



Global Humanitarian Forum 2009
Parallel Workshop: Climate Change and Human Rights
23 June 2009

Organizers: Centre for International Environmental Law (CIEL)
Friedrich-Ebert-Stiftung (FES)
International Council for Human Right Policy (ICHRP)

Overall Chair: Mary Robinson, President, Realizing Rights: The Ethical Globalization Initiative, Former President of Ireland (1990-1997), Former UN High Commissioner for Human Rights (1997-2002).

First Session

Chair: Türkan Karakurt, Co-Director, Friedrich Ebert Stiftung, Geneva

Panel: **Kyung-wha Kang**, Deputy UN High Commissioner for Human Rights
Olivier De Schutter, UN Special Rapporteur on the Right to Food (Louvain)
Maria Julia Olivia, International Lawyer Specializing on Trade and Environment

Second Session

Chair: **Mary Robinson**

Panel: **Stephen Humphreys**, Research Director, The International Council on Human Rights (ICHRP)
Richard Hermer QC, Barrister, Doughty Street Chambers
Yves Lador, Permanent Representative to the UN, Earthjustice
MJ Mace, Independent Advisor
Miloon Kothari, UN Special Rapporteur on adequate housing (2000-2008);
Coordinator, South Asia Regional Programme, Habitat International Coalition's
Housing and Land Rights Network

Key points and conclusions from the two sessions:

The first session aimed to introduce the issue going from the more general to the specific.

To:

- describe the added value and contribution of human rights to the climate change discussion
- advocate for a focus on the most vulnerable

Panellists pointed to several key areas:

- the climate change and human rights linkage has moved from the periphery to the mainstream. Examples include the unanimous HRC resolution, the OHCHR study, the recent Interactive dialogue at the HRC.
- Human rights adds value through:
 - o highlighting the climate justice question: the most vulnerable paying the price for the activities of the most privileged
 - o enabling a focus on individuals and communities and disaggregates the discussion that has focused purely on state to state obligations.
 - o adding substance to the commitments to equity in the climate regime
 - o enabling the climate regime to be more effective in emissions reductions and in addressing adaptation
 - through using human rights as safeguards against harmful mitigation and adaptation actions
 - to focus implementation on the most vulnerable, and the most affected: women and children; indigenous peoples, all those who depend on land as source of income and livelihoods
 - using human rights as indicators and assessment tools in such areas as technology needs assessments and national adaptation plans of action and strategies.

However some concerns and questions were raised:

- How do we integrate human rights into the climate change regime? Language in the new revised text includes some language, but is it more than hortatory.
- negotiators and other in the climate regime are nervous about including human rights. How do we communicate with them: who should do this, at what point and in what manner.
- in the same vein, how do we bring human rights and environmental groups to work more closely together in both fora.

- How do we address the problem of “climate injustice”—the fact that actions in one state cause harms in another state. This requires *increased*, rather than reduced accountability.
- climate change poses significant challenges to human rights that may require adapting human rights jurisprudence – we need to address the traditional post hoc approach of the HR mechanisms which only act when damage is inevitable. What principles from environmental law may be usefully imported into the Human rights arena to assist us in addressing potential climate change harms to human rights?

Moving forward, some suggestions were made:

- we should take advantage of the language in the new revised text to further elaborate and specify the particular ways and entry points in which Human Rights standards can be incorporated into the design and implementation of a new climate regime.
- human rights mechanisms should use their resources to more effectively address climate change. However, a lack of capacity on climate change will have to be addressed through greater interaction with relevant civil society groups
- we should develop and use accountability mechanisms outside of court and litigation systems. the human rights system may be particularly well suited to do this building on existing treaty bodies and special procedures.
- The Climate regime should establish a focal point, such as a new expert body (or sub-body) on human rights and climate change.

The second session focused on the potential legal recourse available through human rights approaches to:

- ensure action to address climate change
- address the negative impacts of climate change

Panellists addressed four distinct areas of potential recourse:

- litigation against private actors, such as oil companies
- individual petition, in regional human rights arena, such as the Inter-American Commission on Human Rights
- interstate litigation, in fora such as the ICJ
- making use of human rights treaty and charter bodies, such as the committee on economic social and cultural rights.

