



Climate Justice, Human Rights and the Role of Churches

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The United Evangelical Mission is an international communion of 34 churches from various traditions in Africa, Asia, and Germany, along with the v. Bodelschwingh Foundation Bethel. Emerging from the work of the Rhenish mission (since 1828), the Bethel mission (since 1886) and the Zaire mission, the UEM has a modern, international communion of churches since 1996, cooperating equally among all member churches. The UEM pursues a holistic sense of mission: Spreading the Good News of the Gospel extends to improving people's educational, social, and medical conditions and to striving for justice, peace, and the integrity of creation.

Founded in 1948, the World Council of Churches promotes Christian unity in faith, witness and service for a just and peaceful world. A global fellowship, the WCC brings together more than 349 Protestant, Orthodox, Anglican and other churches representing more than 560 million Christians in 110 countries and works cooperatively with the Roman Catholic Church.

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Foreword

Concern for justice, human rights and sustainable communities has been at the core of churches and the ecumenical movement's work for decades. The conciliar process on "Justice, Peace and the Integrity of Creation" (JPIC) in the 1980s and '90s showed how violence, injustice and the environment are intertwined. The JPIC convocation in Seoul, Korea, in 1990, already stressed climate change as a major challenge. The assessment reports of the International Panel on Climate Change (IPCC) released since the 1990s provided the scientific consensus which shows how climate especially affects vulnerable communities. The ecumenical movement has stressed that the climate crisis is also an ethical and spiritual crisis, thus the concern for climate justice has become of utmost importance.

The World Council of Churches (WCC) and United Evangelical Mission (UEM) together with many other churches and ecumenical bodies have given special attention to climate justice through advocacy at the local, regional and international levels and promoting networking among and joint action of churches in various regions of the world. This has been done by providing global platforms to share concerns and experiences with regard to climate change, to reflect on the implications for a theology of creation in view of the challenges put to humankind by the devastating consequences of rising temperatures, and to give space to develop a spirituality of creation¹.

Based on the biblical understanding of justice for the poor and most vulnerable, the ecumenical movement has stressed the rule of law as the essential condition to preserve human dignity. In this framework, the WCC and UEM have emphasized the

1 See e.g. David G. Hallman, *Spiritual Values for Earth Community*, updated edition, Geneva, WCC 2012.

importance of human rights as universal and indivisible rights for all people. They have especially taken a clear stand to echo voices of victims of human rights violations.

It is obvious that climate change is having and will increasingly have an enormous impact on many people's lives and the full enjoyment of universal human rights. Today peoples' lives and livelihoods are already affected by the consequences of increasing temperatures, the rise of sea levels and the increase in strength and frequency of hurricanes, cyclones, flooding, droughts, unpredictable weather conditions and the change in rainfall patterns.

Especially the rights of those who are most vulnerable are and will be endangered. Their rights to food, to water, to health, to adequate housing will be at stake. Climate change will also challenge political and civil rights in view of millions of refugees and migrants who are being forced to move out of their homelands to other populated areas especially big cities or even across borders to other countries and regions. New potentials for violent conflicts among people and between states over water and other resources may emerge.

In June 2012 we witnessed how states again have completely failed at the UN Conference on Sustainable Development (UNCSD - Rio + 20). Missing another opportunity, the international community was unable to agree upon time-bound, accountable, and solid commitments that demonstrate a credible path forward, enable sustainable conditions, and thereby guarantee a life in dignity for everyone, based on human rights, equity, respect for the environment and sustainable use of natural resources.

Therefore churches even more right now have the responsibility to speak out and to address the issue of climate change also from a rights-based perspective. This not only implies the question of state responsibility for adaption and mitigation measures, including extraterritorial obligations of those states which have contributed significantly to climate change in the past and today. It has also to be clarified to which extent states can be made legally accountable according to international law for damages caused by CO2 emissions in other states. With regard to the latter, in 2011 the island state of Palau has announced it will initiate a process, together with the Marshall Islands, to clarify this matter by an assessment of the International Court of Justice in The Hague.

With this study written by Dr. Rathgeber, who has been cooperating closely with the WCC and the UEM for many years, on “Climate Justice, Human Rights and the Role of the Churches”, the WCC and the UEM would like to broaden and deepen the discussion and understanding within churches about climate change and human rights. In view of the General Assembly of the WCC in Busan in 2013, which has as its theme “God of life, lead us to justice and peace,” this particular dimension of justice and peace may become more prominent in the discussions. We hope that churches in the future will strongly advocate at the national level and at the UN to integrate climate justice into human rights and international law in a fair, ambitious, binding and effective way and to clarify responsibilities for human rights violations caused by climate change.

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Climate Justice, Human Rights and the Role of the Churches

Introduction

The Conference of the Parties (COP) on the UN Framework Convention on Climate Change (UNFCCC) in Durban, South Africa took place at the end of November 2011. After COP 16 in Cancún, Mexico in December 2010, when human rights were identified as a major reference point for further discussions, there was an emerging consensus that climate change signified a vital challenge for the protection of human rights. COP 17 in Durban barely added anything further in this regard while the problem of settling the climate change regime on a rights-based normative platform remains an imminent task. Unfortunately, the preparations for the next COP 18 in Doha do not raise any more significant expectations. Despite this, the UN Security Council underlines the gravity of the problem. Its Presidential Statement from 20 July 2011 recognizes that the adverse effects of climate change aggravate threats to global peace and security.² Thus, COP 17 and COP 18 should open space to discuss the future regime on climate change within human rights benchmarks. Mitigation, adaptation, protection and justice in burden-sharing are key elements which urgently need to be addressed by such a regime. Human rights are relevant for shaping climate change policy.

