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Intersections of Climate Justice and Human Rights: Lessons from South Asia

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Climate Justice*

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Outline

- Climate change, climate justice and human rights
OHCHR report, 2009
Paris Agreement, 2015
- Role of human rights in relation to climate change
- Climate justice
- Environmental justice framework
- Role of the Judiciary
- Lessons from South Asia – Leghari case
- Conclusion

“I believe climate change is the biggest human rights issue of the 21st Century”

Mary Robinson (former President of Ireland, Special Rep've of UN SG on Climate Change & Mary Robinson Found'n – climate justice)



CC & HR-Report of the OHCHR, 2009

- Recognized that global warming will potentially have implications for the full range of human rights
- These include rights to life, adequate food, water, health (both direct and indirect), and adequate housing
- Disproportionate impact on vulnerable states and vulnerable communities
- Despite the link between CC and HR, it is not clear what obligations HR poses on states with regard to CC

Paris Agreement, 2015

- First environmental treaty to refer to human rights and justice:

“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.”
(Preamble)

Paris Agreement - climate justice

- Noting the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth, and noting the importance *for some* of the concept of “climate justice” when taking action to address climate change (Preamble)
- Affirms the importance of education, training, public awareness, public participation, public access to information and cooperation (Preamble)

Role of Human Rights?

- Many of the protected rights will be affected by CC including, right to life, health, water, food, privacy and family life, dignity
- Need to discuss HR in relation to
 - (a) mitigation measures (b) adaptation measures
 - (c) historic emissions (d) severe weather events

Some issues do not have a legal framework – climate displacement/migration

Vertical nature of HR – places the burden on states whose contribution to CC may be very small while main emitters (states and companies) may escape liability

Remedies – may not be adequate

Bangladesh's statement at OHCHR/HRC consultation

- In dealing with the global problem of climate change, too much emphasis was put on national responsibility. The least developed countries and small island States would be the worst affected by climate change, although they had contributed least to global greenhouse gas emissions. **It was not only unfair, but also unjustified**, to hold these countries responsible fully for protecting their populations. While human rights based efforts to adaptation and mitigation were useful, such an approach should not only focus on the obligations of national authorities as duty bearers for protecting individuals' human rights.

Climate Justice

“Climate change is far more than an environmental challenge. It is profoundly a human issue with immediate and far-reaching implications for jobs, homes, health, food and lives It is also increasingly seen as a **justice issue** as climate change undermines the realization of a host of internationally recognized human rights, has asymmetrical impacts on the poor and vulnerable, and increasingly requires disproportionate action from developing countries.”

(Climate Justice working paper by World Resources Institute and Mary Robinson Foundation, 2013)

Climate justice contd...

“Climate justice links human rights and development to achieve a human-centered approach, safeguarding the rights of the most vulnerable and sharing the burdens of benefits of climate change and its resolution equitably and fairly”

(Mary Robinson Foundation-Climate Justice)

Disproportionate contribution to CC *versus* the disproportionate impact of CC (countries and vulnerable groups)

Four elements the underlie climate justice

- The disjuncture between responsibility for CC and its impacts
- The capacity (or lack of it) to take adaptation measures
- The need for economic development for poorer nations
- Insufficient atmospheric space to allow developing countries to emit GHGs to the same level as developed countries

Some scholars/activists distinguish between **luxury emissions** and **subsistence emissions**

Environmental justice framework

- Many definitions – some have described it as a “marriage of the movement for social justice with environmentalism” integrating env’tal concerns into social, racial and economic justice agenda.
- We will use the four-part categorization of environmental justice proposed by **Robert Kuehn**
 - (a) distributive justice (b) Procedural justice
 - (c) Corrective justice and (d) Social justice

Human rights framework is a useful tool to achieve justice but may be challenging in the context of climate change due to its vertical nature

Distributive justice

- Closely related to equal treatment – the right to the same distribution of goods and opportunities as anyone else and equal distribution of benefits
- Does not mean distributing pollution or risk equally
- Means equal protection for all and eliminating environmental hazards
- Is achieved through lowering of risks, not shifting or equalizing existing risks
- In certain instances, it becomes necessary to favor a particular group to redress past imbalances or inequities
–CBDR principle/affirmative action

Procedural justice

- Requires access to information, participation of the relevant stakeholders, and access to justice
- Overlaps with human rights law and are referred to as access rights or environmental democracy
- Rio Declaration Principle 10 and Aarhus Convention reflect these rights in relation to env'tal issues
- Also requires that the process be designed to lead to a fair outcome
- May require providing disadvantaged groups with legal and technical resources so that they can participate
- Participation in international negotiations, especially for developing countries and vulnerable groups, is limited

Corrective justice

- Involves fairness in punishment and remedying harm inflicted on individuals and communities
- In environmental context - means polluters are punished and are not allowed to reap benefits of disobeying the law and remedying the injuries caused
- Environmental damage inflicted by multinational companies in developing countries is a real problem. They have escaped liability for a variety of reasons
- How do we apply this in the context of CC? Is the loss and damage mechanism a step towards this?

Social justice

- Probably the least developed and most nebulous pillar
- Overlaps with social pillar of sustainable development
- Environmental justice cannot be separated from struggles for other forms of justice that often underlie the reasons for env'tal problems
- Focusing on distributive justice alone neglects the social structures and agents that are causing env'tal problems (Foster)
- Although struggles for injustices are intertwined and cannot be separated from each other, the wider focus can seem overwhelming

Role of judiciary

- Judiciaries in South Asia have played an important role developing environmental rights
- Many significant cases where judiciary interpreted existing rights to encompass environmental rights and articulate a right to a healthy environment and the right to be free from pollution

India – right to life (Subhash Kumar case)

Pakistan – right to dignity (Shehla Zia case)

Sri Lanka – right to equality (Eppawala Phosphate mining case)

Nepal – right to life (Suray Prasad Sharma Dhungel)

Bangladesh – right to life (Mohiuddin Farooque case)

Lessons from South Asia

- *Leghari v. Federation of Pakistan* (2015), Lahore High Court Lahore Judicial Dept

“Climate Change is a defining challenge of our time and has led to dramatic alterations in our planet’s climate system. On a legal and constitutional plane this is clarion call for the protection of fundamental rights of the citizens of Pakistan, in particular, the vulnerable and weak segments of the society who are unable to approach this Court.”

Leghari Case contd...

- Environment and its protection has taken a center stage in the scheme of our constitutional rights. It appears that we have to move on. The existing environmental jurisprudence has to be fashioned to meet the needs of something more urgent and overpowering i.e., Climate Change. **From Environmental Justice, which was largely localized and limited to our own ecosystems and biodiversity, we need to move to Climate Change Justice.** Fundamental rights lay at the foundation of these two overlapping justice systems.
- The delay and lethargy of the State in implementing the Framework offends the fundamental rights of citizens.

Conclusion

- The rest of the world can learn from South Asia's jurisprudence relating to env'tal rights and sustainable development
- Not only have judiciaries in South Asia used existing rights creatively and articulated a right to a healthy environment, they have also relaxed rules relating to standing, taken up cases *suo moto* and brought international environmental law principles into the realm of national law
- Legal profession and NGOs have also played an important role
- This important trend is continuing in relation to CC



Thank you!