



## CleanLaw 60: Hannah Perls Speaks with Aminta Ossom About the Intersection of Human Rights and Environmental Justice – with Additional Commentary by Tripti Poddar - July 29, 2021

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Robin Just: Welcome to Clean Law from the Environmental & Energy Law Program at Harvard Law School. In this episode, our legal fellow, Hannah Perls speaks with Aminta Ossom, a clinical instructor at [Harvard Law's International Human Rights Clinic](#), where she focuses on equality, inclusion and economic and social rights.

Robin: Before joining the clinic, she worked as a human rights officer at the United Nations and taught international human rights at Fordham Law School. They discuss how looking at environmental problems through a human rights lens can provide new insights and legal strategies for addressing environmental injustice in the United States and beyond. We hope you enjoy this podcast.

Hannah Perls: Hi, Aminta

Aminta Ossom: Hi.

Hannah: How are you?

Aminta: I'm doing well.

Hannah: Well, thank you so much for joining us on Clean Law. I am unabashedly really excited about this episode because it's the first time that we are bringing a human rights expert to come onto the podcast and inform the ways that we look at and evaluate environmental legal issues.

Hannah: Normally, I think our listeners are used to us focusing on one tiny element of environmental law. And I think your perspective is going to be really helpful in reframing how we even define those issues in the first place. So, I'm very excited about this conversation.

Hannah: I also wanted to flag that we're going to be hearing from one of your colleagues in India, Tripti Poddar. Tripti is a litigating attorney. She's practicing in Delhi and Assam. She's also a legal consultant with legal empowerment organization called [Nazdeek](#), which is based in Delhi. And there, Tripti supports community-led advocacy and research on economic and social rights, which we, of course, will get into in this conversation.



Hannah: Now, before we dive into that research specifically, I wanted to give our listeners a chance just to learn more about your personal journey. Because you've been working now for over a decade on human rights issues, and it's covered the gamut from torture, to disability rights, to transitional justice, and now you're focusing on environmental issues.

Hannah: So, I was wondering if you could talk a bit about what brought you to now look at climate change impacts and if you're seeing any connections with that decade of previous work.

Aminta: Thanks, Hannah. That's a great question. And actually, I should say first off that I'm really appreciative of the opportunity to speak today on issues that I'm clearly passionate about. And I really appreciate the chance to just talk about where the intersections are between environmental law and human rights. I've been in the human rights field now, like you said, for over 10 years. We're probably inching closer to 12 or 13 years, which is wild to think about.

Aminta: But over that trajectory, I've had a growing interest in economic and social rights, and also specifically the issues of economic and social inequality, which it's topical and it's in the news now, we all are conversant in some of the challenges around economic inequality, but it hasn't actually formed the core of work of organizations that would self-identify as human rights organizations working internationally let's say.

Aminta: So, I grew interested in this, especially looking at the intersections of economic inequality and other types of inequality that those of us in the human rights field are a little bit more familiar with working around. So, issues of inequality based on race or ethnicity or religious discrimination, or as you mentioned before, disability rights and disability related-discrimination and understanding, and seeing that those communities were also dealing with issues around their different economic standings brought me to work on inequality.

Aminta: And it's actually my connection with the partner organizations that brought me to work on climate change. I hadn't worked on climate justice before. I was looking to support organizations that were already grappling with questions around inequality, and that was my priority. And it was really through talking to them, I learned about how vital climate justice is and how urgent it is.

Aminta: It's just impossible for them to ignore working for Nazdeek communities in India and for the Center for Economic and Social Rights communities around the world and seeing what are the rights abuses that they're suffering? And climate change has a role in many of them.



