

POLICY PAPER

# A Human Rights-based Approach to Climate and Disaster Risk Financing

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## Brief Summary

Climate and disaster risk financing (CDRF) measures and activities that governments or other actors carry out can affect the enjoyment of human rights. The Paris Agreement therefore recognises that, “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights (...)” (Paris Agreement 2015). This paper presents a human rights-based approach to CDRF (HRBA-CDRF). In accordance with the approach, CDRF instruments and activities should be developed, implemented, and evaluated so as to protect and promote enjoyment of human rights to prevent harm to communities and ecosystems, as well as for promoting sustainable development in the context of climate risk management.

The HRBA-CDRF contains four guardrails and five principles, along with comprehensive guidelines including ‘necessary measures’ for implementing each principle. All actors involved in developing, implementing, and evaluating CDRF instruments and activities should apply the HRBA-CDRF, with the ultimate objectives of promoting and protecting human rights, preventing harm to communities and ecosystems, and promoting sustainable development.

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# Contents

<b>1</b>	<b>Introduction.....</b>	<b>4</b>
<b>2</b>	<b>Climate Change, Climate and Disaster Risk Management, and Human Rights.....</b>	<b>5</b>
2.1	The Need for a Human Rights-based Approach for Climate and Disaster Risk Financing Instruments and Activities.....	6
2.2	Legal Basis.....	9
2.3	Human Rights Entitlements and Obligations in the Context of Climate Change: Right Holders and Duty Bearers.....	10
<b>3</b>	<b>A Human Rights-based Approach to Climate and Disaster Risk Financing.....</b>	<b>12</b>
<b>4</b>	<b>Principles.....</b>	<b>16</b>
4.1	Non-Discrimination and Equality.....	17
4.2	Participation and Empowerment.....	18
4.3	Transparency.....	20
4.4	Accountability.....	21
4.5	Do No Harm.....	22
<b>5</b>	<b>Operationalisation of the HRBA’s Principles and Application Guidelines.....</b>	<b>24</b>
<b>6</b>	<b>The Way Forward.....</b>	<b>28</b>
<b>7</b>	<b>Bibliography.....</b>	<b>29</b>

# 1 Introduction

Climate change impacts have already profoundly affected enjoyment of human rights for people throughout the world, and these impacts are rapidly increasing. They include the growing frequency and severity of cyclones, storms, and heatwaves, as well as slower onset hazards such as sea-level rise. Climate change impacts mostly affect individuals and groups who are already disadvantaged, marginalised, excluded, and vulnerable. United Nations agencies and national governments have long explicitly acknowledged these facts. Measures by governments or other actors to respond to climate change can also have impacts on or neglect urgent needs related to the enjoyment of human rights. This concerns both measures to mitigate greenhouse gas emissions and measures to adapt to and manage climate change impacts. The Paris Agreement in its Preamble thus recognises that “(...) Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on Human Rights (...)” (Paris Agreement 2015).

An increasing number of climate and disaster risk financing (CDRF) instruments and activities have been implemented in developing countries, aiming to protect the poorest and often most vulnerable people. These measures, if well-developed and implemented, can improve resilience, empower right holders, and even provide incentives for risk reduction and prevention activities. Conversely, poorly designed and implemented CDRF can intensify pre-existing inequalities, and create new dependencies or new forms of discrimination, leaving behind the population’s already marginalised and most vulnerable parts. To ensure that indeed the poorest and most vulnerable benefit from CDRF schemes and that human rights violations through CDRF are prevented or minimised, the call has been made to follow a human rights-based approach (HRBA) (e.g. Schäfer et al. 2016). International initiatives such as the InsuResilience Global Partnership for Climate and Disaster Risk Finance and Insurance (IGP) highlight that their pro-poor principles “align with, and promote a human rights-based approach to climate and disaster risk finance” (InsuResilience 2019). Still, the details on definition, design, and application of an HRBA-CDRF remain vague. This paper endeavours to answer the following question: How can all relevant phases (development, implementation, and evaluation) of CDRF instruments and activities be aligned with and monitored based on human rights standards and principles? Thus, the paper further develops and expands on the 2018 Germanwatch Human Rights-based Approach to Climate Risk Insurance (Hutfiles 2018).

The paper starts with a brief analysis of the interlinkages of climate change, climate risk management, and human rights (Chapter 2). After establishing the need for a HRBA-CDRF (2.1), building on the legal basis (2.2) and a brief explanation to human rights entitlements, and obligations (2.3) it then presents an HRBA-CDRF (Chapter 3), which seeks CDRF instruments and activities to be developed, implemented, and evaluated so as to protect and promote the enjoyment of human rights. Next, it introduces the HRBA-CDRF principles to be applied to CDRF instruments and activities (Chapter 4). Necessary measures for each principle as well as guidelines for their application are subsequently described with regard to the approach’s applicability (Chapter 5).

## 2 Climate Change, Climate and Disaster Risk Management, and Human Rights

Climate change impacts are negatively affecting the realisation and enjoyment of a variety of human rights and they will increasingly do so in the future. United Nations agencies and national governments (e.g. OHCHR 2009a, OHCHR 2009b, OHCHR 2011a, UNFCCC 2011, OHCHR 2013, OHCHR 2016, Paris Agreement 2015) have long explicitly acknowledged this. The extent and nature of these harms are quickly developing and will vary from region to region and from community to community. It is, however, already evident that anthropogenic climate risks are likely to affect the rights to life, adequate food and water, health, and self-determination, among others (Johl & Lador 2012). Anthropogenic climate change impacts on human rights can be divided into two categories. The first is **direct impacts on human rights**, which can result from extreme weather events or slowly evolving events with direct implications on people's human rights; such as the loss of homes and means of subsistence (e.g. right to adequate housing and to self-determination) due to a cyclone or other storm, and the loss of access to drinking and/or irrigation water due to sea-level rise (e.g. rights to adequate food and to safe drinking water, right to return). The second is **indirect impacts on human rights**, which can occur when people, because of climate-induced migration or displacement, lack access to livelihoods, education, and other key elements, or live in conflict in the areas to which they migrated (e.g. right to social security, right to adequate standard of living, right to education).

The effects of climate change on human rights mostly affect those who already find themselves in vulnerable situations due to factors including geography, poverty, gender, age, indigenous or minority status, and disability (OHCHR 2011a). Therefore, the biggest impacts are expected in the least-developed countries, where people are most vulnerable, have the least capacity to adapt, and have least contributed to the causes of climate change (UN DESA 2017). The prevention of human rights-related harms is therefore also especially important for fulfilling the national development agendas and sustainable development goals (SDGs).

Next to the direct and indirect human rights impacts of climate change itself, it has also been recognised that **measures to respond to climate change by governments or other actors can impact the enjoyment of human rights** (e.g. OHCHR 2016; UNEP 2015). This concerns measures to mitigate greenhouse gas emissions, as well as measures to adapt to and manage the climate change impacts. Both can interfere with human rights, particularly with those of the most vulnerable. While, for instance, a large-scale renewable energy project may bring forced evictions, climate risk management measures might benefit one group to the detriment of another. Such might be the case for coastal fortifications that protect one community while exposing another to greater risk of erosion and/or flooding. This might also be the case for a climate risk insurance product only affordable for communities' wealthier members, thereby, for instance, damaging informal risk-sharing networks that also provide protection for the most vulnerable in times of disaster. From a human rights perspective, potentially affected communities must be able to participate in the planning process and a human rights-based risk assessment must inform the discussion.

