

Kris Turner:

Hello and welcome to Wisconsin Law in Action, the University of Wisconsin Law School's podcast. I'm your host, Kris Turner. Today I have the privilege of speaking with Sumudu Atapattu, who plays a deeply important role in connecting the dots between human rights, environmental law, and climate Justice. Sumudu is the director of the Global Legal Study Center and a teaching professor here at UW Law, the executive director of the Human Rights Program at UW Madison, and a leading scholar on climate change, migration and international environmental law. Her work spans continents. She's an attorney at law on the Supreme Court of Sri Lanka, she holds advanced degrees from Cambridge, and she has published extensively on human rights approaches to climate change. Sumudu, thank you for joining the podcast today.

Sumudu Atapattu:

Thank you so much for having me today, Kris.

Kris Turner:

Of course. It's an absolute pleasure. So let's just dive right into it. I'm excited to get this going. Let's begin with your story. How did you come to focus on both human rights and environmental law? What was that journey like? When did you realize these issues are so deeply interconnected?

Sumudu Atapattu:

So Kris, as you mentioned, I'm originally from Sri Lanka. I worked for an environmental NGO many, many years ago, and this was at the time when environmental law was just starting in Sri Lanka, so nobody knew what it was. So we were sort of learning as we went along. But one day the lawyers that were working at this NGO came and said, "Oh, we had a huge victory in court today. We evicted some squatters from a national park." And that really got me thinking, sure, this is a national park, which is protected under the law, but these squatters that they were referring to were probably people dependent on the forest for their day-to-day subsistence. I wasn't sure whether they were indigenous peoples where we do have indigenous peoples in Sri Lanka, but they were clearly people who were dependent on the forest. Maybe they were there illegally, but ...

So that really got me thinking, and I asked the lawyers, "So what happened to the people?" And they looked at me as if I was crazy. They hadn't clearly thought about this. So that was when I started thinking about by applying one set of laws, you are violating another. So I thought this didn't seem right. So that's how I got interested in looking at the intersection between human rights and environment. Despite working in this area for around 30 years now, people still bifurcate this. Obviously the two fields have converged to a certain extent, but people still ask me, "So are you a human rights lawyer or an environmental lawyer?" And I wonder, "Does that matter?"

So this was how I really got involved in the field, and I saw it from the other side too because after I finished my PhD, I worked for a human rights NGO for a little bit before I started teaching. And obviously this was at a time when Sri Lanka was undergoing a civil war and there were many human rights violations taking place, which were much more tangible than the environmental problems that the country was witnessing. So again, the focus was on human rights, not so much on the environmental issues, although the war itself had a huge toll on the environment. So I saw it from both sides at the domestic level as well as at the international level too.

Kris Turner:

You have a global background. How has your international experience shaped your perspective on climate law and justice?

Sumudu Atapattu:

Yeah, as you say, I am originally from Sri Lanka. I studied in England, now I live in the US, so I have seen quite a bit of the situation on the ground, especially in South Asia. I have traveled quite a bit as well, and I have seen the intersection of poverty or underdevelopment, environmental degradation and violation of human rights. So having that global perspective, especially as a person coming from the Global South, has really helped me to keep my feet on the ground, so to say, because I have seen what it's like to struggle with poverty, how these interconnections actually multiply to create even more bigger injustices. That has really helped me.

And also to see it from the Global North perspective, what they're actually seeing and what they're not seeing on the ground. And even in the Global North, there's a huge disparity when it comes to poverty and environmental degradation of human rights violations as well. So being able to see what it's like from both sides, human rights and the environment is really helpful to foreground issues for me.

Kris Turner:

You had mentioned what the Global North doesn't see sometimes from the Global South's perspective and vice versa. What is it that those two perspectives often miss about each other?

Sumudu Atapattu:

So I mean, we tend to generalize. So everybody in the Global South is poor, which is not true. You see a vast disparity in the Global South too. And then from the Global South perspective, people tend to think that everybody in the Global North is super rich and they live these wonderful lives, which is also not true. People work really hard in the Global North. A lot of people don't understand the challenges in the Global North too. We tend to generalize, I think it's very helpful to know what the ground situation is like, and especially in the field that I work on, it's very helpful to know what it's like, what it's actually like both in the Global North as well as in the Global South.

