



**Nederlands Juristen Comité voor de Mensenrechten**  
**Dutch section of the International Commission of Jurists**

**2008 OHCHR study  
Climate Change and Human Rights**

**Stakeholder input by NJCM, Dutch Section of the International  
Commission of Jurists  
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## 1. INTRODUCTION

In its resolution 7/23, the Human Rights Council requested 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 rights, to be submitted to the Council prior to its tenth session.

In order to seek the views of States, UN agencies and other relevant stakeholders, OHCHR has sent out letters to various stakeholders asking for input.

In this position paper the Dutch Section of the International Commission of Jurists (NJCM)<sup>1</sup> responds to the request of the OHCHR. It is structured as follows. Firstly the environmental challenges linked to Climate Change and other relevant contemporary and past environmental concerns are briefly summarized (sections 2 and 3). Secondly the link between these concerns and human rights is discussed (sections 4, 5, 6, 7 and 8). Lastly, the NJCM recommendations to the Human Rights Council are put forward (section 9).

## 2. CLIMATE CHANGE AND ENVIRONMENTAL ISSUES

Although certainly not the only pressing environmental issue of today, climate change has been at the top of the (political) agenda over the last few years. It had been long debated whether it existed and whether rising temperatures globally were due to natural occurrences or were triggered by human activity. Human caused climate change today is accepted as such in science and thus is a reality.

### **Specific Climate Change issues and impacts**

For more than a century, people have relied on fossil fuels such as oil, coal and gas for their energy needs. Burning these fossil fuels releases the global warming gas carbon dioxide into the atmosphere. Other, even more potent, greenhouse gasses are also playing a role, as is massive deforestation.

Today, our world is warmer than it has been in two thousand years. By the end of the century, if current trends continue, the global temperature will likely climb higher than at any time in the past two million years. There is a broad scientific consensus that humanity is in large part responsible for this change, and that choices we make today will decide the climate of the future.

Climate change is already having an impact on the number of environmental refugees. According to a 2006 Tearfund report<sup>2</sup>, there were an estimated 25 million environmental refugees resulting from changing rain patterns, floods, storms and rising tides in 2006. This figure, according to the report, is likely to rise significantly and thus may be much higher today.

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<sup>1</sup> This report has been drafted on behalf of the NJCM Working Committee Sustainable Development and Human Rights by Mr. J.I. van de Venis, LL.M. and Ms. Sangini Ramnewash-Oemrawsingh, PhD Candidate at the University of Amsterdam.

<sup>2</sup> Tearfund report Feeling The Heat, page 6. Report can be found online: <http://www.tearfund.org/webdocs/Website/News/Feeling%20the%20Heat%20Tearfund%20report.pdf>.

Developing nations that lack the infrastructure or resources to respond to the impacts of climate change will particularly be affected. It is clear that many of the world's poorest people are likely to suffer the most from climate change. Long-term global efforts to create a more healthy, prosperous and sustainable world may be severely hindered by changes in the climate.

Climate change is initially projected to bring mixed effects, including some benefits such as reduced demand for heating, increased crop yields and increased forest growth. However, as climate change continues, its negative impacts (including more frequent winter floods, endangered ecosystems and increasing ground instability) are likely to outweigh its benefits. For instance, in reference to the consequences of climate change for the Netherlands, it should be mentioned that increasing rainfall and floods are estimated to be a serious problem.

### **Climate Change Impacts per topic as per the IPCC (Intergovernmental Panel on Climate Change) reports:<sup>3</sup>**

- *Changing sea levels and temperatures* Globally, the sea level could rise by 18 to 59 cm by the end of the century. Rising sea levels would swamp some small, low-lying island states and put millions of people in all low-lying areas at risk of flooding.
- *Extreme weather* Globally, climate change means that extreme weather events, such as floods, droughts and tropical storms, will become more frequent and more dangerous.
- *Plants and animals* If global temperatures rise by two degrees Celsius, 30 per cent of all land-living species will be threatened by an increased risk of extinction.
- *Marine Life* Experts<sup>4</sup> warn the world's oceans are turning acidic due to the buildup of carbon dioxide (CO<sub>2</sub>) in the atmosphere. Scientists say the effects on marine life will be catastrophic. In the next 50 to 100 years corrosive seawater will dissolve the shells of tiny marine snails and reduce coral reefs to rubble. As oceans absorb CO<sub>2</sub> from the air, the gas reacts with water to produce carbonic acid. The acid in turn consumes the carbonate that sea creatures need to build their shells. It's a problem that no living corals have encountered in their past evolutionary history.  
The scientists stressed that increased ocean acidity is one of the gravest dangers posed by the build-up of atmospheric CO<sub>2</sub>. Shell-building by marine organisms will slow down or stop. Reef-building will decrease or reverse. This will have great impact on marine life and ecosystems, threatening coastal fisheries already under pressure, and weakening the natural barriers. This will entail depletion of food sources and depletion of the protection coral reefs offer to people living on islands and in coastal areas against tropical storms. And this whilst sea levels are still rising.

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<sup>3</sup> Unless specifically mentioned differently in a footnote, all data, facts and figures presented under this paragraph are from the IPCC, 2007: Summary for Policymakers Documents: Impacts, Adaptation and Vulnerability; The Physical Science Basis; and Mitigation as drafted by or on behalf of The Intergovernmental Panel on Climate Change, Climate Change 2007.

