Environment, Climate Change and Human Rights

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Scope and structure

• Scope: International and regional framework on the promotion and protection of human rights (related to Climate Change and the Environment)

• Topics to discuss
  • The Right to a Clean, Healthy and Safe Environment
    • What is “the environment”, and our ecological footprint
    • Is there a Right to a Clean, Healthy and Safe Environment
  • Part 2: Climate Change and Human Rights
    • What action is being taken internationally on climate change?
    • Is climate change a Human Rights issue? How?
    • Case Study: Human Rights, Climate Change and Migration

Part 1: Environment and human rights

What do you think about when you think about “the environment”?

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Pristine environment / wilderness/ national parks (?)

Environmental pollution and disaster, such as Koh Samet, August 2013

Climate change

“Environmentalists”, such as protests against the Mae Wong Dam (Sept 2013)

Rural livelihoods that depend on the environment (in many, many ways!)

Urban “habitats”

Of course, the rural and urban are linked

And, there are many different types of communities who relate to – and manage - their environment in many different ways.

Loss of access to natural resources – including due to land dispossession, river degradation, or forest destruction – is a threat to livelihoods.

Globally, human’s “footprint” is growing

- “We” are exceeding the world’s carrying capacity
  - Global Average = 2.7 global hectares per person, whilst 2.1 is available (demand 30% greater than supply)
  - Many have benefited materially, but still just over one billion people live on less than $1.25 a day (in 2011), compared with 1.91 billion in 1990
  - If everybody consumed at U.S. rates, we would need 3 to 5 planets

EF has doubled since 1966!

By 2030, we will need two planets

- 1961
- 1971
- 1981
- 1991
- 2001
- 2007

http://www.footprintnetwork.org

The Age of the Anthropocene

Anthropocene refers to the present time interval, in which many geologically significant conditions and processes are profoundly altered by human activities,

(coined in 2000 by Paul Crutzen and Eugene Stoermer)

http://www.anthropocene.info/en/anthropocene

Southeast Asia’s “Great Transformation”
Development or transboundary environmental injustice?

Globalization, investment and exporting environmentally polluting industries

<table>
<thead>
<tr>
<th>Name of disease</th>
<th>Japanese prefecture affected</th>
<th>Cause</th>
<th>Source</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ito-i-tai disease</td>
<td>Toyama Prefecture</td>
<td>Cadmium poisoning</td>
<td>Mitsui Mining &amp; Smelting Company</td>
<td>1912</td>
</tr>
<tr>
<td>Minamata disease</td>
<td>Kumamoto Prefecture</td>
<td>Methylmercury</td>
<td>Chisso Corporation</td>
<td>1956</td>
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<tr>
<td>Niigata Minamata Disease</td>
<td>Niigata Prefecture</td>
<td>Methylmercury</td>
<td>Showa Denko</td>
<td>1965</td>
</tr>
<tr>
<td>Yokkaichi Ashma</td>
<td>Ito Prefecture</td>
<td>Sulfur dioxide</td>
<td>Air pollution within Yokkaichi</td>
<td>1961</td>
</tr>
</tbody>
</table>

Academics have many concepts to think about the science, policy and politics of environmental change....

Many have spoken/ debated/ contested about “Sustainable Development”

- Urbanization
- Industrialization
- Globalization
- Intensification
- Demographic transitions
- Consumption growth
- Democratization
- Policy innovation
- Militarization
- Decentralization


Many have spoken/ debated/ contested about “Sustainable Development”

- The launch pad for the notion of international environmental law
- Created UNEP
- Published in 1987 by the United Nations World Commission on Environment and Development (WCED).
- Placed environmental issues firmly on the political agenda
- Tried to link the environment and development as a single interconnected issue.

“to meet the needs of the present without compromising the ability of the future generations to meet their own needs.”

Our Common Future, 1987

It goes on to emphasize “…sustainable development requires meeting the basic needs of all”
**Principles of the Rio Declaration (1992)**

- *The right to development* must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.
- Common but differentiated responsibility
- *Procedural justice and public participation*
- The precautionary principle
- The polluter pays principle
- Prior and timely notification on activities that could have transboundary environmental impacts
- “States have … the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”

Do we have a Right to a Clean, Healthy and Safe Environment

- The international human rights framework and the international consensus for environment sustainability emerged from separate origins
- At the 1972 Stockholm conference, the Right to the Environment was proposed … it was discreetly dropped from Rio conference in 1992.
- In 1991, the UN first studied the relationship between the environment and human rights, appointing a Special Rapporteur on Human Rights and the Environment
  - Ms. Fatma Zohra Ksentini was appointed as Special Rapporteur on Human Rights and the Environment for the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities.
  - She concluded that environmental damage has direct effects on the enjoyment of a series of human rights and that human rights violations in turn may damage the environment
  - Opened the way for growing momentum on Human Rights and the environment through both case law and international agreements.

