

**Paper by Ambassador Henry L. Mac-Donald¹ Permanent Representative of the
Republic of Suriname to the United Nations Organization on the**

The Impacts of Climate Change on Small Island and Low Lying States

(“The Reality of Environmental Human Rights”)

World Bank Legal Forum 2008 on Climate Change

Washington DC

May 27 – 28, 2008.

Introduction

The issue of climate change is these days on top of the global political and academic agenda. Proof of this fact is for instance the 3 day thematic debate organized by the President of the General Assembly of the United Nations from July 31 to August 2, 2007. Evidence of the increasing importance of this issue is also the fact that the Secretary General of the United Nations organized a High Level Meeting on this very topic on September 24th, one day before the start of the General Debate of the 62nd Session of the General Assembly. Testimony for the significance of climate change nowadays is also the fact that the 2007 Nobel Peace Prize has been awarded to the Intergovernmental Panel on Climate Change (IPCC) and Albert Arnold (Al) Gore Jr. (former Vice President of the United States of America) “for their efforts to build up and disseminate greater knowledge about man made climate change, and to lay the foundations for the measures that are needed to counteract such change”².

In selecting climate change as the theme for this year’s World Health Day, WHO aimed to turn the attention of policymakers to compelling evidence of the health sector, since consideration of the health impact of climate change could help political leaders move with the so desired and appropriate urgency³.

¹ 1994; Master of Laws; Anton de Kom University of Suriname, 2004; Master of Laws in Law and Government, American University, Washington College of Law; currently Ambassador, Permanent Representative of the Republic of Suriname to the United Nations Organization.

² IPCC: <<http://www.ipcc.ch/pdf/press-releases/pr-121007.pdf>>.

³ World Health Organization News; The Impact of Climate Change on Human Health, A Statement by the World Health Organization Director General, <worldhealthorganizationnews@who.int>

The subject of climate change has indeed become a matter of intense and passionate political and academic discussion at the United Nations, multilateral institutions and various universities across the globe⁴. This matter has also caught the attention of the key Presidential candidates that are currently running for the highest political Office in the United States of America⁵.

Just last December in Bali, Indonesia, discussions were completed in the margins of the United Nations Frame Work Convention on Climate Change (UNFCCC), between more than 190 developing and developed states on how to join the growing worldwide effort to protect the global environment for future generations⁶.

This international conference provided small states like my own (the Republic of Suriname), with a unique opportunity to establish and launch a renewed global consensus on climate change, with recommendations on the architecture of global climate change policy namely: adaptation, mitigation, greenhouse gas cuts, technology cooperation, deforestation, and financing propositions such as the payment for ecological credits.

Although climate change is a global phenomenon, its consequences will not be evenly distributed. Scientists agree that developing countries and small island nations in particular will be the first and hardest hit⁷. For small coastal states and particularly those small island states in the Caribbean, Pacific and Indian Ocean, the dangers of climate change are immediate and threaten their very existence. Their small size, remoteness, geographical dispersion, vulnerability to natural disasters, fragile ecosystems, low lying coasts, constraints on transportation and communication and for many limited freshwater supply, mean that they are extremely vulnerable to even the smallest changes to the global climate. Just as the integrity of many small states is threatened, so are the rights of their peoples to a safe and secure home and the enjoyment of their most basic and fundamental rights as human beings. It is for that reason important to finally put people at the heart of the climate change discussions⁸.

⁴ Henry L. Mac-Donald: Speech on Climate Change and the MDG's, United Nations, September 14, 2007, New York; *Remarks Global Climate Change in a Human Perspective*, Symposium New York University Law School, October 26, New York.

⁵ The Obama/Mc Cain/Lieberman Climate Bill <<http://gristmill.grist.org/story/2007/1/12/17937/0703>>

⁶ Ramesh Jaura, *"U.N. Goes Climate Natural"*, Terra Viva UN Journal, NUSA DUA, Bali, Indonesia, December 12, 2007 (IPS)

⁷ Id. 3.

⁸ Henry L. Mac Donald, Id. 3.

Evidence of Global Warming

The bitter consequences resulting from climate change albeit in varying degrees. Even rich countries in temperate zones are not able to shield themselves against diverse impacts, as the 35000 casualties caused by heat waves in Europe in the summer of 2003 have dramatically demonstrated⁹.

In 2006 the Multinational Arctic Climate Impact Assessment shocked the world with its findings that the Arctic was experiencing “some of the most rapid and severe climate change on earth”. Consequently the international press responded with reports about accounts that the ice cap is vanishing and polar bears are going extinct¹⁰.

These findings however were hardly news to the world, since in fact two years earlier the Inuit Circumpolar Conference (ICC) a federation of native nations representing about 150,000 indigenous people in Canada, Greenland, Russia and the United States of America (ICC), had begun investigating how to get industrialized nations to act decisively on global warming¹¹. The ICC consulted environmental lawyers Martin Wagner and Don Goldberg, who were already working together to link climate change to human rights. The pair then advised, as a result of a comprehensive study, the ICC that filling a petition with the Inter-American Commission on Human Rights was the best way to go¹².

