



# Climate change: tackling the greatest human rights challenge of our time

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## Recommendations for effective action on climate change and human rights

Prepared by the Center for International Environmental Law and CARE International



*"We call on the State Parties to the United Nations Framework Convention on Climate Change (UNFCCC) to ensure full coherence between their solemn human rights obligations and their efforts to address climate change, one of the greatest human rights challenges of our time."*

Special Procedures of the UN Human Rights Council in an open letter to Parties to the UNFCCC (17 Oct 2014)

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#### **Cover photo:**

Devastation after typhoon Haiyan struck Ormoc city in the Philippines in November 2012. The typhoon, believed to be one of the strongest tropical storms on record, took the Philippines by surprise resulting in thousands of deaths and widespread destruction. © CARE/Peter Caton

## Recommendations

Climate change is not just an environmental issue, but is fast becoming the greatest human rights challenge of our time. It is an issue of justice and inequality for the millions of people and communities around the world who already are experiencing climate harms. It is also an issue for future generations who will suffer increasingly severe loss and damage. The international community's historic and present failures to take urgent action to mitigate climate change is further threatening these rights, especially for vulnerable peoples and communities who are already experiencing the adverse impacts of climate change. However, if the international community acts urgently with ambition and scaled-up resources, it can reduce the very worst climate impacts.

As recognized by the United Nations Framework Convention on Climate Change (UNFCCC), UN Human Rights Council (Council) and numerous scientific bodies and governments, the impacts of climate change - as well as the responses taken to address climate change - are already affecting the enjoyment of fundamental, internationally recognized human rights. In light of these threats, urgent action is required at all levels to minimize and halt the impacts of climate change and to ensure that all solutions enshrine human rights. Thus far, the UNFCCC has been slow to address the human rights dimensions of climate change.

**With negotiations for the 2015 climate agreement underway, steps are required to deliver:**

**Urgent and ambitious action** that effectively limits the average global temperature increase to no more than 1.5 degrees Celsius and provides scaled-up support for actions that prioritize the needs of the poorest and most vulnerable, including:

- *Adopt urgent and ambitious mitigation action and provide scaled-up support and resources as a means to prevent the most catastrophic impacts of climate change*
- *Provide compensation for climate-related harms that could not be avoided*

**Recognition that human rights obligations apply in the context of climate change** and must be integrated into the development and implementation of climate policies and solutions, and:

- *Include reference to the Parties' obligations to protect human rights in all climate actions as a means to ensure consistency and coherence among human rights and climate regimes*
- *Establish safeguards and accountability processes to ensure that climate policies are designed, implemented and monitored in a manner that protects the rights of affected people and communities*
- *Establish a work programme on human rights and climate change to monitor and assess the progress in integrating human rights into all aspects of climate action*
- *Request input from the UN Human Rights Council/ Office of the UN High Commissioner on Human Rights on how to operationalize human rights protections in climate policy*

**Access to information, full and effective participation and access to justice** in decision-making processes at all levels, including:

- *Ensure effective means of participation in decision-making at all levels, as critical to effective and sustainable outcomes*
- *Establish a grievance mechanism in the UNFCCC*

**This briefing paper provides an overview of the human rights implications of climate change and the human rights obligations of States relating to climate change. It explores ways in which human rights can be addressed further in the UNFCCC process. The paper also sets out specific recommendations for integrating human rights into the UNFCCC climate regime.**

## Climate change impacts and human rights

Direct climate impacts, such as extreme weather events and rising seas, threaten millions of people in coastal and low-lying areas, while melting snow and ice threaten the security of the indigenous peoples of the Arctic. Loss of freshwater resources and glacial melt put communities at risk in the Andes and the Himalayas. At the same time, intruding seas contaminate groundwater in coastal communities. Ocean acidification and changes in weather patterns alter ecosystems and their capacity to provide goods and services to human communities. Increasing weather extremes constrain food security and access to nutritious forms of food while changing the prices of global commodities, making food more expensive and harder to access

for the world's poorest people. Continuing delays in mitigating climate change mean the costs of adapting to it are increasing, as is the risk of experiencing severe and irreversible loss and damage. A recent UNEP report estimates that adaptation costs in developing countries are two to three times higher than projected in previous studies.<sup>1</sup> Climate change has exacerbated poverty for vulnerable people around the world - and will continue to do so - even though they are the least responsible for causing it. Figure 1 maps various climate impacts on some of the human rights that are threatened or undermined as a result of these harms.

