

REVIEW: Sumudu Atapattu — Human Rights Approaches to Climate Change: Challenges and Opportunities

Birsha Ohdedar

PhD Candidate, School of Law, SOAS, University of London, UK

INTRODUCTION

In 2010 Humphreys remarked that there was a ‘mutual disinterest’ between those who were working on climate change and those who were working on human rights.¹ Seven years on, there has been a rapid growth of literature in the area, including many contributions from this Journal.² There have also been movements at the international institutional level through the appointment of a UN Special Rapporteur on Human Rights and the Environment³, a series of resolutions from the Human Rights Council⁴, as well as pre-ambular acknowledgement of the link between human rights and climate change in the Paris Agreement.⁵ Today, the assertion that climate change and human rights are inexorably linked is not a controversial one. Neither is the claim that climate change is impacting upon many human rights and will continue to do so unless there are significant socio-political changes.

¹ S Humphreys, ‘Introduction: Human Rights and Climate Change’ in S Humphreys (ed), *Human Rights and Climate Change* (Cambridge University Press, Cambridge 2010) 4.

² A detailed list of citations exploring the link between human rights and climate change is provided in the Book itself, see: S Atapattu, *Human Rights Approaches to Climate Change: Challenges and Opportunities* (Routledge, Oxford 2015) 75.

³ Human Rights Council (HRC) Resolution 19/10, Human rights and the environment, UN Doc. A/HRC/19/L.8/Rev.1 (20 March 2012).

⁴ HRC Resolution 7/23, Human rights and climate change, UN Doc. A/HRC/RES/7/23 (28 March 2008) and HRC Resolution 18/22, UN Doc. A/HRC/18/L.26/Rev.1 (28 September 2011).

⁵ UNFCCC, Paris Agreement, 12 December 2015, FCCC/CP/2015/L.9/Rev.1 Recital 12.

While the linkages between human rights and climate change are now recognised, it is now also necessary for legal scholars to take the debate forward through examining the state of human rights law in relation to climate change and through conceptualising how to broaden human rights law to tackle the challenges of climate change. In this context, Sumudu Atapattu's book provides a timely appraisal of the legal and conceptual framings of human rights and climate change. The book also offers an analysis of how different areas of human rights law might tackle the challenges of climate change.

Atapattu's approach throughout the book is pragmatic. She does not overstate the extent to which international human rights law is currently placed to tackle the multiple challenges of climate change. However, she is hopeful that through further constructive legal engagement, as well as political will, a rights-based approach can be developed to frame solutions to the climate crises. Overall, the book is an excellent source of scholarship for students, lawyers, and researchers interested in human rights law, climate change, environmental law and for anyone interested in climate justice.

LEGAL AND THEORETICAL FRAMEWORK

The first three chapters of Atapattu's book provide an overview of how various international legal frameworks have developed to address climate change and human rights, with respect to environmental protection. These chapters provide a useful background to the international law, institutions and mechanisms that have governed environmental protection and human rights (and have come into

existence in the past few decades). From the Stockholm Declaration in 1972 to the appointment of an Independent Expert on Human Rights and the Environment by the Human Rights Council in 2012, and beyond.

In outlining her theoretical and conceptual framework, Atapattu highlights the complexities in linking human rights to climate change. First, the issue of establishing a causal link between an existing rights violation and the environmental condition or circumstances in question. Second, accounting for the multiple contributing factors to a severe weather event or a natural resource stress. Third, allocating responsibility for future impacts of climate change fraught with uncertainty. Furthermore, it is not always easy to connect rights and obligations at the international level. This is because international human rights law operates under a ‘vertical’ relationship between states as duty bearers having obligations and citizens as rights holders. Atapattu cites the example of a citizen from the Maldives being affected by severe weather event associated with climate change. While identifying a rights-holder is easy (the affected citizen), locating a corresponding duty bearer for that ‘violation’ is difficult.⁶ The Maldives is a negligible contributor to climate change and therefore it is difficult to hold it responsible. However, to hold a foreign major emitting country as a duty bearer would currently require a ‘marriage’ between international human rights law and the principle of no-harm under international law.⁷

Thus, Atapattu recognises the difficulty in applying an international human rights framework to a problem as complex and multi-factored as climate change.

⁶ Atapattu (n 2) 87.

⁷ Ibid.

Accordingly, she points out that human rights are easier to apply in an adaptation context rather than in the context of mitigation. To return to the example of the Maldives, the affected citizen can easily identify a duty holder (the Maldives) in relation to certain adaptation actions, such as the provision of adequate flood defence to protect a right to housing or to shelter. However, such identification would be tougher in relation to mitigation, precisely because, as noted, the Maldives has made a negligible contribution to greenhouse gases and it is so difficult to pinpoint a relevant duty holder across borders. Accordingly, Atapattu hopes that a distinct environmental right at the international level, which there is increasing pressure for, will provide a more coherent way forward.

