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Climate Change Secretariat
UNFCCC
P.O. Box 260 124
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To Whom It May Concern:

Pursuant to paragraphs 93 and 94 of the Cancun Agreement, the Berkeley Law International Human Rights Law Clinic submits the accompanying proposal for a forum on the impacts of the implementation of climate change response measures.

Sincerely,

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Submission pursuant to FCCC/AWGLCA/2010/L.7, paragraphs 93-94

Introduction

The Berkeley Law International Human Rights Law Clinic makes this submission in response to the Conference of the Parties' (COP) invitation to submit views on “a forum on the impact of the implementation of response measures.”¹ This paper proposes that the Conference of Parties (COP) mandate a Process within the United Nations Framework Convention on Climate Change (UNFCCC) to support states in the development and implementation of policy to ensure that responses to global climate changes are effective, sustainable, and advance global human development, security, equality, and freedom. This Process, to include the full range of stakeholders — including state representatives, international human rights and humanitarian agencies, and civil society — would ensure that all mitigation and adaptation policies incorporate international human rights standards and best practices.

In so doing, this Process would advance the UN's goals to promote peace and security through the protection of human rights.² The incorporation of a rights-based approach would also enable the UNFCCC to make human rights a cross-cutting issue, consistent with the call for all UN processes and agencies to incorporate human rights-based approaches in their work.³ Above all, this Process would strengthen the sustainability and effectiveness of climate change policies.⁴

In the final analysis, the COP should mandate the UNFCCC to institute a new Process with several important capabilities. First, the Process should clarify existing human rights principles and international standards that will be useful for states to apply to all climate change policies. The clarification of these norms should occur through collaboration among governments, existing international bodies, and a diverse group of civil actors. In practice, the resulting guidelines should address the human rights concerns of climate change response measures and establish a “do no harm” principle as the basis for evaluating climate change policies.

¹ Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010, FCCC/CP/2010/7/Add.1, ¶¶ 93-94. This paper was originally released as a report entitled “Protecting People and the Planet: A Proposal to Address the Human Rights Impacts of Climate Change Policy,” published in December 2009, by the International Human Rights Law Clinic and the Miller Institute for Global Challenges and the Law, University of California, Berkeley, School of Law, and the Center for Law & Global Justice at the University of San Francisco School of Law, edited by Laurel E. Fletcher, Michelle Leighton, Alice M. Miller, and Cymie R. Payne, and authored by Zoe Loftus-Farren and Cáitín McKiernan.

² U.N. Charter art. 1, para. 1.

³ Second Inter-agency Workshop on Implementing a Human Rights-Based Approach to Development in the Context of UN Reform, Stamford, United States, May 5-7, 2003, *The Human Rights-Based Approach to Development Cooperation: Towards a Common Understanding Among the United Nations Agencies, Introduction*, (May 2003), available at http://www.undg.org/archive_docs/6959-

[The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf](#) (last visited Feb. 16, 2011) [hereinafter *Common Understanding*]; *Renewing the United Nations: a Programme for Reform*, G.A. Res. 52/12, U.N. Doc. A/RES/52/12 (Nov. 12, 1997) [hereinafter *Renewing the United Nations*].

⁴ Office of the United Nations High Commissioner for Human Rights, *Frequently Asked Questions on a Human Rights-Based Approach to Development and Cooperation*, 16, 16 U.N. Doc. H.R./PUV/06/8 (2006) [hereinafter *Human Rights-Based Approach to Development and Cooperation*]; Mary Robinson, *What Rights Can Add to Good Development Practice*, in *HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT*, 25, 40 (Philip Alston & Mary Robinson, ed., 2005) [hereinafter *Robinson, What Rights Can Add*].

Second, this Process should provide a forum for government and expert dialogue and information sharing about the impacts of mitigation and adaptation policies on human rights. The forum would seek a wide range of data through information sources, including multidisciplinary research that models the impacts of mitigation and adaptation measures on people; well-documented evidence-based case studies of climate change policies; comparative research that evaluates the strengths and weaknesses of national climate change policies on human rights; and development of monitoring systems and research criteria that are made readily accessible to stakeholders.

Third, this Process should include all parties, including the world's most vulnerable states. In order to enable such large-scale participation, vulnerable states will be provided with technical assistance.⁵ This assistance could take many forms; it might be coordinated with existing humanitarian bodies,⁶ or it might be initiated through regional systems. Alternatively, personnel in state and regional agencies already tasked with designing and implementing climate change policy could receive training, including information on how to conduct rights-based assessments. Whatever the chosen mechanisms, the technical assistance would support countries as they incorporate human rights principles into climate change policies.

Fourth, all of the features of this proposed Process should be implemented at international, regional, and national levels of policymaking. Through international participation, the new Process would help states to identify principles and standards applicable to all national policies. It would also provide valuable guidance and assistance to existing multilateral and regional organizations, including political and economic bodies, as they confront climate change issues. Finally, it would inform national reviews of existing climate change policies and their human rights implications; guide the development of new national climate policies; and provide technical assistance in the conceptualization, implementation, and monitoring of all relevant state efforts.

Background and Problem Statement

This paper proposes a Process to address the human rights impacts of climate change policy, thereby strengthening the effectiveness of climate change mitigation and adaptation measures.

⁵ The technical assistance component proposed in this paper is not part of the larger conversation on geopolitical climate justice. While important work is being done in that area, particularly around technology transfers and transfer of funds from developed to developing nations, the technical assistance component suggested here is of more limited scope, focused on providing training and assistance to governments as they work to apply human rights principles to climate change policy. For an interesting perspective on technology transfer and geopolitical justice see Frederick M. Abbott, *Innovation and Technology Transfer to Address Climate Change: Lessons from the Global Debate on Intellectual Property and Public Health*, Intellectual Property and Sustainable Dev. Series, Issue Paper No. 24, (Int'l Ctr. for Trade and Sustainable Dev., Geneva, Switzerland), June 2009, available at <http://ictsd.net/downloads/2009/07/innovation-and-technology-transfer-to-address-climate-change.pdf> (last visited Feb. 17, 2011).

⁶ Coordination might be organized by the Inter-Agency Standing Committee (IASC), for example, and include cooperation among full members such as United Nations Office for the Coordination of Humanitarian Affairs, the United Nations Development Program (UNDP), the United Nations High Commissioner for Refugees (UNHCR), the Food and Agriculture Organization, and many others. See IASC website, available at <http://www.humanitarianinfo.org/iasc> (last visited Feb. 17, 2011).

The United Nations Framework Convention on Climate Change (UNFCCC),⁷ the Kyoto Protocol,⁸ and the Cancún Agreement⁹ all acknowledge the importance of fundamental human rights as a motive for cooperation on climate change and as an obligation in shaping a response. In addition, the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) draws attention to the likely of climate change on social and human systems due to greenhouse gas emissions.¹⁰ IPCC projections of social impacts include: increased health risks due to heat waves in Europe, greater pollution stress in North American coastal communities, droughts and flooding in Asia, and decreased food security and increased malnutrition in Africa.¹¹ Marginalized communities will, and may already be, disproportionately impacted affected by climate change.¹²

⁷ The UNFCCC acknowledges that global warming may “adversely affect...humankind,” that certain developing countries may be especially vulnerable to the impacts of climate change, and that “responses to climate change should be coordinated with social and economic development” so as to avoid adverse impacts on developing countries. United Nations Framework Convention on Climate Change, Preamble, May 9, 1982, 1771 U.N.T.S. 107, 165; S. Treaty Doc No. 102-38 (1992); U.N. Doc. A/AC.237/18 (Part II)/Add.1; 31 I.L.M. 849 (1992) [hereinafter UNFCCC]. The UNFCCC also specifically defines the “adverse impacts of climate change” to include “serious deleterious effects...on the operation of socio-economic systems or on human health and welfare.” *Id.* at art. 1.

⁸ The Kyoto Protocol acknowledges the impacts that climate change can have on people, stating that the “Parties included in Annex I shall strive to implement policies and measures under this Article in such a way as to minimize adverse effects, including the adverse effects... on... social, environmental and economic impacts on other Parties, especially developing country Parties.” Kyoto Protocol to the United Nations Framework Convention on Climate Change art. (2)(3) Dec. 10, 1997, U.N. Doc FCCC/CP/1997/7/Add.1, 37 I.L.M. 22 (1998) [hereinafter Kyoto Protocol]. Additionally, the Kyoto Protocol recognizes the need for adequate adaptation to climate change to address these impacts on people. *Id.* at art. 10(b).

⁹ At COP-16 in Cancún, the Ad Hoc Working Group on Long-term Cooperative Action under the Convention explicitly acknowledged the connection between human rights and climate change. DRAFT DECISION -/CP.16, OUTCOME OF THE WORK OF THE AD HOC WORKING GROUP ON LONG-TERM COOPERATIVE ACTION UNDER THE CONVENTION. A draft decision of the working group took note of resolution 10/4 of the United Nations Human Rights Council on human rights and climate change, recognizing “that the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights.” *Id.* at 1. Furthermore, the draft decision “[e]mphasizes that Parties should, in all climate change-related actions, fully respect human rights.” *Id.* at 2.

¹⁰ Intergovernmental Panel on Climate Change [IPCC], *Summary for Policymakers, in Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (Parry, M.L., Canziani, O.F., Palutikof, J.P., van der Linden, P.J., & Hanson, C.E. eds., Cambridge University Press, Cambridge, UK, 2007) [hereinafter *Summary for Policymakers*].

¹¹ *Id.* at 11.

¹² The IPCC states that “[t]here is increasing evidence of greater vulnerability of specific groups such as the poor and elderly, not only in developing but also in developed countries.” *Id.* at 19; see also U.N. Committee for Development Policy, Department of Economic and Social Affairs, *Policy Note, Achieving Sustainable Development in an Age of Climate Change* at 5, U.N. Publishing Section, New York (January 2009) [hereinafter *Policy Note*]; Office of the High Commissioner for Human Rights [OHCHR], *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General, Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights*, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009) available at <http://www.ohchr.org/EN/NewsEvents/Pages/OHCHRanalyticalstudyClimateChange.aspx> (last visited Feb. 17, 2011) [hereinafter *Climate Change and Human Rights*]; Global Humanitarian Forum, *Climate Change-The Anatomy of a Silent Crisis*, 58, 2009 available at www.eird.org/publications/humanimpactreport.pdf (last visited Feb. 17, 2011) [hereinafter *Silent Crisis*]; Oxfam Int’l, *Suffering the Science: Climate Change, People and Poverty*, 130 Oxfam Briefing Paper, July 6, 2009 available at <http://www.oxfam.org/en/policy/bp130-suffering-the-science> (last visited Feb. 17, 2011) [hereinafter *Suffering the Science*]; NICHOLAS STERN, *THE ECONOMICS OF CLIMATE CHANGE: THE STERN REVIEW* vii (2006) available at http://www.hm-treasury.gov.uk/stern_review_report.htm (last visited Feb. 17, 2011) (hereinafter STERN).

