



THE CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW



Climate Change & Human Rights: A Primer



Introduction

The body of the world's leading climate scientists convened by the UN, the Intergovernmental Panel on Climate Change, has concluded that climate change is both occurring and is attributable to increasing atmospheric concentrations of greenhouse gases (GHGs) resulting from human activity. The UN Human Rights Council (Council) has recognized that the environmental changes brought about by climate change can interfere with the realization of fundamental, internationally recognized human rights – including those protected by the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights.

Climate change impacts and measures taken to mitigate or adapt to these impacts (referred to as response measures) are already affecting both individuals and communities. Particularly vulnerable to the impacts of climate change are individuals and peoples whose way of life is inextricably tied to nature, and coastal and low-lying island states that lack the economic resources to adapt to severe changes. At the extreme, climate impacts and response measures threaten to destroy many cultures of peoples around the world, render their lands uninhabitable, and deprive them of their means of subsistence.

According to the UN Charter, the Universal Declaration of Human Rights, and other international human rights instruments, states have a duty to cooperate to prevent the violation of human rights, including the duty to take effective action in the fight against climate change. Furthermore, States must take adequate measures to respect and protect human rights when working to mitigate climate change or adapt to its impacts.

Increased attention to the human dimensions of climate change, including in the current negotiations under the UN Framework Convention on Climate Change (UNFCCC), can improve the likelihood that climate change-related measures will protect human rights. Accordingly, understanding and addressing the human consequences of climate change is a fundamental component of the climate change challenge. Moreover, linking the climate change negotiations and structures to existing human rights norms enables States to use indicators and mechanisms anchored in the well-established human rights system to address the challenges posed by the changing climate.

The linkages between climate change and human rights (CC&HRs) are beyond dispute. The challenge now lies in introducing a rights-based approach to the development and implementation of an effective and equitable solution to climate change.

Climate-Related Human Rights Concerns

Manifestations of climate change include rising sea-levels, increasing temperatures, extreme weather events (such as storms, droughts and cyclones), receding coastlines, melting permafrost and changes in precipitation patterns. These climatic phenomena have direct impacts on human populations and their livelihoods.

- Rising sea-levels and storms cause flooding, population displacement, salinization of fresh-water resources, and the diminishment of habitable or cultivable land.
- Rising surface temperatures lead to greater occurrence of diseases such as scrub typhus, diarrheal diseases and other mosquito-borne diseases.
- The increasing number and intensity of weather events endanger life, health, and housing.
- Changing coastlines and melting permafrost cause damage to land, houses, and other infrastructure.
- Changing precipitation patterns and the melting of glaciers affect access to water, which in turn affects the ability to irrigate lands and secure access to food.



Adaptation and mitigation actions to address these impacts can affect, perhaps profoundly, the livelihoods, lifestyles, living conditions and cultures of indigenous peoples and local communities.

Women and children are particularly vulnerable to the effects of climate change. In the poorest regions of the world, women often bear the primary responsibility for gathering the essential food, water and fuel supplies for their families. Droughts caused by climate change make their work extremely hard as wells run dry, crop production declines, and fuel wood has to be collected from farther distances. Similarly, shortages of food and water will increase malnutrition among children and diminish their chances to receive school education. Children are also more vulnerable to natural disasters as they lack physical



strength, and are often orphaned or separated from their families.

Indigenous peoples are also particularly vulnerable to climate change, since their way of life is often inextricably tied to the natural environment. Consequently, environmental changes impact their ability to access water, food and shelter. Moreover, for many indigenous peoples, lands are not a mere commodity, but a central element of spiritual and cultural identity. Thus, serious environmental changes resulting from climate change can affect both their physical and spiritual survival.

