

**SUBMISSION TO THE AD HOC WORKING GROUP ON THE DURBAN PLATFORM FOR
ENHANCED ACTION REGARDING INFORMATION, VIEWS AND PROPOSALS RELATED
TO THE DURBAN PLATFORM WORK PLAN UNDER WORKSTREAM I**

*On behalf of the Human Rights & Climate Change Working Group,
Center for International Environmental Law, Earthjustice, Foundation for GAIA,
Interamerican Association for Environmental Defense (AIDA),
Planetary Association for Clean Energy, and World Council of Churches*

1 March 2013

In response to the call for information, views and proposals on the Durban Platform Work Plan, the Human Rights & Climate Change Working Group, Center for International Environmental Law, Earthjustice, Foundation for GAIA, Interamerican Association for Environmental Defense (AIDA), Planetary Association for Clean Energy, and World Council of Churches respectfully make the following submission. This submission focuses on long-term action under Workstream I.

Introduction

Climate change is perhaps the greatest human rights challenge of our time. It has affected, and will continue to affect, a number of core human rights, including the rights to life and self-determination, as well as a wide range of social, economic and cultural rights. Because all States are bound by human rights obligations, the duties of States under the UNFCCC are reinforced by obligations to prevent human rights violations. Human rights law also requires that special measures be taken to protect the rights of the people most vulnerable to climate change, who are often among the poorest people on our planet, and who often live in States that have contributed relatively little to the industrialized development processes causing climate change. The COP has stated unequivocally that “Parties should, in all climate change-related actions, fully respect human rights.”¹

The obligations of States to protect against climate change-related harm to human rights relate to mitigation and adaptation actions. In addition, international law requires States to ensure that their responses to climate change do not themselves violate human rights. To this end, climate change actions should be designed, implemented and monitored in such a way that respects the full and effective enjoyment of human rights, including the rights of access to information, public participation, and access to justice. For example, to respect the public participation rights, States must address climate change through transparent processes that enable participation by all affected communities, including indigenous peoples and other vulnerable populations.

¹ Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, para. 8 [Cancun LCA outcome].

International cooperation is among States' core duties in addressing threats to human rights. This duty is particularly relevant in the context of climate change, given its complex and transboundary nature, as well as the variety of actors contributing to the problem. Thus, global-level action is necessary to prevent and mitigate its harmful effects. To fulfill their international law obligations, and to protect the individuals, communities and peoples most vulnerable to climate change, States must reach an agreement that adequately protects human rights from the harms of climate change and related mitigation and adaptation actions. The following describes the application of international law obligations to various elements of the future climate change agreement.

Guiding Principles

Given the long-standing recognition of the link between the environment and human rights, *e.g.*, in the Stockholm Declaration (referred to in the UNFCCC) and U.N. Human Rights Council Resolution 10/4 on 'human rights and climate change' (recognized in the Cancun LCA Agreements), the Preamble and Shared Vision of the 2015 Agreement should explicitly recognize the link between human rights and climate change. As in the Cancun Agreements, the Preamble and Shared Vision should recognize that climate change impacts have implications for the full and effective enjoyment of human rights. Further, the Preamble and Shared Vision should reinforce and strengthen the recognition of existing human rights obligations in the context of climate change in the Cancun Agreements, by articulating the obligations of states to fully respect, protect, promote and fulfill human rights in all climate-related actions.

Mitigation

As embodied in the Cancun LCA Outcome, States must respect human rights in all climate change-related activities, including climate change mitigation. To this end, the future agreement should include language that recognizes Parties' existing obligations to respect, protect, fulfil and promote human rights. States must also adopt, including through international cooperation, appropriate measures and policies designed to prevent dangerous anthropogenic interference with the climate system and to ensure that climate change mitigation does not come at the expense of human rights. It is similarly important to strengthen measurement, reporting, and verification (MRV) as well as public participation in that context (see below).

In the implementation of mitigation actions, States have the responsibility to regulate businesses and corporations to ensure that their operations and strategies promote social and environmental benefits, and do not contribute to human harms and rights abuses.

It is unclear, at present, whether REDD+ will continue as a separate process in the future agreement. However, to the extent that States continue to engage in forest-related mitigation activities, they must guarantee full respect for human rights in all stages of implementation. States should explicitly undertake to act in accordance with the principle of free, prior and informed consent. National and international systems developed for the current REDD+ regime should be adjusted and strengthened based on lessons learned from implementation. For instance, current safeguards for REDD+ should be retained and

expanded as appropriate. Further, non-Parties should be able to submit information on whether rights are being respected to the UNFCCC.

Adaptation

States must ensure that climate change adaptation does not negatively impact human rights. The future agreement should therefore reaffirm States' human rights obligations, and operationalize a rights-based approach to adaptation.

The future agreement should also include concrete measures to protect the millions of people likely to be displaced as a result of climate change, including measures to ensure protection of the human rights of individuals and communities who will cross borders as a result of disasters, as well as measures to allow potential victims of climate change to migrate voluntarily and in a manner that safeguards their dignity and cultural identity.

Loss and Damage

Severe damages and irreversible losses from climate impacts can no longer be avoided. Such loss and damage to lives, livelihoods, property and culture threaten the human rights of the individuals and communities most vulnerable to but least responsible for climate change. As agreed in Doha, the Parties must establish "institutional arrangements, such as an international mechanism, including functions and modalities," to address loss and damage associated with the impacts of climate change in highly vulnerable countries at next year's Conference of the Parties.² Recognizing their obligations to compensate those who are impacted by climate change, the Parties should develop an international mechanism that will provide compensation for those most vulnerable to unavoidable losses and damages.

Financing

States must cooperate to ensure that climate finance mechanisms contain institutional safeguard systems that effectively prevent social and environmental harm, promote sustainable development, and maximize participation, transparency, accountability, equity, and rights protections. For example, over the next year, as mandated by the Parties to the UNFCCC, the Green Climate Fund must develop and implement strong safeguard policies and a transparent means of redress (accountability mechanism) when safeguards are not applied.

Technology Transfer

States should cooperate to ensure that sufficient technology transfer occurs to prevent dangerous anthropogenic climate change. States must recognize that access to adequate and effective technology may contribute to the realization of human rights.

² Approaches to Address Loss and Damage, para. 9, advance unedited version, adopted by the 18th Conference of the Parties to the UNFCCC (Dec., 2012), *available at* http://unfccc.int/files/meetings/doha_nov_2012/decisions/application/pdf/cmp8_lossanddamage.pdf.

Participation

The future agreement should emphasize the need for effective mechanisms for equitable participation at the local, national and international levels, thus reinforcing Article 6 of the UNFCCC and Principle 10 of the Rio Declaration. It should explicitly affirm rights of access to information, full and effective participation, and access to justice in reference to all climate change mitigation and adaptation actions.

Parties must ensure the full and effective participation of stakeholders in the development and operation of institutions and processes under the UNFCCC, including but not limited to the Green Climate Fund, Adaptation Board, and institutional arrangements to address loss and damage. Such participation should include affected individuals and peoples as well as civil society representatives. Parties should focus in particular on groups traditionally underrepresented due to factors such as geographical location, age, poverty, indigenous or minority status and disability.

Parties should also consider the operationalization of participatory rights principles within processes for measurement, reporting and verification (MRV). This includes the right of non-Parties to provide information for consideration in national communications and biennial reports, and to participate in the review processes under international assessment and review, and in international consultations and analysis.