

## Rights for Ambition: A Submission to the Talanoa Dialogue

The undersigned organizations appreciate the opportunity to participate in the Talanoa Dialogue, as the open and inclusive process is consistent with the right to public participation. We appreciate Fiji's leadership and desire to facilitate a dialogue that will lead to increased ambition by taking stock of where we are now while also looking at where we want to go and how we get there. Increasing ambition to address climate change is imperative. We are already seeing the adverse impacts that climate change is having on people and the environment around the world. These impacts will only worsen without urgent action, including ambitious mitigation; adaptation and loss and damage action; and adequate finance, technological support, and capacity building to support these actions.

Climate change is not merely an environmental problem, but a human rights issue. As noted above, climate change is already endangering people and infringing on their ability to realize their human rights, including the rights to life, health, food, water, culture, housing, an adequate living, and a healthy environment. Moreover, not only have States committed to combating climate change, they also have human rights obligations, as all are party to more than one core human rights treaty. Thus, States have obligations to respect, fulfill, and protect the rights of people. These obligations extend beyond, but also include, climate action.

The following submission is a first contribution to the Talanoa Dialogue and offers initial perspectives and framing on how integrating human rights in climate action is not only an obligation, but will also increase ambition and lead us to where we want to go. Given the short time period in which to compile this submission, it should not be considered a comprehensive overview of available tools and information. However, we hope to provide a vision and guidance on the importance of and ability to enhance the ambition of the implementation of the Paris Agreement. As such, it addresses the three questions posed by the Fijian presidency as the basis for this process. We look forward to continuing to engage in the Talanoa Dialogue and plan to produce further submissions in advance of subsequent deadlines.

## *Where are we now?*

As noted, the parties to the Paris Agreement have numerous obligations under existing human rights agreements and declarations related to the implementation of actions to address climate change.<sup>1</sup> There is no longer any doubt that climate change and the responses to it interfere with the enjoyment of human rights recognized and protected by international law, including access to information and participation; a just transition; economic and social rights; land tenure rights; the rights of indigenous peoples; food security; gender equality; intergenerational equity; and ecosystem integrity. **These human rights obligations must inform climate action if we are to reach the Paris Agreement’s goal of keeping global temperature rise to below 1.5°C.** At the current temperature rise, we can already see the impacts of climate change on both the environment and people’s enjoyment of human rights, highlighting the urgent need for action. Though several include information related to human rights, indigenous peoples, food security, and gender equality,<sup>2</sup> current NDCs do not reflect the ambition needed to meet the Paris Agreement’s temperature goals. To meet these goals and ensure that human rights are respected, protected, and fulfilled in the implementation of the Paris Agreement, we must collectively take stock of where we are now, realize where we want to be, and decide how we are going to get there.

In taking climate action, Parties must make sure that they are not doing so in a way that harms people or the environment. Too often, well-intentioned actions to mitigate or adapt to climate change have failed to incorporate human rights obligations and have thus contributed to environmental damage and social harms. Current international mechanisms and schemes to mitigate climate change, such as the Clean Development Mechanism (CDM), Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD+), and Nationally Appropriate Mitigation Action (NAMA), often promote climate action without incorporating human rights obligations.<sup>3</sup> Thus, reaching the below-1.5°C goal requires the full incorporation and intertwining of climate action with human rights obligations.<sup>4</sup>

**Several well-documented cases demonstrate how implementing climate action has adversely affected citizens’ rights, including, among others, the right to information and participation and the rights of indigenous peoples.** For instance, CDM projects have not always been “clean.” In one well-known instance, the Barro Blanco dam, a hydroelectric project in Panama, was removed from the CDM registry after extensive campaigning exposed human

rights abuses, including lack of consultation and flooding of indigenous peoples' land that impacted the human rights to property, housing, food, water, and culture, which had occurred during construction and maintenance of the project.<sup>5</sup> It is promising that the project was deregistered; however, this administrative step did not provide remedy to the local community and people who were harmed. Neither Panama, nor financiers, nor project implementers took action following the deregistration to remedy the harm or to address how the indigenous peoples affected by the project would continue to live, farm, or sustainably develop when their land was flooded. Nor was there further community engagement or an opportunity for the public to participate in next steps. As the Barro Blanco project demonstrates, failure to consider people and human rights obligations throughout planned climate action, from design, to development, to implementation, can lead to negative impacts and few benefits.