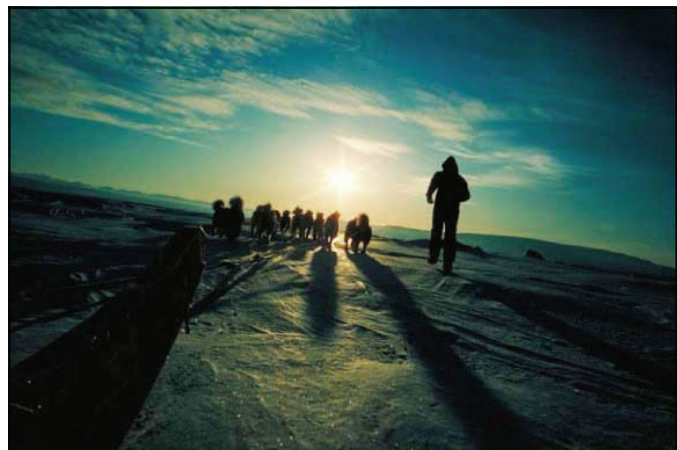
International Human Rights

Human rights are the basic rights and freedoms to which all humans are entitled, as recognized and protected by the core international human rights instruments. They encompass civil and political rights, such as the rights to life, liberty and freedom of expression, to worship, to own property, and to be treated equally before the law. They also include economic, social and cultural rights, such as the rights to family, to education, to culture, to health, to subsistence, to residence and movement, and to inviolability of the home. These rights are universal and fundamental, and states have the duty to ensure their realization.

International human rights law has established several mechanisms to monitor compliance with and ensure observance of human rights. At the international level, the universal periodic review of the Human Rights Council and the committees overseeing the ICCPR and ICESCR monitor human rights issues, including with respect to climate change. At the regional level, human rights courts and commissions in Africa, the Americas and Europe provide victims with a forum to seek redress for violation of their rights.

The Inuit Petition

The CC&HRs linkage was squarely posed by the Inuit before the Inter-American Commission on Human Rights (IACHR) in 2005. The petition presented by the Inuit from Canada and the United States, with the legal support of CIEL and Earthjustice, avers that climate change, caused substantially by the United States, has had a devastating impact on the rights of the indigenous peoples of the Arctic. While the IACHR decided not to proceed with





the petition in 2006, it held a “thematic hearing” to begin investigating the connection between CC&HR from a general perspective. The effort by the Inuit before the IACHR illuminated the CC&HRs linkage, and helped broaden and re-focus the terms of the climate change debate. The petition is available at: www.ciel.org/Publications/ICC_Petition_7Dec05.pdf.

The Malé Declaration

During 2007, CIEL supported the Republic of the Maldives to further recognize and clarify the CC&HRs relationship. In November 2007, representatives of the Small Island Developing States, including the Maldives, signed the Malé Declaration on the Human Dimension of Global Climate Change. The Declaration notes that the environment provides the infrastructure for human civilization, and that the impacts of climate change pose the most immediate, fundamental and far-reaching threat to the environment, as well as individuals and communities around the planet. It also notes that the fundamental right to an environment capable of supporting human society and the full enjoyment of human rights has been recognized by the international community, and therefore expresses concern that climate change has clear and immediate implications for the full enjoyment of human rights. The Malé Declaration further calls for the cooperation of the UN High Commissioner for Human Rights (OHCHR) and the Council in assessing the human rights implications of climate change. It is available at: www.ciel.org/Publications/Male_Declaration_Nov07.pdf.

UN Human Rights Council Resolutions

In March 2008, the Council adopted, by consensus, Resolution 7/23 on human rights and climate change, which states 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. The resolution also requests the OHCHR to conduct a detailed, analytical study of the CC&HRs relationship.

The Council adopted another consensus resolution (Resolution 10/4) in March 2009, noting that climate change has both direct and indirect implications for the enjoyment of human rights, and recognizing that vulnerable individuals and communities will be the most acutely affected. The resolution underlined key points made in the OHCHR study, and decided to hold a panel discus-

sion on CC&HRs in order to contribute to the realization of the goals of the Bali Action Plan (a road map providing the framework for a two-year negotiation process under the UNFCCC). Further, it requested that the OHCHR prepare a summary of the panel discussion to be made available to the UNFCCC.