- Aminta: And I also saw the value of coming from a clinic, working on issues around climate change and human rights, because we have a privileged position to be in between scholarly communities and practitioner communities. And we can bring insights from one to the other. We also have a privileged access to time and resources that practitioners who are putting out fires don't have a lot of access to. And so, on something like climate change, which is, it feels complex but still urgent, it's a good place for a clinic to come in. So, that's how we got started.
- Hannah: Got it. It's so funny because I think, of course in the lived experience, everything is interconnected and interdependent, which is one of the central tenets of human rights work. That, of course, all rights are interconnected and interdependent. But in the practice of academia or specializing, we tend to silo off. And so, I like how your experience highlights the, yes, of course, all of these things tie together and are interconnected and feed off each other. And climate change as the "threat multiplier" has its fingers in everything, but it's cool to see how over the 13 years of your professional trajectory, that's really been lived out.
- Hannah: I do want to take a pause because we've mentioned a couple of times now economic and social rights. And for our listeners who don't have a human rights background, what are those? Why do we have these categories? What do you mean when you say economic and social rights? And I think specifically for our listener base, could you help distinguish how that category or those categories of rights are different from the rights that we might typically recognize as being upheld under US law?
- Aminta: Yeah, definitely. When we talk about economic and social rights, and I should say there's also a category called cultural rights, which is usually classified together with economic and social rights. They're often compared to what we call in the human rights field, civil and political rights, which I think are probably more familiar for US attorneys.
- Aminta: And the distinction there is assumptions about how the right is protected and fulfilled. So, for economic and social and cultural rights, the assumed notion was that those rights require some type of positive action by a government in order to implement them. So, for example, you might have the right to food, or the right to health, or the right to housing. We think that governments are going to have to do something to fulfill those rights.
- Aminta: And comparing that to civil and political rights, there's a notion that the government needs to do a negative action. So they need to constrain themselves to not infringe upon the rights. And some classifications of those would be like the right to participate in the political process, or the right to express yourself or be free from torture. We think the government should hold itself back and not violate those rights.



Aminta: In practice, we see that the rationale for that division doesn't really hold up. And like you mentioned, under international human rights law, they're of equal value, they're interdependent. In general, we think that civil and political rights you need to refrain from infringing upon them. But you can think of something like the voting. To participate in the political process you need to vote. And that actually takes some resources, some action from the government to put in place a system of voting.

Aminta: So, the distinction is more historical than practical, but that's the background. And then there's also historical element with the human rights framework developing during the time of the cold war differences between countries. Historically, you have countries from what we call "the East" promoting economic and social rights as priority, and countries from the West, including the United States promoting civil and political rights, which led to two different covenants, which are the core of international human rights law.

Aminta: So, I would say that US lawyers would be probably more familiar with civil and political rights. We know the United States has signed, but not ratified, the International Covenant on Economic and Social Rights, but the United States still recognizes economic and social rights as being rights.

Hannah: It's always interesting to me. Eleanor Roosevelt played such a critical role in developing that initial, the Universal Declaration of Human Rights. There is this deep US influence in the development of these frameworks and yet civil political rights have such a strong hold on our political and legal imagination, whereas economic, social, and cultural rights, these "freedom tos," as opposed to a "freedom from," those feel like extra. It's like a bonus. And I think environmental rights certainly fall in that category, right? The right to water. It's like, "Yeah, that'd be great," but we're working on the "freedom tos."

Aminta: Yeah.

Hannah: So, one of the things that I really love about bringing, again, this human rights lens to environmental legal issues in the United States is it challenges us to think about what do we subconsciously exclude from our legal imagination when we define an environmental problem? And so, this brings me to the big question for this episode, which is, why do you think it's important that we look at climate change impacts through this human rights lens? And what is this framework that we've just been discussing? What does that offer us in a very concrete way as environmental advocates that we might otherwise overlook?

Aminta: I think what has made this an accessible area of law for me, not having a background in climate change or environmental science, is that the human rights' framework puts the human in focus. It's very story-based, it's very lived



experience based. And because of that, we're able to look at what humans are experiencing from climate change. And it takes us out of a conversation that's focused on scientific and technical matters or technological solutions to look at what are people seeing, feeling, how is their life affected by climate change? And I think that's a huge benefit of this particular lens.

Aminta: From the work that we're doing, which is using a fact-finding methodology or an investigation methodology, I think there's some added value there too to paint a bigger picture and to tell broader stories that other types of law might, you just might not have the luxury of doing. So, one thing I often say with students is think about litigation, think about the facts that you can present in the litigation case.