**Even when human rights obligations are meant to be included in climate action, they may not be incorporated in actuality.** During a review of thirteen national submissions to the Carbon Fund, the Rights and Resources Initiative found that despite clear commitments toward the realization of REDD+ ambitions, all thirteen fell short of developing concrete action plans that would protect or enhance human rights and the rights of the indigenous peoples.<sup>6</sup> The inability to adequately include indigenous peoples in the design and implementation of these policies had a cross-sectional detrimental effect. For instance, instead of benefitting from the process as they should, indigenous women became increasingly removed from the process and thus even more vulnerable to repercussions or potential negative impacts on their lives.<sup>7</sup>

**Sometimes, however, climate action schemes have resulted in good practices.** For instance, Nationally Appropriate Mitigation Actions (NAMAs) generally must be designed, developed, and implemented through an all-inclusive stakeholder engagement process.<sup>8</sup> However, despite the public's right to participate in environmental decision-making being a core principle of international environmental law,<sup>9</sup> no rules exist to create international coherence for effective and inclusive stakeholder engagement. Thus, NAMAs are carried out with varying degrees of inclusiveness. One positive example is a project led by a coalition of NGOs with men and women from local communities in Georgia to develop a gender-sensitive NAMA.<sup>10</sup> The project provided important lessons learned for implementation of NAMAs, as the practice of community engagement and capacity-building both enhanced the local population's participation and empowered women.<sup>11</sup>

***Though we are not where we need to be, future climate action can build on and learn lessons from current and past mitigation and adaptation actions. This will help to ensure that projects designed to address climate change and meet the goals of the Paris Agreement do not violate human rights or cause other harm to people and the environment.***

### ***Where do we want to go?***

The objectives of the UNFCCC to “prevent dangerous anthropogenic climate change” and of the Paris Agreement to enhance its implementation by “aim[ing] to strengthen the global response to the threat of climate change in the context of sustainable development and efforts to eradicate poverty, including by” keeping global temperature rise to below 1.5°C, provide direction on where we need to go. Moreover, this should be done in a manner consistent with human rights, gender equality, indigenous peoples’ rights, and the environmental and social principles in the preamble of the Paris Agreement. The intense hurricanes, droughts, and wildfires in the last year are a potent reminder that the harmful effects of climate change are already impairing fundamental human rights. Therefore, States must not only take ambitious action to comply with the goals of the Paris Agreement, but must do so to ensure the right to life. ***Rapid, large-scale, rights-based mitigation action is imperative. It must also be coupled with adaptation and loss and damage actions, as well as the necessary finance. It is critical that countries equitably and fairly<sup>12</sup> move faster to achieve these goals.***

### ***How do we get there?***

Keeping global temperature rise below 1.5°C requires ambitious, transformative action. To be sustainable, this transition to climate neutral societies is only achievable if it includes effective public participation and is done in a manner that fully respects, protects, and promotes human rights, particularly the right to access information and public participation, the rights of indigenous peoples, land tenure rights, gender equality, economic and social rights, and food security. Local people are often best placed to develop mitigation and adaptation plans, as they often possess first-hand knowledge that government officials do not. The following examples, though limited in scope, show how the participation of indigenous peoples, local communities, women, and children, among others, will result in more legitimate, effective, and rights-based climate responses.

### *Ensuring public participation and access to information*

**Strengthening access to information and participation in line with agreed international norms can ensure that cross-sectional human rights obligations are protected in a sustainable transition toward a climate-neutral society. Further, ensuring the rights of local communities to access information and participate in climate action decision-making and planning processes will increase the likelihood that these actions are effective, sustainable, and legitimate.** As noted above, lack of participation in climate projects, such as the Barro Blanco dam, results in actions that worsen conflict and actually cause harm. Comprehensive participation throughout the lifecycle of mitigation, adaptation, and loss and damage actions can mitigate some of these problems. This fact is increasingly recognized as critical by international financial institutions, including the World Bank, which has seen these adverse consequences firsthand, and the Green Climate Fund, which included it in its recently passed Environmental and Social Policy.<sup>13</sup>

### *Ensuring the participation and rights of indigenous peoples*

As evidenced by the numerous studies, indigenous peoples possess long-standing knowledge as stewards of the land and therefore are uniquely situated to provide expertise in designing climate change mitigation and adaptation plans, though they are often the most affected and most at risk of displacement.<sup>14</sup> Climate change actions must be transparent and incorporate indigenous peoples' rights, including their participation in governance and resource management and proper land use planning.<sup>15</sup>

