

Climate Change, Human Rights and Justice

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Abstract

The global climate crisis is not just a matter of fixing industry so that it can produce profitably and contaminate less. There is a far more pressing issue facing us: how to address the negative climate impacts of development that is irresponsible in terms of its human and environmental costs. Mitigation and adaptation are two fundamental pillars of the climate debate. Technological equity and efficiency (mitigation) and the capacity of communities to brace themselves in the face of climate change (adaptation), are both fundamental to advance international climate change negotiations.

Keywords: Climate change, Greenhouse gases, Human right, Justice

Introduction

In trying to answer the issues on Climate Change, Human Rights and Justice, it is of no doubt that this piece of work should first briefly explain the meanings and extents of these key words which are climate change, human rights and justice.

Starting with climate change, this has been defined differently by different authors, whereas generally it means a change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods. In this definition, human activities which can alter the composition of global atmosphere are those resulting to the emission of Green houses gases (GHGs). By explaining human rights, it is of more important to relate the meaning with climate change because human rights combine all rights reserved to all human being. Generally speaking, Human rights are universal and are based on the inherent dignity and equal worth of all human beings. Either right to life, the right to adequate food, the right to the highest attainable standard of health, the right to adequate housing, the right to self-determination and human rights obligations related to access to safe drinking water and sanitation, they are equal, indivisible, interrelated and interdependent, and cannot be waived or taken away. The term “justice” which is last key word in this work is defined as fairness in adaptation and mitigation to climate change among developed and developing countries. If we think of questions of justice as centrally about the fair or just distribution of benefits and burdens, then the issue of global climate change is inextricably linked to questions of justice.

Climate change is one of the greatest threats to human rights for the present generation, and if drastic measures won't be taken, then the future generations will witness and experience terrible effects as a result of climate change. The challenges and or impacts of climate change pose serious risks to the fundamental rights to life, health, food and an adequate standard of living for individuals and communities across the world (UNEP, 2015). The effects of climate change to Human rights are more complicated due to the fact that not only the green houses gases (GHGs) emissions are destroying the environment but also some of the measures undertaken to mitigate greenhouse gas (GHGs) emissions and adapt to climate change can themselves adversely affect the enjoyment of human rights. For example, there are documented instances of hydroelectric and biofuel projects that have resulted into human rights violations [1]. Even though climate change is a global issues but it is disproportionately affecting countries, means that developing countries are strongly affected than developed countries. In 2009, UNHRC in resolution 10/4 it was noted that “the effects of climate change will fall hardest on the rights of those people who are already in vulnerable situations “owing to factors such as geography, poverty, gender, age, indigenous or minority status and disability” [2].

The Rationale behind Integrating Human Rights with climate Change Related Actions

Talking about climate change and Human Rights issues, someone should bear in mind that there is no way to separate climate change actions with human rights issues because climate change is directly associated with human being activities in the course of production for development especially industrial pollution. As for now, those human developmental activities have already affected the state of the environment upon which any living organisms including human beings depend for their survivals. Human right are determinant

factors upon the living of human beings. Whatever tempers with the life or wellbeing of humans, automatically tempers with the human rights attached thereto. So to say then, climate change which is a result of human developmental actions, has already affecting temperatures, hydrologic conditions, ecosystem functioning, and agricultural productivity in many regions and it will continue to have a profound effect on the enjoyment of human rights for individuals and communities across the planet. Hence, non-separate nature of climate change and human rights issues.

In 2009 UNHR Council adopted Resolution 10/4 on Human rights and climate change: “Noting that climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights including, inter alia, the right to life, the right to adequate food, the right to the highest attainable standard of health, the right to adequate housing, the right to self-determination and human rights obligations related to access to safe drinking water and sanitation, and recalling that in no case may a people be deprived of its own means of subsistence” [3].

Climate change is not only interrelated to human rights because of its effects but also mitigation and adaptation measures will be effective by taking into account to human rights protection. In 2014 Special Procedures mandate holders (independent experts) of the HRC issued a joint letter to States and a joint statement on International Human Rights highlighting the role that human rights can play in climate change governance. They state that ‘understanding and addressing the human consequences of climate change are fundamental and therefore, climate change cannot be effectively addressed without protecting human rights, including the principle of climate justice’ (OHCHR and the Mary Robinson Foundation, 2015, Human Rights and Climate Change) [2]. In 2010, the State Parties to the UN Framework Convention on Climate Change agreed in Cancun that the “Parties should, in all climate change related actions, fully respect human rights”.

How climate change undermines human rights?

