

16 April 2010

Office of the High Commissioner for Human Rights
Palais Wilson
52 rue des Pâquis
CH-1201 Geneva, Switzerland

**Re: Universal Periodic Review of the United States of America, 2010
Submission of Earthjustice, Greenpeace USA, Human Rights Advocates, and Many
Strong Voices**

SUMMARY

1. Recalling UN General Assembly Resolution 60/251, adopted on 15 March 2006; UN Human Rights Council Resolution 5/1 adopted on 18 June 2007; and Decision 6/102, adopted on 27 September 2007; and in accordance with the Information Note for NGOs regarding the Universal Periodic Review mechanism (8 October 2007), Earthjustice, Greenpeace USA, Human Rights Advocates, and Many Strong Voices respectfully submit to the Human Rights Council for its universal periodic review the following information regarding the threats to human rights caused by the disproportionate contribution to climate change of the United States of America (hereafter the United States).

2. We seek to inform the Human Rights Council of the acute impacts that climate change is having and will have on the human rights of individuals and communities in the United States and around the world, and to highlight the special obligation of the United States in light of its disproportionate historic and current emissions of pollutants that cause climate change. The changes in the physical environment due to climate change, and the resulting impacts on human rights, have been increasing in frequency and severity over the past several decades and are predicted to increase significantly by the end of the century.¹

3. Increasing changes in the physical environment caused by anthropogenic climate change directly threaten many of the human rights guaranteed by the United States under international law, including: the right to **life**, the right to **security of person**, the right to **water**, the right to be **free from hunger**, the right to **means of subsistence**, the right to **sanitation**, the right to **health**, the right to **property**, the right to **housing**, the right to an **adequate standard of living**, and the right to a **healthy environment**. Because the United States is responsible for between 15 and 47 percent of the effects of climate change, international human rights law obligates the United States to reduce national greenhouse gas emissions substantially and quickly, and to take action to protect the rights of individuals and communities threatened by the effects of climate change in the United States and in developing nations.

BACKGROUND

4. In its Fourth Assessment Report, the Intergovernmental Panel on Climate Change (IPCC) predicts that anthropogenic climate change will have significant adverse effects not only on the natural environment, but also on the human populations that inhabit that environment and rely on its processes and services.² The IPCC considers it very likely (*i.e.*, more than 90 percent probability) that as a result of climate change average temperatures will increase around the world, extreme heat events will occur more frequently, climate-sensitive diseases will spread, air quality

¹ IPCC Working Group I Report: *The Physical Science Basis: Summary for Policymakers* (2007), <http://www.ipcc.ch/pdf/assessment-report/ar4/wg1/ar4-wg1-spm.pdf>.

² IPCC Working Group II Report: *Impacts, Adaptations, and Vulnerability* (2007), <http://www.ipcc.ch/ipccreports/ar4-wg2.htm>.

will deteriorate, freshwater shortages will increase, sea levels will rise, sea ice and snow-covered areas will shrink, and agricultural production will change. It also concluded that there was a 66 percent probability that the intensity of tropical cyclones and hurricanes will increase.³

5. In 2009, the U.S. Interagency Global Change Research Program, which coordinates the research of thirteen U.S. agencies on climate change, concluded that global temperatures have increased over the past 50 years, and that this observed increase is due primarily to human-caused emissions of heat-trapping gases.⁴

IMPACTS OF CLIMATE CHANGE ON HUMAN RIGHTS

6. Many U.S. government agencies, including the U.S. Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the Centers for Disease Control and Prevention, and the Department of Homeland Security, have concluded that anthropogenic climate change threatens human health in the United States.⁵ If current emissions hold steady, excess heat-related deaths in the United States could climb from an average of about 700 each year currently, to between 3,000 and 5,000 per year by 2050.⁶ Climate change particularly threatens U.S. communities without the means to construct needed infrastructure, as well as vulnerable individuals, including the elderly, children, the homeless, those with heart problems or asthma, and those without access to quality health care and clean water.⁷ These harms will occur in every region of the United States.⁸ Climate change may also contribute to social disruption, economic decline, and displacement of populations in certain regions.⁹ For example, the Inuit of Alaska, whose livelihoods and culture depend on Arctic ecosystems that are warming twice as fast as the rest of the planet,¹⁰ are particularly vulnerable to the detrimental effects of climate change.¹¹

