

National Human Rights Institutions and the 2018 UN Climate Conference

Incorporating Human Rights in the Implementation Guidelines
of the Paris Agreement

Information

The Paris Agreement of 2015 represents a significant step for the promotion of human rights-based and people-centred climate policies. Critical to this are the implementation guidelines for the Paris Agreement, which are currently being drafted and are planned to be adopted at COP-24 in December 2018. The guidelines will shape the way states fulfil domestically their commitments under the Agreement. The purpose of this brief is to encourage NHRIs to support their governments and other relevant stakeholders in the process of negotiating these guidelines. The brief provides information about essential elements of the Paris Agreement and outlines key aspects that the guidelines should include to ensure that climate policies are human rights-based in their design and implementation.

The Paris Agreement¹, adopted in 2015, represents a breakthrough for the promotion of human rights-based and people-centred climate policies. The international community has long recognised that climate change impacts, both directly and indirectly, a broad range of human rights, including the rights to life, water and sanitation, food, health, and housing. International human rights mechanisms, such as the Universal Periodic Review of the Human Rights Council as well as UN human rights treaty bodies, have issued recommendations to many states to take measures to protect human rights from the negative consequences of climate change.²

The Paris Agreement frames action to mitigate climate change and reduce its impacts as integral to the efforts to achieve sustainable development. The Agreement also reaffirms the need for states to respect, protect and promote human rights when taking action to combat climate change. This is critical, because there have been instances where climate action taken by states without appropriate safeguards has resulted in human rights harms. For instance, hydroelectric projects, which deliver climate benefits in the form of cleaner energy, can and have resulted in serious human rights violations associated with the loss of access to land for economic activities or housing due to resettlement or forced eviction. The design of both climate change mitigation and adaptation actions and policies have to take into consideration legitimate land use rights, including those of persons who do not hold formal title to land.

Whether the human rights commitments in the Paris Agreement are put into practice will be determined to a significant extent by whether and how they are reflected in the implementation guidelines, which will constitute the main instrument for implementing the Paris Agreement at the national and international level. Negotiations on the guidelines have now entered a critical phase as the finalised guidelines are slated for adoption at the UN Climate Change Conference (COP-24) in Katowice, Poland, in December 2018.

Informing the implementation guidelines

Given their broad mandate to protect and promote human rights, National Human Rights Institutions (NHRIs) are well placed to make a significant contribution towards ensuring that human rights inform the implementation guidelines of the Paris Agreement. NHRIs work on human rights violations in their national context and thus are able to bear witness to situations already influenced by climate-change related changes in the environment, such as the impacts of tropical storms in the Philippines or the resettlement to the Fiji Islands of persons from other Pacific Islands. In order for states to adequately respond to situations of this kind, they must draw up and implement national regulations on resettlement or on

the treatment of economic displacement, etc. which ensure full respect for human rights, such as the right to food, health, housing, or water, and the rights of indigenous peoples as well as groups in vulnerable situations.

Additionally, in the Mérida Declaration³ adopted in 2015, NHRIs agreed to contribute to the international commitment “to leave no one behind” and to discharge their protective and promotional mandate to monitor the implementation of the Sustainable Development Goals (SDGs)⁴ at the national level. The SDGs introduce a strong convergence between sustainable development and human rights. Goal 13 includes actions against global warming, urging states to “take urgent action to combat climate change and its impacts.”

The Paris Agreement and its implementation guidelines in a nutshell

The Parties to this Agreement,

[...] *Acknowledging* that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on 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, [...] (Preamble of the Paris Agreement, 2015)

The implementation guidelines will not create new obligations for states, but will seek to inform states’ implementation of the Paris Agreement in the context of the “nationally determined” nature of their commitments.

Moreover, the implementation guidelines will ensure that the Parties to the Agreement implement their climate actions in a manner that is consistent with the legal obligations that each individual state recognised when it ratified international or regional human rights instruments.

