

# Human Rights Implications of Climate Change Mitigation Actions

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# CLIMATE CHANGE IMPACTS ON HUMAN RIGHTS - A TWOFOLD PROBLEM

## PROBLEM

Man-made climate change has significant effects on the full enjoyment of several human rights, such as: the right to life, health, food, water and housing, among others.

## SOLUTION

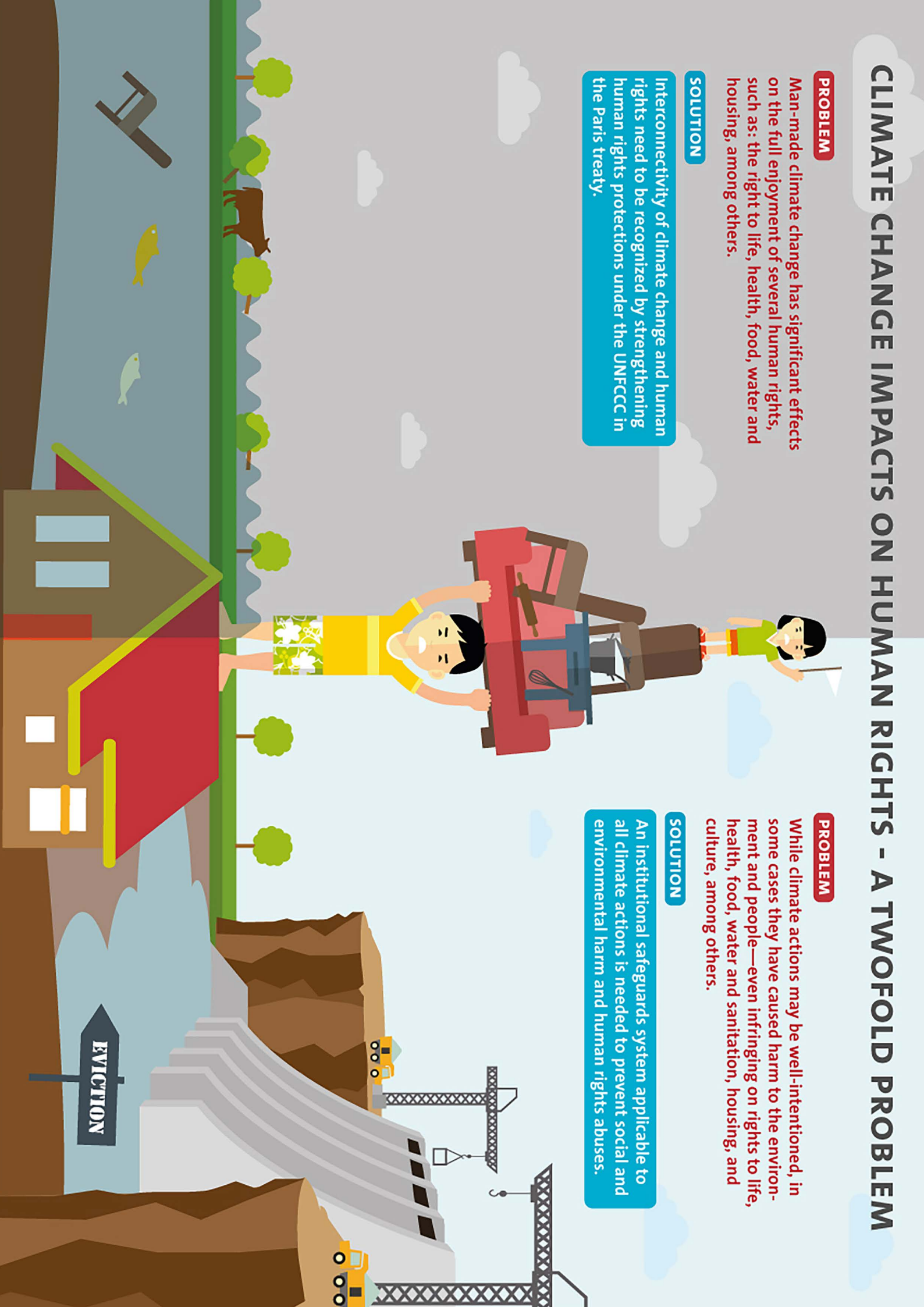
Interconnectivity of climate change and human rights need to be recognized by strengthening human rights protections under the UNFCCC in the Paris treaty.

## PROBLEM

While climate actions may be well-intentioned, in some cases they have caused harm to the environment and people—even infringing on rights to life, health, food, water and sanitation, housing, and culture, among others.

## SOLUTION

An institutional safeguards system applicable to all climate actions is needed to prevent social and environmental harm and human rights abuses.



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## Executive Summary

This is a crucial moment in Paris. As global negotiations on a climate change agreement shape the future of our planet, Parties can decide on an approach that will protect people and the planet in the near and long term.

Countries' obligations under international human rights law are well established. These include the obligations to respect, protect, and fulfill human rights, and are applicable to climate change, and to private actors, public and private.

Parties to the United Nations Framework Convention on Climate Change (UNFCCC) have recognized that they should fully respect human rights in all climate-related actions, and, at the time they negotiated the 1992 UNFCCC in Rio de Janeiro, principles of public participation and sustainable development were at the forefront of their minds, as embodied in the Rio Declaration of the same conference. Since then, the UNFCCC Conference of the Parties (COP), the UN Human Rights Council, and other bodies have helped to further develop and clarify the legal obligations related to climate change.

Yet, as this policy brief demonstrates by discussing the applicable law and UNFCCC-related case studies, the realization of these obligations has not fully materialized through implementation of the UNFCCC.

This policy brief highlights the opportunity to learn from these positive and negative outcomes of UNFCCC-related projects and actions, and to ensure the Paris outcome is robust, consistent with human rights obligations, and a reflection of the mind-set of the UNFCCC drafters' commitment to sustainable development and public participation.

To this end, this policy brief offers the following recommendations:

- \* Include this language in Article 2 of the Paris agreement:

*All Parties shall, in all climate change-related actions, respect, protect, promote, and fulfill human rights for all, including the rights of indigenous peoples; ensuring gender equality and the full and equal participation of women; ensuring intergenerational equity; ensuring a just transition of the workforce that creates decent work and quality jobs; ensuring food security; and ensuring the integrity and resilience of natural ecosystems.*

- \* Establish best-practice guidelines with clear, detailed guidance on local stakeholder consultation, including
  - who must be consulted (at minimum, affected people);
  - how (through means of communication, including language and media, appropriate to the people being contacted); and
  - when (early and throughout the project cycle, to ensure a communication channel if the project causes harm after approval or registration).
- \* Adopt clear, detailed guidance for sustainable development assessment and monitoring based on sustainable development indicators, including on
  - minimum standards for sustainable development, reflecting international law obligations including the do-no-harm principle and requiring assessment throughout the project cycle and with indicators made publicly available
  - public participation;
  - gender equality; and
  - safeguards against negative social and environmental impacts.
- \* Establish international-level communication channels and grievance mechanisms for people and communities regarding social and environmental impacts of climate change mitigation projects or actions; and
- \* Adopt guidance, including minimum standards, for establishing grievance and complaint procedures at the national level, with reporting and transparency requirements.

# I. Introduction

As States work toward developing the next stage of climate architecture through the United Nations Framework Convention on Climate Change (UNFCCC) COP21 negotiations in Paris this December, it is crucial to reflect on what has worked so far and what has not. One reason efforts have fallen short—or worse, led to additional problems—is a failure to fully appreciate the harm that can result from actions we take to mitigate climate change. This includes harm to people.

With melting glaciers, rising sea levels, and stronger and more frequent storms, droughts, and floods, it has become clear that climate change is interfering with people's enjoyment of their human rights. Perhaps less immediately obvious, but unfortunately also clear from recent examples, is the effect that climate change mitigation actions can have on human rights. Mitigation in the context of climate change refers to actions taken to prevent or reduce further contributions to the disruption of our climate, particularly by reducing emission levels and stabilizing greenhouse gas concentrations in the atmosphere.

While mitigation actions may be well intentioned, in some cases they have caused harm to the environment and people—even infringing on rights to life, health, food, water and sanitation, housing, and culture, among others. Invariably, the poor and most vulnerable (due to factors such as geography, gender, age, disability, and indigenous or minority status) have been the hardest hit.

Alongside the ever-increasing scientific consensus on the serious dangers we face from climate change, it is encouraging that States and private actors are taking steps to mitigate further harm to the environment from climate change. Especially encouraging is the focus on the UNFCCC negotiations in Paris, which aim to produce a robust climate agreement that will certainly include mitigation. Given UNFCCC Parties' existing obligations to respect human rights in all climate-related actions, their mitigation actions must not threaten or violate people's human rights. As United Nations Special Rapporteur on Human Rights and the Environment John Knox put it, "States do not leave behind their human rights commitments when they negotiate a climate agreement or when they take individual actions to address climate change." Indeed, in negotiating the Paris Agreement, Parties should apply the same sort of forward-thinking approach to planning and avoiding harm that they would for any other kind of project. For instance, if a community needed a school, but during the construction of the school, the community's homes would have to be bulldozed to make room for the equipment and site of the school, it would be wise to alter the project design to avoid that counterproductive result. Similarly, mitigation actions can end up causing more harm than good if not approached correctly. Proper planning, design, and implementation—each with meaningful participation of affected people and communities—are crucial to avoiding harmful consequences of mitigation actions.

