



# Climate Action Network

## Integrating Human Rights into the Paris Agreement

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*Climate Action Network International (CAN-I) is the world's largest network of civil society organizations working together to promote government action to address the climate crisis, with more than 950 members in over 110 countries. [www.climatenetwork.org](http://www.climatenetwork.org)*

### Executive Summary

Climate change and the lack of adequate policies to address climate change present global threats to the realisation of human rights, in particular in relation to the rights of people and communities that are already vulnerable or marginalized. For this reason, the transition to a low-carbon economy and resilient communities must fully protect human rights. By integrating human rights into climate policies, countries will strengthen the long-term effectiveness of, and build public support for, climate actions. The Paris Climate Conference thus provides a crucial opportunity to establish a new framework for climate action that strengthens mitigation and adaptation while addressing the needs of vulnerable groups.

This paper sets forth CAN's position as to why and where human rights language should be included in the Paris Agreement. In particular, in order to establish a framework that effectively addresses climate change and protects those most vulnerable from the adverse impacts of climate change and climate policies, Parties must include the following reference to human rights in the operative section of the core agreement:

*All Parties shall, in all climate change related actions, respect, protect, promote, and fulfil 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.*

This language calling for rights protections must be included for the following reasons:

1. While the Parties to the UNFCCC have recognized the interplay between human rights and climate change, they have not taken action to operationalize their rights obligations.
2. Human rights are a cross-cutting issue in the implementation of the Convention.
3. Human rights must be integrated into climate actions at all levels.
4. Integrating human rights into climate action will not divert focus from combating the causes and impacts of climate change but will promote more effective climate action.

In order for the Paris Agreement to promote effective climate policies that benefit people and communities affected by climate impacts and climate policies, the Parties to the UNFCCC must include a reference to human rights in the core agreement to be adopted at COP-21 in Paris. This provision must be overarching in order to apply to all areas of implementation of the Convention. It must be included in the operative section of the agreement in order to guarantee its effective and systematic implementation. It must be comprehensive and address all key dimensions of the relation between human rights and climate change.

### **Introduction: Interplay between human rights and climate change**

In the 21<sup>st</sup> century, climate change is possibly the greatest single threat to human rights, adversely impacting the lives of millions of people around the planet and undermining the progress made over the past decades in relation to development and health.

Extreme weather events are causing loss of lives and livelihoods, disrupting health and educational services, and damaging properties and critical infrastructure. Slow onset hazards such as sea-level rise, desertification and the modification of weather patterns affect food security, undermine access to clean water, facilitate the spreading of diseases, and will result in the displacement and migration of millions of people and communities. Additionally, ill-designed climate projects have resulted in the violation of the rights of indigenous peoples and local communities, creating conflicts between climate action and the protection of human rights.

Furthermore, climate change exacerbates existing vulnerabilities. The UN Human Rights Council recognized in 2008 that “the world’s poor are especially vulnerable to the effects of climate change.”<sup>1</sup> It also emphasized that the impacts of increased temperatures and sea level rise affect most acutely “those segments of the population who are already in vulnerable situations owing to factors such as geography, poverty, gender, age, indigenous or minority status and disability.”<sup>2</sup>

### **What COP 21 must deliver: an effective integration of human rights into climate action**

As the Paris Agreement will set the stage for a durable framework for climate action, the core agreement adopted at COP 21 must include, in its overarching section, an operative provision that will guarantee the effective integration of human rights in all climate related action:

*All Parties shall, in all climate change related actions, respect, protect, promote, and fulfil 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.*

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<sup>1</sup> Human Rights Council Resolution 7/23 (2008).

<sup>2</sup> Human Rights Council Resolution 10/4 (2009).