As the outcome of Durban shows, what at an intellectual level may be evident does not automatically merge into politics at all. Therefore, the present paper argues not only that climate change policy must take human rights into account, in order to enhance

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UN Security Council 2011; it was the first Presidential Statement ever on climate change issues. Although it was a political declaration and therefore not binding, some of the world's most powerful and influential countries agreed to identify climate change as an aggravating threat to international peace and security. The Presidential Statement reiterates the centrality of the UNFCCC and other pertinent UN organs as the platforms where the focus on climate change should remain.

solutions to climate change as well as making the outcome of the deliberations to function effectively, but the paper also reflects on victims, justice and complaint procedures, as well as on the question of why churches and their alliances may be considered main actors in addressing the profound implications of climate change for human dignity. This involves considerations and recommendations on how a human rights-based climate regime best can be actively promoted.

Background

Since the Intergovernmental Panel on Climate Change (IPCC) released its first assessment report in 1990, the consequences and impacts of climate change have been widely known and have become manifest in many regions of the world. In its fourth assessment report in 2007, the IPCC identified a number of evident impacts; for instance, in relation to agriculture and food supply in many countries.³ Despite some disputes on details, there is no doubt that climate changes leads to a steadily worsening situation with respect to access to land, water and resources, and this, in turn, will trigger, among other effects, massive movements of refugees, violent conflicts and even wars.⁴ The Global Humanitarian Forum, founded by former UN Secretary General Kofi Annan, published a study in 2009 which estimates that the effects of climate change already felt today are resulting in 300,000 deaths each year in the world's poorer regions, with a further 300 million people directly affected in some way. The report predicts that four billion people are vulnerable to the effects of climate change and 500 million are at extreme risk.⁵

In a nutshell, the current situation of climate change and its detrimental effects can easily be studied in the Pacific islands; in particular, at the atoll islands of Kiribati, Tuvalu, Vanuatu, the Carteret Islands of Papua New Guinea or the Marshall Islands. Their inhabitants are confronted with rising sea level, an increasing number of extreme weather conditions (cyclones, hurricanes, floods), coastal erosion, a growing lack of fresh

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IPCC 2007a, 2007b, 2008; see also the famine in Somalia in fall 2011.

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Welzer 2008.

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Global Humanitarian Forum 2009.

water, higher temperatures in surface waters and a growing acidification of the sea. They face an existential threat to their livelihoods. The negative effects of climate change will lead to growing conflicts over scarce resources, poverty and forced migration.⁶

The nations of the global North find themselves faced with lasting and omnipresent problems resulting from the ecological, economic and social consequences of extreme weather conditions, floods and droughts, which mean a greater strain on their national economies, too. The costs of effective climate protection or the immediate reduction in emissions might be lower than the failure to act. In 2006, the Stern Report estimated the possible costs of climate change at up to 20% of global Gross National Product by 2100.⁷

Most of the world's nations have by now included climate change and its immediate effects on their political agendas. At the international level, in the framework of UNFCCC, the nations are wrangling over a climate treaty that should enact drastic cutbacks in the carbon dioxide (greenhouse gas) emissions as well as over agreements on, for example, financial transfers from the global North to the global South in order to help developing nations to adapt to climate change. In spite of the pressing challenge, the discussions on the nature of understanding – comprehensive or rather technically reducing climate and environment to a mere good – are ongoing and tending toward a conventional disaster-management approach. In this way of thinking, the current model of society and economy and its “culture of the instant” will remain untouched. However, the reality of climate change will impose limits on the

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FAO 2009; Pacific Networking in Europe 2011.

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Stern 2006.

unconstrained expansion of a carbon-based economy and require a profound transformation. The question emerges: at the expense of whom?

Originally, within the UNFCCC negotiations, industrialized countries acknowledged their greater contribution to climate change as well as their responsibility and greater capacity to deal with the consequences. The UNFCCC speaks of “*common but differentiated responsibilities and respective capacities.*” The industrialized countries further have recognized the challenge to assist poorer countries in managing the impacts of climate change; as in transiting to low-carbon economies, for instance. Still, there is no pertinent policy in place today even though this is a key principle for the climate change regime. The prospective burden sharing appears today more an appeal, a source of unwanted charge and disagreement.⁸ Therefore, reflection on climate justice remains a task of paramount relevance which will be dealt with in more detail in the following chapter.

Furthermore, there has been little development of instruments, tools and mechanisms by which the adverse impacts of climate change could be assessed in a normative way, in particular from the viewpoint of victims. Although the IPCC started such a research programme in 2007, within the climate change regime there exists as yet no pertinent and agreed assessment tool. Obviously, climate change encompasses complex situations and scientific projections at the global level, which hamper the determination of causation, attribution and apportionment of responsibility in singular cases.⁹

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ICHRP and Humphreys 2011.

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ICHRP and Humphreys op.cit.; Oxfam 2009.

Within the climate change regime, the discussion about such a normative platform began only recently. The COP 13 on UNFCCC met in Bali in December 2007 and identified four pillars of a future climate change settlement: mitigation, adaptation, finance and technology transfer; it gave technology transfer a prominent role in the Bali Action Plan as an incentive for low-carbon development. Since then, efforts on a technical management of the impacts of climate change have been intended to remain at the heart of the COP meetings. The COP 15 meeting in Copenhagen was supposed to agree on post-Kyoto commitments while the outcome of the *Copenhagen Accord* did not meet such expectations and was consequently criticized for being unfair and not at all ambitious.

COP 16 in Cancún provided a platform in terms of human rights which in the future could play an enhanced role as an organic part of the climate change regime. The Parties to UNFCCC formally agreed that climate change implies a bundle of direct and indirect impacts for the full and effective enjoyment of human rights. The Cancún outcome emphasized that human rights protection should be considered in “*all climate change-related actions*”. The following COP 17 in Durban did not elaborate further on this subject and, thus, human rights still did not enter into the treaty language of UNFCCC.

In addition, as the climate change regime evolves, safeguards would be needed in conformity with human rights standards, e.g. on mitigation and adaptation, or on mechanisms such as the Clean Development Mechanism (CDM) which barely reach those whose rights are put most at risk by climate change. Or in such cases as REDD or REDD plus (Reducing Emissions from Deforestation and Forest Degradation), which pose risks to indigenous peoples’ rights to land and natural resources.

