

From the West to the rest: Climate change as a challenge to human security in Africa

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Introduction

Carbon dioxide (CO₂) and other greenhouse gases (GHG) produced by the burning of fossil fuels and forests and other anthropogenic activities are accumulating in the atmosphere and causing average global temperatures to rise – a phenomenon termed ‘global warming’. The resultant climate change raises complex legal and technical questions related to the environment, and to science, economics, rights and development.

The United Nations Intergovernmental Panel on Climate Change (UN IPCC 2007) has detailed devastating effects of global warming. Although climate change is embraced as an

environmental problem and an economic challenge, its human security implications and the concomitant human rights violations have not received the requisite consideration. Yet climate change threatens food security, public health, property and the livelihoods and lives of individuals worldwide (Aminzadeh 2007:231). The adverse effects of climate change run against the grain of the concept of human security which posits that people ought to be secure in their daily lives. Human security means, first, safety from such chronic threats as hunger, disease and repression; and second, it means protection from sudden and hurtful disruptions in the patterns of daily life (UNDP Report 1994:23; Kerr 2007:92).

European institutions have adopted several instruments contributing to the fight against global warming, but Africa has not yet developed an environmental policy exclusively aimed at the reduction of GHG emissions. Climate change is real, rising, imminent and has been recognised as a universal threat to the very future of Planet Earth. In its 1996 advisory opinion on the use of nuclear weapons, the International Court of Justice (ICJ:1996, para 29) recognised ‘that the environment is under daily threat and ... that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.’ In the Social and Economic Rights Action Centre (SERAC) case (2001), the African Commission appealed to the Nigerian government ‘to ensure protection of the environment, health and livelihood’ of a group whose rights had been violated. Similarly, national courts have explicitly accepted that climate change was occurring and that human activities were the probable cause of the problem (Environmental Defence Society Case 2000).

After publication of the 2007 UNIPCC report, there is little doubt about what is occurring and what is needed now is a decisive legal answer to drive political will to effectively combat climate change. Experts have been pledging that ‘carbon capture and sequestration’ – a technology that involves the storage of GHG in aquifers and disused oil and gas wells instead of releasing it into the atmosphere – would be widely commercially available by 2020. Yet, the cost of waiting may exacerbate a looming planetary catastrophe. If levels of GHG and global temperatures continue to rise in line with current trends, there could be a 2–3 °C temperature increase within the next 50 years. A rise in global temperature of 2 °C is likely to result in a 10 per cent decline in crop yield in Africa – a continent that is already struggling to produce enough food to sustain its population.

A further temperature increase could lead to a decline in fisheries and freshwater supplies, the loss of forests and wetlands, and more severe weather. The reason is that climate change causes an increase in the severity and frequency of extreme events and weather disasters, including storms, tropical cyclones and droughts. Climate change also causes warming of oceans, rivers and lakes and poses a threat to fish stocks already under pressure

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from overfishing, pollution and habitat loss (UNIPCC 2007). Such a decline could have a devastating impact on human populations, particularly in the developing countries that rely on fish as a main source of food. Higher temperatures may also lead to decreased crop yields and in livestock and wildlife. Such environmental problems will most severely impact on the vulnerable communities who mostly live in developing countries.

Most of the work on climate change has to date focused on mitigation and adaptation strategies to address its causes and consequences to the environment. The UNIPCC report attests to this view in that it focused on describing the problem rather than advocating the solutions. Some commentators have expanded the debate by arguing for the promotion of sustainable development and poverty reduction (Huq & Toulmin 2006). However, there is need to also focus on the human dimension in the climate change discourse. Therefore, this discussion seeks to contribute a more nuanced understanding of the problem through a victim (human security) oriented approach to combat climate change.

The central argument is that there must be a deliberate reframing of the climate change debate in terms of human security, which is anchored in human rights doctrine. The shared human rights framework entitles and empowers developing countries to safeguard their rights when they are endangered. Investment in emission reduction is a bargain compared with the long-term costs of inaction. It is essential to act *now* to prevent catastrophic impacts, rather than adopt a business as usual approach and face terrible consequences later. The global energy system is out of alignment with the ecological systems that sustain the earth. Realignment demands a fundamental shift in regulation, market incentives and international cooperation and respect for human rights within a human security framework. Considering that the climate change crisis divides the world both in terms of culpability and vulnerability, any sustainable solution to climate change must take into account its human impact and the needs of all communities in all countries in a holistic manner. Although most GHG emanate from the West, the essential point is that Africa should take the lead, as populations in developing countries on the African continent will bear the brunt of climate change impact.

The issue of ‘common but differentiated responsibilities’

Environmental imperialism? ‘Climate politics’ in the North and the South

Global warming – or climate change – has been identified as one of the crises facing the international community in the 21st century. The UN Framework Convention on Climate Change (UNFCCC) was adopted in 1994 as the basis for a global response to

the problem. The UNFCCC called on nations ‘to protect the climate system ... on the basis of equity and in accordance with the common but differentiated responsibilities and respective capabilities’. It sets a series of general objectives aimed at the stabilisation of GHG through cooperation between developed and developing countries. The UNFCCC sets a non-binding target for industrialised countries to reduce their GHG emissions below their 1990 levels by 2000 – a target which has not been achieved to date. Countries that cannot achieve this goal were given the option to buy emission credits or invest in conservation. However, developing countries have no immediate restrictions under the UNFCCC. As such, anecdotally, the 1997 Kyoto Protocol attempted to turn this voluntary commitment into a binding one. However, some large GHG-emitting states such as China and India were not included in any numerical limitation in the Kyoto Protocol because they were not among the main contributors to the emission of GHG during the pre-treaty industrialisation period. Nevertheless, although they do not have any commitment to reduce according to the Kyoto target, developing countries do share the common responsibility that all countries have for reducing GHG emissions.