Aminta: Those are determined by the laws that exists already. So, fact finding lets us go outside of that framework and to talk about what are the lived experiences even outside of what we already think that we can prove through a specific type of litigation.

Aminta: And then I think the last thing to say is, I think accountability is super important. This often gets lost even in international global governance discussions of climate change. And that's the question of who is responsible and how can they rectify the harms that are being caused. Human rights always has that question, so I think this is a great addition to the discussion on climate justice.

Aminta: Through this framework, we are always asking, who's responsible for making things better? And it doesn't really require us to say that they have directly caused the violation because through the international human rights' framework, there's also a duty to protect and fulfill the rights. So, I think this gives us another avenue for seeking justice.

Hannah: It's so distinct from the litigation framework. I'm thinking about standing, for example, like you talk about focusing on the individual and in litigation, and maybe that inquiry goes as far as standing. To what extent have you been harmed in the way that we define, very narrowly, which harms are relevant?

Hannah: And I remember from our earlier conversations, you had this great way of encapsulating all this. That the law limits the stories that we tell by prescribing what's relevant. And so, I really appreciate how your research, which we're about to get into, really just opens the field to say all of this is relevant despite what we might limit ourselves to focusing on within a litigation framework.

Hannah: And the same with causation. Did you cause this particular harm to this person? And then the remedy even is defined by that very narrow scope. And so, especially in the environmental realm, often the remedy is wholly mismatched to the harm. Like here's some money for this destroyed ecosystem or the loss of



health. There's a loss of livability or, in a prior podcast, we talked with community members in North Carolina who talked about losing a sense of community and losing access to property that has been in their family for generations, even from the times of slavery.

Hannah: And so, there's this human experience of loss that is not captured in our litigation framework. And again, I think this human rights perspective helps us restore or at least notice those lost elements and recognize what is missing from the story that we're telling here and why is that consequential?

Hannah: We also have a recording from Tripti responding to this question. So I want to make sure we give her a chance as well. And let's listen to what she has to say.

Tripti Poddar: Hello, I'm Tripti. I'm a lawyer practicing in the courts in India. I'm very happy to be a part of this conversation. Thank you for having me. It's been an absolute pleasure working with the clinic and with Aminta and your amazing group of students for the last couple of years. It's a fantastic project and it's been a great pleasure working on this project.

Tripti: Diving straight into the issues that I was asked to address today. The first question or issue that I'd be addressing is to talk about looking at climate change through a human rights lens and what it offers to environmental activists that may otherwise get missed.

Tripti: Now, before I dive into this question itself, I think it's very, very important to talk about one thing, which is that we shouldn't look at this as a human rights advocacy versus an environmental advocacy issue. The two are no way divergent or separate.

Tripti: The right to a clean, habitable environment is also a human right. It is a human right to continue staying in the place of one's choice and not be displaced because of environmental calamities. And therefore, I think it is very, very imperative that for getting efficient remedies, the two are looked together.

Tripti: And I think we, as people working on these issues, need to be very cognizant of that. I understand. I'm very well aware of the fact that while the two movements have had different sources and are rooted in different points in history, they are intrinsically linked and the realization of one right without the other, and I don't want to use the word futile, but the realization of one right without the other may actually have diminishing value at times in the long run.

Tripti: So, that's why I think it's very, very important to look at these two together. And I think specifically having said the above, I think there are two very specific reasons why I think this is the way to look at addressing climate change and human rights.



