

**HUMAN RIGHTS – A PRE-REQUISITE FOR CLIMATE GOVERNANCE THAT SUPPORTS
HUMAN WELLBEING AND RESILIENCE**

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I will speak to you this morning about the value a human rights approach to governance has for strengthening resilience – that is the ability of communities and individuals to respond to the challenges of climate change and to maintain essential levels of well-being,, including good social relations and coherence. I will begin with a brief discussion of the challenges we face and identify the broad benefits of such an approach for strengthening resilience. I will then move on to consider prerequisites of a sound climate governance system. And finally, I will identify several specific areas of action.

INTRODUCTION

Why does governance matter? How does it impact on our ability to averting the likelihood of accelerated declines in human well-being and to identify sustainable mitigation and adaptation paths?

Governance is not distinct from society. It refers to means by which society defines its goals and priorities, and distributes costs and benefits. It includes policies, laws, norms, and institutions at formal (state) and informal (private sector, civil society) levels.

Society's values, historical choices, and priorities in allocating benefits, opportunities and costs lie at the core of climate change – both in terms of its causes and its disproportional impacts. Dominant development paths have led to skewed economic growth and entrenched inequity. They have left vast numbers of people, including the poorest people, women, Indigenous Peoples, and other natural resource-dependent communities – and the environment – vulnerable to both slow and sudden on-set changes; and unable to respond to surprise inherent in climate change. Governance underlies this weak capability and disempowerment.

Resilience rests on the level of exposure to hazards, the sensitivity to these hazards, and adaptive and coping capacity. Human capabilities and wellbeing shape both sensitivity and response.

The lack of rights in governance has, for example, made it difficult for people to build the capabilities that underlie resilience, and allow individuals and communities to successfully ride crises and deal with changes. The lack of access to resources, including natural, social, economic and political resources has made it difficult for these communities to accumulate the capital needed for resilience. In addition they often lack rights to determine best paths of response. Centralized policies, in agriculture and conservation, have excluded communities from the resources on which they rely for their livelihoods. This includes for example the construction of large dams that impact local water use regimes and allocate the benefits elsewhere.

Even where rights are protected, power and inequity often intercede, making it impossible for rightsholders to ensure equitable outcomes. In many countries, national elites have, for example, been able to capture the benefits of “community” forest management because of weak systems of accountability and transparency. There is the danger that without strong procedural and substantive rights, the most vulnerable people will – in addition to bearing the high costs imposed by climate change – pay heavily for mitigation and adaptation choices.

RECOGNIZING AND STRENGTHENING HUMAN RIGHTS IN GOVERNANCE IS ONE TOOL TO HELP LEVEL THE PLAYING FIELD AND ENSURE FAIRER, MORE EQUITABLE, AND MORE JUST OUTCOMES

Such an approach is also consistent with the *Right to Development* and the right people have to shape their own futures. While governance systems need to be nationally specific and address the peculiarities of different countries, human rights can provide a useful tool for strengthening governance. They have the advantage of encompassing widely held normative values, as indicated by extensive recognition of human rights instruments by states.

Fundamental Human Rights values– the equality and dignity of all, equity and the right of non-discrimination, accountability, participation, and the centrality of people in development as actors and as beneficiaries – lie at the core of developing a good governance system that strengthens resilience.

Incorporating Human Rights contributes to enhancing resilience:

1. **Strengthening inclusion through *active and meaningful* participation in decision- and choice-making supports vulnerable communities and people to:**

- Secure access to the capabilities and social capital (including tenure, food rights) that underlie livelihood security and the ability to recover from crises;
- More effectively advocate for their needs and support from governments and other stakeholders, and to claim their rights and obtain a fair share of benefits;
- Participate in evaluating choices (including for mitigation and adaptation) and ensure that their priorities, interests and rights are taken into account.
- Protect their rights and employ non-judicial and non-adversarial options for holding authorities and institutions to account.

2. **Human rights provide a benchmark for making choices and encouraging equity and non-discrimination in outcomes, including in the distribution of costs and benefits.** For example, it provides a method for weighing climate mitigation and adaptation choices against impacts on a right to food, a right to life, and the right to a clean, healthy environment. A small but growing body of International Human Rights case law emphasizes the centrality of a Right to Life in assessing development choices. By the same token mitigation and adaptation choices can be held to this standard.

3. **Human rights thinking helps clarify rights, roles and responsibilities by distinguishing (1) between rightsholders and stakeholders and (2) beneficiaries and facilitators.** This sets the basis for recognizing the special position of communities and individuals, whose rights are affected by climate change and actions to address it, in climate governance and in particular in the distribution of costs and benefits. It reemphasizes the role of states as facilitators and agents of development. And it helps ensure that with the proliferation of different interest groups, that those people directly impacted (continue to) have a direct voice.