Kris Turner:

Yeah, that's where your global background comes to play such a key role where you have been walking in the shoes from both of those perspectives and be able to combine those into such powerful writing and scholarship, but also in your roles as directors here at the UW Law School, which is a nice segue into my next question here. So you are, again, as I mentioned, the director of the Global Legal Study Center. How do you integrate scholarship, teaching and community engagement into that role?

Sumudu Atapattu:

Yeah, that's really important, right? Because as I said, it's really important to know what the ground situation is like because in order to apply the law, that's really important. And I have also seen, again, the other side about how law is actually made, so I have attended many COP meetings, conference parties, climate negotiation conferences. So it's really interesting to see the other side as well, just as important it is to see how law is applied on the ground. It's also important to see how law is made. So I have also participated where I was in Sri Lanka about drafting new legislation and things like that, especially the draft constitution, which of course never happened, but it was interesting to see the process and also especially in the environment field, law is very dependent on science, sociology and things like that. So having that multidisciplinary background is important too.

And here at UW Law School, I have been very fortunate because the law school has allowed me to experiment with new courses like climate change and human rights. I think UW Law is one of the first law schools to have a separate seminar on climate change and human rights, which I started teaching about 10 years ago. Having been able to discuss these issues at a very early stage really helped both my teaching and research. So I'm very grateful to the UW Law School for giving me that opportunity because not many law schools are that open, I should say.

Kris Turner:

Well, we are lucky to have you teaching it because it proved to be such a prescience and important subject to showing students. And I'm in a position where I'm able to talk with a lot of students that've taken this course, and I've heard nothing but great things about it on top of that. So if you hadn't heard that, I wanted you to hear it live and we could all hear it together too.

Sumudu Atapattu:

Thank you. I appreciate it.

Kris Turner:

Sure, of course. And going back to your interdisciplinary work topic, I again hear that all the time from UW law scholars about how important it's to bring in all these different voices on that perspective. So I'm so glad that you are leading the charge on that one. One of those things you have done is actually your book, *Human Rights Approaches to Climate Change: Challenges and Opportunities*, which is a widely cited book. And if you have not read it, and this is your area of interest, you have to read this book. How do you see a human rights framework as helping or sometimes complicating efforts to address climate change?

Sumudu Atapattu:

As I mentioned at the beginning, the human rights community was not very interested in bringing the human rights focus into climate change. Took a little bit of time and a lot of lobbying, like many areas of law, these developed on two separate tracks, and there are still two separate frameworks, but because of the close link between climate change and human rights, these two areas have merged quite a bit. But there are drawbacks of both systems. So sometimes people say it's like trying to fit square pegs in round holes kind of a situation. But what the human rights framework has done is to give a voice to marginalized communities. So indigenous peoples have used the human rights framework to bring environmental issues to the forefront.

There was a recent case before the Inter-American Court of Human Rights, *La Oroya V. Peru*, *La Oroya* is considered as one of the most polluted places on earth because of a smelter, and these people have suffered for years and years and years. But this case really highlighted the link between the two areas. There was another advisory opinion after that, more recently this year, really highlighting the link between human rights and environment that states have human rights obligations to protect their people from climate consequences. The International Court of Justice also issued an advisory opinion recently, again highlighting the link, the advisory opinion of the ICJ was much wider than human rights.

So increasingly, victims of climate degradation, climate consequences are bringing human rights claims both at the international level as well as the domestic level. They're using the constitutional framework. You may be familiar with the Montana case where a group of youth brought a case against the legislature, their government for not doing enough on climate change. There's a case pending in Wisconsin right now, again, a group of youth have brought a claim against a public services commission.

So although the litigation itself may not be successful and many aren't, lawyers are pushing the envelope, looking at novel theories and really highlighting the disproportionate impact on these marginalized communities.

Kris Turner:

Small island states, climate migration, vulnerable populations, these topics keep coming up in your research. Can you talk about the justice dimensions of climate migration and why international law lands is so critical in addressing it?

