

**FRIENDS OF THE EARTH
RIGHTS & JUSTICE CENTRE**

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Office of the UN Commissioner for Human Rights
UN Office at Geneva
CH211 Geneva 10

For the attention of Mr. Ulrik Halsteen

29 August 2008

Dear Sir

Submission to the United Nations High Commissioner for Human Rights on Human Rights and Climate Change by Friends of the Earth England Wales and Northern Ireland

We have received a copy of a recent letter from Mr Ibrahim Wani of the Development & Economic and Social Issues branch of UNHCHR seeking information as part of a detailed study being prepared by UNHCR on the relationship between human rights and climate change. We would like to submit the following information for the purposes of this study.

Bearing in mind that the UNHCHR office is likely to receive many responses to its request for information, we have opted to highlight key issues and case studies falling within the areas highlighted in Mr Wani's letter. We would be happy to provide further information on any of the points raised upon request.

Background information on Friends of the Earth

Friends of the Earth is the world's largest grassroots environmental network. We have 69 national member groups and 5,000 local activist groups on every continent. One of the network's key campaigns is for climate and energy justice which is the right of all peoples to a fair share of the world's resources within sustainable limits. Core themes running through our work include protecting human and environmental rights. We also campaign for historical polluters to reduce greenhouse gas emissions and take responsibilities for the impacts of climate change in vulnerable countries. The Friends of the Earth International network (FOEI) opposes "carbon sinks" and other schemes that replace diverse forests with tree plantations, advocating for indigenous peoples and forest communities to be able to manage forests using traditional sustainable methods.

Our international positions are informed and strengthened by our work with communities, and our alliances with indigenous peoples, farmers' movements, trade unions, human rights groups and others.

Section 1: Assessments of the impact of climate change (experienced or anticipated) on human lives, the populations most affected and vulnerable, and the enjoyment of human rights

Information on this is set out below. Analysis of the human rights and legal dimensions of climate change is contained in Section 3.

FOEI has produced a testimonial publication with 9 case studies from communities from across the worldⁱ documenting the way in which climate change impacts and efforts by communities to respond to the challenges of climate change. This publication is appended to our submission and available in English at <http://www.foei.org/en/publications/pdfs/climate-testimonies>. French and Spanish language versions are also available on the FOEI website.

The publication highlights climate change impacts on access to water and food, increased extreme weather events such as droughts and natural disasters.

People of the global South and indigenous peoples worldwide are the most vulnerable to climate change. This is because their livelihoods are intimately bound with land and water, diversity of ecosystems and traditional knowledge of using and conserving natural resources. In many cases, going back to traditional methods is the best way of adapting to climate change so retaining knowledge of these methods is vital if we are truly to build sustainable societies. In addition, these communities may also be disproportionately affected by climate change adaptation measures.

Examples of projects that have been undertaken by FOEI to protect livelihoods, and build community resistance to climate change vulnerabilities include the following:

- **Malaysia: mangrove restoration for fisherfolk livelihood protection**
- SAM/Friends of the Earth Malaysia has a long-standing collaboration with fisherfolk in Penang working with them to protect marine areas and ensure their livelihoods. The impacts of climate change on marine resources and increase in extreme weather events has lead SAM to take practical action to support local Penang communities in mangrove restoration as well as undertake an education and awareness raising campaign on climate change causes and its projected impacts.
- **Haiti: building resilience to water shortages and supporting food sovereignty**
- Haiti Survive/Friends of the Earth Haiti has been working on training and research on climate change impacts for a number of years and from this has been able to identify adaptation actions to help communities cope with the effects of climate changes. A priority project that Haiti Survive is currently implementing is a community rainwater harvesting adaptation project to collect and store water for the dry season. This project is reinforcing food sovereignty activities in the local communities, increasing their resilience to impacts of climate change on food systems.
- **Swaziland: education and resistance to vulnerability**
- Yonge Nawe/Friends of the Earth Swaziland runs a creative education and popular communication campaign to provide rural and urban communities in Swaziland with information about climate change and impacts. Yonge Nawe is also actively campaigning against inequitable development that threatens the resilience of those vulnerable to climate risks, such as timber plantations and processing plants that dry up the water resources of communities and the effluent has polluted the remaining rivers – destroying fisheries and increasing water stress.
- **Papua New Guinea: Climate-induced migration**