By way of illustration, the implication is that although China and the US together produce about 40 per cent of the world’s total GHG emissions, neither has agreed to binding reductions. This has driven some opponents of the UNFCCC to argue that the split between Annex I (developed) countries in the North and non-Annex I (developing) countries in the South is unfair and that both developing countries and developed countries in the North need to reduce their emissions. It is also apparent that the costs of complying with the UNFCCC requirements may have implications for the economies of states.

On the one hand, developing countries have interpreted the ‘common but differentiated’ terminology of the UNFCCC very precisely to mean that industrialised countries would need to take the lead by cutting their GHG emission and funding environmental programmes in the South to boost green development paths. For this reason, despite the strenuous efforts of developed countries to separate climate and development issues, development concerns are invariably controversial issues in environmental negotiations. On the other hand, developed countries have been more selective in their interpretation. Developed countries have made significant efforts to compartmentalise the climate change problem, and they perceive developmental issues such as trade, aid, investment, debt and intellectual property rights to be secondary concerns. Thus there is an inclination amongst developing countries to see the position of developed countries as one akin to environmental imperialism, with developed countries using the environmental agenda to pull the development ladder up behind them (Reed 2007:4).

For the foregoing reason, the global environmental negotiations have been characterised by high levels of ‘preference heterogeneity and deep discord’. Even when the North and the South countries can agree on general fairness principles the ‘preference heterogeneity

generated by global inequality aggravates disagreements about how to make those principles operational' (Reed 2007:3). The international community is far from reaching consensus on the post-Kyoto Protocol climate regime to be followed after expiry of the Kyoto agreement in 2012. Hence, a 'gaping chasm' divides North and South on the crucial question as to who should reduce GHG emissions. The question that follows is, when and by how much? A related question is who should pay for adaptation to the impacts of climate change and how much should they pay? It is often argued that developed countries are responsible for the current accumulated stock of CO₂ in the atmosphere. It has been predicted that increases in future emissions will primarily take place in the developing world based on economic growth and demographic change (Reed 2007:1,2). If this assessment is accepted, then it can be deduced that all of humanity is responsible for the reduction of GHG emissions. It therefore follows that if one state reduces its GHG emissions and other states do not, the GHG problem will not be solved. This is true for both developing and developed states, and small as well as big GHG emitters.

Imbalance of power: The antagonism of 'climate justice' in sharing the burdens of climate change

One of the marked characteristics of global climate negotiations has been the lack of consensus between the global North and the global South. From the perspective of the United States, the guiding principle is that the US must lead the world in the production of fewer GHG emissions in a way that does not undermine economic growth or prevent nations from delivering greater prosperity for the people (Bush 2007). Until recently, when the European Union clearly diverged from the US position, developed countries generally sought global restrictions on GHG emission reductions with flexible mechanisms for their implementation. The contention is that since GHG originate all over the world, all countries need to be part of the emissions reduction efforts. Developed countries often argue that a climate agreement that excludes developing countries is unfair and meaningless since the emissions of non-Annex I countries will increase exponentially over the next few decades. Some states have also suggested that if they continue to bear the weight of sustaining global economic growth and international financial stability, it would be both unfair and unrealistic to expect them to make sharp and immediate reductions in their carbon emissions (Reed 2007:3).

One of the problems with economic theory, however, is that in its 'single-minded focus on maximizing aggregate social welfare, it quite self-consciously ignores the distribution of wealth and power in society' (Sen 1999:349–351). Entitlement theories of justice, both in their libertarian and Marxist context, hold that individuals are entitled to what they have produced and in the context of climate change, 'grandfathering'¹ embodies this principle. It also exemplifies the justice principle of proportional equality that nations are unequal and therefore should be treated unequally (Reed 2007:5).

In contrast, developing countries in the southern hemisphere have suggested that their per capita GHG emissions remain very low relative to their developed counterparts in the North. Their argument is that because it is the industrialised countries that have benefited from past emissions of GHG, they have to be responsible for reducing their emissions while they allow developing countries to focus on economic development. The rationale is that since developing countries have relatively weaker economies and often widespread poverty, they ought to be allowed to raise the living standards of their citizens without being constrained by costly measures to reduce GHG emissions. The economic constraints imply that developing countries have a lower adaptation capacity to climate change than industrialised countries. This suggests the need for compensation, in the form of new and additional aid. While most developing countries have agreed to negotiate treaties that require richer nations to reduce emissions, they remain opposed to mandatory action themselves. China and India, in particular, insist that established industrial powers must act first, given that their developed economies have apparently contributed to the present build-up of GHG. This developed/developing countries divide shows that rich and poor countries have diametrically opposed perceptions of 'climate justice' (Reed 2007:2).