The Paris Agreement’s goal is to keep temperature increases well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature rise even further, to below 1.5°C above pre-industrial levels, while reaffirming the principle of equity, the need for the provision of support to developing countries and the fact that implementation must reflect “common but differentiated responsibilities and respective capabilities, in the light of different national circumstances” (Art. 2).. Adaptation measures and strengthening climate resilience are at the heart of the agreement.

Guidelines for implementing the Paris Agreement

While the Paris Agreement lays out the overall framework for climate action, it does not provide detailed guidance on designing national climate plans or operationalising the processes set out in the Agreement. Therefore, the Ad Hoc Working Group on the Paris Agreement (APA) and other

Subsidiary Bodies established under the UNFCCC were tasked with drafting a set of guidelines to aid states in implementation. Draft versions of these guidelines will be reviewed during the Bangkok Climate Change Conference (4–9 September 2018) and at the 24th UN Climate Conference (COP-24) in Katowice, Poland (3–14 December 2018), where a finalised version is scheduled to be adopted.

What will the guidelines cover?

The implementation guidelines will address key provisions of the Paris Agreement and serve two functions:

- They will provide guidance to states on designing and implementing their national commitments related to actions on climate mitigation and climate change adaptation, on the provision of support to other countries, and on ensuring the transparency in these areas.
- They will define how international mechanisms and processes established under the Agreement will operate in order to foster cooperation and trust among parties and thus contribute to the realisation of the Agreement's main objectives.

The guidelines will address, among others, the following key provisions:

- **Nationally determined contributions (NDCs) (Article 4):** The NDCs constitute the backbone for the implementation the Paris Agreement. They will form the basis of the implementation plan through which each state defines its level of commitment and identifies how it will implement its obligations. All parties will have to prepare, communicate, and maintain NDCs on the basis of a successive 5-year cycle.
- **Sustainable development mechanism (SDM) (Article 6):** The Paris Agreement provides for mechanisms to enable states and private actors to cooperate in mitigation and adaptation measures. Explicitly mentioned is a mechanism for the use of internationally transferred mitigation outcomes (ITMOs) in the form of emissions reduction credits. The Agreement also establishes a central mechanism to support greenhouse gas emissions reduction projects (SDM), which allows the trading of emission reduction certificates between countries.
- **Adaptation communications (Article 7):** States should implement measures to adapt to the negative consequences of climate change.

These measures are to be integrated within existing national social and environmental policies and should reflect a gender-responsive, participatory, and transparent approach as well as be guided by indigenous peoples', local and traditional knowledge. States have agreed to prepare so-called adaptation communications on a periodic basis to enhance the understanding of adaptation measures and share good practices.

- **Transparency framework (Article 13):** States have agreed to monitor their progress in implementing the Paris Agreement under the transparency framework, which is intended to promote trust among and accountability of governments regarding the implementation of their commitments. The framework will include both obligations related to the provision and receipt of financial support as well as the obligation for parties to provide periodic reports elaborating on their experience with the implementation of climate policies.
- **Global Stocktake (Article 14):** States have agreed to undertake a periodic review of their collective progress towards implementation of the Paris Agreement. The Global Stocktake will play a central role in framing climate action, as the Agreement calls for its outcome to inform the preparation of future NDCs.
- **Facilitation and compliance mechanism (Article 15):** The Paris Agreement provides for the establishment of a mechanism to facilitate its implementation and to promote compliance with its provisions. The functions of this mechanism are not spelled out in the Agreement, but it could have a problem-solving function, to help parties resolve their difficulties in meeting their obligations, as well as an accountability function to demonstrate whether or not parties are meeting their commitments.

How to ensure that the guidelines are human rights-based

In order to ensure that the guidelines support the human rights-based implementation of these key elements, adherence to international human rights norms and principles must be anchored within them, as outlined below.

