

CHANGEMENTS CLIMATIQUES ET DROITS DE L'HOMME

EDITORIAL

Whatever the assessment of what happened at the Copenhagen climate talks, NGOs needed to define new goals for a climate-compatible incentive linked to human rights. Therefore, many NGOs involved in the area of Climate Change decided to work together on the preparation and the follow-up of the UN Climate Change Conference which took place in Cancun in December 2010.

In this context, many NGOs wish to elaborate strategies for the next year in the area of Climate Change and Human Rights with special focus on the Human Rights Council (HRC).

On one side, a core group of countries (Maldives, Costa Rica, Switzerland, Uruguay) seems to work on the drafting of a resolution to the Human Rights Council at its March session, requesting a report by OHCHR on issues linked to Human Rights and Environment.

On their side, the NGO community rather wants to push for a stronger resolution, e.g. by including the establishment of a Special Procedure on « Climate Change and Human Rights » or « Environment and Human Rights » to be established in the next March 2011 session. For those NGOs the key issue is to start by defining a clear concept : what are the merits and dangers of various approaches – Special Rapporteur ; Independent Expert ; use of certain language in the HRC environment .

What issues should be highlighted strongly : disappearing of island states, migration, extreme poverty of the victims of climate change ?

These NGOs decided to build on previous work inside and outside the HRC : declarations such as Malè Declaration on the Human Dimension of Global Climate Change, link with the HRC Social Forum 2010 session on Climate change, different panels that have been held on human rights and climate change.

In this issue of the CCIG Newsletter, we publish some of these discussion papers.

Hélène Durand Ballivet, Présidente du CCIG

In 2010, Climate change and Human Rights has been the mainstream topic at CCIG : Training session on International reality, contribution, together with other NGOs, to the 3rd Social Forum of the UN Human Rights Council, participation to the Ecumenical Lenten Campaign on climate change and access to food.

En 2010, l'analyse du lien entre changement climatique et droits de l'homme fut l'un des thèmes principaux du CCIG. Ainsi, la session de formation aux réalités internationale d'octobre avait pour thème « Les droits de l'homme : une réponse aux enjeux du changement climatique ? » Les ONG participantes [CCIG en étroite collaboration avec le Conseil œcuménique des Eglises, Waterlex, et International Environment Forum] avaient décidé de rédiger ensemble une déclaration à l'attention du Forum Social préparatoire à la Conférence des Nations Unies de Cancun de décembre 2010 sur les changements climatiques.

Celle-ci fut effectivement reprise dans le rapport final du Forum : elle demandait la création, dans le cadre du Conseil des droits de l'homme, d'un mandat spécial sur les changements climatiques et les droits de l'homme.

Par ailleurs, le CCIG a apporté sa contribution à l'organisation d'une conférence dans le cadre de la Campagne œcuménique de Carême relative l'impact du changement climatique sur l'accès à la nourriture avec la participation d'Olivier de Schutter, rapporteur spécial sur le droit à l'alimentation. Vous pourrez lire dans ce bulletin un résumé les différentes interventions entendues à l'occasion de cette conférence, qui ont abordé, outre la capacité des Etats à garantir l'accès à l'alimentation, les raisons économiques expliquant la flambée des prix des denrées alimentaires, les pertes de biodiversité, la pénurie d'eau qui font partie des effets générés par le changement climatique.

La solution ? Réduire la dépendance vis-à-vis de l'agriculture industrielle et développer une agriculture plus bio-écologique.

Budi Tjahjono, Secrétaire général du CCIG

INSTRUMENTS OF ACCOUNTABILITY ON ACCESS TO FOOD

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Le droit à l'alimentation est le fondement de toute politique visant la sécurité alimentaire des populations les plus pauvres [Art. 25 de la DUDH de 1948]. L'auteur analyse ici les processus de la mise en oeuvre de ces politiques et les obstacles qui s'opposent, aujourd'hui, à leur application dans de nombreux pays.

Access to food is one of the components leading to the achievement of food security. Food security is achieved when every woman, man, child alone or together have access to safe, nutritious and culturally acceptable food at all times. This means that food has to be available, accessible, affordable and adequate both in terms of quantity and quality. Accessibility and availability of adequate food – without discrimination – is therefore central to the right to food, in addition to access to land and productive resources or to a salary that allows people to feed themselves and their family with dignity. If people are not able to feed themselves, social safety nets should be in place. Food security is therefore understood as far more than the provision on minimum sustenance through aid to prevent people from starving but a right to have the means to feed oneself adequately, either through income to buy food or through land or other productive resources to produce it.