The sense of injustice is compounded by the view that some developed countries appear to undermine environmental treaties by failing to cut emissions, resisting limits on their conspicuous consumption, failing to transfer promised technology and environmental assistance and seemingly disdain the issue of development. This is clearly manifested in relations between the US and China, for example, with both countries using each other's behaviour as an excuse for the stalemate. Although there has been declining levels of generalised political trust between the North and the South, it is evident that a political settlement without the full participation of developing countries is meaningless. It is conceivable, therefore, to suggest that developing countries will never meaningfully participate in global climate agreements that ignore their development needs. It also explains why developing countries have repeatedly shown their 'willingness to resort to zero-sum, retaliatory tactics' as a bargaining chip in international climate negotiations (Reed 2007:3).

In an international system which is still state dominated and horizontally constructed there must be legitimate reasons for the hierarchy between bodies set up by states. Hierarchies are antithetical to the Westphalian paradigm of equal sovereign states that recognise no superior. Even in the post-1945 era of the growth of international organisations, there must be a presumption against hierarchies (Camilleri & Falk 1992). It is clear that both developed and developing countries are responsible for GHG emissions. It is also true that if the post-Kyoto framework is to mean anything, it must include the US, China and India, who are the world's first, second and fifth biggest GHG emitters.

The fact is that the geographical scope of climate change is global, including the Arctic region, ocean currents, weather systems, tropical islands and land masses (UNIPCC

2007). While the effects of climate change are widespread, they are not equally distributed among countries. The Arctic region and Small Island Developing States (SIDS) bear the brunt of the adverse repercussions of climate change. The Arctic region is warming twice as fast as any other region, resulting in melting permafrost and thinning ice (Aminzadeh 2007:243–244).

Climate change may also impact on developing countries by causing an increase in the spread of infectious diseases, an increase in surface temperature, a change in the acidity of oceans, changes in rainfall patterns, flash floods and landslides, drought and changes in the intensity of tropical cyclones (Aminzadeh 2007:244–245). The implication is that the world's poorest places will suffer setbacks unless rich countries promptly begin to curb emissions linked to global warming while also helping poorer ones to access less polluting energy sources than coal and oil. The poorer countries would also need assistance to adapt to climate changes. In this connection, Sachs (2007) notes that equity within a generation has at least two dimensions. First, it implies the fair distribution of burdens and benefits of fossil fuel use among nations. Second, it implies the universal protection of human dignity by securing the fundamental rights of every human person to water, food, housing and health. This is in line with the theory that ensuring human security requires a seven-pronged approach, addressing economic, food, health, environment, personal, community and political security (Kerr 2007:92). In the non-binding 'Washington declaration' key states agreed in principle to a global cap-and-trade system that would apply to both developed and developing countries, which they hoped would be in place by 2009.² Global warming, as the name suggests, is a global issue demanding much greater involvement than regional initiatives alone. The way that people in the developed world lead their lives can and will have significant effects on the rest of the world. Stopping climate change is an enormous task which requires concerted effort from governments and organisations throughout the world.

Is the world listening? The question of responsibility for greenhouse gas emissions

In a nutshell, the parties to the Kyoto Protocol agreed that the largest share of historical and current global emissions of GHG has originated in developed countries; that per capita emissions in developing countries are still relatively low; and that the share of global emissions originating in developing countries will grow in line with their social and development needs. The historical responsibility principle which has often been espoused by developing countries holds that the polluter pays. It may be argued that a country's reduction of GHG should depend on its relative contribution to the global rise in temperature. Per capita is premised on egalitarian principles and holds that every human has equal rights to the global atmosphere and therefore allocations of how much each can pollute should be done on a per capita basis. This approach places developed countries at a distinct disadvantage, because they already far exceed the stabilisation

target roughly equivalent to one tonne of CO₂ per capita. Developing countries obviously stand to gain from this approach because their present levels of income and industrialisation put them well below the one metric tonne threshold. As it is difficult to imagine any rapid convergence between nations at opposing ends of the emissions spectrum, the per capita approach holds that low-emission countries would be able to trade their unused allowances for funding or technical assistance through the Kyoto Protocol's clean development mechanism and other emissions trading mechanisms (Reed 2007:7).

The climate change phenomenon also presents a division both in terms of culpability and vulnerability. In this context, devastating effects will be felt primarily by the world's most vulnerable communities, such as drought-prone parts of Africa, flood-prone parts of Asia and hurricane-prone parts on the Caribbean and Pacific oceans. Developing countries of the global South are at the mercy of big players in the climate game since GHG emissions that adversely affect them usually come from far away. Developing states, in Africa for example, have generally contributed little to the concentration of GHG in the atmosphere, yet they are directly affected by climate change. The signatory countries to the UNFCCC agreed to take action to prevent dangerous climate change, yet it has failed to protect many of the world's poorest and most vulnerable communities.

Paradoxically, the poor and vulnerable countries and communities are most at risk from adverse impacts, yet they are the least responsible for causing the problem. Indeed, the haves of the world are responsible for the vast majority of the GHG that have already accumulated, and yet it is the have-nots who are likely to bear the brunt of its effects (UNIPCC 2007; Sinden 2007). The US, for example, with less than 5 per cent of the world's population, is responsible for more than 28 per cent of GHG. Many of the areas most vulnerable to sea level rise and to debilitating drought are in the developing world (UNIPCC Report 2007:7:16). Furthermore, throughout the world the poor are generally less likely to have the resources to cope with calamity when it strikes. The same is true of the vast majority of the people in the coastal areas of the African continent. Stern (2006) aptly highlights both the moral obligation and the pragmatic need for the rich countries, which are most responsible for creating the problem, to assist poorer and more vulnerable nations in order to help them adapt to the inevitable impacts they may face. Those most responsible for climate change have caused the loss of life and livelihoods of poor and vulnerable communities. 'Once this damage has been inflicted, adaptation is much less of an option. Rather, issues of liability and associated compensation will need to be considered' (Huq & Toulmin 2006).

