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## HUMAN RIGHTS AND CLIMATE CHANGE

As the effects of climate change continue to be felt, appreciation of its future transformational impact on numerous areas of public law and policy is set to grow. Among these, human rights concerns are particularly acute. They include forced mass migration, increased disease incidence and strain on healthcare systems, threatened food and water security, the disappearance and degradation of shelter, land, livelihoods and cultures and the threat of conflict.

This inquiry into the human rights dimensions of climate change looks beyond potential impacts to examine the questions raised by climate change policies: accountability for extraterritorial harms; constructing reliable enforcement mechanisms; assessing redistributive outcomes; and allocating burdens, benefits, rights and duties among perpetrators and victims, both public and private. The book examines a range of so-far unexplored theoretical and practical concerns that international law and other scholars and policy-framers will find increasingly difficult to ignore.

STEPHEN HUMPHREYS is Research Director at the International Council on Human Rights Policy (ICHRP), an independent research institution based in Geneva, Switzerland. He holds a Ph.D. from the University of Cambridge and has published widely on human rights.

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Edited by

STEPHEN HUMPHREYS

with a Foreword by

MARY ROBINSON



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ACRONYMS

ATCA	Alien Tort Claims Act
CAFOD	Catholic Agency for Overseas Development
CBDR	common but differentiated responsibilities
CDM	clean development mechanism
CERD	Committee on the Elimination of Racial Discrimination
CER	certified emission reduction
CESCR	Committee on Economic, Social and Cultural Rights
CIFOR	Centre for International Forestry Research
COP	Conference of the Parties (to the UNFCCC)
CRC	Convention on the Rights of the Child
ECtHR	European Court of Human Rights
EPA	Environmental Protection Agency
ETS	emissions trading system
FAO	Food and Agricultural Organisation
FIELD	Foundation for International Environmental Law and Development
GATT	General Agreement on Tariffs and Trade
GCI	Global Commons Institute
GDR	greenhouse development rights
GEF	global environmental facility
GHG	greenhouse gas
IACHR	Inter-American Commission on Human Rights
IBRD	International Bank for Reconstruction and Development
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHRP	International Council on Human Rights Policy
ICJ	International Court of Justice
IELRC	International Environmental Law Research Centre
ILC	International Law Commission
IMF	International Monetary Fund
IOM	International Organization for Migration
IPCC	Intergovernmental Panel on Climate Change
IUCN	International Union for the Conservation of Nature and Natural Resources
LDCF	Least Developed Country Fund

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LDC	least developed country
MDG	millennium development goal
NAPA	National Adaptation Programme of Action
NGO	Non-governmental organisation
NHTSA	National Highway Traffic Safety Administration
OAS	Organization of American States
ODA	official development assistance
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
PRC	People's Republic of China
REDD	reduced emissions from deforestation and degradation
SCCF	Special Climate Change Fund
SPA	special priority on adaption
TVPA	Torture Victims Protection Act
UDHR	Universal Declaration on Human Rights
UNCED	United Nations Conference on Environment and Development
UNCLOS	United Nations Convention on the Law of the Sea
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNFCCC	United Nations Framework Convention on Climate Change
WHO	World Health Organization
WTO	World Trade Organization

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## FOREWORD

MARY ROBINSON

In summer 2008, natural disasters in China and Myanmar brought tragedy to hundreds of thousands of individuals and families. After centuries of technological and industrial advance, it is sobering to reflect on how poorly equipped we were to manage the devastation wrought by these catastrophes. We still lack early warning systems, efficient response mechanisms, and – as the suffering of the Burmese people in particular cruelly reminds us – the global solidarity and coordination needed to deliver help where and when it is most needed.

We know there will be more catastrophes of this kind in future, we know that their number and intensity is likely to grow and we know that they will increasingly be due to the acts of human beings. But they will not always involve horrific headlines and torrid photographs of hurricanes and tsunamis. More commonly, they will be cumulative and unspectacular. People who are already vulnerable will be disproportionately affected. Slowly and incrementally, land will become too dry to till, crops will wither, rising sea levels will undermine coastal dwellings and spoil freshwater, species will disappear, livelihoods will vanish. Occasional cataclysms will exacerbate these trends. Mass migration and conflicts will result. Only very gradually will these awful consequences reach those whose lifestyles and activities are most to blame. Climate change will, in short, have immense human consequences.

We have known this for a long time. We also know that these events are no longer ‘natural’ in the ordinary sense of the word: they are in part man-made, a product of the very same technological progress that has improved many lifestyles, but has not so far succeeded in protecting the vulnerable from its own worst consequences. The human impacts of climate change also have a human source – and this causal relationship makes the climate phenomenon peculiarly appropriate for human rights analysis.