OHCHR's Analytical Study

The OHCHR study requested by the Council definitively shows that climate change interferes with a wide range of human rights, that States have obligations under human rights law to protect those rights from the effects of climate change – including, in particular, through international cooperation – and that States' efforts to mitigate and adapt to climate change must comply with their duties under human rights law. These conclusions should both increase the ethical imperative for governments around the globe to act to combat climate change, and inform how States must act in mitigating and adapting to climate change.

The OHCHR received submissions from States, UN bodies, intergovernmental organizations, and non-governmental organizations (NGOs) during the preparation of its analytical study. The submissions address the human dimension of climate change, including the physical impacts of climate change on society; the implications of climate change for human rights; and the role of the international community in protecting and fulfilling the rights threatened by climate change. In its submission, the Maldives presented the table on the following page regarding the human rights implications of climate change (the full submission, including references to all of the rights cited below, is available at: http://www.ciel.org/Publications/Maldives/Maldives_Submission_29Sep08.pdf).

The OHCHR study, together with a summary of the discussion held during the Council's session, was made available to the Conference of Parties to the UNFCCC for its consideration. The study is available at: <http://www2.ohchr.org/english/issues/climatechange/study.htm>.

Geneva Experts Meeting

In January 2009, CIEL and Friedrich Ebert Stiftung (FES) brought together a group of leading experts from environmental and human rights organizations to discuss practical ways of implement-



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

UDHR = Universal Declaration of Human Rights; ICCPR = International Covenant on Civil and Political Rights; ICESCR = International Covenant on Economic, Social and Cultural Rights; CEDAW = Convention on the Elimination of All Forms of Discrimination against Women; ICRC = Convention on the Rights of the Child.

ing the CC&HRs linkage. The workshop attempted to identify concrete approaches to operationalize the CC&HRs linkage. The workshop identified several options including:

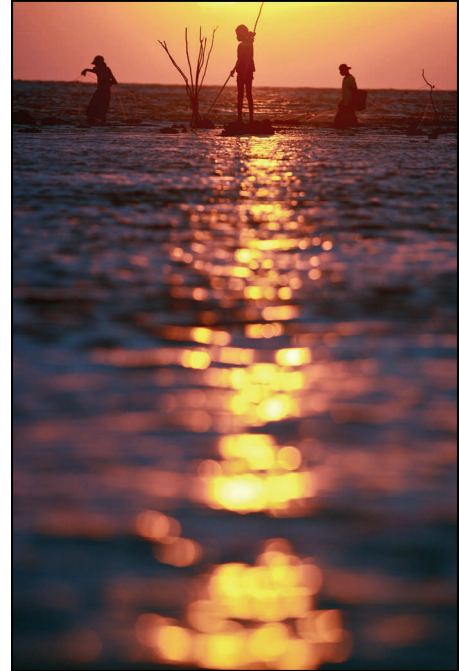
- 1) Existing human rights special procedures could address the implications of climate change;
- 2) The Council could establish a special procedure on climate change;
- 3) The Council could engage with climate change issues in other ways;
- 4) Human rights treaty bodies could address CC&HRs linkages within their mandates; and
- 5) The UNFCCC could recognize the principle that climate change-related activities must respect human rights, and task a new or existing specialized body or process with making the CC&HRs linkage operational.

Comments made by the panel of experts are reflected in CIEL and FES’s report “Human Rights and Climate Change: Practical Steps for Implementation”, which are available at: http://www.ciel.org/Publications/CCandHRE_Feb09.pdf.

2010 Social Forum

In October 2010, the Human Rights Council convened the Social Forum with a focus on the relationship between CC&HRs. The 2010 Social Forum provided an opportunity to discuss: the adverse effects of climate change on the full enjoyment of human rights; measures and actions to address the impact of climate change on the full enjoyment of human rights at the local, national, regional and international levels; and international assistance and cooperation in addressing the human rights-related impacts of climate change.

