The Human Rights Implications of Climate Change

In September of this year, typhoon survivors in the Philippines and their allies called for a formal investigation into the responsibility of large fossil fuel companies in perpetrating climate change and the human rights violations that follow. The first complaint of its kind worldwide, the legal petition delivered to the Commission on Human Rights in the Philippines called on the Commission to investigate the responsibility of “carbon majors,” the ninety fossil fuel corporations that are responsible for sixty-five percent of all anthropogenic carbon released between 1751 and 2013, for present and future human rights violations resulting from climate change (Soriano 11). From rising sea levels to rising temperatures, the increase of carbon in the atmosphere is already having catastrophic consequences for people around the world, especially those who live in areas susceptible to natural disasters. The petition cites seven “violations or threats of violations” to Filipino’s rights—life, water, food, sanitation, adequate housing, self-determination, and the “highest attainable standard of physical and mental health”—while identifying several marginalized communities that face the most serious consequences, including people with disabilities and people living in poverty (Soriano 5). These rights derive from the Filipino constitution as well as from international documents such as the Universal Declaration of Human Rights and reports of the United Nations Office of the High Commissioner. To assign corporate responsibility for these human rights violations, the petition suggests that the Commission identify each fossil fuel corporation’s share of carbon emitted globally and calculate
the effects for which those companies are responsible. Petitions such as the one submitted by
typhoon victims in the Philippines raise an increasingly relevant question: how can governments
and international organizations prevent and remedy human rights violations that result from
climate change? Climate science research, international human rights documents detailing the
evolution of environmental rights, as well as current attempts to hold corporations around the
world accountable suggest that states and international organizations must take significant steps
to codify and protect environmental rights.

Foundational to the argument that fossil fuel companies should bear some kind of
responsibility for the effects of climate change are a few key scientific truths. It is widely
accepted that climate change exists, has anthropogenic causes including the extraction and
consumption of fossil fuels, is having effects right now, and will have much more severe effects
in the future without significant action. According to the Intergovernmental Panel on Climate
Change 2013 report, carbon dioxide concentrations in the atmosphere have increased by forty
percent since pre-industrial times and the earth has warmed almost one degree since the
industrial revolution. The effects of these changes, which range from increasingly intense natural
disasters to desertification, are already having horrific effects around the world (IPCC 5). There
are a few factors that make it challenging to hold perpetrators accountable for human rights
violations resulting from climate change. First, neither perpetrators nor victims are nations. This
complicates existing mechanisms of enforcement of human rights, which often rely either on
state action in domestic conflicts or international actions focusing on state actors. Furthermore,
the causes and effects of climate change are global rather than local, making it difficult to assign
liability with legal precision. This factor makes the issue of corporate responsibility for climate
change uniquely challenging, as compared to more immediate and tangible environmental issues
such as pollution and land degradation. These complications explain to some degree the disparity between the clear climate science and the lack of global action.

Further challenges arise when looking to incorporate the evolving category of environmental rights into existing international human rights frameworks. United Nations committees focusing on human rights, environmental issues, and social and economic rights provide various non-binding frameworks for protecting those who suffer from the effects of climate change; however, no formal environmental rights exist in the foundational Universal Declaration of Human Rights. Intimations on these rights can be derived from various existing documents, raising preeminent yet unresolved questions of how to categorize and enforce environmental rights. According to environmental and international law expert Alan Boyle, environmental rights can fall into any of the three basic categories of human rights: civil and political, economic and social, and collective and solidarity. When conceiving of environmental rights as fitting within a framework of civil and political rights, international bodies look at environmental degradation as it relates to human well-being and seek political processes and judicial mechanisms to remedy situations that violate human rights. This “greening” of human rights does not necessarily require the addition of new, formal rights; rather, lawyers and governments re-shape their notions of other human rights protocols such as those addressing refugees to include victims of climate change (Boyle 1). Alternatively, viewing environmental rights through an economic and social framework highlights environmental quality as a value in and of itself, regardless of how the environment affects humans. Boyle suggests that this ecological focus makes enforcement challenging as current legal structures are often built to focus on humans and because treating environmental rights as their own category places it in competition with other rights outlined in similar documents, such as the right to economic
development (Boyle 2). Lastly, collective or solidarity rights give way to environmental rights by giving communities the right to determine how their environment should be managed and protected. Critics of this approach argue that collective environmental rights divert attention from the ongoing implementation and valuation of other collective rights and that existing collective rights already have environmental implications (Boyle 2). The question of whether to conceive of environmental rights as political, social, or collective has significant impacts on the expression and enforcement of these rights.

