Human Rights and Climate Change
Emerging issues

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HUMAN RIGHTS AND THE ENVIRONMENT
IN THE EU // TOWARDS AN INCLUSIVE DEBATE

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Climate change and human rights are inextricably intertwined and the linkages between these topics are a rapidly-emerging field of activity. This presents both risks and opportunities at the international, regional, and local levels as climate change increasingly impacts people's health, safety, wellbeing and livelihoods.

This paper assesses the current state-of-play and suggests further areas of inquiry in this quickly-developing field. In particular, it focuses on the following areas:

- International policy-related developments at the intersection of climate change and human rights, including through the UN;
- Regional developments, including within the European Union;
- Legal cases and their impact;
- Impacts of measures to address climate change;
- Climate justice and the rights of the most vulnerable as a "moral imperative";
- Locally-led adaptation; and
- The impact of current geopolitics and power dynamics.

These topics emerged as key issues during an online seminar held on 3 August 2023. The event was moderated by Chris Spence, an expert in the UN climate negotiations, and featured three expert speakers: Professors Saleemul Huq and Annalisa Savaresi, and Dr. Kiara Worth. This paper aims to capture their key points and proposes some possible next steps or areas of further inquiry.

International policy-related developments

The interlinkages between climate change and human rights began to be institutionalized in 2009, with the UN Human Rights Council observing the impact climate change can have on the enjoyment of human rights. In the seminar on 3 August 2023, Professor Annalisa Savaresi, University of Eastern Finland, provided a brief history of human rights internationally. She described the human rights legal framework designed to protect fundamental tenets of modern civilized life, which is enshrined in international treaties and UN declarations. She explained that these rights have evolved over time, drawing attention to the recent endorsement by the UN General Assembly (2022)[1] and the UN Human Rights Council (2021)[2]

[1] https://digitallibrary.un.org/record/3982508?ln=en
[2] Human Rights Council Resolution 48/113, available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/289/50/PDF/G2128950.pdf?OpenElement

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of the right to a clean, healthy and sustainable environment. She stressed the growing recognition that climate change is affecting virtually all human rights, including the right to food, water, and even life.

Under the UN Framework Convention on Climate Change (UNFCCC), she highlighted that the 2015 Paris Agreement recognizes human rights in the context of climate change, although the final text does so in "a half-hearted way" since it is in the preamble and does not entail new obligations. She also drew attention to important recent work by the UN Special Rapporteur on Climate Change and Human Rights, Ian Fry.

The first Special Rapporteur on the promotion and protection of human rights in the context of climate change was appointed by the Human Rights Council at its 49th session in March 2022 and started his mandate on 1 May 2022. In his first formal report to the UN General Assembly, he stressed that "human-induced climate change is the largest, most pervasive threat to the natural environment and societies the world has ever experienced, and the poorest countries are paying the heaviest price[3]". He further highlighted the "enormous injustice" perpetrated by rich countries and major corporations, which are not acting to reduce their greenhouse emissions, and consequently failing the poorest and least able to cope, emphasizing that "the G20 members, for instance, account for 78% of emissions over the last decade". The first Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change[4] focuses on three areas: mitigation action; loss and damage; access and inclusion, and the protection of climate rights defenders.

Next steps: In terms of ***next steps*** over the next 1-2 years, Professor Savaresi said an operational international financial mechanism on loss and damage was necessary. This was agreed in principle at the 27th session of the Conference of the Parties (COP27) in November 2022, and now needs to be operationalized at COP28 in December 2023. Also, a lot more needs to happen on climate change and refugees, and countries need to meet their obligations in this respect. This is already demanding growing attention from policymakers as climate-related immigration continues to grow.

It should also be noted that civil society enthusiasm for this topic is growing. This should be welcomed. However, there is a clear need to build capacity internationally for these groups to engage effectively. When it comes to international policy developments, Savaresi also pointed out that this area would not go away and would require a "long game" and going beyond our sectoral siloes.

