

## **Observations by the United States of America on the relationship between climate change and human rights**

1. The United States appreciates the opportunity to share its views on “the relationship between climate change and human rights,” as requested by the UN Office of the High Commissioner for Human Rights (OHCHR) in its communications dated June 3 and August 21, 2008. The United States understands that the OHCHR is seeking views on this matter, in accordance with Human Rights Council (HRC) resolution 7/23, in order to conduct “a detailed analytical study on the relationship between climate change and human rights.”
2. The advancement of human rights and an effective response to global climate change are both policy priorities for the United States Government. Climate change is a serious challenge, and the United States is committed to working through the UN Framework Convention on Climate Change (UNFCCC) to develop an environmentally effective and economically sustainable climate regime that will slow, stop, and reverse global emissions of greenhouse gases. Regarding human rights, the values captured in the Universal Declaration of Human Rights (UDHR) reflect the core values upon which the United States was founded centuries ago. We continue to work actively to advance the cause of human rights around the world.
3. The United States considers a safe and sustainable environment to be an essential and shared goal – one that may further the realization of certain human rights, such as the “right to a standard of living adequate for the health and well-being” of all individuals (UDHR, Art. 25). More broadly, environmental protection will, as noted in the Universal Declaration of Human Rights, “promote social progress and better standards of life in larger freedom.” As Part I of this paper outlines below, the United States considers that efforts to address climate change and to advance human rights have a number of common and mutually reinforcing elements.
4. However, the United States does not consider that a right to a “safe environment” -- or other similarly worded or conceived rights -- exists under international law. Further, the United States takes the view that a “human rights approach” to addressing climate change is unlikely to be effective, and that climate change can be more appropriately addressed through traditional systems of international cooperation and international mechanisms for addressing this problem, including through the UNFCCC process. This topic is addressed in Part II, below.

### **I. Climate Change, Human Rights, and Good Governance**

5. As noted above, the United States considers that efforts to address climate change and to advance human rights have a number of common and mutually reinforcing elements. Most notable is the importance of good governance and the rule of law. Efforts to build capacity and strengthen this foundation of good governance across the

globe unquestionably yield dividends with respect to both an effective response to climate change and the protection of human rights.

6. Effective climate adaptation means the development of flexible and resilient societies and economies. A diverse, robust, and open economy can better withstand many types of disruptions, including those related to climate variability and climate change. The greatest progress will be assured through strategies that together improve energy security, alleviate poverty, reduce harmful air pollution, and reduce greenhouse gases. Good governance and capacity building in support of this end are essential for developing flexible and resilient societies and economies. Well-governed societies are inherently more adaptable to changing economic, social and environmental conditions of all kinds.
7. The United States has undertaken a broad range of activities to help countries become more resilient to climate risks. The United States was among the first to address climate vulnerability through the U.S. Country Studies Program, which between 1994 and 2001 helped 56 countries build their assessment capacities. They produced greenhouse gas inventories, mitigation plans and vulnerability assessments. Building on these efforts, the United States is fostering new partnerships to further knowledge gained through observations, assessments, and adaptation projects.
8. For instance, the United States is collaborating internationally on monitoring tools, such as the Global Earth Observation System of Systems (GEOSS). This partnership of more than 70 countries is providing communities early warning of natural disasters and improving decision-making for agriculture, coastal development, and other economic sectors that are affected by climate variability and change. And, in 2007, the U.S. Agency for International Development released an Adaptation Guidance Manual that is designed to assist USAID missions and other development partners to understand, analyze, and respond to the potential impacts of climate change on development challenges, and to develop effective approaches to solving those challenges. All told, USAID contributes approximately \$180 million a year to climate change-related development activities.
9. The United States considers that the attributes that contribute to climate solutions -- good governance, transparency, and rule of law -- are also essential to the promotion of democracy and human rights. Democracies are built on a foundation of representative, accountable institutions of government, including an independent judiciary. Rule of law includes legal and administrative measures and regulations that apply equally to all individuals and elements of society; equal access to justice and due process; fair and effective enforcement of penalties; and an intolerance for official corruption. Vibrant civil societies, including independent non-governmental groups and a free media, also are essential to the success of democracies, helping to bring issues, such as environmental concerns, to the forefront and holding authorities to account to ensure that they are addressed.

