

## CLIMATE CHANGE INDUCED CHALLENGES TO THE RIGHT TO HEALTH: AN EMERGING THREAT THAT REQUIRES IMMEDIATE INTERVENTION

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### ABSTRACT

*Climate change is possibly the most serious worldwide environmental issue. Climate change has increased the frequency and intensity of natural disasters causing the vulnerability of impoverished communities in developing nations, notably in LDCs, small island developing countries, and African countries. Large-scale anthropogenic changes caused by climate change are interacting to create important emergent public health hazards that jeopardize people's health and well-being. These concerns include not just increased infectious disease exposure, but also water scarcity, food scarcity, natural disasters, and population displacement, which may be the largest public health problem humanity has faced. There is a pressing need to increase our understanding of the dynamics of these risks creating the complex interplay of factors that generate them, the characteristics of populations that make them particularly vulnerable, and the identification of which populations are at greatest risk from each of these threats. Accelerating changes to Earth's climate, its terrestrial surface, and the functioning of its ecosystems are endangering our future access to some of the most important and basic components of population health: adequate nutrition, safe water, clean air. Our growing awareness for these emerging public health hazards needs the development of a new discipline of study within environmental health. In contrast to the traditional environmental health focus on exposure to toxins, we need to consider the broader implications of the human transformation of the natural world. This paper will examine how changes in land use, climate, and the function of ecosystems may act synergistically to alter exposure to infectious disease and natural disasters, while curtailing access to food, clean air, and clean water and increasing the likelihood of population displacement and civil strife. This paper will propose a legal framework for conceptualizing the connections between global environmental change and human health. It will concentrate on discussing why it has been difficult to demonstrate direct links between deteriorating environmental conditions and unfavourable health outcomes.*

**Keywords-** Climate change, developing nations, vulnerability, public health, basic needs, ecosystem etc.

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## I. INTRODUCTION

Due to climate change, developing countries are facing challenges in the implementation of their human right to get a global safe environment and such challenges are bringing threats to public health hampering natural components which an individual needs to maintain a healthy life. Despite the importance of legal framework in regulating the consequences of climate change, no comprehensive research is yet to be undertaken in the world to strengthen the constitutional right of having secured public health by prioritizing the concept of right to life. In fact, providing legal protection to the affected people whose deteriorated health conditions is one of the consequences of climate change is an unexplored area of research. This article is expected to fill in the gaps of knowledge on legal policies by taking corresponding measures on the mitigation of climate change effect on public health.

The article addresses the following research questions:

1. What are the impacts of climate change on public health in developing countries?
2. To what extent is existing legal framework adequate to deal with consequences?
3. How far are the developed countries complied with?
4. To what extent have climate justice been integrated in the legal systems of various countries?
5. How far is the legal mechanism for accountability of environmental crime effective?

Accordingly, this article has the following aims and objectives: to identify the extreme weather events and also slow onset events in environment throughout the world; to examine the adequacy and relevance of the climate change regime to ensure secured public health; to focus on responsibilities and accountability of developed countries for their contribution to rise of global temperature and to suggest legal framework and compliance mechanism for facilitating implementation of right to public health by reflecting the principle of common but differentiated responsibilities considering different national circumstances.

## METHODOLOGY

This study is the combination of methods for interpreting the relevant international instruments addressing present situation of climate change around the world and also existing legal remedy

for controlling its several consequences. In this research, the analytical method is given priorities. Some information are collected from primary sources such as international treaties, national laws and policies. Some of the information was extracted from secondary sources such as books, journals, magazines, newspapers, websites etc.

