



# **ANALYTICAL REPORT ON HUMAN RIGHTS AND CLIMATE**

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## **CLIMATE & DEVELOPMENT NETWORK**

The 21st Session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP21) will be held in Paris from 30 November to 11 December 2015. COP21 will be a crucial conference, as it needs to achieve a new international agreement on the climate with the aim of keeping global warming below 2°C until 2100. French-speakers in civil society are helping to prepare this agreement in order to add their weight to the fight against climate disruption and to ensure that these efforts comply with the priorities of the poorest and most vulnerable countries. This is the task that the Climate & Development Network (RC&D) has been working on for several months.

RC&D was created by the Réseau Action Climat-France (RAC-France) and ENDA Énergie, Environnement, Développement in Senegal. It now numbers 75 French-speaking associations running projects in the field and advocating on climate change. It is the only climate change network for French-speaking NGOs. The network leverages the diversity of its members, from field project managers to skilled international negotiators, to promote a new development model that takes account of climate and energy constraints. These members launch innovative, locally integrated projects and raise awareness among the local population of new energy and climate concerns. The RC&D also campaigns to make the voice of French-speaking civil society heard in the national, regional and international political arenas, with capacity-building and knowledge-exchange workshops, analytical reports and joint position statements.

For several years, RC&D has been encouraging its member associations to take part in negotiations in order to learn about the issues so that they can then cascade this information throughout the network. In 2015, the network decided to intensify this work by setting up a specialised taskforce to act for it in key international bodies and events in the run-up to COP21. Throughout the year, the taskforce represents RC&D's field associations and pushes their issues up the agenda, based on six challenges identified by the network as key for the hoped-for Paris agreement: renewable energy and energy efficiency, adaptation, agriculture and food security, funding, gender and human rights.

For the Climate & Development Network, the Paris summit must meet the dual challenge of keeping global warming below 2°C and combating poverty in the countries most affected by climate change. The time has come to take a stronger stand in the face of new challenges posed by rising temperatures. RC&D is calling for an agreement that will both widen access to sustainable energy services, food and nutritional security, and give Africa the financial resources it needs to prioritise adaptation without losing sight of its human rights and gender equality issues.

## INTRODUCTION

**Climate change is a threat to people's rights**, especially those who are already among the most vulnerable in society, such as women, indigenous populations, poor farmers and people living in traditional societies, all of whom are by their nature closely tied to their environment, and rely for their survival on the production and preservation of natural resources.

This situation generates conflict between communities and, occasionally, countries. The crisis in the Central African Republic, for example, has seen displaced people and refugees drawing on resources in order to survive and thereby finding themselves "in competition" with the local population. Similarly, conflicts over scarce water resources and food insecurity in the Sahel have claimed many lives and created climate refugees, and conflicts between arable and livestock farmers have been a cause of political instability in many countries.

Health, safety, physical integrity and even the right to decent housing are increasingly endangered, and threats to the survival of indigenous populations continue to grow. Serious conflicts arise from climate change, and in the absence of regulation, people fight only for their own interest, with many, often far-reaching, consequences in terms of human rights violations.

Climate change poses a threat to nation states and their inhabitants, and therefore also to people's right to a decent life. Its consequences weaken and sometimes jeopardise access to essentials such as water, food and health. In this sense, climate disruption is a growing threat to human rights, since it endangers peace, but also to the development rights of poor communities.

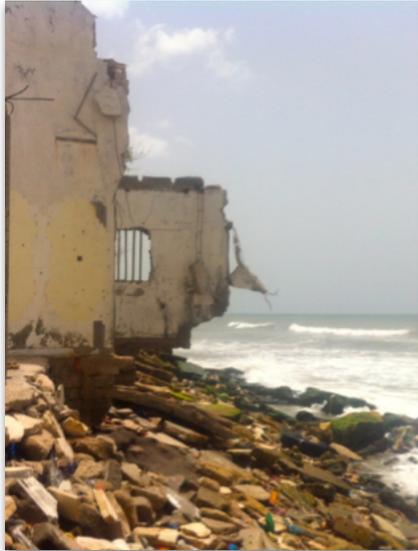
Climate injustice heightens inequality, and it is those least responsible for climate change who are most exposed to and affected by it, without recourse to appropriate solutions. And the prevailing lack of ambition in reducing greenhouse gas emissions is having a direct impact on the need for adaptation to climate change and losses and damages. Losses and damages<sup>1</sup> are those sustained as a result of climate change, which cannot be avoided, by mitigation or adaptation. If we do not increase mitigation, the need for adaptation will be greater, and if we do not increase adaptation, irreversible losses and damages will be more substantial, further undermining human rights. Hence the need to create a mechanism for losses and damages, which must offer redress and respect for human rights.



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<sup>1</sup> For more information on the subject of losses and damages, read our [Note de décryptage sur l'adaptation du Réseau Climat & Développement, 2015](#).

<sup>2</sup> In Chad, for example, 5% of oil revenues are paid to the oil-producing region, over and above general public



Furthermore, certain projects and investments affecting climate in developing countries pose serious social and environmental risks to local communities and indigenous people. Many violations of property rights and human rights, and environmental degradation have been observed as a result of mining and forestry projects, among others. Some projects that were presented as solutions to the climate emergency have in fact engendered social, health and food problems for the population. This was the case for the policy to increase the use of agro-fuels, which has led to a land-grab from subsistence farmers, and plans for large dams to generate "clean" electricity that see local communities

expropriated and deprived of their land. It is therefore crucial that human rights and social and environmental safeguards are given greater priority in policies and measures to combat climate change.

