of a participation which is effective, access to essential information and effective remedies. According to the OHCHR “*the Guidance Note for UN country teams on Integrating Climate Change Considerations in the Country Analysis and the United Nations Development Assistance Framework (UNDAF) integrates a human rights-based approach, requiring that UNCTs consider in what ways, and to what extent, anticipated changes in climate will impede economic and social development at relevant levels, including consideration of poverty reduction, strengthening human rights and improving human health and well-being*”<sup>13</sup>.

Such an approach should be integrated in any measure related to climate change adaptation or mitigation. This includes the promotion of alternative sources of energy, projects concerning forest conservation and tree-planting, schemes of resettlement amongst other things. Members of communities and individuals who are affected must participate in a non-discriminatory manner, in the creation and implementation of such projects. There is a possibility that mitigation and adaptation strategies which are inadequate in terms of participation of local communities may result in human rights violations.

With respect to the rights of individuals and members of local communities who have been made vulnerable and marginalized by poverty and discrimination, a human rights-based approach can be a meaningful weapon to support international efforts being employed in tackling the negative effects of global warming. States therefore have an obligation to take both individual and collective actions and measures to reduce greenhouse gas emissions as well as to assist those who are most vulnerable in preparing for, and adapting to, their unstoppable impact.

### **1. The Entitling Dimension**

The critical question of whether or not climate change is in itself a human rights violation is still not clear despite the adoption of a human rights-based approach to combat climate change by the United Nations as described above. In

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<sup>13</sup> OHCHR, *Applying a human rights-based approach to climate change negotiations, policies and measures*, op. cit. note 8

view of answering this question, a twofold approach can be taken based on the principle that international human rights law have both an entitling and an obligating dimension<sup>14</sup>.

The international normative and legal system for the promotion and protection of human rights is founded on the idea that all human beings are *entitled* to the freedoms and rights provided for by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). This dimension of human rights law which has an entitling power in relation to climate change, is synthesized by the OHCHR Report stating that climate change will “*potentially have implications for the full range of human rights*” and in particular the right to life, the right to adequate food, the right to health and right to housing as well as the right to self-determination<sup>15</sup>. In addition, it accentuates that the effects of climate change will be felt most severely and acutely by groups considered as vulnerable such as women, children and indigenous peoples who would therefore be entitled to special protection in accordance with the principle of equality and non-discrimination<sup>16</sup>. As a result, viewed from the perspective of the ones entitled by human rights, it can be safely concluded that climate change and its impacts and consequences are in violation of human rights<sup>17</sup>.

## 2. The Obligating Dimension

A crucial interrogation is whether or not climate change can be considered as a human rights violation legally attributed to States as the primary duty-bearers as per the legal framework on international human rights law. Indeed, one salient feature of the international human rights system is the formation of State *obligations*. A State is legally bound to obey human rights provisions enshrined by international covenants and customary law towards the individual person, towards another State bilaterally and always to the whole international community. Thus, it remains to question whether or not contributing to climate change by emitting greenhouse gases resulting in global warming constitutes a violation of States human rights obligations.

The OHCHR sees three barriers to this argumentation: First, it would be “*impossible to disentangle the complex causal relationships linking historical greenhouse gas emissions of a particular country with a specific climate change-*

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<sup>14</sup> W. KALIN, J. KUNZLI, *Universeller Menschenrechtsschutz*, Helbing-Lichtenhahn, 2<sup>nd</sup> ed, 2008, p. 89.

<sup>15</sup> OHCHR, *Applying a human rights-based approach to climate change negotiations, policies and measures*, *op. cit.*, § 20.

<sup>16</sup> *Ibid.*, § 42.

<sup>17</sup> S. MCINERNEY et al., *Human Rights and Climate Change: A Review of the International Legal Dimensions*, World Bank Publications, 2017, pp. 11–19.

