

# Understanding Human Rights and Climate Change<sup>1</sup>

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<sup>1</sup> Submission of the Office of the High Commissioner for Human Rights to the 21<sup>st</sup> Conference of the Parties to the United Nations Framework Convention on Climate Change

## Key Messages on Human Rights and Climate Change

Climate change impacts, directly and indirectly, an array of internationally guaranteed human rights. States (duty-bearers) have an affirmative obligation to take effective measures to prevent and redress these climate impacts, and therefore, to mitigate climate change, and to ensure that all human beings (rights-holders) have the necessary capacity to adapt to the climate crisis.

Climate justice requires that climate action is consistent with existing human rights agreements, obligations, standards and principles. Those who have contributed the least to climate change unjustly and disproportionately suffer its harms. They must be meaningful participants in and primary beneficiaries of climate action, and they must have access to effective remedies.

OHCHR's Key Messages on Human Rights and Climate Change highlight the essential obligations and responsibilities of States and other duty-bearers (including businesses) and their implications for climate change-related agreements, policies, and actions. In order to foster policy coherence and help ensure that climate change mitigation and adaptation efforts are adequate, sufficiently ambitious, non-discriminatory and otherwise compliant with human rights obligations, the following considerations should be reflected in all climate action, including agreements to be negotiated at the 21<sup>st</sup> Conference of the Parties to the United Nations Framework Convention on Climate Change.

- 1. To mitigate climate change and to prevent its negative human rights impacts:** States have an obligation to respect, protect, fulfil and promote all human rights for all persons without discrimination. Failure to take affirmative measures to prevent human rights harms caused by climate change, including foreseeable long-term harms, breaches this obligation. The Fifth Report of the Intergovernmental Panel on Climate Change confirms that climate change is caused by anthropogenic emissions of greenhouse gases. Among other impacts, climate change negatively affects people's rights to health, housing, water and food. These negative impacts will increase exponentially according to the degree of climate change that ultimately takes place and will disproportionately affect individuals, groups and peoples in vulnerable situations including, women, children, older persons, indigenous peoples, minorities, migrants, rural workers, persons with disabilities and the poor. Therefore, States must act to limit anthropogenic emissions of greenhouse gases (e.g. mitigate climate change), including through regulatory measures, in order to prevent to the greatest extent possible the current and future negative human rights impacts of climate change.
- 2. To ensure that all persons have the necessary capacity to adapt to climate change:** States must ensure that appropriate adaptation measures are taken to protect and fulfil the rights of all persons, particularly those most endangered by the negative impacts of climate change such as those living in vulnerable areas (e.g. small islands, riparian and low-lying coastal zones, arid regions, and the poles). States must build adaptive capacities in vulnerable communities, including by recognizing the manner in which factors such as discrimination, and disparities in education and health affect climate vulnerability, and by devoting adequate resources to the realization of the economic, social and cultural rights of all persons, particularly those facing the greatest risks.

- 3. To ensure accountability and effective remedy for human rights harms caused by climate change:** The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other human rights instruments require States to guarantee effective remedies for human rights violations. Climate change and its impacts, including sea-level rise, extreme weather events, and droughts have already inflicted human rights harms on millions of people. For States and communities on the frontline, survival itself is at stake. Those affected, now and in the future, must have access to meaningful remedies including judicial and other redress mechanisms. The obligations of States in the context of climate change and other environmental harms extend to all rights-holders and to harm that occurs both inside and beyond boundaries. States should be accountable to rights-holders for their contributions to climate change including for failure to adequately regulate the emissions of businesses under their jurisdiction regardless of where such emissions or their harms actually occur.
- 4. To mobilize maximum available resources for sustainable, human rights-based development:** Under core human rights treaties, States acting individually and collectively are obligated to mobilize and allocate the maximum available resources for the progressive realization of economic, social and cultural rights, as well as for the advancement of civil and political rights and the right to development. The failure to adopt reasonable measures to mobilize available resources to prevent foreseeable human rights harms caused by climate change breaches this obligation. The mobilization of resources to address climate change should complement and not compromise other efforts of governments to pursue the full realization of all human rights for all including the right to development. Innovative measures such as carbon taxes, with appropriate safeguards to minimize negative impacts on the poor, can be designed to internalize environmental externalities and mobilize additional resources to finance mitigation and adaptation efforts that benefit the poorest and most marginalised.
- 5. International cooperation:** The UN Charter, the International Covenant on Economic, Social and Cultural Rights, and other human rights instruments impose upon States the duty to cooperate to ensure the realization of all human rights. Climate change is a human rights threat with causes and consequences that cross borders; thus, it requires a global response, underpinned by international solidarity. States should share resources, knowledge and technology in order to address climate change. International assistance for climate change mitigation and adaptation should be additional to existing ODA commitments. Pursuant to relevant human rights principles, climate assistance should be adequate, effective and transparent, it should be administered through participatory, accountable and non-discriminatory processes, and it should be targeted toward persons, groups, and peoples most in need. States should engage in cooperative efforts to respond to climate-related displacement and migration and to address climate-related conflicts and security risks.
- 6. To ensure equity in climate action:** The Rio Declaration on Environment and Development, the Vienna Declaration and Programme of Action, and ‘The Future We Want’ all call for the right to development, which is articulated in the UN Declaration on the Right to Development, to be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. The UN Framework Convention on Climate Change calls for States to protect future generations and to take action on climate change "on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities". While climate change affects people everywhere, those who have contributed the least to greenhouse gas emissions (i.e. the poor, children, and future generations) are those most affected. Equity in climate action requires that efforts to mitigate

and adapt to the impacts of climate change should benefit people in developing countries, indigenous peoples, people in vulnerable situations, and future generations.

- 7. To guarantee that everyone enjoys the benefits of science and its applications:** The International Covenant on Economic, Social and Cultural Rights states that everyone has the right to enjoy the benefits of science and its applications. All States should actively support the development and dissemination of new climate mitigation and adaptation technologies including technologies for sustainable production and consumption. Environmentally clean and sound technologies should be accessibly priced, the cost of their development should be equitably shared, and their benefits should be fairly distributed between and within countries. Technology transfers between States should take place as needed and appropriate to ensure a just, comprehensive and effective international response to climate change. States should also take steps to ensure that global intellectual property regimes do not obstruct the dissemination of mitigation and adaptation technologies while at the same time ensuring that these regimes create appropriate incentives to help meet sustainable development objectives. The right of indigenous peoples to participate in decision making related to and benefit from the use of their knowledge, innovations and practices should be protected.
- 8. To protect human rights from business harms:** The United Nations Guiding Principles on Business and Human Rights affirm that States have an obligation to protect human rights from harm by businesses, while businesses have a responsibility to respect human rights and to do no harm. States must take adequate measures to protect all persons from human rights harms caused by businesses; to ensure that their own activities, including activities conducted in partnership with the private sector, respect and protect human rights; and where such harms do occur to ensure effective remedies. Businesses are also duty-bearers. They must be accountable for their climate impacts and participate responsibly in climate change mitigation and adaptation efforts with full respect for human rights. Where States incorporate private financing or market-based approaches to climate change within the international climate change framework, the compliance of businesses with these responsibilities is especially critical.
- 9. To guarantee equality and non-discrimination:** States have committed to guarantee equality and non-discrimination. Efforts to address climate change should not exacerbate inequalities within or between States. For example, indigenous peoples' rights should be fully reflected in line with the United Nations Declaration on the Rights of Indigenous Peoples and actions likely to impact their rights should not be taken without their free, prior and informed consent. Care should also be taken to ensure that a gender perspective, including efforts to ensure gender equality, is included in all planning for climate change mitigation and adaptation. The rights of children, older persons, minorities, migrants and others in vulnerable situations must be effectively protected.
- 10. To ensure meaningful and informed participation:** The International Covenant on Civil and Political Rights and other human rights instruments guarantee all persons the right to free, active, meaningful and informed participation in public affairs. This is critical for effective rights-based climate action and requires open and participatory institutions and processes, as well as accurate and transparent measurements of greenhouse gas emissions, climate change and its impacts. States should make early-warning information regarding climate effects and natural disasters available to all sectors of society. Adaptation and mitigation plans should be publicly available, transparently financed and developed in consultation with affected groups. Particular care should be taken to comply with relevant

human rights obligations related to participation of persons, groups and peoples in vulnerable situations in decision-making processes and to ensure that adaptation and mitigation efforts do not have adverse effects on those that they should be protecting. Human rights impact assessments of climate actions should be employed to ensure that they respect human rights. Further, States should develop and monitor relevant human rights indicators in the context of climate change, keeping disaggregated data to track the varied impacts of climate change across demographic groups and enabling effective, targeted and human rights compliant climate action.