Is there hope? Yes. It is entirely possible to undertake climate change mitigation without harming human rights. Unfortunately, UNFCCC mechanisms have, in some instances, generated mitigation actions that violated or threatened human rights. Both positive and negative examples are described in section IV of this paper. Aiming to ensure that future climate finance architecture takes into account lessons learnt from the Clean Development Mechanism (CDM), Reducing Emissions from Deforestation and Degradation Programme (REDD+), and Nationally Appropriate Mitigation Actions (NAMAs), this briefing paper makes recommendations to promote mitigation actions that respect and protect human rights through **safeguards related to local stakeholder consultation; sustainable development; and grievance mechanisms.**

Specifically, this paper outlines (i) the legal basis and justification for calling for strong human rights protections in the context of climate change, including for (ii) businesses and climate finance; (iii) positive and negative examples from the current system, along with lessons learnt; (iv) state of play on human rights in the UNFCCC negotiations; and (v) recommendations for mitigation actions that respect and protect human rights.

## II. Human Rights Obligations of States Related to Climate Change

All Parties to the UNFCCC already have existing obligations to respect international human rights. These obligations apply in the context of climate change, and more specifically to mitigation actions.

### A. Human Rights Obligations under the UNFCCC

First, the UNFCCC Conference of the Parties (COP) expressly agreed that human rights obligations apply to climate change-related actions. Specifically, in the 2010 Cancun Agreements, all Parties to the UNFCCC recognised their duty to "in all climate change-related actions, fully respect human rights."

Established under the UNFCCC, the UN-REDD Programme also recognizes that human rights underlie its work. According to the UN-REDD Programme, as a UN-related entity, it "follows a human rights-based approach to programming and policy" and is committed to ensuring that international human rights instruments "guide all development cooperation and programming." The UNFCCC Cancun Agreements established that States are to "promote and support" certain safeguards for REDD+ projects, including "[t]hat actions complement or are consistent with the objectives of ... relevant international conventions and agreements." Other safeguards include "[r]espect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws," as well as ensuring that REDD-related actions are used "to enhance other social and environmental benefits." In addition, the UN-REDD Programme's Social and Environmental Principles and Criteria detail applicable human rights obligations and "reflect the UN-REDD Programme's responsibility

to apply a human-rights based approach to its programming, uphold UN conventions, treaties and declarations, and apply the UN agencies' policies and procedures."

Climate finance related to the UNFCCC also imposes human rights obligations. For instance, the Adaptation Fund's Environmental and Social Policy includes a section on human rights stating that "[p]rojects/programmes supported by the Fund shall respect and where applicable promote international human rights." The Green Climate Fund (GCF) adopted interim environmental and social safeguards that call for human rights protections, including to "safeguard personnel and property in accordance with relevant human rights principles"; to avoid or minimise displacement and adverse social economic impacts from land takings or land use restrictions; and to avoid forced eviction. Specific to indigenous peoples, the GCF's interim safeguards instruct to "[e]nsure full respect" for indigenous peoples' human rights, dignity, aspirations, livelihoods, culture, knowledge, and practices; and to avoid or minimise adverse impacts. Furthermore, they call for sustainable and culturally appropriate development benefits and opportunities, and "[f]ree, prior and informed consent in certain circumstances."

## **B. Climate Change-related Obligations under International Human Rights Treaties**

Second, all Parties to the UNFCCC have agreed to respect human rights in other international treaties. Indeed, all 195 State Parties to the UNFCCC have ratified at least one of the major United Nations human rights treaties. Among those treaties are the International Covenant on Civil and Political Rights with 168 Parties, and the International Covenant on Economic, Social and Cultural Rights with 164 Parties. Those States must uphold, not undermine, their human rights-related duties in their actions to mitigate climate change.

More broadly, States' obligations under the UNFCCC must be interpreted to be consistent with their obligations under those human rights treaties, and their actions under the UNFCCC must not conflict with their existing human rights obligations. Illustrating how these duties work together, the UN Committee on Economic, Social, and Cultural Rights "has urged States to implement strategies to combat global climate change that do not negatively affect the right to adequate food and freedom from hunger, but rather promote sustainable agriculture, as required by article 2 of the United Nations Framework Convention on Climate Change."

Importantly, States' human rights obligations do not stop at their borders. As the Office of the United Nations High Commissioner for Human Rights (OHCHR) recognised in a report on human rights and climate change, "States have also committed themselves not only to implement the treaties within their jurisdiction, but also to contribute, through international cooperation, to global implementation"—highlighting developed countries' "particular responsibility and interest" to assist the poorer developing countries. Drawing on extraterritorial obligations the Committee on Economic, Social, and Cultural Rights identified, OHCHR noted in its climate change report the following legal obligations States have to promote economic, social and cultural rights:

- Refrain from interfering with the enjoyment of human rights in other countries;
- Take measures to prevent third parties (e.g. private companies) over which they hold influence from interfering with the enjoyment of human rights in other countries;
- Take steps through international assistance and cooperation, depending on the availability of resources, to facilitate fulfilment of human rights in other countries...;
- Ensure that human rights are given due attention in international agreements and that such agreements do not adversely impact upon human rights.

The first three embody the duties to respect, protect, and fulfill human rights. The fourth makes clear that, in negotiating the Paris agreement, Parties must "[e]nsure that human rights are given due attention" and that the agreement "do[es] not adversely impact upon human rights."

## **C. Climate Change-related Obligations Recognised by UN Human Rights Council and Office of the High Commissioner for Human Rights (OHCHR)**

Third, the United Nations Human Rights Council and OHCHR have repeatedly and emphatically called attention to the adverse effects of climate change on human rights and to corresponding State duties.

The Human Rights Council has passed several resolutions on human rights and climate change. In those resolutions, the Council recognised 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" and that "the effects of climate change will be felt most acutely by individuals and communities around the world that are already in vulnerable situations owing to geography, poverty, gender, age, indigenous or minority status or disability."

The Special Procedures to the UN Human Rights Council affirmed that human rights obligations apply to climate change-related harm and apply extraterritorially. As those experts observed, “[t]here can no longer be any doubt that climate change interferes with the enjoyment of human rights recognised and protected by international law.” They noted that climate change “poses great risks and threats to the environment, human health, accessibility and inclusion, access to water, sanitation and food, security, and economic and social development.”

In 2009, OHCHR issued an extensive report on the relationship between climate change and human rights. In that report OHCHR explained, “[i]nternational human rights law complements the United Nations Framework Convention on Climate Change by underlining that international cooperation is ... a human rights obligation and that its central objective is the realization of human rights.” OHCHR concluded that States have duties to protect the human rights of those affected by climate change, including those who have been displaced, and to ensure that their actions do not violate human rights.

Focusing on physical impacts of climate change, OHCHR recognised that “addressing [climate change-related] harm remains a critical human rights concern and obligation under international law.” Legal protection thus provides a “safeguard against climate change-related risks and infringements of human rights resulting from policies and measures taken at the national level to address climate change.” This is particularly true where a State, through its acts or omissions, has failed to protect an individual’s fundamental rights.

Addressing climate change mitigation measures, OHCHR described agro-fuel production as “one example of how mitigation measures may have adverse secondary effects on human rights,” especially the right to food and indigenous peoples’ rights to their traditional lands and culture—despite the possible positive climate change benefits. In addition, “if individuals have to move away from a high-risk zone, the State must ensure adequate safeguards and take measures to avoid forced evictions.” By extension, if a mitigation project forces individuals to move away, the same obligations should apply.

Also applicable to climate change is States’ duty to protect individuals from foreseeable risks and threats to human rights. For instance, a Council of Europe committee noted that this duty could apply where climate change leads to an increased risk of flooding in certain areas, citing the European Court of Human Rights (ECHR) case *Budayeva v. Russia*. In that case, the ECHR found that a State violated the right to life where its authorities “had failed to implement land-planning and emergency relief policies while they were aware of an increasing risk of a large-scale mudslide,” noting that “the population had not been adequately informed about the risk.”

As for REDD+, OHCHR noted that “indigenous communities fear expropriation of their lands and displacement” and have concerns about the framework for REDD+. OHCHR also highlighted the Permanent Forum on Indigenous Issues’s statement that new REDD+ proposals “must address the need for global and national policy reforms ... respecting rights to land, territories and resources, and the rights of self-determination and the free, prior and informed consent of the indigenous peoples concerned.”

## **D. Procedural Human Rights Obligations related to Climate Change**

In addition to the substantive obligations described above, States’ procedural human rights obligations also apply to climate change mitigation. Under the UNFCCC, access to information, participation, education, training and public awareness are commitments in Article 4 and further outlined in Article 6. In addition, the Cancun Agreements “[r]ecognize[] the need to engage a broad range of stakeholders at global, regional, national and local levels, be they government, including subnational and local government, private business or civil society, including youth and persons with disability, and [through] ... gender equality and the effective participation of women and indigenous peoples.” Furthermore, the rights of access to information, public participation in decision-making, and of access to justice in environmental matters enshrined under international law in the Aarhus Convention and Rio Declaration apply to climate change mitigation design, planning, and implementation. General principles of international law such as non-discrimination, transparency, and accountability accompany States’ duties to uphold procedural rights. Indigenous peoples have heightened protection under international law, including the right to free, prior and informed consent in certain instances.

