# Climate Change and Human Rights

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# Climate Change and Human Rights

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# CONTENTS

**ACKNOWLEDGEMENTS** ..... **III**

**FOREWORDS** ..... **VI**

**EXECUTIVE SUMMARY** ..... **VIII**

**INTRODUCTION** ..... **1**

**PART 1: THE HUMAN RIGHTS IMPLICATIONS OF CLIMATE CHANGE** ..... **2**

1.1 Effects of Climate Change on Human Rights ..... 2
- (a) Impacts on Ecosystems and Natural Resources ..... 3
  - (i) Freshwater Resources ..... 3
  - (ii) Terrestrial Ecosystems ..... 4
  - (iii) Coastal Systems and Low-lying Areas ..... 4
  - (iv) Ocean Systems ..... 4
  - (v) Food Security and Production Systems ..... 5
- (b) Impacts on Physical Infrastructure and Human Settlements ..... 5
  - (i) Urban Areas ..... 5
  - (ii) Rural Areas ..... 5
  - (iii) Key Economic Sectors and Services ..... 6
- (c) Impacts on Livelihoods, Health, and Security ..... 7
  - (i) Livelihoods and Poverty ..... 7
  - (ii) Human Health ..... 8
  - (iii) Human Security ..... 8

1.2 Effects of Mitigation and Adaptation on Human Rights ..... 8
- (a) Mitigation ..... 8
- (b) Adaptation ..... 10
- (c) Geoengineering ..... 10

**PART 2: THE OBLIGATIONS OF GOVERNMENTS AND PRIVATE ACTORS TO RESPOND TO THE HUMAN RIGHTS IMPLICATIONS OF CLIMATE CHANGE** ..... **11**

2.1 The Progressive Recognition of Human Rights Obligations Relating to the Environment and Climate Change ..... 12
- (a) Recognition of Human Rights Obligations Relating to the Environment ..... 12
- (b) Recognition of Human Rights Obligations Relating to Climate Change ..... 12

2.2 Governmental Obligations to Address the Human Rights Implications of Climate Change ..... 15
- (a) Procedural Obligations ..... 16
  - (i) Ensuring Access to Information and Conducting Environmental Assessments ..... 16
  - (ii) Public Participation in Environmental Decision-making ..... 17
  - (iii) Access to Administrative, Judicial, and Other Remedies ..... 18
- (b) Substantive Obligations ..... 19
  - (i) Adaptation Obligations: Protecting Human Rights From Climate Related Harms ..... 20
  - (ii) Domestic Mitigation Obligations ..... 22
  - (iii) International Cooperation Obligations ..... 24
  - (iv) Obligations to Address Transboundary Harm ..... 25
  - (v) Safeguarding Human Rights in Mitigation and Adaptation Activities ..... 26

(c) Obligations to Specific Groups ....27
(i) Women ....27
(ii) Children ....28
(iii) Indigenous Peoples ....28

2.3 Private Sector Obligations to Address the Human Rights Implications of Climate Change ....29

**PART 3: IMPLEMENTATION ASSESSMENT ....30**

3.1 Human Rights and Climate Change in National Communications ....30

3.2 Mitigation Measures and Commitments ....31

3.3 Adaptation Measures and Commitments ....32

3.4 Financial and Technical Assistance to Developing Countries ....33

3.5 Respect for Procedural Rights in Climate Policies and Planning ....34

3.6 Human Rights Safeguards in International Climate Finance Mechanisms ....36
(a) Clean Development Mechanism ....36
(b) REDD+ ....37
(c) Green Climate Fund ....38
(d) Adaptation Fund ....38
(e) Global Environment Facility ....39

**PART 4: RECOMMENDATIONS ....40**

4.1 International Cooperation ....40

4.2 National Measures ....42

4.3 Local Governments and Private Actors ....42

**CONCLUSION ....43**

# Foreword

Climate change is one of the greatest threats to human rights of our generation, posing a serious risk to the fundamental rights to life, health, food and an adequate standard of living of individuals and communities across the world. This report aims to support government and private decision makers by assessing the relationship between climate change and human rights law.

While the United Nations and national governments acknowledge that climate change and the responses to it can impact on human rights, there is less agreement on the corresponding obligations of governments and private actors to address this problem. The relationship between human rights and the environment has been much debated over the past few decades, supported by UNEP, OHCHR and the Human Rights Council-appointed Special Rapporteur, specifically the identification of positive, mutually reinforcing links between the fields of law and policy.

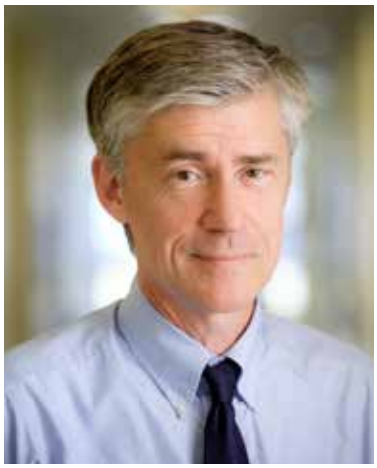
This UNEP report sheds light on the human rights obligations of both governments and private actors in responding to climate change, including those relating to rights to information, public participation in decision-making and access to justice, as well as obligations relating to adaption and mitigation.

The report makes a number of recommendations on how governments and other actors may address climate change. These include the need to recognize the link between climate change and human rights in climate-related processes and activities. The report also highlights the need for greater ambition with regard to mitigation, human rights safeguards for international climate finance mechanisms, financial assistance for developing countries faced with adaptation, and the development of an international mechanism on climate-induced displacement and migration. In addition, the report proposes a number of new human rights-related mechanisms for international coordination and accountability in delivering these outcomes.

The Paris agreement is a stepping stone rather than the end objective for climate change action. So I hope that, whatever the outcome, this report will become a central reference for anybody involved in making climate or environmental related decisions in the crucial years ahead.

**Achim Steiner**
**UNEP Executive Director**

# Foreword



Ten years ago, the Inuit people asked the Inter-American Human Rights Commission to hear their claim that the unchecked effects of climate change were violating their human rights. At the time, the request seemed quixotic, especially after the Commission declined to hear the case. In retrospect, however, the Inuit petition was the first harbinger of a sea-change in how the international community thinks about climate change.

In 2007, a group of small island states came together to adopt the Male' Declaration, the first intergovernmental statement that "climate change has clear and immediate implications for the full enjoyment of human rights." The next year, they convinced the United Nations Human Rights Council to adopt the first of what became a series of resolutions linking climate change to a host of impacts on human rights. The Office of the High Commissioner for Human Rights then issued a seminal report describing those effects. And in 2010, the State Parties to the UN Framework Convention on Climate Change agreed in Cancun that the "Parties should, in all climate change related actions, fully respect human rights." The relevance of human rights to climate change is now universally recognized. On Human Rights Day last year, December 10, 2014, all 78 UN human rights mandate-holders came together to issue a joint statement underscoring the threat climate change poses to human rights, and unanimously calling on States "to make sure that human rights are at the core of climate change governance."

At the same time, the human rights norms relating to the enjoyment of a safe, clean, healthy and sustainable environment have been clarified. As the first UN Independent Expert (and as of March 2015, the first Special Rapporteur) on human rights and the environment, I have had the honor of hearing from practitioners and scholars all over the world how human rights are being applied to environmental problems generally and to climate change in particular. The question is no longer whether human rights law has anything to say about climate change, but rather what it says and how it can best be brought to bear.

This report is the most detailed and comprehensive study yet undertaken of those questions. It arrives at a critical moment, as the Parties to the UNFCCC meet in Paris to begin a new chapter in our generational effort to defeat climate change. The report provides an indispensable basis for climate policy going forward, helping us see in detail how climate change threatens our ability to enjoy our human rights, and also how the exercise of human rights can inform and guide our climate policies. As the report makes clear, a human rights perspective on climate change not only provides a stark warning of what is at stake - it also gives us a beacon of hope that we can solve this problem together.

**John H. Knox,**
**UN Special Rapporteur on human rights and the environment**

# Executive Summary

It has long been recognized that a clean, healthy and functional environment is integral to the enjoyment of human rights, such as the rights to life, health, food and an adequate standard of living. Anthropogenic climate change is the largest, most pervasive threat to the natural environment and human societies the world has ever experienced. The latest assessment report from the Intergovernmental Panel on Climate Change (IPCC) describes how observed and predicted changes in climate will adversely affect billions of people and the ecosystems, natural resources, and physical infrastructure upon which they depend. These harmful impacts include sudden-onset events that pose a direct threat to human lives and safety, as well as more gradual forms of environmental degradation that will undermine access to clean water, food, and other key resources that support human life.

As a consequence, climate change will have a profound effect on the enjoyment of human rights for individuals and communities across the planet. This is not merely an abstract, future possibility. Climate change is already affecting temperatures, hydrologic conditions, ecosystem functioning, and agricultural productivity in many regions. Displacement is also an imminent prospect for some communities, such as those situated in the rapidly melting Arctic and low-lying coastal areas.

Further complicating the picture, measures undertaken to mitigate greenhouse gas (GHG) emissions and adapt to climate change can themselves adversely affect the enjoyment of human rights. The international community has pledged to allocate or direct $100 billion (US) per year to funding mitigation and adaptation projects in developing nations. It is critical that as the world endeavors to address climate change, it do so with full respect for human rights.

This report describes how governments and other actors may address climate change in a manner consistent with their obligations to respect, protect, promote and fulfill human rights. One key goal is to inform the decisions undertaken by the Conference of the Parties to the United Nations Framework Conference on Climate Change (UNFCCC). However, the analysis and recommendations set forth in this report are not limited to the current round of international climate negotiations. Another key goal is to inform decisions and actions undertaken by nations, sub-national governments, international organizations and private actors pursuing climate action both within and beyond the context of the UNFCCC in the coming years.

Part I describes the latest projections and observations of how climate change impacts and responses can affect the environment, individuals and communities. Some of the key findings include:

- The impacts of climate change on freshwater resources, ecosystems, and human settlements are already undermining access to clean water, food, shelter, and other basic human needs; interfering with livelihoods; and displacing people from their homes. Even if we remain within the international goal of 2° C of global warming, these impacts will expand dramatically in the coming decades.

- These impacts constitute a serious interference with the exercise of fundamental human rights, such as the rights to life, health, water, food, housing, and an adequate standard of living.

- Mitigation, adaptation, and geoengineering measures can also adversely affect the exercise of human rights. For example, there are documented instances of hydroelectric and biofuel projects that have resulted in human rights violations. There is also a high risk of human rights violations resulting from the implementation of resettlement programs for those who are displaced or at risk of displacement due to climate change, and a corresponding need to ensure that such programs are undertaken with adequate input and consent from those who are relocated.

Part II summarizes the obligations of governments and private actors to respond to these impacts. This section begins by reviewing how UN agencies and national governments have come to understand the relationship

between climate change and human rights. It then provides a more detailed discussion of specific obligations in this context. These include:

- Procedural obligations for all governments to ensure that the affected public is: (i) adequately informed about the impacts of climate change and the measures undertaken to both mitigate and adapt to climate change; (ii) adequately involved in public decisions about climate change; and (iii) given access to administrative, judicial, and other remedies when rights are violated as a result of climate change and responses to it.

- Substantive obligations for all governments to: (i) protect human rights from climate-related harms; (ii) respond to the core drivers of climate change by regulating GHG emissions within their jurisdiction; (iii) cooperate internationally to protect human rights against climate-related harms; (iv) address the transboundary impacts of climate change; and (v) safeguard human rights in all mitigation and adaptation activities.

- States also have unique obligations with respect to certain groups, including women, children, and indigenous peoples. Notably, states must obtain free, prior and informed consent (FPIC) before undertaking any measures that would adversely affect the traditional lands and resources of indigenous peoples.

- Private actors also have obligations to address the human rights implications of climate change, and should refer to the UN Guiding Principles on Business and Human Rights to ensure that they fully respect human rights in all activities.

Part III discusses the implementation of these obligations, focusing primarily on activities undertaken by national governments either within or outside of the UNFCCC context. It documents several recent developments in this area:

- Some states are beginning to recognize the linkages between human rights and climate change in reports submitted to the UNFCCC secretariat, but this is not the case for the majority of developed nations.

- There is a significant "emissions gap" between the mitigation commitments set forth in the Intended Nationally Determined Contributions (INDCs) and the emission reductions required to keep warming at or below 2°C.

- There is also a significant "adaptation finance gap" in terms of what will be needed to adapt to climate change and the finance, technology and capacity available.

- Finally, there is a significant "finance gap" between the financial and technical assistance that has been given or pledged to developing countries and the resources that will be required to ensure that climate change does not interfere with the exercise of human rights in those countries. This is true even if we do meet the 2°C target.

- Most international climate finance mechanisms are accompanied by safeguards to protect human rights, but there is room for improvement, especially with respect to the monitoring and assessment of these programs and any human rights violations.

Part IV provides recommendations on how national governments and other actors can better integrate human rights considerations into their mitigation and adaptation activities. Our key recommendations for the parties to the UNFCCC include:

- National parties should commit to **more ambitious mitigation targets** to ensure that the global average temperature increase remains at or below 2°C.
- The COP should **recognize the link between climate change and human rights** in the Paris Agreement.
- The **safeguards for the various climate finance mechanisms should be made uniform and revised** to ensure full respect for human rights.
- National parties should **increase financial and technical assistance** to developing countries that are most vulnerable to the impacts of climate change, to protect human rights in those areas.
- National parties should continue to discuss the issue of **loss and damage** in a transparent way that will address the concerns of all affected countries.

The report also contains other recommendations to national governments on measures they can adopt unilaterally to protect human rights in the context of climate change, as well as recommendations to local governments and private actors.

*Glacial melt in the Hindu Kush-Himalayas.*

# Introduction

The natural environment provides human beings and the communities in which we live with the resources we need to achieve lives of dignity and well-being – clean air to breathe; clean water to drink; food to eat; fuels for energy; protection from storms, floods, fires and drought; climate regulation and disease control; and places to congregate for aesthetic, recreational and spiritual enjoyment. These environmental endowments—often referred to as ecosystem services—are at once essential to core survival and vital to human flourishing. As the nations of the world declared in *The Future We Want*, the outcome document of the 2012 Rio+20 conference, sustainable development requires that we angle toward "harmony with nature."[1] To achieve this idea, we must balance economic, social and human development with "ecosystem conservation, regeneration and restoration and resilience in the face of new and emerging challenges."[2]

The nature of the linkages between the environment and human rights has been debated for years. However, it has long been recognized that a clean, healthy and functional environment is integral to the enjoyment of human rights, such as the rights to life, health, food and an adequate standard of living. This recognition offers one reason the international community has banded together through multilateral environmental agreements (MEAs) to prohibit illegal trade in wildlife, to preserve biodiversity and marine and terrestrial habitats, to reduce transboundary pollution, and to prevent other behaviors that harm the planet and its residents. In short: Environmental protection protects human rights. At the same time, adherence to human rights—such as those that ensure public access to information and participation in decision making—contributes to more just decisions about the utilization and protection of environmental resources, and protects against the potential for abuse under the auspices of environmental action. Thus, domestic environmental laws and MEAs can both be strengthened through the incorporation of human rights principles, even as they contribute to the ongoing realization of human rights.

Anthropogenic climate change is the largest, most pervasive threat to the natural environment and human rights of our time. Climate change has already begun to have far-reaching environmental impacts, including many adverse effects on wildlife, natural resources and the ecological processes that support access to clean water, food, and other basic human needs. These impacts, combined with direct harms to people, property, and physical infrastructure, pose a serious threat to the enjoyment and exercise of human rights across the world.[3] The mandate to take immediate action to both reduce the greenhouse gas emissions that contribute to global climate change and enact measures that reduce vulnerability and increase resilience to climate change impacts is clear. Yet, certain responses to climate change—including both mitigation and adaptation activities—can also interfere with human rights, as has been the case for a number of hydroelectric and biofuel projects undertaken, in part, to reduce global greenhouse gas emissions. It is critical that as the world endeavors to address the "super wicked" problem of climate change it do so with full respect for human rights.

Over the course of the last decade the international community has arrived at a clear consensus on all of these issues. Yet, while United Nations agencies and national governments have explicitly acknowledged that climate change and responses to climate change can impair human rights, there has been less agreement on the corresponding obligations of governments and private actors to address this problem. The purpose of this report is to inform the decisions undertaken by the Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) at COP-21, as well as other activities undertaken by governments and private actors, by providing an up-to-date assessment of the relationship between climate change and human rights law and by making recommendations for incorporating a human rights lens into international and domestic climate action. Part I describes the latest projections and observations of how climate change impacts and responses can affect the environment, individuals and communities and the exercise of human rights. Part II summarizes the obligations of governments and private actors to respond to these impacts. Part III discusses the implementation of these obligations, focusing primarily on activities undertaken by national governments either within or outside of the UNFCCC context. Part IV provides recommendations on how the COP, national governments, and other actors can better integrate human rights considerations into their mitigation and adaptation activities.

1 UN GA Res. 66/288, *The Future We Want*, p. 40, UN Doc. A/RES/66/288 (July 7, 2012).
2 *Id. p. 4.*
3 *See, e.g.,* UNHRC Resolutions 10/4 (March 25, 2009), 18/22 (Oct. 17, 2011), and 26/27 (June 27, 2014).

*Rising sea levels and changing salinity pose a serious threat to mangrove ecosystems, like those found along the coast of Los Haitises National Park, Dominican Republic.*

# The Human Rights Implications of Climate Change

## 1.1 Effects of Climate Change on Human Rights

Climate change poses an enormous threat to the lives and well-being of individuals and communities across the world. The Intergovernmental Panel on Climate Change (IPCC)'s Fifth Assessment Report (AR5) provides a detailed picture of how the observed and predicted climactic changes will adversely affect millions of people and the ecosystems, natural resources, and physical infrastructure upon which they depend.[4] These harmful impacts include sudden-onset events that pose a direct threat to human lives and safety, as well as more gradual forms of environmental degradation that will undermine access to clean water, food, and other key resources that support human life.

Thus, climate change will have a profound effect on the enjoyment of human rights for billions of people. This is not merely an abstract, future possibility. Climate change is already contributing to drought, ecosystem degradation, and food shortages across the world.[5] Some regions are hit harder than others, with more clearly attributable linkages to climate change—for example, sea level rise has adversely affected the safety and livelihoods of many coastal inhabitants,[6] and rising temperatures are causing significant changes in the Arctic ecosystems that support many indigenous communities.[7]

4 IPCC, Climate Change 2014: Impacts, Adaptation, and Vulnerability, Contribution of the Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (Cambridge University Press 2014).
5 *Id. See also* Oxfam, Entering Uncharted Waters: El Niño and the Threat to Food Security (2015).
6 Anthony Oliver-Smith, *Sea Level Rise and the Vulnerability of Coastal Peoples: Responding to the Local Challenges of Global Climate Change in the 21st Century*, UNU-EHS Publication No.7/2009 (July 2009).
7 Sheila Watt-Cloutier, *Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States* (Dec. 7, 2005) [hereinafter Inuit Petition].

This section briefly summarizes the findings of the IPCC AR5, specifically the contribution of Working Group II on Impacts, Adaptation, and Vulnerability. For each impact area, the effect on specific human rights is also noted.[8] A more detailed summary of what these rights entail is provided in Appendix A. The discussion focuses on impacts that are projected to occur under the intermediate emissions scenarios (RCP4.5 and RCP6.0), corresponding with a global mean temperature increase between 1.1 and 3.1C. The severity of these impacts will be significantly worse in a high emissions scenario (RCP8.5), which would correspond with a temperature increase between 2.6 and 4.8°C.