## Part I. Human Rights and Climate Change

**“Climate change threatens our ability to achieve sustainable development, and in some cases, our very survival.”**

Ban Ki-moon, Secretary General of the United Nations

As emphasized by the United Nations Human Rights Council in its Resolution 26/27, “climate change is an urgent global problem requiring a global solution.” The Council called for international cooperation to implement the United Nations Framework Convention on Climate Change (UNFCCC) “in order to support national efforts for the realization of human rights affected by climate change-related impact.” The Council affirmed that “human rights obligations, standards and principles have the potential to inform and strengthen international, regional and national policymaking in the area of climate change, promoting policy coherence, legitimacy and sustainable outcomes.”

In recognition of these facts, the Human Rights Council held a full-day panel discussion on human rights and climate change on 6 March 2015.<sup>2</sup> The discussion addressed challenges posed by climate change towards the realization of all human rights for everyone, particularly those in vulnerable situations, and the adverse impacts of climate change on States’ efforts to progressively realize the right to food. Panellists, who included eminent speakers representing United Nations Member States, intergovernmental organisations, civil society and academia, recommended forward-looking rights-based solutions to address climate change.<sup>3</sup>

This submission to the 21<sup>st</sup> Conference of the Parties to the United Nations Framework Convention on Climate Change is an outcome of the above-mentioned panel discussion that is complemented by human rights commentary and analysis. It is intended to inform climate action and policy at all levels including the work of the Conference of the Parties to the UNFCCC (COP) and to further elucidate the critical links between human rights and climate change identified by panellists. Panellists highlighted a number of human rights challenges resulting from or exacerbated by climate change as well as efforts to mitigate and adapt to it. They stressed the importance of ensuring transparency and participation, especially of those most affected, in all climate-change

<sup>2</sup> The summary report of this discussion is contained in A/HRC/29/19

<sup>3</sup> For more information about this discussion including the concept note and statements of panellists please see <http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/Discussion6March2015.aspx> (last accessed 6 October 2015).

related action. They made an unequivocal call for integration of human rights in COP 21 (2015 Paris) and highlighted the impacts of climate change on the enjoyment of human rights.

Panellists' comments inform the structure of this document which begins with a background discussion of the human rights implications of climate change and the global discourse so far. It then proceeds to elaborate upon the legal basis of specific human rights affected by climate change, the factual basis for alleged human rights violations caused by climate change, and recommendations for a rights-based approach to climate change.

### ***Why integrate human rights in climate change-related actions?***

Human rights are universal legal guarantees that protect individuals, groups and peoples against actions and omissions that interfere with their fundamental freedoms and entitlements. Human rights law obliges governments (principally) and other duty-bearers to respect, promote, protect and fulfil all human rights. Human rights are universal and are based on the inherent dignity and equal worth of all human beings. They are equal, indivisible, interrelated and interdependent, and cannot be waived or taken away. Furthermore, human rights are legally protected, and impose obligations in relation to actions and omissions, particularly of States and State actors.

It is now beyond dispute that climate change caused by human activity has negative impacts on the full enjoyment of human rights. Climate change has profound impacts on a wide variety of human rights, including the rights to life, self-determination, development, food, health, water and sanitation and housing. The human rights framework also requires that global efforts to mitigate and adapt to climate change should be guided by relevant human rights norms and principles including the rights to participation and information, transparency, accountability, equity, and non-discrimination. Simply put, climate change is a human rights problem and the human rights framework must be part of the solution.

The Fifth Assessment Report (AR5) by the Intergovernmental Panel on Climate Change (IPCC) unequivocally states that “human influence on the climate system is clear, and recent anthropogenic emissions of green-house gases are the highest in history.”<sup>4</sup> It notes that “recent climate changes have had widespread impacts on human and natural systems.”<sup>5</sup> AR5 found that “people who are socially, economically, culturally, politically, institutionally or otherwise marginalized are especially vulnerable to climate change and also to some adaptation and mitigation responses.”<sup>6</sup> During the Human Rights Council panel discussion, the United Nations Deputy High Commissioner for Human Rights Flavia Pansieri affirmed that “those who have contributed the least to greenhouse gas emissions will be the ones who bear the greatest burden; the poorest people, in the poorest countries, their children, and all our children”. Former High Commissioner for Human Rights, Mary Robinson, now President of the Mary Robinson Foundation – Climate Justice, described climate change as “probably the greatest human rights challenge of the 21<sup>st</sup> century”. Other panellists

<sup>4</sup> Intergovernmental Panel on Climate Change, *Fifth Assessment Report: Climate Change 2014 Synthesis Report Summary for Policymakers* (Bonn: United Nations Framework Convention on Climate Change), p. 2 (hereinafter IPCC, AR 5).

<sup>5</sup> IPCC, AR5, p. 2.

<sup>6</sup> IPCC Working Group II, *Climate Change 2014: Impacts, Adaptation, and Vulnerability, Summary for Policymakers*, (WMO and UNEP) p. 6.

described climate change as an ethical and moral challenge of a global scale that demands a human rights solution. Recognizing the importance of human rights in this context, parties to the UNFCCC have agreed to “fully respect human rights in all climate change-related actions”.<sup>7</sup>

Despite the clear human rights implications of failure to act to prevent climate change, the international community has not taken adequate preventive action. In fact, some of the climate change mitigation and adaptation efforts that have been employed to date have had counterproductive human rights impacts, particularly on the most marginalized. Taken as a whole, existing climate change mitigation and adaptation efforts have fallen far short of the level of ambition necessary to prevent and/or remedy the negative human rights impacts of climate change in fulfilment of the obligations of States and other duty-bearers.

Integrating human rights in climate actions will necessitate higher levels of ambition and improve mitigation and adaptation strategies by making them more effective and inclusive. During the panel discussion, several delegations underlined the importance of integrating human rights in climate policy, including participation, access to information and access to justice. A human rights based approach addresses cross cutting social, cultural, political and economic problems, while empowering persons, groups and peoples, especially those in vulnerable situations. This can make considerable contributions to climate change policies, making them less myopic and more responsive, sensitive, and collaborative.

### ***What human rights principles apply in the context of climate change?***

**“These are basic issues of justice.”**

Olav Fykse Tveit, General Secretary, World Council of Churches

States are obligated to respect, protect, promote, and fulfil all human rights for all people. This includes an affirmative obligation to prevent foreseeable harms including those caused by climate change. The UN Charter, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the UN Declaration on the Right to Development all make clear that State human rights obligations require both individual action and international cooperation. According to the Universal Declaration of Human Rights everyone is entitled to a social and international order in which the rights and freedoms therein can be fully realized and everyone has duties to the community. Similarly, the ICESCR declares that States should “take steps, **individually and through international assistance and co-operation**, especially economic and technical, to the maximum of [their] available resources, with a view to achieving progressively the full realization of rights recognized in the present Covenant”.

The Declaration on the Right to Development further calls on States to establish through their individual and collective actions, national and international conditions favourable to the realization of the right to development and all human rights including through international cooperation to provide developing countries “with appropriate means and facilities to foster their

<sup>7</sup> United Nations Framework Convention on Climate Change, *Report of the Conference of the Parties on its sixteenth session* (Cancun: United Nations, 2010), FCCC/CP/2010/7/Add.1.

comprehensive development”. It also emphasizes that “**all human beings have a responsibility for development**, individually and collectively... and they should therefore promote and protect an appropriate political, social and economic order for development”. The UN *Guiding Principles on Business and Human Rights* confirm that businesses also have human rights responsibilities. They reaffirm that **all responsible actors should be held accountable for the negative impacts of their activities** and that all actors share responsibility for remedying these impacts.<sup>8</sup>

The basic human rights principles of **equality and non-discrimination** require action to address and remedy the disproportionate impacts of climate change on the most marginalized and to ensure that climate actions benefit persons, groups and peoples in vulnerable situations and reduce inequalities. The disproportionate impacts of climate change on persons in vulnerable situations raise concerns of **climate justice, fairness, equity and access to remedy**. The Universal Declaration of Human Rights, the International Covenant of Civil and Political Rights (ICCPR) and other human rights instruments make it clear that **all persons who suffer human rights harms are entitled to access to effective remedy**. The Human Rights Council panel repeatedly called for climate justice and immediate action to mitigate and adapt to climate change. Prime Minister Enele Sopoaga of Tuvalu described the human rights impacts of climate change as an issue of justice that requires immediate international action and adequate compensation of victims. According to Olav Fykse Tveit, General Secretary of the World Council of Churches, the disproportionate impact of climate change on persons least responsible for climate change and most vulnerable to it is an issue of fundamental injustice.

