

Civil Justice in the Mountains: The Bolivian Andes as Grounds for Climate Reform

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I. INTRODUCTION

Scientists expect the impacts of climate change to manifest in various regions of the world in drastically different ways.¹ The Intergovernmental Panel on Climate Change (“IPCC”) estimates a predicted temperature rise of anywhere from 1.8 to 4.0 degrees Celsius beyond pre-industrial levels by 2100.² Some of the major expected and observed impacts include warmer temperatures, changes in extreme temperatures, increased and decreased precipitation, drought, glacier melt, and sea level rise.³ Two of the region’s most vulnerable to the impacts of climate change are coastal zones, especially small island states, and the fragile ecosystems of the high-altitude mountains.⁴ In addition, the inhabitants of these vulnerable regions tend to be indigenous peoples who are more dependent on the land than urbanized communities,⁵ making them especially vulnerable to the effects of climate change on their land.⁶ Inaction regarding climate change will force indigenous communities to migrate to less vulnerable climate zones,⁷ and their unique way of life will be lost permanently; these cultures will become another avoidable casualty of anthropogenic climate change.⁸ The uneven distribution of harm to isolated and unique cultures—that, for the most part, have not contributed to the

1. See Richard B. Alley et al., *Technical Summary*, in CONTRIBUTION OF WORKING GROUP I TO THE FOURTH ASSESSMENT REPORT OF THE INTERNATIONAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2007: THE PHYSICAL SCIENCE BASIS 19, 71–74 (Susan Solomon et al. eds., 2007).

2. Susan Solomon et al., *Summary for Policymakers*, in CLIMATE CHANGE 2007: THE PHYSICAL SCIENCE BASIS, at 1, 13 [hereinafter IPCC POLICYMAKERS].

3. See *id.* at 445–49, 12–17.

4. Human Rights Council Res. 7/23, Rep. of the Human Rights Council, 7th Sess., Mar. 3–Apr. 1, 2008, U.N. Doc. A/HRC/7/78, at 66 (March 28, 2008), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/146/62/PDF/G0814662.pdf?OpenElement>.

5. See J. Mijin Cha, *Environmental Justice in Rural South Asia: Applying Lessons Learned from the United States in Fighting for Indigenous Communities’ Rights and Access to Common Resources*, 19 GEO. INT’L ENVTL. L. REV. 185, 187 (2007).

6. Human Rights Council Res. 10/4, Rep. of the Human Rights Council, 10th Sess., Mar. 2–27 2009, U.N. Doc. A/64/53, at 28 (March 25, 2009), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/149/83/PDF/G0914983.pdf?OpenElement> [hereinafter Human Rights Res. 10/4].

7. See Bonnie Docherty & Tyler Giannini, *Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees*, 33 HARV. ENVTL. L. REV. 349, 349 (2009).

8. See Elisabeth Rosenthal, *An Amazon Culture Withers as Food Dries Up*, N.Y. TIMES, July 24, 2009, available at <http://www.nytimes.com/2009/07/25/science/earth/25tribe.html> (“Cultures threatened by climate change span the globe”).

accumulation of greenhouse gases in the atmosphere—is an example of a broader trend of a lack of environmental justice.⁹

This Note addresses the risk climate change poses to vulnerable mountain communities. The tangible threats posed by climate change to mountainous ecosystems directly threaten the livelihoods of the indigenous peoples living there and subsisting on the land.¹⁰ Section II of this Note describes the vulnerabilities of mountain ecosystems and indigenous communities to climate change. Section III explains how the protection of fundamental human rights in both international agreements and domestic law can be used as a foundation for a movement toward increased access to justice for climate victims.

Section IV frames human rights violations from climate change as examples of the lack of environmental justice because poor and marginalized communities are forced to bear a disproportionate environmental burden.¹¹ It then addresses the challenge of creating accountability for harms arising out of the collective and anonymous nature of the climate change problem without a comprehensive international framework capable of holding entities liable for specific harms.

Section V proposes a solution to the problem. Environmental justice must be re-categorized as a civil rights issue. Domestic lawmakers must endeavor to capture environmental rights in national legislation; citizens must demand avenues to justice in domestic judicial systems; and judiciaries must be willing to recognize rights to a healthy environment and remedies in the interest of preserving indigenous peoples' way of life. International lawyers and activists must demand a change in rhetoric that will include environmental justice as part of civil rights in international negotiations, treaties, and other agreements. By recasting the climate change problem as a direct civil rights violation, advocates can bypass historically troubling technical obstacles such as standing law,¹² undeveloped articulation of environmental rights,¹³ and lack of

9. U.N. Econ. & Soc. Council, Permanent Forum on Indigenous Issues, *Indigenous Peoples Must be Included in Global Negotiations Aimed at Combating Climate Change, Say Speakers in Permanent Forum* (April 22, 2008), <http://www.un.org/News/Press/docs/2008/hr4946.doc.htm> [hereinafter *Indigenous Peoples Must be Included*] (statement of Isabel Ortega Ventura).

10. *See generally id.*

11. Cha, *supra* note 5, at 186.

12. *See generally* CHRISTOPHER D. STONE, *SHOULD TREES HAVE STANDING?: LAW, MORALITY, AND THE ENVIRONMENT* (3d ed. 2010) (discussing standing issues facing environmental claims).

13. MARK A. DRUMBL, *INT'L CTR. FOR TRANSITIONAL JUSTICE, ACCOUNTABILITY FOR PROPERTY CRIMES AND ENVIRONMENTAL WAR CRIMES: PROSECUTION, LITIGATION, AND DEVELOPMENT* 20 (2009).

accountability on behalf of specific parties,¹⁴ in order to achieve real, specific judicial remedies to climate harm.¹⁵

The necessary re-categorization will require a popular movement, such as the Civil Rights Movement in the United States, in order to gather the will to introduce environmental justice into the broader realm of civil justice. This Note uses the example of the Bolivian Andes, including the Bolivian *Altiplano* (a high plateau in the Andes where many Bolivians live), to demonstrate the climate change problem and its impacts on high-altitude indigenous communities. Finally, this Note suggests that Bolivia is the ideal ground for forming a popular global environmental movement because indigenous peoples in the Andes have international,¹⁶ constitutional,¹⁷ and statutory¹⁸ rights pertaining to these issues; they are uniquely vulnerable to climate change; and it is in Bolivia's best sovereign interest to act domestically on the climate change ideas it has advocated internationally. Once the Bolivian government and judiciary begin to recognize climate change as a civil rights violation and remedy it accordingly, other nations and entities will be more willing to recognize Bolivia's perspective on climate change¹⁹

14. See DAVID SCHLOSBERG, *DEFINING ENVIRONMENTAL JUSTICE: THEORIES, MOVEMENTS, AND NATURE* (2007).

15. While greater access to specific judicial remedies is a goal of climate justice, it is not the only benefit that may come out of reframing indigenous climate problems as civil rights problems. Greater awareness and a new definition of environmental justice will be progress in its own right, and that move itself will likely get judiciaries closer to specific remedies than attempting to bring claims on behalf of the environment alone.

16. See Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948), available at <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/043/88/IMG/NR004388.pdf?>; Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, arts. 8, 25–26, U.N. Doc. A/RES/61/295, (Sept. 13, 2007), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>; U. N. Conference on the Human Environment, June 5–16, 1972, *Stockholm Declaration on the Human Environment*, princ. 1, U.N. Doc. A/CONF.48/14/Rev.1 (1973), [hereinafter *Stockholm Declaration*]; U.N. Conference on Environment and Development, June 3–14, 1992, *Rio Declaration on Environment and Development*, princ. 1 U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I) (1992) [hereinafter *Rio Declaration*].

17. NUEVA CONSTITUCIÓN POLÍTICA DEL ESTADO 2009 (Bol.).

18. Ley No. 1333, Apr. 27, 1992, *Ley del Medio Ambiente* [hereinafter *Ley 1333*].

19. Bolivia has struggled to gain recognition in international climate change negotiations. At the 2010 United Nations Conference on Climate Change (“UNFCCC”), Bolivia objected to the decisions in the Cancún Agreements, yet they were passed, and no other country joined Bolivia in its objections. See, e.g., Adalid Cabrera Lemuz, *ABI: Morales: Bolivia was not Alone in Cancun, It Stood with the People in Defense of Life*, WORLD PEOPLE’S CONFERENCE ON CLIMATE CHANGE AND THE RIGHTS OF MOTHER EARTH BLOG, (Dec 20, 2010), <http://pwccc.wordpress.com/2010/12/20/abi-morales-bolivia-was-not-alone-in-cancun-it-stood-with-the-people-in-defense-of-life/> (last visited Mar. 21,

and to incorporate the concept of rights into the greater legal context addressing climate change problems.

II. CLIMATE CHANGE IMPACTS TO MOUNTAIN ECOSYSTEMS AND HUMAN COMMUNITIES

Mountain climates provide a unique and important perspective from which to approach the climate change problem for many reasons. First, mountains are crucial elements of natural ecosystems.²⁰ Second, mountains and their human communities are particularly vulnerable to the impacts of climate change.²¹ Finally, mountains are largely overlooked and their indigenous inhabitants unrepresented in climate change discussions.²²

A. The Importance of Mountains to the Study of Climate Change Impacts

Mountains deliver fresh water to the rest of the world and provide the variability in temperature, moisture, and soil that countless forms of natural life require to survive.²³ Because they are “the water towers of the world,” they “are vital to all life on earth and to the well-being of people everywhere”²⁴ Mountains cover almost twenty-five percent of the Earth’s surface,²⁵ while approximately ten percent of the world’s population relies directly on mountain resources, and an even greater percentage utilizes those resources, especially water.²⁶ In addition to

2012).

20. U.N. Conference on Environment and Development, June 3–14, 1992, *Agenda 21*, ¶ 13.1, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I) (1992).

21. *Id.* ¶ 13.4.

22. *See, e.g.*, UNFCCC, Dec. 1/CP.16, U.N. Doc. FCCC/CP/2010/7/Add.1, ¶ 95, (Mar. 15, 2011), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/605/50/PDF/G1160550.pdf?OpenElement> [hereinafter *Cancún Agreements*] (noting a commitment to provide funding for those countries most vulnerable to climate change, including small island developing states, least developed countries, and Africa, but making no mention of fragile mountainous communities).

23. *Agenda 21*, *supra* note 20, ¶¶ 13.1, 13.4.