*related effect, let alone with the range of direct and indirect implications for human rights” ; second, global warming can often be considered as only “one of several contributing factors to climate change-related effects” ; and third, harmful consequences of global warming would often be “projections about future impacts, whereas human rights violations are normally established after the harm has occurred”<sup>18</sup>.*

It is therefore important to re-examine thus where and how the United Nations sees the added value of a human rights-based approach to climate change despite the challenges mentioned above. The OHCHR Report emphasizes on the domestic level obligations deriving from international human rights law. States are under the legal obligation to protect their citizens from foreseeable threats connected to climate change<sup>19</sup>. Also, during the adoption of measures while responding to climate change, States need to act in line with their domestic human rights obligations. As a result, mitigating measures must take into consideration possible implications and impact on the enjoyment of human rights. In the same vein, adaptive measures need to be in compliance with human rights standards including the right to access to information and the right to participation in processes of decision-making must be guaranteed<sup>20</sup>.

The OHCHR Report interprets State obligations at the international level in the context of climate change from international human rights law. Specifically, from the perspective of international equity, it is fair and just not only to impose obligations to deal with the impact of climate change in a way which is human rights-compliant on the countries most affected by climate change, but also to remind industrialized and developed countries of their responsibilities under international human rights law<sup>21</sup>. The discussion at the HRC on this issue proved difficult with developing countries and Small Island States not wanting to be “*left alone*” while developed countries insisted on focusing domestic level obligations<sup>22</sup>.

There is however an obligation and a crucial need for international co-operation and assistance in international law that also applies to the climate change context according to the OHCHR Report<sup>23</sup>. Article 1 paragraph 3 of the UN Charter and Article 2 of the International Covenant on Economic, Social and

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<sup>18</sup> OHCHR, *Applying a human rights-based approach to climate change negotiations, policies and measures*, *op. cit.*, § 70.

<sup>19</sup> *Ibid.*, § 74.

<sup>20</sup> *Ibid.*, § 78–79.

<sup>21</sup> UNHRC, *Panel Discussion on the Relationship between Climate Change and Human Rights: Summary of Discussions*, *op. cit.*, § 68–92.

<sup>22</sup> M. LIMON, “Human Rights Obligations and Accountability in the Face of Climate Change”, *Ga J Int’l Comp L*, Vol. 38, 2010, pp. 543- 550.

<sup>23</sup> *Op. cit.*, § 84-85.

Cultural Rights provide for the basis of this international obligation. As a consequence, and based on the common recognition that climate change impacts on human rights, states are under a legal obligation to cooperate by taking “*steps through international assistance and cooperation, depending on the availability of resources, to facilitate fulfilment of human rights in other countries*”<sup>24</sup> as per the OHCHR Report.

It should be noted that the OHCHR Report has also been subject to criticism despite being welcomed by the international community<sup>25</sup>. The main criticism levied against it is that while it provided for a compressive picture on how climate change affects human rights, it fell short to clearly state what should therefore be the corresponding state obligations to provide for a solution. There is a lack of detail with which domestic and international obligations of States in the context of climate change and human rights have been elaborated by the OHCHR<sup>26</sup>. A glaring lacuna is also the determination of State obligations from an extra-territorial perspective<sup>27</sup>. The OHCHR Report underlines the concern that human rights have turned into the “*common currency of contemporary legal and political discourse*” but also adds that there is a critical need for further elaboration in view of transforming the human rights-based approach into a meaningful and effective concept<sup>28</sup>.

## **II. Potential and contribution of the human rights-based approach to climate change**

As discussed above, despite the criticism against a human rights-based approach to climate change, it cannot be denied that this approach is devoid of any impact on the critical issue of climate change mitigation and adaptation. However, it can also be considered that this approach is still at its developmental stage as would be the case for any new approach before its adoption by the international community in general. It is therefore important to comprehensively assess the potential and the contribution that such an approach can bring to the discourse of mitigating and adapting to climate change.

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<sup>24</sup> *Op. cit.*, § 86.

<sup>25</sup> J. KNOX, “Linking Human Rights and Climate Change at the United Nations”, *Harvard Environmental Law Review*, Vol. 33, 2009, pp. 477-484.