This operative reference would facilitate the implementation of rights-based climate policies at the national level, while also emphasising obligations of States to cooperate to progressively realise rights.<sup>3</sup> Additionally, it would provide a strong mandate for non-state actors (including bodies established under the Convention) to consider the human rights implications and benefits of any climate action and for relevant institutions to foster cooperation in this field. Finally, it will enable the Parties to the UNFCCC to consider how human rights could be integrated most effectively across all activities implemented under the UNFCCC after COP 21.

Such a provision would complement references to equity in the text (which recognise that countries have differing contributions to environmental problems), by reinforcing the duty to cooperate in order to protect rights.

### **Rationale for the inclusion of an operative provision on human rights in the Paris Agreement**

#### ***1. The Parties to the UNFCCC have recognized the interplay between human rights and climate change, yet have not taken action to operationalize their rights obligations.***

In 2010, COP 16 recognized the complex interplay between climate change and the exercise of human rights.<sup>4</sup> The Cancun Agreements noted that “*climate change has a range of direct and indirect implications for the effective enjoyment of human rights.*” Additionally, the Cancun Agreements emphasized that “*Parties should, in all climate change related actions, fully respect human rights.*” Finally, the Conference of the Parties recognized the relevance of the UN Declaration on the Rights of Indigenous Peoples and mandated that the REDD safeguards should respect, among other things, the “*knowledge and rights of indigenous peoples and members of local communities.*”

However, there is little evidence to show that Parties have actually taken into account their human rights obligations, as recognized in the Cancun Agreements. A review of the national communications submitted to the UNFCCC since the adoption of the Cancun Agreements highlighted that a large majority of countries provide no information on how their climate policies might take human rights into account.<sup>5</sup> Similarly, some institutions established under the UNFCCC (such as the Clean Development Mechanism) have refused to consider and address human rights, claiming it is not within their mandate to do so.<sup>6</sup>

Other institutions have developed social and environmental safeguards as well as established grievance mechanisms, demonstrating that practical solutions exist in order to effectively integrate human rights in the work of these bodies. Consequently, Parties must reiterate and strengthen the call for human rights to be integrated into climate action as a means to ensure that all relevant actors effectively implement this principle.

#### ***2. Human rights are a cross-cutting issue in the implementation of the Convention.***

In relation to mitigation, human rights implications must be considered when defining the level of collective ambition. Building on the work of the IPCC, the UN Special Rapporteur on Human Rights and the Environment noted that increasing magnitudes of warming result in

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<sup>3</sup> See e.g. International Covenant on Economic, Social and Cultural Rights, art. 2(1).

<sup>4</sup> Cancun Agreement (Decision 1/CP.16), preambular para. 8 and Appendix 1, para 2(c).

<sup>5</sup> <http://www.mrfcj.org/pdf/2014-10-20-Incorporating-Human-Rights-into-Climate-Action.pdf?v=2>

<sup>6</sup> Link to explanation about the CDM EB decisions.

concomitant effects on the full enjoyment of a wide range of human rights for those most vulnerable.<sup>7</sup> Human rights norms should also inform the definition of each country's fair share of mitigation ambition in order to guarantee the respect of equity and to avoid placing additional burdens on those most vulnerable.

Additionally, as recognized in *The Geneva Pledge for Human Rights in Climate Action*, human rights-based policies will ensure that mitigation policies are implemented in a way that maximize social co-benefits with the full and effective participation of those directly affected. Such policies would prevent projects and activities that threaten the rights of indigenous peoples and local communities.

The need to respect and protect human rights must also be integrated into adaptation policies in order to increase the resilience of local communities and to address in particular the needs of those most vulnerable. The development of effective mechanisms to address loss and damage can contribute to provide practical solutions to ensure that human rights are upheld in the communities already severely impacted by climate change.

