

**OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS**



**“The Environment and Human Rights”**

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**Conference on the Human Dimension of Climate Change**

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I would like to start by thanking the organizers for having invited the Office of the United Nations High Commissioner for Human Rights to this conference. As the primary human rights arm of the United Nations, the Office of the UN High Commissioner for Human Rights has a particular interest in the deliberations of this conference on the human dimension of climate change. It is a very good opportunity for us to learn more from you policy makers and experts about the human impact of climate change, as we, as an Office, review how we might contribute towards this very noble and timely endeavour. I hope that our limited contribution here will be of some help in your deliberations. The office will also be represented in Bali and that will give us yet another opportunity to sharpen our input and continue the engagement.

The pollution of water sources, desertification, environmental degradation, natural disaster and now climate change-induced manifestations do not only affect the natural environment, but also a whole range of human beings and their living conditions. There is little doubt that some of the key manifestations of climate change, many of which have been discussed here since yesterday, have an impact on human rights defined in the broadest sense. These include: the possible displacement of millions of people; increased water stress, notably for small-scale farmers in Africa and for those with already limited access to safe-drinking water; drastic reduction of yields affecting small-scale farmers' livelihoods; and the increased risks of diseases. As climate change could threaten the basic elements of life, including access to safe drinking water, food, health and land, it could also have implications for the enjoyment of a whole range of human rights, including the rights to life, food, adequate housing, health and water.

Non-discrimination and equality concerns are also evident as the impact of climate change on individual livelihood is often influenced by factors such as poverty, inequality and unequal

power relationships. The poor, who are already living at the margins of survival, tend to be disproportionately affected by climate change and are particularly vulnerable to its impact, raising questions of *de facto* discrimination and equality concerns. Women are also likely to be disproportionately affected by climate change, as traditional female roles in some areas of the world – such as collecting water– might be reinforced in societies affected by climate change.<sup>1</sup> In many parts of the world, especially the poorest, women are overrepresented in agriculture, a sector that will be hardest hit by climate change. Indigenous peoples also are among the groups that could be most vulnerable to the impacts of climate change.

Procedural human rights, including access to information or to justice and participation in decision-making processes might also become increasingly relevant in a context of climate change, notably for those being affected by it.

Climate change's impacts might also render it increasingly difficult for States to fulfil their human rights obligations. With the predicted increase in the frequency and intensity of weather-related events, States might have to allocate additional resources – personal, financial and others – to address emergencies, secure their environment and respond to increased risks brought by climate change. In a context of limited resources, States might therefore have to cut public expenditures in other areas and could face serious difficulties in fulfilling their human rights obligations in key sectors such as health, education or social security. The predicted displacement of millions of people will also put additional stress on governments in meeting their obligations to realize a certain number of human rights.

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<sup>1</sup> Stern Review Report on the Economics of Climate Change, Part II: Impacts of Climate Change on Growth and Development, p. 114

International human rights law also imposes several obligations on states that are relevant to addressing the vulnerabilities of the individual to climate change. These include: the state obligation to provide better housing, located away from hazardous zones, for people who happen to be poor; improved access to sanitation and safe-drinking water; access to adequate food; local participation in planning and decision-making; accountability; and access to information and justice.<sup>2</sup>

Most of the work on climate change has to date focused on mitigation and adaptation strategies to address its causes and consequences. More recently, the promotion of sustainable development and poverty reduction have also emerged in the discussions. However, little attention has been put on individuals and how climate change affects them, and on how human rights might aid in addressing climate change.

Before addressing some key issues that will be important in going forward with this agenda, I would like to briefly touch on the normative framework regarding the link between the enjoyment of human rights and the environment as recognized in public international law.