In her concluding remarks, the Chairperson-Rapporteur of the 2010 Social Forum, noted that the discussions had reaffirmed Resolution 10/4's finding that "human rights obligations and commitments have the potential to inform and strengthen international and national policy-making in the area of climate change, promoting policy coherence, legitimacy and sustainable outcomes."



Proposed Special Procedure on Climate Change and Human Rights

One of the outcomes of the 2010 Social Forum was the NGO Social Forum Declaration, which calls on the Council to establish a Special Procedure on CC&HRs. A Special Procedure on CC&HRs would likely provide coherence within the human rights regime and among other relevant international institutions. More specifically, a Special Procedure on CC&HRs could coordinate and collaborate with other special procedures and subsidiary bodies, and therefore could fill in gaps and identify obstacles to the realization of rights. A Special Procedure on CC&HRs could also monitor the impacts of climate change and response measures on the realization of rights, and document cases involving rights violations. Finally, a Special Procedure on CC&HRs would help clarify the conceptual and operational dimensions of the CC&HRs linkage. This mandate would contribute to preventing interferences to human rights resulting from climate change and response measures, as well as to promoting the full enjoyment of human rights.

UN Framework Convention on Climate Change

The UNFCCC is the basic international legal instrument for channeling international cooperation to achieve stabilization of GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. The Kyoto Protocol to the UNFCCC, adopted in 1997 and entered into force in 2005, imposes emissions reduction and limitation obligations on industrialized country Parties.

The UNFCCC negotiation process is focused on developing a shared vision for long-term cooperative action to avoid dangerous interference with the climate system. In turn, the shared vision

rests on enhanced action under each of the four basic pillars: mitigation, adaptation, financing, and technology transfer. Human rights are relevant to all four pillars.

In December 2010, the Parties to the UNFCCC and Kyoto Protocol adopted a set of decisions collectively known as the Cancun Agreements, which include several references to human rights. Most notably, the decision that reflects the work of the Ad Hoc Working Group on Long-term Cooperative Action (Cancun LCA decision) recognizes the CC&HRs connection:

Noting resolution 10/4 of the United Nations Human Rights Council on ‘human rights and climate change’, which recognizes that the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights and that the effects of climate change will be felt most acutely by those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status and disability.

To protect those most vulnerable to climate change, the Cancun LCA decision also “emphasizes that Parties should, in all climate change-related actions, fully respect human rights,” and recognizes the need to protect the participatory rights of affected individuals and peoples in decision-making processes.

The rights language in the Cancun LCA decision is a significant first step towards establishing human rights protections in the climate regime, and is largely the result of leadership from certain State Parties as well as sustained NGO advocacy. The recognition that Parties should respect human rights in climate-change related activities eliminates any questions that some actors might have regarding the relevance of human rights in the context of climate change.

A detailed analysis of the human rights language in the Cancun LCA decision is available at http://www.ciel.org/Publications/HR_Language_COP16_Mar11.pdf.



Adaptation

Adaptation policies attempt to increase the capacity of societies and ecosystems to deal with the risks and impacts of climate change. Undoubtedly, governments and other actors will take action to face the changes brought about by climate change. In this regard, the duty in human rights law to protect people from harm is universally recognized. However, these adaptation measures have the potential to infringe on human rights.