<sup>4</sup> Four leading marine experts delivered this grim prognosis at the February 2007 annual meeting of the American Association for the Advancement of Science in San Francisco, California. This news was published on many websites, including at <http://news.nationalgeographic.com/news/2007/02/070217-acid-oceans.html>.

- *Food and water* As temperatures increase and rainfall patterns change, crop yields are expected to drop significantly in Africa, the Middle East and India. Water availability for irrigation and drinking will be less predictable because there will be more variable rainfall. Salt-water intrusion from rising sea levels will reduce the quality and quantity of fresh water supplies. Droughts are likely to be more frequent. Up to three billion more people could suffer increased water shortages by 2080.
- *Disease* With rising temperatures, diseases such as malaria, West Nile disease, dengue fever and river blindness will shift to different areas. It is predicted that 290 million additional people could be exposed to malaria by the 2080s.
- *Rainforests* Large areas of Brazilian and central African rainforest will be lost if climate change results in significant reductions in rainfall in these areas – and this would be on top of the forest already being cut down or burned to clear land for agriculture.
- *Vulnerable areas* Damage areas - such as overgrazed rangeland, deforested mountainsides, and denuded agricultural soils - will be more vulnerable than previously to changes in climate. In any case, when climate shifts occurred thousands and tens of thousands of years ago, they generally took place more gradually. Natural systems had both more space and more time to adapt.
- *Developing countries* The effects of climate change are expected to be greatest in developing countries in terms of loss of life and relative effects on investment and economy. Livelihoods built for generations on particular patterns of farming may quickly become impossible. Similarly, the world's vast human population, much of it poor, is vulnerable to climate stress. Millions live in dangerous places - on floodplains or in shantytowns on exposed hillsides around the enormous cities of the developing world. Often there is nowhere for them to go. In the distant past, man and his ancestors migrated in response to changes in habitat. There will be much less room for migration this time around.
- *Regional - Africa* If not addressed, climate change is likely to place an additional 80-120 million people at risk of hunger; 70 to 80 per cent of these will be in Africa. In Africa it is predicted that by 2050 land areas may warm by as much as 1.6°C over the Sahara and semi-arid regions of southern Africa. This could mean people having to move from their home due to prolonged drought. In southern Africa and parts of the Horn, rainfall will fall by about 10 per cent. Sea level will rise by around 25cm, threatening low-lying areas of West Africa and coastal fisheries. Climate variability and the frequency and intensity of severe weather events will increase.
- *Regional - Latin America and the Caribbean* Hurricanes and tropical storms will increase in intensity. Sea level rise is likely to hit coastal areas, leading to loss of coastal land, infrastructure, and biodiversity, as well as the intrusion of soil-contaminating saltwater. Sixty of Latin America's seventy seven largest cities are located on the coast. Warming in high mountain regions is melting glaciers, snow and ice, affecting farming and the availability of water to coastal cities and tourist activities. It is estimated that by 2025 about 70 per cent of the population in South America and Mexico will live in regions with low water supply.

- Regional – Asia The timing and intensity of rainfall will become more erratic and interseasonal. A 1°C increase in sea surface temperatures in the Bay of Bengal could increase tropical cyclone intensity by 10%.  
 It is estimated that 120 million to 1.2 billion will experience increased water stress by the 2020s, and by the 2050s the number will range from 185 to 981 million. Accelerated glacier melt is likely to cause increase in the number and severity of glacial melt-related floods, slope destabilisation and a decrease in river flows as glaciers recede. Other extreme events such as heat waves are also likely to increase as the climate becomes unstable through climate change. The consequences of these changes in climate are greater risks to food and water security, and greater health risks, which will affect the poor and vulnerable the most.
- Regional-Europe Nearly all European regions are anticipated to be negatively affected by some future impacts of climate change, and these will pose challenges to many economic sectors. Climate change is expected to magnify regional differences in Europe’s natural resources and assets. Negative impacts will include increased risk of inland flash floods, and more frequent coastal flooding and increased erosion (due to storminess and sea-level rise). The great majority of organisms and ecosystems will have difficulty adapting to climate change.

### 3. ENVIRONMENTAL ISSUES LINKED TO CLIMATE CHANGE

Mankind is living far beyond its means. The human population is now so large and putting so much pressure on planet earth that the amount of resources needed to sustain it exceeds what is available. Humanity's footprint is 21.9 hectares per person while the Earth's biological capacity is, on average, only 15.7 ha/person.

According to UNEP<sup>5</sup>, the declining environmental quality of planet Earth and the apparent increase in strength and frequency of natural hazards such as cyclones, floods and droughts are intensifying peoples' vulnerability to food insecurity, ill health and unsustainable livelihoods.

The impacts of climate change are obviously more extreme because of the general stress on natural resources and the environment of planet earth. Some of these general environmental issues, with clear human rights links, are relevant or linked to climate change issues and should therefore be mentioned in this report.

Human activities cause serious environmental problems all over the globe and, in turn, often result in grave harm to human beings. Some examples that could be mentioned here are:

- **Air:** According to the World Health Organisation<sup>6</sup> 2.4 million people die each year globally from causes directly attributable to air pollution. This boils down to 4,000 deaths per year in The Netherlands alone caused by outdoor air pollution. Mainly due to particulate matter or fine particles produced by traffic and industry. To put this number into perspective: annual

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<sup>5</sup> When referring to UNEP, this report refers to the data and conclusions as set out in UNEP Global Environmental Outlook 4 (GEO 4) Summary Report and the UNEP Global Environmental Outlook 3 (GEO 3) Conclusions Report.