Sumudu Atapattu:

Sure. So as I mentioned just now, a human rights framework has given a voice to these marginalized communities. One of the biggest injustices of climate change is that those who contribute at least to the problem, are affected most. So small island states is a good example. There are close to 50 small island states in the Caribbean, in the Pacific, in the Indian Ocean like Maldives, Vanuatu, Tuvalu, Marshall Islands that are being disproportionately affected by climate change to the extent that they might disappear, some of them might disappear, not all of them, because of sea level rise associated with climate change because of severe weather events associated with climate change, but their contribution to climate change is very, very little. Historically, the United States has been the biggest contributor to climate change, but the impact on the small island states is way beyond their contribution.

Similarly, climate migration, people are moving as a result of climate change, even in the United States. Some communities are being relocated, some communities in Alaska are waiting relocation. So that's within states. People are moving across borders as well, many of the people who are seeking asylum in the US are actually climate refugees. And I already mentioned vulnerable populations like indigenous peoples and many of the communities that are awaiting relocation in Alaska are actually indigenous peoples. And as you know, they have a very intimate relationship with their land. It's spiritual for them. It's part of their culture. So if they have to be relocated elsewhere, they lose that connection with their territory, their traditional lands.

That's a big issue. The other issue with climate refugees, which is not a legal term, is that those who cross borders are not protected by international law. Right now, international refugee law does not govern climate refugees. They have to be political refugees right now. So they lack legal protection under refugee law, although basic human rights law still applies to them, but they don't have a right to seek asylum right now. So unless individual states start doing something about it, and Australia did actually enter into an agreement with Tuvalu recently to allow them to migrate to Australia because of climate change. But that's a bilateral approach. This is going to be a global problem, although most climate movement will be, climate-related movement will be internally. We do need an international approach to climate migration.

Small island states, although the International Court of Justice said in its advisory opinion recently that just because an attribute of statehood like territories lost, if you are already considered as a state, then statehood and international law will not be lost. So that's a big statement towards recognizing the continuity of statehood under international law. But I think the bigger question is not the legal one, it's a humanitarian, right? Where are these people going to go if they don't have territory? As lawyers and as courts, we can solve the legal problem, not so much the humanitarian problem. So I think we really need to have an international law approach to the humanitarian question as well.

Kris Turner:

Maybe the courts could help pave the way through litigation and other ideas to the humanitarian problem would hopefully be a maybe optimistic idea, but one that is feasible in some ways. You had mentioned that some lawyers are pushing the envelope of some of these cases in a previous answer, do you see lawyers either in the international law arena or in a specific jurisdiction pushing the envelope for climate migration right now?

Sumudu Atapattu:

Yes, there was a case three years ago or four years ago before the Human Rights Committee, a person from Kiribati filed action against New Zealand because his application for refugee status was refused by New Zealand, and his application was on the basis of climate change. He argued that if he were to be sent back to his country Kiribati, and he was sent back, his right to life would be affected by climate change, and that would be a violation of international law. And actually, the Human Rights Committee accepted that argument saying that the basic principle that's underlying refugee law, which is also applicable in the human rights field, so if somebody is facing a serious threat to life, if that person is sent back to their home country, the sending state has an obligation not to send that person back to face that danger. So applying this principle that underlies the refugee law in the context of climate change was really important. And it was actually endorsed by the International Court of Justice in its advisory opinion as well.

So yeah, lawyers are pushing the envelope. In fact, the very first case applying a human rights framework to climate change was way back in 2005 when a group of Inuit people held by two prominent NGOs brought a case against the United States in the Inter-American Commission of Human Rights, arguing that as the biggest contributor at that time to climate change, United States has an obligation to help Inuit people. Some of them were actually Canadian citizens, so that was another legal innovation that lawyers did. And although, again, the case itself was unsuccessful, it really had a ripple effect getting people to think about a human rights approach to climate change. So even litigation that fails can have a positive impact.

Kris Turner:

Mm-hmm. So we've touched on this a little bit already, you work on global human rights organizations and institutions and their role and environmental protection. Can you share your thoughts on how the UN human rights bodies are or could be mobilized to tackle environmental degradation and climate change?

