

Briefing Note: COP-22 Marrakesh Climate Conference

Integrating Human Rights to Climate Action

The Paris Agreement constituted a milestone in the integration of human rights and environmental policies as it is the first international environmental agreement to define explicitly the respect for human rights as a cross-cutting principle for all climate actions. Yet the agreement did not indicate how this integration should be promoted. In this context, the decisions to be adopted at the COP-22 in Marrakesh should ensure that human rights obligations are effectively reflected in order to promote their integration in the implementation of the Paris Agreement.

This briefing note identifies specific entry points for the integration and consideration of human rights in negotiations expected during the COP-22. The note identifies four main complementary approaches:

1. Parties should **integrate human rights** in the modalities, procedures and guidelines discussed under the APA in order to ensure that the implementation of the Paris Agreement takes effectively into account the parties' respective human rights obligations.
2. Parties should **create an enabling environment** helping governments to integrate human rights to climate action by leveraging capacity building and other cooperation opportunities.
3. Specific focus is required to **address the rights of specific groups disproportionately impacted by climate change** and identified explicitly in the Paris Agreement, including women, indigenous peoples and children.
4. The **accountability of all actors** must be promoted, including that of private businesses operating under the mechanisms and platforms established under the UNFCCC.

These approaches, together with adequate and equitable actions, can contribute to ensure that the rights of communities and peoples impacted by climate change or climate action are respected and promoted.

1. Integrating Human Rights at the core of the Paris Agreement implementation

The modalities, procedures and guidelines currently under consideration by the APA will play a critical role in shaping how parties implement the Paris Agreement. Consequently, parties should consider how to integrate in these decisions adequate references to the cross-cutting principles and obligations highlighted in the Paris Agreement, such as human rights, including the rights of indigenous peoples, gender equality, food security, intergenerational equity, just transition and ecosystem integrity. Such a holistic approach to the Paris modalities, procedures and guidelines would also promote synergies with the implementation of the 2030 Agenda for Sustainable Development and with the right to development.

1.1. Integrating rights in the Nationally Determined Contributions (APA Agenda Item 3)

The NDCs constitute the keys to the implementation of domestic actions under the Paris Agreement. Ensuring that these commitments duly integrate human rights and other cross-cutting principles and obligations defined in the Agreement is therefore critical. Twenty-four INDCs submitted prior to the Paris Conference refer to the integration of human rights. Several NDCs also contain references to the rights of indigenous peoples, to gender equality, to food security, to a just transition and to intergenerational equity. We welcome the inclusion of this information. Governments must however go beyond the inclusion of short references to these principles and elaborate on specific steps and measures that they will take to contribute to the integration of cross-cutting principles to all climate action.

In order for the NDCs to enable a holistic implementation of the Paris Agreement and to provide a comprehensive vision of future climate policies, governments should also articulate in their NDCs how they will effectively integrate these principles when implementing climate actions. Additionally, given the importance of the NDCs in defining domestic climate policies of the parties, it is critical that the preparation of these documents be made with the participation of civil society, including women, indigenous peoples, local communities, children and youth, people with disabilities and people in vulnerable situations and in extreme poverty.

These practical commitments might include information related to future policies and programs, the allocation of resources, procedural and institutional settings and developments. The UNFCCC secretariat, working together with relevant intergovernmental organizations', should be invited to develop guidelines identifying how these cross-cutting principles can be reflected in relation to climate commitments. These guidelines should take into account existing commitments including the Sustainable Development Goals and the respective human rights obligations of parties.

1.2. Adaptation Communications (APA Agenda Item 4)

Information related to the respect and promotion of human rights, indigenous rights, gender equality and food security must be included in the Adaptation Communications. This information in the Adaptation Communications will enable the exchange of good practices and the identification of potential areas for progress or challenges where international support and capacity building are particularly relevant. The APA must develop a non-exhaustive set of cross-cutting principles including human rights that must be addressed in the national communications. Additionally, the Adaptation Communications should be prepared with the effective participation of civil society. A workshop should be organized in

2017 to collect good practices and lessons learned in relation to participatory preparation of NAPAs and NAPs.

