



**International-Lawyers.Org**

*Working for a World Order Respecting International Law*

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Geneva, Switzerland, 30 November 2021

Office of the United Nations High Commissioner for Human Rights  
United Nations Office in Geneva (European Headquarters)  
Geneva, Switzerland  
By email to [registry@ohchr.org](mailto:registry@ohchr.org) (CC: [tarnesen@ohchr.org](mailto:tarnesen@ohchr.org))

Dear Ladies and Gentlemen,

We write to provide you our contribution to the research and report that the Office of the United Nations High Commissioner for Human Rights (OHCHR) is preparing in accordance with Human Rights Council resolution 47/24 entitled “Human Rights and Climate Change” on the issue of the adverse impact of climate change on the full and effective enjoyment of human rights of people in vulnerable situations.

As an international non-governmental organization in Special Consultative status with the Economic and Social Council of the United Nations we have focused our response on global concerns related to the above topic rather than concerns in a specific country.

We welcome your posting our contribution on your website.

Thank you for this opportunity to contribute to the work of the Office of the High Commissioner for Human Rights.

Respectful regards,

A handwritten signature in black ink, appearing to read "C. Doebbler".

Curtis F.J. Doebbler  
Main Representative to United Nations Headquarters (NY)  
International-Lawyers.Org (INTLawyers)

INTLawyers response to the  
Questionnaire in relation to Human Rights Council resolution 47/24  
on human rights and climate change

General comment:

International-Lawyers.Org (INTLawyers) notes while vulnerability is an important criterion for determining what precise action needs to be taken to address the adverse effects of climate change on a particular population, international law that is reflected in the United Nations Framework Convention on Climate Change (UNFCCC) requires a distinction between ‘developed’ and ‘developing’ countries.

Article 4, paragraph 2, of the UNFCCC, uses the phrase “developed country Parties and other Parties included in Annex I” to denote the special obligations of these States to take adequate mitigation action without delay,<sup>1</sup> to provide detailed plans for adequate mitigation,<sup>2</sup> to provide assist developing countries with the costs of adaptation,<sup>3</sup> to transfer technology and know-how needed for mitigation and adaptation,<sup>4</sup> and to develop and enhance the endogenous capacity of developing countries.<sup>5</sup>

We note that it would be more consistent with international law for the Secretary-General's report to consider the actions that “developed” States must take as a consequence of their obligations under the UNFCCC. This should include the special obligations of mitigation incumbent on developed countries as well as developed countries’ duty to provide the assistance that is necessary for developing countries to take adequate mitigation and adaptation action.

The UNFCCC already defines the legal obligations of States with respect to the most effective and comprehensive manner of addressing the adverse effects of climate change. We therefore regret the limitation of the questions in the questionnaire to vulnerable populations, as the distinction between “developed” States and other States remains an appropriate and legally binding framework that has been agreed by 197 State Parties to the United Nations Framework Convention on Climate Change.

We urge the Secretary-General to point out this inconsistency to States and to urge them to respect their international legal obligations in a manner that is consistent with the UNFCCC.

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<sup>1</sup> Art. 4(2)(a).

<sup>2</sup> Art. 4(2)(b).

<sup>3</sup> Art. 4(4).

<sup>4</sup> Art. 4(5).

<sup>5</sup> *Id.*

1. Please describe the impacts of the adverse effects of climate change on the full and effective enjoyment of the human rights of people in vulnerable situations.

All human rights are impacted in some manner by the adverse effects of climate change. For example, some States will suffer significant interference with their right to self-determination because they will almost certainly cease to exist due to the adverse effects of climate change. In other States, particularly developing States, individuals, and groups will have their rights to housing, food, water, an adequate standard of living, and in some cases, consequently, their rights to life and humane treatment interfered with when persons no longer have access to these necessities of life due to the adverse effects of climate change, particularly desertification and rising sea levels. And similarly, for example, the right to health is interfered with when the rate of a deadly disease, such as malaria, increases due to rising temperatures at higher altitudes where previously the mosquito's carrying malaria were not present.

