

# **Climate Change Considerations at the Committee on Economic Social and Cultural Rights<sup>1</sup>**

**- A Discussion Paper -**

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## I. Introduction

Implications of Climate Change on the enjoyment of Human Rights are an issue of growing concern. With a study prepared by the Office of the High Commissioner on Human Rights (A/HRC/10/61) and various debates and parallel events during the 10th session of the Human Rights Council, this topic has arrived at the center of interest of the human rights community.

According to the OHCHR study, the implications can most directly be seen respective the rights to life, food, water, health, housing and self-determination. All of those rights are covered by the International Covenant on Economic, Social and Cultural Rights. Furthermore, the Committee on Economic, Social and Cultural Rights (henceforth: the Committee) has issued General Comments on health, food, water and housing.

The OHCHR study points out that the effects of climate change will be felt most by the most vulnerable segments of society, naming women, children and indigenous peoples. These segments of societies and their access to the rights mentioned have been of major concern to the Committee.

Hence there is an important role in the future for the Committee to play in safeguarding the human rights of the persons most affected by the negative impacts of climate change. The approach of the Committee towards the progressive realization of economic social and cultural rights (ESCR) may become an important tool in addressing climate change related violations of ESCR. Climate Change is not a sudden one-time catastrophe (although it entails many of them) but rather a continuing process of degradation and deprivation that needs to be fought continuously by way of adapting to and mitigating effects progressively.

The present study, without claiming to be exhaustive, gives background on the ways how the Committee has already engaged directly or indirectly with the issue of climate change. It draws some conclusions on how this engagement could be continued and strengthened, e.g. by interpreting the General Comments progressively, strategically using the Lists of Issues and formulating Concluding Observations reflecting the background of climate change implications. It closes with two practical suggestions – commenting on the State party's position towards the treaties and conventions of the climate change regime and speaking out on the human rights aspects of measures adopted to mitigate and to adapt to climate change.

We hope that our work can contribute to the evolving thinking on ways to address human rights implications of climate change and further the discussion on the role of the Committee in this regard.

## **II. Links to climate change in the work of the Committee on Economic, Social and Cultural Rights**

The following analysis is a result of a research based on Concluding Observations and General Comments of the Committee in relation to climate change. It aims mainly at reviewing positions taken and comments and observations expressed by the Committee directly or indirectly on this issue, and at determining potential future approaches that could be taken.

The study also analyses the Reporting Guidelines adopted by the Secretary General concerning the obligations of State parties in fulfilling their reporting obligations under article 16 and 17 of the International Covenant on Economic, Social and Cultural Rights. It further proposes a selection of areas/issues of concern in relation to climate change in the countries under review during the next three sessions.

### **The four following aspects have been analyzed:**

1. Concluding Observations of the Committee on Economic, Social and Cultural Rights to State Parties adopted between May 2006 and November 2008;
2. General Comments of the Committee on Economic, Social and Cultural Rights (General Comment No. 15 on the right to water, General Comment No. 14 on the right to the highest attainable standard of health, General Comment No. 4 and No. 7 on the right to adequate housing, General Comment No. 12 on the right to food);
3. Reporting Guidelines (Guidelines on treaty-specific documents and Harmonized Guidelines);
4. Climate change issues in countries under review during the sessions 42 to 45.

### **Sources used:**

OHCHR, Committee on Economic, Social and Cultural Rights – Sessions:

<http://www2.ohchr.org/english/bodies/cescr/sessions.htm>;

OHCHR, Committee on Economic, Social and Cultural Rights - General Comments:

<http://www2.ohchr.org/english/bodies/cescr/comments.htm>;

OHCHR, Compilation of guidelines on the form and content of reports to be submitted by States parties to the international human rights treaties (HRI/GEN/2/Rev.5);

OHCHR, Guidelines on treaty-specific documents to be submitted by States parties under article 16 and 17 of the International Covenant on Economic, Social and Cultural Rights (E/C.12/2008/2);

OHCHR, 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);

Sources of the internet-based research on country specific climate change issues are given in the footnotes.

## **1. Concluding Observations of the Committee on Economic, Social and Cultural Rights to State Parties adopted between May 2006 and November 2008**

There are only a few cases where the Committee has made reference to climate change and more generally environmental issues in its Concluding Observations.

The only case in which the issue of climate change has been concretely mentioned is the document on Ukraine<sup>2</sup>, where “the Committee welcomes the adoption by the State party of legislation on climate protection giving effect to the 1997 Kyoto Protocol to the United Nations Framework Convention on climate change”<sup>3</sup>.

The following paragraphs extracted from the Concluding Observations issued by the Committee to State Parties between May 2006 and November 2008 present references to environmental problems and challenges, showing an indirect connection to the issue of climate change.<sup>4</sup> They are nevertheless relevant to the purpose of this study, since they could be used as a possible examples for further future comments on the phenomenon.

Concluding Observations on the Philippines: “The Committee notes with satisfaction the legislative framework and institutional mechanisms established by the State party for the protection of the environment and the improvement of environmental and industrial hygiene.”<sup>5</sup>

Concluding Observations on Bolivia “The Committee notes with satisfaction the efforts made by the State party to protect the environment and the fact that the State party has more certified forests than any country in the region.”<sup>6</sup>

The fact that, out of 30 Concluding Observations adopted between May 2006 and November 2008, the Committee has made direct references to the issues concerned only in three, leads to the following conclusions.

Firstly, the human rights regime has so far not considered climate change to be directly linked to the enjoyment of Human Rights and has hence not analyzed in a systematic manner the existing interfaces<sup>7</sup>.

Secondly, the references made by the Committee and the examples quoted show however that there is room for action by the Committee, specifically in upcoming reviews of countries where environmental issues (influenced by climate change) play or should be playing an important role: positive aspects and improvements could be mentioned, such as in the presented cases, and recommendations made on certain problematic aspects.

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<sup>2</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights (henceforth CESCR), 4 January 2008, E/C.12/UKR/CO/5.

<sup>3</sup> Concluding Observations of the ESCR, 4 January 2008, E/C.12/UKR/CO/5, para. 4.