7. Impacts from climate change are being felt around the world, are projected to increase, and are predicted to be particularly severe in developing countries without the resources to adapt to the negative effects of climate change. To cite just a few of the many examples, some semi-arid countries in Africa are expected to experience climate changes resulting in agricultural yield reductions as much as 50% by 2020, compromising food security across the continent.¹² In the Andes, climate change is causing rapid loss of glaciers, threatening the nearly complete loss of

³ OHCHR, *Report of the Office of the UN High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights*, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009) (hereafter OHCHR 2009), at 5.

⁴ U.S. Global Climate Change Research Program, *State of the Knowledge Report on Global Climate Impacts in the United States 2009*, <http://downloads.globalchange.gov/usimpacts/pdfs/climate-impacts-report.pdf> at 13.

⁵ U.S. Environmental Protection Agency, *Climate Change and Health*, March 23, 2010, <http://www.epa.gov/climatechange/effects/health.html>.

⁶ U.S. Center for Disease Control, *Climate Change and Public Health, Health Effects, Heat Waves*, March 25, 2010, <http://www.cdc.gov/climatechange/effects/heat.htm>.

⁷ *Id.*

⁸ See U.S. Global Change Research Program, *Regional Climate Change Impacts*, <http://www.globalchange.gov/publications/reports/scientific-assessments/us-impacts/regional-climate-change-impacts>.

⁹ U.S. EPA 2010 *supra* n.5.

¹⁰ IPCC Working Group II Report: *Impacts, Adaptations, and Vulnerability, Chapter 15, Polar Regions (Arctic and Antarctic)* (2007) at 655, <http://www.ipcc.ch/pdf/assessment-report/ar4/wg2/ar4-wg2-chapter15.pdf>.

¹¹ Sheila Watt-Cloutier et al., *Petition to the InterAmerican Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States* (2005), http://www.earthjustice.org/library/legal_docs/petition-to-the-inter-american-commission-on-human-rights-on-behalf-of-the-inuit-circumpolar-conference.pdf.

¹² M. Boko et al., *Africa. Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, M.L. Parry et al. Eds., Cambridge University Press, Cambridge UK, 433, 435 (2007).

freshwater supplies for entire communities.¹³ Earthjustice has made several submissions to the Human Rights Council highlighting the impacts of climate change on human rights in Small Developing Island States (SIDS) and other affected countries.¹⁴

CONTRIBUTION OF THE UNITED STATES TO CLIMATE CHANGE

8. The United States is the single largest historical emitter of greenhouse gases, and thus the single largest contributor to anthropogenic climate change, regardless of the method of analysis used to calculate relative responsibility by country.¹⁵

9. There are several methodologies for calculating current and historical responsibility of a State for emissions of global warming pollutants that cause anthropogenic climate change. Using cumulative national, current and historic per-capita emissions of the three main greenhouse gases—carbon dioxide, methane and nitrous oxide—as a proxy for contribution to and responsibility for climate change, the United States is responsible for 40 to 47 percent of anthropogenic climate change.¹⁶ A second methodology considers only per-capita emissions from 1900 to 2000 of carbon dioxide but not other greenhouse gases, due to incomplete measurement and reporting of non-CO₂ pollutants in many countries and the varying duration of different GHGs in the atmosphere.¹⁷ Pursuant to this analysis, the United States is responsible for roughly 15 percent of climate change.¹⁸ A third methodology, which considers only CO₂ from fossil fuels, regardless of population, holds the United States responsible for roughly 37 percent of climate change.¹⁹ Based on these methodologies, **the United States is responsible for between 15 and 47 percent of climate change impacts.**²⁰ According to Greenhouse Development Rights, an international think tank on climate and economics that has pioneered methods to calculate and compare national obligations to pay for both mitigation and adaptation, the United States is responsible for roughly 36 percent of global climate change.²¹