A report by the International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide*, notes that while the IPCC has increasingly examined the social and human impacts of climate change,¹³ it has focused at the sub-regional and continental levels. This has left a dearth of information regarding impacts at the local level, where people directly confront climate change hardships.¹⁴ Moreover, although the IPCC Fourth Assessment Report discusses the general impacts of climate change on humans, it rarely addresses these impacts in light of people's experience of their human rights.¹⁵ This connection between identifying human impacts and understanding these impacts as directly related to human rights has yet to be fully elaborated in the IPCC and within most other existing climate change literature to date.¹⁶

In recent years, the UNFCCC has made important progress in bridging this gap. Building on commitments in the UNFCCC,¹⁷ governments approved the Nairobi Work Programme at the 11th Conference of the Parties in 2005. The Programme is a five-year project focused on impacts, vulnerability, and adaptation to climate change.¹⁸ Two years later, at the conclusion of the 13th Conference of the Parties, states adopted the Bali Action Plan, which included an important discussion of the human impacts of climate change.¹⁹ The text called for enhanced mitigation

¹³ INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, CLIMATE CHANGE AND HUMAN RIGHTS: A ROUGH GUIDE 2 (2008) [hereinafter ROUGH GUIDE]. 2; *Summary for Policymakers*, *supra* note 10, at 10-11.

¹⁴*Id.* This is in part because the robustness of climate projections declines with greater geographic and temporal specificity. In other words, warming trends in Africa over the next one hundred years can be predicted with much greater confidence than the average annual rainfall for the next five years in Mozambique. This was noted in the Convention preamble: "Noting that there are many uncertainties in predictions of climate change, particularly with regard to the timing, magnitude and regional patterns thereof." UNFCCC, *supra* note 7, at Preamble.

¹⁵ ROUGH GUIDE, *supra* note 13, at 2-3.

¹⁶ See ROUGH GUIDE, *supra* note 13, at 3 (2008), which notes that because the IPCC Reports are "essentially literature reviews," the "vacuum" of "rights references" in the IPCC reports therefore demonstrates the "vacuum" of "rights references" in climate change literature.

¹⁷ Article 4 includes commitments to cooperate with respect to adaptation preparation; to attempt to minimize the adverse effects of climate change policies on human health and the economy; to promote cooperative exchange of scientific, socio-economic and technological information; and to cooperate with respect to educational and training efforts. UNFCCC, *supra* note 7, at art. 4(1)(e), (f), (h). Article 4 also recognizes the responsibility of developed country Parties to assist developing country Parties that are especially vulnerable to climate change in their adaptation efforts, and to transfer technology to developing country Parties to help with implementation of the Convention. UNFCCC, *supra* note 7, at art. 4(4),(5).

¹⁸ The primary objective of the Nairobi Work Programme is to assist all Parties to the UNFCCC, particularly developing nations, to "improve their understanding and assessment of impacts, vulnerability and adaptation to climate change," and to "make informed decisions on practical adaptation actions and measures to respond to climate change on a sound scientific, technical and socio-economic basis, taking into account current and future climate change variability." UNFCCC Secretariat, Nairobi Work Programme, *available at* http://unfccc.int/adaptation/sbsta_agenda_item_adaptation/items/3633.php (last visited Feb. 17, 2011); *see also* UNFCCC Conference of the Parties, Decision 2/CP.11, *Five-year Programme of Work of the Subsidiary Body for Scientific and Technological Advice on Impacts, Vulnerability and Adaptation to Climate Change*, in Report of the Conference of the Parties on its Eleventh Session, held at Montreal from 28 November to 10 December 2005, Addendum, Part Two: Action Taken by the Conference of the Parties at its Eleventh Session, U.N. Doc. FCCC/CP/2005/5/Add.1 (Mar. 30, 2006).

¹⁹ Additional acknowledgements of the ties between human rights and climate change can be seen in the UN Human Rights Council's resolution requesting that the Office of the High Commissioner for Human Rights conduct an analytical study of the relationship between climate change and human rights. *See* Human Rights Council, Resolution 7/23, *Human Rights and Climate Change*, ¶ 15, U.N. Doc. A/HRC/RES/7/23 (Mar. 28, 2008); Anne Parsons, *Human Rights and Climate Change: Shifting the Burden to the State?*, 9 Sustainable Dev. L. & Pol'y 22, 22 (2009); ROUGH GUIDE *supra* note 13 at n.3. The Office of the High Commissioner for Human Rights responded

measures and consideration of the “economic and social consequences of response measures,”²⁰ and increased state action on adaptation, with special attention to the immediate needs of developing countries “particularly vulnerable to the adverse effects of climate change.”²¹ This renewed recognition within the UNFCCC that the social and economic impacts of climate change response measures must be considered represents a significant step and should be built upon in ongoing negotiations. Civil society groups urged increased attention to this issue in 2009, at the 15th Conference of the Parties meeting, and again in 2010, at the 16th Conference of the Parties.²² Although the 2009 Copenhagen Accord did not fully reflect these efforts, one of the draft texts of the 16th Conference of the Parties in 2010 explicitly recognized the impacts that climate change and climate change policies will have on the enjoyment of human rights.²³ Moreover, the draft text specifically draws attention to the consequences of response measures “for vulnerable groups, in particular women and children.”²⁴ It calls for countries to “cooperate” to gather information on the impacts of response measures and calls for the creation of “a forum on the impact of the implementation of response measures.” It projects a decision at the 17th Conference of the Parties on “modalities for the operationalization of the work programme and a possible forum on response measures.”²⁵ To date, however, it is unclear whether such a forum will be created, what its structure will be, and whether it will focus on ensuring the enjoyment of human rights.²⁶ The call for the forum, however, may provides an important opening.²⁷

to the UN Human Rights Council’s request in its annual report in January 2009. *Climate Change and Human Rights*, *supra* note 12.

²⁰ UNFCCC, Conference of the Parties, Decision 1/CP.13, *Bali Action Plan*, in Report of the Conference of the Parties on its Thirteenth Session, held in Bali from 3 to 15 December 2007, at 3, U.N. Doc. FCCC/CP/2007/6/Add.1 (Mar. 13, 2008) [hereinafter *Bali Action Plan*]; The Bali Action Plan reinforced and reemphasized previous commitments in both the UNFCCC and the Kyoto Protocol to consider the social and economic impacts of climate change response measures. *See* UNFCCC, *supra* note 7, art. 4(f), (h), and Kyoto Protocol, *supra* note 8, at art. 10(d) and art. 13(a).

²¹ *Id.* at ¶ 1 (c)(i).

²² For example, in October 2009, approximately 18 organizations, focused on human rights, environmental justice, and climate change, sent a sign-on letter to President Obama, urging greater attention to the impacts of climate change policies on human rights. *See* Letter from Advocates for Environmental Human Rights et al, U.S. NGOs and educational institutions, to Barack Obama, President of the United States of America (Oct. 22, 2009), available at <http://www.law.berkeley.edu/files/Letter.to.Obamare.COP15.pdf>. At COP-15 and COP-16, several side events, organized by civil society groups, focused on the intersection of human rights and climate change. *See* UNFCCC, COP-15 Side Events/Exhibits Archive, <http://regserver.unfccc.int/seors/reports/archive.html> (last visited Feb. 17, 2011) and UNFCCC COP-16, Side Events and Exhibits:

http://unfccc.int/files/meetings/cop_16/side_events_exhibits/application/pdf/cop16_cmp6_side_events_and_exhibits_brchure_2nd_web_edition.pdf (last visited Feb. 27, 2011).

²³ The Copenhagen Accord was brief, and made no mention of human rights. UNFCCC, Report of the Conference of the Parties on its fifteenth session, held in Copenhagen from 7 to 19 December 2009, Copenhagen Accord, at 4, available at <http://unfccc.int/documentation/decisions/items/3597.php?such=j&volltext=/CP.15#beg> (last visited Feb. 17, 2011). The 16th Conference of the Parties, however, directly acknowledged human rights concerns in two places within one of the Cancún Agreements. UNFCCC, Draft decision -/CP.16, Outcome of the work of the Ad Hoc Working Group on long-term Cooperative Action under the Convention, available at http://unfccc.int/meetings/cop_16/items/5571.php (hereinafter Cancún Working Group Draft Decision) (last visited Feb. 17, 2011). It is important to note, however, that the Cancún Agreements, like the Copenhagen Accord, are not legally binding.

²⁴ *Id.*

²⁵ Cancún Working Group Draft Decision, *supra* note 23 at Chapter III, Section E. Submissions by parties and nongovernmental organizations were due on March 28, 2011. *Id.* at ¶ 94.

²⁶ The language addressing response measures does not specifically refer to human rights. *See id.* at Chapter III, Section E. However, attention to the secondary impacts of climate response measures, particularly on vulnerable

Protecting Human Rights and Addressing Climate Change are Compatible Interests

“Truly good practice — in government, in development, in other domains — tends everywhere to be consistent with human rights principles and values...”

– Mary Robinson, former President of Ireland and UN High Commissioner for Human Rights²⁸

It is widely recognized that human rights-sensitive development policies are more sustainable than those that do not consider rights enjoyment.²⁹ In 2003, the United Nations Development Group gathered to develop *The Human Rights-Based Approach to Development Cooperation Towards Understanding Among the United Nations Agencies (Common Understanding)*, which defines the parameters of a human rights-based approach (HRBA);³⁰ explains the need for such cooperation;³¹ and enumerates the importance and benefits of applying such an approach to “all development cooperation and programming in all sectors and in all phases of the programming process.”³²

According to UN development agencies, the elements of a HRBA are: (1) identification of immediate structural obstacles to rights-realization, and the human rights claims of rights-holders and the correlated human rights obligations of duty-bearers; (2) assessment of the capacity of rights-holders to claim their rights and duty-holders to fulfill their obligations, and the concomitant strategies to build such capacities; (3) monitoring and evaluation of results and processes guided by human rights standards and principles; and (4) the implementation of programs that are informed by recommendations from international human rights bodies and mechanisms.³³ Human rights principles, therefore, guide each stage of programming, from assessment, analysis and program design to “implementation, monitoring and evaluation.”³⁴ As Mary Robinson, former UN High Commissioner for Human Rights, explained, “the principles in question are: participation, empowerment, accountability, non-discrimination, and express

groups, suggests that human rights considerations might be incorporated into the proposed work programme or forum.

