



**U.S. State Department UPR Town Hall & Civil Society Consultation  
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***Advance Written Statement of Michael H. Burger, Executive Director, Sabin  
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During the first Universal Periodic Review (UPR), the U.S. received several recommendations calling for effective mitigation of greenhouse (GHG) emissions and cooperation with international efforts to address climate change.<sup>1</sup> The U.S. accepted these recommendations with reservations about their specific wording<sup>2</sup> and declared that it is “firmly committed to addressing the causes and impacts of climate change” in the national report for the 2<sup>nd</sup> cycle of the UPR.

Climate change has once again been raised as a human rights concern during the 2<sup>nd</sup> cycle of the UPR. Specifically, the U.S. received the following recommendations:

*176.341. Take up the commitment to address, in a framework of shared but differentiated responsibility and along with the international community, the world problem of climate change and its negative impact (Nicaragua);*

*176.342. Continue to actively participate in the climate change negotiations for a strong legally binding outcome of the UNFCCC process (Bangladesh);*

*176.343. Ensure federal legislation to prohibit environmental pollution and reduce greenhouse gas emissions to control climate change (Maldives).*

For the following reasons, we believe that the U.S. should again accept these recommendations with reservations the government deems necessary, reiterate its commitment to addressing the causes and impacts of climate change consistent with its human rights obligations, and undertake enhanced action to do so.

**1. Climate Change is a Human Rights Concern**

The Human Rights Council (HRC) and the United States have recognized that “the effects of climate change have a range of direct and indirect implications for the effective

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<sup>1</sup> These included recommendations from Venezuela (“Comply with its international obligations for the effective mitigation of greenhouse gas emissions, because of their impact in climate change”), Nicaragua (“Take positive steps in regard to climate change, by assuming the responsibilities arising from capitalism that have generated major natural disasters particularly in the most impoverished countries”) and Bolivia (“Implement the necessary reforms to reduce their greenhouse gas emissions and cooperate with the international community to mitigate threats against human rights resulting from climate change”). *Database of UPR recommendations and voluntary pledges*, <http://www.upr-info.org/database/>.

<sup>2</sup> U.S. Dept. of State, *UPR Recommendations Supported by the U.S. Government*, <http://www.state.gov/j/drl/upr/recommendations> (“we disagree with the premises embedded in these recommendations, but agree with their essential objectives (reduce greenhouse gas emissions and cooperate internationally)”).

enjoyment of human rights.”<sup>3</sup> Sea level rise, flooding, drought, desertification, and other forms of environmental degradation associated with climate change will threaten the lives and well-being of people across the globe. These impacts will impede the enjoyment of fundamental human rights, such as the right to life, health, food, water, and housing.<sup>4</sup>

Climate change will also trigger massive displacement and conflict, which raises additional human rights concerns. The scale of displacement in this context could be massive: current estimates range from 25 million to 1 billion displaced persons by 2050, and this number could soar higher later in the century if greenhouse gas emissions are not seriously reduced. Some nations may see their homelands disappear altogether.

The effects of climate change “will be felt most acutely by those segments of the population that are already vulnerable owing to geography,” such as low-lying islands, coastal areas, and deserts,<sup>5</sup> and “by those segments of the population who are already in vulnerable situations due to factors such as poverty, gender, age, minority status, and disability.”<sup>6</sup> The UN Office of the High Commissioner for Human Rights (OHCHR) notes that “States are legally bound to address such vulnerabilities in accordance with the principle of equity and non-discrimination.”<sup>7</sup>

## 2. The Obligation to Protect Human Rights Extends Across Borders

In a 2009 report on the relationship between climate change and human rights, the OHCHR highlighted four types of “extraterritorial obligations” that are relevant in this context. Specifically, states have legal obligations to:

- Refrain from interfering with the enjoyment of human rights in other countries.
- Take measures to prevent third parties (e.g. private companies) over which they hold influence from interfering with the enjoyment of human rights in other countries.
- Take steps through international assistance and cooperation, depending on the availability of resources, to facilitate fulfillment of human rights in other countries, including disaster relief, emergency assistance, and assistance to refugees and displaced persons.
- Ensure that human rights are given due attention in international agreements and that such agreements do not adversely impact upon human rights.<sup>8</sup>

The first and second obligations on this list coincide with the “no harm” rule—a principle of customary international law which holds that states have an obligation to prevent and control

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<sup>3</sup> U.S. Delegation to the UN Human Rights Council, *U.S. Statement at the HRC 29 on Human Rights and Climate Change* (July 2, 2015); Human Rights Council (HRC) Res. 29, *Human Rights and Climate Change*, U.N. Doc. A/HRC/29/L.21 (June 30, 2015). See also *Observations by the United States of America on the relationship between climate change and human rights*, ¶¶ 14-15 (2008); HRC Res. 10/4, U.N. Doc. A/HRC/10/29 (Mar. 29, 2009); HRC Res. 7/23, U.N. Doc. A/HRC/7/78 (Mar. 28, 2008).

<sup>4</sup> OHCHR, *Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights*, ¶ 18, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009).

<sup>5</sup> HRC Res. 10/4 (2009), *supra* note 3, at 1.