Climate policies should also aim to increase access to essential rights and basic social services for people living in developing countries. The principles of climate fairness and justice should allow everybody in the world to exercise their right to development (access to basics such as water and energy, the right to food, education, health, land, etc.). Solutions for combating climate change, from adaptation to mitigation, should be shared and available to all. This will mean new rules on intellectual property rights, the transfer of appropriate technology and competence building, to give all developing countries an equal right to sustainable development.

There is also the question of a fair and equitable transition, which can be achieved by adopting an approach based on climate-change rights. Combating climate change means, for example, closing fossil-fuel power stations. But this process must include the creation of new jobs for the people working in them, to prevent the transition further weakening the local population. For this transition to be genuinely fair and equitable, it must take account of every level of society, especially those people that received some of the revenues from the exploitation of fossil



fuels for their development and who need to find alternative sources of income<sup>2</sup>.

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<sup>2</sup> In Chad, for example, 5% of oil revenues are paid to the oil-producing region, over and above general public investment of oil revenues throughout the country.

Another key point is the duty of governments to inform the public about the environment and to allow them to engage with the subject (management of the environment, formulation, implementation and assessment of policies and projects), in line with many international principles and declarations (e.g. free, prior, informed consent – CLIP, Rio Declaration). This will promote respect for human rights in the management of climate change, its impact and the solutions implemented.

## **I. WHAT IS A RIGHTS-BASED APPROACH?**

An approach based on human rights takes as its starting point the implementation of standards of protection and promotion of human rights. One of the goals of the United Nations is the implementation of the rights set out in the Universal Declaration of Human Rights and the international instruments deriving therefrom. The formulation of climate policies should therefore be based on "rights" instead of "needs". According to the definition given by Morocco's National Human Rights Council, for example, "the difference between the two concepts is notable, given that a right is deserved by an individual simply by virtue of being human, and may be imposed by law in order to ensure people's right to a decent life, and that the State is committed to securing it, whereas a need is an aspiration or ambition that may be legitimate without necessarily being covered by a commitment of the government or any other party."

Considering climate change according to a rights-based approach is supported by the integration of strict international standards in public policies, plans and programmes. These rights are already recognised and accepted by all signatory nations to the UNFCCC, which are therefore obliged to ensure their effective implementation. Parties to conventions and treaties concerning human rights must grant special protection to the most vulnerable and to those suffering the effects of climate change, principally indigenous and local people and women, i.e. groups that depend directly on the environment and its natural resources, and climate refugees. In March 2008, the Human Rights Council of the United Nations stated "climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights."

What an approach based on human rights means is that rights are enforceable. Implementing it requires the creation of an impartial legal mechanism allowing people or groups of people who feel that their rights have been violated to file a complaint, and this action must trigger a process that apportions blame to a guilty party, ensures that rights are protected and if necessary allows reparations to be made that reflect the damage caused.

A rights-based approach also means prioritising, when faced with a choice between several options for mitigating or adapting, those that do not increase the vulnerability of the people affected or make others vulnerable but instead protect these people and increase their capacity to enjoy a decent life.

**It is therefore vital to take account of human rights and the rights-based approach in the COP21 negotiations, especially in the wording of the Paris agreement.** This is feasible because some high-level authorities of international standing are aware of the importance of rights in climate protection. French President François Hollande declared in his New Year's address in 2015 "France was able, 70 years ago now, to hold a major conference on universal human rights. We must now bring the world along with us so that it, in turn, can adopt a declaration on the rights of humanity to protect the planet."

Mary Robinson too, the Special Envoy of the United Nations' Secretary-General, declared on 25 March 2015 that the "climate deal must respect human rights".

Morocco, as host of the future COP22, which will take place in Marrakesh in 2016, has also stressed the importance of the link between human rights and climate change. At the Women for Climate summit held in Morocco from 29 to 30 May 2015, the Moroccan Environment Minister Hakima el Haite stated that King Mohammed VI would like to see the approach to climate change based on human rights.

## **II. MAJOR VULNERABLE GROUPS**

**Indigenous peoples** lead a life connected to their land and territory, and are therefore particularly dependent on the environment and natural resources. They are doubly affected by climate change, and this increases their vulnerability.

First, climate change accentuates the exposure of these populations by reducing their access to the resources they need to survive. In Chad, for example, nomadic herdsmen are affected by drought that depletes their pastures and reduces the main source of revenue from livestock rearing. And projected solutions to climate change do not always obtain these people's free prior consent.



Second, indigenous populations are unempowered by basic social services such as health and education. Access to these is already difficult in most of their habitats, which are mountainous, forested, arid regions. But nomads are being forced by climate change to travel further in search of resources and a suitable environment, and this makes their access to such essential services even more problematic.

Indigenous people's identity is tied to their connection with the land and/or territory. However, they do not only pay the full price for climate change, but are also often subject to forced displacement and land-grabs of the ancestral lands and territories they have protected for thousands of years, in the name of projects to combat climate change. The loss of this land leads to the loss of the traditional and spiritual lore that has protected their environment since the dawn of time and is vital in ensuring their ability to adapt as climate change sets in.

