



## Climate change and human rights in Africa

Dr. Chantelle Moyo

### Overview

Over the past half-century, global temperatures have [increased significantly](#) resulting in extreme climatic events such as heat waves, droughts, floods and frequent storms. The effects of these changes in the weather patterns, usually referred to as climate change, are particularly severe for populations in poor countries. Moreover, climate change adversely impacts the enjoyment of a [wide range of human rights](#), including the right to life, adequate housing, food, and the highest attainable standard of health. Therefore, efforts in mitigation and adaptation should take a human rights-based approach to addressing the impacts of climate change.

It is within the context of identifying the impacts of climate change that the phenomenon cannot simply be understood as an environmental or even economic problem but also as a [human-rights](#) concern. The consequences of climate change result in human migration and displacement, food insecurity, water shortages and greater risk of certain illnesses. For instance, in the [Horn of Africa](#), an estimated 36.1 million people have been affected by the drought, and 8.9 million livestock have died due to the impacts of climate change. While climate change is not the singular reason for this, it becomes a threat multiplier in a region [exacerbating insecurity and existing tensions](#). Furthermore, approximately 16 million people cannot access enough clean water, and 20.5 million face acute food insecurity and rising malnutrition in parts of Ethiopia, Somalia and Kenya, with more than a million people in Somalia (mostly women and children) already [displaced](#).

At the ongoing COP28 in Dubai, calls have been made for countries to [prioritise human rights in negotiations for climate action](#). The most significant act to heed this call, so far, has been the [operationalisation of the loss and damage fund](#). This is because, under human rights law, the actors responsible for climate change-related harm should be accountable for remedying them. Moreover, [human rights principles and standards](#) should inform all action to address loss and damage including needs assessments and specific measures to respect, protect and fulfil the rights of those who are often disproportionately affected by climate change such as women and girls, children, youth, older persons, persons with disabilities, indigenous peoples, minorities, migrants, rural workers, persons living in poverty and others in vulnerable situations.

### **The Paris Agreement and the UNGA Resolution on the right to a healthy environment**

Historically, there had not been an explicit mention of human rights in addressing the impacts of climate change. However, the [Paris Agreement](#) became a turning point. The Paris Agreement became the first international environmental treaty to explicitly mention states' obligations under human rights law. The preamble to the Agreement specifies that parties "*should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights*". The preamble lists the rights that should be taken into consideration in climate action, and these include "*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 intergenerational equity*". While this preambular reference draws attention to parties' obligations under treaties that they have ratified already or may ratify in future, the operative part of the Paris Agreement (Articles 7(5), 11(2), and 12) makes implicit reference to human-rights-related considerations, such as gender-responsiveness, public participation, and access to information. The list of rights in the Paris Agreement is limited excluding the right to life, property, or any of the social and economic rights, which experiences from

the Horn of Africa show that the full enjoyment of these rights is [curtailed by climate change](#).

The nexus between human rights and climate change did not stop with the Paris Agreement. In 2022, the UN General Assembly (UNGA) adopted a Resolution ([A/RES/76/300](#)) recognising the human right to a clean, healthy, and sustainable environment. The Resolution recognises the human right to a clean, healthy and sustainable environment and its relationship with other human rights and existing norms of international law. The UNGA's Resolution responds to the call for climate action by taking on a [triple planetary crisis](#): climate change, pollution, and biodiversity loss through a human rights-based approach. Thus, it calls for the full implementation of multilateral environmental treaties and urges international organisations, corporate actors, and other stakeholders to adopt policies, enhance international cooperation, strengthen capacity-building and share good practices to ensure a clean, healthy and sustainable environment for all.

While the Resolution is not binding, it can be considered a catalyst in strengthening the nexus between climate change and human rights by ensuring that all climate action is centred around respecting, protecting and fulfilling human rights. Based on the Resolution, it is pertinent to note that a human rights perspective directly addresses environmental impacts on the life, health, private life, and property of individual humans. Such a perspective serves to secure higher standards of environmental quality, based on the obligation of States to take measures to control pollution affecting health, private life, and other human rights. Therefore, it provides a framework within which detrimental impacts on food and water security can be addressed. It also helps to promote the rule of law that governments become directly accountable for their failure to regulate and control environmental nuisances, including those [caused by corporations](#), and for facilitating access to justice and enforcing environmental laws and judicial decisions.

