



**High Level Expert Meeting on the New Future
of Human Rights and Environment:
Moving the Global Agenda Forward
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BACKGROUND PAPER ON:

Linking Human Rights and the Environment

**Key Issues Arising from Human Rights Council Resolution 10/4 and the June 2009
Council Debate on the Relationship between Human Rights and Climate Change**

**By Mr. Marc Limon, Advisor at the Permanent Mission of the
Republic of Maldives to the United Nations Office at Geneva¹**

¹ The views expressed in this presentation are those of the author alone and do not represent or reflect the official position of any government or organisation.

Linking Human Rights and the Environment

Key Issues Arising from Human Rights Council Resolution 10/4 and the June 2009 Council Debate on the Relationship between Human Rights and Climate Change

Background Paper

By Marc Limon

It is clear that, over recent years, much progress has been made by the international human rights community in addressing and understanding the interface between climate change and human rights. This in-turn has important implications for exploring and addressing the wider relationship between human rights and the environment.

In March 2008, when negotiations took place in the UN Human Rights Council on resolution 7/23, there was strong objection to the mere notion that climate change and related environmental degradation have implications for the full enjoyment of human rights. By June 2009, when the Council met in full session to debate the relationship between human rights and climate change, there was not only broad acceptance of the existence of a relationship, but also a clear convergence of views on the nature and character of the linkage.

There was also, by June 2009, thanks to the OHCHR's report and the subsequent debates in the Human Rights Council, a very clear sense of the key outstanding issues and questions thrown up by the effort to link climate change policy with international human rights law, as well as of the fault-lines running between different State views on those issues and questions. The first of these questions is whether the physical impacts of climate change can be construed as a human rights violation in the strictest legal sense, with identifiable victims and perpetrators, and thus whether they can be placed within an accountability and redress framework. The second concerns the character and the extent of State human rights obligations both vis-à-vis their own citizens and vis-à-vis persons living outside their territory.

The first outstanding question (i.e. regarding the presence or otherwise of a human rights violation) may not have been answered to the satisfaction of all States but nonetheless is unlikely, for political reasons, to be a key focus of the human rights and climate change agenda moving forward – although that may change if the 15th Conference of Parties to the UNFCCC meeting in Copenhagen in December 2009 fails to agree a new and effective climate change treaty.

The second question, on the other hand, is likely to be a continuing source of interest, debate and disagreement in the Human Rights Council. This is because demonstrating that international action to reduce emissions and to provide adequate adaptation support is a legal obligation under international human rights law is likely to be, along with showing that climate change undermines human lives, dignity and livelihoods and that these effects are not felt evenly across society but rather select against the most vulnerable sections of society, the major contribution of the human rights community to global efforts to address climate change. It is also because climate change, as one of the ultimate manifestations of globalisation, neatly encapsulates the schism that exists between the concept of human rights that exists in most parts of the developed world – as essentially a contract between a States and its citizens – and

the one that exists in most parts of the developing world – as a contract that exists both within and between States.

Thus there seems little doubt that the Human Rights Council and related mechanisms will continue to wrestle, over the coming years, with the following three questions:

1. How can human rights obligations and principles be best applied to national climate change policy (across both mitigation and adaptation) in order to improve the quality and effectiveness of that policy including by ensuring that priority is given to the most vulnerable segments of society?
2. What is the precise nature of extraterritorial human rights obligations as they relate to climate change and how can the international community, through the international human rights mechanisms, best draw attention to and enforce those obligations in a manner that complements and supports the UNFCCC process?
3. What is the exact balance or relationship, in the context of climate change, between national-level obligations and international-level obligations? For example, if extraterritorial obligations are applicable insofar as they construct an enabling environment in which individual States can effectively protect the human rights of their citizens, how might we know when those extraterritorial obligations are being honoured and when they are not? In the context of climate change, would such obligations be met if emissions and temperature rises were restricted to “safe levels”? If extraterritorial obligations are not honoured, what is the consequence of this vis-à-vis the national-level human rights obligations of, say, a small vulnerable States? Can such a State really be held responsible for failure to fulfil the human rights of its people in the absence of an international enabling environment?