Several groups of indigenous forest peoples are therefore either opposed to REDD+ projects, or forced to accept the programme and its related projects to the detriment of their traditional way of life, without reaping any of the rewards. REDD+ (Reducing Emissions from Deforestation and Forest Degradation) is an effort to create carbon credits in order to reduce emissions from forested lands, set up under the UNFCCC. It allows a carbon market to be created in forested countries such as those of the Congo Basin – by the Commission of Central African Forests, the Amazon Basin and the forests of Asia. A working group on REDD+ introduced safeguards for human rights and the rights of indigenous peoples, but they are not particularly exacting and have no clear pathway for committing parties to the system to respect for human rights. REDD+ projects do not always comply with the rules for free, prior and informed consent recognised in the United Nations Declaration on the Rights of Indigenous Peoples and in the guidelines used by several international institutions such as the World Bank and the United Nations Programme for Development.

Despite this, the rights and protection of these peoples are enshrined in international standards. In Article 4.2 of its Convention 169, one of the major prescriptive texts on the rights of indigenous peoples, the ILO states "such special measures shall not be contrary to the freely expressed wishes of the peoples concerned". Article 7.4 states that "governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit." It also states that parties should recognise and protect these peoples and help them to manage their land and resources sustainably.

Furthermore, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) may not be legally binding, but it does grant some rights to these peoples in Article 29.1: "Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination." Article 32.3 states that "States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact."

### ***The Santa Rita dam in Guatemala: human rights violations under a Clean Development Mechanism project***

The Clean Development Mechanism (CDM) was set up under the Kyoto Protocol and allows industrialised countries to fund projects to reduce greenhouse gas emissions in a southern country in exchange for carbon credits. The hydroelectric dam in Santa Rita in Guatemala was recorded as a CDM project in June 2014. It is backed by the Guatemalan government and funds granted by the major Swiss, German, Spanish and Dutch development agencies and banks as well as the World Bank.

**In 2009, the Q'eqchi communities of the region around the Dolores river were informed of the future installation of a hydroelectric dam nearby.** These indigenous communities are completely dependent for their survival on the water from this river. To assert their rights, they attempted to obtain more information from the authorities, but received no reply. In 2010, they decided, in the presence of the local authorities, to refuse their consent for this construction project which violated their right to access to water, sufficient food and freedom of movement.

The rights of indigenous peoples in their territories are recognised in the Guatemalan Agreement on the Identity and Rights of Indigenous Peoples, and the International Labour Organization's Convention on Indigenous and Tribal Peoples, ratified by Guatemala in 1996, as well as the Modalities and Procedures of the CDM, give communities the right to be consulted before a project is approved. But these three standards were violated and the agreement was not respected.

In August 2013, Guatemalan police illegally attempted to arrest one of the community's rights activists. In the same month, two children from one community were shot dead during the visit of the Rapporteur on the Rights of Indigenous Peoples of the Inter-American Commission on Human Rights. The terror and repression led by the government, the company and local landowners then intensified. Between 14 and 17 August 2014, a punitive operation was launched against several local Q'eqchi communities, in which people were displaced, robbed, attacked and humiliated. The project caused the deaths of at least seven people.

**In October 2014, community representatives filed an official complaint with an independent body,** demanding that the IFC Performance Standards (the World Bank body co-funding the project) comply with the agreements of the High Commissioner for Human Rights, and:

- put a stop to the arrests of those opposing the project
- ensure that local communities enjoy freedom of movement in the region around the dam
- adopt a clearer and better defined public participation process

Source: Santa Rita – CDM Hydro Dam in Guatemala. The need for safeguards in climate finance flows. Carbon Market Watch, 17 March 2015. <http://carbonmarketwatch.org/fact-sheet-santa-rita-cdm-hydro-dam-in-guatemala/>

Carbon Market Watch website: <http://carbonmarketwatch.org/watch-this-lettre-dinformation-ong-11- barrage-hydroelectrique-de-santa-rita-une-histoire-de-douleur/>

**Women** are most vulnerable to the impact of climate change<sup>3</sup>. In most developing countries, women's lives are closely tied to the environment, which allows them to feed their families and ensure the health of their children and their community. They are therefore particularly exposed to the impacts of climate change on the environment, which has a knock-on effect on all of society, a large part of which depends on them. Women's



rights, moreover, will suffer because they are generally insufficiently involved in the political decisions taken regarding climate change. They are marginalised, despite having many of the keys to solutions for combating this catastrophic threat. Article 14 of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women reveals the specific problems faced by women in rural societies – housing, sanitation, involvement in development planning, access to sufficient production resources and equal treatment in property reform, among others.

Parties to the Convention are beginning to consider how to incorporate gender into climate negotiations, but effectively integrating these issues into all aspects of the negotiations remains a major challenge. The time has come to recognise that climate change is an issue for all people, and that women are part of the solution. Their rights need to be acknowledged and respected.



**Children** are not spared the impacts of climate change. They account for 80% of deaths attributed to climate disruption<sup>4</sup>, being more likely to be affected by hunger, malnutrition, malaria and diarrhoea. Pneumonia, diarrhoea and malaria are the three leading causes of infant mortality, and climate change is a major factor in spreading these diseases. It is expected to cause malnutrition in an

additional 25 million children before 2050<sup>5</sup>. Chronic malnutrition stunts children's growth

<sup>3</sup> For more information on women and climate change, read the [Note de décryptage Genre et climat du Réseau Climat & Développement, 2015](#).