Indeed, human rights are relevant to the climate change regime and human rights tools can usefully be mobilized in the climate change policy-making. Though there is presently no internationally recognized human right to a genuine environmental or climatic aspect – which already varies under regional and national human rights laws – human rights provide an internationally agreed language for such a subject. They provide a pertinent platform for the understanding of the scope of the problem and entail a moral compass in the transformation of society and economy. Although negative impacts of climate change do not automatically translate into violations of state duties under international human rights law, the human rights norms constitute a framework of accountability. We will get back to this issue in the following chapter.

Climate change and human rights are governed by separate international legal regimes. In addition, international climate negotiations are moving slowly, and even the formally agreed assistance in terms of financial flow for both climate mitigation and adaptation efforts has barely materialized. Taking into account the outcome of the COP 17 meeting in Durban in 2011, there was an opportunity at “*Rio +20*” in 2012 in Brazil, on global environmental challenges, to establish a focal point in order actively to involve human rights expertise in addressing climate change. For such a task to be implemented, the full participation of promoters and actors would have been required. As the outcome of Rio+20 shows, there is no such human rights linkage at all, and the promoters are still in a weak position.

Non-state actors have been actively promoting the involvement of human rights in climate change regime, although mostly within the human rights system and significantly less within the climate change regime. The most active and successful have been

indigenous peoples' advocacy.¹⁰ Amongst the non-state actors, and for some reasons which will be further elaborated in another chapter, churches may play a specific role. Key elements of the gospel such as justice, peace, integrity of the creation, a change of mind in human beings' relation to nature, the focus on interpersonal or structural violence, may briefly illustrate the wisdom and insights of the biblical stories and examples addressing the issue of peace with the earth. As institutions, churches are in most crucial countries in a position to extend a powerful call for justice, protection and fulfilment of obligations on human rights as well as for an appropriate climate change policy in regard to their nation.

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¹ Indigenous Peoples Caucus 2002; IWGIA 2008; UN Permanent Forum on Indigenous Issues 2008.

Climate Justice

No one has more of a right to use the common global asset known as “the climate” than does anyone else. It is one of the fundamental acknowledgments within the UNFCCC. Climate change is a problem for everyone, while the responsibilities for greenhouse gas emissions and consequently their negative impacts are distributed unevenly. In the previous chapter it was said that any sustaining solution requires not only technical know-how but also a fundamental rethinking and normative framework on how the world should be organized in the future. In the discussions, there is more than one concept put forward in order to allow a fair sharing of the burden and to suite international and national governance structures. The concept of justice and fairness as central principles would argue that there is a fundamental right to a dignified existence and a right to the pertinent resources that enable this existence.

In the context of a climate change regime, justice and fairness mean that populations and countries affected by poverty as well as by social and political marginalization should not only be treated differently with respect to their contribution to climate protection, but also should be given additional support in order to overcome their situations. Starting from this conclusion, it is within the logic of the subject – threats to livelihood by climate change – to establish human rights as a key element in order to gain access to minimum standards and justice for underprivileged people.

In particular, the UN Declaration on the Right to Development¹¹ provides at least a conceptual structure and material substance in both its reference to international

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¹ UN General Assembly 1986; for the current discussion on the Right to Development see Marks 2011.

cooperation and core human rights norms. Particular attention should be paid to the call for equity and justice in the development process. Moreover, the Right to Development requires that within the context of climate change, human rights violations may by no means be justified in order to reduce emissions or to adapt prescribed measures. The urgency of the problem and the need for imminent protection of fundamental rights are inherent in the concept. Such a framework is particularly true and indispensable from a victim's perspective.

Beyond the debate whether the Right to Development is – or should be – a legally binding instrument, its normative structure aims to redirect the macro-level, and its sources of wealth, towards the primary subject of development, the human person and his/her dignity. The functions and characteristics attributed by the Right to Development to international cooperation are likewise the call for international cooperation by the UNFCCC, where it is considered a key element.¹²

At a first glance, this may seem to be a contradictory assumption: climate protection and development based on economic growth for the sake of implementing economic and social rights in particular.¹³ Indeed, despite attempts at realizing the concept of sustainable development, the reality check reveals an incompatibility between a strict and necessary reduction of greenhouse gas emissions and the predominant paradigm of development and the fight against poverty. A number of countries therefore assign priority to economic development and poverty-fighting over climate-protection measures. Such priority

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The preamble of the UNFCCC affirms that, “*responses to climate change should be coordinated with social and economic development in an integrated manner with a view to avoiding adverse impacts on the latter.*” The ultimate objective should be achieved in a way “*to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.*”

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For a more detailed overview of the discussion on green economy, see Netzer 2011.

is quite understandable, in particular against the background that industrialized countries simply continue this paradigm in their development including specific patterns of consumption and barely comply with their reduction obligations. As there is little space left in the atmosphere to increase emissions of greenhouse gases without further damaging the climate system, a number of countries in the global South are faced with the real threat that the imperatives of climate protection and stabilization would deprive them from access to relatively cheap fossil energy sources that made the wealthy countries wealthy.

Within the debate on sustainable development, green economy, climate protection and fair access to resources, the organization *EcoEquity* and the *Stockholm Environmental Institute* developed the concept of the “*Greenhouse Development Rights Framework*” which addresses main aspects in bridging climate protection, poverty reduction and human rights.¹⁴ The approach considers not only breaking down emission rights among countries but also takes into account the differences within countries. The framework starts from the premise that climate change imposes inherent limits on development, national economies and the global economy. In the context of climate constraints, fundamental public goods such as energy access, which are vital to achieve basic human rights, need to be primarily assigned to developing countries in portions that allow them to prosper. In order to allocate the minimal development needs in a fair way, the *Greenhouse Development Rights* (GDR) framework identifies a threshold which marks the level of welfare, below which individuals and countries are exempted from contributions to reduce greenhouse gas emissions. However, this does not mean that the Right to Development could be simplistically perceived as a right to pollute.

