

## Climate Change and Migration

11 November 2011

Thank you and good morning everyone,

I would like to thank Professor Jane McAdam and the University of New South Wales' Centre of Public Law for inviting me to be here with you for this conference which is both extremely important and timely.

I say this both because of the scale of the challenge posed by climate or environmentally-induced migration, but also because our ability, as an international community, to deal with that challenge is extremely limited.

The Maldives' basic position on climate induced migration and the related challenge of statelessness is that, while we understand the conceptual and legal difficulties associated with the issue, we do not believe such difficulties should be used as an excuse for inaction. But more of that later.

This afternoon, I have been asked to talk about human rights obligations and accountability in the face of climate change.

As you may be aware, the UN Human Rights Council has been extremely active over recent years addressing the interface between global warming and the enjoyment of human rights. While the Council's work has not focused directly on the question of climate induced migration, the broad moral and legal questions that have been raised – especially relating to human rights obligations and accountability - are as relevant to displacement as they are to, say, mitigation and adaptation.

With this in mind, I will begin my talk this afternoon by briefly describing the Council's work on human rights and climate change.

I will then outline the key human rights questions that have been raised in the course of that work.

And I will end by suggesting how these questions are relevant to the issue of climate or environmentally-induced migration, and what next steps might be envisaged.

### **Human Rights Council and Climate Change**

On November 14<sup>th</sup> 2007, a group of the world's most vulnerable Small Island States met in the Maldives and adopted the Male Declaration on the Human Dimension of Climate Change. That Declaration stated explicitly, and for the first time in an international agreement, that “climate change has clear and immediate implications for the full enjoyment of human rights”, and called on the United Nations system to address the issue.

Answering this call, in 2008 the Human Rights Council adopted resolution 7/23 which conceded that global warming “has implications” for the full enjoyment of human rights, and asked the UN High Commissioner for Human Rights to produce a report into possible scope of those implications.

These were small steps, but they were nonetheless significant.

It is perhaps difficult to believe it now, but in 2008, most States in the Human Rights Council refused to accept that there was any linkage whatsoever between human rights and climate change. The United States went even further, arguing that while climate change may have human rights implications, those implications could be

positive as well as negative.

The High Commissioner for Human Rights published her report in January 2009, and, following the adoption of a further resolution in March, the Council held a dedicated debate on the human rights implications of climate change in June 2009.

The results of that debate, and the High Commissioner's report, were then fed into the UNFCCC climate change negotiations. As a result, last year's Cancun Agreements included a variety of references to human rights law and principles. This was the first time that an international climate change agreement had included reference to human rights – a huge achievement considering the widespread opposition to such ideas only a few years previously.

### **Human rights obligations and accountability**

Ladies and gentlemen,

The OHCHR report and the June 2009 Council debate in essence addressed three core questions relating to the nature of human rights obligations and accountability in the face of climate change.

These questions were as follows:

1. Is there a relationship between climate change and human rights, and if so, what is the nature of that relationship?
2. Does climate change constitute a violation of human rights – especially the rights of the most vulnerable. and
3. What are a States' national and international human rights obligations pertaining to climate change?

So, first, is there a relationship between climate change and human rights?

Following the the OHCHR report and the June Council debate, there is now a broad consensus between States both that there *is* a clear relationship, as well as a broad agreement on the nature of that relationship. By June 2009, no UN delegation argued with the notion that climate change has implications for a wide-range of explicitly identified internationally-protected human rights - including the right to life and the right to self-determination; that already vulnerable countries are most at risk; and that human rights impacts do not fall evenly across a given population but rather target marginalized or vulnerable groups, such as women or children.

However, there was far less agreement on the second and third questions.

On the question of whether climate change can be regarded as a human rights violation, the OHCHR had concluded, rather cautiously, in its report that: and I quote: “the physical impacts of global warming cannot easily be classified as human rights violations, not least because climate change-related harm often cannot be clearly attributed to acts or omissions of specific States”.

A number of States argued strongly against this reading. For example, Pakistan argued that it is possible to establish responsibility for climate change and to link a derogation of that responsibility to a human rights harm. Pakistan and others pointed out that responsibility can be established at two levels – historic responsibility and failure to comply with international emission reduction obligations.