<sup>4</sup> UNICEF, *The Challenges of Climate Change: Children on the front line*, 2014.

<sup>5</sup> Nelson G.C., et al., *Climate Change: Impact on agriculture and costs of adaptation*, International Food Policy Research Institute, 2009.

permanently, and leaves them unable to defend themselves against even benign infections. Climate change therefore compounds the threats to the health, safety, food security, education and means of subsistence of millions of children, putting them in a situation in which their right to survive and grow up in a safe habitat is not assured. According to the 1989 Convention on the Rights of the Child, States must ensure that all children can exercise their basic rights: the right to life, to survival and development. This is also a question of protecting future generations.

**Climate refugees and displaced people:** climate change also threatens some populations by destroying their land or rendering it uninhabitable. These populations are then forced to leave their territory and become environmental refugees or displaced people. The United Nations Environment Programme estimates put the number of environmental displaced in Africa at 50 million by 2060. There is also extensive movement of people away from the interior of their countries as they look for habitable land. This generates intercommunity conflict over access to natural resources such as water, pasture and arable land. There is certainly widespread migration from poor countries to rich ones, spurred by war, but climate migrants receive little coverage as yet. These people see no alternative but to leave their homeland and put all their hope in some other destination. Many men and women, particularly from the Sahel, cross the desert and then Libya to either complete their journey in Algeria or push on further and take the risk of a sea crossing. According to the Norwegian Refugee Council, in 2013 three times as many people were fleeing climate change as armed conflict.

When the habitability of a region declines markedly, the very existence of the local population is endangered, since its identity, rights, lifestyle and culture come under threat. Climate refugees currently have no specific rights, while such rights do apply to people fleeing war or conflict. This will be a major issue at COP21, because warming of even 2°C could turn many people in the Sahel, the major deltas exposed to rising sea levels and small island states into climate refugees. The status of climate refugee needs to be recognised. Territories that receive these migrants must also launch a genuine process allowing these people to settle in decent conditions, without increasing vulnerability in the local population.

### III. PROTECTING SPECIFIC RIGHTS

Many rights that are considered to be human rights by the United Nations are directly threatened by climate change. The Universal Declaration of Human Rights of 10 December 1948 also protects such rights as the right to a sufficient standard of living (food, clothing, housing, etc., Article 25) and the right to life (Article 3), which are affected by climate change. The 1993 Vienna Declaration and Programme of Action define social and environmental rights as human rights, since they set minimum requirements for a decent life.

## A. Basic social rights

Basic social rights consist of several rights connected to both human life and the protection of the environment, which are threatened by the impact of climate change or projects presented as solutions thereto. They are:

**The right to food:** the impact of climate change has a direct effect on access to food. It is detrimental to family farming and traditional agriculture, which feed millions of people worldwide, especially in Africa. Changes of season and fluctuating rainfall lead to floods and drought, which can slash agricultural yields and generate severe food crises.



Soil holds four to five times as much carbon as biomass, but according to the FAO's report in 2012, recent damage to the soil has cut its previous carbon content by between 30% and 75%, making it less fertile. Experts reckon that "rising populations and socio-economic growth will double demand for food by 2050." According to a UNEP report, "about 50% of world population would be at risk of undernourishment under increasing demand and climate change by 2050 (~2°C warming globally), compared to about 30% as a result of socio-economic changes alone."<sup>6</sup> The effects of climate change therefore constitute a barrier to the right to food that may engender or exacerbate malnutrition, as deprived populations struggle to access healthcare.<sup>7</sup>

The right to food and property rights are also imperiled by the race for natural and agricultural resources, which leads to systematic land-grabs that undermine the most vulnerable populations and their rights. The sale to foreign investors of vast tracts of agricultural land or woodland over long periods for the purposes of speculation or the production of food products and agro-fuels for export is now widespread. This intensive monoculture contributes nothing to the local economy, damages the soil and endangers the right to food of the local population.

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<sup>6</sup> UNEP, Africa's Adaptation Gap 2: Bridging the gap – mobilising sources, 2015, based on the survey by Dawson TP et al. (2014) Modelling impacts of climate change on global food security.

<sup>7</sup> For more information on the impact of climate change on food security and agriculture, see the [Note de décryptage sur l'agriculture et la sécurité alimentaire by Réseau Climat & Développement, 2015.](#)



**Property rights:** property rights or the right to land are a legitimate right enjoyed by all citizens in order to practice any activity necessary for their survival and to add value to the land with buildings or agriculture. Environmental crises affect the land and make the soil less fertile, with a direct impact on food security and the development of human life in general. In international negotiations, the use of land is dealt with only in relation to mitigation

(see the issue of "net zero emissions"<sup>8</sup>), whereas this subject should be at the heart of discussions of adaptation, and losses and damages. Land and territories are more than just storage space for carbon: they are cultures, peoples and identities.

The right to land is a source of conflict in many countries, and this is not on the agenda in international negotiations around climate change. And what about the 500 million hectares worldwide of degraded land that is to be restored according to the UN Convention to Combat Desertification, alongside the UNFCCC? This restoration must be carried out rationally, with full respect for people's rights, in order to protect the people who depend on this land.

Over and above the issues of mitigation, the sequestration of carbon in land and land restoration, it is important that there is participative management of access to property for the most vulnerable.