### **1. Access to Information**

According to Article 6 of the UNFCCC, States “shall promote and facilitate ... the development and implementation of educational and public awareness programmes on climate change and its effects ... [and] public access to information on climate change and its effects.” OHCHR noted these commitments under the UNFCCC in its 2009 report and called for the provision of early-warning information “in a manner accessible to all sectors of society.” OHCHR further explained that under international human rights law, the rights to freedom of opinion and expression imply access to information.

Specific to REDD+, the UNFCCC COP established that Parties should provide information on how all of the REDD+ safeguards established in the Cancun Agreements are being addressed and respected, indicating their level of compliance through national communications and other channels.

## 2. *Public Participation*

Under the UNFCCC, Parties “shall promote and facilitate ... public participation in addressing climate change and its effects and developing adequate responses.” At the same time that countries from all over the world negotiated the UNFCCC at the Rio Conference in 1992, they recognised and accepted that the best way to make decisions on environmental issues is to give wide access to information and participation to the public. Principle 10 of the Rio Declaration on Environment and Development established:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available.

To align climate change policies and measures with overall human rights objectives, States should assess possible effects of such policies and measures on human rights, with the widest possible involvement from the public. Unquestionably, “adequate and meaningful consultation with affected persons should precede decisions to relocate people away from hazardous zones.” When indigenous peoples are among those affected, the right of indigenous peoples to free, prior, and informed consent (FPIC) comes into play, for example, when effects include relocation or major impacts to an indigenous people’s land or territories.

Generally speaking, in the words of OHCHR, “[t]he human rights framework seeks to empower individuals and underlines the critical importance of effective participation of individuals and communities in decision-making processes affecting their lives.” To this end, “[h]uman rights standards and principles should inform and strengthen policymaking in the area of climate change, promoting policy coherence and sustainable outcomes.”

There is a difference between participation under a development framework and under a human rights framework. As the Special Rapporteur on the right to water and sanitation explained:

Human rights understand participation as genuine empowerment, rather than mere consultation and provision of information. Active, free and meaningful participation requires a concrete opportunity to express demands and concerns and influence decisions. This relies on providing information through multiple channels, enabling participation in transparent and inclusive processes, and strengthening the capacities of individuals and civil society to engage.

Inclusiveness, in turn, fosters more sustainable outcomes: “Human rights-based approaches aim to better respond to people’s needs and priorities including those normally excluded. By achieving community ownership, they help to realise more sustainable interventions.”

As for mechanisms under the UNFCCC regime, the CDM’s main body of rules, known as the Modalities and Procedures, includes two requirements related to stakeholder consultation. At the project validation stage, the validator (known as the Designated Operational Entity (DOE)) must verify that in response to the project design document (PDD): “Comments by local stakeholders have been invited, a summary of the comments received has been provided, and a report to the designated operational entity on how due account was taken of any comments has been received.” The DOE must also “[r]eceive, within 30 days, comments on the validation requirements from Parties, stakeholders and UNFCCC accredited non-governmental organizations and make them publicly available.” In the Modalities and Procedures, the UNFCCC COP clarified that “[s]takeholders’ means the public, including individuals, groups or communities affected, or likely to be affected, by the proposed clean development mechanism project activity.”

Regarding REDD+, echoing the Rio Declaration’s spirit of complete engagement and access to participation of stakeholders, the REDD+ safeguards, established in the Cancun Agreements, include “[t]he full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities” in mitigation actions in the forest sector. Elaborating on this commitment, the UN-REDD Programme and Forest Carbon Partnership Facility (FCPF) issued guidelines on stakeholder engagement, which describe participation and how to plan and implement effective consultations in terms of timing, stakeholders, issues, and outreach methods, among other considerations. The REDD+ safeguards further require respect for the rights of indigenous peoples, noting the universal application of the UN Declaration on the Rights of Indigenous Peoples:

Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples.

The guidelines call for a “clear commitment” to ensure that the rights of indigenous peoples and other forest-dwelling communities “are fully respected throughout the REDD+ program cycle.” The UN-REDD Programme also issued Guidelines on Free, Prior and Informed Consent, which discuss extensively participation and consultation principles applicable to REDD+ projects.



The guidelines recognise that the right to FPIC is one of *consent*, not consultation, and that, while the objective in consultation is to reach consent, indigenous peoples have the right to withhold consent:

At the core of FPIC is the right of the peoples concerned to choose to engage, negotiate and decide to grant or withhold consent, as well as the acknowledgement that under certain circumstances, it must be accepted that the project will not proceed and/or that engagement must be ceased if the affected peoples decide that they do not want to commence or continue with negotiations or if they decide to withhold their consent to the project.

### 3. Access to Justice

As for access to justice, the human rights framework “stresses the importance of accountability mechanisms in the implementation of measures and policies in the area of climate change and requires access to administrative and judicial remedies in cases of human rights violations.” Such grievance mechanisms are crucial to the integrity and credibility of mitigation projects. Indeed, in the mindset of countries at the time they negotiated the UNFCCC was the recognition in Principle 10 of the Rio Declaration that “Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.” Yet several climate mitigation programmes under the UNFCCC, including the CDM, lack mechanisms to redress harms resulting from mitigation actions.

Under REDD+, however, National Programmes are required to establish grievance mechanisms. Drawing from the UN Guiding Principles on Business and Human Rights, the UN-REDD Programme and FCPF Joint Guidance Note for REDD+ Countries on “Establishing and Strengthening Grievance Redress Mechanisms” list seven principles to guide the design of grievance mechanisms. They are to be legitimate, accessible, predictable, equitable, transparent, enabling continuous learning, and “rights-compatible,” that is, with outcomes “consistent with applicable national and internationally recognized rights.”

## III. Human Rights Obligations of the Private Sector Related to Climate Change

In clarifying the human rights obligations of States and the respective responsibilities of the private sector in the context of climate actions, the UN Guiding Principles on Business and Human Rights (Guiding Principles) provide an important additional normative framework. The Guiding Principles, which the UN Human Rights Council unanimously endorsed in 2011, rest on three pillars: 1) the obligation of States to *protect* human rights from abuses by businesses, through adequate policies, laws and other measures; 2) the responsibility of businesses to *respect* human rights in their own activities and business relationships along the supply chain; and 3) the right of affected people to have access to *remedy* in cases of human rights abuses. Access to remedy includes access to courts, to non-judicial state complaint mechanisms, and to private complaint mechanisms of businesses.

Pillar 2, the corporate responsibility to respect human rights, provides an international minimum standard of conduct for business activities and relationships all over the world. To meet this responsibility, businesses should develop and institute a policy commitment to respect international human rights. They should conduct human rights due diligence, which means to identify and assess the actual and potential impacts of their activities and relationships on human rights; take adequate measures to mitigate and to redress such impacts; track the effectiveness of these measures; and report publicly about these human rights risks and the measures taken to deal with them. Finally, businesses should provide a redress mechanism that is based on human rights norms and principles.

Although the corporate responsibility to respect human rights is not legally binding, the obligation of States to protect human rights from abuses by companies (Pillar 1) means that States have a duty to make sure that businesses respect human rights. Thus, States should make this expectation clear and require businesses to act accordingly. Moreover, according to Pillar 3, States have a duty to ensure that victims have access to courts and other remedies when companies cause or contribute to human rights violations. Even though the Guiding Principles are not a treaty with binding character for States, they refer to and provide an interpretation of binding human rights treaties. This interpretation provides an international minimum standard for States and businesses and an authoritative policy framework for States.

As the Guiding Principles refer to all business activities and relationships globally, there is no doubt that they apply in the context of climate mitigation (and adaptation) activities as well. Whenever such business activities receive governmental support through climate mitigation finance mechanisms under the UNFCCC, it is clear that, even though not explicitly mentioned, they fall under the category of business activities with a “state-business-nexus,” as discussed in Guiding Principle 4. For activities “that receive substantial support and services from state agencies,” Guiding Principle 4 requires States to “take additional steps to protect against human rights abuses by business enterprises [...] including, where appropriate, by requiring human rights due diligence.” In cases where States fail to take such steps, as the commentary to Guiding Principle 4 explains, these States risk breaching their own legal obligation to respect human rights, as they be may actively supporting activities that lead to human rights abuses. Particularly in cases of large energy projects that fall under areas of high risk to human rights, requiring human rights due diligence is “appropriate.” In such cases, States would have to require human rights due diligence, including comprehensive human rights impact assessments as an essential component.

## HUMAN RIGHTS IMPACT ASSESSMENTS

As a key component of human rights due diligence, principles 17 and 18 of the Guiding Principles require companies “to identify and assess” the “actual and potential impacts” of their activities and relationships. Actual impacts are those that can be observed already and can be assessed empirically after the fact (*ex post*). Potential impacts mean human rights risks in future activities that should be assessed *ex ante*, which means early enough before starting the activity in question.

**What kinds of impacts?** The Guiding Principles do not require companies to conduct human rights impact assessments (HRIA) of every single business activity or relationship. However, in situations where a serious human rights risk can or should be anticipated, human rights impacts must be assessed. The single most important criteria in determining the necessity of a HRIA is the *severity* of the actual or potential human rights impact. The commentary to the Guiding Principles define severity in terms of scale, scope, and irreversibility, with considerations such as the gravity of the harm and number of people affected relevant to that determination.

