



Climate Justice and Vulnerable Populations

By Kathy Burke

HRA held its 2021 Fall Educational Event entitled “Climate Justice and Vulnerable Populations” on October 28, 2021. The event took place in the context of the preparation for the 26th Conference of the Parties (COP26) to the United Nations Framework Convention on Climate Change (UNFCCC), which began three days later on October 31st in Glasgow, Scotland. Typically held at USF School of Law, this year’s event was presented remotely due to the COVID-19.

Trevor Yan, HRA Board President, introduced the panel discussion and Anna Manuel, HRA Board Member, moderated it. The speakers were Neil A.F. Popovic, Partner at Sheppard Mullin Richter & Hampton, LLP and Professor at UC Berkeley Law School, and Madison Cassulo, J.D. Candidate, 2023, University of San Francisco School of Law

The moderator and speakers addressed the fact that the harmful effects of climate change disproportionately affect vulnerable and underserved populations. And vulnerability makes the same populations often less able to prepare for and cope with the impacts of climate change. Vulnerable populations may include, for example, low-income families, women, children, the elderly, persons living with disabilities, racial minorities, and ethnic minorities. They shared other examples from around the world, and addressed what international law can do to ameliorate the inequalities that vulnerable populations face from climate change.

Madison Cassulo began her presentation by mentioning that she had worked on a written statement with Professor Connie de la Vega that was submitted to the UN’s upcoming Commission on the Status of Women (CSW) session to be held March 14-25, 2022, with a focus on gender equality in the context of climate change. She presented a summary of HRA’s written submission which focused on the disproportionate impact of climate change on women. Studies show that

climate change significantly increases the likelihood of heat waves and droughts, and the severity of storms. Studies have shown across the board that women are more negatively affected by natural disasters than men. One of several contributing factors is that approximately 70% of people living in poverty are women. She therefore chose to focus on how women are affected by such natural disasters, taking the examples of the 2003 European heat wave, Hurricane Katrina, and Cyclone Nargis:

2003 European Heat Wave: Over 15,000 deaths were reported during the 2003 summer heat wave in France. Studies showed that the mortality rate increased with age and gender. The overall mortality rate was 75% higher for women than for men, possibly because more elderly women than men live alone, and women have different health complications.

Hurricane Katrina: In 2005, Hurricane Katrina destroyed much of Louisiana. However, those who suffered the greatest impact were African-American women. They already were some of the poorest and most marginalized people in the area. African-American women made up approximately 80 % of those left behind when Hurricane Katrina hit New Orleans, even though they made up 54% of the population. Many could not afford to evacuate and those left behind struggled to access relief resources, experienced greater domestic violence, and endured more sexual assaults at the shelters people were sent to after the storm.

Cyclone Nargis: In 2008, Cyclone Nargis hit Myanmar. Over 60% of the people killed were women. In some villages, twice as many women died as men. About 87% of unmarried women, and 100 % of married women lost their main source of income when a man died.

Cassulo summed up her presentation by stating that these examples are not uncommon across the globe. As climate change worsens, and natural disasters

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increase, more women and girls are at risk of getting sick, losing their education, being raped, and dying.

In the final analysis, HRA recommended that the UN take steps to collect data and increase protection during times of disaster based on these findings.

Neil A.F. Popovic began his presentation by speaking about what the issue of vulnerability means and that it is not a new issue. The Intergovernmental Panel on Climate Change (IPCC) has recognized for years that some sectors of the population are more susceptible to adverse effects of climate change, and have a decreased ability to cope and recover from damage. They tend to have less input into decisions on adaptation measures, so are less likely to benefit from such measures. However, he pointed out that there are gaps in international law, for example, refugees were not in the mind of negotiators of the refugee treaty. There is a lack of political will to expand human rights protections or to adapt international environmental law to consider human rights.

Next, he discussed factors that make people vulnerable, which may include geography, discrimination (both systemic and intentional), poverty, exclusion from policymaking, disempowerment of indigenous people and others. Several of these factors may combine, in negative synergies (intersectionality).

The following part of his presentation discussed the international framework for the discussions about climate change issues:

International Environmental Law. In 1992, the UNFCCC was adopted. It is a binding treaty. It recognizes not just the need to address climate change, but also that climate change affects people differently. The differences that this instrument identifies are differences between countries, rather than within countries.