**The right to health:** human health depends on the quality of the environment. In an unhealthy (polluted) environment, there will be a direct effect on human life. Since climate change has begun to have a noticeable impact, some African countries have seen the appearance of new diseases, hitherto unknown in this part of the world, including severe respiratory diseases caused by air pollution, and a dramatic rise in existing diseases such as malaria, typhoid fever and seasonal epidemics, without counting the prevalence of waterborne diseases and those caused by the poor hygiene resulting from dwindling water resources or flooding. There exist legal instruments ensuring the right to health of all people without discrimination, such as Article 16 of the African Commission on Human and People's Rights (ACHPR): "Every individual shall have the right to enjoy the best attainable state of physical and mental health. States party to the present Charter shall take the necessary measures to protect the health of their people and

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<sup>8</sup> For more information on the issue of net zero emissions, see the [Note de décryptage sur l'agriculture et la sécurité alimentaire](#) by Réseau Climat & Développement, 2015.

to ensure that they receive medical attention when they are sick."

**The right to housing:** depending on the region, drought and/or flooding can lead to forced displacement of people looking for habitable land. In this sense, they are climate refugees inside or outside their country, deprived of a decent home that meets housing rights, and this generates conflicts over land occupation. Floods in southern Chad in 2013, for example, displaced thousands of people who were forced to leave their homes on elevated roads, with the threat to their lives posed by the vehicles travelling along them.



## B. The Right to Development

**Right to Development:** the UN Declaration of 1986 establishes development as a right. All peoples are entitled to pursue development as outlined in the 1993 Vienna Declaration and Programme of Action which, among other things, provides for:



**The right to water:** This right is not part of climate change negotiations. Access to clean drinking water is an inherent aspect of right to life and recognised in Article 24c of the Convention on the Rights of the Child. The lifestyles of several communities mean that they are far from enjoying constant access to clean drinking water. This is especially the case for nomads, who are constantly on the move in search of water and grassland. Because of climate change, the availability of these two resources is becoming scarcer, with the result that the nomads' migratory routes are increasingly at risk.

**The right to education:** Climate change poses a threat to the lifestyles of several populations, such as nomads and the inhabitants of hard-to-reach areas. In Chad, the government has put in place, in some schools on migratory routes, a Department of Education for the children of nomads and families from remote areas. However, the fact that climate change is modifying these routes means that these populations take little or no advantage of this opportunity, thereby depriving them of their right to education. This consequently begs the question of how can you entitle a people to development when they do not even have this basic right?

**The right to energy:** This is a major issue given the number of towns and cities in Africa that are subject to incessant power cuts and the pervasive emissions, noise and smell from the backup generators that are then turned on to provide electricity. Not to mention the fact that most rural areas are not connected to the grid, despite being home to 80% of the population. Access to energy is a major challenge and many States remain wary of renewable energies, regardless of the fact that they have a duty to ensure the development of their countries and notwithstanding the fact that the development of renewable energies and energy efficiency is a key factor in driving development and fighting poverty.<sup>9</sup>



#### **IV. AN ANALYSIS OF THE RECOGNITION OF HUMAN RIGHTS...**

##### **A. ...in the frame of environmental protection at the international level...**

Several environmental instruments protect human rights, including the rights of indigenous peoples. Policies, principles, guidelines and manuals are issued to ensure that rights are properly safeguarded. For example, under the programmes and projects it finances, the World Bank has put in place social and environmental safeguard policies and created the Forest Carbon Partnership Facility (FCPF), all of which are intended to protect human rights, including the rights of indigenous peoples. Other organisations have adopted guidelines (like the EFG) or introduced voluntary guides and policies (such as the FAO, the UNDP, the UN-REDD Programme and NGOs). In addition, the 2008 report by the United Nations Commission on Human Rights (UNCHR) confirmed the relationship between climate change and human rights in the section on Climate change and environment.<sup>10</sup>

These standards are a major step forward for human rights, but the fact that they vary from one instrument to the next creates a lack of consistency and problems in terms of their transmission and enforcement. At the international level, these standards exist but are sadly limited. At the national level they are often unenforced, and in many cases not even known of.

##### **B... and within the UNFCCC**

There has been progress in climate negotiations at the UNFCCC on the responsibility of States in the face of climate change. At COP16 in Cancun, Mexico in 2010, headway was made in terms of

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<sup>9</sup> For a greater insight into the issue of access to sustainable energy for all, read [RC&D's 2015 Analytical Note on Energy \(in French\)](#).

<sup>10</sup> *Based on consultations with key UN partners and relevant NGOs, developed a thematic study on the relationship between climate change and human rights, pursuant to Human Rights Council resolution 7/23. Provided analysis and policy direction to the High Commissioner, Deputy High Commissioner and the Office in addressing the human rights dimensions of climate change.*

recognising the safeguards of the REDD+ solution carried out by indigenous peoples with a view to enshrining them in national legislations and creating instruments for respecting human rights. Accordingly, after several investigations and cases of rights abuse during the implementation of REDD+ and the Clean Development Mechanism (CDM) at the national level, States agreed to respect the text of the vision for long-term cooperative action, which includes seven REDD+ safeguards. States also acknowledged the importance of integrating the traditional knowledge of indigenous peoples as a possible source of fighting climate change under the Cancun Adaptation Framework (CAF)<sup>11</sup> and included several references to rights in the Cancun Agreements.

After Cancun, the issue of human rights was also raised at COP19 in Warsaw, Poland in 2013, leading to negotiations on the REDD+ safeguards, which were successfully concluded after several rounds of discussions. Human rights and the rights of indigenous populations were recognised in the final text of COP19.