<sup>26</sup> *Ibid.*, p. 478.

<sup>27</sup> J. KNOX, “Climate Change and Human Rights Law”, *Virginia Journal of International Law*, Vol. 50, 2009, pp. 163-200.

<sup>28</sup> D. EFTHYMIU, “Climate Change, Human Rights and Distributive Justice”, *Finnish Yearbook of International Law*, Vol. 20, 2009, pp. 111-112.

## A. Potential of the approach

KNUR has identified three conceptual questions to be addressed in view of measuring the effectiveness and potential of a human rights-based approach to climate change. She has presented them conceptually as follows: “*First, it will be asked whether a State duty to reduce greenhouse gas emissions could be derived from human rights law. Second, it will be considered how States could be held responsible id est liable for the harmful consequences of human- induced global warming on the grounds of human rights law. Third, the human rights-based duty to provide international assistance will be revisited*”<sup>29</sup>.

### 1. Human Rights-Based Duty to Reduce Greenhouse Gas Emissions

One essential interrogation is whether States have an obligation under the international human rights law framework to reduce greenhouse gas emissions given that human induced effects of climate change are proving to be affecting human rights<sup>30</sup>. The rationale behind imposing such an obligation is that States cannot legitimately continue in a business-as-usual manner with regard to their national emission policies especially because it has now become clear that these emissions have contributed to human-induced climate change. There is therefore a need for them to accept the obvious impact of emissions on the climate as well as the consequences on human rights of citizens of the world since the International Covenant on Economic, Social and Cultural Rights imposes an obligation of States to promote human rights internationally<sup>31</sup>. In fact, every State action, including actions resulting in emissions, which proves to be a hindrance for human beings to enjoy a higher standard of living should be considered as a violation of human rights law. It is within the competence of international human rights institutions to explore this issue to address the question of how human rights obligations of States should be linked to the international legal framework on climate change and the reduction of greenhouse gas emissions<sup>32</sup>.

On one hand, there is a need for human rights institutions deriving their mandate directly from the UN Charter to renew and revisit their commitment to the issue of human rights and climate change. Generally, the debate on this subject

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<sup>29</sup> F. KNUR, “Climate change as a threat to peace”, *op. cit.*, p. 44.

<sup>30</sup> A. ALONSO-FRADEJAS, “Sons and Daughters of the Earth: Indigenous communities and land grabs in Guatemala (Land & Sovereignty in the Americas Series, No. 1)”, *Oakland, CA: Food First/Institute for Food and Development Policy and Transnational Institute*, 2013, Available online at: [https://www.tni.org/files/download/land-sov\\_series\\_briefs\\_-\\_ndeg1\\_alonso-fradejas\\_final.pdf](https://www.tni.org/files/download/land-sov_series_briefs_-_ndeg1_alonso-fradejas_final.pdf), accessed 03 May 2021.

<sup>31</sup> J. KNOX, “Climate Change and Human Rights Law” , *op. cit.*, pp. 202-206.

<sup>32</sup> H. KELLER, L. GROVER, “General Comments of the Human Rights Committee and Their Legitimacy”, in H. KELLER, G. ULFSTEIN (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy*, Cambridge University Press, 2012, p. 127.



matter tends to be highly controversial at the UNHRC implying that there are evident restrictions of political human rights bodies<sup>33</sup>. This being said, it is still positive for the debate on human rights and climate change to be conducted at the level of HRC as this allows the subject matter to remain on the international agenda and which gives the possibility of civil society organizations and non-governmental organizations to publicly disagree and oppose states claiming that reducing emissions is not a human rights law obligation imposed on them<sup>34</sup>. The OHCHR may take the role of a think tank conducting research and providing member states of the UNHRC with scientific facts and figures on climate change and human rights. RODELY also believes that the OHCHR can also appoint a special rapporteur on the matter to further the “*comparative and global understanding of the human rights problems*”<sup>35</sup>.

