



Outline

- Human rights and climate change
- What is climate justice?
- Current legal options to promote climate justice
- A Human Rights Act: could it promote climate justice?
- Australia's Human Rights Framework
- Conclusions

Climate change and human rights

- Traditionally, the climate change debate is framed on economics and environment
 - Reducing GHG emissions as efficiently as possible
- The human rights dimensions of climate change is being increasingly recognised
- Impacts include drought, more severe storms, reduced water resources, biodiversity loss etc
 - Reduced water and food security, housing, infrastructure damage
- Disproportionately experienced by poorer communities, regions, countries: further marginalisation and disadvantage
- Recognised by....
 - HREOC in 2008
 - UN High Commissioner for Human Rights, January 2009
 - Native Title Report 2008
 - UN Committee on Economic, Social and Cultural Rights, May 2009

Climate change and human rights

- Climate change may affect the realisation and enjoyment of:
 - Right to life
 - Right to water
 - Right to food
 - Right to health
 - Cultural rights
 - Right to participate
 - Right to clean and healthy environment
- Examples: Extreme weather events (Hurricane Katrina, Torres Strait); sea level rise; emissions trading (CPRS)

What is climate justice?

- Aims to ensure vulnerable members of society are protected from climate change impacts
- A rights-based approach to consider:
 - Who is suffering?
 - What will be future impacts on them?
 - Who is responsible?
- Re-conceptualises policy response as human rights/social justice issue, rather than only economic/scientific
- Initiatives are significantly focused on Indigenous communities eg. Torres Strait Islands

Current legal options for climate justice

- Is domestic litigation an option?
 - Limited options and difficult to focus on human rights
- *Inuit petition* to Inter-American Commission on Human rights by 62 Inuit from the Arctic
 - Claim that climate change violated rights to culture, to property and to use and enjoy traditional land, to the preservation of health, life and physical integrity
 - Rejected
- *Morka et al v Nigeria* (2002) in African Commission on Human and Peoples' Rights
 - Oil production by the military government (with Shell) violated a number of rights: life, food, housing, health and the environment
- *Gbemre v Shell Petroleum Development Co Nigeria*, Court found that uncontrolled gas flaring was a breach of the right to life, which included a right to a healthy environment

Current legal options for climate justice

- Internationally:
 - No obvious venue
 - No equivalent to Inter-American Commission of Human Rights/ African Commission on Human and Peoples' Rights
 - UN Declaration on the Rights of Indigenous Peoples
 - UN Human Rights Committee
- Law and policy reform is key
 - UNFCCC political process/negotiations failing: unlikely to address human rights issues, climate change disputes etc;
 - Domestic human rights legislation may assist?

A Human Rights Act for Climate Justice

- How could a human rights act protect and promote climate justice?
- An Australian Human Rights Act: based on existing models in UK, ACT, Vic
- Would include economic, cultural, social and specific environmental rights
- Application to all arms of government

Human Rights Act 1

- Parliamentary scrutiny of new bills
 - via special committee and Statements of Compatibility
- For climate justice, it would encourage:
 - greater analysis and consideration of human rights issues when climate change legislation is debated
 - greater transparency and accountability in lawmaking
 - prevent breaches of rights before they occur
- eg. CPRS legislation

Human Rights Act 2

- Public authorities to consider and act compatibly with human rights:
 - Decision-making
 - Developing policy and delivering services
- Encourage more participatory and inclusive processes in developing policy, particularly with Indigenous Australians
- A 'culture of rights' in the public service
- Example of better outcomes for climate justice:
 - Climate policy may better incorporate participation of Indigenous Australians (eg. Use of traditional land management techniques; participation in carbon trading)

Human Rights Act 3

- Courts to interpret legislation compatibly with protected rights; issue a declaration if incompatible
- Possibly, a separate cause of action
 - Remedies to restrain government authority acting contrary to protected rights;
 - Damages;
 - or at least a complaint resolution mechanism
 - Provide a new avenue for protecting human rights and promoting climate justice
- Access to justice remains problematic

Impact for Climate Justice

- Advocacy and awareness raising tool for climate justice
- Encourage systemic change /culture of rights in Government
- Human Rights Act is not a panacea. Other needs:
 - Strong climate change legislation and policies
 - Better consultation with, and participation of, communities, including indigenous communities, on climate change
 - More resources for climate change adaptation funding
 - Better human rights education
 - Enhanced support for access to justice eg better funding of CLCs, NGOs etc

Human Rights Framework

- Australia's Human Rights Framework
- Announced 21 April 2010
- No Human Rights Act
- Centerpiece is education: schools, communities and Cth public servants
- 5 areas: 'reaffirm; educate; engage; protect; respect'
- Review in 2014

Action to 'educate'

- "Educate"
- \$3.8 million in education and training of Cth public sector
- Human rights 'toolkit' and guidance materials to:
 - Raise awareness of Cth public sector of human rights obligations
 - Enhance capacity of policy and legal officers to develop policies, programs and legislation consistently with human rights
 - Provide guidance to administrative decision makers on relevant human rights considerations to take into account

Action to 'protect'

- "Protect"
- Legislation will be introduced to:
 - Establish a Parliamentary Joint Committee on Human Rights to scrutinise new legislation and regulations to examine consistency with 7 core UN treaties
 - Require Statements of Compatibility to be tabled with new legislation and regulations, outlining compatibility with 7 core UN treaties

Impact of Framework

- May enhance consideration of human rights in climate change policy development and decision-making; and in legislation; useful as an advocacy tool
- Does not go far enough to protect human rights, including climate justice
- No binding legal requirement:
 - On public authorities to consider and act consistently with human rights
 - On courts to interpret legislation consistently with human rights
 - To enable individuals to seek remedies in Court
- Limited accountability as not legally enforceable, although could enable human rights to be considered relevant considerations under administrative law

Conclusions

- Limited legal avenues to promote climate justice
- Ongoing failure of UNFCCC negotiations and domestic politics
- An Australian Human Rights Act could:
 - **encourage a 'rights based' approach to climate change policy and legislation leading to better outcomes**
 - **create a culture shift in government**
 - **be a useful advocacy tool**
- Framework is a good start, but doesn't go far enough to promote climate justice
- Climate change will continue to present human rights issues into the future
 - eg Climate-induced migration; participation of Indigenous Australians in climate policy; providing compensation to developing countries
- New policy and legal responses are necessary; 2014 review?
