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COPIES: Christiana Figueres, Executive Secretary, UNFCCC  
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OBJET/SUBJECT: **Letter from the Special Rapporteur on human rights and the environment**

Please find attached a letter from the Special Rapporteur on human rights and the environment, John H. Knox.

The Special Rapporteur hereby requests the Secretariat to share this letter with Ambassador Carlos Fuller, Chair, Subsidiary Body for Scientific and Technological Advice (SBSTA), United Nations Framework Convention on Climate Change (UNFCCC).



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**Mandate of the Special Rapporteur on human rights and the environment**

REF:SPB/SHD/SH/PG

3 May 2016

Dear Ambassador Fuller,

I write in my capacity as the United Nations Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment pursuant to Human Rights Council resolution 28/11.

I urge the Subsidiary Body for Scientific and Technological Advice (SBSTA) to ensure that the new mechanism established in Article 6, paragraph 4 of the Paris Agreement is in accordance with international human rights obligations, by incorporating strong social and environmental safeguards.

The human rights obligations relating to the environment have become much clearer in recent years. As the Paris Agreement recognizes, they are highly relevant to actions taken to address climate change. The attached paper describes those obligations and explains how they may be translated into safeguards in the new mechanism, using illustrative examples from the safeguards adopted by the Adaptation Fund. An Executive Summary highlights the main conclusions.

I will publicly release the paper in the near future and indicate that I have been in contact with you and the SBSTA.

Thank you for your work and for the work of the SBSTA on this important topic. Please do not hesitate to contact me, at [srenvironment@ohchr.org](mailto:srenvironment@ohchr.org), if I can provide any additional information or assistance.

Best Regards,

A handwritten signature in black ink, appearing to read "John H. Knox".

John H. Knox

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Mr. Carlos Fuller  
Chair of the Subsidiary Body for Scientific and  
Technological Advice (SBSTA)  
United Nations Framework Convention on Climate Change (UNFCCC)

# **Human Rights and Safeguards in the New Climate Mechanism established in Article 6, paragraph 4 of the Paris Agreement**

3 May 2016

John H. Knox

*United Nations Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*

## **Executive Summary**

As the Paris Agreement recognizes, when States take action to address climate change, they should respect, promote and consider their respective obligations on human rights. These obligations apply not only to decisions about how much climate protection to pursue, but also to the mitigation and adaptation measures through which the protection is achieved. **The new mechanism established in article 6, paragraph 4 of the Paris Agreement should follow (and where possible, improve upon) the examples set by other climate mechanisms that have adopted strong safeguards, such as the Adaptation Fund.**

Safeguards protect against human rights abuses by ensuring that climate programs and policies supported reflect the concerns of those most affected. Failing to include safeguards will result in controversy that can derail projects, call into question entire mechanisms, and harm the very people that the projects are supposed to help.

This paper suggests the following safeguards to protect human rights.

**1. Include a requirement that every proposed project and programme produces an environmental and social assessment.** Prior assessment is necessary to protect a wide range of human rights from harm. The new mechanism should set the standard, at a minimum requiring: assessment of potential risks before approval, with management plans that identify the measures necessary to avoid, minimize, or mitigate the risks; monitoring of projects and programmes over time; and public disclosure of assessments and management plans. The Adaptation Fund Environmental and Social Policy provides a useful model. See page 6 for details.

**2. Provide for effective public participation.** Public participation is a fundamental human right. The new mechanism should ensure that proposals identify interested stakeholders and involve them as early as possible in planning any project or programme for which support is sought, and that public consultations be timely, effective, inclusive, and held free of coercion and in an appropriate way for communities that are directly affected by the proposed project or programme. See page 9 for details.

**3. Include effective remedial procedures.** From the Universal Declaration of Human Rights onward, human rights law has required effective remedies for violations of protected rights. The new mechanism should incorporate mechanisms with the ability to provide such

remedies. The Adaptation Fund, for example, requires implementing entities to identify grievance mechanisms that provide people who are affected by projects or programmes with an “accessible, transparent, fair and effective process for receiving and addressing their complaints about environmental or social harms caused by any such project/programme.” In addition, the new mechanism should establish its own grievance procedure, with the authority to review complaints that the mechanism failed to meet its own requirements. See page 11 for details.

**4. Require legal and institutional protections against environmental and social risks.** The new mechanism should require that projects and programmes not only assess environmental and social risks, but also include effective measures to avoid, minimize, and mitigate those risks during implementation. The Adaptation Fund again provides a possible model. It provides that all projects and programmes supported by the Fund shall be designed and implemented to meet specific environmental and social principles, including: provision of fair and equitable access to benefits; avoidance of any disproportionate adverse impacts on marginalized and vulnerable groups; gender equity; protection of the rights of indigenous peoples; avoidance of involuntary resettlement; protection of natural habitats; conservation of biological diversity; avoidance of increase in drivers of climate change; pollution prevention; avoidance of impacts on public health; avoidance of harm to physical and cultural heritage; and conservation of lands and soil. See page 13 for details.