In light of these unresolved questions, many parties with stakes in the creation and implementation of environmental rights have tried to use international frameworks outlining corporate responsibility for human rights and international refugee treaties to their advantage. There are four main ways environmental rights can be derived from existing international law: policies of the United Nations Special Representative for Business and Human Rights, reports by the United Nations Committee on Economic, Social, and Cultural Rights, policies of the United Nations High Commissioner, and existing protections for refugees and internally displaced people. While these documents do not specifically describe environmental rights, they have been cited in countless petitions and legal challenges as mechanisms by which corporations can be held accountable to international human rights standards. However, each of these presents human rights as aspirational rather than enforceable by highlighting guidelines and moral duties without outlining enforcement mechanisms, suggesting that more powerful domestic and international enforcement mechanisms are necessary for the fullest realization of environmental rights.

The United Nations “Protect, Respect, Remedy” framework, described by Special Representative for Business and Human Rights John Ruggie, provides a set of policies through which corporations can be held accountable for upholding human rights. The policy has three
pillars: a state duty to protect against and adjudicate for human rights violations perpetrated by non-states, a corporate responsibility to act with due diligence to protect human rights and account for violations, and mechanisms by which victims of human rights abuses can access judicial and non-judicial remedies (Ruggie 1). While states have a “duty” to work towards the prevention of human rights violations, the framework outlines only a “responsibility” for businesses, a lower standard to reflect that respecting human rights is not an obligation imposed on business by international law; rather, it is a non-binding standard of expected conduct reflected in many domestic laws and international human rights frameworks (Ruggie 2). The “Protect, Respect, Remedy” report goes on to describe how, because corporations can affect the enjoyment of virtually all internationally recognized rights, the aforementioned responsibility applies to all rights covered in documents such as the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the core conventions of the International Labor Organization. The framework suggests that, from a corporate perspective, human rights due diligence should include an integration of human rights in all processes, an assessment of human rights impact, and continuous performance tracking (Ruggie 3).

The United Nations Committee on Economic, Social, and Cultural Rights suggests similar corporate measures in its report on the obligations of states regarding oversight of the corporate sector, describing the moral obligations of states to hold corporations accountable for human rights violations and to provide effective remedies to victims of corporate abuse (UNCESCR). A report by the United Nations High Commissioner, *The Corporate Responsibility to Protect Human Rights*, takes a different approach in suggesting that responsibility for upholding human rights is a “global standard of expected conduct for all business enterprises”
around the world, regardless of state policies and accountability mechanisms. The document specifically outlines three ways in which corporations can be responsible for human rights violations: directly violating rights through their own activities, directly or indirectly contributing to a larger violation of rights, or being otherwise involved in violations through business operations, products, or services (Zied 15). These three United Nations documents outlining the roles and responsibilities of states and businesses in protecting human rights serve as an important starting place for discussions of corporate responsibility; however, they bear no legal weight and instead rely on states and business to hold themselves accountable.

Existing refugee and internal displacement policies provide a fourth way to investigate potential roots and applications of environmental rights. The two foundational United Nations documents on refugees, the 1951 Refugee Convention and its 1967 Protocol, define a refugee as someone who is “outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail himself of the protection of that country, or to return there, for fear of persecution” (UNHCR). Many humanitarians object to this definition, arguing that it is both outdated and too narrow to encompass the true refugees of the modern world. A research document by the Social Policy Group of the Australian Parliament argues that the perceptions of refugees when foundational United Nations human rights documents were written in the post-World War II and Cold War eras were rooted in Western political interests and memories of Nazi-era persecution, when a refugee was often an individual hoping to flee a communist country. The United Nations definition still reflects this vision of a uniquely persecuted individual fleeing an oppressive ideology; however, today’s refugees are much more likely to be fleeing civil wars or natural
disasters than communist regimes. The world’s refugee and internally displaced population has risen dramatically as refugees are more often groups than individuals: there were ten million at the end of the Cold War and are thirty five million now, according to the United States Committee on Refugees (Milbank). For these people, case-by-case assessments would be absurd because humanitarian and community assistance is clearly needed. As refugees are fleeing different circumstances yet the application and emigration processes as well as the technical definition go unchanged, many human rights violations slip through the cracks.

