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# Climate Justice and Human Rights, in a World in Climate Emergency



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# Climate Justice and Human Rights, in a World in Climate Emergency

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## EXECUTIVE SUMMARY

Climate justice is the blueprint for a fair and sustainable future of life on this planet. Climate justice can be understood as a lens for looking at climate change as a social, ethical and legal issue, rather than solely an environmental one. This frame of justice has in its core the protection of human rights and of the most vulnerable in a climate changed world. Climate justice should be seen as a flexible umbrella that is about ensuring that the process of implementing policies to tackle the anthropogenic harms of climate change is mirroring the rule of law and is developed on a rights-based approach. It is a matter of global justice with duties spreading from the international to the regional and national stakeholders.

If the United Nations (UN) fails to promote climate justice, then we collectively fail to protect human rights and negligently violate the rights of future generations. This policy brief outlines the linkages of human rights and climate change, by advocating for climate justice.

Climate change is undermining the fulfilment of internationally protected human rights, like the rights to health and life; the rights to food, water, shelter and property; rights associated with livelihood and culture; and with migration and resettlement. The worst effects of climate change are principally felt by those whose rights protections are already insufficient.

The main message of this brief is intended to raise awareness about the climate emergency that our world is under, and to extend an urgent call for immediate climate action addressed to all stakeholders in the European Union (EU) and UN levels, including politicians, law and policy makers as well as to civil society. After three decades of negotiating about the reach and power of climate laws and policies, we have reached a point that the negative effects of climate change are directly harming human rights on a large scale. We need a global response with strong laws mirroring and integrating the human rights project in this process. This brief aims to expose the political negligence of power holders in mitigating the negative effects of climate change on our planet, human rights and humankind's existence. Climate change is not only linked with the obvious human rights, like the right to a healthy environment or right to life; but climate change has become synonymous for climate emergency, and if this emergency is not mitigated by climate justice it will turn into the end of human rights. It is not rocket science to understand that in a world without a healthy environment, drinkable water and clean oxygen, no right to life or any human right can be truly enjoyed.

## INTRODUCTION

### What is Climate Justice?

It begins with the idea that the adverse impacts of a warming climate are not felt equitably among people. Climate change's worst effects are felt by the most vulnerable (and least responsible for this crisis). Effective climate justice solutions must honour human rights, equity, the rights of future generations and the rights of nature.

Climate justice views global warming as an ethical, legal and political issue, instead of dealing with climate change as – only – an environmental issue. As scholars, lawyers and activists, we engage with climate justice by linking the effects of climate change to the important ideas of environmental justice and fairness. We do so by examining topics such as equality, human rights, collective rights, intergenerational justice and the historical responsibilities for climate change due to carbon emissions, under the evolving and inclusive umbrella of climate justice.

Climate justice is the evolution of environmental justice, which in theory means that all living beings have a natural right to access and obtain the resources needed to have an equal chance of survival and are entitled to exist free from harm (Anderson 2004).

As part of the climate action movement, climate justice advocates are working from the grassroots up to create solutions to our climate and energy problems, with the goal of ensuring the rights of all people and future generations. The term 'climate justice' was originally defined as actual legal action on climate change; and thus, it is interesting to see the numbers of the relevant caselaw. According to a 2017 report (UN Environment Programme & Columbia Law School's Sabin Center for Climate Change Law 2017), there were, at the time the report was published, 894 identified ongoing legal actions globally. In November 2020, the total number of climate change cases filed reached over 1,650 (See <http://climatecasechart.com/>).

It should be noted that no report has managed to provide data about the impacts of climate change litigation in the climate justice project efficiently, which leads us to the conclusion that

there is a need for greater assessment and legal research on the effects of these legal actions beyond the courtroom.

According to a decade old policy brief, '[i]t is now beyond scientific doubt that the emissions of greenhouse gases need to be reduced significantly to prevent dangerous interference in the climate system and avoid dramatic consequences of global warming' (UNDESA 2009). Since it is beyond scientific doubt that climate change is a climate emergency that requires urgent climate action, why there are voices in the scientific community that deny these facts, and thus why there is a climate change denialism movement growing strong and spreading misinformation? Why is it that in 2021, decades after the recognition of these threats, the international stakeholders have done too little too late to frame the problem as an emergency and thus act to counteract the climate changed assassination of human rights?

## PROBLEM DESCRIPTION

### Why is Climate Change an Injustice?

The inadequate commitment of international law makers with climate justice research must be addressed and counteracted. It is interesting to see the huge difference in the amount of funding that goes to research about climate change denial than towards climate justice. This could be explained by looking at which industries are being negatively affected by climate justice and who are the holders of capital in our world today (Brulle 2014: 681), or in simple terms by following the money trail.