There was also a wide-divergence of views on the nature of States' national-level and international-level human rights obligations pertaining to climate change.

In particular, there was a major division between States on the question of the relative weight of national human rights obligations as against extraterritorial obligations. As

with similar debates in the Council on other global crises such as the financial crisis and the food crisis, the fault line between States on the issue of climate change ran roughly along developed-developing country lines.

For their part, most developed countries insisted that while the climate crisis may be international in scope, human rights promotion and protection is the sole purview of national governments vis-a-vis their citizens and others in their territory. It is therefore up to individual States to promote and protect the human rights of their people in the face of climate change – irrespective of the additional burden placed upon them.

Some developed countries went even further. For example, the US argued that democratic countries with good human rights records are, by their nature, more climate resilient than other States. At a different level, the UK argued that important human rights obligations and principles such as equity, non-discrimination and access to information, represent important tools for the development of more effective climate change policies.

Developing countries meanwhile argued that while national level obligations are important, it is grossly unjust to ignore international-level or extraterritorial human rights obligations. For example, the Maldives or Tuvalu could have the strongest human rights protection laws in the world, but this would not save them in the face of rising sea-levels, should the rest of the world continue to emit CO<sub>2</sub> at current levels.

As Bangladesh stated using the principle of Climate Justice: and I quote: “Least Developed Countries and Small Island States will be the most affected by climate change even though they have contributed least to global greenhouse gas emissions. It is not only unfair but also unjust to hold those countries fully responsible for protecting their people”.

The Maldives and other Small Island States took up this argument, stating that State Parties to core human rights treaties have an extraterritorial legal obligation to refrain from taking action, such as emitting CO<sub>2</sub> beyond safe levels, which knowingly interferes with the enjoyment of human rights in other countries, and to take steps through international cooperation to facilitate the fulfillment of those rights”.

### **Climate-induced Migration**

Ladies and gentlemen,

These broad agreements and divisions between States remain, to this day, the basic geopolitical landscape on the question of human rights obligations and accountability in the face of climate change.

In my opinion, the international community can only make further progress through the appointment of a UN Independent Expert who would look at the exact nature of domestic and extraterritorial human rights obligations in the context of environmental protection. The Maldives, Switzerland and Costa Rica hope to table a UN resolution in this regard this coming March.

It is also clear that the questions of human rights obligations and accountability I have just outlined are extremely relevant to the issue of climate-induced migration.

For example, while it is clear that States' domestic human rights obligations extend to all people in their territory – including displaced persons – it is not at all clear that this understanding is sufficient in the case of climate-induced cross-border displacement. That is because it ignores extraterritorial obligations in the context of a situation in which most climate-related cross-border displacement will occur between developing countries, while responsibility for that displacement lays mainly with the world's rich countries.

It is also evident that while we have international hard and soft law dealing with the particular human rights situations of refugees, of migrant workers, and of internally-displaced persons, we have no such law responding to the needs of climate or environmental migrants.

Which brings me to my final point – that it is high time for the international community to directly address and clarify the nature of human rights obligations and accountability in the context of climate or environmentally-induced migration. It is important to address the issue now because it will be increasingly difficult to address it as the number of people moving cross-border increases over time from the tens of thousands to the millions.

There are clearly a number of options for doing so, as we have heard over the past two days. These range from doing nothing and relying on existing law and mechanisms, to drafting an entirely new international treaty. My own view is that it would be prudent and most politically viable to begin with soft law – for example, international guidelines on human rights and climate-induced migration.

But what is certain is that we need to urgently ask questions at UN-level and to begin to decide on the answers. Is there a human rights protection gap for people forced to move across borders because of climate change? What is the nature of that gap in the context of statelessness? If there are gaps, how should the international community address them and what are the obligations of States in that regard? And how do we ensure that the international response is consistent with the concept of climate justice?

These are all difficult questions, but we should not respond to those difficulties by not asking them in the first place.

For that reason, the Maldives and other Small Island States are looking at options to begin a process of reflection at UN level. Our current view is that the Human Rights Council is a good place to start and in that regard we are looking at kick-starting an initiative in the coming year, for example through a cross-regional statement.

If we do so, we look forward to working with the participants of this conference and benefiting from their advice and experience as we move forward.

Thank you.