Regional developments

At the ***European regional level***, Savaresi believes that the European Union has addressed the issue of climate change and human rights somewhat indirectly. For instance, the European Parliament has held

[3] https://www.ohchr.org/en/press-releases/2022/10/climate-change-greatest-threat-world-has-ever-faced-un-expert-warns
[4] https://www.ohchr.org/en/documents/thematic-reports/a78255-report-special-rapporteur-promotion-and-protection-human-rights

discussions on the refugee crisis, while the EU also has its own human rights instruments, although these don't specifically refer to climate change. Across the region, she said this area is very active and there is a genuine shift in thinking happening on these matters, with an emerging recognition that a lot more needs to be done.

On climate refugees, the role of climate change in the forced displacement of people has been recently highlighted both at the European and international levels. The UN High Commissioner for Refugees (UNHCR) offers his thoughts on climate change and disaster displacement[5], while the European Commission discusses the issue during the deliberations on the European Green Deal[6]. Still the definition and legal protection of climate refugees remain unclear, creating a void in the international legal framework.

Refugee status is governed by the 1951 Geneva Convention relating to the Status of Refugees[7]. It is granted by a foreign State to a person who has a well-founded fear of persecution in his or her country of origin on the basis of race, religion, nationality, membership of a particular social group or political opinion, not recognizing climate risk as a valid basis for acquiring refugee status.

Since 2008, over 376 million people have been displaced as a result of climate disasters[8], including 36.2 million people in 2022 alone, 10 million of which in Pakistan displaced because of floods[9]. In the summer of 2023, record-breaking temperatures were noted in many parts of the world and floods in Italy displaced 50,000 people[10]. A month later, Storm Daniel killed more than 12,000 people in Libya with an additional 40,000 displaced[11]. While most displaced people found refuge within their own country, some were forced to go abroad.

Scientists estimate at the 2019 Special Report on the Ocean and Cryosphere in a Changing Climate by the Intergovernmental Panel on Climate Change (IPCC) that, in this century, between 6 000 and 17 000 square kilometres of land will be lost owing to rising sea levels and coastal erosion, both caused by climate change[12]. The 2021 IPCC 6th Assessment Report[13] highlighted similarly alarming trends on the future of coastal cities and their populations as a result of the life-threatening rise in sea levels.

Next Steps: Savaresi advocated for further efforts at the regional level to incorporate human rights considerations within the climate change policy domain. She believes that although it is "daunting" in terms of what needs to happen, disregarding human rights in the context of climate change is "not really an option" and would be very damaging.

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[5] https://www.unhcr.org/what-we-do/build-better-futures/environment-disasters-and-climate-change/climate-change-and
[6] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52019DC0640&from=EN
[7] https://www.unhcr.org/sites/default/files/legacy-pdf/4ca34be29.pdf
[8] Internal Displacement Monitoring Center, https://www.internal-displacement.org/disasters-and-climate-change
[9] https://www.iom.int/news/nearly-10-million-people-displaced-pakistan-iom-urges-sustained-humanitarian-assistance-pace-shelter-distribution-increases
[10] https://www.euronews.com/green/2023/06/01/were-italys-devastating-floods-really-caused-by-climate-change-this-new-study-suggests-not
[11] https://www.reuters.com/world/africa/death-toll-floods-reaches-11300-libyas-coastal-city-derna-2023-09-17/
[12] https://www.ipcc.ch/srocc/
[13] https://www.ipcc.ch/report/ar6/wg1/

Legal cases and their impact

Lawsuits asserting that people's right to a clean and healthy environment is being violated are proliferating. A recent study by New York University estimates that almost 300 such cases are being considered global as of late June 2023. One recent case in Montana found that the state had violated young people's rights to a clean environment. It is likely to end up in the U.S. Supreme Court.

In Europe, Savaresi noted that the European Court of Human Rights is currently considering a number of climate change cases and alleged human rights violations. She said the Court had taken a "cautious" approach so far. However, she added that in the past it has been very influential in developing a jurisprudence across member States of the Council of Europe and has brought forward positive change.

At the ***national level***, Savaresi noted some positive signals from domestic courts in the Netherlands, Belgium, and Germany, where the courts have already adopted decisions supportive of climate applicants based on human rights. This, she said, may influence the European Court of Human Rights.