## II. CORE IDEAS OF RIGHT TO HEALTH

Health is a fundamental human right indispensable for the exercise of other human rights.<sup>1</sup> Every human being is entitled to the best possible health care that allows them to live a dignified life. It was first expressed internationally in the 1946 World Health Organization (WHO) Constitution, whose preamble defines health as "a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity." The right to an acceptable standard of life was also included in the 1948 Universal Declaration of Human Rights (art. 25). Other human rights enshrined in the International Bill of Rights, such as the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition of torture, privacy, access to information, and the freedoms of association, assembly, and movement, are inextricably linked to and dependent on the realization of the right to health. These and other rights and liberties address critical aspects of the right to health.

The Committee on Economic, Social and Cultural Rights, the body responsible for monitoring the International Covenant on Economic, Social and Cultural Rights<sup>2</sup> calls these the "underlying determinants of health." They include Safe drinking water and adequate sanitation; Safe food; Adequate nutrition and housing; Healthy working and environmental conditions; Health-related education and information; Gender equality. Furthermore, the right to life claim, which is commonly raised in climate change lawsuits, is included in the broad definition of the right to health because one's health is clearly harmed when one's life is threatened by climate change.<sup>3</sup> Climate change that poses a risk to one's health or life is protected under the right to health.<sup>4</sup>

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<sup>1</sup> Human Rights Centre, 'The Right to Health' <<https://www.humanrights.is/en/human-rights-education-project/comparative-analysis-of-selected-case-law-achpr-iachr-echr-hrc/the-right-to-health/>> (accessed on 23 August 2023)>

<sup>2</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

<sup>3</sup> Samvel Varvastian, 'The advent of international human rights law in climate change litigation,' (2021) 38(2) Wisconsin International Law Journal 392.

<sup>4</sup> Luis E Rodriguez-Rivera, 'Is the human right to environment recognized under international law? It depends on the source,' (2001) 12 Colorado Journal of International Environmental Law and Policy 13.

### III. THE RIGHT TO HEALTH IN INTERNATIONAL HUMAN RIGHTS LAW

The right to the best possible health is a human right recognized by international human rights legislation. The right to health is addressed in many ways in international and regional human rights agreements. Some are generic in nature, while others focus on specific groups of people, such as women or children.

#### **International Covenant on Economic, Social and Cultural Rights, art. 12**

The steps to be taken by the States Parties to the present Covenant to achieve the full realization of the right to health shall include those necessary for:

- a) The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child;
- b) The improvement of all aspects of environmental and industrial hygiene;
- c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

#### **International human rights treaties recognizing the right to health**

1. The 1965 International Convention on the Elimination of All Forms of Racial Discrimination: art. 5 (e) (iv)
2. The 1966 International Covenant on Economic, Social and Cultural Rights: art. 12
3. The 1979 Convention on the Elimination of All Forms of Discrimination against Women: arts. 11 (1) (f), 12 and 14 (2) (b)
4. The 1989 Convention on the Rights of the Child: art. 24
5. The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: arts. 28, 43 (e) and 45 (c)
6. The 2006 Convention on the Rights of Persons with Disabilities: art. 25.

The African Charter on Human and Peoples' Rights (1981), the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, known as the Protocol of San Salvador (1988), and the European Social Charter (1961, revised in 1996) all recognize the right to health. The American Convention on Human Rights (1969)

and the European Convention for the Promotion of Human Rights and Fundamental Freedoms (1950) both include health-related provisions, such as the right to life, the prohibition on torture and other cruel, inhuman, or degrading treatment, and the right to family and private life.

#### **IV. INTERNATIONAL ENVIRONMENTAL LAW PROTECTING THE RIGHT TO HEALTH**

The intersection between health and the environment began to be acknowledged in intergovernmental forums.<sup>5</sup> In 1972, the Stockholm Declaration and Action Plan for the Human Environment was adopted at the UN Conference on the Human Environment. The Convention on the Rights of the Child, adopted in 1989, notes the dangers of environmental pollution and the importance of child education to develop respect for the natural environment.<sup>6</sup> At the 1992 UN Conference on Environment and Development, which also established the Rio Declaration on Environment and Development, the UNFCCC was opened for signature.