The adverse effects of climate change impact the full and effective enjoyment of numerous human rights of persons in vulnerable situations. Individuals in developing countries are especially affected and at the greatest risk of being harmed by the adverse effects of climate change. This is because of the more modest capacity of developing countries to adapt to climate change and the advantages that developed countries have acquired by their much greater exploitation of the planet's atmosphere. Consequently, developed countries act in a manner inconsistent with their obligations under the UNFCCC when they fail to provide developing countries with adequate finance, access to technology, capacity-building, and access to other means that are needed for developing countries to be able to adapt to the adverse effects of climate change.

This State responsibility for developed countries is both joint and several. That any developed country can be held responsible for the full consequences of an internationally wrong act is a statement of existing international law that should be made clear in the Secretary-General's report.<sup>6</sup>

All human rights are impacted in some manner by the adverse effects of climate change. Some states will suffer significant interference with their right to self-determination because they will almost certainly cease to exist due to the adverse effects of climate change. Individuals in some states, particularly developing States, will have their right to life and humane treatment interfered with because they will no longer have access to food and other necessities of life due to the adverse effects of climate change, particularly desertification and rising sea levels.

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<sup>6</sup> See, for example, United Nations International Law Commission, *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries* at pp. 124 and 125 in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION, 2001, vol. II, Part Two (Art. 47 and accompanying commentary).

*2. Please describe any specific policy, legislation, practice or strategy that your Government has undertaken, in compliance with applicable international human rights law, to promote an approach to climate change mitigation and adaptation, as well as loss and damage that ensures the full and effective enjoyment of the human rights of people in vulnerable situations. Please also note and identify any relevant mechanisms for ensuring accountability for these commitments including their means of implementation.*

In response to this question, we note some appropriate policies, legislation, practices or strategies that States have taken or are contemplating.

The government of Sierra Leone's Constitutional Review Committee proposed creating the right to adaptation action as a part of the "right to an environment that is conducive to health and to the natural environment whose productivity and diversity are maintained."<sup>7</sup>

On 14 August 2021, the government of Uganda adopted The National Climate Change Act that in enacts the UNFCCC as well as its Kyoto Protocol and the Paris Agreement into Ugandan law. This Act creates a private right of action stating that "[a] person may apply to the High Court for relief against the Government, an individual or a private entity whose action or omission threatens or is likely to threaten efforts towards adaptation to or mitigation of climate change."<sup>8</sup> Today it is estimated that litigation concerning individuals' human rights accounts for about 10% of all international climate change related litigation.<sup>9</sup>

3. Please share a summary of any relevant data that captures how the adverse effects of climate change have affected people in vulnerable situations, taking into account multiple and intersecting forms of discrimination (i.e. discrimination based on a combination of multiple grounds, including disability, gender, race, colour, sex, language, religion, nationality and migration status).

Numerous developing countries have recognized the disproportionate effect that climate change has on developing countries. The Canadian government recognizes that "Developing countries are the most impacted by climate change and the least able to afford its consequences."<sup>10</sup> In March 2021 a U.S. think tank issued a fact-sheet recognizing the impact of the adverse effects of climate change on developing State's fragility, the propensity for conflict, population displacement, food and water security,

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<sup>7</sup> Constitutional Review Committee (Sierra Leone), ABRIDGED DRAFT REPORT 23 (2016).

<sup>8</sup> Sec. 26(1) of The National Climate Change Act (Uganda), 2021.

<sup>9</sup> Based on a review of the Global Climate Change Litigation database maintained by the Sabin Center for Climate Change Law at Columbia Law School of Columbia University in the United States, which excludes litigation in US courts, at <http://climatecasechart.com/climate-change-litigation/non-us-climate-change-litigation/> (accessed 28 November 2021).

<sup>10</sup> Canadian Government webpage at [https://www.international.gc.ca/world-monde/issues\\_developpement-enjeux\\_developpement/environmental\\_protection-protection\\_environnement/climate-climatiques.aspx?lang=eng](https://www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/environmental_protection-protection_environnement/climate-climatiques.aspx?lang=eng) (accessed 1 November 2021).

health, and economic development in developing countries.<sup>11</sup> In July 2021, the Bank of France issued a Working Paper with data covering 126 developing income countries from 1960 to 2017 finding that these countries bear “a disproportionate cost, even though they have contributed only marginally to temperature rises, and, in some cases, help mitigate it.”<sup>12</sup> These selected examples are evidence that developed countries are well aware of the destructive effect of climate change on developing countries and the human rights of their people. Yet, despite this knowledge developed countries have failed to provide adequate finance, technology transfer, and capacity-building. The Secretary-General

4. Please describe any mechanisms and tools that are in place to measure and monitor the impacts of climate change on the full and effective enjoyment of the human rights of people in vulnerable situations.