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<sup>11</sup> States adopted the Cancun Adaptation Framework in the frame of the Cancun Agreements adopted at COP16 in 2010 and which confirmed that adaptation must be given the same level of priority as mitigation.

### References to human rights in the Cancun Agreements (2010)

Preamble: *Noting resolution 10/4 of the United Nations Human Rights Council on human rights and climate change, which recognizes that the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights and that the effects of climate change will be felt most acutely by those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status, or disability;*

Paragraph 8: *Emphasizes that Parties should, in all climate change related actions, fully respect human rights;*

Preamble to paragraph 88: *Taking note of relevant provisions of the United Nations Declaration on the Rights of Indigenous Peoples.*



At COP20 in Lima, Peru in 2014, several important groups including the Women's Caucus, the Indigenous Peoples' Caucus and NGOs once again raised the subject of rights. However, the words "human rights" only appear in the introduction of the negotiating text.

At the UNFCCC Conference in Geneva in February, the Indigenous Peoples' Caucus continued to call for the integration of human rights that recognise and respect the social, political, cultural and economic rights of indigenous peoples. It received support from several NGOs for its position on human rights, and from organisations including Action Against Hunger, which campaigns for right for food, CARE, which demands the right to equal treatment, and other organisations focused on the right to land and territory, etc. Accordingly, the negotiating text published at the end of the Geneva conference contained references to human rights in the Preamble, the General/Objective section (*All Parties shall, in all climate change related actions, respect, protect, promote, and fulfil human rights for all. All Parties shall be guided by gender equality and ensure the full and equal participation of women [...] just transition [...] and the rights of indigenous peoples*) and in the Adaptation section of the draft agreement. Nevertheless, some States such as Saudi Arabia are resisting efforts to include human rights in the Paris Agreement, which risks setting back negotiations on the subject. Lastly, the European Union should have taken the lead on this issue, which has not really been the case because, as it indicated in a meeting with civil society, while it

is in favour of the integration of the rights-based approach, it is not prepared to make its inclusion a deal-breaker so as not to block negotiations with countries formally opposed to the idea.

The Costa Rican delegation was behind another advance at the Geneva negotiations. Climate negotiators and the national delegations of several members<sup>12</sup> of the United Nations Human Rights Council pledged to “*facilitate the exchange of expertise and best practice between our human rights and climate experts to build our collective capacity to deliver responses to climate change that are good for people and the planet.*”

At the Bonn Climate Change Conference in June 2015, there was a much greater focus on the subject of human rights in countries’ dialogues and in the communications and events organised by civil society. Different significant groups<sup>13</sup> organised side events and there were meetings by the various caucuses<sup>14</sup>, bilateral negotiations and press conferences, all on the subject of human rights. The UN Special Rapporteurs on the Environment and on the Rights of Indigenous Peoples also made efforts to demonstrate the impact of climate change on human rights and the rights of indigenous peoples.

Several groups highlighted the need to bolster paragraph 15 of Part C [General / Objective] of the draft text of the Paris Agreement, including the Indigenous Peoples’ Caucus, the Accra Caucus<sup>15</sup> and civil society groups focused on human rights. Some States and groups of States have also supported this initiative. For example, Bolivia suggested via the contact group on technology that the knowledge of indigenous peoples be integrated in respect of their rights. This received the backing of other countries such as Australia, Norway and the G77 + China. However, given that negotiations on the final wording of the text have not yet begun, it is essential to further demonstrate the importance of integrating human rights into the Paris Agreement.

## **V. PROPOSALS FOR DECLARING HUMAN RIGHTS IN THE PARIS AGREEMENT**

### **A. Place human rights at the heart of the Paris Agreement**

Human rights are a consideration that runs throughout the fight against climate change and it is vital that they appear in the operational provisions of the Paris Agreement. This will guarantee social rights and sustainable and responsible development that genuinely respects the environment, with a positive impact on ways of life, in accordance with Principle 7 of the Rio Declaration, under which “*States shall co-operate in a spirit of global partnership to conserve,*

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<sup>12</sup> The pledge was signed by Chile, Costa Rica, France, Guatemala, Ireland, Kiribati, Maldives, Marshall Islands, Micronesia, Mexico, Palau, Panama, Peru, Philippines, Uganda, Uruguay, Samoa, and Sweden, and Switzerland and Germany have since added their signatures.

<sup>13</sup> UNFCCC observers formed 9 main groups: businesses (BINGOs), environmental NGOs (ENGOs), local authorities (LGMAs), indigenous peoples (IPOs), research institutes and independent organisations (RINGOs), trade unions (TUNGOs), women, young people (YOUNGOs) and farmers.

<sup>14</sup> A caucus is a meeting of two or more large groups on a common theme.

<sup>15</sup> The Accra caucus comprises representatives of civil society and indigenous peoples’ organisations who work on REDD.

*protect and restore the health and integrity of the Earth's ecosystem".*

If we are to protect our planet then the Paris Agreement must be binding. To this end, the specific categories of rights and existing United Nations texts on rights must be recognised as of the Preamble of the Paris Agreement. Indigenous peoples and women are the most vulnerable to climate change, but they are also part of the solution. If they are to be involved and considered in this agreement, then they must be integrated as key actors and the texts of the agreement must recognise and respect their rights. One main way of achieving this will be by taking into account the REDD+ safeguard principles, which recognise and respect the rights of indigenous peoples and women, the logical framework from Cancun, which recognises traditional and local knowledge, as well as recognising the principles of free, prior and informed consent (FPIC) in the adaptation and mitigation of REDD+.