The UNFCCC was followed by two protocols: the Kyoto Protocol in 1997 and the Paris Agreement in 2015. In its preamble, the latter convention explicitly mentions human rights, particularly the right to health. The Committee on Economic, Social, and Cultural Rights released a statement on climate change in 2018, emphasizing that it poses a significant threat to the enjoyment of economic, social, and cultural rights including the right to health.<sup>7</sup>

Although the legal foundations for addressing the climate problem from the standpoint of the right to health are well established, an enforcement mechanism is lacking. The Convention on Biological Diversity, the UN Framework Convention on Climate Change, and their related protocols are critical for addressing human needs. They must, however, promote respect for global health, which is an important complement to the international human rights framework.

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<sup>5</sup> David W Patterson, 'The Right to Health and the Climate Crisis' (2021) 23(2) Health Hum Rights 109–120.

<sup>6</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) UNGA Res Res. A/RES/44/25 preamble and art. 29(1)(e).

<sup>7</sup> United Nations, 'Climate change and the International Covenant on Economic, Social and Cultural Rights: Statement of the Committee on Economic, Social and Cultural Rights,' 64<sup>th</sup> Session UNESC Res E/C.12/2018/1 October 8, 2018<<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23691&LangID=E>> accessed on 18 August 2023.

## V. PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW ACKNOWLEDGING THE RIGHT TO HEALTH

Several general themes are encapsulated in international environmental law. They are notable for serving as interpretative tools for international courts and tribunals. They embody legal norms that reflect evolving environmental principles, safeguarding the right to a healthy environment. Protection of the right to health from climate change-related issues is also recognized by these principles of international environmental law, which are utilized as guiding rules for treaty interpretation and as negotiation guides. These principles play an active role in reducing environmental harm and the possibility of harm. Ten governing principles, as follows, are noteworthy.

1. Prevention of Environmental Harm Principle (articulated in the Trail Smelter award and refined as Principle 21 of the 1972 Stockholm Declaration and Principle 2 of the Rio Declaration, 1992).
2. Good Neighborliness Principle (the requirement of information-sharing, notification, consultation, good-faith negotiations, and cooperation in planning projects with potential environmental impacts and responding to emergencies).
3. Principle of Non-Discrimination (the constraint against responding more favorably toward one particular State or States affected by harmful activity than other affected States).
4. Principle of Common but Differentiated Responsibilities (the recognition that developed States, having disproportionately caused environmental degradation should bear more of the cost of sustainable development initiatives).
5. Precautionary Principle (the requirement, found in most recent environmental agreements, that in the face of scientific uncertainty about environmental risks inherent in a particular activity, decisions about that activity should err on the side of taking effective measures to avoid potential harm).
6. Polluter-Pays Principle (a rule, well-established in Europe, that the polluter should internalize and be prepared to pay the costs of remedying any injury that might result from its activity).
7. Principle of Inter-Generational Equity (the recognition that, in fairness to future generations, resources should be used in such a way as to maintain abundance and environmental quality for the benefit of future generations).

8. Principles of Territorial Integrity and Permanent Sovereignty Over Natural Resources (the territorially-based understanding that each sovereign State has the primary custody of its own resources including preventing environmental harm and ensuring inter-generational equity).
9. Principle of a Common Heritage (the understanding that all human beings are stakeholders in the resources of common areas-outer space, the high seas, the seabed, and Antarctica-and in the natural heritage within sovereign States that is of acknowledged global importance and commonality).
10. Principle of Sustainable Development (the requirement, closely related to that of inter-generational equity, that States must ensure the sustainability over time of their use of natural resources).