Following the adoption of resolutions 7/23 and 10/4, the publication of the OHCHR report, and the conclusion of the June panel debate, the challenge facing the Human Rights Council is now whether and if so how it should tackle these questions. There are a number of options:

1. Do nothing – many States do not wish the climate change-human rights agenda, or the broader environment-human rights agenda to be taken any further.
2. Further mobilisation of UN Special Procedures – Special Procedures, as independent human rights experts, are uniquely well-placed to address the difficult questions outlined above. Taking their lead from operational paragraph three of resolution 10/4 and following a Joint Meeting of Special Procedures in July 2009 which dedicated one day to the issue of climate change, many mandate-holders including on the right to adequate housing, the right to food, access to safe drinking water, poverty and internally-displaced persons are already undertaking research into the implications of global warming within their mandate. However, there is certainly scope for deeper engagement, both individually and jointly.
3. Pursue a new Special Procedure mandate on human rights and climate change, or on human rights and the environment.
4. Await developments in the Human Rights Treaty Bodies – because many of the arguments about the nature of extraterritorial obligations in the context of climate change are in effect issues of interpretation of the core international human rights treaties, Treaty Bodies have the potential to play a key role in clarifying the issues (for example, through a General Comment), as well as in integrating climate change considerations, where appropriate, into the national reporting process.

5. Universal Periodic Review (UPR) – national reviews under the UPR mechanism are a useful forum in which to highlight and explore the obligations of States not to interfere in the enjoyment of human rights elsewhere as well as to extend adaptation assistance.
6. Follow-up resolution 2005/60 on human rights and environment as part of sustainable development.
7. Pursue the issue of human rights and the environment in the General Assembly.

10/4 Human rights and climate change

The Human Rights Council,

Guided by the Charter of the United Nations, and reaffirming the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Vienna Declaration and Programme of Action,

Reaffirming the United Nations Framework Convention on Climate Change and the objectives and principles thereof, and welcoming the decisions of the United Nations Climate Change Conference, held in Bali, Indonesia, in December 2007, and in particular the adoption of the Bali Action Plan,

Reaffirming also the Rio Declaration on Environment and Development, Agenda 21, the Programme for the Further Implementation of Agenda 21, the Johannesburg Declaration on Sustainable Development and the Plan of Implementation of the World Summit on Sustainable Development, and recognizing that human beings are at the centre of concerns for sustainable development and that the right to development must be fulfilled so as to meet equitably the development and environmental needs of present and future generations,

Reaffirming further that all human rights are universal, indivisible, interdependent and interrelated and that they must be treated in a fair and equal manner, on the same footing and with the same emphasis,

Recalling its resolution 7/23 of 28 March 2008 on human rights and climate change,

Taking note of the report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights (A/HRC/10/61),

Noting that climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights including, inter alia, the right to life, the right to adequate food, the right to the highest attainable standard of health, the right to adequate housing, the right to self-determination and human rights obligations related to access to safe drinking water and sanitation, and recalling that in no case may a people be deprived of its own means of subsistence,

Recognizing that while these implications affect individuals and communities around the world, the effects of climate change will be felt most acutely by those segments of the population who are already in vulnerable situations owing to factors such as geography, poverty, gender, age, indigenous or minority status and disability,

Recognizing also that climate change is a global problem requiring a global solution, and that effective international cooperation to enable the full, effective and sustained implementation of the United Nations Framework Convention on Climate Change in accordance with the provisions and principles of the Convention is important in order to support national efforts for the realization of human rights implicated by climate change-related impacts,

Affirming that human rights obligations and commitments have the potential to inform and strengthen international and national policy-making in the area of climate change, promoting policy coherence, legitimacy and sustainable outcomes,

1. *Decides* to hold a panel discussion on the relationship between climate change and human rights at its eleventh session in order to contribute to the realization of the goals set out in the Bali Action Plan and to invite all relevant stakeholders to participate therein;

2. *Requests* the Office of the United Nations High Commissioner for Human Rights to prepare a summary of the panel discussion and decides to make the summary available to the Conference of Parties of the United Nations Framework Convention on Climate Change for its consideration;

3. *Welcomes* the decision of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living to prepare and present a thematic report on the potential impact of climate change on the right to adequate housing, and encourages other relevant special procedure mandate-holders to give consideration to the issue of climate change within their respective mandates;

4. *Welcomes* the steps by the Office of the High Commissioner and the secretariat of the United Nations Framework Convention on Climate Change to facilitate exchange of information in the area of human rights and climate change;

5. *Encourages* the Office of the High Commissioner to participate at a senior level, during the High-level Meeting on Climate Change, to be held ahead of the general debate of the General Assembly at its sixty-fourth session, and at the fifteenth session and Conference of Parties to the United Nations Framework Convention on Climate Change.

*41st meeting
25 March 2009*

[Adopted without a vote.]