While particular States have put in place mechanisms to measure and monitor the impact of climate change on individual’s human rights, we draw attention to the underutilized opportunity that the existing international human rights mechanisms offer to provide States guidance in the protection of human rights in the face of the adverse effects of climate change.

5. Please identify and share examples of good practices and challenges in the promotion, protection, and fulfilment of the human rights of people in vulnerable situations in the context of the adverse effects of climate change.

Many developing countries have enacted laws or taken steps within their capacity to secure the human rights of people under their jurisdiction. The examples of proposed or enacted laws in Uganda and Sierra Leone that have been mentioned above are evidence of these good practices. It must be recognized that these efforts to provide legal protections for human rights of the citizens of developing countries could likely be fruitless unless developed countries honor their legal obligations to provide adequate financing, technology transfer and capacity-building to developed countries in accordance with such obligations in the UNFCCC.

6. Please include examples and good practices that highlight international and multilateral cooperation and approaches that are implemented through close consultation with and active involvement of people in vulnerable situations.

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<sup>11</sup> U.S. Global Leadership Coalition, CLIMATE CHANGE AND THE DEVELOPING WORLD: A DISPROPORTIONATE IMPACT (March 2021) at <https://www.usglc.org/media/2021/03/USGLC-Fact-Sheet-Climate-Change.pdf> (accessed 2 November 2021).

<sup>12</sup> Olivier de Bandt, Luc Jacolin, and Thibault Lemaire, CLIMATE CHANGE IN DEVELOPING COUNTRIES: GLOBAL WARMING EFFECTS, TRANSMISSION CHANNELS AND ADAPTATION POLICIES p. 1, Banque de France Working Paper No. 822 (3 July 2021).

In the regional context the African Commission on Human and Peoples' Rights (African to Study its Impact in Africa, ACHPR/Res.153 (XLVI), in 2009. This resolution called upon the Commission to undertake a study on climate change and human rights in Africa. While this study still has not been undertaken, such regional initiatives, especially in regions with a significant number of developing States, can play a valuable role in establishing the particularities of legal obligations for human rights. This resolution was the product of the efforts of a coalition of non-governmental organizations (NGOs), including both African and international NGOs, which since 2007 have been urging the African Commission to adopt undertake the report. Although the Commission has not yet been able to undertake the study, we understand in large part due to insufficient funding, we hope that Secretary-General's report will not only highlight this cooperation as an example of ongoing cooperation between State and non-State actors but will also urge developed States to support the African Commission to carry out this study as soon as possible.

Similarly in the context of the U.N. Human Rights Council, civil society organizations, including dozens of NGOs in ECOSOC Special and General Consultative status called upon the Council to create the mandate for a Special Rapporteur on human rights and climate change since 2008. Finally, this year at the 47<sup>th</sup> Regular Session of the Human Rights Council such a mandate was created.<sup>13</sup> Although taking more than a decade to bear fruit this is nevertheless an example of multilateral cooperation between the United Nations Human Rights Council and civil society.

7. Please provide any additional information you believe would be useful to support climate action that promotes the full and effective enjoyment of the human rights of people in vulnerable situations.

There is a significant need to increase States' understanding of their responsibility for ensuring respect for human rights when confronted by the adverse effects of climate change. Especially important is to recognize the State responsibility—jointly and severally<sup>14</sup>—of developed States for taking adequate action in the form of financing, technology transfer, and capacity-building for developing States to allow them to *de facto*, not merely *de jure*, protect the human rights of person and groups of persons under their jurisdiction.

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<sup>13</sup> United Nations Human Rights Council Resolution 47/24 adopted on 26 July 2021, UN Doc. A/HRC/RES/47/24.

<sup>14</sup> *See, supra*, note 6.