²⁷ *Analysis of the Human Rights Language in the Cancun Agreements (UNFCCC 16th Session Conference of the Parties)*, Center for International Environmental Law (Mar. 14, 2011), available at http://www.ciel.org/CIEL/Research/Climate_Change_Publications.html.

²⁸ Robinson, *What Rights Can Add*, *supra* note 4, at 25, 40.

²⁹ *Id.* at 25, 40; *Human Rights-Based Approach to Development and Cooperation*, *supra* note 4, at 15-16; Organisation for Economic Co-Operation and Development, *Development Assistance Committee, DAC Action-Oriented Policy Paper on Human Rights and Development* (2007), available at www.oecd.org/dataoecd/50/7/39350774.pdf (last visited Feb. 17, 2011) (explaining and analyzing the growing consensus that human rights principles increase the sustainability of development policies); United Nations Development Programme, *Integrating human rights with sustainable human development: A UNDP policy document* (1998), available at www.pogar.org/publications/other/undp/hr/hr-pub-policy5-98e.pdf (last visited Feb. 17, 2011) (explaining that human rights and sustainable development are closely connected and mutually reinforcing).

³⁰ *Common Understanding*, *supra* note 3, at 3.

³¹ *Id.* at 1.

³² *Id.* at 3.

³³ *Id.*

³⁴ *Id.* at 2-3.

linkages to international human rights norms and standards.”³⁵ As these elements suggest, a HRBA aims to examine inequalities and remedy discriminatory processes that hamper development.³⁶ The aim of a HRBA is that “all activities... contribute directly to the realization of one or several human rights.”³⁷

A similar approach should be adopted with respect to climate change policies. Analysis, implementation, and evaluation of policies can be strengthened by considering rights principles and by following existing national and international commitments. State policies that comprehensively address the human rights impacts of climate change can ameliorate human suffering by increasing resilience of populations, and by mitigating future consequences of a changed environment. In other words, the “convergence”³⁸ of human rights and climate change policy are mutually reinforcing; human rights-sensitive climate change policies can protect human rights, and human rights can promote more effective and sustainable climate change policies.

Furthermore, active consideration of human rights is compatible with UNFCCC’s principle of “common but differentiated obligations” of states to address climate change, which allows governments to make advances based on relative resources.³⁹ This principle is also consistent with the treaty obligations of state parties to progressively realize economic, cultural, and social rights embodied in the *International Covenant on Social, Cultural and Economic Rights*.⁴⁰ Both instruments recognize wealthier states’ implicit commitment to support international cooperation and provide assistance to less developed states to achieve international standards.⁴¹

In addition to the work of UN development agencies, the UN as a whole has strengthened its institutional commitment to promoting human rights. In 1997, Secretary-General Kofi Annan deepened the role of human rights within the UN system when he characterized human rights as a “cross-cutting issue” and called upon all UN entities to “mainstream” human rights into their

³⁵ Mary Robinson, UN High Comm’r for Human Rights, *Bridging the Gap Between Human Rights and Development: From Normative Principles to Operational Relevance*, Presidential Address to the World Bank (Dec. 3, 2001) available at <http://www.unhchr.ch/Hurricane/Hurricane.nsf/60a520ce334aaa77802566100031b4bf/2da59cd3ffc033dcc1256b1a0033f7c3?OpenDocument> (last visited Feb. 17, 2011).

³⁶ *Human Rights-Based Approach to Development and Cooperation*, *supra* note 4, at 15.

³⁷ *Common Understanding*, *supra* note 3, at 1.

³⁸ Robinson, *What Rights can Add*, *supra* note 4, at 40.

³⁹ UNFCCC, *supra* note 7, at art. 4, ¶¶ 4, 9.

⁴⁰ Each state has an “obligation to move as expeditiously and effectively as possible,” “to the maximum of its available resources.” See Committee on Economic, Social and Cultural Rights, *General Comment 3, The Nature of States Parties Obligations (Art. 2, Para. 1 of the Covenant)*, ¶ 9 (Fifth Session 1990) [hereinafter *General Comment 3*].

⁴¹ *Id.* at ¶¶ 13-14. OHCHR has explicitly acknowledged that “[h]uman rights standards and principles are consistent with and further emphasize ‘the principle of common but differentiated responsibilities’ contained in the United Nations Framework Convention on Climate Change.” *Climate Change and Human Rights*, *supra* note 12, at 28. See also *General Comment 3* which states that “the undertaking given by all States parties is ‘to take steps, individually and through international assistance and cooperation, especially economic and technical . . .’ [and] in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard . . .” *Id.* at ¶¶ 13-14.

activities and programs, within their respective mandates.⁴² As a result of these efforts (reinforced by the *Common Understanding*), a number of UN agencies and UN country teams now employ “human rights-based approaches” in their work.⁴³

Human Rights Implications of Mitigation and Adaptation Policies

Supported by the COP process, UNFCCC state parties continue to advance mitigation strategies. They have also begun to develop and implement climate change adaptation policies that aim to enable individuals and communities to transition to present changes in their environment and to anticipate changes in the future. Nevertheless, attention to the potential negative impacts that mitigation and adaptation policies might have on human rights enjoyment has received insufficient attention in the development of policy.⁴⁴ Critical rights including association, expression, and access to information — the building blocks for preserving culture, utilizing science, and realizing the rights of full citizenship — are often ignored.⁴⁵ As a result, these policies may further harm other rights: life, a secure shelter, and highest attainable standards of health, food and water.⁴⁶

⁴² The Secretary-General, *Renewing the United Nations: a Programme for Reform*, ¶¶ 175, 274, U.N. Doc. A/51/1950 (July 14, 1997); see also *Renewing the United Nations*, *supra* note 2; *Common Understanding*, *supra* note 3, at 1.

⁴³ For example, the UNDP and the Office of the High Commissioner for Human Rights developed the Human Rights Strengthening (HURIST) program in 1999. The program’s principle purposes “are to test guidelines and methodologies and to identify best practices and learning opportunities in the development of national capacity for the promotion and protection of human rights and in the application of a human rights approach to development programming.” United Nations Development Programme & Office of the High Commissioner for Human Rights, *Human Rights Strengthening – HURIST, Brief Description*, U.N. Doc. GLO/99/615/A/11/31 (April 1999), available at <http://mirror.undp.org/magnet/Docs/hr/HURISTNO.htm> (last visited Feb. 17, 2011); see also United Nations Development Programme, Democratic Governance, The Human Rights Strengthening Programme, http://www.undp.org/governance/topics_human_rights_strengthening.shtml (last visited Feb. 17, 2011); UNFPA Human Rights-Based Approach, available at <http://www.unfpa.org/rights/approaches.htm> (last visited Feb. 17, 2011); UNICEF Rights and Results, available at <http://www.unicef.org/rightsresults/index.html> (last visited Feb. 17, 2011); UNDP A Human Rights-Based Approach to Development Planning, available at <http://www.undg.org/?P=221> (last visited Feb. 17, 2011).

⁴⁴ The 2007 Bali Action Plan is an important start to mobilize attention to human impacts of climate change in the COP process. See *supra* note 20, and accompanying text.

⁴⁵ See International Covenant on Civil and Political Rights, art. 19(2), 22(1), GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967).

⁴⁶ See Human Rights Committee of the International Covenant on Civil and Political Rights, *General Comment No. 28, Equality of Rights Between Men and Women (Art. 3 of the Covenant)*, ¶¶ 3, 7, CCPR/C/21/Rev.1/Add.10, (2000) available at

<http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/13b02776122d4838802568b900360e80?Opendocument> (last visited Feb. 17, 2011) (noting that a “State party must not only adopt measures of protection, but also positive measures in all areas so as to achieve the effective and equal empowerment of women,” and that the “equal enjoyment of human rights by women must be protected during a state of emergency”); International Covenant on Economic, Social and Cultural Rights, *General Comment No. 4, The Right to Adequate Housing (Art. 11(1) of the Covenant)*, ¶ 1, 13/12/91, (Sixth Session, 1991) available at <http://www.unhchr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e?Opendocument> (last visited Feb. 17, 2011) (noting that the “human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights”); International Covenant on Economic, Social and Cultural Rights, *General Comment No. 14, The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, ¶¶ 1,3, E/C.12/2000/4, (Twenty-second Session, 2000), available at <http://www.unhchr.ch/tbs/doc.nsf/0/40d009901358b0e2c1256915005090be?Opendocument> (last visited Feb. 17,

Mitigation policies

Mitigation measures slow emissions and curb global warming, but they can also bring unintended human consequences. For example, while policies encouraging biofuel production in Brazil and China may decrease emissions and bring benefits to certain farmers, they may also reduce the overall land available for food cultivation.⁴⁷ Land scarcity translates to decreased food production, which may lead to higher prices for dietary staples,⁴⁸ leaving poor communities without access to an adequate supply of food.⁴⁹ Food insecurity may also lead to forced migration scenarios.⁵⁰ Each of these problems related to land scarcity is likely to be exacerbated by restricted access to information and the unequal or limited participation of affected community members in decision-making, based on factors including gender, age, ethnicity or other characteristics.⁵¹

Another example of how mitigation strategies implicate human rights concerns is the Clean Development Mechanism (CDM). As Barbara Haya, consultant to the civil society organization International Rivers explains, the CDM allows countries with emission-limitation or emission-reduction commitments under the Kyoto Protocol to implement emission-reduction projects in

2011), (noting that health is an indispensable, fundamental human right, “closely related and dependent upon the realization of other rights”); International Covenant on Economic, Social and Cultural Rights, *General Comment No. 12, The Right to Adequate Food (Art. 11 of the Covenant)*, ¶ 1, E/C.12/1999/5, (Twentieth Session, 1999), available at <http://www.unhcr.ch/tbs/doc.nsf/0/3d02758c707031d58025677f003b73b9> (last visited Feb. 17, 2011) (noting that the “human right to adequate food is of crucial importance for the enjoyment of all rights”); International Covenant on Economic, Social and Cultural Rights, *General Comment No. 15, The Right to Water (Arts. 11 and 12 of the Covenant)*, ¶ 1, E/C.12/2002/11, (Twenty-ninth Session, 2002), available at <http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94?Opendocument> (last visited Feb. 17, 2011) (noting that the right to water is a “prerequisite for the realization of other human rights.”)