10. The United States will continue its aggressive efforts to promote human rights and address climate change, including through our ongoing efforts to build capacity and strengthen governance and the rule of law worldwide.

## **II. Relationship between human rights law and climate change**

11. The United States notes that a “safe climate” and “safe environment” are increasingly referred to as human rights. References to the environment as a human right take various forms, including the following:
  - a. The right to live in a safe, secure and sustainable environment
  - b. The right to a safe and sustainable environment
  - c. The right to a healthy and sustainable environment
  - d. The right to an environment capable of supporting human society
  - e. The fundamental right to a safe and sustaining environment
  - f. The right to a safe environment
  - g. The right to climate protection
  - h. The right to climate-resilient development<sup>1</sup>
12. The United States does not share the view that an environment-related human right exists under international law, and indeed the sheer number different formulations of this “right” is indicative of the fact that it does not have a basis in international law. This view is informed by a review of the relevant instruments of international law. Such a right is not found in the UDHR. Even with respect to human rights obligations that may exist with respect to particular countries under treaty law, neither the International Covenant on Economic, Social, and Cultural Rights nor any other universal human rights treaty of which the United States is aware provides for such rights. Likewise, international climate change agreements, such as the UNFCCC, do not speak of individual rights or human rights obligations, nor do they create private rights of action. Rather, the focus of such agreements is on achieving international cooperation to advance policies and measures to both mitigate and adapt to climate change.
13. The United States is similarly unaware of any analysis demonstrating the general and consistent practice of states and *opinio juris* (i.e., an underlying belief of states engaging in such general and consistent practice that their conduct was compelled as a matter of legal obligation) that would be necessary for such a right to exist as a matter of customary international law. Indeed, such a right would be inconsistent with the domestic law and practice of the United States, and many other states.

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<sup>1</sup> The first six examples can be found in “Preparing for Bali and Beyond: The Human Dimension of Global Climate Change.” Conference materials for the conference hosted by the Maldives, Nov. 13-14, 2007; “the right to climate protection” is found in *The Economics of Climate Change*, N. H. Stern, Great Britain Treasury, at 47 (2007); “right to climate-resilient development” is from the address by Dr. Fakhruddin Ahmed, the Chief Adviser (Head of the government) of the Caretaker Government of the People’s Republic of Bangladesh, at the SAARC Ministerial Meeting on Climate Change, July 3, 2008, Dhaka.

14. While there is no direct formal relationship between the two issues as a legal matter, the United States agrees that “climate change ... has implications for the full enjoyment of human rights.” This view was expressed in March 2008 by the Human Rights Council in its resolution 7/23. This observation is similar to the one expressed in resolution 2005/60 of the Commission on Human Rights, which stated more broadly that “environmental damage ... can have potentially negative effects on the *enjoyment of human rights*...” Previous resolutions of the Commission dating back more than a decade contain similar expressions.<sup>2</sup> It should be noted, of course, that these statements are factual observations rather than statements of international law.
15. The United States agrees that climate change has implications on the “enjoyment” of human rights. In some instances, for example where climate change leads to localized increases in crop yields, the effect on enjoyment may be positive. In other instances, the effect on enjoyment may be profoundly negative. This may also be the case with respect to natural or climatic events that lack a causal connection to human behavior, such as with volcanic eruptions, earthquakes, and tsunamis. Indeed, this recognition is included in Commission resolution 2005/60, which states that environmental damage includes damage “caused by *natural circumstances or disasters*” that are not linked to human activities. In this regard, climate change is one of many natural and societal phenomena that may affect the enjoyment of human rights.
16. The recognition that climate change can have implications on the enjoyment of human rights has led increasingly to calls for a human rights-based “approach” to addressing climate change, including a statement by the OHCHR to this effect.<sup>3</sup> From a practical standpoint, the meaning of such suggestions is not clear. Certainly, governments should be mindful of their international human rights obligations when considering any significant domestic policy initiatives; but the United States does not consider that human rights law provides an optimal framework for addressing climate change internationally. Instead, the United States believes that climate change can be more effectively addressed through traditional systems of international cooperation, including through the UNFCCC process and its Bali Action Plan and regional cooperation such as the Asia Pacific Partnership on Clean Development and Climate.
17. As outlined below, the United States considers that moving toward a human rights-based approach to climate protection would be impractical and unwise. The basic characteristics of climate change suggest that this challenge is not especially amenable to human rights-based solutions.
18. First, climate change is a highly *complex* environmental issue, characterized by a long chain of steps between the initial human activities that produce greenhouse gas