Key agreements and UN agencies have acknowledged and highlighted that climate actions must be developed and implemented to avoid threatening or violating human rights (e.g. OHCHR 2016). The Special Rapporteur on human rights and the environment finds in his latest report, that "first, climate change and its impacts threaten a broad range of human rights, and second, as a result, States and

private actors have extensive human rights obligations and responsibilities” (OHCHR 2019b). Pursuant to the preamble of the Paris Agreement, “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on Human Rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity” (Paris Agreement 2015). Moreover, the guidelines for implementation<sup>1</sup> of the Paris Agreement contain references to human rights principles and standards that states can use to enforce such standards in climate protection measures (Eschke 2019). All acts to combat climate change therefore underlie an obligation, hence duty, to respect and promote human rights. Especially relevant in this context is that human rights law not only recognises **substantive rights** such as the rights to life, food, development, and of indigenous people, but also **procedural rights** such as the rights to information, education, and to participate in government decision-making processes (see also Chapter 2.2). Such procedural entitlements and resulting duties have implications for the processes by which governments make decisions about their climate change response strategies, both nationally and internationally, and how they carry out and review such measures.

## 2.1 The Need for a Human Rights-based Approach for Climate and Disaster Risk Financing Instruments and Activities

People worldwide are facing the realities of climate change. This is often manifesting at an increased frequency and in the form of severe extreme weather events. Between 1999 and 2018, about 495 000 people died worldwide and losses of US\$3.54 trillion (in Purchasing Power Parities) were incurred as a direct result of such events (Eckstein et al. 2019). Slow-onset processes (such as sea-level rise and desertification) will add an additional burden in the future.<sup>2</sup>

Destruction due to natural disasters (including climate change-fuelled events) means poor people in poor countries that are especially vulnerable to climate impacts face obstructions in their development. In particular, the Least Developed Countries and Small Islands Developing States face a growing risk of declining investments, stranded infrastructure investments, worsening credit ratings, higher debt, and ultimately, lowered adaptive capacity (Bread for the World 2019). Climate risk management is imperative for these countries in order to identify, reduce, and transfer risks, and to respond to events and disasters (IPCC 2012). CDRF, which helps governments or other actors address residual risks—which are impossible or not cost-effective to mitigate or reduce—is one step in this process (World Bank & GFDRR 2012).

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<sup>1</sup> Human rights are not explicitly enshrined in the implementation guidelines, as Norway, Canada, and the European Union demanded.

<sup>2</sup> With increasing reliability, attribution science can show that climate change is a driver for the observed frequency, intensity, and duration of some extreme weather events and slow-onset hazards (Committee on Extreme Weather Events and Climate Change Attribution et al. 2016).

## Financial risk management instruments and human rights

Financial risk management instruments aim to build resilience by increasing governments' financial response capacity to be able to meet post-disaster funding needs for response (relief), recovery, and reconstruction without compromising development objectives, fiscal stability, and wellbeing. CDRF instruments and activities can be distinguished at the time of their planning and use (Ghesquiere & Mahul 2010).

1. **Ex-ante instruments and activities**, which require proactive planning and allow for quick disbursement after a disaster. These include:
  - reserves or calamity funds
  - budget contingencies
  - contingent credit
  - risk transfer (insurance and catastrophe [CAT] bonds/risk-linked securities)
2. **Ex-post disaster instruments and activities**, which are not prepared before a disaster, can take some time to mobilise and are therefore more uncertain. These include:
  - donor assistance (relief)
  - budget reallocation
  - domestic credit
  - external credit
  - donor assistance (reconstruction)
  - tax increases

Based on states' obligations to respect, protect, and fulfil the human rights of their citizens and of any other people in their territory or under their jurisdiction, they have a responsibility to protect their population in the case of disasters or humanitarian crisis. Ensuring the enjoyment of human rights throughout a disaster situation, however, requires finance. Currently, this often represents implicit contingent liabilities for governments, leaving the open question of 'Who has to pay?' (Hallgatte et al. 2017: 13). Setting up CDRF instruments can help cover these liabilities created by natural hazards or other environmental risks to clarify these responsibilities, as well as the question of 'Who is the rights holder?' (e.g. vulnerable people towards their government) to receive support in the form of financial protection (Hallgatte et al. 2017: 160). CDRF instruments can also provide incentives for risk reduction (Hutfils 2018: 3) by making the costs of liabilities more visible and reducing political economical obstacles for investments (Hallgatte et al. 2017: 61). Introduction and utilisation of CDRF instruments can thereby help to protect and fulfil human rights, particularly for the most vulnerable. At the same time, CDRF instruments and activities should respect and promote human rights principles in their development, implementation, and evaluation as a preventative measure to avoid or minimise ex-post human rights violations that may arise from climate risk financing actions.

With the objective of building resilience by increasing developing countries' financial response capacities, an increasing number of CDRF instruments and activities have been implemented and supported in recent years. The population's most vulnerable<sup>3</sup> parts are often the activities' key target groups. Large international initiatives, such as the IGP, aim to enable more timely and reliable disaster response using climate and disaster risk finance and insurance solutions to help poor and vulnerable people recover more quickly, and to strengthen local resilience over time (InsuResilience 2018). To make sure that the marginalised and most vulnerable (e.g. the poorest members of communities) do indeed benefit from these schemes, there has been a call to follow an HRBA (e.g. Schäfer et al. 2016). The IGP, for example, has set up Pro-Poor Principles and underscores that these "align with, and promote a human-rights based approach to climate and disaster risk finance (both in terms of their attainment as well as the process requirements indicated by such an approach)" (InsuResilience 2019). *Realize Human Rights* is also one of the Pro-Poor Sub-Principles, with the objective that: "Climate and disaster risk finance and insurance solutions will contribute to ensuring poor and vulnerable people attain and maintain their Human Rights in the aftermath of disasters, or consequent to slow onset events caused by climate change" (ibid.).

Still, details on definition, design, and application of an HRBA-CDRF remain vague. In 2018, Germanwatch outlined the Human Rights-based Approach to Climate Risk Insurance, and thereby developed a framework for setting up climate risk insurance schemes that protect and promote human rights and recognise people as individual holders of human rights, and states and businesses as bearers of duties (Hutfils 2018). It places the principles of common but differentiated responsibilities and respective capacities, do no harm, polluter pays, and international human rights law at its core (ibid.). The approach proposes four basic principles to align the design process of climate risk insurance and related instruments and activities for achieving favourable human rights outcomes: (1) Non-discrimination and active inclusion of marginalised groups; (2) Participation and empowerment of those affected; (3) Transparency, accountability, and mechanisms for complaint; and (4) Respect towards and building on existing structures in the country/region (Hutfils 2018).

We decided to revise and extend the HRBA in order to advance the scope of an HRBA-CDRF to also include other CDRF instruments apart from insurance, and include all relevant related phases (development, implementation, and evaluation) of the respective instruments and activities. The revised HRBA approach, building on and adding to the formerly proposed framework, mainly strives to answer the following question: How must all relevant phases (development, implementation, and evaluation) of CDRF (including insurance instruments) and other financial instruments and activities be aligned, defined, and monitored based on human rights standards and principles? Accordingly, the revised HRBA-CDRF complements, specifies, and defines the principles in the respective phases. It also includes 'necessary measures' for all principles along with the process of implementing an HRBA.