A number of cases are before the European Court of Human Rights, including:

- Engels and Others v. Germany, a follow-up case to Germany's Federal Constitutional Court's judgment regarding the Climate Protection Act, where the Court had ordered the legislator to amend the act to comply with the environmental targets[14];
- The Norwegian Grandparents' Climate Campaign and others v. Norway, querying whether the granting of oil licenses violates human rights under the European Convention[15];
- Plan B Earth and Others v United Kingdom, where the claimants allege that, in breach of its legal obligations arising under the Human Rights Act 1998 and the European Convention on Human Rights, the UK Government is systematically failing to take practical and effective measures to address the threat from man-made climate breakdown[16];
- Humane Being v. the United Kingdom, querying whether farming violates human rights due to the risks of the climate crisis, future pandemics and antibiotic resistance[17];
- Soubeste and Others v. Austria and 11 Other States, examining whether rights of young citizens have been affected by climate change due to the Energy Charter Treaty[18];
- De Conto v. Italy and 32 other States, on a potential violation of the positive obligations of States to protect the environment as well as protection from discrimination since the harmful effects of global warming would hit the younger generations harder[19];

[14] https://climatecasechart.com/non-us-case/engels-and-others-v-germany/
[15] https://climatecasechart.com/non-us-case/the-norwegian-grandparents-climate-campaign-and-others-v-norway/
[16] https://climatecasechart.com/non-us-case/plan-bearth-and-others-v-united-kingdom/
[17] https://climatecasechart.com/non-us-case/factory-farming-v-uk/
[18] https://climatecasechart.com/non-us-case/soubeste-and-others-v-austria-and-11-other-states/
[19] https://climatecasechart.com/non-us-case/de-conto-v-italy-and-32-other-states/

- Uricchio v. Italy and 32 other States, where the claimant complains that the 33 States parties to the European Convention on Human Rights, which are also parties to the 2015 Paris Agreement (including Turkey, Switzerland, Portugal, Austria, Norway and France) have not taken sufficient measures to implement the latter[20];

- Carême v. France, on climate risk caused by insufficient government action[21];

- Greenpeace Nordic and Others v. Norway, on the potential violation of the fundamental rights of Norwegian citizens through the adoption of the decision to license new blocks of Barents Sea for development of deep-sea oil and gas extraction, and through the failure to take the necessary measure to address the risk of the climate crisis[22];

- KlimaSeniorinnen v Switzerland, addressing the adequacy of Swiss government's climate change mitigation targets and implementation measures, and possible infringement on human rights[23];

- Müllner v. Austria, Whether Austria has violated the fundamental rights of an multiple sclerosis patient through their inaction on climate change[24]; and

- Duarte Agostinho and Others v. Portugal and 32 Other States, where the complaint alleges that the States in question have violated human rights by failing to take sufficient action on climate change, and seeks an order requiring them to take more ambitious action[25].

On 29 March 2023, the Grand Chamber of the European Court of Human Rights held oral hearings in the cases are KlimaSeniorinnen v Switzerland and Carême v. France. The Chamber has scheduled oral hearings in the third climate case, Duarte Agostinho and Others v. Portugal.

Next Steps: With the right to a clean and safe environment now being actively enshrined in international, regional, and domestic laws, we can expect many groups to resort to legal action to push for more rapid change. Given the urgency of the climate crisis and the likely proliferation of cases, both governments and other major actors such as large corporations will need to give careful consideration to their response. Ideally, they will react by taking on the higher levels of climate ambition that the science demands. Those that do not can expect further litigation and (probably) unwanted publicity and public pressure or even censure.