There is obviously enough and clear scientific evidence that global warming is already a reality. Current concentration of CO₂ and other green house gases in the atmosphere are about 430 parts per million (ppm), compared with 280 ppm in the pre-industrial period. Most experts believe concentrations should be kept below 500 ppm and preferably closer to 450 ppm, to avoid the risk of runaway global warming¹³.

⁹ Janet Larsen, *Record Heat Wave in Europe Takes 35000 Lives*, Earth Policy Institute, October 9, 2003, (Updated in 2006), <<http://www.earth-policy.org/Updates/Update29.htm>>.

¹⁰ Emily Gertz, *Inuit Fight Climate Change with Human Rights Claim*” July 26, 2005. <<http://64.233.169.104/search?q=cache:DshsO5uO4wOJ:www.grist.org/news/maindish/2005/07/26/gertz-inuit/index.html+climate+change+and+human+rights&hl=en&ct=clnk&cd=1&gl=us>>.

¹¹ Id.

¹² Id.

¹³ Understanding and Responding to Climate Change, Highlights of National Academics Reports: (National Academy of Sciences; National Academy of Engineering; Institute of Medicine; National Research Council; <www.national-academies.org>

Even at 450 ppm the Hadley centre model shows a three quarters likelihood of average global temperature rising by more than 2 degrees, At 500 ppm and above, the changes of a rise will be 3 percent or more, with possible catastrophic changes to our climate, due to abrupt and unpredictable changes in the weather systems. Even a global average rise of 2 degrees will bring much higher increases in temperature in many parts of the world¹⁴.

Scientists worldwide presently are in full agreement about the following principal facts with respect to the warming of planet earth:

- that the Arctic regions are losing ice cover¹⁵;
- that the populations of whales and walrus that Alaskan Eskimo communities depend on for food are crashing¹⁶;
- that fresh water draining from ice and snow on land is decreasing the salinity of far northern oceans¹⁷;
- that many species of plankton – the microscopic plants that form the crucial base of the entire marine web- are moving North to escape the warming water on the ocean surface off Greenland and Alaska¹⁸.

Ice ages come and go over millennia and for the past 8,000 years, the gradual end of the last ice age has seen a natural increase in worldwide temperatures, all scientists agree. Skeptics have expressed doubt that industrial activity is to blame for world's rapidly rising temperatures¹⁹. But records show that for the past 50 years or so, the warming trend has sped up due to the atmospheric burden of greenhouse gases produced by everything industrial, from power plants burning fossil fuels to gas guzzling automobiles²⁰.

¹⁴ Other Key facts: 2006 was ranked as the hottest year in continental USA; USA is ranked as the top global warming polluter in the world; 20% increase of USA carbon dioxide emissions from the burning of fossil fuels since 1990; 15 % increase of USA carbon dioxide emissions forecasted by 2020 if there is no cap on pollution; 80% decrease in USA global warming pollution required by 2050 to prevent the worst consequences of global warming; 78 days by which the USA fire season has increased over the past 20 years; 200 million people around the world could be displaced by intense droughts, sea level rise and flooding by 2080.
<<http://www.environmentaldefense.org/article.cfm?contentID=5816>>.

¹⁵ David Perlman, San Francisco Chronicle, Chronicle Science Editor; New global warming evidence presented, scientists say their observation prove industry is to blame; Saturday, February 19, 2005

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

Human Rights

In today's world there exists the international consensus that instances of humiliation and impoverishment have to be measured against the norm to guarantee the fundamental rights of every human person. By birthright, people are considered bearers of rights for protecting their dignity, regardless of their nationality or cultural affiliation.

These rights are equal and all human beings enjoy the same rights, they are inalienable, they can not be forfeited and are universal²¹.

Especially in an age of globalization, it is increasingly the discourse of human rights that sets the terms of reverence for disputes over power and its victims²².

Before the Second World War it was just states that could claim rights. The rights of persons (Human Rights) were first recognized at the international level only with the acceptance of **the Universal Declaration on Human Rights** almost 60 years ago in 1948²³. This Declaration gave rise to the codification of the basic political rights of each and every individual in the world vis a vis state power. Subsequently the juridical revolution made further progress with **the International Covenant on Civil and Political Rights**²⁴ and **the International Covenant on Economic, Social and Cultural Rights**²⁵. The three aforementioned instruments are nowadays been revered to as **the International Bill of Human Rights**²⁶.

In the eighties and nineties a human rights advocacy revolution occur globally bringing advocacy groups such as Amnesty International²⁷ and Human Rights Watch²⁸ to the forefront, which put various states in the dock for their violations of basic human rights.

²¹ Wolfgang Sachs, Climate Change and Human rights, World Economy and Development in brief, WDEV Special report 1/200, <<http://www.wdev.eu/>>

²² Id.

²³ The Universal Declaration of Human Rights, adopted and proclaimed by the General Assembly, Resolution 217 A (III) of 10 December 1948, <<http://www.un.org/Overview/rights.html>>.

²⁴ International Covenant on Civil and Political Rights, created in 1966 and entered into force on 23 March 1976, <http://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights>.

