

NATIONAL PEOPLES TRIBUNAL ON “CLIMATE CRISIS”



November 16, 2010
India Islamic Cultural Center, New Delhi



ACKNOWLEDGEMENT

The National people's Tribunal was organized by a host of civil society organizations including CECOEDCON, PAIRVI, Beyond Copenhagen, SADED, Accion Fraternal and many others to look into the legal space available for state responsibility and responsibility of developed nations in bringing about the climate crisis, which is having devastating impact on the lives of poor people and women as presented in the Tribunal. We are highly thankful to the Jury of the Tribunal and Justice (Retd) Pana Chand Jain for having provided their time and benefit of their experience and learning to the process. The Tribunal was the result of culmination of a series of consultations, Tribunals, discussion and guidance of a number of organizations, we are also grateful to them. We are also highly grateful to the participants and experts who took part in the Tribunal by way of giving testimonies, presentation, expert opinions and by way of simply supporting the Tribunal and its rationale.

The presence of Mr. Kailash Vijayvarigiya, Hon'ble Minister (Govt. of Madhya Pradesh) has been very encouraging, we thank him for his support and look forward to his continued support in taking these issue to policy making in the state and also at the national level.

We also remain grateful to Nisha Agrawal from the Oxfam, for providing it a direction and Ms. Moutoshi and Ms. Vanita for having worked along with us to make it successful. We also take this opportunity to thank colleagues and friends from partner organizations who facilitated the Tribunal. The ambition of the National tribunal is to take this contentious issue of ecological debt owned by the developed world to recompense the poor communities in the developing countries. We look forward to draw support and strength from you in this struggle.

Sharad Joshi

Secretary, CECOEDCON

FOREWORD

Jethabai, a rural woman from Rajasthan said before the Tribunal “With the climate becoming more and more unpredictable, we do not know whether to be ready for floods or drought. Food, water, fuel, fodder all becoming scarce we do not know how to plan a day. It has thrown our lives completely out of gear”

Climate crisis is claiming new victims every day. It has not spared any continent, country or community, nor will it spare any in the future. The nature’s wrath is spewing disaster on the human kind. However, more than the nature, we are to blame ourselves for having brought this crisis. Developed countries that have brought the world to this crisis are yet to understand that the cost of inaction will be many more times than the cost of action.

The impact of climate change on a range of globally respected and protected human rights has already been established. There is an overwhelming juridical opinion that these violations be compensated. The legal framework laid down by the UNFCCC and Kyoto Protocol do not have very effective redressal or disputes resolution forum. People in developing countries whose lives have been devastated by impacts of climate change must have recourse. The Tribunal did a tremendous work looking at causality, state responsibility and compensation in a comprehensive manner. Raising these issues at judicial and quasi-judicial fora will contribute significantly in compelling state and non-state actors looking at climate change in a rights based approach. Thinking about climate change in human rights based approach not only gives us the guidelines for international policy development but also gives us an opportunity to the most pressing needs of the time of addressing high global inequality among and within the countries which are at different levels of economic, political and social development.

The debate on climate change and international negotiations are mainly rooted in determining economic and industrial costs to emission reduction. The social, human and environmental costs are highly undermined. The demand for an alternative and robust judicial forum which will enforce climate justice, punish the wrongdoers and compensate the victims is highly relevant now. Only with more actions brought to the courts and tribunals will lead to an effective demand for compensation by the affected communities and countries. Litigation as a strategy and human rights instruments as tools to address climate change looks to have potential to bring more pressure on the state to reduce the emission and redress the impacts.

Justice Pana Chand Jain

Convener, National Peoples Tribunal on climate crisis, 16th November, Delhi

INTRODUCTION

National Peoples Tribunal sustained peoples and effected communities demand for compensation from the state and developed countries. It recognized that people have substantive rights which are protected by a number of instruments to which a large number of countries have committed to respect, which if violated have recourse in the municipal laws, customary laws and international laws.

National Peoples Tribunal was organized by people and victims in response of the developed countries failure to address climate crisis and as a run up to the COP 16 held at Cancun, Mexico in 2010. It was a expression of peoples expectation and claim from not only the developed countries but also their own country. Twelve testimonies representing demands of small and marginal farmers, landless workers, women peasants, pastoralists and fisherfolk from all over India were presented before a Jury of high intellectual, academic and juridical competence.

The Jury reiterated that climate crisis has to be addressed through an international policy regime which must have a robust judicial forum for compliance, identification of wrongdoers and reparation. Developed countries owe developing countries and affected communities a debt which must be settled through an adequate compensation. Besides the testimonies by victims, the Jury considered a litany of laws, legal literature and scientific facts placed before it by experts. The verdict of the Jury emphasized that despite minimal legal framework on climate change, people have a recourse through the international human rights instruments, which puts states under a legal obligation to respect, promote and fulfill these rights. The verdict also reiterated that the notion of equity and common but differentiated responsibility lie at the heart of the UNFCCC which is the pivot of the international climate stabilization regime and developed countries must respect that.

The National Peoples Tribunal was preceded by a number of consultations and tribunals in different parts of India (Bihar, Jharkhand, Rajasthan, Andhra Pradesh) to bring more voices and perspectives in the process. The outcomes of the Tribunal and the verdict was shared widely at COP and also at other South Asian Meetings which has greatly encouraged people in bringing similar actions before judicial and quasi-judicial fora. We express and extend our solidarity to them and their cause.

VICTIMS OF CLIMATE CRISIS THROUGH CIVIL SOCIETY ORGANIZATIONS

Petitioners

VERSUS

Union of India

State of Rajasthan

State of Gujarat

State of M.P.

State of U.P.

State of Maharashtra

State of Tamilnadu

State of Orissa

State of Uttarakhand

State of Bihar

State of Rajasthan

State of West Bengal

Annex 1 countries of the Kyoto Protocol and the USA

....Respondents

PRESENT:

Peoples Tribunal composed of the following Jury:

Justice V.S. Dave (Retd.)

Justice A.K. Srivastava (Retd.)

Dr. Syeda Hameed, Hon'ble Member, Planning Commission of India

Mr. Hari Jai Singh, Ex-President Editors Guild of India

Prof. Jaya Mehta (Economist)

Prof. AR Nandi (M S Swaminathan Research Foundation)

Justice Panachand Jain (Retd.) – Convener

VICTIMS REPRESENTATIVES:

Mr. Vijay Singh Negi (Beej Bachao Aandolan, Uttarakhand)

Prof. Sanjai Bhatt (Delhi School of Social Work)

Mr. Vijay Pratap (Convener, Beyond Copenhagen)

Mr. Ajay Kumar Jha (PAIRVI)

Ms. Nisha Agrawal (CEO, Oxfam India)

Dr. Suman Sahai (Gene Campaign)

Mr. Sharad Joshi (CECOEDECON)

Prof. Surjit Singh (IDS, Jaipur)

Prof. Janaka Rajan (Madras Institute of Development Studies Tamilnadu)

Mr. Anshuman Das (Director DRCSC, WB)

Er. C.P Singh, Chairman, IWRS, Patna

Mr. Anil Rawat (Researcher)

Prof. Anwar Saadat (India Society for International Law , Delhi)

Ms. Alka Awasthi (Cecoedecon)

RESPONDENTS REPRESENTATIVES

Non-Present.

VERDICT

November 16, 2010

1. INTRODUCTION

- 1.1 A Peoples Tribunal “on Climate Crisis” has been organized on 16th November 2010 by PAIRVI, CECOEDECON and beyond Copenhagen in collaboration with Oxfam India called Petitioners hereinafter.
- 1.2 The petitioners have averred that climate crisis has brought devastation to a range of internationally respected rights namely right to life, right to environment, right to health, right to adequate standards of life, right to work and livelihood and right to food, protected by a number of international treaties and conventions including UDHR, ICCPR, ICESCR etc.
- 1.3 The petitioners have also averred that developed countries are mainly responsible for bringing about this crisis by having contributed to more than 80% of the GHG stock and by not reducing their emissions as dictated by the UNFCCC and the Kyoto Protocol
- 1.4 The petitioners have argued that the victims of climate change in the developing and lest developed countries have a right to compensation against the developed countries due to their historical role in bringing climate change and also due to their failure to observe the principles and instructions laid down in the UNFCCC and Kyoto Protocol, which also impinges on people’s rights laid down under the various covenants and treaties on human rights cited.
- 1.5 The petitioners have also sought to make a case against the Union of India and various state governments for their inability to protect their rights and have sought to claim compensation from them.
- 1.6 In support of their arguments, petitioners have presented testimonies of the farming community, women, and indigenous people from different parts of the country stating the impacts of climate change on their livelihood, health, vocations and ways of living. Experts too have made their submissions (oral and well as documented) attributing the impacts to climate change and alluding to the responsibility of developed countries for bringing about these impacts. Representatives of civil society have orally presented the cause of the victims of climate change.

