

CLIMATE CHANGE AND HEALTH

The Role of National Human Rights Institutions

National Accountability Mechanisms

INTRODUCTION

The purpose of this non-paper is to clarify the possible role that National Human Rights Institutions (NHRIs) may play in **national accountability and oversight mechanisms** designed to ensure access to remedy for those who suffer human rights harms as a result of climate change. It also highlights relevant practice by NHRIs on this subject.

The Human Rights Council emphasized on various occasions the need of a human-rights based approach to climate change. It also noted that “climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights including... **human rights obligations related to access to safe drinking water and sanitation**” and that such effects “will be felt most acutely by those segments of the population who are already in a vulnerable situation” (A/HRC/RES/10/4).

The Intergovernmental Panel on Climate Change in its Fifth Assessment Report (AR5) confirmed that “climate change mainly harms human health by exacerbating existing disease burdens and negative impacts on daily life among those with the weakest health protection systems, and with the least capacity to adapt. Thus, most assessments indicate that **poor and disenfranchised groups will bear the most risk**, and globally the greatest burden will fall on poor countries, particularly on poor children”. Poor children are in fact already most affected by such climate-related diseases such as malaria, under-nutrition and diarrhea.

It is of crucial importance that the future Paris Agreement recognizes the grave threat that climate change poses to human rights, and that it provides a durable framework for effective climate action guided by a human rights-based approach. At the same time strong national oversight mechanisms are needed to provide remedy for those who suffer human rights harms as a result of climate change.

In the field of water, WaterLex – as a UN Water Partner, has been implementing a programme focusing on national human rights institutions called the “**NHRI Water Initiative**” since 2013. The programme which is led by a consortium of NHRIs aims at enhancing the role of these intuitions in monitoring and protecting water governance-related human rights (right to water and sanitation, right to health etc.). This programme has so far resulted in a growing international network of NHRIs and (a) a compilation of NHRI monitoring and protection practices in the field of water governance (*see publication below*)¹; (b) sharing of practices among peers and enhancing the capacity of several

¹ National Human Rights Institutions and Water Governance, Compilation of Good Practices. WaterLex 2014. http://www.waterlex.org/?post_publications=national-human-rights-institutions-and-water-governance-compilation-of-good-practices.

The Human Rights to Water and Sanitation in Courts Worldwide: A Selection of National, Regional and International Case Law: http://www.waterlex.org/?post_publications=the-human-rights-to-water-and-sanitation-in-courts-worldwide

NHRIs worldwide to provide remedies to victims of human rights violations resulting from poor water governance.

INTRODUCING NATIONAL HUMAN RIGHTS INSTITUTIONS

NHRIs are independent institutions established by Parliaments. They have constitutional powers to promote and protect human rights that also enables them to monitor the work of governments. These independent institutions have a constitutional mandate to find remedies to both individual and systematic human rights violations, including human rights violations resulting from the adverse impacts of climate change as well as national climate change related frameworks. While court procedures remain the basic mechanisms for the protection of human rights and States (governments) bear the ultimate international responsibility, NHRIs can usefully complement the work of both the judiciary and government.

We note that several NHRIs already have experience in promoting and protecting human rights in relation to climate change. Some relevant practice on this subject is cited below. The publication of WaterLex on compiling NHRI good practices on water governance and human rights may further feed into the discussion on how NHRIs can ensure access to remedy for those who suffer human rights harms as a result of climate change.

Area 1 - Remedy climate change-related human rights violations

Philippines

Typhoon survivors and civil society groups in the Philippines on 22 September 2015 delivered a complaint to the **Commission on Human Rights of the Philippines** (CHR) calling for an investigation into the responsibility of big fossil fuel companies for fuelling catastrophic climate change resulting in human rights violations. The group is demanding an investigation into the top 50 investor-owned fossil fuel companies and their responsibility for climate impacts that endanger people's lives and livelihoods, as well as that of future generations. Petitioners request that "the Carbon Majors should be held accountable for violations or threats of violations of Filipinos' rights (a) to life; (b) to the highest attainable standard of physical and mental health; (c) to food; (d) to water; (e) to sanitation; (f) to adequate housing; and (g) to self-determination resulting from the adverse impacts of climate change. Special attention should be paid to marginalized and disadvantaged people and communities particularly vulnerable to the effects of climate change, including women, children, persons with disabilities, those living in extreme poverty, indigenous peoples, and displaced persons; as well as the right of Filipinos to development. The workers and workers' organizations among the Petitioners also seek accountability for the human rights implications of climate change on the workers' health, labour productivity, work environment and safety, and job protection." Petitioners note that their Petition seeks vindication of human rights through a comprehensive investigation into the responsibility of the Carbon Majors for violations or threats of violations of human rights resulting from the impacts of climate change.