- Tripti: First, of course, and I think it's very important one and I've touched upon it briefly above, but I think in how the law is structured and in how the law is implemented, we often see issues of environmental protection being pitted against other socioeconomic rights of people or vice versa, right?
- Tripti: Whether it is in the context of forced displacement by governments or in terms of rights of indigenous people, we've often seen that the way in which policies are designed, the way in which law is designed and which law is written and finally implemented, these rights are often seen as mutually exclusive almost.
- Tripti: And in fact, there are cases that we're doing currently that unfortunately I can't discuss, but those are very, very real, tangible instances of when environmental law litigation is actually leading to mass displacement, judicially-ordered removal of people from their places of residence.
- Tripti: So, I think it is a very, very real issue on the ground and something that needs to be addressed. And I think the only way to address it is if the two movements work together, work with each other and balance the work that we do. And I think as time is passing, as the severity of climate change as a threat is increasing, I think even in our work at Nazdeek, we're being faced more frequently with this issue of the environment and of how climate change is affecting lives of people, is affecting access to basic socioeconomic rights of the marginalized communities that we work with.
- Tripti: And I think the second very, very important reason is that any kind of adversity, whether it is an adversity that relates to climate change, whether it is an adversity that relates to other kinds of natural disasters, they do impact first the most marginalized communities. And often the severity of the impact is felt more so by marginalized communities.
- Tripti: And therefore, I think in light of that, it is very, very important to think of mitigation strategies and to think of any other, to devise strategies in dealing with climate change in consultation with the communities and in consultation with these marginalized communities who often are at the heightened, or the highest levels of vulnerability, right? And oftentimes it is these marginalized communities who don't have the resources to deal with crisis when it hits them.
- Tripti: And again, these crises exacerbate their vulnerabilities. It is a fact that it is the rich who are better prepared to deal with crises that affect the poor disproportionately, whether it is the impact of climate change, whether it is impact of any other crisis. And therefore, I think it's very, very important that any mitigation strategy, that any strategy to adjust climate change meaningfully engages with communities, meaningfully engages with communities from the



aspect or from the lens of human rights violation, from the lens of violation of other socioeconomic rights.

Tripti: Because unfortunately, these violations are very real to marginalized communities, are being felt increasingly on a daily basis. And therefore, it is very important to devise policies to address climate change to mitigate effects of climate action and to finally deal with effects of climate change.

Tripti: It is very important to have a very real human aspect in these policies. It is very important to have a very real human aspect in these laws. And I think it is for these two reasons amongst a whole lot of other reasons, amongst a host of other reasons that when we're talking about climate change, when we're talking about law and policy for climate action, we need to do it through a human rights lens and human rights work needs to take into account, of course, effects on climate change and environmental degradation.

Hannah: Now I think we've teed up your research enough that it's time that we really dig into it. And so, I think, Aminta, one key question, and it's a really timely question that you've been looking at in this research with Tripti and other community partners is, how do we actually capture or measure the impact of climate change on the systemic deprivation of economic and social rights?

Hannah: And you've been focusing on the right to water in India. And you're using this methodology, like you said, that combines a classic, academic literature review, looking at legal documents, anthropological resources with these personal interviews with community members and government officials. And one outcome of this methodology is that you can capture the intersectional, the cumulative effects of climate change impacts.

Hannah: And as an example, I know in your research, you talk about the distance that women from informal settlements have to walk to collect water, given the lack of piped water in the areas where they live. And you point out that some women already are making six trips a day to collect this water and climate change, of course, is projected to make that trip far more taxing in a number of ways.

Hannah: The obvious one is physical through longer and more frequent journeys, greater exposure to heat, risks of heat exhaustion and dehydration. But you also highlight the equally important social and economic components, for example, that women and girls who collect water now have to prioritize that collection over paid work or educational opportunities.

Hannah: And those are just some of the intersections, right? So, I pull out that example as one of many ways that these rights-based narratives, provide a more comprehensive picture of how climate change both intersects with and





exacerbates existing vulnerabilities. And I think the hopeful part is that you talk about how it provides clues as to how advocates and policy makers can go about addressing those vulnerabilities describing or designing solutions.

Hannah: I was a former scientist, and as a lawyer, of course, we have to dig into the dirty details. So, can you explain briefly how this methodology works and some of the main takeaways from your work so far in Delhi?

Aminta: Yeah. First, let me just say thank you for referencing some of our findings. And it's true that we've been able to capture a lot of detail and nuances about what the experience of climate change has been like in terms of enjoying water.