- The Pacific Region will be one of the worst affected by climate change due to its extreme geographic vulnerability. In November 2005, the 1000 residents of the Carteret atolls in the Pacific became the first people in the world to be officially evacuated due to climate change. Starting as soon as money is available to the Papuan New Guinean regional government, 10 families at a time will be moved to Bougainville, a larger island 62 miles away. Friends of the Earth Australia is activity campaigning for the culturally-sensitive relocation of Carteret Islanders, financed by regional historical polluters such as the Australian government.

Section 2: Projects and measures at national or regional level to mitigate or adapt to climate change, including information on assessments of their impact on affected populations and their human rights

Some projects undertaken by the FOEI network are set out in section 1 above.

2.1 The UK Climate Change Bill

The UK is the first country anywhere in the world to introduce a long term legally binding framework for reducing carbon emissions. The Climate Change Bill puts into statute targets for the UK to reduce carbon dioxide emissions through domestic and international action by at least 60 per cent by 2050 and at least 26 per cent by 2020, against a 1990 baseline. This target may be further strengthened by a Climate Change Committee, to be set up when the Bill comes into force. Friends of the Earth EWNI was instrumental in lobbying for this Bill and is now campaigning for aviation emissions to be included within it.

The Climate Change Bill was introduced in Parliament on 14 November 2007 and completed its passage through the House of Lords on 31 March 2008. It has now moved to the House of Commons for consideration and is expected to be in its final form in the late Autumn of this year.

2.2 Climate Solutions and Human Rights Impacts

It is important to note that some of the proposed solutions to the climate and energy crisis are actually exacerbating climate change as well as having detrimental human rights impacts. These include the planting of biofuels (or agrofuels), coalmines and carbon offset projects such as monoculture tree plantations (see example in relation to Swaziland above, where timber plantations are drying up local community resources).

2.2.1 Biofuels and Human Rights

The large scale use of biofuels has been promoted as a solution to green house gas emissions from transport. But there are now increasing concerns about whether biofuels really reduce or indeed increase emissions as well as about their role in deforestation. Additionally new reports have shown that the unchecked expansion of plantations for biofuel crops fuels land right conflicts, human rights violations and poverty.

Example 1: Indonesia

Increasing demands for palm oil for biofuels is causing millions of hectares of forests to be cleared for plantations and destroying the livelihoods of indigenous peoples. Many of the 60-90 million people in Indonesia who depend on the forests are losing their land to the palm oil companies.

The expansion of the industry is leaving many indigenous communities without land, water or adequate livelihoods. Oil palm plantations and the palm oil milling process can cause serious pollution problems. Plantations are intensively sprayed with pesticides and herbicides, creating toxic runoff.

Previously self-sufficient communities find themselves in debt or struggling to afford education and food. Human rights – including the right to water, to health, the right to work, cultural rights and the right to be protected from ill-treatment and arbitrary arrest – are being denied in some communities. Oil palm companies often use violent tactics as they move in to convert the land to plantations. In January 2008, 513 conflicts between communities and companies were being monitored.¹

Example 2: Columbia

In Tumaco, paramilitary groups linked to palm oil plantation owners have carried out a number of massacres and are causing significant displacement in order to expand the palm oil. Massacres have occurred in Jurado, Rio Sucio, Bojaya Quibdo, San Juan River, Naya River, Raposo River, Buenaventura and Barbacoas. On average 277,000 people were displaced every year between 1996 and 2001 in Colombia.² The largest displacement occurs in areas assigned for macro-development projects and a significant part of the strategy is thought to be funded by plantation owners.