The relationship between the environment and human rights is undeniably synergistic. These principles represent the fact that environmental rights are frequently only adequately implemented when human rights are respected. These principles create a human rights framework that holds that climate change is a human welfare and security issue that must be addressed from a larger socioeconomic standpoint. Climate change-related challenges must be addressed holistically rather than as isolated technological issues. The principles necessitate the urgent adoption of human rights obligations that can offer a legal foundation for how climate change is addressed and what must be protected from its consequences. A human rights approach to climate change represents a significant shift in emphasis from physical sciences to the predicament of individuals and communities, giving voice to the right to health and enforcing it.

## VI. HOW DREADFUL IS CLIMATE CHANGE NOW?

The WMO State of the Global Climate report 2022 focuses on key climate indicators – greenhouse gases, temperatures, sea level rise, ocean heat and acidification, sea ice and glaciers.<sup>8</sup> Climate change continued to advance in 2022, from mountain peaks to ocean bottoms. The State of the Global Climate 2022 depicts the planetary scale changes produced by record amounts of heat-trapping greenhouse gases on land, in the ocean, and in the atmosphere. 2023 is now one of the warmest years on record, with the average worldwide temperature in July being 1.5°C over preindustrial levels. Even if this is only temporary, it

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<sup>8</sup> United Nations, 'Climate Change Reports' <<https://www.un.org/en/climatechange/reports>> accessed on 18 August 2023.

highlights the importance of bold efforts to cut global greenhouse gas emissions, which are the primary cause of climate change behind these record. The Copernicus Climate Change Service, implemented by the European Centre for Medium-Range Weather Forecasts on behalf of the European Commission with funding from the EU, routinely publishes monthly climate bulletins reporting on the changes observed in global surface air temperature, sea ice cover and hydrological variables.<sup>9</sup> This service confirms that the worldwide average temperature for July 2023 will be the highest on record for any month. The month was 0.72°C warmer than the average for July from 1991 to 2020, and 0.33°C warmer than the previous warmest month, July 2019. The month was expected to be 1.5°C warmer than the 1850-1900 normal. After a protracted stretch of extremely high temperatures from April 2023, the global average sea surface temperature has continued to rise, hitting record high levels in July.

## VII. DETERIORATED POPULATION HEALTH DUE TO CLIMATE CHANGE

We humans have been very efficient as a species at altering the natural world to satisfy our own demands. Overpopulation has increased demand for ecological goods and services, causing ecological disruption. Vulnerability to changing environmental conditions results from exposure to environmentally mediated health risks.<sup>10</sup>

Researchers and UN bodies alike recognize that human health is widely impacted by climate change.<sup>11</sup> For example, the rise in temperature due to GHG emissions has induced heat stress and caused bodily dysfunction and even deaths.<sup>12</sup> Because of the effects of pollutants, changing humidity levels can worsen air pollution and increase asthma episodes. Excessive rainfall due to climate change causes microorganism blooms in drinking water, increasing the transmission of water-borne infectious illnesses.

New patterns of infectious disease exposure are being driven by climate change. Changes in land use and climate are transforming the biological content, structure, and complexity of a

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<sup>9</sup> Bonn, 'July 2023: Global Air and Ocean Temperatures Reach New Record Highs' Copernicus Climate Change Service (August 8, 2023) <<https://climate.copernicus.eu/july-2023-global-air-and-ocean-temperatures-reach-new-record-highs#:~:text=The%20global%20average%20temperature%20for%20July%202023%20is,around%201.5%20C%20warmer%20than%20the%20average%20for%201850-1900.>> accessed August 18, 2023

<sup>10</sup> B L Turner, R E Kasperson, P A Matson, J J McCarthy, R W Corell and ors, 'A framework for vulnerability analysis in sustainability science' (2003) 100(14) Proc. Natl. Acad. Sci. USA 8074–79.

<sup>11</sup> Jill Krueger, Colleen Healy Boufides, 'The public health sector's challenges and responses' in Michael Burger, Justin Gundlach (eds), *Climate Change, Public Health, and the Law* (CUP 2018) 34–71.