²⁵ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966, entry into force 3 January 1976, according with article 27, <http://www.unhchr.ch/html/menu3/b/a_ceschr.htm>.

²⁶ Henry L. Mac-Donald, Syllabus Introduction to Human Rights Law, Paramaribo, Suriname, 1997, page 3,

²⁷ <<http://www.amnesty.org/>>.

In the name of human rights, numerous campaigns began the interference in the internal affairs of states, which resulted into the United Nations establishing an instrument of its own (namely **the High Commissioner of Human Rights**²⁹) to investigate excessive internal sovereignty claims on the part of various states. It is no doubt that the civil and political rights claimed much attention during these days³⁰.

For a long time the economic, social and cultural rights played a subordinate role in the growing legal awareness worldwide. This was largely due to the Cold War; since the Western block inscribed civil and political rights on its banner, while the Eastern bloc did the same with economic, social and cultural rights. These two sets of human rights were ritually played off against each other, by the then two world super powers, with as a result that social rights were taken no more seriously in the West than democratic rights in the East³¹.

Meanwhile this confrontation has basically resolved its self and the inseparability and interdependence of political and social human rights have been largely accepted. Indeed, presently it would be hard to comprehend why hunger, malnutrition or hunger should be less important than press censorship or religious persecution in affecting people's ability to act. Without social and economic rights the minimum basis for equality of civil and political rights is lacking and conversely, social and economic rights without civil and political rights are robbed of the motive power of freedom. A minimal conception of human rights that refers only to negative political freedoms therefore discriminates against the have-nots and those whose livelihood is threatened; recognition of their dignity requires the protection of economic, social and cultural rights³².

When human beings do not have the basic capability to support themselves with dignity, their human rights are under threat. Most societies regard as basic requirements: the capability to obtain adequate nourishment; to avoid unnecessary illness and premature death; to have adequate housing; to earn one's own livelihood, to be assured of physical safety; to have equal access to justice; to appear in public without feeling ashamed and to take part in the life of a community³³.

²⁸ Human Rights Watch, <<http://www.hrw.org/>>.

²⁹ High Commissioner on Human Rights, <<http://www.ohchr.org/EN/Pages/WelcomePage.aspx>>

³⁰ Wolfgang Sachs, Id. 16

³¹ Id.

³² Id.

³³ Id.

International law has recognized that Governments constitute the prime duty bearers in human rights law. Indeed securing human rights should be the first priority of every Government as Article 1 of the **Vienna UN Conference on Human Rights** has affirmed³⁴. However in a transnational world where the influence of states has become more and more circumscribed while the influence of corporations and multilateral institutions is on the rise, a case can be made that non-state actors will have to observe corresponding duties as well. It is after all difficult to imagine how there can be universal human rights without universal duties.

The Declaration on Human Duties and Responsibilities (1997) explicitly states that: Members of the global community have collective, as well as individual duties and responsibilities, to promote universal respect for and observance of human rights and Fundamental freedoms³⁵.

The text of the Declaration clearly mentions members of the global community and does not simply refer to states. But also to transnational corporations, international Governmental and Non Governmental Organizations, associations, foundations, even to all communities of peoples, including the individual person³⁶.

Indeed, things would have look bad for human rights if only states continued to be considered duty bearers in a globalized world. Instead all actors that exert power in a more and more border-less world carry responsibility for the protection of fundamental human rights. The basic dignity of people is to be safeguarded against any form of denigrating power, regardless from whom and where it originates. For, rights cannot be maintained universally, unless the duty of observing them is shared universally³⁷.

³⁴ World Conference on Human Rights, 19 – 25 June 1993, Vienna, Austria, <<http://www.unhcr.ch/html/menu5/wchr.htm>>.

³⁵ Wolfgang Sachs, Id. 16.

³⁶ A draft proposal for a very comprehensive *Declaration of Human Duties and Responsibilities* was adopted in 1998 in Valencia, under the auspices of UNESCO and the Valencia Third Millennium Foundation, by a high-level group (chaired by Richard J Goldstone) and then submitted for consideration to UNESCO in 1999 as the "Valencia Declaration" (but without any apparent follow-up). An earlier proposal, known as the *Trieste Declaration of Human Duties* (also known as the *Carta of Human Duties*), had been drafted from 1992 by the International Council of Human Duties. The *Earth Charter* (completed in 2000) has also been considered to be a Declaration of Human Duties and Responsibilities even if it does not bear that name -- notably by recognizing the need for "reproductive health and responsible reproduction"

<<http://www.laetusinpraesens.org/docs00s/respon.php>>

³⁷ Id.

Human Dimension of Global Climate Change

It is by now crystal clear that the phenomenon of climate change is way more than *ecological*, more than *scientific*, more than *economic*, more than *diplomatic*, more than *security*³⁸, and more than *political*³⁹. It is fundamentally a human issue, as it threatens human survival and prosperity⁴⁰.

