

Research Article

The Impact of Climate Change on the Protection of Human Rights in Developing Countries

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Abstract.

The paper is aimed to examine the impacts of climate change on the legal protection of human rights in developing countries. Climate change has already variedly affected human rights, such as the right to live, the right to food, the right to water, the right to health, the right to enjoy a healthy environment and the right to self-determination. The various kinds of human rights are disturbed by the impacts of climate change. Climate change affects all aspects of human life, including social, economic, and cultural rights. Developing countries are more vulnerable and suffering if compared to developed countries due to the impacts of climate change. The research aims to comprehensively examine the protection of human rights in developing countries due to the effects of global warming, examine the obstacles, and find solutions to the protection of human rights. The research is normative juridical research by employing conceptual and statutory approaches. The result of the study indicates that: first, climate change affects the protection of all human rights; second, the protection of human rights in developing countries due to the impacts of climate change needs the assistance of developed countries; third, there are some solutions to address the protection of human rights in developing countries.

Keywords: Climate Change, Developing Countries, Impacts, Human Rights, Protection

1. Introduction

The aim of the paper is to examine the legal protection of human rights in developing countries due to the impacts of global warming. Indeed, the global warming will be followed by Climate Change, such as increasing rainfall in some parts of the world causing flooding and erosion, while in other parts of the world cause prolonged drought caused by rising temperatures, thus the soil hardens, and plants are unable grow in this location. Additionally, climate change causes irreversible threat to life, property, environment, health, security, adequate food, subsistence, as well as education, culture, and water. If drought occurs in agricultural land in a long period of time, it will certainly affect the food production. Consequently, it will affect the right to food. If the drought

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not only occur in one country, then there will be a global famine that may become the tragedy of the common [1]. The developing countries and least developed countries are more vulnerable and often suffer the more serious impacts of the climate change [2]. Climate change does not only affect to the environment but it also affects social, economic and cultural rights. Thus, the serious impacts of climate change affect the protection of human right especially in developing countries.

The United Nations Human Rights Council (UNHRC) adopted Resolution 7/23 on 28 March 2008. It states that climate change “has implications for the full enjoyment of human rights.” The resolution was founded on several previous treaties, including the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights; the International Covenant on Civil and Political Rights, and the Vienna Declaration and Programmed of Action. The UNHRC Resolution addressed several specific rights. It discovered that climate change could have an impact on the right to life, the rights to food, the right to health, the right to housing, and, by extension, the right to self-determination. Most scholars have focused on these rights, as well as the right to life mentioned in the Inuit petition, during subsequent discussions about climate change and human rights. [3] Furthermore, the impacts of climate change directly affect to the rights to life stipulated in Article 3 of Universal Declaration of Human Rights. It states that “Everyone has the right to life, liberty and security of person” as well as in Article 6 of the International Covenant on Civil and Political Rights which states that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”. Hence, it cannot be ignored that the impacts of climate change directly affect the rights to life which is categorized as non-derogable rights.

There are some previous studies conducted by several authors, such as the research carried out by Deepa Badri Narayana, his research discusses the discusses the relationship between climate change and human rights and examines the limits of international law remedies in the enforcement of human rights as well as presented the rights endangered by climate change are constitutionally protected by several nations with low GHG emissions. Second, is the research conducted by Saheed A. Alabi, his research investigates potential methods of protecting the elderly from the effects of climate change. It discusses the implementation of the “right to life” (the right to live a life free of environmental degradation) and/or environmental health to protect the aged population [4]. The third research is carried out by Samvel Varvastian [5], His research

analyses a comprehensive appraisal of human rights claims and their feasibility in climate cases decided by national and regional courts, as well as international court and regional treaty bodies. The fourth, the research carried out by Konadu Amoakuh [6], his research focuses on how the rights strategy in international climate litigation in other states has apparently successful, however, the activists in United States are not able to transform similar rights-based strategies to United States-based climate litigation. From various studies outline previously, there is no study which specifically examines on the legal challenges of human rights protection in developing countries due to the impacts of climate change. The study examines comprehensively to what extend the impacts of climate change to the human rights. Second, it analyzes the legal challenges and solutions of human rights protections in developing countries due to the impacts of climate change. Finally comes up with conclusion.