<sup>12</sup> Ibon Eguiluz-Gracia, Alexander G Mathioudakis, Sabine Bartel and ors, 'The Need for Clean Air: The Way Air Pollution and Climate Change Affect Allergic Rhinitis and Asthma,' (2020) 75(9) Allergy 2170–2184.



large portion of the world's land surface. Temperature, precipitation patterns, soil moisture, biogeochemical cycles, nutrient concentrations, surface water chemistry, and sunshine exposure are all changing. These characteristics are frequently crucial in influencing public health. Malaria is spread by a wide range of *Anopheles* mosquito species that are distinct to each place. Roughly 500 million people contract malaria each year, and over one million people die of it, mostly in Africa.<sup>13</sup> Deforestation in the Amazon basin increases the breeding habitat of *anopheles darlingi*, the principal malaria vector in this region.<sup>14</sup>

Climate change-induced incursions into wildlife habitat can result in new exposure to zoonotic diseases such as Ebola, simian retroviruses, and, most likely, human immunodeficiency syndrome. Dense urban populations with poor sanitation, waste management, or water treatment can increase exposure to a variety of diseases such as diarrhea, dengue fever, and leptospirosis. Schistosomiasis is a widespread infectious disease that infects around 200 million individuals and can harm the liver, lungs, intestines, and bladder. In Cameroon, schistosomiasis has increased due to deforestation. Marine systems are also affected by global environmental change which can lead to massive fish kills, shellfish poisonings, disease and death of marine mammals and human morbidity and mortality. Worldwide, roughly 60,000 individual cases and clusters of human intoxication occur annually.<sup>15</sup> Cholera outbreaks in Asia and South America have been associated with sea surface temperature, rainfall patterns, and nutrient loading from agricultural runoff.<sup>16</sup> Although the examples listed above are not exhaustive, they illustrate the changes in climate which are affecting human health.

## VIII. CHALLENGES IN ENSURING THE RIGHT TO HEALTH UNDER THE CLIMATE CHANGE REGIME

Associating aspects of climate change with the right to health remains a challenge and the right to health implications of climate change are seldom discussed in court decisions.<sup>17</sup> Efficient protection of the right to health is not well developed under the climate change regime and also

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<sup>13</sup> Robert W Snow, Carlos A Guerra, Abdisalan M Noor and ors, 'The Global Distribution of Clinical Episodes of *Plasmodium Falciparum* Malaria,' (2005) 434(7030) 214–17.

<sup>14</sup> C A Guerra, R W Snow, S I Hay, 'A Global Assessment of Closed Forests, Deforestation and Malaria Risk,' (2006) 100 Ann. Trop. Med. Parasitol 189–204.

<sup>15</sup> Frances M Van Dolah, Daniel L Roelke, Richard M Greene, 'Health and Ecological Impacts of Harmful Algal Blooms: Risk Assessment Needs' (2001) 7 Hum. Ecol. Risk Assess 1329–45.

<sup>16</sup> Samuel S Myers and Jonathan A Patz, 'Emerging Threats to Human Health from Global Environmental Change' (2009) 34 Annual Review of Environment and Resources 223 – 252.

<sup>17</sup> S Aminzadeh, 'A Moral Imperative: The Human Rights Implications of Climate Change,' (2006) 30 Hastings International and Comparative Law Review 231.

climate change protection is not given under the right to health regime.<sup>18</sup> However, legal hurdles such as the fragmentation of climate change and human rights laws and the difficulties in proving causal links—hamper efforts to litigate right to health claims in the context of climate change.<sup>19</sup> A petition by the Inuit to the Inter-American Commission on Human Rights was filed in 2005 and the US government failed to regulate greenhouse gas (GHG) emissions, which has exacerbated climate change to affect on the Inuit people's traditional way of life. Furthermore, uncertainties in measuring the scale and impact of climate health risks, legal hurdles (such as proving complicated causal links), the uneven distribution of states' responsibilities, and issues of extraterritoriality also hamper efforts to link climate change with the right to health.

