

International Council on Human Rights Policy

submission to the

Office of the High Commissioner for Human Rights

in regard to

Human Rights Council Resolution 7/23

In June 2008, the International Council on Human Rights Policy released a report entitled *Climate Change and Human Rights: A Rough Guide*, accompanied by a short summary. In Spring 2009, the Council will release a collection of articles on these issues, published by Cambridge University Press, entitled *Human Rights and Climate Change*. At present the Council is exploring the human rights dimensions of technology policies in the context of climate change.

The existing report and summary are both submitted to OHCHR in regard to HRC Res. 7/23. In addition, the Council submits the present document, which draws on this volume of ongoing work. The document makes four substantive points:

1. Climate change has clear and unavoidable human rights implications: human rights agencies and organizations need guidance on how they should be addressed as a matter of law and policy.
2. Adopting human rights tools and principles will improve climate change policies.
3. The international legal regimes regarding climate change and human rights are mutually reinforcing and carry important implications for interstate obligations.
4. Climate change is a global problem that must be treated at a global level: the mechanisms for international assistance to treat climate change can and should advance human rights priorities across borders.

1. Climate change has clear and unavoidable human rights implications: human rights agencies and organizations need guidance on how it should be addressed as a matter of law and policy.

Climate change is already undermining the realization of a broad range of internationally protected human rights: rights to health and even life; rights to food, water, shelter and property; rights associated with livelihood and culture; with migration and resettlement; and with personal security in the event of conflict.¹ Few dispute that this is the case. Moreover, the impacts of climate change on human rights extend beyond these direct implications. Vulnerability to climate change impacts is correlated with poor human rights fulfilment. A low resource base that may complicate the fulfilment of social and economic rights will also obstruct the capacity to adapt to climate change. And policies aimed at mitigation of or adaptation to climate change also have the potential to threaten human rights. Yet despite these clear overlaps, the mainstream climate change literature and debate has, until very recently, given little or no attention to human rights concerns. The IPCC reports and other leading sources on climate change do not speak of human rights threats or infringements in relation to the many harms they predict. Human rights organizations, for their part, have not yet begun to speak of the implications climate change holds for human rights.

OHCHR's proposed analytic study is thus a valuable and welcome step towards filling that gap. The study can go some way to clarifying for human rights groups—including activists, advocates and scholars—what the relevant areas of overlap are, what issues need addressing, as matters of both policy and advocacy, and how they might go about doing so.

With this in view, the International Council's report on climate change and human rights endeavoured to identify some of the reasons why there has been, to date, so little uptake on the human rights implications of climate change. Among the reasons suggested there, two are worth mentioning here.

The first is that climate change harms present a disjuncture between 'victims' and 'perpetrators' that cannot easily be imagined, let alone addressed, through human rights law. If climate change victims are specific individuals in particular places, the 'perpetrators' are diffuse, distant, and best viewed not as individuals but as governments, corporations or even societies. The complex and transnational basis of climate change therefore poses a significant challenge to international human rights law's dominant structures. It will be necessary to look closely at those structures and their recent evolution if the human rights harms associated with climate change are not to fall outside of the law altogether.

A second possible obstacle to action is the fact that, much as the effects are increasingly being experienced today, climate change harms are generally located in the future; they remain a matter of prediction and of probability and they are, by their nature, unprecedented. This is not a register with which human rights groups are comfortable: human rights are generally viewed in a factual light, as

¹ A detailed list of climate change impacts that will directly affect human rights, excerpted from the IPCC's Fourth Assessment Report (2007) and from the Stern Review (2006), is given in an appendix to the International Council's report *Climate Change and Human Rights: A Rough Guide*.

either fulfilled or violated, protected or unprotected, in the *present*. Advocacy naturally centres on known violations requiring rectification. Even where future violations are predicted or postulated, human rights groups will look to precedent and experience rather than hypothetical scenarios and speculation, which are the stock in trade of climate science and analysis. Yet just because the bulk of human rights harms associated with climate change are future tense and unprecedented does not make them any less palpable, and does not diminish the suffering of the victims. The problem appears to be due much more to the disciplinary habits of human rights rather than the nature of the harms expected.

