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CLIMATE CHANGE AND HUMAN RIGHTS

An unlikely relationship?

GUSTAV LANYI

We have become familiar with the concept of climate change as greenhouse gases accumulate in the atmosphere and cause average global temperature to rise.¹ No less than 182 nations have agreed to cut their greenhouse gas emissions by ratifying the Kyoto Protocol, which entered into force in 2005 and is due to expire at the end of 2012. However, what do human rights — the rights we all have as human beings — have to do with climate change? Surprisingly, quite a lot, and the impacts are both direct and indirect. Many economic, social and cultural rights are impacted by climate change, including the rights to food, water, housing and health. Civil and political rights, such as the right to life, and the cultural rights of Indigenous people can also be impacted by climate change. This article examines these impacts, with a particular emphasis on Australia.

Direct and indirect impacts

It is arguable that the impact of climate change on rights can be felt *directly* from extreme weather events that are caused by climate change,² such as the 2009 Black Saturday bushfires in Victoria; the 2011 Queensland cyclone and floods and other recent flooding in country Victoria, New South Wales, South Australia and Western Australia; and droughts, such as the more than decade-long one which ended throughout Australia in 2010. Extreme weather events can also adversely affect food security, as exemplified by significant increases in the price of fruit and vegetables, particularly bananas, which followed these events, making such foods unaffordable for many.³

Climate change can also result in *indirect* impacts on human life through deterioration in health, declining access to safe drinking water, increased susceptibility to diseases,⁴ and several other consequences. The United Nations Development Programme ('UNDP') has argued that mass environmental displacement, loss of livelihoods, rising hunger and water shortages can potentially contribute to national, regional and global security threats.⁵

Economic, Social and Cultural Rights

Right to food

Key among the economic, social and cultural rights protected by international law is the right to food, which is enshrined in Article 11 of the 1966 *International Covenant on Economic, Social and Cultural Rights* ('ICESCR'), as a right to adequate food and 'the fundamental right of everyone to be free from hunger'.

This right has been interpreted by the Committee on Economic, Social and Cultural Rights ('CESCR') in its 1999 General Comment No 12 as requiring State Parties to ensure freedom from hunger and to take necessary action to reduce hunger, even in times of natural or other disasters. The right to food will be detrimentally impacted on by climate change as food production is likely to decline due to increased temperatures accelerating grain sterility; shifts in rainfall patterns producing land infertility, elevating erosion, desertification and diminishing crop and livestock yields; rising sea levels making coastal lands unusable and causing fish species to migrate; and increasingly frequent extreme weather events disrupting agriculture.⁶ For example, Australia is expected to see up to 20 per cent more droughts by 2030, with a corresponding negative impact on food production.⁷

Right to water

The right to water is regarded as implicit in the rights to an adequate standard of living (Article 11) and to health (Article 12) of the ICESCR. In July 2010, the UN General Assembly made a Declaration that safe and clean drinking water is a human right.⁸ The right to water will be adversely affected by climate change because, as the earth gets warmer, heat waves and water shortages will make it difficult to obtain safe drinking water and sanitation⁹ (impacting the right to health), and water for crops¹⁰ (impacting the right to food). The drop in precipitation in Australia's water catchments is already resulting in competition between stakeholders over the use and sharing of remaining water.¹¹ Elsewhere, the loss of glaciers and reductions in snow cover are predicted to increase under climate change, and result in less water availability for more than one-sixth of the world's population which is supplied by meltwater from mountain ranges.¹²

Right to health

The right to health is recognised by Article 12 of the ICESCR, according to which everyone is entitled to 'the highest standard of physical and mental health'. Climate change presents considerable challenges to the enjoyment of the right to health because, as the CESCR noted in its General Comment No 12, one of the determinants of human health is a healthy environment. The Intergovernmental Panel on Climate Change ('IPCC') in its Fourth Assessment Report predicted that climate change will affect the health of millions of people, including through increased malnutrition, diarrhoeal, cardio-respiratory and infectious diseases,

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as well as injuries caused by extreme weather events.¹³ A 2003 study conducted jointly by the World Health Organisation and the London School of Hygiene and Tropical Medicine found that global warming may already have caused more than 160 000 deaths per year through malaria and malnutrition — a number which may double by 2020.¹⁴ According to the International Institute for Environment and Development, climate change will affect the intensity of many types of diseases: vector-borne diseases (such as malaria and dengue fever); water-borne diseases; and respiratory diseases (such as asthma) — especially among older age groups and urban poor populations.¹⁵ In Australia, there is a risk that the range and spread of diseases and pests will increase¹⁶ as the climate warms and becomes more tropical.