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<sup>3</sup> The people and groups most vulnerable to climate change impacts have greater exposure to extreme weather events and slow-onset hazards, and are least able to prevent, adapt to and cope with these risks. They lose comparatively more in rapid onset events and have a higher risk of receding into poverty. Many factors can lead to vulnerability. These include economics, education, health and nutrition, housing and environment, social capital, and social inclusion. The climate crisis consequently impacts these people and groups existentially and their human rights are at high risk.

CDRF instruments and activities can, if well-developed and implemented, improve resilience, help in establishing planning security for people, empower right holders, and even provide incentives for risk reduction and prevention activities. However, if poorly designed and implemented, they can increase pre-existing inequalities, and create new dependencies or new forms of discrimination that may leave behind the poorest and most vulnerable people. In this light, all CDRF activities must be carried out in conformance with human rights.

## 2.2 Legal Basis

The HRBA-CDRF is anchored in a system of rights and corresponding obligations established by international law. Most central are the contents of international human rights law, Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), which together comprise the so-called Bill of Human Rights<sup>4</sup>. Together with the legal grounds of international climate, environmental, and sustainability law, they form the HRBA-CDRF's legal basis. In international climate law, the United Nations Framework Convention on Climate Change (UNFCCC)<sup>5</sup> and the Paris Agreement set out the legal framework. The Paris Agreement was the first climate agreement, and one of the first environmental agreements of any kind, to explicitly recognise the relevance of human rights. Additionally, the UNESCO Declaration of Ethical Principles in relation to Climate Change (2017) sets out a comprehensive set of ethical principles of decision-making, policy formulation, and other actions related to climate change, which should be taken into account internationally, regionally, nationally, sub-nationally, and locally as appropriate.

The Sendai Framework for Disaster Risk Reduction (2015) is central for the context of risk reduction. It acknowledges that “managing the risk of disasters is aimed at protecting persons and their property, health, livelihood and productive assets, while promoting and protecting all Human Rights, including the right to development” (Sendai Framework 2015). In the broader context of environmental protection and sustainable development, a wide-ranging set of legal grounds sets the scene for the HRBA-CDRF, especially under the premises of the rights to development in an environmental context. This includes the Stockholm Declaration (1972), Rio Declaration on Environment and Development (1992), Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention 1998), and the 2030 Agenda for Sustainable Development (2015). However, in this context, it is important to consider that development cannot compromise other human rights and fundamental freedoms; as Sen states: “The basic idea that the expansion of human freedom is both the principal end and the main means of development” (Sen 1999: 9). This overview of legal grounds does not claim to be exhaustive<sup>6</sup>; however, it displays the broad legitimisation of applying an HRBA-CDRF with the aim of protecting and promoting the enjoyment of human rights for preventing harm to communities and ecosystems, as well as promoting sustainable development in the context of managing climate and disaster risks.

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<sup>4</sup> Bill of Human Rights: <https://www.ohchr.org/Documents/Publications/Compilation1.1en.pdf>.

<sup>5</sup> In 2010, in Cancún, Mexico, the Conference of the Parties to the United Nations Framework Convention on Climate Change adopted Decision 1/CP.16, which noted that climate change's adverse effects have implications for the effective enjoyment of human rights, that population segments already vulnerable will most acutely feel such effects, and that party States should, in all climate change-related actions, fully respect human rights.

<sup>6</sup> The Annex gives a more comprehensive overview of conventions, agreements, and treaties from the fields of human rights, climate change, environment, sustainable development, and disaster risk management relevant to the HRBA-CDRF.

## 2.3 Human Rights Entitlements and Obligations in the Context of Climate Change: Right Holders and Duty Bearers

A key feature of human rights is the recognition of individual people as **rights holders**, who, by virtue of being human, have a claim to certain entitlements, and states as primary **duty bearers**, who are legally bound to respect, protect, promote, and fulfil the entitlements associated with those claims.<sup>7</sup> Therefore, a focus on rights and obligations helps to identify who is entitled to make claims and who has a duty to take action, empowering those who have legitimate claims to rights.

### ***Human rights entitlements of rights holders***

Rights holders possess entitlements outlined in international human rights law, which provides a foundation for the most vulnerable to claim support. The right to life, for instance, entitles every person to the safety of their own life, free from discrimination. Rights holders can also be seen as beneficiaries of obligations and duties, which in this case would be the protection of right holders' lives by any necessary means. In the context of climate change impacts, rights holders are those affected by the impacts of extreme weather events and slow-onset hazards, which are increasingly frequent and severe. They are also entitled to protection from harm by duty bearers through means such as provision of financial resources.

Rights holders are individuals who can make legitimate claims (UNIRSDSP 2020). In contrast with international environmental law, with its few dispute resolution mechanisms, human rights law has abundant central monitoring mechanisms that verify compliance with numerous human rights conventions and the obligation of states to apply treaties' provisions at the national level; such as treaty body committees and rapporteurs. Such procedures can also give a voice to victims of climate change harm when an HRBA is applied to climate change mitigation or risk management measures. In the context of CDRF, the target group's civil and political rights, their economic, social, and cultural rights, and their collective human rights must be considered in each phase. Adequate accountability mechanisms are imperative for right holders to claim their entitlements or file complaints if harm occurs and rights are violated.

### ***States' and businesses' human rights obligations***

Duty bearers are primarily states<sup>8</sup> that are required to protect everyone within their jurisdiction, and public actors acting on behalf of their governments. Businesses are also duty bearers and must respect human rights and act accordingly.

By becoming parties to international human rights treaties, states assume obligations and duties under international law (human rights conventions and agreements, environmental and disaster risk reduction law, and related normative frameworks) to respect, protect, and fulfil human rights. The obligation to respect means states must refrain from interfering with or curtailing the enjoyment of human rights. The **obligation to protect** requires them to protect individuals and groups against human rights abuses (e.g. by private actors). The **obligation to fulfil** means states must proactively facilitate the enjoyment of basic human rights (OHCHR 2020a).

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<sup>7</sup> In the human rights literature, these are referred to in the Maastricht Guidelines, which define the scope of State obligations in relation to economic, social, and cultural rights, but are equally relevant to civil and political rights. See Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (Maastricht, Netherlands, 22–26 January 1997).

<sup>8</sup> It is important to note that human rights obligations do not depend on reciprocity. One state's respect for human rights does not depend on, and may not be conditioned on, compliance by other states.

The framework principles on human rights and the environment differentiate between three categories of state obligations: procedural, substantive, and special obligations towards those in vulnerable situations (OHCHR 2018a). The principles can be operationalised in the context of climate change impacts to satisfy the duties to respect, protect, and fulfil human rights. These principles should guide all climate actions related to mitigation, adaptation, climate risk management, and climate finance (OHCHR 2019a). Table 1 provides details on respective state obligations as proposed by the Office of the High Commissioner for Human Rights (OHCHR 2013).

**Table 1: Human rights obligations of states; Source: Author's own**

Category	State obligation
Procedural	States must provide accessible information (e.g. UDHR 1948; ICESCR 1966); Ensure participation (UDHR 1948; ICCPR 1966); assess human rights impacts of plans and policies (cf. OHCHR 2018b); and respect the rights of indigenous peoples in all climate actions (including CDRF activities), particularly their rights to free, prior, and informed consent (United Nations 2007).
Substantive	States committed themselves to a safe climate, referring to a broad range of human rights (OHCHR 2019b); they must protect against third parties, including businesses, violating those rights; and they must establish, implement, and enforce laws, policies, and programmes to fulfil those rights (OHCHR 2011b). <sup>9</sup> States also must avoid discrimination and retrogressive measures (ICESCR 1966).  States must take adequate measures to protect all people from human rights-related harms caused by non-state-actors, including businesses (OHCHR 2011b; OHCHR 2011c); must ensure that their own activities—including activities conducted in partnership with the private sector, such as public–private CDRF, market-based approaches, or purely private CDRF—protect and promote human rights; and where such harms do occur, must enable affordable and timely access to justice and effective remedies.
Special	The do no harm rule ensures that polluting activities within a state's jurisdiction or control do not cause serious harm to the environment or people of other states, or to areas beyond the limits of national jurisdiction (CBD 1992; Rio Declaration 1992; UNFCCC 1992).  In accordance with the principle of common but differentiated responsibilities, wealthy states must contribute their fair share towards the costs of mitigation, adaptation, and climate risk management in low-income countries (UNFCCC 1992).