Many developing countries are small and poor, so they have little ability to adapt to climate change, either physically or financially. Small-scale farmers in Africa and Asia, those who do not have access to safe drinking water, sanitation, healthcare or social security or slum dwellers living in informal settlements located in hazardous zones, will suffer

earliest and disproportionately the consequences of climate change. Wealth, technology and infrastructure facilitate adaptation and the ability to cope with the adverse effects of climate change. The poor generally tend to have much lower coping capacities yet they are more exposed to disasters, drought, desertification and slow economic decline. From this argument it is clear that the rich countries, who also happen to be the largest historical emitters, should take aggressive action to facilitate the reduction of GHG emissions and mitigate the effects of climate change, including that beyond their borders.

The question is whether the developed countries are willing to transfer money and new technologies to developing states to protect them from rising seas as outlined in the Bali Action Plan. The intensity of CO₂ makes clear the need for voluntary changes in energy efficiency to drive GHG emission reductions. The focus is on how economic growth will be maintained while minimising the impact on the climate. In this case, the goal is to provide for strong economic growth with as little GHG emissions as possible. This approach could be seen as an offshoot of Betham's 'utilitarian theory' of justice, which holds that mutually advantageous and cost-effective solutions are also just solutions. The corollary is that inefficient solutions are also unjust. From this perspective, the fair solution to climate change involves stabilising the climate as cost-effectively as possible while maximising economic growth. The assumption is that since developing countries provide the most cost-effective opportunities for reducing GHG emissions, efforts to stabilise the climate should focus predominantly on providing developing countries with 'green development paths' (Reed 2007:6).

To this end, Reed has advanced a 'moral compromise' or 'negotiated justice' settlement involving an optimal mix of principles that may assist rich and poor countries in overcoming barriers to cooperation. While others have developed hybrid models,³ simply asserting that a 'negotiated justice' settlement should prevail, avoids the more central question of whether and to what extent an agreement must favour rich or poor nations. Reed (2007:8, 9) is of the opinion that 'negotiating a shared world view will require the North to consider forming equitable constructive, long-term partnerships with southern nations and helping them to tailor country-specific and sector-specific development strategies and climate policies to local conditions, culture, institutions, knowledge and technologies'. Developed nations may also need to promote policies that explicitly signal concern for the structural obstacles facing developing countries. In terms of Reed's thesis, developing this shared world view will necessitate a movement away from particularistic understandings of justice representative of vested interests, to a shared understanding of justice that transforms the relationship between North and South and in turn the relationship with the natural world. In the same vein, poverty eradication, prevention of extremism and good governance are crucial to the equitable and harmonious conduct of both international relations and domestic policies. This exposes the dynamics and the confrontation between economic and developmental concerns within the framework of environmental protection and human security.

What is to be done? Taking human security seriously

The existing international climate regime is insufficient to deal with the scale of the envisaged problem. In addition, treaty negotiations have stalled, and there are numerous reasons for pessimism about international cooperation in the face of global warming. Therefore practitioners concerned about global climate change have been searching for other approaches (Posner 2007:1). The protection of human rights is at the very heart of human security. As climate change will inevitably affect human security, the protection of human rights should be a key consideration in efforts to address the impact of climate change. International human rights law imposes several obligations on states that are relevant to addressing human vulnerabilities to climate change. These include the obligation to provide better housing, located away from hazardous zones; improved access to sanitation, safe drinking water and healthcare; access to adequate food; effective participation in planning and decisionmaking; accountability; as well as access to information and justice. Therefore, there is merit in integrating the human security dimension into strategic thinking about mitigation of, and adaptation to, climate change for optimal investment of resources in the long run.

Universal human rights norms and standards – which are anchored in common humanity, needs and aspirations – should provide impartial guidance for managing and protecting diversity. The very foundation of freedom, justice and peace rests on the recognition of the inherent dignity and the equal and inalienable rights of all humans as expressed in the universal declaration of human rights. The declaration emphasises that all people are entitled to exercise their fundamental freedoms and human rights, without discrimination, and without any limitations other than those accepted under international law. From a normative perspective the concept of human security serves to highlight the importance of good global norms. Human security is not only a motivation but serves as an umbrella norm for various treaties and conventions which aim to protect vulnerable people from persecuting actors, notably states (Kerr 2007:93).

Reframing climate change negotiations in the context of human security

The route pursued by the international community, namely diplomacy and treaty governance, has been largely ineffective in addressing the mitigation of, and adaptation to, climate change. This is to a large extent due to the general reluctance of states to relinquish sovereignty in order to address global environmental problems. Current international environmental law does not adequately safeguard human security from the threats associated with climate change. Furthermore, states have largely focused on the environmental and economic implications of climate change rather than its human security implications. Hence there is a need to reframe the climate change debate in

terms of human security. Another reason for pursuing a human security approach is that environmental governance on climate change, primarily the UNFCCC and the Kyoto Protocol, do not provide remedies for injured parties (Aminzadeh 2007:245, 259–260). The question is when is an environmental problem severe enough to become a human security issue? With regard to human rights, Osofsky (2005a:91) suggests an approach based on US environmental law to evaluate whether an environmental harm constitutes a human rights violation by assessing the geographic scope, duration and severity of the environmental damage. It appears that if these criteria are used, climate change will have significant social and human security implications (Aminzadeh 2007:242).