<sup>6</sup> World Health Organisation, Estimated deaths & DALYs attributable to selected environmental risk factors, country profile 2007.

traffic casualties add up to 800 deaths annually in this country. Five times less. Stopping or restricting fossil fuel emissions thus would not just mean restricting CO<sub>2</sub> / Climate Change emissions, but would also stop or restrict the discharge of other lethal particles and stop killing hundreds of thousands of people per year across the globe.

- **Water:** According to UNEP reports, overexploitation of many of the surface water resources and great aquifers upon which irrigated agriculture (takes about 70 per cent of available water) and domestic supplies depend has resulted in more and more countries facing water stress or scarcity. Water quality is declining too, polluted by microbial pathogens and excessive nutrients. Globally, contaminated water remains the greatest single cause of human disease and death. About 1.2 billion people still lack access to clean drinking water, 80 % of which are the rural poor.
- **Development impacts:** According to UNEP over 70 per cent of the Earth's land surface could be affected by the impacts of roads, mining, cities and other infrastructure developments in the next 30 years unless urgent action is taken.
- **Marine:** Overfishing and other marine life being overexploited, marine ecosystems being destroyed to the extent that it outweighs nature's ability to maintain it.
- **Forests:** Deforestation and ancient forests being in crisis due to human destruction such as pollution and hunting (bush-meat). Many of the animals and (medicinal) plants that live in these forests face extinction. And many of the people and cultures who depend on these forests for their way of life are also under threat.
- **Toxics:** Toxic chemicals in our environment threaten our rivers and lakes, our air, land, and oceans and all live on and in it. Ultimately ourselves and our future. Environmental exposure causes almost a quarter of all diseases.
- **Reducing pollution** in developed countries has been at the expense of the developing world, where industrial production and its impacts are now being exported.
- **The Earth's biological diversity** is under increasing threat. The extinction rate of species is accelerating. Habitat destruction and/or modification are the main cause of biodiversity loss but invasive species are the second most important pressure.

#### 4. HUMAN RIGHTS AND THE ENVIRONMENT

##### Developments in international Law

Human rights became a focus of international law long before a rights-based approach to environmental concerns and sustainable development became part of the picture. The United Nations Charter of 1945 marked the beginning of modern international human rights law, whereas the Stockholm Declaration<sup>7</sup> of 1972 is generally seen as the starting point of the modern international framework for the linkage of environmental protection and human rights, like many will say the 1992 Rio Declaration<sup>8</sup> constitutes the basis for the concept of sustainable development.

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<sup>7</sup> Stockholm Declaration of the United Nations Conference on the Human Environment, 16 June 1972, U.N.Doc.A/.CONF.48/14/Rev.1 at 3 (1973).

<sup>8</sup> Rio Declaration on Environment and Development, Conference of Rio de Janeiro on Environment and Development, 1992.

It has always been clear that human rights law and environmental law have an important element in common: they are both seen as a challenge to, or limitation on, the traditional understanding of state sovereignty as independence and autonomy. Despite their separate initial stages, it has become more and more acknowledged over the years that human rights and the environment are inherently interlinked. To give a clear example; the right to life, personal integrity, family life, health and development of each human being depends on protecting the environment as the resource base for all life.

Over the years, the international community has started addressing the links between human rights and environmental rights, this process leading to the 1992 Rio Declaration that acknowledged the right to a healthy and productive life in harmony with nature and the right of access to environmental information and of public participation in environmental decision-making.

The process of linking seemed decelerated on the official international level recently when the 2002 World Summit on Sustainable Development in Johannesburg only acknowledged the consideration being given to the possible relationship between environment and human rights. However, recent case law based on international conventions such as the American Convention on Human Rights and African Charter on Human and People's Rights and other local, regional and international developments and initiatives – including the Millennium goals and the Earth Charter – have reaffirmed that environmental and human rights are closely linked and that the right to a healthy environment is a fundamental part of the right to life and to personal integrity.

Although this position has not yet been accepted commonly at the international level, over the last decennia it is considered more and more and to a greater extent that individuals should have a “Human Right to a Healthy and Clean Environment”.<sup>9</sup>

Professor Dinah Shelton has recognised three steps / three approaches in linking human rights and environmental issues.<sup>10</sup>

1. Since the 1970s, environmental protection has been (progressively) recognised as a pre-condition to the enjoyment of internationally guaranteed human rights, especially the rights to life and health.
2. Building on that - and most common in international agreements since 1992 - the broader view became that certain human rights are essential elements to achieving environmental protection (instead of just viewing environmental protection as an essential element of human rights). This approach is well-illustrated by the 1992 Rio Declaration on Environment and Development.
3. The most recent approach views the links between human rights and the environment as indivisible and inseparable and posits the right to a clean and healthy environment as an independent substantive human right. Examples of this are found mainly in regional human rights systems, UN Declarations, environmental treaties and constitutions or national law.

## **A Human Right to Environment**

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<sup>9</sup> For more information and extensive research on this topic, please go to [www.RightToEnvironment.org](http://www.RightToEnvironment.org).

<sup>10</sup> For a more extensive outline of these approaches, see the working paper by Professor Dinah Shelton: Health and Human Rights Working Paper Series No 1, Human Rights, Health & Environmental Protection: Linkages in Law & Practise, A Background Paper for the World Health Organisation, Prof. Dinah Shelton, London, 2002.