## (a) Impacts on Ecosystems and Natural Resources

### *(i) Freshwater Resources*

According to IPCC projections, climate change will significantly reduce surface water and groundwater resources in most dry subtropical regions, thus intensifying competition for water among agriculture, ecosystems, settlements, industry, and energy production, and affecting regional water, energy, and food security.[9] Climate change will also increase the frequency of droughts in presently dry areas. The primary drivers of these projected water shortages and droughts include: (i) reduced rainfall, (ii) reduced snowpack, resulting in less snowmelt supplying rivers and streams; (iii) higher temperatures, which increase evaporation from surface water and soils; and (iv) sea level rise, which contributes to saltwater inundation of freshwater resources. In addition, variations in the timing, magnitude, and type of precipitation, as well as temperature increases and sea level rise, can harm freshwater ecosystems by changing stream flow and water quality. This can also lead to the degradation of water supplies for human consumption, agriculture, and other uses.

**Affected rights:** right to water and sanitation, right to health, right to life, right to food, right to an adequate standard of living.

*Climate change will reduce freshwater availability in arid regions that are already suffering from severe water shortages and drought, such as the remote Turkana region of Northern Kenya, where residents had to collect water from dry riverbeds during a period of prolonged drought.*

8 The rights identified in this report are based on the core international human rights treaties. For the full text of these treaties and protocols, see UN Office of the High Commissioner for Human Rights (OHCHR), The Core International Human Rights Treaties (2014), *available at* http://www.ohchr.org/Documents/Publications/CoreInternationalHumanRightsTreaties_en.pdf. For an explanation of treaty implementation, see OHCHR, The United Nations Human Rights Treaty System, Fact Sheet No. 30, Rev. 1 (2012), *available at* http://www.ohchr.org/Documents/Publications/FactSheet30Rev1.pdf. For a more detailed overview of specific rights, such as the rights to water, food, health, and housing, see OHCHR, *Publications and Resources: Fact Sheets,* http://www.ohchr.org/EN/PublicationsResources/Pages/FactSheets.aspx (last visited Nov. 12, 2015)

9 IPCC (2014), *supra* note 4, at 232.

### *(ii) Terrestrial Ecosystems*

Even under the intermediate emissions scenarios there is a "high risk" that climate change will cause "abrupt and irreversible regional-scale change in the composition, structure, and function of terrestrial and freshwater ecosystems" in this century.[10] Many plant and animal species have already moved their ranges and changed their behavior in response to observed climate change over recent decades, but many others will be unable to move quickly enough or otherwise adapt to changing climactic conditions.[11] Thus, the IPCC predicts that climate change will "reduce the populations, vigor, and viability" of many species, especially those with spatially restricted populations, and will increase the extinction risk for many species.[12]

In addition, increased tree death has been observed in many places worldwide, and there is high confidence that this can be attributed to climate change in some regions.[13] "Forest dieback" is a major environmental risk, which has potentially significant impacts on climate, biodiversity, water quality, wood production, and livelihoods. The drivers of tree death include high temperatures and drought, and changes in the abundance of insect pests and pathogens (related, in part, to warming).[14]

**Affected rights:** right to food, right to an adequate standard of living, right to health.

### *(iii) Coastal Systems and Low-lying Areas*

The IPCC projects that coastal systems and low-lying areas will increasingly experience adverse impacts such as submergence, flooding, erosion, and saltwater intrusion, primarily due to sea level rise (although increased precipitation and storm surges will also contribute to these impacts). For the two intermediate emissions scenarios, the projected mean sea level rise ranges from .36-.73 meters by 2100, with large regional and local variations.[15] There will also likely be an increase in the occurrence of the most severe tropical cyclones.[16] Finally, the physical composition of coastal and estuarine ecosystems will be altered by changes in precipitation and river flow, increased water temperatures, and ocean acidification, and this will contribute to a decline in biodiversity and ecosystem productivity along coastlines.[17]

The projected increase in the intensity of tropical cyclones, exacerbated by sea level rise and the degradation of ecosystems that provide protection from storms and flooding, will pose a direct threat to human lives and coastal settlements. Without adaptation, IPCC AR5 projects with high confidence that "hundreds of millions of people will be affected by coastal flooding and will be displaced due to land loss by year 2100."[18] Coastal communities will also be adversely affected by the more gradual degradation of land, soils, freshwater resources, and coastal and estuarine ecosystems.

**Affected rights:** right to life, right to health, right to housing, right to an adequate standard of living, right to food, right to water, right to property, right to self-determination.

### *(iv) Ocean Systems*

Climate change is altering the physical, chemical, and biological properties of the ocean; scientists have already observed large-scale distribution shifts of species and altered ecosystem composition as a result of ocean warming (e.g., the distribution of many fish and invertebrates have shifted poleward and/or to deeper, cooler waters).[19] The IPCC thus predicts that, in response to further warming by 1°C or more, there will be large, irreversible shifts in the spatial distribution of species and seasonal timing of their activities (feeding, growth, development, behaviors, and productivities), which will have implications for ecosystem goods and services.[20] It is likely that the spatial shifts of

10 *Id.* at 276.
11 *Id.* at 274-275.
12 *Id.* at 275.
13 *Id.* at 276.
14 *Id.*
15 *Id.* at 369.
16 There is not yet consensus on whether climate change will affect the severity of extratropical cyclones. *Id.* at 368.
17 *Id.* at 368.
18 *Id.* at 364.
19 *Id.* at 414.
20 *Id.*

marine species will cause species richness to increase at mid- and high latitudes, and decrease at tropical latitudes. This has serious implications for marine productivity and food security in tropical areas.[21]

**Affected rights:** right to food, right to an adequate standard of living, right to health.

### *(v) Food Security and Production Systems*

The effects of climate change on crop and terrestrial food production are already evident in several regions of the world. Some high-latitude regions, such as northeast China and the U.K., have experienced a modest increase in productivity as a result of recent warming trends.[22] However, changes in temperature and rainfall precipitation have also negatively affected wheat and maize production in many regions.[23] There is also evidence that extreme weather events (storms and flooding) have impacted food production, but it is not possible to say that these specific events were caused by climate change (although climate change will increase the likelihood of such events).[24] As noted above, climate change is also adversely impacting the productivity of fisheries.

Going forward, it is very likely that climate change will adversely impact the production of major crops (wheat, rice, and maize) in both tropical and temperate regions.[25] The food security risk will be greatest in low-latitude countries, where there is high confidence that crop production will be "consistently and negatively" affected by climate change in a 2°C warming scenario (and fishery production will also decline).[26] Even in the near term, the impacts on global food security could be devastating—for example, 10% of the projected impacts on food security under a 2°C warming scenario showed yield losses of more than 25% for the period 2030-2049.[27] Greater losses are expected after 2050.[28]

**Affected rights:** right to food, right to health, right to life, right to an adequate standard of living.

## (b) Impacts on Physical Infrastructure and Human Settlements

### *(i) Urban Areas*

Climate-related phenomena such as rising sea levels, coastal storms, heat stress, extreme precipitation, inland and coastal flooding, landslides, drought, increased aridity, water scarcity, and air pollution "will have profound impacts on a broad spectrum of city functions, infrastructures, and services and will interact with and may exacerbate many existing stresses."[29] Urban climate change-related risks are increasing, with widespread negative impacts on people and their health, livelihoods, and assets, as well as local and national economies and ecosystems.[30] These risks are amplified for those who live in informal settlements and hazardous areas, which often lack essential infrastructure and adaptive capacity, as well as individuals that are more vulnerable as a result of age, income, disability, or other factors.[31]

**Affected rights:** right to life, right to housing, right to health, right to water and sanitation, right to an adequate standard of living, right to property.

### *(ii) Rural Areas*

Climate change will affect water supply, food security, and agricultural incomes in rural areas.[32] This will have implications for human health, livelihoods, incomes, and migration patterns. Some of the key impacts that create risk for rural communities include: rising temperatures and heat waves, changing precipitation patterns, and

21 *Id.* at 414-415.
22 *Id.* at 491.
23 *Id.*
24 *Id.*
25 *Id.* at 488.
26 *Id.*
27 *Id.* at 504.
28 *Id.* at 488, 504.
29 *Id.* at 556.
30 *Id.* at 538.
31 *Id.*
32 *Id.* at 616.

*Changing precipitation patterns and higher temperatures can adversely affect food production in many parts of the world, such as Vietnam, where adaptation measures will be needed to protect food security and agricultural livelihoods.*

extreme weather events, and the corresponding impacts on human health, water supply, ecosystems, natural resources, crops, and physical structures. Rural areas are also uniquely vulnerable to the effects of climate change due to: (i) a greater dependence on agriculture and natural resources, such as fisheries and forests; and (ii) existing vulnerabilities caused by poverty, lower levels of education, physical isolation, and neglect by policymakers.[33] Rural areas in developing countries face the most significant risks due to their geographical location (where climate change impacts are projected to be most severe), lack of adaptive capacity, and heavy reliance on agriculture and natural resources.[34]

**Affected rights:** right to life, right to health, right to housing, right to food, right to water and sanitation, right to an adequate standard of living, right to property.

### *(iii) Key Economic Sectors and Services*

Climate change will affect a variety of economic sectors and services, including energy, water services, transport, agriculture and livestock, forestry, fisheries, tourism, and insurance. Food production systems, water supply systems, and other sectors and services that rely on natural resources in their supply chain are particularly vulnerable to the impacts of climate change.[35] Electricity systems will also be affected, both through direct climactic impacts (e.g., higher temperatures, lower water supply) and through increased demand for electricity, both of which can compromise electric grid reliability.[36]

33 *Id.* at 618.
34 *Id.* at 631.
35 *Id.* at 674, 676.
36 *Id.* at 664-672.

Current estimates of global annual economic losses due to additional temperature increases of approximately 2°C are between 0.2 and 2.0% of income, but actual losses are more likely than not to be greater than these estimates, and there will be large differences in economic losses both between and within countries.[37] Many of the direct and indirect economic losses will occur due to the decreased productivity of agricultural systems, fisheries, forests, and other natural resources. Other drivers of economic loss include direct impacts on human health, water shortages, and extreme weather events.

**Affected rights:** right to health, right to an adequate standard of living, right to food, right to water.

## (c) Impacts on Livelihoods, Health, and Security

### *(i) Livelihoods and Poverty*

Climate-related hazards, including gradual changes and extreme weather events, will affect peoples' livelihoods directly through impacts such as losses in crop yields; the destruction of natural resources, homes, and properties; and displacement. They will also have indirect effects on livelihoods by exacerbating other stressors—for example, climate change can contribute to: (i) increases in the prices of food, energy, and other critical commodities; (ii) political instability and large-scale conflict; and (iii) individual and household-level disturbances.[38]

Poverty, political instability, and conflict also undermine the ability of individuals and communities to adapt to climate change (e.g., by fortifying their physical assets or by moving to less vulnerable locations). Thus, climate change is one of many factors that can perpetuate a vicious cycle of poverty, deprivation, and inequality.[39]

**Affected rights:** right to an adequate standard of living, right to health, right to life, right to food, right to water, right to property.

*Aerial view of Kotzebue, Alaska, USA - an Inuit village facing the imminent prospect of displacement due to rising sea levels, melting permafrost, and erosion.*

37 *Id.* at 663.
38 For example, studies have found an increase in gender-based violence within households following climate-related disasters as well as slow-onset climate events, owing to greater stress and tension, loss and grief, and disrupted safety nets. *Id.* at 809.
39 *Id.* at 817.

### *(ii) Human Health*

There is evidence that climate change has already contributed to health problems in some regions, and if climate change continues as projected under various scenarios, the major health impacts will include: (i) greater risk of injury, disease, and death due to more intense heat waves and fires; (ii) increased risk of under-nutrition resulting from diminished food production in poor regions; (iii) health consequences stemming from lost work capacity and reduced labor productivity in vulnerable populations; and (iv) increased risk of food-, water- and vector-borne diseases. [40] In some regions, the combined effects of higher average temperatures and higher humidity will also create significant health risks (especially those regions that already exceed the international standard for safe work activity during the hottest months of the year). Although there may be some positive health impacts, these will be increasingly outweighed by the magnitude and severity of negative health effects.[41]

**Affected rights:** right to health, right to life.

### *(iii) Human Security*

Climate change will threaten human security[42] by increasing the scarcity of key resources (e.g., water, food, land, and other natural resources), undermining livelihoods, compromising culture and identity, increasing displacement and migration, and challenging the ability of states to provide the conditions necessary for human security. Each of these impacts can directly affect human security, and can also contribute to political instability and violent conflict.[43]

**Affected rights:** right to life, right to an adequate standard of living, right to a nationality, right to self-determination, right to mobility, right to property.

## 1.2 Effects of Mitigation and Adaptation on Human Rights

The manner in which governments and other actors respond to the challenges of climate change can also affect the enjoyment of human rights. This is true for actions undertaken to mitigate the greenhouse gas (GHG) emissions that contribute to climate change, as well as projects undertaken to adapt to the impacts of climate change.

### (a) Mitigation

There are numerous examples of how certain kinds of mitigation projects undertaken to reduce or sequester GHG emissions can adversely affect the rights of certain groups. The most egregious violations have occurred in the context of:

1. **Hydroelectric projects**, which often lead to displacement of local people and the destruction of ecosystems upon which they depend, and can also harm the health and livelihoods of people living downstream from the project by reducing river flows.[44]

2. **Biofuels policies and projects,** which can contribute to food shortages and price shocks, additional water stress and scarcity, widespread deforestation, and displacement of indigenous peoples and

40 *Id.* at 713.

41 Positive health impacts include modest reductions in cold-related mortality and morbidity in some areas due to fewer cold extremes, and reduced capacity of disease-carrying vectors due to extreme heat. *Id.*

42 In the IPCC report, "human security" is defined as "a condition that exists when the vital core of human lives is protected, and when people have the freedom and capacity to live with dignity." *Id.* at 759.

43 For example, in a report on Syria, the former Special Rapporteur on the Right to Food described how severe droughts, exacerbated by climactic changes in the region, led to crop failures and food shortages, thus undermining the right to food. Olivier De Schutter, Special Rapporteur on the Right to Food, *Addendum, Mission to the Syrian Arab Republic*, U.N. Doc. A/HRC/16/49/Add.2 (Jan. 27, 2011). Since then, the drought and food shortages have contributed to political instability and violent conflict, resulting in deaths, injuries and displacement of millions of people. *See also* U.N. Secretary-General, *Climate change and its possible security implications: Report of the Secretary-General*, UN Doc. A/64/350 (Sept. 11, 2009).

44 IFC Compliance Advisor Ombudsman, Complaint, Guatemala / Real LRIF-01/Coban (Oct. 29, 2014) (complaint submitted to IFC alleging social and environmental harms from Santa Rita dam); Economic, Social & Cultural Rights and Climate Change: A Legal Reference Guide 68-69 (Sébastien Jodoin & Katherine Lofts eds., CISDL, GEM & ASAP 2013); Naomi Roht-Arriaza, *"First, Do No Harm': Human Rights and Efforts to Combat Climate Change*, 38 Ga. J. Int'l. & Comp. L. 593, 597-98 (2010); Victoria Tauli-Corpuz & Aqqaluk Lynge, *Impact of Climate Change Mitigation Measures on Indigenous Peoples and on their Territories and Lands*, study presented at the UN Economic and Social Council, Permanent Forum on Indigenous Issues, 7th session, E/C.19/2008/10 (2008); Tania Bodero et al., *Request to meet about the Barro Blanco project during July 2013 visit to Panama* (Centro de Incidencia Ambiental 2013).

*Costa Pinto Biomass Cogeneration Plant in Piracicaba, São Paulo, Brazil.*

small-scale farmers through land acquisitions.[45] According to a 2008 Oxfam Report, the "scramble to supply" biofuels like palm oil, which was partly driven by EU biofuel targets, exacerbated the food price crises, brought "30 million people into poverty," and put 60 million indigenous people at risk.[46] Numerous adverse impacts on local stakeholders and human rights violations have also been documented in the context of specific biofuel projects.[47]

Many of these projects have been funded through the UNFCCC Clean Development Mechanism (CDM) and other climate finance mechanisms.[48] Concerns have also been raised about the potential effect of the Reducing Emissions from Deforestation and Forest Degradation (REDD/REDD+) program on indigenous groups and local stakeholders—specifically, that: (i) there may not be sufficient opportunities for input and consent from the people whose lives and livelihoods are affected by REDD/REDD+ projects; (ii) the commodification of forest carbon sequestration services will lead to land grabs that will displace people who lack adequate legal protections and land tenure; and (iii) the payments for those sequestration services will not be equitably distributed among local stakeholders.[49]

On a more general level, there are concerns about the distributional consequences of mitigation policies. Carbon pricing schemes, for example, can have a disproportionate effect on indigenous peoples, the poor, and other

45 FAO, Climate Change Adaptation and Mitigation: Challenges and Opportunities in the Food Sector 7 (2012); Nicola Colbran, *Indigenous Peoples in Indonesia: At Risk of Disappearing as Distinct Peoples in the Rush for Biofuel?* 18 Int'l J. on Minority & Group Rights 63 (2011); UNDP, Human Development Report 2007/2008, Fighting climate change: human solidarity in a divided world 143 (2007); International Council on Human Rights, Climate change and Human Rights: A Rough Guide 33-36 (2008), at 33-36; Olivier De Schutter, Special Rapporteur on the Right to Food, *Building Resilience: A Human Rights Framework for World Food and Nutrition Security*, ¶ 31, UN Doc A/HRC/9/23 (2008).

46 Oxfam, Climate Wrongs and Human Rights: Putting People at the Heart of Climate-Change Policy 15-16 (2008).

47 Accountability Counsel, Fueling Human Rights Disasters: An examination of the U.S. Overseas Private Investment Corporation's Investment in Buchanan Renewables (2014); ActionAid, Feeling the biofuels pressure: Human rights abuses in Guatemala (2013); Center for Human Rights and Global Justice, Foreign Land Deals and Human Rights: Case Studies on Agricultural and Biofuel Investment (NYU School of Law 2010).

48 Jeanette Schade and Wolfgang Obergassel, *Human Rights and the Clean Development Mechanism*, 27 Cambridge Review of International Affairs 717 (2014); Roht-Arriaza (2010), *supra* note 44, at 597-598. *See also* Jake Abrahamson, *An Indian Coal Plant's Human Rights Crisis,* Sierra, July 4, 2015 (discussing human rights abuses associated with the construction of the Sasan coal-fired power plant, which received CDM support because it employed more efficient coal technology); Anuradha Munshi, Bank Information Center Trust, *Sasan Ultra Mega Power Project – A Brief Report* (Sept. 2013) (further detailing adverse consequences on local communities associated with the Sasan project).

