

Response of Ross C. “Rocky Anderson  
To Presentation by Steve Vanderheiden,  
“Climate Justice and the Challenge of Development”  
Democracy in South Asia Forum, University of Utah  
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The juridical or legislative development of new environmental legal rights, through negotiated climate change treaties or otherwise, share one feature in common with safe nuclear power plants: They will take longer to achieve than permitted by the rapidly closing window of opportunity we have to radically reduce greenhouse gas emissions before irreversible, catastrophic consequences of climate change befall our earth and its inhabitants.

If, following that disaster, people – that is, those who survive the floods, droughts, killer heat waves, rising oceans, and wars fought over diminished resources – find the time or have the inclination to philosophize about what new rights people or nations should have had or where liability should be assessed, they will likely point with most vehemence to the delay, dithering, and distractions in which *we* have engaged while knowing full well that only resolute action would prevent the cataclysm to come.

In assessing the doubtful prospects of reaching an agreement about any new environmental rights, consider, for instance, that any rights analysis must also take into account the relative population growth and emissions rates of various nations. Is India more liable and less entitled to a right to emit because its population growth rate has increased almost three times that of China? And is China more liable, and less entitled to a right to emit because its per capita emissions rate is more than three times that of India?

We must also recognize the resistance of the present generation being content with assuming liability for the emissions and development patterns of prior generations, particularly when those generations had no idea about the harm they were doing. Professor Vanderheiden stated that “the costs associated with achieving . . . necessary reductions from current emissions must be assigned on the basis of *historical* luxury . . . emissions.” If we’re going to await agreement with that premise before we reach an agreement on emissions reductions, then I submit it is never going to happen.

The world is not a static place when considering technical changes and opportunities for use of or conversion to clean renewable sources of energy. If one nation has become dependent on the automobile over decades of highway construction, as in most of the United States, perhaps it is easier and less expensive for a developing nation to move more in the direction of lower-emissions mass transit. There is no reason to assume – as the equal-development-opportunities argument seems to – that developing nations must necessarily replicate the same mistakes and the same patterns of development as developed nations.

Ferretting out all of the elements that must go into any calculation of relative rights and liabilities is a terrific academic exercise, but not at all promising – as the world has seen since Kyoto, including these past three dismal years, during which many people expected more from “hope” and “change” than foot-dragging, whoredom to the fossil fuel and nuclear power industries, and mindless platitudes in a nomination acceptance speech and the most recent State of the Union address about the promise of non-existent “clean coal”.

The only solution lies in the fact that fundamental human rights guaranties are *already* in place that could and should serve as the basis for regulating greenhouse gases, asserting claims, and assessing liability for harm caused by excessive emissions. Among the rights impacted by climate change are the rights to life, liberty and security of person, guaranteed by the Universal Declaration of Human Rights.<sup>1</sup> The right to life of children receives specific protection in the Convention on the Rights of the Child. The effects of climate change implicate the right to adequate food under several international treaties, including the International Covenant on Economic, Social and Cultural Rights, where the state parties recognize “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing.”<sup>2</sup> Other essential, guaranteed human rights are threatened by climate change, including the right to human security, the right of indigenous people to strengthen their cultural life, and the right to maintain livelihoods and homes – all of which

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<sup>1</sup> The International Covenant on Civil and Political Rights also provides that “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” Article 6(1), International Covenant on Civil and Political Rights.

<sup>2</sup> Article 11(1), International Covenant on Economic, Social and Cultural Rights.

rights have already been negotiated and included in binding international treaties.

The human rights community has largely abdicated its responsibility to address climate change within a human rights framework, leaving climate protection advocacy instead to the “environmental” community. In turn, that community has done an abysmal job developing and communicating an effective message to the public, as it has obviously been focused on its base of funders while perseverating on cute polar bears rather than on the human rights impacts on people around the world. The message has been, essentially, that one species of animal located far away are primarily affected.

As a result, the polls reflect that we are losing enormous ground, with fewer people than just a few years ago understanding that climate change is human caused and with less public support over the last several years for climate protection legislation and regulation. The public messaging about climate change, ignored by the human rights community and botched so badly by the environmental community, has been so ineffective and self-defeating that the U.S. House of Representatives, including our own Congressman Matheson, may now actually get away with voting to strip the EPA of regulatory power over CO2 emissions.

We need to get back to the basics of human rights guaranties already in place if the job of climate protection is going to be accomplished. At the same time, the human rights community must effectively communicate to the public what really is at stake. So far, it’s as if Pearl Harbor happened a week ago and we are all still just tuned in to Laurel and Hardy.

Getting the message out in an effective way and empowering people who will organize at the grassroots level to effectively push for change is why I founded High Road for Human Rights just over three years ago.