Looking back in time, one can clearly distinguish a change in approach from merely linking human rights to environmental disruptions or violations, towards a healthy and clean environment as a separate human right. Professor Dinah Shelton also reaches this conclusion in her Working Paper prepared for the World Health Organisation.<sup>11</sup>

Examples of a codification of such a human right to environment are the regional American<sup>12</sup> and African<sup>13</sup> human rights treaties and the 2007 UNGA Declaration on the Rights of Indigenous Peoples.<sup>14</sup>

### **The European Convention on Human Rights (and the European Court of Human Rights) and Environmental Issues**

Many would assume that this convention would contain a provision relating to the environment. However, this is not the case. The European Convention on Human Rights has no explicit provision on the right to a healthy and clean environment. The reason for that is that environmental concerns were not put that high on the agenda when the European Convention - drafted in the aftermath of World War II and the holocaust - was adopted back in 1950. And although the Parliamentary Assembly has tried to have such a right acknowledged and codified through an additional protocol to the convention twice, no such right has yet been codified.

In Parliamentary Assembly Recommendation 1614 (2003), which bears the title “Environment and human rights”, the Assembly drew special attention to its recommendation 1431 (1999), which already proposed linking this subject to the European Convention on Human Rights by supplementing it with an environmental component. The Assembly referred to case law of the European Court and recommended that the Committee of Ministers draw up an additional protocol to the European Convention on Human Rights concerning the recognition of individual procedural rights intended to enhance environmental protection. The Committee of Ministers replied<sup>15</sup> that it recognised the importance of a healthy, viable and decent environment and considers that, accordingly, human rights, which may be relevant to the protection of the environment, need to be effectively protected. But it refused to codify such a right.<sup>16</sup>

The European Court on Human Rights, however, has found ways to fix this environmental human rights gap by allowing compensation for damage to the environment in the context of other rights, such as the right to life (Article 2), privacy and family life (Article 8), the right to a

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<sup>11</sup> Ibid.

<sup>12</sup> Article 11 of the Additional Protocol American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988) is titled: “Right to a healthy environment” and proclaims (1.) Everyone shall have the right to live in a healthy environment and to have access to basic public services and (2.) The States parties shall promote the protection, preservation and improvement of the environment. The Protocol provides for both a right to environment and a right to health. Article 10 states that (1.) Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.

<sup>13</sup> The African Charter on Human and Peoples’ Rights (1981) contains both a right to health and a right to environment. Article 16 of the Charter guarantees the right to enjoy the best attainable state of physical and mental health to every individual. Article 24 declares that all peoples shall have the right to a general satisfactory environment favourable to their development.

<sup>14</sup> <http://daccessdds.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>.

<sup>15</sup> Adopted at the 869th meeting of the Ministers’ Deputies (Doc. 10041 21 January 2004), 24 January 2004.

<sup>16</sup> “*However, because the Convention system already indirectly contributes to the protection of the environment through existing Convention rights and their interpretation in the case-law of the European Court of Human Rights - and for the reasons indicated by The Steering Committee for Human Rights (CDDH) - it does not consider it appropriate to draft an additional protocol to the Convention or a recommendation in this field at this stage.*”



fair trial (Article 6) and freedom of expression (Article 10). By having done so over the years, the court has shown and confirmed that protection of the environment is a general interest and that environmental disruption affects all sorts of aspects of daily life due to the interconnected characteristics of the environment.

Many, like Turkish Professor Dr. Y. Turgut<sup>17</sup>, think the Court should widen the scope of its judgement even further and go “...*beyond the present interpretation concerning classical human rights, which indeed reflects the established concept of human rights by considering the very specific characteristics, concepts and principles of environmental protection. The concepts of general interest in the protection of the environment, the long term interests, duty of individuals on the protection of the environment, and the participation principle, which are commonly accepted crucial themes, should be considered during the analysis of all the relevant criteria, such as fair balance by the Court. This consideration would lead the interpretation of the causal link between individual interests and environmental issues more broadly, and make a valuable contribution to specify the core of established human rights under the convention, the content and scope of the term of general interest as well as clarifying the relationships between different general interests.*”

The European Court has accepted several sorts of environmental disruption to be human rights violations, mostly under Article 2<sup>18</sup> (right to life), Article 6 (procedural rights)<sup>19</sup> and Article 8 (family life) of the European Convention on Human Rights (ECHR). The Court has given its most explicit judgements based on Article 8.<sup>20</sup>

The Court has made it possible to hold states liable for negligence in cases of environmental disruption by both the private sector and individuals. The Court has dealt with several sorts of

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<sup>17</sup> The European Court Of Human Rights And The Right To The Environment, Prof. Dr. Nükhet Yılmaz Turgut Ankara Law Review Vol.4 No.1 (Summer 2007), pp.1-24 or <http://auhf.ankara.edu.tr/journals/alr-archive/ALR-2007-04-01/alr-2007-04-01-yilmaz-turgut.pdf>

<sup>18</sup> Most recently in *Budayeva and Others vs. Russia, Application, 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02 [2008] (20 March 2008)*, the Court confirmed that the Russian government had failed to fulfil its obligations under Article 2 of the European Convention on Human Rights (ECHR), namely to protect the right to life. The case concerned events between 18 to 25 July 2000, when a mudslide led to a catastrophe in the Russian town Tyrnauz: it threatened the applicants' lives and caused eight deaths, among them the husband's of one of the applicants.

