

Human Rights Obligations Under Climate Change: Need for Clarity

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On April 19, 2023, the General Assembly asked for an advisory opinion on the obligation of states to respect climate change. The Resolution (A/77/L.58) was adopted on March 29, 2023 at the 77th session of the General Assembly. The Resolution was also adopted without any objection by state parties in the assembly. This initiative was largely driven by the Government of Vanuatu. The questions put before the International Court of Justice by the General Assembly included the obligations of states under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for states and for present and future generations. At the same time, the responsibility of these states towards small island developing states, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change and the peoples and individuals of the present and future generations affected by the adverse effects of climate change. All these questions are being assessed with reference to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the rights recognized in the Universal Declaration of Human Rights etc .

In this context, the UNGA recalls the importance of the United Nations Framework Convention on Climate Change and the Paris Agreement “as expressions of the determination to address decisively the threat posed by climate change.” The resolution also underscores the importance of implementing these treaties, particularly in light of the significant gap between states’ current nationally determined contributions and the emission reductions required to hold the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C, as well as the gap between current levels of adaptation and the levels needed to respond to the adverse effects of climate change.

Under Article 92 of the United Nations Charter and Article 34 of the International Court of Justice Statute, the World Court has advisory jurisdiction. Though Article 36 of the same statute and 33 of the United Nations Charter along with 93 of the Charter vests only state the jurisdiction for filing a case in the International Court of Justice. Although the advisory opinion is not binding, states and international organisations may consider it as a reference to include in their behaviour.

In this light, there is a need to understand human rights obligations and accountability in the context of climate change. Historically, in November 2007, the small island developing states met in the Maldives and adopted the Male Declaration on the Human Dimension of Global Climate Change. The declaration laid down a roadmap for actions within the UN system designed to explore and draw attention to the relationship between global warming and the full enjoyment of human rights both civil and political, as well as economic, social, and cultural rights. The questions that this declaration seeks to answer include how to understand the complex and multifaceted relationship between climate change and human rights, whether climate change constitutes a violation of human rights, especially the rights of vulnerable people and what are states’ national-level and international-level human rights obligations pertaining to climate change.

It needs to be understood that the reasons behind bringing the Male Declaration continue to exist even now, such reasons being frustration on the part of vulnerable communities at the slow pace of progress in tackling climate change, lack of emphasis on the victims around the world and the lack of accountability framework to deal with a phenomenon caused by man and with devastating human consequences.

Going forward, the need of the hour is for the ICJ to clearly stipulate the human rights obligations under the UNFCCC to use human rights law and its related mechanisms to influence and improve international climate change policy as governed by the UNFCCC to make that policy fairer and more effective. The questions that ICJ must clarify include but are not limited to how can human rights obligations and principles be best applied to national climate change policy across both mitigation and adaptation, the precise nature of extraterritorial human rights obligations as they relate to climate change and how can the international community, through the international human rights mechanisms, best draw attention to and enforce those obligations in a manner that complements and supports the UNFCCC process?

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