<sup>4</sup> On the relationship between environmental pollution, climate change and human rights, see the OHCHR report on the relationship between climate change and human rights (A/HRC/10/61)

<sup>5</sup> Concluding Observations of the CESCR, 1 December 2008, E/C.12/PHL/CO/4, para. 9.

<sup>6</sup> Concluding Observations of the CESCR, 8 August 2008, E/C.12/BOL/CO/2, para. 9.

<sup>7</sup> On the relationship between environmental pollution, climate change and human rights, see the OHCHR report on the relationship between climate change and human rights (A/HRC/10/61).

## **2. General Comments of the Committee on Economic, Social and Cultural Rights (General Comment No. 15 on the right to water, General Comment No. 14 on the right to the highest attainable standard of health, General Comment No. 4 on the right to adequate housing, General Comment No. 12 on the right to food)**

As stated above, the Concluding Observations of the Committee for the period 2006-2008 only contain few references to both the issue of climate change and more generally the protection of the environment. Considering that this could change during the upcoming sessions, this paper will now examine the General Comments of the Committee, which do not directly address the object of this study, but nevertheless contain references and points of interaction with climate change and environmental issues.

The discussed interconnection between human rights and, in the specific case, climate change, is supported by the content of several General Comments, more specifically number 15 on the right to water<sup>8</sup>, number 14 on the right to the highest attainable standard of health<sup>9</sup>, numbers 4 and 7 on the right on adequate housing<sup>10</sup> and number 12 on the right to adequate food<sup>11</sup>.

In addition to the comments contained in the Concluding Observations analyzed, the General Comments confirm the connection between the rights concerned, i.e. water, health, housing, food and environmental issues and climate change. The necessity for State parties to adopt specific legal instruments providing protection to those rights, which would directly and indirectly include measures of environmental protection in relation to climate change as well, is likely to increase.

Given the growing evidence and acknowledgements of the impacts of climate change on the enjoyment of human rights, the Committee might opt to address the issue more systematically. It may consider (re)examining for example the relation between climate change and environmental issues raised in some of its documents and to address and discuss with States parties the overall impacts of climate change on specific human rights, as elaborated in the following General Comments.

### 2.1 General Comment on the right to water

The General Comment no. 15 contains several references to environment as well as to climate change.

The Committee notes, for example, how “article 11, paragraph 1<sup>12</sup>, of the Covenant specifies a number of rights emanating from, and indispensable for, the realization of the right to an

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<sup>8</sup> General Comment no. 15(2002) of the CESCR, 20 January 2003, E/C.12/2002/11: The right to water.

<sup>9</sup> General Comment no. 14(2000) of the CESCR, 11 August 2000, E/C.12/2000/4: The right to the highest attainable standard of health.

<sup>10</sup> General Comment no. 4(1991) of the CESCR, 13 December 1991, E/1992/23: The right to adequate housing.

<sup>11</sup> General Comment no. 12 (1999) of the CESCR, 12 May 1999, E/C.12/1999/5: The right to adequate food.

<sup>12</sup> Art. 11 of the Covenant on Economic, Social and Cultural Rights: “The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family,

adequate standard of living <including adequate food, clothing and housing>. The use of the word <including> indicates that this catalogue of rights was not intended to be exhaustive.”<sup>13</sup>

Following this interpretation, several rights related to environmental issues and climate change could be considered implied, such as the right to water quoted in the paragraph above.

Secondly, the General Comment points out that “environmental hygiene, as an aspect of the right to health under article 12, paragraph 2 (b)<sup>14</sup>, of the Covenant, encompasses taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions.”<sup>15</sup> The aspect of environmental hygiene of course does not only relate to the right to water (and sanitation), but also implies more generally speaking the issue of climate change, considering the interrelatedness between all human rights.

Furthermore, it is pointed out that “(...) the following factors apply in all circumstances: (...) b) Quality. The water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person’s health.(...)”<sup>16</sup>

This paragraph puts pollution and environmental issues in relation not only with the right to water, but also with the right to health, showing the strong interconnection between those rights.

The General Comment no. 15 enumerates specific legal obligations for the State Parties, including *i.a.* obligations to respect and protect the right to water: this means, for example, adopting effective legislative measures in order to prevent third parties (and to refrain themselves) from unlawfully diminishing or polluting water.<sup>17</sup> Furthermore, specific legal obligations include as well the obligation to facilitate, promote and provide, requiring the State to take positive measures to assist individuals and communities to enjoy the right.<sup>18</sup> This would of course include environmental issues.

In relation to comprehensive and integrated strategies and programmes State parties should adopt to ensure that there is sufficient and safe water for present and future generations, the Committee suggest that they should include, *i.a.* “assessing the impacts of action that may impinge upon water availability and natural-ecosystems watersheds, such as climate change, desertification and increased soil salinity, deforestation and loss of biodiversity.”<sup>19</sup>

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including adequate food, clothing and housing, and to the continuous improvement of living conditions. (...)”

<sup>13</sup> General Comment no. 15(2002) of the CESCR, 20 January 2003, E/C.12/2002/11, paragraph 3.

<sup>14</sup> Art. 12 of the Covenant on Economic, Social and Cultural Rights: “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by the State Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (...) b) the improvement of all aspects of environmental and industrial hygiene (...)”.

<sup>15</sup> General Comment no. 15(2002) of the CESCR, 20 January 2003, E/C.12/2002/11, paragraph 8.

<sup>16</sup> General Comment no. 15(2002) of the CESCR, 20 January 2003, E/C.12/2002/11, paragraph 12.

<sup>17</sup> General Comment no. 15(2002) of the CESCR, 20 January 2003, E/C.12/2002/11, paragraph 21-23.

<sup>18</sup> General Comment no. 15(2002) of the CESCR, 20 January 2003, E/C.12/2002/11, paragraph 25.

<sup>19</sup> General Comment no. 15(2002) of the CESCR, 20 January 2003, E/C.12/2002/11, paragraph 28.