The first human rights and climate change resolution was adopted by the Human Rights Council in 2008 and is still evolving.<sup>20</sup> Due to the political and economic pressures from political entities (such as regional economic communities) and multinational enterprises, many states and international organizations still do not acknowledge the link between climate change and human rights.<sup>21</sup> For example, the OHCHR declared in 2009 that the physical effects of global warming cannot simply be defined as human rights breaches since climate change-related harm cannot often be clearly ascribed to specific States' activities or omissions. Despite pressure from civil society groups lobbying for such recognition, the final wording of the Paris Agreement does not contain human rights in its operative sections. As a result, it is uncertain if the UN or high-income countries, which are principally responsible for climate change and seek to minimize culpability by rejecting human rights-based arguments, support the climate change-human rights connection.

Due to the marginal status of human rights in the climate change regime, global climate change law focuses mainly on environmental damage and the state's responsibility to constrain environmentally deleterious behavior rather than on the state's responsibility to avoid climate change impacts on humans.<sup>22</sup> Sustainable development is a principle of global climate change

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<sup>18</sup> Paul Hunt, 'Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health,' 61<sup>st</sup> session UN Doc. A/62/214 ESC E/CN.4/2005/51 [102].

<sup>19</sup> Chuan-Feng Wu, 'Challenges to Protecting the Right to Health under the Climate Change Regime,' (2021) 23(2) Health Hum Rights 121–138.

<sup>20</sup> Human Rights Council, 'Human Rights and Climate Change' (2008) 47<sup>th</sup> session UN Doc. A/HRC/RES/7/23 3–14

<sup>21</sup> Roger H J Cox, *Revolution Justified* (Maastricht: Planet Prosperity Foundation, 2015) 243.

<sup>22</sup> H M Osofsky, 'Learning from Environmental Justice: A New Model for International Environmental Rights,' (2005) 24 Stanford Environmental Law Journal 77.

law, with population-wide health being one of its central goals, yet no specific references to the protection of human health were made when the United Nations Framework Convention on Climate Change (UNFCCC) was adopted in 1992.<sup>23</sup> UNFCCC article 4.1(f) briefly states that parties should employ appropriate assessments with a view to minimizing adverse effects on the economy and public health when mitigating or adapting to climate change. However, the public health assessment requirement is stipulated in a vague and nonbinding manner, requiring only that parties consider public health impacts to the extent feasible and allowing them to sacrifice public health in the name of economic growth.

The Kyoto Protocol of 1997, which aims to assist states in meeting GHG emissions reduction targets in mostly economic terms, does not clearly lay out any health-related objectives. Most climate change rulings that have been issued by national courts are only indirectly based on human rights, with courts' primary focus on a general duty to prevent environmental damage.<sup>24</sup> Even though the Human Rights Council recently passed a resolution recognizing the right to a healthy environment, there are still obstacles to the incorporation of the new nonbinding right into national climate change laws.<sup>25</sup> Efforts toward international recognition of right to health under climate change regime are still underway .

## **IX. EMERGING RIGHTS-BASED CLIMATE CHANGE LITIGATION AND CLIMATE CHANGE REGIME ENSURING RIGHT TO HEALTH**

Not all courts consider right to health claims in the realm of climate protection to be justiciable.<sup>26</sup> This is because some courts understand climate change matters as political (climate change policy choices) rather than legal issues, which precludes the courts' consideration of right to health claims.<sup>27</sup>

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<sup>23</sup> M Parry, O Canziani, J Palutikof, 'Climate Change 2007: Impacts, Adaptation and Vulnerability – Working Group II: Contribution to the Fourth Assessment Report of the IPCC,' (2007) New York: Cambridge University Press 75–76.