Working conditions in the palm oil plantations are described by the International Labour Organization (ILO) as exploitative. The lack of negotiation potential for better working conditions, the poor pay, the inadequate job security, the high health risks and the employment of family members in feudalistic style, the sub-contracts that prevent every possible negotiation for social services - all these factors put the employees more than a hundred years behind as far as labour rights are concerned. At the same time, the brutality and systematic methodology of the palm oil mafia, that does not stop at murder and kidnapping of labour activists and their relatives, becomes clear.³

Example 3: Brazil

Bioethanol from Brazilian sugar cane is often upheld as example of a particularly “good” biofuel, mainly because of high yields and relatively little energy input into the cultivation cycle. In reality the sugarcane plantations are riddled with particular problems:

Poor working conditions for sugarcane cutters, who make up more than half of the 1 million jobs generated by the sector - conditions akin to slave labour have been uncovered in a number of regions of Brazil.⁴ It is our information that the uncontrolled use and disposal of a toxic by-product called *vinhoto*, which is used as a fertilizer, is leading to soil and water contamination. In addition we believe that the practice of burning sugarcane plantations before the harvest - used on 80% of plantations – is leading to respiratory diseases in workers and local residents.

2.2.2 Poverty impacts

Biofuel mandates and support measures in rich countries are driving up food prices as they divert more and more food crops and agricultural land into fuel production. The World Bank estimates that 75% of recent food price rises have been caused by biofuels.

¹ “Losing Ground”, Friends of the Earth 2008

² http://www.ukwatch.net/article/eu_biofuel_plans_for_columbia

³ “Columbia: the Palm Trees’ Bloody Oil”, Robin Wood, 2007

⁴ <http://www.guardian.co.uk/world/2004/jul/19/brazil.paulbrown>

As a result Oxfam estimates that 30 million people worldwide have been pushed into poverty by biofuels.⁵

2.3 Reducing Emissions from Deforestation in Developing Countries (REDD)

There are also concerns about the human rights impacts of mechanisms for carbon reduction proposed under international climate treaties, as well as concerns about whether they will actually bring about the desired carbon reductions.

Specific concerns arise around REDD (Reducing Emissions from Deforestation in Developing Countries), an approach being developed by the parties to the UNFCCC. This aims to incentivise forest conservation through including forests in carbon markets. In doing so it raises questions of rights, such as who has ownership of the forests and who has the right to sell forest credits. In the absence of secure land rights, indigenous peoples and other forest-dependent communities have no guarantees that they will receive any form of REDD “incentive” or reward for forest conservation.

Increasing the value of forests may have extremely detrimental impacts for some of the poorest people in the world, given the fact that up to 1.6 billion people are at least partially reliant on access to forests for their everyday needs (FAO 2008) and some 60 million indigenous people depend wholly on forests for all their requirements. Impacts can range from conflict between communities and changed local power structures and social/traditional values and behaviours, through to complete denial of access to resources.

FOEI takes the view that cordoning off a forest to prevent local people from using trees for fuel will simply worsen the situation or move the problem to a different location, rather than solving it. A better solution would be to fund forest conservation in a way which enables local populations to have equitable and sustainable access to resources. FOEI is very concerned that the negotiations on REDD have taken place without any genuine participation from those communities who will be most directly affected if their forests become part of the carbon market.

The role of subsistence farming in deforestation also raises questions of human rights. Figures given in research commissioned for UNFCCC (Blaser,2007) seem to indicate that subsistence farming is probably the main driver for deforestation in all regions although research also indicates that human farming has helped increase the distribution of indigenous oil palms. A balanced combination of human rights and ecological approaches to this problem would ensure that farmers had access to food and other necessities whilst taking into account the “global good” of forest conservation. However, international climate negotiations do not appear to be moving in this direction and it is important to develop mechanisms that allow for affected communities to participate and their rights taken into account.

Section 3: Views on the relationship between obligations arising out of international climate conventions and international human rights treaties, including on international assistance and cooperation.

The views expressed below represent the views of FOE EWNI as it has not been possible to prepare a response on behalf of the entire FOEI network within the time available.