The foundation for linking human rights and environmental protection was established in the 1972 Stockholm Declaration in its declaration that man has a fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.<sup>3</sup>

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<sup>2</sup> Ibid., pp 99, 114

<sup>3</sup> *Declaration of the United Nations Conference on the Human Environment*, Preambular para. 1 and Principle 1, reprinted in 11 I.L.M. 1416 (1972)

Ten years later, the World Charter on Nature explicitly referred to the right to access to information and the right to participate in environmental decision-making.<sup>4</sup> In 1990, the United Nations General Assembly recalled, in its resolution 45/94, the language of the Stockholm Declaration, stating that all individuals are entitled to live in an environment adequate for their health and well-being. The 1992 Rio Declaration acknowledged the right to access environmental information and public participation in environmental decision-making.<sup>5</sup>

Some international human rights treaties also explicitly address the linkages between the protection of the environment and the enjoyment of human rights. For example, the Convention on the Rights of the Child (CRC) recognizes that the enjoyment of human rights depends, inter alia, on a decent environment,<sup>6</sup> and ILO Convention No. 169 concerning Indigenous and Tribal Peoples also provides for the protection of the environment of indigenous and tribal peoples.<sup>7</sup>

In this connection, it is noteworthy that the International human rights instruments adopted before the 70s – notably the Universal Declaration of Human Rights (UDHR) and the two International Covenants on civil and political rights and on economic, social and cultural rights – do not explicitly refer to the protection of the natural environment among the preconditions for the enjoyment of the substantive rights that they recognize. Part of the explanation for this omission is that the environment was not a big issue for the international community at the time. The UN Committee on Economic, Social and Cultural Rights -which

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<sup>4</sup> World Charter for Nature, paras 15-16, 23 available at: <http://www.un.org/documents/ga/res/37/a37r007.htm>

<sup>5</sup> *Rio Declaration on Environment and Development*, Principles 1 and 10, reprinted in: 31 I.L.M 876 (1992)

<sup>6</sup> Article 24(2) on the right to the highest attainable standard of health requires State parties to consider the “dangers and risks of environmental pollution” and ensure that all segments of society have access to information and education with regard to, inter alia, hygiene and environmental sanitation. Article 29(e) includes “the development of respect for the natural environment” among the goals of educational programmes.

<sup>7</sup> Articles 4, 7(3) and 7(4))

monitors the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) by State Parties- has attempted to address this gap by interpreting the right to health, enshrined in this International Covenant, as encompassing the underlying determinants of health, such as healthy environmental conditions.<sup>8</sup>

The UN Human Rights mechanisms, especially the treaty bodies whose role is to monitor the implementation of the obligations assumed by state parties and the special procedures, started to address the relationship between human rights and the environment in the early nineties.

The Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child and the Human Rights Committee, among others, have issued recommendations related to environmental issues in their review of specific country reports: For example, in relation to the pollution of water sources; protection of indigenous peoples' natural resources; environmental policies and their specific impact on the enjoyment of human rights; environmental degradation; natural disasters; the impact of large infrastructure development projects on the environment; environmental hazards affecting specific groups or minorities; and the dumping of toxic waste and its impact on the enjoyment of human rights.

Case law from the European Court of Human Rights and the Human Rights Committee also indicate that environmental deterioration can lead to violations of human rights, including the right to life, the right to respect for privacy and family life, the right to freedom of expression –which includes the right to seek information- or minority rights.<sup>9</sup>

The “Special procedures,” the general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address either

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<sup>8</sup> General Comment No. 14, para 11

<sup>9</sup> Stefano Sensi, *Human rights and the environment – a practical guide for environmental activists*

specific country situations or thematic issues in all parts of the world, have for their part also addressed different dimensions of human rights and the environment:

- The former Special Rapporteur on the human rights of migrants identified environmental degradation among the reasons why people leave their countries;
- The former Independent Expert on human rights and extreme poverty stressed the links between poverty and environmental degradation;
- The Special Rapporteur on adequate housing underlined that housing cannot be separated from other issues related notably to a safe and healthy environment;
- The Representative of the Secretary General on the human rights of internally displaced persons highlighted that natural disasters are among the leading causes of internal displacement;
- The Special Representative of the Secretary-General on human rights defenders included environmental activists in the group of civil society actors that are particularly exposed to violence and other violations of their rights;
- The mandate of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights has, since its creation, highlighted how international movements of waste can have negative effects on the enjoyment of several human rights, including the right to life, health, adequate food, health, freedom of association or the right to form and join trade unions.

The former UN Commission on Human Rights and the UN Sub-Commission on the Promotion and Protection of Human Rights have also, on several occasions, reaffirmed and emphasized the linkage between human rights and the environment.

