

EDITORIAL

Health Rights and the Urgency of the Climate Crisis

CARMEL WILLIAMS AND GILLIAN MACNAUGHTON

This special section on health rights and the urgency of the climate crisis could not be more timely. The world came together in Glasgow at the COP26 summit last month to try to avert the global disaster that will result if carbon emissions are not cut sufficiently or with enough haste. But in this matter, the summit was not successful. Despite the unanimous agreement on the goal of limiting global warming to just 1.5°C above pre-industrial levels, state parties did not agree on the speed at which to take the necessary steps to achieve this goal. Scientists are adamant that our primary challenge is to drastically reduce emissions by 2030 and that if this is not achieved, the world will be tipping toward self-destruction. The 1.5°C goal requires global carbon output to be halved by 2030, and countries had to submit their plans on how they would achieve this objective before the Glasgow talks began. But the plans, when analyzed by the Climate Action Tracker, were found to allow emissions at a rate that would “lead to a disastrous 2.4°C of heating.”¹ So the negotiations will continue in 2022 and 2023. Time, one thing not in the state parties’ hands, marches on.

In 2018, the Intergovernmental Panel on Climate Change report detailed the harsh differences in climate change likely to result from moving above 1.5°C, including increases in mean temperature in most land and sea regions, hot extremes in most inhabited regions, heavy precipitation, and probably droughts in other regions.² It also outlined the detrimental impacts on low-lying cities and coastal areas, on food production, and on most essential systems, including health systems, of a 2.0°C (compared to 1.5°C) increase. Further, it demonstrated the extra hardship that the added 0.5°C would mean for vulnerable and poor communities. But still, COP26 was unable to convince its member parties to transition away from fossil fuels quickly enough to save lives, livelihoods, and, in the case of small island states, entire nations. India and China both fought against “cutting out” the use of fossil fuels. Instead, they opted for the soft language of “phasing down” coal-fired power plants.

The Glasgow agreement particularly fails low-income countries. The United States and the European Union refused to create a new fund that low-income countries could draw on for crisis responses, even though—as all the papers in this special section acknowledge—low-income countries are far more exposed than high-income countries to loss and damage from adverse climate impacts. Christian Aid delivered a report to COP26 showing that, under current climate policies, the most vulnerable and “least developed

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countries” can expect to see climate change reducing their GDP by 19.6% by 2050 and by 63.9% by 2100. If governments limit global heating to 1.5°C, then the damage would be reduced but would remain significant. In a 1.5°C world, these nations would see their GDP hit by 13.1% by 2050 and 33.1% by 2100.³

Low- and middle-income countries report that climate change is already costing them as they repair the damages it causes, for which they rightly seek compensation. In his 2019 report to the UN General Assembly, David Boyd, UN Special Rapporteur on human rights and the environment urged states to establish a new financing mechanism to fund payments for loss and damage suffered by vulnerable low-income countries due to climate change.⁴ Reparation is a complex and challenging issue and is the subject of Audrey R. Chapman and A. Karim Ahmed’s paper, “Climate Justice, Human Rights, and the Case for Reparations.” The underpayment of pledges from high-income, high-emissions (historically and currently) countries to help low- and middle-income countries adapt to and mitigate climate impacts has led to Chapman and Ahmed’s suggestion for a new human rights-oriented fund for reparations. They suggest that the fund should be supervised by the United Nations Human Rights Council, linked to human rights accountability mechanisms, and organized similarly to the Global Fund to Fight AIDS, Tuberculosis and Malaria. Further, they identify the parties most responsible for the climate crisis, whom they argue, from an equity perspective, are obligated to contribute the most to reparation funds.

Like the COVID-19 pandemic, climate change is a global crisis that is hardest on the countries and people who are least privileged and least resourced. Successful responses to COVID-19 required interdisciplinary and cross-sectoral responses based on public health leadership, political commitment, state funding, legal underpinnings and regulations, and people’s trust. Many governments around the world accepted that the pandemic posed extreme threats to health, lives, and livelihoods, and they found the funding necessary to subsidize businesses that had to close temporarily, to help individuals

who lost their jobs, to provide shelter for homeless people, to purchase and distribute vaccines, to bolster intensive care capacity in hospitals, and, generally, to keep society functioning to the greatest extent possible to enable a full recovery as quickly as possible. These actions showed that states can respond expeditiously to crises when deemed necessary.

It is therefore puzzling that state responses to the existential crisis of climate change remain lackluster. Perhaps it is a function of the fact that many who hold political power will not be around to face the future that a 2.0°C-warmer world promises. In contrast, youth are very engaged and vocal in their demands for action for climate justice—it is their lives and their opportunities that are most threatened. Giulia Gasparri et al., in their paper “Children, Adolescents, and Youth Pioneering a Human Rights-Based Approach to Climate Change,” draw on the authors’ own experiences in the youth activist space to show the many ways in which youth are operationalizing rights-based responses to climate change. These rights-based approaches include a demand for young people’s participation and inclusion in the global and local arenas where decisions on climate action are made. Not surprisingly, youth were present at COP26 but, like the rest of civil society, not in the negotiating rooms, and they were frustrated with the outcomes. The paper also describes young people’s focus on equality and nondiscrimination and their heightened awareness of climate change impacts on vulnerable and marginalized populations. The authors explain that young people are driving climate accountability through formal contributions to legislative and judicial processes and by engaging international human rights mechanisms.