The right to food is enshrined in the 1948 UDHR (Article 25). It is also part of the 1966 International Covenant on Economic, Social and Cultural rights. It also brings along obligations on the part of the governments to ensure the right to food of its citizens. The 1966 ICSECR obligates states to undertake programmes and measures to improve methods of production, conservation and distribution of food. The FAO Voluntary Guidelines on the Realization of the Right to Food calls on states to respect protect and fulfill the right to food. The obligation to respect the Right to Food requires governments to not to do anything that would take away people's access to adequate food. The obligation to

protect requires the government to take measures to ensure that no one else deprives other people of access to adequate food. And the obligation to fulfill means that states must take active steps to strengthen people's access to, and use of, resources to ensure their right to food is met.

In September 2000, 189 states further expressed their commitment to the eradication of hunger and poverty by endorsing the Millennium Declaration. The challenge is whether these goals will be met in 2015 given the current food security challenges.

On December 10, 2008, the United Nations General Assembly adopted an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP ICESCR) to ensure justice for victims of economic, social and cultural rights violations. The Protocol allows for individuals and groups to file complaints on violations and provides an opportunity for people to claim their rights under this treaty. Their complaints would be heard in front of an independent, international panel of experts who would determine whether their rights had been upheld. The Protocol is also aimed at helping governments identify gaps in the protection of economic, social and cultural rights in their respective countries and to create an incentive for all government officials to listen to people living in poverty as a way of ensuring that no groups are left out from efforts at social and economic development. The challenge is to have states to become party to OP ICESCR given the enormous challenges posed on food security including climate change which hampers progress to achieve the same. Climate changes do pose direct and indirect impacts to food security. Climate change may affect food systems in several ways ranging from direct effects on crop production (e.g. changes in rainfall leading to drought or flooding, or warmer or cooler temperatures leading to changes in the length of growing season), to changes in markets, food prices and supply chain infrastructure.

Direct Impacts of Climate change on access to food

It is estimated that one billion people could be forced to migrate because of climate change by 2050. In the process of migration, communities lose their land thus greatly affecting their access to food. Accessibility to food is mostly linked to availability of land on which to grow food. Loss of land will thus lead to the erosion of self sufficiency capacities of affected communities as they will be forced to rely mostly on the market for their food security needs. ***Eat what you grow and grow what you eat*** is the meaning of food sovereignty. Without access to land, small scale farmers will lose the power to determine what to grow, how to grow the crops and to freely choose what to eat. The choice to make independent choices on healthy and culturally compatible food will no longer be an option.

It is also estimated that by 2080 agricultural output in developing countries may decline by 20% due to climate change and yields could decrease by 15% on average. For example, farming in Africa is highly dependent on rain-fed agriculture, and increased droughts can seriously impact the availability of food. This pose a great challenge given that approximately 70% of the population depends on agriculture for their livelihood and to the gross domestic products.

Recurrent droughts and floods can lead to loss of variety of crops, particularly seed which is the base on which agriculture depends. On the other hand, reduction in yields will force prices of food to rise thus greatly affected the most vulnerable who in most cases will not be able to afford buying the food. Shortages of food will force governments to open up markets resulting in dumping of cheap subsidized food. This poses a danger of displacing local food production and facilitates high dependency on the market.

It is also important to note that areas (for example, Sub Saharan Africa) that are most affected by climate change impacts are those mostly affected by HIV/AIDs pandemic. HIV and nutrition are linked not just because adequate nutrition is essential for an individual's physical health; HIV also affects the ability of people to work and provide a sufficient income and resources for their household and community. It is estimated that the number of under-nourished people in Sub Saharan Africa may rise from 138 million (1990 figure) to 359 million in 2050. Loss of crop diversity due to climate change therefore affects diets and available food options.

Indirect Impacts of climate change on access to food

The climate crisis also indirectly poses great challenges towards ensuring food security, mainly fostering agro-fuel production and land grabbing. Challenges of climate change lead to harsh move towards agro-fuels production as a measure to mitigate the impacts through reduction of green house gas emissions. In the need to find alternative ways to reduce green house gas emissions, private investors are in a rush for land grabs to set up huge plantations to grow maize, soya, sugar cane for ethanol/biofuel production. Land grabbing refers to the acquisition by corporations or states of large areas of farmland in another country and on a long term basis (often 30-99 years) for the production of basic foods that will then be exported. Since last year, massive amounts of land in developing countries have been bought or leased by foreign entities and mainly countries depending on food imports (Saudi Arabia, Japan, China, India, Korea, Libya, and Egypt). The FAO also estimates that in the last three years twenty million hectares have been acquired by foreign investors in Africa alone.