A human security approach to climate change would integrate the theoretical and advocacy approaches of international environmental law and human rights law as well as development discourses. This approach could result in a renewed sense of urgency in the stagnant political debate over climate change and jumpstart international diplomacy towards solutions, such as the debates relating to the post-Kyoto Protocol regime. The approach seems to make sense from a legal standpoint because both international human rights law and international environmental law limit the traditional independence and autonomy of state sovereignty. However, there is a concern that a human security approach could lead to an anthropocentric perspective of environmental problems, instead of looking at the totality of impacts to species and the environment (Taylor 1998).

Thinking of climate change as a human security issue may facilitate the perception that it is not just a matter of aggregate costs and benefits but of winners and losers – of the powerful few preventing the political system from acting to protect the powerless many (Sinden 2007:14). According to article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) each state party shall respect and ‘ensure to all individuals within its territory’ the various rights contained therein whereas article 2(2) obligates states to undertake the necessary steps, including the adoption of legislative and other measures, to give effect to the rights in the ICCPR. It is an accepted human rights principle that the duty to ensure respect for rights generates both negative and positive obligations for states. The political paralysis with regard to ‘climate justice’ is due to the gross imbalance of power between those who stand to gain and those who stand to lose from climate change regulation. Given that the human rights tradition is fundamentally rooted in concerns about power imbalance, framing claims in connection with climate change in human security terms may effect a shift in the debate, so that it spotlights the problem of political failure rather than market failure (Sinden 2007:12).

Instead of arguing over how best to measure in dollar terms the costs and benefits of climate change regulation, the focus should be on how to arrest the adverse impact of climate change on the victims. By protecting vulnerable populations susceptible to the adverse effects of climate change, such action will also serve to preserve the delicate environment of the planet. When the vulnerable populations formulate a challenge on

a given state’s failure to curb GHG emissions in terms of human security, they are seen to advocate for the protection of the environment and challenge the disparity in power and resources between vulnerable populations and perpetrators (Sinden 2007:4, 7). In *Hungary vs Slovakia*, the ICJ (1997, para 13) stated that the protection of the environment is a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself. In *Hatton and Others vs United Kingdom* (2001:21) the European Court of Human Rights stated that the requisite standard in the European human rights system was that states are required to minimise, as far as possible, the interference with these rights, by trying to find alternative solutions and by generally seeking to achieve their aims in the least onerous way with regard to human rights. In order to do that a proper and complete investigation and study with the aim of finding the best possible solution which will, in reality, strike the right balance, should precede the relevant project.

Climate perturbations most clearly surpass the jurisdiction of a single state; they are in fact a striking example for the transnational character of threats in a highly interdependent world. Under such circumstances, the human rights obligations of states and non-state actors cannot simply stop at territorial borders; rather, they reach geographically to other countries as well. As such, it can be argued that human rights that are susceptible to the effects of climate change call for extra-territorial responsibility. Countries with high emissions must therefore recognise their extraterritorial obligations towards the protection of human rights.

If this assessment is acceptable, it is possible to argue that when human rights are threatened by climate change, the principle of extraterritorial obligations becomes even more relevant. The point is that just as climate effects reach to the ends of the earth, the geographical scope of responsibility has to be global as well. Sachs (2007:9) succinctly posits that:

[T]his responsibility is in the first place a negative one; it implies avoiding harmful action rather than intervening to provide conditions for enjoyment of human rights ... climate responsibility is first of all a matter of self-limitation on part of high-emitting States and social groups, ‘not a matter of benevolent imperialism bent on improving the world’. It is, incidentally, the liberal core of human rights law to emphasize negative obligations, ie, to call on power-holders to refrain from actions that infringe upon people’s integrity.

The victims of global warming are dispersed throughout the world. However, most are concentrated in poor countries in low-lying islands and coastal regions, where rising sea levels result in more frequent floods, erosion and the destruction of property. Two other groups of victims are first farmers whose land can no longer support traditional crops because of climatic changes, people who become vulnerable to diseases, and

people who rely on glaciers and oceans, lakes and rivers for their water (Posner 2007). Climate change therefore should be addressed in a way that is fair and just, cognisant of the needs and risks faced by the vulnerable groups, and adhering to the principles of non-discrimination and equality. If this analysis is sound, it is easy to conclude that any sustainable solution to climate change must take into account its human security impact and the needs of all communities in all countries (particularly poor countries) in a holistic manner. Given that climate change is a universal problem, it is incumbent upon every state to curb the anthropogenic effects of climate change that invariably result in human rights violations. After all, humanity is indivisible. Human rights are higher values that are not derived from the fact that an individual is a national of a certain state, but are based upon attributes of his humanity.