Key questions addressed were:

- what are the best or most available fora?
- who are the most likely targets, governments or private actors, if the former, rich-country or poor-country governments?
- what rights are at issue and to what extent are these human rights?

Some initial hurdles and obstacles were pointed out in almost all the areas:

- At present it is very difficult to demonstrate *causation* in the climate change arena, linking a specific harm to specific actions by a defendant
- *Fault* can difficult to establish as well. It requires showing that the defendant has done something contrary to law or regulations. In the context of climate change, it is not always clear what if any laws have been breached.
- Jurisdiction can be difficult to establish.

However none of these difficulties was seen as insurmountable in the context of climate change and potential legal recourses to address climate change harms, particularly where it can be shown that governments have failed to regulate, or failed in their duty of care, or that private companies have deliberately misled the public, as in the tobacco cases in the past.

Some general advantages on the role of litigation were also noted:

- The threat of HR litigation may force people to take an issue seriously
- It puts an issue in the public domain and highlights a failure of justice, even if a specific case is not ultimately successful
- It can provide a means of redress to victims and holds offenders to account and raises standards.
- It can turn victims into actors and activists on their own behalf and add to constituencies for addressing climate change.

In specific areas discussed:

- Some scepticism was expressed that inter-state litigation was likely, workable or desirable, nevertheless, the awareness raising value of such a case was acknowledged if the jurisdictional issues could be solved.
- Litigation against private actors was not likely to be seen on a significant scale in the near future.

- Given the cross-border nature of climate change, cross-border actions against states by individuals and communities remains problematic. This is a gap that both the environmental and human rights groups need to think about addressing.

Some future areas of potential were however pointed out:

- the failure to regulate, as a way of holding states accountable may provide a strong basis for future cases, especially in regional fora.
- Actions against government by individuals and communities were generally seen to be the most fruitful avenue, especially building on the success of the Inuit petition to the inter-American Court of Human Rights.
- The Human rights treaty bodies and other mechanisms under the Human Rights Council were seen to have great potential for addressing climate change harms. this includes
 - o increasing involvement of special mandate holders
 - o the Committee on economic, social and cultural rights and the human right committee raising relevant questions, as well as addressing the issue in their concluding observations..
 - o the use of the optional protocol to both the ICCPR and ICESCR to address individual complaints.
 - o raising questions on climate change actions by states during the Universal Periodic Review
 - o establishing a Special Rapporteur on Human Rights and Climate Change. The example and influence of John Ruggie, may be useful, especially in harnessing resources and expertise to address such an important issue and in pushing forward such concepts as extraterritorial obligations of states and the responsibilities of the private sector.

There were several suggestions for how to move forward:

- there is a task of education to be done with decision-makers in all legal fora on the human rights and climate change linkage
- litigators and other victims representatives need a coordinated strategy to further share information and develop tools to overcome hurdles and obstacles to human rights litigation in the climate change arena.
- increase coordination between human rights and environmental groups to share lessons in addressing environmental harms
- the OHCHR and treaty bodies should formalise, institutionalize and carry out discussions and meetings with other environmental accountability mechanisms and publicise this work.

Finally, the limits of legal recourse were emphasised. This can only be one approach among a whole host of approaches necessary to address the challenge of climate change and the fragmentation of international law. Human rights can play an essential role in achieving climate mitigation and adaptation goals. The moral and ethical power that human rights brings to the table is powerful and should be used in the service of pushing for a high level of ambition in reducing emissions and addressing climate change.

Human rights poses a challenge to the climate regime but equally, climate change poses a challenge to the human rights regime. The human rights regime must come of age and extend itself to address the unprecedented scope and nature of the effects of climate change. There has never been a stronger need for dialogue between human rights actors and climate change actors. We are going to have to move on different fronts, create more coherence and engage in evolutionary, strategic thinking to maximize the potential for establishing accountability.