

Kicking off Human Rights and Climate Change within the New Mandate:

The First Thematic Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change

Author: Verena Kahl (verena.kahl@uni-hamburg.de)

Issues: climate change and human rights

On October 21st – a month after the landmark decision in [Daniel Billy et al. v. Australia](#) and the [global climate strike](#) under the slogan [#Peoplenotprofit](#) – Ian Fry, the first Special Rapporteur on the promotion and protection of human rights in the context of climate change, [presented](#) his second report to the UN General Assembly.

After the UN Human Rights Council had [created the mandate](#) in October 2021 and appointed Fry in its 49th session in March 2022, he took up his mandate on May 1st of the same year and shortly thereafter published a [first report](#) on initial planning and vision for the mandate. His second report was the first opportunity to dive deeper into the vast and complex relationship between human rights and climate change. Unsurprisingly, the choice of the report's thematic focus was heavily influenced by [COP27](#) that took place only two weeks after the report was presented before the UN General Assembly.

This contribution scrutinizes several noteworthy points of the mandate's first thematic report. First, 'loss and damage' is the dominant theme of the report, with specific attention for vulnerable States and communities that are particularly affected by climate change-induced harm. Second, the report does not shy away from pointing the finger at those who are overwhelmingly responsible for the current situation: the countries of the Global North. Fry highlights the disconnect between those most affected by climate change and those responsible for corresponding decision-making and their concomitant support of the fossil fuel industry. Both are addressed in turn.

I. A Short Reminder: Climate Change as a Crisis and Mitigation as a Remedy

Before diving deeper into the core topics of the report, Fry recalls that “[h]uman-induced climate change is the largest, most pervasive threat to the natural environment and human societies the world has ever experienced” and quoting [“atmospheric colonization”](#), emphasizes that it is the unwillingness of developed economies and big companies to drastically reduce their GHG emissions, which has led to loss and damage on the side of the poorest and least able to cope (§1-2).

The report underscores that States continue to fail in complying with their obligations to sufficiently reduce GHG emissions and prevent the corresponding negative effects on human rights. The Rapporteur highlights that this failure will exacerbate already existing inequalities and vulnerabilities (§8, 10) and requires a reduction of global emissions by at least 55 % by 2030 (§90 lit. a). While the Rapporteur names several underlying causes of this pervasive

incompliance including, subsidies for fossil fuels, a regulation gap in relation to high emitting industries and sectors or the dispute settlement clauses of the Energy Charter Treaty (§13-15), his report remains silent on important questions, such as:

What are the specific mitigation obligations of States in the context of human rights? Which are the guiding human rights principles governing the regulation of GHG emissions? Does the obligation to regulate also fall upon international organizations? Could major GHG emitting companies be held accountable under international (human rights) law?

Maybe the answer to these and other fundamental questions could not have been expected in this first report, and for compelling strategic reasons, the report shines a spotlight on loss and damage. However, as COP27 has [not brought](#) new and urgently needed mitigation targets, pressure on decision-makers and on the mandate holder must remain high.

II. In the Spotlight: Loss and Damage, Vulnerabilities and Empirical Data

The need for increased pressure in favor of mitigation targets becomes all the more evident when the report introduces loss and damages, which is shaped by facts and figures that evidence the litany of human rights impacts caused by climate change. The mere density of data on climate change-related loss and damage in its physical, economic and non-economic forms leave no doubt about the urgency of the climate crisis and its drastic effects for human rights as of today, particularly for individuals living in the Global South. The comprehensive description of harm caused by floods, heavy rains, strong winds, sea level rise, droughts and extreme heat illustrates the intensity and geographic extent of negative climate change impacts. It makes the consequences of climate change tangible and puts a human face on the crisis (§29 et seq.).

The human face of the crisis is illustrated by the repeated and explicit reference to particularly vulnerable groups and communities, with significant focus on gender. The report highlights that “women are several times more likely to die from climate disasters than men” and that due to current patriarchal systems “women of various classes, castes and creeds are disproportionately affected” (§44). Additionally, the report addresses the specific situation of indigenous communities, many of which face loss of their culture and way of life due to climate change-related extreme weather events and slow-onset phenomena (§51). This latter point echoes the aforementioned UN Human Rights Committee decision in [Daniel Billy et al. v. Australia](#).