2. Results and Discussion

2.1. The Impact of Climate Change to Developing Countries

Climate change will have the greatest impact on Africa. Unpredictable rains and floods, extended droughts, crop failures, and rapid desertification, among other signs of global warming, have already begun to change the face of Africa. Climate change will cause increased aridity, rising of sea level, reduced freshwater availability, cyclones, coastal erosion, deforestation, loss of forest quality, woodland degradation, coral bleaching, the spread of malaria, and impacts on food security. It demonstrates the vulnerability of the Sub-Saharan Africa, considering the devastating climate events of the last few years. A terrible drought, for example, hit the Horn of Africa in 2011, affecting “11 countries and 12 million people.” The varying rainfalls in different regions of Africa caused by climate change will undoubtedly impact Africans’ ability to collect adequate amounts of food, as well as their ability to collect an adequate supply of water [7].

In fact, various kinds of human activities cause serious impacts to the environment, such as industrial activities, transportation and agricultural activities which occur almost in every single state have triggered the global warming and cause climate change. The impacts of climate change that have been discussed previously cause more severe and vulnerable impacts in developing countries. It is well-recorded that if unmitigated, climate change presents an irreversible threat to life, property, environment, health, security, adequate food, subsistence, education, culture, and water resources. These

aspects of life are constitutionally protected in several countries, and thus climate change threatens to diminish constitutional rights such as the right to life and environmental protection. Climate change is a global issue, thus international action and response are required to prevent constitutional violations. However, several major greenhouse gases (GHG) emitters initially refuse to accept a legally binding obligation to reduce their emissions under the Kyoto Protocol. The Intergovernmental Panel on Climate Change (IPCC) issued its landmark Fourth Assessment Report in December 2007, concluding that climate change is unequivocal, accelerating, and most likely due to human activities [8].

The negative impacts of climate change do not only occur on land, but it is also at sea. An area that is vulnerable to global warming namely the area in the North Pole that is very possible in the long term the ice that is in the North Pole will melt, so the Inuit people living in the area will be homeless and their culture is also endangered, because they are not be able to practice their culture [9]. Inuit people are people living in the arctic region with a unique culture to hunting meet their food needs along with the animals that only live in the arctic region that requires cold temperatures [10]. Climate change also has an impact on archipelagic countries like Indonesia where there are many fishermen who live in coastal areas whose livelihoods are very depending on the situation and sea conditions. Even more tragic is people living in small islands like in Maldives, Marshall Island and Tuvalu, due to rising sea levels resulting from changes climate can submerge these small islands, so they become homeless [11]. Climate change does not affect merely to the environment, but it also affects social, economic, and cultural rights. The severe impacts of climate change have already affected the protection of human right especially in developing countries. Global climate science has been studied for nearly two centuries. The rate at which scientists have added to their understanding of atmospheric and oceanic processes has accelerated dramatically over the last five decades.

The gradual expansion of our global response to climate change is largely due to pioneering work in a variety of disciplines ranging from climate science and health to economics and development. As a result, the effects of global climate change are now recognized as the most immediate and far-reaching threat to our natural and social systems [12]. Indeed, the developing countries have more serious and vulnerable impacts of climate change due to the lack of technology. lack of financial support and the location that geographically not advantage, such as Tuvalu and Maldives. The

cost of damage caused by climate change will be more costly as the planet becomes warmer. “Loss and damage from climate change is not a future event. It is happening at the present time all around us.” It can be proven, when the UN Secretary-General Antonio Guterres said during a visit to Pakistan, which was recently hit by floods that displaced hundreds of thousands of people and killed more than a thousand. [13] The recognition of loss and damage due to impacts of climate change are finally seen as equal to mitigation and adaptation, which have long been pillars of the United Nations Framework Convention on Climate Change (UNFCCC) climate regime and is an important political statement on recognition of its acknowledged status on the global stage of climate negotiations. This is stated in the agreement’s Article 8 (1) states that,

Parties recognize the importance of avoiding, mitigating, and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow-onset events, and the role of sustainable development in reducing the risk of loss and damage. [14]

2.2. The Impacts of Climate Change on the Protection of Human Rights in Developing Countries

The 1948 Universal Declaration of Human Rights articulates rights with environmental implications. Hence, through amendments or interpretations, several countries recognized the right to a decent or healthy environment in their constitutions. Presently, 140 countries have included environmental protection guarantees in their constitutions. This standard has had an impact on climate change mitigation. For the first time, the international community recognized human rights in the context of climate change in the Paris Agreement. Countries are currently going one step further by recognizing the climate system as part of their constitutional right to a healthy environment. Some national courts have recognized the right to a healthy environment as including protection from climate change. [15]

