

Office of the United Nations High Commissioner for Human Rights
(1 November 2016)

Response to the request of Ad Hoc Working Group on the Paris Agreement (APA) for views and guidance related to intended nationally determined contributions, adaptation communications, the transparency framework, and the global stocktake, and for information, views and proposals on any work of the APA. FCCC/APA/2016/2.

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Introduction

The Preamble of the Paris Agreement to the United Nations Framework Convention on Climate Change affirms that all States “should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights”. Efforts to implement the Paris Agreement must honour this commitment by integrating human rights throughout.¹ This is both a legal and moral imperative as well as sound policy. According to the United Nations Human Rights Council, climate change both directly and indirectly impacts a broad range of human rights and “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”.²

¹ See OHCHR’s Key Messages on Human Rights and Climate Change
http://www.ohchr.org/Documents/Issues/ClimateChange/KeyMessages_on_HR_CC.pdf

² HRC resolution 32/33 *Human Rights and Climate Change* (2016).

Further, it is critical that climate actions themselves respect human rights. In the past, some actions taken to mitigate and adapt to climate change have been conducted without appropriate safeguards resulting in human rights harms that should and could have been avoided. In this submission, OHCHR highlights some key entry points for human rights integration in implementation of the Paris Agreement including in the processes and mechanisms outlined for measurement, reporting and verification. These processes should be inclusive, transparent, and participatory. OHCHR respectfully submits the following recommendations for consideration of the APA.

Nationally Determined Contributions (NDCs)

Nationally Determined Contributions (NDCs) contain State commitments to reach the objectives of the Paris Agreement. It is therefore important that the NDCs integrate human rights and ensure implementation is consistent with human rights principles and the broader development agenda. To achieve this, OHCHR calls for NDCs to:

1. **Comprehensively outline Parties' plans for integrating human rights** in climate actions, including information about how the plan will comply with the commitments made by Parties to respect, promote and consider human rights. The Paris Decision calls for NDCs to describe “how the Party considers that its nationally determined contribution is fair and ambitious, in the light of its national circumstances, and how it contributes towards achieving the objective of the Convention.”³ Including information about the human rights impacts of climate action and on safeguards attached to those actions would clearly further this purpose.
2. In particular, NDCs should **highlight priorities, implementation, and support needs** for respecting and promoting “human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity” and a just transition in the workplace as called for in the Paris Agreement.
3. The Paris Agreement repeatedly references the importance of public participation in climate action including calling for efforts to “enhance public and private sector participation in the implementation of nationally determined contributions”. Article 12 of the Agreement states: “**Parties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information**, recognizing the importance of these steps with respect to enhancing actions under this Agreement”. Every effort should be taken to ensure that the guidelines for developing and reviewing NDCs and actions taken within their ambit, guarantee the right to participation of all persons including youth and children, women, minorities, indigenous peoples, persons with disabilities, older persons, local communities, and persons in vulnerable situations, and that such people are protected from all forms of threats, intimidation, persecution, or reprisals for such engagement.
4. In order to ensure participation in the development of modalities for NDCs, OHCHR encourages the Parties to continue to seek further the views and support of UN agencies and other stakeholders on integrating human rights in NDCs.

³ FCCC/CP/2015/L.9, Decision 1/CP.21 paragraph 27 (2015).

Adaptation Communications (ACs)

According to the Paris Agreement “adaptation is a global challenge faced by all... [that constitutes] a key component of and makes a contribution to the long-term global response to climate change **to protect people, livelihoods and ecosystems**, taking into account the urgent and immediate needs of those developing country Parties that are particularly vulnerable to the adverse effects of climate change.”

The Agreement calls upon parties to strengthen their cooperation in enhancing adaptation actions including by assisting developing country Parties. It further calls upon United Nations specialized organizations and agencies “to support the efforts of Parties to implement [adaptation] actions.” The adaptation communications (ACs), defined in the Paris Agreement, should include “priorities, implementation and support needs, plans and actions, without creating any additional burden for developing country Parties.” Adaptation action should be “country-driven, gender-responsive, participatory, and fully transparent,” include consideration of groups in vulnerable situations and be “based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions.”

