



Friends of  
the Earth



**EARTHJUSTICE**

*Because the earth needs a good lawyer*



March 28, 2011

The Center for International Environmental Law, Earthjustice, Friends of the Earth England, Wales and Northern Ireland (part of Friends of the Earth International), and Nord-Sud XXI make this submission in response to the Conference of the Parties' (COP) invitation to submit views on the issues to be considered in the forum on the impact of the implementation of response measures and the subsequent work programme and possible mechanism to address the impacts of response measures.<sup>1</sup>

As the UNFCCC, the UN Human Rights Council, and others have recognized,<sup>2</sup> 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 prevent further human harm, the COP has emphasized that "Parties should, in all climate change-related actions, fully respect human rights."<sup>3</sup> 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).

For this reason, the Parties must consider how to avoid or minimize the human rights impacts of the implementation of response measures to mitigate or adapt to climate change.<sup>4</sup> The Parties should address this issue at the upcoming forum, and should include it in a decision on the operationalization of the work programme to be taken at the seventeenth session of the Conference of the Parties.<sup>5</sup> The undersigned organizations strongly support the establishment of a permanent mechanism on response measures as part of this decision.

---

<sup>1</sup> Outcome of the work of the Ad Hoc Working Group on long-term Cooperative Action under the Convention, advanced unedited version, 4 December 2010, paras. 93 and 94 [Cancun LCA Outcome]. The forum is to be convened at the thirty-fourth and thirty-fifth sessions of SBSTA and SBI, "with a view to adopting [...] modalities for the operationalization of the work programme and a possible forum on response measures" at the seventeenth session of the Conference of the Parties. *Id.*, para. 93.

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

<sup>3</sup> Cancun LCA outcome, para. 8.

<sup>4</sup> See United Nations Framework Convention on Climate Change, 9 May 1992, 1771 U.N.T.S. 107, 165, art. 4, paras. 8 and 9.

<sup>5</sup> In its 2009 report on the relationship between climate change and human rights, the Office of the UN High Commissioner on Human Rights highlights the potential human rights implications of response measures. For example, policies promoting biofuel production may lead to land scarcity, which would result in decreased food production and therefore higher prices for food commodities. Such impacts threaten the right to food and the rights of indigenous peoples to their traditional lands and culture, among others. OHCHR, "Report of the Office of the

While the Cancun LCA Outcome called for the adoption of a “possible forum on response measures,”<sup>6</sup> we urge the Parties to create a mechanism that is more than a forum for discussion. Such a mechanism should: **(i) provide guidance on rights considerations that will inform the implementation of response measures; (ii) establish a process to consider and address communications by those affected by response measures; and (iii) provide relevant technical assistance.**

*Guidance on rights considerations that will inform the implementation of response measures*

There is a need for guidance that will help ensure that human rights are respected when implementing response measures. Drawing on appropriate outside expertise, such as the UN Human Rights Council and other international human rights bodies and experts, the UNFCCC should develop guidance based on human rights principles. Such guidance will help Parties evaluate the potential consequences of their actions at the local, national and international levels.

*Mechanism to consider and address communications by those affected by response measures*

The Cancun LCA Outcome describes the need to consider “information from those affected, and evidence of actual impacts” of response measures.<sup>7</sup> This paragraph also requires Parties to consider existing channels, such as national communications and possible submissions of supplementary information, as a means for “those affected” to provide such information.

To operationalize these provisions, the Parties should establish a mechanism to which individuals, peoples or communities (or their representatives) whose rights may be impacted by the implementation of response measures can submit relevant information. The mechanism should provide an assessment of the impacts of the response measures on the affected peoples or communities, including on their enjoyment of human rights, and recommendations for preventing or minimizing harmful effects and for ensuring that the response measures do not interfere with their enjoyment of their rights. In addition, the mechanism should be available to assist policymakers in safeguarding human rights and in applying the guidance.

*Technical assistance*

The proposed mechanism should provide technical assistance, particularly to countries that do not have the capacity to address unintended human rights impacts of response measures. In coordination with relevant human rights bodies and Parties requesting assistance, technical

---

United Nations High Commissioner for Human Rights on the relationship between climate change and human rights,” UN Doc. A/HRC/10/61, January 15, 2009, paras. 65-68.

<sup>6</sup> *Id.*, para. 93.

<sup>7</sup> *Id.*, para. 92.

assistance may include training of policymakers responsible for the development and implementation of climate change-related policies and other forms of direct assistance.<sup>8</sup>

### *Participatory approach*

The UNFCCC also recognizes the need to protect the rights of affected individuals and peoples to participate in decision-making processes.<sup>9</sup> The Parties must ensure the equitable and effective participation, facilitated by timely access to all relevant information, by those affected and by their civil society representatives in all relevant stages of the upcoming forum to consider these issues, and in the work programme and negotiations on the development, implementation and monitoring of the proposed mechanism on response measures.<sup>10</sup>

Civil society should also have opportunities to provide input in the forum, work programme, and other processes related to the proposed mechanism on response measures through official interventions, submissions and consultations. To promote transparency, the Secretariat should publish all relevant documents 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.

---

<sup>8</sup> The issue of technical assistance with respect to response responses has been further elaborated in: PROTECTING PEOPLE AND THE PLANET: A PROPOSAL TO ADDRESS THE HUMAN RIGHTS IMPACTS OF CLIMATE CHANGE POLICY, available at [http://www.law.berkeley.edu/files/IHRLC/Protecting\\_People\\_and\\_the\\_Planet.pdf](http://www.law.berkeley.edu/files/IHRLC/Protecting_People_and_the_Planet.pdf).

<sup>9</sup> See Cancun LCA Outcome, paras. 7 and 12.

<sup>10</sup> 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.”).