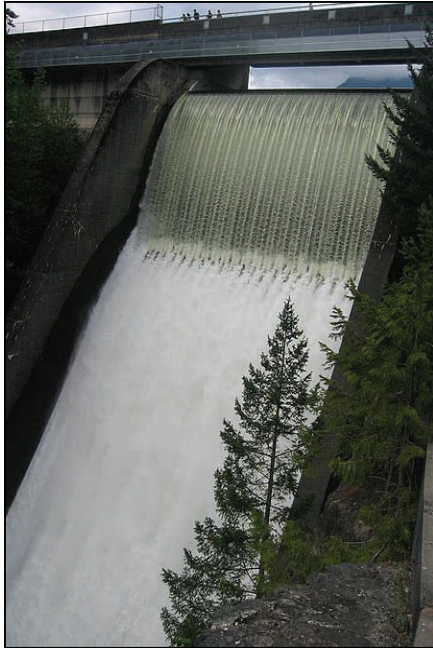
Due to the nature of the climate system and the long-term effects of increased GHG concentrations, climate change will continue over several decades, and therefore adaptation strategies are key to protecting vulnerable populations. A variety of adaptation measures implicate human rights, such as measures regarding food, water, and the availability of other resources to support the adaptation needs of vulnerable populations. Similarly, disaster risk management could address the particular situation of the most vulnerable and marginalized.



Mitigation

The Bali Action Plan clearly contemplates additional emission reduction commitments for industrialized countries, and introduces the concept of nationally appropriate mitigation actions (NAMAs) by developing countries, which are to be supported by technology, financing, and capacity-building. Although the contours of the post-2012 mitigation regime are unclear at this point in the negotiations, the mitigation measures necessary to address climate change will undoubtedly impact human rights.

The UNFCCC and Kyoto Protocol require countries to reduce their GHG emissions using various mitigation strategies. The Protocol established market-based mechanisms, such as the Clean Development Mechanism (CDM) and Joint Implementation, to allow developed countries to meet their treaty obligations by investing in developing countries. Other mitigation strategies, such as reducing emissions from deforestation and forest degradation (REDD+) programs, could provide funds to developing countries, indigenous peoples, and forest-dependent communities involved in forest conservation.



Clean Development Mechanism

The Kyoto Protocol's CDM supports projects in developing countries that result in emission reductions, generating carbon credits that industrialized countries can use to offset their own emissions. CDM projects may involve displacement of communities and other human impacts. Denial of free and prior informed consent by indigenous peoples and other local communities could further aggravate these impacts, with respect to their rights, lands and territories. As such, the human rights dimensions of such mitigation measures need to be carefully considered in designing these policies and projects.

Current CDM modalities and procedures contain some tools that help promote a rights-based approach, such as disclosure of environmental assessments and channels for public participation. However, the CDM has yet to fully adopt a rights-

based approach to ensure that its operations contribute to sustainable development, including respect for human rights.

Forests and Land Use

Policies and measures adopted by national governments in connection with forests and land use can significantly impact indigenous peoples and local communities. Land tenure, traditional use of resources, and benefit sharing considerations may all be implicated by mitigation efforts, such as REDD+. For example, national governments establishing protected areas over forests occupied or otherwise used by indigenous peoples and other forest dependent communities could potentially displace traditional occupants, and implicate relocation and traditional resource use rights. Because land and livelihoods may be impacted, it is important to ensure protections for the people most closely associated with the forest.

Respect and protection of the rights of indigenous peoples and other forest-dependent communities affected by REDD+ activities is essential to ensure the success and permanence of measures taken on the ground. This means that forest-dependent peoples and communities have a right to participate in and to share the benefits of programs and measures relating to reducing emissions from deforestation and forest degradation. Participation is more than mere consultation, as it involves the



right to free and prior informed consent of indigenous peoples and other forest-dependent communities, in accordance with their customs and traditions, including their traditional governance structures. Notably, in 2010, Parties to the UNFCCC agreed to promote and support the following safeguards for REDD+ activities: consistency with international obligations; respect for the rights of indigenous peoples and local communities; full and effective participation of stakeholders; good governance systems; and avoided damage to biodiversity and ecosystems. Parties also agreed to develop a system of information sharing on how safeguards are being implemented.

In the end, a rights-based approach to forests and land use can ensure that its policies and projects do not interfere with the rights of those who have preserved the forest since time immemorial.