49 Arturo Balderas Torres & Margaret Skutsch, *Challenges for Pro-Poor Benefit Sharing Schemes in the Implementaiton of REDD+ in Mexico*, Technical Series: Forest Governance and Economics, No. 2 (IUCN 2014); Cristiane Faustino and Fabrina Furtado, *The Green Economy, Forest Peoples and Territories: Rights Violations in the State of Acre* (Platforma de Dirietos Humanos, Econômicos, Sociais, Culturais e Ambientais 2014); Aled Dilwyn Fisher, A Human Rights-Based Approach to the Environment and Climate Change: GI-ESCR Practitioner's Guide 11 (2014); David Takacs, *Environmental Democracy and Forest Carbon (REDD+),* UC Hastings Legal Studies Research Paper No. 103 (2014); Joyeeta Gupta et al., Climate Change, Forests, and REDD: Lessons for Institutional Design (Routledge 2013); Annalisa Savaresi, *REDD+ and Human Rights: Addressing Synergies between International Regimes*, 18 Ecology and Soc'y J. 5 (2013); Margaret Skutsch, *Slicing the REDD+ Pie: Controversies Around the Distribution of Benefits* (2012).

vulnerable groups, who may suffer greater hardship due to the increased price of energy, fuel, and goods.[50] Some commentators have also suggested that the commoditization of carbon emissions rights will contribute to, rather than alleviate, existing economic disparities between and within countries.[51] These concerns may be alleviated through proper regulatory design, such as by including relief from increased costs or encouraging distributional equity in project siting decisions.

### (b) Adaptation

Both the failure to adapt and the implementation of adaptation measures can interfere with human rights, particularly for the most vulnerable. One concern is that some adaptation programs, may benefit one group to the detriment of another—as might be the case for coastal fortifications that protect one community while exposing another to greater risk of erosion and/or flooding. There is also the risk that adaptation measures will be undertaken without the necessary public consultation and may result in outcomes that adversely affect the very persons they aim to protect. There is a risk of human rights violations in the context of relocation and resettlement programs, and a corresponding need to ensure that such programs are undertaken with adequate input and consent from those who are relocated. It should be noted that both the Adaptation Fund and the Green Climate Fund have put in place environmental and social safeguards.

### (c) Geoengineering

Geoengineering refers to the deliberate and large-scale manipulation of natural systems through measures aimed at preventing or mitigating the effects of climate change, such as solar radiation management and ocean iron fertilization. Although there have not yet been any significant field tests of geoengineering technology, far less any large-scale geoengineering projects, it is important to note that such projects could seriously interfere with the enjoyment of human rights for millions and perhaps billions of people. For example, one recent study of five potential geoengineering methods deployed in high GHG emissions scenarios concluded that these methods could severely disrupt ocean and terrestrial ecosystems.[52] These disruptive effects could undermine the provision of ecosystem goods and services, thus interfering with access to food, clean water, and other key resources. Another study found that proposals for solar radiation management would cause widespread regional-scale changes in precipitation.[53] Such shifts could lead to increases in storms and flooding in some areas and drought in others, with adverse impacts on natural ecosystems and human settlements. In addition, there is at this time no mechanism in place to ensure that governments or private parties carrying out geoengineering projects coordinate with the international community, or even disclose information to allow for public participation.

50 *See, e.g.,* Jodoin & Lofts (2013), *supra* note 44, at 31-32; Karen Bubna-Litic, *Climate Change Impacts on the Poor – A Case Study of Australia's Indigenous Population and the Impact of Australia's Response on this Population*, in Poverty Alleviation and Environmental Law (Yves Le Bouthillier et al. eds., Edward Elgar 2012).

51 *See, e.g.,* Torres & Skutsch (2014), *supra* note 49; Gupta et al. (2013), *supra* note 49; Mark Wilson, *The Green Economy: The Dangerous Path of Nature Commoditization*, 10 Consilience: The Journal of Sustainable Development 85 (2013).

52 David Keller et al., *Potential Climate Engineering Effectiveness and Side Effects During a High Carbon Dioxide-Emission Scenario,* 5 Nature Communications 3304 (2014).

53 J.A. Crook et al., *A Comparison of Temperature and Precipitation Responses to Different Earth Radiation Management Geoengineering Schemes,* 120 Journal of Geophysical Research: Atmospheres DOI 10.1002/2015JD023269 (2015).

Blog do Planalto (2012)

# PART II

*World Leaders in attendance at Rio+20*

## The Obligations of Governments and Private Actors to Respond to the Human Rights Implications of Climate Change

While the linkages between climate change and human rights are clear, it is only in the past decade that UN human rights bodies and national governments have begun to develop consensus on this issue. Thus far, the consensus has extended to the understanding that climate change will interfere with the full enjoyment of human rights, as detailed in Part 1. There is less agreement on the nature of corresponding obligations of governments and private actors to address the human rights implications of climate change. However, there are several well-established and emerging principles that are applicable in this context.

This section provides a brief history of how UN agencies and national governments have come to understand the relationship between climate change and human rights, before turning to a more detailed discussion of specific obligations for international agencies, national governments and private actors.[54] The obligations discussed here are primarily based on the rights enumerated in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as these comprise the core of international human rights law. State commitments under the UNFCCC and other agreements are also discussed in relation to these core treaty obligations. It is worth noting that a country's legal obligations may differ depending on which treaties it has ratified. It is beyond the scope of this paper to highlight all of these differences; however, there is growing consensus that most or all of the rights enumerated in the UDHR constitute customary international law, and as such, they are binding on all states regardless of treaty ratification status.[55]

54 For detailed discussion of this political process, and the various positions of specific national governments, see John H. Knox, *Linking Human Rights and Climate Change and the United Nations*, 33 Harvard Environmental Law Review 477 (2009).

55 *See, e.g.,* Olivier De Schutter, International Human Rights Law: Cases, Materials, Commentary 63-66 (Cambridge University Press 2014); Theodor Meron, Human Rights and Humanitarian Norms as Customary Law (Clarendon Press 1989); Louis Henkin, *Human Rights and State "Sovereignty"*, 25 Georgia Journal of International Law 37 (1995-1996).

## 2.1 The Progressive Recognition of Human Rights Obligations Relating to the Environment and Climate Change

### (a) Recognition of Human Rights Obligations Relating to the Environment

The core international human rights treaties do not recognize a freestanding right to a clean environment. However, it is generally understood that inadequate environmental conditions can undermine the effective enjoyment of other enumerated rights, such as the rights to life, health, water, and food. Some of the UN human rights treaties explicitly recognize this link. The ICESCR, for example, directs states to adopt measures as may be necessary for the "improvement of all aspects of environmental and industrial hygiene" in order to fully realize the right to health.[56] The Convention on the Rights of the Child (CRC) directs states to account for the "dangers and risks of environmental pollution" to ensure full implementation of the right to health for children.[57]

In addition, the 1972 Stockholm Declaration recognized that there is "a fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being."[58] While this declaration apparently recognizes a right to an adequate environment, it lacks the force of a binding treaty. Nonetheless, as noted by the Office of the UN High Commissioner for Human Rights (OHCHR), this declaration reflects a "general recognition of the interdependence and interrelatedness of human rights and environment."[59] OHCHR's conclusion is supported by the UN Independent Expert on Human Rights and the Environment's 2013 mapping report, which concluded that "[h]uman rights law includes obligations relating to the environment" that include both procedural obligations and substantive obligations.[60]

Finally, the right to a clean environment has either been expressly included in or interpreted as a fundamental component of many regional human rights agreements and national constitutions.[61]

### (b) Recognition of Human Rights Obligations Relating to Climate Change

Two key events sparked a searching international dialogue on human rights and climate change. First, in December 2005, the Chair of the Inuit Circumpolar Conference (ICC) submitted a petition to the Inter-American Commission on Human Rights (IACHR) requesting relief for human rights violations resulting from the impacts of global warming and climate change. The petition specifically alleged that the United States—the largest cumulative emitter of greenhouse gas (GHG) emissions to date—had violated the Inuit's human rights by failing to adopt adequate GHG controls.[62] Although the IACHR never issued a decision, the petition did succeed in drawing public attention to the severe effects of global warming on the Inuit and sparking further dialogue about the human rights implications of climate change.[63]

Second, in November 2007, the Small Island Developing States (SIDS) adopted the Male' Declaration on the Human Dimension of Global Climate Change. The Male' Declaration was the first international agreement to explicitly recognize that "climate change has clear and immediate implications for the full enjoyment of human rights." It also called upon the Conference of the Parties (COP) to the UNFCCC and the UN human rights bodies to launch a collaborative process for assessing the human rights implications of climate change.[64] That same month, OHCHR issued a public statement for the Bali Climate Change Conference (COP-13) acknowledging that "climate change can adversely affect the fundamental human rights of present and future generations" and reminding the

56 ICESCR Art. 12(2)(b).
57 CRC Art. 24(2)(c).
58 Declaration of the UN Conference on the Human Environment ("Stockholm Declaration"), June 16, 1972, Principle 1.
59 OHCHR further explains: "the United Nations human rights treaty bodies all recognize the intrinsic link between the environment and the realization of a range of human rights…." *Report of the OHCHR on the Relationship Between Climate Change and Human Rights,* UN Doc. A/HRC/10/61, Jan. 15, 2009 at paras 17-18.
60 HRC, *Report of the Independent Expert on the issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, John H. Knox,* pp. 79-81, A/HRC/25/53 (Dec. 30, 2013) [hereinafter "Mapping Report"].
61 African Charter on Human and People's Rights (June 27, 1981), Art. 24; Protocol of San Salvador Protocol (Nov. 17, 1988), Art. 11; Arab Charter on Human Rights (May 22, 2004), Art. 38; ASEAN Human Rights Declaration (Nov. 19, 2012), Art. 28; David Boyd, The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment (2012); Dinah Shelton, *Human Rights and the Environment: What Specific Environmental Rights Have Been Recognized?* 35 Denv. J. Int'l L. & Pol'y 130 (2008); Luis E. Rodriguez-Rivera, *Is the Human Right to Environment Recognized under International Law? It Depends on the Source*, 12 Colo. J. Int'l Envtl L. & Pol'y 1 (2001).
62 Inuit Petition (2005), *supra* note 7.
63 Hari M. Osofsky, *The Inuit Petition as a Bridge? Beyond Dialectics of Climate Change and Indigenous Peoples' Rights*, 31 Am. Indian L. Rev. 675 (2007).
64 Male' Declaration on the Human Dimension of Global Climate Change (Nov. 14, 2007).

COP that governments have both moral and legal obligations to protect and promote basic human rights when tackling climate change.[65]

Responding to the Male' Declaration, the UN Human Rights Council (UNHRC) issued a 2008 resolution, expressing concern that climate change "poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights," and directing OHCHR to conduct a "detailed analytical study of the relationship between climate change and human rights" in consultation with states and other relevant international organizations and intergovernmental bodies.[66]

OHCHR released a report in 2009 describing how the observed and projected impacts of climate change have implications for the enjoyment of human rights and for the obligations of states under international human rights law.[67] The report found that "[a]n increase in global average temperatures of approximately 2° C will have major, and predominantly negative, effects on ecosystems across the globe, on the goods and services they provide," that it will "exacerbate the harmful effects of environmental pollution," and that these effects "have implications for a wide range of human rights."[68] The report discussed specific examples of those rights which relate most directly to climate change-related impacts, including the rights to life, food, water, health, housing, and self-determination. It also highlighted effects on specific groups, including women, children, and indigenous peoples.

Despite concluding that there is "broad agreement that climate change has generally negative effects on the realization of human rights," OHCHR noted that "it is less obvious whether, and to what extent, such effects can be qualified as human rights violations in a strict legal sense." This statement reflected the position of many developed countries that were willing to accept that climate change could interfere with the enjoyment of human rights, but would not concede that this interference constituted a violation of international human rights law.[69] OHCHR justified this conclusion by citing challenges of causation, attribution, and future harm associated with climate change.[70]

Nonetheless, OHCHR concluded that states have a duty to address the effects of climate change on human rights regardless of whether the state has contributed to climate change in a manner which gives rise to specific human rights violations.[71] This is because "human rights law requires each State to do more than merely refrain from interfering with human rights itself; it also requires the State to undertake due diligence to protect against such harm from other sources."[72] Accordingly, OHCHR identified a number of national level obligations that are applicable in this context, such as the obligation to protect individuals against foreseeable threats of weather-related hazards,[73] and to provide access to information and participation in decision-making.[74] OHCHR also described various "obligations of international cooperation," thus asserting that countries have an obligation to address the extraterritorial effects of climate change.[75]

65 OHCHR, *The Human Rights Impact of Climate Change, UN Joint Press Kit for Bali Climate Change Conference*, 3-14 December 2007 (Nov. 2007).
66 UNHRC Res. 7/23, *Human rights and climate change*, UN Doc. A/HRC/Res/7/23 (March 28, 2008).
67 OHCHR, *Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights*, A/HRC/10/61 (2009) [hereinafter "OHCHR Report"].
68 *Id.* at p. 16.
69 Knox (2009), *supra* note 58, at 489-90; Mark Limon, *Human Rights Obligations and Accountability in the Face of Climate Change,* 38 Ga. J. Int'l & Comp. L. 543, 571-73 (2010).
70 OHCHR Report (2009), *supra* note 71, at p. 70. It bears noting that these issues are becoming less problematic over time. For one thing, recent research on current and historical GHG emissions has made it easier to allocate responsibility for emissions among different states. *See, e.g.,* World Resources Institute, *CAIT Climate Data Explorer* (2015), http://cait.wri.org; Tommi Ekholm & Tomi J. Lindroos, Assessing Countries' Historical Contributions to GHG Emissions, Research Report VVT-R-00139-15 (2015); H. Damon Matthews, *Quantifying Historical Carbon and Climate Debts Among Nations,* Nature Climate Change Letters, DOI: 10.1038 (Sept. 7, 2015). In addition, as the effects of climate change become increasingly apparent, it is possible to identify, with greater certainty, those effects which can be causally traced to climate change (e.g., sea level rise and increased average temperatures). IPCC (2014), *supra* note 4.
71 OHCHR Report (2009), *supra* note 71, at p. 71. *See also* Knox (2009), *supra* note 58, at 491 ("whether a state *causes* climate change is a separate question from whether it has a duty to address the effects of climate change on human rights").
72 John H. Knox, *Human Rights Principles and Climate Change,* Wake Forest Univ. Legal Studies Paper No. 2523599, 8 (2014).
73 OHCHR Report (2009), *supra* note 71, at p. 74.
74 *Id*. at pp. 78-79.
75 *Id.* at pp. 84-91.

Since the issuance of this report, UNHRC has issued five resolutions recognizing the linkages between climate change and human rights.[76] These include:

- Resolution 10/4 (2009), which recognized that international cooperation would be "necessary" to enable implementation of the UNFCCC.[77]
- Resolution 18/22 (2011), which affirmed that "human rights obligations, standards and principles have the potential to inform and strengthen international and national policymaking in the area of climate change, promoting policy coherence, legitimacy, and sustainable outcomes" and that "in no case may a people be deprived of its own means of subsistence" as a result of climate change." Resolution 18/22 also called for additional dialogue on how to address the adverse impacts of climate change on the full enjoyment of human rights.[78]
- Resolution 26/27 (2014), which explicitly noted the "urgent importance of continuing to address, *as they relate to States' human rights obligations*, the adverse consequences of climate change for all, particularly in developing countries and its people whose situation is most vulnerable to climate change, especially those in a situation of extreme poverty, and deteriorating livelihood conditions."[79]
- Resolution 29/15 (2015), which contained effectively the same language on "States' human rights obligations" as Resolution 26/27, and called for new study on the relationship between climate change and the human right to the highest attainable standard of physical and mental health.[80]

Although UNHRC has not yet issued a clear declaration on the obligations of governments or other actors to respond to the human rights implications of climate change, there is ample evidence that certain obligations do exist. Specifically, the Independent Expert's 2013 mapping report on *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment* outlines numerous statements from the UN human rights treaties and treaty bodies charged with overseeing them, other UN bodies and mechanisms, regional human rights systems, and international environmental instruments, all recognizing various human rights obligations related to climate change.[81] The results of that report are incorporated into the analysis in Section 2.2, below.

The UNFCCC COP also formally recognized the linkages between climate change and human rights in the 2010 Cancun Agreements, where the Parties agreed to emphasize that countries "should, in all climate change-related actions, fully respect human rights."[82] But the COP has done very little in the past five years to elaborate on *how* countries should fulfill that goal. In the interim, numerous declarations and submissions have been made calling for the COP to incorporate human rights considerations into its decisions and agreements, and most notably, the 2015 Paris Agreement.[83]

76 In addition, many regional bodies have issued decisions on the linkages between climate change and human rights. *See* African Commission on Human and Peoples' Rights (ACHPR), *Resolution on Climate Change and Human Rights and the Need to Study its Impact in Africa*, ACHPR/Res.153(XLVI)09 (2009); Organization of American States, *General Assembly, Resolution 2429: "Human Rights and Climate Change in the Americas"*, AG/Res. 2429 (XXXVIII-O/08) (OAS June 3, 2008).

77 UNHRC Res. 10/4, *Human Rights and Climate Change*, A/HRC/Res/10/4 (March 25, 2009). Some developing countries sought the stronger language, but were unable to convince developed countries to accept it. Limon (2010), *supra* note 73, at 455.

78 UNHRC Res. 18/22, *Human Rights and Climate Change*, A/HRC/Res/18/22 (Oct. 17, 2011).

79 UNHRC Res. 26/27, *Human Rights and Climate Change*, A/HRC/Res/26/27 (July 15, 2014) (emphasis added).

80 UNHRC Res. 29/15, *Human Rights and Climate Change*. A/HRC/Res/29/15 (July 2, 2015).

81 Mapping Report (2013), *supra* note 64; UN Independent Expert on Human Rights and the Environment, *Focus Report on Human Rights and Climate Change* (June 2014).

82 UNFCCC Decision 1/CP.16, *The Cancun Agreements,* p. 8, UN Doc. FCCC/CP/2010/7/Add.1 (March 15, 2011).

83 *See, e.g.,* Special Procedures Mandate-Holders of the HRC**,** *A New Climate Change Agreement Must Include Human Rights Protections for All* (October 17, 2014).

*Aerial photo of Mantoloking, New Jersey after Hurricane Sandy*

## 2.2 Governmental Obligations to Address the Human Rights Implications of Climate Change

The obligations of governments with respect to international human rights are frequently characterized as entailing three types of duties:[84]

- The duty to **respect** human rights, a negative obligation, which requires states to refrain from taking actions that would interfere with or curtail the enjoyment of human rights.
- The duty to **protect** human rights against violations by third parties.
- The duty to **fulfill** human rights, a positive obligation, which requires states to undertake measures to ensure the realization of rights for all members of society.

Some documents also refer to a duty to "promote" human rights, which can be understood as a related but distinct obligation to "promote universal respect for, and observance and protection of, all human rights."[85]

Another way to conceptualize government duties in this context is to divide them into 1) procedural obligations, 2) substantive obligations, and 3) obligations in relation to individuals who are members of specific groups. This approach is particularly helpful for understanding the linkages between different obligations, and so we use it here.

84 OHCHR, *International Human Rights Law,* http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx (last visited Oct. 6, 2015).
85 Vienna Declaration and Programme of Action, Art. 1 (June 25, 1993) (endorsed by G.A. Res. 48/121). *See also* G.A. Res. 53/144, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Art. 1 (Dec. 9, 1998) (noting states' responsibility to "promote" human rights); M. Magdalena Sepúlveda, The Nature of the Obligations Under the International Covenant on Economic, Social and Cultural Rights 157-167 (Intersentia 2003) (explaining typologies for human rights obligations).