Atapattu goes on to advance the position that the links between climate change and human rights need to be seen through a ‘climate justice’ lens. Echoing others, she describes climate justice as the ‘elephant in the room’.⁸ This relative neglect, she suggests, is because climate justice involves a discussion of the historical and contemporary processes of imperialism and capitalism that have driven climate change.⁹ There is a reluctance to speak of these subjects, notably by developed countries in climate change negotiations. Atapattu argues that rights-based approaches must weave a number of principles, such as participatory rights, equitable burden sharing, gender equality and equity, into their frameworks to further climate justice. Furthermore, she stresses the importance of corrective justice, distributive justice and inter-generational equity, which cannot be ignored and thus must be brought into rights-based approaches.

⁸ Ibid 93.

⁹ Ibid 96.

In Chapter 4, Atapattu surveys principles of international environmental law, such as common but differentiated responsibility, that are relevant to a rights-based approach to climate change as well as climate justice. In Chapter 5, she goes on to discuss mitigation and adaptation, their development in international climate change law, and how such approaches can benefit from human rights approaches. While Atapattu argues that adaptation is an ‘easier fit’ for a rights-based approach, here she also discusses mitigation projects, such as the Clean Development Mechanism, through two case studies. These chapters will serve as a useful guide for students and scholars looking for a succinct summary of the development of international human rights law, international environmental law, and climate justice.

HUMAN RIGHTS AND VULNERABLE COMMUNITIES

Atapattu makes an important contribution to the growing literature on migrants/refugees, women and indigenous peoples and their vulnerabilities to the impacts of climate change in the second section of the book, which tackles important human rights issues of groups specifically vulnerable to climate change.

Migration that occurs as a result of climate change is an incredibly complex phenomenon and one that is becoming increasingly relevant.¹⁰ While there has been discussion of this issue in recent years, there has been reluctance by Governments to extend international law to protect climate-vulnerable groups. Atapattu puts forward two important arguments in this respect. The first concerns

¹⁰ For example, in relation to Syrian refugee crisis, see: P Gleick, ‘Water, Drought, Climate Change and Conflict in Syria’ (2014) 6 *Weather, Climate, and Society* 331.

terminology. Atapattu argues that we should refrain from using the term ‘climate refugees’ so that we do not undermine the status of political refugees. She argues that the term ‘refugees’ fails to speak to the intricacies of climate-induced migration, which may be temporary rather than permanent. Accordingly, she proposes the term ‘forced climate migrants’ to emphasise the involuntary nature of this movement yet keep a distinction from political refugees. Such migrants are those forced to move because of ‘significant environmental damage associated with climate change’.¹¹ It is not clear, however, how one would clearly distinguish damage resulting from climate change from other forms of environmental damage or from other effects of climate change, including political instability. For example, a complex set of interrelated factors ranging from religious and socio-political tensions to climate variability and freshwater availability have been cited as triggers for the Syrian civil war.¹² In today’s world, where particularly high burdens are placed on asylum seekers and migrants to prove their rights, it would again seem to place a high burden of proof upon a potential ‘forced climate migrant’ to isolate, and to prove, climate-related factors.

The second major argument is institutional. Atapattu argues that international human rights law (coupled with some *erga omnes* obligations) provides the best framework for governing the problem of climate change induced migration. She argues that international human rights law provides an approach preferable to humanitarian/refugee law, international climate change law or developing a new branch of international law. Here, she cites the politically charged nature of international refugee and climate law and the slow-nature of the climate change

¹¹ Atapattu (n 2) 165.

¹² Gleick (n 10).

negotiations. The chapter usefully highlight the gaps in the current international legal framework concerning climate-induced migration and raises important questions relating to framing rights-based solutions, but there is not enough in Atapattu's argument to convince the reader that international human rights law would also not suffer from similar issues in dealing with the issue of climate change induced migration.

The two other chapters in this section explore the ways in which forests and indigenous peoples, and women, are impacted by climate change and inequality. These chapters provide a comprehensive summary of the current status of international human rights law and climate change law in relation to each issue respectively.

DISAPPEARING STATES, CONFLICT AND ADJUDICATION

The chapters of the final section explore how climate change will present profound questions for international law relating to disappearing states and to increased natural resource conflicts. In Chapter 9, Atapattu discusses the fate of small island states as sovereign entities whose entire existence is threatened by the impacts of climate change. She poses a number of important questions relating to sovereignty and territoriality under international law as well as linking these to rights that are discussed in earlier chapters.