**Based on which principles?** For such situations, the Guiding Principles, as well as recent academic literature, establish basic principles that must be followed in conducting HRIAs:

- human rights must provide the normative framework for the assessment;
- the main focus must lay on groups that are most vulnerable to human rights abuses;
- these vulnerable groups, civil society organisations, and other stakeholders have to be consulted in a direct and meaningful way;
- the assessment must conclude with clear recommendations on how to mitigate or redress the abuses;
- the whole process must be conducted in a transparent and non-discriminatory way;
- the methods and results must be communicated transparently; and
- the assessment must be understood and conducted as a continuous process that includes tracking the effectiveness of the measures taken to address the human rights problems identified.

**Using what methodology?** The Guiding Principles do not prescribe or recommend a specific methodology to be applied in HRIAs. However, they propose elements and steps that should be part of any HRIA and that have become a standard in academic literature on HRIA methodology and practice. Steps generally include a *screening* of rights and groups of people that may be affected; *scoping* through the formulation of guiding questions, indicators and methodological approaches; *evidence gathering* through a review of literature, documents, field visits, and interviews with the affected people, civil society organisations, other experts and stakeholders; a *human rights analysis* based on the evidence gathered; *recommendations* on measures to be taken; and *tracking the effectiveness* of these measures as follow-up.

According to the HRIA framework, States and intergovernmental organisations should only provide support to projects where businesses have conducted human rights due diligence; where major human rights risks can be excluded; or where comprehensive and credible counter-measures, have been agreed upon, following consultation with, and acceptance by the affected people. For this reason, when businesses conduct or commission HRIAs, it is essential that they are made public and reviewed by the affected people, independent experts, and relevant decision-making bodies.

However, one must bear in mind that large energy projects are complex and that not all impacts are necessarily foreseeable even in HRIAs conducted with a good faith effort to identify and assess all actual and potential impacts. Thus, continuous monitoring and effective grievance mechanisms, where the affected people can file complaints that are dealt with in a timely manner, are fundamental. Principle 31 of the Guiding Principles provides a list of relevant human rights-based criteria that must be taken into account in the design and implementation of such complaint or grievance mechanisms: the mechanism should be transparent, accessible, credible, predictable, non-discriminatory, and effective, and employ human rights as the normative framework for complaints.

## IV. Human Rights Impacts of Climate Mitigation Actions

Despite the existing human rights obligations under international law described in section II, including expressly under the UNFCCC, several projects under UNFCCC mechanisms have harmed human rights. Others offer good examples of how to uphold human rights commitments. Below are descriptions of a few examples of the local stakeholder consultation and sustainable development processes from CDM, REDD+, and NAMA projects. These examples highlight the need for express human rights protections in the Paris agreement (which would apply across the board to mechanisms under the UNFCCC), as well as in the rules of those mechanisms themselves.

### A. CDM

The Clean Development Mechanism is a project-based, flexible carbon-offset mechanism established by the Kyoto Protocol with the dual goals of reducing carbon emissions and achieving sustainable development. The CDM allows companies and governments in developed countries with legally binding or voluntary emission reduction obligations (UNFCCC Annex I countries) to purchase certified emission reductions from greenhouse gas emission abatement projects in developing countries registered under the CDM. To date, more than 7500 projects are registered under the CDM, most of them implemented in China and India.

Local stakeholder consultation (LSC) is a key requirement in the CDM process cycle and necessary for the registration of a CDM project. The CDM modalities and procedures provide for consultation processes during the design and validation stage of the project. Within these processes, stakeholders relevant for the proposed CDM project must be informed of the planned activity and be invited to make comments. Relevant stakeholders include the public, individuals as well as groups or communities affected or likely to be affected by a proposed CDM project.

On sustainable development, the requirement is very general: Before submitting a validation report to the CDM Executive Board, the DOE must also verify that it received “confirmation by the host Party that the project activity assists it in achieving sustainable development.” The definition of the sustainability criteria is left to the discretion of the host government, and the CDM does not review the sustainability determination.

Despite the CDM’s fundamental goal to deliver sustainable development benefits, field visits and first-hand reports from local communities in the vicinities of CDM projects have shown that many implemented projects do not live up to the sustainable development benefits indicated in the Project Design Documents (PDDs), the key document in the validation and registration process. This results from the lack of international criteria for sustainable development and lack of verification that the sustainability determination is justified. In many cases, the host country’s defined criteria include only very general requirements and lack transparency and stringency. Moreover, the lack of mandatory monitoring requirements in the CDM rules does not provide incentives for project participants to fulfill promised sustainable development benefits.

Although the CDM rules require local and global stakeholder consultation, as well as host-country approval that the project contributes to sustainable development, these rules do not provide enough specificity or definition to ensure that consultation is adequate and sustainable development achieved. Worryingly, the CDM currently has no grievance mechanism or official means of recourse available to people adversely affected by CDM projects.

#### 1. Case Study: Barro Blanco

The Barro Blanco Hydroelectric Power Plant Project (CDM project number 3237) is a 28.84 MW hydroelectric CDM project on the Tabasará River in the Ngäbe-Buglé Comarca and Chiriquí Province of Panama. Despite deep concerns that local communities and local and international civil society organisations communicated to the CDM Executive Board, the project was registered under the Clean Development Mechanism (CDM) in 2011 European development banks from Germany (DEG) and the Netherlands (FMO), as well as the Central American Bank for Economic Integration loaned US\$78 million for the financing of the project.

According to a fact-finding mission led by the United Nations Development Programme (UNDP) in 2013, the water reservoir of the dam is expected to flood three Ngäbe communities of the Ngäbe-Buglé Comarca—indigenous land owned and administered by Panama’s indigenous Ngäbe and Buglé peoples. The dam will severely affect the indigenous communities by flooding territory that includes their homes, school, and religious, archaeological, and cultural sites. These communities have expressed their opposition to the project, including in protests, since 2008.

In May 2014, the Panamanian indigenous organisation el Movimiento del 10 de Abril (M-10), representing the affected communities, filed the first ever complaint to the Independent Complaints Mechanism (ICM) of FMO and DEG, alleging that the European lenders failed to ensure free, prior and informed consent before financing the Barro Blanco project. One year later, the ICM published a report concluding, among other things, that the banks violated their own policies by failing to adequately assess the risks to indigenous peoples’ rights and the environment before approving a US\$50 million loan to Generadora del Istmo SA (GENISA), the project developer, to implement the project.

In February 2015, following continuing protests by local indigenous communities, Panama’s national environment agency made a landmark decision to temporarily suspend the dam’s construction, which had advanced to 90 percent. The decision was based

on non-compliance with national environmental impact assessment requirements, including shortcomings in the agreements with the locally affected indigenous communities. A dialogue roundtable was set up for indigenous communities and the government to discuss the compatibility of the dam with national laws and human rights. The process unfortunately failed to reach an agreement and ended in May 2015, leaving the affected communities to re-engage in peaceful protests.

### **Local Stakeholder Consultation**

Despite local communities' protests, along with concerns that local civil society organisations and Carbon Market Watch communicated to the CDM Executive Board via two letters submitted on 9 February 2011 and 24 March 2011, the Barro Blanco project was registered under the CDM in 2011. Among these concerns were that the documents submitted for validation and registration under the CDM did not adequately describe project impacts on local communities and that stakeholder consultation during CDM validation did not consider opinions from the affected indigenous communities. The findings in these two submissions strongly suggest that the CDM local stakeholder consultation requirements were not met.

Indeed, after its visits to the affected communities, the UNDP-led mission concluded, "it is obvious that the residents of these communities were not consulted in the correct form." As the then-UN Special Rapporteur on the rights of indigenous peoples declared after a field visit in 2013, the Ngäbe people should have been properly consulted before the decision to authorise the dam. By allowing flooding of indigenous lands without adequate consultation and a proper agreement with affected indigenous communities, the CDM's decision to validate and register Barro Blanco contravened the international principle of free, prior and informed consent.

Yet because the CDM process only provides for comments from affected communities prior to registration, the affected communities have no means to officially engage in the process during implementation.

### **Sustainable Development**

At the design stage of each CDM project, project developers specify how the project will contribute to the sustainable development of the host country in the Project Design Document (PDD). Regarding environmental and social impacts, the Barro Blanco PDD identified "non-reversible impacts on the vegetation, flora and fauna" but noted that they would be addressed by "a rescue plan," along with other measures "such as the placement of plant barriers in strategic points, [and] painting buildings with colours that match those of the landscape and monitoring plans." It also noted reversible negative impacts, such as "the generation of dust or noise by the works," that would be prevented by the installation of warning signs and a water irrigation programme. The PDD claimed that the project would eventually increase the quality of life of the inhabitants, "as a result of the number of jobs available and the improvement in the conditions of the quality of water and river banks, which will provide new leisure areas to the community."

However, the UNDP-led mission to the affected Ngäbe communities in 2013 identified many negative environmental and social impacts not reflected in the PDD. An *amicus curiae* brief that three NGOs (the Inter-American Association for Environmental Defense (AIDA, by its Spanish initials), the Center for International Environmental Law (CIEL) and Earthjustice) submitted in 2013 to the Supreme Court of Panama in support of Ngäbe community members' case to nullify the Environmental Impact Assessment (EIA), illustrates that the EIA did not contain complete information about the impacts of the project on indigenous territories, and did not guarantee effective participation of the affected communities.

The Panamanian environment agency's decision to temporarily suspend the project in 2015 stemmed from several project outcomes that are incompatible with sustainable development. These include deficiencies in the negotiation processes; absence of an archaeological management plan approved to protect the petroglyphs and other archaeological findings detected; repeated failures to manage sedimentation and erosion; poor management of solid and hazardous waste; and logging without permission.

