

Discussion Paper

Taking Action on Human Rights and Climate Change (30 September 2016)

This paper was drafted by OHCHR in consultation with a core drafting group. It is designed to generate and support discussion at OHCHR's Expert Meeting on Climate Change and Human Rights on 6 – 7 October 2016. It is not intended as a complete examination of potential avenues for rights-based climate action.

What is the current situation?

Climate change is a threat multiplier that directly and indirectly threatens the full and effective enjoyment of a range of human rights by people throughout the world, including the rights to life, water and sanitation, food, health, housing, self-determination, culture and development. The negative impacts of climate change are disproportionately borne by persons and communities already in disadvantageous situations owing to geography, poverty, gender, age, disability, cultural or ethnic background, among others. At the same time, efforts to adapt to and mitigate climate change can only be effective if they occur in the context of enabling legal frameworks and are informed by the exercise of human rights such as the rights to information, public participation in decision-making and access to justice.

These links between human rights and climate change are now firmly established and clearly recognized both at the UNFCCC and the Human Rights Council (see e.g. COP16 and COP21 outcomes, HRC resolution 29/15). In particular, the Human Rights Council (HRC), its special procedures mechanisms, the human rights treaty-bodies, and the Office of the High Commissioner for Human Rights have sought to bring renewed attention to human rights and climate change through a series of resolutions, reports, and activities on the subject, and by advocating for a human rights based approach to climate change.

In Paris, human rights obligations provided a legal and moral basis for a more ambitious target of 1.5 degrees Celsius and an emphasis on protecting the rights of those most vulnerable to climate change. As the Preamble of the Paris Agreement to the United Nations Framework Convention on Climate Change now makes clear, all States “should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights”.

Many challenges await the effort to give life to the Paris Agreement's human rights imperative, including identifying concrete ways to integrate human rights in climate action

undertaken pursuant to the UNFCCC and constructively engaging human rights mechanisms in monitoring climate impacts and promoting accountability for climate commitments. Success will require improved monitoring of the human rights impacts of climate change; increased awareness of the links between human rights and climate change; better understanding of human rights obligations in the context of climate change and the human rights based approach to climate action; strengthening linkages between human rights and climate experts and the fora in which they work; mobilizing human rights mechanisms to promote and support effective rights-based action to mitigate and adapt to climate change; better integrating human rights within UNFCCC processes; and ensuring that climate actions benefit rather than infringe upon human rights.

What human rights obligations apply in the context of climate change?

States are obligated to respect, protect, promote, and fulfil all human rights for all people. This includes an affirmative obligation to prevent foreseeable harms including those caused by climate change. The UN Charter, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the UN Declaration on the Right to Development all make clear that State human rights obligations require both individual action and international cooperation. According to the Universal Declaration of Human Rights everyone is entitled to a social and international order in which the rights and freedoms therein can be fully realized and everyone has duties to the community. Similarly, the ICESCR declares that States should “take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of [their] available resources, with a view to achieving progressively the full realization of rights recognized in the present Covenant”.

The Declaration on the Right to Development further calls on States to establish through their individual and collective actions, national and international conditions favourable to the realization of the right to development and all human rights including through international cooperation to provide developing countries “with appropriate means and facilities to foster their comprehensive development.” It also emphasizes that “all human beings have a responsibility for development, individually and collectively... and they should therefore promote and protect an appropriate political, social and economic order for development.” The UN *Guiding Principles on Business and Human Rights* confirm that businesses also have human rights responsibilities. They reaffirm that all responsible actors should be held accountable for the negative impacts of their activities and that all actors share responsibility for remedying these impacts.

The basic human rights principles of equality and non-discrimination require action to address and remedy the disproportionate impacts of climate change on the most marginalized and to ensure that climate actions benefit persons, groups and peoples in vulnerable situations and reduce inequalities. The disproportionate impacts of climate change on persons in vulnerable situations raise concerns of climate justice, fairness, equity and access to remedy. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and other human rights instruments make it

clear that all persons who suffer human rights harms are entitled to access effective remedy.

States have procedural obligations to ensure that persons affected by climate change are: (i) adequately informed about the impacts of climate change and measures undertaken to mitigate and adapt to it; (ii) adequately involved in public decisions about climate change; and (iii) given access to administrative, judicial, and other remedies when rights are violated as a result of climate change and responses to it.¹

[OHCHR's Key Messages on Human Rights and Climate Change](#) further highlight the essential obligations and responsibilities of States and other duty-bearers (including businesses) and their implications for climate change-related agreements, policies, and actions. In order to foster policy coherence and help ensure that climate change mitigation and adaptation efforts are adequate, sufficiently ambitious, non-discriminatory and otherwise compliant with human rights obligations, the following considerations should guide climate action.