The Declaration on the Right to Development by calling for the **fair distribution of the benefits of development** and for developed countries to assist developing countries, embraces the need for equitable development. International cooperation, equality and non-discrimination, accountability and equity reflect human rights commitments and are critical to address climate change. The principle of equity, including **intergenerational equity**, is also specifically recognized in the UNFCCC which calls for all parties to “protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their **common but differentiated responsibilities and respective capabilities**”. In spite of the above, State commitments under the UNFCCC have so far failed to provide for and ensure the implementation of adequate mitigation and adaptation measures to limit climate change and its adverse effects on human rights, the economy, public health and the environment.

The UNFCCC is a framework convention and it is open to evolution and continuing negotiations. There is a high degree of hope that the agreement negotiated at COP21 in Paris and any subsequent agreements will raise the level of ambition of climate action in order to protect human rights from the adverse effects of climate change. In these negotiations and throughout related processes, the human rights principles of **transparency, participation and accountability** have an important role to play.<sup>9</sup> “Participation is a basic human right in itself, [and] a precondition or catalyst for the realization and enjoyment of other human rights.”<sup>10</sup> In order to ensure sustainable

<sup>8</sup> The legal obligations of States and enterprises to address climate change are the subject of growing consensus and analysis. See e.g. the Oslo Principles on Global Obligations to Reduce Climate Change (1 March 2015) available at: <http://www.osloprinciples.org/principles/> (last accessed 7 October 2015).

<sup>9</sup> The Aarhus Convention of the United Nations Economic Commission for Europe on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters highlights the importance of these principles in the context of environmental issues.

<sup>10</sup> United Nations General Assembly, A/HRC/23/36: *Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona* (New York: United Nations, 2013), Summary.



development and appropriate mechanisms for mitigating and adapting to climate change, the COP21 outcome should reflect human rights principles and a rights-based framework should shape both the substantive commitments of parties and the processes by which they are agreed and carried out.

### ***How can human rights be integrated in climate-change related actions?***

Human rights can be integrated in climate-change related actions by applying a rights-based approach to policy and development as called for by the Declaration on the Right to Development and agreed to in the UN Common Understanding of a Human Rights-Based approach to Development Cooperation.<sup>11</sup> The UN Common Understanding emphasizes key human rights principles like universality and inalienability, indivisibility, interdependence and interrelatedness, non-discrimination and equality, participation and inclusion, accountability and the rule of law. It outlines a conceptual framework for development based on international human rights standards in order to promote and protect human rights in all development activities. A rights-based approach analyses obligations, inequalities and vulnerabilities, and seeks to redress discriminatory practices and unjust distributions of power. It anchors plans, policies and programmes in a system of rights, and corresponding obligations established by international law.

The essential attributes of a human rights-based approach are the following:

- As policies and programmes are formulated, the main objective should be to fulfil human rights.
- The *rights-holders* and their entitlements must be identified as well as the corresponding *duty-bearers* and their obligations in order to find ways for strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations.
- Principles and standards derived from international human rights law – especially the Universal Declaration of Human Rights and the core universal human rights treaties, should guide all policies and programming in all phases of the process.

A human rights-based approach should be integrated in any climate change adaptation or mitigation measures, such as the promotion of alternative energy sources, forest conservation or tree-planting projects, resettlement schemes and others. Affected individuals and communities must participate, without discrimination, in the design and implementation of these projects. They must have access to due process and to remedy if their rights are violated.

During the panel discussions, the importance of a rights-based approach to climate change was raised frequently. Martin Khor, Executive Director of the South Centre, observed that such an approach demands the inclusion of climate justice, equity, respect for human rights as well as international cooperation and solidarity. These factors are essential in supporting developing countries, including through finance and technology. According to Mary Robinson, a human rights-based approach to development should focus on fulfilling for all persons the minimum conditions necessary for a life of human dignity. Faced with climate change, persons in vulnerable situations must have their rights protected, obtain access to measures of adaptation and resilience, and receive the support of the international community. A rights-based response should also maximize inclusion, participation and equality.

<sup>11</sup> See <http://hrbportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies> last accessed on 7 September 2015.

Critically, it is not enough to simply focus on ensuring that climate actions respect human rights. A rights-based approach requires States to take affirmative actions to respect, protect, promote and fulfil all human rights for all persons. Failure to prevent foreseeable human rights harms caused by climate change, or at the very least to mobilize maximum available resources in an effort to do so, constitutes a breach of this obligation. Human rights obligations apply to the goals and commitments of States in the area of climate change and require that climate actions should focus on protecting the rights of all those vulnerable to climate change starting with those most affected. Human rights principles articulated in the Declaration on the Right to Development and other instruments call for such climate action to be both individual and collective and for it to benefit all persons, particularly the most marginalized. The UNFCCC further elaborates upon the need for equitable climate action calling for States to address climate change in accordance with their common but differentiated responsibilities and respective capabilities in order to benefit present and future generations.

State commitments therefore require international cooperation, including financial, technological and capacity-building support, to realise low-carbon, climate-resilient, and sustainable development, while also rapidly reducing greenhouse gas emissions. Only by integrating human rights in climate actions and policies, and empowering people to participate in policy formulation, can States promote sustainability and ensure the accountability of all duty-bearers for their actions. This, in turn, will promote consistency, policy coherence and the enjoyment of all human rights.

### ***What actions have been taken by international human rights mechanisms so far?***

Since 2008, the Human Rights Council and its Special Procedures Mechanisms have been actively involved in addressing the human rights impacts of climate change. The Council has held two panel discussions on human rights and climate change, which was also the theme of the 2010 Social Forum<sup>12</sup>. The following resolutions on human rights and climate change have been issued to date:

- **Resolution 7/23** (March 2008): The Council expressed concern that climate change “poses an immediate and far-reaching threat to people and communities around the world” and requested OHCHR to prepare a study on the relationship between climate change and human rights (A/HRC/10/61).

- **Resolution 10/4** (March 2009): The Council noted that “climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights ...” and that such effects “will be felt most acutely by those segments of the population who are already in a vulnerable situation ...”

- **Resolution 18/22** (September 2011): The Council affirmed that human rights obligations, standards, and principles have the potential to inform and strengthen international and national policy-making in the area of climate change, promoting policy coherence, legitimacy, and sustainable outcomes. They called for a seminar to address the adverse impacts of climate change on the full enjoyment of human rights and a summary report of the seminar (A/HRC/20/7).

- **Resolution 26/27** (July 2014): The Council emphasized the need for all States to enhance international dialogue and cooperation to address the adverse impacts of climate change on the enjoyment of human rights including the right to development. It called for dialogue, capacity-building, mobilization of financial resources, technology transfer, and other forms of cooperation to

<sup>12</sup> The report of the 2010 Social Forum is contained in A/HRC/16/62.

facilitate climate change adaptation and mitigation, in order to meet the special needs and circumstances of developing countries.

- **Resolution 29/15** (July 2015): The Council emphasized the importance of continuing to address the adverse consequences of climate change for all and called for a panel discussion and analytical study on the impacts of climate change on the enjoyment of the right to health.

The Council has also addressed the issue of the impact of climate change in the framework of its work on human rights and the environment, particularly resolutions **16/11**, **19/10**, **25/21** and **28/11**. In these resolutions, the Human Rights Council has recognized that the impact of climate change on the full enjoyment of human rights is a global problem that requires a global solution. It has highlighted the importance of addressing human rights in the context of discussions related to the UNFCCC and the post-2015 development agenda and made available the results of its debates, studies and activities to the sessions of the Conference of Parties to the UNFCCC. The Council has clearly articulated that “human rights obligations and commitments have the potential to inform and strengthen international and national policymaking in the area of climate change”.