### **Need for Stronger Human Rights Protections**

The Barro Blanco project highlights the serious shortcomings of CDM rules on local stakeholder consultation and sustainable development and the resulting need for more robust human rights protections in the UNFCCC. Failure to consult with the affected communities left them out of the process and put them at odds with the government and company implementing the project.

Indeed, local affected communities paid a high price for their struggle. In 2012, while peacefully protesting against the exploitation of mining and hydroelectric power, including from Barro Blanco, on their territory, violent repression by the Panamanian national police killed two indigenous people and left more than a hundred wounded. An investigative report by Panamanian human rights organisations described serious human rights violations, even reports of detained Ngäbe women, including a minor, who were raped by police agents, and noted that the Panamanian government had suspended cellular phone service in the indigenous territories for several days. Likewise, in July 2015, indigenous people were arrested and injured following demonstrations against Barro Blanco.

Stronger protections in the UNFCCC, both in the Paris agreement and CDM rules, to ensure that affected people meaningfully participate in the CDM process; that the project makes good on its promise to contribute to sustainable development; and that

provide a means of recourse if the project causes harm would all serve to enhance the integrity of the CDM. Such protections could have reduced the harm the Ngābe people have suffered—and may continue to suffer—due to the Barro Blanco project.

## *2. Case Study: Sasan*

With a capacity to produce 3960 MW, the Sasan coal plant (CDM project number 3690), located in Singrauli, India, is one of six coal power projects registered under the CDM and one of nine Ultra Mega Power Projects (UMPP) being pursued by the Indian government. The total installed capital of all thermal power plants in that area—a district emerging as India's energy capital—is around 10% of the total installed capacity in India. Claiming to employ more efficient super critical coal technology, the project was registered under the CDM in October 2010.

Local residents and tribal Baiga people who live in small villages near the Sasan project site mainly make a living from agriculture and cattle, using their farming products for the most part for self-sufficiency. The Sasan power project, which covers almost 10,000 acres of land, required large areas for construction.

In the course of its construction, four villages and one tribal area had to be relocated. Rehabilitation areas have been provided for the relocated communities, but the standard of living was dramatically decreased as children's access to schools, as well as critical infrastructure, such as roads and water pumps, are lacking at rehabilitation sites. Since most of the Baiga lived in areas allocated to the company for coal mine overburden, they have been forced to leave forests identified as government land. Some tribe members with land titles have been shifted to a rehabilitation colony far from the forest area. Without work or the forest that sustained them, most have been reduced to begging and struggle every day to survive.

In July 2014, concerned NGOs (Bank Information Center, Bharat Jan Vigyan Jatha, Carbon Market Watch, Center for International Environmental Law, Friends of the Earth US, Sierra Club and Srijan Lokhit Samiti) filed a formal complaint with the Office of the Inspector General of the U.S. Export-Import Bank (Ex-Im Bank) because Ex-Im Bank approved over \$900 million in financing for the Sasan coal power project in October 2010. The complaint requested a full investigation and an assessment of compliance with Ex-Im policies including, but not limited to, environmental, social, human rights and anti-corruption policies.

The NGOs submitted this complaint in response to the numerous documented accounts of project-related corruption, as well as human rights and labour violations, which they had already communicated to Ex-Im Bank. In October 2014, a two-person team from the Office of the Inspector General (OIG) visited the Sasan project site. During the field visit, inspectors refused to meet the affected people in their communities, invited only a handful of representatives to come to their hotel to meet. In so doing, the OIG disregarded cultural and ethical practices, particularly given that officials of project developer Reliance Power were present on the hotel premises and could see who participated in the meeting.

Despite the shortcomings of the OIG's field visit, the inspection report was critical in recognizing the 19 tragic deaths that occurred at the project.

### **Local Stakeholder Consultation**

According to the information in the CDM project documents for the Sasan project, the project developer, Reliance Power, identified and invited local stakeholders to a consultation announced in a local Hindi language daily newspaper. The local stakeholder consultation was scheduled in April 2008 in a community hall in the Singrauli area. Separate invitations were also sent to selected stakeholders including contractors, environmental consultants, officials of the district magistrate and the media. Although the Sasan project document states that an open consultation meeting took place with overwhelming positive response for the project, the company selected the participants, making it unclear whether it selected people who supported or were less opposed to the project, and whether this may have resulted in more positive comments on the project.

Moreover, given that this consultation was the only means to involve and inform local residents, it is important to note that the majority of local people living in the Singrauli area are illiterate. A newspaper announcement without any verbal announcement thus did not constitute effective outreach to the local population affected by the project activity. Moreover, the local newspaper chosen to publicise the date and venue of the consultation has a small circulation. Therefore, areas directly affected by the project activity did not receive the information about the consultation.

At a NGO field visit in April and May 2014, many local people who were interviewed reported that they were aware of neither a public hearing nor about the Sasan coal power project itself before the construction started. At the beginning of construction, local residents had merely been informed that their residential and farming land was needed for a new coal power plant and had been asked to sell it to the project owner under the promise of secure employment opportunities as well as high compensation rates.

### **Sustainable Development**

The Project Design Document for the Sasan project outlined the sustainable development benefits the project would create in the Singrauli area, ranging from social to environmental, economic, and technological well-being. Sustainable development benefits that the project developer promised included that the project would empower "economically weaker sections of the

society, including the scheduled castes and scheduled tribes,” improving standard of living in the region. In addition, stating its commitments “to improve the medical and health care” and to “promote increased educational levels in the project location,” the project developer undertook construction of hospitals and associated medical infrastructure to help reduce infant mortality, and of a new school, near the project activity.

The PDD also listed numerous environmental benefits for the Singrauli area. For instance, it claimed the Sasan project would not only reduce CO<sub>2</sub> emissions, but also emissions of other major air pollutants. It also claimed that the project would contribute to preserving natural terrain because construction of the plant would require removal of only minimal vegetation. The PDD also claimed that the increased electricity generated by the project would “support economic growth of the region and address the electricity deficit.”

However, as documented in an NGO fact-finding report on the Sasan project, these claims starkly contrast with the situation on the ground. For example, local residents still depend on generators, as the electricity generated is transmitted into the national grid. Moreover, fly ash generated by the project activity pollutes the water and poisons the harvest, making it unsafe to consume food and causing an increase of diseases in the affected area.

### **Need for Stronger Human Rights Protections**

The Sasan project has had major impacts on the local population and their human rights, illustrating the need for express protection of human rights in the Paris agreement and in CDM rules. The fact that the project proponent selected participants for the consultation and used only a newspaper with limited circulation not encompassing the affected people, even though most are illiterate, casts serious doubt on the sufficiency of the local stakeholder consultation for the Sasan project. Moreover, given that some of the affected are indigenous people, international law recognises their right to consent, not merely to be consulted. This project illustrates the need for rules that specify *how* to conduct such a consultation, especially given the major impacts on the local population. It also highlights the need for human rights protections at the UNFCCC-level in the Paris agreement, as they would apply to the CDM as a UNFCCC mechanism.

In several reported cases, construction started without consulting the affected population. Houses were bulldozed and streets and community property destroyed before clearance and acquisition was completed. Personal belongings were demolished and affected people forcibly displaced to rehabilitation areas without their permission. Being dependent on agriculture and the forest, this has far reaching consequences for their livelihoods. Their standard of living decreased as they could no longer work on their fields and most were not hired for the project, in contrast to the project developer’s promises. The rights of indigenous people were ignored. There was no separate consultation with the Baiga tribe, and few of their people have received any compensation.

Furthermore, the Sasan project has harmed human and environmental health in Singrauli, an area already plagued by numerous coal power plants. Fly ash has jeopardised air quality, water resources, and the harvest, posing grave danger to the life and health of local residents. The environmental concerns are all the more serious given that the project lies in one of the most polluted areas in India. These impacts infringe on numerous human rights, including rights to health, food, water, housing, and to one’s one means of subsistence. Establishing human rights protections in the Paris agreement and CDM rules could help to avoid negative outcomes from other projects.

\* \* \*

To prevent future CDM projects from resulting in similar, negative outcomes, CDM rules must contain clear, specific requirements that ensure (i) adequate participation with the affected communities; (ii) that the project meet its Kyoto Protocol goal of contributing to, not undermining, sustainable development; (iii) that no human rights violations result from project; and (iv) a grievance mechanism or other formal means of recourse for people harmed by CDM projects at any point during the project cycle. Politically, this has been difficult to achieve given the interest of many Parties involved in the CDM to get projects going, notwithstanding social and environmental costs. Yet allowing outcomes like those described in the Barro Blanco and Sasan cases contravenes States’ human rights obligations.

To promote climate change mitigation that does not harm human rights, the Paris agreement should state, in its purpose or another overarching section, Parties’ commitment to respect, protect, and fulfill their human rights obligations in all climate change-related actions.

## **B. REDD+**

Through the 2010 Cancun Agreements, the UNFCCC COP established the Reducing Emissions from Deforestation and Forest Degradation (REDD) framework to support developing countries’ mitigation actions and policies related to the forest sector. In addition to deforestation and degradation, REDD+ encompasses conservation of forest carbon stocks, sustainable management of forests, and enhancement of forest carbon stocks. REDD+ was established as a country-driven process involving the development of national strategies or action plans, the implementation of national strategies or action plans, and results-based REDD+ with financing.