<sup>9</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 3 on the nature of States parties' obligations (E/1991/23).

While duty bearers are primarily states, the fulfilment of human rights also depends on other entities and actors (German Institute for Human Rights 2014: 13). Private entities often are implementers and service providers to the population, with legal duties under national law and legal responsibilities towards their contractual partners, which often are states. States therefore must regulate and monitor private service providers to enforce conformity with human rights (German Institute for Human Rights 2014: 13). Additionally, private stakeholders—such as private enterprises, armed groups, community leaders, and civil society organisations—must be included in a broad dialogue on the concept of rights and responsibilities (ibid.).

Furthermore, there are accepted standards and principles for non-state actors, enshrined in international law and that are increasingly being incorporated into domestic law (UNEP 2015). Corporations should comply with the United Nations Guiding Principles on Business and human rights as they pertain to human rights and climate change (OHCHR 2011a, OHCHR 2011b). Accordingly, businesses must respect human rights, adopt human rights policies, and conduct human rights due diligence. They must be accountable for their climate impacts, participate responsibly in climate change mitigation and adaptation efforts with full respect for human rights (OHCHR 2015), and remedy human rights violations for which they are directly responsible (Expert Group on Climate Obligations of Enterprises 2018). The Oslo Principles on Global Obligations to Reduce Climate Change (2015) further specify non-state obligations with respect to human rights that explicitly deal with climate change.<sup>10, 11</sup>

In the context of CDRF instruments and activities, this is especially important because activities often are initiated and carried out by public–private or multi-actor constellations. In the case of the IGP, for example, stakeholders from a wide range of sectors—public and private sector representatives, multilateral development banks, civil society, and academia—are involved. In such a context, states have the duty to demonstrate that all their available resources, including through requests for international assistance, are put towards the protection of human rights (ICESCR 1966), while private sector actors must respect human rights, adopt human rights policies, and conduct human rights due diligence.

### **3 A Human Rights-based Approach to Climate and Disaster Risk Financing**

As detailed in Chapter 2, instruments and activities that help countries manage climate change-related risks can also interfere with the enjoyment of human rights. This is based on the observation that not only climate impacts and risks themselves are quickly increasing, causing unacceptable harm, but also that efforts to address them can cause harm. When poorly designed, implemented or evaluated (e.g. not participative for marginalised groups), these measures could even worsen

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<sup>10</sup> Luciano Lliuya v. RWE AG is the first climate lawsuit in which a court found that a private company could potentially be held liable for supporting people in (poorer) countries affected by climate damage from its emissions. If corporations do not comply with the above-mentioned international standards and agreements, climate litigation might become a means of enforcing their participation in adaptation or remedial efforts – with important implications for upholding human rights in the context of the climate crisis.

<sup>11</sup> Supply chain laws are currently being prepared in Germany and elsewhere in the European Union that are intended to provide for human rights and environment-related reporting obligations, duties of care, and liability. These legal obligations could be implemented by mid-2021 and would be of utmost importance for enhancing the legal basis for businesses as duty bearers. Germanwatch is part of the Supply Chain Law initiative and demands that the German government pass a law on human rights due diligence of companies. See: <https://germanwatch.org/de/lieferkettengesetz>.

adverse pre-existing conditions (such as marginalisation) or create new violations of human rights. It is therefore essential to consider the human rights impacts of climate risk management instruments and activities to ensure that key actors respect and promote existing human rights obligations and principles, thus promoting full enjoyment of human rights. Applying an HRBA can ensure this.

### **Objective**

The OHCHR defines an HRBA as a “conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to **promoting and protecting** human rights” (OHCHR 2006). In the context of CDRF, an applied HRBA can be understood as an approach for analysing obligations and inequalities related to the development and implementation of CDRF instruments and activities so that any practices or power relations that impede progress towards sustainable development are redressed (see OHCHR 2006). The HRBA-CDRF aims at **guiding CDRF by human rights principles anchored in and established by international law and corresponding obligations** (OHCHR 2006). According to an HRBA, **CDRF instruments and activities should be developed, implemented, and evaluated in a way that protects and promotes (OHCHR 2020) the enjoyment of human rights to prevent harm to communities and ecosystems, and promotes sustainable development** in the context of climate risk management (Johl & Lador 2012).

The objective is not to address ex-post human rights violations that may arise from CDRF actions. An HRBA-CDRF aims to function as a preventive measure in aligning the development, but also the implementation and evaluation phases, of CDRF instruments and activities with standards and principles of international law (Toussaint & Blanco 2019). As highlighted in the literature, an HRBA has the potential to “strengthen the effectiveness, long-term success, and sustainability of climate finance policies and measures at both the national and international levels” (Johl & Lador 2012) and “provides new avenues for providing help to vulnerable groups” (Broberg & Sano 2018).

### **Guardrails**

Based on the above-listed set of conventions, agreements, and treaties, and corresponding obligations established by international law (Chapter 2), the HRBA recognises people as individual holders of human rights, and states and businesses as bearers of duties. On the same basis, four elements form the HRBA-CDRF’s guardrails: (1) the prevention of social or environmental harm, (2) the precautionary approach, (3) the promotion of sustainable development, and (4) the principles of common but differentiated responsibilities. These span a frame in which the HRBA principles for CDRF are operating.

**Do no harm approach:** The principle of do no harm emphasises that states are duty-bound to prevent, reduce, and control the risk to communities and ecosystems of other states, as well as of areas beyond national jurisdiction (Brownlie 2008; Legal Response Initiative 2012; Rio Declaration 1992). This principle represents the general objective that efforts to address one problem (such as climate risk) should not lead to new problems and harms. Following international law principles as proposed by an HRBA is one, but not the only, means of striving to prevent harm. At the same time, every HRBA-CDRF must acknowledge, at every step of its process, that an HRBA and CDRF, both independently and jointly, if not adequately applied, can in fact be sources of conflict and harm. The HRBA-CDRF for this reason views the do no harm approach as both a guardrail and a principle to be applied to CDRF instruments and activities, and should also guide application of an HRBA towards the context of CDRF.

The HRBA-CDRF promotes a **precautionary approach** to avoid or minimise environmental and societal impacts that interfere with full enjoyment of human rights, even in situations of scientific uncertainty (UNFCCC 1992). A huge gap presently exists here. The suggested instruments and financing to address climate change-related risks are not even at the scale of the needs to address the likely, and even the less possible, risks. Now is the time to take measures such as preparing the necessary instruments, organising participation of people at risk, and organising the necessary financial sources. At the same time, the approach sets out a guideline for duty bearers to use adequate available resources to minimise uncertainty to the extent possible in regard to negative effects before implementing CDRF instruments and activities themselves, and to take respective precautionary measures. Therefore, the HRBA-CDRF aims to ensure that addressing the problem of climate risk through financing tools, by trying to anticipate, avoid, or minimise harm, does not result in new or worse problems and harms for people or the environment (UNESCO 2017).