Sumudu Atapattu:

So one of the things that I have been thinking about is that none of the human rights treaties actually have a right to a healthy environment or even environmental issues mentioned in them. The only treaty actually to refer to pollution is the Convention on the rights of the child, which unfortunately the US has not ratified and remains the only country in the world not to have ratified. But these human rights bodies are increasingly looking at environmental issues, sustainable development, climate change in their reports, in their country, observations, in their general comments, et cetera. So that's how I really got interested in looking at how these human rights bodies are approaching these issues, although their mandate does not include them.

So that resulted in the book you mentioned, which I published a couple of years ago, looking at how these human rights bodies are approaching these issues. And it's really interesting, although the United States has not ratified many of these human rights treaties in the reports that these human rights bodies are doing on the US, they're actually referring to environmental issues even in the country reports that

US has done, they are referring to environmental issues, especially environmental justice issues. So it's really interesting to see, even though the mandate itself does not include environmental issues, these human rights bodies are increasingly addressing them. But recently there was a UN journal assembly resolution recognizing a right to a healthy environment as a separate human right, so increasingly we will see these bodies addressing these environmental issues more and more, but even in the absence, they have been addressing those issues given the close link between human rights and environmental issues.

Kris Turner:

Well, that's kind of encouraging that even though it's not always ratified or spelled out in the treaties, that they are still being addressed in that sense.

So again, you started to talk about this in a previous answer, but given how deeply inequitable climate impacts are, especially on the small island states or in vulnerable populations that you had discussed already, and then in the Global South, how do you approach these issues of power and development and environmental justice in your work?

Sumudu Atapattu:

Yeah, this power asymmetry is something that I have been thinking about quite a lot because when it comes to climate negotiations or environmental negotiations or human rights negotiations, you can really see how these power dynamics play out. So I was the co-editor of the book, *International Environmental Law and the Global South*, and here we wanted to see how these power asymmetry and the power dynamics play out in relation to international environmental law and how these North-South dimensions actually play out in climate negotiations or environmental negotiations. So that has really influenced my work as well, this North-South dimension and power asymmetry.

So recently I was involved in a book chapter that I drafted with my colleague from Loyola University, Carmen Gonzalez, looking at third world approaches to international law in relation to climate change. Recent negotiations that broke down on hold in relation to the Plastics Treaty is another example of these North-South issues, especially the role played by fossil oil companies is playing out. And then I also see how power and corruption have ruined countries in the Global South too. So it's not just this North-South issue that's affecting these issues, but it's also power and corruption in my own country, Sri Lanka, because the country itself had a huge economic crisis because of power and corruption. So I have seen it all happening, not just the North-South dimensions, but in the Global South as well.

Kris Turner:

Really uplifting sometimes. I'm sure it has to be very frustrating to see some of these things. We're going to touch on that in a little while though, for sure. First, I want to shift gears a little bit. Let's talk about your role as the executive director of the human rights program here at UW Madison. How does that program intersect with your environmental work? Again, we've talked about how these two things are starting to align a little bit more, but how do they specifically-

Sumudu Atapattu:

[inaudible 00:26:15].

Kris Turner:

... impact each other, and how do you see UW students contributing to Global Climate justice through your program?

Sumudu Atapattu:

The Human Rights Program tries to bring human rights issues to the forefront, and climate change is one of the biggest human rights issues that we are facing. So we have looked at climate change issues. We recently had a series of civil dialogues in relation to human right, and we looked at climate change as a specific issue because as you know, this has become a very polarized issue as well politically. And some people don't believe in climate change, they think it's a hoax, it's not happening. So bringing that issue to the forefront, how do we talk about climate change with people who don't agree with us? And students can play an important role here through participating in our events. They can also do internships. We try to facilitate internships. If they're interested in climate change issues, they can work with community to address these issues, and also they can find their own organization as well. We encourage students to find student organizations or work closely with organizations that are already there to bring these issues to the forefront.

Down the road, something we want to do is to have a certificate in human rights because the students are actually asking, but this has to happen at the undergraduate level. And we were successful in bringing a human rights track to the international studies major, took a while because things moved slowly, but yeah, it happened about two to three years ago. So now students can actually get a specialization, undergraduate students can get a specialization in human rights. And I myself teach a course on international human rights law, and I have a module on climate change, environmental issues, sustainable development and poverty, because I want the students to understand these connections as well, because human rights law tends to be more traditional in approach, but increasingly, these issues are becoming intertwined.

