



February 21, 2011

Center for International Environmental Law and Earthjustice make this submission in response to the Conference of the Parties' (COP) invitation to submit "views and information on what elements should be included in the work programme to consider approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change."¹

As the COP, the UN Human Rights Council and others have recognized,² climate change is not only an environmental but also a human rights issue for the millions of people and communities around the world experiencing rising sea levels, increasingly severe floods and storms, melting glaciers, groundwater contamination, health impacts, forced relocation and displacement, and other adverse impacts. To protect those most vulnerable to climate change, the COP has emphasized that "Parties should, in all climate change-related actions, fully respect human rights."³ By recognizing the Parties' existing human rights obligations, the COP has determined that rights considerations should guide the development, implementation and monitoring of the processes and mechanisms mandated by the Outcome of the work of the Ad Hoc Working Group on long-term Cooperative Action under the Convention (Cancun LCA outcome).

To respect the full and effective enjoyment of human rights, the UNFCCC recognizes the need to protect the participatory rights of affected individuals and peoples in decision-making processes. In Cancun, the COP reaffirmed its commitment to public participation and transparency, stating that the adaptation framework must "follow a country-driven, gender-sensitive, *participatory and fully transparent approach*, taking into consideration vulnerable groups, communities and ecosystems"⁴.

With respect to the work programme on loss and damage, the Parties must ensure the equitable and effective participation by affected individuals and peoples as well as civil society representatives, with particular focus on groups traditionally underrepresented due to factors such as geographical location, poverty, gender, indigenous or minority status, and disability. It is important to note that participation must not be limited to those with "relevant specialized expertise,"⁵ but must also include those who are most vulnerable to loss and damage associated with climate change impacts.

¹ Outcome of the work of the Ad Hoc Working Group on long-term Cooperative Action under the Convention, advanced unedited version, 4 December 2010, para. 28 [Cancun LCA outcome].

² See e.g. U.N. Human Rights Council, Resolution 10/4, 41st meeting, 25 March 2009, U.N. Doc. A/HRC/10/L.11.

³ Cancun LCA outcome, para. 8.

⁴ Cancun LCA outcome, para. 12 (emphasis added).

⁵ Cancun LCA outcome, para. 28(d).

In addition to participation in the work programme and subsequent negotiations, the Parties must ensure that any proposed loss and damage mechanisms are designed, implemented and monitored in such a manner that respects the full and effective enjoyment of human rights, including the rights of access to information, public participation, and access to justice. For example, the Parties should provide opportunities by which affected individuals, peoples or communities (or their civil society representatives) whose rights may be impacted by the adverse effects of climate change can submit relevant information to the loss and damage mechanisms.

Civil society should be actively engaged in all relevant stages of the work programme and subsequent negotiations on the development, implementation and monitoring of the proposed loss and damage mechanisms.⁶ Civil society should also have opportunities to provide input through official interventions, submissions and consultations. To promote transparency, the Secretariat should publish all documents relevant to the work programme on loss and damage as soon as they become available. In addition to other forms of distribution, documents should be posted to the UNFCCC website no later than the time they are made available for hard-copy distribution.

⁶ See Decision II/4, Promoting the Application of the Principles of the Aarhus Convention in International Forums (Almaty Guidelines), paras. 29, 30, ECE/MP.PP/2005/2/Add.5 (20 June 2005), <http://www.unece.org/env/documents/2005/pp/ece/ece.mp.pp.2005.2.add.5.e.pdf> (“Participation of the public concerned should be as broad as possible” and should be allowed “in all meetings of international forums, including their subsidiary bodies and other groups established by the forums to contribute to the decisionmaking [and] at all relevant stages of the decisionmaking process.”).