Land grabbing destroys livelihoods, accelerate eco-system destruction and the

climate crisis because of the type of monoculture oriented and industrial approaches to agriculture. The danger of monocultures is the limited choices or none available when the crop is destroyed by floods or affected by droughts and pests and diseases. The planting of many crop varieties will help with ensuring the survival of some of the crops from these disasters

Biofuel or agro-fuel production often entails clearing trees from huge tracts of land, destroying natural resources and environmental systems. Cutting down forests for feeding cars does not keep the vulnerable small scale farmers in charge of their food supply, but rather, sells that right off to the global marketplace. One writer has stated, 'the amount of grain required to fill the 90-litre petrol tank of a 4x4 vehicle *once* with ethanol could feed one person for a year. Biofuels also demand a lot of water to grow the crops and process them into fuel-diverting the scarce water from food crops. The question is whether there should be competition to produce for feeding cars or for reducing the number of hungry people in the world. On the other hand, the expansion of cash crop monocultures has a severe impact on local food availability as it diverts food producing resources and labor to cash crop production.

Conclusion

According to the recent report of the IAASTD (Independent Assessment of Agricultural Knowledge, Science and Technology for Development), climate change can irreversibly damage the natural resource base on which agriculture depends (2008). Climate change greatly impacts on the realization of the right to food and can pose challenges to states in their efforts to respect, protect and fulfill the right to food as part of their obligation. Climate change will greatly affect food prices, accessibility to flood prone areas and can lead to biodiversity loss. Converging crises of climate change, energy and water scarcity, and conflicts over land use and land rights and other economic and environmental stresses will negatively impact food production. These crises need to be addressed in ways that recognize farmers' rights, rebalance power in the food system and protect biodiversity and the ecosystem. What is needed is a global shift away from industrial agricultural practices having high social, economic and cultural costs. More emphasis should be put on solutions that will deliver productivity on the basis of: ecological approaches including: organic agriculture that alleviate poverty and improve food security; reduced and efficient water use; reduced fossil fuel use in energy, fertilisers, pest and disease management; conservation technologies, soil conservation measures and reduction of water pollution as well as increased ecological resilience and capacity to mitigate and adapt to climate change and other environmental stresses. ■

THE CONSTRAINTS OF UNEP AND INTERNATIONAL ENVIRONMENTAL LAW TO RESPOND EFFECTIVELY TO THE VICTIMS OF CLIMATE CHANGE

Arthur Lyon Dahl
International Environment Forum
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La reconnaissance des droits liés à l'environnement n'est pas suffisamment codifiées au niveau international. Les victimes des changements climatiques n'ont pas de mécanisme de recours pour réclamer une juste reconnaissance de leurs pertes. Chacun de nous peut, en effet, être à la fois contributeurs et victimes potentielles. Personne n'est prêt à admettre sa responsabilité, tant au niveau national qu'international. Si un petit Etat insulaire en développement, comme c'est le cas des pays de la zone Pacifique, est submergé par la montée des eaux, comment nous allons aborder la discussion sur la perte de souveraineté nationale? Ou allons-nous rapatrier la population? Quels droits reconnaître à ces populations par rapport à leur culture, leur souveraineté nationale sur un nouveau territoire? Pouvons-nous accepter la migration de communautés entières, voire de nations? Tels sont certains des défis auxquels la communauté internationale sera tôt ou tard, sans doute, confrontée.

Cet article nous propose une réflexion sur des questions liées aux impacts négatifs des changements climatiques.

The victims of environmental pollution, degradation and change are poorly protected under international law. Apart from specific pollution incidents, the cases where a guilty party can be identified are few. For example, we are all responsible to some extent for climate change when we benefit from fossil fuel consumption or land-use transformations. The situation is not helped by the present economic paradigm, which treats the environment and natural resources as free goods to be exploited for economic benefit, not as capital resources to be managed sustainably. The loss of environmental resources and subsequent damages are considered as externalities.