This paragraph, containing a specific reference to climate change, strengthens what is stated above. Firstly, climate change does affect human rights, such as the right to water. Secondly, the issue can be addressed by the Committee in relation to established rights, as seen in the example presented.

As far as violations of the right to water are concerned, the General Comment mentions that they include, *i.a.*, “the failure to enact or enforce laws to prevent the contamination and inequitable extraction of water”<sup>20</sup>, showing once again the relevance of environmental problems to the protection of human rights.

## 2.2 General Comment on the right to the highest attainable standard of health

The presented connection between the right to water, right to health and environmental pollution, elaborated in the General Comment no. 15<sup>21</sup> and stated in the General Comment no. 14<sup>22</sup>, is confirmed further on in the same document: “(...) a wide range of socio-economic factors that promote conditions in which people can lead a healthy life and extends to the underlying determinants of (...) a healthy environment.”<sup>23</sup>

Furthermore, similarly to what has been seen in the General Comment no. 15, the General Comment no. 14 includes legal obligations, i.e. the obligation to respect, protect and fulfill, meaning for example to “refrain from interfering directly or indirectly with the enjoyment of the right to health”<sup>24</sup>. This could be understood as a reference to avoiding behaviors that could lead to a violation of the right to health, such as pollution or other forms of conduct that could have a negative impact on the environment and on climate change: as stated in the specific legal obligations of State parties, States should refrain from unlawfully polluting air, water and soil.<sup>25</sup> Furthermore, States “should formulate and implement national policies aimed at reducing and eliminating pollution of air, water and soil, including pollution by heavy metals such as lead from gasoline”<sup>26</sup>.

## 2.3 General Comments on the right to adequate housing

In the General Comment no. 4 the Committee makes two references to environmental issues. Firstly it states that “adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors”<sup>27</sup>, creating a connection between housing and environment. Secondly, the Committee further requires that steps should be taken “to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy) with the obligation under article 11 of the Covenant”.<sup>28</sup>

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<sup>20</sup> General Comment no. 15(2002) of the CESCR, 20 January 2003, E/C.12/2002/11, paragraph 44.

<sup>21</sup> General Comment no. 15(2002) of the CESCR, 20 January 2003, E/C.12/2002/11, paragraph 8.

<sup>22</sup> General Comment no. 14(2000) of the CESCR, 11 August 2000, E/C.12/2000/4, paragraph 16.

<sup>23</sup> General Comment no. 14(2000) of the CESCR, 11 August 2000, E/C.12/2000/4, paragraph 4.

<sup>24</sup> General Comment no. 14(2000) of the CESCR, 11 August 2000, E/C.12/2000/4, paragraph 33.

<sup>25</sup> General Comment no. 14(2000) of the CESCR, 11 August 2000, E/C.12/2000/4, paragraph 34.

<sup>26</sup> General Comment no. 14(2000) of the CESCR, 11 August 2000, E/C.12/2000/4, paragraph 36.

<sup>27</sup> General Comment no. 4(1991) of the CESCR, 13 December 1991, E/1992/23, paragraph 8.

<sup>28</sup> General Comment no. 4(1991) of the CESCR, 13 December 1991, E/1992/23, paragraph 12.

Additionally, in General Comment no. 7 on the right to adequate housing - forced evictions<sup>29</sup> the Committee says that unavoidable evictions have to be carried out observing art. 4 (permitted limitations),<sup>30</sup> 11.1 (continuous improvement of living conditions) and 2.1 (realization of the rights by all appropriate means) of ICESCR and relates to article 17.1 of the International Covenant on Civil and Political Rights which requests adequate protection in forced evictions.<sup>31</sup> The same General Comment names instances of forced evictions, including “development and infrastructure projects” as well as “large-scale energy projects”.<sup>32</sup> Was it written today, this list might have included projects on environmental protection.

While the General Comment no. 7 does not directly link to climate change, two facts should be kept in mind, which highlight the importance of this General Comment to the debate: Climate change is already and will become even more a major reason for evictions; Evictions may occur as results of infrastructural or environmental protection measures and energy generation – both issues that are heavily impacted by climate change: environmental protection will be complemented by infrastructural adaptation measures; energy production will undergo changes due to the need of mitigating climate change.

#### 2.4 The General Comment on the right to food

In The General Comment no. 12 on the right to food<sup>33</sup> the Committee states that the realization of the right to food requires the adoption of “appropriate economic environmental and social policies”<sup>34</sup> In today’s context, those environmental policies would need to include measures related to climate change.

Regarding the obvious impact climate change has on the agriculture and related economy of a country, the Committee might recur to General Comment no. 12 in regard to possible queries on climate change mitigation and adaptation posed to a State party.

General Comment no. 12 also gives an entry point regarding international obligations, when stating that “States parties should, in international agreements whenever relevant, ensure that the right to adequate food is given due attention and consider the development of further international legal instruments to that end.”<sup>35</sup> The current climate negotiations at UNFCCC are such a case in point, where human rights considerations, e.g. relating to the right to food could be brought up by states in this forum. The work currently undertaken by the Special Rapporteur on the Right to Food, who considers climate change to be “the single most important threat to food security in the future”<sup>36</sup> could further inform the Committee in this regard.<sup>37</sup>

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<sup>29</sup> General Comment no. 7 (1997) of the CESCR, 20 May 1997, E/1998/22, annex IV.

<sup>30</sup> General Comment no. 7 (1997) of the CESCR, 20 May 1997, E/1998/22, annex IV, paragraph 5.

<sup>31</sup> General Comment no. 7 (1997) of the CESCR, 20 May 1997, E/1998/22, annex IV. paragraph 8.

<sup>32</sup> General Comment no. 7 (1997) of the CESCR, 20 May 1997, E/1998/22, annex IV. paragraph 7.

<sup>33</sup> General Comment no. 12 (1999) of the CESCR, 12 May 1999, E/C.12/1999/5.

<sup>34</sup> General Comment no. 12 (1999) of the CESCR, 12 May 1999, E/C.12/1999/5, paragraph 4.