**Studies show that securing indigenous peoples' forest land rights and participation has immediate and significant climate benefits, including lower deforestation rates and higher carbon storage.**<sup>16</sup> Therefore, this is critical to climate mitigation and adaptation action. For example, legal recognition of indigenous peoples' land rights in Peru reduced deforestation by 81 percent after one year and a further 56 percent the next year.<sup>17</sup> In Latin America, forests that are legally owned by indigenous peoples experience deforestation at lower rates than non-indigenous peoples-owned forests. The rates of deforestation range from 6 times lower in Bolivia to 350 times lower in the Mexican Yucatan.<sup>18</sup>

**Currently, indigenous peoples claim or use 50 percent of forests, but formal ownership is only recognized for 18 percent.**<sup>19</sup> Forests controlled by indigenous peoples, regardless of legally recognized ownership, "hold at least 24 percent ... of the total aboveground

carbon stored in the world's tropical forests.”<sup>20</sup> This equates to about 4 times the global greenhouse gas emissions of 2014.<sup>21</sup> Therefore, the potential danger of deforestation or improper climate action in these areas cannot be underestimated.<sup>22</sup> To protect these rights and increase policy coherency, we must look at lessons learned, determine best practices going forward, and implement climate action that does not threaten these rights. This includes granting land tenure and ensuring that indigenous peoples have the ability and support to continue practicing and implementing traditional knowledge to combat climate change and maintain forests as natural carbon sinks.<sup>23</sup>

### *Ensuring the participation and rights of women*

**Ensuring strong land tenure rights for indigenous peoples is also necessary to combat the inherent gender discrimination of climate change.** Landesa Rural Development Institute found that women with strong property and inheritance rights earn up to 3.8 times more income, and their savings are up to 35 percent greater.<sup>24</sup> These women and families also tend to devote more of their budget to education and childcare, which increases the potential for climate change education and the participation of future generations in climate action. In many countries, women also play central roles in local communities as household and forest managers, food providers, and developers of sustainable rural economies.<sup>25</sup> Yet 30 low- and middle-income countries across Latin America, Africa, and Asia still do not adequately recognize indigenous women's tenure rights.<sup>26</sup>

**Women-led climate action has been shown to benefit and empower rural communities.** One example is a pilot program launched in Cambodia by the Nordic Development Fund, Asian Development Bank, and Institute for Global Environmental Strategies.<sup>27</sup> Working with the Ministry of Agriculture, Forestry and Fisheries, the program created the first-ever climate change mitigation references in the ministry's gender mainstreaming policy. This has led the ministry to implement gender integration on national, subnational, and provincial levels, and gender representatives serve on all community committees that develop projects. Among other initiatives, this also includes a training program for women in eco-friendly forestry techniques to combat deforestation.

**Further, women-led action has improved rural communities' response to climate change,** including in the Laramate district in Peru.<sup>28</sup> When climate change adversely affected crop production in the region, leaving children malnourished and families without economic

stability, women in the community used ancestral techniques to conserve seeds and cultivate the land with great success. Not only have the women experienced economic and political empowerment through this, but they have also started to teach others in their community ways to sustainably combat the adverse effects of climate change.

**Further, we must ensure effective participation of women in climate action and planning.** For instance, forest communities where at least one-third of the management council is occupied by women produced improvements in both forest condition and distributional equity.<sup>29</sup> This seemingly small recommendation ensures that critical rights are protected *and* results in better, more sustainable climate action implementation.

### *Ensuring a just transition for workers*

Additionally, ensuring a just transition for workers contributes to addressing climate change, while also promoting quality jobs and building social support for action. For instance, cities in some of the lowest-ranking countries on the EU Climate Leader Board have instituted good practices despite their States' lack of climate ambition because municipalities took the lead.<sup>30</sup> Cities' contributions to enhancing State ambition has untapped potential for new jobs as well as other societal benefits, "such as green urban habitats, improved air quality, reduced energy poverty and cleaner and safer streets."<sup>31</sup>

In another example, Niepolomice, Poland, established a partnership with three other municipalities to purchase and install renewable energy in households and public buildings. Over four years, the municipalities jointly invested 17.3 million euro to equip these buildings with renewable energy from solar panels, thermal collectors, and heat pumps. The local government did not implement this project alone, but instead engaged with citizens and sought individual investment in the project from the beginning, which gave them a sense of ownership. The cities also developed training programs to teach people how to install the solar infrastructure.<sup>32</sup>

***Building on synergies with other international frameworks and current good practices will help guarantee ambitious, sustainable climate action that truly promotes sustainable mitigation and adaptation projects. Further, it does so in a manner that does not create an additional burden for States, but instead promotes the coherence and effectiveness of policies related to climate change and sustainable development within a human rights context. Moreover, it ensures that climate action does not exacerbate human rights abuses, but rather helps States promote, protect, and respect peoples' human rights.***