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¹ Baer et al. 2008 and 2010; see also Caney 2009a and 2009b; OXFAM 2007.

Such development threshold is defined predominantly alongside the human rights to social protection and security while measured in a per capita income of minimally \$20 per day; significantly above the global poverty line of \$1-2 per day but also significantly below the levels of “affluent” consumption by large parts of the population in industrialized countries. The figure is based on research that only beyond the level of \$16 per person per day, there is the real chance of overcoming poverty, malnutrition, high infant mortality, low access to qualitatively good education and health services, as clean water and sanitation, and high food expenditures. Adding up to \$20 per day, this will ensure that the level of social life will be beyond mere basic needs and enter into the sphere of social well-being and welfare; at least to the extent of overcoming the level of poverty. With regard to countries, that amount correlates to a per capita income of about \$7,500 per person per year. Although income distribution can vary a lot within a country, and non-monetary assets to address climate change; as knowledge and capacities (resilience) on local the level are not attended either, the per capita income indicates basic access to fundamental human rights and social security.¹⁵

Conversely, people above the development threshold are perceived as having realized their right to development, and therefore are subject to bear responsibility and to contribute toward dealing with the climate change problem. On this basis, the GDR framework suggests the *Responsibility and Capacity Index* (RCI) which corresponds to the UNFCCC principle of “common but differentiated responsibilities and respective capacities”. Altogether, the GDR framework goes beyond the moral imperatives towards green or sustainable development and

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¹ Baer et al. op.cit.

establishes an accountability framework, essential for the promotion and protection of human rights. Again, political will and social actors are required in order to make such a policy happen.

Climate Change and Human Rights

The adverse impact of climate change on the enjoyment of human rights is meanwhile well established and reflected within the international human rights system; i.e., the UN Human Rights Council (HRC), its sub-bodies as the Social Forum and the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), among pertinent mandate holders of the UN Special Procedures as well as among the UN Treaty Bodies.¹⁶ This chapter therefore examines in some detail how human rights addresses those impacts, and how the human rights approach may be usefully interrelated with the climate change regime at practical and legal levels.

Although the UN system already had started discussions on adverse impacts of climate change to human rights in the 1990s,¹⁷ the issue became prominent only in recent times. The chief impetus came from the Maldives, supported at that time mainly by other Pacific and Caribbean island nations that will be threatened by rising sea levels. In March 2008, they launched resolution 7/23 on *Human rights and climate change*, which requested the Office of the UN High Commissioner for Human Rights (OHCHR) to carry out a detailed analytical study focusing on the relationship between human rights and climate change.¹⁸ A year later, resolution 10/4 followed which invited the Special Procedures to consider this issue in their future reports as it decided that a panel discussion is to be held at HRC's eleventh session (June 2009) on the relationship between climate change and human rights.¹⁹ Thus, human rights have emerged

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¹ for details on these institutions access www.ohchr.org.

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UN Commission on Human Rights 2002.

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HRC 2008.

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within the UN system as a platform to give a voice to people and individuals affected by climate change. Meanwhile, this platform is used by countries of the global South, too, in order to address the adverse impacts of climate change in the scope of binding duties and the need for a more genuine international cooperation.

The above mentioned report of the OHCHR²⁰ showed that climate change is interfering with a wide range of human rights, including the rights to life and health, food, water, housing and shelter, and the preservation of specific cultural characteristics in cases of resettlement and migration, also touching on political and civil rights such as freedom of information and opinion, the right to dissent or dispute the climate change approach taken, access to a legal review of decisions, and participation in the political opinion-forming and decision-making process as well as self-determination. The study also identified states' obligations under human rights law to protect those rights from the adverse effects of climate change. Moreover, states are obliged to see that their efforts to mitigate and adapt to climate change are in accordance with their duties under human rights law. The study revealed that involving human rights into the debate on climate change and climate change policy draws the focus to concerns and interests of victims and rights holders.

The report also takes up the issue of international cooperation. The study noted that climate change is a truly global problem that can be effectively addressed at best through international cooperation while climate change disproportionately affects poorer countries with the weakest capacity to protect their populations. The report refers to the disputed principle of “extraterritorial state obligations” according to Art. 2.1 of the

HRC 2009.

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OHCHR 2009.

UN Covenant on Economic, Social and Cultural Rights. The report quotes General Comment No. 3 of the UN Committee on Economic, Social, and Cultural Rights (CESCR), that affluent nations are obliged to assist poorer nations.²¹ According to this General Comment, states are requested not to exert any influence on other countries that would negatively affect human rights, to prevent private companies from doing the same, insofar as they are subject to national laws, to provide reliable international assistance and co-operation, and to guarantee that human rights will be adequately anchored in international agreements, and that none of these agreements shall harm human rights. Although industrialized nations accept the need for international cooperation, they reserve the right to provide assistance merely voluntarily and within the framework of bilateral or multilateral relationships.

By resolution 13/17 in 2010, the HRC called for a Social Forum session on the adverse effects of climate change.²² The session took place in October 2011 at the eve of COP 16 in Cancún and was directed at emphasizing that human rights obligations and commitments have the potential to inform and strengthen international policy-making in the area of climate change and to seek coherence in climate change policy. In its recommendations, the Social Forum proposes that the HRC establish a new mechanism under the Special Procedures on climate change and human rights.²³ The mandate should clarify the responsibilities of states in the area of climate change; i.e., in the fields of adaptation, mitigation, technology transfer and financing, both at national and international levels. Such a mandate would further provide an input to the UNFCCC and other relevant forums on

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CESCR 1990.

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HRC 2010.