The present collection of papers is not by any means the first to draw attention to the urgency of the many human impacts that climate change

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will entail, nor to broach the difficult justice questions that it raises, nor to inquire into its long-term implications for development. Each of these concerns has been discussed repeatedly since the United Nations Framework Convention on Climate Change (UNFCCC) was opened for signature in May 1992, and, indeed, before then. What this collection does for the first time, however, is think through the human rights implications of climate change and ask how the substantial body of international human rights law and experience relates to that phenomenon. Where does international human rights law coincide with or confront obligations under the nascent climate regime? Where must climate change policies contend with human rights imperatives?

Human rights law is relevant because climate change causes human rights violations. But a human rights lens can also be helpful in approaching and managing climate change. The human rights framework reminds us that climate change is about suffering – about the human misery that results directly from the damage we are doing to nature. Many communities already feel the adverse effects of warming temperatures – yet few remedies are so far available to them. While we cannot say precisely who will be affected in future, or how severely, the signs are nevertheless clear. Where information is still lacking, as it often is, we know where and how to gather it. As the present collection progressively clarifies, if we build human rights criteria into our future planning, we will better understand who is at risk and how we should act to protect them.

Attending to human rights also means recognising that as we take steps to address climate change, we must not do so at the cost of the most vulnerable. It is surely possible to repair our environment while still assuring our fellow human beings a path out of poverty and insecurity. Making certain that good information exists – and that it is in the hands of those most affected – can ensure greater participation in efforts to prevent and manage climate change. Beyond that, we must design with care global and regional programmes that substitute fuels, preserve forests, apply new technologies, or redesign markets. At each step we must ask where the heaviest burden will fall and how it should be divided.

Finally, government obligations do not stop at their own borders. As human rights lawyers have long observed, states have a special responsibility to monitor and, where necessary, regulate the behaviour of private entities within their purview, including those operating abroad. This is especially important in the case of climate change, where the immediate causes are generally found in private acts. Yet, as things



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currently stand, large emitters may fall through the net of a global system that imposes different obligations on rich and poor countries. It is surely right that countries with little or no history of emitting greenhouse gases should not have to take on targets that would impact their development. But it would surely be wrong if private actors were permitted to take advantage of this dispensation to produce carbon-intensive goods cheaply and export the benefits back to wealthy countries. Better to harness private ingenuity toward equitable solutions that can target and head off unacceptable human harms.

Climate change already threatens the livelihoods of peoples in distant corners of the world, from North Alaska to the Pacific islands. It is contributing to rising prices for grains and staples that are undermining food security for millions, particularly in countries with unstable weather patterns. It poses a profound threat to development in states that currently lack the resources to fulfil basic human rights.

The scope of these problems – and of the action required to treat them – reaches beyond previous human challenges. Yet in the seventeen years since the UNFCCC was signed, global negotiations have proceeded at a glacial pace. We have collectively failed to grasp the scale and urgency of the problem. Climate change shows up countless weaknesses in our current institutional architecture, including its human rights mechanisms. To address it effectively will require a transformation of global policy capacity – from information-gathering and collective decision-making to law enforcement and resource distribution.

Climate change is a story about desperation and hope. It can kill us or it can save us. Climate change will test us, threaten us and force us to change. And change, the unknown, is daunting. However, it does not have to be. On the contrary, there are reasons to be optimistic. Because, in fact, we have the know-how, the tools, the technology and the economy to mitigate climate change and ensure climate justice.

Why is the human context so important? In 1820, the United Kingdom was the richest country in the world. The average income per person was three times greater than that of people in the poorest region, sub-Saharan Africa. Today the United States is the richest country in the world, with a per capita income that is roughly twenty times larger than that of the poorest region – still sub-Saharan Africa. Most of the expected rise in global population of 2.6 billion persons by 2050 will come from the poorest regions in the world. These are regions which have no convergent economic growth, are the most unstable politically and will be those hardest hit by climate change.

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It is clear that we will not be able to mitigate climate change unless we address poverty and ensure climate justice. Ultimately, achieving sustainability and a low-carbon economy will not only depend on technological innovation, but will require far-ranging social and political innovation. Let us not forget that technology does not have the ability to eliminate poverty, respect human rights, stop climate change and build a sustainable society – people do.

According to the Universal Declaration of Human Rights, ‘everyone is entitled to a social and international order in which [their] rights and freedoms ... can be fully realized’. Climate change disrupts that order. But perhaps it is also an opportunity, if we are willing to grasp it, to create the kind of international and social order of which the framers of the Universal Declaration dreamt.

Mary Robinson  
President, Realizing Rights: The Ethical Globalization Initiative