Aminta: And I can say the methodology that we're using was actually developed by one of our partners. And that's the Center for Economic and Social Rights, which is an international human rights NGO based in New York that creates a lot of tools and analytical frameworks that different NGOs around the world can use to monitor exactly this systemic deprivations of rights. Which are sometimes harder and more complicated to monitor than what we could say is like an event-based rights violation, right?

Aminta: If someone is kidnapped and taken from a place and then forcibly "disappeared," you can monitor that by getting testimonies and getting documentation of what happened specifically in that circumstance. But systemic deprivations of rights are harder to prove, so they developed this methodology that allows, as you mentioned, this combination of quantitative and qualitative data. And the methodology is called OPERA. I won't go into super details about it, but it's available on their website.

Aminta: OPERA stands for, O, the human rights outcomes that people are living and experiencing. P-E is for policy efforts. And that's the measures the government is taking to rectify the problems. Resources, which is R, I think is super important because that looks at what financial and other resources are actually devoted to tackling the outcomes that we've already identified.

Aminta: And then A is for assessment, determining if the right has been fulfilled or protected. For the right to water in particular, there are certain elements to the right that we're also looking at. We call these in shorthand, AAAQ, and those are the availability of the resource. How accessible is it? How acceptable is it? And what's the quality?

Aminta: So, availability is what we think of naturally, that's the sufficiency of water, how regular it is. So, for communities and informal settlements, we're thinking of things like, if they're getting water from tanker trucks or from wells, how much



more available is that than piped water, which we know is a little bit more constant.

Aminta: And then when we look at the climate change element, we know that the quantity of all sources of water is likely to be reduced because of issues like contamination of ground and surface sources, reduction of reservoirs and things like that. Those are questions around availability.

Aminta: When we're thinking of accessibility, that speaks to the findings that you mentioned earlier, how physically easy is it to access. But another thing to point out there is also how economically-accessible the resource is. We know for people in informal settlements that they spend a larger proportion of their income on water because they're not connected often to the pipe sources.

Aminta: And with climate change, that cost is likely to go up. The demand for water is increasing as temperatures are rising and the supply is reducing. So, economic accessibility is really important. And then acceptability and quality are kind of cousins, I would say. Quality is a little bit easier to understand. You're talking about how clean and safe the water is and then acceptability is a more subjective judgment that talks to the specific community about what's acceptable for them.

Aminta: And that can have to do with moral questions or cultural preferences around water that might be used for certain domestic purposes or certain cultural purposes. So, those are all the kinds of different things that we're looking at. And like I said before, the methodology allows us to capture a lot of detail on nuance, which really paints a very distinct picture of what the experience of a certain community is.

Hannah: I love the AAAQ framework, especially it just lays out so clearly like, are you looking at this? Are you looking at this? Are you looking at this? And that acceptability component is so community-specific that it really requires not just consultation but meaningful consultation with folks who have been impacted.

Hannah: And again, it's painting the picture of like, what have you assessed and what haven't you assessed and why? And if these are your goals, if this is the information you know you want to collect. From there, you can backtrack and say, "Okay. Well, then this is the procedural mechanism that we need to set up in order to get that information."

Hannah: And that requires that meaningful consultation that, again, it's one of those buzz words that everyone's throwing around, but I think this framework gives people a really concrete way of knowing, okay, at what point is it meaningful? How do we know when we're done?