As a matter of priority, then, human rights groups must seek a credible language to express expected and unprecedented rights infringements, and to address them through policy measures rather than with legal tools alone. These may include innovative approaches to injecting human rights criteria into climate change policy and examining the international climate change legal architecture for complementary and mutually reinforcing mechanisms. We examine both of these possibilities below.

2. Adopting human rights tools and principles will improve climate change policies.

Human rights can help to focus and prioritise climate change policy, by putting human beings at the centre of policy. In a debate necessarily steeped in scenarios and probabilities, a human rights lens will require that hard lines be drawn where possible. The important questions about impact scenarios would then be: *who* is likely to suffer *what* and *why*? The climate literature now devotes considerable space to evaluating the human impacts of global warming on food, water and health. Yet climate change scenarios remain broad brush, constrained to take sweeping overviews rather than locating specific harms. Factoring future human rights threats explicitly into climate change scenarios would provide an analytical tool for refocusing climate change impacts more narrowly on their likely human costs. This would in turn help not only to determine whether human rights risk being breached, but also to identify future duty-bearers and the adequacy of response institutions and redress mechanisms.

One way to organise data collection and modelling of this kind might be to think in terms of human rights thresholds: levels of protection for individual rights which can be regarded as the minimum acceptable outcome under a given policy scenario. A policy requirement that basic threshold levels should not be breached – either as an effect of climate change itself or as a by-product of a given mitigation or adaptation policy – ought not to be controversial, especially as human rights fulfilment is in any case a legal requirement on policy-actors. Basic human rights standards are broadly accepted.

In addition such a goal is modest. It does not require large-scale social engineering or assume equal and universal rights to use of the atmosphere. Nor does it involve epic calculations across vast datasets. Rather essential needs might be identified for priority attention on the basis of their likely breach, and further resources can be concentrated on assessing and mitigating risk by finding appropriate technological and institutional fixes. Embedding human rights thresholds into policy objectives might first involve reviewing existing climate change scenarios to identify specific human costs across time and in different places, and then asking how countries – provincial and local governments, and eventually

communities – are equipped to respond (socially, financially, technologically and institutionally). Eventually, real-time monitoring would need to be supplemented by predictive forecasting of human rights thresholds under a series of scenarios.

Human rights thresholds are one possible way of thinking about and preparing for the human rights consequences of climate change. They are raised here merely to initiate discussion on these issues— their shape and application remains to be determined, and there may be better ways to achieve similar outcomes. They are one means of expressing a more general observation: namely that building human rights assessments into long-term mitigation and adaptation scenarios would refine and improve policies, and provide criteria for their adoption or rejection.

Adaptation

Since it is widely recognised that some impacts are now inevitable, very many countries, rich and poor alike, will have to take steps towards adapting to a new climate. Furthermore, in those poorer countries where climate change impacts are likely to be severe, there is an obligation on wealthier countries to assist in adaptation. However existing adaptation plans and funding have run into numerous obstacles and continue to advance with difficulty. Identifying likely human rights risks and threats would help refocus attention on the human priorities that ought to drive debate.

Connecting predicted climate change impacts to human rights threats.

Efforts to assess the future human impacts of climate change can be improved by applying human rights tools and principles in the climate change predictive armoury. This would require refining methods for forecasting the social impacts of expected physical and meteorological changes on individuals and communities. This in turn implies, first, identifying threats to rights and those persons and communities who are particularly vulnerable. It involves, second, assessing the presence or absence of safeguards, the availability of climate change–related information and public access to it, and the capacity of local institutions to manage these concerns.

Local monitoring

Climate change is measured at macro level, but will be experienced locally. There is an enormous need to improve the ability to monitor local social and economic impacts, including their rights implications. It will not be possible to operationalise or finance adaptation or compensation programmes equitably or effectively in the absence of much more detailed information about local impacts on livelihoods and vulnerability, and about how different groups of people will be affected. It will be necessary to develop methodologies for tracking impacts on specific rights (food, health, water, shelter, property, and so on) and more general vulnerability. This work too will require research into institutional capacity and the robustness of process rights (such as access to information).