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<sup>2</sup> See e.g., CHR Resolution 1991/44, stating that “environmental damage has potentially negative effects on human rights and the enjoyment of life, health and a satisfactory standard of living.”

<sup>3</sup> OHCHR, “The Human Rights Impact of Climate Change,” United Nations Joint Press Kit for Bali Climate Change Conference, Dec. 3-14, 2007 (stating, *inter alia*, the need for a “rights-based approach to tackling climate change.”)

emissions and the eventual physical impacts that may result from those emissions. Emissions from all sources and all countries determine the overall concentration of these gases in the atmosphere. Once in the atmosphere, each of the different greenhouse gases imposes a perturbation in the radiative energy budget of the Earth's climate system ("radiative forcing") which, in turn, increases global average surface temperatures. This warming then leads to the eventual physical impacts that affect human society, such as changes to rain patterns and the earth's hydrological systems. At the local level, some of these physical impacts may be negative, whereas others may be positive.

19. Furthermore, many uncertainties exist regarding the magnitude of current and future climate change, including distinguishing between those impacts that are part of natural climate variability and those that are influenced by anthropogenic climate change. For instance, for any single climatic event, such as a hurricane, it may be impossible to separate the human and natural causal influences.
20. Second, as suggested above, climate change is a *global* phenomenon. A worldwide and diffuse set of actors -- public and private, wealthy and poor -- collectively determine the world's anthropogenic greenhouse gas emission levels. Consequently, as the Intergovernmental Panel on Climate Change (IPCC) has described, "[n]o single individual or nation can determine the composition of the world's atmosphere. Any individuals' or nations' actions to address the climate change issue, even the largest emitting nation acting alone, can have only a small effect. As a consequence, individuals and nations acting independently will provide, together, fewer resources than all individuals and nations would if they acted in concert. This characteristic provides an important motivation for collective, global action."<sup>4</sup>
21. Third, climate change is a *long-term* challenge. Emissions of carbon dioxide, on average, remain in the atmosphere for about 100 years. (Some other greenhouse gases persist in the atmosphere for thousands of years.) Accordingly, the impacts of climate change today are caused not by recent emissions but the accumulation of greenhouse gases over long periods of time by a diffuse set of actors, most of whom would have been unaware of any potentially adverse future impact of the greenhouse gas emissions associated with their activities.
22. Fourth, greenhouse emissions that contribute to climate change are linked to a *broad array of human activities*. This includes activities related to electricity, transportation, industry, heating, waste disposal, agriculture, and forestry. Many activities that contribute to the build-up of greenhouse gases in the atmosphere are themselves critically important to advancing human well-being and higher standards of living. Similarly, many of these activities contribute to the advancement of human rights, and indeed the individual actors contributing to these emissions are themselves rights holders.

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<sup>4</sup> IPCC, *Climate Change 2001: Mitigation*, contribution of Working Group III to IPCC Third Assessment Report (2001), p. 606.