4. **Enhancing the legitimacy and sustainability of choices and decisions,** by increasing local support for globally-agreed measures through (1) consensus-building and (2) providing a method for making difficult tradeoffs. This is important where rights are affected, as historically such communities have actively resisted state law and initiatives through, for example, illegal forest use and disregarding state-imposed boundaries.

5. **Strengthening coherence between different levels and sectors** (such as. climate change, biodiversity (CBD), financial responsibilities (1992 UNCED)) by emphasizing cooperation based on fundamental principles, and encouraging long-term perspectives based, for example, on

Intergenerational Rights .

6. **Making vulnerabilities visible by desegregating data helps reduce the likelihood of rights derogations.** It draws attention to (1) the specific ways in which rights will be impacted and (2) who will be impacted

ESTABLISHING AN EFFECTIVE CLIMATE GOVERNANCE REGIME:

1. **Requires incorporating Human Rights into institutional and governance arrangements for financing, mitigation, adaptation, capacity-building and technology transfer among others.**
2. **And in addition, integrating Human Rights into climate governance across levels –from local to global– and ensuring that these levels are mutually reinforcing.** Where governance regimes are weak or ambiguous, International Human Rights law provides binding obligations that ensure that decisions are made in ways that support, and do not adversely affect, vulnerable or marginalised communities.
3. **It demands adopting Human Rights governance approaches NOW** - in the UNFCCC negotiations, in other multilateral and bilateral agreements (such as the Copenhagen Accord, the REDD+ Partnership, and in regional and national decisionmaking), as well as in **FUTURE agreements and actions** (such as in the final UNFCCC agreement, and in implementing actions at national and local levels for e.g. for REDD+ and the CDM).
4. **It is critical to address not only procedural rights but also the substantive rights that set the arena for governance.** Four important areas may be identified
 - This includes addressing natural resource tenure and traditional property rights, which underlie not just rights of participation but issues of authority and compensation. Including for example the right to say no to particular options.
 - Recognizing and protecting substantive rights to food, education, water and health as they are the foundation of essential capabilities
 - Investing in capacity-building and access to technology (and finance) as well as recognizing the Traditional Knowledge and cultural rights of Indigenous People as provided for in the *United Nations Declaration on the Rights of Indigenous People* (UNDRIP) is critical as this forms the base for effective decisionmaking
 - Agreeing on –and returning to – fundamental principles including, for example, that responses to

environmental challenges (such as climate change) need to be cross-cutting and incorporate social, environment and economic issues.

5. Developing systems not only for respecting and promoting human rights but also for the adoption of measures to ensure that these rights can be protected and fulfilled.

SPECIFIC ACTIONS FOR INTEGRATING HUMAN RIGHTS CONSIDERATIONS INTO THE PROCESSES AND INSTITUTIONS OF THE UNFCCC (AND RELATED ACTIVITIES) MUST BE ADOPTED.

Action is required to strengthen measures for participation, transparency and accountability, access to information and justice, system coherence, and subsidiarity.

1. The starting premise should be recognizing a **Human Rights Principle, that requires parties to, in all climate change-related actions (including governance), to ensure *respect for and protection of Human Rights***. As recognized in the current negotiating text of AWG LCA (October 2010) these include the inherent rights of indigenous peoples, women, children, migrants and other vulnerable people. Indicators and criteria for assessing adherence to this principle will need to be established.
2. **Measures to strength voice of the most vulnerable will be particular important. These rest on addressing the differential capabilities of civil society actors. I identify 5 points of intervention.**
 - **First - Building collaborative networks, for example, for adaptation and disaster risk management.** This requires investing in capacity-building while also recognizing the diverse knowledge and experience of different actors and creating opportunities for knowledge-sharing and networking as a basis for effective collaboration. Strengthening the ability of vulnerable actors to engage with outsiders (including humanitarian and conservation organizations) in determining priorities and managing growing resource conflicts will be crucial. In conflict management, including around water and wildlife resources, this approach has improved responsiveness to diverse needs while taking account of global knowledge. Examples include reducing hostilities around water sharing in the Nile Basin and reducing water conflicts between pastoral and agricultural communities in Northern Kenya.
 - **Second - Establishing windows for genuine and effective engagement of the most marginalized actors in the development –including at global levels– and implementation of policies that affect them.** Mere representation is insufficient as research from participation efforts in conservation over

the last two decades has demonstrated. Opportunities to participate may not be fully enjoyed in meeting contexts that participants experience as alien. Strengthening the capability of different parties to engage in formal meeting processes requires addressing barriers such as language and the lack of accessible information. In some contexts establishing a critical mass – that is a minimum number of participants from a vulnerable group– is important. Sustained participation that starts early and is continuous has proved to be successful. Here too, it is important to develop criteria and indicators for evaluating approaches to participation. This would include assessing the extent of participation (for example the frequency of interventions) as well as its effectiveness (whether or not stakeholder interests are considered and represented in final decisions).