Climate Impact	Human Impact	Rights Implicated
<b>Sea Level Rise</b> <ul style="list-style-type: none"> <li>• Flooding</li> <li>• Sea surges</li> <li>• Erosion</li> <li>• Salination of land and water</li> </ul>	<ul style="list-style-type: none"> <li>• Loss of land</li> <li>• Drowning, injury</li> <li>• Lack of clean water, disease</li> <li>• Damage to coastal infrastructure, homes, and property</li> <li>• Loss of agricultural lands</li> <li>• Threat to tourism, lost beaches</li> </ul>	<ul style="list-style-type: none"> <li>• Self-determination [ICCPR;ICESCR,1]</li> <li>• Life [ICCPR;6]</li> <li>• Health [ICESCR;12]</li> <li>• Water [CEDAW,14; ICRC 24]</li> <li>• Means of subsistence [ICESCR,1]</li> <li>• Standard of living [ICESCR,12]</li> <li>• Adequate housing [ICESCR,12]</li> <li>• Culture [ICCPR;27]</li> <li>• Property [UDHR,17]</li> </ul>
<b>Temperature Increase</b> <ul style="list-style-type: none"> <li>• Change in disease vectors</li> <li>• Coral bleaching</li> <li>• Impact on fisheries</li> </ul>	<ul style="list-style-type: none"> <li>• Spread of disease</li> <li>• Changes in traditional fishing livelihood and commercial fishing</li> <li>• Threat to tourism, lost coral and fish diversity</li> </ul>	<ul style="list-style-type: none"> <li>• Life [ICCPR,6]</li> <li>• Health [ICESCR,12]</li> <li>• Means of subsistence [ICESCR,1]</li> <li>• Adequate standard of living [ICESCR,12]</li> </ul>
<b>Extreme Weather Events</b> <ul style="list-style-type: none"> <li>• Higher intensity storms</li> <li>• Sea surges</li> </ul>	<ul style="list-style-type: none"> <li>• Dislocation of populations</li> <li>• Contamination of water supply</li> <li>• Damage to infrastructure: delays in medical treatment, food crisis</li> <li>• Psychological distress</li> <li>• Increased transmission of disease</li> <li>• Damage to agricultural lands</li> <li>• Disruption of educational services</li> <li>• Damage to tourism sector</li> <li>• Massive property damage</li> </ul>	<ul style="list-style-type: none"> <li>• Life [ICCPR;6]</li> <li>• Health [ICESCR;12]</li> <li>• Water [CEDAW,14; ICRC 24]</li> <li>• Means of subsistence [ICESCR,1]</li> <li>• Adequate standard of living [ICESCR,12]</li> <li>• Adequate and secure housing [ICESCR,12]</li> <li>• Education [ICESCR,13]</li> <li>• Property [UDHR,17]</li> </ul>
<b>Changes in Precipitation</b> <ul style="list-style-type: none"> <li>• Change in disease vectors</li> <li>• Erosion</li> </ul>	<ul style="list-style-type: none"> <li>• Outbreak of disease</li> <li>• Depletion of agricultural soils</li> </ul>	<ul style="list-style-type: none"> <li>• Life [ICCPR;6]</li> <li>• Health [ICESCR;12]</li> <li>• Means of subsistence [ICESCR,1]</li> </ul>

*Source:* Submission by the Maldives to the OHCHR in September 2008, as part of OHCHR's consultative study on the relationship between climate change and human rights

Actions taken to mitigate or adapt to these climate impacts may also have adverse effects on the lives and livelihoods of people around the world and, in particular, on some of the poorest and most vulnerable communities. For example, Reducing Emissions from Deforestation and Forest Degradation (REDD+) activities potentially

negatively affect the rights of local communities and indigenous peoples who live in and manage forests; large-scale energy projects can result in communities being forced to leave their homes and ancestral lands without adequate consultation or consent.