Climate change affects the protection of human rights in developing countries. This is evident by the number of damages occur in developing countries due to the impacts of climate change. The violation of human rights is not directly by human activities, but the violation of human rights in the case of climate change are indirect impacts of human activities. Thus, the root is the human activities. In 2015, the Paris Agreement became the “first legally binding climate instrument that refers to human rights”, albeit

only in its preamble and in reference to human rights aspects of response measures. The United Nations Human Rights Council and the Office of the High Commissioner for Human Rights have drafted several resolutions and reports, as well as undertaken activities to promote a human rights-based approach to climate change. John Knox and David Boyd, the first and second UN Special Rapporteurs on Human Rights and the environment, prepared a series of reports on climate change and human rights. These reports highlighted the following human rights violations and threats as a result of climate change, as followed: the right to life, the right to health, the right to food, the right to water and sanitation, the right to a healthy environment, the right to an adequate standard of living, the right to housing, the right to property, the right to self-determination, the right to development, the right to culture. [16] Hence, most of human rights are affected by the climate change impacts.

All these human rights are presently recognized and protected at the international or regional level, though the degree to which states recognize and protect them varies. The question is whether courts and treaty bodies will interpret them as imposing concrete obligations on states in terms of climate change. According to the human right law, a state has obligation to respect, to protect and to fulfil. However, in the case of climate change, it is impossible an individual state will be able to protect the violation of human rights due to the impacts of climate change. Climate change is not a local problem, because climate change does not merely depend on single state, but each state has contributed to the release of greenhouse gases in the atmosphere. However, the contribution of each state is not the same, thus, the principle of common but differentiated responsibility is applicable to the reduction of emission and the responsibility to the impacts of climate change.

A closer examination of various climate change impacts reveals that they can be highly multifaceted, depending on the climate-related extremes from which they arise. Every climate change impact affects a broad range of human interests. The most obvious example is probably the effects on health. Different climate-related extremes can have an impact on the three most common health impacts: death, disease, and mental health disorders. The effect of the climate change on food and water resources pose yet another formidable threat to human communities. Food impacts are primarily caused by a reduction in agricultural, livestock, and fishery yields because of prolonged droughts or changes in ocean chemistry. Drought and heat waves can have a serious impact on the quality and availability of fresh water. Finally, social impacts, particularly economic

and security-related impacts, have been identified as having the potential to cause significant disruption to society. [17] The human rights and environment regime adheres to the traditional three-tier structure of correlative obligations: (1) a duty to respect the content of the protected right, (2) a positive obligation to protect the right from infringements by third parties, and (3) a duty to gradually fulfill the conditions for full scope enjoyment of the relevant right. In recent cases, the ECtHR has also been more open to interpreting the effects of severe environmental pollution on the well-being and enjoyment of private and family life without strictly tying it to health endangerment. This approach may include taking preventive and repressive measures against human rights violations committed not only by the state but also by private individuals. [17]

2.3. The Legal Challenges of Human Rights Protection in Developing Countries

The protection of human rights in the context of climate change has multifaceted aspect and complicated since the climate change impacts as a cumulative impact which come from all state in the world. The regime of state responsibility to protect human rights in the national level affected by the capability of a state to protect the rights violated by the climate change impacts. Hence, the responsibility of a state to protect human rights which includes the need of international cooperation, since the root of the sources of violation conducted by various and many state activities which release GHG in the atmosphere. However, there are some obstacles and solution to protect the human rights due to the impacts of climate change. The protection of human rights in developing countries due to the impacts of climate change need a great effort and support from the developed countries. The developing countries under international law have the obligation to protect the human rights all the people live in the state. However, the protection of human rights that must be performed by the developing countries is not a modest matter. Based on International Human Rights Law and National Human Rights Law a state has obligation to respect, to promote and to fulfill the human rights. The developing states face many challenges in protecting the human rights due to the climate change impacts. There are many challenges that can be presented as followed, such as:

First, the protection of human rights in the context of climate change is not a simple matter that can be carried out by individual state. The transboundary impacts of climate change and multi dimension of the impacts need international cooperation. The Paris

Agreement adopts the principle of common but differentiated responsibility to cope up with the impacts of climate change. According to the principle, a state has different responsibility to prevent and to migrate climate change based on the contribution of each state to the releasing of GHG. The more the GHG releases to the atmosphere the more responsibility to prevent and to mitigate the GHG by reducing the emission. However, the implementation is not easy. The mechanism to aid developing countries to protect human rights as the obligation of state under the regime of climate change have not been clearly established.