2. On the contentions, three questions arise for consideration;
 - 2.1 Whether the impacts stated by the victims have been caused by climate change (attribution/causality)
 - 2.2 Whether the developed countries and impugned states are responsible for these changes (responsibility), under the UNFCCC , Kyoto Protocol and International Human Rights Law framework, and
 - 2.3 Whether the victims have a right to compensation as a recourse (remedy)

3. The jury has studied the relevant legal provisions at international and national level
 - 3.1 We have studied provisions of the UNFCCC and the Kyoto Protocol.
 - 3.2 International Covenant on Economic, Social and Cultural Rights (1966).
 - 3.3 We have studied the proceedings of COP-15 at Copenhagen.
 - 3.4 Reference has been made to public and private International Laws and domestic legislation, which may be used for seeking legal redress against the dangerous impact of climate change.
 - 3.5 The National Tribunal in this verdict has tried to explore legal spaces to assess state accountability to mitigate and protect people from climate change.
 - 3.6 The National Peoples Tribunal through this verdict will try to develop jurisprudence on climate change. Despite the deficient legal framework on climate change laws, increasing number of action in courts in different countries prove that there are enough provisions in the Public and Private International law and domestic legislations to attempt bring accountability on the national governments to protect people from the climate change impacts.
 - 3.7 The most popular case in point is Inuit's case where indigenous people bordering USA and Canada brought an action in American Commission on Human Rights. The petition sought relief from violations of the human rights of Inuit resulting from global warming caused by greenhouse gas emissions from the United States.
 - 3.8 Many similar actions on climate change might not succeed in the absence of proof of causation; however, they show a rising public and juridical opinion to seek legal redress to impacts of climate change. In the circumstances, it is only desirable that more such actions are brought to judicial, quasi judicial and peoples forum.

4 BACKGROUND AND CONTEXT:

- 4.1 Following information was furnished by the petitioners in support of their averment;
- 4.2 It was cited that the FAR IPCC (2007) has projected that global mean surface temperature will rise by 2.0% to 4.5% by the end of the century due to increase in CO₂ concentration in the atmosphere. The increasing climate variability, unpredictable extremes of weather will have a dramatic impact on agriculture and food security as it may alter the balance between food demand and supply. Asia and South Africa are projected to be particularly vulnerable to these changes due to their large populations and great dependence on agriculture.
- 4.3 Majority of the developing countries and small island states are most likely to be affected by climate-change impacts. Even with a temperature rise of 1–2.5DC, the IPCC predicts serious effects, including reduced crop yields in tropical areas leading to increased risk of hunger, spread of climate-sensitive diseases such as malaria, water stress in Africa, increased risk of floods followed by drought and water scarcity for millions of people living in the catchment areas of the Himalayas and Andes, inundation of coasts and threat of tropical cyclones worldwide, complete submergence of small island states and an increased risk of extinction of 20–30% of all plant and animal species. With impact on life and livelihoods, climate change will have far-reaching effects on the sustainable development of developing countries, including their ability to attain the United Nations Millennium Development Goals by 2015.
- 4.4 The main sources of GHG in the world are 60% from energy, 18% from deforestation, 14% from agriculture excluding land use change, 4% from industrial processes and 4% from wastes.
- 4.5 The developing countries with 80% of the world's population still account for only 20% of the cumulative emissions since 1751. Developing countries like China, Brazil and India have per capita emissions lower than the world average. According to the World Bank the high-income countries emit CO₂ at 13 t/yr per capita, whereas the same for middle and low-income countries is no more than 3 t/yr. The current per capita emissions of the US is 20 times higher than India's. With just 15 per cent of the world population, rich countries account for 45 per cent of CO₂ emissions.
- 4.6 Approximately 70 percent of India's population lives in rural areas and 55 to 60 percent of its workforce is engaged in agriculture. A temperature change of +2°C would result in a decline in agricultural net revenue by 9%, and a warming by 3.5°C can result in decline of 25% in farm revenues. Even now the agrarian crisis in India has claimed more than 200,000

lives. The situation is further worsened by the climate change induced irregularities in rainfall. Recent years have witnessed severe droughts in Uttar Pradesh, Madhya Pradesh, Assam, Vidarbha and flash floods in Rajasthan and Maharashtra. The case of Andhra Pradesh has been the most tragic with drought and floods within the same year. In recent times northern India rice yield has reduced during the last three decades. Interaction of climate related changes with agriculture, forestry, livestock, aquatic systems is bound to affect food security in ways more than one can imagine.

4.7 Water and reduced availability of water is another concern. More than 70% of India's ground and surface water is being used for agriculture, and out of this, 70% is allocated to rice cultivation. Besides food security and water, there are a number of concerns regarding the impact of climate change and global warming requiring urgent debate and redressal through policy and action.

4.8 Intensification of urban-rural and inter-state migration may be another area of impact of climate change. Many of the poorer states in the north such as Bihar, Uttar Pradesh, Madhya Pradesh and Rajasthan would witness increased migration. Climate change can further add to complications in migration patterns. Rising sea levels may displace a part of the population currently living in the coastal zones. According to the Government of India (2004), a rise of one meter in sea level is projected to displace 7.1 million people.

4.9 The global efforts to combat climate change are taken under the aegis of the UNFCCC (United Nations Framework Convention on Climate change. The UNFCCC adopted at the *Rio Earth Summit* (May 1992) seeks to achieve stabilization of GHG concentration in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system within a time frame that allows eco-systems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner. The UNFCCC recognizes historical role of developed countries in GHGs accumulation and that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs. The UNFCCC recognizes the legitimate need of developing countries for sustained economic growth and poverty alleviation.

4.10 Kyoto Protocol is the most significant legally binding protocol to take forward the objectives of the UNFCCC and it was adopted by 192 parties to the UNFCCC except US and Australia. The Protocol provides for quantified emission limitation and reduction commitments for the developed countries, mechanisms to facilitate review of and compliance with these targets. It sets out targets for GHG reductions by individual

industrialized countries during the “first commitment period”, 2008-2012, totaling 5.2 percent below their aggregate 1990 emissions. The *Kyoto Protocol* also provides for three (market based) mechanisms that enable the developed countries with quantified emission limitation and reduction commitments to acquire greenhouse gas reduction credits from activities outside their own boundaries at relatively lesser costs.

4.11 The international community and mainly developed countries (called Annex 1 countries in Kyoto Protocol) have failed the efforts on climate change. Bali Action plan recognized the need for “deep cuts” in emission of developed countries based on the principle of “common but differentiated responsibility”. After Bali several dialogues have taken place including Poznan, G8 meeting at Laquila, Bonne meeting) however, Annex 1 countries have failed to declare their express commitment towards emission reduction to an appreciable limit. Whereas, the BAP asked them to reduce 25-40% of the emission by 1990 standards up to 2020, at best developed countries emission reduction commitment add up to 10-15% only.

4.12 The Stockholm Declaration 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 generation." The aforesaid Stockholm Declaration is referenced in Para 7 of the Preamble to the UNFCCC and this clause is consistent with the 2009 Human Rights resolution, which states "Climate Change" related effects and response measures have a range of implications both direct and indirect, for the effective enjoyment of human rights. The Human Rights principles inform and strengthen international and national policy in the area of climate change and contribute to the realization of the objectives of the Convention"

4.13 In the shared vision draft text of 9 December 2009, reaffirming that human beings have the fundamental right as aforesaid, it was decided that mitigation of and adaptation to climate change shall be undertaken in a manner that respects, protects and promotes full and effective enjoyment of human rights consistent with international obligations and duty of all states was recognized to cooperate internationally to prevent climate change from interfering with the rights to sustainable development and the human rights of all people.