Photos courtesy of Amir Jina

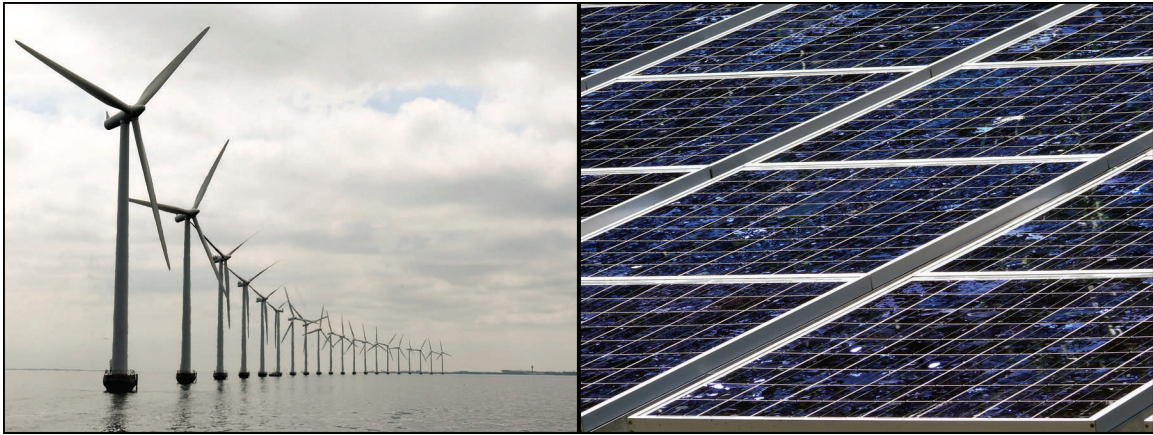
Finance

Industrialized countries have an obligation under the UNFCCC to assist lower-income countries in funding mitigation and adaptation strategies necessary to reduce emissions and protect vulnerable populations. Lower income countries acting alone are not in a financial position to fully protect their populations from climate impacts. Finance is therefore critical to assist these countries in fighting climate change and protecting the human rights of their people. The development and application of finance safeguards is also necessary to prevent social and environmental harm and maximize participation, transparency, accountability, equity, and rights protections. In 2010, Parties to the UNFCCC established a new fund (the Green Climate Fund), and agreed to, among other things, develop mechanisms to ensure that social and environmental safeguards apply to the fund.

Institutions involved in funding climate change-related activities, such as the Adaptation Fund, the Global Environment Facility (GEF), and the World Bank, should provide transparent processes, maintain policies and procedures that respect internationally recognized rights, and allow meaningful opportunities for public participation. Other regimes and institutions should also be involved in this effort, including: UN Environment Programme, UN Development Programme, Food and Agriculture Organization; and International Labor Organization (ILO). The principal efforts and leadership, however, should come from the two most directly involved regimes – climate change and human rights.

Technology Transfer

Transfer of technology is critical to supporting sustainable development and avoiding the shifting of polluting industries from industrialized countries to the developing world. Establishing a workable institutional mechanism for technology transfer is crucial to reaching and successfully implementing any post-2012 framework. A rights-based approach can help ensure that beneficial technologies are fairly shared. In terms of effective implementation for adaptation, a human rights approach to technology transfer can help ensure that technologies required by the most vulnerable peoples and communities is a priority.



Institutions & Mechanisms in the UNFCCC

To provide further support for the principle that Parties should respect human rights in climate-change related activities, the Parties must integrate human rights protections within the climate regime, and provide adequate transparency and opportunity for public participation in relevant decision-making processes.

For example, the Conference of the Parties (COP) to the UNFCCC could create an expert group on CC&HRs to explore the human dimensions of climate change. A COP decision could establish an expert group on CC&HRs, define its membership, and specify the scope of its activities. This could include advising the COP or one of the subsidiary bodies on matters relating to human rights, and providing a focused forum for discussion of CC&HRs issues.