24. Klaus Toepfer, United Nations Environment Programme, Information Notes, UNEP and the International Year of the Mountains (Feb. 27, 2002), <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=239&ArticleID=3019&l=en> (last visited Mar. 21, 2012).

25. Martin Beniston, *Climate Change in Mountain Regions: A Review of Possible Impacts*, 59 CLIMATIC CHANGE 5, 6 (2003).

26. *Agenda 21*, *supra* note 20, ¶ 13.2.

providing water, mountains are important sources of energy and biological diversity, including many endangered species.²⁷ Due to the widespread reliance on mountain water and other resources, “[w]hat happens on the highest mountain peak affects life in the lowlands, in freshwaters and even in the seas,”²⁸ and it is this interconnectivity that makes the integrity of mountain climates so important to climate change discussions.²⁹ In fact, the United Nations Environment Program (“UNEP”) recognizes that “[a]s a major ecosystem representing the complex and interrelated ecology of our planet, mountain environments are essential to the survival of the global ecosystem.”³⁰

Beyond their importance to the global ecosystem and human cultural identities, mountains are good subjects for studying climate change impacts because their unique shape, biological diversity, and ecology of mountains make them particularly susceptible to climate change.³¹ Mountains are early indicators of climate change because vegetation, hydrology, and climate vary rapidly with elevation over relatively short horizontal distances, creating high biodiversity and rapid changes in plant and animal life.³²

B. Mountain Ecosystems are Vulnerable to Climate Change

Because mountains are highly susceptible to climate change impacts,³³ mountain ecosystems and their human inhabitants are vulnerable to the effects of global warming like drought, increased amount and intensity of natural disasters, diminished biodiversity, heavy rains, and desertification.³⁴ However, mountainous areas will likely see more drastic impacts because of their extreme altitudes, natural temperature swings, and fragile ecosystems, which make mountains unusually vulnerable to any climate changes.³⁵ Additionally, impacts less

27. *Id.* ¶¶ 13.1, 13.2.

28. UNEP and the International Year of the Mountains, *supra* note 24.

29. *Agenda 21*, *supra* note 20.

30. *Id.* at ¶ 13.1 (emphasis added).

31. Beniston, *supra* note 25.

32. *Id.*

33. *Climate Change, MOUNTAIN PARTNERSHIP*, <http://www.mountainpartnership.org/.issues/climate.html> (last visited Mar. 15, 2012).

34. *See, e.g.*, Gov’t of Viet Nam, Preparing for Disasters in Vietnam’s Mountain Regions, RELIEFWEB (Oct. 12, 2010), <http://www.reliefweb.int/rw/rwb.nsf/db900sid/EGUA-8A6NHX?OpenDocument> (last visited Mar. 21, 2012); *Agenda 21*, *supra* note 20; Beniston, *supra* note 25, at 7–8.

35. Beniston, *supra* note 25.

likely to affect other climate zones could destroy mountainous ecosystems, including landslides,³⁶ species isolation by loss of habitat,³⁷ species extinction by loss of genetic diversity,³⁸ accelerated soil erosion,³⁹ and increased glacier melt.⁴⁰

Scientists, policymakers, and courts have already noted significant environmental degradation in many mountain areas; indeed, UNEP has explicitly warned that mountain systems are rapidly changing.⁴¹ Even the United States Supreme Court has acknowledged negative climate change effects on mountains.⁴²

C. Mountain Communities are Vulnerable to Climate Change

As climate change causes increasing physical impacts on mountains, the people living there suffer from the negative effects on their homes and livelihoods.⁴³ Mountain inhabitants, mainly indigenous peoples, are highly vulnerable to the various impacts of increased rainfall, drought, and natural disasters.⁴⁴ Indigenous communities often rely directly on the land for subsistence. In an already fragile ecosystem, changes are more likely to affect vegetation and agriculture. Thus those changes are more likely to seriously harm indigenous communities.⁴⁵ While “[n]early half of the world’s population is affected in various ways by mountain ecology and the degradation of watershed areas,”⁴⁶ the people who live immediately in those ecosystems and rely directly upon the land affected are the most injured by environmental deterioration because they are “far more severely affected by any restriction on their

36. See *Agenda 21*, *supra* note 20.

37. See *id.*

38. See *id.*

39. See *id.*

40. NICHOLAS STERN, STERN REVIEW: THE ECONOMICS OF CLIMATE CHANGE 56 (2006), available at http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/sternreview_index.htm.

41. *Agenda 21*, *supra* note 20.

42. See *Massachusetts v. EPA*, 549 U.S. 497, 521-22, (2007) (“qualified scientific experts involved in climate change research have reached a strong consensus that global warming threatens . . . severe and irreversible changes to natural ecosystems and a significant reduction in water storage in winter snowpack in mountainous regions with direct and important economic consequences”) (internal quotations omitted).

43. See David Preston et al., *Grazing and Environmental Change on the Tarija Altiplano, Bolivia*, 23 MOUNTAIN RES. & DEV. 141, 147 (2003) (studying the effects of climate change on livestock practices on the Bolivian *Altiplano*).

44. SCHLOSBERG, *supra* note 14, at 84-85.

45. See Cha, *supra* note 5, at 187.

46. *Agenda 21*, *supra* note 20, ¶ 13.13.

ability to access and use natural resources.”⁴⁷

Additionally, in a more global context, the negative impacts of climate change in mountainous areas disproportionately harm developing nations.⁴⁸ For example, in the United Nations Framework Convention on Climate Change (“UNFCCC”), policymakers recognized that “developing countries with fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change.”⁴⁹ For this reason, those indigenous peoples living in developing nations and affected by climate change are also more likely to suffer from, *inter alia*, poverty, hunger, unemployment, and health problems.⁵⁰ Additionally, dying crops, loss of grazing lands, and other climate change impacts exacerbate all of these problems even further.⁵¹

Already challenging circumstances have compounded to make it very difficult for indigenous mountain peoples to continue their traditional ways of life when they suffer from basic problems of survival and additionally must find ways to accommodate the increasing problems of climate change.⁵² For example, in Vietnam, the indigenous people who subsist on agriculture in the mountains have a poverty rate that is three to five times the national average, and at the same time they are most at risk for death or injury by landslides and other disasters.⁵³ Furthermore, people in impoverished regions cannot afford to stop or slow the depletion of natural resources, which leads to further impoverishment as natural resources dwindle.⁵⁴ For mountain communities, poverty is a serious problem, especially for farmers due to the low profitability of agricultural practices.⁵⁵

Directly related to the problem of poverty, hunger plagues indigenous mountain communities, especially in areas where climate change impedes local farmers’ abilities to produce needed sustenance.⁵⁶ In fact, approximately 270 million indigenous mountain peoples in

47. Cha, *supra* note 5, at 187.

48. UNFCCC, United Nations Convention on Climate Change, June 28, 2002, Preamble (1992), *available at* http://unfccc.int/essential_background/convention/background/items/2853.php.

49. *Id.*

50. Beniston, *supra* note 25.

51. *See* Preston et al., *supra* note 43.

52. SCHLOSBERG, *supra* note 14, at 84–85.

53. *See* Mtnforum.org, <http://www.reliefweb.int/rw/rwb.nsf/db900sid/EGUA-8A6NHX?OpenDocument>.

54. Strategy of the Regional Mountain Centre of Central Asia, 31 (2009) [hereinafter RMCAA].

55. *Id.* at 27.

56. Mountain Partnership, *supra* note 33.

developing countries experience hunger or are at risk of experiencing hunger.⁵⁷ Rising population levels all over the world, and especially in developing countries, exacerbate the problems of poverty and hunger as the competition over limited resources becomes fiercer, and the resources diminish under unsustainable practices.⁵⁸ For example, early in 2011 food shortages in Bolivia led to massive protests because Bolivian people could not afford the rising prices of food and high inflation rates.⁵⁹

Besides exacerbating existing struggles with poverty, hunger, and limited resources, other climate change impacts will worsen the suffering of indigenous peoples in developing nations due to the direct consequences of changing weather.⁶⁰ Sudden shifts in weather patterns due to warming could severely affect water availability.⁶¹ This is particularly true in areas with existing water concerns such as tropical regions and mountainous areas that depend on glaciers that are highly vulnerable to melting.⁶² Important infrastructure will be vulnerable as more frequent and violent storms will likely cause serious direct damage, and changing soil conditions in response to drought and permafrost melting will threaten buildings' stability.⁶³ For many isolated mountainous communities, poor infrastructure is already a problem, and any further damage due to climate change will be difficult to reverse.⁶⁴

These problems threatening basic needs will force many people to migrate in order to survive.⁶⁵ In 1995, a conservative estimate approximated that about 25 million people—environmental refugees—had migrated from their homes due to environmental problems along with the associated problems of population pressure and poverty.⁶⁶ There were also 135 million people threatened by severe desertification, and 550 million people suffering from chronic water shortages.⁶⁷ Predictions suggest that 200 million more people will be permanently displaced due

57. *Id.*

58. Beniston, *supra* note 25.

59. *Thousands Protest in Bolivia over Food Prices*, AFP, Feb. 18, 2011, <http://www.google.com/hostednews/afp/article/ALeqM5hXtSC12CZ8YIcoKhqCIBtMO8YrsA>.

60. *See, e.g., Indigenous Peoples Must be Included*, *supra* note 9.

61. STERN REVIEW, *supra* note 40, at 82.

62. Beniston, *supra* note 25, at 11–15.

63. STERN REVIEW, *supra* note 40, at 78–79.

64. RMCAA, *supra* note 54.

65. Robert L. Glicksman, *Climate Change Adaptation: A Collective Action Perspective on Federalism Considerations*, 40 ENVTL. L. 1159, 1190 (2010).

66. Norman Myers, *Environmental Refugees: A Growing Phenomenon of the 21st Century*, 357 PHIL. TRANS. R. SOC. B. BIOL. SCI. 609, 609 (2002).