**5. Include requirements for the protection of the most vulnerable.** The rights of the most vulnerable must be respected and protected in all climate-related actions, including actions taken to mitigate or adapt to climate change. The new mechanism should include a commitment that projects and programmes do not exacerbate existing inequities, particularly with respect to marginalized or vulnerable groups, and it should follow the lead of other mechanisms, including the Adaptation Fund, in ensuring that its projects and programmes avoid imposing any disproportionate adverse impacts on marginalized and vulnerable groups, including children, women and girls, the elderly, indigenous people, tribal groups, displaced people, refugees, people living with disabilities, and people living with HIV/AIDS. The new mechanism should provide that it will not support projects and programmes that are inconsistent with the United Nations Declaration on the Rights of Indigenous Peoples and other applicable international instruments on the rights of indigenous peoples, and it should ensure that projects and programmes are designed and implemented in order to avoid the need for involuntary resettlement. See page 14.

**6. Include a general commitment to respect all human rights.** This paper focuses on human rights obligations that are particularly relevant to environmental protection, but other human rights, including labor rights, may also be relevant to social safeguards in climate mechanisms. Climate mechanisms should ensure that they comply with all relevant human rights norms. To that end, it is important to include a general provision, such as that in the Adaptation Fund Environmental and Social Policy, which states: “Projects/programmes supported by the mechanism shall respect and where applicable promote international human rights.” See page 16.

# **Human Rights and Safeguards in the New Climate Mechanism established in Article 6, paragraph 4 of the Paris Agreement**

John H. Knox

*United Nations Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*

## **I. The Relevance of Human Rights to Climate Action**

In the preamble of the Paris Agreement adopted on 12 December 2015, States acknowledge that climate change is a common concern of humankind, and emphasize that States “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.”

As has become abundantly clear over the last two decades, climate change threatens the enjoyment of a vast range of human rights, including the rights to life, health, food, water, housing, development, and even self-determination. These effects fall disproportionately on those who are already marginalized and vulnerable. As the United Nations Human Rights Council has stated:

while these implications affect individuals and communities around the world, the adverse effects of climate change are felt most acutely by those segments of the population that are already in vulnerable situations owing to factors such as geography, poverty, gender, age, indigenous or minority status, national or social origin, birth or other status and disability.<sup>1</sup>

States have obligations under international law to respect, protect, and promote human rights. Human rights bodies have made clear that to protect human rights from environmental harm in general, and from climate change in particular, States have specific procedural and substantive obligations, which include:

1. providing for environmental assessment and making environmental information public;
2. facilitating public participation in environmental decision-making, including by protecting the rights of freedom of expression and association;
3. providing for effective remedies for violations of human rights;
4. adopting and implementing effective legal and institutional frameworks to address environmental harm;

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<sup>1</sup> Human Rights Council Resolution 29/15 (2 July 2015).

5. providing heightened protections for those who are particularly vulnerable; and
6. respecting and protecting all other relevant human rights.<sup>2</sup>

These human rights obligations apply not only to decisions about how much climate protection to pursue, but also to the measures through which the protection is achieved. As a result, international, regional, and national mechanisms to facilitate and implement mitigation and adaptation to climate change must ensure that the projects that they support comply with applicable human rights obligations.

International institutions active in financing and supporting development, including the World Bank, regional development banks, the International Finance Corporation, the United Nations Development Programme, and many national and private agencies, have adopted environmental and social safeguards to enhance the benefits of sustainable development and to avoid harm to the environment and affected communities.<sup>3</sup>

Such safeguards protect against human rights abuses. They ensure that the programs and policies supported by these mechanisms reflect the concerns of those most affected and that they have popular support. The safeguards also increase the stability of the investment and regulatory framework, by avoiding opposition by local communities and their supporters. Including safeguards therefore makes these projects fairer and more effective. In contrast, failing to include safeguards results in controversies that can derail projects, call into question entire mechanisms, and harm the very people that the projects are supposed to help.

In the climate context, financing mechanisms include the Global Environment Facility,<sup>4</sup> the Adaptation Fund, the REDD+ program (operating through the Forest Carbon Partnership Facility and the UN-REDD program), and the Green Climate Fund. All of these mechanisms include social and environmental safeguards. While the safeguards may be subject to criticism in some respects – and they should be strengthened and made more uniform as necessary – they all include protections that, when implemented, can provide significant protections for human rights. It is not surprising that the one climate mechanism that most obviously lacks effective social and environmental safeguards, the Clean Development Mechanism, is also the one that has been dogged by the strongest accusations of supporting projects with serious human rights abuses.