Independent of any new process or mechanism, there is a need to mainstream human rights considerations into existing institutional arrangements and mechanisms. Bodies within the climate regime that could take on the CC&HRs linkage include the two standing subsidiary bodies created in the Convention – the SBSTA and SBI – and the CDM Executive Board with respect to the operation of the CDM.

There are a number of ways in which the UNFCCC bodies could address human rights issues. For example, they could produce technical papers that identify existing or potential problems relating to CC&HRs, or they could request that the secretariat organize a workshop, produce a paper, or call for an expert meeting on the same issues. UNFCCC bodies could also be tasked to consider ways

to include human rights concerns in the ongoing negotiations. They could be tasked with coordinating a common approach or response in collaboration with other international bodies or efforts to address CC&HRs, such as the OHCHR.

Recommendations

It is essential to consider the human rights aspects of climate change in the Human Rights Council, UNFCCC, and other relevant institutions and mechanisms. For example, given the impacts of climate change and measures taken to mitigate or adapt to climate change on a wide range of human rights, it is essential to integrate human rights considerations into the institutional framework and relevant processes of the UNFCCC, including whatever legal and institutional architectures emerge in the agreed outcome of the current negotiations. In addition, we recommend:

- Designing appropriate institutions and mechanisms in the UNFCCC framework that effectively operationalize the rights-related language in the Cancun Agreements;
- Creating a process(es) in the UNFCCC framework that will consider and address communications by or on behalf of individuals, peoples or communities whose rights may be affected by climate change impacts and associated response measures.
- Establishing a special procedure on CC&HRs to provide coherence within the human rights regime and among other relevant international institutions

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SELECTED RIGHTS OBLIGATIONS RELEVANT TO CLIMATE CHANGE

Treaties	Parties	Parties also party to UNFCCC	Rights Implicated (article number)
Universal Declaration of Human Rights	48 (signed)	48 (signed)	Life (3); Liberty and security of person (3); Freedom of movement (13); Property (17); Work (23); Adequate standard of living (25); Education (26); Culture (27)
International Covenant on Economic, Social and Cultural Rights	160	160	Self-determination (1); Duty to cooperate (2); Means of subsistence (2); Right to work (6); Adequate standard of living (11); Right to be free from hunger (11); Improvement of environmental and industrial hygiene (12); Education (13); Culture (15); Scientific progress (15); Utilize natural resources (25)
International Covenant on Civil and Political Rights	167	166	Self determination (1); Life (6); Liberty and security of person (9); Movement (12)
International Convention on the Elimination of All Forms of Racial Discrimination	174	172	Property (5); Work (5); Housing (5); Health (5); Education (5); Culture (5)
Convention on Indigenous and Tribal Peoples (No. 169)	20	20	Culture (8); Property (14); Use and conservation of natural resources (15); Health (25); Education (26)
UN Declaration on the Rights of Indigenous Peoples	148	147	Self determination (3); Life (7); Liberty and security (7); Education (14); Means of subsistence (20); Development (23); Health (24); Environmental conservation (29); Culture (31)
Convention on the Rights of the Child	193	191	Life (6); Freedom of expression (13); Duty to cooperate (17); Health (23); Adequate standard of living (27); Education (28); Culture (30)
Convention on the Elimination of All Forms of Discrimination against Women	102	101	Education (10); Work (11); Health (14); Adequate living conditions (14); Housing (14); Water (14)



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1350 Connecticut Ave., NW, Ste. 1100
Washington, DC 20036-1739 USA
Tel: +1 202.785.8700
Fax: +1 202.785.8701
Email: info@ciel.org

15 Rue des Savoises
1205 Geneva, Switzerland
Tel: +41.22.789.0500
Fax: +41.22.789.0739
Email: geneva@ciel.org

Visit us online at www.ciel.org.