EXECUTIVE SUMMARY

Climate change poses a risk to the human rights of millions of people--such as their rights to life, health, food and water. The risks are highest in developing countries, where extreme weather events, crop failures and other emergencies related to climate change are projected to occur with greater frequency. Most developing countries also lack the necessary technological and financial resources to adapt to climate change. Indeed they are already facing increased difficulties in realizing the economic, social and cultural rights of their people due to the financial, economic and food crises and growing populations. The capacity of developing countries to realize human rights domestically is further limited as a result of the over-use by developed countries of the global atmospheric space and the global carbon budget.

This paper sets out the relevance of international human rights obligations in light of the multiple constraints climate change poses to the sustainable development of developing countries. These legally binding obligations have been agreed upon by states since the creation of the United Nations and are incorporated in widely ratified human rights treaties. Legal human rights obligations specifically require states to act to protect peoples and individuals from violations of their human rights and for states to cooperate to this end. Climate change will impact a wide range of these human rights and could potentially lead to their serious and widespread violation.

Preventing climate change-induced human rights violations requires intensive international cooperation. In particular, it requires that inequities between developed and developing countries and their peoples are addressed in accordance with the legal principle of affirmative action. This principle, which is incorporated in international human rights law, is an expression of an exception to the general principle that all states are sovereign equals, which means that generally all states have the same legal obligations. It provides that a state may have to treat right holders differently, if by treating right holders similarly when they are in unequal positions, inequalities are maintained. This paper demonstrates that the framework provided by the United Nations Framework Convention on Climate Change (UNFCCC) is particularly suitable to facilitate rights-based cooperation in accordance with the principle of affirmative action and the legal duty of all states to cooperate to realize human rights.

The UNFCCC framework, including the UNFCCC and the Kyoto Protocol, is premised on legal principles that run parallel to, and reinforce, international human rights obligations. The framework balances concerns for the development needs of developing countries with the responsibilities and obligations of all countries to address climate change and thus mitigate human rights harm. Of particular importance are the principles of equity and common but differentiated responsibilities and respective capabilities of developed and developing countries. In accordance with these principles, developed countries have specific obligations to mitigate their emissions in order to modify the longer-term trends in global emissions and provide financing and technology transfer to developing countries for adaptation and sustainable development.

An assessment of developed countries' compliance with their UNFCCC obligations reveals a persistent compliance gap. It has proven difficult to address this gap through legal mechanisms, most notably because the UNFCCC lacks an enforcement mechanism. In this

regards, the inherent legal basis of internationally agreed human rights norms deserves special attention. As legally binding international norms, human rights are rules that have been reaffirmed continuously by more than two-thirds of the international community of just under two hundred states, most of which are also Parties to the UNFCCC. Human rights also lay at the basis of the concept of *erga omnes*, obligations that are "owed towards the entire world and all its inhabitants."

As the failure of developed countries to comply with their UNFCCC obligations may result in widespread human rights violations, developing countries may turn to international tribunals to address this failure. In other words, international tribunals could be requested to clarify the legal obligations of states under international human rights law in relation to climate change and climate change legislation. This opportunity for encouraging timely and adequate action on climate change will become all the more viable if non-compliance with these *de minimum* norms continues and economic and ecological inequities between developed and developing countries increase even further as a result.

I INTRODUCTION

It is well accepted that climate change is caused by human beings. The Intergovernmental Panel on Climate Change (IPCC) has confirmed in several reports climate change is man-made and caused by the excessive emission of greenhouse gases (GHGs) since industrialization.[1] One hundred and ninety four (194) states have agreed with this assessment in ratifying the United Nations Framework Convention for Climate Change (UNFCCC) [2] in which a legal definition of climate change is found in Article 1 that states "a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods."[3]

International law not only recognizes that there is evidence that climate change is caused by human beings, but generally that human beings or countries have been the greatest contributors to climate change. Historically, developed countries – as a result of their industrialization process and its associated production and consumption patterns – have accounted for around three-fourths of total anthropogenic emissions of greenhouse gases into the atmosphere since the start of the Industrial Revolution (i.e. from around 1850 to the present). Developing countries – despite their larger populations but as a result of their lower industrialization levels – have contributed much less to such anthropogenic emissions. Currently, with just 15 per cent of the world population, developed countries account for 45 per cent of CO2 emissions.[4] By 2030, "developing countries are projected to account for just over half of total emissions" from less than half in 2004,[5] largely as a result of increasing populations and economic growth.[6] Notably, per capita emissions in developed countries (with a population of approximately 1.2 billion) is almost four times higher (at 16.1 tons of CO2 equivalent) than in developing countries (with a population of approximately 5.6 billion and per capita emissions of 4.2 tons of CO2 equivalent).