Impacts of measures to address climate change

How governments and other stakeholders respond to climate change can also impact people's human rights. This is apparent in terms of both mitigation and adaptation. For instance, hydroelectric projects designed to reduce greenhouse gas emissions can displace large numbers of people and destroy local

[20] https://climatecasechart.com/non-us-case/uricchio-v-italy-and-32-other-states/
[21] https://climatecasechart.com/non-us-case/careme-v-france/
[22] https://climatecasechart.com/non-us-case/greenpeace-nordic-assn-v-ministry-of-petroleum-and-energy-ecthr/
[23] https://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-council-and-others/
[24] https://climatecasechart.com/non-us-case/mex-m-v-austria/
[25] https://climatecasechart.com/non-us-case/youth-for-climate-justice-v-austria-et-al/

ecosystems. Wind farms can also adversely affect local communities in some cases. Meanwhile, initiatives to increase the use of biofuels, for instance palm oil, appear benign and well-meaning. However, they have put millions of people, and especially Indigenous peoples, at risk. Also, a focus under the UN climate treaty on reducing emissions from deforestation and forest degradation (REDD), which again may be well-intentioned, can often exclude local communities and Indigenous groups from having any real input; furthermore, the profits from REDD projects are often monopolized by multinational companies and are not shared with these groups.

More recently, the growing consideration being given to geoengineering is giving rise to new concerns. How might manipulation of our natural planetary systems—for instance through solar radiation management, carbon removal or attempts at geoengineering our oceans—have unintended consequences? Might such actions also harm one population or group while helping (or trying to help) another? It will be important to answer these questions as carefully as possible before embarking on major geoengineering initiatives.

Next Steps: Clearly, governments need to hold themselves and others, including those in the private sector, to account to ensure their climate responses do not have damaging consequences, either intended or unintended. During the 3 August event, Professor Saleemul Huq, International Centre for Climate Change and Development, highlighted the need to adapt in order to minimize ***loss and damage***, and addressing loss and damage whenever it actually happens. In the short term, he said the loss and damage fund agreed in principle at COP27 must be operationalized at COP28[26]. Furthermore, he said participants at COP28 should not view it as the 28th meeting in a long process, but rather as the first meeting in a new era of climate impacts causing loss and damage, as well as its human rights impacts.

Another area of focus relates to work by recently-appointed UN Special Rapporteur Ian Fry on climate change response measures and the impacts of climate action[27]. For instance, there is evidence of human rights abuses by some renewable energy companies, which risks replicating the mistakes of the period of fossil fuel extraction. Instead, both Fry and Professor Savaresi recommend moving forward in a positive and inclusive way that accounts for the needs of everyone involved.

Climate justice and the rights of the most vulnerable

Climate justice and the rights of the most vulnerable were major themes in the presentation by Professor Saleemul Huq. He explained that climate change mostly impacts poor people, primarily in poor countries but also in more affluent ones. He highlighted this as a justice issue and a moral question for every individual, as climate change impacts are a violation of the human rights of the planet's poorest by its richest. He welcomed growing recognition of this and action by many stakeholders domestically, regionally, and globally.

[26] https://unfccc.int/news/transitional-committee-on-loss-and-damage-makes-progress-at-third-meeting
[27] https://www.ohchr.org/en/specialprocedures/sr-climate-change

The concept of climate justice focuses on the unequal historical responsibility that countries and communities bear in relation to the climate crisis[28]. It suggests that those that benefitted from large emissions of greenhouse gases have a responsibility to help those affected by climate change, particularly the most vulnerable countries and communities, who often are the ones that have contributed the least to the crisis. The notion of climate justice denotes that climate change-related responsibilities should be divided according to who is contributing most to the problems, while addressing structural, socioeconomic, and intergenerational inequalities.

The impacts are more severe for vulnerable populations who have limited means to adapt to climate change impacts. Between 2010 and 2020, human mortality from floods, droughts, and storms was 15 times higher in highly vulnerable regions, compared to regions with very low vulnerability[29]. The notion of just transition[30] toward a sustainable future should also be highlighted, as the modifications that the necessary transformational change invoke could hurt vulnerable and marginalized groups.

Next steps: Warning that we are already in a new era of major climate impacts, with temperature records and heatwaves across the globe, it was noted during the interviews that leaders need to get the message that this is a human rights crisis and act accordingly. The need to ***galvanize global citizens***, particularly young people, and enable them to be more powerful in making the changes needed and holding leaders to account was also highlighted.