⁴⁷ *Climate Change and Human Rights*, *supra* note 12. See also ROUGH GUIDE, *supra* note 13, at 51-52; FOOD AND AGRICULTURE ORGANIZATION, THE RIGHT TO FOOD AND THE IMPACT OF LIQUID BIOFUELS (AGROFUELS) 12-19 (2008) (discussing the ways in which biofuel cultivation can impact access to food, as well potential impacts on land holdings, labor conditions, and the environment); Oxfam International, Agriculture Campaign, Biofuels, available at <http://www.oxfam.org/en/campaigns/agriculture/biofuels> (last visited Feb. 17, 2011) [hereinafter *Oxfam Agriculture Campaign*]; FOOD AND AGRICULTURE ORGANIZATION, THE STATE OF FOOD AND AGRICULTURE 2008, BIOFUELS: PROSPECTS, RISKS AND OPPORTUNITIES, CHAPTER 6, IMPACTS ON POVERTY AND FOOD SECURITY 72-86 (2008). Brazil and China were among the highest biofuel producers in 2007. Other major producers currently include Canada, India, and Indonesia. *Id.* at 15.

⁴⁸ The shift to biofuel feedstock is thought to be one of the reasons for the sharp increase in food prices in recent years. *Policy Note*, *supra* note 12, at 9.

⁴⁹ ROUGH GUIDE, *supra* note 13, at 51-52.

⁵⁰ Frank Biermann and Ingrid Boas, The Global Governance Project, *Preparing for a Warmer World, Towards a Global Governance System to Protect Climate Refugees*, *Global Governance Working Paper No 33* 11-14 (2007), available at <http://www.glogov.org/?pageid=22> (last visited Feb. 17, 2011); see also Norman Myers, *Environmental Refugees: A Growing Phenomenon of the 21st Century*, 360 PHIL. TRANS. R. SOC. B 13-20 (Jan. 29, 2002).

⁵¹ See Alyson Brody, Justina Demetriades & Emily Esplen, *Gender and Climate Change: Mapping the Linkages* (March 2008) available at http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/DFID_Gender_Climate_Change.pdf (last visited Feb. 17, 2011) (describing the ways in which gender inequalities can exacerbate the impacts of climate change on both men and women, and discussing the important contributions that affected communities can make to the decision making process).

developing countries.⁵² Hydro power projects currently comprise the highest proportion of technology programs in the CDM.⁵³ However, despite this large share, there is little international oversight of hydro power projects under the CDM.⁵⁴ As a result, some of these projects divert water resources from entire communities, cause health problems from construction dust, lead to decreased fish populations, contribute to the loss of flood plain agricultural capacity, and cause displacement as a result of land submergence.⁵⁵

New initiatives to develop more fuel efficient cook stoves for displaced persons are a dramatic example of how considering rights in developing mitigation policies can dynamically reinforce both rights and the environment. Inefficient fuel use often forces women and girls to forage for wood more widely and often more intensively, thereby exposing them to the risk of violence and further degrading the environment.⁵⁶ Notably, current projects to develop more efficient stoves are explicitly considering effects on the rights and health of women and girls.⁵⁷ Yet these types of initiatives need greater support, wider implementation and long-term evaluation to ensure that they continue to benefit the environment as well as women and their communities.

Adaption policies

Adaptation policies may also bring unintended human rights consequences, particularly for traditionally marginalized groups.⁵⁸ In areas likely to experience the worst impacts of climate change, such as Sub-Saharan Africa and Asia, women play a primary role in agricultural production.⁵⁹ For example, in Sub-Saharan Africa, women are responsible for 70 to 80 percent of household food production.⁶⁰ As communities in these regions face growing food insecurity engendered by climate change, women will likely bear the brunt of the burden as they struggle to

⁵² Kyoto Protocol, *supra* note 8, at art. 12; UNFCCC, Clean Development Mechanism, *available at* <http://cdm.unfccc.int/about/index.html> (last visited Feb. 17, 2011); BARBARA HAYA, FAILED MECHANISM: HOW THE CDM IS SUBSIDIZING HYDRO DEVELOPERS AND HARMING THE KYOTO PROTOCOL (International Rivers, Nov. 2007).

⁵³ Hydro projects account for 25 percent of all CDM projects awaiting approval or already approved. Haya, *supra* note 52, at 3.

⁵⁴ Permit applicants need only apply their respective national standards of sustainable development to their CDM projects. *Id.* at 7; *see also* Ulrike Röhr, *Gender aspects of Climate Induced Conflicts*, SPECIAL ISSUE, GENDER, ENVIRONMENT, CONFLICT (Environment, Conflict and Cooperation Newsletter, Berlin, Germany), May 2007, at 3-4; *available at* http://www.ecc-platform.org/index.php?option=com_content&task=view&id=986 (last visited Feb. 17, 2011).

⁵⁵ HAYA *supra* note 52, at 8. Substantial areas of land are generally submerged in dam catchment areas that often cause large-scale displacement of people. Esther Duflo & Rohini Pande, *Dams*, 122 Q.J. ECON. 601, 607 (May 2007).

⁵⁶ One example of a cookstove initiative is the Darfur Stoves Project, implemented by Technology Innovation for Sustainable Societies, *see* Darfur Stoves Project, <http://darfurstoves.org/> (last visited Feb. 17, 2011).

⁵⁷ *Id.*

⁵⁸ Adaptation can be defined as “[a]djustment in natural or human systems in response to actual or expected climatic stimuli or their effects, which moderates harm or exploits beneficial opportunities.” UNFCCC Secretariat, Glossary of Climate Change Acronyms, *available at* http://unfccc.int/essential_background/glossary/items/3666.php (last visited Feb. 17, 2011).

⁵⁹ Brody, Demetriades & Esplen, *supra* note 51, at 4-5.

⁶⁰ Canadian International Development Association, *Gender Equality and Climate Change, Why Consider Gender Equality when Taking Action on Climate Change?*, 2, *available at* [www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Climate%20change3/\\$file/Gender-2.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Climate%20change3/$file/Gender-2.pdf) (last visited Feb. 17, 2011) [hereinafter *Gender Equality and Climate Change*].

feed their families.⁶¹ Due to gender-based distribution dynamics within families, women and girls also are least likely to receive food during shortages,⁶² and are therefore more likely to experience declining health during such periods.⁶³ Accordingly, an adaptation policy which would provide assistance and capacity building to improve access to food must consider the gender dynamics of food procurement and distribution within families as well as in markets. Failure to do so may bring serious unintended consequences, including burdening women with extra work or exacerbating malnutrition.

Adaptation policies to relocate coastal communities or entire small island states affected by rising sea levels and the flooding of low-lying areas may also raise a host of human rights concerns. Relocation may exacerbate existing cultural, economic, and political stresses on dislocated individuals and the communities where they resettle.⁶⁴ Such relocation can result in loss of livelihood, resource shortages, and social tensions.⁶⁵ Moreover, tensions may be magnified when displacement, whether cross-border or internal, brings different communities into contact and competition with each other over land, food, water, and other resources, possibly leading to violence.⁶⁶ Often, such conflicts are intensified by exclusionary laws and policies (for example, policies that differentiate women and men within displaced communities).⁶⁷

Moreover, those forced by climate change to cross borders in search of shelter or livelihood may lack any assistance or protection, and may encounter abusive or discriminatory treatment in the

⁶¹ Brody, Demetriades & Esplen, *supra* note 51, at 5; *see also Gender Equality and Climate Change, supra* note 60.

⁶² Brody, Demetriades & Esplen, *supra* note 51, at 3; Gender CC- Women for Climate Justice & LIFE, *Gender Aspects and Action Points Concerning Articles 2 and 4 of the UNFCCC Convention*, 1 (Joint Submission by Gender CC-Women for Climate Justice & LIFE on Matters Relating to Article 4, Paragraph 8 and 9, of the Convention: Progress on the Implementation of Decision 1/CP. 10 (SBI)).

⁶³ UN WomenWatch, *Fact Sheet, Women, Gender Equality and Climate Change*, 2 (2009), available at http://www.un.org/womenwatch/feature/climate_change/ (last visited Feb. 17, 2011).

⁶⁴ *Silent Crisis, supra* note 12, at 54; for a general discussion of how climate change may result in displacement, see *Id.* at 46-51.

⁶⁵ Francois Gemenne & Philip Reuchlin, *Climate Change and Displacement, Case Study, Central Asia*, in 31 FORCED MIGRATION REV., 14-15 (October 2008); VIKRAM ODEDRA KOLMANNKOG, NORWEGIAN REFUGEE COUNCIL, FUTURE FLOODS OF REFUGEES, A COMMENT ON CLIMATE CHANGE, CONFLICT AND FORCED MIGRATION 15-17 (April 2008).

⁶⁶ *Silent Crisis, supra* note 12, at 54.

⁶⁷ The negative human rights impacts on those who must relocate due to climate change are likely to be similar to those experienced by internally displaced persons, refugees, or those crossing borders due to natural disasters. Francis M. Deng, *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Methods of Work of the Commission, Human Rights, Mass Exodus and Displaced Persons, Internally Displaced Persons*, U.N. Doc. E/CN.4/1995/50 (Feb. 2, 1995), available at <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/6dcf5dc21f7c511d8025671300398bc0?Opendocument> (last visited Feb. 17, 2011). Additionally, the links between climate change and conflict have been asserted by a number of NGOs, government agencies, and other researchers. For example, International Alert has noted that climate change and violent conflict creates a “double-headed problem” for many of the world’s most vulnerable nations. DAN SMITH & JANANI VIVEKANANDA, INTERNATIONAL ALERT, A CONFLICT OF CLIMATE, THE LINKS BETWEEN CLIMATE CHANGE, PEACE AND WAR 3 (Nov. 2007). The NGO also draws attention to the connection between adaptation responses and conflict, noting that “peacebuilding and adaptation are effectively the same kind of activity, involving the same kinds of methods of dialogue and social engagement, requiring from governments the same values of inclusivity and transparency.” *Id.* at 4. *See also* KOLMANNKOG, *supra* note 65.

receiving state or barriers to their return home.⁶⁸ They may also confront the legal question of statelessness. If a person's state is uninhabitable, is she still its citizen?⁶⁹ May the government of a state, no longer operating from within its territory, take steps to ensure citizenship rights for its people?⁷⁰ If people in this context do not fall under the definition of a refugee in international law,⁷¹ which entities, states or intergovernmental programs are authorized and indeed mandated to respond to their needs and rights?