The UNFCCC COP largely finalised the modalities for the REDD+ framework in 2013 with the adoption of the “Warsaw Framework for REDD+,” a set of decisions that completed the guidance required for its full operationalisation. These decisions do not elaborate substantially on the human rights-related commitments set forth in the REDD+ safeguards.

The REDD+ safeguards (described in section II) include full and effective participation of relevant stakeholders, especially indigenous peoples and local communities, as well as respect for knowledge and rights of indigenous peoples and local communities, including FPIC in certain circumstances. These safeguards take a forward-looking approach in an effort to avoid further social, environmental, and economic costs. Following the logic behind this approach, it is crucial for countries to invest the energy and resources necessary to properly carry out the public consultation and participation process to achieve successful implementation of REDD+ projects.

### *Case Study: REDD+ Projects in Yucatán*

In Mexico, the issue of consultation and public participation in REDD+ is a very important, complex, and interesting subject, not only regarding the rights of indigenous peoples, but also because the main drivers of deforestation and forest degradation—agricultural and urban frontier expansion, and communication infrastructure—are outside the environmental sector. Therefore, if REDD+ is to succeed, it is crucial to effectively engage stakeholders from inside and outside the forests, particularly agricultural authorities, land owners (individual, collective, and communal) and indigenous people who live and depend on forests.

The activities that the authorities carry out to promote access to information and public participation are crucial to ensure an effective and meaningful feedback process. In this way, access to information is not only a rhetorical human right, but a pragmatic prerequisite for an effective participation. It is the responsibility of the Mexican national government to make sure that information is available to the public (all stakeholders) in a way that is complete and clear, culturally appropriate, and free.

Specific to REDD+, the Mexican Government published the paper *Mexico’s Vision for REDD+* in 2010 and developed a National REDD+ Strategy (ENAREDD+) draft in October 2012. However, the Mexican forest authority (CONAFOR) only began a national public consultation process for the ENAREDD+ in July 2015 with plans to finish by the end of 2015.

Since the publication of *Mexico’s Vision for REDD+* in 2010, it has become clear that the stakeholders engaged in the consultation process must include forest land owners (individual, *ejidos* and *comunidades*), users, and inhabitants; indigenous peoples and communities; rural women; civil society organisations; forestry and agriculture organisations; international organisations; academia and researchers, including intercultural universities; officials of various agencies involved in rural development; proponents of private initiatives, community forestry promoters; and the general public. Considering Mexico’s socioeconomic and jurisdictional dimensions, including the complexity of its social context and legal framework, achieving a good-faith, comprehensive, and meaningful consultation process has been a big challenge.

CONAFOR’s plan is to hold at least one forum for public consultation in each of the 32 federal entities (31 states and 1 federal district) of the Mexican Republic, and four thematic consultation forums. The governmental objective is to conduct consultation and gather opinions and feedback in just three months (July to September), so that it can reach agreements and conclude the process by the end of 2015. It seems very unrealistic to carry out a comprehensive and proper consultation process on a subject as complex as REDD+ in such little time. The case of Yucatán, México clearly illustrates this.

#### **Local Stakeholder Consultation**

CONAFOR held a public consultation forum for the state of Yucatán in Mérida at the Hotel los Aluxes on July 15, 2015. This is the only public consultation forum in Yucatán that has taken place so far. The forum was a good exercise in participation using workshops. Nevertheless, the government’s failure to provide adequate information in advance and especially in a comprehensible way, including in an appropriate language, prevented a deeper and richer participation process.

Here, it is important to recognise that most rural people from Yucatan speak Mayan better than Spanish, yet all presentations, information and the process in general took place in Spanish. In fact, most people in the *ejidos* and *comunidades* of Yucatán are indigenous Mayan. In addition, most of the information about the consultation forum, such as the address, date, time and the documents to be discussed were available and promoted mainly through CONAFOR’s website, but most of the interested public has no access to the web.

While representatives from the federal government, 11 NGOs and a university cultural board attended the public consultation forum, ranchers, soya and corn farmers, agrarian authorities and other stakeholders relevant to the drivers of deforestation from outside forest lands were not adequately represented. The clear lack of participation from these groups was, and still is, a big problem.

For instance, during the consultation, CONAFOR mentioned that two more consultation forums are planned in Yucatán: one with Technical Consultation Committee for REDD+ (CTC-REDD+) and another with local ranchers and farmers. However, neither has been officially announced or scheduled yet and is not clear when and where they will take place and who will attend. Recalling the government’s intent to conclude the consultation process by the end of 2015, there is concern that the government might

change its course. The lack of representation of ranchers and farmers at the first meeting makes it more difficult for these groups to hold the government to its word and ensure an inclusive process.

### **Need for Stronger Human Rights Protections**

The Mexican government's public consultation is facing some serious problems due to the short timeframe it established for the entire national process: 6 months. These include failure to communicate information in a manner appropriate, in terms of timing and language, for the people most affected—those who live and depend on forests. These deficiencies contravene Mexico's human rights obligations under the right of access to information.

Furthermore, the Mexican government's failure to ensure participation of all relevant groups (despite its identification of several in its 2010 vision) in the public consultation process, along with its failure to effectively engage relevant government bodies and non-environmental authorities on issues related to REDD+ contravene its human rights obligations under the right to participation. Its decisions to announce the consultation and to conduct it in Spanish despite the large number of indigenous Mayan people among the affected population further undermines its duties to respect rights of indigenous peoples.

These shortcomings contradict Mexico's commitments under the REDD+ safeguards to include "[t]he full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities" in mitigation actions in the forest sector," considering timing, stakeholders, issues, and outreach methods. They also indicate lack of a "clear commitment" to ensure that the rights of indigenous peoples and other forest-dwelling communities "are fully respected throughout the REDD+ program cycle."

Mexico has been a leader in the recognition of the need in the Paris agreement to respect, protect, promote, and fulfill human rights in all climate change-related actions. Thus, it is certainly possible that Mexico can learn from its experience in Yucatán and allot additional time for the consultation processes, communicate in appropriate languages to announce and conduct the consultations, and ensure wide participation that includes all relevant stakeholders, including those it identified in 2010.

However, this example shows serious deficiencies in the REDD+ rules at the institutional level to implement commitments under the REDD+ safeguards, including related to access to information and public participation. Rules on how and with whom to conduct local stakeholder consultation would enhance Parties' ability to ensure compliance with the REDD+ safeguards and their commitments under international law. Human rights language in the Paris agreement would complement REDD+'s human rights framing and the Cancun Agreements' instruction to "promote and support" REDD+ safeguards.

### **C. NAMAs**

Nationally Appropriate Mitigation Actions (NAMAs) are a climate policy tool that allows developing countries to design their own proposals for emission reduction activity based on their national circumstances. The initial idea for NAMAs was born in 2007 with the Bali Action plan, with an aim to enhance the role of developing countries in national and international efforts towards mitigation of climate change. According to the Ecofys NAMA Database, as of October 2015, there were 163 NAMAs in different stages of development across 51 countries.

NAMA actions are designed to pursue two objectives: to contribute to domestic sustainable development and to reduce greenhouse gas (GHG) emissions below business-as-usual levels by 2020. Aside from that, the instrument is fairly flexible and outlines that NAMA actions are to be "nationally appropriate." Firstly, that means that they can take a variety of forms, such as policies, sectoral goals, or project-based activities. Secondly, "nationally appropriate" means they are driven by national governments and primarily reflect national development needs, rather than solely needs for emission mitigation. In this respect, NAMAs are considered a policy instrument with a "development first" agenda, where the foremost goal is to secure social, economic and environmental prosperity.

Despite the significance of the goal to achieve sustainable development, UNFCCC COP decisions do not provide criteria, methodologies, incentives, or safeguards to monitor and assess the sustainable development co-benefits of NAMA actions. Initiatives are developed without direction from the COP, for example using the UNDP voluntary tool to report and monitor sustainable development benefits, or the Sustainable Development Framework for NAMAs, currently being developed by the NAMA Partnership working group on sustainable development.

Moreover, while there is a broad understanding that NAMAs need to be designed, developed and implemented through all-inclusive stakeholder engagement, there are no official rules or decisions under the UNFCCC that call for stakeholder consultation in the NAMA development process. The absence of guidelines leaves NAMAs to be carried out largely according to national rules. This can be especially problematic given that a number of developing countries have no or weak rules for stakeholder engagement.

NAMAs have shown a great potential for contributing to the sustainable development needs of developing countries, adding to the well-being of local populations while achieving emissions reductions. Georgia's NAMA described below offers a good example. However, without appropriate guidelines for stakeholder engagement process and safeguards against negative impacts, NAMAs ultimately face the same main challenges as the CDM. NAMAs lack appropriate international guidance in order to ensure they deliver positive impacts on the ground.



## *Case Study: Pilot Phase for Gender Sensitive NAMA in Georgia*

The population of Georgia, particularly local communities in rural areas, suffer from a severe lack of energy and struggle to provide heat and warm water for their households. Those communities spend about one third of their income on energy needs. They largely depend on wood as a source of energy, which—due to unsustainable logging—leads to depletion of 6500 ha of forest annually. In addition to the environmental and economic implications, this also generates health problems from indoor air pollution and poses a social burden on women, who are generally responsible for collecting wood and taking care of the household. Despite the time and effort women put into domestic heating, they often do not cover the energy needs to maintain the household.