For example, Atapattu highlights the linkages between the right to self-determination and small island states sinking due to sea level rise.¹³ The dominant

¹³ Atapattu (n 2) 234-235.

legal understanding of the right to self-determination has been narrow and largely confined to colonial or apartheid contexts.¹⁴ For international law to deal with the question of a sinking state, it must broaden the ambit of how the right to self-determination is understood. The normative idea of people's wishes being respected where their autonomy is under threat underpins the right to self-determination. As Willcox argues, climate change inundation is a "grave, foreseeable, external threat" to such autonomy and of "the kind that self-determination should protect against".¹⁵ Atapattu highlights challenges such as these which international lawyers must grapple with. There is an urgent need for both political will and for international law to broaden, adapt and reconfigure its basic assumption in light of existing realities of climate change and frame solutions for the fate of sinking states.

Atapattu's contribution here is not just to challenge international law, but also emphasise that any approach or solution that deals with the fate of people on sinking islands must be focussed on human rights. First, to prevent a breach of multiple human rights, resulting in a grave injustice not only morally, but also legally. Second, to prevent further loss of culture, heritage and people's dignity. Such injustices could result in more disruption, violence and unrest as people go through a painful process of survival. Climate change is already a significant threat to peace and security.¹⁶ Framing solutions for 'disappearing states' without

¹⁴ Ibid 234.

¹⁵ S Willcox, 'Climate Change Inundation, Self-Determination, and Atoll Island States' (2016) 38(4) Hum.Rts.Q 1022, 1026.

¹⁶ US Department of Defence, Report on National Security Implications of Climate Related Risks and a Changing Climate <
<http://archive.defense.gov/pubs/150724-congressional-report-on-national->

a focus on these human rights would aggravate such a threat. Finally, approaches that are rights-based would mean that the concerns of small island states around citizenship, culture, heritage, sovereignty and dignity could be considered through dialogue at the outset. This would provide room for co-operative, diplomatic and politically viable solutions, which could be based on rights-based benchmarks.¹⁷

The penultimate chapter grapples with litigation and adjudication. Atapattu discusses some of the challenges that have been brought by different groups at the international and regional level, for example the petition brought by Inuit Circumpolar Conference before the Inter-American Commission on Human Rights.¹⁸ The constraints identified earlier in the book about identifying duty holders in relation to human rights-based approaches to climate change are relevant here, and Atapattu is sceptical about the likely future success of litigation given the current constraints of international law. However, she emphasises the importance that human rights-based litigation has had for enabling affected communities and individuals to ‘bring a human face’ to climate change, moving away from the generally technocratic approaches of international climate change law.¹⁹

implications-of-climate-change.pdf?source=govdelivery> accessed 23 September 2017.

¹⁷ See for example the work of Displacement Solutions, a non-profit that assists at creating rights-based frameworks and solutions to climate displacement: Displacement Solutions, ‘About DS’ <<http://displacementsolutions.org/about-ds/>> accessed 24 September 2017.

¹⁸ Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States (7 December 2005) <http://earthjustice.org/sites/default/files/library/legal_docs/summary-of-inuit-petition-to-inter-american-council-on-human-rights.pdf> accessed 16 September 2017.

¹⁹ Atapattu (n 2) 289.

In the final chapter, there is a passionate plea for more action. While in previous chapters Atapattu develops a pragmatic and rigorous legal argument, in the final chapter a more heartfelt tone is allowed to emerge. ‘The international legal system – with its obsolete rules and procedures – has not helped these [affected] communities to obtain relief; rather, it has shut its doors to them. Justice – in every sense of the word – has eluded these communities’.²⁰ Nevertheless, Atapattu is still optimistic that the international community can come together to ‘stand firm in our conviction that we can make a change’.²¹

LOOKING FORWARD: A SOURCE FOR RIGHTS-BASED APPROACHES

There is a pressing need for those of us interested in human rights and climate change to move beyond simply pointing out the broad linkages between them. The ‘mutual disinterest’ that Humphreys observed in 2010 is no longer present.²² It is now time to apply ourselves to thinking of ways in which we can use the human rights framework to address mitigation, adaptation and broader sustainable development aims. There is a need to look at ways in which legal frameworks can be transformed in light of climate change, and how this can be done through strengthening and realising human rights for all. This book takes the debate on climate change forward along such a path. The topic of human rights and climate change is extensive. One book cannot provide an exhaustive or comprehensive account of all the different complexities, but this book certainly provides a careful and detailed analysis of the challenges and opportunities that lie ahead.

²⁰ *ibid* 295–296.

²¹ *ibid* 297.

²² Humphreys (n 1) 4.