67. *Id.* at 610.

to climate change by 2050,⁶⁸ likely outnumbering the total number of traditional refugees migrating for reasons other than climate change.⁶⁹ While impacts likely to cause widespread migration like rising sea levels and natural disasters are not as threatening to mountain communities, impacts like desertification and drought will likely be direct causes of migration, especially for the indigenous peoples relying on subsistence farming.⁷⁰

Migration stresses host populations and can negatively affect the culture of migrating populations. Climate change migrants face many dangers; in addition to the migratory journey itself, entire communities will be displaced, and new host countries may suffer from overpopulation and a lack of resources.⁷¹ Assuming environmental refugees and their new host countries could respond to these challenges safely, forced migration from the mountains to urban centers due to climate change is a fundamental injustice to these communities.⁷² The indigenous mountain peoples that must leave their homes have not contributed to global warming in any meaningful way, and yet, because their lands are the most vulnerable to climate change, their cultures will disappear.⁷³

D. Mountain Ecosystems and Human Communities Need a Voice to Protest the Impacts of Climate Change

The international climate regime has recognized the risks of glaciers melting and failing to provide adequate water to the rest of the world, but the climate regime has failed to focus on the more extreme and immediate impacts on the peoples living directly next to the glacier.⁷⁴ To avoid this injustice, indigenous people, like those living in the Bolivian Andes, must find a voice to speak out against becoming the first major wave of victims to climate change. With proper representation in the political and legal realm of their individual countries, indigenous peoples can seek legal remedies for climate change harm, and perhaps they can propel domestic authorities and even international bodies to take real steps to mitigate climate impacts.

68. STERN REVIEW, *supra* note 40.

69. Bonnie Docherty & Tyler Giannini, *Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees*, 33 HARV. ENVTL. L. REV. 349, 349 (2009).

70. *Id.*

71. Myers, *supra* note 66, at 611.

72. See Ethan Goffman, *Environmental Refugees: How Many, How Bad?*, CSA DISCOVERY GUIDES, June 2006, at 12.

73. See *id.*

74. See, e.g., *Cancún Agreements*, *supra* note 22.

III. ENVIRONMENTAL RIGHTS AS FUNDAMENTAL HUMAN RIGHTS

Harm from climate change deprives indigenous people of their environmental rights.⁷⁵ This Note identifies some of the strongest sources articulating rights that may apply to climate change impacts on indigenous lands. This section highlights existing articulations of environmental rights in international agreements and domestic laws, and then it describes the relevant domestic laws that pertain to Bolivia in formulating rights for climate victims.

Unfortunately, the best articulations of environmental rights often exist in agreements, treaties, convention documents, and other types of “soft law,” with the effect that the agreed-upon rights may not be actual rights at all due to their lack of enforceability.⁷⁶ Instead, the rights articulated in these documents are perhaps better understood as the possible foundation for agreements creating stronger rights in the future or suggestions of the kinds of rights that *should* be respected yet employ no real punishments for violations.⁷⁷

Creating “hard law” that will protect environmental rights is one crucial step in the path toward environmental justice;⁷⁸ however, that step cannot effectively take place until there is a change in rhetoric regarding what those rights represent. Therefore, it is in fact better that the environmental rights listed are not binding commitments yet because the reformulation of rhetoric should take place first.

International agreements create legally recognized human rights even though they are most often expressed in nonbinding terms. In general, the narrower the scope of the law—for example, national legislation has a narrower scope than an international treaty—the more binding the law is, but the less widespread the application of the law.⁷⁹ For the purposes of the reformulation of the rhetoric of climate justice, every type of law along the scale is useful and important because it

75. See, e.g., Universal Declaration on Human Rights, *supra* note 16; see also R.S. Pathak, *The Human Rights System as a Conceptual Framework for Environmental Law*, in ENVIRONMENTAL CHANGE AND INTERNATIONAL LAW 205 (Edith Brown Weiss, ed., United Nations University Press 1992).

76. See Alexandre Kiss, *An Introductory Note on a Human Right to Environment*, in ENVIRONMENTAL CHANGE AND INTERNATIONAL LAW 199 (Edith Brown Weiss, ed., United Nations University Press 1992).

77. *Id.*

78. *Id.*

79. See Paul C. Szasz, *International Norm-Making*, in ENVIRONMENTAL CHANGE AND INTERNATIONAL LAW 41–43 (Edith Brown Weiss, ed., United Nations University Press 1992).

supports the legitimacy behind the idea of environmental justice as civil justice. In terms of making “soft law” into “hard law,” this Note suggests that the process should begin from the narrow, domestic, binding level, and then that law should disseminate into the international domain. However, even if the law does not fully realize uniform recognition in the international domain, the change in rhetoric at an international level, along with the “hard law” spread unevenly across domestic domains, could be enough to effect significant change on behalf of climate victims. This Note argues that the change in rhetoric is the first and most important step in this process in order to encourage widespread affirmative action in the face of climate change, regardless of the form of the action or the identity of the actors behind it.

A. Fundamental Human Rights in International Agreements

Some of the strongest articulations of fundamental rights to a healthy environment for indigenous peoples appear in international agreements on human rights and indigenous rights,⁸⁰ additional sources include constitutions recognizing rights, judge made law, and statutory provisions for environmental rights.⁸¹ Many international agreements grant basic human rights, more specific rights of indigenous peoples, and other forms of rights that help frame the relationship between humans and the environment.⁸²

The Universal Declaration on Human Rights has multiple articles that provide for humans’ rights to life, equality, and healthy standards of living, as well as legal remedies for violations of fundamental rights.⁸³ Article 28 provides that “[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”⁸⁴ At least in theory, the basic rights to a healthy life and equal treatment under the law, combined with the right

80. See Janelle P. Eurick, *The Constitutional Right to a Healthy Environment: Enforcing Environmental Protection Through State and Federal Constitutions*, 11 INT’L LEGAL PERSP. 185, 186 (2001) [hereinafter *The Constitutional Right*].

81. See JOHN E. BONINE, *STANDING TO SUE: THE FIRST STEP IN ACCESS TO JUSTICE* (1999), available at <http://familylaw.uoregon.edu/assets/facultydocs/jbonine/boninelecture.pdf> (summarizing the multiple ways that domestic courts have recognized citizen standing to sue on behalf of environmental interests).

82. Eurick, *supra* note 79.

83. Universal Declaration on Human Rights, *supra* note 16.

84. *Id.* at art. 28.

to “a social and international order” aimed at enforcing those rights,⁸⁵ create a strong legal framework for addressing climate change harms that threaten indigenous cultural practices. In the Bolivian context, President Evo Morales has told the United Nations that he believes that access to water should be a human right and that any policies allowing water to be privatized should be illegal.⁸⁶

Other international agreements more explicitly create rights to a healthful environment.⁸⁷ The Stockholm Declaration of 1972, for example, states in its Principle 1 that “[m]an has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being”⁸⁸ In parallel fashion, the Rio Declaration of 1992 affirms Stockholm and recognizes in its Principle 1 that “[h]uman beings . . . are entitled to a healthy and productive life in harmony with nature.”⁸⁹ Indigenous people living already “in harmony with nature”⁹⁰ and “in an environment of a quality that permits a life of dignity and well-being”⁹¹ should be able to make strong arguments that they should not lose this relationship with their lands because of the polluting actions of other, more politically powerful, entities. Mountainous communities that lose their ability to graze or grow their crops because of climate change should be able to use these international principles of law to demonstrate that they have a right to compensation or some other remedy for their loss of a healthy environment.

The United Nations Declaration on the Rights of Indigenous Peoples (“Declaration”) is perhaps the strongest iteration of specific rights to indigenous peoples. Because of indigenous peoples’ close relationship with the land where they have traditionally lived, many of the Declaration’s provisions protect that relationship explicitly.⁹² Several of the Declaration’s articles address indigenous peoples’ rights to maintain their culture, practice, and beliefs, including the ways in which these values pertain to their lands.⁹³ Article 25 provides that indigenous peoples should be able to protect spiritual relationships with their lands

85. *Id.*

86. U.N. Econ. & Soc. Council, Bolivia’s President Urges Development of Economic System Based on ‘How to Live Well’ (April 21, 2008) [hereinafter *Bolivia’s President Urges Development*].

87. Eurick, *supra* note 79.

88. *Stockholm Declaration*, *supra* note 16.

89. *Rio Declaration*, *supra* note 16.

90. *Id.*

91. *Stockholm Declaration*, *supra* note 16.

92. See U.N. Declaration on the Rights of Indigenous Peoples, *supra* note 16.

93. *Id.*

and resources and to continue these important traditions for their future generations.⁹⁴ The clause addressing future generations in this article suggests an interesting argument that indigenous peoples might make for keeping their lands environmentally healthy in order for future generations to enjoy the same spiritual relationship with the same lands as their predecessors.

Article 26 establishes rights over the lands and resources indigenous peoples have traditionally occupied, along with rights to use, control, and develop these lands.⁹⁵ It additionally requires states to legally recognize and protect these lands on behalf of their indigenous inhabitants and in accord with the peoples' "customs, traditions, and land tenure systems."⁹⁶

As far as applying these rights to state and private activities affecting lands, Article 5 creates rights for indigenous peoples to maintain their own institutions and to participate fully in the "political, economic, social and cultural life of the State."⁹⁷ This provision supports the inclusion of indigenous peoples in political and social endeavors to combat climate change. Alternatively, this right may give states a duty to provide a meaningful forum for indigenous peoples to raise problems, ideas, and plans for the healthy management of their land. Article 8 emphasizes this need for states to protect indigenous peoples' rights to control their land, their cultural values, and their ethnic identities.⁹⁸ It also requires that states provide support for preventing and remedying any actions depriving indigenous peoples of their cultural values, ethnic identities, integrity as distinct peoples, or any actions dispossessing them of their lands.⁹⁹

The Declaration is one of the strongest articulations of rights for indigenous peoples dealing with climate change because it speaks directly to issues facing indigenous peoples and their customs and traditions, while recognizing some of their most common threats like dispossession of lands and lack of state support.¹⁰⁰ Bolivia ratified the Declaration¹⁰¹ and then became the first nation to adopt it in its entirety

94. *Id.*

95. *Id.* at art. 26.

96. *Id.*

97. *Id.* at art. 5.

98. *Id.* at art. 8.