Human-rights norms in international law

The Right to Life and Security ‘Everyone has the right to life, liberty and security of person.’ (UDHR, Article 3) (Universal Declaration of Human Rights (UDHR))

The Right to Food ‘The State Parties to the present covenant, recognize the fundamental right of everyone to be free from hunger...’ (ICESCR, Article 11) (International Covenant on Economic, Social and Cultural Rights (ICESCR)).

The Right to Subsistence ‘Everyone has the right to a standard of living adequate for the health a well-being of himself and of his family, including food, clothing, housing...’ (UDHR, Article 25) (Universal Declaration of Human Rights (UDHR)). ‘In no case may a people be deprived of its own means of subsistence.’ (ICCPR, Article 1.2 and ICESCR, Article 1.2) (International Covenant on Civil and Political Rights (ICCPR) (International Covenant on Economic, Social and Cultural Rights (ICESCR)).

The Right to Health ‘The State Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.’ (ICESCR, Article 12) (International Covenant on Economic, Social and Cultural Rights (ICESCR)).

Current and projected impacts of climate change upon human rights

It is very clear that climate change is interrelated to human rights and its impacts are violating human rights for the present and the projections indicate that it will be worst for future generations.

- There are more deaths, disease and injury due to the frequency and intensity of heat waves, floods, storms, fires, droughts and will be continue to increase rapidly and highly in the coming years (Intergovernmental Panel on Climate Change (IPCC) 2007, Working Group II; *World Health Organisation).
- Rising sea levels will increase the rise of death and injury by drowning. Up to 20 percent of the world’s population live in river basins that are likely to be affected by increased flood hazard by the 2080s.
- Heat waves are likely to increase deaths among elderly or chronically sick people, young children, and the socially isolated. Europe’s 2003 heat wave induced by climate change resulted in 27,000 extradeaths.
- Many nations are experiencing the food insecurity as a result of climate change and the Future climate change is expected to put close to 50 million more people at risk of hunger by 2020, and an additional 132 million people by 2050.
- In Africa, shrinking arable land, shorter growing seasons and lower crop yields will exacerbate malnutrition. In some countries, yields from rain-fed agriculture could fall By 50 percent as soon as 2020.
- In parts of Asia, food security will be threatened due to water shortages and rising temperatures. Crop yields could fall by up to 30 per cent in Central and South Asia by 2050.
- Water: By 2020, between 75 million and 250 million people in Africa are likely to face greater water stress due to climate change. Reduced water flow from mountain glaciers could affect up to one billion people in Asia by the 2050s.
- Natural resources: Approximately 20–30 per cent of plant and animal species assessed so far are likely to be at increased risk of extinction if average global temperatures rise more than 1.5–2.5°C. Coral bleaching and coastal erosion will affect fish stocks currently the primary source of animal protein for one billion people.
- Property and shelter: Millions more people risk facing annual floods due to sea-level rise by the 2080s, mostly in the megadeltas of Asia and Africa.
- On small islands, too, sea-level rise is expected to exacerbate inundation, storm surge, and erosion, threatening vital infrastructure, settlements, and facilities that support livelihoods of island communities.
- Child malnutrition will increase, damaging growth and development prospects for millions of children.
- Increasing floods and droughts will lead to more cases of diarrhea and cholera. Over 150,000 people are currently estimated to die each year from diarrhea, malaria, and malnutrition caused by climate change.
- Changing temperatures will cause some infectious diseases to spread into new areas. It is estimated that 220–400 million more people will be at risk of malaria. The risk of dengue fever is estimated to reach 3.5 billion people by 2085 due to climate change.

Inequity among Countries

Disparity among developed countries and developing countries is clearly manifested by the way those who are the biggest emitters

of GHGs are the only one to benefit from their activities while the poorest countries are bearing the hardest impacts of climate change without even being able to adapt to. Here developing countries are not complaining about the right to emit GHGs to same level like do developed countries, what they are fighting for is the right to enjoy a safe environment which can afford to them the basic needs and influencing to achieve sustainable development. This argument was also defended in the principles of justice which said that “those who have benefited and still benefit from emissions in the form of on-going economic development and increased wealth, mainly in industrialized countries, have an ethical obligation to share benefits with those who are today suffering from the effects of these emissions, mainly vulnerable people in developing countries. People in low income countries must have access to opportunities to adapt to the impacts of climate change and embrace low carbon development to avoid future environmental damage” (Mary Robinson foundation, Principles of Climate Justice, Climate Justice links human rights and development). Article 3 of the UNFCCC contains the language regarding equity that has informed the climate negotiations since 1992. It states that “The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.” [4].