NHRIs play a crucial role in human rights protection. NHRIs have a broad and flexible constitutional mandate to find remedies to human rights violations. Unlike courts, NHRIs can initiate and carry out investigations at will. Their rules of procedure enable them to choose the subject of their investigations flexibly (within the realm of human rights), to have recourse to independent research capacity, to recommend far-reaching and innovative remedies, etc. The independence of NHRIs enables them to pursue cases that might be overlooked by government bodies or the prosecution due to political or bureaucratic complacency.

NHRIs can go beyond monitoring, combining analysis with action to ensure remedy for both individual violations and systematic deficiencies. These institutions can initiate investigations,

conduct public inquiries, collect data, and refer to relevant authorities, to the Government and even to the public. Reporting and presenting recommendations in view of compliance can be addressed by NHRIs to national authorities (legislative and executive branches) in addition to informing global/regional review mechanisms. Depending on their mandate, some NHRIs can even initiate court proceedings and/or perform conciliation, mediation as alternative dispute settlement to seek remedies to violations. Their mandate enables them to collect indispensable data via collaboration with civil society, statistical offices, research institutions and academics.

They offer a complementary avenue to monitoring and seeking remedy in a quicker and cheaper manner. Therefore, they are also well placed to seek remedies to human rights violation concerns resulting from the adverse impacts of climate change and national climate change related frameworks.

Area 2 – Advising governments/parliaments to enact human rights respecting climate frameworks

Scotland

In recent years, the **Scottish Human Rights Commission** has urged the Government and Parliament to take a series of actions to ensure that a human rights based approach to climate change is implemented in policy, including explaining the relation between environmental degradation and human rights, developing integrated impact assessments, working with the international community to design responses to climate change using a human rights-based approach, organising conferences and delivering lectures to support momentum towards climate justice. The Commission also presented an intervention during the 25th session of the Human Rights Council in 2014 welcoming the report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. The Commission argued for the need to integrate current pressing environmental challenges, including climate change into both domestic policy and practice. To this end, the Commission has led the development of Scotland's first National Action Plan for Human Rights which will help bring about a consistent process for integration of relevant human rights standards in Scotland's climate change policy and practice.

NHRIs may not only fill important gaps in the regular judicial-administrative system of human rights protection through their investigations and monitoring, at the same time they can be a driving force behind enhancing overall institutional vigilance and the culture of human rights.

NHRIs may perform advisory functions to legislative powers contributing to the establishment of a national enabling environment that fosters human rights adherence of national climate frameworks. Notwithstanding the actual individual violations, NHRIs therefore may go further and address the deficiencies of the broader social, economic and political structures and systems that are conducive to widespread violations of human rights. This role renders NHRIs particularly valuable in finding remedies to human rights violations resulting from systematic deficiencies of national climate frameworks.

These institutions are uniquely placed to influence national implementation efforts of climate change-related commitments in view of enacting human rights respecting national climate policies. NHRIs can be instrumental in ensuring that human rights considerations are not neglected in the post-2015 climate change context: NHRIs are empowered to scrutinize legislation, administrative laws, draft bills and policies and even perform budget review in view of compliance with human rights obligations. Their advisory roles allows them to provide opinions, recommendations, proposals and reports to the government, parliament or other responsible organs from a human rights lens.

In particular, NHRIs may be involved in translating and tailoring globally agreed climate change commitments into human rights respecting national frameworks by contributing to the development

of national indicators, benchmarks etc. NHRIs may also conduct human rights impact assessments of climate change related policies and programmes to implement climate related goals. In addition, NHRIs can be involved in the national level review process to see if financial assistance supporting climate change pledges is in line with human rights commitments.

NHRIs' bridging role uniquely positions them to ensure the national level tailoring process of international climate change commitments upholds the principles of inclusion, participation and non-discrimination. As independent entities, NHRIs occupy a unique terrain that enables them linking civil society to the Government. They can provide an unbiased meeting point that encourages dialogue and facilitates cooperation among various stakeholders.