Several international organizations have begun to acknowledge these questions and consider the implications of climate-induced statelessness. These issues are without precedent within the UN system.⁷² Proposed solutions range from the cessation of territory, to stateless nations, to the acquisition of new nationality for stateless citizens.⁷³ Relocation of populations may in some cases be the most viable solution, and may be necessary to avoid present harms or mitigate future ones. In order to preserve and protect the rights of those affected, policymakers must utilize a human rights-based approach in their conceptualization and implementation of policy.

Gaps in Approach, Coverage, Strategy, and Principles in Climate Change Policies

The United Nations Office of the High Commissioner for Human Rights (OHCHR), the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), and other international organizations have taken significant steps to identify and address some of the human rights concerns raised by climate change and climate change policies. Their work has drawn attention to the issue; provided formal acknowledgment within the UN system and/or the international community of the importance and interconnected nature of climate change and human rights; and in some cases revealed gaps in existing climate change approaches.⁷⁴ Although these international institutions have made important strides, significant gaps remain in the development and implementation of climate change policies.

⁶⁸ Michelle Leighton, *Migration and Slow-Onset Disasters: Desertification and Drought*, in MIGRATION, ENVIRONMENT AND CLIMATE CHANGE: ASSESSING THE EVIDENCE (Frank Laczko & Christine Aghazarm eds., IOM 2009). See generally MIGRATION, ENVIRONMENT AND CLIMATE CHANGE: ASSESSING THE EVIDENCE (Frank Laczko & Christine Aghazarm eds., 2009).

⁶⁹ U.N. High Comm'r for Refugees [UNHCR], *Climate Change, Natural Disasters and Human Displacement: A UNHCR perspective*, 5 (Aug. 14, 2009), available at <http://www.unhcr.org/4901e81a4.html> (last visited Feb. 17, 2011) [hereinafter *UNCHR Perspective*].

⁷⁰ *Id.* at 5.

⁷¹ *Id.* at 5-6.

⁷² See e.g., United Nations High Commissioner for Refugees, International Organization for Migration, and the Norwegian Refugee Council, Submission, *Climate Change and Statelessness: An Overview* (May 2009), available at <http://www.unhcr.org/refworld/docid/4a2d189d3.html> (last visited Feb. 17, 2011).

⁷³ *Id.* at 2.

⁷⁴ For example, the United Nations High Commissioner for Refugees (UNHCR) has issued a number of reports that call for the international community to analyze the cause of climate change and anticipate migration scenarios – both internal and international – which have the potential to move individuals and communities outside their states of origin, and in some cases, stateless. U.N. High Comm'r for Refugees [UNHCR], *UNHCR perspective*, *supra* note 69, available at <http://www.unhcr.org/4901e81a4.html> (last visited Feb. 17, 2011); *UNHCR and Climate Change: Involvement, Challenges, and Responses*, UNHCR BROCHURE (Oct. 2009), available at <http://www.unhcr.org/4ad5820f9.html> (last visited Feb. 17, 2011).

Similarly, in January 2009, the United Nations Office of the High Commissioner for Human Rights (OHCHR) published a report recognizing a link between climate change and human rights. *Climate Change and Human Rights*, *supra* note 12.

Lack of Comprehensive Consideration of Human Rights Concerns

Within the UN framework, the OHCHR has recognized that adaptation and mitigation policies may impact human rights.⁷⁵ In fact, the OHCHR is perhaps the only UN agency to explicitly describe the connection between human rights and climate policies. However, the OHCHR has only addressed two specific policies: biofuel production and programs to mitigate climate change by reducing deforestation (the Reduced Emissions from Deforestation and Degradation, or REDD programs).⁷⁶ Virtually all climate policies, however, can have serious implications for the

The United Nations Environment Programme (UNEP) has made significant contributions to the conceptualization and implementation of both adaptation and mitigation strategies. See United Nations Environment Programme [UNEP], *UNEP Climate Change Strategy for the UNEP Programme of Work 2010-2011*, 12, DCP/1119/NA, available at http://www.unep.org/pdf/UNEP_CC_STRATEGY_web.pdf (last visited Feb. 17, 2011).

The International Organization for Migration (IOM) has made significant contributions to the dialogue on forced migration resulting from climate change. See Oli Brown, *Migration and Climate Change*, (IOM Migration Research Series No. 31, Geneva, Switzerland,) 2008 available at http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/serial_publications/MRS-31.pdf (last visited Feb. 17, 2011) (This report, published by IOM, includes a disclaimer that the opinions expressed in the report do not necessarily represent those of the IOM); *Migration, Climate Change and the Environment*, IOM POLICY BRIEF (IOM, Geneva, Switzerland), May 2009; International Organization for Migration [IOM], *Migration, Climate Change and Environmental Degradation*, <http://www.iom.int/jahia/Jahia/activities/by-theme/migration-climate-change-environmental-degradation> (last visited Feb. 17, 2011).

Additionally, the Inter-Agency Standing Committee (IASC), a membership organization, has engaged in considerable work to address climate change and humanitarian risks, released a number of related reports, and directed significant efforts towards the UNFCCC process. See Inter-Agency Standing Committee (IASC), *About ISAC*, available at <http://www.humanitarianinfo.org/iasc/pageloader.aspx?page=content-about-default> (last visited Feb. 17, 2011); International Federation of Red Cross and Red Crescent Societies [IFRC], UN Office for the Coordination of Humanitarian Affairs [OCHA] *Addressing the Humanitarian Challenges of Climate Change Regional and National Perspective, Preliminary Findings from the IASC Regional and National Level Consultations*, available at <http://www.humanitarianinfo.org/iasc/pageloader.aspx?page=content-news-newsdetails&newsid=134> (follow “Addressing the Humanitarian Challenges of Climate Change – Regional and National Perspectives. Preliminary Findings from the IASC Regional and National Level Consultations” hyperlink) (last visited Feb. 17, 2011); International Federation of Red Cross and Red Crescent Societies [IFRC], Red Cross / Red Crescent Climate Centre & ProVention Consortium with Ken Westgate, *Climate Change Adaptation Strategies for Local Impact, Key Messages for UNFCCC Negotiators, Technical Paper for the IASC Task Force on Climate Change* (May 2009), available at unfccc.int/resource/docs/2009/smsn/igo/054.pdf (last visited Feb. 17, 2011).

See *infra* note 75 for discussion of the World Health Organization’s work.

⁷⁵ Climate Change and Human Rights, *supra* note 12.

⁷⁶ *Id.* at 22-23. The UNFCCC Conference of Parties adopted a decision on Reduction of Emissions from Deforestation and Degradation at the 13th Conference of the Parties in Bali. UNFCCC, Conference of the Parties, Decision 2/CP.13, Reducing emission from deforestation in developing countries: approaches to stimulate action, see *Bali Action Plan*, *supra* note 20, at 8. The economic, social and cultural rights of millions of people are closely tied to forest goods and resources. Frances Seymour, *Forests, Climate Change, and Human Rights: Managing Risk and Trade-offs*, in HUMAN RIGHTS AND CLIMATE CHANGE (forthcoming Stephen Humphreys ed., Cambridge University Press, Dec. 2009). Because of this close connection, there is a high possibility “for policy initiatives taken in response to climate change to have unintended negative consequences for human rights.” Seymour, *supra*. Specifically, the Internal Forum of Indigenous Peoples on Climate Change has expressed concern that REDD programs will lead to loss of indigenous lands and resources, cause forced evictions, threaten traditional agricultural practices, negatively impact cultural diversity, and increase social conflicts. *Id.* For these reasons, REDD policies serve as another example of a mitigation policy that may have serious implications for the enjoyment of human rights, particularly by a traditionally marginalized group. See also, ROUGH GUIDE, *supra* note 13, at 32-33; International Forum of Indigenous Peoples on Climate Change, *Statement by the International Forum of Indigenous*

enjoyment of human rights.⁷⁷ Moreover, treatment of the full range of rights impacts and corresponding policies is incomplete across the entire UN system.⁷⁸ The relevant agencies lack guidance, political will, and urgency from member states.

The World Health Organization (WHO) has drawn attention to the important relationship between adaptation and mitigation policies and human health.⁷⁹ One recently-published WHO report called for further examination of the issue.⁸⁰ Additionally, the International Organization for Migration (IOM) has made important conceptual contributions including questioning the international view that migration is merely “a failure of adaptation,” by pointing out that “it is also one of the possible adaptation strategies to climate and environmental change.”⁸¹

These examples demonstrate that the international community has begun to consider the issue of climate change policy and human rights but that this examination is incomplete. Perhaps more striking, international agencies treat climate change impacts selectively, in relation to their respective mandates, rather than comprehensively through an integrated approach in a single forum.

Lack of Inclusive Focus on Human Rights Impacts of Climate Change Policies

UN agencies and other international institutions have focused primarily on the direct impacts of climate change, and have discussed adaptation and mitigation strategies exclusively as solutions. For example, the OHCHR identifies several ways that climate change may increase stress on water supplies for millions of people around the world.⁸² The OHCHR also notes that “the negative effects of climate change on water supply and on the effective enjoyment of the right to water can be mitigated through adoption of appropriate measures and policies.”⁸³ Despite these

Peoples on Climate Change (IFIPCC) on ‘Reduced Emissions from Deforestation and Forest Degradation’ (REDD) Agenda Item at the UNFCCC Climate Negotiations, The 13th Session of Conference of the Parties to the UNFCCC SBSTA 27, agenda item 5/REDD (Nov. 2007); TOM GRIFFITHS, FOREST PEOPLES PROGRAMME, SEEING ‘REDD’? FORESTS, CLIMATE CHANGE MITIGATION AND THE RIGHTS OF INDIGENOUS PEOPLES AND LOCAL COMMUNITIES (May 2009).