There is increasing interest from the human rights community in climate change and this is welcome. There are a number of possible overlaps between international climate and international human rights legislation and these are set out below. In our view however, the

⁵ “Another Inconvenient Truth”, Oxfam, 2008

human rights and social consequences of climate change are not adequately reflected in the climate policies of either states or international bodies.

3.1 Links between the UNFCCC and International Human Rights

The ultimate objective of the UNFCCC Convention is to stabilise greenhouse gases at levels that would “prevent dangerous anthropogenic interference with the climate system. However, the preamble to the Convention refers to the Stockholm declaration of 1972, principle 1 of which states that:

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.

This principle sets out the linkages between a healthy environment and the achievement of human rights and could form the basis for considering human rights issues within the international climate framework. In practice however, the human rights and social consequences of climate change policies are not considered in the international climate framework, which focuses instead on technical issues relating to greenhouse gas removal.

3.2 Using Human Rights in the Climate Change Context

There is increasing consideration of how climate change can impact on human rights and we do not propose to repeat the arguments made on this issue in a number of legal journals, but instead to draw particular issues to the attention of UNHCHR. Case studies giving real-life examples of how these impacts arise have been set out above.

Right to Life: This can be impacted through an immediate extreme weather event induced through climate change, or because of a more ongoing deterioration in resources needed to maintain life. UN General Comment 31 and ECHR case law have highlighted the need for states to take positive steps to ensure the right to life. It has been suggested that where a nation fails to take reasonable measures to prevent environmental damage, and the result of such action is climate change, those harmed may seek redress for violations of their right to life. The counter-argument is that the damage must be very severe to constitute such a breach and by the time climate change directly threatens the Right to Life it may be too late to seek redress.

The application of the precautionary principle would be beneficial in the above context. This principle of international environmental law provides that, where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing cost effective measures to prevent environmental degradation. Using the precautionary principle in a case concerning the right to life (or indeed other human rights) would allow for action to be taken prior to a direct threat occurring.

Right to private and family life: The ECHR held in the celebrated Lopez Ostra case that the consequence of environmental degradation may so affect an individual’s well being as to deprive her of the enjoyment of her private and family life. This right is understood to cover a right to health where relevant and could therefore be used to address the health impacts of climate change.

Right to Property: This is mentioned in the UDHR and regional instruments and could be used to protect people who lose their homes in natural disasters and people in island communities who are forced to resettle. It could also be balanced against other human rights in order to interpret the property rights of technological patent-holders in such a way as to enable technology transfer.

Right to Food: This is recognised in the ICESCR as well as a number of other legal instruments and other international instruments. The right is one of progressive implementation whilst recognising that more immediate and urgent steps may be needed to ensure the fundamental right to freedom from hunger and malnutrition (Article 1(2)).

Right to Water: This is not mentioned in the ICESCR, but the Committee on Economic, Social and Cultural rights has recognised it as an independent right, and it is also mentioned in CEDAW. Violent conflicts over water likely to become more widespread so the issue of water access is likely to gain in importance.

Rights of Indigenous Peoples: The UN 2007 declaration on the Rights of Indigenous peoples refers to the right of indigenous peoples to practice and revitalise their cultural practices, customs and institutions. In September 2007 the interagency support group on Indigenous issues found that Indigenous peoples often inhabit some of the world's most vulnerable ecosystems and suffer from some of the worst effects of environmental degradation. In addition, removal from traditional lands may lead to serious loss of life and health. As explained above, indigenous and local knowledge is often key to retaining sustainable resource use in an area.

It is our view that state parties are required to consider these and other relevant human rights when formulating and implementing national and international policy on climate change. The Australian Human Rights and Equality of Opportunity Commission identifies the following advantages of this approachⁱⁱ:

1. It gives a "human face" to the issue
2. It focuses on the inclusion of excluded and marginalised populations- even if resource constraints imply prioritisation
3. It encourages accountability and transparency in policy decisions
4. It encourages participatory and democratic processes; and
5. It provides sustainable outcomes- by building on the capacity of key stakeholders, strengthening social cohesion.