Area 3 – Human rights monitoring

Colombia

The **Ombudsman's Office of Colombia** was asked to evaluate the performance of State obligations in respect of the human right to water. In its investigations, the office of the Ombudsman classified the country's municipalities into a hierarchy from 'worst' to 'best' in terms of both water supply and environmental sustainability. The first classification used evaluation indicators based on the components of the human right to water, i.e.: i) the availability of water, i.e. ensuring a continuous supply; ii) accessibility to water, both in terms of physical access, economic access, non-discrimination and access to information, and iii) water quality, as it must be safe and must not contain microorganisms or substances that threaten health. Additional indicators included coverage levels, the gap between water coverage and sanitation coverage levels, the gap between urban and rural coverage levels, and local government capacity. The second classification, measuring environmental sustainability, classified municipalities according to their performance on three axes. These were natural water regeneration capacity (extent of plant cover, wetlands, etc.), water scarcity (risk of water shortages in adverse environmental conditions) and vulnerability (the relationship between natural regeneration capacity and water scarcity). The results of the investigation identified 46 of the 1097 municipalities as being 'high risk' municipalities in which the declaration of a health emergency was recommended. In a further 117 municipalities data was deemed highly inadequate, requiring further research. Finally, in environmental terms, only 17% of the Colombian population have acceptable levels of vulnerability, indicating an urgent need to build regenerative capacity and reduce water scarcity in the majority of municipalities.

Australia

The **Australian Human Rights and Equal Opportunities Commission** published a background report on human rights and climate change in 2008. In this report, the right to water is looked at in the context of the human rights dimensions of climate change. The report notes that climate change may impact upon human rights through gradually diminishing access to safe drinking water: "as the earth gets warmer, heat waves and water shortages will make it difficult to access safe drinking water and sanitation (...). In Australia declining precipitation in water catchments is already creating competition between stakeholders over the appropriate use and sharing of and sharing of remaining water". In the same year the Australian Human Rights Commission noted in its Native Title Report that indigenous Australians' water rights are at severe risk from climate change. The commission highlighted the need for genuine participation of indigenous people in the development of new Australian water policy and that the preservation of indigenous cultural practices related to water must be a key element of the new water policy.

NHRIs are also uniquely placed to ensure a human rights-based monitoring of national climate change related frameworks. The unique role of these institutions is to ensure that monitoring is designed to track adherence to the commitments under international and national human rights law. NHRIs can monitor progress towards achieving internationally agreed goals based on indicators and

benchmarks through collecting data from various stakeholders (national statistical offices, Government, public bodies, civil society etc.). Therefore, NHRIs can act as a catalyst for monitoring that is participatory, evidence based, transparent and accountable.

NHRIs have been participating in the UN human rights protection mechanisms and have a wide ranging experience in following up recommendations concerning compliance with State commitments. Therefore, these institutions are also well suited to channel information on national climate implementation efforts from a human rights perspective.

We note, that there are several NHRIs who developed a specialized monitoring methodology providing them with tools to perform country monitoring in relation to the human right to water and sanitation and other related rights. These examples may also feed into the discussion on how NHRIs can support existing climate change-related national tracking systems from a human rights lens.

Contact: Ms. Viktoria Mohos Naray – NHRI Programme Manager v.mohos@waterlex.org

WaterLex | WMO building 2nd floor, 7 bis avenue de la Paix, 1202 Geneva, Switzerland | +41 (0)22 907 36 46 | www.waterlex.org

WaterLex is an international public interest development organization based in Geneva, Switzerland. It is a UN-Water Partner with UN ECOSOC special consultative status. Its mission is to develop sustainable solutions based on human rights to improve water governance worldwide. It works with an alliance of interested parties to improve water-governance frameworks, bringing them in line with country obligations under international human rights law. The interested parties are individuals and groups working in government (diplomatic missions), academia (professors of law, researchers), bilateral cooperation (water management advisors), the judiciary (high/supreme courts judges), the UN system (UN-Water family members), and civil society (NGOs that work on water issues). WaterLex works in partnership with 13 universities to continuously enrich the content of the WaterLex Legal Database. Established in 2010, when the human right to water was recognized by the UN, the organization has a secretariat in Geneva, a supervisory board of directors, and a large pool of members and expert advisors. It is an official member of the Global Water Partnership, UNDP Cap-Net, UNDP Global Water Solidarity, UNEP Global Wastewater Initiative, and Swiss Water Partnership.