



**Human Rights Council Interactive Debate on Human Rights and Climate Change  
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Introduction

Mr. President, Delegates,

thank you to the Human Rights Council for the opportunity to speak on this panel and to contribute to the development of the human rights and climate change framework.

The Center for International Environmental Law (CIEL) has a long history of work integrating the fields of human rights law and environmental law. Our ongoing work on human rights and climate change began with providing legal support (in collaboration with partners such as Earthjustice) to the indigenous communities of the Inuit throughout the Arctic on their petition to the Inter-American Commission on Human Rights. More recently, we have been working with the government of the Republic of the Maldives on the 2007 Male Declaration on Human Rights and Climate Change and 2008 Human Rights Council Resolution. As many of you know, the Maldives faces the potential disappearance of its territory as a result of projected sea-level rise.

This work has helped ratchet up the legal, moral and political will to address the urgent need to take action on climate change, and to do so in a way that respects human rights. What seems obvious now about the links between climate change and human rights to many in this room was not so obvious 5 years ago. Significantly, some questioned (and some still do) the point of identifying linkages between human rights and climate change, arguing that such linkages would overburden the CC negotiations or weaken the HRs system.

What a Human Rights Approach can contribute to addressing Climate Change

The challenge before us is to make the CC&HRs linkage work to address both the need to address climate change **and** ensure the realization and protection of human rights. This requires mechanisms and processes for managing and integrating human rights and climate change, but those mechanisms depend on some understanding of how human rights might add value and contribute to addressing climate change.

There are two elements to this. The first is the extent to which human rights can add to the moral and ethical justifications for addressing climate change and, in particular, for furthering the framework and aims of the UNFCCC. The second is the extent to which human rights can contribute, instrumentally, to the implementation and effectiveness of actions, mechanisms and institutions to address climate change.

a. Moral and Ethical Justifications

What can Human rights contribute to the ethical and moral justification underlying the need to address climate change and why should we seek to do so?

One response to that question is this: the key elements of the framework established by the UNFCCC to combat climate change were failing. Other than the bare divisions set up by the Kyoto protocol to establish greenhouse gas (GHG) emissions reduction commitments, the key components of common but differentiated responsibilities that addressed the needs of poor and vulnerable communities, especially in developing countries, have been ignored. We therefore need to look to other frameworks to provide support to adaptation and mitigation for climate change.

*Adaptation*

Climate change adaptation has a basic normative structure. In the UNFCCC it is framed as an equity issue for whom the obligation lies entirely with industrialized countries. The question then is twofold: whether there may be a role for human rights in more clearly articulating the equity justifications for adaptation and how such a role would be operationalized.

The approach within the UNFCCC is from a corrective action perspective. Corrective justice approaches are also inherent to human rights discourse, especially where, as the OHCHR study has established, climate change negatively impacts the realization of specific rights.

The ICHRP proposes human rights thresholds as a framework for determining the roles that a human rights framework can play. A human rights threshold approach would create a bright line by establishing minimally acceptable levels below which impacts cannot be allowed to go. To allow climate to affect the realization of such rights so that they fall below the threshold may therefore become unlawful, or at least politically unacceptable.

The role of human rights would then contribute to more explicitly articulating the underlying corrective justice claims for adaptation, while helping to focus adaptation actions on the poorest and most vulnerable populations.

*Mitigation*

While corrective justice claims for technology transfer for adaptation make it easier to establish a link to human rights, the justice claims for mitigation are different altogether.

Transfer of resources to developing countries for mitigation actions is part of the basic contractual bargain underlying the UNFCCC. Developing countries will only take on GHG emissions reduction commitments once they have access to technologies that enable a carbon-efficient pathway, paid for by industrialized countries.

The Greenhouse Development Rights (GDR) model which has roots in a right to development framework establishes a development threshold, drawn from the right to development, below which countries and communities may not be expected to bear the costs of climate reductions.

b. Instrumental role of human rights

Climate change is already having a negative impact on the realization of human rights and this underscores the urgent need for renewed support for adaptation. Further, mitigation policies to respond to climate change can also have human rights impacts. In this light, climate change mitigation and adaptation cannot come at the expense of human rights.