Accountability

The guidelines should increase the accountability of the state parties and promote the exchange of experiences. They should request states to report on how they are ensuring that the design and implementation of their climate policies is in line with their human rights obligations. This would provide an incentive to adopt human rights-based climate policies. In addition to providing for such reporting in the mechanisms under the Paris Agreement (transparency framework and Global Stocktake), the guidelines should request states to report on climate policies in the context of their reporting obligations under human rights mechanisms as well as under other relevant international frameworks such as the 2030 Agenda and the Sendai Framework.

National adaptation communications detail domestic policies and plans to build adaptive capacities and resilience of those population groups most vulnerable to the impacts of climate change. The Paris Agreement explicitly stresses that adaptation measures should be gender-responsive, participatory and fully transparent, and based on traditional and indigenous knowledge. The guidelines should therefore request that the communications include information on how states are ensuring that adaptation measures respect and promote human rights (in design and implementation), for instance, by conducting human rights risk and impact assessments for planned measures or by identifying a mechanism to handle complaints from persons who might be negatively affected by adaptation policies (e.g. potentially involving the NHRI). States should also be asked to report on institutions, measures, and procedures in place to ensure accountability for adaptation action at the national level.

The implementation guidelines should invite parties to provide information on how they design and implement their nationally determined contributions (NDCs) in a human rights-based manner. By doing so, the guidelines could establish a “virtuous cycle” within which the sharing of information on human rights-based climate action by some countries during the first NDC cycles would encourage other countries to follow suit in subsequent cycles. Providing such information

when communicating their NDC would also allow the parties to reflect on their experience regarding human rights-based and participatory climate decision-making, allowing others to benefit from the lessons learned.

Several states – including Norway, Canada, and the European Union – have publicly supported the inclusion of such an invitation in the implementation guidelines. This proposal was therefore included in the various iterations of the negotiating text produced by the co-facilitators of the negotiations related to NDC guidance since the COP-23 in November 2017 – thus providing a strong basis around which other institutions and governments can now rally. To ensure that the proposal is ultimately included in the implementation guidelines, other governments must now step up and speak in favour of this important proposal.

Right to information and participation

The Paris Agreement recalls the importance for state parties to promote public participation and public access to information (Article 12). Climate policies should be designed, implemented and monitored through inclusive, transparent, and effective participation processes in order to ensure that the perspectives of all relevant stakeholders, including indigenous peoples, civil society actors and local communities as well as NHRIs are taken into account. The guidelines should invite states to provide information on the steps they have taken to ensure the participation of relevant stakeholders in the design and implementation of their NDCs as well as climate adaptation measures, as they do in the voluntary reviews on the implementation of the SDGs.⁵

Reports and communications assessing progress towards the implementation of the Paris Agreement, in connection with the Global Stocktake and the transparency framework, for instance, should also be prepared through participatory processes at the national level. For this, stakeholders should have access to information and data about the implementation of national climate policies. They must also be given the opportunity to provide information and data to inform reports and communications under the Paris Agreement (adaptation communications, transparency framework, and Global Stocktake).

Safeguards and access to remedy

Cooperation mechanisms for mitigation and adaptation measures, such as the sustainable development mechanism and ITMOs, must provide a robust set of environmental and social safeguards to ensure that projects do not negatively impact on human rights and the environment and to guarantee access to information for meaningful consultation of those affected by projects, as well as respect the Free, Prior and Informed Consent of indigenous peoples. These safeguards should be in line with international best practice, those currently being negotiated for the Green Climate Fund⁶ and those included in the Environmental and Social Policy of the Adaptation Fund⁷ established under the Kyoto Protocol to ensure coherence. There should also be a mechanism for remedies and accountability. Private actors should have to comply with the safeguards and rules established by the SDM and ITMOs, including building on the UN Guiding Principles on Business and Human Rights.