Also raising the key human rights principle of participation, David W. Patterson, in his paper “The Right to Health and the Climate Crisis: The Vital Role of Civic Space,” expresses concern at the lack of community participation in climate crisis discussions. He notes the restrictions placed on civic space—such as bans on public gatherings and protests—throughout the COVID-19 pandemic, and he fears that these restrictions could continue

into the future when they are no longer needed to reduce the spread of disease. Patterson calls for human rights, public health, and environmental activists to collaborate to address climate change and to defend the civic space necessary for their participation in climate discussions. Recognizing the interrelatedness of all human rights, he contends that the right to health provides a valuable opportunity for engaging a broader range of advocates in the response to the climate crisis, while warning that civil and political rights—such as the rights to information, to participation, to freedom of association, and to peaceful assembly—must also be protected if these actors are to contribute meaningfully and be heard.

Chuan-Feng Wu, in his paper “Challenges to Protecting the Right to Health under the Climate Change Regime,” looks at the contributions of the judiciary to addressing the harms inflicted by the climate crisis. While recognizing the many difficulties in litigating climate cases—including the challenge of proving causal links between specific state actions (or lack of action), climate change, and specific harms to individuals—Wu shows that there is potential for courts to play an important role in pushing states to take actions to mitigate and adapt to climate change, as well as in compensating victims for losses due to climate crises. Wu argues for building bridges between the climate regime and the human rights regime by centering actions on the right to health. Although not all courts consider right to health claims in the realm of climate protection to be justiciable, Wu notes that several courts at the domestic and international levels have done so, and he outlines such cases from around the world. He concludes that climate change and the right to health do not occupy entirely separate legal spheres and that a failure to mitigate or adapt to climate change may be tantamount to violating the right to health.

Along similar lines, Thalia Viveros-Uehara, in her paper “Health Care in a Changing Climate: A Review of Climate Change Laws and National Adaptation Plans in Latin America,” examines the extent to which legal and policy responses to climate change incorporate a human rights-based

approach to health care systems, using the case studies of Brazil and Colombia. Analyzing the climate laws and national adaptation plans of both countries, she finds that they only partially incorporate concerns for equality and nondiscrimination, participation, transparency, and monitoring and accountability, and pay even less attention to the key elements of the right to health—availability, accessibility, acceptability, and quality of health care. Further, although the World Health Organization has issued guidelines on incorporating health into national adaptation plans, these two countries’ plans do not explicitly embrace health rights. As a result, the climate laws and plans in Brazil and Colombia fail to ensure that their public health care systems will be adequately prepared to meet the health needs of the people most vulnerable to climate change impacts.

The COVID-19 pandemic drew attention to the underpreparedness of health systems around the world to cope with public health crises. Underinvestment throughout the past 40 years has led to extreme staff shortages and facility overloads, which increased the death toll from COVID-19. In their paper “Crises as Catalyst: A New Social Contract Grounded in Worker Rights,” Diane F. Frey et al. recognize the devastating impacts that three intersecting crises—climate change, the pandemic, and extreme economic and social inequality—have had on workers and their families. Crises may act as catalysts, however. In this context, they argue that the recovery from COVID-19 and the related economic crisis presents opportunities for a just transition to also address climate change and extreme inequalities. In particular, they argue that the neoliberal social contract is failing workers and the planet alike, and they call for a new social contract grounded in workers’ rights to decent work, to favorable conditions of work, to join and form trade unions, and to social protection. They conclude optimistically that a new transformative social contract grounded in human rights—specifically worker rights—would reduce inequalities, protect the health and livelihoods of workers and their families, and promote a sustainable future.

The complexities of climate change, including

the global power differences between those most responsible for emissions (states and nonstate enterprises) and those suffering most from the human and environmental consequences, demand a more progressive interpretation of international human rights. While, traditionally, states are accountable for human rights concerns within their territory or jurisdiction, climate change impacts do not stop at national borders. Further, legal actions usually call for proving a direct causal connection between the action of the respondent and the harm of the claimant—a connection that is almost impossible to draw in climate cases. However, some courts and legislatures have interpreted human rights more progressively to include, for example, the “precautionary principle” and other means of protecting the human right to health and the sustainability of the planet. Such progressive interpretations are necessary to meet the human rights challenges posed by climate change.

We are also encouraged by the recently adopted Human Rights Council resolutions to create a new human right to a safe, clean, healthy, and sustainable environment and a new mandate of the Special Rapporteur on the promotion and protection of human rights in the context of climate change.⁵ Both actions signal that climate change and a sustainable environment are now regarded as key human rights concerns that warrant greater attention and greater accountability. As many of the papers in this special section note, linking state climate change responsibilities to international human rights accountability mechanisms would greatly enhance global attention to the actions (or lack of action) taken by states to protect the human rights threatened by global warming.

We end this editorial with four recommendations that we believe the new Special Rapporteur should consider as necessary next steps to deepen engagement with human rights in global and national climate change discussions and actions:

- Explicit acknowledgment should be made that deep and immediate transformational action is needed to avert the current and impending

threats from climate change to the health and livelihoods of millions of people, and that respecting, protecting, and fulfilling human rights must be part of the solution.⁶

- Explicit acknowledgment should also be made that neoliberal policies contribute to the causes of climate change and prevent adequate responses to the human rights harms from climate change. Solidarity, both globally and domestically, is necessary to protect our human rights.
- Human rights-based climate impact assessments should be required of all state-proposed policies and projects at the local, national, and international levels, including those of multinational organizations and international financial institutions.
- State reporting on climate change actions and inaction, including analysis in comparison to their United Nations Framework Convention on Climate Change national adaptation plans, should be required by all human rights accountability mechanisms, including the Universal Periodic Review.

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