In order to assist countries with the preparation of these documents, the parties should mandate a constituted body to prepare comprehensive technical guidelines regarding the Adaptation Communications. The section of these guidelines dedicated to cross-cutting principles and to participatory nature of the preparation process for the Adaptation Communications must be drafted in cooperation with relevant intergovernmental and observer organizations in order to benefit from all technical expertise available.

Information communicated by parties in relation to these principles should be aggregated by the UNFCCC secretariat on a periodic basis in order to provide a report of good practices and challenges with the view to inform capacity building, support and the work of the UNFCCC bodies dealing with adaptation matters. Civil society organizations should also be invited to provide additional information to complement the information contained in the Adaptation Communications.

1.3. Monitoring and reporting on implementation through the transparency framework (APA Agenda Item 5)

The Transparency Framework should aim at fostering trust and understanding among parties, at strengthening domestic processes and public ownership, and at generating information related to implementation. In order to support the holistic implementation of the Paris Agreement, this framework should thus allow parties to report both the progress made in relation to mitigation, adaptation and means of implementation as well as how these policies integrate the cross-cutting principles and obligations contained in the Paris Agreement. The scope of the transparency framework must therefore include information related to human rights, including the rights of indigenous peoples, gender equality, food security, just transition, intergenerational equity and the preservation of the integrity of ecosystems

The guidelines to be developed for the submission of national reporting must reflect this comprehensive approach and identify information that parties should report in relation to each of these cross cutting principles and obligations. These guidelines must draw from existing international reporting obligations to foster synergies with other frameworks and avoid duplication of efforts. Additional, relevant intergovernmental organizations' should be invited to provide complementary technical and methodological reporting guidance.

The transparency framework offers an opportunity not only to promote trust and mutual understanding among parties but also to foster dialogue with civil society stakeholders at the national and international level. Such a participatory and inclusive approach is necessary

to ensure the quality and comprehensiveness of information reported as well as the public ownership and support for climate actions. The APA should therefore identify the roles that civil society organizations' can play at each stage of the transparency framework.

1.4. Taking stock periodically of progress and evaluating collective experiences (APA Agenda Item 6)

As the prime political moment for renewed support for climate action, the Global Stocktake must adopt a truly comprehensive approach to review collective progress with the implementation of the Paris Agreement as mandated in article 14.1 of the Paris Agreement. Such an approach must consider both the level of action undertaken collectively by parties in relation to mitigation, adaptation and means of implementation as well as progress made with the effective integration of the cross-cutting principles and obligations contained in the Paris Agreement, including a dedicated focus on human rights, including the rights of indigenous peoples, gender equality, food security, just transition, intergenerational equity and the preservation of the integrity of ecosystems.

The sources of input to the Global Stocktake must reflect this comprehensive approach and consider information provided by civil society and international institutions. The Global Stocktake must include dedicated events focused on the review of the integration of these cross-cutting principles and obligations to climate action. These events should enable the exchange of experience and expertise between relevant stakeholders including civil society and indigenous peoples representatives, governmental actors, intergovernmental organizations' and research institutions.

The Global Stocktake should result in the preparation of a technical report summarizing lessons learned and key challenges identified in relation to the integration of these cross-cutting principles. This report should be accompanied with a compilation of good practices highlighted throughout the Global Stocktake on these matters.

2. Creating an enabling environment for the integration of human rights

Parties must establish an enabling environment supporting governments to promote policy coherence and to integrate human rights to climate action through capacity building and other cooperation opportunities.

2.1. Leveraging the potential of Capacity Building (SBI Agenda Item 14)

Work related to Capacity Building offers a key opportunity to provide technical support to countries for the integration of human rights (and other cross-cutting principles and obligations) in all their climate policies.

During the May 2016 session, the SBI conducted the third comprehensive review of the implementation of the capacity-building framework under the UNFCCC. The [latest version of the draft](#) conclusions resulting from this review includes a request for the Paris Committee on Capacity-building, in managing the 2016– 2020 workplan, to “take into consideration cross-cutting issues of national priority, such as gender responsiveness, human rights and indigenous peoples’ knowledge”. This reference must be retained when finalizing the document at the COP-22 as it provides the mandate for the PCCB to support countries interested in this integration.