<sup>24</sup> Ottavio Quirico, 'Climate Change and State Responsibility for Human Rights Violations: Causation and Imputation,' (2018) 5(2) Netherlands International Law Review 187.

<sup>25</sup> S McInerney-Lankford, M Darrow, L Rajamani, 'Human Rights and Climate Change: A Review of the International Legal Dimensions,' (2011) World Bank IBRD(02)/M4781 38.

<sup>26</sup> A Romaniszyn, 'Human Rights Climate Litigation Against Governments: A Comparative Overview of Current Cases and the Potential for Regional Approaches,' (2020) 16(2) McGill International Journal of Sustainable Development Law and Policy 244–246.

<sup>27</sup> D I Shelton, 'Complexities and Uncertainties in Matters of Human Rights and the Environment: Identifying the Judicial Role' in Jhon H Knox, Ramin Pejani (eds), *Introduction to The Human Right to a Healthy Environment* (CUP, 2018) 101–102.

But several courts at the domestic and international levels seem to be in favor of the right to health approach in climate change litigation recently.<sup>28</sup> For example, in *Marangopoulos Foundation for Human Rights v. Greece*, the European Committee of Social Rights found a human rights violation by the state as it failed to abate an activity previously identified as contributing to climate change.<sup>29</sup> The committee further recognized the state's responsibility to design measures to remove the cause of the ill-health resulting from the climate threat.<sup>30</sup> In *Clean Air Foundation Limited and Gordon David Oldham v. Government of the Hong Kong Special Administrative Region*, the Hong Kong High Court recognized the government's right to health obligation to combat air pollution.<sup>31</sup>

Even though in some cases the right to health is not directly cited, jurisprudence addresses the right to life in the context of environmental degradation due to climate change. In *Leghari*, the Pakistan Lahore High Court found climate change to be a challenge to the right to life which includes the right to a healthy environment and right to health. It concluded the government's failure to implement a national climate policy framework to prevent human rights violation.<sup>32</sup> Domestic and international courts might utilize the right to health as an interpretive tool in climate change lawsuits to legitimize stricter environmental protection. Courts may rely on the right to health in interpreting vague legislative requirements under climate change laws, such as the concept of "public interest," and it can be utilized as an additional tool in analyzing breaches of legal obligations under climate change law.

National and international legal instruments have begun to define the scope and content of states' right to health obligations to prevent or mitigate the detrimental effects of climate change-induced difficulties on individuals' enjoyment of the greatest attainable standard of health. Bangladesh's government has implemented many national programs in accordance with the international formats of the UNFCCC and IPCC. The Government of Bangladesh's Ministry of Environment, Forests, and Climate Change (MOEFCC) initiated and developed National Adaptation Programmes of Action (NAPA) and the Bangladesh Climate Change Strategy and Action Plan (BCCSAP) to combat the effects of climate change, particularly on the health of

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<sup>28</sup> M R Anderson, 'Individual Rights to Environmental Protection in India', in A Boyle, M Anderson (eds), *Human Rights Approaches to Environmental Protection* (OUP, 1996) 199.

<sup>29</sup> *Marangopoulos Foundation for Human Rights v Greece* (2005), ECSR [196].

<sup>30</sup> *ibid* [202].

<sup>31</sup> *Clean Air Foundation Limited and Gordon David Oldham v Government of the Hong Kong Special Administrative Region* (2007) HCAL [35].

<sup>32</sup> Muhammad Amir Munir, 'Public Interest Litigation in Supreme Court of Pakistan' (2007) 106–10.

its people. In 2005, the government started its National Adaptation Programme of Action (NAPA) in collaboration with several stakeholders to plan and implement urgent climate change adaptation initiatives (NAPA, 2005). The Bangladesh Climate Change Strategy and Action Plan (BCCSAP) was prepared, reviewed, completed, and printed by an inter-ministerial group led by the Ministry of Planning and prominent experts. BCCSAP has programs with the theme "Food security, Social protection, and Health" that assure public health challenges in Bangladesh as a result of climate change.