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<sup>2</sup> See Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc. A/HRC/31/52 (1 February 2016) (“Knox Climate Change Report”); UN Environment Programme, Climate Change and Human Rights (December 2015) (“UNEP Report”), available at <http://www.unep.org/NewsCentre/default.aspx?DocumentID=26856&ArticleID=35630>.

<sup>3</sup> See Adaptation Fund Environmental and Social Policy (approved in November 2013), para. 3, available at <http://www.adaptation-fund.org/wp-content/uploads/2015/09/Environmental-Social-Policy-approved-Nov2013.pdf> (listing entities).

<sup>4</sup> The GEF administers three funds that support projects to address climate change: (a) the GEF Trust Fund; (b) the Least Developed Countries Trust Fund; and (c) the Special Climate Change Trust Fund.

## **II. The United Nations Mandate on Human Rights and the Environment**

In 2012, the United Nations Human Rights Council decided to establish a new mandate on human rights and the environment. I have the honor of having been appointed to be the first Independent Expert requested to carry out the mandate. In 2015, the Council renewed my mandate for another three years and changed my title to Special Rapporteur.

Pursuant to the mandate, I have been requested by the Human Rights Council, among other things, to:

- study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment;
- identify, promote and exchange views on good practices relating to human rights obligations and commitments that inform, support and strengthen environmental policymaking, especially in the area of environmental protection;
- promote and report on the realization of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment;
- identify challenges and obstacles to the full realization of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and protection gaps thereto, including in the context of sustainable development; and
- contribute to and participate in, where appropriate, intergovernmental conferences and meetings relevant to the mandate.<sup>5</sup>

I have prepared a number of reports on the relationship of climate change and human rights, including a report presented to the Council at its most recent session, in March 2016,<sup>6</sup> and a report last year on the effect on human rights of a 2°C increase in global average temperature.<sup>7</sup> I and other UN experts have issued joint statements drawing attention to the effect of climate change on the enjoyment of human rights,<sup>8</sup> and we have attended sessions of the UNFCCC Conference of the Parties in Lima and Paris. On 29 February and 1 March of this year, I met with officials of the Secretariat of the UNFCCC in Bonn. This paper is informed by these previous reports and meetings, as well as other consultations with interested stakeholders.<sup>9</sup>

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<sup>5</sup> Human Rights Council Resolution 28/11, para. 5 (26 March 2015).

<sup>6</sup> Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc. A/HRC/31/52 (1 February 2016) (“Knox Climate Change Report”).

<sup>7</sup> The Effects of Climate Change on the Full Enjoyment of Human Rights (30 April 2015), available at <http://www.thecvf.org/wp-content/uploads/2015/05/humanrightsSRHRE.pdf>.

<sup>8</sup> The joint statement issued on World Environment Day, 5 June 2015, is available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16049&LangID=E>. The joint statement on Human Rights Day 2014, 10 December 2014, is available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15393&LangID=E>.

<sup>9</sup> This paper occasionally repeats language from my previous reports with citation but without quotation marks.

### **III. Translating Human Rights Obligations into Environmental and Social Safeguards**

To protect human rights, it is critical that the new mechanism established in article 6, paragraph 4 of the Paris Agreement follow and wherever possible improve upon the examples set by other climate mechanisms that have adopted strong safeguards. Building on the previous safeguards is also called for by article 38 of the December 2015 decision of the Conference of the Parties, which recommends that “the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement adopt rules, modalities and procedures for the mechanism established by Article 6, paragraph 4, of the Agreement on the basis of [among other things]...(f) Experience gained with and lessons learned from existing mechanisms and approaches adopted under the Convention and its related legal instruments.”

In the following sections, this paper suggests safeguards to ensure that the new mechanism addresses human rights obligations. The paper illustrates its points with examples from the safeguards adopted by the Adaptation Fund, which in many respects most fully implements the relevant human rights obligations.<sup>10</sup> However, other models, including those from other climate mechanisms, may also be relevant. The key point is that the new mechanism should include the strongest possible protections for human rights and environmental protection.

#### **1. Include a requirement that every proposed project and programme produces an environmental and social assessment.**

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights state that the right to freedom of expression includes the freedom “to seek, receive and impart information”. The right to information is also critical to the exercise of other rights, including rights of free association. Human rights bodies have made clear that in order to safeguard the enjoyment of human rights in the environmental context, States should assess the possible threats to the full enjoyment of human rights, and provide public access to the results of the assessments and to relevant information generally.<sup>11</sup>

The obligation to assess the environmental and social impacts of projects is closely related to the obligation to provide information. Human rights bodies have often stated that in order to protect human rights from environmental harm, States should provide for the assessment of impacts on the enjoyment of human rights. For example, on the basis of the right to respect for private and family life set out in article 8 of the European Convention on Human Rights, the European Court of Human Rights has stated:

Where a State must determine complex issues of environmental and economic policy, the decision-making process must firstly involve appropriate investigations and

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<sup>10</sup> In 2014, the Board of the Green Climate Fund adopted the environmental and social performance standards of the International Finance Corporation on an interim basis. The Board indicated that it will establish its own safeguards within three years.