Many communities do not fit under the technical definition of a refugee and are, therefore, unable to get any kind of relief. Those who lose their homes in earthquakes, are starving due to poverty, or live in islands that will be below sea level before the end of their lifetimes are not considered refugees because their neighbors suffer in the same ways. The tragic irony of refugee law is that as more people look to it as a source of relief, it becomes less likely that any of them will qualify for protection because the law as it stands is only concerned with persecuted minority individuals. Countries in the Northern hemisphere, which would be called upon to take in more refugees with a widened definition and are also often leaders in the United Nations, have financial and political incentives to maintain the current system. Some communities facing consequences of natural disasters, droughts, and other effects of climate change are able to take advantage of internal displacement policies cited in the United Nations 1998 Guiding Principles on Internal Displacement, which protect the rights of people forcibly displaced within their country of origin by “conflict, persecution, natural disasters, and development projects” (Zetter 2). According to the UN Special Representative for the Human Rights of Internally Displaced Persons, existing human rights norms and policies provide “sufficient protection” for people forcibly displaced internally; however, standards and protocols
for people crossing state borders require significant clarification and development (Glahn). Refugee and internal displacement policies provide some opportunities for victims of climate change but must be specifically altered to include groups who cross state boarders due to natural disasters and hazardous environmental changes.

None of these existing mechanisms of international law—policies of the United Nations Special Representative for Business and Human Rights, reports by the United Nations Committee on Economic, Social, and Cultural Rights, policies of the United Nations High Commissioner, and existing refugee and internal displacement rights—provide adequate recognition of victims of climate change or holds corporations accountable. There are many lawsuits from individuals and groups suffering from human rights violations that result from climate change, asking that responsible parties be held accountable. The Pacific Islands and Alaska are home to many communities that are the most vulnerable to rising sea levels, intensifying storms, land infertility, and weather disruptions. Sea levels have risen more than twenty centimeters in the past century, completely inundating some uninhabited islands and threatening many island nations. Fifteen percent of people living in the island nation of Tuvalu in the Pacific have emigrated in the past ten years, while other islands such as Kiribati have begun purchasing thousands of acres of land on more elevated islands; however, migration studies suggest that only a quarter of the people living on these kinds of islands would be able to afford to move. While President Obama stated before recent climate talks that these Pacific Islanders have “a right to dignity and sense of place,” the President’s climate envoy clarified that the United States would not accept any liability for violations of these rights and would neither compensate for damages nor pay the costs of relocation (McDonald).
Many countries and international organizations have dismissed challenges from individuals and groups whose human rights have been violated due to climate change in such vulnerable areas as the Pacific Islands and the Arctic. Many islands in the Pacific Ocean are vulnerable to flooding that will submerge entire nations by the end of the century and is currently destroying cropland and infrastructure. A family that had fled the sinking island of Kiribati to seek refugee status in New Zealand was recently denied this protection and deported (Dastgheib) while international organizations have largely ignored a proposal from the island of Vanuatu for a global insurance policy to compensate groups such as those on the island for climate change-induced damages (Daigle). Like the Pacific Island, the Arctic faces disproportionately severe effects of climate change. The region faces the most severe temperature changes anywhere in the world, leading to shifting weather patterns, seasons, and habitable territory. Inuits in the Arctic have stated that the United States, as the largest emitter of greenhouse gases, has the responsibility to “take immediate and effective action” to protect their rights. This petition, which has not yet yielded any benefits for the Inuits, raises violations of the American Declaration of the Rights and Duties of Man in claiming that climate change is threatening their lives, health, culture, and livelihood (Watt-Cloutier). Furthermore, in 2008, the Supreme Court of the United States refused to hear a case brought by the Alaskan Inupiat village against fossil fuel companies asking for damages for the “unreasonable harm” caused to villagers by greenhouse has emissions (Wernick). In order to address human rights violations such as those in the Pacific Islands and the Arctic, the global community must re-think the way it conceives of the humanitarian effects of climate change and amend international human rights law.