⁷⁷ See Section II, Human Rights Implications of Adaptation and Mitigation Policies for examples.

⁷⁸ See *supra* note 74 for examples of those UN agencies and international bodies that have begun to consider the human rights impacts of climate change and climate change policies.

⁷⁹ The World Health Organization (WHO) has made vital contributions to the field through its work to delineate the connections between climate change and human health, advocate for greater attention and research to the topic, and consider the most effective interventions for promoting human health. See World Health Organization [WHO], *Protecting Health from Climate Change: Global Research Priorities*, (World Health Organization, Geneva, Switzerland) 2009 at ii, 8 available at <http://www.who.int/globalchange/publications/9789241598187/en/index.html> (last visited Feb. 17, 2011) [hereinafter *Global Research Priorities*] (representing the product of a global consultation sponsored by WHO); World Health Organization [WHO], *WHO Workplan on Climate Change and Health*, available at http://www.who.int/globalchange/wha_plans_objectives/en/print.html (last visited Feb. 17, 2011).

⁸⁰ World Health Organization [WHO], *WHO Workplan on Climate Change and Health* Home Page, http://www.who.int/globalchange/wha_plans_objectives/en/print.html (last visited Feb. 17, 2011).

⁸¹ International Organization for Migration [IOM], Migration, Climate Change and Environmental Degradation, a Complete Nexus Home Page, available at <http://www.iom.int/jahia/Jahia/pid/2070> (last visited Feb. 17, 2011) [hereinafter IOM Webpage].

⁸² *Climate Change and Human Rights*, *supra* note 12, at 11.

⁸³ *Id.* at 11.

considerations, the goals of these programs could be further advanced by including analyses of the unintended impacts of mitigation and adaptation programs on the enjoyment of human rights. For example, greater agricultural use of wastewater may increase the risk of contamination or disease, and changes in crop irrigation patterns may have impacts on food security,⁸⁴ thus negatively affecting the rights to health and food.

The importance of the consideration of human rights impacts is also evident in the adaptation and mitigation efforts of the United Nations Environment Programme (UNEP). UNEP has provided valuable assistance to countries to develop sound energy policies; has developed assessment tools for climate change; has supported adaptation planning through disaster prevention efforts; and has given preliminary consideration to the human impacts of climate change policy. Nevertheless, the Programme has not articulated a cohesive strategy or guidelines for reviewing the unanticipated human rights impacts of its work. The dual problems of insufficient development of the issue and fragmented engagement are symptoms of the lack of coherent member state attention and commitment that must be addressed.

Lack of Comprehensive Strategy for International Cooperation

Despite widespread consensus that the international community must identify and address the human consequences of climate change policies, no cohesive strategy exists to realize this goal. Engaged UN agencies have not offered sufficient guidance to date. UNHCR encourages the international community to clarify responsibilities and “to adopt an approach based on respect for human rights and international cooperation,” in particular with regard to the “international protection regime.”⁸⁵ Similarly, the OHCHR has stated that “[c]limate change can only be effectively addressed through cooperation of all members of the international community,” and that “international cooperation is important because the effects and risks of climate change are significantly higher in low-income countries.”⁸⁶ In addition, the Inter-Agency Standing Committee, a membership organization focused on inter-agency coordination of humanitarian assistance, successfully gathered a number of UN and non-UN humanitarian institutions to consider climate change collectively, but still calls for more inter-agency cooperation.⁸⁷

⁸⁴ WORLD HEALTH ORGANIZATION, PROTECTING HEALTH FROM CLIMATE CHANGE: GLOBAL RESEARCH PRIORITIES 10 (2009).

⁸⁵ UNHCR Perspective, *supra* note 69, at 9.

⁸⁶ *Climate Change and Human Rights*, note 12, at ¶ 84. Additionally, the World Health Assembly (WHA) passed a resolution in 2009 calling upon the WHO to work across the UN, international agencies, and member states to ensure that “health impacts and their resource implications are understood and can be taken into account” in future national and international climate change policymaking, World Health Organization [WHO], *Climate Change and Health, Resolution of the Sixty-First World Health Assembly*, 2, WHA 61.19 (May 24, 2008), available at http://apps.who.int/gb/ebwha/pdf_files/WHA61-REC1/A61_Rec1-part2-en.pdf (last visited Feb. 17, 2011) [hereinafter *World Health Assembly*].

⁸⁷ World Food Programme [WFP], Int’l Fed’n of Red Cross and Red Crescent Soc’ys [IFRC], U.N. Office for the Coordination of Humanitarian Affairs [OCHA], *Addressing the Humanitarian Challenges of Climate Change: Regional and National Perspectives, Preliminary Finds from the IASC Regional and National Level Consultations*, 21, SU/0909/3213, (September 9, 2009), available at <http://www.humanitarianinfo.org/iasc/pageloader.aspx?page=content-subsidi-common-default&sb=76> (last visited Feb. 17, 2011); see also Inter-Agency Standing Committee, Welcome to ISAC, <http://www.humanitarianinfo.org/iasc/> (last visited Feb. 17, 2011) (providing background information on ISAC).

Currently there is no comprehensive plan for cooperation among governments, international bodies, scientists, and civil society. Developed nations may have commitments to assist developing nations,⁸⁸ but without some form of guidance regarding how states and other actors might cooperate, or a framework within which to do so, there remains a large gap in the existing UN and international agency treatment of this important issue.

Lack of Cohesive Principles or Streamlined Process for Guiding States

International agencies and states must clarify specific and cohesive principles or guidelines for states to address human rights when developing and implementing climate change policies. Some international agencies and institutions have made important efforts in this regard. The OHCHR identifies many direct links between climate change and the enjoyment of human rights, and, to some extent, links climate change *policies* with human rights.⁸⁹ Similarly, both UNHCR and IOM identify ways in which climate change may stimulate migration, and the reasons why migration might be used as an adaptation strategy.⁹⁰ UNHCR and IOM also recognize how migration may interact with human health, political and ethnic conflicts, and gender dynamics.⁹¹ UNHCR, for example, explicitly calls for future analysis to develop a “common understanding” of the links between climate change, environmental degradation, armed conflict, displacement, and migration.⁹²

These are all important acknowledgements that advance the climate policy discussion. However, these acknowledgements do not suggest how nations might tackle this cross-cutting issue; do not provide guidelines that address the human rights impacts of climate change response measures; and do not provide advice for how states might formally integrate human rights considerations into their policymaking process.

The Need for a New Process

Faced with a complex and evolving set of considerations and key gaps in the existing climate change approaches, governments need a structure and a Process in the UNFCCC that will facilitate collaboration in the development and implementation of human rights based-approaches to climate change polices. UN agencies and other international institutions have begun important, but largely isolated, analyses of human consequences of climate change and climate change policies.

It is essential to act now, as new commitments to address climate change are being formed, to create a central forum for increased collaboration with and support for governments. This forum should build constructively on the knowledge and expertise within international agencies and bodies and draw all relevant actors to work together. Several existing models provide a useful

⁸⁸ *General Comment 3, The Nature of States Parties Obligations (Article 2 para. 1 of the Covenant)*, ¶ 14, (1990), cited in *Climate Change and Human Rights*, *supra* note 12, at 28.

⁸⁹ *Climate Change and Human Rights*, *supra* note 12. Also, the WHA calls on member states to “consider the health impacts of potential mitigation and adaptation measures, *see World Health Assembly*, *supra* note 72.

⁹⁰ *See UNHCR Perspective*, *supra* note 69; IOM Webpage, *supra* note 81.

⁹¹ *See UNHCR Perspective*, *supra* note 69; IOM Webpage, *supra* note 81.

⁹² *UNHCR Perspective*, *supra* note 69, at 10.

starting point to consider how this process might function.⁹³ Below, we discuss particular ways in which these models address facilitation of information sharing, technical assistance, and guidelines for supporting rights-based approaches. These descriptions are non-exhaustive, and are provided simply as one tool for the conceptualization of how a new process could function.

This new Process should be guided by its capacity to address issues, as they arise, in climate change policy development. Located within the UNFCCC, the Process should facilitate input and clarification of standards and best practices by expert international agencies, institutions, and NGOs. In order for an international process to effectively address the human rights and humanitarian implications of climate change, it should be able to: (1) clarify human rights principles applicable to the development of climate change policies; (2) facilitate information sharing; (3) provide technical assistance; and (4) operate in these capacities at international, regional, and state levels. These four elements will also need to be supported by a sustainable financing component. Together, these four elements comprise the charter for the new Process.

Clarification of Existing Human Rights Standards

The new Process should clarify existing human rights principles and international standards that will be useful for states to apply to all climate change policies. The clarification of these applicable norms should occur through collaboration among governments, existing international bodies, and a diverse group of civil actors, including scientists, human rights experts, and representatives of NGOs, as well as a broad spectrum of representatives of affected groups and members of civil society. In practice, the resulting guidelines should address the human rights concerns of climate change response measures and establish a “do no harm” principle as the basis for evaluating climate change policies. The principles should provide guidance on how to apply a human rights-based approach (e.g. utilize Human Rights Impacts Assessments)⁹⁴ to evaluate policies, and should include specific guidelines for government decision-making.

For example, a nation designing an adaptation policy of seasonal or permanent relocation would be aided by principles that consider the potential cultural, social, and economic impacts on displaced communities and receiving communities. Alternatively, a nation accommodating non-citizens displaced by climate change could turn to principles addressing national sovereignty, and existing standards, to address migrant rights. Moreover, these guidelines should address how existing human rights principles can be utilized to ameliorate the disproportionate impacts

⁹³ One additional model, not explored in this paper is to link consideration of human impacts of climate change by the UNFCCC by giving an explicit mandate to existing UN human rights agencies such as the OHCHR, UNHCR, or IOM individually or collectively to develop principles, organize information sharing, and the provision of technical support.

⁹⁴ “Human Rights Impact Assessment (HRIA) measures the impacts of policies, programmes, projects and interventions on human rights.” Human Rights Impacts Resource Center, An Introduction to Human Rights Impact Assessment, *available at* <http://www.humanrightsimpact.org/hria-guide/overview/> (last visited Feb. 17, 2011) [hereinafter Human Rights Impact Assessment]. HIRA can be used to assess the unintended and indirect negative impacts that actions may have on human rights. *Id.*

of climate change policy, particularly on women, the elderly, indigenous populations, and other marginalized groups.⁹⁵

Once articulated through this collaborative Process, the principles would provide centralized and cohesive guidance to governments on how to uphold their existing rights commitments while addressing climate change. The resulting response measures would support community needs, reach all affected populations and territories and, more generally, would produce policies that are stronger, more sustainable, and more equitable.