On the other hand, all major international human rights treaties and conventions have established monitoring mechanisms which are constituted of international experts. These institutions, generally referred to as convention committees, are mandated and competent to assess the effects of climate change on the enjoyment of human rights. RODELY contends that these institutions can be a valuable tool “*to give States guidance in nature and scope of other obligations*”<sup>36</sup>. More specifically, General Comments of these institutions which are considered as authoritative statements explaining and defining the scope of human rights and their application, could clearly clarify the relationship between pertinent human rights and the threat posed to them by climate change and provide for policy recommendations on human rights and climate change to be implemented by states<sup>37</sup>.

## **2. The Question of State Responsibility and Liability for climate change**

Another decisive question on climate change from a human rights perspective is the possibility of holding States responsible, individually or collectively, for all damages done to human beings by human-induced climate change. Climate change litigation and resulting compensation claims is still an area which is under-explored<sup>38</sup>. Article 33 of the Articles on State Responsibility

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<sup>33</sup> N. RODELY, “UN Treaty Bodies and the Human Rights Council”, in H. KELLER, G. ULFSTEIN (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy*, Cambridge University Press, 2012, p. 352.

<sup>34</sup> F. KNUR, “Climate change as a threat to peace”, *op. cit.*, p. 45.

<sup>35</sup> N. RODELY, “UN Treaty Bodies and the Human Rights Council”, *op. cit.*, p. 353.

<sup>36</sup> *Ibid.*

<sup>37</sup> H. KELLER, L. GROVER, “General Comments of the Human Rights Committee and Their Legitimacy”, *op. cit.*, pp. 124-127.

<sup>38</sup> T. KOIVUROVA, “International Legal Avenues to Address the Plight of Victims of Climate Change: Problems and Prospects”, *Journal of Environmental law and Litigation*, Vol. 22, 2007, pp. 267–282.

for Internationally Wrongful Acts drafted by the International Law Commission does allow individual claims States. However, individuals may not have many chances and occasions to do so especially given that the UNFCCC is unclear on the question of responsibility for damage and claims of compensation for injury caused<sup>39</sup>.

Therefore, human rights law could be utilized as a framework that would provide for accountability for damages related to climate change as opined Mauritius during a HRC session on the subject matter<sup>40</sup>. Indeed, in 2005, representatives of the American and Canadian Inuit filed a petition to the Inter-American Commission on Human Rights in which they were praying to the Commission that the US be held responsible for violation of their human rights since the US was being held responsible of human-induced climate change as the world largest emitter of greenhouse gases<sup>41</sup>. The Commission held that the petition was inadmissible on the basis that it was impossible to relate emissions to one single State and to calculate that State's national responsibility for climate change<sup>42</sup>. However, despite the findings of the Commission on this matter as above, it was agreed that the case had opened a debate on States being responsible and liable for human rights violations caused by climate change based on its historical emissions and the extent to which it honors its emission-target as per the Kyoto Protocol<sup>43</sup>.

### **3. Duty to Provide International Assistance to Affected States on the basis of human rights**

Is there a human rights-based extra-territorial duty on States to provide for international assistance to states that are affected by climate change and are in the process of adapting to its consequences? The Article 4(c) of the UNFCCC imposes a duty to assist with adaptation with regard to transfer of technology and

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<sup>39</sup> R. VERHEYEN, *Climate Change Damage and International Law: Prevention Duties and State Responsibility*, Nijhoff, 2005, 242 p.

<sup>40</sup> HRC, "The Statement of Mauritius at the Panel on Human Rights and Climate Change", HRC 11th Session, 15 June 2009.

<sup>41</sup> Inuit Circumpolar Council, "Petition to the Inter-American Commission on Human Rights Seeking Relief from the Violations Resulting from Global Climate Warming Caused by Acts and Omissions of the United States", [Online] Available: [www.inuitcircumpolar.com/files/uploads/icc-files/FINALPetitionSummary.pdf](http://www.inuitcircumpolar.com/files/uploads/icc-files/FINALPetitionSummary.pdf), document retiré mais voir <https://www.inuitcircumpolar.com/press-releases/inuit-petition-inter-american-commission-on-human-rights-to-oppose-climate-change-caused-by-the-united-states-of-america/> consulté le 8/6/2021.