4.14 Global warming has been driven by emissions of green houses gases over more than 150 years. Developed countries home to less than a fifth of the world's population - have contributed almost three quarters of all historic, man-made green house gases into atmosphere.

Reaction of the different countries on the Treaty and Kyoto Protocol :-

- Developing countries represented by China and India insist that Kyoto Protocol is the only framework they would work with. There is no question of a new framework when developing countries are made to cut their carbon emission as it would be counter-productive for their economic growth, whereas the European countries desire that burden of carbon emission should be shared by developing countries.
- USA maintains that China's carbon emission is as much as that of US and hence it is an equal culprit in global warming. In contrast, China says that per capita US carbon emission is five times higher than that of China and it would not stop before it reaches per capita capacity parity with the US.
- The poor countries say that industrialized countries bear double responsibilities not only do they need to take reducing their own CO₂ emission seriously, they are called upon for the substantial financial and technological transfer needed to put developing and newly industrialized countries into low carbon development path. Global action on climate change will only take pace if it allows for the rights of poor people to a better life and in turn poverty can only be eradicated if climate change is tackled.
- Parties to U.N. Framework Convention on Climate Change (UNFCCC) talks have set out the yardsticks for fairness. The first principle the Convention puts forward to guide climate action is that parties should act on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Within the Convention this is clearly defined to mean that developed countries should take the lead in combating climate change, that developing country actions will directly depend on the support of developed countries through finance and technology and that economic and social development and poverty eradication are the first and overriding priorities of the developing country parties.
- It is India's view that planetary atmosphere space is a common recourse of humanity and each citizen of the globe has an equal entitlement to that space.
- Developed countries intend for minimum commitments from developing countries.

5 WHY THE NEED FOR TRIBUNAL:

5.1 The Tribunal will assess the impacts of climate change on people, their lives, food, work and avocation, and habitat. It also looks at legal framework and spaces available to generate state and non-state responsibility for the impacts of climate change and its redressal.

5.2 While the final outcome of the international negotiation on climate change is still being debated and anticipated, the impacts have started affecting millions of people in developing and least developed countries and extremely vulnerable countries. The government of Tuvalu is looking to settle its entire population to save them from submergence due to impacts of climate change. It is also contemplating legal action against Australia and other developed countries to claim compensation. Even in the developing countries, the change in precipitation patterns and increased frequency of extreme climatic events is severely affecting a range of rights of people including the right to life, for which there does seem to be absolutely no responsibility on the part of the state or the international community. The UNFCCC and KP which are the main architecture of climate change law, does not provide any binding commitments on part of developed countries or developing countries to protect their populations from impacts of climate change. There is absolute dearth of legal entitlements even in the national and domestic legal framework of countries. This forms the major handicap in taking up legal action against the state of developed countries making them own the impacts of climate change.

5.3 Despite the minimal legal framework there is an increasing no. of actions in the realm of climate change being brought in courts of different countries against the national governments or foreign governments to reduce GHG emissions; they are also seeking to hold state, foreign country and non state actors liable for the impacts, nuisance and negligence and rights violations. While in one case victims of hurricane Katrina have brought action against oil and coal companies and chemical manufacturers for exacerbating climate change impacts, in *Mss. Vs. EPA* a US Court admitted an action against the EPA and ruled that “harms associated with climate change are well recognized” and “casual connection between manmade GHGs and global warming” In Canada, friends of the Earth Canada has launched a landmark lawsuit against the Government of Canada for abandoning its international commitments under the Kyoto Protocol. Filed in Federal Court in Ottawa by Canada’s foremost environmental law organization, Sierra Legal, the lawsuit alleges that the federal government is violating Canadian law by failing to meet its binding international commitments to reduce greenhouse gas emissions. In Argentina, after the 2003 Santa Fe floods in Argentina which killed many people and caused millions of dollars of damage, citizens have successfully used Article 6 of the U.N. Framework convention on Climate Change to reveal official failure to adapt to climate change. The legal action has so far revealed that infrastructure changes needed to protect people had

been drawn up but not acted upon by the authorities. In Nigeria, Communities in the Niger Delta region of Nigeria are suing the Nigerian Government and multinational oil companies (Shell, Exxon, Agip, Chevron and Total) over the continuous flaring of gas for over 40 years.

- 5.4 It is estimated that more than 250 cases related to climate change and global warming are lying in different courts in the US. While there are still obstacles of causation and attribution in bringing legal action against the state; the increasing number of legal actions show that there are a number of provisions which can be invoked against the state to bring an end to its inaction on climate change, identify climate change as a policy imperative and take initiatives to address violations of rights due to climate change impacts.
- 5.5 Parliament has enacted the National Green Tribunal Act 2010 for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environment protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property but it appears to be an eye wash as far as harm caused due to global warming and claiming of compensation from the state or from other nations who have been already held responsible for global warming under the Kyoto Protocol and its ill effects on food, health and livelihood as its scope is limited to the control of pollution Acts only, that too, if the question arises out of the implementation of the enactments specified in Schedule I.
- 5.6 The UNFCCC is the main international climate change forum and provides parties with an independent dispute settlement process. In relation to international efforts to curb GHG emissions, the UNFCCC could therefore be perceived as a special “self-contained” regime that precludes parties from seeking legal redress outside the Convention process. Under the Convention, parties are encouraged to approve the submission of a dispute to the ICJ or arbitration in accordance with an annex to be adopted by the Conference of the Parties. To date, no such annex has been adopted, and only the Netherlands has accepted binding dispute settlement (in this regard) through the ICJ.
- 5.7 The parties’ primary obligations under the UNFCCC are too vague to exclude the application of general international law on state responsibility. The preamble of the UNFCCC emphasises that the no-harm rule forms part of the international law surrounding climate change, and continues to govern the relationship between parties to the Convention.⁹⁵ In addition, the robustness of the compliance systems established under the UNFCCC and the Kyoto Protocol is limited. While the UNFCCC envisages the

establishment of a consultative process for the resolution of questions regarding its implementation, to date, efforts to do so have not been successful. In relation to the Kyoto Protocol, the Marrakech Accord has created a comprehensive system of reporting, monitoring and compliance that also contains a significant element of enforcement. However, the Kyoto Protocol stipulates that that any binding consequences shall be adopted through an amendment to its text. In this respect, no further decision has yet been taken.

5.8 Therefore, in our opinion there exists certain legal ambiguity as regards enforcement and dispute settlement process, which neither settles exclusivity of the UNFCCC framework, and Kyoto protocol nor proposes any other forum. The Tribunal will also consider whether this ambiguity needs to be addressed by an alternative judicial forum.

6 IMPACTS OF CLIMATE CHANGE (CAUSALITY):

6.1 The environmental scenario manifesting and evolving as of now is grim and dismal. The pollution levels in soil water resources and air has already reached maximum permissible and tolerance limits and continues increasing unabated. The dangerous consequences have started manifesting in climate change, melting of ice, shortages in crop yield, accentuating water scarcity erratic rains, droughts, floods diseases and miseries of all sorts.

6.2 The National Peoples Tribunal of Climate Crisis has been organized for assessing the impact of climate change at national level. Before the Tribunal evidence has been recorded to emphasize the impact of climate change on food security and migration. Civil society's experts and other persons who are interested in the matter have also submitted their written statements. Some have had their oral submissions before the Tribunal.

6.3 We have examined testimonies of the following persons -

Mrs. Kothabai, a tribal woman, village Purampur, Village Panchayat Kasbaa Nonera, District Baran, (2) Prabhati Devi, a scheduled caste woman from Niwai Block in Jaipur (3) Ms. Ajantha, of Karai District, representing Fishermen Federation, Nagapattinam, Tamilnadu., (4) Mr. Nilo Malli of village Chanpagnda, Koraput, Orissa (5) Mr. Laxman Singh Negi of Chamoli, Uttarakhand (6) Mr. Animash Giri from Pathar Pratima District 24 Pargana Sunderbans, West Bengal (8) Mr. Mohit Prasad of Gorakhpur, Uttar Pradesh, (9) Mr. Madhukar Sarap, from Vidarbha Maharashtra, (10) Ms. Baida Bai of Pune, Maharashtra (11) Mr. Ram Prasad Raikwar of Village Khandva, Madhya Pradesh (12) Jetha Bai and Mr.