- Hannah: So, I just really appreciate you laying it out so clearly. And we also have another audio clip from Tripti also explaining the research. So, I want to make sure we listen to that as well.
- Tripti: The next issue that I will be addressing is the value of grassroots collaborations, the value of basically having the populations that we're working with actually in its true sense be represented in a study like the one Aminta is supporting in the law clinic. I think in terms of just the first and the foremost reason to have grassroots partnerships to do primary data collection it's a verification process of popular narratives.
- Tripti: Now, what do I mean by that is, when reports are written or when studies are done, it's very important to have the most updated information from the field and to have information from the affected communities. And to have information that is verified as far as possible. Also, because when we're talking about issues of human rights violation or when we're talking about issues of environmental degradation, there are a lot of vested interests, right? And these vested interests unfortunately have more resources than the communities that are actually being impacted by these laws and by these policies.
- Tripti: And the kind of information that may be publicly available could very well be one that stems from vested interests and not necessarily one that originates from affected communities. And therefore, I think anytime that a study like this is being done, it is very, very important to first and foremost, develop these grassroots partnerships and develop partnerships with communities as, at the least, a verification process, a process of verifying popular narratives that may actually already exist in the literature.
- Tripti: I think the second is to highlight issues that are important to affected communities, issues that are most important to individuals within communities that are affected by specific adversities. And I would go into a second layer and to say that by individuals from these communities who may not always be represented in even the popular voice of the very community.
- Tripti: Therefore, I think it's very, very important to build literature drawn from the voices of marginalized communities as a base for future work for local, domestic and international advocacy. For example, the right to water work that we've been doing with the law clinic.
- Tripti: Now, what we see in India is that the jurisprudence on the right to water is extremely weak. There isn't much there, right? And what we're seeing is as the effect of climate change, access to water is going to be depleting. Our realization of the right to water is going to be more and more difficult as time progresses and the communities that are affected by it first and foremost and the ones that are



affected by it most actually wouldn't have the means to seek redress once the problem becomes much worse.

Tripti: And just from that perspective, I think it's very, very important to build literature, to build research, to build information on issues that is most critical and most important to marginalized communities. And I think finally, the power of documentation. I think the power of archiving, the power of documentation, it's very, very important because today we're writing what history tomorrow would be, right?

Tripti: And therefore, in writing the history for tomorrow, we need to ensure that voices of the most marginalized communities, voices of people, that there's no voice that is left unheard or unspoken. And therefore, our documentation becomes very important. And I think documentation can only and only happen if research and academic work engages truly with partner communities who are affected by adversities.

Tripti: So, I think in that sense, these, of course, again, all of this is just a tip of the iceberg. And I think there are a plethora of other reasons of why it is very important to forge effective, efficient and honest grassroots partnerships. But I think in the context of the project that we're currently doing, I think these three really stand out the most. Thank you. It's been a pleasure speaking with you.

Hannah: So, at this point, I'm guessing some of our listeners might be thinking, "This is all well and good, but that's in India. So, what the heck does this have to do with environmental law in the United States?" As we discussed earlier, the US is really notorious for not recognizing international human rights standards and instruments, particularly those that have to do with economic, social and cultural rights. These affirmative "freedom tos."

Hannah: And so, I wanted to ask you, I know you've been already thinking about this with your partners, but how do you see this kind of research and methodology being applied in the US and what do you think the US-based legal experts and advocates have to gain from looking at environmental challenges through this lens?

Aminta: Yeah. I mean, I think that this lens really helps us get to the equity questions, which I think there's, thankfully, a more political will to address now, but less experience addressing than what we have done in the international sphere. And in national sphere, I should say, we call it substantive equality, but it's the same concept that you're looking not just at equality of opportunities, but also equality of outcomes. So, I think this approach really helps us get at that too.

Aminta: The other thing is I see a lot of potential for similar research to be done for historically-excluded and marginalized communities in the US because there is a



lot of knowledge already in the US. We have a lot of data about what communities are experiencing. We can do this combination of quantitative data to get a nuanced picture of what the experience is. I think the approach also helps us determine remedies that are tailored to that experience and not just looking at the remedies first. So, I think those are some benefits of the human rights angle.

Aminta: The other thing I wanted to point out too is, like when we talk about the right to participation, which I mentioned earlier in the podcast, we're talking about the right to participate not just in its own as a right, but the right to participation as applied to other rights.

Aminta: So, the communities that are most affected should have a right to participate in determining what the solutions are, setting the budget for the solutions that are applied, and also determining how information is gathered and from whom that information is gathered. So, I think this approach of a rights-based focus on environmental justice has a lot to bring to the fore and that the United States is a great place for that to be applied.

Hannah: I especially loved what you were talking about with remedies and not just looking at the remedies first. And I think, especially with climate change, there's an appropriate urgency. Like, "Oh, we have to fix this. We have to fix everything right now."

