INTERNATIONAL CLIMATE CHANGE LAW, HEALTH PROMOTION AND EVOLVING DOMESTIC CLIMATE LAW IN DEVELOPING COUNTRIES

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I. Introduction

A. The crux of the problem

The purpose of this paper is to discuss the trends in implementation by developing countries through domestic law of their health obligation in international climate change law. The discussion is posited in the context of the health protection objective of international climate law. The paper aims to discuss the strengths and limitations of domestic climate legislation for health protection, and the proposals to invigorate health promotion and protection in the laws in developing countries. It argues that despite the importance of the health protection objective under the United Nations Framework Convention on Climate Change (UNFCCC) and Kyoto Protocol, trends in domestic climate legislation, by developing as well as developed state parties, is biased towards mitigation and energy issues without clear mechanisms for addressing public health challenges in tackling climate change. It identifies evidence of the weaknesses in the evolving climate legislation in the developing world generally as well as using case studies of Brazil, China, and South Africa.

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The paper emphasizes the importance of reorienting domestic climate change law, by strengthening mechanisms to fully integrate health into climate change law and governance generally. Specifically, the paper calls for substantive, procedural, and institutional legal reforms to promote health within both mitigation and adaptation actions. The paper calls on developing countries to consider implementing the functional theory of adaptive governance approaches to strengthen the social and human health aspects of domestic climate legislation. The paper makes a contribution by making the climate and health linkage, in the context of renewed thinking of health protection, in broader environmental law.

The paper is divided into five sections including this introduction. Section II focuses on the inclusion of health as a major objective of the UNFCCC as well as the Kyoto Protocols that must be integrated into domestic actions by parties. It also discusses the legal obligations on Parties to implement both the UNFCCC and Kyoto Protocol, and a health critique of these obligations. Section III discusses the trends in domestic climate legislation in developing countries, arguing that it focuses on mitigation and to a less extent, adaptation while lacking effective provisions and mechanisms for tackling health challenges of climate change. This section examines further, select developing country case studies to demonstrate this scenario. Section IV is discursive and focuses on options to promote health protection in emerging domestic climate law in developing countries. Section V is the conclusion.

B. Health impacts of climate change on developing countries and the world

Climate change is a global health challenge. The Intergovernmental Panel on Climate Change (IPCC) has shown that the global climate is facing rapid changes.\(^1\) Global mean temperatures are on the rise,\(^2\) and

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