There are a number of cases where elaboration of principles, and inclusive participation in such a process, has improved policymaking on a national level. The UN Economic Commission for Europe *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)* provides an example of a unique process through which multiple stakeholders, in particular civil society, participated in the conceptualization, negotiation, and implementation processes for a multinational agreement.⁹⁶ By way of example, during the negotiation of the *Aarhus Convention*, NGOs were invited to form an NGO coalition that actively participated alongside government representatives in the negotiation process.⁹⁷

The negotiation methods of the Aarhus Convention could be adapted to this current discussion. NGOs could be similarly invited to participate in clarifying human rights principles in the context of climate change policy, adding significant value to the proposed Process. This is familiar territory; the NGO community has played a key role in each step of the climate change negotiations, from the Rio Declaration to the present negotiations.⁹⁸ Moreover, NGOs are already leaders in engaging climate change policies and their unintended impacts on human

⁹⁵ See Brody, Demetriades & Espfen, *supra* note 51 (discussing the disproportionate impacts that climate change can have on women, and some of the ways in which application of human rights principles to the formulation of climate change policies can ameliorate these impacts).

⁹⁶ UN Economic Commission for Europe, *UN Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (June 25, 1998).

⁹⁷ Svitlana Kravchenko, *The Aarhus Convention and Innovations in Compliance with Multilateral Environmental Agreements*, 18 COLO. J. INT'L ENVTL L. & POL'Y 1, 6 (2007). Appropriate adjustments might be needed necessary to account for the difference in these processes; the outcome of the Aarhus Convention was an international a treaty, while the proposal here is for a voluntary process.

⁹⁸ See UNFCCC, *Civil Society and the Climate Change Process*,

http://unfccc.int/parties_and_observers/ngo/items/3667.php (last visited Feb. 7, 2011) (explaining that “[c]ivil society engages with the climate change process through representative non-governmental organizations”); UNFCCC Secretariat, *Promoting Effective Participation in the Convention Process*, ¶ 12, U.N. Doc. FCCC/SBI/2004/5 (Apr. 16, 2004) (describing NGO participation as a “fundamental element of the Convention process” that increases transparency, facilitates input from diverse perspectives, increases understanding of climate change issues within the general public, and promotes accountability). The Kyoto Protocol negotiations provide a good example of NGO participation. Working within the coordinated framework of the Climate Action Network (CAN), environmental NGO (ENGO) representatives attended at least two of the Kyoto negotiating sessions, met with country delegation members to discuss strategy, and caucused to share information and debate issues, and delivered statements during plenary sessions, among many other activities. Michele M. Betsill, *Environmental NGOs and the Kyoto Protocol Negotiations: 1995-1997*, in *NGO DIPLOMACY: THE INFLUENCE OF NONGOVERNMENTAL ORGANIZATIONS IN INTERNATIONAL ENVIRONMENTAL NEGOTIATIONS* 43, 48-49 (Michele M. Betsill & Elisabeth Corell eds., 2008).

rights.⁹⁹ As such, their input would enrich the discussion and lend valuable insight to the Process.

The *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* (“Maastricht Guidelines”) provide another example of a process that clarified existing human rights standards and provided concrete and constructive guidance to states in implementing economic, social, and cultural rights.¹⁰⁰ These Guidelines were conceptualized at a workshop attended by approximately 30 experts, including state representatives, UN officials, NGO representatives, and scholars,¹⁰¹ tasked with clarifying the nature and scope of violations to the *International Covenant on Economic, Social, and Cultural Rights*.¹⁰² The experts sought to aid those “who are concerned with understanding and determining violations of economic, social and cultural rights and in providing remedies thereto, in particular monitoring and adjudicating bodies at the

⁹⁹ See Center for International Environmental Law, Friedrich-Ebert Stiftung, Human Rights and Climate Change: Practical Steps for Implementation (Feb. 25, 2009), *available at* http://www.ciel.org/Publications/CCandHRE_Feb09.pdf (last visited Feb. 17, 2011) (discusses the human rights impacts of response policies); International Work Group for Indigenous Affairs et al, international NGOs and support organizations, Joint Indigenous Peoples and NGO Statement on the Occasion of the Presentation of the Report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the Relationship between Climate Change and Human Rights (Mar. 12, 2008), *available at* http://www.forestpeoples.org/documents/law_hr/un_ohchr_ngo_climate_statement_mar09_eng.pdf (last visited Feb. 17, 2011) (mitigation measures like agrofuel plantations and large hydroelectric dams violate their rights, and urges the consideration of indigenous peoples in the development of mitigation and adaptation strategies); *Oxfam Agriculture Campaign*, *supra* note 47 (explaining the societal harms of biofuel production); Ryan Schuchard and Nicki Weston, The Nexus of Climate Change and Human Rights, *Climate Biz: The Business Resource for Climate Management* (June 25, 2009), *available at* <http://www.climatebiz.com/blog/2009/06/25/nexus-climate-change-and-human-rights> (last visited Feb. 18, 2011) (This green business blog notes that mitigation policies aimed at carbon reduction have had “unintended human rights consequences for vulnerable populations in those communities.” Businesses must make hard decisions about land use, access to natural resources, and opportunities for economic development.”).

This list is not exhaustive and may ignore the work of key civil society groups in non-English speaking countries. It suggests, however, that civil society organizations have begun to articulate concerns about the connection between climate change policy and human rights. Other notable groups working more generally on “climate justice” issues are: The Mary Robinson Foundation -- Climate Justice *available at* <http://www.mrfcj.org/about> (last visited Feb. 18, 2011) (directed by Mary Robinson, former President of Ireland and former UN High Commissioner for Human Rights); International Rivers *available at* www.internationalrivers.org (last visited Feb. 18, 2011) (an NGO that, in part, works to raise “awareness that efficiency and small-scale, decentralized and renewable solutions are essential for meeting water and energy needs, alleviating poverty and protecting the planet”); tck, tck, tck, Time for climate justice campaign *available at* <http://tcktcktck.org> (last visited Feb. 18, 2011), (partners include the Global Humanitarian Forum; the Campaign is building an online grassroots campaign); Gender CC Webpage <http://www.gendercc.net/> (last visited Feb. 18, 2011) (launched to serve as a “platform for information, knowledge and networking on gender and climate change;” 350.org *available at* www.350.org (last visited Feb. 18, 2011); Climate Justice Now! (a “network of organization and movements across the globe” that works “to expose the false solutions to the climate crisis promoted by [rich industrialised countries], alongside financial institutions and multinational corporations – such as trade liberalisation, privatisation, forest carbon markets, agrofuels and carbon offsetting.”) *available at* <http://www.climate-justice-now.org/principles/> (last visited March 7, 2011).

¹⁰⁰ U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ, Soc. & Cultural Rights, *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, U.N. Doc. E/C.12/2000/13 (Oct. 2, 1997) [hereinafter *Maastricht Guidelines*].

¹⁰¹ *Id.*

¹⁰² *Id.* at Introduction.

national, regional and international levels.”¹⁰³ The resulting Maastricht Guidelines have deepened international understanding of the breadth and character of these rights and have informed state practices for a decade.¹⁰⁴

Information Sharing

The new Process to address climate change policies and human rights should also facilitate the sharing of pertinent information. Thus far, information gathering and sharing has been a central component of climate change policy.¹⁰⁵ The IPCC in particular continues to play a critical role in this regard.¹⁰⁶ However, research disseminated through the IPCC has focused primarily on climate change science: the visible impacts of change and projections of future warming and its associated impacts. It has given more limited consideration to the social impacts of mitigation and adaptation strategies and their relationship to climate change policy.¹⁰⁷

Governments and experts require a forum to share information about and to discuss the human rights impacts of mitigation and adaptation policies. With a forum, countries will learn how each is addressing these difficult issues, and how each is utilizing rights-based approaches to analyze, develop, implement, and evaluate the successes and failures of such policies. The resulting dialogue and exchange of ideas will likely increase the overall effectiveness and sustainability of future climate change policies.

A wide range of additional information regarding human rights impacts will also be useful to states as they design and implement climate change policies. Although specific policies may differ between nations, insight and experience stemming from the design, implementation and assessment of climate change plans would likely have broad application. For example, multidisciplinary research that models the human impacts of both mitigation and adaptation measures would be extremely valuable. Similarly, well-documented and evidence-based case studies, perhaps using Human Rights Impacts Assessments,¹⁰⁸ of climate change policies in different countries would also be helpful. Additionally, comparative research evaluating the strengths and weaknesses of national climate change policies on human rights would aid states as they implement new measures, or reevaluate and revise existing ones. Development and sharing of monitoring systems and research criteria would also prove useful to governments as they undertake their own Human Rights Impact Assessments.

¹⁰³ *Id.* at Introduction. (For further discussion of the purpose, see Victor Dankwa, Cees Flinterman & Scott Leckie, Commentary to the Maastricht Guidelines on Violations of Economic, Cultural and Social Rights, 20 HUM. RTS Q. 705, 708 (1998)).

¹⁰⁴ Maastricht Guidelines, *supra* note 100, at Introduction.

¹⁰⁵ See Kyoto Protocol, *supra* note 8, art. 2(1)(b), art 10 (b)(ii)(e); *Summary for Policymakers*, *supra* note 10.

¹⁰⁶ See *Summary for Policymakers*, *supra* note 10. The IPCC provides an impressive example of information sharing and gathering. Aggregating the work of thousands of scientists worldwide, providing academic review, and acting as a clearinghouse, the IPCC has been tremendously successful in synthesizing the vast research conducted around climate change science and impacts. With a relatively small organizational size, the sheer quantity of information that the IPCC is able to review and assess within this structure is noteworthy.

¹⁰⁷ See *Summary for Policymakers*, *supra* note 10.

¹⁰⁸ Human Rights Impact Assessment, *supra* note 94.

