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Contributions to the Report on Climate Change and Human Rights - a Safe Climate

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The Global Network for the Study of Human Rights and the Environment (GNHRE)¹ consists of thinkers, researchers, policy-makers, opinion-formers and community activists working at the interface between human rights and the environment. In collaboration with our members and partners and in response to the Call for Inputs: Climate Change and Human Rights - a Safe Climate, the GNHRE presents this contribution to respond to Question 2 of the questionnaire regarding the specific obligations of the States to address the main drivers of climate change. This contribution features the inputs of Ana Lucía Maya-Aguirre and Héctor Herrera-Santoyo of the Observatory for the Marine and Coastal Governance (Colombia)², Dr. Josh Gellers of the Department of Political Science and Public Administration of the University of North Florida (U.S.)³, Dr Kirsten Davies, Professor at Macquarie Law School of Macquarie University (Sydney, Australia); Dr. Anna Grear, Professor of Law and Theory, School of Law and Politics, Cardiff University (Cardiff, Wales); Dr Tom Kerns, Director, Environment and Human Rights Advisory; Steering Group, Permanent Peoples' Tribunal Session on Human Rights, Fracking and Climate Change.

We urge that States recognize that human rights protection and a profound commitment to climate justice are interdependent and indivisible, as stated in the Declaration on Human Rights and Climate Change drafted and published by the GNHRE (Principle 1).⁴ In relation to this, this contribution is divided into two parts to address two distinct aspects of State obligations to address climate change: protection of coastal communities and fracking.

The first part addresses the critical need to recognize the relation among climate justice, the enjoyment of human rights, the protection of coastal communities, and the need to increase cooperation with and among small island countries (which we call “big ocean States”).⁵ In that regard, we believe that States are obligated to: recognize climate change as a contributing factor of environmental displacement in coastal zones and assist internally and internationally displaced people; apply the precautionary

¹ Available at: <https://gnhre.org/>

² The Center for Social and Environmental Studies - Observatory for Marine and Coastal Governance is a Colombian non-profit organization, working on research, environmental education, monitoring of public policy and environmental protection of the marine ecosystems and the communities that inhabit the coastal territory. Link <https://www.ceambientales.org/>

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⁴ Global Network for the Study of Human Rights and the Environment (GNHRE). 2016. Declaration on Human Rights and Climate Change. Available at: <https://gnhre.org/declaration-human-rights-climate-change/>

⁵ Chan, N. 2018. “Large Ocean States”: Sovereignty, Small Islands, and Marine Protected Areas in Global Oceans Governance, *Global Governance: A Review of Multilateralism and International Organizations*, 24(4), 537-555. doi available at: <https://doi.org/10.1163/19426720-02404005>



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principle for activities developed in the sea, including especially offshore drilling; protect coastal communities by improving coastal governance.

The second part of this submission derives from The Permanent Peoples' Tribunal (PPT) Session on Human Rights, Fracking and Climate Change Advisory Opinion⁶ released on April 12, 2019; it summarizes those portions of the Advisory Opinion relevant to States' obligation to protect against climate change, particularly with respect to State actions that license, permit, monitor and subsidize fossil fuel industry extraction, infrastructure, and distribution practices.

If you need any further information, please do not hesitate to contact us at edaly@widener.edu and anamaya@ceambientales.org.

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⁶ The Permanent Peoples' Tribunal (PPT) Session on Human Rights, Fracking and Climate Change Advisory Opinion. Released on April 12, 2019. Available at: <http://permanentpeopletribunal.org/wp-content/uploads/2019/04/AO-final-12-APRIL-2019.pdf>



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Question addressed

Given that “urgent, effective and ambitious action” to ensure a safe climate is essential to protecting a wide range of human rights, what are the specific obligations of States and businesses in terms of addressing the main drivers of climate change (e.g. greenhouse gas emissions, deforestation, industrial agriculture)?

Part One: Coastal Zone Protection

1. Recognition of climate change as a factor of environmental displacement in coastal zones and assistance to people who are internally or internationally displaced, with particular attention to the unequal burdens resulting from the impacts of climate change borne by particularly vulnerable populations including but not limited to women and children.

