

*University of Southern California Law
School*

Legal Studies Working Paper Series

Year 2015

Paper 159

Air Pollution, Health, and Human Rights

Jonathan M. Samet*

Sofia Gruskin†

*USC, Institute for Global Health, jsamet@usc.edu

†University of Southern California, gruskin@usc.edu

This working paper is hosted by The Berkeley Electronic Press (bepress) and may not be commercially reproduced without the permission of the copyright holder.

<http://law.bepress.com/usclwps-lss/159>

Copyright ©2015 by the authors.

Air Pollution, Health, and Human Rights

Jonathan M. Samet and Sofia Gruskin

Abstract

Worldwide, the problem of air pollution is heterogeneous in its sources and in the populations affected, but consistent in that there is an urgent need for action. In this Comment, we address whether framing air pollution as a human rights issue would more quickly and efficiently motivate and direct actions than what is done at present. We conclude that rights-based approaches merit deeper consideration to advance control for air pollution worldwide at a time when air quality is notably deteriorating in many parts of the world.

Air pollution, health, and human rights



The activities of human beings contaminate the air with toxic pollutants. Air pollution has both short-term and long-term adverse effects, and contributes to non-communicable diseases.¹ The Forum of International Respiratory Societies² note that “breathing unhealthy air is a cause or contributor to most respiratory conditions”. Globally, greenhouse gas pollution has contributed to climate change, which has serious direct and indirect consequences for human and environmental health.

Worldwide, the problem of air pollution is heterogeneous in its sources and in the populations affected, but consistent in that there is an urgent need for action. In this Comment, we address whether framing air pollution as a human rights issue would more quickly and efficiently motivate and direct actions than what is done at present. Air pollution has long been acknowledged as a public health threat and is viewed as an inevitable consequence of energy use and industrial production. For polluters (whether individuals or corporations), its consequences and costs are viewed merely as an externality. However, drawing on Garrett Hardin’s analogy of the tragedy of the commons,³ the collective actions of polluters have created a situation that threatens the health of all people, and governments have human rights obligations that have been inadequately invoked to protect the public’s health from air pollution. The legal basis for action can be derived from the right to health and related rights. The basic responsibility of governments to protect health underlies rationale for action, even though there is not an explicit right to a healthy environment or to safe, healthy, or pollution-free air.

The right to health is stated in international documents and is expressed in WHO’s constitution: “The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being...”⁴ Could this right include a safe and healthy environment, including ensuring air pollution does not bring harm? Although a healthy environment seems fundamental to the right to health, no enforceable legal document guarantees it. The first principle of the 1972 Stockholm Declaration, one of the earliest calls for a right to a healthy environment, begins: “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and wellbeing, and he bears

a solemn responsibility to protect and improve the environment for present and future generations.”⁵

Since then, a specific right to a healthy environment has not gained much traction for many reasons, ranging from political to legal. Nonetheless, advocates have successfully shown that, given their interdependence, several human rights can be invoked because their realisation is dependent on a safe and healthy environment. Although the ability to enjoy all human rights might be affected by environmental degradation, including air pollution, the right to health provides an important start, particularly when coupled with rights to life; adequate food, water, and housing; non-discrimination; participation; and self-determination. Of particular importance, the UN Convention on the Rights of the Child,⁶ notes the need “to combat disease and malnutrition...taking into consideration the dangers and risks of environmental pollution,” and in a related document⁷ provides a comprehensive account of governmental legal obligations.

Any call for protections that cover air pollution through claims for a right to a healthy environment will be challenged by scientific understanding of risks posed by air pollution and by lawyers concerned with the limits of what human rights law can offer. We propose that taking the right to health as a start, as done by the Committee on the Rights of the Child, implies similar protections for adults, with the potential for engagement on and mitigation of the effects

Published Online
October 23, 2014
[http://dx.doi.org/10.1016/S2213-2600\(14\)70145-6](http://dx.doi.org/10.1016/S2213-2600(14)70145-6)



Jim West/Science Photo Library

of pollution on vulnerable populations. Even the comparatively low levels of air pollution in high-income countries can still be linked to adverse health effects. In 2013, the WHO International Agency for Research on Cancer classified air pollution as cancer-causing in human beings.⁸ Knowledge of underlying mechanisms indicates that any exposure to urban pollution has some cancer risk. Thus, a rights-based strategy can call for air quality to be as healthy as possible, but not risk-free (an unattainable goal). At best, the target risk would need to be based on principles used to guide risk management (as low as reasonably achievable⁹) and on the precautionary principle¹⁰—protecting against the possibility of risk in the face of uncertainty.