Additionally, the COP-22 will also decide the annual thematic focus for the PCCB in 2017. Parties should, in Marrakesh, agree that the PCCB should initiate its work focusing on the cross-cutting principles including human rights, gender equality and indigenous peoples’ knowledge. Such a decision would send a strong signal to all parties regarding the importance of such an integrated approach as well as to the availability of support.

2.2. Promoting procedural rights in the implementation of the Paris Agreement (APA Agenda Item 8(b))

The Paris Agreement reaffirms the importance of public participation and access to information on all matters related to climate policies. Article 12 of the Paris Agreement also commits parties to cooperate in taking action in order to enhance public participation and access to information (as well as education, awareness raising and training). Guaranteeing effective participation by the public will contribute to greater ownership and support for climate policies as well as more effective climate action.

In Paris, the parties mandated the 1st session of the CMA to explore ways of enhancing the implementation of public participation and access to information (decision 1/CP.21, para. 83). Given the early entry into force of the Paris Agreement, the parties should begin to consider in Marrakesh the process for this exploration of options. The implementation of article 12 of the Paris Agreement – as well as of activities related to article 6 of the UNFCCC such as the Doha Work Programme – must take a rights-based approach building on principle 10 of the 1992 Rio Declaration and on other relevant international commitments and instruments. This exploration of views should consider in particular how to strengthen public participation and access to information in relation to the modalities, procedures and guidelines to be adopted by the APA. To guarantee that the public can effectively participate in climate policy formulation, monitoring and review without fear of intimidation or retaliation and the rights of environmental defenders must be protected. The parties should consider how to integrate such protection to work initiated under Article 12 of the Paris Agreement.

2.3. Adopt a joint work programme on Food Security and agriculture (SBSTA Agenda Item 7)

As the Paris Agreement recognizes “*the fundamental priority of safeguarding food security and ending hunger*”, linking agriculture activities to the achievement of food security is fundamental. Nonetheless, the discussions on agriculture at the UNFCCC are currently trapped in the mitigation/adaptation divide, which hampers progress on the issue. If UNFCCC wants a coherent approach to agriculture and food security within climate policies, a work programme (WP) with a clear agenda must be set up during COP 22. A dedicated work programme would be an indispensable support for the work of the UNFCCC through the provision of advices on agricultural matters. It would centralize much needed information and involve very diverse bodies inside and outside the UNFCCC (the Committee on World Food Security for example)¹. Having a joint SBSTA/SBI work programme would be an opportunity to ensure both technical and implementation challenges are treated accordingly.

Although adaptation, emissions reduction and carbon sequestration are essential to tackle climate change and its impact, those three elements need to be addressed separately in order to reach a comprehensive approach to food security. On the one hand, food security must be at the heart of the adaptation of agriculture, with a strong focus on small-scale producers and peasant agroecology. On the other hand, an equitable approach to agriculture within the UNFCCC should address in parallel the responsibility of countries with high rates of emissions due to their industrial agriculture and food systems, instead of focusing on sequestration.

3. Promoting the rights of the groups disproportionately impacted by climate change

Parties should take steps to ensure that the rights of groups disproportionately impacted by climate change are respected and promoted in the context of climate change and climate action, including the rights of women, indigenous peoples, local communities, migrants, children and youth, persons with disabilities and people in vulnerable situations and in extreme poverty. These actions might involve the exchange of relevant expertise and specific actions aimed at protecting these rights.

3.1. Enable the sharing of expertise with regards to children rights and climate change

¹ <http://unfccc.int/bodies/body/6399.php> : “The SBSTA plays an important role as the link between the scientific information provided by expert sources (...) and the policy-oriented needs of the COP (...). It works closely with the IPCC (...) and also collaborates with other relevant international organizations that share the common objective of sustainable development.

The preamble of the Paris Agreement specifically highlights the necessity to consider the rights of children in climate action. This year, international human rights bodies have also decided to address these linkages. The Committee on the Rights of the Child hosted a day of general discussions in September 2016 to consider the implications of the obligations contained in the Convention on the Rights of the Child in the context of environmental policy – including a specific focus on climate change and children’s rights. The Committee is currently preparing a report summarizing the findings of this event, due in early 2017. Additionally, the Human Rights Council mandated the Office of the High Commissioner for Human Rights (OHCHR) to organize a panel discussion on climate change and the rights of the child during its upcoming session in March. In parallel, the OHCHR was also requested to prepare prior to the end of spring 2017 a report on the issue and is currently accepting submissions from governments and organizations’.