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Social Forum 2011.

the question of how far principles of human rights can contribute to the development of a climate change regime. The mandate should also monitor the impacts of climate change and corresponding measures on the realization of human rights. Such a special procedure would finally contribute to identifying productive linkages between the Right to Development and climate change.²⁴

In its resolution 18/22 on the subject of climate change, the HRC requested the OHCHR to convene a seminar in order to address the adverse impacts of climate change on the full enjoyment of human rights. The seminar took place prior to the nineteenth session of HRC in March 2012 and assessed whether the call for respecting human rights in climate change-related actions and policies has been followed up. The seminar made a strong call to forge a stronger cooperation between the human rights and climate change communities and to take into account the issue arising from COP 17 in Durban. The report of the OHCHR on this seminar was submitted to the twentieth session of HRC in June 2012 echoing the focus on climate change, instead of environment, and the support of appointing a special mechanism on the issue of climate change and human rights.²⁵

Since 2010, a dispute has emerged within the HRC around the distinction between environment and climate change, and consequently, which term might be the most appropriate to address the causes of human rights violation in the context of, for example, hurricanes and floods. Though since 2008 the HRC's focus has been on climate change, in March 2011 Switzerland launched a resolution on environment together with

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Social Forum op.cit., para 60; further reflections on institutionalizing climate change into the human rights regime have been developed by CIEL and FES 2009.

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HRC 2011b, OP 2 and 4; see report A/HRC/20/7, i.e. paras. 68ff.

the Maldives.²⁶ Countries like the Philippines and Bangladesh raised their concern as they understand the context of climate change with its specific effects²⁷ as the most pertinent and imminent to be addressed, beyond any analytical and methodological considerations as to which issue might be more appropriate for a comprehensive understanding of affected people's concerns. Both countries also are troubled that the focus on environment might weaken the equity challenge, since in the context of climate change it is acknowledged that developing countries are more vulnerable compared to industrialized countries. The discussion is therefore not free from the presumption that the issue of "environment" has been introduced to bridge conflicting interests around "climate change" and its call for immediate action.

While the mentioned seminar prior to the HRs March session in 2012 brought the dynamic back to the issue of climate change, the supporters of the environment approach presented in March 2012 the resolution A/HRC/RES/19/10 in order to establish the mandate of an Independent Expert on the issue of "*Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*". The resolution was adopted without a vote. Although the Independent Expert, Mr. John Knox, is a person highly recognized for his expertise and commitment, concerns remain about the spreading dynamics of the topics "climate" and "environment".

Within the institutional setting, several mandates of the Special Procedures already had started to involve climate change and its adverse effects in their reports before the Maldives had launched the resolution in 2008; this may be found in the report of the

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HRC 2011a.

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Like sea level rise and the destruction of harvests or the entire livelihood by salt water.

Special Rapporteur on the Rights of Indigenous Peoples.²⁸ A strategic view of the interrelation of human rights and climate change has been developed in particular by the Special Rapporteurs on the Right to Safe Drinking Water and Sanitation and on the Right to Food. The Special Rapporteur on the Right to Food has been actively involved into the debates on agro-ecology. He emphasizes the recycling of nutrients and energy and the diversity of species which enhance the sustainability of food systems and their resilience to climate change. Agro-ecology further contributes to a development approach which integrates the local environment and cares of the biological tenets and cycles. The Special Rapporteur on the Right to Safe Drinking Water and Sanitation elaborated a position paper specifying benchmarks on the subject.²⁹

Next to the HRC, its sub-organs and the Special Procedures, several committees of the UN Treaty Bodies also started to take climate change into their considerations; as, for instance, the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee on the Elimination of Racial Discrimination (CERD) and the Committee on the Rights of the Child (CRC), either within their General Comments or in addressing the politics of state parties to each of the conventions. Up to now, they mostly have used the reporting system together with the tool of “*Concluding Observations*” and “*Recommendations*” in order to address the policy of the state under review. Although there is as yet no systematization visible, the number of increasing comments by different committees indicates a growing concern. The CRC urged Grenada in 2010 to evolve a programme of preparedness for natural disasters and to take into account in its policy-making that the environment as

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¹ Stavenhagen 2005 and 2007; see also Hunt 2008, Kothari 2008; Ziegler 2008; Kälin 2010.

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¹ Albuquerque 2010; Schutter 2010.

well as cooperation with regional and international partners should be actively managed within the context of climate change.³⁰ In 2009, the CESCR expressed its concern in relation to Australia's state report addressing the negative impact of climate change on the right to an adequate standard of living, including the right to food and the right to water, which affect in particular indigenous peoples. CESCR encouraged the Australian government to reduce its greenhouse gas emissions and to mitigate the adverse effects of climate change as well as to ensure adequate consultation with affected Aboriginal and Torres Strait-Islander peoples.³¹

All these instruments and mechanisms are required if one is adequately to address problems in the realization of human rights and climate change and deepen the incidence of human rights on climate aspects. They further place these instruments into the hands of affected people because they provide complaint procedures, which they can use to demand protection for their rights. Such an instrument also enables the victims to negotiate a fair compensation based on the indicators for minimum standards. The implementation of the standards by the national state is to be checked by independent experts. Stakeholders are entitled to witness and to provide critical data related to the state report. Altogether, such a mechanism may provide a fairly accurate picture of how urgent and serious an infringement is. Transferred to the international level of cooperation on mitigation and adaptation, the individual complaints can be summed up and introduced into the negotiations on the basis of a widely accepted standard and a jointly agreed language. Such rehabilitation – in what form ever

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¹ CRC 2010 para 52; for details of the treaty bodies' involvement into climate change issues see ICHRP and Humphreys 2008; Rathgeber 2009.

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¹ CESCR 2009, para. 27.

– is therefore not a matter of rich nations dispensing charity to poor ones.