<sup>19</sup> *Öçkan and others v. Turkey, 46771/99 [2006] (28-03-2006)* is an example of such a case. The case concerns the granting of permits to operate a goldmine. The applicants, and other inhabitants of Bergama, asked for the permit to be set aside, citing the dangers of the cyanidation process used by the operating company, the health risks and the risks of pollution of the underlying aquifers and destruction of the local ecosystem. The Court concluded a violation of Articles 6-1 (right to a fair trial) and 8 (right to respect for private and family life); it was not necessary to examine separately the complaints under Articles 2 (right to life) and 13 (right to an effective remedy).

<sup>20</sup> Landmark cases include *Lopez Ostra v Spain* and *Guerra v. Italy*. In both cases ECHR found the violation of the Article 8 (privacy and family life). In *Giacomelli v. Italy, 59909/00 [2006] (2 November 2006)* the Court gave an extensive outline on the case law of the court (thus redefining when environmental pollution creates a violation of Article 8), the Court concludes that there had been a violation of Article 8 in this case, which related to the Lombardy government allowing for a waste treatment plant. The licence included the “detoxification” of hazardous waste, a process involving the treatment of special industrial waste using chemicals. To the Court's opinion “... the fact remains that for several years her right to respect for her home was seriously impaired by the dangerous activities carried out at the plant built thirty metres away from her house. Having regard to the foregoing, and notwithstanding the margin of appreciation left to the respondent State, the Court considers that the State did not succeed in striking a fair balance between the interest of the community in having a plant for the treatment of toxic industrial waste and the applicant's effective enjoyment of her right to respect for her home and her private and family life. The Court therefore dismisses the Government's preliminary objection and finds that there has been a violation of Article 8 of the Convention.

environmental disruption: air pollution, dangerous chemicals, noise pollution, conservation and procedural issues. On the other hand, it has not reviewed concrete climate change issues yet. The Court has dealt with several aspects of the right to privacy and family life, such as: physical and psychological wellbeing, quality of life and surroundings and health. Because of the complexity of many environmental case (and because no human right to environment has yet been codified under the European Convention), the Court generally grants States a wide margin of appreciation and the Court considers in a somewhat restricted manner whether States have acted with due diligence.

The Court has clearly used or extended acknowledged human rights under the ECHR in environmental cases. However, it – as some judges have concluded in their opinions – is limited in this practice of stretching ECHR rights, because the ECHR does not contain a right to environment. More importantly, as mentioned above, the Committee of Ministers in 2003 has clearly chosen not to have such a specific Human right under the ECHR.

Conversely, on 4 June 2008, on the eve of World Environment Day, Mr. Maria de Puig, President of the Parliamentary Assembly of the Council of Europe (PACE), repeated his call for a "Right to Environment under the European Convention". In March 2008 he had said that protection of the natural environment had to be regarded as a fundamental human right. And that one of the objectives that he had set himself during his term of office was the integration of the right to a healthy environment into the European Convention on Human Rights, through an additional protocol.<sup>21</sup>

Such a specific right would obviously have great consequences on environmental matters, thus creating a far more strict level of environmental protection by giving individuals a clear right. This would also have an impact on Climate Change issues. However, NJCM draws attention to the fact that, as demonstrated above, in the absence of a specific provision related to the environment, the European Court on Human Rights has created somewhat restricted but fairly clear rules on the quality of the environment, based on several existing Articles of the ECHR; most particularly under Article 8 (the right to respect for private and family life). Rules and restrictions for States towards individuals that will obviously also apply to climate change issues.

## 5. HUMAN RIGHTS IN INTERNATIONAL LAW AND LINKS TO ENVIRONMENTAL ISSUES

According to the NJCM the following human rights are affected by environmental harms.<sup>22</sup>

➤ **Right to Life** The right to life, perhaps the most basic human right, has extensive environmental links. The most obvious connections manifest themselves in situations such as the Bhopal gas leak and, recently, the toxic dumping in Ivory Coast. According to CCPR General Comment No 6<sup>23</sup>, this right cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures.

<sup>21</sup> Press release at <http://assembly.coe.int/ASP/Press/StopPressView.asp?ID=2025>

<sup>22</sup> The NJCM refers to the excellent and extensive annual Environmental Rights reports of Earthjustice, which have been submitted to the UN). Versions as of 2001 to 2007 are downloadable at [http://www.earthjustice.org/our\\_work/issues/international/human\\_rights/human-rights-report/international\\_human\\_rights\\_full\\_report.html](http://www.earthjustice.org/our_work/issues/international/human_rights/human-rights-report/international_human_rights_full_report.html)

<sup>23</sup> <http://www.unhchr.ch/tbs/doc.nsf/0/84ab9690ccd81fc7c12563ed0046fae3>

It could be linked to any environmental disruption that directly contributed to the loss of lives - including to the mentioned air pollution causing 2.4 million deaths per year. But also to casualties due to rising of the sea level and extreme weather events due to climate change.