Justice Implications of Mitigation and Adaptation Measures

Strategies to address climate change take two forms: first is mitigation, by which is meant measures to limit GHGs either by reducing their sources or by enhancing the planet’s capacity to absorb them (in, for example, forests or oceans, also known as ‘sinks’); second is adaptation, which is the adjustment of natural or human systems to a new or changing environment, to moderate harm or exploit beneficial opportunities. The interdependence between mitigation and adaptation efforts has been recognized most recently in the ILA Draft Articles on Climate Change, Article 4.3, which establishes that ‘States shall protect the climate system as a matter of urgency, keeping in mind that to the extent they delay taking adequately ambitious mitigation action to meet the multilaterally agreed global goal, the locus of action will shift, of necessity, to adaptation and the burden of responsibility to the most vulnerable and least responsible states.’ As aforementioned, climate change undermines human rights thus creating injustice [5]. But responses to climate change can also risk further injustice if not informed by human rights. As such, although mitigation and adaptation measures are needed to achieve climate change justice, the measures themselves can create additional justice concerns. The IPCC has noted that: ‘mitigation and adaptation can positively or negatively influence the achievement of other societal goals, such as those related to human health, food security, biodiversity, local environmental quality, energy access, livelihoods, and equitable sustainable development; and vice versa, policies toward other societal goals can influence the achievement of mitigation and adaptation objectives.’ Resources devoted to either mitigation or adaptation should be allocated with an understanding of, and appreciation for, the ways in which they impact human rights. As resources are allocated between mitigation and adaptation, significant issues will arise about the appropriate balance among these two different strategies for addressing the harms of climate change. Properly balancing resources devoted to mitigation and those devoted to adaptation may be ‘itself a justice issue.’ Examined

separately, mitigation and adaptation policies also pose a myriad potential justice questions.

Extraterritorial Responsibility

Extraterritorial responsibility is hard to establish. Extraterritorial application of duties under human rights treaties is a difficult issue politically as well as legally. Some treaties, such as the International Covenant on Civil and Political Rights (“ICCPR”), have jurisdictional limits. The ICESCR does contain language that provides support for extraterritorial obligations, including duties of assistance and cooperation, but its Committee’s interpretations are not legally binding, nor have its pronouncements on extraterritoriality been met with universal acceptance. In particular, developed states have resisted extraterritorial obligations, seeing them as a potential basis for developing countries to argue that they are entitled to financial assistance as a matter of right [6].

Under human rights law, a person’s government ordinarily has the primary duty to act when rights are violated. In the context of climate change, however, responsibility for impacts in the most vulnerable countries often lies not with the government nearest to hand, but with diffuse actors, both public and private, many of whom are located far away. Human rights law does not easily reach across international borders to impose obligations in matters such as these [7]. (The OHCHR report, 2009) emphasizes that states have an international duty to cooperate in order to realize human rights, and that this duty is especially important with respect to climate change, an inherently global threat to human rights [6]. Although this conclusion may seem innocuous, it is likely to be the most controversial in the report, because many developed states have long resisted the proposition that they have human rights obligations to those not within their territory or direct control.

International Cooperation In The Face Of the Climate Crisis and Human Rights

Climate change as a phenomenon which is altering the composition of global atmosphere, the world wide is facing its impacts reason why the effective actions for combatting climate change are undertaken in both international environmental treaties and international human rights treaties.

Principle 9 of the Rio Declaration provided that “states should cooperate to strengthen endogenous capacity building for sustainable development by improving scientific understanding through exchange of scientific and technological knowledge and by enhancing the development, adaptation, diffusion and transfer of technologies including new and innovative technologies” [6]. In 1992, UNFCCC calls upon all parties “taking into account their common but differentiated responsibilities” to promote and cooperate in the development, application and diffusion, including transfer of technologies, practices and processes that control, reduce or prevent anthropogenic emission of green house gases (art.4)... and article 10 of the Kyoto protocol reiterates this obligation. The notion of common but differentiated responsibilities reflects the fact that the developed world was the primary source of GHGs that have contributed to climate change. Article 3.1 of UNFCCC thus state “the parties should protect the climate system for the benefit of present and future generation of human kind, on the basis of of equity and accordance with common but differentiated responsibilities and respective capabilities. Accordingly, the developed countries should take the lead in combating climate change and the adverse

effects of. International cooperation is considered as a good way to adapt and mitigate to climate change but in practice it is still dilemma. Resolution 7/23 asked the OHCHR to prepare the report “in consultation with and taking into account the views of States, international organizations . . . and other stakeholders,” and encouraged states to contribute to the report. The OHCHR’s ensuing request for information did not ask the recipients to take positions on whether climate change violates human rights, but it did ask, *inter alia*, for assessments of the impact of climate change, including on human rights. The OHCHR received thirty responses from states. Many of the submissions were very brief and did not express any views on the connections between climate change and human rights. Japan, for example, provided only a one-page description of its support for developing countries’ efforts to mitigate and adapt to climate change. Those states that did express their views on the relationship between climate change and human rights agreed that climate change threatens the enjoyment of human rights. Even the United States, still under the Bush Administration at the time, acknowledged that climate change has implications for the full enjoyment of human rights, although it said that the implications could be positive as well as negative [6].