For each set of obligations, we describe the "hard law" (treaty provisions, case law) underpinning the obligations, as well as soft law (UN declarations, comments from UN treaty bodies) and interpretations from UN special rapporteurs and other experts. As noted above, the actual scope of legal obligations for any specific country may depend on treaty ratification status, except to the extent that some of these obligations may now constitute customary international law that is binding all countries.[86]

## (a) Procedural Obligations

Human rights law imposes various procedural obligations on governments with respect to the environmental impacts of their activities. These include obligations to gather and disseminate information about environmental impacts, to facilitate public participation in environmental decision-making, and to provide access to remedies for environmental harm. These obligations are based in civil and political rights, but "they have been clarified and extended in the environmental context on the basis of the entire range of human rights at risk from environmental harm."[87]

As discussed below, governments also have unique obligations with respect to decisions that affect indigenous peoples and their lands, such as a duty to obtain the free, prior and informed consent (FPIC) of indigenous peoples before undertaking decisions that would adversely affect any lands or resources that they have traditionally owned or occupied.

### *(i) Ensuring Access to Information and Conducting Environmental Assessments*

ICCPR Art. 19 and UDHR Art. 19 recognize the right of all persons "to seek, receive and impart information." At a minimum, the ICCPR and UDHR require states to provide public access to any government information of public interest.[88] The Human Rights Committee (HR Committee), the treaty body for the ICCPR, has not explicitly discussed whether the right of access to information entails a corresponding obligation for states to conduct environmental impact assessments (EIA). However, the International Court of Justice (ICJ) has held that, as a matter of customary international law, states have an obligation vis-à-vis other states to conduct environmental assessments where there is a risk that a proposed activity "may have a significant adverse impact in a transboundary context, in particular, on a shared resource" and disclose the results of that EIA to countries that may be adversely affected.[89] Accordingly, states should assess how activities within their jurisdiction will adversely affect the climate (a shared resource) and provide adequate notice to the international community. For example, states should conduct GHG assessments for activities that are likely to have significant GHG impacts—such as programmatic decisions about fossil fuel development, large fossil fuel-fired power plants, and fuel economy standards—and make the results publicly available.

The right of access to information is generally viewed as a prerequisite to the exercise of other procedural rights relating to public participation and access to remedies, and these procedural rights have been interpreted as critical to the exercise of substantive human rights, such as the rights to life, health, and privacy.[90] As such, many regional human rights courts have held that states have an obligation to assess and disclose foreseeable environmental risks as part of their positive duties to protect, respect, and fulfill various human rights.[91] This includes any environmental risks caused by government activity, as well as other environmental risks that threaten the exercise of human rights (since states have an obligation to protect rights against harms caused by third parties).

86 *See supra,* note 59.
87 Mapping Report (2013), *supra* note 64, at p. 29.
88 HR Committee, General Comment No. 34, pp. 18-19, UN Doc. CCPR/C/GC/34 (Sept. 12, 2011)
89 Pulp Mills on the River Uruguay (Argentina v. Uruguay), 2010 I.C.J. 14, 83, p. 204 (April 20).
90 *See, e.g.,* CESCR, General Comment No. 14, p.3, UN Doc. E/C.12/2000/4 (Aug. 11, 2000) (recognizing that the right to health "is closely related to and dependent upon the realization of other human rights" including access to information); Okechukwu Ibeanu, Special Rapporteur on the Adverse Effects of Illicit Movement and Dumping of Toxic Wastes on Human Rights, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development,* 2, UN Doc. A/HRC/7/21 (Feb. 18, 2008) (noting that the rights to information and participation are "both rights in themselves and essential tools for the exercise of other rights, such as the right to life, the right to the highest attainable standard of health, the right to adequate housing and others").
91 *See* Öneryildiz v. Turkey, 2004-XII European Court of Human Rights 1, p. 90 (deriving right to information from right to life); Taşkin v. Turkey, 2004-X Eur. Ct. H.R. 179, pp. 118, 119, 126 (deriving right to information from right to privacy and home life); Ogoniland Case (Social and Economic Rights Action Center v. Nigeria), Decision Regarding Communication 155/96 (African Commission on Human & Peoples' Rights, Oct. 2011), 96 AJIL 937, para 53 (2002) (deriving right to information from the rights to health and a healthy environment); Claude-Reyes et al. v. Chile, Inter-Am. Ct. H.R. (ser. C) No. 151 (2006) (deriving right to information from right to freedom of expression).

The UNFCCC outlines similar obligations with respect to assessing and disclosing information related to climate change. Specifically, Art. 4(1)(h) requires states to "[p]romote and cooperate in the full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information related to the climate system and climate change, and to the economic and social consequences of various response strategies." Art. 6 also directs the Parties to promote and facilitate at the national and, as appropriate, subregional and regional levels, "public access to information on climate change and its effects." Several other provisions direct the Parties to provide information on national GHG emissions and measures taken to address climate change and its effects.[92]

The right to information and corresponding obligation to acquire information through environmental impact assessments (EIA) and other mechanisms, and to communicate that information to the public, are also included in the Rio Declaration,[93] the Aarhus Convention,[94] the Espoo Convention on EIA in a Transboundary Context, the Kyiv (SEA) Protocol, and a variety of other MEAs.[95] The domestic laws of numerous states also contain such requirements.[96]

Several expert bodies have explicitly directed states to account for climate change when fulfilling their obligations to evaluate environmental risks and disclose environmental information to the public.[97] For example, in Resolution 65/178 (2011), the UN General Assembly called for urgent international, regional and national efforts to address the impacts of climate change on food security.[98] And regarding the right to water, the Committee on Economic, Social and Cultural Rights (CESCR) has determined that State parties should establish mechanisms for assessing the impacts of climate change, desertification and other environmental harms on watersheds.[99]

### *(ii) Public Participation in Environmental Decision-making*

The UDHR (Art. 21) and ICCPR (Art. 25) both recognize the fundamental right of everyone to take part in the government of their country and in the conduct of public affairs. In addition, a variety of human rights treaty bodies have determined that governments have an obligation to facilitate public participation in environmental decision-making in order to protect human rights against environmental harm.[100] The UNFCCC also directs states to promote and facilitate "public participation in addressing climate change and its effects and developing adequate responses."[101] Other multilateral environmental instruments similarly provide for public participation.[102]

92 UNFCCC Arts. 4(2)(b), 7(2)(b), 12.

93 Rio Declaration on Environment and Development (1992), Principles 10 and 17.

94 The Aarhus Convention outlines a comprehensive set of obligations relating to access to information, public participation in decision-making, and access to justice in environmental matters, and provides a useful gauge for a country's compliance with obligations under other treaties (notably, the ICCPR). For example, the Convention defines "environmental information" for assessment and disclosure purposes; directs parties to take specific, affirmative steps to promote access to information. The Convention also restricts the circumstances under which governments may refuse a request for environmental information. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ("Aarhus Convention"), June 25, 1998, Arts. 3(2), 3(3), 4, 5.

95 Convention on Biological Diversity (CBD), Art. 13; UN Convention on Law of the Sea (UNCLOS), Art. 244; Protocol on Environmental Protection to the Antarctic Treaty, Annex I; Convention to Combat Desertification (CCD), Arts. 5(d), 10(f); Montreal Protocol on Substances that Deplete the Ozone Layer, Art. 9.

96 According to a 2011 survey, 191 of the 193 member nations of the UN either have national legislation or have signed some form of international legal instrument that refers to the use of EIA. Richard K. Morgan, *Environmental Impact Assessment: The State of the Art*, 30 Impact Assessment and Project Appraisal 5 (2012).

97 In addition to the statements of the UN General Assembly and the CESCR, see Special Rapporteur Raquel Rolnik, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context,* p. 50, UN Doc. A/62/25 (Aug. 6, 2009).¶ 50, UN Doc. A/62/214 (Aug. 8, 2007) ("Informed and effective participation, in turn, requires that information about the mitigation targets and decisions related to those goals are managed transparently."); *Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani*, p. 66, UN Doc. A/HRC/16/43 (Dec. 20, 2010) ("Urban dimensions of climate-change-induced displacement should be a key consideration in medium and long-term national development strategies, as well as adaptation measures. These should include strengthened systems to monitor influxes of IDPs, and to address the assistance and durable solutions needs of IDPs outside camps living in urban areas. IDPs, who are more likely to be unlisted and undocumented, are also likely to have less access to services and livelihoods, and to live in slum areas which are often situated in hazard-prone locations such as low-lying areas and landfill sites –thereby making them vulnerable to further risks, including to their physical safety, the loss of housing, and secondary displacement.").

98 G.A. Res. 65/178, pp. 15, 26, UN Doc. A/Res/65/178 (March 24, 2011).

99 CESCR Comment No 15, p. 28, UN Doc. E/C.12/2002/11 (Jan. 20, 2003).

100 *See, e.g.,* CESCR General Comment No. 15, p. 56, UN Doc. E/C.12/2002/11 (Jan. 20, 2003) (public participation required before any government or third party action that interferes with right to water); Mapping Report (2013), *supra* note 64, pp. 36-40. *See also* UN Doc. A/HRC/7/21 (Feb. 18, 2008), *supra* note 94, at ¶ 51 (Special Rapporteur Ibeanu calling for "public participation in the preparation of environmental plans, programmes, policies, laws and regulations, as well as the permitting of industrial, agricultural, and construction activities).

101 UNFCCC Art 6. *See also Cancun Agreements* (2011), *supra* note 86, p. 7; UNFCCC Decision 9/CP.13 Amended New Delhi work programme on Article, annex, p. 17(k), UN Doc. FCCC/CP/2007/6/Add.1 (2007).

102 *See, e.g.,* Stockholm Convention on Persistent Organic Pollutants. Art. 10; CBD, *supra* note 99, Art. 14(1); CCD Arts. 3, 5, 19; Aarhus Convention, Arts. 6, 7, 8.

General Assembly Resolution 67/210 (2013) recognizes the "need to engage a broad range of stakeholders at the global, regional, national and local levels, including national, subnational and local governments, private businesses and civil society, and including youth and persons with disabilities, and that gender equality and the effective participation of women and indigenous peoples are important for effective action on all aspects of climate change."

The precise standard of what constitutes "adequate" or "effective" public participation is not always clear. Terms such as "full and informed participation" and "meaningful consultation" are often used to describe this requirement. At a minimum, this requires: (1) assessment and disclosure of environmental impacts, as discussed above; (2) effective communication of those impacts—e.g., in a language and venue that is accessible to the persons who will be affected; and (3) an opportunity for affected persons to "voice their concerns."[103]

It is particularly important to invite and facilitate public participation in decisions that affect vulnerable groups,[104] and for decisions concerning the displacement or resettlement of certain groups. OHCHR emphasizes that "adequate and meaningful consultation with affected persons should precede decisions to relocate people away from hazardous zones."[105] The Special Rapporteur on the human rights of migrants, François Crépeau, has also contributed to this discussion by recommending certain obligations and good practices for States to address the impacts of climate change on migrants.[106]

### *(iii) Access to Administrative, Judicial, and Other Remedies*

The UDHR, ICCPR, and ICESCR all recognize that states should provide an "effective remedy" for human rights violations. The respective human rights bodies for these treaties have clarified that such remedies extend to human rights violations caused by environmental harms. The obligation to provide access to justice and/or an effective remedy is also enshrined in the Rio Declaration, the Aarhus Convention, and a variety of other multilateral environmental and human rights agreements.[107]

There is both a procedural and a substantive dimension to this obligation. First, states must provide access to administrative and judicial proceedings to adjudicate claims of human rights violation (the procedural element). But various expert bodies have asserted that states must also ensure that compensation or other forms of redress are available when violations do occur (the substantive dimension). The CESCR, for example, has noted that states should ensure that adequate compensation, alternative accommodation, and resettlement opportunities are provided to indigenous communities and other groups who are displaced by large infrastructure projects and deforestation.[108] More generally, the former Special Rapporteur on Adequate Housing, Raquel Rolnik, has stated that human rights standards "require the existence of institutional forms of redress for grievances, compensation in response to inevitable damages and an evaluation of the distributional impacts of projects and effects."[109]

The UNFCCC does not explicitly recognize a right of access to justice or remedies for individuals. Article 14 outlines a procedure for the settlement of disputes between countries concerning the interpretation or application of the Convention.[110] More notably, Paragraph 92 of the Cancun Agreements describes the need to consider "information from those affected, and evidence of actual impacts" of response measures (adaptation and mitigation).[111] But the

103 *Report of the United Nations Conference on Sustainable Development, p.* 13, UN Doc. A/CONF.216/6 (2012).
104 See discussion, *infra*, section 2.2.3.
105 OHCHR (2009), *supra* note 71, at p. 79.
106 François Crépeau, *Report of the Special Rapporteur on the human rights of migrants to the General Assembly, pp.* 39, 73-76, 79, 93, UN Doc. A/67/299 (Aug. 13, 2012).
107 *See, e.g.,* Rio Declaration, Principle 10; Aarhus Convention Art. 9; CBD, *supra* note 99, Art. 10(b).
108 *See* CESCR, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Mexico,* p. 28, UN Doc. E/C.12/MEX/CO/4 (June 9, 2006); CESCR General Comment No. 15, p. 55, UN Doc. E/C.12/2002/11 (Jan. 20, 2003). For a more detailed discussion of CESCR's views on this, see Mapping Report (2013), *supra* note 64, Individual Report on the International Covenant on Economic, Social and Cultural Rights, pp. 55-56 (Dec. 2013).
109 Rolnik (2009), *supra* note 101, p. 50.
110 Specifically, Art.14 directs the country parties to settle such disputes "through negotiation or any other peaceful means" when possible, and allows parties to request that a "conciliation commission" be convened to issue a "recommendatory award" when such disputes have not been settled after twelve months. UNFCCC Art. 14(1), (5)-(6). Alternatively, the parties may issue a declaration consenting to the compulsory jurisdiction of the ICJ and/or an independent arbitrator to settle such disputes. UNFCCC Art. 14(2). Notably, no countries have accepted the jurisdiction of the ICJ over such disputes, and only three countries (Netherlands, Solomon Islands, and Tuvalu) have recognized arbitration as compulsory for the settlement of UNFCCC disputes, but the COP has yet to develop any procedures for the arbitration of disputes. UNFCCC, *Declarations by Parties,* http://unfccc.int/essential_background/convention/items/5410.php (last viewed Oct. 19, 2015).
111 Cancun Agreements (2011), *supra* note 86.

COP has yet to establish any clear mandate for countries, climate finance mechanisms, or other entities to ensure access to a grievance mechanism for those who are harmed by the impacts of or responses to climate change.

### (b) Substantive Obligations

Both the ICESCR and ICCPR contain substantive rights, such as the rights to life, health, and an adequate standard of living, accompanied by a combination of: (i) negative obligations for states to refrain from taking action that would interfere with rights, (i.e., a duty to respect rights); and (ii) positive obligations for states to protect and fulfill rights.[112] As noted by the UN General Assembly:

> "Each state has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political, and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice."[113]

Based on these obligations, the CESCR, regional courts, and UN special rapporteurs have concluded that states have a general duty to "adopt legal and institutional frameworks that protect against, and respond to, environmental harm that may or does interfere with the enjoyment of human rights."[114] The framework must ensure that the state will respect human rights in all of its activities and decisions, and include protections to prevent third parties from creating environmental harms that interfere with the exercise of human rights.[115] In addition, the European Court of Human Rights (ECtHR) has held that states must also take reasonable measures to protect citizens against the reasonably foreseeable effects of natural disasters.[116]

The adverse impacts of climate change clearly qualify as "environmental harms" that can interfere with the exercise of human rights. Thus, states must enact legal and institutional frameworks to protect against and respond to those impacts. More specifically, there are at least five types of obligations that may arise in this context: (1) adaptation obligations, requiring states to enact frameworks for protecting people against the effects of climate change; (2) domestic mitigation obligations, requiring states to regulate the sources of GHG emissions; (3) international cooperation obligations, requiring states to participate in international negotiations for an effective global climate agreement; (4) transboundary mitigation obligations, requiring states to mitigate the effect of their activities on the human rights of persons outside of their jurisdiction; and (5) an obligation to ensure that mitigation and adaptation activities do not themselves contribute to human rights violations.

There are at least three overarching principles which apply to all of these obligations. First, states are "obliged to take measures towards the full realization of economic, social, and cultural rights *to the maximum extent of their available resources*."[117] This means that states "must take deliberate, concrete and targeted measures, making the most efficient use of available resources, to move as expeditiously and effectively as possible towards the full realization of rights."[118]

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112 Regarding implementation, the ICESCR specifies that each party shall "take steps, individually and through international assistance and cooperation… to the maximum of its available resources, with a view to progressively achieving the full realization of" the rights contained therein. ICESCR Art. 2. The ICCPR contains slightly different language, requiring each party to "respect and to ensure to all individuals within its territory and subject to its jurisdiction" the rights recognized therein, and to "take the necessary steps…to adopt such laws or other measures as may be necessary to give effect" to those rights. ICCPR Art. 2, pp. (1)-(2). Based on this language, the treaty bodies have concluded that both agreements contain a combination of positive and negative obligations. HR Committee General Comment No. 31, pp. 5-7, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004); HRC General Comment No. 6, pp. 1, 5, UN Doc. HRI/GEN/1/Rev.1 (1994); CESCR General Comment No. 3, pp. 1-2 UN Doc. E/1991/23 (Dec. 14, 1990).

113 G.A. Res. 53/144, Art. 2, p. 1, UN Doc. A/RES/53/144 (March 8, 1999).

114 Mapping Report, *supra* note 64, at pp. 47 (citing statements from these entities to support this proposition). *See, e.g.,* CESCR, General Comment No. 14, pp. 4, 15, 36, UN Doc. E/C.12/2000/4 (Aug. 11, 2000) (to achieve full realization of right to health, states must adopt measures to protect citizens from environmental hazards, and implement policies "aimed at reducing and eliminating pollution of air, water and soil"); Fadeyeva v. Russia, 45 Eur. Ct. H.R. 10 (2005); Öneryildiz v. Turkey, 2004-XII European Court of Human Rights 1, ¶p. 89 ("The positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2… entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life."); López Ostra v. Spain, 20 Eur. Ct. H.R. 277 (1994); Ştar v. Romania, App. No. 67021/01, Eur. Ct. H.R. (Jan. 27, 2009); Ogoniland Case (2011), *supra* note 95; Hatton and Others v. United Kingdom, 37 Eur. Ct. H.R. 28, ¶ 98 (2003). *See also* Gabcíkovo-Nagymaros (Hungary v. Slovakia), 1997 I.C.J. 7 (Sept. 25) (separate opinion of Judge Weeramantry) (describing the protection of the environment as a "sine qua non for numerous human rights such as the right to health and the right to life itself").

115 Mapping Report, *supra* note 64, at pp. 47-6.

116 *See, e.g.,* Budayeva and Others v. Russia, App. Nos. 15339/02, 21155/02, 20058/02, 11673/02 and 1543/02, Eur. Ct. H.R. (March 20, 2008).

117 OHCHR Report (2009), *supra* note 71, at p. 75 (citing CESCR General Comment No. 3, pp. 1-2).

118 *Id.* at p. 76 (citing CESCR General comments No. 3 and No. 14).