Hannah: And that urgency often comes at the cost of participation. And people, I think, are in this process of, "Do we do one or the other, do we do it quickly or not?" And I think what I hear you saying is that's really not the way we want to look at this. This is not an either/or, because when you do it quick, you are sacrificing, one, this right to participation.

Hannah: And what that means is that the substantive outcomes that you reach are going to be inadequate, because they're not going to account for those historically excluded and marginalized groups that have a fundamental right to participate in and benefit from these processes.

Hannah: And so, I just wanted to pull that out. That element of speed is always underlying a lot of these conversations and I think it's important to make it explicit that, yes, we have to move fast and it can't come at the expense of these fundamental pieces of a truly inclusive, and when we say inclusive, I also want to make clear that that means successful solution. It's really hard to have one without the other.

Aminta: Totally.

Hannah: I also don't want to put words in your mouth, but that was what I heard.



Aminta: Yeah. Exactly. And I think also, it's just like you said, our motivation for even taking action is to meet needs that communities have now. And what's the best way of understanding their needs is to have them driving the solutions and identifying the solutions.

Aminta: For climate change, one thing we've learned from communities around the world, including indigenous communities from so many continents who've been leaders of this discussion for the international sphere is that a lot of them actually have solutions they've been using, because we've been adapting to climate change for so many decades, that they can propose.

Aminta: And if we take an approach that just looks at a remedy from the government point of view without consulting communities that have been surviving climate change for so long, it's like you said, it's going to be solutions that aren't going to work. And that eliminates the benefits that we get from speed.

Hannah: Well, we've already wandered into the field of federal EJ solutions. You've hinted at, we now have a government that's much more interested in tackling equity. We have resources on our website about the environmental justice and equity commitments that the Biden administration has made in their first week in office through executive orders and then progress made on those orders in our a hundred days report. And we can link to those resources in our show notes.

[Click here to learn about Biden's First 100 Days of Climate Action.](#)

Hannah: And they've made these very explicit environmental justice commitments. We have the Justice40 initiative, for example, that commits federal agencies, not just your classic enviro agencies, DOI, EPA, but FEMA, Health and Human Services, the commitment being that they invest or direct 40% of federal benefits, benefits is the word that they use, to disadvantaged communities. And so, of course the big question is-

Hannah: That's awesome but how are we going to do it? How are we going to do this well? And I should let you know we're also going to be releasing a federal environmental justice tracker on our websites, so if you want to learn more about Justice40, we can also include that link in our show notes.

[Click here to learn about our Environmental Justice Tracker.](#)

Hannah: But for this conversation, I wanted to narrow in on Justice40 as an example and ask, again, with this methodology that you're looking at. We've talked about procedure, and we've talked about the ways that you might assess how effective a program is or how you design a participatory process. What do you think, if you



could talk to the Biden administration, what would you tell them is fundamental to crafting an effective Justice40 program?

Aminta: Yeah. I'm going to give a disclaimer that I don't have all the answers, but some considerations like the law instructor that I am. I think what I've learned through this process myself and doing research that's putting the community experience in focus first, one thing that's come out from that work is the importance of adaptation.

Aminta: In the international global governance space, a lot of times we talk about mitigation as being the most important thing, but I think one thing that I'm learning is how urgent adaptation measures are and that there are also distributional questions around adaptation.

Aminta: Now, for the urgency, for example, like if we're talking about mitigation as being a priority, there's some privilege in that notion because that assumes that we have time. And I think looking at how much is being done for adaptation is really important because we know that historically excluded and discriminated communities are already facing the consequences of climate change. Before we needed to hammer this point in, I think with this summer's disasters all over the place that communities are literally underwater, it's probably less important to hammer this point home.

Aminta: But I think on the remedy side of things, it just highlights the importance of investing in adaptation. And it also highlights the importance of looking at distribution of resources for adaptation. And I think your mentioning of FEMA is really appropriate in this regard because there are studies that have come out now about how FEMA funding and FEMA resources have been inequitably distributed after disasters and communities of color getting less of those resources, even if they experienced greater impacts.