Means of Implementation will play a critical role in securing climate projects and activities in developing countries and in providing incentives for specific categories of projects. In 2014, the Human Rights Council called upon all States to “*continue to enhance international dialogue and cooperation in relation to the adverse impacts of climate change on the enjoyment of human rights, including the right to development (...), including through dialogue and measures, such as the implementation of practical steps to promote and facilitate capacity-building, financial resources and technology transfer.*”<sup>8</sup> Applying a rights-based approach to climate finance guarantees sustainable development co-benefits for affected peoples and communities, provides legal certainty for project developers and increases attractiveness to contributing countries and institutions. Additionally, this approach can ensure that technology transfers prioritize solutions with high environmental and social integrity.

### ***3. A reference in the operative section of the Agreement will promote effective integration of human rights into all climate actions.***

In order to guarantee policy coherence and the mainstreaming of human rights into climate actions, this provision must be included **as one of the general provisions contained in the operative section of the Paris Agreement**. Several legal precedents highlight that such provisions have been adopted in existing international legally binding agreements (see text box).

Provisions contained in the preamble of a legally binding agreement usually aim at providing the context in which the instrument was negotiated and adopted but do not define general principles guiding the implementation of this instrument. While these provisions might guide the interpretation of the obligations contained in the instrument, their political and legal status is much weaker than the status of the operative provisions.

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<sup>7</sup> See the 2015 report by the UN Special Rapporteur on Human Rights and the Environment, <http://www.thecvf.org/wp-content/uploads/2015/05/humanrightsSRHRE.pdf>

<sup>8</sup> HRC Resolution 26/27 (2014), para. 5

Are there precedents of international legal agreements not directly related to human rights but including a general provision referring to the integration of human rights in their respective policy area?

Yes, such provisions can be found in several international treaties relating to other areas of international law. In each of these legal instruments, the purpose of the operative provisions is to ensure the integration of these rights into the implementation of their provisions.

These agreements can be found in many fields of international law, including for instance the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), the Cotonou Agreement (2000), the WHO Framework Convention on Tobacco Control (2003) and the Convention on Cluster Munitions (2008).

All but two UNFCCC parties having ratified at least one of these international agreements containing an operative reference to human rights thus demonstrating that the inclusion of such provision does not create an obstacle to the wide ratification of an instrument.<sup>9</sup>

#### ***4. Integrating human rights into climate action will not divert focus from combating the causes and impacts of climate change but will promote more effective climate action.***

The inclusion of an operative reference to human rights in the general provisions of the Paris Agreement will not substitute an additional objective for the UNFCCC parties but will provide guidance in the implementation of this Agreement and of the UNFCCC.

Such a provision will not impose new human rights obligations on UNFCCC parties. All Parties to the UNFCCC are bound by the international human rights instruments that they have ratified. The inclusion of an operative provision will ensure the more effective implementation by Parties of their human rights obligations in the context of climate action, therefore promoting policy coherence.

Additionally, integrating human rights into climate action will strengthen climate policies by informing policy design with local and traditional knowledge, allowing for the informed participation of local stakeholders in the decision-making process, providing benefits for those most vulnerable, and increasing legal certainty. For instance, an empirical study on deforestation and forest degradation highlighted that forests are better conserved when the rights of indigenous peoples and local communities are fully protected by the government.<sup>10</sup>

## **Conclusions**

In order for the Paris Agreement to promote effective climate policies that benefit people and communities affected by climate impacts and climate policies, the Parties to the UNFCCC must include a reference to human rights **in the core agreement** to be adopted at COP-21 in Paris. This provision **must be overarching** in order to apply to all areas of implementation of the Convention. It **must be included in the operative section** of the agreement in order to guarantee its effective and systematic implementation. It must be comprehensive and address all key dimensions of the relation between human rights and climate change.

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<sup>9</sup> These two parties are: South Sudan and Equatorial Guinea.

<sup>10</sup> [http://www.wri.org/sites/default/files/securingrights\\_executive\\_summary.pdf](http://www.wri.org/sites/default/files/securingrights_executive_summary.pdf)

Such an agreement would promote the rights of every child, man and woman on this planet and help ensure that the world's poorest do not suffer the most severe impacts of climate change and are not adversely affected by climate policies.