As stated in the GNHRE’s Declaration on Human Rights and Climate Change, “All human beings have the right to investments in adaptation and mitigation to prevent the deleterious consequences of anthropogenic climate change, and to international solidarity and timely assistance in the event of climate change driven catastrophes.”⁷ Among the most serious situations arising from intensifying effects of climate change is the climate-induced displacement of people, both internally and internationally.⁸

States should recognize climate change as a factor of induced displacement, and such recognition should lead to the protection of internally and internationally climate-displaced people.⁹ Notwithstanding the absence of standardized definitions, we urge States to take national measures to protect the human dignity of those who are displaced by climate conditions.¹⁰ In particular, states should ensure consistently adequate availability of security, food, water, and health and hygiene, and they should ensure family cohesion. In addition, changes in the climate exacerbate pre-existing vulnerabilities, whether from disability, poverty, or other conditions.¹¹ It must also be recognized that the burdens of displacement fall more heavily on women and girls who are less likely to be able to draw on material resources and are more likely to be responsible for the care of others who are even more

⁷ Global Network for the Study of Human Rights and the Environment (GNHRE). 2016. Declaration on Human Rights and Climate Change. Available at: <https://gnhre.org/declaration-human-rights-climate-change/>

⁸ Wilkinson, E; Et. Al. 2016. Climate-induced migration and displacement: closing the policy gap. ODI. Available at: <https://www.odi.org/sites/odi.org.uk/files/resource-documents/10996.pdf>

⁹ Sánchez, B. & Rubiano, S. 2017. Territorios en transformación, derechos en movimiento: cambio ambiental y movilidad humana en Colombia / Bogotá: Universidad de los Andes, Facultad de Derecho, Ediciones Uniandes.

¹⁰ International Organization for Migration (IOM). Glossary. Migration, environment and climate change: Evidence for policy (MECLEP). Available at: https://publications.iom.int/system/files/pdf/meclep_glossary_en.pdf & IPCC. 2014. Summary for policymakers. In: Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Field, C.B., V.R. Barros, D.J. Dokken, K.J. Mach, M.D. Mastrandrea, T.E. Bilir, M. Chatterjee, K.L. Ebi, Y.O. Estrada, R.C. Genova, B. Girma, E.S. Kissel, A.N. Levy, S. MacCracken, P.R. Mastrandrea, and L.L. White (eds.)]. Cambridge University Press. p20. Available at: https://www.ipcc.ch/site/assets/uploads/2018/03/ar5_wgII_spm_en-1.pdf

¹¹ Brown, O. 2008. Migration and Climate Change. International Organization for Migration (OIM).



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vulnerable. In addition, the breakdown of social structures exposes vulnerable people to increased levels of sexual violence and other forms of exploitation and humiliation.

State recognition of the impacts of international displacement is also necessary. First, states should provide special status to people who come from other countries due to climate change even if they do not meet the legal standards for refugee status. Receiving states should regulate by law or administrative authority the legalization of permanent residence of climate “refugees” (including e.g. VISA, residence permit, job opportunities). Additionally, receiving states should provide on an immediate basis emergency humanitarian assistance, medical attention, and shelter, whether independently or in cooperation with other states and non-state organizations. Cooperation and support from developed countries to Big Ocean states and continental coastal communities to prevent and manage climate displacement is desperately needed. In the long term, stable and lasting practices should be implemented.

The principle of non-refoulement borrowed from international human rights law, humanitarian law, and refugee law should be applied by analogy to people displaced by climate change. This principle establishes that states cannot transfer, deport or remove individuals from their jurisdiction when they can be at risk of irreparable harm upon return, including persecution, torture, ill-treatment or other serious human rights violations.¹² In the case of climate change displacement from one country to another, people cannot be forced to return to their countries of origin when their homes and their original communities are no longer habitable and where general personal security is lacking. Forcing people to go back would exacerbate the vulnerability of people -- and especially women and girls -- and even put their lives in jeopardy.

The case of people displaced in Vanuatu in the South Pacific provides an example of how people have left their home-islands when they become uninhabitable, for a variety of reasons, including the impacts of climate change, which exacerbates existing vulnerabilities. Squatter communities are now appearing on the outskirts of Port Vila and Luganville (in Vanuatu) and Honiara (in the Solomon Islands).¹³ There is also the case of people from Kiribati and Tuvalu who have been permanently displaced because of the rising level of the sea resulting from climate change.¹⁴

Addressing climate change and migration requires a strategic management of both climate change policy and migration policy. Understanding this link and recognizing that climate conditions lead the migration of people is the first step to follow up a process of combining different public policies specifically addressing climate change, such as adaptation and mitigation, and other aspects of

¹² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED); Convention relating to the Status of Refugees.

¹³ Davies, K; Riddell, K. 2017. *The Warming War: How Climate Change Is Creating Threats to International Peace and Security*, 30 *Geo. Int'l Env'tl. L. Rev.* 47; Moita M & Logan C. 2017. Adapting global practices and tools on disaster displacement to the Pacific context. OIM; Cullen, M. 2018. “Eaten by the Sea”: human rights claims for the impacts of climate change upon remote subnational communities. *Journal of Human Rights and the Environment*, Vol. 9 No. 2, September 2018, pp. 171–193.