OBLIGATIONS OF THE UNITED STATES

10. Human rights law imposes on all States the obligation to “respect and ensure” the rights guaranteed in the human rights treaties, and to take the steps necessary to give effect to the rights recognized. The obligation to respect and ensure human rights—including the rights to life, health and security, food, water, shelter, a means of subsistence, and culture—imposes on States the duty to refrain from interfering with people’s enjoyment of human rights; the duty to prevent human

¹³ See, e.g., Agua Sustentable and Earthjustice, Universal Periodic Review of Bolivia: Submission of Agua Sustentable and Earthjustice (2009), www.earthjustice.org/library/legal_docs/upr_bolivia_09_09.pdf; The World Bank, *Visualizing Future Climate in Latin America: Results from the application of the Earth Simulator*, at 5 (Latin America and Caribbean Region Sustainable Development Working Paper 30, Nov. 2007), <http://siteresources.worldbank.org/INTLAC/Resources/SDWP-FutureClimate-CompleteReportOct31AB6.pdf>; IPCC Technical Paper VI: *Climate Change and Water* (2008), <http://www.ipcc.ch/pdf/technical-papers/climate-change-water-en.pdf>.

¹⁴ Earthjustice, *International Human Rights* (2010), http://www.earthjustice.org/our_work/issues/international/human_rights/.

¹⁵ Nathan Rive and Jan Fuglestedt, *Introducing population-adjusted historical contributions to global warming*, 18 *Global Environmental Change* 142 (2008).

¹⁶ *Id.* (If the timeframe of analysis is 1890 to 2000, the United States is responsible for 47 percent of GHGs. If the timeframe of analysis is 1990-2000, the United States is responsible for 40 percent of GHGs.)

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Greenhouse Development Rights, *Principle-based Annex 1 Differentiation in the Copenhagen Accord*, <http://gdrights.org/wp-content/uploads/2009/09/principle-based-annex-1-differentiation.pdf> at 7.

rights violations by third parties; the duty to provide an effective remedy in the event that the guaranteed rights are violated;²² the duty to guarantee a core minimum enjoyment of human rights and to take action towards the full realization of these rights;²³ and the duty to cooperate internationally to prevent the infringement and promote the progressive realization of human rights.²⁴

11. A State's responsibility for human rights violations is not limited to violations within its borders. International human rights tribunals and scholars recognize that "it would be unconscionable to so interpret the responsibility under article 2 of the Covenant 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."²⁵ In the context of climate change, this principle is supported by the well-established prohibition on States permitting the use of their territory in such a way as to cause transboundary environmental harm, widely considered to be amongst the first principles of international law.²⁶

12. In recent years international human rights bodies have advanced their understanding of the links between global warming and human rights. In January 2009 the UN High Commissioner for Human Rights published a report on climate change and human rights after receiving submissions from states, international agencies, and non-governmental organizations.²⁷ The report recognizes that climate change has and will have a range of effects on human rights. Finding that "human rights obligations provide important protection to the individuals whose rights are affected by climate change," the OHCHR concludes that states have legal obligations to those whose rights are affected by climate change, and that those obligations extend extraterritorially.²⁸ In March 2009, the Human Rights Council adopted the OHCHR Report by consensus with Resolution 10/4, which emphasizes the OHCHR report's conclusion that climate change-related effects have a range of implications for the effective enjoyment of human rights, particularly on vulnerable communities.²⁹

13. The European Commission on Social Rights has also found violations of substantive human rights guarantees due to the failure of a State to legislate to protect the environment. In *Marangopoulos Found. for Human Rights v. Greece*, the Commission found violations of the Charter's right to health provisions because the State had not adequately prevented negative environmental impacts nor had it developed an appropriate strategy to prevent and respond to health hazards stemming from pollution and greenhouse gases emitted due to lignite mining.³⁰ Concerning the right to health, the Committee found the Greek National Action Plan for greenhouse gas emissions inadequate in the light of the State's obligations under the Kyoto Protocol and the principle requiring use of the "best available techniques."