<sup>42</sup> J. GORDON, "Inter-American Commission on Human Rights to Hold Hearing after Rejecting Inuit Climate Change Petition", *Sustainable Development Law and Policy*, Vol. 7, 2007, p. 55.

<sup>43</sup> J. FORD, "Supporting Adaptation: A Priority for Action on Climate Change for Canadian Inuit", *Sustainable Development Law and Policy*, Vol. 8, 2008, p. 25.

others. It is however very challenging to concretely implement this obligation solely as a treaty obligation. As a solution to it, McINERNEY & al. argue that human rights law could support the implementation and concretising of these obligations as human rights law contains the international cooperation and mutual assistance principles<sup>44</sup>. This approach is provided by Article 2 of the International Covenant on Economic, Social and Cultural Rights as follows: “*Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures*”.

KNUR has aptly interpreted the above article to examine whether there exists a human rights-based duty to cooperate especially in the context of climate change in the following passage:

*“Thus, the ICESCR obligation to promote social, economic and cultural human rights is not restricted to the territory of a State party, but extends to international assistance and cooperation. However, it is unclear what is contained in the human rights-based duty to cooperate; the nature of the concept and its legal value is still debated. In terms of providing economic or technical assistance from one State to another, the duty to assist does not emerge until the sovereign State asks for it; even then it has to be realised step by step only. However, the duty of international cooperation and assistance could also contain a ‘standing’ State obligation to offer assistance to those States and peoples most affected by the consequences of global warming. Should not all States constantly take steps in order to guarantee non-discrimination in access to economic, social and cultural rights everywhere and to ensure the minimum essential levels of each right enshrined in the covenant? It should also be investigated to what extent national obligations of environmental law might be applicable internationally. Before legislating emission caps, States could be asked to do an impact assessment not only focusing on national (and border) regions, but also take into account consequences on a global level”<sup>45</sup>.*

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<sup>44</sup> S. McINERNEY-LANKFORD et al., *Human rights and climate change: A review of the international legal dimensions*, World Bank Publications, 2011, pp. 61-62.

<sup>45</sup> F. KNUR, “Climate change as a threat to peace”, *op. cit.*, p. 50.

## **B. The Contribution of the Human Rights-Based Approach to the International Discourse on Climate Change**

As discussed above in section A, the conceptual approach to climate change from an international human rights law perspective and as a derivative is still incomplete with several critical questions left unanswered so far. Even the OHCHR Report has not significantly changed the way in which climate change could be combatted using a human rights-based approach. As such, it seems risky for individuals to claim compensation through climate change litigation processes on the basis of international human rights law. There are also no concrete obligations being imposed on States for them to commit to greenhouse gases emissions as part of their human rights obligations. Against this backdrop, it is therefore apposite to assess whether a human rights-based approach to climate change is still worth considering or not<sup>46</sup>. KNUR, in attempting to respond to this question, argues as follows: “*It may be stated that the human rights-based approach contributes to the international discourse on climate change in two significant ways: On a very practical level, conceptually linking climate change and human rights provides access to institutions. On a more theoretical level, the human rights-based approach to climate change introduces a vertical level to international climate law and refocuses it on the needs and subjective rights of individuals*”<sup>47</sup>.

### **1. Access to Institutions**

It is well-known that the most significant and pertinent institutions working on climate change are run by scientists and diplomats<sup>48</sup>. Their mandate does not extensively and comprehensively include the impacts of global warming<sup>49</sup>. This implies that there is a lack of international institutions available to discuss and recommend policies on the impacts of climate change from a non-scientific or non-political angle. Therefore, considering climate change as a human rights-related issue enhances accessibility to international institutions. Human rights bodies are famously known to be platforms of lively debates and expertise. This may be rewarding for the debate of the human rights-related aspects of climate change. KNUR contends that:

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<sup>46</sup> E. CAMERON, “Human Rights and Climate Change: Moving from an Intrinsic to an Instrumental Approach”, *Georgia Journal of International and Comparative Law*, Vol. 38, 2010, p. 673.