¹⁴ Curtain R. & Dornan M. 2019. A pressure release valve? Migration and climate change in Kiribati, Nauru and Tuvalu. Development Policy Centre, Crawford School of Public Policy ANU College of Asia and the Pacific The Australian National University. Available at: <http://devpolicy.org/publications/reports/Migration-climate%20change-Kiribati-Nauru-Tuvalu.pdf>



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migration policies, social measures, land tenure, and gender inequities to avoid conflicts among migrants and between populations of migrants and those whose lives are affected by increasing migration to their communities.

2. Applying the precautionary principle for activities offshore

Countries such as Belize¹⁵ and Costa Rica¹⁶ have enacted laws for declaring a moratorium on offshore drilling. However, other countries are moving in the opposite direction without taking into account the deep effects that this can have on marine and coastal ecosystems and on the human populations that live within those ecosystems. The burdens are especially significant for people who live in the Caribbean. In these countries' shared ecosystems, there is increasing economic interest in exploiting so-called natural resources in marine and coastal territories, such as offshore oil and gas. These activities prompt deep concerns, because the damage done to the environment and to the people can be profound and irreversible.¹⁷ The Caribbean region is particularly vulnerable to climate change,¹⁸ with sensitive ecosystems that have taken eons to evolve¹⁹; here, the study of these ecosystems could provide scientific information for conserving other ecosystems.²⁰ In a recent, unprecedented advisory opinion, the Inter-American Court of Human Rights held that Caribbean States are required under International Environmental Law to prevent environmental damage and to apply the precautionary principle (PP) both inside and outside their borders, since impacts transcend national frontiers.²¹

The obligation of applying the PP should be extended to countries outside the Caribbean. At this moment, the understanding of this principle should be extended not only when there are threats of serious or irreversible damage,²² but also when an activity raises threats of harm to human dignity and health or to the environment even if some cause and effect relationships are not fully established scientifically.²³ This should apply fully to offshore activities. A comprehensive environmental impact assessment should be undertaken to demonstrate whether the harm will be irreversible. Most importantly, in case of doubt, the obligation of the state should be to avoid the activity or at least

¹⁵ Belize, Petroleum Operations (Maritime Zone Moratorium) Act (2017).

¹⁶ BNAmericas. 2019. Costa Rica extends oil moratorium until 2050. Available at:

<https://www.bnamericas.com/en/news/oilandgas/costa-rica-extends-oil-moratorium-until-2050>

¹⁷ Intergovernmental Panel on Climate Change (IPCC). 2014: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland, pp: 151.

¹⁸ Comisión Económica para América Latina (CEPAL). 2015. La economía del cambio climático en América Latina y el Caribe: paradojas y desafíos del desarrollo sostenible.

¹⁹ Santos, M. M.; Et Al. 2018. The last frontier: Coupling technological developments with scientific challenges to improve hazard assessment of deep-sea mining. *Science of the Total Environment*, Vol. 627. pp: 1505-1514. DOI: <https://doi.org/10.1016/j.scitotenv.2018.01.221>

²⁰ Wade L. 2016. "An unhappy peace dividend". *Science*.: Vol. 352, Issue 6282, pp. 129-130. DOI: 10.1126/science.352.6282.129

²¹ Inter-American Court of Human Rights. The Environment and Human Rights. Advisory Opinion OC-23/17. Series A No. 23.

²² The United Nations Conference on Environment and Development. 1992. Principle 15. Rio Declaration. Available at:

http://www.unesco.org/education/pdf/RIO_E.PDF

²³ Wingspread Statement on the Precautionary Principle. 1998. Available at: <http://www.gdrc.org/u-gov/precaution-3.html>



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declare a temporary moratorium to reflect the general principle of environmental law, *in dubio pro natura*²⁴.

3. Protection of coastal communities

Among the most vulnerable populations affected by climate change are the coastal communities in both islands and continental countries. There are multiple needs in terms of adaptation and mitigation of climate change, but there is also the need to develop a broad understanding of sustainability in coastal areas, which entails managing activities, protecting communities, facilitating access to marine and coastal information, ensuring broad and meaningful participation in decision-making by those who are affected, and supporting social and scientific research in those areas.

