

**UN Human Rights Council Seminar
to Address the Adverse Impacts of Climate Change
on the Full Enjoyment of Human Rights
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**Forging Stronger Cooperation Between Human Rights
and Climate Change Communities:
Assessing the Impacts of Climate Change on Human Rights**

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Thank you very much, Excellency. I would also like to thank the Philippines and Bangladesh and the other members of the Human Rights Council for the opportunity to participate in this path-breaking seminar on climate change and human rights.

Other speakers have already emphasized the importance of cooperation between the human rights and climate change communities. I will focus on one area of cooperation that could be especially fruitful: using impact assessment to examine the effects of climate change-related activities on human rights.

I will first describe the long-standing mechanisms for environmental impact assessment, and then the much more recent efforts to develop human rights impact assessment. Finally, I will discuss how they apply to climate change, and make some suggestions about the human rights and climate change communities might try to bring them to bear on climate change more effectively.

Environmental Impact Assessment

Let me begin with *environmental* impact assessment. Most countries in the world require environmental assessments for certain types of projects within their territory, as do the World Bank and other international bodies for projects that they finance. Although these laws vary, they follow similar principles. Generally, they require a government to consider the possible environmental effects of a proposed project before deciding whether to undertake or authorize it. They often give interested members of the public a chance to comment on the proposal, and they provide for a final report on the project to be made public. More developed systems may

broaden the range of proposals subject to environmental assessment, require the decision-maker to consider alternatives to the proposed action, and provide for independent review to ensure the procedures are followed. Advanced systems also tend to require greater consideration of measures to mitigate any environmental harms caused by the proposed project.

In its original form, environmental impact assessment focuses on internal, domestic effects of proposed projects. But over the more than 40 years since it was first introduced, it has expanded its scope in several ways. First, countries often conduct strategic environmental impact assessment for broader plans and programs. Second, assessment often considers social impacts, not just environmental ones. And third, many countries now require assessment of transboundary environmental effects as well as domestic ones.

Indeed, this has now become a requirement of international law. The 1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context requires its 45 parties to conduct such transboundary assessment. And in 2010, the International Court of Justice announced that because it “has gained so much acceptance among States” in recent years, “it may now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource.”

Human Rights Impact Assessment

In recent years, there has been a growing awareness of the potential value of human rights impact assessment – that is, assessment of proposed activities in light of their effects on human rights. In order to be effective, human rights impact assessment, like environmental impact assessment, should be carried out before the project is authorized, should facilitate public participation, and should be made public.

While human rights impact assessment is much younger than its older sibling, it is progressing rapidly. I will mention several examples.

First, human rights bodies, including treaty bodies and regional human rights tribunals, have emphasized the importance of assessing environmental impacts that may adversely affect human rights. As Professor Shelton described yesterday with respect to the Inter-American Human Rights Commission, human rights bodies have created an extensive jurisprudence on environmental protection. Even in the absence of a universally adopted right to a safe and

healthy environment, they have construed human rights such as the rights to life, health, and property, to impose duties on states related to environmental protection. They have set out strict procedural duties that states must follow to avoid violating human rights through environmental harm, and they have made clear that these duties include the prior assessment of environmental impacts, as well as the provision of access to environmental information and public participation in environmental decision-making.

Others urge states to go further. For example, the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, which will be introduced formally on March 5 at the Human Rights Council, provide that “States must conduct prior assessment, with public participation, of the risks and potential extraterritorial impacts of their laws, policies and practices on the enjoyment of economic, social and cultural rights.”

Human rights groups such as Oxfam and the International Federation for Human Rights are working with local communities, to assess the human rights impacts of private investment projects, including dams and extractive industries.

Perhaps the most striking progress in this area is at the corporate level. The Guiding Principles on Business and Human Rights, proposed by Professor John Ruggie and endorsed by the Human Rights Council last June, provide that corporations “should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships.” The Principles make clear that the assessment procedure “should: (a) Draw on internal and/or independent external human rights expertise; [and] (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.”

Application to climate change-related activities

How well do these impact assessment procedures apply to climate change and, in particular, the effect of climate change-related activities on human rights?

First, let’s look at *environmental* impact assessment. It may seem obvious that environmental impact assessment should include effects on climate change. And, indeed, at the global level, the international community has used environmental impact assessment for climate

change with great success. The Intergovernmental Panel on Climate Change is, in a sense, the largest environmental impact assessment ever undertaken.

At national and local levels, however, environmental assessment procedures have sometimes been slow to require projects to address their impacts on climate change. One reason may be that climate change is, as Professor Humphreys said yesterday, a post-territorial problem, and environmental assessment has traditionally focused on local effects. In addition, human rights bodies have not addressed the need for transboundary assessment of harms caused by climate change. Nevertheless, there are some successes. Let me briefly mention two.

In the United States, environmental groups sued two federal agencies that help to finance international trade and investment, arguing that they were failing to assess the effects of their work on climate change. In 2009, shortly after the current Administration took office, the agencies agreed to conduct environmental impact assessment for all projects that emit more than 100,000 tons of carbon dioxide, and to reduce by 20% over the next decade emissions from such projects.

And, as Jasper Teulings will describe shortly, Micronesia successfully requested the Czech Republic to assess the transboundary effects on Micronesia of the largest coal-fired power plant in the country.

Nevertheless, even when there is environmental assessment of projects contributing to climate change, the assessment does not typically address effects on human rights. Even the extremely valuable IPCC reports have been criticized for not paying more attention to the ways that climate change affects interests protected by human rights. As Dr. Crist told us yesterday, however, the next IPCC Assessment, due in 2013-14, will include chapters on human security and well-being. That is an important step in the right direction.

In addition, projects designed to reduce greenhouse gases, such as Clean Development Mechanism and REDD projects, have been accused of having adverse effect on human rights that have been overlooked during the assessment process.

What about *human rights* impact assessment? Is it addressing climate change? For the most part, it is still in its infancy. But so far, it has not been eager to address harms from climate change. Corporate human rights impact assessment, in particular, is often limited to local effects. For example, one of the most commonly used assessment tools is the Human Rights Compliance Assessment Quick Check, developed by the Danish Institute for Human Rights. It

includes criteria on the effect of operations on the environment, but only the environment of the local community.

I am not suggesting that environmental and human rights impact assessment procedures should simply merge. But there is an important opportunity here for the environmental and human rights communities to work together. The environmental community, which is familiar with environmental impact assessment, and the human rights community, which is helping to develop human rights impact assessment, should learn from one another. Environmental and human rights NGOs should work together on strengthening assessment, and environmental officials should work with their counterparts in agencies concerned with development and human rights.

Taking into account human rights into account in environmental impact assessment would add rigor to existing efforts to examine social impacts, because it could measure impacts in light of binding human rights standards. And bringing more attention to climate change in human rights assessment procedures would ensure that corporations take long-distance as well as local environmental harms into account.

It has already been suggested that the Human Rights Council should consider appointing a special mandate. Among the other advantages of this idea, a special rapporteur or independent expert could contribute to this cooperative work on environmental and human rights impact assessment in two ways: by clarifying the relevant human rights obligations pertaining to environmental protection, and by acting as a point of contact with other bodies, including the FCCC, as they continue to grapple with these critically important issues.

Thank you for your attention.