<sup>47</sup> F. KNUR, “Climate change as a threat to peace”, *op. cit.*, p. 51.

<sup>48</sup> M. DOELLE, “Compliance and Enforcement in the Climate Change Regime”, in E.J. HOLLO, K. KULOVESI, M. MEHLING (eds), *Climate Change and the Law*, Springer, 2012, pp. 166-169.

<sup>49</sup> M. LIMOM, “Human Rights and Climate Change: Constructing a Case for Political Action”, *Harvard Environmental Law Review*, Vol. 33, 2009, pp. 439-451.

*“By linking climate change to human rights, a multitude of institutions become available as platforms for discussion. The Human Rights Council and the convention committees then are the forums where States as well as international experts negotiate problems of climate change, analyze them from a human rights angle and elaborate on related legal and political aspects. With general comments or during the individual complaints procedure, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights might investigate the effects of global warming on single convention rights. During the reporting procedures they could include climate change aspects and ask to what extent States cooperate internationally in order to mitigate the effects of climate change in Developing and Small Island States. NGOs could complement the process by presenting their points of view”<sup>50</sup>.*

## **2. Introduction of subjective rights**

Another contribution of a human rights-based approach to climate change is that it may add a vertical dimension based on State obligations which would then open the possibility of subjective rights to international climate law. So far the existing framework on international environmental law only imposes obligations on States on a horizontal level, that is, one State has an obligation to reduce emissions primarily towards another State. In contrast, under a vertical obligation imposed by international human rights law, an individual is legally entitled to specific acts or omissions by a State<sup>51</sup>. KNUR illustrates this possibility as follows: *“At present it is rather difficult to derive such a vertical structure from the UNFCCC. It stands to reason, from a classical inter-State treaty with a horizontal structure, that subjective rights can also be derived and to what extent a human rights-oriented interpretation could assist with this endeavour”*.

## **Conclusion**

The legal and normative framework on international human rights law is helpful in filling gaps and overcoming challenges that exist in the current international climate change regime. Human rights law as an interactive platform with international climate law may be useful in re-focusing its rules, aims and objectives more in line with the interests and the needs of the individual. The OHCHR Report has highlighted that *“the human person is the central subject of*

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<sup>50</sup> KNUR F, “Climate change as a threat to peace”, *op. cit.*, p. 52.

<sup>51</sup> D. BODANSKY, “Climate Change and Human Rights: Unpacking the Issues”, *Georgia Journal of International and Comparative Law*, Vol. 38, 2010, p. 511.

*development and that international cooperation is not merely a matter of the obligations of a State towards other States, but also of the obligations towards individuals*<sup>52</sup>. The United Nations has not yet fully explored the advantages of using a human rights-based approach to climate change. Despite its challenges, the article has argued that there may be sound reasons for at least such an approach to be tested.

The human rights-based approach to climate change provides for a more legalistic framework to combat climate change than environmental conventions and treaties would normally do. In addition to providing a human rights face to the issue of climate change, the human rights-based approach moves the whole climate change debate from the political arena (under international climate regime) to the area of international law. To illustrate, reduction of greenhouse gas emissions would be considered as a matter of obligation that a state would have towards an individual whose is a victim of human rights violations caused by climate change. However, under the current international climate regime, greenhouse gas reduction is merely a matter of political negotiations and voluntary targets without any binding effects. It is therefore in the best interest of the international community to move the agenda on climate change forward by adopting a human rights-based approach especially given that less and less progress is being made so far by adopting other approaches and strategies.

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<sup>52</sup> *Op. cit.*, § 86.