Human security is concerned with the protection of people from life-threatening dangers, regardless of whether the threats are rooted in anthropogenic activities or natural events, whether they lie within or outside states and whether they are direct or unstructured. Human security is 'human centred' in that its principal focus is on people both as individuals and communal groups. It is 'security oriented' in that the focus is on 'freedom from fear, danger and threat' (Thakur & Newman 2004:347). A human security perspective shifts the focus to people and to the effects of climate change on their lives. Along with human security, human rights also introduce an accountability framework that is an essential element of the promotion and protection of human rights as such, by holding governments, the primary duty bearers, accountable for reducing the vulnerability of their citizens to global warming and assisting them in adapting to the consequences.

'Green litigation' – combating climate change through human rights claims

The voluntary standards may not be enough to regulate a growing problem because they may not provide for accountability – corporations and states may act unchecked, with no penalties attaching to possible unethical decisions or actions. International environmental law claims are more likely to succeed if they can be reconceptualised in terms of robust international human rights claims (Posner 2007:3–7). Most states subscribe to human rights treaties, and many of the obligations embodied in these treaties have become norms of customary international law. Posner is of the view that, since certain treaties and norms of customary international law imply that states are liable for emitting pollution which adversely affect people living in other states as a corollary, it can be argued that if these rules do in fact prohibit such pollution, they apply to GHG as well. Human rights treaties potentially give individuals claims against states – both the state of which the individual is a citizen and any relevant foreign state. In theory, individuals or groups could bring human rights claims against their own state and foreign states in certain international tribunals, and prevail if they can show that failure to regulate GHG emissions has resulted in a violation of their human rights (Goldberg & Wagner 2004:191; Posner 2007:3, 4).

Litigation over the effects of climate change may take various forms, and may be based on international human rights law. Plaintiffs argue that major emitters of GHG have violated rights to life and health by contributing to environmental injuries and health problems associated with global warming. However, law suits involving climate change raise complex issues about causation and redress because any single polluter is likely to produce relatively insignificant proportions of the GHG and thus any judicial remedy is likely to have a small impact on solving the global problem. It is also difficult to connect actors and claims to fora for litigation because climate change occurs in the atmosphere without respect to national boundaries. Despite these obstacles, there are laws that can force governments and other parties to reduce their GHG emissions, and litigation is an increasingly prevalent means of holding parties responsible for climate change (Mank 2005:1; Osofsky 2005a:1789, 1802). Hence the importance of environmental organisations and states using domestic legal action. Although climate change litigants have brought cases for different reasons, most emphasise responsibilities and obligations rather than rights. Climate change litigation has been a step in the right direction, but it has largely failed to emphasise the human rights and social consequences of climate change (Aminzadeh 2007:233–234).

Victims of environmental harm can benefit from a human rights-based approach to environmental litigation because international human rights law provides a basis for intervention when harm occurs solely within the borders of another state while international environmental law generally does not. A reformulation of existing human rights in the environmental context would garner more effective environmental protection because it would take advantage of existing international and regional monitoring and enforcement mechanisms, which are better developed in the human rights terrain than in the environmental field. Although it is unlikely that international fora will issue injunctive relief to restrict GHG emissions, they can issue injunctions for monetary relief, which will help to underwrite the cost of weather damage stemming from climate change or to establish special funds to build coastal defences, protect freshwater supplies and develop new forms of agriculture (Aminzadeh 2007:260).

Apart from domestic and regional structures, an applicant could also utilise UN mechanisms, the particular choice obviously depending on the nature of the claim and desired remedy. There are several other possibilities for adjudicating human rights claims relating to climate change. States may bring claims against other states in the ICJ, subject to jurisdictional requirements. Individuals could also bring claims against states in the European Court of Human Rights (ECHR), or the Inter-American Commission on Human Rights (IACHR). Indigenous and other displaced peoples could bring complaints to the World Bank Inspection Panel. It is for this reason the African states are urged to sign the declaration, in terms of article 34(6) of the Protocol, that would establish the African Court of Human and Peoples' Rights (ACHPR) Protocol which would provide individuals and non-government organisations with a platform for human rights claims based on climate change damage.

Therefore, one way of ensuring that a climate change case is brought in a competent forum, is to use human rights litigation. For example, a litigant could bring a case in a domestic court, as in the Nigerian *Gbemre* case (2005), where the communities in the Niger Delta were granted an injunction in a Nigerian court against Shell and the Nigerian National Petroleum Company by claiming that the climate change impacts of the wasteful practice of 'gas flaring' constituted a human rights violation. International human rights courts provide alternative forums, with the African Court for example providing a conducive forum, pursuant to article 3(1) of ACHPR, since actions may be brought before the court on the basis of any instrument, such as environmental treaties, which have been ratified by states party to it.

The Inuit people of the Arctic have filed a petition with the IACHR, claiming that the acts and omissions of the US with respect to climate change violated their human rights, particularly the right to life, residence and movement, inviolability of the home and preservation of health and of well-being (Inuit Petition 2005). Despite the IACHR's refusal to review the petition on procedural grounds, the filing of the petition could establish a legal basis for holding countries liable for profiting from inadequate GHG regulation (Aminzadeh 2007:241). In the *Social and Economic Rights Action Centre vs Nigeria*, the African Commission on Human and Peoples' Rights held that Nigeria had violated several human rights espoused in the African Charter on Human and Peoples' Rights (the Banjul Charter), including article 16(2) which obliges states parties to 'take the necessary measures to protect the health of their people'. The commission found that Shell's operations contaminated the water, soil and air, causing both short-term and long-term health problems for the Ogoni people. Because Nigeria was a party to the Banjul Charter and had failed to restrain Shell's behaviour and protect their citizens, the commission found that they had violated the charter. Likewise, in the *Hatton* case, the ECHR held that the UK failed to adequately regulate the airport noise and protect them against arbitrary interference with their right to privacy and family life. As such, actions taken to respond to climate change can themselves have significant justice as well as human rights implications because their benefits and costs are frequently distributed in ways that consolidate or exacerbate existing vulnerabilities and inequalities (Reed 2007:1).