99. *Id.*

100. *Id.*

101. UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES, MISSION TO BOLIVIA; REPORT AND RECOMMENDATIONS 9 tbl.1, *available at* <http://tebtebba.org/index.php/content/151-unpfi-mission-to-bolivia-report-and-recommendations>.

as national legislation by passing National Law 3760.¹⁰² Enforcing the provisions in practice and attempting to remedy marginalizing actions on the ground present much more difficult questions that lead to the discussion of a lack of environmental justice, addressed in the next Section of this paper. Although UN Declarations are not legally binding,¹⁰³ the Declaration is a powerful expression of explicit and widely agreed-upon rights belonging to indigenous peoples. In Bolivia, the Declaration even served as an “international boost” for President Evo Morales’s vision for Bolivia becoming a “plurinational” state “with territorial and administrative autonomy for indigenous peoples.”¹⁰⁴

B. Protection of Fundamental Human Rights in Domestic Law

In the domestic environmental realm and without resorting to principles embodied in international agreements, governments and courts have found multiple methods of recognizing rights corresponding to the environment.¹⁰⁵ Many countries, including India, have explicitly recognized the right to a healthful environment via constitutional provisions granting rights to the people or establishing government duties to protect the environment.¹⁰⁶ Pakistan, Bangladesh, Columbia, Tanzania, and the Philippines do not have precise environmental protections in their constitutions but have been willing to recognize a right to a healthy environment as part of the basic right to life due process provisions of their respective constitutions because the environment is inextricably linked to the right to life.¹⁰⁷ Furthermore, courts in some countries have been lenient in accepting citizen suits on behalf of environmental harms, whether they were brought under specific environmental statutes or argued to be essential as a matter of basic constitutional rights.¹⁰⁸

102. Rick Kearns, *U.N. Declaration Becomes Law of the Land in Bolivia*, BOLIVIA RISING (Dec. 10, 2007), <http://boliviarising.blogspot.com/2007/12/un-declaration-becomes-law-of-land-in.html>.

103. UN Permanent Forum on Indigenous Issues, *United Nations Declaration on the Rights of Indigenous Peoples; Adopted by the General Assembly 13 September 2007*, A Historical Overview, <http://www.un.org/esa/socdev/unpfi/en/declaration.html> (last visited Jan. 9, 2012).

104. Franz Chávez, *Morales Gets Boost from UN Declaration on Indigenous Rights*, IPS NEWS, Sept. 19, 2007, <http://ipsnews.net/news.asp?idnews=39320> [hereinafter Chávez, *Morales Gets Boost*].

105. Eurick, *supra* note 79.

106. *Id.* at 189–90.

107. *Id.* at 189–200.

108. See BONINE, *supra* note 80.

The new Bolivian National Constitution, approved in 2009, expressly recognizes many rights of Bolivian citizens, including equal rights for men and women, rights to basic facilities, and various rights to indigenous peoples.¹⁰⁹ The constitution also creates a right to autonomous, indigenous self-government and grants exclusive property rights to indigenous communities over forest resources on their lands.¹¹⁰ Furthermore, the constitution adds a new indigenous judicial system that is equal in stature to the ordinary judiciary and creates a Plurinational Constitutional Court to uphold the many principles embodied in the new document.¹¹¹ Bolivian citizens now have a strong source of rights granting individuals' claims that could be brought to the new Plurinational Constitutional Court, and doing so would in fact be in accord with the new "democratic, intercultural, and decentralized" spirit of the nation.¹¹² Beyond the common avenues to environmental justice like citizen suits and constitutional protections, Bolivia also has an explicit environmental statute on the books.¹¹³ The environmental statute, *Ley 1333*, forbids anyone from taking actions that damage, deteriorate, or destroy the environment.¹¹⁴ *Ley 1333* is the most direct and immediately applicable method by which citizens can seek remedies for violations of environmental rights.

IV. CLIMATE CHANGE AS AN ENVIRONMENTAL JUSTICE PROBLEM

This section frames human rights violations due to climate harm as examples of the lack of environmental justice because poor and marginalized communities are forced to bear a disproportionate environmental burden.¹¹⁵ It then addresses the challenge of creating accountability for harms arising out of the collective and anonymous nature of the climate change problem without a comprehensive international framework with the capacity to hold entities liable for specific harms. The solution, as presented in the next section, is that environmental justice must be re-categorized as a civil rights issue. Citizens must demand domestic avenues to justice in the judicial system,

109. MAURICIO IPIÑA NAGEL, *THE BOLIVIAN LEGAL SYSTEM AND LEGAL RESEARCH* (2009), available at <http://www.nyulawglobal.org/globalex/Bolivia.htm>.

110. *Id.*

111. *Id.*

112. *Id.* at 2.

113. *Ley 1333*, *supra* note 18.

114. *Id.*

115. Cha, *supra* note 5.

and judiciaries must be willing to recognize rights to a healthy environment and remedies in the interest of preserving indigenous peoples' way of life. International lawyers and activists must demand a change in rhetoric that will include environmental justice as civil rights in international negotiations, treaties, and other agreements.

A. Defining Environmental Justice

“Environmental justice” is a term widely used to highlight the disproportionate environmental burdens placed on “poor and marginalized communities” and to demand remedies to the unfair distribution of harm.¹¹⁶ Different advocacy groups tend to base their definitions on the types of remedies that they seek.¹¹⁷ In his book on defining environmental justice, David Schlosberg identifies four distinct strains of environmental justice arguments represented by various advocacy groups and their causes.¹¹⁸

Groups concerned with the unequal distribution of wealth and resources define environmental justice in terms of equity in distribution. This definition is perhaps the most familiar characterization of environmental justice to date.¹¹⁹ Environmental justice as an equity issue focuses on the harms caused by rural communities' challenges in maintaining property rights and access to natural resources.¹²⁰ They call for local ownership and control over natural resources, arguing that indigenous peoples' local knowledge will help to preserve and sustain the biodiversity of the region.¹²¹ These groups protest outsider action that threatens local control over natural resources, such as government policies that encourage trade in resources for capital, because they inhibit local communities' ability to exercise control over their traditional lands.¹²² Arguments surrounding unfair distribution of resources focus on the injustice inherent in these actions and policies, especially because local indigenous communities rely on those resources to survive.¹²³

A second type of environmental advocacy group defines environmental justice as the recognition of “diverse cultures, identities, economies, and ways of knowing” presented by “the relationship between social, cultural, and ecological misrecognition and community

116. *Id.* at 186; SCHLOSBERG, *supra* note 14.

117. SCHLOSBERG, *supra* note 14, at 4–5.

118. *Id.* at 5.

119. *Id.* at 82.

120. Cha, *supra* note 5, at 186–87.

121. *Id.*

122. *Id.*

123. *Id.* at 187.

devastation, the lack of democratic participation in the construction and ongoing processes of governing institutions, and the debilitation of many individual and community capacities necessary for healthy functioning.”¹²⁴ Two important demands include: (1) recognition that indigenous communities live in areas where the majority population does not acknowledge them; and (2) recognition that indigenous cultures and traditions are just as valid as other cultures and traditions.¹²⁵

A third type of advocacy group defines environmental justice as providing indigenous communities with access to procedural justice or the ability to participate in legal and other institution building processes.¹²⁶ This group frames the lack of environmental justice as forcing marginalized communities to live with a disproportionate share of environmental degradation because they do not have access to policy making processes, leaving them with no form of redress for environmental harms.¹²⁷

Finally, the fourth type of advocacy group argues that environmental justice must address reduced capabilities and functioning of local communities due to environmental harms.¹²⁸ In this conception, environmental justice is degraded “as a process that takes away the ability of individuals and their communities to fully function, through poor health, destruction of economic livelihoods, and general and widespread environmental threats.”¹²⁹ Indigenous peoples, being more vulnerable to change, less able to adapt, and more reliant on their lands and resources, experience severely reduced capabilities resulting from any threats to their environments.¹³⁰ This category of environmental justice is fairly broad, addressing any change in environment that reduces the functioning of the community, including “the impact of culture, race, gender, age, class, and power relations on issues ranging from health-related agricultural issues to inner-city toxic contamination of children.”¹³¹ One major problem that creates a loss of functioning is forced migration from traditional lands into urban centers in order to survive, which denies indigenous peoples the opportunity to use their unique capabilities that centered exclusively on a rural lifestyle.¹³² Beyond immediate suffering due to loss of capabilities, forced migration

124. SCHLOSBERG, *supra* note 14, at 86.

125. *Id.* at 87.

126. *Id.* at 89.

127. Cha, *supra* note 5, at 188.

128. SCHLOSBERG, *supra* note 14, at 91.

129. *Id.* at 80.

130. *Id.* at 91.

131. Cha, *supra* note 5, at 189.

132. SCHLOSBERG, *supra* note 14, at 92.

is a major challenge presented by climate change because it ensures loss of culture, adding the problem of “cultural” survival to that of outright survival.¹³³

*B. Accountability when Climate Change Causes the
Degradation of Environmental Justice*

The climate change problem presents a unique challenge for framing environmental justice.¹³⁴ The nature of climate change makes definition, redress, accountability, and enforcement very difficult.¹³⁵ Because the harm arises from a collective contribution of greenhouse gases into the atmosphere, there are numerous distributional challenges that arise in any effort to provide redress or assign responsibility to specific actors generally.¹³⁶ Instead, the carbon stock in the atmosphere has built up over the span of life on Earth, and the over-accumulation of carbon due to anthropogenic emissions has accrued since the industrial age.¹³⁷ As the carbon concentration in the atmosphere is now reaching unprecedented high levels, the impacts of the warming themselves cannot be attributed to specific entities, and this is a major challenge to climate justice.¹³⁸

The fact that carbon lingers in the atmosphere for many years creates a temporal anonymity in emissions, and the fact that once carbon is emitted, it joins the common stock in the atmosphere without geographical distinction creates a spatial anonymity in emissions.¹³⁹ Temporal and spatial anonymity make it difficult to determine which emissions are responsible for individual harms on a technical level.¹⁴⁰ Instead, policymakers must attempt to place legal accountability on parties based on their general contributions to the problem. Accountability standards may be based on a party's percentage of overall emissions, usage of best practices, and compliance with voluntary

133. *Id.* at 93.

134. *See generally* INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, FOURTH ASSESSMENT REPORT, WORKING GROUP 3: MITIGATION OF CLIMATE CHANGE (2007) [hereinafter IPCC MITIGATION] (discussing various mitigation strategies and the accompanying risks, uncertainties, and challenges that arise due to the complicated nature of climate change).

135. *Id.* at 119.

136. *See id.* at 127.

137. IPCC POLICYMAKERS, *supra* note 2, at 2.

138. *See generally* IPCC MITIGATION, *supra* note 134; *see also* IPCC POLICYMAKERS, *supra* note 2, at 2.

139. *See* IPCC MITIGATION, *supra* note 134.

140. *See id.*

commitments to reductions.¹⁴¹ Without specific accountability, any attempt to pursue justice for climate change harm becomes complicated and highly controversial. This is *the* challenge in creating environmental justice for those affected most by climate change.