To better understand what climate justice entails, it is of essence to consider the United Nations Framework Convention on Climate Change (UNFCCC) (1992). The objective of the UNFCCC according to article 2 is the 'stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system'. It is important to stress that any attempt to understand what climate justice is, must be introduced in the form of a rights-based approach to climate change.

It is critical to apply a human rights-based approach to guide global policies designed to address climate change. To better understand what could constitute the essential attributes of a human rights-based approach, it would be useful to consider some of the elements described by the UN Human Rights Council (HRC) and the UN. For example, the elements of good practices under a rights-based approach requires policies to be formulated having as paramount main objective to fulfil human rights. This means that the rights-holders and their entitlements must be identified to find ways to strengthen their capacity to make their claims, and at the same time to ensure that the duty-bearers will meet their obligations.

Principles and standards derived from international human rights law – especially the Universal Declaration of Human Rights (UDHR 1948) and the core universal human rights treaties, should guide all policies, in all phases of this process.

### Linking Climate Change with Human Rights

Climate justice is linked with the agenda of human rights and the international sustainable development goals, sharing the benefits and burdens associated with climate stabilisation, as well as concerns about the impacts of climate change (Mary Robinson Foundation n.d.).

We know today that human rights and climate change are linked in numerous ways. This policy brief highlights the three main ways this interconnected linkage blooms:

1. Firstly, climate change has implications for the real satisfaction of the full range of human rights, especially for the most vulnerable people.
2. Secondly, a failure to act and incorporate human rights into climate action can undermine people's rights and activate duties of responsibility.
3. Thirdly, the integration of human rights into climate change policies can improve effectiveness and benefit people and the planet.

These three keyways provide us with all the

justifications needed to engage with human rights-based research in the climate change stadium.

Climate change is undermining the fulfilment of several internationally protected human rights, like the rights to health and life; rights to food, water, shelter and property; rights associated with livelihood and culture; and with migration and resettlement (European Council 2021). The worst effects of the ecological drama that threatens to bring the end of human rights are being felt by those individuals and groups whose rights protection is already insufficient. There are many new terminological constructions that are gaining ground in the international literature in the field of environmental or green crimes and human rights, which, if viewed from the same utilitarian standpoint, share a common essence, and that is the message they all try to communicate: that climate change is being caused by human activities; and this message is calling for attributing responsibility to the countries, companies or individuals that have direct links with the caused harms (article 3 of the UNFCCC). In this sense the best possible ally for moving climate justice would be the inclusion of green crimes in climate laws and the collaboration of international criminal law, environmental law and human rights law that are inter-connected and inter-dependent; under the need to achieve climate justice in a global scale. It is important for climate justice specialists to also evaluate the criminal dimensions of climate change, and include in this analysis questions such as: 'since the leaders of the developed countries had knowledge of the threat of climate change since the 1960s, and were alerted by scientists, however they failed to alert the public and move positive climate action that led to the climate emergency our world is experiencing now, should they bear legal responsibility?'

It is beyond doubt that the biggest polluters can be found in certain profitable industries, while business is still booming in exploiting natural resources, committing green crimes or abusing animal rights. All these issues are relevant in a climate justice discourse; however, to start grasping the complexities involved in the practice of this field of law, one needs to look

at the UNFCCC, where terms like ‘intergenerational justice’ and ‘historical differentiated responsibility’ have risen.

The human rights world is offering us a complete and useful infrastructure of legal procedures and a well-tested set of legal tools that we can now apply to climate justice. The relationship of climate change with human rights has gained ground and scientists have provided strong justifications for these claims to be standing strong. For example, the effects of climate change in the enjoyment of the basic human rights of future generations is now indisputable.

## Climate Justice and the Law

In resolution 45/94 the UN General Assembly evoked the logic behind the Stockholm conference in declaring that ‘all individuals are entitled to live in an environment adequate for their health and well-being’. The UN asked its member states to join forces in their struggles for safeguarding a healthier environment. Almost half a century later, the connections that were founded by these opening declarations have been reconstructed and developed in various ways in international legal instruments, presented in decisions of human rights bodies and the relevant caselaw precedent. The common paramount factor that has utility in our discussion is that in their majority, these legally valuable data were constructed on a rights-based approach to the topics. On that train of thought, we need to understand environmental law, as a pre-condition for the actual satisfaction of internationally guaranteed human rights.