Aminta: So, that raises this distributional question that should be raised and considered in any kind of policy response. Looking at our project, for example, we need to make sure that water is distributed equitably and equally. And it's not just about having an adaptation approach, but having an approach that looks at who is adaptation currently benefiting, and how can we make sure that it's benefiting people equitably?

Aminta: Another question that often comes up is about resources. When we start talking about distribution, the question is often how much is enough? And there are certain guidelines and human rights standards that I found really useful for at least getting closer to an answer on this question.



Aminta: In economic and social rights jurisprudence or practice, we have a notion called devotion of maximum available resources, which is a technical way of saying, give the most money possible. So, you want to give as much as available to a government in terms of technological resources, financial resources to fulfilling economic and social rights like the right to water.

Aminta: What I like about the framework developed by the Center for Economic and Social Rights is that they inspire us and compel us to look not just at allocation of resources, but also at generation of resources. And that's to say, if a government has ability to actually raise more funds to fulfill this right, that it should. And that brings us to the tricky questions of fiscal policy and taxes that these should also guide us when we're thinking about resources.

Aminta: Another approach, like we talked about before, about the right to participation. This also applies to budgeting and decision making processes, making them as transparent and inclusive as possible. And maybe the final notion that I would share is this concept of progressive realization of an economic and social right. And this notion came up because countries were talking about, we can't all be held to the same standards. Some of us have more resources than others.

Aminta: So, the jurisprudence that has been developed has been about, we want the resources devoted to filling this right to actually increase over time. If your economy is growing, you should be devoting more to protecting the right to water. So, I think that's something that in the United States, we can certainly look at and hope that greater resources are being devoted and in a more and more equitable way to communities that are most impacted.

Hannah: There is a lot in there. So we have adaptation, we have, I think, a healthy reminder of how much is enough and truly how many resources certainly that we have to expend in the United States. I also love, with a capital L, that you brought up FEMA and their inequitable distribution of resources.

Hannah: And there was something I wanted to flag there that I think is helpful, which is, one thing they're finding with FEMA is these aren't people, it's not like Mr. Burns at a desk thinking, "How can I allocate more money to rich, white communities than poor communities or poor black and brown communities?" It's the tools that we've assumed to be value neutral, whether it's cost benefit analysis or online application processes, these tools exacerbate inequities in ways that, I think, people weren't aware of until they saw the data.

Hannah: And it reflects for me how important data is and how important the work is that you're doing to pull the veil away and say, "Yeah, you might have thought these are value-neutral ways of allocating resources or assessing impacts and what we found is they're not." And it just gives us an opportunity to reassess and re-





evaluate how do we rejigger these tools to achieve the equitable outcomes that we now say that we want?

Hannah: And so, I think it just, it's one example of the many, many ways that the data and the research that you're collecting, and then putting into a package that explains the narrative, is so empowering for organizations like FEMA that have now expressed an interest in doing better. Right? And when they have the information, they're actually able to identify the source of the problem, consult with communities who have been impacted who have been saying, I should say for a very long time that this has been happening and we are belatedly realizing that this is a huge nationwide problem.

Hannah: So, I just want to flag this. We have a national awareness of this now, but communities have understood this for much longer, but again, just the work that you're doing and the, I think, pivotal role that it plays in changing how we have these conversations. So, now I'm done fan girling.

Hannah: Well, we're coming to the end of our time, but I definitely want to give you a chance to, is there anything else that we should know as listeners about the research you're doing or about where you see this going? Is there anything else that you want to say before we close out?

Aminta: I'll just put in a quick plug that we're still doing our fact finding now and are likely to keep doing it for the coming months but that we'll soon have a report produced about our work, so people can watch the space and keep an eye out for some of our research.

Aminta: And also, we're looking forward to opportunities to exchange with programs like yours and other advocates who are doing similar work in many different contexts, but they see parallels of lessons that we might learn and lessons that we might share. So, I just want to put that out there that we're open to communication with fellow like-minded advocates.

Hannah: Aminta, thank you so much for sharing your research with us. And of course, thank you to Tripti as well. It's been really, really wonderful talking with you.

Aminta: Thanks so much for the chance. I've really enjoyed this.

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