**Promote sustainable development:** Development, implementation, and evaluation of CDRF instruments and activities need to aim at ensuring that all human beings are able to fulfil their potential with dignity and equality, and in a healthy environment. They also should aim at ensuring that all human beings can enjoy prosperous and fulfilling lives and that economic, social, and technological progress occurs in harmony with nature, as well as protecting and promoting human rights (United Nations 2015).

**Common but differentiated responsibilities and respective capabilities (CBDRRC):** While all duty bearers have a common responsibility in endeavouring to protect and promote human rights, prevent harm, and promote sustainable development, two aspects differ in this regard. First, duty bearers' degree of responsibility in the context of CDRF depends on their different contributions to the risks posed or the harm CDRF aims to prevent or minimise, as well as on their different abilities to reduce those risks. Richer and highly polluting countries should therefore take the lead in assisting and supporting countries highly affected by climate risks in the conduct of CDRF activities. Before the adoption of the Paris Agreement, the main focus here was on developed countries. The Paris Agreement has inherently taken a dynamic interpretation of CBDRRC, owing to the shift of emissions and of capabilities to emerging countries.

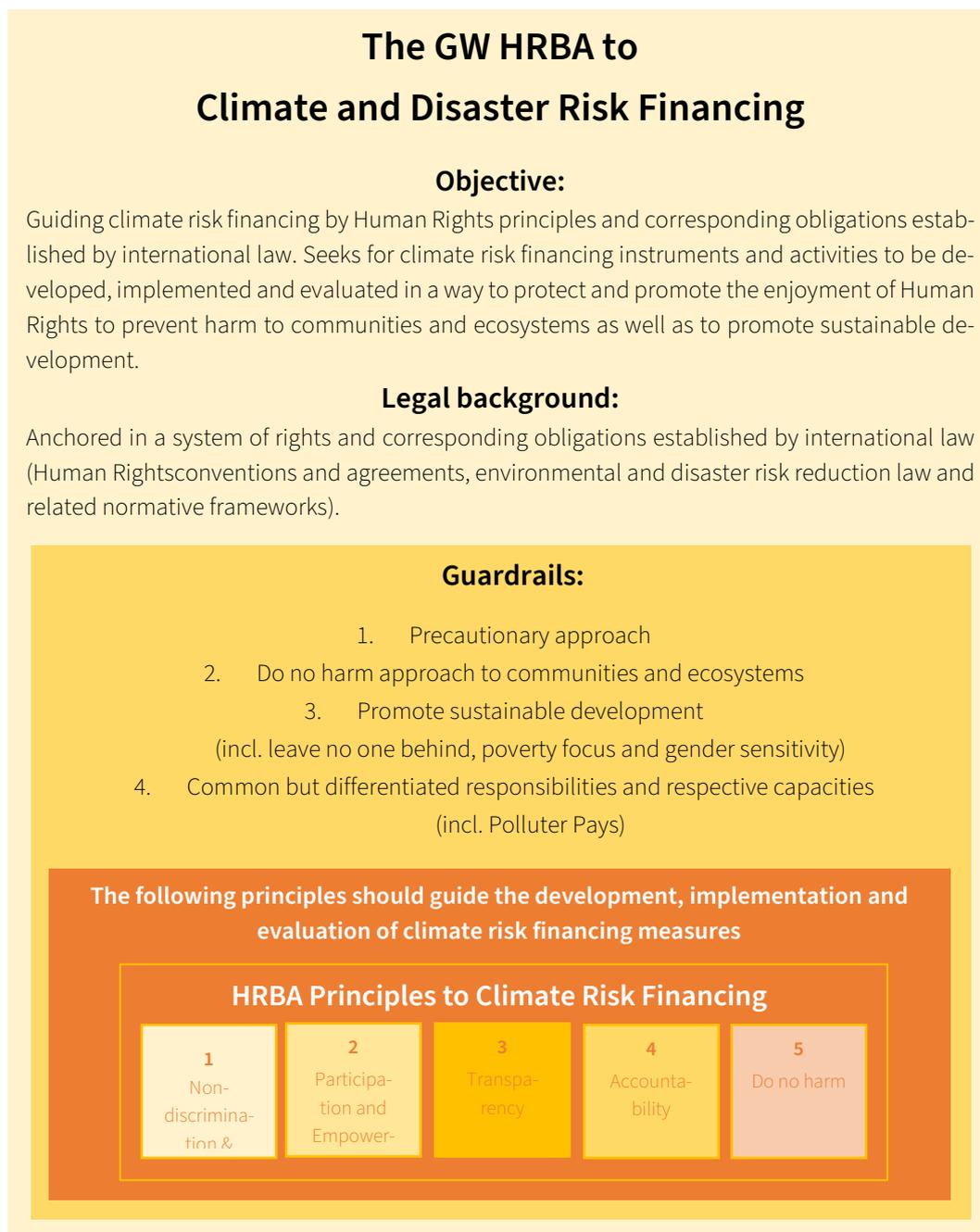
The notion of responsibility (UNFCCC) in international environmental law is also often mirrored in the **Polluters Pay Principle**, anchored in the Rio Declaration (UNCED 1992). Accordingly, in cases in which attribution to human-made climate change can be shown, responsibility should increasingly shift to those who have contributed to the anthropogenic climate change. Large-scale emitters such as companies and states should bear, at the least, substantial parts of the costs of managing the related risks. In the case of, for instance, insurance-related instruments, this could mean measures such as providing premium support, as well as financial and technical support for setting up schemes.

The CBDRRC's second pillar refers to the differing capabilities, and national and regional priorities, objectives, and circumstances (UNFCCC 1992), among any kind of duty bearers to contribute to fulfilment of the outlined responsibilities. For example, ex-ante CDRF requires proactive advance planning and upfront investments. Some duty bearers are more capable than others in these areas. Thus far and in most cases, high responsibility and high capabilities go hand in hand, but this would shift in the context of a successful transformation.

The HRBA-CDRF aims to protect individuals and groups through its seeking to prevent actions and omissions that interfere with fundamental freedoms, entitlements, human dignity, and values common to all cultures and civilisations (OHCHR 2006). Despite this, the instruments and activities analysed with the approach itself can, without additional structural changes, scarcely improve pre-

existing societal and environmental conditions of human rights oppression or violation, inequalities, or discrimination. The HRBA ensures that CDRF instruments and activities processes consider—and seek to prevent or address, rather than further exacerbate—existing inequalities and discriminatory practices. Therefore, an HRBA-CDRF aims to place particularly strong emphasis on the needs, risks, and capacities of these marginalised segments of the population that are already in vulnerable situations owing to factors such as geography, poverty, gender, age, indigenous or minority status and disability, national or social origin, birth, or other status (e.g. Committee on Economic, Social and Cultural Rights 2009).