Although many of the human rights threatened by climate change have been well established since at least the adoption of the Universal Declaration of Human Rights in 1948, and although anthropogenic climate change has been recognized by much of the mainstream scientific community for decades, the discussion about whether human activities resulting in climate change should be viewed through a human rights lens

has, amazingly, barely begun. The human rights community has been astoundingly derelict, ignoring the greatest human rights threat ever faced.

On December 11, 2007, just over three years ago, the President of the Human Rights and Equal Opportunity Commission in Australia, noted:

Whilst there is now plenty of discussion about the responses that governments should be making to address the predicted consequences of climate change, the focus seems to have been largely on the economic, trade and security issues. The social and human rights implications rarely rate a mention.<sup>3</sup>

During the December 2007 Conference of the Parties to the United Nations Framework Convention on Climate Change and its Kyoto Protocol, which I attended, the United Nations Deputy High Commissioner for Human Rights noted as follows:

In the lead up to this momentous gathering in Bali, the world heard extensively about the grave threat that climate change poses on the environment and economic growth. Much less was heard about the human dimension of climate change.<sup>4</sup>

She then stressed in a statement unprecedented for a U.N. official, “that the existing body of human rights norms and principles offers a solid foundation for responsible and effective thinking and action in this regard.”<sup>5</sup> In light of the failure of the UN to take effective action thus far, the reflections about the human rights implications of climate change are reminiscent of the UN’s tragic, truly pathetic, record of inaction in the face of major genocides and human trafficking.

The International Council on Human Rights Policy did not add climate change to its research program until 2007.<sup>6</sup> Its first publication on

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<sup>3</sup> John von Doussa, “Climate Change: Catastrophic Impacts and Human Rights,” University of Adelaide Research Tuesday, December 11, 2007 (<http://www.safecom.org.au/climate-change-human-rights.htm>)

<sup>4</sup> “Climate Change and Human Rights,” Address by Ms. Kyung-wha Kang, Deputy High Commissioner for Human Rights, Office of the United Nations High Commissioner for Human Rights, Conference of the Parties to the United Nations Framework Convention on Climate change and its Kyoto Protocol, 3-14 December 2007, Bali, Indonesia. (<http://www.unhchr.ch/hurricane/hurricane.nsf/0/013DC0FAA475EC87C12573B10074796A? . . .>)

<sup>5</sup> *Id.*

<sup>6</sup> “Climate Change and Human Rights: A Rough Guide,” International Council on Human Rights Policy, 2008, at inside cover.

the issue was published just three years ago. As noted in that publication, “the mainstream climate change literature and debate has, until very recently, given little or no attention to human rights concerns.”<sup>7</sup>

When one considers the well-established fundamental human rights standards regarding which there is now almost universal agreement, one must wonder why the consideration of climate change in a human rights context has taken so long, particularly since the application of human rights principles will aid significantly in combating climate change.<sup>8</sup> In fact, one is left perplexed indeed as to why the human rights community seems to have been so somnolent – so absolutely irresponsible – in the face of the imminent human rights disasters caused by climate change – the most widespread and catastrophic tragedies in the history of humankind.

The Australian Human Rights & Equal Opportunity Commission provides this extraordinary conclusion with respect to the crucial role of the human rights community in successfully combating climate change:

The values that inspired the drafters of the Universal Declaration of Human Rights provide a powerful point of reference in the climate change context. That document was an international response to the human tragedy of extreme nationalism, fascism and world war. It established a set of entitlements and rights – civil, political, cultural, social and economic for ‘all members of the human family’ to prevent the ‘disregard and contempt for human rights that have resulted in barbarous acts which have outraged the conscience of mankind’. While the drafters of the Universal Declaration of Human Rights were looking back at a human tragedy that had already happened, we are now looking at a human rights tragedy *in the making*. Allowing that tragedy to evolve would represent ‘a

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<sup>7</sup> *Id.* at 2.

<sup>8</sup> “The paucity of rights-specific information is not, of course, merely a *cause* of the negligible analysis of the human rights dimensions of climate change, it is also a *consequence*. Given their salience to the main themes discussed in the IPCC’s fourth assessment report, for example it is remarkable that human rights are scarcely signaled in almost 3,000 pages of analysis. This would appear to indicate a near complete disciplinary disconnect, an impression borne out by a glance at the 10,000-strong participants’ list for the recent (thirteenth) Conference of the Parties of December 2007, among whom no more than a tiny handful hailed from human rights backgrounds. . . . Since the IPCC reports are essentially literature reviews, the shortage of rights references no doubt indicates a mere vacuum in the literature rather than any conclusion, bias or failing on the part of the IPCC authors. That vacuum says as much about an absence of interest in climate change among human rights professionals to date as vice versa.” *Climate Change and Human Rights: A Rough Guide*, at 3.

systematic violation of the human rights of the poor and of future generations'.<sup>9</sup>

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<sup>9</sup> "Human Rights and Climate Change," 2008 Human Rights and Equal Opportunity Commission, at 15.