Where physical harm is not enough to remind high emitting States of their responsibility, the sheer numbers of economic losses show the scale of the crisis from yet another angle. According to the report, the emissions of the USA, China, the Russian Federation, India and Brazil cause approximately \$6 trillion in losses worldwide, with the USA responsible for about one-third (§58), while countries of the [Vulnerable Twenty Group](#) have already lost \$525 billion between 2000 and 2019 due to climate change-related harm (§57). In contrast, rich countries have only covered half of the appeals for annual funding requests (§53-54). Finally, climate-related displacement of around 216 million people by 2050 and risks of statelessness underscore the urgency for action (§60, 65). Given the enormous implications of such massive climate change-induced displacement, the report scheduled for 2023 will

consequently be dedicated to “Addressing the human rights implications of climate change displacement” (§ 66).

III. Remedying Loss and Damage and the Participation Disconnect

The general emphasis on loss and damage as well as the report’s specific recommendation for a separate and new funding mechanism for loss and damage (§69) resonated in COP27, where a historic step was taken as State parties [agreed](#) on the establishment of a financial facility to cover loss and damage caused by climate change. While many questions regarding the operation of the financial facility remain unanswered, the establishment of the Transitional Committee on the operationalization of the new funding arrangements for responding to loss and damage, follows at least some of the Special Rapporteur’s recommendations. In particular, developing countries make up the majority of the Committee’s members, of which two belong to Small Island Developing States and two to least developed countries. Hopefully, the Committee’s future decision-making processes will also abide by the modalities and principles suggested in the report at hand, [such as](#) the polluter pays principle, applying a human rights-based approach and prioritizing marginalized groups (para. 92), thereby helping to create a facility that is sufficiently capitalized and can be easily accessed by those most affected.

In contrast, COP27 still [mirrored](#) the [injustice](#) present in contemporary decision-making processes, which described the phenomenon that “those who are most affected and suffering the greatest losses are the least able to participate in current decision-making” as the “participation disconnect” (§73). In this sense, those who are the most vulnerable to climate change-related harm are not the ones who participate and are represented in important decision-making processes. Instead, “corporate capture” provides elites with interests in fossil fuel and carbon-intensive industries, disproportionate access to decision-makers (§74-75), as was once again demonstrated by the rising number of fossil fuel lobbyists [attending](#) COP27. The report further accurately described how the exclusion of civil society, youth and indigenous communities leads to two unconnected meetings in one under the UNFCCC framework (§77) and a “world expo” (exemplified [here](#)) that lacks adequate participation of women and complicates the access of the main stakeholders to the conference (§77-78, 80).

It remains to be seen whether COP28, to be [held](#) in the United Arab Emirates in late 2023, will embrace at least some of the recommendations made by the Special Rapporteur to remedy the pervasive participation disconnect, including the establishment of a youth committee, the revision and improvement of the Gender Action Plan and particularly the passing of an omnibus decision allowing for the “full and effective participation of indigenous peoples and civil society organizations in decision-making processes at all levels of the Conference of the Parties” (§99 lit a-c.). What is clear, however, is that without meaningful and widespread participation of those most affected by climate change, international negotiations will in all likelihood – as a reflection of the aforementioned atmospheric colonization – continue at a snail’s pace.

IV. Concluding Remarks

The current contribution could not cover all recommendations included in the Special Rapporteur's report. It is noteworthy, however, that some of these recommendations do not follow directly from the references to loss and damage, vulnerabilities, data and remedial measures. Instead, several novel recommendations were presented as a rather disconnected surprise at the very end of the report, such as the inclusion of "ecocide" as an indictable offense in the [Rome Statute](#) of the International Criminal Court or the establishment of an "international human rights tribunal to hold governments, business and financial institutions accountable for their ongoing investments in fossil fuels and carbon intensive industries and the related human rights effects" (§90 lit. d. and f.). It would therefore be useful to address these far-reaching recommendations in future reports in more detail by providing further substantiation and clarifying the recommendations' content. Apart from that, compliance with some recommendations in the recent past gives rise to hope: in addition to the establishment of a new facility for loss and damage during COP27, the European Parliament [took the position](#) that it will support the EU's exit from the Energy Charter Treaty when requested for its consent, while several European Union Member States [have already announced](#) their withdrawal from the Treaty (paras. 18 and 19 of the EP resolution), which the Special Rapporteur explicitly recommended to repeal (§90 lit. b).

The report serves as a prelude to the much-needed work in the context of the mandate, which should also pave the way for [further potential solutions](#), including the study, identification and specification of binding human rights obligations in the context of climate change. In this regard, future work under the mandate should follow the urgent message sent by the report itself: "We can no longer delay. The time to actively address this emergency is now."