**Securing the protection of human rights through climate change litigation** Since the Paris Agreement, there has been some traction in court cases relating to the protection of human rights and climate change in Africa.

Although these cases are not explicitly labelled as climate change litigation cases, they are often heard based on environmental degradation claims that either contribute to or exacerbate the impacts of climate change. For instance, in [\*Okpabi v. Royal Dutch Shell\*](#), the claimants comprised 42500 individuals from Nigerian communities and alleged that oil spills from pipelines operated by Shell Petroleum Development Company of Nigeria Ltd (**SPDC**), a Nigerian registered company, caused widespread environmental damage, including water and ground contamination. Due to this alleged contamination, the communities could not use natural waterbodies for drinking, fishing, agricultural and recreational purposes thereby violating multiple human rights. The claimants argued that the oil spills were caused by the negligence of SPDC and that RDS, the UK-registered parent company of SPDC, owed the claimants a duty of care as it exercised significant control over material aspects of SPDC's operations. The UK Supreme Court held that it was at least arguable, based on the degree of control and *de facto* management, that the parent company owed a duty of care to the Nigerian communities concerning alleged environmental damage and human rights abuses by Shell's Nigerian subsidiary.

In [\*Save Lamu v. National Environmental Management Authority & Amu Power Co Ltd\*](#), a Kenyan community-based organisation representing Lamu County and other individual claimants challenged the approval of a license by the National Environmental Management Authority (NEMA) to a power company to construct the first coal-fired power plant in the country. The claimants argued that the NEMA failed to conduct a proper environmental impact assessment (EIA). By so doing, this violated the right to a healthy environment, human health and other rights linked to the impacts of climate change. The Tribunal set aside the license and held that NEMA had violated the EIA regulations by granting it without proper and meaningful public participation in the process. Importantly, the Tribunal directed that the power company conduct a new EIA in compliance with the EIA Regulations including the Climate Change Act 2016, the Energy Act 2019 and the Natural Resources Act 2016, should it choose to pursue the project.

In [\*Earthlife Africa Johannesburg v Minister of Environmental Affairs\*](#), a South African environmental non-governmental organisation brought a claim against the Minister of Environmental Affairs in charge of granting the environmental authorisations, and the companies intending to build the 1,200 MW coal fired Thabametsi power plant. Earthlife maintained that the Chief Director in the Ministry was obliged to consider the climate change impacts of the proposed power station before granting authorisation and that he failed to do so. Based on the government's specifications Thabametsi was designed to be highly greenhouse gas emission intensive. [\*Thabametsi's own climate change impact assessment\*](#) showed that it would be one of the most emission-intensive plants in the world. Although the South African NEMA does not expressly mention climate change, the High Court held that considerations relating to climate change are relevant and their absence from the project's EIA made the approval unlawful. In its reasons for deciding, the High Court also mentioned South Africa's commitments under the Paris Agreement.

These judgements create jurisprudence in climate change litigation in Africa. Moreover, they have the intended purpose of showing that courts will not stand idly as human rights violations occur through environmentally adverse practices.

### **Looking to the future of climate change and human rights in Africa**

With the increasing acceptance of the nexus between human rights and climate change based on both the Paris Agreement and the UNGA Resolution, it can be expected that more cases that violate human rights and are linked to climate change will be brought to courts in Africa. Furthermore, while existing cases are brought under environmental legislation, this might soon change with more African countries enacting climate change-specific legislation. Currently, countries such as Kenya, Nigeria and Uganda already have climate change legislation while South Africa and Zimbabwe are in the final stages of enacting theirs. The protection of human rights is likely to continue being intrinsic to future cases, considering the increasing acceptance of the impacts of climate change on health, livelihoods, access to clean water and other fundamental rights.

## **About the author**

Dr Chantelle G. Moyo is an admitted lawyer and researcher who specializes in environmental law. She holds an LLB, LLM in Environmental Law and a PhD in Law and Development specializing in climate change and energy in African cities. Dr Moyo is also a Certified Expert in Climate Change and Renewable Energy Finance.