In light of these commitments, OHCHR recommends ACs include the following components:

5. **They should explicitly address human rights considerations** including climate justice, equity, food security, just transition, the right to health, participation, transparency, access to remedy, accountability, gender equality, and the rights of minorities, migrants, older persons, children, persons with disabilities, indigenous peoples including with regard to their traditional knowledge, and others in vulnerable situations.
6. **They should highlight efforts to protect the rights of those in particularly vulnerable situations** to the adverse effects of climate change, including through impact assessments and protective measures taken, as well as processes for ensuring meaningful participation in climate action. All communications and actions should integrate **inclusive, participatory and gender-responsive approaches** that include civil society, relevant stakeholder groups and potentially affected persons.
7. In line with the Agreement, the Parties should further consider forming a body to fulfil commitments to ensure participation in the development of modalities for ACs and seek further the views and support of UN agencies and other stakeholders on integrating human rights in ACs.

Transparency framework

“The purpose of the framework for transparency of action is to provide a clear understanding of climate change action in the light of the objective of the Convention as set out in its Article 2, including clarity and tracking of progress towards achieving Parties' individual nationally determined contributions under Article 4, and Parties' adaptation actions under Article 7, including good practices, priorities, needs and gaps, to inform the global stocktake under Article 14.” The transparency framework developed under Article 13 of the Paris Agreement should foster trust and confidence between actors. It should be designed to promote transparency, accountability, cooperation, participation, and access to information within and between Parties and other relevant actors. In these interests, OHCHR submits the following recommendations:

8. **The transparency framework should include an analysis of State human rights commitments** and ensure that human rights considerations are clearly reflected in measurement, review and verification processes and in the global stock-take. The framework should build on human rights reporting in NDCs, ACs and other relevant communications, highlighting for review considerations such as climate justice, equity, food security, just transition, the right to health, participation, transparency, access to remedy, accountability, gender equality, and the rights of minorities, migrants, older persons, children, persons with disabilities, indigenous peoples including with regard to their traditional knowledge, and others in vulnerable situations.
9. The review framework should draw on **existing international reporting mechanisms, including relevant observations by human rights mechanisms** so as to reflect a comprehensive approach and foster coherence and synergies across the human rights, development and climate spheres.
10. Guidelines for reviews should be developed that **facilitate the exchange of ideas and incorporate full participation** among and between civil society and other relevant actors at national and international levels.
11. Reviews should identify capacity-building needs and areas of improvement for Parties, including with regards to integration of human rights considerations in climate actions, while taking into account the respective national capabilities and circumstances of developing country parties and ensuring facilitative, non-intrusive, non-punitive and respectful implementation.

Global stocktake

Article 14 of the Paris Agreement establishes a global stock-take “to assess the collective progress towards achieving the purpose of this Agreement and its long-term goals... in a comprehensive and facilitative manner, considering mitigation, adaptation and the means of implementation and support, and in the light of equity and the best available science.” The global stock-take offers an avenue for Parties to assess progress toward climate mitigation and adaptation in order to update their own commitments and enhance cooperation. In the interest of furthering these objectives, OHCHR recommends:

12. **The impacts of climate change on the enjoyment of human rights should be reported in the global stocktake.** This should include an analysis of climate impacts based on **disaggregated data** as well as relevant reports of human rights mechanisms and review processes for the 2030 Agenda and the Addis Ababa Action Agenda among others
13. The global stocktake should **consider how climate actions have respected and promoted human rights and identify good practices in this regard and associated safeguards.** A report could be prepared, in consultation with relevant stakeholders, that identifies good practices, lessons learned and key challenges related to the integration of human rights in climate actions.
14. The global stocktake should include **meaningful participation and inputs from all relevant stakeholders.** Particular attention should be paid to the situation of individuals and groups that are most vulnerable to the effects of climate change and to the level of mitigation ambition that is necessary to avert the worst impacts of climate change according to the best available science (see e.g. the periodic reports of the IPCC).
15. The global stocktake **should include a review of commitments and actions and an exchange of experiences and good practices by all relevant actors** including private businesses, civil society, indigenous peoples, local governments, intergovernmental organizations, UN agencies, and research institutions. Particular attention should be paid to the compliance of businesses with their responsibility to respect human rights in climate action and to do no harm.