- **Third - Decentralizing policy determination and recognizing the principle of subsidiarity.**
- **Fourth - Investing in dialogue** now, but also in implementation activities, to deepen shared understanding or greater awareness of the concerns, priorities and rights of affected communities is a neglected option. Dialogue as a process is fundamentally different from negotiation. It seeks to emphasize common humanity and empathy and through this to improve understanding of different actor interests and to support the development of consensus. Approaches could build existing experience with public climate hearings and social forums, such as this one. Strengthening dialogue in UNFCCC and related processes, such as REDD+ is critical. Such dialogue needs to be based (1) on recognizing dignity and equality of all and (2) on procedures that encourage free and active participation.
- **Fifth - Strengthening opportunities for participation of indigenous people, forest-dependent communities, and other communities whose rights are impacted in the negotiation process** – by moving beyond the current “observer” status of key actors. While opportunities for participation in the UNFCCC process has increased significantly (with observer participation now exceeding state participation), participation still weighs heavily in favour of northern organizations with INGOs, global thinktanks and research organizations emerging as important constituencies. Adopting measures for strengthening participation of indigenous people and local communities in the UNFCCC negotiation processes is important. The Centre for International Environment Law (CIEL) suggests:
 - (a) establishing specific working groups addressing their interests;
 - (b) granting specific opportunities to these communities, *on par* with state parties, to obtain and submit documents, speak during negotiations, and participate in groups dealing with issues of particular relevance to them; and

(c) establishing an *inclusive* expert group to support the negotiation process and ensure that governance procedures take account of the linkages between mitigation and adaptation measures and Human Rights.

3. **Developing decision making tools that incorporate rights perspectives can provide valuable support to decisionmakers and other actors. Rights mapping**, for example, can provide an effective tool for actors to understanding how specific, including non-proximate, groups are impacted and ensure that choices and decisions take account of the diverse rights impacts.

4. **Establishing a system for allocating not only benefits but also costs is important for strengthening mitigation and adaptation.**

- Such a system needs to be based on the principles of **equity and fairness**, including attention to the **common but differentiated obligations** of actors at global and national levels. Issues of climate debt and responsibility need to be addressed. Similarly, the role of IP in conservation, especially in the protection of forests needs to be acknowledged.
- **Strengthening and extending the provisions for *Free, Prior, Informed Consent* to all persons whose rights (both existing and denied) are adversely impacted** should be considered. This requires recognizing the long-chain of actors that are potentially impacted by mitigation and adaptation choices. Current approaches to FPIC do not recognize the diverse rights derogations that are likely to occur. The potential risks of REDD+ and CDM to forest users, especially Indigenous people, is well documented, but other actors also stand to loose as their rights are compromised. For example, forests placed under protective REDD+ regimes will impact agricultural and food production patterns within these countries and elsewhere. REDD+ could drive up the price of land and global commodity costs (including food) as more land comes under REDD+ regimes in which agroforestry and other food production systems are disallowed. At the same time this may lead to a new demand for agricultural land in non-REDD+ countries, potentially adversely impacting pastoral people.

5. **Strengthening measures for avoiding Human Rights derogations by establishing a rigorous safeguard system that goes beyond “Do no Harm” measures is essential if capabilities are not to be further reduced::**

- **Disallowing weaker standards at a national level and linking social standards to the explicit recognition of the supremacy of human rights law is essential for effective rights protection.**

Existing approaches to safeguarding rights in the current AWG LCA text (FCCC/AWGLCA/2010/8) for example recognizes the importance of establishing “transparent and effective national forest governance structures” but immediately subjects these to national legislation and sovereignty.

- **Going beyond requirements for respecting Human Rights to at the very least a commitment to promote human rights is critical.** The August AWG LCA text, for example, acknowledges the need to “Respect (for) the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations and, national circumstances,” but does not require promotion or protection of these rights.
 - **Social standards need to recognizing the fundamental rights of indigenous people and local communities, including to land, as well as those of other rightsholders.**
 - **Establishing *active* access to information, including by requiring states and international driver organizations to disclose all relevant, including unsolicited information, to communities whose rights are impacted can help strength transparency and accountability requirements.**
6. **Establishing systems for preventing and resolving conflicts** over access, use and ownership as well as the distribution of costs and benefits arising from climate change and mitigation and adaptation actions is important for rights and long term sustainability.
- Requiring third-party monitoring, evaluation and verification of decisionmaking helps ensure fairness and transparency.
 - Recognizing *de facto* and *de jure* rights of vulnerable as well as international recognized but locally *denied rights* including to resources sets the foundation for determining compensation.
 - Developing and supporting proximate redress systems including local and indigenous ones improves enjoyment of justice.
 - Providing for fair compensation, that not only compensate for lost assets but that also acknowledges the loss of other social capitals (such as networks) that underlie resilience is essential. Locally-driven processes need to be at the heart of evaluating loss.
 - Developing collaborative systems that bring together different actors in dialogue can help prevent conflict. Citizen juries could provide an effective tool for evaluating different approaches to mitigation and adaptation and for determining best options.