Dilip Kumar Patre from Orissa. Some witness examined were cross examined by the experts and farmers present there.

- 6.3.1 Mrs. Kotha Bai has deposed in her statement that on account of persistent low rainfall in the last few decades the agriculture has suffered the most. The local farmers can grow only one crop in a year. The jungles are also dried up and the additional food from forest products has been drastically reduced, adding up to the very poor nutritional level and poverty of the indigenous people of the area. This has also forced them for migration hampering their indigenous cultural practices. They need to walk for 6 kilometers daily for collecting fuel wood. Traditional cropping system has collapsed and now they are depending upon hybrid seeds, fertilizers, and pesticides that has very high cost for these people. They remain under serious debt web and suffer constant poverty. This has also affected their traditional way of life and social functioning in many ways.
- 6.3.2 Smt. Prabhati Devi in her statement stated that in the village where she lives all families have average 3 to 6 bighas of land some families have limited number of cattle. They are forced to come to city for manual labour. 25 years ago the village was rich in natural resources. Resources were enough to sustain a dignified life in the village. Average rain fall has decreased drastically affecting the crops. Traditional varieties of crops have almost been wiped out. They did not grow wheat and are growing mustard which requires less water. The remains of the mustard are not useful for the livestock. It has created a scarcity of fodder. The underground water has gone deep. It contains fluoride which is very harmful for health.
- 6.3.3 Mr. Animesh Giri states that their resource base of natural forests is shrinking at a faster rate, affecting the livelihood opportunities. Intermediary season have changed spring has disappeared and autumn is shorter, Cyclone and severe storms have considerably increased, There is decline in soil productivity and micro flora and fauna diversity in apparent. There is exodus of people in search of livelihood. Keeping livestock has become very expensive due to diseases and lack of fodder. Sweet water is becoming scarcer.
- 6.3.4 Dilip Kumar Patra village Praharajpur, District Kendrapara, Block Rajnagar. He deposed that the village is part of the Mangroves eco-system (Bhitarakaniaka region) characterized by soil salinity, brackish water, lack of irrigation, limited dependence on Mangroves for fuel, fodder and building material. The dependence has drastically reduced due to substantial depletion of the Mangroves. The impact is evident in poor housing conditions (repeated cyclones/storms and limited access to

house building materials). He has stated his perception of the change in climate as under:-

- Increased Low pressure phenomenon during Summer and monsoon period (May to October)
- Increased incident of rough sea
- Increased temperature and humidity
- Decreased winter days & intensity
- Increased cases of sea aggression (high tides, sea surging/ingression to inland areas
- Longer/high tidal effect during full moon/new moon times increased.

He further deposes the qualification of the change as under:-

- Major Cyclones –1971, 1982, 1992, 1999
- Sea surging/water entering into agricultural land due to low pressure phenomenon for last 3 years- 2009 (3times), 2008 (2times), 2007 (3 times).
- Longer/high tidal effect during full moon/new moon times- Jagar Ambasya, Baruni Amabasya, Chitalagi Amabasya, Dipabali Amabasya, Kumar purnima.

6.3.5 Ms. Ajantha has stated that there has been drastic change in the climate. The monsoon has become very scanty. The temperature has risen at an alarming rate. The combination of wind and wave has completely changed in the Nagapattinam shoreline in the last 30 years. The sea has advanced by 200-500 mt. “ There used to be sand dunes as high as 20 ft, which provided protection from sea erosion and natural disasters, and even played a key role in dissipating the tsunami waves. Some local plants - a creeper called Adappan Kodi and another spiky plant called Gundu mull helped in trapping and building up the sand dunes. However, these plants are getting very rare these days, and as a result we don't see sand dunes building up now, but rather washing away because of erosion and seasonal changes.

The backwaters play a vital role in fish production. In fact, the point where fresh and saline waters meet harbor an enormous wealth of fish. But in Thiruvarur and Puthukottai districts there is sand deposition in the backwaters. Similarly, as at Pazhaverkadu, the estuaries are blocked at their mouths with sand, which has greatly affected the availability of fish and prawn catch. At Ennore as the effluents are dumped in to the sea from the thermal power plant the fish production is affected. The

Thamirabharani river in Kanyakumari district has changed course in the past few years, thereby damaging houses and seashore

- 6.3.6 Mr. Laxman Singh Negi states that “We are predominantly small farmers. Apart from grains, our region also has good horticulture and we also grow spices and condiments. Besides cow or buffalo, some families also rear goats and sheep. Forest produce, like ringaal cane, provide some families this provides a good and traditional source of livelihood through weaving baskets, mats, etc. The mountain landscape and pilgrimage, makes tourism also a source of income. In short, these are the major sources of livelihood for people in my region. But, life in these high regions is not easy and we have to constantly struggle to make ends meet. In the last 10-20 years this struggle has been becoming more acute. One reason for this is that the weather and climate in our area is changing very rapidly. Not only that, the climate has also become *very* uncertain. Our agriculture, social activities and even entire knowledge system were often determined and regulated by regular climate patterns. But now we losing all sense of climate and have absolutely no idea when the weather will be normal or whether there will be drought.

If we have warm summers then we have a state of drought in our area, and if it rains suddenly or heavily, there are landslides and flash floods. And in winters we now have cold waves. A very good example of weather uncertainty was the monsoon of this year, which was initially a failure, but was so heavy later on that there was extensive damage. What is even more ironic, barely a month or so after such heavy monsoon, we are already facing the problem of water depletion. The heavy rains have not seeped underground but rundown. Earlier when it used to rain heavily, we could expect a good snowfall in the winters, but now we are not sure what will the winters be like even after such heavy rainfall.

Because of no or little snowfall, in all, about 250 water sources in the region have dried up. This has depleted soil fertility and there are now drought like conditions. Because of people using chemical fertilizers and pesticides, the reach of the impacts has increased manifold. Between 1970 and 2008, the production of potatoes, rajmah beans, amaranthus, etc. has fallen by one-third. Because of uncertain or no rainfall, people have stopped cultivation of local crops like ogal, phaphar, kauni, cheena, barley, etc., while jhangora, kauni, cheena, mandua, amaranth have become almost extinct”

6.3.7 Nillo Mali describes: “I am completely dependent on traditional farming on a marginal and infertile land and on collection of minor produces from the forest. Earlier, we were relatively happy, most of the things we needed were within reach, but now the situation has completely changed. Our resource base of natural forests is shrinking at a fast rate, affecting the livelihood opportunities. There is no adequate rain in the area as a consequence of which the temperature of the atmosphere is significantly high. We used to experience rains for five-six months and winter for four months in the year. But, we now have more summer season, as felt by the people. Due to these the environment is becoming dry every year and not supporting the crop production. Erratic and shorter rains do not percolate adequately and the ground remains dry on which nothing can be grown. With the onset of rains, new leaves used to grow on trees, but now with delayed rains, the leaves are maturing earlier and there is hardly any new generation. We now observe the onset of summer by the first week of February and continue till the end of June. Imbalance in temperature is primarily due to deforestation and industrialisation, particularly mining in our areas. For the last 5-6 years, the intensity of winter has also decreased, and it even rains in November during the harvest period, which affects the paddy and vegetable harvest. The social practice of gathering around fire in the mornings and evenings has already gone down, as the weather becomes warmer. I still recall the summer days in my area when the maximum temperature was less than 30 degree Celsius even during the day time and one needed to use a blanket at night.

Our people would use medicinal herbs for normal sickness and there were no need of hospitalization; but nowadays, neither these herbs are available nor is the same type of sickness gets cured by the use of these medicinal herbs. Now I realize that changes in the climate have greatly affected agriculture farming, forest resource collection, livestock farming and overall livelihoods. Due to degradation of forests we are now seeing less wild animals like tiger, bear and elephants in my area. We are also noticing a change in the behavior of birds and animals in my area. As the climate changes, animals are also being forced to move out of their habitats.