- **Right to Health** This right, closely linked to the right to life, is often violated in cases of pollution of air, land or water. For example, poorly regulated industries and mines cause severe contamination among local people, resulting in a slew of physical problems of adults and children and thus impacting on the health of local residents. The CESCR General Comment 14 on the right to the highest attainable standard of health<sup>24</sup> specifically refers on, several occasions, to healthy environmental conditions. Obviously deteriorating health due to climate change impacts cause a violation of this right as well.
- **Right to Water** This right is not codified in an international treaty, but more frequently invoked and accepted as such through CESCR General Comment No. 15.<sup>25</sup> It is obviously linked to the rights to life and health. Without access to clean drinking, cooking and bathing water in adequate quantities, individuals and communities worldwide die and suffer serious illnesses. Billions already lack access to clean and safe drinking water. This number, according to the IPCC reports, is likely to rise dramatically due to glacial melt and other climate change impacts.
- **Right to Food** As set out above, due to the environmental disruption, the right to physical and economic access at all times to adequate food or means for its procurement, will progressively be under pressure. The IPCC reports set out that food scarcity is likely to rise dramatically owing to extreme droughts storms and other events caused by climate change, which in turn result in failing harvests .
- **Right to Development** This right<sup>26</sup> enunciated in UNGA Declaration on the Right to Development (Resolution 41/128 of 4 December 1986) shares considerable common ground with the right to a healthy environment. A holistic model of sustainable development recognises that environmentally destructive economic progress does not produce long-term societal progress. Impacts on the poorer parts of the world are expected to be bigger than in the wealthier parts. The less developed nations have done little to cause global warming. However, they are most exposed to its effects and also have fewer resources for coping with the effects of climate change. Whilst they are eager for economic development themselves, they are prognosed to be limited in this due to climate change.
- **Right to Property** With sea levels rising ,more and more people living on islands and in coastal areas, have and will be deprived of (parts of) their property. Property which would disappear due to the rising of the sea level or more extreme weather events.
- **Right to Shelter and Housing** This right is implicated when environmental degradation displaces people or compels them to live in unhealthy or hazardous conditions.
- **Right to Information and Right to Participate** These rights - the environmental context – at least has the elements of the right to obtain government-held information on request and the

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<sup>24</sup> [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En)

<sup>25</sup> [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf)

<sup>26</sup> <http://www.unhchr.ch/html/menu3/b/74.htm>

government's duty to apprise the people of environmental dangers and emergencies. The right to participate includes everything from suffrage to direct participation in planning of development activities.

➤ **Right to Work** Along with environmental disruption often comes deprivation of the right to work. Examples would be the waters of the coast of West Africa being fished empty by European fishing industries, mangroves being destroyed due to poor shrimp farming practices, river pollution or dynamite fishing devastating the marine environment, including coral reefs fish stocks, putting local fishermen out of work. As set out above, these already damaged and vulnerable areas are likely to become hurt much more by turning acidic due to CO2 emissions.

➤ **Right to Culture, Family life and Rights of Indigenous People** Some of the most obvious examples of cultural deprivations involve indigenous peoples, whose lifestyles often depend on their relationship with the natural environment. Impacts of climate change on the Arctic environment and tropical islands and indigenous people having their forests disappear through logging, for example, have disproportionate effects on local culture. In September 2007, the UN GA adopted the UN Declaration on the Rights of Indigenous Peoples, which - for the first time - recognises the conservation and protection of the environment and resources as a human right.

➤ **Rights and Equity** Climate change impacts will be unfair. Impacts on the poorer parts of the world are expected to be bigger than in the wealthier parts. And whilst the poorer nations of the world have done almost nothing to cause global warming, they are most exposed to its effects. The CO2 emissions by the richer countries over the last century are a debt incurred for the high standards of living enjoyed by a minority of the world's population, but those to suffer most from climate change will be in the developing world. In addition, these nations have fewer resources for coping with storms, floods, droughts, disease outbreaks, disruptions to food and water supplies, etc. Whilst they are eager for economic development themselves, they are prognosed to be limited in this due to climate change.

➤ **Women and Children's Rights** Women and children are even more impacted by environmental disruption than men, because they are even more dependent than men upon primary natural resources for food and water, such as land, forests and water sources. As set out, 80 % of the 1.2 billion people that lack access to clean drinking water are the rural poor; and more specifically, of the 1.3 billion people living in extreme poverty 70 % are women. Children are more vulnerable than adults to diseases because their immune systems and detoxification mechanisms are not fully developed making them also more vulnerable to contaminated water (bacterially or viral) environmental pollution in general.

#### **Case of climate change directly linked to human rights**

An illustration of a case where some of the aforementioned rights were linked specifically to the effects of climate change is a petition filed with the Inter-American Commission on Human Rights, by the *Inuit Circumpolar Conference (ICC)* – in December 2005 - with the support of the Center for International Environmental Law (CIEL) and Earthjustice. The petition claimed that the United States' climate change policy violated the Inuit's human rights. This petition represents the first legal action specifically connecting climate change and human rights. As such, it can be argued that it opens the door to future human rights-based climate change legal

action. The Inuit petition asserted that the US's failure to reduce its national GHG emissions has impacted the Arctic and harmed the Inuit and other communities. It subsequently, alleged that US climate change policy violated several rights enshrined in the American Declaration, in particular the right to life, liberty and personal security), the right to residence and movement, the right to inviolability of the home and the right to the preservation of health and to well-being.<sup>27</sup> Although the Inter-American Commission refused to consider the petition, by connecting climate change to human rights in a legal action, this petition serves as an example for future human rights claims related to climate change.<sup>28</sup>

It should be mentioned here that these examples only provide a sampling of many connections between human rights and environmental protection. Other substantive areas that combine human rights and environmental considerations include: humanitarian law, environmental refugees issues and the effects of development projects funded by development banks.