The right to information as a policy tool

Much of the extensive and nuanced information required to prepare sensibly for future climate change harms is still lacking. The most affected persons are often not well informed either about likely climate

changes, or their effects, or the availability of adaptation funding. This simultaneously affects their rights and detaches policy-makers from some of the best sources of local information. A sound and proactive approach to information-gathering and dissemination (as recommended in the Aarhus Convention), including burden sharing where needed, will help.

Mitigation

Mitigation policies have clear human rights dimensions. On one hand, any strategy (or mix of strategies) that is successful at a global level will tend to determine the long-term access that many millions of people will have to basic public goods. On the other, choices made in the shorter-term – such as whether and where to cultivate biofuels or preserve forests – will affect food, water and health security, and by extension cultures and livelihoods throughout the world.

“Dangerous” global warming.

Until recently, international policy was converging on a greenhouse gas stabilisation target that would keep global warming to 2°C above preindustrial levels. Such a target already carries significant human rights consequences, because some areas will be affected much more severely than others, directly harming the lives and livelihoods of many thousands. Although these costs have not yet been calculated adequately, some actors are nevertheless now abandoning the 2°C target as “unrealistic”. A human rights analysis requires taking stock of the full human costs of any chosen path of action and setting policy accordingly. It will be critical to gather sound information about the specific human rights consequences of any suggested stabilisation target.

Biofuels

Biofuel production has recently surged, contributing to rising food prices in a number of countries, many of which are already vulnerable to the likely future impacts of a changing climate. Given the scale and influence of biofuel investment (assuming it presents a climate-friendly alternative to carbon fuels), it is essential to ensure that programmes take account of social and human rights impacts.

Reduced Emissions from Deforestation and Degradation (REDD).

A key feature of the nascent REDD regime is its potential to increase the financial benefits accruing from control over forest resources. These benefits might fall to forest-dependent indigenous populations, which might in turn yield human rights benefits. Unless human rights safeguards are built into REDD programming from the outset, however, better established and resourced actors are likely to obtain most of the benefit.

Forecasting long-term impacts on development.

Globally, greenhouse gas reduction will require alternative development paths, particularly in poorer countries. These paths will have consequences for human rights protection and fulfilment. What steps should be being taken to ensure that human rights protection does not diminish, but increases, as development paths shift? Will technology transfers advance or impede human rights protection? Will they reflect a country’s development needs rather than the economic interests of exporting countries?

3. The international legal regimes regarding climate change and human rights are mutually reinforcing and carry important implications for interstate obligations.

States' obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the UN Framework Convention on Climate Change (UNFCCC) overlap: both prioritise respect for and fulfilment of social and economic rights through development and poverty eradication. Under ICESCR Art. 2(1), states' primary obligations are to those within their own jurisdiction, whose rights they are required to support using "the maximum of available resources" including "through international assistance and cooperation". With similar objectives, the UNFCCC also includes obligations between states, to provide international support for adaptation and technology transfer programmes. Together, the two treaties create a matching architecture of rights and duties between states, citizens and the international community, treating a similar set of issues—notably threats to the rights to health, food, water, and housing.

The ICESCR stipulation that developing countries are required to use international assistance to attend to social and economic needs at home receives support in the UNFCCC, Article 4(7):

The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.

This important proviso introduces two key conditions that must kick in before poorer countries undertake emissions caps. First, rich countries have to fulfil their obligation, not only to provide assistance for adaptation but also to transfer relevant technologies. Second, in language that echoes the ICESCR, "economic and social development" and "poverty eradication" are recognised as the "first and overriding priorities" for poor countries. The UNFCCC therefore requires that clean technologies be made available to developing countries to permit them not only to join in the global mitigation effort but also for purposes of adaptation and to ensure that energy transition can be undertaken while respecting and fulfilling social and economic rights in those countries. This requirement fits easily with the corresponding obligation on developing countries to use international assistance to those same ends.

Both the UNFCCC and the ICESCR, then, appear to require that international assistance to address climate change be directed primarily towards social and economic rights fulfilment. And they further appear to support the effective transfer of technologies towards both environmental and development ends. In effect, the mutual obligations are as follows: developed country States are obliged by the UNFCCC to make assistance available to developing country States to address their adaptation needs, notably through the transfer of technologies. At the same time, developing country States are required by the ICESCR to prioritise economic, social and cultural rights in their deployment of international assistance. In combination these mutual obligations assume the developing countries must prioritise their duty to protect the economic and social rights of their citizens in the international sphere,

including in climate change negotiations and in the acceptance of assistance. It might be argued that the climate change architecture ought, therefore, to reflect these same human rights priorities.