In the Preamble of the UNFCCC Parties recognize that "the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions in developing counties will grow to meet their social and development needs."[7]

The IPCC projects that "with current climate change mitigation policies and related sustainable development practices, global GHG emissions will continue to grow over the next

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1 See for example the IPCC's Fourth Assessment Report at www.ipcc.ch.

2 United Nations Framework Convention on Climate Change Article 1(2), May 1992, S. Treaty Doc. No. 102-38, 1771 UNTS 107 [hereinafter UNFCCC].

3 Ibid.

4 United Nations Development Programme (UNDP), *Human Development Report 2005* (2005) [hereinafter HDR 2005], p. 42.

5 Ibid.

6 See UNDESA – Population Division, World Population Prospects: The 2008 Revision, at http://esa.un.org/unpp/p2k0data.asp, projecting developing country population growth from 5.67 billion in 2010 to 7.03 billion in 2030.

7 UNFCCC, Preamble.

few decades"[8] and that "continued GHG emissions at or above current rates would cause further warming and induce many changes in the global climate system during the 21st century that would very likely be larger than those observed during the 20th century."[9] Near-terms projections suggest that "a warming of about 0.2º C per decade" will occur.[10]

Unless current rates of greenhouse gas (GHG) emissions are drastically cut and reversed, global average temperatures will rise by at least 2º C by 2050, according to the IPCC. This will result in, among others, the creation of hundreds of millions of environmental refugees mostly from developing countries, acute water shortages of large proportions of the global population (again mostly in developing countries), food shortages as agricultural production goes down all over the world, sea level rise of at least 1 meter[11], and the extinction of a third of the world's species. Even before that, the expected 1º C rise by 2020 and the 1.3º C rise by 2025 will already have devastating impacts on the lives and livelihood of people, especially the poor and especially in developing countries.

In terms of regional impacts of climate change, following are some examples of major projected impacts:

- Africa, where most LDCs are located, is projected to be hard hit by increased water-related stresses such as droughts which could reduce yields from rain-fed agriculture by 50%. This could severely compromise food production and security. Projected sea level rise is likely to affect low lying coastal areas with large populations (such as Alexandria, Egypt; Lagos, Nigeria; Abidjan, Cote d'Ivoire[12]).[13]
- Likewise, most parts of developing Asia will likely see decreased freshwater availability, and coastal areas with large populations are likely to face increased floodings from sea surges or rivers (such cities as Kolkata and Mumbai, India; Dhaka, Khulna, and Chittagong, Bangladesh; Guanzhou, Shanghai, Tianjin and Ningbo, China; Ho Chi Minh City and Hai Phong, Vietnam; Jakarta, Indonesia; Bangkok, Thailand; and Yangon, Myanmar[14]).[15]
- In Latin America, projections are that the Amazonia will start drying out by mid-century, turning from tropical forest to savanna. Agricultural productivity is projected to decrease, and water availability could also be significantly affected.[16]
- SIDS are expected to be most adversely affected by sea level rise exacerbating inundation, storm surge, erosion and other coastal hazards, "thus threatening vital

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8 Intergovernmental Panel on Climate Change (IPCC*), Fourth Assessment Report: Climate Change 2007 (Synthesis Report)*, adopted at IPCC Plenary XXVII, Valencia, Spain, 12-17 November 2007, at IPCC 4AR Synthesis Report [hereinafter IPCC 4AR Synthesis Report], p. 44.

9 Ibid., p. 45.

10 Ibid.

11 According to the World Bank, "the impact of sea level rise from global warming could be catastrophic for many developing countries – the World Bank estimates that even a one meter rise would turn at least 56 million people in the developing world into environmental refugees." See World Bank, "The Impact of Sea Level Rise on Developing Countries: A Comparative Analysis" (WPS4136, February 2007), at http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/0,,contentMDK:21215328~pagePK:64165401~piPK:64165026~theSitePK:469382,00.html.

12 For a ranking of world cities most exposed to coastal flooding arising from climate change, see e.g. R.J. Nicholls et al., "Ranking of the World's Cities Most Exposed to Coastal Flooding Today and in the Future – Executive Summary" (OECD, 2007)[hereafter Nicholls].

13 IPCC 4AR Synthesis Report, p. 50.

14 Nicholls, p. 3.

15 IPCC 4AR Synthesis Report, p. 50.

16 Ibid.