With the significant decline of the forests, women particularly are facing a lot of problem in collecting fuelwood. Earlier they used to collect fuelwood from the outskirts of the village itself but now they have to walk over 4-5 km daily for it.

Loss of forest has also affected our livelihood as collection of various minor forest products like edible nuts, various types of fibre, mushrooms, essential oils, medicinal plants, gum, bamboo, and broom grass, honey etc. has decreased which was a major source of food and income, but is now under serious threat”

6.3.8 Madhukar Sarap states that “Constant temperature rise has reduced soil fertility, and there is depletion of earthworms and other friendly insects in the soil. Their decline has severely reduced the water absorption capacity of the soil. Earlier the rabi crops would use the soil moisture to meet their requirement, but today the crops turn yellowish if irrigation is delayed by even one or two days. I have clear memories of harvesting 20 bags of groundnuts from unirrigated red soil and up to 25 kgs from irrigated land. But today, getting even 10 bags from irrigated black soil is a difficult task, and we cannot even think of sowing in un-irrigated land.”

He demanded from the government:

- Water conservation in homes and farms, must be promoted.
- Traditional knowledge of farming must be promoted
- Import of food-grains in the name of food security must be banned.

He also states that enhanced use of pesticides has increased the resilience of the pests. American ball worms are creating havoc to our crops. These worms are not only affecting the cotton crops but also harming gram and lentil crops, which are now more prone to different diseases.

6.3.9 Mrs Baida Bai is from Maharashtra. She is a rag picker and collects plastic, paper, metal etc from the garbage. She made a pathetic story about her profession. She stands for the dignity of laborers. She has stated that these are 8000 labors working as a cooperative society engaged in her profession. They are segregating papers, plastics and other materials from the filth or “garbage” recycling. It is in this way they are keeping the nation from saving many trees. Paper is made out of pulp of tree. He has stated that now garbage collection contract is going to be awarded to the big contractors in the some CDM. The contractors will now demand price of Kachra from them and in this way near about 8000 labours would be rendered jobless. In her submission it is a direct case of violation of Art 21 g of the Constitution of India and misuse of the lawful authority of the government in the name of taking steps for the reduction of carbon emission or carbon trading.

7 EXAMINATION OF THE EVIDENCE:

- 7.1 Examination of the evidence submitted suggests that in the lack of any legal framework on climate change; the impact of climate change on humans can be addressed only through human rights laws. Human rights provide a lens through which to more completely assess and evaluate the range of services and economic impacts of climate change within and across populations, as well as a set of tools and principles to help craft responses that ensure that equality, justice, and peace for all people are promoted alongside climate and environmental benefits. We propose to apply a human rights based approach in this regard. We have before us statements of witnesses. We have taken note of others from public who have spoken on different subjects especially their deep concern over the issue of climate change which has tremendously affected the culture, means of livelihood, way of life and pattern of society. We have on record many articles from famous writers, cuttings from magazines, newspapers, books of eminent authors and verdict of Jury given in the Public Hearing on climate change.
- 7.2 All the witnesses have deposed that climate change has worsened the living conditions of farmers, cultivators and forest dependent people. They have stated that on account of persistent low rainfall in last two decades, the agriculture has suffered most. There has been severe deforestation. The people are migrating.
- 7.3 Mrs. Kothabai has deposed that the traditional cropping system has collapsed. Farmers are depending upon hybrid seeds, fertilizer and pesticides. Her statement is supported by Prabhati Devi, who has in addition stated that the decreased underground water level has added into the fluoride content in the drinking water. Other witness has also corroborated Mrs Kothabai. Shri Dilip Kumar Patra deposes that on account of change in climate there remains increased low pressure phenomenon during summer and monsoon period. There remains increased temperature and humidity in summer and decreased winter days and intensity sea surface temperature and salinity level of backwater increased. There is also increase in frequency sea remaining rough. There is decrease in fishing days. Younger generation has lost interest in fishing. Shri Ramnaraian Choudhary corroborates Mrs. Kothabai and states that he used to cultivate varieties of crops, but now only two crops are cultivated as rain days are declined and days have become warmer. He states that with the rise in temperature the size and taste of vegetables and fruits are affected. The yield in field has decreased and it is not sufficient to provide food for even six months. He

has experienced that it is now 10 months of drought and less than 2 months with rain. The witnesses admit erratic rainfall due to climate change.

7.4 Experts namely Mr. Soumya Dutta, Beyond Copenhagen, Mr. S. Janakrajan Professor MIDs, **Dr. hanhwart Bisht**, an Associate Professor of Uttar kashi (Uttarakand) Mr. C.P. Sinha, a scientist from North India, Dr. Anwar Saadat, Academician and Nalini Kant from Jharkhand have submitted their expert witness papers as evidence which we have very carefully studied.

7.5 The expert opinion of Mr. C.P. Sinha reveals that the study has clearly indicated that the temperature had rising trend and rainfall is declining, particularly after seventies. The rate of increase in temperature between 1901 and 1970 is approximately 0.0078 degree C per annum. Whereas the increase between 1971 and 2002 is 0.0304 degree C per annum, the respective rate of decrease per annum in rainfall for the two periods is 0.3477 and 13.01 mm. The rate of increasing temperature is of the same order as determined by the Intergovernmental Panel on Climate Change (IPCC) and many other researchers. The IPCC, in the report published in 2007, has predicted that global mean temperature is expected to increase between 1.4 and 5.8 degree C. over the next hundred years. Though evaporation increases with rise in temperature, saturation, vapour pressure of air. Also increases and warm air holds more moisture resulting in decreased precipitation. Thus, climate change will have significant impact on hydrological cycle affecting water recourses systems and will have far reaching consciousness on the wet lands of north Bihar.

Global climate change is a serious threat to water resources systems in-general and wet lands in particular. This study on climate change in north Bihar has indicated a gradual increase in temperature and decrease in rainfall, especially after 1970. Similar impact of climate change may be expected elsewhere too. This is a very disturbing situation and should be taken due care of urgently. Further in-depth and comprehensive study should done and corrective action should be devised accordingly.

7.6 Mr. Soumya has opined on critical issues of climate change and climate change governance and has laid emphasis that agriculture must be brought to the centre for climate change negotiation. In his own words Mr. Soumya has stated as under:

If we care to look into both the actual matter in the negotiating texts and the various demands & 'voices' that are surrounding the climate conferences and negotiations; we see a strange neglect of the issues related to agriculture and farming livelihoods. Compared: to other important issues, like forests or energy or even transport which have rightly received high attention, the provider of the most basic and important source of energy and also the

largest number of livelihoods in developing countries - AGRICULTURE, has received abysmally low attention. In the background of the multiple crises of a looming world-wide food shortage- the stagnation or even decline of soil productivity in large swathes of the intensively-farmed lands (modern industrial agriculture) in most of the world,

- The alarming decline in availability of water for agriculture and increasing competition that this faces with large scale diversion of precious water to industry, power plants and large urban centers.
- The growing thrust towards agro-fuel which is diverting both arable land & produced-food from the primary purpose of feeding human beings to feeding ever-hungry cars,
- The increasing unpredictability and erratic nature of the climate patterns that farmers depended upon for centuries, and the impending crisis of peak-oil –
- We cannot afford to put the larger picture of food & agriculture in the relative obscurity that this is in now, but must bring them to the centre-stage of climate negotiations.

7.7 Mr. Anshuman Das, in his expert witness paper has come with the following expert observation:

In Sundarbans, a preliminary survey reveals that over the last 30 years, around 7000 people have been displaced from their original habitat, becoming environmental refugees/migrants due to sea level rise, coastal erosion, cyclone and coastal flooding. These numbers are likely to significantly increase in the future.

Some of the climate change related risks- apart from large scale inundation and geomorphological changes, facing the farming and fishing communities of this region, which has large impact on the livelihood and the cultivation practices, are:

- Variability of the monsoon - mostly delayed monsoon and variation in rainfall
- Lengthier summers
- Increased frequency of cyclones
- Saltwater inland intrusion

While, the farming community would bear the brunt of changing rainfall patterns and cyclonic events, the fishing community who practice inland riverine fisheries would be affected because of increased salt water intrusion into the riverine tracts that would affect the fish populations. Reduced fresh water flushing would also aggravate the situation: As it is, after the Farakka barrage was constructed,

freshwater flow to this region has reduced considerably and **has** affected the freshwater fish diversity and population. Climate change related salinization would aggravate the situation further for the fishing population of this region.