Paris Agreement. In 2015, the Paris Agreement recognized that there are different vulnerabilities within the population of a country, not just country-to-country. This is not a binding agreement, however, and involves no binding obligations on States Parties. But it explicitly links, in the preamble, climate change with human rights. This allows advocates to address climate change through the lens of an international human rights structure that focuses on the effect a government's actions may have on the people who reside within that government's control, instead of the traditional state-to-state structure.

Human Rights Considerations. There is finally international recognition that there is a human right to a safe, clean, healthy and sustainable environment after decades of work on this subject. In October 2021, the

Human Rights Council's resolution on the subject recognizes that consequences of climate change are felt most acutely by those segments of the population that already are in vulnerable situations. A Special Rapporteur on human rights in the context of climate change is charged to address the resilience and adaptive capacities of people in vulnerable situations to respond to the adverse consequences of climate change. This is an important recognition that not only is there an environmental component to various human rights, but that there is a substantive human right to a safe and clean environment.

Human Rights Instruments. International instruments on human rights, like the International Covenant on Civil and Political Rights, include non-discrimination provisions. The international principle that rights are guaranteed on an equal basis, when applied to the newly recognized right to a safe and clean environment, can help formulate policies that protect the rights of vulnerable people. Some instruments specifically recognize the need for "special measures" to address inequality. All the human rights instruments that address the needs of a particular vulnerable population (e.g., women, children), can be infused with the substantive human rights that are implicated by climate change issues; and this can be combined with the protections in those treaties.

Popovic next posited that we can make good use of the recent recognition of the right to a safe and clean environment; we can use human rights principles to interpret and apply international environmental instruments; and we can develop the environmental content of human rights that protect vulnerable populations. It is an opportunity to "get ahead of history" because ultimately the effects of climate change all have a human impact. He suggested that there is a variety of forums and opportunities, including: environmental forums; human rights forums; national courts; media and social media; education; and business (making climate justice central to environmental and social governance), that we can use for further advocacy work on these issues. However, obstacles include: politicization of climate change; the multiplicity of many challenges in addition to climate change, with limited resources; the problems that it is a uniquely slow-moving emergency; and the fact that the populations that are most affected tend to be the most disempowered. And the elements we need for a just transition include: reduced exposure to pollution; job opportunities in the green economy for the vulnerable community; affordable energy; a

possibility of remediation or special measures for past harms; and recognition of climate refugees.

In the final part of his presentation he offered suggestions about what actions can make progress. They include: make it personal, in terms of storytelling; put science in perspective – what it can and cannot do; connect climate change with the human rights agenda; on the business side, harness economic self-interest; strive for a win-win, and acknowledge when compromise is necessary; know what you don't know, i.e., listen more than you talk; offer tools to vulnerable populations, not solutions; and persist. Climate justice may be the central challenge of our era, but it is not the only challenge, and we must not neglect other aspects of human rights while we focus on climate change. We can create positive synergies through education, empowerment, and constructive engagement.

In closing, after a Q & A session, Moderator thanked the speakers and those who participated virtually in the Event.

A Tribute to Professor David Weissbrodt

By Deepika Udagama

When Professor David Weissbrodt (affectionately called DW by the human rights community) left us on 12 November, he left a huge void globally both in the fields of human rights scholarship and human rights advocacy. He straddled both pursuits with equal ease leaving behind a monumental legacy that saw a very significant body of human rights literature, an array of important human rights institutions he pioneered and hundreds of grateful students and advocates who he mentored and inspired with passion. The reach of his legacy is certainly global.

I am one of the lucky ones who came under the immediate tutelage of DW. I first met DW on a typically freezing day in the Twin Cities in 1989 when he interviewed me for a position at the then Minnesota Lawyers' International Human Rights Committee (MLIHRC). A young academic in the making from Sri Lanka, I had then just completed my doctoral studies at the UC Berkeley School of Law and was seeking an opportunity at 'practical training' before returning home to teach and engage in advocacy. The meeting is vividly

etched in memory.