By and large, emitting pollution that harms third parties is a standard tort, which means that plaintiffs should have no trouble persuading courts that GHG emitters are potentially tortfeasors. However, complex questions about the scope of liability will have to be addressed. To pursue a tort case, the plaintiff needs to prove that one's life, health, or property was damaged or destroyed by flooding, disease, or some other hazardous phenomenon connected to global warming by the defendant. International law generally creates obligations for states, not for corporations or individuals. Yet states are usually protected by sovereign immunity, so that they cannot be sued in domestic courts. However, domestic tort litigation in terms of the environment poses evidentiary hurdles relating to causation – for example, a victim of flooding would have to show that the

flooding was caused, in a legal sense, by GHG emissions of a particular corporation. However, such litigation cannot address a global problem given that most GHG emissions take place in foreign countries, and most of the victims may be in foreign countries. Litigation against foreign states based on international law is likely to fare poorly in domestic courts because of foreign sovereign immunity and other doctrines that limit the liability of foreign states and individuals, plus the weakness of international environmental treaties and customary law. The weakness of the law also makes litigation before international tribunals largely pointless, except perhaps as a way of attracting attention; further, international tribunals have no power to coerce states to comply with their judgments.

Corporations can be held liable – especially if they have acted in complicity with states. Thus, if GHG-related human rights litigation is to succeed, it will need to target corporations – domestic, foreign and multinational – and the prospect of litigation and damages will also have to deter corporations from offering their services to foreign states and officials (Posner 2007:8). However, the question that arises is whether emissions of GHG by a state or corporation violate international law. International legal restrictions on pollution are weak or nonexistent, or apply in limited domains. For instance, article 24 of the Banjul Charter provides the 'right to a general satisfactory environment favourable to development', but there is also no international human right to be free of global warming or pollution per se. An international human rights claim directed at GHG-emitting states or corporations would have to be based on an argument that the polluters, by emitting GHG, violated victims' rights to life or health, or discriminated against them.

However, there are significant legal hurdles to a human rights-based approach to climate change litigation. The litigants have to prove that climate change has violated their human rights. Just as a violation of the right to food, health or shelter can often not be traced back to the action of a clearly identifiable duty bearer, climate effects, too, cannot be attributed to a specific culprit identified by name and address. Determining how to use existing legal categories, who the responsible actors are, and who the victims are that deserve remedies, is a difficult process. These legal hurdles may hurt a human rights-based litigation strategy, fuelling criticisms about the insufficiency of scientific data and undermining the efficacy of climate change advocacy.

Nevertheless, the complexity in pinpointing culprits does not nullify the entitlements of rights. A strictly legal conception, which maintains that there are no rights unless they are justiciable, can hardly hold in the light of the universality principle of human rights protection, the globalisation of security and amorphous anthropogenic causes of global warming. States are the primary duty bearers in human rights law. In this sense, the evidentiary standard for the right to life or health would require individuals or communities to establish that their rights were violated by the state's failure to restrict the activities of the GHG emitter. In the *Yanomani* case the Inter-American Commission

decided in favour of the petitioners that the Brazilian government violated the petitioner's right to life, liberty and personal security by failing to take environmental measures to prevent environmental damage. When a state fails to take reasonable measures to prevent environmental damage, and the result of such non-action is climate change, the victims may seek redress for human violations (Aminzadeh 2007:251; Van de Venis 2006).

According to Aminzadeh (2007:264) reframing the climate change in human rights terms is nonetheless valuable in its own right. That litigation can be effective for changing policy cannot be denied, although it cannot be concluded with certainty that litigation may lead to better policy (Posner 2007:17). Progress with global warming depends on litigation succeeding against corporations around the world. International litigation, since it would target foreign as well as domestic corporations, and thus apply a consistent liability standard around the world, holds out more hope on this score. A positive decision on the petition will establish the responsibility of major GHG-emitting states for the human rights violations resulting from climate change. The responsibility creates an international obligation to take action to prevent such violations. Thus, it seems sensible that policymakers may need to adopt a human security approach to climate change that is rooted in the international human rights framework.

Conclusion: Broadening the AU's human security agenda – a proposal for an AU victim-oriented climate policy

The environment is one of the seven sectors identified in the early definition of human security by the UNDP (1994) together with economic, food, health, personal, community and political security (Barnett 2007:197). During the Cold War scientists used to warn of a 'nuclear winter' – the consequences of nuclear war in which smoke and debris would block the very sunlight from the atmosphere. According to Pachauri (2007:2), now there is a danger of creating a permanent 'carbon summer' in which global warming pollution traps the heat that is normally radiated back out of the atmosphere, on earth. This explains why the UN (2007) urged member states to take 'decisive action on a global scale', towards a 'comprehensive agreement' that 'tackles climate change on all fronts, including adaptation, mitigation, clean technologies, deforestation and resource mobilization'.