Second, although international human rights law generally requires the "progressive realization" of economic, social, and cultural rights, there are some obligations which require immediate implementation. For example, states must guarantee non-discrimination in access to economic, social and cultural rights, irrespective of resource constraints.[119] States also have an immediate obligation to ensure, at the very least, "minimum essential levels" of each right that is enshrined in the ICESCR.[120] In addition, states have an immediate obligation to refrain from undertaking actions that cause a violation of *any* human rights.

Third, states have an obligation to protect *all rights* against third party abuses. As interpreted by the HR Committee, this means that states must "take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress" any human rights violations caused by third parties.[121]

### *(i) Adaptation Obligations: Protecting Human Rights From Climate-Related Harms*

Article 6 of the ICCPR recognizes that "[e]very human being has the inherent right to life" and that no person "shall be arbitrarily deprived of life." The HR Committee has noted that the right to life "should not be interpreted narrowly" and that "the protection of this right requires that States adopt positive measures" to protect life.[122] The ICESCR contains a number of additional rights—such as the rights to health and an adequate standard of living—which also require positive action from the state for their implementation.[123]

As discussed in Part 1, the effects of climate change will threaten the lives, health, well-being, and livelihoods of hundreds of millions if not billions of people in the coming decades. States have an obligation to enact legal and institutional frameworks to protect human rights against these effects. This is true regardless of whether the state is responsible for those effects because, as noted above, the ICCPR and ICESCR both include obligations to protect human rights from harms caused by third parties. Presumably, this would encompass a more pressing obligation to protect citizens from imminent, life-threatening harms (such as more severe storms and flooding), as well as an ongoing obligation to implement adaptation measures to alleviate the projected impacts of climate change on people and their livelihoods. [124]

The ECtHR has issued several decisions which, although not binding under the ICCPR or ICESCR, do provide insight on the nature of a state's positive obligation to protect the human right to life in this context.[125] For example, in *Budayeva and Others v. Russia,* the ECtHR determined that Russian authorities had violated the right to life when: (i) the authorities knew that there was a risk of a mud-slide, (ii) they did not implement land planning and emergency relief policies, (iii) they did not adequately inform the public about the risk; and (iv) eight citizens died as a result of the mud-slide.[126] The Lahore High Court in Pakistan also recently issued a decision in which it held that the national government had violated the fundamental rights of its citizens, including the right to life, by failing to implement adaptation measures recommended in the 2012 National Climate Policy and Framework.[127]

The UNFCCC does not recognize a right to adaptation, but it does call upon all parties to "[c]ooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas,

119 CESCR General Comment No. 3, pp. 1-2, UN Doc. E/1991/23 (Dec. 14, 1990).
120 OHCHR Report (2009), *supra* note 71, at p. 76 (citing CESCR general comment No. 3).
121 HRC General Comment No. 31, p.8, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004). *See also* CESCR, General Comment No. 12, p. 15, UN Doc. E/C.12/1999/5 (May 12, 1999); Knox (2014), *supra* note 76, at 7; Andrew Clapham, *Human Rights Obligations of Non-State Actors* (2006); John H. Knox, *Horizontal Human Rights Law* (2008); Velásquez Rodríguez v. Honduras, Inter-Am. Ct. H.R. (Ser. C) No. 4 (July 29, 1988); Z and Others v. United Kingdom, 34 Eur. Ct. H.R. 3 (2002).
122 HR Committee General Comment No. 6, ¶¶ 1, 5, UN Doc. HRI/GEN/1/Rev.1 (1994).
123 ICESCR Arts. 11, 12.
124 OHCHR acknowledges that, "in some cases, states may have an obligation to protect individuals against foreseeable threats to human rights related to climate change, such as an increased risk of flooding or storms in certain areas." OHCHR (2009), *supra* note 71, at p. 74. In another statement on disaster risk reduction and human rights obligations, OHCHR has also asserted that a failure "to take reasonable preventive action to reduce exposure and vulnerability and to enhance resilience, as well as to provide effective mitigation [to disasters]" is a "human rights issue." OHCHR, Organization Profile: Policies and Programmes in DRR, http://www.preventionweb.net/organizations/1370/view (last visited Oct. 6, 2015). In addition, HRC Resolutions 10/4 and 18/22 more assert that: "in no case may a people be deprived of its own means of subsistence" as a result of climate change impacts."
125 Öneryildiz v. Turkey, *supra* note 95; Budayeva and Others v. Russia, *supra* note 120; Ţiţar v. Romania, *supra* note 118.
126 Budayeva and Others v. Russia, *supra* note 120.
127 Ashgar Leghari v. Federation of Pakistan, Lahore High Court Green Bench (W.P. No. 25501/2015) (Sept. 15, 2015). Similarly, a district court in The Hague recently referred to the ECtHR's jurisprudence on the right to life and corresponding obligation of governments to protect citizens from environmental harm in order to determine the "standard of care" that the Dutch national government must exercise to protect its citizens from climate-related harms. District Court of the Hague, *Judgment: Urgenda Foundation v. Kingdom of the Netherlands Regarding the failure of the Dutch State to take sufficient actions to prevent dangerous climate change,* p. 4.74 (Urgenda Foundation 2015).

*Damage to villages and infrastructure following Cyclone Sidr, which hit southern Bangladesh in November 2007*

particularly in Africa, affected by drought and desertification, as well as floods."[128] In addition, it calls upon developed countries to provide assistance to developing countries to address the adverse effects of climate change in those countries.[129] These directives complement the human rights obligations noted above.

The Hyogo Framework for Action (2005-2015) and the Sendai Framework for Disaster Risk Reduction (2015-2030), endorsed by the United Nations General Assembly,[130] also outline a set of obligations for countries to build resilience of their citizens to disasters. The Sendai Framework explicitly recognizes that "[m]anaging the risks of disasters is aimed at protecting persons and their property, health, livelihoods and productive assets, as well as cultural and environmental assets, while promoting and protecting all human rights, including the right to development."[131] It also recognizes that each state has the "primary responsibility" to take "effective measures to reduce disaster risk" within its jurisdiction.[132] States can refer to the principles and directives outlined in the Sendai Framework in order to implement their human rights obligations with respect to climate-related disaster planning and risk reduction.

Finally, OHCHR notes that states are "legally bound to address [climate-related] vulnerabilities in accordance with the principle of equality and non-discrimination."[133] Specifically, the non-discrimination principle requires that states "identify marginalized or vulnerable individuals and groups; address specific needs through 'targeted and differentiated interventions;' and tackle underlying power imbalances and structural cases of 'differential vulnerability' within and between households while building the ecological resilience necessary to reduce vulnerability and achieve threshold needs."[134]

128 UNFCCC Art. 4(1)(e).
129 UNFCCC Arr. 4(4).
130 A/RES/69/283, June 23, 2015.
131 Sendai Framework for Disaster Risk Reduction (2015-2030), Part III, p. 19(c).
132 *Id.* at Part III, p. 13(b).
133 OHCHR, *supra* note 71, at p. 42.
134 Fisher (2014), *supra* note 49, at 11 (citing ELAN, *Integrating Community and Ecosystem-Based Approaches in climate Change Adaption Responses* (2012)).

Although states have discretion to decide how to protect human rights against climate-related effects, taking into account their resource constraints and national contexts, there may be some minimum measures that would be required as a matter of international, regional, or domestic human rights law. These might include measures that are necessary to protect lives from imminent threats, such as early-warning systems and risk notification,[135] which tie into the obligation to disclose information, discussed above; improvements to physical infrastructure to reduce the risk of floods or other hazards; emergency response plans; and the provision of disaster relief and humanitarian assistance in times of emergency.[136]

Some of the UN Special Rapporteurs have further expanded upon the measures that states should take to protect human rights in the context of climate-related disasters and slow-onset degradation. Some of the proposed measures include:

- **Urban Planning and Warning Systems:** (1) Risk assessments in urban planning, rural development projects, and housing design (with a particular focus on vulnerable areas).[137] (2) Establishing necessary infrastructure and services to prevent extreme weather events from becoming disasters.[138] (3) Providing warning information to all neighborhoods to allow dwellers to seek protection and take risk reduction actions.[139] (4) Providing access to "affordable and well-located land for the urban poor" in order to "avoid further unplanned settlement expansions" that contribute to climate change vulnerability.[140]

- **Displacement and Resettlement:** (1) Conducting risk assessments, providing public participation risk assessments, providing public participation opportunities, and ensuring that there are human rights safeguards for all programs to manage migration and displacement.[141] (2) Ensuring adequate resettlement opportunities for those who are temporarily displaced by climate change-related disasters, and ensuring that "temporary relocation must last only as long as absolutely necessary and all displaced persons should have the right to return to their homes without discrimination."[142] (3) Ensuring that the UNFCCC and related climate change frameworks address "the nexus between the effects of climate change and displacement" and that the least developed countries are provided with technical assistance, financial resources and/or other enhancements to domestic capacity to cope with climate-related displacement.[143] (4) Adhering to the Guiding Principles on Internal Displacement, which describe how human rights considerations should be incorporated into government actions to prevent and manage internal displacement.[144]

- **Access to Food:** (1) Addressing food shortages and price shocks that are caused or aggravated by climate related phenomena.[145] (2) Developing social safety nets to ensure that those who are adversely affected by climate change (e.g., through displacement or loss of livelihoods) will have access to food.[146]

### *(ii) Domestic Mitigation Obligations*

States may also have an obligation to respond to the core causes of climate change – anthropogenic emissions of GHGs and the accumulation of GHGs in the atmosphere. The CESCR, for example, has stated that State Parties to the ICESCR should mitigate the effects of climate change in order to safeguard the economic, social and cultural

135 OHCHR (2009), *supra* note 71, at p. 78.
136 The CESCR has asserted that, to protect the right to health, parties to the ICESCR have a "joint and individual responsibility . . . to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons." CESCR, General Comment No. 14, p. 40, UN Doc. E/C.12/2000/4 (Aug. 11, 2000).
137 Rolnik (2009), *supra* note 101, at ¶ 51.
138 *Id.*
139 *Id.* at p. 53.
140 *Id.* at p. 74.
141 Crépeau (2012), *supra* note 110, at 39, 73-76, 93.
142 Rolnik (2009), *supra* note 101, at 55.
143 *Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin*, p. 84, U.N. Doc. A/HRC/13/21 (Jan. 5, 2010).
144 *Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani*, ¶ 65, U.N. Doc. A/HRC/16/43 (Dec. 20, 2010).
145 *Id. See also,* De Schutter (2008), *supra* note 45.
146 *Id.*

rights of their citizens (although it has not expressly characterized this as an obligation).[147] The former Special Rapporteur on Adequate Housing has also asserted that "Human rights standards require all countries to seek to reduce their harmful emissions to the global atmosphere, with a view to reducing their negative effect on the enjoyment of human rights."[148] The international human rights courts have not yet addressed the nature of a state's obligations to mitigate GHG emissions, but there is at least one domestic case requiring a national government to accelerate its emission reduction efforts in order to fulfill a duty of care to its citizens,[149] and another requiring the government to implement its national climate change policy (which included mitigation objectives) in order to protect the fundamental rights of its citizens.[150] In addition, cases alleging a violation of fundamental rights as a result of governmental inaction on climate change have been filed in the United States[151] and Belgium.[152]

In this context, questions of causation are relevant. Many countries have made and are making relatively small contributions to climate change; their GHG emissions reductions will not significantly impact their peoples' enjoyment of human rights. By contrast, emissions reductions by the U.S., China, the E.U. and other major emitters matter a great deal.[153]

The principles and goals set forth in the UNFCCC provide a useful frame for these mitigation obligations. For one thing, the treaty recognizes that all states share a duty to "prevent dangerous anthropogenic interference with the atmosphere" as necessary to "allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner."[154] In the 2010 Cancun Agreements, the COP agreed that, to achieve this goal, they must "hold the increase in global average temperature below 2°C e above pre-industrial levels," and that they should consider strengthening this long-term goal so as to hold the global average temperature increase to 1.5°C.[155] Many UN independent experts and other stakeholders feel that to protect fundamental human rights, it will be necessary to keep global warming well below the 2°C goal.[156] Such an approach would accord with some of the core principles of many international environmental instruments (including the UNFCCC), such as the precautionary principle[157] and intergenerational equity.[158]

The UNFCCC also provides insight on how to allocate the responsibility for achieving this target. Under the principle of common-but-differentiated responsibilities, developed countries must take the lead in ensuring that we remain within the 2°C global warming goal established under the UNFCCC.[159] However, developing countries also have an

147 E.g., in Statement on the World Food Crisis, CESCR pressed State parties to adopt "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 UN Framework Convention on Climate Change." In Concluding Observations to Australia, it encouraged Australia "to reduce its greenhouse gas emissions and to take all the necessary and adequate measures to mitigate the adverse consequences of climate change, impacting the right to food and the right to water for indigenous peoples."

148 Rolnik (2009), *supra* note 101, at 45.

149 Urgenda decision, *supra* note 131.

150 Ashgar Leghari, *supra* note 131.

151 Complaint for Declaratory and Injunctive Relief at 85, Kelsey Cascadia Rose Juliana, Xiuhtezcatl Tonatiuh M. Et Al. v. United States, Barack Obama et al., No. 6:15-cv-01517-TC (D. Or. Aug. 12, 2015). This complaint and other recent cases in the U.S. also allege that federal and state governments have violated their public trust obligation by failing to adequately mitigate the GHG emissions that contribute to climate change. *See, e.g.,* Foster v. Washington Department of Ecology, No. 14-2-25295-1 (Wash Super. Ct., filed Sept. 2014); Juliana v. United States, No. 6:15-cv-01517 (D.Or., filed Aug. 2015). Although these cases have not yet been successful at compelling government action, they have resulted in at least one decision holding that the state government (New Mexico) had a public trust responsibility to protect the atmosphere (but the court also found that this responsibility had been met through compliance with the state air quality act). Sanders-Reed v. Martinez, 2015-NMCA-063, 350 P.3d 1221 (March 12, 2015). Although these cases did not involve human rights claims, there is a clear relationship between governments' public trust obligations—which require the maintenance and preservation of common environmental resources for the benefit of current and future generations—and governments' human rights obligations. *See* Burns H. Weston & David Bollier, Green Governance – Ecological Survival, Human Rights, and the Law of the Commons (Cambridge University Press 2013); David Takacs, *The Public Trust Doctrine, Environmental Human Rights, and the Future of Private Property,* 16 NYU Envtl. L.J. 711 (2008).

152 Summons to the Ministers of Flanders, Wallonia, Brussels, and the Federal State of Belgium (April 27, 2015), *available at* http://klimaatzaak.eu/wp-content/uploads/2015/04/Dagvaarding.pdf.

153 Knox (2009), *supra* note 58, at 10-11.

154 UNFCCC Art. 2.

155 Cancun Agreements (2011), *supra* note 86, at ¶ 5.

156 *See, e.g., A New Climate Change Agreement Must Include Human Rights Protections for All: An Open Letter from Special Procedures Mandate-holders of the Human Rights Council to the State Parties to the UNFCCC on the occasion of the meeting of the Ad Hoc Working Group on the Durban Platform for enhanced Action in Bonn*, 20-25 October 2014 (Oct. 17, 2014); Press Release, Climate Vulnerable Forum, 20 Nations Call to Strengthen 2 Degrees Climate Goal (May 1, 2015), http://www.thecvf.org/wp-content/uploads/2015/05/cvfpressrelease010515.pdf.

157 Hartmut Grassl & Bert Metz, *Climate Change: Science and the Precautionary Principle,* Ch. 14 in Precautionary principle: Late Lessons from Early Warnings: Science, Precaution, Innovation, EEA Report No 1/2013.

158 Edward Cameron et al., *Climate Justice: Equity and Justice Informing a New Climate Agreement,* World Resources Institute and Mary Robinson Foundation Working Paper (Sept. 2013).

159 UNFCCC Art. 3(1).

*Wind turbines in rural India.*

obligation to incorporate GHG mitigation goals into their development plans, laws, and policies.[160] This approach accords with fundamental principles of equity, responsibility, and burden sharing.[161]

Finally, the Oslo Principles, although not endorsed by the UN or binding on any states, contain a useful framework for conceptualizing state obligations in this context. The principles explicitly reference the need to protect human rights and clarify the obligations that states have to reduce GHG emissions, taking into account cost and other factors.[162]

### *(iii) International Cooperation Obligations*

The ICESCR requires parties to "take steps, individually *and through international assistance and co-operation*, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means."[163] The UDHR and ICCPR also recognize an obligation of states to "promote universal respect for, and observance of" human rights and freedoms.[164] Finally, in the UN Charter, all UN member states "pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of [inter alia] universal respect for, and observance of, human rights and fundamental freedoms for all." [165]

Based on this language, both the CESCR and the OHCHR have concluded that states have an obligation to address the extraterritorial impacts of environmental harm caused by activities within their jurisdiction.[166] These have been framed as "obligations of international cooperation," and they require that states:

- Refrain from interfering with the enjoyment of human rights in other countries

160 UNFCCC Art. 4(2).
161 IPCC, *Sustainable Development and Equity*, Ch. 4 in Climate Change 2014: Mitigation of Climate Change, Working Group III Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change 317-319 (2014).
162 Oslo Principles on Global Climate Change Obligations (2015).
163 ICESCR Art. 2.
164 UDHR Preamble; ICCPR Preamble. *See also* Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna, June 25, 1993, Art. 1.
165 UN Charter p. 85.
166 OHCHR (2009), *supra* note 71, at ¶ 84-88; CESCR General Comment No. 3, ¶ 14, UN Doc. E/1991/23 (Dec. 14, 1990).

- 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 fulfillment of human rights in other countries, including disaster relief, emergency assistance, and assistance to refugees and displaced persons
- Ensure that human rights are given due attention in international agreements and that such agreements do not adversely impact upon human rights.[167]

The OHCHR has noted that these standards and principles are "consistent with and further emphasize" the principle of "common but differentiated responsibilities" contained in the UNFCCC,[168] and the various provisions of the UNFCCC which call for international cooperation and financial and technical assistance between countries.[169]

According to one author, the obligation of international cooperation would likely require the following actions from countries with respect to climate change: (i) setting mitigation targets that are consistent with the full enjoyment of human rights (and implementing those targets); (ii) funding adaptation measures in vulnerable countries; and (iii) crafting international agreements that do not adversely affect human rights.[170] Other components of this obligation may include the provision of financial assistance and/or technology transfer for climate change *mitigation* measures in countries that lack resources to implement those measures, and compensating people for harm incurred as a result of climate change.

### *(iv) Obligations to Address Transboundary Harm*

States also have a duty to address transboundary environmental harms, which is closely related to, and partially premised on, their duties of international cooperation. This obligation also derives in part from customary international law, which primarily deals with a state's obligations vis-à-vis other states, as opposed to a state's obligations to individuals.