What NHRIs can do

National Human Rights Institutions can use their expertise and institutional mandate to engage in the negotiation process of the implementation guidelines and to promote human rights-based policies at the national and international level in a number of ways:

- Encourage policy makers to integrate human rights meaningfully in the guidelines and provide concrete advice on how to do so;
- Provide a platform for exchange between policy makers and civil society, including population groups most affected by climate change and climate policies;
- Engage in the international process, e.g. through the Talanoa Dialogue for climate ambition;
- Use international human rights mechanisms like the UPR and the treaty bodies to report on the human rights compliance of their governments' climate action;
- Integrate climate change and environmental perspectives into their investigation of complaints and base their advocacy and policy advice on their findings;
- Build their expertise on the effects of climate change on human rights, including by using their mandate to conduct inquiries among population groups most impacted.

After the COP-24, the mobilisation of domestic actors, such as NHRIs, will be crucial for the effective and systematic integration of human rights in the planning of policies and the implementation of actions that contribute both to effective climate responses and to the realisation of rights. Given the scale of this task, promoting these integrated approaches leading to more effective policies delivering human rights-based and people-centred benefits will require the involvement of all national human rights actors and stakeholders.

Practices

- In 2015, the NHRI of the Philippines received a complaint from survivors of Typhoon Hainan accusing fossil fuel companies of being responsible for climate change leading to human rights violations and is calling for an official investigation into the human rights implications of climate change and ocean acidification and whether the investor-owned “carbon majors” are in breach of their responsibilities.
- The local branches of the Moroccan NHRI have held and continue to hold sessions on issues related to climate change and environmental rights in human rights and democracy clubs in schools with which the NHRI has partnerships with.
- The Scottish NHRI worked closely with the Scottish Government, Parliament and civil society to encourage action to ensure that a human rights-based approach to climate change is implemented in national policies.

- 1 UN, Framework Convention on Climate Change (2015): Paris Agreement. https://unfccc.int/sites/default/files/english_paris_agreement.pdf (last accessed 08.08.2018).
- 2 The Treaty Bodies have issued 29 recommendations on state parties' climate change policies, eleven in 2017 and 16 in 2016. Data Query: Filter by theme "B73 Human Rights and Climate Change" at <https://uhri.ohchr.org/> (last accessed 08.08.2018). In the context of the Universal Periodic Review, states have given 29 recommendations related to climate change in the first cycle (2008–2011), 62 in the second cycle (2012–2016) and 7 in the third cycle that has started in 2017. Data Query: Search keyword "Climate Change" at <https://www.upr-info.org/database/> (last accessed 08.08.2018).
- 3 International Coordinating Committee (2015): Mérida Declaration: The Role of National Human Rights Institutions in implementing the 2030 Agenda for Sustainable Development. <https://nhri.ohchr.org/EN/ICC/InternationalConference/12IC/Background%20Information/Merida%20Declaration%20FINAL.pdf> (last accessed 08.08.2018).
- 4 UN, General Assembly (2015): Transforming our world: the 2030 Agenda for Sustainable Development, UN Doc. A/RES/70/1 21 October 2015. http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E (last accessed 08.08.2018).
- 5 Long, Graham (no date): How should civil society stakeholders report their contribution to the implementation of the 2030 Agenda for Sustainable Development? Technical Paper for the Division for Sustainable Development, UN DESA. https://sustainabledevelopment.un.org/content/documents/18445CSOreporting_paper_revisions_4May.pdf (last accessed 08.08.2018).
- 6 Green Climate Fund (2018a): Environmental and Social Policy. https://www.greenclimate.fund/documents/20182/574763/GCF_policy_-_Environmental_and_Social_Policy.pdf/aa092a12-2775-4813-a009-6e6564bad87c (last accessed 11.08.2018); Green Climate Fund (2018b): Indigenous Peoples Policy. https://www.greenclimate.fund/documents/20182/574763/GCF_policy_-_Indigenous_Peoples_Policy.pdf/6af04791-f88e-4c8a-8115-32315a3e4042 (last accessed 11.08.2018).
- 7 Adaptation Fund (2016): Environmental and Social Policy. https://www.adaptation-fund.org/wp-content/uploads/2013/11/Amended-March-2016_OPG-ANNEX-3-Environmental-social-policy-March-2016.pdf (last accessed: 16.08.2018).

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The Institute

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