Although it has been more than a decade since the Kyoto Protocol was adopted, the GHG emissions of most industrialised countries are still rising and their per capita emissions remain unacceptably high. It is often argued that industrialised countries must show more leadership on the issue of climate change. Similarly, developing countries, and especially large states, need to be brought on board if the climate change regime is to be truly effective. However, the extent to which developing countries would be taken on board depends on whether industrialised countries fulfil commitments to cut domestic

emissions and provide the requisite financial resources and transfer of technology to developing countries.

Although Suckling (2007) suggests that the polar bear should be the icon for climate change, Aminzadeh proposes that human beings are the icon for climate change, which should provide a powerful impetus for solving the problem (Aminzadeh 2007:234). It seems that a human security approach, rooted in human rights doctrine, to reduce GHG emissions may act as a catalyst for an effective response to combat climate change. This entails that the suffering resulting from climate change in the developing world be addressed and that developing countries be helped to advance in ways that will be less harmful to the planet in the future. Combating climate change involves complex economic and political realities. Still, human security may be a utility concept for development of a policy framework to combat climate change. As such, states and non-state actors need to do everything in their power to stabilise GHG emissions, by making use of stringent national policies and effective market mechanisms. When human rights and political or economic expediency require different courses of action, human rights considerations should automatically be accorded precedence. In this sense, a human security approach to climate change would integrate the theoretical and advocacy approaches on the cross-disciplinary triangular relationship between environmental law, human rights and development. Such an approach which would require that climate change negotiations be reframed in the context of human security, have the potential to break the political stalemate over climate change, and jumpstart international diplomacy towards solutions for the post-Kyoto Protocol regime.

Climate change claims by vulnerable populations and victims of GHG emissions may contribute to environmental protection and so avoid a planetary catastrophe (Environmental Rights Action/Friends of the Earth Nigeria 2005). According to article 2 of the UN FCCC, the goal of climate change advocacy is to encourage states to scale back their GHG emissions to a point where GHG concentrations in the atmosphere stabilise and then decrease to a level that prevents dangerous anthropogenic interference with the climate. As long as states fail to pursue much-needed policies on climate change and set adequate standards for emissions reductions, victims and environmental groups should continue to use domestic laws and even international human rights law to gain protection for human rights and the environment. The motivation of the international human rights approach is that international litigation against states might pressure governments to adopt more environmentally friendly policies, whereas domestic litigation against multinational corporations might pressure them to reduce their GHG emissions. Litigation can generate press attention, mobilise public interest groups, galvanise ordinary citizens and, ultimately, gain compensation for victims (Posner 2007:7). Meritorious cases could thus break new ground in international law relating to the protection of the environment.

The fight to save the earth, perhaps using CO₂ trading programmes and increased sharing of CO₂ reduction technologies should be a priority. CO₂ is quickly becoming a global

commodity, and perhaps the next oil in terms of commodities or perhaps CO₂ needs to be the DNA for businesses, an important issue just like health and safety. However, it should be understood that cutting GHG emissions will be costly – and while playing down those costs may seem like smart politics today, it may be inaccurate in the longer term. The IPCC estimates that action to avoid the most dangerous effects of climate change would reduce the world's annual gross domestic product by 3 per cent by 2030. Although this is not an intolerable burden, it is still painful. However, it needs to be done if one considers that the health of the global climate is to the public good. It will entail sacrifice on a national scale, as well as transformation in the way that states produce and use energy. Less-developed countries cannot be expected to control their emissions unless developed countries take the lead, perhaps with new technologies such as solar panels, hydrogen-fuelled cars and others as yet imagined. In an interdependent and globalised world everyone is a stakeholder in human security. Starting with individuals (who may also be victims, investors or policymakers) and proceeding to non-state actors as well as states, everyone has the duty to combat climate change within their sphere of influence.

With regard to the African continent, there is a need for the integration of the environmental protection concerns into the manifold policies of African states in general and the AU in particular. The rationale is to develop a more coordinated AU policy on energy-related issues, although the actual implementation may be left to the competence of the member states. When the UN Charter was adopted soon after World War II, in 1945, it was imperative for the peoples of the UN to commit themselves to save succeeding generations from the scourge of war. Given that today climate change is a universal threat to the very future of the planet, it is imperative that the members of the UN offer future generations a chance to live by saving their planet as well. Therefore the AU needs to develop an environmental policy in terms articles 9(1)(a) and 13(1)(b) and (e) of the AU Act. Such a policy may be akin to the European climate policy whose basic goals are the promotion of energy efficiency, promotion of renewable sources, research and attention to the cost-efficiency relationship as to the sectors affected by regulations and cooperation with the industrial sector, non-governmental organisations and other stakeholders (Massai 2007:11). Given that the bulk of AU member states are developing countries that may be the most adversely affected by climate change, the AU needs to lead the way to combat climate change to provide guidance for the continent. If African states build the momentum to combat climate change, it will send a signal that the global community will not be able to ignore.

Notes

- 1 'Grandfathering' is the act of instituting an exception clause that allows a previously existing rule or regime to continue to apply to some existing situations, while a new rule or regime will apply to all relevant future situations.
- 2 The agreement was reached on 16 February 2007 by Canada, France, Germany, Italy, Japan, Russia, UK, US, Brazil, China, India, Mexico and South Africa.

- 3 See the 'preference score' developed by the Pew Centre for Global Climate Change and the 'tritych' proposal advanced by the University of Utrecht.

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