The outcome document of the 2012 United Nations Conference on Sustainable Development “The Future We Want” reaffirmed the importance of human rights for achieving sustainable development. Prior to this Conference, the UN High Commissioner for Human Rights had emphasized the responsibilities of all States to ensure full coherence between efforts to advance the green economy, on the one hand, and their human rights obligations on the other, in an open letter to all Permanent Missions in New York and in Geneva.<sup>13</sup> In addition to this advocacy, OHCHR has produced a number of reports on the effect of climate change on the enjoyment of human rights.<sup>14</sup>

Mandate holders of the special procedures mechanisms of the Human Rights Council have also regularly addressed the human rights impacts of climate change in the course of implementing their mandates. The Special Rapporteur on human rights and the environment has been particularly engaged, and issued a Climate Change mapping report in 2014 that describes statements made by human rights bodies regarding human rights that are threatened by climate change and human rights obligations related to climate change.<sup>15</sup> In addition to this report which highlights work of the special procedures mechanisms, the human rights treaty-bodies and other relevant bodies related to climate change, there have been several joint advocacy efforts on human rights and climate change, by special procedures mandate holders. These include:

<sup>13</sup> See Open Letter of the High Commissioner for Human Rights on Sustainable Development (30 March 2012) available at <http://www.ohchr.org/Documents/Issues/Development/OpenLetterHC.pdf> (last accessed 7 September 2015).

<sup>14</sup> See e.g. A/HRC/10/61, Analytical study on the relationship between climate change and human rights; Summary Report of the Panel discussion on the relationship between climate change and human rights held at the eleventh session of the HRC (June 2009) following resolution 10/4, available at: <http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/Panel.aspx> last accessed 7 September 2015; A/HRC/16/62, Report of the 2010 Social Forum on the adverse effects of climate change on the full enjoyment of human rights; A/HRC/20/7, Report of the United Nations High Commissioner for Human Rights on the outcome of the seminar addressing the adverse impacts of climate change on the full enjoyment of human rights; A/HRC/29/19, Summary report of the Office of the United Nations High Commissioner for Human Rights on the outcome of the full-day discussion on specific themes relating to human rights and climate change.

<sup>15</sup> Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Focus report on human rights and climate change (June 2014) available at <http://www.ohchr.org/Documents/Issues/Environment/MappingReport/ClimateChangemapping15-August.docx> (last accessed 7 September 2015).

- An Open Letter dated 17 October 2014 to State Parties to the UNFCCC from 28 Special Procedures mandates that urges the UNFCCC "to adopt urgent and ambitious mitigation and adaptation measures to prevent further harm" and to include in the 2015 climate agreement a commitment that "the Parties shall, in all climate change related actions, respect, protect, promote and fulfil human rights for all."<sup>16</sup> At the panel discussion, John Knox, the Special Rapporteur on human rights and the environment, emphasized critical elements of this letter which describes climate change as one of the greatest challenges of our generation, highlights its disproportionate effects on disadvantaged, marginalized, and excluded person, groups and peoples, and urges the incorporation of human rights obligations into climate change negotiations

- A joint statement drawing attention to the grave harm even a two degree Celsius increase in average global temperature would cause to the enjoyment of human rights issued on the occasion of World Environment Day 2015.<sup>17</sup> The Special Rapporteurs urged climate negotiators to reach an agreement that reflects the obligations human rights law places on States to protect and promote human rights.

- A report prepared by several Special Rapporteurs for the Climate Vulnerable Forum, a group of twenty countries that are especially vulnerable to the effects of climate change. On behalf of the Forum, the Philippines, the current chair, submitted the report, entitled "The Effects of Climate Change on the Full Enjoyment of Human Rights", on 1 May 2015 to the Conference of the Parties (COP) to the UNFCCC.<sup>18</sup> This report warns that a temperature increase of just 1.5 degrees Celsius will threaten human rights, challenging the level of ambition of the current temperature goal of two degrees Celsius.

### ***What steps should be taken going forward?***

In the Geneva Pledge for Human Rights in Climate Action, announced on 13 February 2015, eighteen States committed to facilitate the sharing of best practices and knowledge between human rights and climate experts at the national level, in order to build collective capacity to deliver responses to climate change that are good for people and the planet. The Geneva Pledge remains open to States and is one of many important initiatives aimed at improving understanding of the linkages between human rights and climate change. During the panel discussions, panellists repeatedly emphasized the importance of this initiative noting that improved communication between these distinct constituencies is an important prerequisite for a greater integration of human rights in the climate change discussion.

The ultimate objective of these and other initiatives must be to take this discussion from a theoretical level to a practical one which inspires urgent, immediate, rights-based action to mitigate and adapt to the negative impacts of climate change. By building upon previous work in the area of human rights and climate change and the panel discussion of 6 March 2015, the remainder of this report seeks to inform and inspire the action needed to integrate human rights in climate action at COP 21 and beyond. The next section examines particular rights affected by climate change. Part III,

<sup>16</sup> Available at: [http://www.ohchr.org/Documents/HRBodies/SP/SP\\_To\\_UNFCCC.pdf](http://www.ohchr.org/Documents/HRBodies/SP/SP_To_UNFCCC.pdf) (last accessed 7 September 2015).

<sup>17</sup> Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16049&LangID=E> (last accessed 7 September 2015).

<sup>18</sup> Available at: <http://www.thecvf.org/wp-content/uploads/2015/05/humanrightsSRHRE.pdf> (last accessed 7 September 2015).

composed of recommendations from the panel discussion offers several ideas for integrating human rights in climate action that respects, protects, promotes and fulfils all human rights.

## Part II: Which human rights are most affected by climate change?

**“Climate change, human-induced climate change, is obviously an assault on the ecosystem that we all share, but it also has the added feature of undercutting rights, important rights like the right to health, the right to food, to water and sanitation, to adequate housing, and, in a number of small island States and coastal communities, the very right to self-determination and existence.”**

Flavia Pansieri, United Nations Deputy High Commissioner for Human Rights,

The relationship between climate change and the enjoyment of human rights is both too complex and too vast to fully describe here. Instead, this Part focusses on specific examples referred to by panellists during the March 2015 discussion at the Human Rights Council. In this context, it is critical to remember that although specific rights may be discussed separately, all human rights are universal, inalienable, indivisible, interdependent and interconnected. A preventable violation of one right can have far-reaching consequences for other, and in some instances, all human rights.

The panel discussion, the IPCC, and the overwhelming consensus among experts make it abundantly clear that climate change negatively impacts human rights. In this regard, it is useful to consider what States and other duty-bearers are obligated to do in the circumstances. This question is addressed briefly here and more thoroughly in OHCHR’s Key Messages on Human Rights and Climate Change and in Part III. As a starting point, States are legally bound to respect, protect, promote, and fulfil all human rights. In doing so, they have committed to work individually and collectively, to eliminate discrimination and promote equality, and to expend maximum available resources for the progressive realization of economic, social and cultural rights as well as the advancement of civil and political rights and the right to development. The following discussion of specific issues demonstrates the grave consequences of failure to comply with these obligations.

### *The right to life*

**“...in dealing with sustainable development issues, unless you deal with the issues of climate change, life, particularly of the most vulnerable, will continue to be threatened and compromised, and life is already compromised and threatened on most island countries...”**

Enele Sosene Sopoaga, Prime Minister, Tuvalu

According to the Universal Declaration of Human Rights “everyone has the right to life, liberty and security of person.” The International Covenant on Civil and Political Rights (ICCPR) reiterates that “every human being has the inherent right to life.” All States have committed to respect, protect, promote, and fulfil the right to life. This entails, at the very least, that States should take effective measures against foreseeable and preventable loss of life.

Climate change clearly poses a threat to human life. Abul Hassan Mahmood Ali, Foreign Minister of Bangladesh, described this threat as “existential”. As highlighted by Renan Dalisay,

Administrator of the National Food Authority of the Philippines, in his remarks about Typhoon Yolanda which “left a path of death and destruction, claiming no less than 7500 precious Filipino lives, mostly in economically vulnerable communities,” this threat extends to both present and future generations. Yolanda, or Typhoon Haiyan as it is more commonly known internationally, was an extreme weather event.

According to the IPCC, the risk of having further extreme weather events and the resulting endangerment of human lives is “moderate to high at temperatures of 1°C to 2°C above pre-industrial levels.”<sup>19</sup> A recent report by the World Bank affirms this risk, finding that “further health impacts of climate change could include injuries and deaths due to extreme weather events.”<sup>20</sup>

In the context of climate change, extreme weather events may be the most visible and most dramatic threat to the enjoyment of the right to life but they are by no means the only one. Climate change kills through drought, increased heat, expanding disease vectors and a myriad of other ways. According to a report by the Climate Vulnerable Forum and DARA International, climate change is already responsible for approximately 400,000 deaths per year and that number is expected to rise to 700,00 by 2030.<sup>21</sup> In order to uphold the right to life, States must take effective measures to mitigate and adapt to climate change and prevent foreseeable loss of life.