Do we have a Right to a Clean, Healthy and Safe Environment

- In April 2011, the UN Human Rights Council adopted resolution 16/11 on human rights and environment
  - Sustainable development and the protection of the environment can contribute to human well-being and the enjoyment of human rights;
  - Environmental damage can have negative implications, both direct and indirect, for the effective enjoyment of human rights
- In March 2012, appointment of Professor John F. Knox as the first Independent Expert on Human Rights and the Environment
- Prof. Knox has scoped and then mapped with regard to the relationship between Environment and Human Rights:
  - UN human rights treaties and the treaty bodies charged with overseeing them,
  - other UN bodies and mechanisms such as the Human Rights Council and its special rapporteurs,
  - regional human rights systems,
  - international environmental instruments
  - National constitutions
- In his statement to the Human Rights Council in March 2014, whilst acknowledging that not all States have accepted the norms that could govern the relationship between human rights and environmental protection, Professor Knox concludes that:

  “I believe that it is now beyond argument that human rights law includes obligations relating to the environment”

For example, he found that around 90 individual States have adopted rights related to a healthy or sustainable environment in their national constitutions
Professor Knox has argued that “human rights bodies have gone beyond describing the effects of environmental harm on the enjoyment of human rights.”

Three types of environmental human rights obligations of States:

- **Procedural obligations**, including to assess environmental impacts, share information, facilitate public participation, and provide access to effective remedies for environmental harm.
- **Substantive obligations** to protect against environmental harm that interferes with the enjoyment of human rights, including to life, health, food and water. State should adopt and implement an appropriate legal framework that strikes a reasonable balance between environmental protection and other priorities.
- **An obligation to take account of groups who may have particular vulnerabilities to environmental harm**. This may include the impacts of environmental pollution to children’s health, situations that may have a disproportionate effects on women, and impacts on indigenous people.

For Rio+20, OHCHR and UNEP launched a joint report.


Key reports:

- Scoping Report (March 2013): Places the mandate in a historical context, present some of the outstanding issues relevant to the relationship between human rights and the environment.
- Mapping Report (March 2014): Maps procedural and substantive rights, and obligations of the state to vulnerable groups.
- Report on Climate Change and Human Rights.

http://srenvironment.org/

Given the relationship between the economy and environment, the UN Guiding Principles on Human Rights are also highly relevant.

Bolivia has emerged as a global visionary of the Rights of Mother Earth, whereby life systems – combined human communities and ecosystems – are recognized as right holders under their national law.

While these Rights exist on paper, it’s often difficult for directly and indirectly affected communities to access them.

Human Rights of Environmental Defenders at Risk

Global Witness, identify a total of 13 and 16 deaths of environmental and land defenders in Cambodia and Thailand between 2002 and 2013, and a further 6 in Indonesia, 1 in Malaysia, and 67 in the Philippines. This total, however, is almost certainly an underestimate.

The ASEAN Human Rights Declaration

Article 28: Every person has the right to the highest attainable standard of health. This right includes the right to a healthy environment, which includes the right to safe drinking water and sanitation, the right to food, the right to safe, clean and sustainable environments, and the right to ensure the participation of women and indigenous peoples in its decision-making, with a particular emphasis on rights that have also recognized this right including in Africa, Central and South America, and Europe.
• AICHR has commendably discussed “Human Rights, Environment and Climate Change” in September 2014

• Well known challenges remain to be overcome to realize the Right to a Clean, Healthy and Safe Environment
  • Uneven governance: Transparency, accountability, incomplete laws, and access to justice

National Legislation:
Right of Access to Information

Part X
Right to Information and Complaints

Article 56. A person shall have the right to receive information, explanation, and reason from a State agency, State enterprise or local government organization, unless the disclosure of such information shall affect the security of the State, public safety, interests of other persons which shall be protected or private information as provided by law.

Article 57. A person shall have the right to get access to public information in possession of a State agency, State enterprise or local government organization before permission is given for operation of any project or activity which may affect the quality of environment, health, and sanitary conditions, the quality of life or any other material interest concerning him or her or a local community and shall have the right to express his or her opinion on such matters to agencies concerned for consideration in that matters.

In undertaking any social, economic, political, and cultural development planning, appropriation of immovable property, city planning, site use zoning, and issuance of regulations which may affect the interests of the people, the State shall thoroughly hold public hearings procedure prior to implementation.