Information, views and proposals on any work of the APA

The work of the APA encompasses a vast swathe of climate action, relates to the work of a number of other UNFCCC bodies, and will have far-reaching implications for the enjoyment of all human rights. This submission is not intended to comprehensively address all human rights issues relevant to the work of the APA but rather to highlight a few key areas, additional to those discussed above, and related proposals for further consideration. In this regard, it should also be noted that OHCHR's recent submissions to the UNFCCC on the Nairobi Work Programme related to climate adaptation and the right to health, the Lima Work Programme on gender equality, the Paris Committee for Capacity-building and modalities for the Sustainable Development Mechanism offer further guidance for the integration of human rights considerations in climate action.⁴

Ambition: OHCHR wishes to express its concern that the level of ambition of climate actions contained in States' intended nationally determined contributions falls far short of the level needed to keep warming to at or below 2 degrees Celsius let alone the more ambitious and preferable 1.5-degree goal advocated by the Office of the High Commissioner for Human Rights and contained in the Paris Agreement. Given the massive human rights implications of this degree of warming, OHCHR calls upon the Parties, taking into consideration their common but differentiated responsibilities and respective capabilities, to take advantage of the opportunity to modify and ratchet up the ambition of their nationally determined contributions as soon as possible in order to better protect the rights of all persons from the negative impacts of climate change.

Business and human rights: Article 6 of the Paris Agreement calls upon Parties to incentivize and facilitate private participation in the mitigation of greenhouse gas emissions. In doing so, States should include adequate safeguards and take effective measures to protect human rights from business harms in line with their obligations as outlined by the United Nations Guiding Principles on Business and Human Rights. States must take adequate measures to protect all persons from human rights harms, including climate 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 including in the Paris Agreement, the compliance of businesses with these responsibilities is especially critical.

Loss and damage: Article 8 of the Paris Agreement emphasizes “the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change... and the role of sustainable development in reducing the risk of loss and damage.” It further calls for the Warsaw International Mechanism for Loss and Damage associated with Climate Change impacts to “be enhanced and strengthened, as determined by the Conference of the Parties serving as the meeting of the Parties to this Agreement” and for Parties, more generally, to enhance understanding, action and support with respect to loss and damage. In particular, it calls for the Warsaw International Mechanism to collaborate with relevant organizations and expert bodies. State efforts to address loss and damage should draw upon their human rights obligations as outlined below and technical expertise that OHCHR and other relevant organizations can provide.⁵

⁴ <http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/UNFCCC.aspx>

⁵ For example, next year OHCHR will initiate a study focusing on the human rights impacts of climate-induced migration with a focus on slow-onset events.

Under international human rights law, States have an obligation to ensure accountability and effective remedy for human rights harms including those caused by climate change. Climate change and its impacts, including sea-level rise, extreme weather events, and droughts have already inflicted human rights harms on millions of people. 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.

Finance: Article 9 of the Paris Agreement establishes the financial mechanism of the Agreement and calls upon financial support to be provided to developing countries for implementation of the Agreement. It further requests the global stocktake to “take into account the relevant information provided by developed country Parties and/or Agreement bodies on efforts related to climate finance.” In doing so, the obligations of States acting individually and collectively 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 should be considered. 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.

Further, the mobilization of resources for climate action should respect basic principles of climate justice including the commitments of Parties 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. Climate justice 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.

Technology: Article 10 of the Paris Agreement establishes a technology facilitation mechanism and calls for support to be provided to developing countries for development and transfer of technologies. It also requests the global stocktake to “take into account available information on efforts related to support on technology development and transfer for developing country Parties.” In doing so, it should be borne in mind that all persons have 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.

Programme of work on human rights: OHCHR proposes the APA consider adopting a programme of work on human rights and climate change at this or subsequent sessions. As a preliminary measure, the APA may wish to call for a workshop or briefing at the May meetings in Bonn during which experts and parties can share good practices, experiences and ideas related to promoting the integration of human rights in climate action. This could take place under the

framework of capacity-building, in the context of adaptation or in any number of other areas. In the longer term, a comprehensive programme of work on human rights and climate change should aim to promote operationalization of the commitment of all Parties to respect, promote and consider human rights when taking climate action.⁶ It should be properly resourced and establish a designated focal point on human rights and climate change at the UNFCCC.

⁶ In addition to their commitments in the Preamble of the Paris Agreement, States have also committed to enhancing climate change education, training, public awareness, public participation and public access to information, all objectives that could be furthered by a programme of work on climate change and human rights at the UNFCCC.