

Response by the Foundation for International Environmental Law and Development (FIELD) to letter dated 16 June 2008 regarding human rights and climate change

This response comments briefly on point c) of Mr Ibrahim Wani's letter dated 16 June 2008, requesting views on the relationship between climate change and human rights.

FIELD's staff of public international lawyers assist disadvantaged countries, communities and campaigners with environmental legal issues. We have a strong commitment to public participation in environmental decision-making and work to help marginalised groups access justice.

There is little question that **climate change** has the potential to radically and irreversibly affect **individual and collective human rights**. For example, sea level rise may lead to the extinction of states. Extreme weather events may lead to an increased number of environmental refugees.

The UN Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol recognise that industrialised countries bear a historical responsibility for climate change. In many vulnerable developing states populations are at considerable risk of suffering negative impacts of climate change and, in some cases, of action to mitigate or adapt to climate change. This raises complex questions related to the responsibilities of states to citizens of other states and the role of the international community.

Climate change is recognised as one of the greatest threats facing humankind. Action to combat climate change at national level and through international legal agreements is essential. However, there is evidence that some efforts to combat climate change can impact on the human rights of vulnerable groups. For example, the proposed inclusion of Reducing Emissions from Deforestation and Degradation ('REDD') in the international climate change regime has raised significant concerns among many Indigenous Peoples groups:

'...the current framework for REDD is not supported by most indigenous peoples.....According to the right to self-determination and the principle of free, prior and informed consent, indigenous peoples must not be excluded, and should be centrally involved and benefit from forest policies and programs at all levels'.¹

The United Nations Permanent Forum on Indigenous Issues recommended that strategies for mitigation and adaptation should be holistic, taking into account not only the ecological dimensions of climate change, but also social impacts, human rights, equity and environmental justice.²

Failure of states to consider the attendant risks and impacts of measures adopted to combat climate change or action to adapt to climate change could result in breaches of

¹ Statement by Victoria Tauli-Corpuz, Chair UNPFII, 23 May 2008, Ninth Conference of the Parties to the Convention on Biological Diversity, Bonn, Germany

² Report on the seventh session (21 April-2 May 2008) of United Nations Permanent Forum on Indigenous Issues, Economic and Social Council, Official Records, 2008, Supplement No. 23, para.6

their obligations to protect rights such as: the right to self-determination;³ the right to be free from any form of discrimination;⁴ and the right to culture,⁵ among others.

An increasing number of trade-offs will have to be made in political decision-making related to climate change. Human rights **mechanisms** can have advantages compared with environmental ones, but there are obstacles to reconceptualising international environmental legal disputes as human rights ones, such as lack of standing or recourse against foreign governments.

Concepts such as **free, prior informed consent** and **public participation** in environmental decision-making, which stand at the nexus of environmental and human rights law need to be given greater status in the environmental sphere. They take on a particular relevance in the context of climate change, as noted above in the context of REDD.

FIELD looks forward to contributing to further discussions regarding human rights and climate change.

27 August 2008

London

³ International Covenant on Civil and Political Rights (ICCPR), Art. 1 (1); International Covenant on Economic, Social and Cultural Rights (ICESCR), Art. 1 (1).

⁴ ICCPR, Art. 2 (1).

⁵ ICESCR, Art. 15 (1).