There are two broad approaches that the global community can take to uphold the human rights of victims of climate change and hold perpetrators accountable: enhancing international
human rights treaties and improving the tangible ways that governments limit and account for the effects of climate change. A strategy looking at bolstering international standards to include groups of people currently excluded from refugee status could amend the United Nations definition of refugee to include environmental refugees, either by fitting them within the existing framework or by re-thinking the characterization of refugees entirely. Some legal scholars, such as those cited in the Baldy Center for Law and Social Policy report on the legal status of victims of climate change, argue that environmental refugees already fit within the United Nations definition because government- and corporate-induced environmental degradation is a form of persecution of the social and national groups of which the refugees are a part and because these people are forcibly relocated due to factors outside their control (Williams 508). Incorporating environmental refugees into existing definitions and frameworks constitutes a civil and political approach to environmental rights and may alter how political processes and judicial mechanisms treat human rights violations that result from climate change (Boyle 1). Another approach to the formal acknowledgement of environmental refugees would be to reinterpret the concept of a refugee entirely, abandoning the Cold War era definition in pursuit of one that either more accurately reflects the communal nature of the modern refugee or specifies the importance of environmental preservation as a crucial aspect of human well-being. This strategy could take on an economic and social or a collective and solidarity view of environmental rights, potentially leading to a stronger focus on environmental preservation (Boyle 2).

Alternatively, the international community could create an entirely new treaty mirroring the 1998 United Nations Guiding Principles for Internal Displacement. While it would not connect victims of climate change to the many refugee protocols and practices, it may be a more amenable option to nations that want to preserve the existing narrow definition of a refugee and
allow for better protection of the collective environmental rights needed by so many groups and nations. By mirroring the internal displacement protocol, a document for external displacement could take advantage of frameworks and protocol described in existing policies for internal displacement and avoid the current strains on the overburdened refugee status process (Glahn). However, the problem with any approach looking at international human rights treaties is enforceability. Many human rights treaties, whether described as binding or non-binding, are seen as aspirational: people have rights in theory but not in practice.

This is why any internationally focused solution must have a more tangible counterpart. Existing efforts to slow down and even stop climate change are absolutely necessary: if climate change did not occur, neither would the of climate refugees trying to flee the Pacific Islands and the Arctic. Including human rights narratives in discussions of climate change provides powerful incentives to mitigate climate change and allows those who are not in the scientific community to understand the magnitude of the problem. Existing efforts to limit carbon dioxide emissions are crucial and must become increasingly stringent in the future (IPCC 5). However, because climate change is occurring now and is already having tangible consequences, a prevention strategy alone is not enough for governments and international organizations. A step states could take to minimize the harmful humanitarian effects of climate change on disproportionately affected populations is to force responsible parties, such as fossil fuel companies and governments who permit their reckless behavior, to pay for damages such as the relocations of groups and even entire nations. International and domestic courts can permit these types of claims just as they do for groups seeking other types of damages (Wernick). By pairing changes to human rights treaties with pragmatic improvements to the perpetuation and mitigation of
human rights violations that result from climate change, the global community can defend environmental rights.

Many deem climate change a collective action problem, one in which many people would benefit from the solution of the issue but the cost of any discrete action is prohibitively high. Trying to remedy the human rights violations that result from climate change has many political and economic costs for international bodies, governments, and corporations. Right now, these groups are largely able to avoid the tragic consequences of rising temperatures and sea levels due to geographical location, wealth, and other factors, as the most noticeable costs of climate change are currently occurring in the Pacific Islands and the Arctic. Despite emerging signs of climate change in wealthy countries, governments and corporations have largely had the privilege to ignore climate change. In reality, without significant changes to the functioning of global political and economic systems, human rights violations resulting from climate change will become absolutely, tragically, blatantly obvious to all. It is time to re-think human rights to fit the challenges of the modern world.
Works Cited