The UNFCCC mitigation and adaptation framework is dominated by economic development language and there has been extensive work looking at climate change impacts and mitigation needs through a development lens. This is particularly true for adaptation. The breadth of the development framing points to a crucial weakness. While the majority of international non-governmental development organizations have a strong track record of considering the human development dimension, that has not been true of the major funding agencies such as the World Bank and the regional development banks. A purely economic development framework for mitigation and adaptation will allow the banks to continue their policies that have historically had detrimental effects on the economic, social, and cultural rights of poor and marginalized populations.

The concerns above point to the clear need for an alternative to the development framework in the UNFCCC. An overall human rights approach may be able to shift the discourse on methods for addressing climate change.

I will point to four examples:

**Human rights can play a role in identification of beneficiaries of resources transferred for mitigation and adaptation programmes.**

To the extent that the UNFCCC uses a development framework, the relevant level of analysis remains the State both for mitigation and adaptation. The UNFCCC's development approach aggregates needs and solutions such that cost-benefit calculations as to the losses suffered by some portion of the population may be balanced against the benefits to other portions of the population. A human rights approach enables disaggregation by ensuring that the individual and the community is the primary beneficiary of mitigation and adaptation actions.

Depending on the specific right, *e.g.* the right to food, human rights also bring with them the core obligation to fulfill the right for the most vulnerable. This coincides with the concept of the human rights threshold. The priority would be to ensure that those below the threshold are the primary recipients and that those at or above the threshold are not pushed below it.

**Human rights can play a role in the identification and prioritization of mitigation and adaptation actions and activities.**

A human rights framework may enable us to cabin the scope and nature of activities, especially for adaptation. Where adaptation is difficult to distinguish more generally from development, a human rights framework may enable the cabining of choices by focusing on primarily those actions necessary for the fulfillment of a right impacted by climate change.

In addition, in prioritizing actions, a human rights perspective would prioritize those actions that enabled broad actions at a low cost rather than large scale capital projects. General Comment 3, paragraph 12 on the nature of States Parties' obligations emphasizes that "even in times of severe resource constraints whether caused by a process of adjustment, of economic recession, or by other factors, the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes."

**Human rights can play a role in ensuring compliance with UNFCCC obligations.**

At present only weak compliance mechanisms exist in the UNFCCC. In contrast, the reporting mechanisms for human rights are quite extensive and well developed. To date, climate change has not been included as a significant element of country reports to the CESCR. This aspect could be enhanced, however, in order to shed light on the compliance of countries with their climate change obligations that have a necessary overlap with their obligation to fulfill certain rights.

**Human rights can play a role in evaluating and assessing the impact of mitigation and adaptation strategies.**

A human rights framework may also be a powerful tool for monitoring and evaluating mitigation and adaptation programmes, as well as being an integral part of impact assessment. One of the clearest examples of where this may have been useful is in the area of biofuels. While economic and GHG emissions models and analyses remained unclear for some time, especially with respect to the effects and contribution of land use changes, a human rights impact assessment approach made it clear that there would be negative effects on food supplies and food security for poor and marginalized communities in both developed and developing countries from any policy that mandated use of biofuels. In addition, as important as it is to ensure that there are no negative impacts from mitigation and adaptation strategies, it is just as important that the rights to information, participation, and consultation are also addressed.

Finally, I would like to address a crucial element of this entire discussion: The cross-cutting issue of the rights of indigenous peoples.

Indigenous peoples are experiencing profound and disproportionate adverse impacts on their cultures, human and environmental health, human rights, well-being, traditional livelihoods, food systems and food sovereignty, local infrastructure, economic viability, and their very survival as Indigenous Peoples.

UNDRIP provides an additional framework to the layer of civil and economic rights that is particularly necessary to bring to bear. The special status of indigenous peoples and their particular vulnerability as communities more reliant on the biodiversity and environmental health of the community support the urgency of action on mitigation.

In particular, the issue of Reduced Emission from Deforestation and Degradation hits at the intersection between indigenous rights, climate change mitigation and pressure from large commercial and government interests to bypass indigenous rights. A rights-based approach can ensure proper safeguards for indigenous peoples, including right to Free, Prior and Informed Consent, including the right to say “no”.

Thank you for your time and I look forward to your questions.