Food security must feature in the text of the Paris Agreement to ensure that the right to food and nutrition is respected, as is the case in the voluntary guidelines endorsed by the FAO<sup>16</sup> and the REDD+ safeguards.

In Paris, States must be prepared to reinforce the right to sustainable development and enable its implementation so that the poorest populations can receive relief against climate change in the form of renewable energies etc. Recognition of the importance of traditional and local knowledge and innovation, adaptation measures and access to clean drinking-water are all universal rights that should be acknowledged universally. Coherent verification mechanisms are required to ensure that everything is carried out in a context of fairness and justice. For the Paris 2015 Climate Conference to succeed, and to pursue the fight against climate change, businesses must be bound to respect social and economic rights, and this must always be accompanied by reinforcing the right of populations to information and communication as laid out in the UNFCCC Preamble and Articles 4.1.i and 6 and by the right to take part in the decision-making process as stipulated in Article 1 of the Aarhus Convention (1998). These rights are also recognised in Principle 10 of the Rio Declaration that was adopted by all States and parties in 1992.

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<sup>16</sup> See <http://www.fao.org/nr/tenure/voluntary-guidelines/fr/>

## **B. Strengthen civil society in order to ensure the respect of rights**

The diversity of civil society, and its commitment to representing the interests of populations and helping States in the application and implementation of their own undertakings, means that it plays an essential role in ensuring that the voices of populations are heard in climate negotiations. Civil society also ensures that checks are made into whether or not rights are upheld, that abuse of rights is criticised, that communities receive support in ensuring that their rights are respected and that solutions to this end are found with governments, businesses and development actors.



### **- In the implementation of the Paris Agreement**

Given civil society's direct role in ensuring that populations' claims are acted on, it must be involved in the preparation of countries' national contributions prior to COP21 and in their implementation. States must seize the opportunity offered by civil society, which is an expert in climate change negotiations but also on the ground, to provide a bridge between what is happening in real time and the decisions being taken at the international level. All the actors and stakeholders need to take on board the inventory of issues, the list of greenhouse gases and the implementation of national contributions.<sup>17</sup> If our ambitions are to be achieved, then no one can be excluded from these decisions.

A system enabling civil society to report directly to the UNFCCC must be created so that it can signal cases of human rights abuse.

### **- In the tools developed by the UNFCCC**

Civil society must be involved in the decisions concerning all the programmes, mechanisms and initiatives used in the fight against climate change in order to ensure that populations' rights are not violated. The involvement of all parties guarantees transparency and means that implementation on the ground can be assessed. States must ensure that civil society is represented in actions taken at the national level via the executing entities, in particular those linked to the Green Climate Fund and other institutions created within the framework of national contributions. This would make it easier to identify national priorities in light of the accelerated impact of climate change on the planet.

Funds must also be allocated to civil society, and made directly available, so that it can monitor respect of human rights in the implementation of climate programmes and policy. The actors involved must behave transparently and provide information on their actions so that they can be assessed and observed.

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<sup>17</sup> The Warsaw COP (2013) invited all the States to present their Intended Nationally Determined Contributions (INDCs) in advance of COP21. The contributions lay out the national actions that countries intend to take to fight climate change when the agreement enters into force in 2020.

## THE RECOMMENDATIONS OF THE CLIMAT & DEVELOPMENT NETWORK

In order to integrate the human rights-based approach into both the fight against climate change and the Paris Agreement, all the key actors in the climate and human rights process need to be involved. This means drawing up a comprehensive list of these actors and their roles and responsibilities. *the Climate & Development Network's* recommendations for COP21, governments and funders are featured below.

### Recommendations for COP21

**The Paris Agreement must include the principle of climate justice and take into account the specificities of both the most affected communities and indigenous peoples. It must adopt a human rights-based approach.**

The question of injustice with regard to the effects of climate change is becoming a key issue between groups of countries but also between population groups within these countries. The injustice is based on the fact that those who have contributed least to climate change suffer most severely from its consequences. Indigenous peoples and local communities, which are very dependent on the environment, are bearing the brunt of the impact of climate change, which makes them particularly vulnerable. The Paris Agreement must therefore guarantee the rights of these communities and associate them with all of the Human Rights Council's fundamental human rights in a legal, binding relationship.

**The Paris Agreement must include human rights in its objectives but also, whenever necessary, in the other parts of the text and especially the parts on finance, mitigation and adaptation.**

Integrating human rights into the objectives will mean that all the parties to the agreement will be legally bound to fully respect these rights. It is nevertheless necessary that human rights are also mentioned in all the sections of the Agreement to ensure that they are genuinely enforced and do not simply remain principles.

For example, their integration into the finance section will guarantee direct and fair access to the most vulnerable communities and remove the need to go through agencies and governments and their overly complex criteria. Similarly, integrating human rights into the sections on mitigation, adaptation, REDD, etc. means that will have to be respected in any related projects and programmes.