7.8 Mr. S. Janakarajan Professor , in great details has put up his opinion before the Tribunal personally on “The case of Cauvery Delta in Tamil Nadu” with respect to Coastal Eco-systems, Livelihood and food security in following words:

This is also a district where 90% of the population consists of small and marginal farmers with a very high concentration of landless agricultural labourers. Furthermore, the coastal region of Tamilnadu is very densely populated (528 people/km², almost double the state average of 372 people/km²). The rapid industrialization along the coastal region, and in particular in the cities of Chennai and Cuddalore, has further aggravated the situation and made coastal cities and towns more vulnerable to the impacts of climate change. Many chemical, textile, oil refinery, thermal power and fertilizer industries are established along coastal zones for easy disposal of effluents into the sea.

Cuddalore and Nagappattinam districts are already vulnerable to multiple factors such as seawater flooding, lack of drainage, land and groundwater salinization, industrial wastes, in addition to the low-lying elevation of the land. Climate change coupled with existing anthropogenic factors will aggravate this already vulnerable situation. Long-term, non-land based adaptive strategies are needed for the region, more comprehensive than the simple engineering solutions currently planned for the delta⁵. The predicted impacts of climate change such as sea-level rise, increasing intensity and frequency of cyclones and storms are likely to severely impact this already vulnerable region.

All coping measures undertaken to date have been ad hoc and structural, with largely no effect. Non-land based, long-term disaster preparedness and risk reduction strategies and early warning systems have not been part of any policy-planning framework so far. The present case study gains enormous significance in this context.

7.9 Dr. Anwar Sadat has laid emphasis on Principle 21 of the Stockholm Declaration and has pointed out other legal provisions in the UNFCCC and Kyoto Protocol. He is not in agreement with the approach that it is difficult to attribute liability of a party either state and non-state for claiming damage, which occurs as a result of extreme weather events. He says the approach of seeking compensation is not currently unarguable. He opines as

under – Principle 21 of the Stockholm Declaration says that state should use its territory in such a manner which does not result in trans-boundary harm beyond its territory or areas beyond its national jurisdiction. The areas beyond its national jurisdiction may cover damage to the atmosphere as well. It is part of the customary norm that state is responsible for trans boundary harm provided it is of serious nature and established with clinching evidence (Trail Smelter Arbitration Award-1939-41). It is important to note here that the past several years have seen an explosion of climate change litigation in sub national, national, and supranational tribunals under a wide range of substantive approaches. On April 2, 2007, the U.S. Supreme Court issued a landmark ruling in *Massachusetts v. EPA*, a case challenging the U.S. Environmental Protection Agency's denial of a petition requesting that it regulate motor vehicles greenhouse gas emissions under the Clean Air Act. The petitioners before the Supreme Court argued that greenhouse gases constitute pollutants because of their effect on the climate; petitioners further contend that the EPA erroneously interpreted the Clean Air Act based on ad hoc policy considerations. These arguments connect to traditional international lawmaking' because the EPA helps to formulate federal policy on climate change. As a party to the UNFCCC, the United States has a good faith obligation to make policy aimed at stabilizing anthropogenic greenhouse gases in the atmosphere. The majority opinion's holding that Massachusetts has standing and that the EPA must provide better justification of its decision not to regulate motor vehicles' greenhouse gas emissions serves as 'an important step forward in the public dialogue over climate change Massachusetts v. EPA will impact the many pending climate change cases in the United States directly as precedent. As a substantive matter, the Court's recognition of climate science anti broad reading of Clean Air Act will provide useful precedent for pending and future cases.

7.10 On the basis of the evidence on record our findings are as under:-

- The Tribunal affirms that the impacts stated by the victims and the experts attributed to the climate change, is established to be a consequence of the rising emissions leading to climate change.
- Rainy and winter seasons are shrinking and summer days are increasing and rise in temperature is felt throughout the country, global warming has disrupted the entire agricultural cycle in the season.

- Forest cover is decreasing due to climate change and affecting the livelihood opportunities and income from forest produce of the tribal and pastorals.
- Rate of migration is on increase. People are leaving villages or seeking employment in the urban areas.
- Dangerous consequences of global warming is manifesting in climate change, reduction in crop yield accentuating water scarcity flood and droughts.
- Pests and insects have increased which are damaging crops.
- Use of chemical fertilizers have drastically damaged the soil quality
- There were many varieties of rice and wheat substantial varieties have already vanished and the remaining are not in tune with the present weather conditions.
- The pollution levels in soil, water resources and air have already reached maximum permissible limits.

8 CLIMATE CHANGE IMPACTS AND PROTECTION UNDER HUMAN RIGHTS

LEGAL FRAMEWORK:

8.1 It cannot be disputed that global warming has affected mankind adversely. It is responsible in depriving the various persons from their livelihood. It has that direct bearing on the rights and for various health hazards. It is responsible for the starvation and hunger, it had affected the culture. Thus the issue of global warming is the issue of violation of human rights.

8.2 The Global Humanitarian Forum, founded by former UN Secretary General Kofi Annan, published a study in 2009 which estimates that the effects of climate change already felt today are resulting in 300,000 deaths each year in the world's poorer regions with a further 300 million people directly affected in some way. The report predicts that four billion people are vulnerable to the effects of climate change and 500 million at extreme risk. However, there is a minimal reference to climate change impacts as violations of human rights in the human rights literature.

8.3 Within the United Nations, only a handful of institutions included the subject of climate change on their agendas prior to 2008. In an early statement in 1972, the UN Conference on the Human Environment (or Stockholm Declaration) propounded the right to "adequate conditions of life in an environment of a quality that permits a life of dignity and well-being." In 2002, the High Commissioner for Human Rights together with the UN Environment Programme (UNEP) led a seminar on human rights, environmental

protection, and sustainable development. Within the UN human rights system, the UN Working Group on Indigenous Populations, appointed by the former Commission on Human Rights, addressed the issue of man-induced changes to the natural environment and the effects of these changes in indigenous territories. The UN Special Rapporteur for indigenous peoples began to address these issues in his annual reports in 2005. In its annual meeting in 2008, the UN Permanent Forum on Indigenous Issues, an advisory board to the UN Economic and Social Council, focused on climate change, biological diversity, living environment, the stewardship role of indigenous peoples as preservers of the environment, and new challenges.

8.4 Based on the Human Rights Council's Resolution 7/23, the Office of the High Commissioner for Human Rights (OHCHR) produced a report on the relationship between climate change and human rights that was accepted by the tenth session of the Human Rights Council. This report begins by referring to the IPCC's Fourth Assessment Report and, based on the scenarios described in it, specifies human rights norms taken from various international agreements, identifying particularly vulnerable populations. Undisputed are the effects of climate change on human rights in the areas of health, the right to a dignified existence (housing, food security, access to clean water), as well as certain group rights of indigenous peoples or national minorities. The OHCHR report also includes chapters focusing on the effects of climate change with respect to displacement and resettlement as well as the resulting conflicts and risks that could pose a threat to national security. A further chapter deals with the national and international obligations stemming from prevailing human rights standards.

8.5 The report of the International Panel on Climate Change (IPCC) addresses individual human rights violations, particularly those relating to the shrinking of snow-covered areas on land and of ice-covered regions of the sea, rising ocean levels and water temperatures, an increase in extremely hot weather and heat waves, rising levels of precipitation, increased periods of drought, and a surge in the numbers of severe tropical storms. At the forefront of these concerns are the rights to water, food, and health. Without going into details here, the report dealing with the right to water stated that worldwide 20 percent of people living on river estuaries are threatened by flooding, hundreds of millions of people in India, China, and the Andes who depend on water provided by melting glaciers are vulnerable to periods of flooding followed by drought, and local populations in the Mediterranean region, the western United States, southern Africa, and northeast Brazil face periods of intense drought. All in all, the distribution of and access to water will change dramatically in the coming years. With respect to the right to food, the IPCC

predicts that the number of people facing starvation could rise from fifty million people in 2020 to 266 million by 2080. In addition to an increase in extreme weather patterns, the right to food is threatened by a rising incidence of fires and plant damage. This will primarily affect small, family-based, self-sustaining groups of farmers and fishermen – primarily in Africa and Asia, but also in Australia – whereas food production in other parts of the world will most likely increase.

