

# What do human rights have to do with climate change?

By John von Doussa QC



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On December 10 this year the world celebrated the 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights (the Declaration).<sup>1</sup> Adopted by the United Nations General Assembly in 1948, the Declaration consists of a preamble and 30 articles setting out a broad range of fundamental human rights and freedoms to which all men and women, everywhere in the world, are entitled, without any distinction.

**T**he Declaration is significant in many respects. It is the foundation of international human rights law, the first universal statement on the basic principles of inalienable human rights, and a common standard for all peoples and all nations.<sup>2</sup> The Declaration and its core values – inherent human dignity, non-discrimination, equality, fairness and universality – apply to everyone, everywhere and always.<sup>3</sup> Given the Declaration's longevity and the remarkable milestone that it has reached, now is an opportune time to reflect on its enduring relevance by considering how its principles may apply in the context of a modern human rights tragedy: climate change.

We generally hear very little about the human rights dimensions of climate change – governments tend to

concentrate on the economic, trade and security impacts. While the interim report of the Garnaut Climate Change Review (the Garnaut Review)<sup>4</sup> made progress in distancing itself from the 'business as usual' approach, it still makes no specific mention of the impact of climate change on human rights protections in Australia and abroad.

Yet when climate change is viewed through a human rights lens, the picture looks very different from the usual scientific statistics and economic forecasts. This perspective shows populations becoming increasingly vulnerable to poverty and social deprivation, as large tracts of previously fertile land become useless. It shows conflicts over limited water supplies becoming more severe and frequent.<sup>5</sup> It also highlights the plight of those living in low-lying atoll countries and delta regions, where lands are fast becoming >>

uninhabitable due to rising sea-levels,<sup>6</sup> and alerts us to the multiple challenges faced by those affected by climate change-induced natural disasters, including issues relating to aid provision, and post-disaster resettlement and property restitution.

These are scenarios that directly threaten fundamental human rights: rights to life, to food, to a place to live and work, as well as rights to shelter and property, rights associated with livelihood and culture and migration and resettlement – many of which are outlined in the Declaration and subsequent international human rights instruments.<sup>7</sup> As Madame Kyung-wha Kang, the UN Deputy High Commissioner for Human Rights, has stated:

‘Global warming and extreme weather conditions may have calamitous consequences for the human rights of millions of people...ultimately climate change may affect the very right to life of various individuals...’<sup>8</sup>

Using the language of human rights to consider climate change has the benefit of bringing the focus back to the human suffering that climate change is likely to cause. Moreover, it reminds us of the reality that the world’s poor and marginalised will be disproportionately affected by climate change – exacerbating existing social inequity at both the local and international level. As the International Council on Human Rights Policy observed in its seminal report on climate change and human rights this year, the worst effects of climate change are likely to be felt by those individuals and groups whose rights are already precarious.<sup>9</sup> This is because populations whose rights are poorly protected are likely to be less well-equipped to understand or prepare for climate change effects; and more likely to lack the resources needed to adapt to expected changes in their environmental and economic circumstances.<sup>10</sup>

This observation is borne out by predictions that, within Asia alone, food production will decrease by as much as 20 per cent as a result of climate change, affecting more than one billion people by 2050.<sup>11</sup> Furthermore, it is estimated that in 46 countries – home to 2.7 billion people – the impacts of climate change, interacting with economic, social and political problems, will create a high risk of violent conflict and that, in a further 56 countries, the institutions of government will have great difficulty taking the strain of climate change on top of their other current challenges.<sup>12</sup>

Closer to home, northern Aboriginal communities are anticipated to bear the brunt of climate change in Australia, with more than 100,000 people facing serious health risks from malaria, dengue fever and heat stress, as well as loss of food sources from floods, drought and more intense bushfires.<sup>13</sup> In the Torres Strait Islands, at least 8,000 people will lose their homes if sea levels rise by one metre.<sup>14</sup> The effects of climate change are already being experienced by some Indigenous people, particularly those of the island communities in the Torres Strait, along the coastline of Australia and those whose lives and maintenance of culture depend on the Murray Darling River.<sup>15</sup>

Given that climate change is already affecting a broad range of internationally protected human rights, what does the modern human rights regime offer governments when

developing appropriate responses to climate change? The answer, it seems, is ‘a lot’, despite the fact that mainstream climate change policy debate has, until very recently, given little or no attention to human rights concerns.