Kris Turner:

You had mentioned that students should come to the events that the human rights program puts on and maybe faculty, staff, and sometimes it's open to the public as well, correct?

Sumudu Atapattu:

Yeah, that's right. All our events are open to the public.

Kris Turner:

Wonderful. So how can people find out about these events? What can they do to learn when an event is coming up?

Sumudu Atapattu:

So we post everything on our website. We have a fairly large mailing list, so we publicize those events. I'm not a very social media savvy person, but we try to do that too. So yeah, everybody's welcome to all events, not just human rights. The Global Legal Studies Center also organizes events, so everybody's welcome.

Kris Turner:

Wonderful. We will link out to those websites too, just to help spread the word about all these upcoming events that you have.

So looking to the future, as climate change intensifies and legal frameworks struggle to keep up, where do you see the most promising opportunities for legal innovation?

Sumudu Atapattu:

As you say, many areas of law will be affected by climate change. Whether we are looking at or whether we are teaching property tort, constitutional law, insurance tax, intellectual property, all those areas will be affected by climate change. So one of the things we want to do is to get our doctrinal faculty as well as clinical faculty to think about how to incorporate climate change into their curriculum. And I feel that as educators, we have a responsibility to train the next generation of lawyers to think about these issues, think about how climate change will affect practically every area of law that we teach.

So because of this, we, Professor Huneus and I, started the Wisconsin Initiative on Law and Climate Change to really highlight teaching the need for research as well as community outreach in relation to climate change. So we launched this about three, four years ago.

We have done some work like the Long-Term Learning Initiative, a couple of workshops as well, as well as the [inaudible 00:31:23] developing. And so that's one aspect, trying to incorporate climate change into the legal curriculum, and the ADA actually requires us to do so now. And on the other hand, looking at new areas of law that are coming up, states have made commitments under the Paris Agreement on climate change to reduce their greenhouse gas emissions. And so this involves every sector of the economy, whether it's a renewable energy, public transportation infrastructure, etc. We really need to look at these new areas of law like common trading and things like that, because we do need lawyers in these new areas. Smart cities is another one.

And then there are areas, as we mentioned, like climate refugees that don't have a legal framework at the international level. So we need lawyers at every level, whether you are working in Wisconsin or at the global level because climate change affects everybody. So that's why I think the Rice Earth Initiative by the Chancellor is really important because it gives us a chance to hire new faculty to work in this area. And I know the Nelson Institute, the law school and POLI SCI actually had a round of job talks recently to hire faculty under this initiative. So I really hope that the law school will be able to get a couple of faculty members to work on climate change as well under this initiative.

Kris Turner:

What do you most hope readers take away from your work?

Sumudu Atapattu:

Well, I hope that I inspire the younger generation to take up these causes, right? Because unfortunately, it's the next generation that will be affected more by climate change, by a problem that the current generation and the previous generation has created for the next generation and the generations to come. So I hope the younger generation will take up these issues and I'm very inspired by what's happening, the youth activism and things like that, and not give up hope.

Kris Turner:

Well, you've already inspired me. I want to work this further into the classes I have a chance to teach, and I think that you will inspire future scholars and future lawyers for sure. Sumudu Atapattu, thank you again for sharing your insights, your passion, and your vision with us today. It was a pleasure having you join the podcast.

Sumudu Atapattu:

Thank you so much for having me and giving me the opportunity to talk about my work. Thank you, Kris.

Kris Turner:

Of course. I look forward to having you on again in the near or far-flung future or all the above. That was Sumudu Atapattu, director of the Global Legal Study Center and a teaching professor here at UW Law School. We'll link out to Professor Atapattu's prolific list of scholarship on our podcast page along with all the human rights websites that we mentioned earlier in our conversation. Thank you all for listening. This was Wisconsin Law in Action from the University of Wisconsin Law School. To hear more conversations with our faculty about their research and its real world impact, visit wilawinaction.law.wisc.edu. Stay up to date on Wisconsin Law School's scholarship by subscribing to this podcast via the Apple iTunes store, or follow the Wisconsin Law School on whatever social media you might be on for updates on faculty news and publications. I'm Kris Turner. See you next time, and happy researching.