<sup>35</sup> General Comment no. 12 (1999) of the CESCR, 12 May 1999, E/C.12/1999/5, paragraph 36.

<sup>36</sup> Report of the Special Rapporteur on the right to food A/HRC/10/5/Add.2, paragraph 29.

<sup>37</sup> Climate Change features in his recent reports A/HRC/9/23 and A/HRC/10/5/Add.2 and is further pursued as he “will specifically address the question of the impact of climate change on the right to

### 3. Reporting Guidelines

#### 3.1 Guidelines on treaty-specific documents to be submitted by States parties under article 16 and 17 of the International Covenant on Economic, Social and Cultural Rights<sup>38</sup>

This reporting guideline does not refer specifically to climate change or to issues related, but nevertheless contains some aspects that could be used as a future reference in relation to the request of submission by States. The following points could be examined in relation to climate change:

“In relation to the rights recognized in the Covenant, the treaty-specific document should indicate”<sup>39</sup>, i.a., “structural and other significant obstacles arising from factors beyond the State party’s control which impede the full realization of the Covenant rights”<sup>40</sup> This would be a point of possible relevance, considering that climate change has an impact on other rights of the Covenant<sup>41</sup> and that the phenomenon can represent a problem particularly in specific countries.<sup>42</sup>

More generally, the document states that States should indicate adoption of national framework laws, policies and strategies for the implementation of the rights, mechanisms in place to monitor progress towards the full realization of the rights etc.<sup>43</sup> This again could be seen as a possible point of interaction, considering the stated relationship between human rights and climate change. This issue could therefore indirectly be an object of the States’ submissions.

#### 3.2 Compilation of guidelines on the form and content of reports to be submitted by States parties to the international human rights treaties<sup>44</sup>

The harmonized guidelines section of this compilation indicates that a State should, in its review of the implementation of human rights at the national level, “identify problems and shortcomings in its approach to the implementation of the treaties”<sup>45</sup>. Climate change could definitely be considered an issue that can represent a problem to the implementation of several human rights, as previously seen in the analysis of the General Comments and as stated by the OHCHR report on the relationship between climate change and human rights.

In relation to the information that should be contained in the treaty-specific document submitted by the State, reference to climate change could be made concerning to several rights of the Covenant on Economic, Social and Cultural Rights. Practices affecting the rights,

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food, and how human rights can guide the identification of mitigation and adaptation strategies, in a future report to the UN.”

<http://www.srfood.org/index.php/en/areas-of-work/climate-change>.

<sup>38</sup> E/C.12/2008/2.

<sup>39</sup> E/C.12/2008/2, para. 3.

<sup>40</sup> E/C.12/2008/2, para. 3f.

<sup>41</sup> As stated in part 2 of this study on the General Comments.

<sup>42</sup> For more details on this issue, see part 4 of the present study: Climate change issues in countries coming up for review.

<sup>43</sup> E/C.12/2008/2, para. 3.

<sup>44</sup> HRI/GEN/2/Rev.5, 29 May 2008.

<sup>45</sup> HRI/GEN/2/Rev.5, para. 9c.

measures considered necessary and methods adopted to assure that the right is granted could be provided regarding the following articles/rights of the Covenant: article 11<sup>46</sup> on the adequate standard of living and on the right to food and housing, article 12<sup>47</sup> on the right to health.

More specifically, the document indicates that States should “give details on any difficulties or shortcomings encountered in the fulfillment of the rights enshrined in article 11 and on the measures taken to remedy these situations”. This, as stated above, could include a reference to climate change as a cause of problems in the implementation of the rights mentioned.

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<sup>46</sup> “1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. 2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need. “

<sup>47</sup> “1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

## 4. Climate change issues in countries coming up for review

### 4.1 Accession to the Kyoto Protocol

Following the example of the Concluding Observation on Ukraine<sup>48</sup>, the Committee could provide similar comments on the accession to Kyoto (and specific legislation following from this accession) for the following upcoming reviews:

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| 1 Brazil (42 <sup>nd</sup> session)                  | 8 Madagascar (43 <sup>rd</sup> session)          |
| 2 Cyprus (42 <sup>nd</sup> session)                  | 9 Congo (43 <sup>rd</sup> session)               |
| 3 UK (42 <sup>nd</sup> session)                      | 10 Gabon (43 <sup>rd</sup> session)              |
| 4 Australia <sup>49</sup> (42 <sup>nd</sup> session) | 11 Algeria (44 <sup>th</sup> session)            |
| 5 Cambodia (42 <sup>nd</sup> session)                | 12 Colombia (44 <sup>th</sup> session)           |
| 6 Republic of Korea (43 <sup>rd</sup> session)       | 13 Mauritius (44 <sup>th</sup> session)          |
| 7 Poland (43 <sup>rd</sup> session)                  | 14 Dominican Republic (45 <sup>th</sup> session) |

It could also point out or request the accession/ratification/signature for the following countries:

- 1 Chad (43<sup>rd</sup> session)<sup>50</sup>
- 2 Kazakhstan (44<sup>th</sup> session)<sup>51</sup>
- 3 Afghanistan (43<sup>rd</sup> session)<sup>52</sup>
- 4 Tanzania (44<sup>th</sup> session)<sup>53</sup>

### 4.2 Specific points of concern

Certain aspects related to climate change are of current concern in the following countries, which will be under review during the upcoming sessions of the Committee.

The results are based on an exemplary internet research of issues of concern in the specific countries, as noted by non-governmental organizations (NGOs), intergovernmental

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<sup>48</sup> Concluding Observations of the CESCR, 4 January 2008, E/C.12/UKR/CO/5, para. 4: “(...)the Committee welcomes the adoption by the State party of legislation on climate protection giving effect to the 1997 Kyoto Protocol to the United Nations Framework Convention on Climate change”.

<sup>49</sup> Could particularly be welcomed, since it was ratified in 2007 and entered into force recently, in March 2008, as pointed out by the Human Rights Law Resource Centre Ltd in its submissions to the Committee on Economic Social and Cultural Rights for the upcoming 42<sup>nd</sup> session.

<sup>50</sup> Chad has not signed the Kyoto Protocol.