- 1. To mitigate climate change and to prevent its negative human rights impacts**
- 2. To ensure that all persons have the necessary capacity to adapt to climate change**
- 3. To ensure accountability and effective remedy for human rights harms caused by climate change**
- 4. To mobilize maximum available resources for sustainable, human rights-based development**
- 5. International cooperation**
- 6. To ensure equity in climate action**
- 7. To guarantee that everyone enjoys the benefits of science and its applications**
- 8. To protect human rights from business harms**
- 9. To guarantee equality and non-discrimination**
- 10. To ensure meaningful and informed participation**

How can these obligations be operationalized?

As the HRC has stressed, it is critical to [apply a human rights-based approach](#) to guide global policies and measures designed to address climate change. The essential attributes to a human rights-based approach are the following:

- As policies and programmes are formulated, the main objective should be to fulfil human rights.
- The *rights-holders* and their entitlements must be identified as well as the corresponding *duty-bearers* and their obligations in order to find ways to strengthen the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations.

¹ UNEP Climate Change and Human Rights report, 2015, p.IX.

- Principles and standards derived from international human rights law – especially the [Universal Declaration of Human Rights](#) and the [core universal human rights treaties](#), should guide all policies and programming in all phases of the process.

The rights-based approach analyses obligations, inequalities and vulnerabilities, and seeks to redress discriminatory practices and unjust distributions of power. It anchors plans, policies and programmes in a system of rights, and corresponding obligations established by international law.

Existing State commitments require international cooperation, including financial, technological and capacity-building support, to realise low-carbon, climate-resilient, and sustainable development, while also rapidly reducing greenhouse gas emissions. Only by integrating human rights in climate actions and policies and empowering people to participate in policy formulation can States promote sustainability and ensure the accountability of all duty-bearers for their actions. This, in turn, will promote consistency, policy coherence and the enjoyment of all human rights. Such an approach should be part of any climate change adaptation or mitigation measures. Affected individuals and communities must participate, without discrimination, in the design and implementation of these projects. States should cooperate to address the global effects of climate change on the enjoyment of human rights around the world in a manner that emphasizes climate justice and equity.

A human rights-based approach also calls for accountability and transparency. States should make their adaptation and mitigation plans publicly available, and be transparent in the manner in which such plans are developed and financed. Accurate and transparent measurements of greenhouse gas emissions, climate change and its impacts, including human rights impacts, will be essential for successful rights-based climate change mitigation and adaptation efforts. Because of the impacts of climate change on human rights, States must effectively address climate change in order to honour their commitment to respect, protect and fulfil human rights for all. Since climate change mitigation and adaptation measures can have human rights impacts; all climate change-related actions must also respect, protect, promote and fulfil human rights standards.

Only by integrating human rights in climate actions and policies and empowering people to participate in policy formulation can States promote sustainability and ensure accountability. In practical terms, ensuring rights-based climate action will require concrete actions by various stakeholders. It is not the intention of this paper to identify all of the stakeholders and their potential roles but rather to focus on human rights mechanisms, the UNFCCC and related mechanisms. The following non-exhaustive list of relevant actors and potential actions is intended to guide discussion but not contain it. Meeting participants will be asked to reflect on the potential roles of these bodies, identify additional relevant actors, and make their own suggestions for action.

Relevant human rights actors and potential actions

- Treaty-bodies: drafting relevant general comments / recommendations, Addressing climate within concluding observations.

- National Human Rights Institutions: monitoring and raising awareness of climate impacts, exploring legal avenues (e.g. Philippines National Human Rights Commission), and investigating allegations of related rights violations, providing technical advice to their governments on mainstreaming human rights in climate action, and holding governments accountable for breaches of human rights obligations.
- The Human Rights Council: including questions and recommendations related to climate change in the Universal Periodic Review, strengthening the resolution on human rights and climate change by drawing more explicit connections between the resolution and UNFCCC, increasing coherence with the UNFCCC and strengthening communication and avenues for information exchange, calling for specific actions by special procedures, and making recommendations based on findings in mandated studies; establishing a special rapporteur on climate change; establishing an annual forum on human rights and climate change that rotates between Geneva and Bonn and includes States, the UNFCCC, OHCHR, UN Environment, and other relevant stakeholders
- Special procedures mechanisms: addressing climate impacts in relevant thematic and country visit reporting, continuing advocacy including joint advocacy and joint reporting.
- The Office of the High Commissioner for Human Rights, UN Environment and relevant UN Agencies: taking steps to increase capacity at HQ and in regional and country offices, developing useful tools for States and other stakeholders, supporting synergies with climate change-related agreements, continuing advocacy and awareness raising including at the UNFCCC.
- Civil Society: advocacy, monitoring, technical support, litigation in courts and before relevant human rights mechanisms nationally, regionally and at the UN level.
- Indigenous peoples: Raise awareness about the human rights implications of using traditional knowledge, the knowledge of indigenous peoples and local knowledge systems in the design and implementation of climate adaptation and mitigation action and in scientific assessments.
- States: integrating human rights in nationally determined contributions, national adaptation plans of action and other relevant policies, including impact assessments, joining the Geneva Pledge for Human Rights in Climate Action, promoting integration of human rights in climate action at the UNFCCC.