Most recently, in March 2008, the UN HR Council Resolutions linked human rights to the issues of Water (7/22) and Climate Change (7/23); the latter - as some have said - making climate change a human rights issue and bringing about this report.

## **6. GROWING CHALLENGES FROM A HUMAN RIGHTS PERSPECTIVE**

It should be clear from the environmental issues set out above that human rights challenges already occur. For example, in- and outdoor air pollution globally having caused tens of millions of deaths and ill health for many more over the last decades constitutes a mere tip of the iceberg of current environmental issues with vast human rights implications. In particular, road transport alone constitutes such a significant source of air pollution, that it was estimated to cause an average loss of 8.6 months of life expectancy in European Union countries (EU25) – including the Netherlands - after May 2004.<sup>29</sup>

The first impacts of climate change are already emerging. Extreme weather events, islands “drowning” due to rising sea levels, droughts, etc. With mankind responsible for having degraded the environmental quality of planet Earth over decades, Earth's capacities to deal with these impacts are much reduced. If one reads the IPCC reports and other scientific reports, it becomes obvious that if we do not act on cutting back emissions immediately, the effects and impacts will only accelerate.

Scientists estimate that currently natural resources such as forests and oceans are taking up merely 30 to 40 % of our global annual CO<sub>2</sub> emissions. If we do not decrease our emission drastically, this will cause global temperatures to rise even further, causing this natural intake to

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<sup>27</sup> Petition to the Inter-American Commission on Human Rights, Violations Resulting from Global Warming Caused by the United States, 7 December 2005, <http://www.earthjustice.org/>.

<sup>28</sup> In doing so, the IACHR reasoned that ‘the information provided does not enable us to determine whether the alleged facts would tend to characterize a violation of rights protected by the American Declaration’; see Letter from the IACHR, in: J. George, *ICC Climate Change Petition Rejected*, 15 December 2006, Nunatsiaq News, <http://www.nunatsiaq.com>.

<sup>29</sup> The Pan-European programme on Transport, Health and Environment, a joint WHO/Europe and UNECE policy platform, Key facts report.

seize. This will in turn, further accelerate global warming, its effects and thus, will have an adverse impact on human rights.

The already apparent increase in strength and frequency of natural hazards such as cyclones, floods, droughts, etc. will progressively bring along more human rights challenges as these will lead to more casualties and will be intensifying peoples' vulnerability to food insecurity, ill health, unsustainable livelihoods, etc. If we do not act on climate change, this will cause widespread famines, droughts. Furthermore, social upheavals as civil strife and rioting may most likely accompany people migrating to areas that have water and can support crop-growing.

All human rights issues mentioned above are associated with and aggravated by the environmental challenges we currently face. It has become clear that in the near future human rights violations due to climate change will not only emerge, because of emissions of the past, but also these violations will accelerate and continue to grow. It is therefore imperative that instant action is taken; not just to cope with the present-day environmental challenges, but also to identify the human rights challenges and thus to limit the environmental impact.

## **7. MITIGATION OF CLIMATE CHANGE**

IPCC scientists<sup>30</sup> contend that adaptation will be necessary to address impacts resulting from the warming which is already unavoidable due to past emissions; that many impacts of climate change can be avoided, reduced or delayed by mitigation; and that sustainable development can reduce vulnerability to climate change.

The question can then be posed whether mitigation is conducive to human rights issues or creates more problems in this area?

The problem with the world's response to climate change is that it is not achieved in a sustainable way. Instead of actively exploring other and sustainable ways to fuel our energy demand, we focus on short term solutions, many of which turn out to be extremely unsustainable.

For example bio fuels: cultivated, agricultural material are used to produce ethanol (from sugar or maize crops) or oils (such as oil palm or soybean) in order to fuel transportation means like cars. Not only do most of these bio fuels have low efficiency (the process of producing the end product taking a lot of energy and causing high CO2 emissions) but they also require water, fertilisers and land for which forests are cleared.

Almost 20 % of global greenhouse gas emissions is due to forests burning. Many of these forests are burnt to make room for plantations fostering bio fuel (mainly soybean and palm oil) plantations. So rather than solving the issue of climate change, it is contributing to it, whilst violating human rights of indigenous people and others. The process of accelerated global warming is also fuelled, since many of the peat swamps currently being dried out to make room for oil palm plantations (for instance, in Indonesia) to produce bio fuel, hold vast amounts of

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<sup>30</sup> The Intergovernmental Panel on Climate Change, Climate Change 2007, Summary for Policymakers Document: Mitigation.

greenhouse gasses. These gasses will be released into the atmosphere once dried out, thereby speeding up the process of climate change.

Despite the direct environmental human rights impacts, the huge demand for bio fuel has drastically raised prices of corn and other crops. This in turn has already had immense implications on the ability of the poor to buy food and is consequently, likely to lead to food security issues.

## **8. HUMAN RIGHTS DEFENDERS**

In addition to the rights issues set out above, the NJCM believes this position paper should also mention human rights defenders. The United Nations have been supporting human rights defenders since its inception, which has been confirmed by the 1998 UN General Assembly Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.<sup>31</sup>

Supporting the rights of human rights defenders is one of the most important ways to ensure human rights for all. More and more (through new declarations and conventions) human rights defenders include environmentalists, who for instance, base their actions on the aforementioned UNGA Declaration on the Rights of Indigenous People which contains a right to environment. Although it would be difficult to draft a conclusive list, this position paper suggests that in view of the link between environmental issues and human rights and the increasing acceptance of a human right to environment, there are many more environmentalists that are indeed human rights defenders.