An significant gap in normative protection remains within the human rights system, in relation to those who are forced to leave their traditional habitat because of a climate-induced disruption of their livelihood that seriously affects their existence and quality of life. The current legal framework at the international level does not recognize climate or environment-induced refugees and migrants. The variety of existing notions – environmental or climate refugees, environmentally displaced persons, environmental migrants – indicates that there is an imminent need to find an appropriate classification in order to provide, at the least, shelter to climate change induced refugees or migrants. Without going into the details of this discussion, the suggestions made tend to a protocol related either to the UN Convention on Refugees or – more likely – to the UNFCCC. For the moment, the latter suggestion seems highly conflictive. Therefore, a number of proposals suggest starting with case studies and to gradually building upon them elements of international customary law which may end in a new legal instrument.³²

Reviewing the issue of climate change and human rights in a strategic manner, particularly considering the underprivileged, there are some reflections made in recent times with which this discussion will be briefly conclude.³³ First, a human rights-based assessment of the adverse effects of climate change needs to be focused on the human being, specifically as rights holder not only as a victim. Human rights norms and mechanisms provide

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See Biermann and Boas 2008; Bauer 2010; Kälin 2010; Kolmannskog and Trebbi 2010; WCC et al 2010; Nümann 2011.

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¹ Sachs 2003 and 2008; ICHRP and Humphreys 2008 and 2011; Rathgeber 2009 and 2011.

poor and vulnerable people in particular a framework of new understanding, an appropriate instrument by which to articulate their concerns, interests and demands on their own. This is even more relevant when the asymmetry is considered between powerful emitters and vulnerable victims. Human rights norms would set the thresholds below which climate change policy should not fall.

This leads to the second aspect, that human rights are a genuine platform for social mobilization and self-organization by the rights holders. Alongside that, the question emerges related to participation in the impact assessment as well as with deliberations about the counter-recipes against adverse impacts of climate change. Although there is no automatism, the process of self-organization by indigenous peoples at national and international level in relation to climate change issues has resulted in an acknowledged though informal status within the climate change regime.³⁴

A next aspect relates to the procedural structure of the human rights system which provides a relatively efficient tool for clearly identifying wrongs, and which can be further converted into a monitoring system for the impacts of climate change and climate change measures. In the same way, as all stakeholders are invited to participate, the complaint procedures help to set the priorities for essential areas of intervention. Human rights finally provide benchmarks for clarifying the responsibilities of the states and for a fair settlement in the area of international cooperation; i.e., adaptation, mitigation, technology transfer and financing.

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¹ Tebtebba Foundation 2009; Johnston and Tauli-Corpuz 2010; Rathgeber 2010.

How far may it be possible to integrate the human rights approach into the climate change regime? The UNFCCC and its institutions are currently insufficient to address adequately the adverse impacts of climate change on human rights, and it will probably be a long road to changing that. But some areas interesting all parties may ease the realization. The Conference of the Parties is entitled to establish working groups. A working group could be established which specifically would address vulnerable groups and special means for their protection. The focus on vulnerability is already a key area identified by the IPCC. It is within the logic of the UNFCCC to introduce a complementary normative framework of accountability into the climate change regime. Further, the next assessment reports by the IPCC in 2014 could include a chapter on climate change impacts analysed on a human rights basis. Nevertheless, hardly anything will happen if there are no actors, in particular non-state actors, who promote the human rights approach. Some are already engaged in the process, like indigenous peoples, but the current scope of actors is definitively not sufficient.

The Role of Churches

Politics “as usual” and entrenched ways of thinking in terms of growth and linear progress will not produce adequate climate policy. Although churches are not free of conceptualizing humanity’s rule over Earth (Genesis 1:28) in a narrow understanding of dominance and exploitation, an increasing number of people in the churches, in publications and appeals, advocate a distinct interpretation in taking care of the integrity of the creation (Genesis 2:15) and the sustainable use of the earth’s resources. In addition, justice and peace have been a long-standing legacy within the churches focusing on human dignity, respect for human rights in more recent times and on the common good. A number of people within the churches is further promoting a determined political will for change, contrary to an “after me, the deluge” attitude. The churches harbour a considerable ethical potential.

The latter is desperately needed if the victims’ voices are to be heard, the protection of climate refugees to be organized, a fair international order to be established and, based on such an approach, a concept of justice to be promoted and pushed at national and international levels. As the previous assessment reveals, there is a high need for marshalling ethics and norms in order to recover a different perception of reality which is orientated towards the needs of the most vulnerable. Their claim for a shared common standard of life according to international agreements on human rights might be uncomfortable and disturbing to the rationality of contemporary thinking in advancing selfish benefits or greed. Churches have always borne the discourse on sharing, the distinction between legitimate and illegitimate wealth, and the corresponding impact on people’s mind. The gospel warns against the idolatry of “mammon” because it will definitively diminish any social relationship and

consolidate a structure of discrimination, inequality and violence.

Even more, it is necessary to echo the previously mentioned concerns at the level of policy-making as well as at the level of face to face communication. Cooperative behaviour can be learned, the trust of individuals and groups in a more human friendly future can be gained; this is lastly a *sine qua non* condition to think differently and to seek change in the politics on common resources, their protection and fair distribution. Churches have emphasized a “we-identity” as a learning process for groups and individuals in order to gain trust among each other. The churches’ vertical architecture links directly and inclusively the level of the grass-root with political decision-making in circles of leadership.

Related to the specifics of climate change and human rights, the climate issue has emerged within the World Council of Churches (WCC) out of the discussion on sustainability beginning in the 1970s. The programmes and campaigns on Justice, Peace and the Integrity of Creation have developed since 1990 to identify the major threats to life.³⁵ They meanwhile constitute a major concern of the ecumenical movement. It made the WCC raise its voice, for instance, during the World Summit on Social Development in Copenhagen 1995, in the aftermath of the Fifth WTO Ministerial Conference in Cancún (2003) on trade, development, food and livelihood security, against the social, political and cultural exclusion of people in the context of politics imposing structural adaptation programmes, or within the debates on the Millennium Development Goals. The conditions for the full enjoyment of human rights were always a

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See the WCC World Convocation in Seoul 1990, where climate change was at the centre of one of the four covenants. A short overview of the history of WCC engagement with Justice, Peace and the Integrity of Creation is provided at http://fore.research.yale.edu/religion/christianity/projects/wcc_jpc.html.