Specifically, one obligation should be to have a national comprehensive regulatory framework that incorporates the environmental, economic, and social sustainability of coastal areas, starting with those countries whose regulation is weak.²⁵ In addition, the development of multilevel governance for coastal environmental sustainability that includes national, regional and local efforts is essential to effectively confront climate change in coastal areas. A crucial point is to strengthen the authority of local officials to protect residents as well as to promote participation of local communities -- in particular those whose survival depends on the sustainable use of marine and coastal biodiversity.

One example of the negative effects that climate change is already having on coastal communities is in the state of Florida, which is estimated to experience the most dramatic financial losses as a result of climate change out of all states in the U.S.²⁶ As a peninsula with a coastline that extends over 1,300 miles (more than 2,000 kms), Florida is particularly vulnerable to sea level rise. In the coastal city of Jacksonville, Florida, it is estimated that more than 2,600 homes will be susceptible to flooding by 2050 under a scenario in which carbon emissions continue unabated.²⁷ Under a new plan, the federal government and the city of Jacksonville are already tacitly accepting the reality of climate change (even while the state government has labored under a ban on the use of the term “climate change”), by agreeing to spend \$4.5 million to purchase and destroy 17 homes located in flood-prone areas and relocate the residents.²⁸

This adaptation strategy is unsustainable. The city does not possess the resources necessary to buy out residents living in all the areas that are currently or potentially vulnerable to flooding in the near future,

²⁴ IUCN World Declaration on the Environmental Rule of Law. 2016. Principle 5. Available at:

https://www.iucn.org/sites/dev/files/content/documents/world_declaration_on_the_environmental_rule_of_law_final_2017-3-17.pdf

²⁵ Colombia is an example of the lack of specific regulation and strong authorities in charge of managing the coastal area.

²⁶ Hsiang Et. al. 2017. Estimating economic damage from climate change in the United States. Science. Available at:

<https://science.sciencemag.org/content/356/6345/1362>

²⁷ Climate Central & Zillow. 2018. Ocean at the Door: New Homes and the Rising Sea. Available at:

<https://www.climatecentral.org/news/ocean-at-the-door-new-homes-in-harms-way-zillow-analysis-21953>

²⁸ Ross. 2019. Jacksonville Moves Ahead With Plan To Buy Out Flood-Prone South Shores Homes. WJCT. Available at:

<https://news.wjct.org/post/jacksonville-moves-ahead-plan-buy-out-flood-prone-south-shores-homes>



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nor is it obvious that local or national taxpayers should bear the burden of residential choices. At present, there do not seem to be any plans to buy out or relocate lower-income residents who live in parts of the city likely to be affected by future flooding, especially by storm surges caused by more intense hurricanes. While climate change poses an existential threat to the entire state of Florida in general, the coastal areas are particularly vulnerable, with direct implications on the rights to non-discrimination and dignity and to housing and property and the fiscal obligations of the local, state, and federal government. Unless statewide and local climate action planning involves the participation of and accommodations for lower-income residents, especially people of color, climate change will likely result in greater and serious environmental injustices.

Part Two: The effects of Hydraulic Fracturing (Fracturing) on Environmental Human Rights

1. Protection against climate change, particularly with respect to State actions that license, permit, monitor and subsidize fossil fuel industry extraction, infrastructure, and distribution practices; recognition of states' obligations to respect, protect and fulfill the rights to life, to an adequate standard of living, to a healthy environment, including of future generations; and of Indigenous peoples to self-determination and to their traditional lands and resources.

This part is based on the Advisory Opinion of the Permanent People's Tribunal (PPT)'s Session on Human Rights, Fracking and Climate Change²⁹ released on April 12, 2019. This is a summary of those portions of the Opinion relevant to human rights and climate change. The PPT stated that “one of the ways in which fracking affects the ‘entire Earth community to which humans belong’ is through its contribution to climate change. Fracking is an important component of the growing threats to global agriculture, ocean and coastal ecosystems, and human and nonhuman health and welfare that stem from global warming.”³⁰

The Tribunal's Advisory Opinion acknowledges that its analysis is taking place “in a historical context in which climate change is the main global threat to the survival of the human species and consequently to the exercise of all human rights.”³¹ Regarding the right to life, the Advisory Opinion quotes from the UN High Commission on Human Rights report, titled “Understanding Human Rights and Climate Change,” noting that “the human rights which are most affected by climate change include the right to life . . . , the right to food, the right to water” and the right to other necessities essential for life.³²

²⁹ The Permanent Peoples' Tribunal (PPT) Session on Human Rights, Fracking and Climate Change conducted hearings during the week of May 14-18, 2018. Ten judges from nine countries heard oral testimony that week, reviewed written and video-recorded testimony from four preliminary tribunals held in the months prior, and reviewed fourteen *amicus curiae* briefs submitted by attorneys and organizations in five different countries and seven different US states. The Tribunal's Advisory Opinion was released on April 12, 2019. Available at: <http://permanentpeopletribunal.org/wp-content/uploads/2019/04/AO-final-12-APRIL-2019.pdf>

³⁰ Ibid. p24.

