Human rights, inequalities and the environment

Friends of the Earth’s submission to the Equality and Human Rights Commission’s Human Rights Inquiry

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Introduction

The quality of the environment we live in can vary enormously between different communities, both within the UK and across the world. Worsening climate change will have a huge impact on the human rights of millions of people, deepening existing inequalities. To support the lives of those most at risk from environmental harm and climate change, Friends of the Earth is calling for:

- extended use of human rights obligations;
- a substantive right to live in a healthy environment.

Unfortunately the Human Rights Act has not yet lead to significant case law in the area of the environment and human rights. The submission below focuses on the issue of climate change and human rights but we believe that it is worth the EHRC considering the linkages between human rights and the environment more broadly.

Environmental inequalities

In England and Wales, the Environment Agency acknowledges that “people who are socially and economically disadvantaged often live in the worst environments” (Environment Agency 2004). For example, Friends of the Earth research in 2001 found that of the 11,400 tonnes of cancer-causing chemicals emitted by large factories in England, 82 per cent were from factories in the most deprived wards (FOE 2001).

Further injustices arise because the people who suffer environmental problems are often not the people who cause them. Children from poorer communities are five times more likely to be killed in road accidents than those from richer areas, yet car ownership is lower in areas with worse traffic levels (ESRC 2000). Furthermore, affected people often haven't been involved in the decisions that shape their environment. Article 14 of the Human Rights Act prohibits discrimination in the enjoyment of human rights on grounds such as race, sex and national or social origin and has the potential to be a useful tool in challenging such inequalities where it can also be established that they result in a breach of human rights.
Climate change

The Intergovernmental Panel on Climate Change’s Fourth Assessment Report predicts a range of impacts including increased morbidity and mortality from heat waves, floods and droughts (IPPC 2007, p.10). Amongst its projected regional impacts for Europe, the IPPC predicts an increased risk of inland flash floods, more frequent coastal flooding and increased health risks due to heat waves and the frequency of wildfires (IPPC 2007, p.11, Table 2). Predicted warm spells will very likely lead to increased risk of heat-related mortality, especially for the elderly, very young, chronically sick and socially isolated. However, there is expected to be reduced human mortality from cold exposure (IPPC 2007, p.13). The major equalities implications of these impacts are as follows.

- **Heat waves:** For the already unwell, and for an ageing population in the UK, these weather impacts could be particularly serious. Increases in heart disease, obesity and other chronic diseases now mean that a higher proportion of the population will be susceptible to heat-related deaths, for example, according to a New Economics Foundation report for the NHS Confederation (NEF 2007, p.6).

  In 2003, a record heat wave claimed 35,000 lives across Europe, with over 14,000 in France alone and more than 2,000 in the UK. Heat waves claim more lives each year than floods, tornadoes, and hurricanes combined (Earth Policy Institute 2007) yet they are not normally treated as environmental crises in the same way. As the IPPC Fourth Assessment Report (IPPC 2007) points out, heat waves particularly affect the elderly, the very young, or the chronically ill. For those already unwell, air pollution can also exacerbate the health-damaging effects of high temperatures by further stressing the body’s respiratory and circulatory systems.

  August 2003 was the warmest August on record in the northern hemisphere, but according to the IPPC, even more extreme weather events lie ahead.

- **Excess winter deaths:** Winter deaths might actually be affected positively by climate change, as winters are expected to get warmer. However, they are a current problem for vulnerable populations of the UK, particularly the elderly. The Government estimates that there are up to 30,000 excess winter deaths each year. For example, in the winter of 2006/07 (December to March) there were an estimated 23,900 more deaths in England and Wales compared to the average level in the non-winter period (National Statistics Online). Respiratory and circulatory diseases are responsible for most of these extra deaths.

- **Flooding:** The Environment Agency investigated the inequality impacts of flooding in 2004 (Walker et al 2004). They found that flooding has a wide range of social impacts on people’s physical and psychological health; people’s possessions and other economic assets; and households and communities.

  Levels of awareness of flood risk are low among those in the lower socio-economic groups. Residents in deprived neighbourhoods are therefore likely to be less well prepared to cope in the event of a flood and with its aftermath. Walker et al also found that the health impacts of flooding will be more extensive in neighbourhoods already characterised by poor health.
Those who suffer the greatest losses – often those on lower incomes and without insurance – may be most susceptible to psychological health effects and, by extension, physical health effects. Overall, deprived neighbourhoods are likely to be particularly hard hit by the impacts of flooding.

Human rights implications

Extreme weather events and an ongoing deterioration in basic environmental resources will lead to large scale violations of the right to life, which is protected under the Human Rights Act. Both ECHR case law (see for example the case of Osman v UK [2000] 29 EHRR 245) and General Comment 31 of the UN Human Rights committee have highlighted the need for states to take positive steps to ensure the right to life.

Similarly, the rights to private and family life and property are also likely to be impacted as a result of climate change. ECHR case law already makes clear that environmental degradation can lead to a breach of human rights (see for example Lopez-Ostra v Spain 16798/90 [1994] ECHR 46 amongst others).

Rights protected in international human rights instruments that have not been ratified by the UK, such as the right to food, will also be impacted.

The UK’s human rights obligations point to the need for it to respond through:

- Protecting human rights through mitigation of climate change, both by reducing carbon emissions and ensuring a just international framework requiring global emissions reductions.
- Ensuring that adaptation takes place in a manner sensitive to human rights considerations.

The international context

When considered in the international context, the injustices brought about by climate change are even more evident. Human rights obligations are traditionally owed by a state to the individuals within that state. However, island states such as the Maldives, which are likely to disappear as a result of the impacts of climate change, are not able to protect their populations as they are not responsible for the emissions that have caused climate change and are also not able to reduce future climate change impacts through their own actions (such actions having a negligible impact on global GHG emissions).

As a result, the human rights framework needs to evolve to allow individuals to hold states other than their home state to account for human rights violations caused by climate change, ideally before the full impacts of these violations are felt. One way of doing this would be to consider interpreting human rights duties in the context of other international law obligations, such as:

- the obligations on states to cooperate under the UN Charter (see Articles 55, 56 and 74);
- the requirement on a state not to cause transboundary harm;
the precautionary principle, under which a lack of full scientific certainty should not be used as an excuse for a failure to take action.

There have already been a number of cases relating to the extra-territorial application of the ECHR (for example Ocalan v Turkey  App. No 46221/99 and Al-Skeini [2007] UKHL 26) and we believe that there is scope for further development in the context of climate change.

In our view, human rights law should also consider how to allow for rights of redress against non-state actors, such as multi-national companies, implicated in violations of human rights as a result of climate change. Human rights and refugee law will also need to evolve to ensure legal protection for people displaced as a result of climate change.

We would welcome a wide interpretation of existing human rights obligations to allow for cases relating to climate change to be brought. However, we also see the value in the recognition of a specific right to a healthy environment, partly because (at present) there is limited scope for using the Human Rights Act in cases relating to environmental harm. This may change if some of the suggestions above are taken up in the interpretation of the Human Rights Act by advocates and the judiciary.

References