As a signatory to the core international human rights instruments, Australia has agreed to *respect, protect and fulfil* the rights contained within them.<sup>16</sup> The obligation to respect means Australia must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires Australia to protect individuals and groups against human rights abuses – whether by private or government actions. The obligation to fulfil means that states must take positive action to facilitate the enjoyment of basic human rights.<sup>17</sup> Thus, irrespective of the *cause* of a threat to human rights, Australia still has positive obligations to use all the means at its disposal to protect the human rights affected.<sup>18</sup> This is particularly relevant in the climate change context, where responsibility for carbon emissions may be difficult to ascertain.

In short, under international law, whether particular climate change responses relate to local communities in Australia; to immigration policies for people seeking to come to Australia to escape environmental catastrophes in their homeland; or to funding for adaptation measures overseas; human rights norms and methodologies should play a central role in policy formulation.

So what does a human rights-based approach to climate change require, in practice? Under a rights-based approach, the substantive elements of any new policy would need to take into account the fundamental rights of everyone affected by the measure, and balance out those rights on non-discriminatory grounds. Those rights should of necessity incorporate minimum standards of political and civil rights, including personal security, and economic social and cultural rights. Water, food, and housing would be the most basic and important rights to ensure that the right to life was meaningful.

Further, a human rights-based approach to climate change addresses the equity and justice issues that may arise in the context of responding to climate change. For instance, Australia’s peak environment and welfare groups have recognised that low-income and disadvantaged people will not only be the first to suffer the effects of climate change, but may also be disproportionately affected by any adaptation measures taken to minimise the risks associated with climate change. The focus on shifting energy sources to low carbon alternatives is likely to mean the more widespread introduction of minimum energy performance standards for electrical appliances, cars and buildings, all of which have the potential to increase costs for users. Pricing carbon into energy means that unit costs will rise.<sup>19</sup> The most disadvantaged will struggle to live with such increased costs.

Human rights standards can help to address these inequities by guiding policymakers and legislators when weighing competing demands on limited resources; helping to ensure, for example, that budget allocations prioritise the most marginalised and disadvantaged. This would mean, for

instance, that the government provides financial and other assistance to low-income households to implement measures that improve water and energy efficiency. It would also encourage governments to establish safety-net provisions to ensure that low-income families are not burdened with price increases for essential services such as electricity and water, as a result of the introduction of an emissions trading scheme.<sup>20</sup> To this end, human rights standards would provide thresholds of minimum acceptability in developing Australia's response to climate change.

Human rights principles are equally valuable in the field of disaster relief. As was clearly highlighted by hurricane Katrina in New Orleans in 2005, natural disasters have a disproportionate impact on already marginalised groups. More than 90,000 people in the affected areas had incomes of less than \$10,000 per year and roughly 30 per cent of those hardest hit were African-American. Furthermore, more than 35 per cent of African-American households and nearly 59 per cent of poor African-American households in New Orleans lacked a vehicle, so they had greater difficulty in leaving the city to escape the impending disaster.<sup>21</sup>

The evidence overwhelming suggests that natural disasters are set to increase in both severity and frequency as a result of climate change.<sup>22</sup> In this context, the principle that all those who are affected by natural disasters, in particular those displaced, should have unimpeded and non-discriminatory access to goods and services necessary

to address their basic needs, should be a cornerstone of all disaster relief efforts.<sup>23</sup> Moreover, if a natural disaster creates a serious risk for the life, physical integrity or health of affected individuals and communities, all appropriate measures to protect those in danger – in particular, vulnerable groups – should be taken to the maximum extent possible; for instance, by providing emergency shelter arrangements. And, a human-rights approach further argues that longer-term efforts to rebuild and reconstruct after a disaster must focus not merely on the redevelopment of infrastructure, but seek also to recognise and respect the property rights of the poor and vulnerable.<sup>24</sup>