National laws related to the environment are important to protect human rights

Public Participation in EIA/HIA

• Constitution of Thailand (2007): Section 67

• Thailand’s existing “Enhancement and Conservation of the National Environmental Quality Act, NEQA 1992,” which pre-dates the current constitution and provides the law on EIA, does not detail requirements for public participation

• However, in the 2007 Constitution detailed mechanisms for public participation are limited, and therefore still being developed in practice

www.environmentaldemocracyindex.org/

Beyond borders: Arenas of Justice to claim right to the environment in ASEAN

"Arenas of (in)justice" as politicized spaces of governance in which a process for claiming/defending rights or seeking redress for rights violations take place.

<table>
<thead>
<tr>
<th>Arena</th>
<th>Formal Institutions associated with the arena</th>
</tr>
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</table>
| National                      | • National Justice system  
• National Human Rights Institution                                                 |
| Regional inter-governmental   | • ASEAN Intergovernmental Committee on Human Rights  
• ASEAN Children and Women Commission (ACWC)                                       |
| International inter-governmental | • UN - Human Rights Council  
• UN - Special Rapporteurs  
• Universal Periodic Review  
• Core treaties (Optional Protocol mechanisms - CEDAW, CRC etc.)                    |
| Extra Territorial Obligations | • "Obligations relating to the acts and omissions of a State, within or beyond its territory, that have effects on the enjoyment of human rights outside of that State’s territory" (Maastricht Principles) |
| Voluntary non-binding mechanisms | • Corporate policies of project developers / financiers  
• Multilateral guidelines (OECD Standards on MNEs)  
• Multi-stakeholder voluntary processes (such as Hydropower Sustainability Assessment Protocol)  
• Civil society led processes (people’s courts etc.)                                    |

• Seeking justice through a critical momentum gained in multiple arenas of justice

Extra Territorial Obligations (ETOs): Khon Kaen Sugar Company, Koh Kong, Cambodia

• In 2006, the Cambodian Government approved two adjoining sugarcane ELCs of 9,700 hectares and 9,400 hectares
• Over 450 households from Chikor Leu Commune, Srae Ambel District dispossessed of 5,000 hectares of "chamkar" land
  • No consultation, process of dispossession at times violent
  • Initiated even before the concession contract was signed
  • Created income and food insecurity, increased debt

Arenas of Justice: Khon Kaen Sugar Company, Koh Kong, Cambodia

• Over 220 HH continue to seek justice, without having accepted compensation for the loss of almost 1,500 Ha of land:
  • Direct protest,
  • The Cambodian court,
  • Communication with the companies,
  • With the Thai National Human Rights Commission,
  • In the UK court, against Tate & Lyle
  • Through the Bonsucro multi-stakeholder initiative on sugarcane
  • Challenged the EU’s “Everything But Arms Initiative”
• Despite public attention, affected communities are yet to receive neither fair compensation, nor return of their chamkar land

http://en.nationalhealth.or.th/node/123
Part 2: Climate change and human rights

The expectation is that by 11 December 2015, a new international climate agreement will be reached that includes all major greenhouse gas emitters.


Explosive intervention by Pope Francis set to transform climate change debate

ASEAN Interngovernmental Commission on Human Rights (AICHR) media training, Bangkok, 27 July 2015

ASEAN Working Group on Climate Change (AWGCC) was established in 2009 to oversee the implementation of the relevant action lines in the ASCC Blueprint.

On 25 March 2009, the Council adopted resolution 10/4 “Human rights and climate change”:

- notes that “climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights ...”;
- recognizes that the effects of climate change “will be felt most acutely by those segments of the population who are already in a vulnerable situation ...”;
- recognizes that “effective international cooperation to enable the full, effective and sustained implementation of the United Nations Framework Convention on Climate Change ... is important in order to support national efforts for the realization of human rights implicated by climate change-related impacts”,
- affirms that “human rights obligations and commitments have the potential to inform and strengthen international and national policy-making in the area of climate change”.

The United Nations Human Rights Council recognized this in its resolution 7/23 (PDF) “Human rights and climate change” (28 March 2008), expressing concern that climate change “poses an immediate and far-reaching threat to people and communities around the world”.

http://environment.asean.org/asean-working-group-on-climate-change/

http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimateChangeIndex.aspx

Dr. Carl Middleton, Center for Social Development Studies, Faculty of Political Science, Chulalongkorn University
Climate Change and HR: Assessment of Independent Expert on Human Rights and the Environment

• June 2014: “Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Focus report on human rights and climate change”
• Prof. John Knox mandate extended in March 2015 to March 2018, and title changed from Independent Expert to Special Rapporteur
• “In 2015, in particular, it seems appropriate to devote particular attention to issues relating to climate change, in light of the importance of the Paris conference in December.”