<sup>51</sup> Kazakhstan signed the Kyoto Protocol on 12/03/1999 but never ratified it.

<sup>52</sup> Afghanistan has not signed the Kyoto Protocol.

<sup>53</sup> Tanzania has not signed the Kyoto Protocol.

organizations (IGOs) and governments. Climate change generally affects all countries, but the following conclusions can be drawn:

Firstly, climate change will contribute to the increase of climate sensitive diseases.

Secondly, many African and South American countries are subject to the problem of desertification, which causes both water supply and food supply difficulties. Increasing snowmelt and glacial retreat in the Himalayas affect large parts of Asian water supplies.

Thirdly, as to islands and countries with large coastal areas, floods might represent a major threat to livelihoods leading to evictions and forced migration.

Generally speaking, the consequences of climate change will affect the development of a large number of countries due to degradation in agriculture, health, water and food supply. The following enumeration is intended to give a background on climate change implications to the human rights issues the Committee might encounter in its work on the countries concerned. While the climate change implications do not necessarily constitute national or international human rights violations, they might deepen the understanding of occurring violations.

#### 4.2.1 Brazil (42<sup>nd</sup> session):

Being home to one of the greatest ecosystems and forests of the planet, Brazil's land use and forestry contribute most to the country's greenhouse gas emissions.<sup>54</sup> Brazil's energy sector contributes little to it, as a big part of the country's energy comes from renewable sources.<sup>55</sup> The following consequences of climate change are already affecting the country:<sup>56</sup>

Brazil is vulnerable to climate change, not least due to its fragile, biologically diverse ecosystems. The tropical rain forest in the Amazon and the Pantanal wetland are of particular concern. Some studies show that, as temperatures rise, the Amazon rain forest could become dryer, making spontaneous fires more frequent. There is also a concern that coral reefs along Brazilian coastlines could suffer from the effects of climate change. Furthermore, changing rainfall patterns, especially in the drought-affected northeastern region of the country, will mean poorer water resources and a reduced water supply. Floods may increase and coastal areas will be vulnerable to rising sea levels and the salinization of soil. Agriculture is concerned as well: possible effects on certain crops are a great problem. Furthermore, rising temperatures are expected to help organisms that act as vectors for diseases, such as mosquitoes.

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<sup>54</sup> Science and Development Network, Brazil and climate change: a country profile, 14/02/2007, <http://www.scidev.net/en/policy-briefs/brazil-climate-change-a-country-profile.html>; Vitae Civilis <http://www.vitaecivilis.org.br/anexos/doc%206%20vc%20ipam%20forests%20climate.doc>; <http://www.nytimes.com/2007/07/31/world/americas/31amazon.html>

<sup>55</sup> Science and Development Network, Brazil and climate change: a country profile, 14/02/2007, <http://www.scidev.net/en/policy-briefs/brazil-climate-change-a-country-profile.html>; <http://www.renovar.org.br/index.php>, <http://ipsnews.net/print.asp?idnews=42642>.

<sup>56</sup> On the impacts/effects of climate change: <http://www.forumclima.org.br/>. See also: Science and Development Network, Brazil and climate change: a country profile, 14/02/2007, Amazonia.org, The forest dialogue, <http://www.amazonia.org.br/arquivos/287518.pdf>; <http://www.scidev.net/en/policy-briefs/brazil-climate-change-a-country-profile.html>.

#### 4.2.2 Cyprus (42<sup>nd</sup> session)

Being an island, climate change's impact on the rising of sea levels and floods will affect coastal areas, especially in the sectors of tourism, shipping and fisheries.<sup>57</sup> Furthermore climate change could have an impact on the water supply of the country, considering that water sources could be drying out.<sup>58</sup> As stated by Costas Papastayros, head of the island's national climate change unit, "climate change is clearly evidenced in Cyprus, and it is not only about a rise in temperature, but also about extreme weather conditions, and drought is one of them. Desertification is also becoming a serious problem."<sup>59</sup>

#### 4.2.3 Australia (42<sup>nd</sup> session)

An NGO submission to the Committee<sup>60</sup> noted Australia's recent Kyoto accession. The Committee could, apart from welcoming this, notice as well the creation of a Minister for climate change and water. On the other hand, an explanation could be requested for Australia's decision to delay joining the global carbon trade system.

The impacts<sup>61</sup> climate change could have on the country are the rising of the sea level, which would affect coastal areas, and its consequences on biodiversity, including national reserves, species diversity and ecosystems, coral reefs as well as forests. In addition, the Climate Change Risk and Vulnerability report commissioned by the Australian Greenhouse Office in 2005<sup>62</sup> identified the following sectors as most vulnerable: <sup>63</sup> agriculture (including cropping and livestock sectors)<sup>64</sup>, settlements (including infrastructure, local government, planning, human health, transport, energy and emergency services)<sup>65</sup>, fisheries and coastal infrastructures<sup>66</sup>, water (including drought, water quality and water supplies)<sup>67</sup>.

#### 4.2.4 Republic of Korea (43<sup>rd</sup> session)

Climate change could contribute to the increase of climate sensitive diseases and would therefore affect the right to health.<sup>68</sup>

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<sup>57</sup> The EU in Cyprus,

[http://ec.europa.eu/cyprus/news/20090401\\_white\\_paper\\_on\\_climate\\_change\\_en.htm](http://ec.europa.eu/cyprus/news/20090401_white_paper_on_climate_change_en.htm).

<sup>58</sup> <http://uk.reuters.com/article/reutersEdge/idUKNOA93798320071119>.

<sup>59</sup> Weather news archive: <http://hinghamweather.com/weathernews/?p=119>.

<sup>60</sup> Human Rights Law Resource Center Ltd: <http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/HRLRC.pdf>.

<sup>61</sup> <http://www.bom.gov.au/climate/change/>, <http://www.climatechangeinaustralia.gov.au/>;

<http://www.climate.org/resources/climate-impacts/australasia.html>;

<http://www.cru.uea.ac.uk/~mikeh/research/australia.pdf>.