Furthermore, a human rights-based approach would guarantee that empowerment and justice are at the forefront of Australia's response to climate change. This is because a focus on human rights puts the spotlight not only on the outcome of climate change policy, but also on the *process* by which policies are adopted. By focusing on individuals as *rights-holders*, the responsibility is placed on government to allow for the participation and input from affected members of society in the formulation, implementation and evaluation of new strategies. This could mean, for example, that Indigenous people are considered a major stakeholder in an emissions trading scheme, and that their custodial role over traditional lands and caring for country are fully taken into account when developing strategies for mitigation and adaptation. >>

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Initiatives such as the Bushlight Project, which aims to increase access to sustainable energy services within remote Indigenous communities across Australia, is one such example of the positive results of a human rights-based approach to climate change mitigation measures.<sup>25</sup> By August 2008, this program had installed 120 renewable energy systems in remote communities in Australia. This is particularly important in remote communities, where often the only source of power for refrigeration, heating and other basic essentials that we in the cities take for granted, is through diesel generators. Critically, a key goal of the project is the education and empowerment of members of remote communities to participate as sustainable energy facilitators, rather than just adopting a simple service-delivery model.

The Australian Human Rights Commission's background paper, *Human Rights and Climate Change*,<sup>26</sup> canvasses additional areas where a human rights-based approach could make a positive contribution to the development of climate change responses. Specifically, in addition to the areas already discussed, it examines how a human-rights based approach could inform Australia's policies for aid for overseas adaptation and 'climate change refugees'. Without providing immediate answers, the paper aims to provide the tools for advancing policy in these areas as they evolve.

Many of these observations draw their origins from the Declaration and its fundamental concept that all members of the human family are entitled to enjoy human rights, without distinction. This message was in essence a rallying call in response to the human tragedy of extreme nationalism, fascism and world war. Yet, while the drafters of the Declaration were looking back at a human tragedy that had already happened, climate change represents a human rights tragedy in the making. With millions of people in the process of losing core economic, social and cultural rights due to climate change, the 60<sup>th</sup> Anniversary of the Declaration should serve as a valuable reminder that human rights principles are at the very least a useful resource to include in the climate change policy toolbox. ■

**Notes:** **1** *Universal Declaration of Human Rights*, GA Res 217 A (III), adopted 10 December 1948, UN Document A/810 at 71. **2** Office of the High Commissioner of Human Rights 'The Universal Declaration: A Living Document' (2008) available at: <http://www.un.org/events/humanrights/udhr60/declaration.shtml>. **3** *Ibid*, n2. **4** *Garnaut Climate Change Review – Draft Report* (July 2008). Available at: <http://www.garnautreview.org.au/CA25734E0016A131/pages/draft-report>. **5** Dan Smith and Janani Vivekananda, *A Climate of Conflict: The Links Between Climate Change, Peace and War* (2007) International Alert, <http://www.international-alert.org/publications/getdata.php?doctype=Pdf&id=322&docs=980>. **6** Fabrice Renaud, Janos J Bogardi Olivia Dun, Koko Warner, *Control, Adapt or Flee: How to Face Environmental Migration* (November 2007) United Nations University, Institute for Environment and Human Security. **7** *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976); *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976). *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990); and *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295, UN Doc A/61/L.67 (2007). **8** Laura MacLinnis 'Climate Change Threatens Human