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- 8.7 Regarding the right to health, the IPCC fears that there will be a drastic increase in cases of malnutrition in Africa, Asia, and tropical regions that will have a fatal effect on the growth of children. Malaria is predicted to increase by between 220 and 400 million additional cases and might well spread to Britain, Australia, and Portugal. The rising incidence of dysentery will hit families with little income particularly hard. Up to 3.5 billion people will be threatened by dengue fever. The WHO has estimated that at present approximately 150,000 additional people die every year as a result of climate change.
- 8.8 The human rights agreements that have come out of the United Nations to date do not include an explicit right to a safe and healthy environment. Nevertheless, the UN treaty bodies, which oversee the implementation of conventions, have in several instances stressed the connection between the environment and the implementation of human rights standards. The right to life is anchored in Article 6 of the International Covenant on Civil and Political Rights (ICCPR). In its General Comments Nos. 6 and 14, the Human Rights Council, which oversees the convention, postulated the right to life as the supreme right, which may not be infringed upon even in times of emergency. In General Comment No. 7 on early childhood, the Convention on the Rights of the Child (UNCRC) set a healthy environment as an inalienable standard for ensuring the survival and development of children.
- 8.9 The Covenant on Civil and Political Rights explicitly included the right to food among economic, social, and cultural rights (Article 11). The same is true of the Convention on the Rights of the Child (Article 24.c.), the UN Convention on the Rights of Persons with Disabilities (UNCRPD) (Articles 25.f. and 28.1.), provisions concerning standards of living in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

(Article 14.2.h.), as well as those of the Committee on the Elimination of Racial Discrimination (CERD) (Article 5.e.). In General Comment No. 12, the Committee on Economic, Social and Cultural Rights (CESCR) called on the signatory governments to implement appropriate economic, social, and environmental policies designed to enable citizens to feed themselves using their own local resources. Hunger should be prevented even in cases of disaster, and particularly vulnerable populations should be better protected. The Convention on the Rights of the Child emphasizes in Article 24.2.c. the signatories' obligation to adequately combat malnutrition (and illness) among children and to heed the threat of environmental pollution. In his 2008 annual report, the UN Special Rapporteur on the right to food documented several examples of how disasters resulting from climate change or ostensibly climate-friendly crops and methods – such as biofuels or palm oil plantations – threaten people's food security.

8.10 The right to water is not explicitly mentioned in the International Covenant on Economic, Social and Cultural Rights, but the committee monitoring the covenant (CESC) considers it to be covered by the Covenant's Articles 11 and 12 (health) as well as by General Comment No. 15, which postulates the right to clean, sufficient, and accessible water and tasks governments with guaranteeing this right. The Convention on the Rights of the Child refers to "clean drinking water" in Article 24.2.c. as a means of preventing illness and malnutrition. The Convention on women's rights (Article 12.2.h.) and the Convention on the rights of the disabled (Article 28.2.a.) both include access to water in their definition of adequate living standards.

8.11 The right to adequate housing is covered by the Universal Declaration of Human Rights (Article 25), the International Covenant on Economic, Social, and Cultural Rights (Article 11), the Committee on the Elimination of Racial Discrimination (Article 5.e.iii.), the Convention on women's rights (Article 14.2.), the Convention on the Rights of the Child (Article 27), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Article 43.1.d.), and the Convention on the disabled (Articles 9.1.a., 28.1., and 28.2.d.). In its General Comment No. 12 the Committee on Economic, Social and Cultural Rights defines this right as the entitlement to a secure, peaceful, and dignified existence as well as the right to access to necessary services, material, and infrastructure. The Committee's General Comment No. 7 states that the right to property also encompasses protection from displacement or resettlement in dangerous areas. The UN Special Rapporteur argued along similar lines when he discussed the issues of climate change and displacement in his 2008 annual report.

8.12 The right to the highest possible standard of physical and mental health is comprehensively covered by Article 12 of the International Covenant on Economic, Social, and Cultural Rights.⁴⁸ The right to health is also addressed in the Convention on women's rights (Articles 12 and 14.2.b.), in the Convention on the Rights of the Child (Article 24), by the Committee on the Elimination of Racial Discrimination (Articles 16.4, 22.2, and 25), as well as in the Convention on migrant workers (Articles 43.1.e., 45.1.c., and 70). In General Comment No. 14, the Committee for Economic, Social, and Cultural Rights lists a "healthy environment" as one of the preconditions for this right to be fulfilled. Adequate access to food, housing, clean drinking water, and sanitary facilities are also key preconditions. In 2008 the UN Special Rapporteur on the right to health warned the UN General Assembly that insufficient measures to counter climate change would further endanger the lives of millions of people already at risk. According to his report, the extent to which education and public health facilities were expanded would determine the severity of the effects of climate change.

8.13 The right to self-determination is one of the fundamental principles of international law. The two central human rights agreements – the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) – each use the same wording to articulate this right in Article 1.50 Provisions such as the principle that no one should be forced to give up his or her means of subsistence against his or her will are clearly relevant in the context of climate change. The signatories are also obliged to ensure the right of self-determination for peoples who do not actually live within their national territories. The imminent threat to island nations posed by rising sea levels resulting from climate change hence obligates the other signatories to counter this danger, for it prevents people from exercising their right to self-determination. It is also generally considered that the social and cultural identities of indigenous peoples are protected by Article 27 of the ICCPR and Article of 15 of the ICESCR.

8.14 In the area of political human rights, freedom of information and opinion are of the utmost importance when it comes to informing the public or issuing warnings about foreseeable dangers. Article 6 of the Framework Climate Convention also provides for these rights. Article 19 of the ICCPR includes the right to access to information. According to Article 25 of the same document, affected persons have an unalienable right to be consulted and to participate in opinionforming and decision-making processes – for instance, concerning programs to resettle people living in high-risk areas. This right is also covered by Article 19 of the Declaration on the Rights of Indigenous Peoples and Article 12

of the Convention on the Rights of the Child. Unlike Article 6 of the Framework Climate Convention, these two agreements contain mechanisms for implementation to be monitored by panels of independent experts to allow those affected to initiate grievance procedures under certain conditions.

8.15 In the Constitution of India, the civil and political rights are incorporated as Fundamental Rights and are made enforceable. The economic, social and cultural rights are enshrined as the Directive Principles of the State Policy and though not enforceable, are made fundamental in the governance of the State. Hence, it is the duty not only of the executive and the legislature but also of the judiciary to implement them. Since, most of the human rights declared as such by the United Nations are incorporated in the Indian Constitution either as fundamental rights or directive principles, by striking the synthesis the courts in India are constantly attempting to promote and protect the universally recognized human rights. The achievement of the Courts in promoting human rights, however, would largely depend upon their success in synthesizing the civil and political rights with the economic, social and cultural rights and by evolving a systems-approach whereby economic, social and cultural rights are ensured to the have-nots to enable them to exercise their civil and political rights equally effectively with the haves.

8.16 The High Courts and the Supreme Court of India have read the right to wholesome environment as part of the right to life guaranteed in Article 21 of the Constitution of India. Article 21 enunciates that no person shall be deprived of his life or personal liberty except according to procedure established by law. **The slow poisoning by the polluted atmosphere caused by environmental pollution amounts to violation of Article 21 of the Constitution of India.** In fact, the right to life guaranteed in Article 21 of the Constitution embraces the protection and preservation of nature's gifts without which life cannot be enjoyed. Moreover, environmental degradation has disastrous impact on the right to livelihood which is part of the right to life.

8.17 In Chhetriya Pardushan Mukti Sangharsh Samiti Vs. State of U.P., the Supreme Court has held:

".....Every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution. Anything which endangers or impairs by conduct of anybody either in violation or derogation of laws, that quality of life or living by people is entitled to be taken recourse of Article 32 of the Constitution."