### ***The right to self-determination***

**“There are realities where extreme events surpass the ability to adapt...and displacement and migration are the only avenues for survival.”**

Mary Robinson, President, Mary Robinson Foundation – Climate Justice

Article 1 of the UN Charter calls for respect of the “self-determination of peoples”. Further, Common Article 1 of the ICCPR and the ICESCR states that “all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” States must respect the right to self-determination of all peoples and ensure that they have the necessary resources to provide for themselves. Climate change not only poses a threat to the lives of individuals; but also to their ways of life and livelihoods, and to the survival of entire peoples.

During the panel discussion, Victoria Tauli-Corpuz, United Nations Special Rapporteur on the rights of indigenous peoples, highlighted that “the realisation of the rights to self-determination and development” are “being seriously challenged” by climate change. Small Island Developing States and Least Developed Countries have identified even warming of 1.5°C as a “serious threat” to their continued existence.<sup>22</sup> These views are supported by the IPCC in its review of the effects of rising

<sup>19</sup> IPCC, *AR5*, p. 19.

<sup>20</sup> The World Bank, *Turn down the heat: why a 4°C warmer world must be avoided* (2012), p. xvii (hereinafter *Turn down the heat 2012*).

<sup>21</sup> See DARA and the Climate Vulnerable Forum, *Second edition: A guide to the cold calculus of a hot planet* (DARA and Climate Vulnerability Monitor, 2012), p. 17.

<sup>22</sup> World Bank, *Turn down the heat 2012*, p. xiii.

sea-levels on “coastal systems and low-lying areas.”<sup>23</sup> According to a recent report by a group of United Nations Special Rapporteurs, climate change challenges the ability of peoples in small island states to “continue to live on their traditional territory, and... to enjoy and exercise their right to self-determination”.<sup>24</sup> States are obliged to take adequate measures to guarantee the rights of all peoples to self-determination in the face of the looming threat posed by climate change but they have so far failed to do so.

### ***The right to development***

Pursuant to Article 55 of the UN Charter, States should promote “conditions of economic and social progress and development”. The ICESCR and ICCPR emphasize that all peoples should “freely determine their political status and freely pursue their economic, social and cultural development”. The Declaration on the Right to Development presents an integrated framework for the pursuit of all three pillars of the UN Charter – peace and security, human rights and development. It articulates a holistic vision of development as “an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.” The Declaration underscores that people must be the central subjects, active participants, and beneficiaries of development. It articulates that all States and all persons have responsibilities for development and States should work individually and collectively to create an internationally enabling environment for development in which the benefits of development are equitably shared by all.

In particular, States should take steps individually and collectively to guarantee all persons the ability to enjoy economic, social, cultural and political development. Climate change poses an existential threat to people’s enjoyment of their right to development. According to World Bank President, Jim Yong Kim “unless the world takes bold action now, a disastrously warming planet threatens to put prosperity out of reach of millions and roll back decades of development”.<sup>25</sup> The IPCC found that “limiting the effects of climate change is necessary to achieve sustainable development and equity, including poverty eradication.”<sup>26</sup> Importantly, while AR5 stressed the “threat” that is posed to sustainable development by climate change, the report also noted with “high confidence” that “there are many opportunities to link mitigation, adaptation and the pursuit of other societal objectives through integrated responses.”<sup>27</sup> Moreover, in the recently adopted Sustainable Development Goals, combating climate change (see Goal 13) has been recognized as instrumental to sustainable development, highlighting the importance of addressing climate change and its adverse effects to secure sustainable, inclusive development that benefits all persons.

<sup>23</sup> IPCC, AR5, p. 13.

<sup>24</sup> Devandas Aguilar et al., *The effects of climate change on the full enjoyment of human rights* (OHCHR, 2015), p. 16.

<sup>25</sup> The World Bank, *Turn down the heat: Climate extremes, regional impacts, and the case for resilience*, p. xii (hereinafter *Turn down the heat 2013*).

<sup>26</sup> IPCC, AR5, p. 17.

<sup>27</sup> IPCC, AR5, p. 13.

For these reasons, the right to development was the subject of marked emphasis during the panel discussions. Panellists agreed that the right to development should inform humanity's collective response to climate change. Renan Dalisay cautioned that "climate change dilutes the right of vulnerable communities to socio-economic development." Elizabeth Mpofu, General Coordinator of La Via Campesina, described how many developing countries were forced to divert financial and human resources away from development priorities like health, education and agrarian support to confront climate change and its impacts. Mary Robinson affirmed that all individuals and peoples had a right to development and that climate action should be directed toward fulfilling that right. She emphasized that the international community must work together to address challenges that climate change poses to the realization of human rights, especially the right to development.

Mithika Mwenda, Secretary General of the Pan-African Climate Justice Alliance, stated that climate change is a problem that requires a broad understanding of human rights and an emphasis on realizing the right to development, in particular, equitable or even equal development between States. He emphasized that in addition to having the obligation to protect human rights within their borders, States and the international community had broader responsibilities to promote the realization of all human rights for all and should act collectively to address climate change, including through the Secretariat of the UNFCCC. The discussions made it clear that States must take urgent action in order to mitigate and adapt to climate change and promote the realization of the right to development for everyone.

### ***The right to food***

**"In extreme cases, food insecurity caused by droughts or floods as a result of climate change has literally paralysed some developing States, such that human rights gains have been reversed to deplorable levels."**

Elizabeth Mpofu, General Coordinator, La Via Campesina

The right to food is enshrined in the Universal Declaration of Human Rights and the ICESCR. Article 11 of the ICESCR upholds the "fundamental right of everyone to be free from hunger" and calls upon States acting individually and through international co-operation, "to ensure an equitable distribution of world food supplies in relation to need." As with all human rights, States must respect, protect, promote, and fulfil the human right to food. Further, States have committed to mobilize maximum available resources for the progressive realization of the right to food and all other rights contained in the ICESCR.

According to the IPCC, climate change undermines food security;<sup>28</sup> therefore, it threatens realization of the right to food. The World Bank has estimated that a 2°C increase in average global temperature (the proposed target for international climate mitigation efforts) would put "between 100 million and 400 million more people at risk of hunger and could result in over 3 million additional deaths from malnutrition each year."<sup>29</sup> Moreover, persons, groups and peoples in vulnerable situations are at a greater risk. For instance, with about two-thirds of the female labour

<sup>28</sup> IPCC, AR5, p. 13.

<sup>29</sup> The World Bank, *World Development Report 2010: Development and Climate Change* (2010), pp. 4 – 5.



force in developing countries, and more than 90 percent in African countries, engaged in agricultural work, the threats to loss of harvests, often the sole source of food and income, have severe implications for many women in rural areas.<sup>30</sup>

During the panel discussion, several panellists described the many ways in which climate change affects the enjoyment of the right to food. According to Renan Dalisay, “damage to agriculture and food production caused by climate change negatively impacts livelihoods, food security and the human right to food.” Ana Maria Suarez Franco, Permanent Representative in Geneva for Food First Information and Action Network (FIAN), described how climate change-induced “extreme events, including droughts and floods, the salinization of water used for irrigation, desertification, [and] water shortages...are affecting the availability of food in the country and cities.”

In her remarks during the discussion, Xiangjun Yao, Director of the Geneva Office of the Food and Agriculture Organization, highlighted that the adverse effects of climate change on the realization of the human right to food had to be addressed so that the “more than 800 million people suffering from hunger and two billion people affected by the diverse forms of malnutrition” could see this right fulfilled. In spite of these well-known threats, the international community has not taken adequate climate action and has left climate change, perhaps the single greatest threat to fulfilment of the right to food largely unchecked.

### ***The right to water and sanitation***

Although the right to water is not explicitly recognized in the ICESCR, General Comment No. 15 of the Committee on Economic, Social and Cultural Rights articulates this right stating: “The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”<sup>31</sup> In its resolution 64/292, the General Assembly recognised “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.”<sup>32</sup> The right to water and sanitation is also found in legal instruments such as the Convention on the Elimination of Discrimination against Women (CEDAW), among others. Pursuant to General Comment 15, “States [sic] parties have to adopt effective measures to realize, without discrimination, the right to water.”<sup>33</sup>

According to the IPCC, “climate change is projected to reduce renewable surface water and groundwater resources in most dry subtropical regions...intensifying competition for water”.<sup>34</sup> The IPCC further found that climate change will likely increase the risk of water scarcity in urban areas and “rural areas are expected to experience major impacts on water availability and supply.”<sup>35</sup> According to a recent World Bank report, a 2 degree Celsius average global increase in temperature

<sup>30</sup> See UN Women Watch, *Fact Sheet: Women Gender Equality and Climate Change* (2009).