V. RE-CHARACTERIZING THE CLIMATE CHANGE PROBLEM IN ORDER TO INCREASE THE AVAILABILITY OF SOLUTIONS

The climate change problem must be recast as a civil rights problem in order to expand the availability of solutions, and the definition of environmental justice must be broadened in order to include all of the factors that contribute to a lack of climate justice. Indigenous groups and those living in poverty have historically been excluded from the legal system to a much greater extent than groups that are better represented among decision makers. Reframing the problem in broader terms and in the rhetoric of civil rights will help propel the issue to the level of political attention and popular recognition necessary to encourage united efforts toward solutions.

A. Reframing the Definition of Environmental Justice to Encompass All Factors Contributing to a Lack of Climate Justice

Due to the anonymous nature of climate change contributors, advocates for environmental justice need to reframe the definition of environmental justice to encompass all of the contributing factors to the problem. This is in contrast to focusing on only one category of redress, like broader participation or better distribution of resources.¹⁴² The definition of environmental justice must harness all four focuses described above in this section: distributional inequities, recognition, participation, and loss of capabilities.¹⁴³ Advocates must embrace a broader sense of responsibility that attaches to all parties involved in emission activities. This implies greater responsibility for bigger

141. See generally MEINHARD DOELLE, FROM HOT AIR TO ACTION? CLIMATE CHANGE, COMPLIANCE AND THE FUTURE OF INTERNATIONAL ENVIRONMENTAL LAW (Thomson Carswell 2005).

142. See JOSEPH WAYNE SMITH, ET AL., CLIMATE CHANGE AS A CRISIS IN WORLD CIVILIZATION; WHY WE MUST TOTALLY TRANSFORM HOW WE LIVE 52 (The Edwin Mellen Press 2007).

143. SCHLOSBERG, *supra* note 14, at 5.

emitters, for unsustainable practices, and for any activities that can be characterized as unhealthy for the environment. The hope is that a broad definition of environmental justice can capture harmful behaviors that may have avoided accountability previously due to the anonymity problem in climate change.

Eventually, this new definition of who is responsible for environmental harms may create accountability at an individual level. Because the science does not point to specific bad actors from which injured parties may seek redress, the justice system must provide other redress for those parties separately. The justice movement must seek redress from any bad actors that it can characterize as contributors to excess carbon accumulation. The causes of climate change are fragmented temporally and spatially from the eventual harm caused,¹⁴⁴ and in the same way, justice for the contributors must be fragmented and pursued separately from the remedies for the injured, with the punishment and the remedy existing entirely apart from the other. The legal process by which the punishment and the remedy are realized should be a separate cause of action for each, likely taking place at different times and in different places. Once all activities that contribute to the problem become characterized as part of the problem, then victims can pursue all avenues accompanying the four types of environmental justice, expanding the likelihood that indigenous peoples can achieve real justice in the process. Because climate change is a global problem, environmental justice must be framed as a global movement.

B. The Importance of Accountability for Harms to Underrepresented Groups

Another reason that the definition of environmental justice must expand is that avenues to accountability must be broad in order to reach the people who are excluded from the system due to the fact that they are poor, indigenous, or both.¹⁴⁵ While accountability is a special problem for addressing climate change because there are rarely situation-specific bad actors, accountability is a fundamental problem in the broader environmental justice context. A major problem is that socioeconomic and environmental harms are poorly articulated in the law, making them

144. See IPCC MITIGATION, *supra* note 133, at 127.

145. See U.N. Econ. and Soc. Council, Rights Violations of Indigenous Peoples 'Deep, Systemic and Widespread' (April 22, 2010), <http://www.un.org/News/Press/docs/2010/hr5016.doc.htm> (statement of James Anaya, Special Rapporteur, on indigenous peoples being excluded from state decision making).

difficult to remedy.¹⁴⁶

Environmental war crimes (intentional damage to the natural environment as a tactic of war), for example, are exceptions to that norm because their definitions have been further developed in conventional and customary international criminal law.¹⁴⁷ Yet, it is still unclear whether or not it would improve accountability to increase individual criminal trials and civil claims.¹⁴⁸ Mark Drumbl argues that accountability for environmental war crimes may become just as robust with investments in alternative types of accountability, like “truth commissions, reparations, constitutional reform, memorialization, public inquiries, affirmative action, and instantiating pedagogy.”¹⁴⁹ Drumbl’s conclusion that environmental war crime accountability may not be improved by traditional means reinforces the idea that environmental justice is an incoherent and disjointed problem that requires creative responses along various avenues.

The reason that improving or ramping up the adjudicative process might not necessarily achieve further accountability for environmental war crimes is—according to the theory behind this paper—that there must first be a supportive and inclusive conception of environmental justice at play in efforts to seek redress for environmental harms, even for specific crimes that can be traced to a bad actor. Environmental war crimes make up one category of environmental justice that is particularly well-defined and legally founded,¹⁵⁰ yet the judicial system cannot achieve accountability for these crimes to the degree that it has for core civil and political rights violations.¹⁵¹ Environmental justice must be recast as civil justice so that environmental crimes, like war crimes, can achieve adequate force in the law.

C. Towards Recasting Environmental Justice as Civil Rights

The problem is one of definition, so there are a number of ways in which activists and peoples’ movements must endeavor to redefine environmental justice. First, the term “environmental justice” must broaden to include each of the iterations that have been used so far in environmental rhetoric (distributional inequity, recognition, participation,

146. DRUMBL, *supra* note 13, at 5.

147. *Id.* at 5, 7.

148. *Id.*

149. *Id.* at 21.

150. *Id.* at 5.

151. *Id.* at 20.

and reduced capabilities)¹⁵²—along with any other strands of environmental justice—in a comprehensive, collective form embodying the whole problem and all of the parties affected. Second, the remedies must similarly broaden their applicability and demands for accountability so that the new norm for environmental justice will be expanded options available to injured parties, allowing for creative solutions and more solutions overall. To this effect, activists and advocates must pursue all methods of expanding accountability in environmental justice in the international context, such as negotiating treaties for international and environmental rights, expanding customary international law, and arguing rights violations under treaties and other sources. In the domestic context, activists and advocates must pursue expanded avenues to environmental justice via lobbying efforts, increased political pressure, intensified media exposure for the issues, increased civil claims on behalf of domestically recognized rights, and broader standing for environmental harms.

Finally, at both the international and domestic level, the environmental justice groups need to re-characterize environmental harms as civil rights violations. This step of harnessing the civil rights rhetoric will accomplish points one and two above: broadening the definition of environmental harms and the remedies available to redress such harms. The civil rights movement will help to reframe the issues from isolated struggles with changing climatic conditions to violations of core civil rights belonging to vulnerable and marginalized peoples. The movement should seek to unite human rights, environmentalism, and social justice¹⁵³ under the umbrella of civil rights. The civil rights movement has successfully redefined human rights justice before, and in doing so, it achieved radical changes in popular thought and created legal remedies for equal rights violations in situations where those rights were previously inconceivable.¹⁵⁴ Because the environment has tended to fall to the periphery of social issues, it has failed to be the vehicle for indigenous rights in the face of climate change.¹⁵⁵

However, human rights and civil rights are more readily recognized in domestic courts and international discussions. If applied to the environmental justice problem, human and civil rights could push climate change harm into a new consciousness that would provide for better solutions, more vibrant discussion, and action on the ground to

152. SCHLOSBERG, *supra* note 14, at 5.

153. *Id.*

154. See, e.g., Jacqueline Jones Royster & Molly Cochran, *Human Rights and Civil Rights: The Advocacy and Activism of African-American Women Writers*, 41 RHETORIC SOC'Y Q. 213, 223–228 (2011).

155. See DRUMBL, *supra* note 13.

prevent and adapt to climate change. Furthermore, environmental rights violations *are* civil rights violations because they discriminate against poor, marginalized indigenous groups, and there is no measure of equality when it comes to environmental rights.¹⁵⁶ Therefore, it is not only useful to capture environmental justice under civil rights rhetoric, but it is also a more accurate characterization. In fact, considering environmental harms separately from other civil and political rights violations is an arbitrary distinction, and it creates an incomplete conception of justice.¹⁵⁷

Treating environmental issues in the same context as civil rights is a means through which the actual concerns of local communities, such as indigenous groups, can be heard in a manner that may offer real solutions.¹⁵⁸ Small communities in the environmental justice movement in the United States have used this approach, achieving the positive result of providing politically marginalized individuals with additional tools in the fight against the “disproportionate environmental burden.”¹⁵⁹ The reason that civil rights is the method by which environmental justice should seek to broaden its applicability and enforceability is that the civil rights tradition in the United States was one of the most compelling movements for the equality of races.¹⁶⁰ Because the United States has a rich history of civil rights, “[g]rassroots environmental protests have forced American society to recognize the conjunction of race, gender, indigenous culture, and class in contesting the landscapes and worksapes of environmental inequality.”¹⁶¹ Environmental movements in the United States have been able to successfully reframe environmental interests in terms of civil justice, and therefore, “political economy must focus on this conjunction in order to explain the unequal pattern of environmental harm and risk,”¹⁶² and “the critique of ‘environmental justice’ has emerged as a potent challenge for political economy.”¹⁶³

Such a “strong, preexisting, race-based” tradition has not manifested in many other places as it did in the civil rights movement in the United

156. *Id.* at 5.

157. See SCHLOSBERG, *supra* note 14.

158. Cha, *supra* note 5.

159. *Id.* (citing Robert D. Bullard, *Anatomy of Environmental Racism and the Environmental Justice Movement*, in CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS 15, 22 (Robert D. Bullard ed., 1993)).

160. See, e.g., Royster & Cochran, *supra* note 154.

161. John Byrne et al., *A Brief on Environmental Justice*, in 8 ENVIRONMENTAL JUSTICE 3, 7 (John Byrne et al., eds., Transaction Publishers 2002).

162. *Id.*

163. *Id.*

States, and for that reason environmental justice has largely failed to capture a sufficiently broad, powerful audience in order to implement real avenues to justice for indigenous peoples.¹⁶⁴ Although some indigenous groups have occasionally used the language and methods of the civil rights movement, they have not been able to achieve these goals because the success of the environmental justice movement requires more association with the civil rights movement than merely using some of its tools. Instead, environmental justice must become nested under civil rights to the point that people begin to feel strongly that having a healthy environment is an individual's civil right.¹⁶⁵ The "rights" discussed in Section III of this Note must be removed from abstract agreement on a theoretical level and transformed into practical demands in the name of civil justice.