The ICJ has clarified that, as a matter of customary international law, it is "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States."[171] Specifically, there is a "principle of prevention" that requires a state to "use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State."[172] The ICJ's holding is consistent with the principle of *sic utere* (also known as the "no harm" rule).[173]

It is less clear whether states have an independent obligation, as a matter of international human rights law, to prevent transboundary harms where the harms originate from activities that occur within their own jurisdiction but have adverse effects on the enjoyment of human rights in other jurisdictions. As noted above, the CESCR has interpreted the ICESCR as encompassing extraterritorial obligations of this nature. The language of the convention strongly supports this interpretation—states are directed to cooperate internationally, and to use the maximum available resources, to protect the numerated human rights for all persons.[174] There is no jurisdictional limitation. However, many developed countries have disagreed with this interpretation, and thus there is not a clear consensus on the extraterritorial application of the convention.[175]

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167 OHCHR (2009), *supra* note 71, at ¶ 86 (citing CESCR General Comments No. 12, No. 13, No. 14, No. 15).
168 *Id.* at ¶ 87 (citing UNFCCC Art. 4, pp. 4 and 9).
169 These include: Article 3(5), which recognizes that Parties "should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them to better address the problems of climate change;" Article 4(1)(c), which specifies that Parties should "[p]romote and cooperate in the development, application, and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions" of GHGs; and Article 4(1)(e), which directs parties to "[c]ooperate in preparing for adaptation to the impacts of climate change," by developing integrated resource management and protection plans, among other things.
170 Mark Limon, *Human Rights and Climate Change: Constructing a Case for Political Action,* 33 Harv. Envtl. L. Rev. 439, 455 (2009).
171 Pulp Mills Case (2010), *supra* note 93, at p. 101 (citing Corfu Channel (United Kingdom v. Albania), Merits, Judgment (1949)). *See also* Trail Smelter (United States v. Canada), 3 R.I.A.A. 1938, 1963 (Mar. 11, 1941) ("no state has the right to use or permit the use of its territory in such a manner as to cause injury… in or to the territory of another or of the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence").
172 Id. at 56, citing Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, p. 29 (1996)).
173 Marte Jervan, *The Prohibition of Transboundary Environmental Harm. An Analysis of the Contribution of the International Court of Justice to the Development of the No-harm Rule,* PluriCourts Research Paper No. 14-17 (2014).
174 ICESCR Art. 2.
175 Matthew Craven, *The Violence of Dispossession: Extra-Territoriality and the Economic, Social, and Cultural Rights,* in Economic, Social and Cultural Rights in Action (M.A. Baderin & R. McCorquodale eds. 2007).

Unlike the ICESCR, the ICCPR does include a jurisdictional limit. Specifically, it directs each party "to respect and to ensure to all individuals *within its territory and subject to its jurisdiction*" the rights recognized therein.[176] The HR Committee has interpreted this as requiring states to respect and ensure civil and political rights for all persons within their "effective control."[177] For example, the Committee has noted that a state may not actively violate the right to life of persons detained abroad, noting that:

> "It would be unconscionable to so interpret the responsibility under article 2 of the Covenant as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory."[178]

However, the Committee has not held that a state has an obligation to protect the right to life of persons outside of its jurisdiction against harms caused by activities within its jurisdiction, and it would be a stretch to say that the "effective control" standard encompasses such situations. That said, there are several HR Committee resolutions that recognize the importance of international cooperation in this context, without explicitly recognizing an obligation of international cooperation.[179]

The idea that states have extraterritorial obligations to prevent transboundary environmental harm is supported by other international declarations and statements from authoritative bodies. For example, Principle 21 of the Stockholm Declaration provides that states have "the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."[180] More generally, the UNFCCC and other MEAs all recognize that states have obligations to address the effect of their activities on global resources, such as the climate, oceans, and biodiversity.[181] Indeed, the UNFCCC's principle of common but differentiated responsibilities is premised on the idea that the states most responsible for climate change must take the lead in order to address the adverse effects of climate change on ecosystems and people across the world, not just their own citizens.

### *(v) Safeguarding Human Rights in Mitigation and Adaptation Activities*

Finally, international law requires states and other governmental actors to ensure that the actions they undertake to mitigate or adapt to climate change do not violate human rights, as part of their duty to *respect* human rights.

This obligation applies to both specific projects and broader policy decisions. For example, in the CESCR Statement on the World Food Crisis, the Committee "urge[d] State parties to address the structural causes at the national and international levels, including by . . . [i]mplementing 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."[182] CESCR's recommendation in this context was no doubt informed by concerns about biofuel projects and their impact on food security.

176 ICCPR Art. 2, p. (1).
177 HR Committee, General Comment No. 31, *Nature of the General Legal obligation on State parties to the Covenant,* p. 10, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004).
178 101 (1981) ICCPR Comm. No. 52/1979, p. 12.3, UN Doc. CCPR/C/OP/1 (1981). *See also* Lilian Celiberti de Casariego v. Uruguay, ICCPR Comm. No. 56/1979 (1981).
179 *See, e.g.,* UNHRC Res. 18/22, *supra* note 82, stated that "climate change is a global problem requiring a global solution, and that effective international cooperation to enable the full, effective and sustained implementation of the United Nations Framework Convention on Climate Change in accordance with the provisions and principles of the Convention is important in order to support national efforts for the realization of human rights implicated by climate change-related impacts." Resolution 26/27, *supra* note 83, provided that "the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions." / "the need of giving due consideration in the elaboration of the Post 2015 development agenda to the role of international cooperation in relation to the special needs and particular circumstances of developing countries and to addressing the adverse impact of climate change on the full and effective realization of human rights." / climate change is an urgent global problem requiring a global solution, and that effective international cooperation to enable the full, effective and sustained implementation of the United Nations Framework Convention on Climate Change in accordance with the provisions and principles of the Convention is important in order to support national efforts for the realization of human rights affected by climate change-related impact.
180 In addition, the Maastricht Principles, although not legally binding, provide a comprehensive framework for understanding the extraterritorial obligations of states in the area of economic, social, and cultural rights. They do not, however, provide detailed information on extraterritorial obligations related to environmental harms or climate change. Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2013).
181 *See, e.g.,* CBD, *supra* note 99, Arts. 5, 10; 1979 Geneva Convention on Long-range Transboundary Air Pollution, Art. 2 UNCLOS, *supra* note 99, Art. 145.
182 CESCR Statement on the World Food Crisis, pp. 12-13, UN Doc. E/C.12/2008/1 (May 18, 2008).

The UNFCCC COP also explicitly recognized this issue in Art. 8 of the Cancun Agreements, which recognize that the Parties "should, in all climate change-related actions, fully respect human rights as enunciated in the outcome of the sixteenth session of the Conference of the Parties to the Convention."[183] UNHRC Resolutions 18/22 and 26/27 include similar language.[184]

The Cancun Agreements also include several paragraphs outlining principles for how Parties should address and mitigate the "economic and social consequences of response measures" on vulnerable groups and developing countries. For example, paragraph 89 urges developed country Parties to:

> "strive to implement policies and measures to respond to climate change in such a way as to avoid negative social and economic consequences for developing country Parties, taking into account Article 3 of the Convention, and to assist these Parties to address such consequences by providing support, including financial resources, transfer of technology and capacity-building, in accordance with Article 4 of the Convention, to build up the resilience of societies and economies negatively affected by response measures."[185]

Appendix I of the Cancun Agreements also outlines a set of safeguards for protecting vulnerable groups in the context of mitigation actions in the forest sector. These safeguards are evaluated in Part 3.

### (c) Obligations to Specific Groups

The principle of non-discrimination is included in the UDHR, the ICCPR, and the ICESCR.[186] In accordance with this principle, countries must ensure that the measures they take to address climate change (and the measures they take to respect, protect, and fulfill human rights) are implemented in a non-discriminatory fashion. These and other agreements also recognize that individuals who are part of certain groups—notably, women, indigenous groups, and children—are entitled to special protections.

The UNFCCC does not speak of specific individuals or groups, but does recognize that some countries and ecosystems may be particularly vulnerable to the effects of climate change, and as such, they warrant special consideration and adaptation assistance.[187] In addition, the Cancun Agreements provide more detailed instructions on how the parties should address the impacts of climate change on people who are vulnerable to climate change as a result of geography, gender, age, indigenous or minority status, and disability.[188]

#### *(i) Women*

The Cancun Agreements recognize that gender equality and the effective participation of women are important for effective action on all aspects of climate change.[189] They also discuss the need to address gender considerations in the implementation of REDD projects.[190] However, they do not outline any specific requirements for countries to ensure that women are adequately involved in the various phases of government decision-making related to climate change mitigation and adaptation, or to address the potentially discriminatory effect of certain actions on women.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provides a more detailed framework for protecting the rights of women and ensuring that they have a voice in public decisions.[191] However, the Convention is more geared towards preventing acts of overt discrimination, as opposed to addressing the discriminatory effects of actions on women. As such, the Convention does not provide much guidance on government obligations relating to the disproportionate burden that women will likely experience as a result of climate change.

183 Cancun Agreements (2011), *supra* note 86, at p. 8.
184 UNHRC Res. 18/22, *supra* note 82; UNHRC Res. 26/27, *supra* note 83.
185 Cancun Agreements (2011), *supra* note 86, at p. 89.
186 ICESCR Art. 2(2); ICCPR Art. 26; UDHR Art. 7.
187 UNFCCC Arts. 3(2), 4(4), 4(10).
188 Cancun Agreements (2011), *supra* note 86, at pp. 7, 12, 18,
189 *Id.* at p. 7.
190 *Id.* at p. 72.
191 For example, Art. 14(2) of the Convention mandates "all appropriate measures to eliminate discrimination against women in rural areas in order… that they participate in and benefit from rural development," and requires participation "at all levels" as well as access to adequate living conditions.

### *(ii) Children*

The Cancun Agreements recognize the need to "fully account" for the adverse effects of climate change on children,[192] but do not contain additional instructions on how countries should do this. The Convention on the Rights of the Child outlines a variety of additional requirements that are relevant to the protection of children in the context of climate change. Article 24 is most relevant—it recognizes the "right of the child to the enjoyment of the highest attainable standard of health" and outlines how states should ensure full implementation of the right. For example, states "shall take appropriate measures" to "combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution."[193]

In addition, the CESCR has directed states to "adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations."[194] The UNFCCC also has an intergenerational focus, with the Parties agreeing that they "should protect the climate system for the benefit of present and future generations of humankind."[195]

### *(iii) Indigenous Peoples*

OHCHR has recognized that climate change "poses a serious threat to indigenous peoples, who often live in marginal lands and fragile ecosystems which are particularly sensitive to alterations in the physical environment."[196] This threat could potentially undermine the right to self-determination for indigenous peoples, which is recognized in both the ICCPR and the ICESCR,[197] as well as the rights outlined in the UN Declaration on the Rights of Indigenous Peoples. The Cancun Agreements explicitly refer to indigenous rights, and call for public participation of indigenous peoples in decisions about forestry and land use projects.[198]

The UN Declaration on the Rights of Indigenous Peoples contains particularly robust requirements for states to engage and obtain consent from indigenous peoples before undertaking actions that will adversely affect those peoples. For example, it specifies that indigenous peoples shall not be relocated from their lands or territories without "free, prior and informed consent… and after agreement on just and fair compensation and, where possible, with the option of return."[199] It also requires states to provide redress measures in the event that land or property is taken from these people without their consent.[200] These provisions are particularly relevant when governments are implementing or authorizing mitigation and adaptation projects that will affect lands or resources owned or used by indigenous peoples. Indeed, the Inter-American Court of Human Rights has decided several cases involving the obligation to protect indigenous rights in the context of projects that affect indigenous lands and resources that would appear applicable in these circumstances.[201]

In addition, the Declaration recognizes that "Indigenous peoples have the collective right to live in freedom, peace and security" and a corresponding right "not to be subjected to forced assimilation or destruction of their culture."[202] Climate change will likely have a devastating effect on many of the ecosystems that indigenous people rely on for their livelihoods and cultural identity, and as such, the effects of climate change could be construed as a violation of this principle.[203] Although it may be difficult to establish causation for the purposes of bringing a successful claim before an international or regional human rights court, it is nonetheless reasonable that major emitters do have an obligation to curtail their emissions so as to avoid the destruction of indigenous cultures.

192 Cancun Agreements (2011), *supra* note 86, at Section E (preamble).
193 CRC Art. 25(2)(c).
194 CESCR General Comment No. 15, UN Doc. E/C.12/2002/11 (Jan. 20, 2003).
195 UNFCCC Art. 3(1).
196 OHCHR (2009), *supra* note 71, at p. 68.
197 ICCPR Art. 1, ICESCR Art. 1
198 *See, e.g.,* Cancun Agreements (2011), *supra* note 86, at Section E (preamble), p. 72.
199 UN Declaration on the Rights of Indigenous Peoples Art. 10.
200 *Id.* Arts. 8, 11.
201 *See, e.g.,* Saramaka People v. Surin, 2007 Inter-Am. Ct. H.R. (ser. C) No. 172, para. 95(Nov. 28, 2007); Indigenous Cmty. Yakye Axa v. Para., Inter-Am. Ct. H.R. (ser. C), No. 146, para. 143 (June 17, 2005); Maya Indigenous Cmty. Of the Toledo Dist. v. Belize, Case 12.053, Inter-Am. Ct. H.R., Response No. 40/04, OEA/SEr.L/V/II.122 doc. 5 rev., para. 113 (2004); Indigenous Community of Awas Tingni v. Nicaragua, Inter-Am. Ct. H.R. (Ser. C) No. 79, para. 148 (Aug. 31, 2001).
202 *Id.* Arts. 7 and 8.
203 *See* Inuit Petition (2005), *supra* note 7.

## 2.3 Private Sector Obligations to Address the Human Rights Implications of Climate Change

As discussed above, states have an obligation to protect human rights against abuses by third parties, as well as an obligation to provide access to an adequate remedy, judicial or non-judicial, when human rights are violated by non-state actors.

The core international human rights treaties do not directly address the obligations of private parties to respect human rights, but there are some standards for non-state actors that countries are beginning to incorporate into domestic law. These standards are enshrined in the UN Guiding Principles on Business and Human Rights (the "Ruggie Principles"), proposed by UN Special Representative John Ruggie and endorsed by the UN Human Rights Council in June 2011.[204] The Ruggie Principles provide additional guidance to countries on how to fulfill their obligations in this context, as well as principles that are directly applicable to private actors. The foundational principles for private actors include, inter alia:

1. Businesses should respect human rights by avoiding infringing on the human rights of others and addressing any adverse human rights impacts with which they are involved.

2. The rights that must be respected by businesses include, at minimum, the rights recognized in the International Bill of Rights (UDHR, ICCPR, ICESCR) and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

3. To meet their human rights responsibilities, businesses should implement policies and processes appropriate for their size and circumstances, so as to safeguard human rights in all aspects of their operation.

4. Businesses should also carry out human rights due diligence, which includes assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.

5. Where businesses identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.[205]

A complete assessment of non-state actors' obligations is beyond the scope of this report, but it is worth noting that non-state obligations with respect to human rights are also outlined in the Oslo Principles (which deal specifically with climate change).[206] In addition, the International Bar Association (IBA) published a recent report on advancing climate justice which contains recommendations on how corporations can implement the Ruggie Principles through the implementation of corporate responsibility policies and other actions.[207]

204 UNHRC Res. 17/4, *Human Rights and Transnational Corporations and Other Business Enterprises,* UN Doc. A/HRC/Res/17/4 (July 6, 2011).
205 Guiding Principles on Business and Human Rights, Part II: The Corporate Responsibility to Respect Human Rights (2011).
206 Oslo Principles, pp. 27-30.
207 IBA Presidential Task Force on Climate Change Justice and Human Rights, Achieving Justice and Human Rights in an Era of Climate Disruption (2014).

# PART III

*Additional investment in flood protection will be needed to address the impacts of rising sea levels and increased precipitation in Manila, the capital city of the Phillipines.*

## Implementation Assessment

The parties to the UNFCCC have taken many important steps, both individually and jointly, to address the causes and impacts of climate change. However, it appears that there is still a need to mainstream human rights considerations into the decisions of individual countries, the COP and the UNFCCC's various arms and mechanisms, and to undertake additional measures to address the effect of climate change on human rights.

This section will briefly evaluate the adequacy of national and international responses in six contexts: (1) formal recognition of the human rights-climate change nexus in national communications; (2) mitigation actions and commitments; (3) adaptation actions and commitments; (4) financial assistance to developing countries; (5) respect for procedural rights in climate policy and planning; and (6) safeguards in international climate finance mechanisms.

### 3.1 Human Rights and Climate Change in National Communications

As of Oct. 5, 2015, 119 INDCs had been submitted, covering 146 countries.[208] Among these,

- 14 discussed the linkages between climate change and human rights.[209]
- 48 discussed gender equality, mainstreaming, and empowerment.[210]

208 Center for International Environmental Law, *Briefing Note: Human Rights and the 2015 Climate Commitments* (November 2015), available at www.ciel.org.

209 These countries include: Brazil, Chad, Chile, Costa Rica, Ecuador, Georgia, Guatemala, Honduras, Malawi, Marshall Islands, Mexico, Morocco, Philippines, Zimbabwe. *Id.*

210 These countries include: Barbados, Brazil, Burkina Faso, Burundi, Cambodia, Cameroon, Central African Rep, Chad, Comoros, Costa Rica, Cote d'Ivoire, Djibouti, Dominica, Dominican Rep., DR Congo, Ethiopia, Gambia, Georgia, Guatemala, Guinea, Haiti, Honduras, India, Jordan, Kenya, Kiribati, Lesotho, Liberia, Malawi, Mali, Mauritius, Mexico, Morocco, Myanmar, Niger, Papua New Guinea, Paraguay, Peru, Philippines, Sierra Leone, Solomon Islands, South Africa, Swaziland, Tajikistan, Vanuatu, Vietnam, Zambia, Zimbabwe. *Id.*

- 14 discussed the impact of climate change and mitigation and/or adaptation responses on indigenous peoples.[211]

Notably, *all* of the INDCs that discuss any of these three topics were submitted by developing countries and least developed countries. These countries often noted the need to implement their mitigation and adaptation targets with full respect for human rights or related issues (e.g., gender equality, indigenous rights), without providing much detail on how this would occur.[212] The INDCs submitted by developed countries do not mention human rights, gender, indigenous peoples, or other relevant considerations (e.g., equity, poverty alleviation, and ensuring access to basic goods and services).[213]

A report published by the Mary Robinson Foundation in 2014 also concluded that the majority of country reports to the UNFCCC and the UNHRC do not address the link between human rights and climate change.[214] Some of the key findings from that report included:

- 49 countries explicitly mentioned human rights in National Communications and National Adaptation Plans of Action (NAPAs) submitted to the UNFCCC between 2010 and 2014. This included 39% of the National Communications and 4% of the NAPAs that were submitted during that period.[215]

- Procedural rights were more frequently discussed than substantive rights in the National Communications submitted to the UNFCCC. 20% of these communications discussed procedural rights (10% developed/ 10% developing), and 13% discussed substantive rights (1% developed/12% developing).[216]

- 45 countries explicitly mentioned the human rights impact of climate change in their national reports to the Universal Periodic Review of the HRC between 2010 and 2014. These included 12% of the submissions from developed countries, 29% of the submissions from developing countries, 32% of submissions from least developed countries (LDCs), and 45% of the submissions from small island development states (SIDS).[217]

- Only 12 countries made the link between human rights and climate change in reports to both the UNFCCC and the HRC.[218]

The report concluded that further steps are needed to ensure that countries will integrate human rights considerations into their climate policies, and also account for climate change when reporting on human rights performance.

While the failure to report on the linkages between human rights and climate change is not itself a violation of human rights obligations, it does suggest that many countries are not thinking about these obligations when formulating climate change plans and policies. It also makes it more difficult for the international community to assess what countries are doing to address the human rights implications of climate change.