Human Right in Paris Agreement

In the preamble of Paris agreement, it is clear that human rights language on climate change didn’t left behind in agreement. Paragraph 11 of its preamble states:

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity [8].

This builds on and expands the basis of an earlier reference in the cross-cutting section of the Cancun Agreements adopted by the COP-16 in 2010. This decision had already highlighted the need for parties to respect human rights in all climate actions. However, the language of the Paris provision further elaborates on specific aspects of human rights – and specific groups of rights-holders – that are highlighted as particularly relevant in the implementation of the Paris Agreement. Other paragraphs of the preamble also emphasize two related principles: the fundamental priority of safeguarding food security and ending hunger (preamble, para. 9) and the imperatives of a just transition of the workforce and the creation of decent work and quality jobs (preamble, para. 10).

Under international law, provisions contained in the preambles of legally binding instruments are considered an integral part of these instruments and should guide the interpretation of specific commitments contained in the operative provisions. The International Court of Justice, for instance, made numerous references to preamble provisions when interpreting treaties. As a consequence, this paragraph applies to all policy areas addressed in the Paris Agreement.

Relevant Provisions of the Paris Agreement for Human Rights Issues

During the drafting process leading to adoption of the Paris Agreement, some parties proposed to include additional references

to human rights in specific sections of the agreement related to the objectives thereof (article 2), to adaptation (article 7), and to capacity building (article 11). Other parties however rejected the inclusion of operative references to human rights out of concern that such references would imply additional obligations or would divert focus away from mitigation action. Consequently, references to human rights were removed from the operative articles of the Paris Agreement before its adoption in December 2015. These proposals were, however, all rejected during final negotiations in Paris. Several operative provisions included in the Paris Agreement are nevertheless highly relevant to the respect and promotion of human rights.

Firstly, the parties agreed to strengthen the level of mitigation ambition. According to the Paris Agreement, temperatures should be kept well below 2 °C, with parties pursuing efforts to keep them from rising above 1.5 °C above pre-industrial levels. The UNFCCC only indicated that the ultimate objective of this process should be to prevent dangerous anthropogenic climate change without providing a more precise target. The Paris provisions thus constitute a strengthening of the level of global ambition and of the legal nature of this commitment, considering that it is now included in the operative section of a legally-binding instrument. This stronger ambition could help prevent some of the most adverse impacts of climate change, in particular for the most vulnerable. In a 2015 report submitted to the UNFCCC, the UN Special Rapporteurs on Human Rights and the Environment had highlighted that temperature increases higher than 1.5 °C above historical levels would lead to a greater risk of human rights infringements (The Effects of Climate Change on the Full Enjoyment of Human Rights«, joint paper by five mandate holders of the Human Rights Council, 30 Avril 2015). The national mitigation commitments communicated prior to the Paris Conference will, however, not be sufficient to meet the target of keeping temperatures well below 2 °C, let alone 1.5 °C, thus requiring an urgent increase of ambition (UNFCCC (2016), Aggregate effect of the intended nationally determined contributions: an update, UN Doc. FCCC/CP/2016/2).

Secondly, whereas previous climate agreements focused primarily on reducing emissions, the Paris Agreement addresses with equal importance questions related to mitigation and adaptation. For instance, it defines a collective goal of fostering resilience and reducing vulnerabilities (article 7.1) Governments are required to strengthen cooperation on adaptation, taking into consideration vulnerable groups and communities, to report periodically on their national efforts and to enhance financial support.

Thirdly, the Paris Agreement specifically addresses the issue of loss and damage resulting from climate change. While these issues were addressed neither under UNFCCC nor under the Kyoto Protocol, this issue was recognized for the first time in the 2010 Cancun Agreements. In 2013, the parties to the UNFCCC agreed to establish a Warsaw International Mechanism on Loss and Damage (WIM). The Paris Agreement confirmed the role of this mechanism and extended its mandate. The agreement provides that action and support related to loss and damage should address, among other things, non-economic losses and the resilience of communities and livelihoods. Approaches related to loss and damage could provide opportunities to remedy the situation of communities and peoples impacted by extreme weather events or to slow the onset of events. Consequently, the WIM could play an important role in guaranteeing

the rights of those living at the frontline of climate change. A task force on climate-induced mobility is also established to avert, minimize and address displacement.