<sup>11</sup> Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox: Mapping report, UN Doc. A/HRC/25/53, paras. 30-33 (30 December 2011); Knox Climate Change Report, paras. 51-55; UNEP Report, pp. 16-17.

studies in order to allow them to predict and evaluate in advance the effects of those activities which might damage the environment and infringe individuals' rights and to enable them to strike a fair balance between the various conflicting interests at stake. The importance of public access to the conclusions of such studies and to information which would enable members of the public to assess the danger to which they are exposed is beyond question.<sup>12</sup>

The right to information is also protected in many environmental instruments. Principle 10 of the Rio Declaration states: "At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities... States shall facilitate and encourage public awareness and participation by making information widely available." Many environmental treaties, including the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants, require environmental information within their scope to be provided to the public.<sup>13</sup>

With respect to environmental assessment in particular, principle 17 of the Rio Declaration states that "environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority." The International Court of Justice has held that States have an obligation under customary international law to conduct environmental assessments "where there is a risk that a proposed activity 'may have a significant adverse impact in a transboundary context.'"<sup>14</sup>

The United Nations Framework Convention on Climate Change promotes the provision of information in several respects. For example, article 4(1)(h) requires the parties to "[p]romote and cooperate in the full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information related to the climate system and climate change, and to the economic and social consequences of various response strategies." Article 6(a) requires the parties to promote and facilitate educational and public awareness programmes, as well as public access to information, and article 12 of the Paris Agreement calls on its parties to cooperate in taking measures to enhance such measures.

Prior assessment of the possible impacts of proposed projects is generally required by international financial mechanisms. The World Bank requires assessment of all Bank-financed projects to "ensure that they are environmentally sound and sustainable."<sup>15</sup> Climate funding mechanisms, including the Global Environment Facility, include strong requirements for environmental and social assessment.<sup>16</sup>

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<sup>12</sup> European Court of Human Rights, *Taşkın and others v. Turkey*, application No. 46117/99 (2004), para. 119.

<sup>13</sup> For other examples, see UNEP Report, p. 17 n. 95.

<sup>14</sup> UNEP Report, p. 16, citing *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, 2010 I.C.J. 14, 83.

<sup>15</sup> World Bank Operational Policy 4.01, para. 1.

<sup>16</sup> GEF Policy on Agency Minimum Standards on Environmental and Social Safeguards, Annex II, Appendix A, Minimum Standard 1, GEF/C.41/10/Rev. 1 (18 November 2011), available at

The mechanism established in Article 6, paragraph 4 of the Paris Agreement should reflect this consensus on the importance of conducting effective assessments of proposed programs and projects, including by providing access to information to all those interested in the projects supported by the mechanism.

The Adaptation Fund Environmental and Social Policy provides a good model. It requires that all projects/programmes “be screened for their environmental and social impacts, that those impacts be identified, and that the proposed project/programme be categorized according to its potential environmental and social impacts.”<sup>17</sup> The Adaptation Fund Policy sets out criteria for categorization of projects and assessment of their impacts.<sup>18</sup> The Policy states:

For all projects/programmes that have the potential to cause environmental or social harm (i.e. all Category A and B projects/programmes), the implementing entity shall prepare an environmental and social assessment that identifies any environmental or social risks, including any potential risks associated with the Fund’s environmental and social principles set forth above. The assessment shall (i) consider all potential direct, indirect, transboundary, and cumulative impacts and risks that could result from the proposed project/programme; (ii) assess alternatives to the project/programme; and (iii) assess possible measures to avoid, minimize, or mitigate environmental and social risks of the proposed project/programme.<sup>19</sup>

Subject to limited exceptions, the Policy requires the environmental and social assessment to be completed before the project/programme proposal is submitted to the Adaptation Fund.<sup>20</sup> The Policy also requires that when the assessment identifies environmental or social risks, it must be accompanied by “an environmental and social management plan that identifies those measures necessary to avoid, minimize, or mitigate the potential environmental and social risks.”<sup>21</sup>

For assessment to be effective, it should continue after the project is approved and implemented, through regular monitoring and evaluation. To this end, the Adaptation Fund Policy provides that “Implementing entities’ monitoring and evaluation of projects/programmes supported by the Fund shall address all environmental and social risks identified by the implementing entity during project/programme assessment, design, and implementation,” and that annual reports by the implementing entities must include a section on the status of implementation of any environmental and social management plans.<sup>22</sup>

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<https://www.thegef.org/gef/content/gef-policy-agency-minimum-standards-environmental-and-social-safeguard-standards>.