14. In light of these obligations, and because the United States is responsible for between 15 and 47 percent of climate change impacts, the United States has an obligation to reduce national greenhouse gas emissions significantly and quickly, and to lead and cooperate with the

²² See OHCHR, Human Rights Committee, General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13 (2004).

²³ See OHCHR, Committee on Economic, Social and Cultural Rights, General Comment No. 3 on the Nature of States Parties' Obligations, E/1991/23 (1990).

²⁴ OHCHR 2009, *supra* n.3 at 27-29.

²⁵ UN Committee on Civil and Political Rights, *Saldias de Lopez v. Uruguay*, UN GAOR, 36th Sess., Supp. No. 40, UN Doc. A/36/40 (1981), at 183.

²⁶ See, e.g. *Corfu Channel (U.K. v. Alb.)*, Merits, 1949 I.C.J. Rep. 4, 22 (Judgment of April 9).

²⁷ OHCHR 2009, *supra* n.3.

²⁸ *Id.* at ¶71.

²⁹ U.N. Human Rights Council Res. 10/4, ¶ 3, in U.N. Human Rights Council, *Draft Report of the Human Rights Council on its Tenth Session* 13, 15, U.N. Doc. A/HRC/10/L.11 (Mar. 31, 2009).

³⁰ *Marangopoulos Found. for Human Rights v. Greece*, No. 30/2005, European Comm. of Soc. Rights (2006).

international community to reduce global emissions, so as to avoid and mitigate threats to human rights due to climate change in the United States and worldwide.

15. The United States is also required, under international human rights law, to prevent human rights violations resulting from the effects of climate change, and to guarantee human rights in the face of a changing climate. In particular, as set forth in the OHCHR Report of 2009, the United States must protect the rights of individuals and communities in the United States from the threats of climate change to the right to life, right to adequate food, right to safe drinking water, right to health, and the right to adequate housing.

16. Finally, the United States has obligations related to the extraterritorial impacts of its actions that contribute to global climate change. Because the United States is a major emitter of greenhouse gases and the largest historical contributor to global climate change, the United States has an obligation to assist developing countries to protect human rights from the threats presented by climate change. The United States should provide financial aid and other resources to developing countries to help them adapt to the effects of unavoidable climate change.

CONCLUSION AND RECOMMENDATIONS

17. As the largest historical emitter of greenhouse gases, and one of the largest current emitters, the United States has a responsibility for adaptation to and mitigation of climate change in the United States and around the world, which should be shared by major greenhouse gas emitting states in accordance with their common but differentiated responsibilities and taking into consideration their historic and current emissions, their respective capabilities, and their social and economic conditions.

18. Article 22 of the Universal Declaration of Human Rights underscores that protection of human rights requires “national effort and international co-operation.” Every state has the obligation to do no harm either to its own citizens or to the citizens of another state. Earthjustice therefore respectfully recommends that the Human Rights Council recognize that: 1) the United States, as a major greenhouse gas-emitting state, is responsible for threats to human rights in the United States and worldwide due to climate change; 2) significantly increased international cooperation is necessary to help protect the human rights of people in the United States and around the world; and 3) the burden of payment for expenses related to mitigation of and adaptation to climate change should be shared by major greenhouse gas emitting states in accordance with their common but differentiated responsibilities and taking into consideration their historic and current emissions, their respective capabilities, and their social and economic conditions.

Respectfully Submitted,
Earthjustice
Greenpeace USA
Human Rights Advocates
Many Strong Voices

For further information, please contact:

Martin Wagner, Earthjustice, 426 17th Street, 6th Floor, Oakland, CA 94612, USA
mwagner@earthjustice.org, +1-510-550-6700