**Figure 1: The HRBA to Climate and Disaster Risk Finance; Source: Author’s own**



## 4 Principles

At the core of the HRBA-CDRF are five principles derived from existing international law (human rights conventions and agreements, environmental and disaster risk reduction law, and related normative frameworks) that should guide all phases of the process (OHCHR 2015). They should serve as a reminder that climate policy has the target of protecting humans and their ecological co-world; it does not exist in a vacuum or in isolation from general obligations of international law, particularly in human rights law (Burkett 2009). The development, implementation, and evaluation of all CDRF instruments and activities should be guided by five principles to protect and promote the enjoyment of human rights and prevent harm to communities and ecosystems, as well as to promote sustainable development in the context of managing climate and disaster risks. They are derived from international and human rights and environmental law, and are as follows: (1) non-discrimination and equality, (2) participation and empowerment, (3) transparency, (4) accountability, and (5) do no harm. For each principle we subsequently present a definition, a detailed explanation for the context of CDRF, the legal background, and linkages to other principles.<sup>12</sup>

**Figure 2: Guiding principles for the HRBA to climate and disaster risk financing; Source: Author's own**



<sup>12</sup> Just as with the preceding GW HRBA approach, this new enhanced approach establishes a set of guiding principles. To further build on the pre-existing set of principles, a review of various frameworks of HRBAs to climate issues and climate finance was conducted. The lessons learnt from this review are that there are various constellations of principles in place; some are more overarching and broader, some are more applicable to be operationalised for the context of developing, implementing, and evaluating CDRF instruments and activities in a human rights-conforming manner. Amongst the various frameworks of HRBAs to climate issues and climate finance, we found the greatest compliance with the Guiding Principles in Applying a Rights-based approach to climate finance proposed by Johl & Lador (2012).

## 4.1 Non-Discrimination and Equality

1

Non-  
discrimination  
and equality

Climate risk financing instruments and activities seek to protect and promote the rights of all people, regardless of origin, age, sex, mental or physical health, ethnic or religious affiliation, sexual orientation, or any other such status. Pre-existing inequalities, exclusion, and discriminatory practices are analysed and taken into account during the development, implementation, and evaluation of such instruments and activities. Equal access to the development, implementation, and evaluation process of the instruments and activities is ensured for all rights holders.

In the climate debate, the principle of non-discrimination and equality is based on the notion that “the groups of the population that have contributed the least to climate change are often the most vulnerable to its impacts” (Johl & Lador 2012). Certain vulnerable groups such as poor parts of the population, women, children, older people, indigenous peoples and other minorities, persons with disabilities, migrant workers, and seasonal workers, even if equally exposed to risks regarding reduced production and income, are often more vulnerable and have less adaptive capacity to climate change-related risks (Thomas et al. 2018). Additionally, exclusion from land tenure, property rights, and education are inconsistent with non-discrimination and equality. The *principle of non-discrimination and equality* obliges all duty bearers to protect and promote the rights of all people, regardless of their origin, age, sex, mental or physical health, ethnic or religious affiliation, sexual orientation, or any other such status (United Nations 1984). An HRBA-CDRF seeks to foster that pre-existing inequalities and discriminatory practices are analysed and taken into account during the development, implementation, and evaluation of instruments and activities. It aims to address, rather than further aggravate, the situations of the most vulnerable and marginalised groups. It seeks to ensure inclusion and equal access to the development, implementation, and evaluation process of CDRF instruments and activities for all rights holders. The principle also entails identifying and prioritising in a participative way groups for which both the risk of harm and the barriers to realising rights are particularly high. These are usually “populations already marginalised or in vulnerable situations or that, due to discrimination and pre-existing inequalities, have limited access to decision-making or resources, such as women, children, persons with disabilities, indigenous peoples and persons living in rural areas” (OHCHR 2019b).<sup>13</sup> For example, women, even if equally exposed to risks regarding reduced production and income, are often more vulnerable and have less adaptive capacity to climate change-related risks (Akter et al. 2016). CDRF instruments should take into account that women’s ability to recover from disasters is lower in the face of fewer economic options and limited access to resources, services, and decision-making processes.

### **Legal background and linkages to other principles**

The notion of non-discrimination is included in all core human rights agreements. The UDHR sets out that “the equal and inalienable rights of all members of the human family is the foundation of

<sup>13</sup> Discrimination can be direct, for example taking the form of apartheid laws or regulations barring women from judicial or presidential office. It can also be indirect, creating inequalities if, for example, school education is provided in a language that a linguistic minority does not understand. Discrimination becomes systemic when it is evident in individual behaviour patterns, social rules and institutional procedures, and policies and legislation. Such systemic discrimination often affects vulnerable groups, and can lead to social exclusion of entire sections of the population, such as women or indigenous communities. A particular challenge is posed by multidimensional discrimination, wherein people or groups are discriminated against based on a number of grounds; e.g. sex and ethnicity.

freedom, justice and peace in the world.” It declares that “all human beings are born free and equal in dignity and rights” and states that, “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.” (ibid.). Finally, it notes that, “Everyone has the right to equal access to public service in his country.” (ibid.). The rights of specific marginalised groups are further specified within the International Covenants (see Annex).

## 4.2 Participation and Empowerment

2

Participation  
and  
empowerment

Active, informed, meaningful, and inclusive participation of all rights holders and empowerment of the affected people is ensured during development, implementation, and evaluation of any CDRF instrument and activity.

The UNFCCC outlines that “public participation in addressing climate change and its effects and developing adequate responses” must be promoted and facilitated by Parties to the convention (UNFCCC 1992). This is especially important regarding thus far marginalised, vulnerable parts of the population. The UNFCCC further adopted the term Action for Climate Empowerment (ACE) in Article 12 of the Paris Agreement, which also refers to Article 6 of the convention. ACE focuses on six priority areas: education, training, public awareness, public participation, public access to information, and international cooperation on these issues. The implementation of all six areas has been identified as the pivotal factor for everyone to understand and participate in solving the complex challenges climate change presents (UNESCO & UNFCCC 2016). This applies not only as a strong incentive for strong climate and resilience activities, but equally to all actions and response measures, including CDRF, in addressing climate change and its effects. First, at-risk people need to be identified and formats of participation need to be made available at all phases of the development, implementation, and evaluation of CDRF instruments and activities. Even more so, these opportunities for participation need to be accessible, acceptable, adequate, and adaptable for all relevant groups. Providing a safe and enabling environment, transparency, and accessibility of information on the possibilities of participation builds another prerequisite for realising the principle of participation in this context. This encompasses i.a. providing customised information on CDRF instruments for different stakeholders and contexts (including in different languages), as well as using different communication platforms. In this regard, identification of people at risk, educational efforts, training, and capacity building are crucial for successfully applying an HRBA-CDRF. This is because the people climate and disaster risks most affect should possess sufficient knowledge on the risks, processes, and instruments, as well as the implications so they can personally participate actively, freely, and meaningfully. Beyond accumulating their influence and power to participate, public awareness should also be raised.

Participation and empowerment of the most vulnerable groups in the development, implementation, and evaluation of CDRF is recognised in international law generally and climate law specifically. For example, the Rio Declaration, Agenda 21, and the Aarhus Convention affirm that the best environmental decisions are made when civil society participates. Meaningful participation,

partnership, and collaboration can ensure a wider reach, innovative ideas, and quicker responses to development challenges such as disaster situations (DFID 2016).

### ***Legal background and interlinkages with other principles***

Article 25 of the ICCPR and General Comment 25 of the Human Rights Committee defines duty bearers' obligations in connection with "the right to take part in the conduct of public affairs", as do a large number of human rights instruments (OHCHR 2020b). More broadly, "Participation is the right held by all people to engage in society and in the decisions that impact their lives" (IDS 2020). The principle of participation and empowerment emphasises the importance of ensuring all rights holders' active, informed, meaningful, and inclusive participation. The spectrum of participation spans from 'informing' the public to 'consulting,' 'involving,' 'collaborating with,' and finally culminating in 'empowering,' the public (Oswald et al. n.d.). Additionally, the implementing guidelines of the Paris Agreement supporting the participation of "non-Party stakeholders and UNFCCC observer organizations" (UNFCCC 2019b), such as inputting to the 'global stocktake' that aims at an increase of states' levels of ambition on the one hand and the need for action and support on the other.