In the climate change context, human rights should be interpreted with regard to general principles of international environmental law and the specific legal responsibilities in the context of climate change. These include the particular responsibilities of developed and wealthy countries to mitigate climate changeⁱⁱⁱ; the Kyoto protocol commitment to implement emissions targets through policies that minimise adverse impacts on developing countries; the requirement on a state not to cause transboundary harm^{iv} and the precautionary principle. Finally, states should bear in mind the obligation under Article 74 of the UN Charter that policy in their metropolitan areas must be based on the general principle of good neighbourliness, due account being taken of the interests and well-being of the rest of the world, in social economic and commercial matters. Doing so provides a strong argument for citizens whose human rights are violated as a consequence of global warming to be able to seek redress in the courts of states responsible for the polluting activities which have contributed to such warming.

3.3 National Policy Formulation

Under the Kyoto protocol, Annex 1 parties are required to put into place domestic policies and measures that cut their Greenhouse Gas Emissions. The general commitments made by parties to the UNFCCC require that all parties must take climate change considerations into account in their other relevant social, economic and environmental policies, and use such methods as impact assessments to minimize any adverse economic, health or environmental consequences of climate change measures.

In most instances parties will also be required under domestic or international law to take into account human rights issues in the formulation of social, economic and environmental policies. In our view states should consider the two issues concurrently, in order to prepare policies that take into account both climate change and human rights concerns.

3.4 Consideration of human rights impacts as part of UNFCCC/Kyoto reporting requirements

Both the UNFCCC and Kyoto protocols impose a number of reporting requirements on parties requiring detailed technical information on implementation, which is then subjected to a thorough technical review. In our view these should specifically include an assessment of the social and human impacts of implementation (or indeed non-implementation) by parties, both on their own populations and abroad.

The Marrakesh Accords also set out a programme of continuing analytical work on the impacts of climate change and response measures. In our view this should expressly include consideration of the human rights impacts in relation to both.

3.5 Public Participation in UNFCCC/ Kyoto Mechanisms

Supplementary to domestic actions parties may use joint implementation, the CDM and Emissions trading (the Kyoto mechanisms) to lower their emissions. In both cases, we believe there should be a mechanism for reviewing any projects carried out or intended to be carried out under these mechanisms for compliance with international human rights obligations.

The necessity for this is highlighted by the case studies in earlier section as well as an article on the website of Carbon trade watch, an NGO^v. This describes a dam in Panama (the Chan-75 dam) which is seeking carbon credit certification from the CDM but which will result in the relocation of the indigenous Ngobe population and the destruction of their lifestyle; does not comply with dam guidelines; is taking place in protected forest and threatens a international park that is a UNESCO world heritage site.

In our view any assessments carried out by the UNFCCC should include consultation with members of the public who have been affected by particular mitigation or adaptation proposals or who have been involved with projects under mechanisms such as CDM. This is particularly the case given that the operational rules of the mechanisms are intended to be based on openness and transparency- local stakeholders are supposed to be able to comment on CDM projects and there is a further period for public comment after documents are submitted.

However, we have reviewed three recent empirical analyses of CDM projects in China, India and Brazil and all three indicate concerns about the stakeholder consultations carried out. In this regard, we believe strict criteria on the consultation process to be necessary. It is also notable that there were concerns as to whether the projects in China and India demonstrated additionality ie. that the greenhouse gas reductions were additional to those that would have occurred on any case.

We believe that the provisions of the Aarhus Convention^{vi} and underlying programme of work on rights to information, public participation and access to justice provide a valuable starting point for developing a method for members of the public to understand and participate in discussions around international climate negotiations as well as specific projects and proposals for mitigation and adaptation to climate change. This is particularly the case in respect of policies and projects involving international financial institutions, such as the World Bank, where there are extremely limited avenues for public engagement.

In this regard we note that 28 of the 37 parties with binding carbon reduction commitments under the Kyoto protocol are parties to the Aarhus Convention and therefore have a direct responsibility to promote its provisions relating to the provision of information, public participation and access to justice when taking part in international environmental negotiations.