Fourthly, gender equality and the participation of women is mentioned several times in the Paris Agreement. The preamble stresses the need to promote gender equality and the empowerment of women. The operative provisions also explicitly emphasize the importance of gender-responsive policies in relation to adaptation and capacity building. However, other proposed references to gender equality in relation to mitigation, finance and technology transfers were deleted before adoption of the Agreement as some parties sought to limit the range of policies to which this principle would apply.

Fifthly, the Paris Agreement highlights the importance of public participation and access to public information in relation to all matters addressed by the Agreement (preamble, para. 10) and stresses the commitment of its parties to take measures to enhance public participation and access to public information (article 12). This commitment builds on similar provisions contained in the UNFCCC (article 6) and in the Kyoto Protocol (article 10(e)). The use of the verb *enhance however emphasizes* that further action is needed from parties in order to promote public participation and access to public information. This commitment to participatory climate action is further stressed in specific provisions of the agreement related to adaptation (art. 7.5) and to capacity building (11.2). The COP decision accompanying the Paris Agreement also requests parties to explore ways of enhancing the implementation of, among other things, public participation and access to information during the first meeting of the COP following the entry into force of the Agreement [8]. Remembering that Paris protocol is the current one about climate change adaptation and mitigation and human rights language was included in the topics under talk, so for today we can ask a question of how will look human rights protection for the country such as U.S.A who do not believe that climate change is happening and also want to withdraw from Paris agreement.

Recommendations

In dealing with climate issue either for adaptation or mitigation, human rights protection and justice should be considered and included in climate change actions as they are rationally interrelated and because human rights impacts of climate change are the clear evidence to indicate at which extent climate change is harmful to the globe especially developing countries whose ability is too low to adapt and mitigate to it. Reminding that sustainable development is impossible while there is still lack of basic needs which are considered also as human rights, countries should accept their responsibility to reduce GHGs emissions in order human rights of their indigenous people and developing countries [9].

Developed countries also must focus on helping climate vulnerable countries and communities effectively address the disastrous negative impacts of climate change on their quality of life and their ability to protect and realize basic human rights. For the most part, climate vulnerable countries and communities have contributed little or nothing to the current climate crisis, yet they bear a disproportionate portion of its burden.

A climate-justice agenda and a proper understanding of the development imbalances caused by climate change should be critical

to effectively infuse the climate change debate with human rights in a way that is equitable for the most climate-vulnerable groups. Human rights provide a framework within which to think through the risks of climate change and the policy structures and mechanisms required to provide effective responses to those that most need them.

States and affected communities must begin by understanding who is affected by climate change and in what way, so that appropriate policy and normative responses can be devised. As is evident from recent natural phenomena related to climate change – such as droughts, floods, fierce storms, water temperature changes, and habitat destruction, and the devastating impacts on human life and the natural environment these are causing – it is imperative that we address the social dimension of climate change without delay.

Conclusion

There is little doubt now that climate change has serious development impacts, and seriously threatens the capacity of individuals and communities to realize their human rights. The causes of global climate impacts, originating historically in industrialized nations, economies, and industrial sectors, not only affect the lives of millions and even billions of people: they also place undue strains on other States to uphold their international human rights commitments. And unfortunately, some of the most climate vulnerable States and communities are also some of the most human rights sensitive [10,11].

The global climate crisis is not just a matter of fixing industry so that it can produce profitably and contaminate less. There is a far more pressing issue facing us: how to address the negative climate impacts of development that is irresponsible in terms of its human and environmental costs. Mitigation and adaptation are two fundamental pillars of the climate debate. Technological equity and efficiency (mitigation) and the capacity of communities to brace themselves in the face of climate change (adaptation), are both fundamental to advance international climate change negotiations.

Throughout this process, nothing is more important than to remember and understand the perspective of the climate victim. It falls to States, and to us, acting as individuals and in organizations, to address the human emergencies that anthropogenic activities are causing in global society, because they threaten our lives, our health, our safety and our environment.

In failing to tackle climate change with urgency, rich countries are effectively violating the human rights of millions of the world's poorest people. Excessive greenhouse-gas emissions are – with scientific certainty – leading to floods, droughts, hurricanes, sea-level rise, and seasonal unpredictability. These impacts are undermining millions of people's rights to life, security, food, water, health, shelter and culture. Human-rights principles must be put at the heart of international climate change policy making now, in order to stop this irreversible damage to humanity's present and future.

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