Relevant actions at the UNFCCC

- Integrating human rights in guidance provided by the Ad Hoc Working Group on the Paris Agreement on features of nationally determined contributions.
- Integrating human rights, including an understanding of human rights impacts of climate change and climate action, within the global stocktake and other relevant processes (i.e. adaptation, mitigation, transparency).

- Making UNFCCC processes more inclusive, transparent, and participatory including the new measuring, reporting and verification framework under the Paris Agreement.
- Raising the ambition of climate commitments to match the 1.5-degree goal and requesting the IPCC to address human rights impacts in its report on 1.5 degrees.
- Including human rights in work on capacity-building including the designation of an annual thematic focus.
- Ensuring transparency contributes to accountability and the enjoyment of the rights to information and participation. States have also committed to enhancing climate change education, training, public awareness, public participation and public access to information.
- Including safeguards in the SDM and other climate financing mechanisms. These policies should integrate human rights considerations in line with the Paris Agreement and be informed by successes and failures of existing approaches in order to ensure human rights protections for all, particularly groups such as indigenous peoples, children, women, and persons living with disabilities that are disproportionately impacted by climate change. A strong safeguard policy should be enforceable and should include: social and environmental impact assessments, informed participation, consultation and consent, measures to ensure benefit sharing, a flexible dispute resolution mechanism, and a general commitment to respect all human rights.
- Ensuring country-driven, gender-responsive, participatory and fully transparent adaptation that takes into consideration vulnerable groups and communities.
- Addressing human rights through the work of the Warsaw Mechanism to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change.
- Developing a programme of work on human rights and climate change at the UNFCCC.
- Promoting the integration of human rights considerations in domestic policies, the COP and the UNFCCC's various arms and mechanisms.
- Improving policy coherence between the UNFCCC and other international frameworks.
- Strengthening the programme of work on women and gender at the UNFCCC.
- Improving coherence with the Human Rights Council and treaty bodies, strengthening communication and avenues for exchange between these fora.
- Calling upon human rights mechanisms to feed into monitoring processes for climate commitments, including the High-Level Political Forum and the UNFCCC global stocktake, and to provide technical support for human rights capacity-building at the UNFCCC.
- Ensuring that the use of traditional knowledge, the knowledge of indigenous peoples and local knowledge systems in the design and implementation of adaptation action

is consistent with the human rights of traditional knowledge holders, especially but not limited to indigenous peoples.

Guiding Questions for Discussion

Why is it important to integrate human rights in climate action? What are the consequences of failing to do so?

Which human rights mechanisms are currently addressing climate change? What are the achievements and gaps?

What role can human rights mechanisms play in promoting a rights-based approach to climate action? How can they make a difference?

What is the relevance of the 2030 Agenda and other development outcomes and processes to this discussion?

How can stakeholders engage at the intergovernmental level to support better integration of human rights in UNFCCC processes? What are the major entry points? (e.g. encouraging the use of NDCs as instruments to promote the enjoyment of human rights)

Which actors are critical and what actions should they be taking?

Where should advocacy and resources be focussed to have the greatest impact?

Key Resources

- Mary Robinson Foundation – Climate Justice, *Incorporating human rights into climate action*, <http://www.mrfcj.org/wp-content/uploads/2016/05/Incorporating-Human-Rights-into-Climate-Action-Version-2-May-2016.pdf>
- OHCHR's Key Messages on Human Rights and Climate Change, OHCHR website on climate change and human rights
<http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimateChangeIndex.aspx>
- Special Rapporteur on human rights and the environment - summary of his work on climate change, including his Council report
<http://www.ohchr.org/Documents/Issues/ClimateChange/InfoNoteClimateChange.pdf>
- Special Rapporteur on Environment, Letter to the SBSTA on the Sustainable Development Mechanism,
http://www.ohchr.org/Documents/Issues/Environment/Letter_to_SBSTA_UNFCCC_May2016.pdf
- UNEP, *Climate Change and Human Rights*, [file:///D:/downloads/-Climate_Change_and_Human_Rights%20\(11\).pdf](file:///D:/downloads/-Climate_Change_and_Human_Rights%20(11).pdf)