## **Right to a livable environment in the context of Environmental Human Rights**

**Prof. Padma Rijal**

It took a long time for the United Nations (UN) to formally recognize environmental rights as a human right worthy to be rescued from the shadows of the interpretative interrelationship with other human rights. The lack of an explicit right to a clean, adequate, healthy, suitable, balanced, productive or sustainable environment in UN legally binding documents did not yet hinder the environmental rights to thrive and establish themselves in adverse or seemingly inhospitable conditions created by the humankind themselves. In addition, the Draft Principles on Human Rights and the Environment 1994 contributed to the normative tone setting of environmental human rights. The institutional reform through the creation of the Special Rapporteur on Human Rights and the Environment in 2012 was another commendable development. Finally, the General Assembly passed a resolution in 2022 titled “The human right to a clean, healthy and sustainable environment.” This resolution is a symbolic integration of International Environmental Law with Human Rights law, albeit rather late because it already existed at the regional human rights regime.

The right to live a dignified life lies at the heart of the human rights law. The fragility of this right is exacerbated by the uninhabitable environment due to the challenges of climate change that have been knowingly and willfully ignored. We are speeding up the process of making the earth an uninhabitable place. We know that the environment will no longer be livable shortly as a small increase in temperature could exponentially destroy the vitality of our ecosystem and in turn, could wipe out humanity. People from the Global South would be the first ones to be affected by this and the process has already begun. The agriculture-dependent population, people residing in soon-to-be ocean areas, people living below the glacier lakes, and people living without drinking water and food, are the ones to feel what

climate change is and what living with it means while the largest emitters are in the comfort zone of denial.

On this background, I have some reservations about the words being used in the recent UN General Assembly resolution such as 'clean', 'healthy' and 'sustainable' as they are still soft and do not reflect the direness of the situation yet. These words are susceptible to the subjective interpretation of the state of cleanliness, health and sustainability that changes over time. We need something that permeates the fundamental essence and stays timeless. Rather, I would advocate for environmental human rights that lives up to the fundamental value of human rights. Environmental human rights should sound undeniable, inherent, universal, and inalienable. *The right to a livable environment* could reflect a literary quality and appeal that matches the persuasive charm of human rights. The use of the word 'Livable' also implies that there is a visible threat that our habitat could be 'Unlivable' too. Although the etymological debate may not contribute much to the substance of the content, different depiction of ideas communicates and impacts differently on the backdrop of the situation where the world refuses to wake up to the climate crisis and resulting injustice.

### **Claim against whom?**

The reliance on pure environmental rights such as the right to live in a livable environment could expand the legal horizon of climate change issues. However, it should be made claimable against a wide array of actors and interest groups including non-state actors such as corporations and economic powers. As the changing socioeconomic structure has created economic superpowers stronger than the government itself, it is high time to identify these new players in the governance system and make them accountable. The economic interest of stronger groups and the silence of vulnerable groups is one of the causes of the climate crisis and the unstable environment we're facing today. The emergence of Corporate Environmental Accountability through recognitions such as the UN Draft Code of Conduct on Transnational Corporations, 1983 and the UN Guiding Principles on Business and Human Rights 2011 are undernourished and cannot offer a



legal mechanism to create a legal duty and corresponding claims against those duties.

### **The synergy**

Meanwhile, the convergence of human rights law and environmental law through the inclusion of a substantial environmental right in the existing human rights framework assures optimism to some level due to two major reasons.

Firstly, the language of human rights is accommodating as well as enjoys the privilege of being universally accepted normative values and standards. The common goal of both areas of law is to ensure a dignified life. The flexibility of human rights both in principle and practice can offer creative solutions. In contrast, international environmental law has not yet been able to achieve unanimity and universality that could transform into a legally binding solution to climate change. Rather, the denial of scientific data and evidence on climate change has shamefully aggravated the situation, universal acceptance and realization is far from the truth.

Secondly, both areas of law share some common rights that are procedural. For example, the right to information, right to participation, right to have access to (speedy, effective and affordable) justice and remedies. These rights at their core regulate the relationship between the government and the governed in the issues concerning environmental interest among others. Such procedural rights can rejuvenate substantive environmental rights. They can offer some legal ways to monitor and thus regulate the environmental law in practice such as scrutiny of mitigation and adaptation measures being followed by the government.

### **Some issues remain.**

The issue of environmental protection and tackling climate change is often positioned as an adversary of economic development because cutting emissions is seen as an unprofitable venture. Our vision and understanding

of economics need to be reoriented and made greener by exploring and accepting methods to attach value to environmental services. The cost-benefit analysis in the context of environmental policies has created injustice because the economic cost of the industry is calculated penny by penny, but the environmental benefit enjoyed at large remains undervalued. The beneficiaries (both intergenerational and non-human entities) of the stable climate and livable environment are 'poorly defined' or to be honest 'unidentified'.