### Human faces of climate change: impacts of climate change on human rights and food security

The Human Rights Council has found that “climate change poses an immediate and far-reaching threat to people and communities around the world and has adverse implications for the full enjoyment of human rights.” The following stories illustrate the human faces of climate change and serve as a clarion call to governments that the international community must act urgently to protect their rights from severe and irreversible climate harms.

- In the Ancash region of Peru, farmers report dramatic changes to their environment. “The climate has changed a lot. Before there weren’t so many insects and it wasn’t so hot,” says Nemezia Villón Ramirez, a local farmer. “Now we’re seeing new pests like white mosquitoes and new illnesses which are destroying our plants. Every year it’s getting worse and farmers like me are the hardest hit.”<sup>ii</sup>
- In India, a mother of four children reports that “now, rainfall is a big problem for our family and for our village, compared to before. So we are now facing lower crop yields and water problems also. We are using most of the crop (paddy) for food consumption. If we have surplus food, then we sell it.”<sup>iii</sup>
- In the Sahel, Harouna Diallo Hamadou Mamoudou (81) reflects on his life experiences. “I think that irrigation agriculture in the dry season, animal fattening and trade could liberate the region from its precarious state of food insecurity, but unfortunately most of us do not have the means to take up these activities and become less dependent on rain. The future for our next generation is dark and full of uncertainties with the shrinking of pastures, erratic and declining rainfall, malnutrition and multiple human and animal diseases.”<sup>iv</sup>

## Human rights obligations in the face of climate change

Under human rights law, States have obligations to protect those whose rights are affected by climate change, with priority given to groups that are particularly vulnerable.<sup>v</sup> By extension, the UNFCCC, the Council and others have recognized that States must ensure that their responses to climate change do not themselves violate human rights.<sup>vi</sup> For this reason, climate policies should be designed, implemented and monitored in a manner that protects the full and effective enjoyment of human rights. For example, States must develop national climate policies - such as intended nationally determined contributions (INDCs) - through transparent processes that promote the effective participation of all affected communities, including indigenous peoples and other vulnerable populations. It is also important to note that developed countries have responsibilities to assist poorer developing countries in their efforts to respect human rights, which complement developed country obligations under the UNFCCC.

In addition to preventing or minimizing harm, a 'human rights-based approach' to climate change will contribute to effective outcomes in addressing it. As stated by the Human Rights Council in resolution 10/4, *"Human rights obligations and commitments have the potential to inform and strengthen international and national policymaking in the area of climate change, promoting policy coherence, legitimacy and sustainable outcomes."* This approach is critical to achieving such outcomes both in the negotiating process and in the development and implementation of policies and projects on the ground.

Through a focus on empowerment, participation and transparency, a human rights-based approach to climate change can help mobilize society and press for sustainable outcomes. Basic human rights—such as the rights to access to information and full and effective participation in decision-making—increase support for, and public ownership of, climate policies. A rights-based approach also helps to clarify who is responsible for the delivery of key changes and, thus, who can be held accountable where this does not happen or when people are harmed by the actions of those in power. As recognized by the Council, the *"effects of climate change will be felt most acutely by those segments of the population who are already in vulnerable situations owing to factors such as*

*geography, poverty, gender, age, indigenous or minority status and disability."* A rights-based approach will focus on those populations who suffer the disproportionate impacts of climate change and help to bring attention to systemic issues, like inequality, discrimination and exclusion.