<sup>17</sup> Adaptation Fund Environmental and Social Policy, para. 8.

<sup>18</sup> *Id.* paras. 8-10, 27-32.

<sup>19</sup> *Id.* para. 30.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* para. 31.

<sup>22</sup> *Id.* para. 32.

The Adaptation Fund Environmental and Social Policy also states that: the results of an environmental and social screening and a draft environmental and social assessment, including any proposed management plan, shall be made available for public consultations; the secretariat will publicly disclose the final environmental and social assessment through the Fund's website as soon as it is received; the implementing entity is responsible for disclosing the final assessment to people affected by the project, as well as other stakeholders; and that any significant proposed changes in the project or programme during implementation shall be made available for effective and timely public consultation with directly affected communities.<sup>23</sup> In all of these respects, the Adaptation Fund provides a useful model for the new mechanism.

## **2. Provide for effective public participation.**

The rights of everyone to take part in the government of their country and in the conduct of public affairs are recognized in article 21 of the Universal Declaration of Human Rights and article 25 of the International Covenant on Civil and Political Rights, respectively. Again, human rights bodies have built on these rights in the environmental context, elaborating a duty to facilitate public participation in environmental decision-making in order to safeguard a wide spectrum of rights from environmental harm.<sup>24</sup>

The importance of public participation is emphasized by many international environmental instruments as well. Environmental treaties that promote public participation include the Stockholm Convention on Persistent Organic Pollutants, the Convention on Biological Diversity, and the United Nations Convention to Combat Desertification. More generally, Principle 10 of the Rio Declaration states: "Environmental issues are best handled with participation of all concerned citizens, at the relevant level . . . . Each individual shall have . . . the opportunity to participate in decision-making processes." In 2012, in *The Future We Want*, the outcome document of the United Nations Rio+20 Conference on Sustainable Development, States recognized that "opportunities for people to influence their lives and future, participate in decision-making and voice their concerns are fundamental for sustainable development."<sup>25</sup>

There can be no doubt that the obligation to facilitate public participation encompasses decision-making in climate policy.<sup>26</sup> States have long emphasized the importance of public participation in addressing climate change. Article 6 (a) of the United Nations Framework Convention on Climate Change requires its parties to promote and facilitate public participation, and the General Assembly has recognized "the need to engage a broad range of stakeholders at the global, regional, national and local levels, including national, subnational and local governments, private businesses and civil society, and including youth and persons with disabilities, and that gender equality and the effective participation of women and indigenous peoples are important for effective action on all

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<sup>23</sup> Adaptation Fund Environmental and Social Policy, para. 33.

<sup>24</sup> Mapping Report, para. 36.

<sup>25</sup> A/CONF.216/16, para. 13.

<sup>26</sup> See Knox Climate Change Report, para. 57.

aspects of climate change.”<sup>27</sup> Similarly, article 12 of the Paris Agreement requires its parties to cooperate in taking appropriate measures to enhance public participation.

To be effective, public participation must include the provision of information to the public in a manner that enables interested persons to understand and discuss the situation in question, including the potential effects of a proposed project or policy, and must provide real opportunities for the views of the affected members of the public to be heard and to influence the decision-making process.<sup>28</sup> These principles are of special importance for members of marginalized and vulnerable groups. In some cases, it may be necessary to build the capacity of members of such groups in order to facilitate their informed participation. Again, these requirements apply not only to decisions about how much climate protection to pursue, but also to the measures through which the protection is achieved. Decisions on mitigation or adaptation projects must be made with the informed participation of the people who would be affected by the projects.<sup>29</sup> This is true at the multilateral as well as the national level.<sup>30</sup>

The rights of freedom of expression and association are of special importance in relation to public participation in environmental decision-making. The Special Rapporteur on the situation of human rights defenders has said that those working on land rights and natural resources are the second-largest group of defenders at risk of being killed, and that their situation appears to have worsened since 2007. Those opposing projects supported by powerful governmental and private interests often face extraordinary risks, including threats, harassment, and physical violence. States have obligations not only to refrain from violating the rights of free expression and association directly, but also to protect the life, liberty, and security of individuals exercising those rights. There can be no doubt that these obligations apply to those exercising their rights in connection with environmental concerns.<sup>31</sup>

To enable informed public participation, the rights of freedom of expression and association must be safeguarded for all people in relation to all climate-related actions, including for individuals who oppose projects designed to mitigate or adapt to climate change. To try to repress persons trying to express their views on a climate-related policy or project, whether they are acting individually or together with others, is a violation of their human rights. States have clear obligations to refrain from interfering with those seeking to exercise their rights, and States must also protect them from threats, harassment and violence from any source.<sup>32</sup>

The Global Environment Facility (GEF) has a general Policy on Public Involvement in GEF Projects, first approved by the GEF Council in 1996, which emphasizes the

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<sup>27</sup> General Assembly resolution 67/210, para. 12 (21 December 2012).