The challenge for international environmental groups is to enact this transition via the rhetoric because "[t]he thing the civil rights movement had that the environmental community . . . does not enjoy right now is a unified sense of dissatisfaction, outrage, indignation . . . with the current status quo."¹⁶⁶ As opposed to wasting time, energy, and expense in creating an original voice that embodies the right tenor of "dissatisfaction, outrage, [and] indignation,"¹⁶⁷ environmental justice groups should simply recognize the problem as the next major civil rights problem for the world. It is not necessary to distinguish rights regarding the environment as separate from human rights, indigenous rights, or basic due process rights, because climate change will almost surely reach the level of devastation for communities around the world that will implicate each of those categories of civil rights. Characterizing the climate justice problem as the next civil rights problem is one possible way to make an impact on law and policy makers, using the civil rights movement's historically recognized strength, equality implications, and emphasis on the *justice* part of the problem.¹⁶⁸

Re-characterizing environmental justice as a civil rights problem is feasible. The process requires a broadening of the scope of environmental justice as discussed previously, and subsequent introduction of a new all-encompassing concept of environmental justice into the domain of civil rights. The groundwork for both of these refocusing efforts has already been laid by activists from all sides of the

164. SCHLOSBERG, *supra* note 14, at 80.

165. *Id.*

166. *Environmental Protection in the Developing World: A Look at the Responsibility of State and Non-State Actors*, 15 FORDHAM ENVTL. L. REV. 403, 419–20 (2004) (Statement of Samuel LaBudde) [hereinafter *Environmental Protection*].

167. *Id.*

168. DRUMBL, *supra* note 13, at 19–20.

problem.¹⁶⁹ The existing environmental justice rhetoric suggests that environmental rights are civil rights, indicating that this reframing has support in the field and is already a logical connection for many movement groups and scholars.¹⁷⁰ For example, in her article, “Environmental Justice in Rural South Asia,” J. Mijin Cha explains that environmental justice requires that “clean air and water . . . and nontoxic living conditions must be viewed as basic civil rights, not just environmental concerns, which are no less important than freedom of speech and the freedom to vote.”¹⁷¹ The Indigenous Environmental Network provides the indigenous perspective, characterizing the degradation of environmental justice as a “new form of racial discrimination against Indigenous Peoples,” and arguing that the “lack of recognition of, and religious intolerance toward, traditional indigenous beliefs and practices has led to the denigration, prohibition, and persecution of [i]ndigenous spiritual beliefs and ceremony.”¹⁷² The only way to remedy this problem is through the vehicle of civil rights, a movement that has already been created, identified with justice for marginalized groups, and proven to create results in domestic courts and common discourse.¹⁷³ These are the precise goals of the environmental justice movement, and civil rights will help bridge the gap in the rhetoric in order to bring accountability to climate change harm.

VI. THE BOLIVIAN ANDES EXAMPLE

Bolivia is the ideal ground for recasting environmental and climate justice as a civil rights problem and transforming that new concept of justice into recognizable rights for indigenous peoples. First, the Bolivian people have much to lose at the hands of climate change due to extreme poverty, vulnerable ecosystems, and little capacity to adapt.¹⁷⁴ Second, the Bolivian culture, political leadership, and indigenous tradition provide for a unique atmosphere that supports indigenous rights in the

169. See SCHLOSBERG, *supra* note 14 (arguing for broadening the environmental justice definition); Cha, *supra* note 5 (characterizing environmental justice as a civil rights issue).

170. See Cha, *supra* note 5, at 189.

171. *Id.* (internal quotations omitted).

172. SCHLOSBERG, *supra* note 14, at 88 (internal quotations omitted).

173. See, e.g., Royster & Cochran, *supra* note 154, at 217 (discussing the challenge of bringing other human rights debates into the vibrant and recognized arena of civil rights discourse).

174. See Bill Weinberg, *Bolivia's New Water Wars: Climate Change and Indigenous Struggle*, 43 NACLA REPORT ON THE AMERICAS 19, 20 (2010) (discussing the climate change impacts facing Bolivia).

domestic and international realm.¹⁷⁵ Finally, it is in Bolivia's self-interest to provide domestic justice on the climate change issue in order to legitimize its vocal opposition to the failure to agree to enforceable environmental rights in international agreements like the Cancún Agreements.¹⁷⁶ By making good on its international position at the domestic level, it may also achieve greater international political legitimacy in general.

A. Bolivians Have Much to Lose at the Hands of Climate Change

Bolivia is the poorest country in South America.¹⁷⁷ The 9.6 million people living there are spread across the highly variable geography of the country "from the Andes mountains, highland valleys and *Altiplano* in the west to the arid Chaco and tropical lowlands of the Amazon jungle in the east."¹⁷⁸ The most destitute citizens are the sixty percent of the population who identify as indigenous, mostly Quechua and Aymara Indians, many of them living in the mountainous highlands,¹⁷⁹ along with other smaller groups like the Chiquitano and Guaraní,¹⁸⁰ many of them living in the jungle areas.¹⁸¹ A study of some of the predominantly indigenous Bolivian towns and communities revealed that ninety-six percent of the people are living in extreme poverty, forty-three percent are suffering from malnutrition, and the infant mortality rate is 129 per every 1,000 births.¹⁸²

The majority of Bolivians live on the *Altiplano*, the high plateau between two chains of Andes Mountains, sitting at about 12,000 feet, making it one of the highest inhabited regions in the world.¹⁸³ Many of

175. See *Bolivia's President Urges Development*, *supra* note 86.

176. See Pablo Solon, *Why Bolivia Stood Alone in Opposing the Cancún Climate Agreement*, THE GUARDIAN, Dec. 21, 2011, available at <http://www.guardian.co.uk/environment/cif-green/2010/dec/21/bolivia-oppose-cancun-climate-agreement>.

177. Franz Chávez, *Not Another 500 Years of Marginalisation, Say Indigenous Leaders*, INTER PRESS SERVICE, June 13, 2007, available at <http://ipsnews.net/news.asp?idnews=38154> [hereinafter Chávez, *Not Another 500 Years*].

178. *Id.*

179. *Id.*

180. U.S. Dep't of State, *Background Note: Bolivia*, (May 13, 2010), <http://www.state.gov/r/pa/ei/bgn/35751.htm>.

181. Chávez, *Not Another 500 Years*, *supra* note 177.

182. *Id.*

183. Tim Eigo, *Overview*, COUNTRIES AND THEIR CULTURES: BOLIVIAN AMERICANS, <http://www.everyculture.com/multi/A-Br/Bolivian-Americans.html> (last visited Mar. 22, 2012).

the two-thirds of Bolivians living in poverty are subsistence farmers on the *Altiplano*,¹⁸⁴ making them heavily reliant on the climate and land rights.¹⁸⁵ In fact, the Andean highlands and *Altiplano* are among the few areas in the world where people practice subsistence farming at such a high altitude, and this practice creates numerous challenges for the poor indigenous communities relying on variable climate conditions in the cold, windy Andes Mountains.¹⁸⁶ Studies have shown that deteriorating conditions for subsistence farming and livestock grazing are not due to livestock practices like over-grazing, but instead are due to changes in climate like sporadic rainfall and drought.¹⁸⁷ Due to the already fragile nature of the *Altiplano* climate for farming and raising livestock, many indigenous families must send a member of the family to work in lowland cities in Bolivia or Argentina to supplement their meager income.¹⁸⁸ If the climate worsens any further with reduced rainfall and prolonged drought, these indigenous communities that already supplement their traditional livelihoods with work in bigger cities¹⁸⁹ will have to permanently migrate to the lowlands.¹⁹⁰ The vulnerability of the majority of Bolivia's indigenous population, especially those living in extreme poverty and subsisting on farming on the *Altiplano*, provides a strong popular will to compel change on behalf of the state, and the Bolivian judiciary should be willing to recognize that need.¹⁹¹

Another motivating factor in the lives of Bolivians is the exorbitantly high price of food.¹⁹² For example, in 2007, food prices rose much faster than the inflation rate for many countries in South America, and they rose the fastest in Bolivia, Brazil, and Chile.¹⁹³ Food prices

184. U.S. Dep't of State, *Background Note*, *supra* note 180.

185. See Valdivia et al., *Adapting to Climate Change in Andean Ecosystems: Landscapes, Capitals, and Perceptions Shaping Rural Livelihood Strategies and Linking Knowledge Systems*, 100 ANNALS ASS'N AM. GEOGRAPHERS 818, 820 (2010).

186. U.N. EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION, SUSTAINABLE MANAGEMENT OF MARGINAL DRYLANDS 23, *available at* <http://www.unesco.org/science/doc/mab/SUMAMADProjectDocumentPhase2.pdf> [hereinafter UNESCO, SUSTAINABLE MANAGEMENT].

187. See R. A. Washington-Allen et al., *Change Detection of the Effect of Severe Drought on Subsistence Agropastoral Communities on the Bolivian Altiplano*, 19: 7 INT'L J. REMOTE SENSING 1319, 1319 (1998).

188. David Preston et al., *supra* note 43, at 146.

189. *Id.* at 146.

190. UNESCO, SUSTAINABLE MANAGEMENT, *supra* note 186.

191. See Bryan R. Roberts & Alejandro Portes, *Coping With the Free Market City: Collective Action in Six Latin American Cities at the End of the Twentieth Century*, 41 LATIN AM. RES. REV. 57 (2006), on the idea that people react to "constraints, crises, and opportunities" by popular collective demand-making.

192. *See id.*

193. The World Bank, Latin America & The Caribbean, *What Are the Facts About*

were so high in 2008 that President Morales and the farmers backed off their opposition to foreign limits on growing coca, and the farmers agreed to switch some of their crops over to rice in return for loans backing their switch.¹⁹⁴ Part of the incentives to switch may have been that the price of rice in Bolivia had tripled over the course of that year.¹⁹⁵ Unfortunately, food prices have only gotten worse since 2008, “following a global trend that is worrying the UN Food and Agriculture Organization.”¹⁹⁶ In February 2011, thousands of Bolivians protested all over the country over rising food prices and food shortages, causing major cities and important sectors to shut down.¹⁹⁷ These protests grew so violent—with explosions set off in Oruro during a visit by President Morales—that Morales had to flee the public event.¹⁹⁸ The Bolivian population is suffering from hunger, and their protests demonstrate that they have the popular will and motivation to demand change.¹⁹⁹ Extreme poverty, hunger, vulnerability to climate change, and increased suffering due to rising food prices put the Bolivian population in the position of fighting for survival,²⁰⁰ and these abject conditions mean that the country is ripe for popular action to take up the demands for climate justice.