From this quick scan, one can see at least five dimensions to the linkages between human rights and the environment:

- Environmental destruction can increase precariousness, often having more severe impacts for vulnerable and marginalized communities, raising questions of *de facto* discrimination.
- People living in poverty tend to suffer from environmental problems in a higher proportion than wealthier individuals, raising concerns of equality.
- Procedural human rights such as access to information or to justice and participation in decision-making processes are often crucial for ensuring the development and implementation of policies that respect environmental concerns.
- Human rights violations, such as discrimination, can lead to environmental degradations.
- A healthy environment is an important precondition for the enjoyment of a whole range of human rights, such as the right to health, the right to food and the right to water.

Although the close relationship between human rights and the environment has been widely acknowledged, the existence and the need for a right to a healthy environment (or an environment of a certain quality) remain controversial at the international level. The lack of reference to a human right to a clean or healthy environment in the 1992 Rio Declaration, which departed from the language in the former Stockholm Declaration, indicates the continued uncertainty concerning the need or desirability of such a right.<sup>10</sup>

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<sup>10</sup> Stefano Sensi, *Human rights and the environment – a practical guide for environmental activists*

That said, many national constitutions either state the principle that an environment of a certain quality constitutes a human right or impose environmental duties upon the State.<sup>11</sup> Such provisions often define the desired environment in general terms with adjectives such as decent, natural, clean, healthy or safe. A significant number of decisions of national courts have also identified environmental harm to individuals or communities as violations of the rights to health, to life, food, water or housing.

At the regional level, the African Charter on Human and Peoples' Rights provides that all peoples shall have the right to a general satisfactory environment favorable to their development (article 24). The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) recognizes the right to live in a healthy environment and demands that States Parties promote the protection, preservation, and improvement of the environment (article 11). The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) provides for the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.

Several international and regional human rights mechanisms have also started addressing the human rights impact of climate change more specifically. For example, in his 2007 report to the UN General Assembly, the Special Rapporteur on the right to health outlines the impact of global warming on the right to health and calls on the Human Rights Council to study the impact of climate change on human rights.<sup>12</sup> The Special Rapporteur on the right to food,

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<sup>11</sup> For instance Azerbaijan, Costa Rica, Philippines, Serbia and Montenegro; most of the time, explanatory or qualifying language is included to specify the type of environment that is sought: decent, natural, clean, healthy or safe.

<sup>12</sup> Number of the report not available yet.

in his 2007 report to the UN Human Rights Council, identified environmental degradation, desertification and global climate change as direct causes of so-called environmental migration and recommended that States consider the possibility of expanding the definition of refugees under the 1951 Convention to cover those fleeing to escape severe violations of economic, social and cultural rights.<sup>13</sup> Following the dismissal, on admissibility grounds, of a petition related to human rights and climate change, on March 1, 2007, the Inter-American Commission on Human Rights held a hearing to address matters related to global warming and human rights.<sup>14</sup> The UN Permanent Forum on Indigenous Issues will also devote its seventh session, which will take place in April 2008, to climate change.

Notwithstanding all these developments, however, the reality still remains that no international treaty – either in the field of human rights or the environment – recognizes a right to a healthy environment as such.

As you advance this discussion about the human dimension of climate change, especially on the desirability and feasibility of a convention on the right to the environment, this general survey suggests several important questions that I think you need to address:

- Problem of Definition: what is the content of this right and how would it be defined?

What is the threshold quality of environment for purposes of human rights?

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<sup>13</sup> UN Doc. A/HRC/4/30, *Report of the Special Rapporteur on the Right to Food, Jean Ziegler*, para 67

<sup>14</sup> In December 2005, the Inuit Circumpolar Conference (ICC) submitted, with the support of Earthjustice and the Centre for International Environmental Law (CIEL), a petition against the United States of America (USA) seeking relief from alleged human rights violations resulting from global warming caused by greenhouse gas emissions from the USA. The petition argued that massive changes occurring in the Arctic, as a result of greenhouse gases emissions in the USA are causing dangerous impacts on the Inuits, affecting several of their rights under the American Declaration of the Rights and Duties of Man.