The United Nations Environment Programme (UNEP), and international environmental law in general, are poorly equipped to deal with victims of climate change or other planetary environmental problems. While there are international conventions on climate change, biodiversity, desertification, toxic chemicals and hazardous wastes, among others, there are hardly any international regimes for liability and compensation apart from oil

pollution at sea, and few enforcement mechanisms. Industrialized countries that are at the origin of most international environmental problems are afraid of creating precedents that might open them to a flood of claims and litigation. In addition, the focus of international environmental law has been on environmental protection, and only indirectly on protecting human beings.

Environmental rights are largely not codified. While there are recognized human rights to life, food, water and shelter, the soft law of international declarations has not yet codified a right to clean air, freedom from pollution, access to adequate resources, or contact with and spiritual links to nature, beauty and other intangible dimensions of the environment. The environment itself, and its component species and ecosystems, also have no established rights to protection and sustainable management. The closest international text is the first principle of the Stockholm Declaration adopted at the United Nations Conference on the Human Environment in 1972, which states:

"Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations."

The first principle in the Rio Declaration adopted at the United Nations Conference on Environment and Development in 1992 did not add much to this.

There are also gaps in international law concerning environmentally displaced persons (Kolmannskog 2008). The international definition of refugees applies those fleeing from persecution by an identifiable person or state, which is not the case in displacement for environmental reasons like climate change. There is also an assumption that a refugee can return home when the threat of persecution ends. On the other hand, those displaced by sea level rise, for instance, will never be able to return to their homes. The structures dealing with political and religious refugees are already overwhelmed, and have no capacity to cope with a new flood of environmentally displaced persons. It is also difficult to distinguish the environmental causes of displacement from other economic and social causes. While environmental change may gradually degrade conditions for existence, the proximate cause of displacement may be an extreme event or natural disaster.

Victims of climate change have no obvious mechanisms of recourse for their loss. We are all both contributors to climate change and potential victims. No one is willing to admit national or collective responsibility;

the potential consequences would be too great. If a small island developing state is totally submerged by rising seas resulting from global warming, how can you evaluate the loss of national sovereignty? Do the victims become stateless? Do they have a right to maintain their culture and national autonomy? Can they migrate as whole communities or even nations? The difficulties in the climate change negotiations show the inadequacies of the present system (Dahl 2010). Climate change raises issues of national sovereignty and international responsibility that will challenge the foundations of the present international system of sovereign nation states.

The potential scale of the problem of displacement from climate change is enormous. More than 100 million people live at less than one meter above sea level, and sea level rise is now projected to reach 80 cm to 2 meters in this century. Estimates of total population displacements reach up to 1 billion people (Christian Aid 2007; Kolmannskog 2008).

Where is there space and resources to resettle such numbers? Who should pay for the costs of resettlement? Does the polluter pay principle apply? Do we keep borders closed and force countries to deal with the problem internally, or do we lower immigration barriers and allow people to move to where there is land, water, resources and possibilities for self-subsistence or employment? We shall probably need a World Migration Organization with powers like the World Trade Organization, able to negotiate a lowering of barriers to the international movement of people, and to allocate displaced persons to the countries best able to receive them. We shall also need new forms of insurance able to share the risks involved in climate change.

For the moment there is tepid interest in these issues of international environmental governance leading up to the United Nations Conference on Sustainable Development in Rio de Janeiro in 2012. There is a lack of political will, a preoccupation with domestic issues and economic difficulties, and a fear of the implications given the projected scale of the problem. Powerful lobbies continue to deny the reality of human-induced climate change.

The public is not prepared, and economic stresses leave an opening for populist and xenophobic political movements for whom immigrants are a convenient scapegoat. The issue must therefore be addressed as a human rights challenge at an ethical level (Dahl 2007), emphasizing the ways in which the victims displaced by climate change can be seen as resources bringing new capacities and cultural richness to the receiving communities. ■

DECLARATION DES ONG MEMBRES DU RESEAU "DROITS DE L'HOMME ET CHANGEMENT CLIMATIQUE"

Au 3ème Forum Social du Conseil des Droits de l'Homme des Nations Unies) :

Les ONG concernées recommandent au Forum social :

1. d'identifier, par des exemples concrets et des témoignages, les impacts du changement climatique sur la vie des individus et des populations ainsi que sur les droits de l'homme ;

2. de demander au Conseil des Droits de l'Homme de continuer à organiser un débat annuel destiné à suivre l'évolution rapide des impacts que les changements climatiques ont sur les droits de l'homme ;