Climate change poses particular challenges when viewed with a lens focused on human rights.¹¹ Its health consequences are likely to be far more serious in vulnerable low-income and middle-income countries that have contributed little to greenhouse gas emissions and that have less capacity to adapt; and today's emissions will affect the health of future generations everywhere. A rights-based approach to climate change offers a framework for problem solving that is based on international human rights law, includes relevant methods to identify and address stakeholder interests, ensures the equity and participation of affected populations, and creates accountability mechanisms. It makes clear that the focus is on people and indicates roles for governments and other stakeholders, requiring the identification of duty bearers who have an obligation to rights-holders to correct wrongs and implement solutions.¹¹

We conclude that rights-based approaches merit deeper consideration to advance control for air pollution worldwide at a time when air quality is notably deteriorating in many parts of the world. They provide a universal rationale and approach for action, even in the face of widely varying legal and regulatory schemes.

**Jonathan M Samet, Sofia Gruskin, for the Forum of International Respiratory Societies working group collaboration*

Department of Preventive Medicine, Keck School of Medicine and University of Southern California Institute for Global Health (JMS, SG), Program on Global Health and Human Rights, University of Southern California Institute for Global Health (SG), and University of Southern California Gould School of Law (SG), University of Southern California, CA 90089, USA
jsamet@usc.edu

JMS received support from the US National Institutes of Health-Fogarty International Center (R24TW009548). SG's work on NCDs and human rights is supported through an unrestricted grant from the Merck Company Foundation. The Foundation had no role in the conceptualization or writing of this commentary. The content is solely the responsibility of the authors and does not necessarily represent the official views of the National Institutes of Health or the Merck Company Foundation.

- 1 Lim SS, Vos T, Flaxman AD, et al. A comparative risk assessment of burden of disease and injury attributable to 67 risk factors and risk factor clusters in 21 regions, 1990-2010: a systematic analysis for the Global Burden of Disease Study 2010. *Lancet* 2012; **380**: 2224–60.
- 2 Forum of International Respiratory Societies. Respiratory diseases in the world. Realities of today—opportunities for tomorrow. Sheffield: European Respiratory Society, 2013.
- 3 Hardin G. The tragedy of the commons. *Science* 1968; **162**: 1243–48.
- 4 WHO. Constitution of the World Health Organization. Geneva: World Health Organization, 1948. <http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1> (accessed June 8, 2014).
- 5 UN General Assembly. Declaration of the United Nations Conference on the Human Environment, June 5–16, 1972. <http://www.unep.org/Documents.mltilingual/Default.asp?DocumentID=97&ArticleID=1503> (accessed June 8, 2014).
- 6 UN General Assembly. Convention on the Rights of the Child, November 20, 1989. <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (accessed June 8, 2014).
- 7 UN Committee on the Rights of the Child. General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24) (CRC/C/GC/15), April 17, 2013. <http://www.refworld.org/docid/51ef9e134.html> (accessed June 8, 2014)
- 8 Loomis D, Grosse Y, Lauby-Secretan B, et al. The carcinogenicity of outdoor air pollution. *Lancet Oncol* 2013; **14**: 1262–63.
- 9 US Nuclear Regulatory Commission. ALARA - As Low As Reasonably Achievable. <http://www.nrc.gov/reading-rm/basic-ref/glossary/alara.html> (accessed June 11, 2014).
- 10 Kriebel D, Tickner J, Epstein P, et al. The precautionary principle in environmental science. *Environ Health Perspect* 2001; **109**: 871–76.
- 11 UN Human Rights Council. Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights (A/HRC/10/61), January 15, 2009. <http://www.refworld.org/docid/498811532.html> (accessed June 8, 2014).