Human beings are just one component of the wider natural systems (the environment) that combine to create and sustain life on Earth. These natural systems are the very infrastructure and resources of human civilization. As a consequence climate change poses the most immediate and far reaching threat to their functioning, and already adversely affects the environment, individuals and populations around the world through: increased incidents and intensity of natural disasters such as hurricanes; tornados; flooding; drought; wildfires; expansion of warmer seawater; widespread melting of the arctic sea ice and glaciers; high rates of evaporation; enormous changes in precipitation patterns and; massive alterations of habitats and ecosystems such as coral reefs, mangroves and salt marches.

The fundamental correlation between climate change and human rights is essentially that everyone has the right to live in a safe, secure, healthy, clean and sustainable environment.

³⁸ T.V. Padma, Climate Change a Serious Security Threat, Warns Report: “*the projected hotspots for future conflicts, due to climate change, tally with areas where agriculture is predicted to be adversely affected*”; “*In Hyderabad, India crop scientists warned that cereal production in Africa and Asia would be adversely affected due to changes in temperatures and rainfall over these continents due to climate change. Asia consumes 90 percent of the world’s rice and is also home to 70 percent of the world’s poor*”, Terra VIVA UN International, December 12, 2007, P. 1.

³⁹ Henry L. Mac Donald, *Remarks Global Climate Change in a Human Perspective*, NY, NY, October 26, 2007; Angelic Alihoesein del Castillo, *Statement by the Delegation of the Republic of Suriname at the UNFCCC Conference in Bali, Indonesia*, December 2007.

⁴⁰ Mary Robinson, *Climate Change and Justice*, Barbara Ward Lecture, Chatham House, London, December 11, 2006: “*We can no longer think of climate change as an issue where we the rich give charity to the poor to help them cope*”; “*Rather this has now become an issue of global injustice that will need a radically different approach*”; “***Climate change has already begun to affect the fulfillment of human rights***”; “*Our shared human rights frame work entitles and empowers developing countries and impoverished communities to claim protection of these rights*”,

If such a right is affected by human induced activities that results into climate change, it will negatively impact on a range of other fundamental human rights including among others:

the right to self-determination; the right to take part in cultural life; the right to use and enjoy property; the right to social security; the right to an adequate standard of living satisfactory for health and well being; the right to clean, potable or fresh water; the right to the highest attainable standard of physical and mental health; the right to development and even; the right to life itself.

The High Commissioner for Human Rights, Mary Robinson linked the issue of climate change and human rights outstandingly in a lecture at the Chatham House in London by the following statement: ***“Article 1 of the Universal Declaration on Human Rights states our birthright: “All human beings are born free and equal in dignity and rights”. However it is here that an issue of justice is raised, as it is poor communities who are suffering most from the effects of climate change, and it is rich countries that are contributing most to the problem”. The human rights approach, emphasizing the equality of all people, is a direct challenge to the power imbalances that allow the perpetrators of climate change to continue unchecked. And the human rights framework gives us the legal and normative grounds for empowering the poor to seek redress”***⁴¹.

The member states of the United Nations have solemnly pledged to safeguard and promote universal respect for human rights and fundamental freedoms as is reflected in the International Bill of Human Rights as well as several other international human rights and environmental instruments, such as the recently adopted **Declaration on the Rights of Indigenous Peoples**⁴² and the **United Nations Framework Convention on Climate Change**⁴³ and its **Kyoto Protocol**⁴⁴.

⁴¹ Mary Robinson Id. 7.

⁴² Declaration on the Rights of Indigenous Peoples, With an overwhelming majority of 143 votes in favor, only 4 negative votes cast (Canada, Australia, New Zealand, United States) and 11 abstentions, the United Nations General Assembly (GA) adopted the Declaration on the Rights of Indigenous Peoples on September 13, 2007. The Declaration has been negotiated through more than 20 years between nation-states and Indigenous Peoples, <<http://www.iwgia.org/sw248.asp>>.

⁴³ United Nations Framework Convention on Climate Change, entered into force on 21 March 1994, <http://unfccc.int/essential_background/convention/items/2627.php>.

⁴⁴ Kyoto Protocol, the Kyoto Protocol is an international agreement linked to the United Nations Framework Convention on Climate Change. The major feature of the Kyoto Protocol is that it sets binding targets for 37 industrialized countries and the European Community for reducing greenhouse gas (GHG) emissions. These amounts to an average of five per cent against 1990 levels over the five year period 2008 – 2012. <http://unfccc.int/kyoto_protocol/items/2830.php>.

Internationally **the Stockholm Declaration on the Human Environment**⁴⁵ stresses that both aspects of man's environment, the natural and the man-made, are essential to his/her well-being and to the enjoyment of basic human rights.

At the regional level the members of the Organization of American States also guaranteed aforementioned human rights in various basic instruments such as: the American Declaration on the Rights and Duties of Men; the Inter American Convention on Human Rights; the Convention on the Protocol of San Salvador to the American Convention on Human Rights; the Inter-American Democratic Charter for instance, recognizes that: "A safe environment is essential to the integral development of the human being, which contributes to democracy and political stability".