Second, the need of adaptation to the climate change is imperative. Vulnerability assessments, integration of adaptation actions into sectoral and national planning, providing incentives for adaptation action implementation, risk management and risk reduction strategies—including risk-sharing and transfer mechanisms such as insurance, disaster reduction strategies, and economic diversification are some of its adaptation strategies. It was presented in the Bali Action Plan also requires parties to consider the “urgent and immediate needs of developing countries” when implementing these strategies, “particularly the least-developed countries and small island developing states, as well as African countries affected by drought, desertification, and flooding.” [19] Third, the main question facing the international community is what legal regime should be developed related to the impacts of climate change. It is important for every single state to contribute in the reducing of emission. However, the commitment is hard to implement due to different capacity building, financial support, and national interest of various state. Hence, the protection of human rights due to the impacts of climate change may not be feasible if the implementation of NDCs which is available in Paris Agreement are not carried out transparently. The Paris Agreement’s Article 6.2 clarifies cooperative approaches. Parties who participate in “internationally transferred mitigation outcomes towards NDCs have to ensure environmental integrity and transparency, including in governance

2.4. The Legal Solutions for Human Rights Protection in Developing Countries

As previously discussed, there are many challenges to protects human rights caused by climate change impacts. Indeed, there are some opportunities to protect the human rights in developing countries due to the impacts of climate change. There are many efforts in international level to protect the human rights in developing countries as

the most vulnerable and suffering states. However, for many years, the Office of the United Nations High Commissioner for Human Rights has emphasized the urgency of climate change-related human rights violations. The environment has been a thorny issue for the enjoyment of several human rights. Climate change has a significant global impact on the enjoyment of human rights such as the right to life and the right to privacy. [20] Additionally, the awakenings of the international community to make international cooperation in many aspects as a good effort to overcome the impacts of climate change. There are some solutions that are provided by the international community, as followed: First, the establishment of international institution is an eminent aspect to protect human rights in developing countries due to climate change impacts. Since 2000, the international community has debated the relationship between climate change and human rights. The Paris Agreement became "the first legally binding climate instrument that refers to human rights," though only in its preamble and in reference to human rights aspects of response measures, in 2015. The United Nations Human Rights Council and the Office of the High Commissioner for Human Rights have drafted several resolutions and reports, as well as undertaken activities to promote a human rights-based approach to climate change [21].

Second, there has been a clear mandate to approach technology transfer cooperation in a manner that embraces human rights. However, the transfer of technology cannot be performed properly. The UNFCCC calls upon developed parties to take all practicable steps to promote, facilitate, and finance transfer/access of environmentally sound technologies and know-how to developing countries. The legal duty lies with developed state parties to the framework convention. The UNFCCC also requires developed countries to "promote, facilitate and finance" technology transfer. Further, this UNFCCC obligation to transfer technology encompasses not only a physical transfer of equipment but also know-how. [22] Third, the Paris Agreement also represents a paradigm shift in international climate change governance. It invites all countries to act on climate change domestically within a treaty architecture that carefully balances national sovereignty with international objectives by focusing on "bottom up" nationally determined actions rather than "top down" global mitigation targets. The 196 Parties adopted an outcome at COP21 in December that establishes a structured process for pledging and reviewing nationally determined but internationally promised actions. These actions go beyond mitigation to include adaptation, finance, capacity building,

and technology development and transfer. Thus, all of which are required for developing countries to contribute to international climate change mitigation and adaptation in accordance with their “common but differentiated responsibilities and respective capabilities” through the NDCs mechanism must be performed transparently [23].

3. Conclusions

The protection of human rights due to the impacts of climate change on developing countries has posed serious problems that need to be addressed. The situation and condition of developing countries with lack of technology, lack of capital and some of them, the locations are geographically disadvantage worsen the protection of human rights in developing countries. The impacts of climate change affect all aspect of life in developing countries, such as environmental aspect, social and economic aspect. Hence, the obligation of state to respect, to protect and to fulfill are hard to be materialized, since the developing countries struggle to overcome the bad impacts of climate change. The assistance of developed countries to conduct adaptation and mitigation are crucial to materialize the human rights protection due to impacts of climate change. The willingness of each single state to contribute in the reducing of GHG emission become important aspect through the NDCs mechanism which is available in the Paris Agreement based on the common but differentiated responsibility.

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