If there was a time to implement on-the-ground justice in Bolivia, it is now. The people have basic human rights,²⁰¹ constitutional rights,²⁰² and national legislation²⁰³ to back up their demands, and because they are fighting for basic needs, action on climate change cannot wait. The majority of Bolivians have been suffering in extreme poverty for decades, and so they should not accept empty promises from their government to add “rights” for the indigenous,²⁰⁴ just as their government should not accept overly simple economic solutions to the

Rising Food Prices and Their Effect on the Region?, <http://go.worldbank.org/CJYWKZPMX0> (last visited Mar. 22, 2012).

194. *Rise in Food Prices Has Bolivian Coca Farmers Planting Rice*, N.Y. TIMES, July 20, 2008, available at http://www.nytimes.com/2008/07/20/world/americas/20ihtbolivia.1.14625676.html?_r=1

195. *Id.*

196. *Thousands Protest in Bolivia over Food Prices*, AFP, Feb. 19, 2011, <http://au.finance.yahoo.com/news/Thousands-protest-Bolivia-afp-2855564450.html>.

197. *Id.*

198. *Bolivian President Evo Morales Flees Food Price Protest*, BBC NEWS, Feb. 10, 2011, <http://www.bbc.co.uk/news/world-latin-america-12427057>.

199. See Roberts & Portes, *supra* note 191.

200. See Valdivia et al., *supra* note 185.

201. See, e.g., Universal Declaration of Human Rights, *supra* note 16.

202. MAURICIO IPIÑA NAGEL, *supra* note 109.

203. *Ley 1333*, *supra* note 18.

204. See Declaration on the Rights of Indigenous Peoples, *supra* note 16.

complex scientific and collective problem of global warming in unenforceable international treaties.²⁰⁵ In other words, the problem of justice is too strong in Bolivia for developed nations to continue failing to address the problem of climate change while promising that they will pay for needed adaptation when the time comes.²⁰⁶

*B. Bolivia's Unique Culture and Political Landscape
Enable it to Pursue Environmental Justice for
Indigenous People*

While the Bolivian populace is largely indigenous and very poor, the rest of the world cannot afford to ignore the country, especially if the people conceive of a united voice with which to propel their legitimate demands for civil justice. As opposed to many other countries with indigenous mountain populations, Bolivia has both strong institutions²⁰⁷ and valuable resources.²⁰⁸ Bolivia has the second largest natural gas reserves in South America and contracts to sell gas to other South American countries, including a contract with Brazil through 2019.²⁰⁹ Bolivia is also home to almost half of the world's lithium, a mineral that carmakers need to power hybrid and electric cars.²¹⁰ Bolivia has a strong government, and under the presidency of Morales, the institutions have only been strengthened with greater constitutional rights and indigenous representation.²¹¹ Due to the strength of Bolivia's institutions and its store of resources, if Bolivians are able to bring a popular, coherent message of civil justice into international climate discussions, they are likely to influence many other developing nations, especially nations from the southern bloc and other South American nations.

The second reason that Bolivia should be the leader in recasting environmental justice as a civil right is that the country has a strong new tradition of advocating indigenous rights internationally.²¹² As a state leader, President Morales is unique in that he is the first indigenous president of a South American country,²¹³ he strongly and actively

205. See Szasz, *supra* note 79.

206. See DOELLE, *supra* note 141, at 62–63.

207. See U.S. Dep't of State, *Background Note*, *supra* note 180.

208. See *id.* at "Economy."

209. *Id.*

210. Shani Saxon-Parrish, *World Looks to Bolivia for Alternative Fuel* (Feb. 3, 2009), <http://www.latina.com/lifestyle/news-politics/world-looks-bolivia-alternative-fuel>.

211. U.S. Dep't of State, *Background Note*, *supra* note 180, at "Government Organization."

212. See, e.g., *Bolivia's President Urges Development*, *supra* note 86.

213. Mariela Rosario, *Bolivians Approve New Constitution: Empower Indigenous*

defends indigenous rights in both domestic²¹⁴ and international contexts,²¹⁵ and he is an advocate for action on behalf of the rights of the Earth and indigenous communities in the face of climate change.²¹⁶ Morales emphasizes his role as a social movement leader, advocating for equality for all peoples, and speaking out on behalf of indigenous rights.²¹⁷ Morales told the United Nations that he believes “the best way forward lay in social movements, such as the indigenous people’s movement, which would not fall silent until it had brought about change.”²¹⁸

When Morales first took office in December of 2005,²¹⁹ he told crowds in La Paz, “The colonial state ends here. Here we begin to reach true equality for all Bolivians.”²²⁰ As the first head of state to address the UN Permanent Forum on Indigenous Issues (“UNPFII”) in 2008, Morales proclaimed that “indigenous peoples in Bolivia had ‘achieved the Presidency,’ enabling it to proceed in the fight for justice and equality.”²²¹ The concept of expanded rights, especially for the indigenous, is one of Morales’s deepest concerns for his country, as evidenced by his embrace of social movements, attention to the peoples’ voice, and focus on justice for indigenous peoples facing “extermination.”²²² One of Morales’s campaign promises and one of his first tasks upon taking office was to summon a Constituent Assembly to rewrite the constitution for the country he officially renamed the “Plurinational State of Bolivia.”²²³ There was much internal opposition and conflict during the process of rewriting the constitution in reaction to Morales’s reforms, like those declaring Sucre the only official capital city, decentralizing government power, and placing new limits on land ownership, but ultimately in 2009—after three years of political and social struggles—the new constitution was approved.²²⁴ The constitution,

Groups (Jan. 26, 2009), <http://www.latina.com/lifestyle/news-politics/bolivians-approve-new-constitution-empower-indigenous-groups>.

214. *See id.*

215. *See Bolivia’s President Urges Development*, *supra* note 86.

216. *See id.*

217. *Id.*

218. *Id.*

219. John Hunt, *Evo Morales Elected Bolivian President in Landslide Victory*, MY LATINO JOURNAL, Dec. 18, 2005, http://nylatinojournal.com/home/eagles_in_fall_lions_in_spring/news/evo_morales_elected_bolivian_president_in_landslide_victory.htm.

220. Rosario, *supra* note 213.

221. *Bolivia’s President Urges Development*, *supra* note 86.

222. *Id.*

223. Chávez, *Morales Gets Boost*, *supra* note 104.

224. Rosario, *supra* note 213.

as discussed in Section III of this Note, established many rights for Bolivians including equality for men and women and rights of indigenous peoples to autonomous self-government.²²⁵ Additionally, Bolivia was one of the first countries to adopt and ratify by domestic law the provisions of the UN Declaration on the Rights of Indigenous Peoples, according to the UNPFII in April 2008,²²⁶ demonstrating that even in the international politicized context of the United Nations, Bolivia is a leader in advocating indigenous rights.

The fact that Morales has carried through with his controversial reforms and positions in the name of equal rights for indigenous Bolivians is indicative of a trend in which state leadership is entering a new phase of popular representation and alternative priorities. This is in contrast to elite outsider rule that has dominated in developing nations for many years.²²⁷ Morales's stance is reminiscent of the rich history in Bolivia, especially among the indigenous Aymara and Quechua groups, of resisting colonial oppression,²²⁸ and it is this revolutionary spirit that could provide the fuel for creating an international indigenous and civil rights movement. It is obvious to many that Morales's changes indicate "a new era of equality for the historically marginalized indigenous community," especially considering the fact that "[o]nly 50 years ago, Aymara and Quechua were not even allowed to walk in the central square of La Paz, and now one of them is president."²²⁹ One representative of an indigenous group from La Paz said, "[a] new era is starting now in which indigenous people will be the citizens of this country."²³⁰

In his 2008 address to the UNPFII, Morales suggested that gatherings of indigenous peoples like the UNPFII must work to spread their message asking for inclusion and access to other world leaders.²³¹ This mobilization of indigenous peoples on behalf of rights and representation is the precise action that this paper argues could begin on the ground in Bolivia, and then spread to international forums via the changed rhetoric of environmental justice. Morales's unique role as an indigenous leader who is willing to spread messages of indigenous

225. NAGEL, *supra* note 109.

226. *Bolivia's President Urges Development*, *supra* note 86 (statement of Evo Morales Ayma).

227. See, e.g., Sinclair Thomson, "We Alone Will Rule . . ." *Recovering the Range of Anticolonial Projects Among Andean Peasants (La Paz, 1740s to 1781)*, 8 *COLONIAL LATIN AM. REV.* 275 (1999).

228. *See id.*

229. Rosario, *supra* note 213.

230. *Id.*

231. *Bolivia's President Urges Development*, *supra* note 86 (statement of Evo Morales Ayma).

equality in international contexts²³² is one of the main reasons that the proposition of civil justice for indigenous peoples facing climate change is politically feasible in his country.

Morales has also stated that it is “important to promote unity and diversity of economies, and that the indigenous movement should put forth a call for unity and diversity in the spirit of multilateralism.”²³³ This idea of plurality and diversity in unity supports the very basis of the strength of a peoples’ movement. Distinct indigenous groups identify with other groups simply on the basis of identifying as indigenous, which may give the movement a strong cohesive identity and a common mission.²³⁴

C. Bolivia Should Promote Its Position In Support of Environmental Justice in International Agreements

The final reason that Bolivia is an ideal ground for climate justice to take shape as a civil movement is that it has already been a leading voice of opposition to business-as-usual in the context of developed countries’ failures to act on climate change, and the implications those failures have for the inherent inequities of the climate change problem.²³⁵ Bolivia has a history of passionately expressing its opposition to continuing unfair and discriminatory policies of climate justice,²³⁶ which indicates that it would be willing to defy the norms in the future with a new idea of peoples’ justice, and that stance would actually reinforce Bolivia’s legitimacy in the international political arena.

At the UN Conference of the Parties in 2010, Bolivia stood alone in opposition to the official Cancún Agreements.²³⁷ Morales opposed in Cancún because he believed the Agreements should require developed nations to take the lead in climate change mitigation due to their greater contribution to the carbon accumulation in the atmosphere and because they have more financial resources than developing countries to dedicate to the problem.²³⁸ Morales stated that Bolivia chose “to be on the side of the peoples of the world that defend life in the face of aggression toward

232. *See id.*

233. *Id.*

234. *See generally, Indigenous Peoples Must be Included, supra* note 9.