<sup>31</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15* (New York: United Nations, 2002), Art. 2.

<sup>32</sup> United Nations General Assembly, *64/292: The human right to water and sanitation* (2010), Art. 1.

<sup>33</sup> UNCESCR, *General Comment No. 15*, Art. 1.

<sup>34</sup> IPCC, *AR5*, p. 13.

<sup>35</sup> IPCC, *AR5*, pp. 15 – 16.

may result in 1 to 2 billion no longer having enough water to meet their needs.<sup>36</sup> Reduced access to water will disproportionately impact persons, groups and peoples in vulnerable situations. For example, reduced access to water introduces added burdens for women and girls in developing countries, who are often responsible for fetching water for their families from distant sources and have distinct needs for water and sanitation.<sup>37</sup>

During the panel discussions, several speakers stressed the importance of water and sanitation, and the impacts that climate change could have on this right. According to Minister Abul Hassan Mahmood Ali, “millions at the bottom of the development pyramid...are exposed to various climatic shocks. Slow-onset disasters like river erosion, desertification, ground water contamination, or inland salinity intrusion do not make headlines, yet impact people’s living.” There can be no doubt that the right to water and sanitation which is derived from the rights to health and an adequate standard of living found within the ICESCR is threatened by inadequate climate action.

### ***The right to health***

**“Adverse effects of climate change” means changes in the physical environment or biota resulting from climate change which have significant deleterious effects... on human health and welfare.... The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects.**

United Nations Framework Convention on Climate Change Articles 1 and 3

The human right to health is articulated in the Universal Declaration of Human Rights and in Article 12 of the ICESCR which provides that all persons have the right “to the enjoyment of the highest attainable standard of physical and mental health.” The Human Rights Council has specifically recognized the impacts of climate change on the right to health on multiple occasions, most recently in its resolution 29/15 which calls for a panel discussion and a detailed study on the relationship between climate change and the enjoyment of the right to health.

According to World Bank reports, climate change will cause “health impacts [that] are likely to increase and be exacerbated by high rates of malnutrition,”<sup>38</sup> including potential increases in vector-borne diseases and “heat-amplified levels of smog [that] could exacerbate respiratory disorders.”<sup>39</sup> In its most recent report, the IPCC found that “climate change is expected to lead to increases in ill-health in many regions and especially in developing countries with low income, as compared to a baseline without climate change”.<sup>40</sup>

During the panel discussion, Dan Bondi Ogolla, Coordinator and Principal Legal Adviser at the UNFCCC, stressed that the right to health is safeguarded in the UNFCCC, as “the definition of ‘adverse effects’ of climate change under the Convention includes impacts...on ‘human health and welfare’.” However, the level of ambition in climate action to date has fallen short of that necessary

<sup>36</sup> World Bank, *World Development Report*, 5.

<sup>37</sup> See UN Women Watch, *Fact Sheet: Women Gender Equality and Climate Change* (2009).

<sup>38</sup> The World Bank, *Turn down the heat 2013*, p. 24.

<sup>39</sup> World Bank, *Turn down the heat 2012*, p. xvii.

<sup>40</sup> IPCC, *AR5*, p. 15.

to prevent adverse impacts on the enjoyment of the human right to health as evidenced by the current and projected impacts of climate change on the enjoyment of this right.

### ***The right to housing***

**“We have to reconcile ourselves with the reality that our islands will be under water, unless we do something very significant and substantial.”**

Anote Tong, President, Republic of Kiribati

According to Article 11 of the ICESCR all persons are entitled to an adequate standard of living for themselves and their families including adequate housing. The scope and application of the right to housing is elaborated upon in General Comment No. 4 of the Committee on Economic, Social and Cultural Rights, which states that “the human right to adequate housing...is of central importance for the enjoyment of all economic, social and cultural rights.”<sup>41</sup> Like with all other economic, social and cultural rights, States are obliged to expend maximum available resources for the progressive realization of the right to housing for all persons.

Climate change threatens the right to housing in a number of ways. Extreme weather events can destroy homes displacing multitudes of people. Drought, erosion and flooding can gradually render territories inhabitable resulting in displacement and migration. Sea level rise threatens the very land upon which houses in low-lying areas are situated and is expected to “continue for centuries even if the global mean temperature is stabilized.”<sup>42</sup>

During the panel discussions, several speakers raised the issue of the right to housing in the context of destructive extreme weather events and rising sea-levels. Stressing the interconnected and cross-cutting nature of the impacts of climate change, Dan Bondi Ogolla noted that “loss of land through sea level rise [also] impacts the right to self-determination [and] to property.” President Anote Tong emphasized that climate change may literally erase Kiribati and other low-lying island States from the map and stressed the importance of guaranteeing the displaced inhabitants of low-lying areas “migration with dignity.” Migration with dignity would entail migration with the assurance of all human rights to all, including an adequate standard of living and the right to housing.

### ***The right to education***

According to the Universal Declaration of Human Rights, “everyone has the right to education.” Article 13 of the ICESCR elaborates upon this right, guaranteeing to all persons, free, compulsory primary education and calling on States to progressively realize free secondary education for all. However, the impacts of climate change and the exigencies which it creates threaten the ability of States to expend maximum available resources for the progressive realization of the right to education and can press children into the labour pool prematurely.

<sup>41</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 4* (New York: United Nations, 1991), Art. 1.

<sup>42</sup> IPCC, *AR5*, p. 13.

In his 2011 report to the General Assembly, the United Nations Special Rapporteur on the right to food stated that the impacts of successive droughts had caused some children to be “removed from schools because education became unaffordable and because their work was needed by the family as a source of revenue”.<sup>43</sup> According to the World Bank, climate impacts can “exacerbate the existing development challenge of ensuring that the educational needs of all children are met.”<sup>44</sup>

During the panel discussion, concerns were expressed that the right to education would be hampered by the transfer of funds earmarked for education to disaster relief budgets, or other adaptation measures. According to Mithika Mwenda, this is already transpiring as “funds earmarked for... providing quality education to children [are] diverted to address climate-inspired disasters”. Failure to ensure fulfilment of the right to education and the diversion of funds from education not only violates this right but also has long term developmental consequences with substantial implications for the enjoyment of all rights by all.

### ***The right to meaningful and informed participation***

**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.**

Principle 10, 1992 Rio Declaration on Environment and Development

The ICCPR guarantees to all persons the right to participate in public affairs and to vote. The Declaration on the Right to Development guarantees the rights of all persons to participate in, contribute to and enjoy economic, social, cultural and political development and to share in the benefits therefrom. According to the Declaration, “States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development”. CEDAW provides for women’s equal right to participate in political and public life at the national and international levels and the Convention on the Rights of Persons with Disabilities (CRPD) calls on State parties to ensure that persons with disabilities have access to political participation rights on an equal basis with others.

In order for participation to be meaningful, it should be adequately informed. Freedom of information is enshrined in Article 19 of the ICCPR, which guarantees “the right to freedom of

<sup>43</sup> United Nations General Assembly, *A/HRC/16/49/Add.2: Report of the Special Rapporteur on the right to food, Olivier De Schutter* (2011), para. 13.

<sup>44</sup> The World Bank, *Turn down the heat 2013*, p. xix.

expression, including the right to seek, receive and impart information and ideas of all kinds.”<sup>45</sup> As the Human Rights Committee has stated “States parties should proactively put in the public domain Government information of public interest.”<sup>46</sup> In the context of climate change, this includes making available early warning information about the effects of climate change, and transparency regarding adaptation and mitigation measures, their potential impacts and their financing.

Given that persons, groups and peoples in vulnerable situations face greater risk and threats from climate change, it is particularly important that the right to meaningful and informed participation in decisions likely to affect their rights and survival is honoured. In addition to being a human rights obligation, ensuring meaningful and informed participation of all persons in climate policy should also improve outcomes. According to the IPCC, “recognition of diverse interests, circumstances, social-cultural contexts and expectations can benefit decision-making processes” and consequently, enables an effective and rights-based approach to tackling the threat of climate change.<sup>47</sup>

During the panel discussions, panellists emphasized the importance of ensuring the participation of people in vulnerable situations. Noting that women constituted 43 per cent of the agricultural labour force and were critical food producers, Xiangjun Yao stated that engaging women in relevant policymaking was critical to food security. She called for climate policy that addresses the situation and conditions of those most vulnerable to climate change, includes all relevant stakeholders in decision-making processes, enables communities to share knowledge and good practices, and strengthens accountability processes.