## 3.2 Mitigation Measures and Commitments

The "emissions gap"— the gap between the aggregate effect of actions and commitments by parties to the UNFCCC and the emissions reductions required to keep warming at or below 2°C[219]—is a major concern from a human rights perspective. The parties have significantly increased their mitigation ambition in the lead-up to the Paris Agreement. But there is more to be done. Moreover, many countries dispute whether the 2°C is really adequate to prevent "dangerous anthropogenic interference" with the atmosphere and the natural systems that

211 These countries include: Brazil, Cameroon, Central African Rep, Costa Rica, Guatemala, Honduras, Lao, Mexico, Paraguay, Peru, Philippines, South Africa, Vietnam, Zimbabwe. *Id.*
212 *See, e.g.,* Federative Republic of Brazil, *Intended Nationally Determined Contribution* 1 (2015); Government of Costa Rica, Ministry of Environment and Energy, *Costa Rica's Intended Nationally Determined Contribution* 11 (2015).
213 See, e.g., INDCs submitted by Australia, Canada, the European Union, Japan, New Zealand, Norway, and the United States.
214 Mary Robinson Foundation, *Incorporating Human Rights into Climate Action* (Oct. 2014).
215 *Id.* at 4.
216 *Id.* The report also noted that parties to the Aarhus Convention (predominantly developed countries) were 4 times more likely to refer to the right to access to information, which implies that the Aarhus Convention is "successful at promoting the inclusion of human rights in policy making."
217 *Id.* at 5.
218 *Id.* at 6.
219 UNEP, The Emissions Gap Report (2015).

support human life[220]—indeed, based on the IPCC's analysis (summarized in Part 1), an increase of this magnitude will have environmental impacts that seriously interfere with human rights for millions and perhaps even billions of people across the world.

In November 2015 UNEP published its sixth Emissions Gap Report which provides a scientific assessment of the mitigation contributions from submitted INDCs, and compares this with the mitigation levels required to meet the target of a global average temperature increase below 2°C by 2100.[221] The assessment covers 119 submitted INDCs, representing 146 countries and 85-88 per cent of global emissions.

The assessment determined that full implementation of both unconditional and conditional INDCs will result in emission level estimates in 2030 that are most consistent with scenarios that limit global average temperature increase to below 3-3.5°C with a greater than 66 per cent chance.[222] Therefore although the INDCs do present a real increase in the ambition level compared to a projection of current policies, there is still a large emissions gap in 2030 of 12Gt$CO_2$e (with a range of 10-15).[223]

In light of these findings, there is a clear need to continue increasing ambition with respect to global GHG mitigation. Thus, many countries have called for inclusion of a mechanism for gradually "ratcheting down" emissions (or "ramping up ambition") in the upcoming Paris agreement.[224] Such a mechanism could contribute to mitigation ambition, although it may not go far enough to protect human rights from climate-related harms. If emissions are not significantly lowered beneath the current commitments, there will almost certainly be environmental impacts that result in widespread interference with human rights. Indeed, the IPCC's Fifth Assessment Report confirmed that, to have a "likely" chance of limiting warming to 2°C, we must see "substantial emissions reductions over the next few decades, and near zero emissions… by the end of the century."[225] Thus, national governments and other actors must seek pathways to a zero-carbon economy.

## 3.3 Adaptation Measures and Commitments

Considerable investments will be required in both developed and developing countries to adapt to climate change. Even the richest countries have yet to enact adequate legal and institutional frameworks for climate change adaptation, and will face serious challenges in terms of mobilizing resources and building adaptive capacity among their citizens, economic sectors, and infrastructure.[226] But there is no question that developing countries—and in particular, least developed countries (LDCs) and geographically vulnerable countries (e.g., small island states)—face the greatest adaptation challenges.

In 2014, UNEP published the Global Adaptation Gap Report which found that there is likely to be a significant gap between the resources that would be needed to adapt to 2°C of warming and the funding that will be made available through international climate funds and other finance mechanisms.[227] The report cited evidence that financial commitments to adaptation have increased in recent years, and that a significant amount of adaptation funding flows to developing countries.[228] However, it also noted a serious need to scale up adaptation funding, and that the existing estimates of global adaptation costs (ranging from US$70 billion-$100 billion per year) are likely to be a significant underestimate, particularly in the period after 2030.[229] The bulk of international climate finance to developing countries in the past few years has been channeled towards mitigation, rather than adaptation (see discussion below). In this context, the decision of the Green Climate Fund to allocate funds 50/50 between mitigation and adaptation is welcome.

220 Petra Tschakert, *1.5°C or 2°C: A Conduit's View from the Science-Policy Interface at COP20 in Lima, Peru,* 2 Climate Change Responses 1 (2015).
221 UNEP, The Emissions Gap Report (2015).
222 *Id.* at XVIII.
223 *Id.* (Based on full implementation of conditional and unconditional INDCs).
224 Both the U.S. and China have supported language to this effect. For more on this issue, see *Commitment Cycles and the Ratchet Mechanism,* The Road to Paris, Climate Nexus (Sept. 28, 2015), http://www.theroadthroughparis.org/negotiation-issues/commitment-cycles-and-ratchet-mechanism.
225 IPCC, Climate Change 2014, Synthesis Report, Summary of Policymakers 20 (2014).
226 IPCC (2014), *supra* note 4, highlights numerous examples of where adaptive capacity is lacking in both developed and developing countries, although it ultimately concludes that developed countries will fare better than developing countries. *See also* Christian Kroll, Sustainable Governance Indicators (SGI), Sustainable Development Goals: Are the Rich Countries Ready? (2015) (concluding that 34 OECD countries are not ready to meet the sustainable development goals, including goals related to climate change adaptation); Nicholas Stern, Stern Review: The Economics of Climate Change 413 (Cambridge University Press 2007) ("Even with an appropriate policy framework, adaptation will be constrained by both uncertainty and technical limits to adaptation.")
227 UNEP, The Adaptation Gap: A Preliminary Assessment (2014).
228 *Id.* at XIII.
229 *Id.*

The UNEP Global Adaptation Report also highlighted other key barriers to adaptation in developing countries, including lack of access to technologies and limitations in existing technologies, lack of knowledge about the impacts of climate change and the effectiveness of various adaptation measures, and problems with institutional capacity and governance in some countries. Even if countries increase their mitigation ambition and can limit warming to 2°C, it will be challenging for many countries to fulfill human rights obligations related to climate change adaptation.

## 3.4 Financial and Technical Assistance to Developing Countries

In the 2009 Copenhagen Accord, developed countries committed to a goal of mobilizing US$100 billion per year by 2020 to "address the needs of developing countries" in the context of "meaningful mitigation actions and transparency on implementation"[230] The expectation was that this funding would come from a variety of public and private sources (not just foreign aid).[231] This commitment was reaffirmed in the 2010 Cancun Agreements.[232] The Cancun Agreements also called for the creation of a Green Climate Fund (GCF),[233] with the stated objective of "achieving a balanced allocation between adaptation and mitigation."[234] The draft negotiating text for the Paris Agreement contains proposed text for scaling up finance after 2020, but does not specify a numeric target for this goal.[235]

As of October 2, 2015, a total of 37 governments had made pledges to the GCF, amounting to US$10.2 billion (including $5.8 billion in signed pledges, and $4.4 billion in announced but not signed pledges). [236] Thus, the aggregate amount of the pledges (which are not annual pledges), is far below the $100 billion annual target. Moreover, the countries have not yet made financial commitments or mobilized any resources for loss and damage caused by the effects of climate change.

However, a recent OECD report determined that many more funds have been mobilized outside of the context of the GCF.[237] Specifically, the report concluded that developed countries had mobilized an average of US$57 billion per year in 2013-2014 for public and private climate finance in developing countries.[238] This figure excludes the pledges that developed countries have made to the GCF. Notably, 77% of the mobilized climate finance addressed climate change mitigation only, 16% addressed adaptation only, and 7% consisted of activities designed to address both mitigation and adaptation.[239] This data reinforces one key concern of developing countries—that international climate finance will prioritize mitigation over adaptation—and lends support to the idea that climate finance should be channeled through a global facility, like the GCF, to ensure that funds are more equally distributed between adaptation and mitigation.

Even if the COP does meet its goal of mobilizing $100 billion in climate finance annually, this will not be adequate to address the effect of climate change on human rights. As noted by the World Resources Institute, $100 billion is "only a fraction of the finance needed to keep the average temperature increase to 2°C,"[240] and clearly insufficient to meet both adaptation and mitigation needs in developing countries.

On a more positive note, there are some promising examples of state action aimed at providing technical assistance to developing countries and addressing the transboundary impacts of climate change. For example, in October 2014, 110 countries endorsed the Nansen Initiative Protection Agenda, which calls for additional research on international displacement caused by natural disasters, including climate-related disasters, and which directs countries to make better use of humanitarian measures to help those displaced across borders.[241]

230 UNFCCC Decision 2/CP.15, *Copenhagen Accord,* ¶ 8, UN Doc. FCCC/CP/2009/11/Add.1 (March 30, 2010).
231 *Id.*
232 Cancun Agreements (2011), *supra* note 86, at ¶ 98.
233 *Id.* at ¶ 100-112. The Agreements did not, however, announce a separate target for adaptation funding—as a result, it is unclear whether the COP intended to raise $100 billion to finance *both* mitigation and adaptation in developing countries, or if additional funds will be mobilized for adaptation.
234 *Id.*, Appendix III, ¶1(c)..
235 Draft Agreement, Ad Hoc Working Group on the Durban Platform for Enhanced Action, Article 6: Finance, ¶ 5, UN Doc ADP.2015.8.Informal Note, Section F, Finance.
236 Green Climate Fund Pledge Tracker, *Status of Pledges and Contributions made to the Green Climate Fund* (Oct. 1, 2015).
237 OECD, Climate Finance in 2013-14 and the USD 100 Billion Goal (2015).
238 *Id.* at 10.
239 *Id.* at 28.
240 Michael I. Westphal et al., WRI, Getting to $100 Billion: Climate Finance Scenarios and Projections to 2020 5 (May 2015)
241 Nansen Initiative, Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (2015).

Nonetheless, to fulfill their human rights obligations relating to international cooperation and transboundary harm, developed countries should increase the amount of financial assistance that is provided to developing countries. They should also seek to achieve a more equitable balance between adaptation and mitigation funding, especially in light of current emissions trajectories.

## 3.5 Respect for Procedural Rights in Climate Policies and Planning

A complete overview of procedural safeguards for national adaptation and mitigation measures is beyond the scope of this report. But there are a few trends worth highlighting.

One of the most important developments occurred in 1992, when the UN General Assembly adopted the Rio Declaration on Environment and Development. Principle 10 stated that:

> Environmental issues are best handled with 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. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.[242]

The outcome document for Rio+20, *The Future We Want,* reaffirmed that "broad public participation and access to information and judicial and administrative proceedings are essential to the promotion of sustainable development."[243] Countries across the world have taken important steps towards implementing these principles in environmental decision-making,[244] and this seems to be the case for climate-related decisions as well.

For example, it appears that many countries are making reasonable efforts to assess the impacts of climate change, as well as the contribution of their activities to climate change, and make this information available to the public. This includes efforts to: (1) monitor and disclose domestic sources of GHG emissions, in accordance with Annex I of the UNFCCC; (2) inform the public about the potential impacts and risks associated with climate change; [245] (3) describe and evaluate efforts to respond to climate change;[246] and (4) use existing EIA procedures to inform decision-makers and the public about the contribution of a proposed action to global GHG emissions, as well as the potential impacts of climate change on those proposals.[247]

It is difficult to gauge the extent to which governments are promoting public participation in decisions that involve climate change, for instance major projects that generate GHG emissions or the development of local, regional and national adaptation plans. National progress in this context relates to the broader issue of public participation in local, regional and national governance, and accordingly with general implementation of the rule of law in nations around the world. There is evidence that, as a general matter, many states have taken important steps towards promoting public participation in environmental decision-making.[248] This appears to be the case for climate-related decisions as well. For example, one study found that many European countries have mechanisms in place to ensure that affected stakeholders are informed about climate-related decisions and that they can provide input on those decisions. [249] However, the same study found that government decision-makers should be more proactive about

242 UN GA, *Rio Declaration on Environment and Development*, A/CONF.151/26 (Aug. 12, 1992).
243 UN GA Res. 66/288, *The Future We Want*, p. 43, UN Doc. A/RES/66/288 (July 7, 2012).
244 Stakeholder Forum for a Sustainable Future, Review of Implementation of Agenda 21 and the Rio Principles 43 (Jan. 2012) (finding that the implementation of Principle 10 has been "very successful in some regions, and looks set to secure successful implementation in others").
245 *See, e.g.,* U.S. Global Change Research Program, National Climate Assessment (2014); UK Climate Change Risk Assessment: Government Report (2012); Australian Department of Environment, Climate Adaptation Outlook: A Proposed National Adaptation Assessment Framework (2013).
246 *See, e.g.,* the National Adaptation Plans (NAPs), National Adaptation Programmes of Actions (NAPAs), and Nationally Appropriate Mitigation Actions (NAMAs) submitted to the UNFCCC Secretariat.
247 *See* Morgan (2012) *supra* note 100. Promisingly, many jurisdictions have developed policies or guidance for integrating climate change considerations into strategic and project-level EIA, to address both the contribution of proposed actions on climate change and the potential impact of climate change on those projects. However, in some jurisdictions, EIA documents do not thoroughly assess the GHG emissions from activities and/or the impacts of climate change on the project. *See* Sabin Center for Climate Change Law, *Climate Change and Environmental Impact Assessment*, http://web.law.columbia.edu/climate-change/resources/nepa-and-state-nepa-eis-resource-center (last visited Oct. 13, 2015) (website includes list of guidance documents from the U.S. and other jurisdictions, as well as assessments of climate change considerations in U.S. EIA).
248 *See* John Knox, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment – Compilation of Good Practices,* Parts A-C, UN Doc. A/HRC/28/61 (Feb. 3, 2015).
249 Mara Silina, European Environmental Bureau & European ECO Forum, *Is Everything Right with Public Participation in Climate Related Decisions?* Presentation for the Fifth Meeting of the Task Force on Public Participation in Decision-making, Geneva, February 23-24, 2015.

*Open dialogue on the Post-2015 sustainable development agenda and local development priorities in Kigali, Rwanda*

soliciting input from affected stakeholders, and actually incorporating the information and perspectives gathered through public consultation processes into final decisions.[250]

Finally, perhaps the largest procedural gap in this context is the lack of access to justice and remedies for climate-related harms. In both domestic courts and international tribunals, many cases alleging serious injury to human rights caused by the effects of climate change have been dismissed or have failed due to: (i) the challenge of establishing a causal link between specific emitters and climate change; (ii) the challenge of establishing a causal link between climate change and the on-the-ground impacts that gave rise to the harm; and/or (iii) the absence of legal requirements or liability for GHG emissions.[251] Jurisdiction (or lack thereof) also poses a major barrier to judicial remedies, especially in the context of transboundary harms. Moreover, there is no international grievance mechanism that would provide an alternative forum for justice and remedies in this context—although many developing countries would like to see a Loss and Damage Framework developed under the auspices of the UNFCCC that could fill this role.[252]

One way for countries to implement and further elaborate upon their procedural human rights obligations is through participation in MEAs. As of 2015, there are 47 parties to the Aarhus Convention, which include virtually all of the countries in Europe as well as several countries in Central Asia.[253] In addition, nineteen countries in Latin America and the Caribbean are currently negotiating a new regional agreement to implement the access rights set forth in Principle 10 of the Rio Declaration.[254] Other actors are also using international mechanisms to give effect to procedural rights—for example, in 2010, the UNEP Governing Council adopted the Bali Guidelines for

250 *Id.*
251 *See, e.g.,* Inuit Petition (2005), *supra* note 7; Sabin Center for Climate Change Law, *Litigation Charts*, http://web.law.columbia.edu/climate-change/resources/litigation-charts (last visited Oct. 13, 2015).
252 For a detailed discussion of barriers to justice in this context, see IBA (2014), *supra* note 211.
253 UNECE, *Status of Ratification,* http://www.unece.org/env/pp/ratification.html (last visited Oct. 19, 2015).
254 Press Release, ECLAC, *LAC Countries Hold First Negotiating Committee Meeting on Principle 10 of Rio Declaration,* May 7, 2015.

the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters, which are intended to be used as a guidance tool for states in the implementation of Rio Principle 10.[255]

## 3.6 Human Rights Safeguards in International Climate Finance Mechanisms

### (a) Clean Development Mechanism

The CDM modalities and procedures include rules that require stakeholder consultation (LSC) and global stakeholder consultation (GSC) prior to the validation of a CDM project.[256] These include rules directing the project participants and coordinating/managing entities to inform the public about the proposed CDM project, invite comments from local and global stakeholders, and explain how these comments were considered in the decision-making process.[257]

These rules are expressed in relatively general terms, lacking definite criteria for what constitutes adequate stakeholder consultation. Moreover, the rules do not require the consent of local stakeholders, nor do they outline any substantive requirements to promote the well-being of local people or the protection of rights (e.g., requirements for equitable distribution of project benefits). Nor is there any framework for prioritizing projects that will have beneficial impacts on the poor and other vulnerable groups, and their local environments.[258] And although the project participants may include commitments to address stakeholder comments in the CDM project (e.g., commitments for job creation, mitigation of environmental harms, or compensation for land), there are no rules for monitoring the status or completion of those commitments. Finally, there are no provisions for stakeholders wishing to raise concerns about a project after it has been validated and registered, nor is there a grievance mechanism for individuals and communities who have been harmed by CDM projects.

As a result of these procedural deficiencies, Carbon Market Watch concluded that many CDM projects have been registered "despite insufficient local stakeholder consultation, strong local opposition and clear evidence that projects cause harm to the local populations and/or ecosystems."[259]

The Executive Board of the CDM has taken steps to improve stakeholder consultation for CDM projects. For example, at its seventieth meeting in 2012, the Board issued a decision directing Designated Operational Entities (DOEs) to assess whether LSC is still adequate when significant changes occur in the project design after the initial LSC.[260] However, as noted in a recent concept note on improving stakeholder consultation in CDM projects, there are additional changes that could be made to the CDM rule and regulations "to increase the participation of stakeholders in, and the transparency, clarity, and effectiveness of," the local and global stakeholder consultation processes.[261] Recommendations for the CDM and other climate finance mechanisms are presented in Part 4.

The lack of adequate provisions for stakeholder consultation in this context reflects a failure on the part of governments to protect and promote both substantive and procedural human rights. As noted in section 1.2, there are some egregious examples of CDM projects that have resulted in the violation of human rights through displacement and the destruction of livelihoods. Better safeguards are needed to ensure that such violations do not occur in the context of future CDM projects.