*Submitted by:*

Center for International Environmental Law (CIEL)

Aotearoa New Zealand Human Rights Foundation

Business & Human Rights Resource Center

Carbon Market Watch

ECOLISE

Foundation for GAIA

Hawai'i Institute for Human Rights

International-Lawyers.Org

Jeunes Volontaires pour l'Environnement

Planetary Association for Clean Energy

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<sup>1</sup> Center for International Environmental Law, et al., “Delivering on the Paris Promises: Combating Climate Change while Protecting Rights” (2017), <http://www.ciel.org/wp-content/uploads/2017/05/Delivering-On-Paris-Web.pdf>.

<sup>2</sup> *See id.* at p. 14 (noting that 24 NDCs included information related to human rights, 19 NDCs included information related to indigenous peoples, 71 NDCs included information related to public participation, 97 included information related to food security, and 59 included information related to gender equality).

<sup>3</sup> Carbon Market Watch, “Human Right Implications of Climate Mitigation Actions,” <https://carbonmarketwatch.org/wp/wp-content/uploads/2016/05/NC-HUMAN-RIGHTS-IMPLICATIONS-OF-CLIMATE-CHANGE-MITIGATION-ACTIONS-VERSION-02-MAY-2016-OK-WEB-spread-page-.pdf>.

<sup>4</sup> Center for International Environmental Law, “States’ Human Rights Obligations in the Context of Climate Change,” <http://www.ciel.org/reports/states-human-rights-obligations-context-climate-change/>.

<sup>5</sup> Carbon Market Watch, “Barro Blanco: flooding suspended, international leaders pressured to act” (July 12, 2016), <https://carbonmarketwatch.org/2016/07/14/barro-blanco-flooding-suspended-international-lenders-pressured-to-act/>.

<sup>6</sup> Rights and Resources Initiative, “Community Rights and Tenure in Country Emission Reduction Programs” (June 2016), [http://rightsandresources.org/wp-content/uploads/2016/06/RRI\\_Community-Rights-and-Tenure-in-Country-Emission-Reduction-Programs\\_June-2016.pdf](http://rightsandresources.org/wp-content/uploads/2016/06/RRI_Community-Rights-and-Tenure-in-Country-Emission-Reduction-Programs_June-2016.pdf).

<sup>7</sup> Rights and Resources Initiative, “Power and Potential” (May 2017), [http://rightsandresources.org/wp-content/uploads/2017/05/Power-and-Potential-A-Comparative-Analysis-of-Womens-Rights-to-Community-Forests-Global-Findings\\_May-2017\\_RRI.pdf](http://rightsandresources.org/wp-content/uploads/2017/05/Power-and-Potential-A-Comparative-Analysis-of-Womens-Rights-to-Community-Forests-Global-Findings_May-2017_RRI.pdf).

<sup>8</sup> Carbon Market Watch, “Human Rights Implications of Climate Mitigation Actions,” *supra* note 3.

<sup>9</sup> *See* Rio Declaration on Environment and Development prin. 10, 12 Aug. 1992, A/Conf.151/26; *see also* Convention on Access to Information, Public Participation in Decision-making and Access to Justice in

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Environmental Matters, 25 June 1998; *see also* The Escazu Convention on Access to Information, Participation, and Access to Justice, 4 March 2018.

<sup>10</sup> Carbon Market Watch, “Human Rights Implications of Climate Mitigation Actions,” *supra* note 3.

<sup>11</sup> *Id.*

<sup>12</sup> *See* CSO Equity Review (2017) *Equity and the Ambition Ratchet: Towards a Meaningful 2018 Facilitative Dialogue*. Manila, London, Cape Town, Washington, et al: CSO Equity Review Coalition, [civilsocietyreview.org/report2017](http://civilsocietyreview.org/report2017); CSO Equity Review (2016) *Setting the Path Towards 1.5°C: A Civil Society Review of Pre-2020 Ambition*. Manila, London, Cape Town, Washington, et al, [civilsocietyreview.org/report2016](http://civilsocietyreview.org/report2016); CSO Equity Review (2015) *Fair Shares: A Civil Society Equity Review of INDCs*. Manila, London, Cape Town, Washington, et al.: CSO Equity Review Coalition, [civilsocietyreview.org/report](http://civilsocietyreview.org/report).