Right to housing

The right to housing is included in Article 11 of the ICESCR. The climate change-induced extreme Queensland floods in early 2011 saw impacts on the more specific right to housing in the affected areas, when access to shelter and disaster preparedness in the face of displacement became strained. The 2009 report on climate change by the UN Office of the High Commissioner for Human Rights ('OHCHR report') explains how climate change has affected the right to adequate housing, which right includes security of tenure, habitability and location.¹⁷ According to that report, sea level rise and storm surges will have a direct impact on coastal settlements. In fact, in low-lying island States like Tuvalu in the Pacific Ocean, such impacts have already led to the relocation of communities. Further, as the report identifies, almost 1 billion people worldwide live in urban slums on fragile hillsides or flood-prone riverbanks, where they face acute vulnerability to extreme weather events, such as the landslides in Brazil in early 2011. The people affected in Queensland, Tuvalu and Brazil have experienced inadequate protection of their housing from weather hazards, that is, the inhabitability of that housing.

The Australian Network of Environmental Defender's Offices ('ANEDO') presented two case studies to illustrate the threats posed to human rights by climate change.¹⁸ The first case study is the dispute between farmers and coal miners over the use of land in the fertile Caroon region of New South Wales. The rights to water and food are adversely impacted in this scenario. The second case study points out the serious consequences of sea level rise and flooding resulting from climate change on Australia's highly populated coastal areas. These consequences include the salinisation of freshwater sources reducing the availability of drinking water, the destruction of infrastructure, greater exposure to disease and the potential threat to water where contaminated sites are inundated.¹⁹ The detrimental impacts of such consequences for the right to water, the right to housing, the right to health and the right to life to soon become evident.

Civil and Political Rights

Right to life

A key civil and political right, the right to life, which is enshrined in Article 6 of the 1966 *International Covenant on Civil and Political Rights* ('ICCPR'), has been interpreted by the UN Human Rights Committee as encompassing not only a negative obligation on States (not to cause death), but also broadly as a positive obligation (to take measures for the protection of life). The IPCC in its Fourth Assessment Working Group II Report has projected increases in death, disease and injury from heatwaves, floods, storms, fires and droughts resulting directly from climate change.²⁰ In that report, the IPCC has also foreshadowed indirect impacts on the right to life through an increase in hunger, malnutrition and related disorders which affect child growth and development, as well as cardio-respiratory illnesses and mortality related to ground-level ozone. The UNDP in its Human Development Report for 2007/2008 found an estimated 262 million people were affected by climate disasters *annually* from 2000 to 2004, of which over 98 per cent lived in developing countries.²¹

Sara C Aminzadeh argues²² that when a State fails to take reasonable measures to prevent environmental damage, and the result of this failure is climate change, those harmed may seek a remedy for breaches of their right to life. This argument appears to be sound given that the right to life is to be widely interpreted as encompassing a positive obligation, and States are jointly and severally bound to ensure the fulfilment of such an obligation, given the universality of human rights.