(http://srenvironment.org/country-profiles/)

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(http://srenvironment.org/country-profiles/)

Report assesses UN human rights treaties and the treaty bodies charged with overseeing them, other UN bodies and mechanisms such as the Human Rights Council and its special rapporteurs, regional human rights systems, and international environmental instruments

• International Covenant on Economic, Social and Cultural Rights
• International Covenant on Civil and Political Rights
• International Convention on the Elimination of All Forms of Racial Discrimination
• Convention on the Elimination of All Forms of Discrimination Against Women
• Convention on the Rights of the Child
• UN General Assembly and Human Rights Council
• Special Procedures of the Human Rights Council
• Rights of Indigenous Peoples
• Global and Regional Environmental Agreements
• Non-binding International Environmental Instruments
• Aarhus Convention
• Asia-Pacific, Arab and African Regional Agreements, and European Social Charter
• Inter-American Human Rights Agreements
• European Convention on Human Rights and European Union

Many Rights identified to be at threatened, including:

• Right to Life
• Right to Water
• Right to Adequate Food/ Food Security
• Right to Health / Right to the Highest Attainable Standard of Health/ Right to Children’s Health
• Right to Adequate Housing
• Right to an Adequate Standard of Living
• Right to Self Determination
• Enjoyment of Rights in General
Obligations also identified:

- International Covenant on Economic, Social and Cultural Rights
- Obligation to conduct EIAs
- Obligation to Mitigate the Effects of Climate Change
- Obligation to Adopt Measures Safeguarding the Substantive Rights of Indigenous Peoples, including to Mitigate the Adverse Consequences of Climate Change
- Obligation to Prevent Third Party Transboundary Environmental Harm
- UN General Assembly and Human Rights Council
- Obligation to Respect Human Rights in All Climate Change Actions

Myers (2002) forecasts that there could be up to 200 million environmentally-displaced persons by 2050, and 25 million at present … although this framing has been criticized.
**Environmental “refugees”**

The 1951 Convention relating to the Status of Refugees (Refugee Convention) offers protection to individuals who are persecuted by a government or regime, societal groups, or individuals, on one of the five Convention grounds (race, nationality, religion, membership of a particular social group, or political opinion).

- Can environmental/climate change be interpreted as “persecution”?
- “Environmental Refugees” more likely to be an IDP than have crossed international borders
- Yet, especially for those fleeing natural disaster, they may have similar needs to political refugees

Note: Many “environmental migrants” are more likely to be IDPs

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**Environmental “Migrants”**

“Environmental migrants are persons or groups of persons who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad” (IOM, 2007)

“As rising sea levels, drought and disasters scrubs some of Earth’s most picturesque places off the map, the first climate refugees apply for asylum. But the UN doesn’t grant refugee status for victims of climate change. Where will they go?”


“In Tuvalu, a collection of reef islands and atolls midway between Hawaii and Australia, saltwater intrusion has already made it difficult to grow traditional crops, and the rainfall that provides much of the drinking water has become unreliable. Despite investments in freshwater storage systems and makeshift bulwarks to slow coastal erosion, much of the nation – where the average land height is a mere 2 meters (about 6.5 feet) above sea level – will likely be under water by the end of the century.”

“It’s already like a weapon of mass destruction,” Tuvalu Prime Minister Enele Sopoaga said last month of the impact climate change is having on his nation.


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But the Court of Appeal in New Zealand, where Mr Teitiota, 37, has been living since 2007, took an old-fashioned view of what constitutes a refugee. In a ruling yesterday, it called his case “fundamentally misconceived”, and an attempt to “stand the [UN refugee] convention on its head”.

The decision means Mr Teitiota and his family will be deported, as his work visa expired in 2010... he argued he faced “passive persecution” if forced to return home, as the government there was unable to protect him from climate change’s effects.

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Who is vulnerable to climate change and flooding?

- People’s “vulnerability” to flooding (and other climate change impacts) reflects a larger story of socio-economic and political inequality.
  - Destructive floods disproportionately affect those from lower socio-economic groups with less political power.
- The effects of floods can be mitigated or exacerbated by institutionalized disaster response strategies (or the lack thereof), as well as shaped by long-term development planning policies.
  - Risk reduction for some can result in risk redistribution to others (Lebel et al., 2011).
- Therefore, flood events can become “hazards” through socio-political processes ... rather than hazard as totally a natural phenomena.

Thank you for listening

www.csds-chula.org / www.maids-chula.org
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