### Current status of human rights in the UNFCCC

The link between human rights and climate change is well recognized by UN human rights bodies, but has received very limited recognition in the UNFCCC negotiations. The UN Human Rights Council has shown significant leadership on this issue. For example, in 2008, it adopted the first of three resolutions on human rights and climate change, stating that climate change "poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights." Building on this important recognition, in the 2010 Cancun Agreements, the Conference of the Parties (COP) to the UNFCCC took an initial step towards integrating human rights in the climate framework. For the first time, the UNFCCC recognized that rights obligations apply in the context of climate change, stating that, "Parties should, in all climate-related actions, fully respect human rights."<sup>vii</sup> Notably, the same decision also established the rights-based safeguards to be applied when financing and undertaking REDD+ activities.<sup>viii</sup>

However, since 2010, the UNFCCC has made minimal progress in operationalizing rights protections. There have been incremental developments in REDD+ to integrate further rights protections. These include the COP deciding that information on social, environmental and governance safeguard policies should be included in national communications<sup>ix</sup> and that payments for results cannot occur without information showing that such safeguards are being addressed and respected.<sup>x</sup>

However, for the most part, the Parties have not taken the necessary steps to ensure that human rights principles guide the development and implementation of the climate policies, institutions, mechanisms and solutions established under the UNFCCC.<sup>xi</sup> Much more work is needed to put human rights on both the political and

negotiating agendas, as evidenced at the most recent COP held in December 2014. In the final days of negotiations, some Parties called for references to human rights, the rights of indigenous peoples and gender equality to be included in the 2015 climate agreement. Despite these interventions and various submissions by UN Special Procedures and civil society organizations calling for human rights to be integrated fully in the climate framework, the draft negotiating text includes only one reference to rights in the preamble paragraphs.<sup>xii</sup>

Moving beyond the UNFCCC, however, there have been important advances in integrating rights in climate funds and institutions. Some REDD+ initiatives have developed policies and guidance to operationalize rights and achieve consistency with the UNFCCC REDD+ safeguards. For example, the UN-REDD Programme has adopted guidance for implementing the right to free, prior and informed consent (FPIC) and the UN-REDD Programme and the Forest Carbon Partnership Facility have adopted joint guidelines on stakeholder engagement.<sup>xiii</sup> In addition, at least two climate funds address human rights (to varying degrees) in their operational policies. The Adaptation Fund's (AF) Environmental and Social Policy provides that, "AF-supported programmes, projects and other activities shall respect and, where applicable, promote international human rights."<sup>xiv</sup> The Green Climate Fund's (GCF's) interim environmental and social safeguards - the Performance Standards of the International Finance Corporation - while controversial, contain some references to human rights, including FPIC in certain circumstances.<sup>xv</sup>

### Policy recommendations for integrating human rights in the climate regime

While the UNFCCC has recognized the need to respect human rights in all climate-related actions, it has yet to implement this approach in practice. Much more work is needed to integrate human rights fully into the post-2020 climate regime. The International Bar Association (IBA) recently released a report that provides a comprehensive survey of existing legal frameworks relevant to climate change and identifies opportunities for the legal, regulatory and institutional reforms needed to address climate change effectively.<sup>xvi</sup> Further, in December 2014, 76 independent experts (known as Special Procedures) of the Human Rights Council issued a statement, calling on the Parties to the UNFCCC to integrate human rights standards and principles in the climate change negotiations.<sup>xvii</sup>

The following recommendations incorporate proposals made by the IBA and the Special Procedures, among others:

#### Objective 1:

**Urgent and ambitious mitigation action that effectively limits the average global temperature increase to no more than 1.5 degrees Celsius to prevent severe and irreversible harm and provides scaled-up support for actions that prioritize the needs of the poorest and most vulnerable**

*Recommendation 1: Adopt urgent and ambitious mitigation action and provide scaled-up support and resources as means of preventing the most catastrophic impacts of climate change*

Based on an overwhelming body of scientific evidence, it is evident that the Parties to the UNFCCC must take urgent action to avoid severe human harms caused by climate change. In doing so, the Parties must consider human rights as a minimum threshold in determining and delivering the level of ambition needed. This includes: (1) a commitment to limit global warming to 1.5 degree Celsius above pre-industrial levels based on procedures for equitable commitments by all Parties; (2) an increase in pre-2020 mitigation efforts; and (3) significantly scaled-up support for both mitigation and adaptation actions, especially for those vulnerable populations in developing countries.

