

CLIMATE CHANGE AS A HUMAN RIGHTS ISSUE?

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Legal Briefings - By **Dr Georgios Zampas and Oliver Elgie**

Although climate change impacts human rights, the situation is more complex than simply stating that climate change violates our human rights, say Dr Georgios Zampas and Oliver Elgie.

Seventy-one years have passed since the Universal Declaration of Human Rights (UDHR) was adopted by the United Nations in the aftermath of the Second World War. Yet, human rights violations remain all too frequent, both in developed and developing countries. While the 1926 Slavery Convention confirmed that slavery is unlawful as a matter of international law, estimates suggest that over 40 million people still live as modern slaves. In addition, forced eviction and displacement, torture, unfair trials, detentions, discrimination, and restrictions in expression and free speech continue today all around the world.

Modern human rights abuses can be the result of armed conflicts, a lack of appropriate local legislation (or the means to enforce legislation) or autocratic leadership. However, all too avoidably, poor business practices that respond to the wrong incentives, can be key contributors to adverse human rights impacts. At Herbert Smith Freehills (HSF), we place human rights at the core of our operations and of the advice we give to clients so that we all can contribute towards an economy that respects human rights.

The conversation about the impact of climate change traditionally revolves around the scientific, economic, and environmental aspects. Only recently has more attention been given to the human and social aspects, particularly to specific segments of the population as attention has been focused on increasing levels of evidence about the impact on living conditions and human lives.

Environmental quality and human rights are inextricably linked. Environmental quality, including a safe and healthy working environment, impacts the right to life, health and adequate living standards, property, freedom of movement, and education and can contribute to modern slavery issues. The enjoyment of many human rights can also contribute to adverse impacts on the environment. A failure to integrate considerations of human rights and environmental considerations can lead to steps intended to protect one, unintentionally adversely impacting the other. On the other hand, if these issues are considered together, the protection of the environment can facilitate the enjoyment of human rights and those rights can then be enjoyed without unnecessary damage to the environment.

At a legislative level, climate change is not legally bound to the universal human rights treaties, but the link between a safe and healthy environment and human rights is now recognised. There is an international movement – both in the private sector and at state level – to integrate climate change issues within policy statements and through joining sustainable development frameworks and international pledges. In addition, the UN Guiding Principles (UNGP) place a responsibility on corporations to respect human rights. Given the link between human rights and environmental protection, it is arguable that, by not addressing the causes of climate change (e.g. reduce GHG emissions), corporations contribute to human rights violation, in contravention of the UNGP.