Right to a Healthy Environment

Although the close relationship between human rights and the environment has been widely acknowledged, the existence and the need for a right to a healthy environment (or an environment of a certain quality) remain controversial at the international level, because a small group of scholars and international politicians and diplomats is hesitant to talk about the reality of environmental human rights⁴⁶. The lack of a specific reference of human rights to a clean or healthy environment in the **1992 Rio Declaration**, which departed from the language in the previously mentioned Stockholm Declaration, indicates the continued uncertainty concerning the need or desirability of such a right.⁴⁷ The Rio Declaration however somewhat cautiously stresses in its principle 10 that "environmental issues are best handled with participation of concerned citizens"⁴⁸.

⁴⁵ Declaration of the United Nations Conference on the Human Environment, <<http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=97&ArticleID=1503>>.

⁴⁶ Volodymyr Vassylenko, Ambassador/Permanent Representative of Ukraine to the UN Human Rights Council, Statement in the Third Committee of the 62nd session of the General Assembly on agenda item 65: Report of the Human Rights Council, November 5, 2007: " *Existing environmental challenges have to do with the right to sound environment, the right to the reliable environmental information, the right to ecologically pure food and water, the right to ecologically safe conditions of labor, the right to ecologically harmless items of every day living, the right to the highest attainable standards of physical and mental health and even to the right to life itself. **The fight against ecological degradation must go hand in hand with the protection of environmental human rights.** We believe that establishing proper standards of environmental human rights by the Council will contribute to the protection of the Earth Nature for the benefit of humankind*".

⁴⁷ Stefano Sensi, *Human Rights and the Environment – A Practical Guide for Environmental Activists*.

⁴⁸ Rio Declaration on Environment and Development, June 1992, <<http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163>>

That said, many national constitutions either state the principle that an environment of a certain quality constitutes a human right or impose environmental duties upon the State.⁴⁹ Such provisions often define the desired environment in general terms with adjectives such as decent, natural, clean, healthy or safe. A significant number of decisions of national courts and a reasonable number of international tribunals have also identified environmental harm to individuals or communities as violations of the rights to health, to life, food, water or housing.

At the regional level, “**the African Charter on Human and Peoples Rights**⁵⁰” provides that all peoples shall have the right to a general satisfactory environment favorable to their development (article 24). The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“**Protocol of San Salvador**”⁵¹) recognizes the right to live in a healthy environment and demands that States Parties promote the protection, preservation, and improvement of the environment (article 11). In Europe the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters adopted the Sofia guidelines in 1995. Then in 1998 the European Governments took a further step by adopting the “**Aarhus Convention**⁵²” on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, which provides for the right of every person of present and future generations to live in an environment adequate to his or her health and well-being⁵³.

Several international and regional human rights mechanisms have also started addressing the human rights impact of climate change more specifically. For example, in his 2007 report to the UN General Assembly, the Special Rapporteur on the right to health outlines the impact of global warming on the right to health and calls on the Human Rights Council to study the impact of climate change on human rights.⁵⁴ The Special Rapporteur on the right to food, in his 2007 report to the UN Human Rights Council, identified environmental degradation, desertification and global climate change as direct causes of the so-called

⁴⁹ For instance Azerbaijan, Costa Rica, Philippines, Serbia and Montenegro; most of the time, explanatory or qualifying language is included to specify the type of environment that is sought: decent, natural, clean, healthy or safe.

⁵⁰ African (Banjul) Charter on Human and Peoples’ Rights, adopted June 27, 1981, AOU. CAB/LEG/67/3/rev. 5, 21I.L.M. 58 (1982), entered into force October 21, 1986, <http://www1.umn.edu/humanrts/instreet/z1afchar.htm>

⁵¹ Protocol of San Salvador, done at San Salvador, 17 November 1988, OAS Treaty Series <<http://www.worldpolicy.org/projects/globalrights/treaties/achr-esc.html>>.

⁵² “Named after the city in Denmark where the final talks were held, the Convention entered into force in 2001.

⁵³ Your Right to a Healthy Environment, A simplified guide to the Aarhus Convention on Access to Information, Public Participation in Decision –Making and Access to Justice in Environmental Matters, United nations Environmental Programme (UNEP), United Nations , New York and Geneva, 2006.

environmental migration and recommended that States consider the possibility of expanding the definition of refugees under the 1951 Convention to cover those fleeing to escape severe violations of economic, social and cultural rights.⁵⁵ Following the dismissal, on admissibility grounds, of a petition related to human rights and climate change, on March 1, 2007, the Inter-American Commission on Human Rights held a hearing to address matters related to global warming and human rights.⁵⁶ The UN Permanent Forum on Indigenous Issues also devoted its Seventh session, which took place in April 2008, to climate change.

Not long ago on March 26, 2008 a United Nations resolution entitled: “Human Rights and Climate Change”, was adopted in which the Human Rights Council, decided to request the Office of the United Nations High Commissioner for Human Rights, to conduct a detailed analytical study of the relationship between climate change and human rights⁵⁷.

Notwithstanding all these developments in Africa, the American Hemisphere and Europe however; the reality still remains that no explicit global instrument –either in the field of human rights or the environment – recognizes a right to a healthy environment as such.