Rights of Millions: UN', *Reuters*, 19 February 2008. **9** International Council for Human Rights Policy, *Climate Change and Human Rights: A Rough Guide* (July 2008) at p3. Available at: [http://www.ichrp.org/files/reports/36/136\\_report.pdf](http://www.ichrp.org/files/reports/36/136_report.pdf). **10** *Ibid*, n9, at p3. **11** *Garnaut Review* (see n4 above) at p188. **12** *A Climate of Conflict: The Links between Climate Change, Peace and War*, n5, at p3. **13** Friends of the Earth International, *Climate Change: Voices from Communities Affected by Climate Change* (November 2007) at p5. **14** Donna Green, *How Might Climate Change Affect Island Culture in the Torres Strait?* (CSIRO Marine and Atmospheric Research Paper 011, November 2007) at pp5-6. Available at: [http://www.cmar.csiro.au/e-print/open/greendl\\_2006a.pdf](http://www.cmar.csiro.au/e-print/open/greendl_2006a.pdf). **15** Tom Calma, 'Land and Culture' (speech delivered at the Department of Environment, Water, Heritage and the Arts for NAIDOC Week Celebrations, Parkes, 7 July 2008), <[http://www.humanrights.gov.au/about/media/speeches/social\\_justice/2008/20080707\\_essentials\\_land\\_and\\_culture.html](http://www.humanrights.gov.au/about/media/speeches/social_justice/2008/20080707_essentials_land_and_culture.html)> at 27 August 2008. **16** UN Office of the High Commissioner for Human Rights, *What Are Human Rights?* (2008). Available at: <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>. **17** See UN Committee on the Rights of the Child, *General Comment No. 5 – General Measures of Implementation of the Convention on the Rights of the Child* (2003) UN Doc CRC/GC/2003/5; UN Committee on Economic, Social and Cultural Rights, *General Comment No. 9 – The Domestic Application of the Covenant* (1998) UN Doc E/C.12/1998/24; UN Human Rights Committee, *General Comment 31 – Nature of the General Legal Obligation Imposed on State Parties to the Covenant* (2004) UN Doc CCPR/C/21/Rev.1/Add.13. **18** UN Committee on Economic, Social and Cultural Rights, *General comment No. 3 – On the Nature of State Parties' Obligations* (1990) UN Doc, E/1991/23, annex III. **19** Justin Sherrard and Alan Tate, *Equity in Response to Climate Change: An Australian Snapshot* (paper for the Equity in Response to Climate Change Roundtable, Melbourne, 26 March 2007). Available at: <http://www.bsl.org.au/main.asp?PageId=4732>. **20** Australian Conservation Foundation, ACOSS and Choice, *Energy and Equity: Preparing Households for Climate Change: Efficiency, Equity, Immediacy* (April 2008) at p4. Available at: <http://www.choice.com.au/files/f132489.pdf>. **21** *McWaters v Federal Emergency Management Committee* No. 05-5488 (12 December 2005) at pp3-4. Available at: [http://www.femaanswers.org/images/3/38/McWaters\\_v\\_FEMA\\_Court.Decision.12.12.05.pdf](http://www.femaanswers.org/images/3/38/McWaters_v_FEMA_Court.Decision.12.12.05.pdf). **22** Jo Tuckman, 'Global Warming Brings Busy Year for UN Disaster Teams', *The Guardian*, 27 December 2007. **23** Inter-Agency Standing Committee, *Protecting Persons Affected by Natural Disasters* (IASC Operational Guidelines on Human Rights and Natural Disasters, 2007) at pp13-22. Available at: [http://www.humanitarianinfo.org/iasc/content/documents/working/OtherDocs/2006\\_IASC\\_NaturalDisasterGuidelines.pdf](http://www.humanitarianinfo.org/iasc/content/documents/working/OtherDocs/2006_IASC_NaturalDisasterGuidelines.pdf). **24** David Fidler, 'Disaster Relief and Governance after the Indian Ocean Tsunami: What Role for International Law?' (2005) 6 *Melbourne Journal of International Law* 458, at p469. Available at: [http://www.mjil.law.unimelb.edu.au/issues/archive/2005\(2\)/08Fidler.pdf](http://www.mjil.law.unimelb.edu.au/issues/archive/2005(2)/08Fidler.pdf). **25** Bushlight is a renewable energy project that aims to increase access to sustainable energy services within remote Indigenous communities across Australia. Through its Community Energy Planning Model, Bushlight seeks to inform, train and empower communities to better utilise their energy services; to engage with service networks to better maintain them; and to design and build high quality, reliable RE systems. Beginning in July 2002, Bushlight had by August 2008 installed 120 RE systems, providing reliable, 24-hour power to over 2,000 people living in remote communities in Australia. On the basis of these achievements, the Australian government has extended funding for the project to June 2011. Further details are available: <http://www.bushlight.org.au/default.asp?action=article&id=21>. **26** Australian Human Rights Commission 'Human Rights and Climate Change: Background Paper' (April 2008). Available at: <http://www.humanrights.gov.au/about/media/papers/index.html>.

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