23. A complex global environmental problem with these characteristics does not lend itself to human rights-based solutions. A central purpose of human rights law, whether at the domestic or international level, is providing remedies for the victims of specific rights violations. For instance, Article 2, paragraph 3 of the International Covenant on Civil and Political Rights states that “Each State Party to the present Covenant undertakes . . . [t]o ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy . . . [and] that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.”<sup>5</sup>
24. This framework requires identifiable violations, identifiable harms attributable to the violations, and for remedies to be provided *by the government to individuals within its territory and jurisdiction*. This approach is also reflected in the various individual complaints procedures found under international human rights law.<sup>6</sup> These mechanisms permit victims of alleged violations to bring complaints against their own government. Furthermore, regional human rights systems similarly permit individuals to bring claims against their own governments.<sup>7</sup> Further still, other international human rights mechanisms and institutions, such as the UN “special procedures” and treaty bodies, are primarily oriented toward improving the compliance of states with their international human rights obligations. All of these systems illustrate that human rights law is primarily concerned with how a government treats its own citizens and others living within its territory and under its jurisdiction. As such, human rights law attempts to ensure that individuals have the ability to petition their government to redress alleged violations.
25. The human rights systems described above are ill-equipped to address a problem with the characteristics of global climate change and provide virtually no guidance or insight on how to mitigate and adapt to climate change. Overall, and in light of the characteristics of the phenomenon of climate change, it will be difficult and problematic to identify any particular party as being uniquely responsible for any particular impairment of the enjoyment of human rights caused by climate change or even any particular harm as being proximately caused by any particular act or omission by a particular government or governmental actor. Considering that greenhouse gases are closely related to the social and economic advancement of societies, it will similarly be infeasible to identify any particular “wrongful” act as having caused an impairment in the enjoyment of human rights. Accordingly, there is no legal basis under human rights law for holding national governments accountable for climate change impacts that have primarily extraterritorial and long-term origins.

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<sup>5</sup> Article 3 further states that a State Party must “ensure that the competent authorities shall enforce such remedies when granted.”

<sup>6</sup> See *e.g.*, the First Optional Protocol to the ICCPR; the Optional Protocol to the Convention on the Elimination of Discrimination against Women; and Article 22 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>7</sup> See *e.g.*, the Inter-American human rights system, at <http://www.oas.org/oaspage/humanrights.htm>.

In short, an impairment of the *enjoyment* of human rights is not the same as a *violation* of human rights, which involves a government's failure to abide by its international human rights obligations.

26. Even if novel theories of responsibility are devised and climate-related human rights claims -- either in domestic or international fora -- gain traction, the overall results are not likely to meaningfully contribute to the underlying need to slow, stop, and reverse worldwide emissions and reduce societal vulnerabilities to climate change or generally advance the broader cause of human rights internationally. Justice would be distributed in a profoundly uneven and arbitrary manner, as remedies would be confined to those that suffered a particular harm and had access to a particular forum. Those that prevailed may not even be those most adversely affected by climate change. The process of pursuing human rights claims would be adversarial and require affixing blame to particular entities; this contrasts with the efforts to achieve international cooperation that have thus far been pursued through the international climate change negotiations. At the same time, governments -- which would not accept a legal basis for such actions or complaints against them -- would almost certainly not enforce human rights-based determinations against them. This, ironically, would harm the enjoyment and enforcement of international human rights law as it would corrode the critical common understanding that human rights law provides a real and immediate set of legal obligations that states are compelled to follow and enforce. In short, any attempt to invent or impose a legalistic human rights approach to climate change will not help address this complex global environmental problem or the enforcement and respect for human rights internationally.
27. In conclusion, it is worth emphasizing that both the UNFCCC and IPCC processes have placed a strong emphasis on the human and societal dimensions of climate change, including the impacts of climate change on food, water, housing, health, and life itself. Indeed, there is an entire working group of the IPCC dedicated to analyzing the "impacts, adaptation and vulnerability" of climate change.<sup>8</sup> Similarly, the UNFCCC process has long recognized the critical importance of sustainable development and the need to improve the adaptive capacities of those societies particularly vulnerable to climate change. The United States fully supports this process and recognizes that improving human well-being has been, and will continue to be, at the center of domestic and international efforts to address climate change.

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<sup>8</sup> The IPCC Working Group II. The latest assessment of that working group "provides a comprehensive analysis of how climate change is affecting natural and human systems, what the impacts will be in the future and how far adaptation and mitigation can reduce these impacts. It also takes into consideration the inter-relationship between adaptation and mitigation, and the relationship between climate change and sustainable development." See <http://www.ipcc.ch/about/working-group2.htm>.