<sup>28</sup> The UNEP Report states that effective public participation requires, at a minimum, “(1) assessment and disclosure of environmental impacts. . .; effective communication of those impacts – e.g., in a language and venue that is accessible to the persons who will be affected; and (3) an opportunity for affected persons to ‘voice their concerns’.” UNEP Report, p. 18.

<sup>29</sup> Knox Climate Change Report, para. 59.

<sup>30</sup> See Maina Kiai, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, U.N. Doc. A/69/365 (1 September 2014).

<sup>31</sup> Mapping Report, paras. 39, 40.

<sup>32</sup> See Knox Climate Change Report, para. 60.

importance of full disclosure of non-confidential information, consultation, and participation by major groups and local communities throughout the project cycle.<sup>33</sup> The Policy applies to the GEF Secretariat and to GEF Partner Agencies, and also to recipient countries and others participating in GEF-financed projects. The Policy succinctly outlines the benefits of public participation:

Effective public involvement is critical to the success of GEF-financed projects. When done appropriately, public involvement improves the performance and impact of projects by:

- (a) Enhancing recipient country ownership of, and accountability for, project outcomes;
- (b) Addressing the social and economic needs of affected people;
- (c) Building partnerships among project executing agencies and stakeholders; and
- (d) Making use of skills, experiences, and knowledge, in particular, of civil society organizations (CSOs), community and local groups, and the private sector in the design, implementation, and evaluation of project activities.<sup>34</sup>

Similarly, the Adaptation Fund Environmental and Social Policy requires implementing agencies to “identify stakeholders and involve them as early as possible in planning any project/programme supported by the Fund.”<sup>35</sup> In particular, it requires that the results of the environmental and social screening and a draft environmental and social assessment, including any proposed management plan, be made available for public consultations, and that the consultations be “timely, effective, inclusive, and held free of coercion and in an appropriate way for communities that are directly affected by the proposed project/programme.”<sup>36</sup> In addition, as noted above, any significant proposed changes in the project/programme during implementation must also be made available for “effective and timely public consultation with directly affected communities.”<sup>37</sup>

### **3. Include effective remedial procedures.**

From the Universal Declaration of Human Rights onward, human rights agreements have established the principle that States should provide for an effective remedy for violations of their protected rights. Human rights bodies have applied that principle to human rights infringed by environmental harm. International environmental instruments support an obligation to provide for effective remedies. Principle 10 of the Rio Declaration, for example, states: “Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided,” and many environmental treaties establish obligations for States to provide for remedies in specific areas. For instance, article 235 of the United Nations Convention on the Law of the Sea requires States to ensure that recourse is available within

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<sup>33</sup> GEF Policy on Agency Minimum Standards on Environmental and Social Safeguards, Annex IV.

<sup>34</sup> *Id.* Annex IV, para. 2.

<sup>35</sup> Adaptation Fund Environmental and Social Policy, para. 33.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

their legal systems to natural or juridical persons for prompt and adequate compensation or other relief for damage caused by pollution of the marine environment.<sup>38</sup>

UNEP has pointed out that the obligation to provide for effective remedies has both a procedural and a substantive component. “First, States must provide access to administrative and judicial proceedings to adjudicate claims of human rights violation (the procedural element). But various expert bodies have asserted that States must also ensure that compensation or other forms of redress are available when violations do occur (the substantive dimension).”<sup>39</sup>

The requirement to provide for an effective remedy applies to violations of human rights relating to climate change. Every State should ensure that its legal system provides for effective remedies for all human rights violations, including those arising from climate-related actions. At the international level, States should work together to support the establishment and implementation of procedures to provide such remedies, particularly with respect to measures supported by international finance mechanisms.<sup>40</sup> Such mechanisms should be established at the multilateral as well as the national level.<sup>41</sup>

Many financing mechanisms, including the World Bank and the Global Environment Facility, provide for grievance mechanisms. Minimum Standard 8 of the GEF Policy on Agency Minimum Standards on Environmental and Social Safeguards, for example, requires each GEF Partner Agency to have “accountability systems or measures that are designed to ensure enforcement of its environmental and social safeguard policies and related systems,” and to have “systems or measures for the receipt of and timely response to complaints from parties affected by the implementation of the Partner Agencies’ projects and which seek resolution of such complaints.”<sup>42</sup> The GEF also has a Conflict Resolution Commissioner, who works with member countries and GEF Agencies to address complaints and to help to resolve disputes.<sup>43</sup>

The Adaptation Fund Environmental and Social Policy requires implementing entities to identify a grievance mechanism that provides people affected by projects and programmes supported by the Adaptation Fund with an “accessible, transparent, fair and effective process for receiving and addressing their complaints about environmental or social harms caused by any such project/programme.”<sup>44</sup> Complaints may also be filed with the secretariat of the Adaptation Fund, which is required to respond promptly and, where appropriate, to refer complainants to a grievance mechanism identified by the implementing entity.