The *Hyogo Framework for Action 2005-2015* (“Hyogo Framework”) provides several examples of information sharing at the international level.¹⁰⁹ The *Hyogo Framework* aims to substantially reduce losses from natural or human-made disasters through methods such as the integration of “disaster risk reduction into sustainable development policies and planning;” the development and “strengthening of institutions, mechanisms and capacities to build resilience to hazards;” and the “systematic incorporation of risk reduction approaches into the implementation of emergency preparedness, response and recovery” programs.¹¹⁰ The Hyogo Framework has employed the use of an online tool termed the “Hyogo Framework Monitor” (HFM) to facilitate information sharing within this process.¹¹¹ Country representatives to the Hyogo Framework have access to this online tool, and report on national progress by inputting data on the website.¹¹² The HFM then provides state representatives “with easy access to its disaster risk information and monitoring trends in progress over the years.”¹¹³ It also allows them to view the progress and strategies of other countries with respect to the Hyogo Framework priorities,¹¹⁴ and provides access to a large number of additional reports on global disaster risk prevention, particularly those written by the United Nations International Strategy for Disaster Reduction (UNISDR).¹¹⁵

Notably, the Hyogo Framework also promotes information sharing through international and national conferences. At the international level, the Global Platform is “the main forum for continued and concerted emphasis on disaster reduction, providing strategic guidance and coherence for implementing the Hyogo Framework, and for sharing experiences and expertise among all its stakeholders.”¹¹⁶ At the national level, the National Platforms for Disaster Risk Reduction allow for “advocacy, coordination, analysis and advice on disaster risk reduction” within nationally operated fora.¹¹⁷ These various National Platforms often sponsor workshops and events to strengthen the national coordination of disaster risk reduction efforts.¹¹⁸

¹⁰⁹ The Hyogo Framework is offered as an example, not as a prescriptive model for the Process. Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disaster, UN Doc. A/CONF.206/6 (2005).

¹¹⁰ INTERNATIONAL STRATEGY FOR DISASTER REDUCTION, SUMMARY OF THE HYOGO FRAMEWORK FOR ACTION 2005-2015: BUILDING THE RESILIENCE OF NATIONS AND COMMUNITIES TO DISASTERS (HYOGO FRAMEWORK) 1 (2005), available at <http://www.unisdr.org/eng/hfa/hf-summary.htm> (last visited Feb. 17, 2011).

¹¹¹ Hyogo Framework Monitor, available at <http://www.preventionweb.net/english/hyogo/hfa-monitoring/hfa-monitor/> (last visited Feb. 17, 2011).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Hyogo Framework for Action Progress Reports, <http://www.preventionweb.net/english/hyogo/progress/reports/?pid:222&pil:1> (last visited Feb. 17, 2011).

¹¹⁵ Hyogo Framework for Action, Key Documents, <http://www.preventionweb.net/english/hyogo/key-documents/?pid:34&pil:1> (last visited Feb. 17, 2011). The Hyogo Framework website is contained within the larger Prevention Web website, which provides additional information about disaster-related efforts. See www.preventionweb.net.

¹¹⁶ Hyogo Framework Monitor, *supra* note 111; Global Platform for Disaster Risk Reduction, <http://www.preventionweb.net/globalplatform/2009/> (last visited Feb. 17, 2011)

¹¹⁷ Hyogo Framework, National Platforms, <http://www.preventionweb.net/english/hyogo/national/list/?pid:23&pih:2> (last visited Feb. 17, 2011)

¹¹⁸ Hyogo Framework, National Platform Key Events, <http://www.preventionweb.net/english/hyogo/national/key-events/?pid:23&pif:3> (last visited Feb. 17, 2011);

Technical assistance

The third component of the new Process should be the provision of technical assistance. While the world's poorest countries experience some of the most threatening impacts of climate change,¹¹⁹ they are often the least technically equipped to address the human rights impacts of climate change, much less the impacts of climate change policies on their populations. In order to address this disparity in resources, the new Process should provide technical assistance to vulnerable states. This assistance could take many forms, such as coordinating with existing humanitarian bodies,¹²⁰ or initiating regional systems to provide assistance. Alternatively, the Process could offer direct assistance through training of relevant personnel in state and regional agencies tasked with the design and implementation of climate change policies.¹²¹

The Aarhus Convention provides a number of examples of technical assistance to consider. Aarhus Centres have been established in eight countries¹²² to facilitate the implementation of the Convention by conducting awareness-raising activities, encouraging dialogue between government and civil society, and hosting training activities for “journalists, judicial staff, school children and other target groups,” among other programs.¹²³ The proposed Process might draw upon the concepts of regional centers, training events, and collaboration with other agencies to develop its own technical assistance component.

Operation at International, Regional, and National Levels

All components of the Process should operate at international, regional and national levels of policymaking. Not only are climate change policies implemented at all levels of governance, their attendant human rights impacts are likewise experienced at all levels. Moreover, evaluation of impacts should be an ongoing activity since new impacts may emerge over time. By encouraging greater involvement and cooperation among different levels of government and diverse nations, the Process will create a cohesive, resilient and effective framework to guide policymaking.

At the international level, the new Process would create a centralized forum for the UNFCCC to consider and address human rights concerns. This forum would provide states with a place and a process in which to clarify key existing rights-based principles and international standards¹²⁴ applicable to the national policies of all states. The Process would also offer guidelines and

¹¹⁹ See, e.g., *Climate Change and Human Rights*, *supra* note 12, at ¶¶ 23,26,32; *Silent Crisis*, *supra* note 12, at 58; *Suffering the Science*, *supra* note 12, at 130; STERN, *supra* note 12.

¹²⁰ Coordination might be organized by the IASC, for example, and include cooperation among full members such as OCHA, UNDP, UNHCR, FAO, and many others. See IASC website, *supra* note 6.

¹²¹ See Abbott, *supra* note 5, and accompanying text.

¹²² UNECE, Aarhus Centres Contacts, available at <http://www.unece.org/env/pp/accontacts.htm> (last visited Feb. 17, 2011).

¹²³ *The OSCE and the Aarhus Convention*, FACTSHEET (Organization for Security and Co-operation in Europe) at 2. Additionally, the Organization for Security and Co-operation in Europe, in collaboration with the Environment and Security Initiative, has supported the implementation of the Convention, particularly with respect to the creation of the Aarhus Centres. UNECE, Aarhus Centres, available at <http://www.unece.org/env/pp/acintro.htm> (last visited Feb. 17, 2011).

¹²⁴ See Background and Problem Statement, Protecting Human Rights and Addressing Climate Change are Compatible Interests.

practical suggestions for how these principles might inform adaptation and mitigation strategies. Going forward, the UNFCCC would be able to reference these principles and models when developing, introducing, or supporting new climate policies. Additionally, the Process would establish a method for information sharing among governments, international agencies, and civil society around the world, while improving cooperation among states as they share relevant experiences and expertise.

At the regional level, the proposed Process would provide valuable guidance and assistance to existing multilateral and regional organizations, including political and economic entities, as they confront climate change issues. This assistance might include facilitation of regional cooperation in standard setting and implementation, with particular attention to the transnational effects of climate change, including migration. Through training and assistance programs, the Process could also aid regional groups in the development of best practices for climate change-related activities and policies.¹²⁵

At the state level, the new Process would inform national reviews of existing climate change policies and their human rights implications, guide the development of new national climate policies, and provide technical assistance in the conceptualization, implementation, and if necessary, the revision of all relevant state efforts. It would also support information gathering at the state level, perhaps through Human Rights Impact Assessments of national policies, and the dissemination of this information to the wider international community. For example, a national government considering a new biofuel policy might use the Process' principles to guide project design and monitoring. Also, the Process would provide the government with technical assistance, potentially in the form of a training event within the country (or a neighboring one).

Alternatively, a regional office of the Process might work directly with a government to analyze how its national biofuel policy might affect the human rights of its citizens. The government could also seek additional information through the information sharing component, which might provide extra-national examples of sound biofuel policies. After implementation, the country could share its experience with other countries, through impact assessments or policy reviews. As additional impacts arise, policies could be revised. In these ways, all elements of the new Process would operate at the state level to assist governments in the consideration, development, implementation, and evaluation of climate change policies, and to ensure that policies “do no harm” with regard to human rights.

¹²⁵ We acknowledge that regional groups serve many different functions. Regional cooperation through the UN would include cooperation with economic, security, health and rights-oriented bodies. The following list of regional organizations is illustrative and draws upon economic and social cooperation for purposes of example: Economic Commission for Africa, Economic and Social Commission for Asia and the Pacific, Economic Commission for Europe, Economic Commission for Latin American and the Caribbean, and the Economic and Social Commission for Western Asia. Additionally, *see* Fourth World Conference on Women, *Beijing Declaration and Platform for Action, Institutional Arrangements*, Sept. 15, 1995, A/CONF.177/20 (1995), available at <http://www1.umn.edu/humanrts/instreet/e5dplw.htm#five> (last visited Feb. 17, 2011) for an example of tasking with regional commissions with a cross-cutting issue.

Conclusion

Applying a human rights-based approach to climate change policies will ensure their sustainability and effectiveness. Empirical evidence demonstrates that “a human rights-based approach leads to better and more sustainable human development outcomes.”¹²⁶ These rights-based approaches would strengthen affected communities and nations in their response to climate change by improving their transparency, participation, information and accountability, and enable them to continuously develop and revise their policies in response to new challenges. The proposed Process will therefore advance human rights while facilitating improved human stewardship of the planet. It is imperative that stakeholders charge the UNFCCC with a mandate and financing to begin an ongoing process to address the gap between existing climate change action and the unintended human rights impact of climate change policies.

A new Process designed specifically to address the human rights of climate change polices could take a multitude of forms. This paper seeks to help facilitate a dialogue, provide some concrete suggestions regarding key elements of such a Process, and offer examples that might be adapted to guide its development. The four elements of the Process are indicative, not exclusive, and the examples drawn from existing mechanisms are far from perfect. However, these suggestions provide a starting point for the conceptualization of a new framework that melds, rather than isolates, discussions of climate change policies and human rights.

The key now is for negotiating states to act to confirm a mandate in the language of the final agreement in Durban to develop the Process within the four corners of the UNFCCC and its processes. All of the elements of this Process may not be clearly delineated as of yet – indeed, this is a task for member nations – but the need for such a process is abundantly clear. Ultimately, as the UNFCCC process has already recognized, it is only by drawing together diverse peoples guided by a common framework that we as inheritors and stewards of the planet can succeed in responding to the dangers of climate change. States must remember that their long standing commitment to fundamental rights and freedoms, equality and development for all, is part of this task.

¹²⁶ *Human Rights-Based Approach to Development and Cooperation*, *supra* note 4, at 16.