Indeed if this debate about the human dimension of climate change is advanced, especially on the desirability and feasibility of a specific internationally recognized instrument on the right to a clean or healthy environment, several important questions need to be addressed, such as:

- * ***The Difficulty regarding a clear definition: What is the content of this right and how would it be defined? What is the threshold quality of environment for purposes of human rights?***

- * ***Who are the possessors or owners of this right?***

- * ***Is it a collective or individual right?***

⁵⁵ UN Doc. A/HRC/4/30, *Report of the Special Rapporteur on the Right to Food, Jean Ziegler*, para 67

⁵⁶ In December 2005, the Inuit Circumpolar Conference (ICC) submitted, with the support of Earth Justice and the Centre for International Environmental Law (CIEL), a petition against the United States of America (USA) seeking relief from alleged human rights violations resulting from global warming caused by greenhouse gas emissions from the USA. The petition argued that massive changes occurring in the Arctic, as a result of greenhouse gases emissions in the USA are causing dangerous impacts on the Inuits, affecting several of their rights under the American Declaration of the Rights and Duties of Man.

⁵⁷ UN Doc. A/HCR/7/L.21/Rev. 1, Human Rights Council, Seventh Session, 26 March 2008; This resolution was co-sponsored by more than eighty UN member states including the Republic of Suriname.

- * *Does it cover past or future generations?*
- * *Who is the duty bearer responsible for promoting, providing for and protecting this right?*
- * *What responsibility would this right impose on states?*
- * *What would be the extra-territorial obligations created by such a right?*
- * *What would be the obligations for Corporations and Non State Actors in respecting this right?*
- * *What would be the added-value, in terms of protection, of such a right? (While a right to an environment of a certain quality would certainly have rhetorical force, some have argued that in reality it would add little to what already exists in international environmental law).*

Environmental Human Rights According to Public International Law

The pollution of water sources, desertification, environmental degradation, natural disaster and now climate change-induced manifestations, do not only affect the natural environment, but also a whole range of human beings and their living conditions. There is little doubt that a number of the key manifestations of climate change have a broad and direct impact on internationally recognized economic, social and cultural ‘human’ rights. These include among others the possible displacement of millions of people; increased lack of fresh water resources, notably for small-scale farmers in Africa and for those with already limited access to safe-drinking water; drastic reduction of fields affecting small-scale farmers’ livelihoods; and the increased risks of diseases.

As climate change could threaten the basic elements of life, including access to safe drinking water, food, health and land, it could also have implications for the enjoyment of a whole range of human rights, including the rights to life, food, adequate housing, health and water⁵⁸.

⁵⁸ Ibrahim Wani, Chief Research and Right to Development Branch off the Office of the United Nations High Commissioner for Human Rights, “*The Environment and Human Rights*”, “*Conference on the Human*

Non-discrimination and equality concerns are also evident as the impact of climate change on individual livelihood is often influenced by factors such as poverty, inequality and unequal power relationships. The poor, who are already living at the margins of survival, tend to be disproportionately affected by climate change and are particularly vulnerable to its impact, raising questions of *de facto* discrimination and equality concerns. Women are also likely to be disproportionately affected by climate change, as traditional female roles in some areas of the world – such as collecting water, providing food etc. – might be reinforced in societies affected by climate change.⁵⁹ In many parts of the world, especially the poorest, women are overrepresented in agriculture, a sector that will be hardest hit by climate change. Indigenous and tribal peoples also are among the groups that could be most vulnerable to the severe impact of climate change.

Procedural human rights, including access to information or to justice and participation in decision-making processes might also become increasingly relevant in a context of climate change, notably for those being affected by it.

Climate change's impacts might also render it increasingly difficult for States to fulfil their human rights obligations. With the predicted increase in the frequency and intensity of weather-related events, States might have to allocate additional resources – personal, financial and others – to address emergencies, secure their environment and respond to increased risks brought by climate change. In a context of limited resources, States might therefore have to cut public expenditures in other areas and could face serious difficulties in fulfilling their overall human rights obligations in key sectors such as health, education or social security. The predicted displacement of millions of people will also put additional stress on governments in meeting their obligations to realize a certain number of human rights.

International human rights law also imposes several obligations on states that are relevant to addressing the vulnerabilities of the individual to climate change. These include: the state obligation to provide better housing, located away from hazardous zones, for people who happen to be poor; improved access to sanitation and safe-drinking water; access to adequate

Dimension of Climate Change”, Male, the Republic of Maldives, November 13- 14, 2007.; Volodymyr Vassilenko Id. 30

⁵⁹ Stern Review Report on the Economics of Climate Change, Part II: Impacts of Climate Change on Growth and Development, p. 114; Maurits Hassankhan, Minister of Home Affairs of the Republic of Suriname, 52nd Session of the Commission on the Status of Women (CSW), Remarks on the Gender Perspective of Climate Change, United Nations, February 27, 2008.

food; local participation in planning and decision-making; accountability; and access to information and justice.⁶⁰

Most of the work on climate change has to date focused on mitigation and adaptation strategies to address its causes and consequences. More recently, the promotion of sustainable development and poverty reduction have also emerged in the discussions. However, little attention has been put on individuals and how climate change affects them, and on how human rights might aid in addressing climate change.