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<sup>38</sup> Mapping Report, paras. 41-43.

<sup>39</sup> UNEP Report, p. 18.

<sup>40</sup> Knox Climate Change Report, para. 63.

<sup>41</sup> See Maina Kiai, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, U.N. Doc. A/69/365, para. 25 (1 September 2014) (“Effective engagement also requires a robust mechanism for ordinary citizens to submit information and complaints.”).

<sup>42</sup> GEF Policy on Agency Minimum Standards on Environmental and Social Safeguards, Annex II, Appendix A, paras. 69, 70.

<sup>43</sup> *Id.* Annex III.

<sup>44</sup> Adaptation Fund Environmental and Social Policy, para. 34.

Such procedures are excellent as far as they go, but the new mechanism established by article 6, paragraph 4 of the Paris Agreement should go further. It should also establish a grievance mechanism at the international level in addition to, and separate from, the mechanisms required to be established by the implementing entities. This international grievance mechanism could receive complaints that the mechanism established by article 6, paragraph 4 failed to comply with its own safeguards or other requirements, and that implementing entities failed to comply with the requirements applicable to them even after complaints were brought to their grievance mechanisms.

Such a mechanism does not need to be unduly confrontational. A model could be the Compliance Advisor/Ombudsman (CAO) of the World Bank Group, which has the authority to receive complaints from individuals affected by projects supported by the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). The CAO first assesses the issues raised in a complaint and receives input from key stakeholders, then works with them to try to agree on a collaborative process to resolve the complaint, which could include facilitation, information sharing, conciliation, and mediation. Only if this collaborative phase is unsuccessful does the Ombudsman refer the complaint to the CAO's compliance function, which can then conduct an audit to evaluate the compliance by the IFC or MIGA with its policies, procedures, and performance standards.<sup>45</sup>

#### **4. Require legal and institutional protections against environmental and social risks.**

States have obligations to adopt legal and institutional frameworks that protect against, and respond to, environmental harm that may or does interfere with the enjoyment of human rights, including harm that is caused by corporations and other private actors. These obligations have been derived from a number of human rights, including the rights to life and health. The obligation to protect human rights from environmental harm does not require the cessation of all activities that may cause any environmental degradation. But the balance cannot be unreasonable, or result in unjustified, foreseeable infringements of human rights. In determining whether the balance struck is reasonable, it may be particularly relevant whether the balance complies with national and international health standards and whether it is not retrogressive. In no event may a State's environmental or development policy discriminate on prohibited grounds. Finally, after a State has adopted environmental standards into its law, it must implement and comply with those standards.<sup>46</sup>

The mechanism established in Article 6, paragraph 4 of the Paris Agreement should ensure that the projects and programmes it supports are adopted and implemented in the context of legal frameworks that meet these standards. Again, the Adaptation Fund provides a possible model. The Adaptation Fund Environmental and Social Policy states:

Environmental and social policies are fundamental to ensuring that the Fund does not support projects/programmes that unnecessarily harm the environment, public health or vulnerable communities. As part of the implementing entities' responsibilities for

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<sup>45</sup> Information about the CAO is available at its website, <http://www.cao-ombudsman.org/>.

<sup>46</sup> See Mapping Report, paras. 47-57.

the project/programme, all implementing entities shall (i) have an environmental and social management system that ensures environmental and social risks are identified and assessed at the earliest possible stage of project/programme design, (ii) adopt measures to avoid or where avoidance is impossible to minimize or mitigate those risks during implementation, and (iii) monitor and report on the status of those measures during and at the end of implementation.<sup>47</sup>

The Adaptation Fund Policy states that all projects and programmes supported by the Fund shall be designed and implemented to meet a list of environmental and social principles, including: provision of fair and equitable access to benefits; the avoidance of any disproportionate adverse impacts on marginalized and vulnerable groups; gender equity; protection of the rights of indigenous peoples; avoidance of involuntary resettlement; protection of natural habitats; conservation of biological diversity; avoidance of increase in drivers of climate change; pollution prevention; avoidance of impacts on public health; avoidance of harm to physical and cultural heritage; and conservation of lands and soil.<sup>48</sup> The principles require that projects and programs supported by the Fund must be in compliance with all applicable domestic and international law, and specifically state that they must “respect and where applicable promote” international human rights, and meet core labour standards as identified by the International Labour Organization.<sup>49</sup>

## **5. Include requirements for the protection of the most vulnerable.**

In addition to the overarching obligation of States not to discriminate in the application of their environmental laws and policies, States have heightened duties with respect to members of certain groups that may be particularly vulnerable to environmental harm, including women, children and indigenous peoples.<sup>50</sup> As the Human Rights Council has stated, the effects of climate change are felt most acutely by those who are already in vulnerable situations. Usually, the most vulnerable have also done the least to contribute to the problem. In this regard, climate change is inherently discriminatory.