Environmental protection is therefore a fundamental device in the delivery and safeguarding of the UDHR.

It is true that most human rights laws were created before environmental protection became a matter and subject of international concern. For example, the UDHR was created in the aftermath of World War II and dealt with the known injustices which emerged from the barbarities of war, which can partly explain the lack of environmental protection language in human rights law. The most obvious exceptions are the rights to life and to health, which are

included in many human rights instruments, and have some references to the environment. For example, the International Covenant on Economic, Social and Cultural Rights (1966) guarantees the right to safe and healthy working conditions and the right of children and young persons to be free from work harmful to their health. The right to health in article 12 expressly calls on state parties to take steps for the improvement of all aspects of environmental and industrial hygiene and the prevention of epidemics.

No reasonable legal mind can deny that the human rights complaint procedures can only be beneficial as utensils, in restoring inadequate environmental rights safeguarding ‘as compared to efforts to incorporate a right to environment in human rights treaties’ (Picolotti & Taillant 2003: 1).

At the end of the day, politicians call for human rights to move uncertain action on climate change policies, instead of supporting climate justice action to prevent human rights costs.

The main argument underlying the message of this policy brief is that human rights law is applicable because the human-made impacts of climate change cause human rights violations. The human rights context redirects the analysis of the phenomenon to its essential effects on humankind, and, since the climate emergency is about suffering, relates to the harm humans are doing to nature, and with more concrete green crimes (Aliozi 2021). Numerous populations experience the adverse effects of warming temperatures, yet few solutions have been available to them. The human rights regime can offer solutions to these injustices, by providing the raw materials for constructing a climate justice legal structure. Our world has reached a point of climate emergency where delaying taking climate action is not an option anymore. However, we still lack strong laws to move the necessary climate action on a global scale. The enforcement of the UNFCCC in 1994, almost three decades ago, marked the beginning and set the map for the steps that need to be taken to tackle the catastrophic consequences of the anthropogenic climate change.

## RATIONALE FOR ACTION:

We have failed to communicate to the public the state of emergency we are under and the seriousness of the existential threat deriving from climate change. This policy brief aspires to illuminate our problematic understanding of climate justice and of the anthropogenic harms threatening humanity and future generations. Harms and damages not only of an environmental nature but also social and legal. Legal experts have a duty to advocate against the manipulation of international law's principles, or omissions by law-making organs in the international arena. The human rights regime cannot be applied selectively to newly emerging legislation, since it has the mandate of being a superior source of international legal principles.

To dismiss human rights arguments from treaty negotiations, when harm on their enjoyment is entailed, is not acceptable by legal theory. Neither is the continuation of non-binding political agreements in cases where the threat of harm to humankind is of incalculable magnitude. If a new law is found to be infringing human rights, then it is an *ultra vires* law and is deemed to be void. There is a duty on the international law-making organs to re-consider climate justice beyond environmental law and to include human rights in the picture.

## POLICY RECOMMENDATIONS

Climate change must be addressed in earnest urgency, for the well-being of humankind and future generations. It is imperative that the UN declares that our world is in a climate emergency and to demand action.

It is critical to ensure that climate change and justice are conceived in a broader manner, which goes beyond the environmental and economic dimensions that have been central to the existing regime. The need to redefine the reach of climate laws by including green crimes within their framework is of the essence. International criminal law in collaboration with human rights law can open the way for a new era of strong legislative tools that can ensure positive change by moving away from the inadequacies presented due to the voluntary nature of soft climate laws

and “theatrical” political agreements with little legal enforceability.

Green crimes refer to violations of environmental law, therefore the incorporation of green crimes into the climate justice framework will only benefit our world in dealing with the climate emergency. Green crimes from a rights-based angle have strong links with human rights, with inter-generational equity and the rights of future generations, and these linkages reveal their critical connection to climate justice. For example, ‘[a] legally enforceable green crime of ecocide that will criminalize the destruction of our world’s ecosystems, is a much-needed addition to our international criminal justice system’ (Aliozi 2021: 2).

Giving a central place to human vulnerability, and incorporating the human rights language in climate change law, is crucial. This could be accomplished by a wider re-evaluating of differential treatment in the climate change regime, and by ensuring that it better reflects people’s vulnerabilities in the future.

After the COP21 (2015) and the legally binding agreement put forward, the need to produce more in-depth human rights research in relation to climate change needs no further justifications. Climate justice is becoming an integral part of the human rights system, and it is in this co-dependent relationship that the present policy brief focuses.