<sup>13</sup> World Bank, Environmental and Social Framework, ESS10: Stakeholder Engagement and Information Disclosure (2016), <http://documents.worldbank.org/curated/en/383011492423734099/pdf/114278-WP-PUBLIC-13-4-2017-11-23-38-EnvironmentalandSocialFrameworkWeb.pdf>; Green Climate Fund, Environmental and social management system: environmental and social policy, GCF/B.19/06 (Feb. 4, 2018).

<sup>14</sup> World Resources Institute, “Securing Rights, Combating Climate Change,”

<http://rightsandresources.org/wp-content/uploads/Securing-Rights-Combating-Climate-Change.pdf>.

<sup>15</sup> International Working Group for Indigenous Affairs (IWGIA), “Tanzania Indigenous Peoples Policy Brief.”

<sup>16</sup> World Resources Institute, “Climate Benefits, Tenure Costs: The Economic Case for Securing Land Rights in the Amazon.”

<sup>17</sup> Rights and Resources Initiative, “Securing Indigenous Peoples and Community Forest Land Rights: A High Leverage Strategy to Save Forests and the Climate” (May 30, 2017).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Rights and Resources Initiative, Woods Hole Research Center & World Resources Institute, “Towards a Global Baseline of Carbon Storage in Collective Lands” (2016), <http://rightsandresources.org/wp-content/uploads/2016/10/Toward-a-Global-Baseline-of-Carbon-Storage-in-Collective-Lands-November-2016-RRI-WHRC-WRI-report.pdf>; Rights and Resources Initiative, “Securing Indigenous Peoples and Community Forest Land Rights: A High Leverage Strategy to Save Forests and the Climate,” *supra* note 19.

<sup>21</sup> Rights and Resources Initiative, “Securing Community Land Rights: Priorities and Opportunities to Advance Climate and Sustainable Development Goals” (Oct. 2017), <http://rightsandresources.org/wp-content/uploads/2017/09/Stockholm-Priorities-and-Opportunities-Brief.pdf>.

<sup>22</sup> Rights and Resources Initiative, “Securing Indigenous Peoples and Community Forest Land Rights: A High Leverage Strategy to Save Forests and the Climate,” *supra* note 19.

<sup>23</sup> *See* Rights and Resources Initiative, “Community Rights and Tenure in Country Emission Reduction Programs,” *supra* note 6; Rights and Resources Initiative, “Power and Potential,” *supra* note 7; Rights and Resources Initiative, “Securing Indigenous Peoples and Community Forest Land Rights: A High Leverage Strategy to Save Forests and the Climate,” *supra* note 19; World Resources Institute, “Climate Benefits, Tenure Costs: The Economic Case for Securing Land Rights in the Amazon,” *supra* note 17; IWGIA, “Indigenous Peoples, land rights and forest conservation in Myanmar” (2018) (unpublished).

<sup>24</sup> Landesa Rural Development Institute, “A Better World: Strengthening Women’s Land Rights,” <https://www.landesa.org/resources/womens-land-rights-and-the-sustainable-development-goals/>.

<sup>25</sup> *See generally* Rights and Resources Initiative, “Securing Community Land Rights: Priorities and Opportunities to Advance Climate and Sustainable Development,” *supra* note 23; Climate Change Partnership for East Africa Indigenous Peoples National Steering Committee on Climate Change, “Position Paper on the Role of Traditional Knowledge in Respect to Indigenous Women and Climate Change Adaptation.”

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<sup>26</sup> Rights and Resources Initiative, “Securing Community Land Rights: Priorities and Opportunities to Advance Climate and Sustainable Development,” *supra* note 23.

<sup>27</sup> Nordic Development Fund, “Weather and Gender: Empowering Women to Combat Climate Change,” <https://www.ndf.fi/news/weather-and-gender-empowering-women-combat-climate-change>.

<sup>28</sup> UN Women, “Indigenous women in Peru combat climate change and boost economy” (Aug. 9, 2016), <http://www.unwomen.org/en/news/stories/2016/8/indigenous-women-in-peru-combat-climate-change-and-boost-economy>.

<sup>29</sup> Bina Agarwal, “The power of numbers in gender dynamics: illustrations from community forestry groups.” *The Journal of Peasant Studies* 42(1): 1-20 (2015), <https://doi.org/10.1080/03066150.2014.936007>.

<sup>30</sup> Carbon Market Watch, “Cities at the forefront of climate action” (Oct. 2017), <https://carbonmarketwatch.org/wp/wp-content/uploads/2017/10/ACHIEVING-THE-PARIS-CLIMATE-GOALS-THROUGH-THE-EFFORT-SHARING-REGULATION.pdf>.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*