States acting individually and in cooperation should take steps to protect the most vulnerable from climate change. Procedurally, States should continue to assess the effects of climate change, and of actions taken to mitigate and to adapt to it, on vulnerable communities. They should ensure that those who are in vulnerable situations and who are marginalized are fully informed of the effects of climate actions, that they are able to take part in decision-making processes, that their concerns are taken into account and that they have access to remedies for violations of their rights. Substantively, States should seek to protect the most vulnerable in developing and implementing all climate-related actions. Even if mitigation targets are met, vulnerable communities may still suffer harm as a result of climate change. Indeed, many are already experiencing adverse effects.

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<sup>47</sup> Adaptation Fund Environmental and Social Policy, para. 10.

<sup>48</sup> *Id.* paras. 13-26.

<sup>49</sup> *Id.* paras. 12, 15, 17.

<sup>50</sup> See Mapping Report, paras. 69-78.

States have obligations at the national level to take adaptation actions to protect their vulnerable populations from the effects of climate change, and at the international level to cooperate in order to facilitate the protection of vulnerable communities wherever they are located. The rights of the most vulnerable must be respected and protected in all actions, including actions taken to mitigate or adapt to climate change. Renewable energy projects and efforts to protect forests, while they may be highly desirable as methods of reducing or offsetting greenhouse gas emissions, are not exempt from human rights norms. When such projects are proposed for the territory of indigenous peoples, for example, the projects must accord with the obligations owed to those peoples, including, where applicable, the duties to facilitate their participation in the decision-making process and not to proceed without their free, prior and informed consent.

The Paris Agreement recognizes the importance of respecting the rights of the most vulnerable. Its preamble specifically refers to the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations, as well as gender equality, in calling on the parties to respect, promote and consider their respective obligations on human rights when taking action to address climate change. Article 7 of the Agreement emphasizes that, in addition to being country-driven, participatory and fully transparent, adaptation action should be gender-responsive and take into consideration vulnerable groups, communities and ecosystems. To ensure that States satisfy their human rights obligations, they must implement the commitments they have made in relation to the protection of the most vulnerable.<sup>51</sup>

The Adaptation Fund Environmental and Social Policy again provides a useful model. It has many references to the importance of protecting the rights of vulnerable and marginalized people. In general, it states that projects and programmes should not exacerbate existing inequities, particularly with respect to marginalized or vulnerable groups, and that:

Projects/programmes supported by the Fund shall avoid imposing any disproportionate adverse impacts on marginalized and vulnerable groups including children, women and girls, the elderly, indigenous people, tribal groups, displaced people, refugees, people living with disabilities, and people living with HIV/AIDS. In screening any proposed project/programme, the implementing entities shall assess and consider particular impacts on marginalized and vulnerable groups.<sup>52</sup>

The Adaptation Fund Policy also includes specific protections for particular groups. It states that projects and programmes supported by the Fund must be designed and implemented so that both women and men are able to participate fully and equitably, receive comparable benefits, and do not suffer disproportionate adverse effects during the development process.<sup>53</sup> It provides that the Fund shall not support projects and programmes that are not consistent with the United Nations Declaration on the Rights of Indigenous Peoples and other applicable international instruments on the rights of indigenous peoples.<sup>54</sup>

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<sup>51</sup> Knox Climate Change Report, paras. 81-84.

<sup>52</sup> Adaptation Fund Environmental and Social Policy, paras. 13, 14.

<sup>53</sup> *Id.* para. 16.

<sup>54</sup> *Id.* para. 18.

And it states that projects and programmes shall be designed and implemented in order to avoid or minimize the need for involuntary resettlement. It states: “When limited involuntary resettlement is unavoidable, due process should be observed so that displaced persons shall be informed of their rights, consulted on their options, and offered technically, economically, and socially feasible resettlement alternatives or fair and adequate compensation.”<sup>55</sup>

## **6. Include a general commitment to respect all human rights.**

This paper focuses on human rights obligations that are particularly relevant to environmental protection, but other human rights obligations, such as those relating to labor rights, may also be relevant to social safeguards in climate mechanisms. Climate mechanisms should ensure that they comply with all relevant human rights norms. To that end, it is important to include a general provision, such as that in the Adaptation Fund Environmental and Social Policy, stating: “Projects/programmes supported by the Fund shall respect and where applicable promote international human rights.”<sup>56</sup>

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<sup>55</sup> *Id.* para. 19.

<sup>56</sup> *Id.* para. 15.