Translating words into action will demand radical strategies by various actors, at the international and national levels:

- One way of moving change is by enriching the international literature with scholarly studies of the highest possible standards, aimed to develop a better, stronger and more effective climate justice field. This is an active contribution that academia can achieve, only through collaborations with inter-disciplinary teams of scientists.
- Campaigning and movement-building: Push for a reliable narrative on climate justice which features human rights. New tech for good and digital communications advocacy need to be employed to raise awareness and deliver the key message of the climate emergency by calling for climate action all stakeholders.

- Capacity-building/education: Call for education on the consequences of climate change, its link to human rights and the prominence of urgent action.
- Call on UN agencies and bodies to support capacity-building in this area through online courses, guides, material and funding research.
- Data, accountability, monitoring, assessment and access to information: The UN needs to work with civil society and the media to monitor governmental and business industry's actions.
- 2030 Agenda for Sustainable Development (SDGs): Advocate for SDGs monitoring, follow-up and review mechanisms to incorporate rights-based indicators in relation to climate justice.
- Private sector: Explore innovative strategies for engaging the private sector: shareholder activism, naming and shaming, calling for contractual rules and binding environmental agreements. Halting of all business activities that harm the environment.
- UNFCCC and the Intergovernmental Panel on Climate Change (IPCC): IPCC need to focus its work to connect UN bodies and promote human rights and climate change linkages. Need stronger and binding international law.
- HRC and UN treaty bodies; Increase coherence between the UNFCCC, HRC and treaty bodies. Empower their mandate and boost stronger binding rules.
- In summary, the future of climate justice depends on the inclusion of the human rights regime within its workings. There are duties that rise from the acknowledgment of the rights of future generations and highlight the urgent key issues deriving from intergenerational justice.

## CONCLUSION

This policy brief aspires to appeal to legal experts, climate justice scholars and human rights practitioners; and ultimately to contribute to policy making, academia, law, philosophy, international relations and global justice. There are various grey areas in our conceptions of the man-made effects of climate change and the role of the law-making organs into the climate

justice process, in a case where the harm involved is of incalculable range.

In summary, the future of climate justice depends on the inclusion of human rights, green crimes, animal rights and rights of nature on the table of negotiations. This will require a shift from the outdated anthropocentric function of law and a positive move towards an ecocentric understanding of climate justice.

We need immediate action to mitigate the disaster scenarios. The human rights regime can offer climate justice the best possible framework for accountability, law-enforcing tools, individual and collective justice claims, and the real and actual implementation of environmental law. Climate change discourse should not be guided solely by environmental law, politics and, in the worst-case scenario, by economic interests. As a human-inflicted harm to other human beings, it must be addressed as bearing responsibility. Criminal law and 'green criminology' can serve in ensuring and restoring justice in the climate justice arena. If we bring human rights standards into our climate justice's future development, then it will be easier to identify those that are under threat and how to protect them. Climate change texts show us a myriad of failings in our existing established design, including the lack of human rights mechanisms. Tackling these drawbacks will involve reform of the global policies, from information-gathering to collective decision-making, and from law-making to practice and enforcement.

According to the UDHR, 'everyone is entitled to a social and international order in which [their] rights and freedoms ... can be fully realized' (article 28). Climate change interrupts this process and the realisation of fundamental human rights.

Human rights in essence are tamers of power and place limits and barriers to what governments and powerful corporations can do. This is what human rights can bring to the climate justice arena and accordingly contribute to tackling, preventing and minimising climate change's harmful effects on humankind, our planet and all living beings. Therefore, we need to include in the discussion the relevant animal rights voices, and work towards including these arguments in the legal realm (Aliozi 2020).

Things should be called by their name, and the fact is that today we are witnessing the ultimate violation of the human rights of the most vulnerable people. It has been scientifically proven that the area of climate change has an inherent crucial urgency; that climate change and human rights claims are strongly connected; that equity for future generations is a defining legal principle; and thus we need to acknowledge clearly, that the ultimate human rights violation of humankind's known history will be the only thing "flourishing" due to anthropogenic climate change.

Over the past 30 years the European Court of Human Rights has played an important role in 'greening' human rights law. It is now well established that environmental damage and environmental protection can be treated as human rights issues. What we as legal scholars need to focus on is pushing for positive change in international criminal law while at the same time work to raise awareness of international green crimes. Climate change will be responsible for the end of human rights if the international community fail to act as fast and effectively as they did during the challenging times of the Covid-19 pandemic. The seriousness and urgency involved in this climate emergency arena is literally a matter of life and death for all stakeholders.

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