4. Climate change is a global problem that must be treated at a global level: the mechanisms for international assistance to treat climate change can and should advance human rights priorities across borders.

Given the global reach of climate change, as well as the applicability of accepted international human rights norms, a successful climate change policy will require the engagement and cooperation of the international community as a whole. Taking a human rights based approach could prove useful as a way to mobilize international action towards appropriate mitigation and adaptation activities (as determined through the use of human rights thresholds, etc). A focus on human rights would be particularly beneficial for vulnerable states, where being able to point to concrete effects on human populations may prove useful in mobilizing international assistance. International cooperation would be particularly relevant to the following areas:

Adaptation funding and programming

There is widespread agreement that the amounts needed for effective adaptation are far in excess of current funds. Research into expected human rights impacts will help to clarify the appropriate scale and orientation of adaptation funding, as well as operationalising its expenditure in ways that are accountable, transparent and effective. More accurate forecasting of the human rights impacts of climate change will not only help mobilise international funds, it will assist local planners to set priorities for adaptation programmes.

Technology transfer

Technology transfer is relevant both to adaptation (irrigation, seawalls, crop selection, desalination and so on) and longer-term mitigation (renewable energies, other climate-friendly technologies). Although transfer of technology is entrenched in the UNFCCC and is considered to be a condition of developing country participation in addressing climate change, progress has been slow. If new and existing technologies are not made available where they are needed, there will be direct human rights consequences. This is true not only for those who are most vulnerable but also for whole societies, as they will soon be unable to rely for development on outmoded and carbon-intensive technologies.

Attention to human rights priorities can help inform and guide evolving policies for the appropriate transfer of technology, by identifying pressing needs and potential solutions. Human rights advocates can help to flesh out adaptation agendas in particular countries and identify how transfers of technologies can help alleviate climate-related suffering and head off future global warming. This would assist in-country policy-makers, and provide leverage at the international level where adaptation funding and technology transfer have been slow in coming. Robust legal tools (under human rights and climate change law) can be used to press governments to create policies and provide funding for addressing climate change impacts, locally and internationally.

Including human rights in a post-Kyoto regime

Given the relevance of human rights to so much of the climate change problem – to its impacts but also to the policies being prepared for treating it – it would seem valuable to recognize and reference human rights principles within the climate change regime. Treaties under the UNFCCC umbrella could usefully note that actions taken in the context of adaptation, mitigation and technology transfer should respect human rights. This would underline legal obligations; redirect attention to where harms will be worst felt; and help to set programme priorities.

The role of private companies in the context of “common but differentiated responsibilities”.

Under any post-Kyoto arrangement, different countries will accept different emissions caps. Quite properly, many states will not have caps for the moment. However, companies that face penalties if they emit greenhouse gases in wealthy countries will have an incentive to shift operations to developing countries. Such an outcome would distort the intent of the UNFCCC’s differential regime, because it would transfer the emissions burden to poorer countries with low or no caps. This would result in only minor development dividends in host countries, while the benefits of emissions are redirected to rich country consumers, in the form of finished products and profits. Research is needed to establish the likelihood of this outcome, identify measures to prevent it, and provide incentives for more equitable investment that would in turn strengthen human rights protections.

The long-term effects of a global emissions market.

The immense influence that emissions trading will have on the long-term economic prospects of non-Annex I (that is “developing”) countries has barely been registered, let alone researched, in many of the poorest countries. In the mid- to long-term, the market might conceivably have the paradoxical effect of prohibiting those most in need of carbon-based development from being able to afford it, to the detriment of human rights fulfilment. For this and related reasons, the scope and likely distributive effects of carbon markets should be closely scrutinised. Forward research into appropriate and meaningful transfer of technologies would also help.

Conclusion

In conclusion, the International Council on Human Rights Policy welcomes the OHCHR initiative in this important area and will make itself available in any way that might be useful.²

² The present document was drafted by the International Council on Human Rights Policy with the help of intern Anna Piekarczywski.