Elizabeth Mpfu called upon States to give voice to the voiceless in the discussion of climate change. La Via Campesina represents over 200 million marginalized people, including peasants and fishermen whose voices are not being adequately heard in the climate debate. As a practicing woman farmer from Zimbabwe, she had witnessed first-hand, the impacts of climate change on human rights, particularly the rights to life, food, health, housing, education, self-determination, development and water and sanitation. According to Ms. Mpfu, the inadequate representation of poor and marginalized people in decision-making processes had contributed to these violations and facilitated the subordination of State responsibilities to protect human rights to powerful corporate interests. Companies had engaged in unsustainable and indefensible practices, including land-grabbing, excessive exploitation of mineral resources, over-reliance on fossil fuels and destruction of nature and livelihoods. Persons, groups and peoples in vulnerable situations, including indigenous peoples, peasants and women, had suffered the greatest impacts of these actions and many had been displaced from their lands.

Ms. Mpfu stated that developed countries, through their trade and investment negotiations and even their efforts to mitigate climate change through the mechanism to reduce emissions from deforestation and forest degradation, had further perpetuated human rights abuses and land-grabs and prioritized the interests of the few over those of the many. For example, biofuels and export

<sup>45</sup> See also United Nations Human Rights Committee, CCPR/C/GC/34, *General comment No. 34: Article 19: Freedoms of opinion and expression* (12 September 2011).

<sup>46</sup> *Ibid*, para 19.

<sup>47</sup> IPCC, AR5, p. 19

crops had been favoured over locally grown and consumed food. Forests were being taken away from indigenous peoples who relied on them for their livelihoods, shelter, balanced diets and way of life. People were losing their right to self-determination. Participation was critical to address these problems and indigenous peoples must have a voice and vote in climate-related decisions. In the context of indigenous peoples, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) further clarifies that States should obtain the free, prior and informed consent of indigenous peoples before taking any actions that affect their rights including actions related to climate change mitigation and adaptation measures.

Dan Bondi Ogolla agreed that response measures to climate change, such as activities under the auspices of the clean development mechanism, could sometimes violate human rights. He called for human rights principles, such as participation and freedom of information to guide the implementation and development of relevant policies. The importance of participation had been emphasized in a variety of COP decisions, which had held, inter alia, that responses to climate change should be integrated with social and economic development plans; all stakeholders should be engaged in the development and implementation of climate change policies; and adaptation actions should follow a participatory approach, taking into account the views of and likely impacts on those in vulnerable situations. During the interactive dialogues, delegations also highlighted the importance of integrating human rights in climate policy, including participation, access to information and access to justice.

### ***The rights of those most affected by climate change***

**“We cannot continue to avoid the injustice faced by the poorest, the most vulnerable, and those on the front line”**

Anote Tong, President, Republic of Kiribati

Article 1 of the Universal Declaration of Human Rights declares that “all human beings are born equal in dignity and rights”. The Declaration, the ICCPR and the ICESCR all contain explicit provisions related to equality and non-discrimination. States have further committed to the principles of equality and non-discrimination in a number of international treaties and other legal instruments including the International Convention on the Elimination of all forms of Racial Discrimination (CERD) and instruments that address the rights of particular persons, groups and peoples such as the CEDAW, the Convention on the Rights of the Child (CRC), the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, CRPD, the United Nations Declaration on the Right to Development and the UNDRIP. These instruments require States to respect, protect, promote, and fulfil the rights of all persons, particularly those who face added social, economic or political vulnerabilities.

As previously discussed, climate change has disproportionate impacts on the rights of persons, groups and peoples in vulnerable situations. According to the IPCC, “people who are socially, economically, politically, institutionally or otherwise marginalized are especially vulnerable to climate change and also to some adaptation and mitigation responses”.<sup>48</sup> This fact has been

<sup>48</sup> IPCC, AR5, p. 54.

repeatedly emphasized by Human Rights Council resolutions on the subject of human rights and climate change including resolution 10/4 which states that the impacts of climate change “will be felt most acutely by those segments of the population who are already in a vulnerable situation.”

John Knox and other panellists in the March 2015 discussions also highlighted that climate change posed the greatest threat to the rights of people in vulnerable situations. Elizabeth Mpofu emphasized that in addition to its direct impacts on the enjoyment of human rights, climate change also brought about indirect impacts by diverting resources from crucial public services such as health, education and agrarian support to climate change response and mitigation efforts at the expense of persons who rely upon public services to meet their needs. Discussing food security, Ana Maria Suarez Franco noted that climate change disproportionately affects peasants, indigenous peoples, pastoralists, small farmers and fishermen, who, paradoxically, have contributed to it the least.

Minister Abul Hassan Mahmood Ali called for States to take a human rights perspective and focus on the impacts of climate change on the poorest communities and countries. Mithika Mwenda compared the plight of humanity in the face of climate change to that of passengers struggling for survival during the sinking of the Titanic: the weak might suffer and die first but, in the end, everyone would sink. Given this reality, he called for a paradigm shift to address climate change and transition to low-carbon economies in an equitable, fair and ecologically sound manner that permitted continued growth in developing countries. Renan Dalisay also emphasized that climate change takes lives and had a disproportionate impact on the poorest and most marginalized. During the interactive discussion that followed the panel presentations, delegations called for mitigation and adaptation efforts to place people at the centre, be gender sensitive and ensure the rights of persons, groups and people in vulnerable situations, including women, children, indigenous peoples and the poor.

To better understand how climate change impacts the rights of particular groups, it is useful to consider the particular nature of the threat posed to the rights of indigenous peoples, one that was emphasized throughout the panel discussion. The UNDRIP and International Labour Organization Convention 169 articulate specific rights of indigenous peoples. UNDRIP affirms that “indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such.” It calls for States to “provide effective mechanisms for prevention of, and redress for” actions which would undermine indigenous peoples’ rights including their rights to culture, land and resources, and self-determination.

<p><b>“Indigenous people[s] are among the most culturally endangered communities.”</b></p> <p>Victoria Tauli-Corpuz, United Nations Special Rapporteur on the rights of indigenous peoples</p>
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During the panel discussion, many speakers warned of the impact of climate change on indigenous peoples’ rights. Victoria Tauli-Corpuz stressed that, “indigenous peoples, like many developing countries, are among those who have least contributed to the problem of climate change, but are the ones suffering from the worst impacts.” She went on to state that indigenous peoples often lived in and relied on fragile ecosystems, damage to which threatened their homes,

livelihoods and cultural survival. Climate change threatens their rights to self-determination, development, food, water, land and culture, among others. Efforts to prevent, mitigate and adapt to climate change could also threaten their rights. The production of biofuels can lead to land-grabbing, and displacement; and the construction of hydroelectric dams and other renewable energy projects can cause displacement and ecological damage. These activities should not be permitted without the consent of potentially affected indigenous peoples.

Prime Minister Enele Sosene Sopoaga further emphasized the importance of ensuring that people are able to “continue to enjoy and practice their own cultural and traditional practices, and their own traditional ways of life.” Panellists also stressed the potential applications of indigenous practices for climate mitigation and adaptation. According to Ms. Tauli-Corpuz, “indigenous peoples’ knowledge increases the effectiveness of adaptation measures.” Similarly, the IPCC has found that “indigenous, local and traditional knowledge systems and practices, including indigenous peoples’ holistic view of community and environment, are a major resource for adapting to climate change.”<sup>49</sup> By empowering indigenous peoples and guaranteeing them control over their traditional knowledge, lands, territories and resources, as called for in UNDRIP, States can simultaneously improve climate mitigation and adaptation efforts and the situation of indigenous peoples. According to Hilal Elver, the Special Rapporteur on the right to food, women’s and indigenous peoples’ knowledge of biodiversity and agro-ecology should inform climate mitigation and adaptation strategies. This will empower and benefit affected persons, guarantee their participation in relevant decision-making processes, and make them part of the climate solution.

### ***The rights of future generations***

**“Climate justice requires that States look beyond their responsibility to their own people, to accept their responsibility to those living beyond their shores, who are particularly vulnerable to climate change. And also, to the generations to come.”**

Mary Robinson, President, Mary Robinson Foundation – Climate Justice

The rights of children are protected by the CRC but the rights of future generations (in the sense of generations yet unborn) are not formally recognised in this or other major human rights instruments. Nevertheless, a strong argument in favour of the rights of future generations can be made on the basis of the human rights principle of equity and a number of multi-lateral environmental agreements. The Stockholm Declaration of the United Nations Conference on the Human Environment stated that “defend[ing] and improve[ing] the human environment for present and future generations has become an imperative goal for mankind” and that “man has the 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, and he bears a solemn responsibility to protect and improve the environment for present and future generations”.<sup>50</sup>

<sup>49</sup> IPCC, AR5, p. 19.