key element for the WCC in addressing poverty, social security and the challenge for Christians.³⁶

It is true that human rights as a concept is still not closely linked in relation to justice within churches in Asia and Africa. Increasing pertinent discourses within the constituencies on both continents and in correspondence on the rise of human rights institutions at the level of the regional intergovernmental systems – at the African Union, with minor progress and extension at SAARC and ASEAN³⁷ – will sooner rather than later urge a more prominent consideration among church leaders and open minds to make this link conceivable. In the Pacific area, the Pacific Conference of Churches fulfils a role of paramount importance in consulting the governments and at the same time building knowledge and capacity among the communities trying to prepare Pacific Islanders for climate change.³⁸ In the long run, the churches as institutions will be embedded in such a discourse on the two continents; this discourse challenges the fundamental crisis there in several aspects. Although the international normative framework on human rights has historically emerged from the catastrophes in Europe in the twentieth century, it emerged and developed as a standard of civilization which nowhere has been completely implemented but contains minimum standards of protection for everybody anywhere.

The ecumenical work on climate change is rooted in the wholeness of creation and the biblical imperative of the commitment for justice which pays special attention to the poor.

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¹ As a kind of summary of multiple initiatives see Mshana 2003.

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¹ South Asian Association for Regional Cooperation (SAARC); Association of Southeast Asian Nations (ASEAN).

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¹ Pacific Conference of Churches 2009.

It is the shared understanding that local communities should be empowered and local people given a voice in order to articulate their concerns and demands by themselves.³⁹ The “*Ecumenical Declaration on Just Peace*” highlights the intimate relationship between peace and justice. In the “*Peace with the Earth*” perspective, “*Just Peace*” refers to climate justice, too, since the challenges posed by climate change are also considered as a matter of justice: “*those who suffer most due to the impact of climate change are impoverished and vulnerable communities who contribute only minimally to global warming*”.⁴⁰

The “*International Ecumenical Peace Convocation*” in Jamaica, May 2011, underlined the churches’ commitment to the integrity of creation and the change of daily lifestyle demanded to overcome both the environmental as well as the ethical and spiritual crisis. The message of Jamaica affirms the churches’ preparedness to join global civil society in advocating that governments radically reconstruct economic activities, and urgently reduce the extensive use of fossil fuels and greenhouse gas emissions. The message of Jamaica further states: “*The ecological debt of the industrialized countries responsible for climate change must be considered when CO2 emission shares and plans for adaptation costs are negotiated.*”⁴¹ For good reasons, the WCC has been present at all COPs since the UNFCCC was adopted in 1992. The wholeness of creation and the commitment for justice have been the guidelines for such engagement.

Over the years, the WCC helped encourage a movement for climate justice involving millions of people world-wide,

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WCC 2006.

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¹ WCC 2010a; Kerber 2011; an overview of the WCC’s engagement on climate change issues is provided in WCC 2010b.

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¹ WCC 2011, para on “*Peace with the Earth*”.

providing the indispensable moral compass and common ethos that can guide the needed fundamental transformation of the economic patterns and structures, in method as well as in attitudes. Because of the wide range of action, i.e. from the groups, congregations and parishes at the local level to the advocacy work at the governmental and intergovernmental levels, churches are best placed to address a comprehensive climate change policy. Within this large area of potential activities, there are specific challenges which can be genuinely followed by churches.

Challenge I – A radical shift in thought and action required

Ethics in relation to victim's concerns is a core contribution churches can make, together with theology. Within the context of climate change, churches are in a position legitimately to demand a fundamental transformation of patterns and structures currently guiding the economy and consumption, as well as transforming policy-making. Even in terms of a materialistic understanding, climate and the natural environment are part of the infrastructure of society and not a mere input into the economy. This reveals the need to re-conceptualize the relationship between economy, climate and environment.

Churches traditionally sustain the integrity of the creation while assigning nature a status as a subject in itself; this approach is still open to debate. In both Protestant and Catholic church(es), the discussion fosters critical theological reflections on the historically predominant understanding of creation from a rather anthropocentric point of view.⁴² A radical assessment and proactive actions need to be made. The outcomes of the Conferences of the Parties were up to now neither fair nor ambitious. Contesting their omissions, to cite one example of

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¹ On the Catholic side, see discussion of Francis of Assisi, Leonardo Boff or the German Bishops Conference in Zollitsch 2009.

action, thousands of congregations rang their bells for a fair and ambitious climate policy to be set by COP 15 in Copenhagen.

Challenge II – A new dynamic is needed

The critical ethical reflection about climate change and its impacts on people is not limited to Christians. There are obviously other cultural and religious traditions which also note with increasing concern the deterioration in the livelihood of their constituencies based on climate change impacts. This affirmation entails the option and task to seek interfaith cooperation at local, national and global levels in order to deepen religious involvement in the current climate change regime. In addition, cooperation with emerging social movements, community-based and non-governmental organizations needs to be strengthened.

The demand for a new dynamic also questions entrenched ways of discussion and categorization. There is a certain routine in language and methodology, and discussions are rather stalled. Many stakeholders stress the potential irreversibility of climate change. The churches' discourse could focus on the imminence of action or scandalize the omission of certain considerations, in particular in relation to displacement and climate refugees. Churches are in a propitious position to evolve an early warning and monitoring system of their own.

Challenge III – An optional methodology is needed

A comprehensive understanding of climate change, its impacts and the scope of policy starts with language, the means of identifying the problem and the methodology of fact-finding. Most of the assessments of climate change by different sciences are in principle carried out by working with extrapolated data

about alterations in the long-term. Current scenarios are founded on ground data which are merged into sophisticated extrapolations based on complex environments. There is nothing wrong with this methodology, which revealed a lot of evidence concerning climate change. But it is only one of the formulas by which to make the reality known, where the affirmation of a current process related to long-term evidence is substituted by extrapolation and expectation. Churches have another, complementary option. Churches' comprehensive understanding of the essence of life is due to a long-standing observation and compilation of experiences with fundamental aspects of the human being. Churches – and other religious communities – dispose of this expertise in terms of truth about the mystery of life, which is communicated in different narratives, including parables.⁴³ Theology is the conversion into an academic language. An analogous process is needed in relation to assessments and discussions about climate change.