*Recommendation 2: Provide compensation for climate-related harms that could not be avoided*

Severe damage and irreversible losses from climate impacts can be avoided no longer. Such loss and damage to lives, livelihoods, property and culture threaten the human rights of the individuals and communities most vulnerable to, but least responsible for, climate change. As agreed in Doha in 2012, the Parties have established a mechanism to address loss and damage associated with the impacts of climate change in highly vulnerable countries. Recognizing their obligations to compensate those who have already been affected by climate change, the Parties should develop a means to provide compensation for those who already are experiencing loss and damage.

## Objective 2:

**Recognition that human rights obligations apply in the context of climate change and must be integrated fully into the development and implementation of climate policies and solutions**

*Recommendation 3: Include a reference to the Parties' obligations to protect human rights in all climate actions as a means to ensure consistency and coherence among human rights and climate regimes*

Building on the language already agreed by Parties to the UNFCCC in the Cancun Agreements, the general principles of the 2015 climate agreement should include:

**“Parties shall, in all climate change related action, respect, protect, promote and fulfil human rights for all”**

This language, which is supported by the UN Special Procedures, is critical to ensure that the international community's responses to climate change do not cause further environmental and human harm. However, it is important to note that this language reflects the Parties' existing obligations to protect human rights. Additional language is needed in the operational elements of the agreement to apply a human rights-based approach in the development and implementation of climate policies, mechanisms and institutions established under the UNFCCC (see below).

*Recommendation 4: Establish safeguards and accountability processes to ensure that climate policies are designed, implemented and monitored in a manner that protects the rights of affected people and communities*

As a means to operationalize their existing rights obligations, the Parties must take necessary precautions to ensure that actions to address climate change do not come at the expense of people and communities. To do so, the UNFCCC must consider how to integrate rights considerations in the development and implementation of climate policies, in part through the design of institutional safeguard systems that apply to all policies, mechanisms and institutions established under the UNFCCC. Such examples include the Clean Development Mechanism (CDM) and other market-based mechanisms, REDD+ initiatives, technology transfer and the loss and damage mechanism.

The key elements of an institutional safeguard system include four components

1. Social and environmental safeguard policies
2. Monitoring systems to ensure that safeguards are being respected
3. Grievance mechanisms to ensure that affected peoples and communities can raise their concerns and have them addressed in a timely manner
4. Opportunities for meaningful and effective participation in all stages of relevant decision-making processes

Within the context of REDD+, some initiatives have adopted a rights-based approach. In particular, the UN Development Programme has recently adopted a comprehensive set of policies - including social and environmental policies and a project-level screening procedure - that could serve as a useful model in developing a safeguards system within the UNFCCC.



With respect to monitoring and reporting at the national level, the Parties must report on the human rights implications of climate change and climate policies as well as the steps they have taken to address these impacts. Such reports should be made in national communications and biennial reports/biennial update reports or any other reporting processes established under the new agreement. Relevant information should include national laws and policies effectively implementing relevant safeguards or rights protections, as well as the status of their implementation. Developing countries, particularly those with less capacity, should be supported in the efforts required to generate such reports. Countries should draw on existing reporting processes to avoid duplication.