Indigenous cultural rights

The cultural rights of Indigenous minorities within nation States are recognised in Article 27 of the ICCPR. The cultural rights of Indigenous communities in Australia are disproportionately affected by climate change, due to their close relationship with the environment, and consequent threats to their health, well-being and even survival. The right of Aboriginal and Torres Strait Islander communities to participate in and strengthen Indigenous cultural life is directly threatened by climate change, given the intrinsic links to land in the cultures of these communities. Friends of the Earth International have predicted that, due to climate change, more than 100 000 people in northern Aboriginal communities will face serious health risks from malaria, dengue fever and heat stress, as well as loss of food sources from floods, drought and more severe bushfires.²³ Elsewhere, the impacts of climate change have already been felt by Inuit communities in polar regions, who have been forced to relocate, thus affecting their traditional livelihoods.²⁴ Climate change also threatens the cultural identity of Indigenous peoples living in low-lying island States, which is closely linked to their traditional lands and livelihoods.

Conclusion

The existing legal framework in Australia and internationally does not protect many of the human

10. Wolfgang Sachs, 'Climate Change and Human Rights' (2008) 51 *Development* 332, 333.

11. Dupont and Pearman, above n 6, 35.

12. 'Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights', A/HRC/10/61, 15 January 2009 ('OHCHR report'), 11.

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16. Rory Sullivan, *Australia Country Study* (UNDP Human Development Report 2007/08, 2007/61) 1, http://hdr.undp.org/en/reports/global/hdr2007-2008/papers/sullivan_rory_australia.pdf.

17. OHCHR report, above n 12, 13.

18. Australian Network of Environment Defenders Offices ('ANEDO'), Submission to the National Human Rights Consultation, 'Climate Change and Human Rights', 15 June 2009, 32–34.

19. Ibid 33–34.

20. OHCHR report, above n 12, 9.

21. UNDP, above n 5, 8, 30, 75, http://hdr.undp.org/en/media/HDR_20072008_EN_Complete.pdf.

22. Sara C Aminzadeh, 'A Moral Imperative: The Human Rights Implications of Climate Change' (2006–2007) 30 *Hastings Int'l & Comp. L. Rev.* 231, 251.

23. Friends of the Earth International, *Climate Change: voices from communities affected by climate change* (November 2007), 4–7, <http://www.foei.org/en/publications/pdfs/climate-testimonies>.

24. OHCHR report, above n 12, 17.

In Australia, there is a risk that the range and spread of diseases and pests will increase as the climate warms and becomes more tropical.

rights — both civil and political rights, as well as economic, social and cultural rights — that are important to the environment and climate change. As a consequence, climate change has the potential to exacerbate existing threats to human rights, increasing vulnerability to poverty and social deprivation. That is, populations whose rights are poorly protected — including Indigenous Australians, the homeless and minority groups — are likely to be less equipped to adapt to climate change.²⁵ While climate change is expected to produce the most disproportionate adverse impacts on coastal and Indigenous people and Third World countries, the long-term effects of climate change will be experienced all over the world, including

Australia. In this context, a human rights framework provides a useful means for analysing and addressing the human impacts of climate change, which are wide-ranging and significant. This article has shown that limits are imposed on a variety of human rights by climate change, the effects of which will be cumulative. This makes imperative the taking of early action to mitigate greenhouse gas emissions.

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25. John von Doussa, 'Climate Change and Human Rights' (CPD, 2008) <http://cpd.org.au/2008/06/climate-change-and-human-rights/>.



NSW EDO at risk

The New South Wales community's ability to access free legal advice for public interest environmental matters has been put at risk by the state government's refusal to commit to ongoing support for EDO NSW.

After nearly 30 years of helping the people of NSW to protect their environment and heritage under the law, EDO NSW faces an unprecedented threat to its survival and needs help to ensure its continued assistance with public interest environmental matters.

Following an unprecedented series of attacks over several months, by the Shooters and Fishers Party in the NSW parliament as well as a national newspaper, EDO NSW has learned that the state government is

reviewing its funding for the organisation. Without funding from the Public Purpose Fund and the NSW government, EDO NSW will be unable to provide its full range of services including a free legal advice line, workshops on topics such as private land conservation, publications such as the forthcoming guide to mining law and advice on issues like current planning reforms.

Support for EDO NSW can be voiced by contacting the Premier, Barry O'Farrell and the Attorney-General, Greg Smith, to ask them to commit to continued support for the work of EDO. For more information see <www.edo.org.au/edonsw>.