During the event on 3 August, participants highlighted the work by UN Special Rapporteur Ian Fry, including his concerns at the ***"deficit in legal protection"*** and his advocacy of an optional protocol, or legal agreement, to the UN Framework Convention on Climate Change that would address the status of international refugees displaced by climate change.

Locally-led adaptation

One success story highlighted by Professor Huq and other speakers relates to locally-led adaptation. This approach can help address issues of climate justice, engage with the most vulnerable, and avoid the unintentional impacts of response measures. Huq reflected on his own work in this area, both internationally (with the IPCC and in the UN climate negotiations) and domestically in Bangladesh. In Bangladesh, he reported on the country's pioneering work in adapting and building resilience in spite of difficult circumstances and vulnerabilities. He said the focus on locally-led adaptation, in contrast to top-down engagement, had resulted in some very positive outcomes. While bottom-up adaptation takes more time, Professor Huq said it is a much better way to create resilience, with the aspiration being that Bangladesh becomes prosperous despite the country's vulnerability to climate change.

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[28] https://www.ohchr.org/en/climate-change/integrating-human-rights-unfccc
[29] https://www.ipcc.ch/report/ar6/syr/
[30] https://climatepromise.undp.org/news-and-stories/what-just-transition-and-why-it-important

Next steps: Adaptation that is genuinely led at the local level can be transformative and should be replicated. The experience reported by Professor Huq in Bangladesh, which has been one of the leaders in this field, could yield positive results across the globe. Groups such as the Global Center on Adaptation are seeking to pioneer efforts to replicate current successes, and inspire and support new ones. As the Global Center on Adaptation notes[31], locally-led adaptation can unlock, support and leverage the enormous potential and creativity of communities to develop and implement solutions, catalysing adaptation that is effective, equitable, and transparent.

The impact of geopolitics and power dynamics

Current geopolitics and power dynamics are having a major impact on people's human rights in the context of climate change and should be disrupted and changed. Highlighting accelerated impacts of climate change—from wildfires to extreme weather, infrastructure impacts, increased food insecurity, water shortages, and health impacts—participants in the seminar said these are causing large-scale migration and impacting economic, social, and cultural rights, as well as civil and political rights. However, these impacts are not equally distributed, being felt more in the Global South and by the most vulnerable, which, as already noted, is an issue of justice, also linked to power and resource control.

Participants in the seminar identified and discussed three dimensions of power: power of decision making; power to set the agenda of what is (and is not) discussed; and the more subtle power to change people's ideologies through socially-structured patterns of behaviour and cultural hegemony.

When it comes to the UN climate negotiations, those in power naturally seek to control the agenda, for instance by delaying putting loss and damage on the formal agenda. Powerful groups such as the fossil fuel industry will seek to have their say. In terms of the power to influence ideology, participants highlighted the impact of social media and fake news, as well as a sense of hopelessness in some circles that any real change is possible.

Next steps: In terms of solutions, participants in the seminar advocated ***transforming the underlying power dynamics*** at play. As an example, the case of Mia Mottley, the Prime Minister of Barbados, was highlighted, who has been building a coalition committed to overhauling financial systems, including the International Monetary Fund and World Bank. Mottley's aim is to redirect finance to build adaptive capacity and improve access to human rights[32].

Focus on locally-led adaptation and increasing participation of Indigenous Peoples, women, and marginalized groups is essential. The adoption of a human-rights approach in the UNFCCC, and embedding such an approach more deeply in ongoing negotiations and national policies would also be a step towards the right direction. Finally, the need to reflect and act critically to optimize our own personal choices, from what we buy to how to deal with our waste is critical. In conclusion, climate change is not an environmental issue,

[31] https://gca.org/programs/locally-led-adaptation/
[32] https://pmo.gov.bb/wp-content/uploads/2022/10/The-2022-Bridgetown-Initiative.pdf

but rather a matter of social justice and morality that can only be addressed by shifting the fundamental power dynamics that drive it. In that respect, civil society has an important role to play in influencing decision makers, even shaping public opinion and societal beliefs.