With the acknowledgement of environment protection as being a human right (and being codified as a human right in several regional treaties and in many constitutions across the globe), the NJCM argues that almost all environmentalists are indeed human rights defenders in need of and deserving the UN's support and protection. This obviously applies to environmentalists/human rights defenders that stand up for any of the human rights mentioned linked to climate change.

## **9. VIEWS AND RECOMMENDATIONS OF THE NJCM REGARDING THE ACTION TO BE TAKEN BY THE UNITED NATIONS HUMAN RIGHTS BODIES AND THE HUMAN RIGHTS COUNCIL**

The NJCM is aware of the fact that the UN staff and representatives working with human rights (thus including all working at or for Human Rights Council) feel somewhat cautious to take on environmental issues and their scientific background. Nevertheless, the time has come for the UN human rights bodies to act on environmental issues where these affect human rights or where protection of the environment is regarded to be a human right.

The scientific evidence is clear. Scientists are no longer guessing about climate change: it is a scientific truth. At this time, scientists denying climate change are a tiny minority. The effects of

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<sup>31</sup> [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.53.144.En](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.53.144.En)

climate change resulting or potentially resulting into human rights violations should be dealt with.

As this position paper suggests, links between human rights and the environment have progressively been regarded as indivisible and inseparable. This posits the right to (a clean and healthy) environment as an independent substantive human right, which has been recognised and codified in many constitutions, regional human rights treaties and notably, in Article 29 of the UNGA Declaration on the Rights of Indigenous People.

We therefore recommend that the UN Human Rights Bodies should play an active role in mitigating the effects of climate change. The UN Human Rights Bodies should do this in a sustainable manner.

### **Progressive approach**

Increasingly the international community recognises that people are not just rulers over nature, but are a part of nature and indeed need nature and a healthy and clean environment. Climate change makes this even more evident. With the rising international support for the granting of a right to a clean and healthy environment the UN Human Rights Bodies, including the Human Rights Council, should play a crucial role into researching this development and advocate the codification of such a right in international law. Accordingly,

1. The NJCM recommends that

- the UN Human Rights Bodies, including the Human Rights Council should play an active role in the(further) development of the right to environment;
- the Human Rights Council should assist the General Assembly to issue a Declaration on The Right to Environment and/or to a ICCPR or ICESCR General Comment on The Right to Environment.

2. The NJCM proposes that obligations in the context of the ICESCR to respect, protect and fulfil should entail:

- *Respecting* could mean refraining from and preventing any actions that would lower the quality of the environment;
- *Protecting* could mean ensuring that ecosystems and environmental settings that are currently safe do not become unsafe as a result of any sort of disruption, including pollution and/or climate change impacts;
- *Fulfilling* could mean improving ecosystems, clean-up and conservation efforts;  
Thus, reducing or preventing deterioration of the global environment.

### **Conservative approach**

Even if the UN Human Rights Council were to take up a more conservative approach in linking human rights and climate change and/or other environmental issues and (for instance) would choose only to link climate change issues to the “right to life”, the UN would still be supporting



the rights of millions of people. As said, according to the World Health Organisation on a global scale 2.4 million people die each year from causes directly attributable to air pollution alone. Prognoses on fatalities due to the effects of climate change would mean that in the near future, millions would become tens of millions whose lives are at stake. It should be stressed that this scenario is based on acceptance of the link with only the right to life, since in the context of this right (tens of) millions are and will be affected. As set out above there are many more rights linked to environmental issues. Hence, the topic of climate change and other environmental challenges deserves the immediate attention of the Human Rights Council.

So even a conservative human rights approach to climate change and/or other environmental issues would benefit and protect both the environment and millions of people every year.

States and corporations (big and small) are the main actors in the field of (disruption of) the environment. At this time, they almost all acknowledge human caused climate change to be real and scientifically proven. Nonetheless, they tend to discuss and not act on the solutions. This does not come as a surprise in a money driven society, where many states in power and (different, though economically associated) corporations are dependent on selling fossil fuels for their income. An enormous additional benefit from a human rights approach to environmental issues and to climate change more specifically, would be that, because of enforcement through courts, it could drastically push the change to renewable energy sources; thus effectively mitigating the predictions made by IPCC on climate change.

With this in mind, taking into consideration what has been set out in this paper and bearing in mind that climate change (which is an issue added to existing environmental disruption) is and will be one of the biggest challenges faced by humanity, the relationship between environmental problems and human rights calls for a holistic treatment of these issues. Accordingly,

1. The NJCM recommends that the United Nations, including its Human Rights Bodies, should in the coming years take on the issue of Climate Change and Human Rights;
2. The NJCM recommends that the United Nations, including its Human Rights Bodies, should in the coming years link Human Rights to the Environment;
3. The NJCM recommends that international, governmental and non-governmental organisations dedicated to protecting human rights should recognise these links, support the United Nations and cooperate to develop mechanisms to address the human rights implications of Climate Change and other environmental problems.

Overall, in view of the fact that the poor of the world, and in majority women and children amongst them, who have done extremely little to cause it, are most exposed to the effects of climate change and have fewest resources for coping, at the very least principles of international solidarity and equity, oblige the UN Human Rights Bodies to tackle these pressing environmental issues.