In order to tackle these problems, civil society in Georgia came together to develop a four-year project as a pilot phase to develop a gender-sensitive NAMA. The project was led by coalition of NGOs together with men and women from local communities and created a good basis and lessons learnt for implementation of NAMAs. It achieved reductions in firewood spending and emissions, and, most of all, it contributed substantially to benefits for the local population and empowerment of women. Those NGOs built capacity of local women and men through training and involvement in development and implementation of the project.

Based on the lessons learnt from the pilot phase, the objective is to launch a gender-sensitive NAMA to address energy needs and strengthen the role of civil society organisations in fostering climate mitigation activities, low-carbon development, and poverty reduction. The NAMA foresees installation of 12,000 energy efficient stoves and 12,000 solar hot water collectors in households in five rural areas of Georgia. This would provide energy for over 20,000 families, reduce costs for heating water and houses by half, and add to the well-being of the local population.

### **Local Stakeholder Consultation**

Despite the absence of guidelines on stakeholder consultation processes in NAMAs, the Georgian NAMA demonstrated an inclusive, bottom-up process of stakeholder involvement. In fact, the project showcased that involvement of local stakeholders in project planning, capacity building, and implementation is crucial for sustainability and local ownership of climate action.

The consultation process was largely led by civil society hand in hand with the local government. One of the main civil society groups involved in the project, the Rural Communities Development Agency, established a resource centre in the project region and helped to organise stakeholder meetings and identify potentially interested stakeholders. Due to another energy project implemented in the region, the local population was aware of the benefits of solar water heaters and was inclined to collaborate. Consultation processes included the local population, private sector, regional NGOs and informal women's groups active in the community. Local stakeholder meetings were held once or twice per month with documentation including a list of participants and internal reports of the meetings. At times community members from other parts of Georgia attended the meetings to learn about the project.

### **Sustainable Development**

The pilot for implementation of Georgia's gender-sensitive NAMA delivered substantial sustainable development benefits, which were measures against a predetermined set of indicators of expected co-benefits.

First, the project added to meaningful environmental benefits. Utilisation of solar water heaters curtailed the need for logging, which in turn reduced deforestation. This led to emission cuts of 1000kg CO<sub>2</sub>, and contributed to protection of biodiversity.

Second, through involvement in the development and implementation of the project, the local community gained from several economic and social benefits. Both men and women were trained through the development of the project. Women were mostly involved in monitoring and maintenance of sustainable development benefits, while men were trained in construction of solar collectors. They spent less time and energy collecting firewood, which benefited both women and men as it decreased the amount of unpaid work. Due to the new solar water heaters, households had to pay less for firewood, which helped to reduce energy spending and scaled down dependency on national energy. Overall, the project created 135 jobs, equally distributed among men and women, in different areas around the country.

The pilot phase for NAMA development had a strong gender dimension and contributed significantly to equality of men and women. It improved living conditions, particularly for women, as it reduced their burden of collecting wood and enhanced their access to hot water for household needs while reducing their exposure to indoor air pollution. Moreover, the project contributed to empowerment of women, who were encouraged to get involved in the project and follow training modules. As a result, 40 percent of the women involved in the project became monitoring and maintenance experts in five regions, and were able to earn additional income.

### **Benefits of Inclusive Process and Indicator-Based Sustainable Development Assessment**

Georgia's successes largely stemmed from the inclusive process and active role of civil society in designing and implementing the NAMA, along with clear, attainable sustainable development objectives identified as indicators.

The most visible social impacts deriving from the project benefited local women. The project significantly reduced the burden of collecting firewood for the needs of the households, which used to mainly fall on women's shoulders. This provided opportunity for women to spend their time differently. Moreover, their role in the community was strengthened as they became the key agents in information about and management of the project.

The whole local community benefited from notable economic benefits. In a community where average annual income is 2000 EUR, and where one third of it is spent on energy needs, a technology that is able to reduce this spending is of immense value. The installation of solar collectors reduced the energy spending by 15 percent, which enabled the local population to spend money on other essential needs.

The success of Georgia's project can serve as a model for other projects, particularly to offer guidance to countries whose national requirements related to public participation and sustainable development are weak, or where civil society faces hurdles to taking an active role in these processes. To better ensure that NAMAs elsewhere yield the same kinds of positive outcomes, NAMA guidelines should ensure the meaningful engagement of civil society and affected people; effective means to ensure realisation of sustainable development co-benefits, including use of sustainable development indicators; and a means of recourse for people adversely affected by NAMAs that do not achieve benefits promised or planned.

In addition to including such protections in NAMA guidelines, including human rights language in the Paris agreement would serve to provide benchmarking for design and implementation and to protect people affected by NAMAs because that agreement applies to NAMAs as part of the UNFCCC.

## **V. Lessons Learnt from CDM, REDD+ and NAMAs**

### **A. Local Stakeholder Consultation**

None of the mechanisms described above has rules on with whom and how to conduct local stakeholder consultation. Yet the examples show a clear need for these kinds of rules, or in the case of the CDM and NAMAs, guidance.

While a general requirement to conduct stakeholder consultation, like the CDM has, is an important first step, it has not proved sufficient to ensure participation of those most affected. The two CDM project examples, Barro Blanco and Sasan, demonstrate this disturbingly well. There, the people most directly affected were not adequately involved—in most cases, entirely left out—of the process. Problems arose that could have been averted had local affected people been adequately engaged in the planning, design, and implementation processes. Thus, there is a clear need for rules or guidance on who must be consulted.

This guidance must go beyond recognizing the need for wide stakeholder engagement at every stage of the process, as exists for NAMAs, and make clear the need to consult local affected people. This is vital to help Parties understand how to ensure they consult the appropriate stakeholders, which must include local affected communities. While in the Georgia example, civil society and the local government worked constructively and effectively together in an inclusive, bottom-up process, this is not guaranteed in every country and every action. Without guidance on whom to consult, the national government and/or the project developers have discretion to decide whether and how stakeholders are consulted. In developing guidance, Georgia's good experience could serve as a model, as can the approach of National Adaptation Programmes of Action (NAPAs), which have established guiding elements to include public participation processes involving stakeholders, especially local communities and "voices of the poor."

Beyond guidance on *whom* to consult, these mechanisms need rules or guidance on *how* to conduct consultations, starting with outreach to potential participants. As the Sasan case shows, leaving methods of communication and outreach to the project developer can result in the wholesale exclusion of affected communities. There, beyond deciding who to invite to participate, the project developer printed an announcement about the consultation in a small-circulation newspaper even though the project would affect mostly people who are illiterate and geographically outside that paper's circulation. In the REDD+ example, the forum was conducted in Spanish, and announced primarily online and in Spanish, even though most of the directly affected communities are indigenous Mayan.

Timing is another key element. Rules or guidance on stakeholder consultation must explain that consultation begins early in the process, before approvals or other key decisions are made, and extends throughout the project cycle. The Barro Blanco case shows that problems can arise after project registration, including recognition of errors or omissions in the documents on which CDM registration was based. However, there is currently no communication channel for those adversely affected by the project after project approval. Open lines of communication are crucial to the integrity and success of mitigation projects. Allowing for communication of project-specific problems and responses to those problems would thus benefit Parties, project developers, and local communities alike.

Timing for the consultation process as a whole must be adequate to ensure effective engagement and the widest possible participation of all relevant stakeholders. As the REDD+ example shows, Parties may need to prioritise inclusiveness over speed when determining the timeframe for consultation processes, particularly where the issues are complex, as they invariably are with climate change mitigation projects.

## **B. Sustainable Development**

The cases above illustrate a pressing need for clear, detailed guidance on sustainable development assessment and monitoring. To avoid subjective, inconsistent interpretation of sustainable development, this guidance must establish minimum standards with indicators of sustainable development.

The two CDM projects show that, on the question of whether the project will contribute to sustainable development, a requirement to merely verify that the host country answered “yes” is insufficient to ensure that contribution in fact results from the project. In both cases, the project developers promised sustainable development co-benefits—positive social, economic, and environmental impacts—that convinced the host countries but did not result while negative impacts did, as documented later in reports. For instance, the Sasan project developer claimed the coal plant would improve the standard of living, address the electricity deficit, and support economic growth in the region. However, an NGO report found that local residents depend on generators because the Sasan plant’s electricity goes to the national grid, and that fly ash from the coal plant contaminated local water, soil, and food while increasing disease in the area. As for Barro Blanco, a UNDP-led report identified a host of social and environmental impacts not included in the project’s environmental impact assessment, which had omitted indigenous land from the project-affected area.

Without criteria, methodologies or social and environmental safeguards on sustainable development, governments and project developers must determine themselves what sustainable development allows and requires. These examples show the need for clear, detailed guidance establishing minimum standards on sustainable development. Such standards should help Parties to ensure their actions complement or are consistent with international law, including the do-no-harm principle.

As the CDM and NAMA examples suggest, guidance should address safeguards against negative social and environmental impacts, public participation, and gender equality, among other topics. In the NAMA example, government and civil society worked together to engage local communities and promote gender equality. Through their involvement in project development and implementation, local communities around the country gained jobs and received valuable training that enabled them to obtain energy more efficiently and cheaply. The NAMA also empowered women through jobs, training, and improving living conditions by reducing their burden of collecting wood, reducing their exposure to indoor air pollution, and enhancing their access to hot water for household needs.

Georgia’s NAMA achieved a positive outcome in part by using indicators to establish expected sustainable development benefits and then measure the project’s delivery of those benefits. Sustainable development indicators facilitate assessment and monitoring. Quantifiable outcomes in the NAMA example included an increase of 135 jobs and reduction of 1000kg in carbon dioxide emissions due to use of solar water heaters. Making indicators publicly available both nationally and internationally further facilitates assessment and monitoring and promotes transparency.