3. de recommander au Conseil des Droits de l'Homme, la mise en place d'une **nouvelle procédure spéciale** avec la nomination d'un « **expert indépendant sur l'impact du changement climatique sur la jouissance des droits de l'homme** ». Ce mandat devrait comprendre notamment :

Une étude sur les responsabilités des Etats dans le domaine de l'adaptation aux minimisations de leurs conséquences aux plans des orientations budgétaires, des transferts de technologie, tant au niveau national qu'international, compte tenu de leurs engagements internationaux en matière de droits de l'homme. L'étude devrait en particulier faire porter l'accent sur la réalité vécue par les populations déplacées pour des raisons climatiques, et suggérer des mesures pour gérer à l'intérieur de leurs pays ou à l'étranger les personnes déplacées, et proposer des mesures pour la gestion des personnes déplacées à la suite du changement climatique ;

Une étroite coordination et collaboration avec les Procédures spéciales du Conseil des Droits de l'Homme et de ses organes subsidiaire, en particulier le Rapporteur Spécial (RS) sur le droit à l'alimentation, celui (RS) sur le Droit à un logement convenable en tant qu'élément du droit à un niveau de vie suffisant et sur le droit à la non-discrimination dans ce contexte, ainsi que celui (RS) sur le droit qu'a toute personne de jouir du meilleur état physique et mental, de l'Expert indépendant (EI) sur la question des obligations liées aux droits de l'homme relatifs à l'accès à l'eau potable et à l'assainissement, l'expert indépendant (EI) sur la question des droits de l'homme en lien avec l'extrême pauvreté, ainsi que d'autres mandats pertinents établis par les procédures spéciales.

Une étroite coordination et collaboration avec le Secrétariat de la Convention Cadre

des Nations unies sur les Changements Climatiques (CCNUCC), ainsi qu'avec d'autres organismes des Nations Unies, agences spécialisées, et programmes, en particulier le PNUE, l'ONU-HABITAT et UNWOMEN, afin de faciliter l'échange d'informations dans le domaine des droits de l'homme liés au changement climatique.

In English

The concerned NGOs recommend to the Social Forum :

1. to identify, with concrete examples and testimonies, the impacts of climate change on the lives and human rights of individuals and peoples ;

2. to request the Human Rights Council to continue to hold an annual discussion to the track on the rapidly evolving impacts of change on human rights ;

3. to recommend to the Human Rights Council the establishment of a **new special procedure** with an independent expert. The mandate of the « **Independent Expert on the Impact of Climate Change on the enjoyment of Human Rights** » should in particular entail :

A study on the responsibilities of States in the area of climate change adaptation, mitigation, technology transfer and funding, both at national and international levels, derived from their respective international human rights law commitments. The study should in particular research on the reality of climate displaced peoples, and suggest steps for the management of internally and internationally displaced persons as a result of climate change ;

A close coordination and collaboration with Human Rights Council's Special Procedures and Subsidiary bodies, in particular the Special Rapporteur (SP) on the Right to Food, the Special Rapporteur (SR) on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to non-Discrimination in this context, the Special Rapporteur (SR) on the Right of Everyone to the Enjoyment of the Highest attainable Standard of Physical and Mental Health, the Independent Expert (IE) on the issue of Human Rights Obligations related to the Access to safe Drinking Water and Sanitation, the Independent Expert (IE) on the Question of Human Rights and Extreme Poverty and other related relevant Special Procedures mandates.

A close coordination and collaboration with the Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC), as well as other relevant United Nations specialized agencies and programs, in particular UNEP, UNHABITAT and UNWOMEN, in order to facilitate exchange of information in the area of human rights and climate change. ■

LE COMITE DU CENTRE CATHOLIQUE INTERNATIONAL DE GENEVE (CCIG)

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JOYEUX NOEL 2010

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Il y avait dans la même région des bergers qui vivaient aux champs et qui veillaient la nuit sur leur troupeau. Un ange du Seigneur parut auprès d'eux et la gloire du Seigneur les enveloppa de clarté, et ils furent saisis d'une grande crainte.

Mais l'ange leur dit :

« Ne craignez point, car je vous annonce une nouvelle qui sera pour tout le peuple une grande joie : il vous est né aujourd'hui, dans la ville de David, un Sauveur, qui est le Christ Seigneur »

Luc 2 : 8 - 11

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