<sup>62</sup> <http://www.climatechange.gov.au/impacts/publications/pubs/risk-vulnerability.pdf>.

<sup>63</sup> <http://www.climatechange.gov.au/impacts/overview.html>; Australian Government report, Climate Change, Risk and vulnerability, <http://www.climatechange.gov.au/impacts/publications/pubs/risk-vulnerability.pdf>; The Allen Consulting group, Responding to Climate Change, <http://www.climatechange.gov.au/impacts/publications/pubs/issues-paper.pdf>.

<sup>64</sup> <http://www.climatechange.gov.au/impacts/agriculture.html>.

<sup>65</sup> <http://www.climatechange.gov.au/impacts/settlements.html>.

<sup>66</sup> <http://www.climatechange.gov.au/impacts/coasts.html>.

<sup>67</sup> <http://www.climatechange.gov.au/impacts/water.html>.

<sup>68</sup> [http://eng.me.go.kr/docs/sub2/policy\\_view.html?idx=76&class=16&topmenu=B&cat=270](http://eng.me.go.kr/docs/sub2/policy_view.html?idx=76&class=16&topmenu=B&cat=270);

<http://www.wpro.who.int/NR/rdonlyres/D10AF055-233A-4D4B-B2C2-688D9656510A/0/KOR2.pdf>;

Furthermore, as stated by the Government,<sup>69</sup> climate change will have an impact on the water resources, since it causes variations in both soil moisture and water resources. The most important factor responsible is regional rainfall. A study based on an analysis of past rainfall, river flow data, Korean peninsula temperature and rainfall change prediction scenarios reported by the Meteorological Research Institute, show that rainfall is expected to increase with climate change. This could cause catastrophic drought and floods. The impact of climate change on agriculture will include changes in agricultural climate zones and for crop growth periods. In a temperate climate zone like Korea, crop productivity and its impact on agricultural ecosystem stability are issues that should be considered, as reported by the Government.

Coastal areas (the Korean coastline consists of about 12,000km), characterized by high population and vigorous economy are very sensitive to environmental impacts, which could represent a major problem, especially for the southern and western coastal areas.<sup>70</sup>

#### 4.2.5 Madagascar (43<sup>rd</sup> session)

Being an island state, Madagascar is vulnerable to climate change mainly because of the rise of sea levels, which could provoke floods on coastal areas. Furthermore, according to the national action on climate change adaptation, the rising of temperatures will cause problems of drought and desertification in the inland, which will affect the water and food supply.<sup>71</sup> Climate change has also an impact on the increase of diseases, for example through the major reproduction of mosquitoes.<sup>72</sup>

The islands natural resource base and rich biodiversity are threatened by bush fires, soil erosion, and declining soil productivity.<sup>73</sup>

#### 4.2.6 Congo (43<sup>rd</sup> session)

Like other African countries, Congo faces severe impacts of climate change, mostly affecting its water and food supply, due to the effects that the phenomenon has on agriculture. Three sectors are of particular vulnerability: water resources, coastal zones and agriculture including forest.<sup>74</sup>

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<http://www.climate.org/resources/climate-impacts/asia.html>;

<http://unfccc.int/resource/docs/natc/kornc1.pdf>.

<sup>69</sup> National Communication of the Republic of Korea, Submission of the ROK under the United Nations Framework Convention on Climate Change.

<sup>70</sup> <http://unfccc.int/resource/docs/natc/kornc1.pdf>.

<sup>71</sup> République de Madagascar, Programme d'action national d'adaptation au changement climatique <http://unfccc.int/resource/docs/napa/mdg01f.pdf>.

<sup>72</sup> <http://www.napa-pana.org/private/modules/knowledgebox/io/file.php?entry=618&field=22%20->;  
<http://www.sidsnet.org/archives/communiqués-des-iles/2003/msg00203.html>;  
<http://acca.madagascar.over-blog.com/>, <http://www.madagascar-environnement.com/>;  
<http://www.climate.org/resources/climate-impacts/africa.html>.

<sup>73</sup> [http://www.usaid.gov/our\\_work/environment/climate/docs/cp/madagascar.pdf](http://www.usaid.gov/our_work/environment/climate/docs/cp/madagascar.pdf).

<sup>74</sup> <http://web.worldbank.org/WBSITE/EXTERNAL/ACCUEILEXTN/PAYSEXTN/AFRICAINFRENCHEXT/CONGODEMOCRATICINFRENCHEXTN/0,,contentMDK:21795360~pagePK:1497618~piPK:217854~theSitePK:466649,00.html>; <http://www.climate.org/resources/climate-impacts/africa.html>;  
<http://unfccc.int/resource/docs/natc/connc1.pdf>.

According to the Fourth Evaluation Report of the Intergovernmental Group of Experts (GIEC 2007), the “forêts du Bassin”, important natural resource base in Congo, is particularly vulnerable to climate change.<sup>75</sup> The basin is a marine and forest ecosystem engulfing Cameroon, the Central African Republic, the Democratic Republic of Congo (DRC), Equatorial Guinea, Gabon and the Republic of Congo, which represents alone 30 per cent of Africa's vegetation coverage and 19 per cent of the world's tropical forests. According to the Central African Forest Commission, around 50 million Congolese people live in the basin. The tropical forest is a source of energy and food for its inhabitants, 65 per cent of which owe their survival to its products.<sup>76</sup>

Desertification being a matter of concern, the United Nations Environment Programme states that there is a large area in the country (64 per cent), which is classified as hyper-arid, and sands of the Kalahari desert have encroached on the savanna vegetation.<sup>77</sup>

#### 4.2.7 Chad (43<sup>rd</sup> session)

In Chad the main areas of concern due to climate change are the water supply, the desertification and especially the shrinking of Lake Chad as a direct consequence of the phenomenon, which is going to affect a whole range of other human rights.<sup>78</sup> In addition, according to the United Nations Environment Programme (UNEP), the Lake Chad basin has also suffered severe vegetation loss, and potential for soil loss and desertification is high.<sup>79</sup> Furthermore, as stated by the same source, “the rate of forest in Central Africa is a cause for concern in terms of its impacts on biodiversity, atmospheric change and hydrological cycles, in addition to the concerns regarding soil erosion”. Declining productivity and soil structure in the Sahelian zones of Chad are exacerbated by unpredictable rainfall and drought, resulting in extreme degradation and desertification. The country is “currently experiencing the greatest vulnerability to desertification, with 58 per cent of the area already classified as desert, and 30 per cent classified as highly or extremely vulnerable”.<sup>80</sup>