<sup>6</sup> OHCHR (2009), *supra* note 4, ¶ 42.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* ¶ 18.

transboundary environmental harms caused by activities within their jurisdiction.<sup>9</sup> The principle that a country must respect the human rights of persons outside of its territory was upheld by the UN Human Rights Committee in *Delia Saldias de López v. Uruguay*. There, the Committee noted that “it would be *unconscionable* to so interpret the responsibility under article 2 of the [International Covenant on Civil and Political Rights] as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory.”<sup>10</sup>

### **3. The U.S. Should Take Enhanced Action to Protect the Human Rights of Persons Impacted by Climate Change**

Although the U.S. is no longer the leading emitter of GHGs on an annual basis, our country is responsible for the largest share of historical GHG emissions. According to the World Resources Institute, U.S. emissions from 1850-2011 accounted for 27% of global emissions.<sup>11</sup>

In the last decade, the U.S. has taken important steps to reduce domestic GHG emissions. These include measures to reduce the carbon footprint of federal government activities, federal investment in clean energy technologies and projects, the promulgation of GHG emission standards for motor vehicles, and EPA’s proposed plan for reducing carbon dioxide (CO<sub>2</sub>) emissions from the power sector. The U.S. has also announced that it will reduce emissions 26-28% below 2005 levels by 2025 as part of its intended nationally determined contribution (INDC) under the United Nations Framework Convention on Climate Change (UNFCCC). This goal is consistent with an emission reduction pathway of 80% by 2050, which will be necessary to limit global warming to 2° C. In addition, the current administration has formally pledged to contribute \$3 billion to the Global Climate Fund.

We commend the current administration for making significant progress on this front, and for its ongoing commitment to pursuing climate change action. But we believe that our country can and should do more to address both the causes and impacts of climate change, along with their implications for human rights. Specifically, we encourage the U.S. to consider the following actions:

- **Evaluate what emissions reduction pathway would be necessary to limit global warming to 1.5° C.** Even if we limit warming to 2° C, global mean sea level could rise 1.5-4 meters by 2300, and many low-lying island states and coastal areas will be submerged and millions of people will be displaced. Limiting warming to 1.5° C could halve sea-level rise by 2300, as compared with a 2° C scenario.<sup>12</sup>

<sup>9</sup> See *Trail Smelter Case, U.S. v. Canada* (1937), available at [http://legal.un.org/riaa/cases/vol\\_III/1905-1982.pdf](http://legal.un.org/riaa/cases/vol_III/1905-1982.pdf); Rio Declaration on Environment and Development, Principle 2 (1992); ILC Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, Report of the ILC 53rd Session, GAOR, A/56/10 (2001); *Pulp Mills on the River Uruguay, Argentina v. Uruguay*, ICJ GL No. 135 (2006).

<sup>10</sup> *Delia Saldias de López v. Uruguay*, ¶ 12.3 (1981), ICCPR Comm. No. 52/1979, U.N. Doc. CCPR/C/OP/1 at 88 (1984).

<sup>11</sup> Other major sources of cumulative emissions include the European Union (25%), China (11%), and the Russian Federation (8%). World Resources Institute, *6 Graphs Explain the World’s Top 10 Emitters*, <http://www.wri.org/blog/2014/11/6-graphs-explain-world%E2%80%99s-top-10-emitters>.

<sup>12</sup> M. Schaeffer et al., *Long-term sea-level rise implied by 1.5° C and 2° C warming levels*, NATURE CLIMATE CHANGE (2012).

- **Reduce fossil fuel production from federal lands and waters.** In the 2012 World Energy Outlook, the International Energy Agency (IEA) concluded that “[n]o more than one-third of proven reserves of fossil fuels can be consumed prior to 2050 if the world is to achieve the 2° C goal.”<sup>13</sup> Despite this finding, the U.S. government has continued to lease federal lands for fossil fuel extraction, and has even proposed an expansion of offshore oil and gas exploration and production.<sup>14</sup> The U.S. should take steps to curtail rather than expand fossil fuel development on public lands and the outer continental shelf.
- **Dedicate additional resources to address the impacts of climate change on vulnerable populations.** Specifically, the U.S. should: (i) increase funding for adaptation both within and beyond our borders, (ii) support the development of an adequate loss and damage framework for those losses which cannot be avoided through mitigation or adaptation, and (iii) support the development of a UNFCCC climate displacement coordination facility or an alternate mechanism for managing climate-induced displacement.
- **Regulate other major sources of GHG emissions.** As noted above, the federal government has either proposed or finalized regulations to reduce GHG emissions from motor vehicles and power plants. But to achieve a 26-28% reduction in economy-wide GHG emissions by 2025 and an 80% reduction by 2050, the U.S. will need to cut emissions from other major sources. The federal government should evaluate how it can use its existing regulatory authority to address emissions from industrial processes, agriculture and livestock, extractive industries, natural gas systems, landfills, wastewater facilities, and other sources within the transportation sector (e.g., commercial aircraft, pipelines, rail, and ships and boats).

The current administration has made laudable progress in furtherance of its commitment to “to lead global efforts to combat global climate change and prepare for its impacts.”<sup>15</sup> But more could be done to reduce GHG emissions, promote adaptation, and protect the human rights of persons who are adversely impacted by climate change. We therefore recommend that the federal government consider the recommendations above as well as any other opportunities to further advance our role as a leader in this arena.

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<sup>13</sup> IEA WORLD ENERGY OUTLOOK 2012 (Nov. 12, 2012), *available at* <http://www.worldenergyoutlook.org/publications/weo-2012/>.

<sup>14</sup> BOEM, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM.

<sup>15</sup> THE PRESIDENT’S CLIMATE ACTION PLAN (June 2013) at 5.