Impact of climate change on human rights

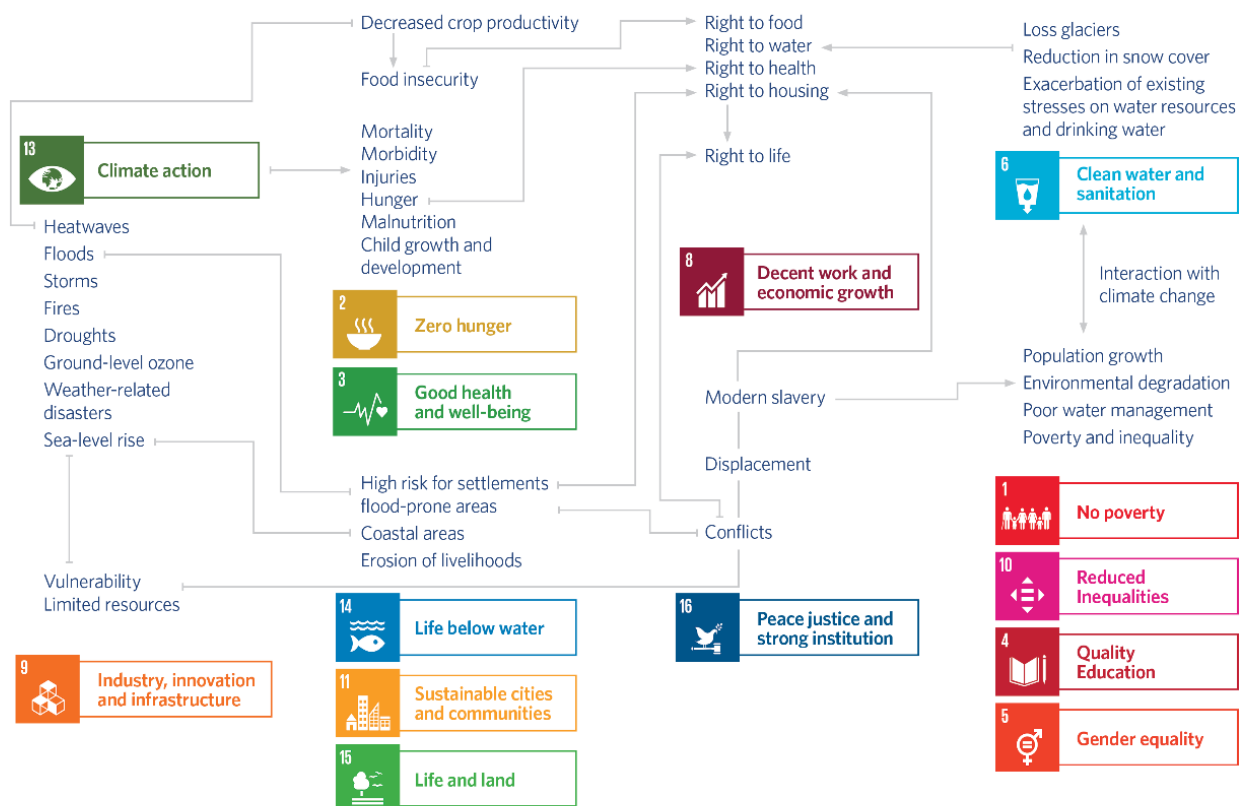


Figure 1: The complexity of the impact of climate change on human rights

At HSF, we act on climate change in various ways. First, we have dedicated teams of lawyers drawn from across our global network who advise our multinational clients across all sectors on contentious and non-contentious climate change issues. In addition, we seek to minimise the environmental impact of our own operations wherever possible (see *fivehundred*, Issue 07, June 2019).

And, in addition to our climate change specialists, we have a market-leading global business and human rights (BHR) practice, which offers cross-border expertise to clients on a broad range of international and local BHR issues, including advice on ways they can minimise or remediate environmental and human rights risks that might be present in complex infrastructure, mining, or energy projects.

The United Nations Guiding Principles (2011)



Figure 2: Human Rights are becoming an increasingly important concern for businesses, particular since the United Nations' endorsement of the Guiding Principles on Business and Human Rights in 2011

The effects of, and accountability for, climate change are not uniform across the world, with states and regions dealing with different types of threats. This contributes to a fragmented coverage of climate and environmental law. In addition, climate change-related litigation against governments and industry players is an emerging trend in a growing number of jurisdictions. We help our clients navigate this increasingly complex landscape by taking a holistic approach, combining our in-depth knowledge of global political agendas and trends, myriad of international and national laws, and sector expertise to advise contentious, corporate, and finance aspects of climate change alike.