Before addressing some key issues that will be important in going forward with this specific agenda item, it is vital to briefly touch on the normative framework regarding the link between the enjoyment of human rights and the environment as recognized in public international law.

The foundation for linking human rights and environmental protection was established in the 1972 Stockholm Declaration in its declaration that man has a 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.⁶¹

Ten years later, the World Charter on Nature explicitly referred to the right to access to information and the right to participate in environmental decision-making.⁶² In 1990, the United Nations General Assembly recalled, in its resolution 45/94, the language of the Stockholm Declaration, stating that all individuals are entitled to live in an environment adequate for their health and well-being. The 1992 Rio Declaration acknowledged the right to access environmental information and public participation in environmental decision-making.⁶³

As mentioned before, some international human rights treaties also explicitly address the linkages between the protection of the environment and the enjoyment of human rights.

⁶⁰ Id., pp 99, 114

⁶¹ *Declaration of the United Nations Conference on the Human Environment*; Preamble paragraph 1 and Principle 1, reprinted in 11 I.L.M. 1416 (1972); Mary Robinson, Id. 7, “Over the three decades since the signing of the Stockholm Declaration in 1972, the impact of environmental factors on human rights has become better understood. We now recognize that respect for human rights is at the core of sustainable development, and the links today between human development, human rights and human security could not be clearer. Equally important, human rights are our shared international language and frame work, and human rights instruments give our multilateral system its means of putting into practice our shared values”.

⁶² World Charter for Nature, paras 15-16, 23 available at: <http://www.un.org/documents/ga/res/37/a37r007.htm>

⁶³ *Rio Declaration on Environment and Development*, Principles 1 and 10, reprinted in: 31 I.L.M 876 (1992)

For example the Convention on the Rights of the Child (CRC) recognizes that the enjoyment of human rights depends, inter alia, on a decent environment,⁶⁴ and ILO Convention No. 169 concerning Indigenous and Tribal Peoples also provides for the protection of the environment of indigenous and tribal peoples.⁶⁵

In this connection, it is noteworthy to point out that the International human rights instruments adopted before the 70's – notably the Universal Declaration of Human Rights (UDHR) and the two International Covenants on civil and political rights and on economic, social and cultural rights – do not explicitly refer to the protection of the natural environment among the preconditions for the enjoyment of the substantive rights that they recognize. Part of the explanation for this omission is that the environment was not a big issue for the international community at the time. The UN Committee on Economic, Social and Cultural Rights -which monitors the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) by State Parties has attempted to address this gap by interpreting the right to health, enshrined in this International Covenant, as encompassing the underlying determinants of health, such as healthy environmental conditions.⁶⁶

The UN Human Rights mechanisms, especially the treaty bodies whose role are to monitor the implementation of the obligations assumed by state parties and the special procedures, started to address the relationship between human rights and the environment in the early nineties. The Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child and the Human Rights Committee, among others, have issued recommendations related to environmental issues in their review of specific country reports: For example, in relation to the pollution of water sources; protection of indigenous peoples' natural resources; environmental policies and their specific impact on the enjoyment of human rights; environmental degradation; natural disasters; the impact of large infrastructure development projects on the environment; environmental hazards affecting specific groups or minorities; and the dumping of toxic waste and its impact on the enjoyment of human rights.

Case law from the European Court of Human Rights and the Human Rights Committee also indicate that environmental deterioration can lead to violations of human rights, including the

⁶⁴ Article 24(2) on the right to the highest attainable standard of health requires State parties to consider the “dangers and risks of environmental pollution” and ensure that all segments of society have access to information and education with regard to, inter alia, hygiene and environmental sanitation. Article 29(e) includes “the development of respect for the natural environment” among the goals of educational programmes.

⁶⁵ Articles 4, 7(3) and 7(4))

⁶⁶ General Comment No. 14, para 11

right to life, the right to respect for privacy and family life, the right to freedom of expression –which includes the right to seek information- or minority rights.⁶⁷

The “Special procedures,” the general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world, have for their part also addressed different dimensions of human rights and the environment⁶⁸:

- *The former Special Rapporteur on the human rights of migrants identified environmental degradation among the reasons why people leave their countries;*
- *The former Independent Expert on human rights and extreme poverty stressed the links between poverty and environmental degradation;*
- *The Special Rapporteur on adequate housing underlined that housing cannot be separated from other issues related notably to a safe and healthy environment;*
- *The Representative of the Secretary General on the human rights of internally displaced persons highlighted that natural disasters are among the leading causes of internal displacement;*
- *The Special Representative of the Secretary-General on human rights defenders included environmental activists in the group of civil society actors that are particularly exposed to violence and other violations of their rights;*
- *The mandate of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights has, since its creation, highlighted how international movements of waste can have negative effects on the enjoyment of several human rights, including the right to life, health, adequate food, health, freedom of association or the right to form and join trade unions.*

The former UN Commission on Human Rights, now the Human Rights Council, and the UN Sub-Commission on the Promotion and Protection of Human Rights have also, on several occasions, reaffirmed and emphasized the linkage between human rights and the environment.