8.18 In Subhash Kumar Vs. State of Bihar, the right to life under Article 21 of the Constitution has been held by the Supreme Court to include the right of enjoyment of pollution free water and air for the full enjoyment of life.

9 HUMAN RIGHTS COVENANTS AND THEIR ENFORCEABILITY IN DOMESTIC COURTS:

- 9.1 One of the important questions which is posed is that though we have a large number of International Covenants regarding protection and preservation of Human Rights, but are they merely empty promises or can they be enforced in domestic courts notwithstanding that the Covenants may not have been incorporated in domestic legislation, on the premises those are deemed to be international law.
- 9.2 Now admittedly the various treaties, conventions, covenants have been accepted and ratified by most of the countries of world e.g. ICESR has been ratified by 108 countries. In our view jurisprudentially speaking all these conventions and treaties fulfill the test of being called international law. We state this because “historically, treaties are an important source of international law; they were developed as a means whereby states could have rules for their mutual conduct with greater particularity than was provided by custom.
- 9.3 The adoption of the UN Charter and the subsequent enactment of such fundamental international instruments as the Universal Declaration of 1948 and the two Covenants on Human Rights of 1966 had such a impact on the international community that no State currently challenges the concept that human rights must be cherished and respected everywhere in the world. As a result, on the one hand, those general texts and a host of specific conventions and international resolutions, and, on the other hand, the consistent practice of international bodies-especially the multifarious activities carried out by various UN organs- a general principal has gradually emerged prohibiting gross and large-scale violation of basic human rights and fundamental freedom. This rising consciousness of human right necessity calls for an instrument of protection.
- 9.4 The two International Covenants namely International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights marked a notable step forward in the protection of human rights within the framework of the United Nations, and largely constitute the basic provisions of an International Bill of rights. The two covenants also demonstrated the way in which the United Nations is overcoming its earlier hesitations about the enforcement of human rights obligations.
- 9.5 International law today is not confined to regulating the relations between the States. Scope continues to extend. Today matters of social concern, such as health, education and

economics apart from human rights fall within the ambit of International Regulations. International law is more than ever aimed at individuals.

- 9.6 It is almost an accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall be deemed to be incorporated in the domestic law. The plea of enforceability of various international covenants is now no longer a matter of debate but should be considered to be firmly established as a part of international law, which the domestic courts are duty bound to give effect.
- 9.7 Notwithstanding some irritant hesitations by some courts, the Tribunal is more than convinced that the various international covenants can be legally enforced against the States, which are not fulfilling their obligation as mentioned above. The Tribunal believes that States must ensure the provision of domestic remedies for each of these fundamental aspects and core contents of the human right in various international covenants.
- 9.8 While enacting the National Green Tribunal Act, 2010, the Govt. of India agreed to provide effective access to judicial proceedings in environmental matters and to develop national laws regarding liability and compensation for the victim of pollution and other environmental violations, in the back drop of the decision taken at the United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992 and Art. 21 of the Constitution of India, which recognizes the right to life and liberty. Thus, the government has directly applied the Directive Principles of State Policy laid down in Part IV of the Constitution and made them enforceable in the Court of law.

10 RIGHT TO COMPENSATION

- 10.1 The Hon'ble Supreme Court of India has recognized right to compensation in the case of violation of fundamental rights guaranteed under Article 21 of the Constitution of India. In the case of State of Rajasthan Vs. Vidyavati, AIR 1962 SC 933, the Hon'ble Court has held that the State should be as much liable for the tort in respect of tortious act. The Hon'ble Supreme Court in Bhopal Gas tragedy case has also recognized right to claim compensation against the State or any individual or body corporate even if operating from outside India.
- 10.2 In Union Carbide Corpn. Vs. Union of India, (1991) 4 SCC 584, the Supreme Court has laid down the following rule for claiming compensation:-
- ".....We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from*

whatever source it comes but we have to build our own jurisprudence and we cannot countenance an argument that merely because the law in England does not recognise the rule of strict and absolute liability in cases of hazardous or inherently dangerous activities or the rule laid down in Rylands v. Fletcher as developed in England recognises certain limitations and exceptions, we in India must not hold back our hands and not venture to evolve a new principle of liability since English courts have not done so. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning

against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher.”

10.3 The right to pollution free environment is a third generation human right it is also integral part of right to life guaranteed under International Covenants of civil and political right and the Constitution of India. International jurisprudence has recognized the right to healthy environment as so fundamental, central and basic that no derogation from it permissible. Thus, it enjoys the status of *jus cogens* in international law. The States owe legal duty to adopt effective environmental protection measures and are liable to pay compensation to the victims.

11 CONCLUSION

11.1 The issue of climate change is urgent and, to date, the measures necessary to combat its effects have largely not been taken by the global community. While the failure to act in time will have catastrophic consequences in many parts of the world, the States bearing the greatest historic responsibility for it also have the greatest capacity to adapt. In that context, the prospect of holding those States to account in an international court or tribunal is appealing.

11.2 The current position that obtains is that in relation to climate change, a credible case for a legal wrong can be made. Affected countries may have a substantive right to demand the reduction of amount of emissions by a certain degree in order to limit further harm (and in some case secure their survival). In a limited number of possible scenarios there are also the procedural means to pursue an inter-State litigation before an international judicial forum – in particular the ICJ.

11.3 Inter-State climate change litigation may help to create the political pressure and third-party guidance required to re-invigorate the international negotiations, within or outside the UNFCCC. The understandable reluctance of developing country governments to challenge any of the big donor nations in court may change once the impacts of climate change become even more visible and an adequate agreement remains wanting.

11.4 We propose that an **International Tribunal on Environment and Climate Justice** or an independent judicial forum that represents the legal systems of the world may be in a good position to determine some of the cornerstones necessary to reach a global deal in time. While political leaders depend on their electorates, corporate interests and party opinions, international judges should be able to take decisions that primarily reflect the need to protect the world's ecosystem and its inhabitants. The world's population demands what the world's science indicates real and rapid cuts enforced against any nation that endangers us all. A judicial body that is given the opportunity to act and seizes it could make an invaluable contribution.

11.5 In our opinion, the petitioners have established the causality beyond reasonable doubts. The state responsibility based on the no-harm principle and polluter pays principle is an established rule in the legal canon.

11.6 In our opinion the victims have the right to claim compensation from the developed countries. The issue of global warming is an issue of violation of human rights. Any violation of human rights gives right to claim for the compensation. In the circumstances the people of this country or the other countries are entitled to raise their demand for climate justice against developed nations responsible for global warming by emission of green house gases.

11.7 Since the developed countries are not observing their responsibilities, which have been laid down in the international treaty and Kyoto Protocol. As such the demand of the Civil Society for the Constitution of International Tribunal for Environment is justified, which would adjudicate the right of the victim of global warming to claim compensation as per the international law, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, 1996 read with Art. 6 of the United Nations Framework Convention on Climate Change and Human Right ordained under Article 21 of the Constitution of India and as per the ratio of the judgment of the Supreme Court laid down in Bhopal gas tragedy case.

11.8 The Tribunal has not applied its mind on the quantum of compensation as it is beyond the scope of reference to the Tribunal.

11.9 The tribunal in the aforesaid circumstances recommends to the respondents to-

- Take appropriate steps to adopt fair and reasonable environmental and social policies at both the National and International levels and to take steps to provide effective access to judicial and administrative proceedings including redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution

and environmental damages in the matter of ill effects of global warming in addition to the remedies available under 'the National Green Tribunal Act, 2010, the scope of which is limited to the enactments mentioned in Schedule I to the said Act of 2010.

- Recognize the right of everyone to an adequate standard of living which includes right a right to food, drinking water and housing with dignity of human person;
- Raise the level of nutrition and standard of living of its people.
- Make effective protection for securing the right to work, to education and to public assistance in cases of the unemployment, old age, sickness and disablement, and in other cases of underserved want.
- Abide by the International Treaties, Covenants and Protocol and provide pollution free environment accordingly.
- Provide to take measures against the Nation on their failure to ensure appropriate control or regulation against violation of human rights due to global warning.

May God bless every living creature on this Mother Earth!

Verdict pronounced on this 16th November 2010.

Signed