**Promote and reinforce the principles of transparency and accountability via mechanisms for reporting, monitoring and checking respect of human rights and for redressing and punishing violations by financial partners and States.**

The lack of an accountability mechanism results in a lack of transparency concerning the actions put in place. Most human rights abuse takes place at the community level, where it is often difficult to take a case to court and/or achieve any success. States nevertheless have a duty to respect human rights for everyone, without discrimination. It is therefore essential to create

standards for transparency based on universal access to information and a possible redress mechanism allowing for violations to be reported directly and without the intervention of an intermediary. In order to be genuinely effective, there also needs to be a procedure for sanctioning human rights abuses that is applicable to all.

### **Recommendations for governments**

**Integrate human rights into climate and development laws, policies, programmes, plans, mechanisms and projects (financed by public and private financial partners).**

- **For climate projects financed by public and private partners:**

Governments and institutions have always worked on the basis of rules provided for by laws. Many countries have human rights legislation but generally fail to make the connection with climate change. This lessens the responsibility of institutional and economic actors, especially financial partners, in terms of respecting human rights when it comes to investing in climate projects. Donor States must reinforce their human rights guidelines for the public and private investors in which they are stakeholders (development agencies, export credit agencies, development banks, etc.) but also for businesses on their territory. The countries in which they are executing the projects also need to reinforce and/or create human rights and climate legislation and ensure that it is respected by all investors on their territory.

- **In national plans and programmes:**

Human rights must be integrated into climate-related legal provisions and into programmes and plans concerning development and the climate (National Adaptation Programmes of Action (NAPAs), National Adaptation Plans (NAPs), Nationally Appropriate Mitigation Actions (NAMAs), Intended Nationally Determined Contributions (iNDC), etc.). Lastly, synergies must be strengthened between climate and development plans and policies by integrating human rights, as must inter-ministerial synergies on climate change, development and human rights.

- **At the local level:**

It is vital that local communities and indigenous peoples be involved in decision making on the climate, notably by reporting decisions taken at the national, regional and international level in languages that they understand. It is necessary to promote broad awareness. Lastly, measures must be taken to facilitate the integration of human rights in local development plans and ensure their implementation.

**Adopt a Declaration of African States on human rights and climate change.**

Politicians always play their full role when it is established in a general context that involves them in a collective undertaking. This stems from a common understanding and ensures stronger commitment at the national and global level. While a declaration may not be legally binding, it could spur on States to enshrine its content in their national law. It is also a means of helping civil society and reassuring the most affected communities as to the emergency solutions that

can be supported by a declaration. Lastly, it is a means whereby African countries, which are the most affected by climate change, can present the Northern nations with their common position on the importance of introducing human rights into climate change considerations.

### **Recommendations for funders**

#### **Integrate human rights into projects financed by public and private partners.**

States have to adopt human rights legislation to facilitate the respect of said rights in projects financed by public and private funders, but the latter also have a role to play.

For a start, they have to adopt human rights guidelines governing the climate and development projects that they are funding so as to give priority to projects that protect the rights of the most vulnerable and increase their chance of leading a decent life.

#### **Carry out an audit and draw up from the outset a blacklist of projects that are detrimental to social and environmental rights.**

Some stakeholders become genuinely involved in the fight against climate change and become part of the solution, whereas others do not really seek to reduce their environmental footprint, and even present their technologies as a solution for the climate when they are in fact a threat to the environment and populations, and more often than not do not even help reduce greenhouse gas emissions.

This behaviour may take the form of land grabs for agro-fuel to the detriment of family farming and food safety, large dams that destroy biodiversity and uproot local populations, or ill-suited and expensive technology transfer measures to replace cheaper local knowledge and innovation that creates local jobs. It is therefore necessary to draw up a blacklist of projects that are detrimental to human rights and the environment.

#### **Guarantee direct access to funding resources and technologies for the most affected and most vulnerable communities, and enable appropriation.**

It is very difficult for least developed countries to obtain access to the UNFCCC's financial instruments, and virtually impossible for the vulnerable communities that are most in need of them in order to adapt. A significant proportion of funding is given over to consultation, workshops and the production of reports, which, while important, are not per se resolving the climate emergency. Moreover, adaptation projects are often less visible and receive very little funding. It is therefore necessary to create direct access to funding for the most affected communities (including climate investment funds for indigenous peoples, for women and for civil society). These funds must be separate from the existing financial mechanisms. In addition, States must continue to address the issues of gender and the most vulnerable populations in the funding that they are responsible for.

### **Crosscutting recommendations for COP21, governments and funders**

#### **Strengthen the participation of indigenous peoples, local communities and civil society in the decision-making and implementation processes.**

Decisions are always made by government bodies at the national level and by the Member States that are Party to the Convention at the level of the UNFCCC. But indigenous peoples and local communities are the first victims of the consequences of climate change, and civil society represents the interests of populations. The latter plays a vital role in implementing decisions and, to this end, it is essential that is helped to fully play its role.

#### **Recognise and enhance the status of indigenous and traditional know-how and knowledge as sustainable solutions, and apply this recognition to adaptation and mitigation initiatives.**

While it is true that indigenous peoples are the most affected by climate change, they are also, all over the world, the guardians of traditional know-how and knowledge on adaptation and mitigation. This knowledge is recognised by the UNFCCC but is never at the forefront of negotiations and climate initiatives, despite the fact that these peoples have developed essential knowledge, on weather forecasting or biodiversity for example, which enable adaptation and mitigation. By recognising this knowledge and this know-how, local and indigenous practices and innovations can be preserved and enjoy an enhanced status for the benefits of these peoples and many others.