From this quick scan, one can see at least five dimensions to the linkages between human rights and the environment:

⁶⁷ Stefano Sensi, *Human rights and the environment – a practical guide for environmental activists*, <www.environmenthouse.ch/docspublications/reportsRoundtables/Human%20rights%20Env%20Report.pdf>.

⁶⁸ Id.

- * *Environmental destruction can increase precariousness, often having more severe impacts for vulnerable and marginalized communities, raising questions of de facto discrimination;*
- * *People living in poverty tend to suffer from environmental problems in a higher proportion than wealthier individuals, raising concerns of equality;*
- * *Procedural human rights such as access to information or to justice and participation in decision-making processes are often crucial for ensuring the development and implementation of policies that respect environmental concerns;*
- * *Human rights violations, such as discrimination, can lead to environmental degradations;*
- * *A healthy environment is an important precondition for the enjoyment of a whole range of human rights, such as the right to health, the right to food and the right to water.*

Final Thoughts

Climate perturbations are likely to be superimposed on economic insecurity. As a direct consequence, climate impacts are at times likely to aggravate the living conditions of people up to the point where their basic rights are in jeopardy. It is for this reason that climate impacts may basically turn in to a matter of environmental human rights.

While science and economics still dominate the ongoing climate change discussions academically and at the United Nations, new reports already warns of other serious consequences to global warming related events, such as increased conflicts and food security issues in vulnerable areas. Combating climate change will undoubtedly be the key international policy issue of the 21 century.

Decline in food production, degradation of freshwater resources, increase in storm, drought, fire and flood disasters and environmentally induced migration are just some of the possible consequences of the climate change phenomenon. Areas at increased risk of “human-insecurity” include Northern and Southern Africa alongside countries in the Sahel region and the Mediterranean. Other potential hotspots are Central Asia, India, Pakistan, Bangladesh,

China, the Gulf of Mexico, the Andean and Amazonian regions of Latin America and the Small Island, Atoll and low lying coastal states in the Caribbean, Pacific and Indian Ocean.

The consequences of Climate Change already strongly affect some of the most vulnerable groups in the world. Women for instance form a big part of this group. Women carry households on their own in many developing countries. Scarcity of food and degenerating health due to the effects of climate change is consequently already part of their daily life⁶⁹.

Children are another group in society that is already harshly influenced by climate change as well as the elderly and people living with disabilities.

Attention should be paid to the fact that climate-related human rights are matched only by the imperfect, not by perfect duties. Like with most economic, social and cultural rights, the link between the right and the corresponding duty is blurred. Just as the violation of the right to food, health, education, shelter etc. can often not be traced back to the action of a clearly identifiable duty-bearer, also climate effects cannot be attributed to a culprit with a name, address and telephone number. Who exactly should be held responsible for hunger and widespread illnesses such as malaria, dengue and HIV/AIDS?

While it might be possible to identify the victims, it is often impossible to identify the responsible actor or the causal relationship between a specific action and a specific damage. In fact an objection often raised against the concept of economic, social and cultural rights holds that, rights makes no sense unless they are combined with exact duties imposed on specific actors who would make sure that these rights are fulfilled. But the objection is flawed, for it militates against the basic idea that people have some claims on others and on the design of social arrangements regardless of what laws happen to be enforced.

The absence of culprits or judges does not nullify rights. A strictly legal conception, which maintains that there are no rights unless they are justiciable, misses out on the universalistic nature of human rights entitlements.

Moreover environmental human rights call for extra-territorial responsibility, even more so than do economic, social and cultural rights. Climate perturbations most clearly surpass the jurisdiction of single states, they are in fact a striking example for the trans-national character

⁶⁹ Mary Robinson, Id. 7: “*Women are responsible for around 75% of household food production in sub Sahara Africa, 65% in Asia and 45% in Latin America*”.

of threats in a highly interdependent world. Under such circumstances the human rights obligations of states and non state actors cannot simply stop at territorial borders, rather they reach geographically to other countries as well, As the Special Rapporteur to the Human Rights Commission on the right to Food has recently stated: “Governments must recognize their extra-territorial obligations towards the right to food. They should refrain from implementing any policies or programs that might have negative effects on the right to food of peoples living outside their territories” (UNCHR 2005).

When the right to food is threatened by climate change, the principle of extra territorial obligations becomes even more relevant, given that rich countries are largely responsible for climate perturbations in poorer countries. Just as climate effects reach to the ends of the earth, the geographical scope of responsibility has become global as well.

Discussing climate change and its impacts from a human rights or humanitarian perspective will shift the focus of the debate more directly to individuals or groups of people, and mainly on how climate change affects their lives as human beings, women, children, elderly persons, migrants, indigenous or tribal peoples etc. Along with the human factor, the human rights approach will also introduce a unique accountability framework towards the developed nations with regard to human induced climate perturbations⁷⁰.

It is for all the aforementioned reasons that climate change should principally be observed as a human rights/ human security issue (environmental human rights), with immediate focus on specifically the economical, social and cultural element of the universally and collectively recognized human rights.

⁷⁰ Id 40.