³¹ Ibid. p76.

³² Ibid. p31. Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change; 26 November 2015. Available at: <https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf>



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The Opinion highlights the Declaration on Human Rights and Climate Change and cites several of its provisions directly related to the right to life, including Article 4, “All human beings have the right to a planetary climate suitable to meet equitably the ecologically responsible needs of present generations without impairing the rights of future generations to meet equitably their ecologically responsible needs.” The Opinion further recommends “That State and sub-state jurisdictions should consider adopting the Declaration on Human Rights and Climate Change and making its standards and provisions part of public policy at all levels.”³³

The right to an adequate standard of living, articulated in the Universal Declaration of Human Rights (Article 25, 1) and in the Convention on the Rights of the Child (Article 24, 2, c) among other instruments, means that all persons and families must be guaranteed access to the basic preconditions for a healthy and dignified life including secure access to nourishing food, clean water, shelter from the elements, and adequate clothing, as well as medical care and necessary social services. This right to an adequate standard of living requires governments to take affirmative measures to prevent conditions – such as climate change, environmental pollution, the spread of disease and malnutrition, etc – that would hinder citizens’ access to these most fundamental necessities. The Advisory Opinion cites John Knox, then United Nations Special Rapporteur on Human Rights and the Environment, who asserts that it is the duty of States to take active steps to protect people’s right to a healthy environment. Governments, he says, must “ensure a safe, clean, healthy and sustainable environment in order to respect, protect, and fulfill human rights.”³⁴

The Opinion recommends “That all States and governments at all levels should include in their constitutions a recognition of the right of all their citizens to a healthy environment.”³⁵ Moreover, in affirming the right to an adequate standard of living for all those alive today, the Opinion further recognized that “this issue also involves more directly than any other cases in the history of the PPT, the rights of future generations.”³⁶

The right of Indigenous peoples to their traditional lands and resources is articulated in the United Nations Declaration on the Rights of Indigenous Peoples (Article 26): “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired”. The right of Indigenous peoples to self-determination, articulated in Articles 3 and 4 of that Declaration, was featured extensively in testimony presented to the court, both orally and in brief, by Alaska human rights attorney Robin Bronen.

³³ Ibid. p60. Global Network for the Study of Human Rights and the Environment (GNHRE). 2016. Declaration on Human Rights and Climate Change. Available at: <https://gnhre.org/declaration-human-rights-climate-change/>

³⁴ Ibid. p74. United Nations Special Rapporteur on Human Rights and the Environment. 2018. Framework Principles on Human Rights and the Environment. Principles 1 and 2. Available at: <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/FrameworkPrinciplesUserFriendlyVersion.pdf>

³⁵ Ibid. p59.

³⁶ Ibid. p76.



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As a final note, the United Nations Environment Programme 2015 report, “Climate Change and Human Rights,” distinguishes among three kinds of state duties to meet their human rights obligations: “1) the duty to respect human rights, a negative obligation which requires states to refrain from taking actions that would interfere with or curtail the enjoyment of human rights; 2) the duty to protect human rights against violations by third parties; and 3) the duty to fulfill human rights, a positive obligation, which requires states to undertake measures to ensure the realization of rights for all members of society.”³⁷ All three kinds of duties bear on States’ obligation to protect against climate change, particularly with respect to State actions that license, permit, monitor and subsidize fossil fuel industry extraction, infrastructure and distribution practices.

Conclusion

Climate justice and improving coastal governance are essential to confronting climate change because of its impact on: human rights, protection of coastal communities, small island communities, and environmental displacement in coastal zones, with emphasis on vulnerable populations, including especially women and children. In addition, the precautionary principle should be applied to offshore drilling activities because of their risk in both adaptation and mitigation to climate change.

Finally, regarding the fossil fuel industry’s impact on climate change and human rights, States should recognize their obligations to respect, protect and fulfill the rights to life, to dignity, to an adequate standard of living, and to a healthy environment, including of future generations, and to the rights of Indigenous peoples to self-determination and to their traditional lands and resources.

³⁷ United Nations Environment Programme (UNEP). 2015. Climate Change and Human Rights. p15. Available at: <http://columbiaclimatelaw.com/files/2016/06/Burger-and-Wentz-2015-12-Climate-Change-and-Human-Rights.pdf>