The work ongoing through these human rights institutions provide an opportunity to provide expertise and knowledge to delegations in order to inform the climate negotiations. The parties should request an in-session expert briefing to be hosted at the May 2017 session in order to allow relevant institutions to provide information regarding the implications of international obligations on the rights of the child for climate change action.

3.2. Promote the rights of migrant through work on adaptation and loss and damage

The Paris Agreement recognized the importance to promote the rights of migrants in climate responses. Parties should integrate this commitment in their work on adaptation to address human mobility in the context of climate change from a rights-based perspective. Additionally, the protection and respect of the rights of migrants should be fully considered in the work of the Warsaw International Mechanism and its task force on climate displacement. The membership of the task force should include expertise on the rights of migrants.

3.3. Strengthen women’s rights through the extended Lima Work Programme (SBI Agenda item 16)

15 years since gender equality was first recognized in the UNFCCC policy mandates, Parties have the opportunity to return to Marrakesh and put forward a new decision on gender and climate change, advancing the scope of the Lima Work Programme on Gender (LWPG) launched at COP20. Despite the LWPG and prior decisions on gender, significant challenges remain in continued monitoring of progress in these areas as well as translating this to implementation of climate policy at national and regional levels, and policy work of UNFCCC Boards and Bodies.

We strongly urge Parties to prepare a draft decision under SBI45 for the consideration of COP22 in Marrakesh which should lay the foundation for continuing progress made under the LWPG and call for the development of a multi-year, comprehensive “Gender Action Plan” (GAP) via a set of workshops and/or stand-alone expert meetings in 2017, and proposed for approval at COP23. Under the GAP, each activity could include an indicative timeline, expected results and define who is responsible for implementation. Review of progress under the GAP could take place at each subsequent COPs, with a timeframe for a broad overview, or to include additional action areas in 2019 or 2020.

The GAP should ensure policy coherence with international obligations on human rights and gender equality as well as the transversality of gender equality objectives in all climate actions, enhance support for the effective participation of civil society, including indigenous women and men, in all decision-making processes, and recognize traditional knowledge as an essential tool for resilience to climate change. The comprehensive plan should include actions to build and strengthen capacity of Parties to undertake planning and implementation of gender-responsive national climate policies, including gender responsive budgeting and mechanisms for regular monitoring and review of national efforts made, particularly in view of the Global Stocktake. The GAP should also contribute to enhance the quality, availability and visibility of quantitative and qualitative gender-disaggregated data on climate change to improve reporting and analysis, including through the participation of gender experts to the IPCC panel. In-session workshops should be held under the GAP to review the implementation of gender-related mandates by UNFCCC Boards and Bodies and climate funds, and address specific recommendations to them as follow up. The GAP should also incentivize Parties to achieve gender balance on national delegations and UNFCCC Boards and Bodies. Finally, for the GAP to have a significant impact, it should benefit from an adequate level of resources to implement the mentioned activities, and be developed and implemented in close collaboration with CSO representatives, including the Women and Gender Constituency, as well as UN agencies.

3.4. Indigenous Rights and Traditional Knowledge

The Paris Agreement highlighted explicitly that the rights of Indigenous Peoples must be respected and promoted in all climate actions. Additionally, parties also recognized in the Paris Agreement that adaptation actions should be based on and guided by traditional knowledge, knowledge of indigenous peoples and local knowledge systems.

The COP21 decision accompanying the Paris Agreement emphasizes the need to strengthen knowledge, technologies, practices and efforts of indigenous peoples related to addressing and responding to climate change. In particular, it mandated the establishment of a platform for exchange of experiences and sharing of best practices on mitigation and adaptation in a holistic and integrated manner (decision 1/CP.21 para. 135). This platform is necessary to

ensure that the unique and crucial perspective of indigenous peoples, based on their long tradition as caretakers of the environment and as holders of valuable indigenous knowledge acquired from their relationship to the Earth, natural laws, as well as their reliance and dependence upon our lands, territories and resources. The modalities for this mechanism aimed at ensuring the respect of the Paris commitment towards indigenous peoples and knowledge must be clarified and operationalized at the COP-22 with the full and effective participation and consent of Indigenous Peoples at this COP.