In addition to establishing indicators, there is a need to ensure that assessment occurs throughout the project cycle and is independently verified. The disparity between project developers’ promises and the documented outcome in the CDM cases demonstrate the need to ensure that sustainable development assessment continues throughout the project or action cycle, along with the value of third-party verification of benefits. One place to incorporate such verification is in a sustainability development tool (SD tool), which exists for both CDM and NAMAs. To maximise effectiveness of the tool and discourage bad actors from evading their sustainable development commitments by opting out of the SD tool, SD tools should become mandatory.

## **C. Grievance Mechanism**

The cases above further demonstrate the need for a grievance mechanism and communication channels in case projects do not go according to plan. To guarantee the right of access to justice, redress mechanisms for social and environmental impacts of climate change mitigation projects and actions are essential. While it is useful and important to have such mechanisms at the national level, these mechanisms should exist at the international level, too, especially given the international nature of the UNFCCC. As the CDM examples show, harms can result from projects after they are registered, yet affected local communities and civil society lack a means of redress for non-compliance with international rules. Even for NAMAs, which are country-driven, international-level mechanisms are appropriate given that local communities might suffer impacts resulting from the implementation of a NAMA but lack means of recourse at the national level. While large institutions that finance CDM, REDD+, and NAMA projects may have their own safeguard policies and mechanisms, they do not necessarily encompass all social and environmental harms. Plus, these projects are increasingly seeking finance from the private sector and other donors that may not have safeguard policies or complaint mechanisms.

As for grievance mechanisms at the national level, to enhance uniformity across countries’ adjudication approaches and discourage a race to the bottom of human rights standards, there is a need for guidance, with minimum standards, on grievance mechanisms. These standards should reflect the criteria for grievance mechanisms established in the UN Guiding Principles on Business and Human Rights: legitimate; accessible; predictable; equitable; transparent; and rights-compatible; and based on engagement and dialogue. Reporting and transparency requirements are also important to enhance integrity of national-level grievance processes for climate change mitigation projects or actions.

## VI. State of Play on Human Rights in the UNFCCC Negotiations

Regardless of what the Paris text will say, climate change will continue to threaten and violate human rights in some instances, and States will end up taking actions to address and redress human rights violations. Language that spells out the rights and obligations will help Parties to understand the risks and their responsibilities as they aim to address climate change. Giving Parties a clear understanding of human rights and corresponding duties will help them to engage in sensible and responsible planning to prevent, or at least minimise, harm.

### A. Enhancing Human Rights Protections in the UNFCCC

Negotiations of the Paris agreement reveal two ways in which Parties can advance necessary protection of human rights. First, Parties can articulate how their human rights obligations apply in various aspects of the climate change regime. Second, Parties can expressly recognise that human rights and corresponding duties apply not only to climate change-related *actions* (such as mitigation projects), but also to harm caused by the *effects* of climate change itself (which can affect mitigation-related decisions).

#### 1. *Articulate How Human Rights Obligations Apply under the UNFCCC*

As described above, all Parties to the UNFCCC have already agreed that they should in all climate change-related actions fully respect human rights. Examples of climate change-related actions include mitigation projects under the Kyoto Protocol's CDM, REDD Programme, and NAMAs. Thus, it is clear that Parties must fully respect human rights in CDM, REDD, and NAMA projects and actions.

However, in the years since Parties expressly made that recognition, they have not further specified what full respect for human rights means in these contexts. The need to operationalise this language is clear from evidence of projects under these mechanisms that have adversely affected human rights (see section 5). Thus, in the Paris agreement, Parties need to include language that better articulates what the human rights obligations are, so that Parties can avoid taking actions that will repeat the past mistakes of the projects that caused harm. This is also true for decisions related to the mechanisms under the UNFCCC, such as the CDM, REDD, and NAMAs.

#### 2. *Encourage Smarter Planning, Including In Mitigation, by Recognizing that Climate Change Effects Themselves Can Harm Human Rights*

In addition to the need to specify how existing human rights obligations apply in the context of climate change, the Paris agreement also should expressly recognise that climate change effects themselves can jeopardise human rights. As successive typhoons in the Philippines and heat-related deaths across Europe have illustrated, climate change effects can and do harm human rights. The benefit of incorporating language to this effect into the Paris text is that it will help Parties to be more cognizant of the need for ambitious action, as well as the costs of insufficient action—in the form of the disastrous outcomes observed in some places to date. Equipped with this awareness, Parties will be better positioned to act wisely and responsibly in addressing climate change. This includes actions Parties take in response to climate change, *i.e.*, response measures, such as mitigation projects under the CDM and REDD, as well as NAMAs.

### B. Textual Proposals for the Paris Agreement

In recent negotiations under the Ad-Hoc Working Group on the Durban Platform for Enhanced Action (ADP), Parties have greatly increased their attention to human rights in the context of climate change. Several proposals exist as to where and how to incorporate human rights language in the Paris text.

Regarding where to put this text, the answer is the operative portion of the agreement, as opposed to the preamble. Given that human rights obligations already exist, and given that human rights are a unifying and universal element of Parties' approach to addressing to climate change, language on human rights most appropriately fits in the Purpose (Article 2) of the agreement. Because human rights obligations arise in the context of mitigation projects (as explained in this briefing paper), it also makes sense to include human rights language in the mitigation section, as well as other sections like adaptation. However, doing so should not be at the exclusion of human rights' applicability to other elements of the UNFCCC. Above all, it is crucial to put this language in a section of the treaty that applies to all elements, *i.e.*, the purpose or another general, overarching section.

Regarding what the language should say, recent proposals included the following for Article 2:

*All Parties shall, in all climate change-related actions, respect, protect, promote, and fulfill human rights for all, including the rights of indigenous peoples; ensuring gender equality and the full and equal participation of women; ensuring intergenerational equity; ensuring a just transition of the workforce that creates decent work and quality jobs; ensuring food security; and ensuring the integrity and resilience of natural ecosystems.*

In the negotiating text for the first week of COP21 (6 Nov edited version), Article 2, Option 1, para. 2 states:

*[This Agreement shall be implemented on the basis of equity and science, in [full] accordance with the principles of equity and common but differentiated responsibilities and respective capabilities[, in light of national circumstances] [the principles and provisions of the Convention], while ensuring the integrity and resilience of natural ecosystems, [the integrity of Mother Earth, protection of health, a just transition of the workforce and creation of decent work and quality jobs in accordance with nationally defined development priorities] and the **respect, protection, promotion and fulfillment of human rights for all**, including indigenous peoples, including the right to health and sustainable development, [including the right of people under occupation] and to ensure gender equality and the full and equal participation of women, [and intergenerational equity].*

Again, regardless of what exact language makes it into the text, it should appear in the operational (purpose or general section), not preambular, text.

Opportunities to correct the shortcomings of the current expression of human rights obligations under the UNFCCC also exist for UNFCCC mechanisms such as the CDM, REDD, and NAMAs, as discussed in Section 5, above.

## VII. Recommendations

Include this language in Article 2 of the Paris agreement:

*All Parties shall, in all climate change-related actions, respect, protect, promote, and fulfill human rights for all, including the rights of indigenous peoples; ensuring gender equality and the full and equal participation of women; ensuring intergenerational equity; ensuring a just transition of the workforce that creates decent work and quality jobs; ensuring food security; and ensuring the integrity and resilience of natural ecosystems.*

Establish best-practice guidelines with clear, detailed guidance on local stakeholder consultation, including who must be consulted (at minimum, affected people); how (through means of communication, including language and media, appropriate to the people being contacted); and when (early and throughout the project cycle, to ensure a communication channel if the project causes harm after approval or registration).

- \* Adopt clear, detailed guidance for sustainable development assessment and monitoring based on sustainable development indicators, including on
  - minimum standards for sustainable development, reflecting international law obligations including the do-no-harm principle and requiring assessment throughout the project cycle and with indicators made publicly available
  - public participation;
  - gender equality; and
  - safeguards against negative social and environmental impacts.
- \* Establish international-level communication channels and grievance mechanisms for people and communities regarding social and environmental impacts of climate change mitigation projects or actions;
- \* Adopt guidance, including minimum standards, for establishing grievance and complaint procedures at the national level, with reporting and transparency requirements

## VIII. Conclusion

The world is at a crossroads. We must decide on the future climate architecture to lead our transition to a decarbonised society. Climate change mitigation projects and actions, along with the financing that makes them possible, will be instrumental in reaching this goal. However, as the paper has shown, those projects, actions, and financing have the potential to cause—and have caused—harm to human rights.

A simple step toward minimizing that harm is strengthening human rights protections under the UNFCCC: in the Paris agreement, in the CDM Modalities and Procedures, in implementation of the REDD+ Safeguards, and in rules applicable to NAMAs. Parties in Paris have the power to make this happen.

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89 See *id.*; UNFCCC, Cancun Agreements (LCA), Decision 1/CP.16, 2010, appendix I, para. 2.

90 NAMA Database, [http://www.nama-database.org/index.php/Main\\_Page](http://www.nama-database.org/index.php/Main_Page).

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93 UNFCCC, Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP), Draft agreement and draft decision on workstreams 1 and 2 of the Ad Hoc Working Group on the Durban Platform for Enhanced Action, Edited version of 6 Nov. 2015, art. 2, Option 1, para. 2 (emphasis added).

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