235. *See* Pablo Solon, *Why Bolivia Stood Alone in Opposing the Cancún Climate Agreement*, THE GUARDIAN, Dec. 21, 2011, <http://www.guardian.co.uk/environment/cif-green/2010/dec/21/bolivia-oppose-cancun-climate-agreement>.

236. *See id.*

237. *Id.*

238. *Id.*

the environment and the planet.”²³⁹ While Bolivia was criticized for attempting to obstruct agreement, Morales said that he refused to sign in Cancún “based on the principle of responsibility and the need to defend Mother Earth, which is under attack from the irrational politics of industrialization of the developed nations.”²⁴⁰ This firm ideological stance on behalf of indigenous peoples and the environment is precisely the kind of atmosphere that will foster a reformulation of climate justice in the spirit of civil rights. Additionally, that same year Bolivia hosted the World People’s Conference on Climate Change and the Rights of Mother Earth (“Conference”), as an alternative to failing UN negotiations.²⁴¹ At the Conference, a group of 35,000 environmental activists from 125 nations signed a Peoples Agreement on behalf of the Earth.²⁴² The Peoples Agreement calls for “the building of a Global People’s Movement for Mother Earth, which should be based on the principles of complementarity and respect for the diversity of origin and visions among its members, constituting a broad and democratic space for coordination and joint worldwide actions.”²⁴³ The Conference and the Peoples Agreement laid the ideological foundations for the popular movement. Social progress on behalf of the environment and the will to move beyond imbalanced and ineffective international negotiations in the face of real climate change threats are already vibrant in the Bolivian rhetoric.

Additionally, there are multiple levels on which a political response to a peoples’ movement in Bolivia is in the self-interest of the nation. First, if couched as a civil rights issue, then Morales will have found the perfect domestic forum to make good on his early promises of democratic reform and the broadening of indigenous rights.²⁴⁴ Second, because Bolivia currently seeks legitimacy in the international political context, taking action on behalf of the criticisms Bolivia leveled in Cancún will provide the exact sort of sovereign legitimacy needed in these highly contentious negotiations. By implementing a domestic framework aimed at the problems that Bolivia expressly raised at

239. Lemuz, *supra* note 19.

240. *Id.*

241. Matthew O. Berger, *Expectations Scaled Back for Cancún Climate Summit*, INTER PRESS SERVICE NEWS AGENCY Sept. 17, 2010, <http://ipsnews.net/africa/nota.asp?idnews=52878>.

242. *Id.*; see also World People’s Conference on Climate Change and the Rights of Mother Earth, Cochabamba, Bol., *Peoples Agreement*, (Apr. 22, 2010), <http://pwccc.wordpress.com/support/>.

243. *Peoples Agreement*, *supra* note 242.

244. See *Morales Promises a Tighter State Control Economy for “Post-Colonial” Bolivia*, MERCOPRESS, Jan. 23, 2010, <http://en.mercopress.com/2010/01/23/morales-promises-a-tighter-state-control-economy-for-post-colonial-bolivia>.

Cancún, the nation will gain legitimacy in the international context for its critical perspective.²⁴⁵ Once it achieves this recognition, the generally uncontroversial point that the current climate change framework is ineffective and unfair could give way to a meaningful alternative, and especially developing nations in similarly vulnerable conditions will have a new path to follow in seeking effective climate change responses.

While other developing countries may have been hesitant to oppose the Cancún Agreements due to the lack of a meaningful alternative,²⁴⁶ Bolivia is in a unique position to offer an alternative with the popular support and widespread appeal to actually work in a global sense. Furthermore, this grassroots movement avoids the complexity of the legal regime presented in Cancún and appeals to a less definitive, but more powerful sense of justice. This is something that can be shared across all cultures, especially when it is human survival that is at stake. Real enforcement can arise out of action induced by popularly changing the political perception of environmental harm in the same way the civil rights movement brought new definitions of equality and recognition.²⁴⁷ This popular movement can redefine discrimination based on resources, race, wealth, class, and ability to adapt to climate change, forcing it to become unacceptable to leave the world's most vulnerable and least guilty individuals to suffer the consequences of climate change.

VI. CONCLUSION

Climate change is the most difficult collective action challenge to ever face our world.²⁴⁸ Dealing with its effects and trying to prevent some of its most threatening catastrophes will require unprecedented collaboration and ingenuity if civilization is to continue in a form that is anything similar to the way it has for the past several centuries.²⁴⁹ The political challenges themselves have understandably impeded any decisive action on behalf of international agreements to stop the business-as-usual before disaster stops it for us.²⁵⁰ While governments

245. See *Environmental Protection*, *supra* note 166 (discussing the idea that implementing ideas domestically improves international policies).

246. See, e.g., DOELLE, *supra* note 141, at 110.

247. See Royster & Cochran, *supra* note 154, at 216.

248. See Mark Lubell et al., *Collective Action and Citizen Responses to Global Warming*, 29 POL. BEHAV. 391 (2007) (studying the collective action problem implicated by climate change).

249. See William R. Travis, *Going to Extremes: Propositions on the Social Response to Severe Climate Change*, 98 CLIMATIC CHANGE 1, 2 (2010).

250. See Benedict Southworth, *Priorities for Decision Makers: Tackling Climate Change in a Time of Corporate Globalization*, 5 GLOBALIZATIONS 72, 72 (2008)

alone cannot stop climate change specifically for indigenous peoples or choose to take on some of the site-specific burdens themselves, there are many things that they *can* do.

There are communities, ethnicities, settlements, and individuals in the world who suffer (and have historically suffered) from marginalization in the form of discrimination, denial of access to lands and resources, diminished enforceable rights, violence and forced migration, and lack of access to justice for their hardships.²⁵¹ Climate change is simply an additional way in which the unequal burden of surviving will disproportionately harm these marginalized peoples. They already struggle to survive and therefore cannot adapt easily, if at all, and there is no avenue to achieve justice before devastation hits.²⁵² It is within the power of states, groups, and individuals today to change the status quo.

The indigenous condition can improve with help in the form of expanded recognizable rights to land and resources and expanded access to justice for peoples suffering from climate change. Governments should work to provide remedies for climate change challenges that scientists fairly predict to be coming. It is difficult to know what precise future climate phenomena will bring for citizens of the world, but if any of the predictions about the climate change impacts of drought, flooding, sea level rise, and desertification are true, then the indigenous peoples living directly off of the land will suffer first.²⁵³ At a minimum, a world working towards justice for its peoples would do what it could today to give those most at risk at least one viable option for rescue and a chance to rebuild their unique cultures. If not for simple justice alone, then it might do this in the interest of diversity, plurality, and the enriching value of individualism.

However, preventative measures on behalf of these vulnerable communities and climate areas would be ideal.²⁵⁴ General mitigation efforts by all countries, and especially the biggest emitters, will do the most today to stop or slow disasters in the future. Adaptation efforts can help those areas that are most obviously at risk, especially in the case of sea level rise for small-island and coastal communities and other impacts that are fairly predictable. Finally, and resting on the argument in this paper, legal claims supported by internationally and domestically

(summarizing the political challenges for international negotiations and some suggestions for the future).

251. See Cha, *supra* note 5.

252. SCHLOSBERG, *supra* note 14, at 84–85.

253. See Valdivia et al., *supra* note 185.

254. See Goffman, *supra* note 72, at 15.

recognized human rights in response to climate harm would accomplish many diverse goals of indigenous justice.

Legal claims for vulnerable indigenous peoples would help to give them a way to participate in their future and with their land. Additionally, giving them legal claims based on civil rights could engage indigenous communities in the political and social process rather than simply exercising their rights to remedies. Perhaps indigenous community members would then participate in other state activities regarding climate change, the environment, and human rights. It would benefit both the state and the indigenous communities for indigenous peoples to have opportunities to apply their localized knowledge to climate change impacts on lands and ecosystems that they know better than anyone else.²⁵⁵ Finally, and most importantly, this access to justice and broader participation would be an important first step toward achieving environmental justice for indigenous peoples who have not contributed to, but are threatened by, climate change.²⁵⁶

Once courts are willing to recognize legal actions on behalf of rights relating to environmental justice, figuring out what forms of redress to grant is the next challenge. They should be open to new, creative ways of helping to solve the inequities inherent in the disproportionate burdens of climate change that are placed on already vulnerable communities. Public forums for debate and idea exchange would allow different parties to suggest creative solutions to the problem. Expanded representation for historically marginalized groups in decision-making bodies would help to balance the scales as well. Adaptation funds and efforts will certainly be necessary for practical responses to climate harms. The world is in an era when the law and judiciaries do not simply settle disputes between two private litigants. The sooner lawyers, lawmakers, and judges embrace this reality, the sooner the legal system will be able to offer more remedies for the diverse sets of problems it can solve. Climate change is the quintessential nontraditional and non-private challenge, and so courts must first recognize that they can deal with these challenges and next must be willing to support nontraditional remedies for them. The recognition stage is the focus of this Note, and it entails recognizing and invigorating the rights expressed in sources like treaties, constitutions, and statutes, and then bringing them from the abstract theoretical realms of “justice” and “equality” into the concrete world of real decision making.

While it may be difficult to conceive of an orderly or logical way to go about finding justice for likely climate change victims, the broader

255. *See Agenda 21*, *supra* note 20, ¶ 13.14.

256. SCHLOSBERG, *supra* note 14, at 89–91.

climate change problem and the few solutions currently in place now (in the form of individual states and nations working in a fragmented manner to slow and reverse their own contributions to climate change) demonstrate the simple fact that climate change is not a top-down problem. The world must recognize the injustices inherent in the modern-day status quo and work towards remedies for the most marginalized peoples. The form of implementing climate change justice *will* matter eventually because justice often depends fully on procedure. However, the first step is the idea. The *idea* of climate change justice is what is at stake today, and today it is conceptually limited to the specialized field of environmental law and policy forums. The task today is to get the idea into the mainstream social and political rhetoric, and to recognize that civil justice is the vehicle for this redistribution. Climate change justice is civil justice; the popular voice just needs to express it as such, and the rest of the world must accept the reformulation. If climate change justice can capture the power of civil rights, then justice for climate victims should follow.