<sup>50</sup> United Nations Conference on the Human Environment, *Declaration of the United Nations Conference on the Human Environment* (Stockholm: United Nations, 1972).



General Assembly resolutions 43/53, 44/207, 45/212 and 46/169 call for the protection of the global climate for present and future generations of mankind. The 1992 Rio Declaration on Environment and Development explicitly advanced the rights of future generations when it linked the right to development to the environment and sustainable development. In paragraph 3, the Rio Declaration affirmed that “the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.”<sup>51</sup> The following year, the Vienna Declaration and Programme of Action included the same language in its paragraph 11.<sup>52</sup> The 2002 Johannesburg Declaration, and the Future We Want, the outcome document of Rio + 20, further affirm the links between the environment, sustainable development and human rights. The principle of equity, including intergenerational equity, is also specifically recognized in the UNFCCC which calls for all parties to “protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities”.

During the panel discussions, the concept of intergenerational equity was highlighted by several discussants. President Anote Tong questioned whether or not we could “guarantee” the futures of our grandchildren. He observed that the people in Tuvalu and other SIDS “have to reconcile [themselves] with the reality that [their] islands will be under water, unless we do something very significant and substantial.” This possible loss of the land mass of an entire country poses a grave threat to the cultural identity and survival of its people including generations yet unborn who may never know their traditional lands and territories. Flavia Pansieri concurred that those who had contributed the least to greenhouse gas emissions, including the poorest people in the poorest countries and future generations worldwide, would be affected the most and this was a matter of fundamental injustice. Victoria Tauli-Corpuz called for the implementation of the “polluter pays” principle, an environmental law principle from environmental law that requires that those responsible for environmental harms should pay for the damages they cause. She stressed the need for current actions to take into account likely impacts on future generations.

Renan Dalisay urged States and people to come together to agree on a lasting solution to save our children and our children’s children from the devastation wrought by the terrible consequences of climate change. Olav Fyske Tveit asserted that we must act now to address climate change, the impacts of which are already a reality and will affect even more, our future generations. Actions taken now will determine whether or not generations to come have access to the most basic elements of life, including food and water. During the interactive dialogues that followed, participants reiterated that the poorest countries and persons, groups and peoples in vulnerable situations that had contributed the least to climate change were likely to suffer its worst impacts. This was particularly true of children and future generations. Discussants agreed that addressing the impacts of climate change on those in vulnerable situations was a matter of justice and fairness that required immediate action.

<sup>51</sup> United Nations Conference on Environment and Development, *Rio Declaration on Environment and Development* (Rio de Janeiro: United Nations, 1992).

<sup>52</sup> World Conference on Human Rights, *Vienna Declaration and Programme of Action* (Vienna: United Nations, 1993).

## Part III: Realizing human rights in a warming world

**“Time is running out to avoid dangerous climate change. This year, 2015, presents a unique opportunity to set the global community on a new path; away from fossil fuel based development and towards a sustainable alternative that will ensure the protection of the rights of generations to come.”**

Mary Robinson, President, Mary Robinson Foundation – Climate Justice

In order for States to realise their commitments to safeguard and uphold all human rights for all in the face of challenges posed by climate change and its impacts, they must act collectively and **immediately**. Principle 15 of the Rio Declaration on Environment and Development calls for States to adopt a precautionary approach to environmental harms and act “when there are threats of serious or irreversible damage” even in the absence of full scientific certainty. In the case of climate change there is no uncertainty. Climate change has already done serious damage. The only uncertainty remaining is how much more damage it will cause. Under these circumstances, urgent preventative action is needed. Discussants agreed that immediate, coordinated climate action that effectively mobilizes resources to mitigate and adapt to climate change while protecting the rights of people affected by it is the only viable solution. The need for such action is supported by sound science, including the most recent report of the IPCC, which overwhelmingly confirms that humanity is headed down a dangerous path towards a warmer, more climate volatile, and less secure world.

The panel discussions, the IPCC, and the growing political consensus in favour of urgent climate action, all demonstrate that the time for concrete, effective climate action is now. Since climate change directly contributes to the violation of human rights, States have an affirmative obligation to take measures to mitigate climate change, to prevent negative human rights impacts, and to ensure that all persons, particularly those in vulnerable situations, have adequate capacity to adapt to the growing climate crisis. Integrating human rights obligations in climate actions will improve outcomes by providing concrete measures to protect people from the harms of climate change. There is a growing body of evidence that a human rights-based approach will lead to more sustainable and effective results in climate action.<sup>53</sup> A human rights perspective offers guidance for addressing climate through a broader lens that encompasses the economic, social, cultural and political dimensions of climate change. It can also reduce arbitrariness in climate change programs and objectives, and ensure that climate action benefits those who are most in need. The integration of human rights in climate action will promote significant involvement from UN bodies and mechanisms mandated to promote and protect human rights, and from civil society actors bringing additional resources to confront the challenge of climate change.

In spite of this, concrete efforts at effective climate change mitigation and adaptation measures have been limited. In the course of the panel discussion, President Aote Tong posed the question “how much global effort are we putting into providing concrete, tangible action to help the vulnerable whose security and survival is very much on the line?” The answer so far has been not

<sup>53</sup> See for example Caleb Stevens et. al., *Securing Rights Combatting Climate Change: How Strengthening Community Forest Rights Mitigates Climate Change*, Executive Summary (World Resources Institute 2014) available at [http://www.wri.org/sites/default/files/securingrights\\_executive\\_summary.pdf](http://www.wri.org/sites/default/files/securingrights_executive_summary.pdf) (last accessed 25 November 2015) (discussing the importance of indigenous and local communities’ forest rights for climate mitigation).

enough. In order to address this failure, panellists and participants made several recommendations to help effectively integrate human rights considerations in climate adaptation and mitigation efforts and to spur the urgent action that is so critically needed to prevent climate change from becoming a human rights catastrophe.

### ***Recommendations from the full-day panel discussion on climate change***

- Appointment of a Special Rapporteur on human rights and climate change to identify good practices, strengthen accountability mechanisms, engage with the Secretariat of the United Nations Framework Convention on Climate Change and further explore the links between climate change and human rights;
- Thorough integration of human rights obligations, standards and principles in international and national climate policy and action, including COP 21;
- Participation of all relevant stakeholders in the development and implementation of climate change policies and action;
- Mitigation and adaptation efforts that place people at the centre, are gender sensitive, and ensure the rights of persons, groups and peoples in vulnerable situations, including women, children, indigenous peoples and the poor. These could be informed by the use of impact assessments to ensure that climate actions benefit those facing the greatest risks;
- Improved regulation of the private sector in order to mitigate their contributions to climate change and ensure their respect for human rights in all their actions;
- Enhanced cooperation based on principles of equity and fairness to ensure adequate funding and research into adaptation measures to help the poorest countries and those persons, groups and peoples most at risk;
- Intensified research and development into renewable sources of energy and energy conservation to reduce the emissions intensity of growth;
- Equitable access to technology, including, if necessary, the lowering of intellectual property standards and facilitation of technology transfer;
- The creation of a climate justice fund;
- Protecting and utilizing traditional knowledge of local communities and indigenous peoples to support the effective use of resources for agriculture and forestry;
- Titling the lands and territories of indigenous peoples and other communities in order to support preservation of forests and improved carbon storage;
- Utilizing community-based climate monitoring to reduce monitoring costs and enhance early warning systems;
- Improved capacity-building, development assistance, innovative finance and clean development mechanisms;
- Improved communication between climate change negotiators and human rights experts including through increased participation in the Geneva Pledge;
- Consideration by States of the linkages between human rights and climate change during the universal periodic review;
- Increased scrutiny of the impacts of climate change on human rights by Human Rights Council special procedures mandate holders;
- A special session of the Human Rights Council on human rights and climate change; and

- The creation of a legal instrument to protect the rights of climate displaced people

Recommendations from the panel discussion share a common objective of better integrating human rights in climate action with a view to respect, protect, promote, and fulfil all human rights for all. With negotiations of the outcome document of COP21 currently under way, this objective is critical and States have the opportunity to make considerable progress. From a human rights perspective, the new agreement and other efforts to mitigate climate change and adapt to its impacts should specifically address the human rights impacts of climate change and be consistent with existing human rights agreements, obligations, standards and principles.