## **X. REFORMING PROCEDURAL MECHANISM UNDER CLIMATE CHANGE REGIME**

By bringing the climate change regime into closer alignment with human rights protection, the right to health can be used to drive greater integration between currently separate international agendas and can provide a tangible legal framework for analyzing states' responsibilities with regard to climate change.<sup>33</sup> Reformation on accountability mechanism can be brought by following the suggestions which are given below-

1. Understanding one's vulnerability to the harms caused by climate change, identifying the pathways through which the harms link law and justice, and contributing to a variety of procedural and substantive outcomes can all be aided by conceptualizing the right to health in a climate change regime.
2. Attempts by legislatures or courts to address climate change concerns on the right to health may expedite responsibility through the direct application of a human rights approach in climate cases or by the indirect influence of human rights law on climate change regime.
3. The right to health, which is linked to the right to a healthy environment, can be used as an alternative legal basis to require states to conduct systematic human rights impact assessments prior to and during the implementation of climate change measures, as well as to provide effective redress mechanisms for those whose right to health is violated as a result of climate change health threats.
4. To utilize international human rights mechanisms in climate change cases to pursue their desired remedy.

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<sup>33</sup> R Jones, H Bennett, G Keating and ors, 'Climate Change and the Right to Health for Māori in Aotearoa/New Zealand' (2014) 16(1) Health and Human Rights Journal 58–63.

5. To rely on the right to health by the courts in interpreting undefined legislative requirements in climate change laws such as the notion of “public interest”.
6. Taking the right to health into account can assist courts in judging the adequacy of mitigation and adaptation measures as a response to health risks posed by climate change.
7. The human rights method, as an interpretive tool, would clarify ambiguous statutory requirements connected to environmental impact assessments, such as the concept of public interest and the principle of intergenerational justice.
8. Suggest that states actively pursue climate mitigation laws (such as setting GHG emission targets) in order to safeguard individuals from negative third-party interference in their right to health.
- a) 9. Recommend states to adopt appropriate legislative and administrative measures toward the full realization of the right to health.
9. Establishing a sufficient causal link between a given activity and specific health harms is of course the strongest approach to successful climate change litigation.
10. Right to health claims in climate change litigation need to be supported by scientific evidence, environmental principles, and climate justice claims.
11. Because the state's discretionary power is commonly recognized in climate change law, the progressive realization principle can be reinforced. For example, the UNFCCC gives nations extensive leeway in implementing climate change mitigation and adaptation measures. The US Supreme Court focused on the degree of discretionary jurisdiction that the Environmental Protection Agency is entitled to wield in regulating GHG emissions in *Massachusetts v. Environmental Protection Agency*.
12. States should actively pursue climate mitigation legislation (for example, setting GHG emissions targets) to protect individuals from negative third-party interference in their right to health, and such appropriate legislative and administrative measures would contribute to the full realization of the right to health.
13. A human rights approach can be useful in placing certain direct requirements on multinational firms to take actions to mitigate the consequences of climate change within the framework of international law.

## XI. CONCLUSION

Climate change and the right to health do not exist in completely independent legal realms. Failure of a state to mitigate or adapt to climate change is becoming equivalent to failing to prevent, treat, or control sickness, a violation of the right to health under article 12 of the International Covenant on Economic, Social, and Cultural Rights. Climate change legislation and policies should be assessed in light of their implications for the right to health and international human rights law. The right to health includes the preservation of a safe, healthy, and sustainable environment (which are seen as underlying health determinants). It can be used to determine the scope of the state's legal obligations to mitigate or adapt to climate change, and it can empower individuals and communities to demand state action on climate change to protect their right to health. Even if there is still a long way to go, knowing the constraints of and potential for applying the right to health in the climate change domain can assist optimize the effectiveness of human rights-based arguments and hasten right to health implementation.

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