Empowerment and participation are deeply complementary. Without genuine empowerment, participation can quickly become a token exercise or even a means of maintaining power relations. Additionally, without meaningful participation, empowerment can remain an empty, unfulfilled promise (Cornwall & Brock 2005). Rights holders' capacities must be strengthened for people to actively engage in the process as well as to gain decision-making power and competence (Hutfils 2018). In terms of actors and processes, action must be taken to enhance vulnerable and marginalised people's 'power to' and 'power with,' and to build influence and participation in decision-making processes, such as in finding ways to ensure marginalised and vulnerable groups, and their issues, are represented and have influence in decision-making spaces (Pettit 2012).

Article 25 (1) of the ICCPR explicitly indicates the importance of non-discriminatory practices in the context of the right to participate in public affairs; therefore, the principle of participation and empowerment is strongly interlinked with the principles of non-discrimination and equality (TCC & OHCHR 2017). Issues such as access to education and labour conditions may affect the right to participate in public affairs, especially for marginalised groups. Duty bearers are therefore called upon to take special measures to ensure equal participation of women, ethnic and minority groups, youth, indigenous persons, persons with disabilities, and any other vulnerable and/or marginalised group or individual. As in other areas, women, minorities, indigenous peoples, and those living in extreme poverty may experience greater or additional barriers (e.g. lack of digital and physical infrastructure) to accessing information. These inhibit their ability to fully participate in public affairs. Truly effective and inclusive participation therefore very much depends on fulfilment of the HRBA principle of transparency.

## 4.3 Transparency



Individuals and communities are adequately informed about CDRF instruments and activities and their potential impacts. They are informed of meaningful and effective opportunities to participate in decisions on how these activities will be developed, implemented, and evaluated.

The principle of transparency sets out that individuals and communities are informed about climate and disaster risks, and CDRF instruments and activities, as well as development, implementation, and evaluation phases. Rights holders in this context are entitled to receive transparent information on potential impacts, whether positive and negative, of implementation of CDRF instruments and activities, and should also be informed about alternatives to CDRF. Moreover, rights holders should be informed of how to take up and use CDRF instruments and activities so that they benefit their needs in the most effective way possible.

Rights holders need to be informed of meaningful and effective opportunities to participate in decisions on how these instruments and activities will be developed, implemented, and evaluated. It is imperative to make information on CDRF instruments and activities as accessible and adequate as possible, so that the most vulnerable and marginalised groups in particular can participate in the development, implementation, and evaluation processes inclusively and meaningfully. It is especially important to create transparency of decision-making processes at all stages.

The Sendai Framework for Disaster Risk Reduction notes that to strengthen disaster risk governance it is important to “enhance[e] relevant mechanisms and initiatives for disaster risk transparency, which may include financial incentives, public awareness-raising and training initiatives, reporting requirements and legal and administrative measures” (Sendai Framework 2015). In this context, it is also essential to conduct a transparent monitoring and evaluation process to assess the success or failure of existing (or missing) CDRF instruments and activities as a pre-condition. This is so duty bearers can be held accountable for their obligations. Appropriate institutional and processual arrangements are to be installed in a participatory manner for this purpose. To guarantee transparency in visibility, predictability, and understandability over the course of the entire cycle of developing, implementing, and evaluating CDRF instruments and activities, and to avoid corruption, detailed plans of action—including timeframes, targets, and benchmarks—should be set out.

### ***Legal background and interlinkages with other principles***

The principle of transparency is enshrined in Articles 19 of both the UDHR and ICCPR. The procedural right of access to information enables citizens to understand policies, help determine public priorities, and use information to ensure the exercise of their other human rights, including the right to education and rights supporting a safe environment (TCC & OHCHR 2017). The principle itself describes the “characteristic of governments, companies, organizations and individuals of being open in the clear disclosure of information, rules, plans, processes and actions” (Transparency International 2009). It emphasises the “duty to act visibly, predictably and understandably to promote participation and accountability” (ibid.). The Paris Agreement’s implementation guidelines also refers to the principle of transparency, such as when member states are asked to provide information on “stakeholder involvement, including subnational, community-level and private sector plans, priorities, actions and programmes” for national adaptation measures

(UNFCCC 2019a+b). Transparency is closely linked to the principles of participation and empowerment, yet it also supports fulfilment of the principle of accountability. High degrees of availability, accessibility, and adequacy of information contribute to making governance, public administration, and general actions of duty bearers more transparent – the very foundation to hold them accountable. Improved transparency has the potential to lead to better outcomes and increased institutional effectiveness. It can also build trust and confidence in institutions and their activities. Transparency has its own intrinsic value additional to these instrumental benefits (McGee & Gaventa 2010).

## 4.4 Accountability



Climate risk financing instruments and activities incorporate accessible and adequate compliance mechanisms and procedures for rights holders should the instruments and activities cause social or environmental harm.

According to the principle of accountability, CDRF instruments and activities should provide effective access to judicial and administrative proceedings, including redress and remedy (UNESCO 2017). Vulnerable and marginalised groups often lack sufficient resources and means to utilise legal advice services. All types of complaint and redress mechanisms in the context of climate risks or CDRF mechanisms therefore must not only be available, but also accessible and set up adequately, which includes providing comprehensive and adequate information on procedures in a timely manner. Another requirement for fulfilling the principle of accountability in the context of applying an HRBA-CDRF is to install specific regulations and policies to make the elements of the CDRF instruments and activities recognisable and enforceable by law. In the case of climate risk insurance this includes, for example, setting up specific insurance regulations that facilitate claims on insurance contracts in the event of loss (CISL 2015). It is also crucial that the monitoring and evaluation process is closely linked to the aim of enabling effective and accessible accountability. Minimum standards for evaluating missing or existing CDRF instruments and activities, and their development and implementation, should therefore explicitly address accountability and grievance systems.

### ***Legal background and interlinkages with other principles***

ICCPR article 2 (3) establishes that the right to remedy is essential towards the enjoyment of all rights. The procedural rights of access to justice and redress are well-established under both human rights and international environmental law. As emphasised multiple times, rights and entitlement imply duties and obligations, whereas the fulfilment of duties demands accountability. The principle of accountability as the concept that duty bearers are held responsible for properly executing their powers is, therefore, a central element of an HRBA (Transparency International 2009). While duty bearers themselves determine which accountability mechanisms are most appropriate in the specific context, all mechanisms must be accessible, transparent, and effective (OHCHR 2012). Accountability essentially aims at the ‘answerability’ of decision makers and the ‘enforceability’ of these, although the majority of accountability initiatives focus on the former (McGee & Gaventa 2010). This both entails making “claims and demand a response” and being involved “in ensuring

that related action is taken” (Shahrokh & Lopez-Franco 2015). In this context, accountability again is closely interlinked with the HRBA principles of transparency and participation.

## 4.5 Do No Harm

5

Do no harm

Climate risk financing instruments and activities should include mechanisms to anticipate, avoid, or minimise unacceptable harm to communities or ecosystems. The development, implementation, and evaluation processes of such instruments and activities need to respect and build on existing structures and knowledge, such as traditional risk management and indigenous and local knowledge.