3.6 Rights of Individual Redress

The UNFCCC and Kyoto protocol do not provide for rights of individual redress. The compliance mechanism under the Kyoto protocol is regarded as state of the art for a multi-lateral environmental committee, but is largely untested. NGO's and intergovernmental organisations are able to provide information under section VIII paragraph 4 of the compliance procedures but there is no right for them, or affected individuals, to invoke the compliance procedures themselves.

In 2012 the international community will need to redefine the current framework for emission reductions set out by the Kyoto Protocol. In developing this framework the leaders will have a number of options, such as implementing or amending Kyoto, establishing regional frameworks, or altogether replacing Kyoto. We would like individuals and NGO's to be able to hold those responsible for climate change accountable by being able to invoke the procedures under the Convention or Protocol. This would be unprecedented in the context of an international environmental treaty, but would reflect the fact the enormous and increasing impacts of climate change (and the responses to it) on human existence and on fundamental rights.

3.7 Input of International Human Rights bodies into international climate policy

We urge UN Human Rights bodies, including UNHCHR, to develop methods of liaising with the UNFCCC/ Kyoto secretariats and relevant IFIs on matters relating to climate change and human rights. One possibility would be for international human rights organs such as UNHCHR to have a specific mandate to input into the work of the compliance and facilitative branches.

In any event we would also like to see UNHCHR create a new post of Special Rapporteur for climate change and human rights, who would be charged with reviewing the UNFCCC and Kyoto structures and state policies on climate change for human rights compliance (including national communications); considering the human rights impacts of the methods being employed and suggesting ways to incorporate human rights approaches into addressing climate change.

3.8 Recognition of a Right to A Healthy Environment

We recall the appointment by UNHCHR of a Special Rapporteur in 1990 to study the relationship between human rights and the environment, and her call for the recognition of a right to a healthy environment. Such a right is already acknowledged in many domestic constitutions as well as regional human rights instruments. The formulation of a right to a healthy environment at an international level could be particularly helpful in the context of maintaining a healthy global climate. As has been acknowledged by many, this can only be achieved through a global effort. International environmental law works acknowledges that specific resources, such as air, the atmosphere and parts of the sea, are part of a global commons. Similarly, there could be adopted a global right to a healthy planet, against which other competing rights could be weighed. Human rights standards could help determine the level below which a particular quality of the environment must not fall if it is to remain

lawful. Such standards could also cover discrimination in the availability of a healthy environment.

Arguably, a global right to a healthy environment now and for future generations should trump the right to eg. extract oil and gas uncovered from the melting of the Arctic as well as the right of indigenous peoples to benefit from this. The livelihoods of the indigenous peoples of the area could be maintained in alternative ways, for example through turning the Arctic into a nature reserve on which they could be employed.

We would request that the UNHCHR investigates further the advantages of the establishment of a right to a healthy environment at an international level.

We hope the above comments are helpful for your study and would be pleased to provide further assistance on request.

Yours faithfully

Gita Parihar

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ⁱ Australia, Brazil, Honduras, Malaysia, Mali, Peru, Swaziland, Tuvalu and the United Kingdom

ⁱⁱ Background paper, Human Rights and Climate Change

ⁱⁱⁱ The Convention's principles refer to the concepts of "equity" and "common but differentiated responsibilities", underlining the fact that, although climate change is a global issue and must be tackled as such, industrialised countries have historically contributed most to the problem and have more resources to address it. These principles are useful when considering how international human rights obligations are to be interpreted in the context of climate change.

^{iv} Under international environmental law states have a responsibility not to cause damage in areas outside their jurisdiction or to the environment of other states, see Principle 21 Stockholm Declaration /Principle 2 Rio Declaration and the Trail Smelter (*United States v Canada* 3 RIAA 1907 (1941) case which stated that "under the principles of international law...no state has the right to use or permit the use of territory in such a manner as to cause injury by fumes in or to the territory of another of the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.

^v http://www.carbonradewatch.org/index.php?option=com_content&task=view&id=200&Itemid=36

^{vi} The Aarhus Convention on Access to Information, Public Participation in Environmental Decision-making and Access to Justice 1998