The consequences are pointed out by UNEP as follows, which clearly shows a relation between climate change impacts and other human rights affected: “In the coming decades, the threat of desertification will increase, as a result of climatic changes, such as: increased evaporation; reduced rainfall and run-off; and increased frequency and severity of drought. In addition, civil unrest or conflict can result in vast movements of refugees, many of whom are settled in marginal or fragile areas.”<sup>81</sup>

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<sup>75</sup> Centre pour la Recherche Forestière Internationale (CIFOR)

[http://www.cifor.cgiar.org/cofcca/home/docs/FlyerCoFCCA\\_Fr.pdf](http://www.cifor.cgiar.org/cofcca/home/docs/FlyerCoFCCA_Fr.pdf)

<sup>76</sup> <http://www.sciencein africa.co.za/2006/march/desertification.htm>.

<sup>77</sup> <http://www.unep.org/dewa/Africa/publications/AEO-1/195.htm>.

<sup>78</sup> <http://www.climate.org/resources/climate-impacts/africa.html>;  
<http://unfccc.int/resource/docs/natc/chanc1.pdf>, <http://www.grida.no/publications/vg/africa-fr/page/3149.aspx>; <http://www.globalpolicy.org/security/natres/water/2006/1214lakechad.htm>.

<sup>79</sup> <http://www.unep.org/dewa/Africa/publications/AEO-1/195.htm>.

<sup>80</sup> UNEP, <http://www.unep.org/dewa/Africa/publications/AEO-1/195.htm>.

<sup>81</sup> <http://www.unep.org/dewa/Africa/publications/AEO-1/195.htm>.

#### 4.2.8 Algeria (44<sup>th</sup> session)

Similarly as for other African countries, climate change is going to affect Algeria's water and food supply, as well as contribute to desertification.<sup>82</sup> As stated above, the phenomenon of desertification aggravates poverty and contributes to social disorders<sup>83</sup>.

#### 4.2.9 Colombia (44<sup>th</sup> session)

In Colombia one of the possible consequences of climate change will be the impact on the water supply of the country.<sup>84</sup> "Like glaciers throughout the world, tropical glaciers in the northern Andes have retreated during the last century," says a study, based on Landsat and Aster images acquired between 1984 and 2004, which map the glaciated regions of the Sierra Nevada de Santa Marta, the Sierra Nevada del Cocuy, and the Ruiz-Tolima Massif, showing the retreat of Andean glaciers in Colombia.<sup>85</sup> The UN Intergovernmental Panel on Climate Change also expressed grave concerns that Colombia will lose all of its six glaciers within the next decade.<sup>86</sup> In addition, as for other countries, climate change will cause the rise of sea level which again will have an impact on coastal areas by provoking floods<sup>87</sup> and, i.a., destroying infrastructures.<sup>88</sup>

#### 4.2.10 Mauritius (44<sup>th</sup> session)

The rising of the sea level will represent a major concern for the country, as well as the increase of natural calamities.<sup>89</sup> According to the Government, key socio-economic sectors which are most likely to be affected by climate change and sea level rise are the following: coastal resources, agriculture, water resources, fisheries, health and well-being, land use change and forestry, biodiversity<sup>90</sup>. The coastline of Mauritius is undergoing severe morphological changes as a result of natural causes such tropical cyclones and tidal waves,

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<sup>82</sup> <http://www.climate.org/resources/climate-impacts/africa.html>;  
<http://unfccc.int/resource/docs/natc/algnc1.pdf>, <http://www.algerie-monde.com/actualite/article4435.html>.

<sup>83</sup> <http://www.algerie-monde.com/actualite/article1997.html>,  
<http://www.unep.org/dewa/Africa/publications/AEO-1/195.htm>.

<sup>84</sup> <http://www.climate.org/resources/climate-impacts/latinamerica.html>;  
<http://unfccc.int/resource/docs/natc/colnc1.pdf>;  
<http://www.tierramerica.net/2005/0226/noticias3.shtml>; <http://www.casamerica.es/es/opinion-y-analisis-de-prensa/zona-andina/colombia-y-cambio-climatico>.

<sup>85</sup> Retreat of Tropical Glaciers in Colombia and Venezuela from 1984 to 2004 as Measured from ASTER and Landsat Images, Morris, Poole and Klein,  
[http://www.easternsnow.org/proceedings/2006/morris\\_et\\_al.pdf](http://www.easternsnow.org/proceedings/2006/morris_et_al.pdf), <http://www.oei.es/decada/ar4-wg2sp.pdf>.

<sup>86</sup> <http://www.ipcc.ch/>; <http://www.ipcc.ch/pdf/technical-papers/climate-change-water-en.pdf>.

<sup>87</sup> Cambio Climático 2007 Impacto, Adaptación y Vulnerabilidad, Informe del Grupo de Trabajo II del Grupo Intergubernamental de Expertos sobre Cambio Climático, <http://www.oei.es/decada/ar4-wg2sp.pdf>.

<sup>88</sup> <http://colombiareports.com/colombia-news/news/3705-scientist-concerned-for-effects-of-climate-change-on-colombia.html>.

<sup>89</sup> <http://unfccc.int/resource/docs/natc/maunc1/index.html>;  
<http://www.climate.org/resources/climate-impacts/smallislands.html>.