Considering the effects of climate change, it is necessary to generate a genuine narrative, based on the views of the people on the essence of their life and the alterations experienced by them. A narrative which enables the people to talk in their own language, their stories and parables, their way of assessment, their science and understanding of their essence of life; particularly the vulnerable and poor. All our known facts and perspectives around climate change are radically incomplete, and churches can make a difference in emerging with such a narrative. Using their vertical structure, churches can convert grass-roots people's assessments into a recognized reference point and, thus, finally contribute to a comprehensive climate

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¹ In various sciences – as physics, medicine, history, social science – there is also the debate about “evidence and approximation to reality”. Based on the relativity of affirmations, there is felt the need to complement the facts with the “narratives” of other sources, e.g. local observation and local stories in history, in order to get a comprehensive picture and assessment done about what can be identified as reality or truth.

policy. This requires a participatory research approach, pertinent case studies and comparative analyses.

Challenge IV – A victims-based standard is required

Giving climate change-affected people a voice, their own voice, will imply challenging existing power relations. Obviously, this does not happen automatically and requires capacities, accompaniment by reliable allies and a chance for self-organization. So far as churches are involved, it is a twofold task. Churches are by their structure in the position to make poor and underprivileged people familiar with the internationally agreed normative standards – bringing in the “international” dimension in order to include external expertise – which provide protection, complaint procedures, a specific concept of “vulnerable people” and mechanisms for expressing demands.

Churches would by such actions assist decisively in integrating human rights law into the climate change regime. Within such an engagement, the grass-roots people would be made familiar with global concepts and language in order to encourage them in going ahead with their local approaches, instruments and techniques, thus making their contribution in the fields of mitigation and adaptation, too. Last but not least, such inclusion offers the chance to avoid a new kind of dependency in the context of technology transfer; to the extent that it happens at all.⁴⁴ Churches are one of the institutions able to organize such learning processes at society’s level. Churches are also asked to undertake a second task in this regard: to provide hope to those most affected by climate change. Beyond practical help, churches can offer spiritual accompaniment and advice based, for example, on the Bible’s contexts of exodus and hospitality.

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¹ ICHRP and Humphreys 2011.

Conclusion

This paper suggests that for several reasons human rights will be an indispensable instrument in addressing climate change. It primarily aims to bring the people's view to national and international attention and to move their concerns forward. Human rights also brings the necessity of justice into the climate change regime and policy, entailing a wide range of procedures in order to seek accountability and a fair share of the burden, and consideration of human rights contributes to shaping governance structures. At the moral as well as at the legal level, human rights provides a substantial platform for priorities and obligations to supply assistance. Human rights may introduce areas of discomfort for duty bearers, but failing to consider human rights might have unexpected consequences, in particular in the field of international cooperation.

Churches are asked to make human rights law coherent with and an integral part of the climate change regime. The increasing involvement of churches emphasizes the conclusion that we must seek "*Peace with the Earth*" in order to protect the integrity of creation; this Christian commitment must be placed in a more prominent position. Due to the determination of churches to be with those who suffer most, climate change becomes an issue, and climate justice becomes a constitutive element in our common advocacy and service. Insisting on human rights is a key aspect in guaranteeing the victims and grass-roots rights holders a voice in policy-making.

Churches are particularly asked to undertake urgent activities. A first aspect relates to the need to generate a genuine platform which can be used in discussing and deliberating about shelter for refugees and migrants related to climate change impacts. The next urgency task relates to the establishment of a Special

Procedure mandate on climate change in order to consolidate the people's voices, to clarify legal issues, to undertake fact-finding missions and to consult the climate regime.⁴⁵ Such a mandate may contribute to systematize and to disseminate the complaint procedures of the UN human rights system. A third aspect of urgency relates to the upcoming COP 18 in Doha in November 2012, which may offer the opportunity to establish a focal point within this dialogue introducing human rights expertise addressing climate change. It is expected that the result would be more substantial when compared to the “*Rio+20*”-meeting in June 2012 in Brazil.

Churches are further asked to increase awareness on climate change within religious bodies and communities, to encourage case studies and comparative analyses, and to provide practical perspectives in particular for grass-roots people in order to ground their involvement. Obviously, calling the “churches” remains an abstract proposition unless the call is taken up by concrete persons. As mentioned, not all part of the churches are prepared to respond to this call effectively. Others, and individual church members, are more advanced in their preparations. May this text contribute to rethinking wherever there is hesitancy as well as to encouraging the better prepared in taking the lead on climate change and human rights. The current climate change regime will remain underdeveloped as long as interest remains low. Activity within the churches and among the partners can make all the difference.

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¹ As requested in the Call For Action by the Geneva Interfaith Forum of which WCC forms part; see Geneva Interfaith Forum on Climate Change, Environment and Human Rights 2011.

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Concern for justice, human rights and sustainable communities has been at the core of churches and the ecumenical movement's work for decades. The World Council of Churches (WCC) and United Evangelical Mission (UEM) together with many other churches and ecumenical bodies have given special attention to climate justice through advocacy at the local, regional and international levels and promoting networking among and joint action of churches in various regions of the world.

With this study written by Dr. Rathgeber, who has been cooperating closely with the WCC and the UEM for many years on "Climate Justice, Human Rights and the Role of the Churches", the WCC and the UEM would like to broaden and deepen the discussion and understanding within churches about climate change and human rights – encouraging churches in the future to strongly advocate at the national level and at the UN to integrate climate justice into human rights and international law in a fair, ambitious, binding and effective way and to clarify responsibilities for human rights violations caused by climate change.