### (b) REDD+

The Cancun Agreements included a set of safeguards that serve as guidance for forest activities aimed at mitigating climate change.[262] These included some provisions that are relevant to the protection of human rights—e.g., that projects should demonstrate "respect for the knowledge and rights of indigenous peoples and members of local communities" and that they should include the "full and effective participation of relevant stakeholders, in particular

255 UNEP, Guidelines for the Development of National Legislation on Access to Information, Public Participation, and Access to Justice in Environmental Matters, Decision SS.XI15, Part A, Feb. 26, 2010.
256 UNFCCC Decision 3/CMP.1, *Modalities and procedures for a clean development mechanism as defined in Article 12 of the Kyoto Protocol,* UN Doc. FCCC/KP/CMP/2005/8/Add.1 (March 30, 2006); UNFCCC, *CDM Standards,* http://cdm.unfccc.int/Reference/Standards/index.html (last visited Oct. 13, 2015).
257 *Id.*
258 Philippe Cullet, The Kyoto Protocol and Vulnerability: Human Rights and Equity Dimension (International Environmental Law Research Centre 2010).
259 Carbon Market Watch, Social and Environmental Accountability of Climate Finance Instruments, 3 (Sept. 2015).
260 EB 70 report, para 91. The Board also adopted a decision to improve the global stakeholder consultation through further action. *See* EB 70 Report, para 90(a)(b)(d), and (e).
261 Concept Note: Improving Stakeholder Consultation Processes, Version 01.0, CDM-EB86-AA-A15, at Para. 6 (2015?).
262 Cancun Agreements, 92011), *supra* note 86, at Appendix I.

indigenous peoples and local communities."[263] But these guidelines are expressed in very general, non-binding terms, and they do not explicitly require consent from those who live in the forests or utilize the forest resources that will be affected by REDD+ projects. They also do not contain language about the equitable distribution of benefits from forestry projects, which may not be a human right in of itself, but which has implications for the effective enjoyment of human rights for those who live in forests and depend on forest resources.[264]

A variety of proposed standards and guidance documents have been introduced in this context. Two notable examples include the REDD+ Social & Environmental Standards,[265] and the Joint Guidelines from UN-REDD Programme and the Forest Carbon Partnership Facility.[266] These standards provide a more comprehensive framework for protecting the rights of indigenous peoples and other local stakeholders, and ensuring an equitable distribution of benefits from REDD+ projects, but they are not binding on member states or other project stakeholders.[267] That said, projects that are funded through the World Bank's Forest Carbon Partnership Facility (FCPF) are required to comply with World Bank safeguard policies.[268] These include ten social and environmental safeguards addressing the following issues: (i) environmental assessment, (ii) natural habitats, (iii) pest management, (iv) physical and cultural resources, (v) involuntary settlement, (vi), indigenous peoples, (vii) forests; (viii) dam safety; (ix) projects on international waterways; and (x) projects in disputed areas.[269] However, compliance with the World Bank safeguards may not ensure that rights will be respected, because the existing safeguards arguably do not fully reflect existing human rights obligations, such as the obligation to obtain free, prior and informed consent (FPIC) for projects that adversely affect indigenous peoples.[270] The World Bank is currently working on revisions to the safeguard policies, which may result in positive human rights outcomes—for example, the current draft requires FPIC for projects that affect indigenous lands and resources or result in the displacement of indigenous communities.[271] However, some stakeholders are concerned that the revisions will ultimately weaken protections for affected communities and the environment, as a result of roll backs in due diligence and other procedural requirements.[272]

Ultimately, to fulfill obligations to protect and promote human rights, countries should ensure that any REDD+ projects financed within their jurisdiction include adequate public participation mechanisms and that they do not result in the dispossession of people from forest lands and resources. Special attention should be paid to the rights of indigenous people in this context, and in particular, the right to FPIC. The COP should also consider adopting a more concrete safeguard policy that applies to all REDD+ projects.

### (c) Green Climate Fund

In 2014, the GCF Board decided to adopt, on an interim basis, the International Finance Corporation's (IFC's) environmental and social performance standards for GCF-funded projects.[273] The IFC safeguards include eight performance standards addressing the following issues: (i) Assessment and management of social and environmental risks and impacts; (ii) Labor and working conditions; (iii) Resource efficiency and pollution prevention; (iv) Community health; (v) Safety and security; (vi) Land acquisition and involuntary resettlement; (vii) Biodiversity conservation and sustainable management of living natural resources; (viii) Full respect of rights of indigenous people and protection of cultural heritage. The Board also adopted terms of reference for an "Independent Redress Mechanism" to receive complaints related to the operation of the Fund and make operation.[274] Once operational, peoples and communities who are directly affected by adverse impacts of projects resulting from a failure to implement the IFC safeguards can submit a complaint to the mechanism. The mechanism can make recommendations on a specific project or on operational policies and procedures.

263 *Id.* at p. 2(c),(d).
264 *See* Thomas Sikor et al., *REDD-plus, forest people's rights, and nested climate governance,* 20 Global Environmental Change 423 (2010).
265 REDD+ Social & Environmental Standards, Version 2, Sept. 10, 2012.
266 Forest Carbon Partnership and UN-REDD Programme, Guidelines on Stakeholder Engagement in REDD+ Readiness (2012).
267 For a more detailed assessment of REDD+ finance safeguards, *see* Stephanie Roe, et al., Safeguards in Bilateral REDD+ Finance (Climate Focus 2014).
268 Alternatively, for projects undertaken in accordance with the FCPF's "Common Approach", projects must achieve "substantial equivalence" with the World Bank safeguard policies. For a more detailed discussion of this issue, *see* Alyssa Johl & Yves Lador, A Human Rights-Based Approach to Climate Finance (Friedrich Ebert Stiftung 2012).
269 The World Bank's standards are derived from the IFC's standards, and thus there are significant overlaps. World Bank, *World Bank Performance Standards*, http://go.worldbank.org/BZ9RCBSRB0 (last visited Oct. 15, 2015).
270 Johl & Lador (2012), *supra* note 273, at 10.
271 World Bank, Environmental and Social Framework, Second Draft for Consultation, Section B, p. 18 (July 1, 2015).
272 Human Rights Watch, *World Bank: Dangerous Rollback in Environmental, Social Protections* (Aug. 4, 2015), https://www.hrw.org/news/2015/08/04/world-bank-dangerous-rollback-environmental-social-protections; Philip Alston, *Reprot of the Special Rapporteur on Extreme Poverty and Human Rights,* UN Doc. A/70/274 (Aug. 4, 2015).
273 *See* Decisions of the Board – Green Climate Fund, GCF/B.07/11, Annex III, June 19, 2014.
274 Decisions of the Board – Green Climate Fund, Terms of Reference for the Independent Redress Mechanism, GCF/B.06/06, Feb. 13, 2014.

*Bwindi Forest National Park, Uganda*

The IFC standards appear to provide adequate protection for human rights—for example, they specify that, in the context of land acquisition projects, project proponents should "avoid/minimize displacement," "avoid forced eviction," and "improve or restore livelihoods and standards of living."[275] They also require FPIC for indigenous peoples under specified circumstances.[276] These substantive provisions are complemented by the procedural mechanisms noted above.

Thus, the safeguards provided for the GCF appear to be sufficient for the protection and promotion of both procedural and substantive human rights, and should be adopted as permanent guidelines, ideally with additional provisions on internal monitoring and assessment.

### (d) Adaptation Fund

The Adaptation Fund Board approved an Environmental and Social Policy in November 2013.[277] The policy outlines a process for screening projects and programs based on their environmental and social impacts, and adopting measures to mitigate any adverse impacts. Specifically, the policy requires implementing entities to adopt measures to avoid or, where avoidance is impossible, minimize environmental and social risks, and monitor and report on the status of those measures during and at the end of implementation. It also outlines a set of social principles to guide the impact assessment process, which are more comprehensive than some of the other safeguard policies. Some notable aspects of these principles include:

- They explicitly require that all projects supported by the Fund "respect and where applicable promote human rights,"[278] and furthermore, that all projects adhere to "core labour standards as identified

275 IFC PS5: Land Acquisition and Involuntary Resettlement.
276 IFC PS7: Indigenous Peoples.
277 Adaptation Fund Board, Environmental and Social Policy (2013).
278 *Id.* at p. 15.

by the International Labour Organization"[279] and the "rights and responsibilities set forth in the UN Declaration on the Rights of Indigenous Peoples and other applicable international instruments relating to indigenous peoples." [280]

- They require that projects be designed and implemented in a way that "avoids or minimizes the need for involuntary resettlement" and specify requirements for when "limited involuntary settlement is unavoidable" which include "socially feasible resettlement alternatives or fair and adequate compensation."

- They require that all supported projects "provide fair and equitable access to benefits in a manner that is inclusive and does not impede access to basic health services, clean water and sanitation, energy, education, housing, safe and decent working conditions, and land rights," and that projects "should not exacerbate existing inequities, particularly with respect to marginalized or vulnerable groups."[281] They also include specific provisions to ensure that project proponents respect the rights of marginalized and vulnerable groups and women.[282]

- They include provisions for habitat protection, conservation of biological diversity, pollution prevention, resource efficiency, public health, physical and cultural heritage, and land and soil conservation.[283]

The policy also includes relatively robust requirements for public disclosure and consultation, and for monitoring, reporting, and evaluating the implementation of projects and risk mitigation measures.[284] Finally the policy requires that the implementing entities identify a grievance mechanism that will provide affected persons with an "accessible, transparent, fair and effective process for receiving and addressing their complaints about environmental or social harms" caused by the project, and also allows for complaints to be submitted to the Adaptation Fund Board secretariat.[285]

Thus, like the Green Climate Fund, these safeguards appear to be sufficient for the protection and promotion of both substantive and procedural human rights.

### (e) Global Environment Facility

The GEF is the oldest UNFCCC financial mechanism, and it manages two additional funds established by the COP: the Special Climate Change Fund (SCCF) and the Least Developed Country Fund (LDCF). In 2011, the GEF Council has also approved its own set of Policies on Environmental and Social Safeguards and Gender Mainstreaming.[286] The environmental and social safeguards are similar to the World Bank safeguards.[287] They require an initial screening for environmental and social impacts, and outline various substantive requirements for the protection of natural habitats, avoiding and minimizing involuntary resettlement, protecting the rights of indigenous peoples (but unlike the World bank, they require FPIC), pest management, the protection of physical cultural resources, and dam safety. Apart from the requirements for consulting with and respecting the rights of indigenous peoples, the public participation provisions are very weak. The social and environmental policy also lacks provisions to address adverse or disproportionate impacts on vulnerable or marginalized groups.

The policy on gender mainstreaming outlines additional criteria for soliciting input from women and avoiding discriminatory outcomes. The policy calls for the preparation of a "gender mainstreaming strategy or plan" to "cover gender sensitive activities" but does not contain very robust requirements for ensuring that women are fully involved in the decision-making process and that benefits are equally distributed to women.[288]

The GEF safeguards provide some protection for human rights, but additional provisions on public notice and consultation would help to ensure that procedural rights are fully respected in the context of GEF-funded projects.

279 *Id.* at p. 17.
280 *Id.* at p. 18.
281 *Id.* at p.13.
282 *Id.* at pp.14, 16.
283 *Id.* at pp. 20-26.
284 *Id.* at pp. 32, 33.
285 *Id.* at p. 34.
286 *GEF Policies on Environmental and Social Safeguards and Gender Mainstreaming,* GEF/C.40/10/REV.1, May 26, 2011.
287 Johl & Lador (2012), *supra* note 273, at 8.
288 *GEF Policies* (2011), *supra* note 291, at Annex II, p. 18.

*Biogas-project in the rural community of Badreni, Nepal.*

# Recommendations

Based on the following summary of human rights obligations and implementation, this report makes the following recommendations on how the UNFCCC Parties and other actors can better integrate human rights considerations into their mitigation and adaptation activities.

## 4.1 International Cooperation

***More Ambitious Mitigation Targets*** – Even if all of the INDCs are fully implemented, the anticipated level of global warming will result in extreme climatic and environmental impacts and widespread adverse effects on human rights. The Parties should continue to increase their mitigation ambition so as to ensure that the global average temperature increase remains at or below 2.0°C, and preferably 1.5°C. To this end, the Paris agreement should include a schedule for assessing and revisiting country commitments with the aim of increasing, over time, the ambition of the climate targets set by countries. Another way to encourage more ambition would be to establish scientifically-based targets for all countries and then assess the performance of countries with respect to these targets. The targets could account for countries' historical and current GHG emissions (on a country-wide, per capita, and per unit of GDP basis) as well as the financial and technical capacity of the country to make emissions reductions. Nations should also undertake efforts to reduce emissions above and beyond their international commitments.

***Recognize the Link Between Climate Change and Human Rights in the Paris Agreement:*** The COP should expressly refer to both the effects of climate change on the exercise of human rights and the need for Parties to respect, protect, promote, and fulfill human rights in all climate-related activities. This could include: (i) recognizing the human rights-climate change nexus in the preamble to the agreement; (ii) noting that one purpose of the agreement is to protect, respect, and fulfill the human rights of all persons; (iii) calling for mitigation commitments that are sufficient to fully protect human rights; (iv) calling upon the parties to ensure that all mitigation and adaptation activities do not violate human rights; and (v) incorporating more robust human rights safeguards into climate finance mechanisms.

***Human Rights Safeguards for International Climate Finance Mechanisms*** – The safeguards for the various climate funds and other mechanisms used to finance mitigation and adaptation projects should be made uniform and revised to fully account for human rights considerations. The Adaptation Fund policy provides a good model, although it would be useful to flesh out many of the provisions in that policy with more detailed guidance. In particular, these safeguards should specify procedural requirements as well as substantive requirements—e.g., "no harm" rules to ensure that projects do not adversely affect local communities. One way to achieve this would be to establish a social and environmental safeguard policy that applies to *all* UNFCCC mechanisms and funds, accompanied by a more detailed implementation guide.

***Financial Assistance to Developing Countries –*** It is imperative that developed countries increase financial assistance to developing countries, and in particular, the LDCs and countries that are most vulnerable to the impacts of climate change. In particular, the amount of funding available for adaptation measures in these countries should be significantly increased in order to account for the disproportionate adverse effects of climate change on people, settlements, and ecosystems. The $100 billion goal should not be viewed as an overarching goal for *all* climate finance in developed countries, as it is inadequate even to cover the cost of mitigation measures (let alone adaptation measures). Rather, separate funding targets should be established for adaptation measures.

***Climate Displacement and Migration –*** Climate change could contribute to the temporary displacement and permanent migration of millions of people in the coming decades. Countries should cooperate in the development of an international mechanism for addressing climate-induced displacement and migration, both within and across domestic borders. Proposals have already been made for the creation of "Climate Change Displacement Coordination Facility" within the UNFCCC, and countries should consider supporting the development of such a facility.[289]

***Loss and Damage –*** Countries should also continue to discuss the broader issue of loss and damage in a transparent way that will address the concerns of all affected countries. This could occur within the framework of the existing Warsaw Mechanism, or a new platform could be developed (most likely within the UNFCCC). Additional stakeholders—such as the UN human rights agencies and expert bodies—could be included in this dialogue.

***New Mechanisms for International Coordination and Accountability –*** To facilitate the activities noted above and other rights-related goals, it may be desirable to introduce new mechanisms for sharing information, coordinating responses, and promoting accountability. Some examples might include:

- **Work Programme on Human Rights –** The COP could establish a work program on human rights, pursuant to the recommendation of the Special Procedures mandate-holders of the Human Rights Council.[290] This work programme could compile data, conduct research, evaluate progress, and develop recommendations on how human rights can be better integrated into climate change responses.

- **Information Sharing Platform** – Alternatively, or as a complement to a UNFCCC work program, the COP and/or another UN body could introduce a platform for compiling and sharing information and best practices—e.g., examples of successful mitigation and adaptation measures with human rights co-benefits, national and sub-national policies that are particularly mindful of human rights, and cost-effective strategies for improving public participation in climate-related decision-making.

- **Human Rights Accountability** – The COP or another UN body could establish an independent accountability mechanism to evaluate human rights performance in the context of climate-related actions taken by countries and private actors. The UNHCR could also issue a declaration or guidance document calling upon countries to incorporate climate-related considerations into their UPR reports.

289 For a discussion of possible functions that this facility could serve, *see* Jessica Wentz and Michael Burger, *Designing a Climate Change Displacement Coordination Facility: Key Issues for COP 21* (Sabin Center for Climate Change Law 2015).

290 *An Open Letter from Special Procedures Mandate-holders of the Human Rights Council to the State Parties to the UNFCCC* (Oct. 17, 2014), *supra* note 160.

***Continued Focus on Environmental Protection and Conservation*** – A continued focus on environmental protection and conservation will be necessary to address the potential effects of climate change on ecosystems, biodiversity, and natural resources. As such, governmental and private actors should remain dedicated to these goals—for example, through the ongoing and enhanced implementation of MEAs, such as the Convention on Biological Diversity.

## 4.2 National Measures

***National Mitigation*** – Regardless of what happens within the UNFCCC, countries should continue to pursue domestic GHG reductions to the greatest extent practicable and with a target of achieving a net zero carbon economy, as this will be necessary to safeguard the human rights of persons both within and outside of their territory.

***National Adaptation Planning –*** Countries should consider how to align human rights and climate change adaptation objectives. One approach would be to pursue an integrated response to climate change adaptation and disaster risk reduction, in order to better safeguard human rights in the face of climate-related disasters. National planners should also pursue adaptation measures with environmental and social co-benefits, such as ecosystem-based adaptation, which refers to the conservation, sustainable management and restoration of natural ecosystems to help people adapt to climate change. Decision-makers can refer to UNEP's Ecosystem-Based Adaptation Guidance for additional information on this approach.[291] Finally, countries must ensure that they do not discriminate against marginalized groups in all adaptation planning activities and in responses to climate-related hazards and disasters.

***National Adoption of Human Rights Protections –*** Countries should incorporate human rights norms into their domestic legal frameworks, including (but not limited to) laws that specifically address climate change. This could include, for example, specific provisions to ensure that the affected public has knowledge of and an adequate opportunity to comment on proposals for domestic mitigation and adaptation policies. In developing domestic policies, countries can consult with existing MEAs, the Bali Guidelines Bali Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters, and a Compilation of Good Practices published earlier this year by the Special Rapporteur on Human Rights and Environment,[292] among other resources.

## 4.3 Local Governments and Private Actors

***Local Governments*** – Local governments should undertake measures to reduce GHG emissions within their jurisdiction and pursue adaptation objectives in a manner that is mindful of human rights. As with national governments, local governments should ensure that adaptation responses are non-discriminatory, consider integrating climate change adaptation and disaster risk reduction programs, and pursue adaptation measures with environmental and social co-benefits, such as ecosystem-based adaptation.

***Private Sector*** - Private actors also have important roles to play in addressing climate change and protecting human rights. They can place pressure on national governments to adopt more ambitious policies and cooperate in international negotiations, and can also undertake their own initiatives to reduce their carbon foot print and ensure that they respect human rights in all of their activities. In particular, large businesses should adopt policies that correspond with the recommendations set forth in the UN Guiding Principles on Business and Human Rights.

291 UNEP, *Ecosystem-Based Adaptation Decision Support Framework,* http://www.unep.org/climatechange/adaptation/EbA/EBADecisionSupportFramework/tabid/102163/Default.aspx (last visited Oct. 20, 2015).
292 Knox, *Compilation of Good Practices* (2015), *supra* note 253.

## Conclusion

Climate change and responses to climate change will have a profound effect on the exercise of human rights for millions and perhaps billions of people across the world. This will occur through both direct impacts on humans and settlements, as well as through the degradation of the ecosystems and environmental resources upon which many lives and livelihoods depend. States have obligations to respect, protect, and fulfill human rights, and this includes obligations to mitigate domestic GHG emissions, protect citizens against the harmful effects of climate change, and ensure that responses to climate change do not result in human rights violations. Although states have taken important steps towards fulfilling these obligations, there is more to be done. In particular, states need to increase their ambition with respect to both climate change mitigation and adaptation, and work cooperatively to ensure the protection of human rights for all citizens across the world.

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