<sup>90</sup> Republic of Mauritius. 1999. Initial National Communication of the Republic of Mauritius under the United Nations Framework Convention on Climate Change,  
<http://unfccc.int/resource/docs/natc/maunc1/chap3/chapter3.htm#INTRODUCTION>.

among others. Land loss and coastal erosion are consequences of climate change and sectors such as fisheries, tourism and agriculture are susceptible to climate change.<sup>91</sup>

#### 4.2.11 Kazakhstan (44<sup>th</sup> session)

Climate change will affect the general development of the country, considering particularly its impact on the agriculture.<sup>92</sup> As stated by the Government, “the most part of the territory of Kazakhstan is deserts and semi-deserts that are rather vulnerable to climate change. Redistribution of precipitation and both the increase of frequency and intensity of droughts against the background of the air temperature increase will result in especially adverse consequences in agriculture, forestry, and water resources of the country. Possible influence of climate change on human health can be negative because of strengthening heat stress, especially in southern areas, and distribution of many kinds of diseases as well.”<sup>93</sup>

#### 4.2.12. Dominican Republic (45<sup>th</sup> session)<sup>94</sup>

One first issue regarding the Dominican Republic and, more generally speaking, all insular States and coastal areas, is the rise in the CO<sub>2</sub> concentration, that will tend to acidify the oceans, “creating a problem for all tropical regions because it will become more difficult for ocean organisms to generate shells and coral”<sup>95</sup>. Furthermore, climate change will affect the extent and spread of vector-borne and infectious diseases, and the vitality of natural resources of the Dominican Republic, such as migrating birds and whales. In addition, global climate change will affect the large-scale circulations of the atmosphere and oceans, the characteristics of hurricanes and will contribute to the rise of sea level, which will affect insular states such as the Dominican Republic.<sup>96</sup>

### 4.3 General remark on the inclusion of climate change issues

In relation to the countries which will be reviewed during the upcoming session of the Committee, references to climate change could be made in all of the Concluding Observations on the countries listed above: as stated previously, climate change affects various human rights, such as the right to health, the right to adequate housing, the right to food and the right to water. This is shown by the main areas of concerns pointed out above for each country: the rising of temperatures will have an impact on the sea level, on water and food supplies, on forests and coastal areas and following from this on the enjoyment of related rights. The list of issues communicated to the States party could voice such concerns, either under the specific rights or under the headings of non-discrimination (where the impact of measures fighting climate change is concerned) and the section asking for the framework in which the Covenant is implemented.

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<sup>91</sup> <http://unfccc.int/resource/docs/natc/maunc1/chap3/chapter3.htm#INTRODUCTION>.

<sup>92</sup> <http://www.climate.org/resources/climate-impacts/asia.html>;  
<http://unfccc.int/resource/docs/natc/kaznc1.pdf>; <http://www.climate.org/resources/climate-impacts/abstracts/asia.html#pilfosova>.

<sup>93</sup> Initial National Communication of the Republic of Kazakhstan under the United Nations Framework Convention on Climate Change, <http://unfccc.int/resource/docs/natc/kaznc1.pdf>.

<sup>94</sup> <http://www.climate.org/topics/climate-change/climate-change-dominican-republic.html>;  
<http://pnud.onu.org.do/proyectos/energiaymedioambiente/47173>.

<sup>95</sup> <http://www.climate.org/topics/climate-change/climate-change-dominican-republic.html>.

<sup>96</sup> <http://www.climate.org/topics/climate-change/climate-change-dominican-republic.html>.

### III Conclusion

The present study has shown that the Committee has already given examples that could be followed, while it so far did not address the issue of climate change and its implications for ESC rights systematically in its Concluding Observations. It also has revealed possible links or entry points in various General Comments, which either relate to environmental questions or could easily be read in their “spirit” to include incidents triggered by climate change.

Given the growing evidence of negative implications of climate change on a large number of human rights and especially on the vulnerable parts of society, the Committee may want to continuously deepen its understanding of the implications of climate change for its work on the one side and to guide states parties to identify the problems involved and search for remedies for the human rights violations on the other side.

General Comment no. 15 contains several references to environment as well as to climate change. Being the most recent of the General Comments reviewed, it also shows the development in the interpretation of the Covenant. Stemming from this interpretation, the General Comments on health, housing and food are equally open to address concerns created or aggravated by climate change.

To receive more targeted information on those issues, the Committee might consider, in line with the Reporting Guidelines (which ask the State party to indicate obstacles arising from factors beyond the State party’s control which impede the full realization of the Covenant rights) to invite submissions on climate change in form of parallel reports, e.g. from NGOs, National Human Rights Institutions and Inter-Governmental Organizations (World Bank, UNFCCC, secretariats of the Biodiversity and Desertification Conventions).

An important feature of climate change is the foreseeable nature of its impacts. Against this background, the Committee could use the lists of issues strategically, including questions relating to climate change: e.g. how mitigation and adaptation strategies do include human rights concerns / what protection and prevention measures are taken. Concluding Observations identifying problems aggravated by climate change could encourage states to attract finance for realization of ESCR through specific mechanisms of the climate regime, like the Clean Development Mechanism, and ask that those measures implemented are designed sensible to human rights concerns.

Summing-up, there are two concrete main aspects in which the Committee could address the issue of climate change. Firstly it could, as shown in the Concluding Observation on Ukraine, notice the accession (or not accession) of countries to the Kyoto Protocol and their engagement and activities relating to the Copenhagen process. In this case, the Australian accession in 2008 could particularly be welcomed, as noted also by Human Rights Law Resource Center Ltd in its submission to the Committee.

Secondly, the Committee could bring up the issue of climate change in relation to various human rights, noting how it is going to affect them, based on evidence documented by NGOs and relating to relevant paragraphs of its own General Comments. This approach could, for example, include welcoming measures taken to reduce emissions in relation to climate change via international cooperation and national measures (as this diminishes the

negative impact on the enjoyment of the human rights concerned), as well as commenting on the compatibility of adaptation measures with the provisions of the ICESCR. The latter might even offer more possibilities for engagement, as concrete measures with assignable impacts are concerned and a direct relation can be established.

Finally, possibilities for ground-breaking legislation might arise from the recently adopted Optional Protocol on the ICESCR. Yet, cases on climate change only start to appear in national and regional courts and litigators will still have to explore the options offered by this new mechanism once it enters into force.