On a similar note, the protection of the vitality of the environment is projected as a responsibility and duty instead of portraying it as a prerequisite of human development to its fullest. Paradoxically, South Asia is the region where economists and development experts such as Amartya Sen and Mahbub ul Haq have advocated for humane development. Sustainable Development studies in theory have walked along that rope in principle but it is difficult for the South Asian countries to live up to that ambition.

Sustainable development is a luxury the global south cannot afford. The immediate threats of climate change faced by the global south have created a fight-or-flight situation. The disproportionate impacts of climate change faced by South Asians and other vulnerable population has not caught the serious attention of the international communities resulting in the unresolved yet sensitive issue of climate justice. The fact that the South Asian countries despite sharing a common trait of vulnerability have not been able to revitalize the regional cooperation is more disheartening.

These are the bigger challenges that the Human Rights Law or Environmental Law, be it in integrated or disintegrated form, cannot address in its entirety. However, a practical renovation of the Regional Human Rights instrument in South Asia that incorporates enforceable environmental rights could be a commendable approach, at least in theory.

### **Contrasting Human Rights with ecocentrism**

The philosophy of human rights and ecocentrism have distinct perspectives in ethical and philosophical frameworks, particularly concerning the relationship between humans and the environment. The anthropocentric base of human rights focuses on the well-being of individuals through the language of rights while ecocentric environmentalists center around the well-being of the entire ecosystem. The claim-based approach to human rights resembles the anthropocentric idea that nature serves as a resource for human development.

The preferable solution to the problems of climate change should be based on the collective well-being and integrity of the whole ecosystem. The reason behind it rests on the fact that the current climate crisis is the result of anthropogenic interference with the climate system and such interference has compromised the integrity of the whole ecosystem which is indeed a shared habitat. Therefore, the human rights approach may not always be the correct approach to deal with climate change-related problems as the right-based approach might not appreciate the inherent value and inherent dignity of nature irrespective of the utility to humans.

Such differences in the moral and ethical grounding of these inherently different areas of law have been blurred by a legal innovation concerning the Rights of Nature. The courts in India have recognized the juridical personhood of rivers in 2016 and 2017. The expansion of human rights-like rights to nature is uncharted territory with navigational difficulties. Still, the difference in ethical grounding prevails as the uncertainty looms over the issue of such a reductionist approach.

The audacity of human beings to grant or not grant such rights to nature is based on pure anthropocentrism. Nevertheless, this trend advocates for the inherent ecological integrity of nature and represents nature as a subject of law through juridical personhood. Despite such differences in theoretical roots, the lookalike branches and the canopy created might still offer protection to the environment and ultimately to human beings.

Considering all this, the incentive to improve the situation is lesser than the incentive to stay in the comfort zone of not doing enough at both regional and international levels. The right to a livable environment should be recognized and enforced under the already matured human rights mechanism. Human Rights Law and International Environmental Law together should create a legally binding and effective solution to avoid this tragedy of the commons. There are cases where these two areas perfectly intersect to create synergy, while some differences such as divergent viewpoints on anthropocentrism subsist. Given the unanimity of the countries on the issue of human rights and its elevated normative status, the shortcomings of the climate change laws and resulting injustices could be addressed unconventionally through cross-fertilization with other areas of law such as human rights law.

### **About the Author**

Ms. Padma is a licensed advocate from Nepal Bar Council and a distinguished legal academician based in Nepal. Specializing in the intricate realm of law, she stands a much-admired faculty known for her dynamic and innovative pedagogical methods in Kathmandu University School of Law. Her dedication extends beyond the classroom, reflected in her active involvement in professional associations and esteemed journals. Driven by a vision for legal education that combines theoretical depth with practical application, she envisions a long-term future serving the legal academia through her alma mater, where she aims to contribute significantly to both scholarly discourse and institutional development. Her research contributions, particularly in the broader field of law, have been published in reputable journals, showcasing her profound engagement with contemporary legal issues. She demonstrates versatility in Environmental Law, Administrative Law and Legal reasoning skill and Logic. Her scholarly pursuits extend to a wide array of topics, including climate change, energy law, sustainability, and governance. Her passion for these subjects is evident in her writings, innovative teaching pedagogy, mentorship of the student advocacy, and the research output of her students. Her holistic approach to legal education seeks to nurture critical thinking and ethical reasoning, preparing the next generation of legal

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