Segments of the population mostly affected

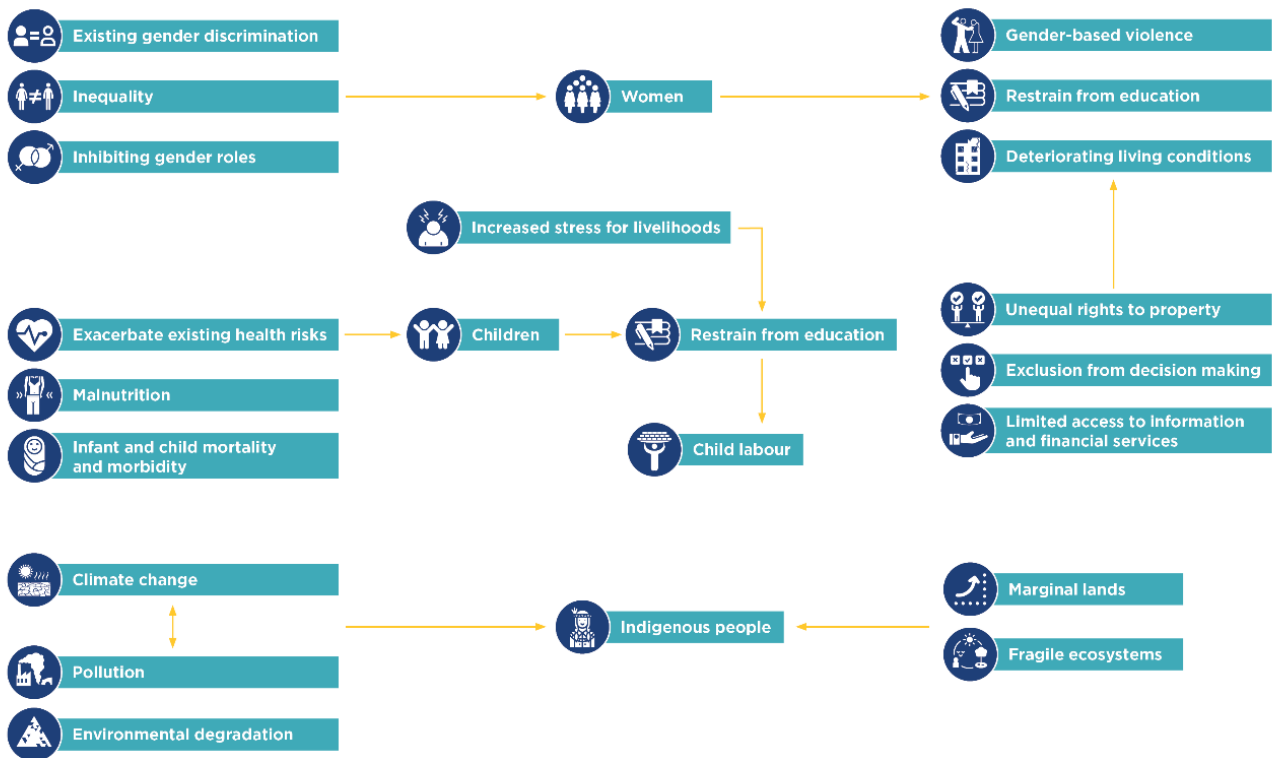


Figure 3: Populations affected by climate change

While it is clear climate change has impacts on human rights, it is more complex than simply stating that climate change *is* a violation of human rights. This is for at least three reasons:

1. **Complexity:** as shown in Figure 1, it is almost impossible to disentangle and isolate the impacts of existing environmental and social circumstances from the impacts of climate change (i.e. more recent emissions of green-house gases).
2. **Attribution:** it is difficult to attribute a particular factor to a particular human rights impact.
3. **Time-lag:** there can often be an extended period between a climate change impacts of climate change, which are often future projections of today's human activity and the violation of human rights following that impact.

However, these three elements should not stop us looking at climate change through a human rights prism and developing adaptation and mitigation policies that address the implications of climate change on human rights.

Many governments have made commitments at an international level to tackle climate change and to improve environmental performance. Companies are also bound to certain standards by national and supra-national environmental regulation. However, looking at climate change through a human rights prism reinforces the position that both governments and businesses should act to mitigate their environmental impact. Under the UNGP, states have a duty to protect human rights and businesses have a responsibility to respect human rights. That responsibility is being increasingly codified and given 'hard law' status in increasing amounts of national legislation.

In circumstances where poor environmental performance can inhibit the free enjoyment of human rights, states have a clear duty and businesses have a clear responsibility to take steps to combat climate change in order that some of the most fundamental human rights can be capable of realisation for some of the poorest and most vulnerable people in the world.

International cooperation that brings together the private sector and states is required to address the cross-border impacts of climate change; through sharing knowledge, technology, and resources. While there should be reasonable flexibility for countries at different stages of their industrial development, consistent cross-border standards would ensure a level playing field and prevent a 'race to the bottom' by jurisdictions adopting materially lower standards to offer investors a competitive advantage. It is a shared environment and its protection must be a shared responsibility.

That said, policy cannot just be dictated by one group of countries. The global inequalities in the area of climate change are highlighted where those who contribute the *least* to climate change often being the ones who are affected the *most*. There is a disproportionate dependence in developing countries on climate-related resources. In these countries, there is usually a higher proportion of vulnerable individuals. Therefore, equity in climate action is absolutely necessary to ensure adaptation and mitigation measures will benefit those groups and inequalities are not exacerbated.

Article 21 of the UDHR declares the human right to participation in government. Therefore, within a particular country, the most affected segments of the population should be part of decision-making process in relation to climate action. For example, indigenous people have a vast knowledge of their environment and their knowledge and interests should be incorporated into climate change policies. In doing so, we can develop effective adaptation and mitigation strategies and measures, which are cost-effective, inclusive, and sustainable.

The human right to information is fundamental in climate change and that right should be used to hold states and businesses to account. Transparency regarding the environmental impact and contribution to climate change of both businesses and governments is necessary.

Nurturing children's environmental knowledge and awareness is also vital, through both informal and formal environmental education. Children and young people should be seen as actors who could drive the climate agenda now and in the future. Therefore, states and businesses should take a more active role in disseminating knowledge and information of climate change to all their audiences.

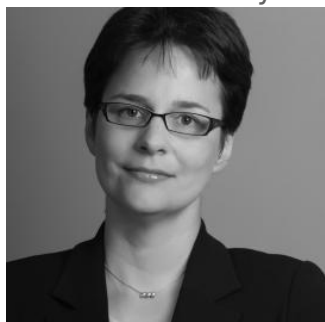
Businesses likewise should be open and transparent about their environmental impact and contribution to climate change, through their corporate reporting obligations and by joining additional voluntary disclosure and reporting initiatives. They should seek to understand better the role they can play in tackling climate change and how they might use their power and network to encourage collaboration and to lobby for improved law and policies. They should look to reallocate resources, share their knowledge and expertise, and promote environmental education within their organisations and raise awareness internally and externally. After all, it is not 'just' a climate change issue; it is also a human rights issue.

For more information in relation to HSF's Climate Change practice, including our report *Climate Change: How to Succeed in a Lower-Carbon Future*, please see [here](#).

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