*Recommendation 5: Establish a work programme on human rights and climate change to monitor and assess the progress in integrating human rights into all aspects of climate action*

As proposed by the UN Special Procedures, the Parties should establish a work programme on human rights and climate change to put this issue squarely on the COP agenda. A work programme, reporting to the COP, would provide a much-needed opportunity for delegates to have a focused dialogue on what efforts have been made thus far and what more needs to be done to protect the rights of those most vulnerable, but least responsible for climate change. In December 2015, the Parties should adopt a decision establishing the mandate as well as the objectives and activities to be undertaken by the work programme (similar to the approach taken with the work programme on REDD finance). The primary purpose of this work programme would be to monitor and assess what actions are needed to integrate human rights fully into climate policy-making. It would also provide a means for exchanging best practices and furthering understanding of what actions can be taken to address the human rights impacts of climate change faced by all countries.

*Recommendation 6: Request input from the UN Human Rights Council/Office of the UN High Commissioner on Human Rights on how to operationalize human rights protections in climate policy*

In determining what actions are needed to protect human rights fully in the climate framework, it would be useful for the UNFCCC - in consultation with human rights experts as well as civil society - to conduct a study where it considers what it means to apply a human rights-based approach to climate change. Once established, the work programme could initiate a consultative study and in-session workshops as mechanisms for sharing ideas and best practices on ways to operationalize human rights in the climate regime. In particular, the work programme could request input or guidance from those with long-standing expertise in this area, notably the UN Human Rights Council and the Office of the High Commissioner of Human Rights (OHCHR), among other human rights experts. Alternatively, the Parties to the UNFCCC could request that the OHCHR conduct such a study. Either approach would help to ensure consistency and coherence between the two regimes and would provide legitimacy to the work being undertaken by the UNFCCC.

### Objective 3:

#### **Access to information, full and effective participation, and access to justice in decision-making processes at all levels**

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*Recommendation 7: Ensure effective means of participation in decision-making at all levels, as critical to effective and sustainable outcomes*

In the 2015 agreement, the Parties to the UNFCCC must promote and strengthen the means for equitable participation at all stages of the decision-making process (development, implementation and monitoring/reporting) and at all levels (local, regional, national and international). It should explicitly affirm the rights of access to information, full and effective participation and access to justice in reference to all climate action. For example, at the international level, the public should be involved in the development of the intended, nationally determined contributions (INDCs) to be submitted in 2015.

The UNFCCC must also recognize the need for the full and effective participation of stakeholders in the development and implementation of institutions and processes under the UNFCCC and related instruments/bodies (e.g. GCF, Adaptation Board, CDM and institutional arrangements to address loss and damage). In the negotiations under the GCF, observers face serious obstacles with respect to access and participation - including lack of adequate notification of meeting dates and draft documents. It is clear that much work is needed to ensure that rights are protected in the GCF.

With respect to monitoring and reporting, the UNFCCC must ensure effective means of participation within processes for measurement, reporting and verification and in the ex-ante review (assessment of INDCs). This includes the ability of observers to provide information for consideration in national communications and biennial reports, and to participate in the review processes.

*Recommendation 8: Establish a grievance mechanism in the UNFCCC*

The Parties to the UNFCCC should establish a grievance mechanism to ensure that those negatively affected by mitigation and adaptation activities can raise their concerns and have them addressed in a timely manner. Grievance mechanisms - such as the International Finance Corporation's Compliance Advisor Ombudsman or the UNDP's Compliance Review and Grievance Processes - are tested tools in helping institutions minimize harm to communities and ecosystems by protecting existing rights, obligations and standards. By facilitating transparency and stakeholder participation, grievance mechanisms also help to ensure that policies and projects are legitimate and effective, and promote sustainable development.

In the coming years, the UNFCCC must establish a grievance mechanism to which individuals, peoples, or communities (or their representatives) whose rights may be affected by the implementation of climate actions can submit relevant information. The mechanism should assess the impacts of the climate actions on the affected peoples or communities, including on their enjoyment of human rights. Such mechanisms should recommend measures for preventing or minimizing harmful effects and for ensuring that the response measures do not interfere with their enjoyment of their rights. In addition, the mechanism should be available to assist policymakers in safeguarding human rights and in implementing the recommended measures.

# Endnotes

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- xiv Adaptation Fund, Environmental and Social Policy (Nov. 2013)
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