4. Ensuring accountability of all actors

Parties must establish modalities to ensure that all private actors taking action in the context of mechanisms and platforms and therefore benefiting from incentives provided under the UNFCCC do comply with human rights obligations and effectively contribute to the transition to a low carbon and resilient society.

4.1. Businesses and the Global Climate Action Agenda

Since the COP-20, the role of non-state has been growingly recognized in relation to climate actions and platforms have been established under the UNFCCC in order to promote this involvement. These platforms evolved organically without strong emphasis up to now on importance of social and environmental integrity of the actions registered. The COP-21 institutionalized this work through the Global Climate Action Agenda (GCAA) under leadership of the High-Level Champions who are expected to make a proposal at the COP-22 regarding the governance of the GCAA.

The consideration of this governance framework must consider modalities ensuring that the social and environmental integrity of the actions registered are guaranteed. These modalities are necessary to prevent that a minority of initiatives implemented in violation of human rights might undermine the legitimacy and credibility of the whole platform. The GCAA should establish a stringent set of criteria to ensure that only projects with social and environmental integrity can be registered. These criteria should be complemented by an exclusion list to prevent the registration of any initiative that is incompatible with the broader objectives of sustainable development. The businesses taking part to the GCAA should be requested to comply with the UN Guiding Principles on Human Rights and Businesses. Adopted by consensus by the Human Rights Council, the Guiding Principles offer a procedural approach to promoting human rights in the context of private action that can be effectively implemented in the context of the GCAA. Finally, a remedy mechanism should be established in the context of the governance of the GCAA to review information related with human rights compliance of individual projects and to take measures against any project that might infringe these rights.

4.2. Adopting adequate modalities for future market-based mechanisms (SDM) (SBSTA Agenda Item 12.b)

Discussions on the rules, modalities and procedures of the market provisions under Article 6 of the Paris Agreement will continue at COP 22 under SBSTA agenda item 12. The explicit reference in the preamble of the Paris Agreement sets the foundation for Parties to take their respective human rights obligations into account in the context of the Sustainable Development Mechanism (SDM). As such, the SDM must be designed, implemented and monitored in a way that respects the full and effective enjoyment of human rights.

COP 22 will be a crucial opportunity to underline the need for a rights-based approach and to call on Parties to operationalize human rights in the post-2020 regime. For the SDM to protect human rights and to contribute to sustainable development, participatory processes and regulatory frameworks guaranteeing effective civil society and stakeholder participation need to be established, as well as institutional safeguard policies and grievance mechanism. Including these elements at this early stage of the negotiations and ensuring that human rights obligations are taken into account will be crucial for the social integrity of the SDM.

4.3. Reforming the existing carbon markets (CDM) (SBI Agenda Item 7a)

Under SBI agenda item 7a, the review of the modalities and procedures (MPs) of the CDM will be back on the negotiation agenda at COP 22. In general, Parties expressed a strong desire to close this agenda item. However, as evident from the last intersession in Bonn May 2016, there is disagreement on how to conclude the review and what revisions to include in the MPs. Despite anecdotal evidence from numerous CDM cases that clearly underline the need for strong human rights protections to be included in the CDM, those elements are not addressed in the MPs review. To ensure social integrity of the CDM, an institutional safeguard system including a grievance mechanism, clear guidance on how to strengthen civil society participation and means for assessing actual contribution to sustainable development would be needed to be included in the MPs.

A strong conclusion of the review that is also addressing human rights considerations will send an important signal to the negotiations on the modalities and procedures of the Sustainable Development Mechanism (SDM). As outlined in the COP decision adopted in Paris, experiences gained and lessons learnt from existing mechanisms and approaches adopted under the Convention need to be taken into account when designing the fundamental rules for the SDM.

*The **Human Rights and Climate Change Working Group** advocates for climate policies that effectively promote and respect human rights.*

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