David's formidable reputation had preceded the meeting and I approached it with great trepidation. DW was hidden behind stacks of books piled up on his desk. There were files and papers dripping from every corner of the room. It was a tough interview, albeit in a kindly tone, conducted from behind the now memorable wall of books. But some source of providence got me through. The one and a half years that followed were deeply influential in shaping my future work on human rights education, institution building and advocacy back in Sri Lanka. The mentorship and friendship forged there was to last three decades and beyond. DW and Pat gave me a home in the Twin Cities and became my second family.

Before long I realized that the Twin Cities area was the human rights capital of the USA. DW had a major hand in accomplishing that distinction. The great 'triumvirate' of human rights institutions that DW had helped shape in the Twin Cities—the MLIHRC, the Torture Victims' Treatment Centre and the Human Rights Centre at the University of Minnesota School of Law—provided an amazingly rich exposure and experience. Academia and human rights practice meshed together to create a solid protective network. This was the remarkable legacy of DW. DW made it clear that human rights scholarship without advocacy was not worth very much.

Before my return to Sri Lanka, DW had a serious chat with me. He asked me about my plans on return. I told him that I was keen to introduce human rights law into the law school curriculum and also emulate the Human Rights Centre that he was directing at the University of Minnesota. Then and there, David sat before his computer and started drafting a proposal to set up a human rights centre at the University of Colombo.

The Centre for the Study of Human Rights at the University of Colombo celebrated its 30th anniversary this year. Hundreds of young graduates have gone through its human rights internship

Human Rights Advocates is accepting nominations for the Board of Directors

The Board will be elected at the Spring Annual Meeting at the University of San Francisco School of Law. Board meetings are held once a month in San Francisco. If you would like to apply, please contact Julianne Cartwright Traylor at traylor@igc.org by January 17, 2022.

program. Many have gone on to become active advocates functioning in various capacities. A few have gone on to become academics and researchers focusing on human rights. The human rights law course that I commenced teaching in 1992 was a pioneering effort in legal education in Sri Lanka. Today, almost every legal education program in the public university system in Sri Lanka teaches the subject. These accomplishments, which have gone on to serve the country very well, mirror DW's global legacy.

The second theatre of interaction with DW was before the UN human rights system. I had the privilege of serving with DW on the then UN Sub-Commission on the Promotion and Protection of Human Rights from 1998 for a period of three years. DW was the expert from the USA. I was elected as the Alternate Member from Sri Lanka. My election at that tender age was without doubt aided and abetted by DW. David had years of experience in the system. He had just started to work on his much-discussed report on transnational corporations and human rights. I was working on globalization and human rights with another 'Twin Cities' stalwart, Prof. Joe Oloka-Onyango, the Sub-Commission's member from Uganda. Neither mandate was an easy one. The critics were relentless. DW, the UN veteran, taught us the art of navigating the tough and complex corridors of the multilateral system. Eventually, he went on to become the Chair of the Sub-Commission, a rare feat for a member from the USA.

Of course, there are many other accomplishments of DW such as the International Human Rights Internship Program and pivotal contribution to Amnesty International. There are many who could speak volumes about how those impacted their lives.

DW and I had a common mentor, the great Prof. Frank Newman of the Berkeley School of Law. We are proud members of the 'Berkeley-Newman Mafia'. Frank was the cutting-edge thinker. DW combined theory with practice, institution building and expanding

global human rights networks. Just as much as their mentoring deeply inspired my work as a human rights scholar, educator and advocate, I am deeply committed to carrying on the mentoring process. That is the best tribute to the great legacies they've left behind. We have to, and we will, carry the torch forward.

Deepika Udagama is an HRA International Advisory Board Member and Professor/Head of the Department of Law, University of Peradeniya, Sri Lanka.

Message from the President

Thank you to all of our members who supported our work and participated in our events during this second most challenging year of COVID-19 pandemic. Despite this challenge of operating remotely, HRA has continued its work to advance international human rights.

Recently, we all lost one of our great human rights scholars and advocate and mentor David Weissbrodt, HRA National Advisory Board Member, and friend and colleagues to many around the world. See the tribute to David by our International Advisory Member Deepika Udagama, also colleague, mentor and friend to many around the world.

Our important work on behalf of human rights must and will continue! I wish you all and your loved ones a safe, healthy, and enjoyable holiday season and New Year!

Your contributions are greatly appreciated by HRA!

Please consider renewing your membership and making a donation – both of which are tax-deductible – by completing the form attached to this issue of the Newsletter.

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