The do no harm principle is based on the concept that “international development interventions or activities should not cause unacceptable harm to communities or ecosystems” (Johl & Lador 2012). Preventing and minimising the severest social and economic impacts of climate hazards on individuals and communities and their respective human rights, especially those in vulnerable and marginalised situations, are the basic intents of developing and implementing CDRF instruments and activities. Nevertheless, CDRF instruments and activities themselves are a potential source of harm. Applying an HRBA-CDRF therefore means following the notion that efforts to address one problem (such as climate risk) should not result in new problems and harm (e.g. additional dependencies, trade-offs, and subsequent problems). According to an HRBA-CDRF, ‘doing no harm’ comprises anticipating, avoiding, or minimising harm, including the creation of additional dependencies, trade-offs, and subsequent problems in social, ecological, and economical dimensions, which might emerge from CDRF instruments and activities (UNESCO 2017). Human rights impact and risk assessments of these instruments and activities are a prerequisite for achieving this. Article 7 of the Paris Agreement comprises specific principles that adaptation actions should be aligned with. Those actions (such as in potential CDRF instruments and activities) should be, inter alia, gender-responsive, participatory, fully transparent, and based on traditional and indigenous knowledge. The Paris Agreement’s implementation guidelines also refer to these principles in relation to the “adaptation communications,” and involve respective aspects in their reporting structure (Eschke 2019), and thus provide an incentive to carefully design respective measures and avoid harm.

For climate risk insurance, research identified potential adverse effects on ecological and social systems. For the former, some climate risk insurance schemes bundle the insurance product with other services, such as agricultural advisory services. In this context, studies have shown an increased use of hybrid seeds and cash crops that replaced drought-resistant subsistence plants (Cole et al. 2017), or increased use of fertilizers by farmers (Karlán et al. 2014). For the latter, in the absence of CDRF instruments and activities, people and communities have traditionally developed coping mechanisms for dealing with weather-related risks, such as informal risk-sharing arrangements (Germanwatch 2020). These traditional coping strategies were often constantly developed over long periods of time following deep-seated cultural risk awareness, and show evidence of early climate risk management approaches (Ngwese et al. 2018). Informal risk-sharing arrangements are often inclusive, providing protection for the most vulnerable members of a community in the case of disaster. Research could show that, for example, farmers with climate risk insurance may change (i.e. reduce) their involvement in informal risk-sharing arrangements (Müller et al. 2017) to the detriment of the most vulnerable community members, who cannot afford

insurance products. CDRF instruments and activities should therefore be carefully integrated within the local context and existing coping strategies to further strengthen them and ensure that the most vulnerable community members are also covered. Otherwise, as Müller et al. (2017) concluded, the instruments could “create long-term maladaptive outcomes and undermine the ability of these systems to reduce vulnerability.” A key point for compliance with the do no harm principle for CDRF instruments and activities is, thus, to **respect and build on existing structures and knowledge** such as traditional risk management and indigenous and local knowledge. Before putting, for example, an insurance scheme in place, this requires a thorough and participative assessment of existing structures. This means also investigating the community’s views and choices, and giving them a voice. Insurance then might become a complementary part to broader climate risk management that integrates both traditional and formal approaches (Germanwatch 2020). Here, the do no harm principle must go hand in hand with the principles of participation and empowerment, because traditional, local, and indigenous knowledge can be appropriately considered only through participatory and empowering processes. CDRF instruments and activities should, moreover, be accompanied by comprehensive policies to safeguard the environment and communities, especially those most affected and in marginalised situations.

### ***Legal background and interlinkages with other principles***

The do no harm approach is widely recognised in international environmental law and serves as a principle for several international declarations.<sup>14</sup> The principle emphasises that states are duty-bound to prevent, reduce, and control the risk to communities and ecosystems of other states, as well as of areas beyond national jurisdiction (Brownlie 2008; Legal Response Initiative 2012; Rio Declaration 1992). This principle represents the general objective that efforts to address one problem (such as climate risk) should not result in new problems and harms. This very much interlinks with the notion of sustainability to take into account long-term positive and negative impacts for people and their social equity, and the planet and its environmental integrity, as well as prosperity in terms of economic and financial considerations (cost–benefit for duty bearer and rights holder). Consequently, the principle of do no harm sets out to not worsen the status quo, or create additional dependencies, trade-offs, and subsequent problems in social, ecological, and economical dimensions. The principle is complementary with the “precautionary principle” set out in the 1992 Rio Declaration, which notes that “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation” (Rio Declaration 1992).

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<sup>14</sup> Principle 21 of the 1972 Stockholm Declaration; 1992 Rio Declaration on Environment and Development (Principle 2), Convention on Biological Diversity (Article 3) and UNFCCC (in recital 8 of its preamble)

## 5 Operationalisation of the HRBA's Principles and Application Guidelines

With the ultimate objective of promoting and protecting human rights, preventing harm to communities and ecosystems, as well as promoting sustainable development, all actors involved in developing, implementing, and evaluating CDRF instruments and activities should apply the HRBA-CDRF. For all these instruments and activities, the HRBA principles of non-discrimination and equality, participation and empowerment, transparency, accountability, and do no harm should guide their development, implementation, and evaluation. In the following, the principles are operationalised for each phase using 'necessary measures' to implement each principle in the process of developing, implementing, and evaluating CDRF instruments and activities. These necessary measures serve two purposes: (1) guide all actors in the process of developing, implementing, and designing CDRF instruments and activities that protect and promote the enjoyment of human rights, and (2) assess whether the HRBA principles were complied with, or to what extent they were fulfilled. Identification of relevant necessary measures was guided by five normative contents which were defined in the general comments of the Committee on Economic, Social and Cultural Rights: adequacy, accessibility, availability, adaptability, and acceptability (OHCHR 2012). **Adequacy** entails, for example, that benefits must have adequate amount and duration so duty bearers can realise their rights, it also entails that information must be provided so that it is usable for all rights holders (ECOSOC 2008). **Accessibility** incorporates that all steps of an HRBA-CDRF must follow the dimensions of non-discrimination, physical, economic, and informational accessibility in terms of, for example, coverage, eligibility, affordability, participation in, and information about CDRF (ECOSOC 2008). **Availability** means that facilities, goods, and services, as well as programs, must be available in sufficient quantity (and quality) to ensure that financial resources are provided for the relevant climate risks and contingencies (ECOSOC 2000). **Adaptability** refers to the retention of a certain degree of flexibility in CDRF instruments and activities so they can adapt to newly available information regarding climate risks, as well as the needs of changing societies and right holders within their diverse social and cultural settings (ECOSOC 1999). **Acceptability** incorporates the dimensions of relevance, cultural appropriateness, and good quality (ECOSOC 1999). CDRF instruments and activities should, for example, be respectful of the culture of individuals, minorities, people, and communities, be sensitive to gender and life cycle requirements, and be designed to respect confidentiality and improve the status of those concerned (ECOSOC 2000). Through these normative contents, the HRBA-CDRF principles were and can further be operationalised.

The identified necessary measures and respective normative contents can be understood as proxy indicators. Notable here is that necessary measures very much depend on the specific context of application, and the type of instrument or activity. A one-size-fits-all approach is therefore inadequate. The following table describes the necessary measures for each of the five principles' operationalisation. Measures' numbering does not imply priority or importance; the implementation of the different measures is equally relevant.

**Table 2: Necessary measures for operationalising the HRBA principles**

<b>Application guidelines for the HRBA principles</b>	
<b>Principle 1: Non-discrimination and equality</b>	
Measure 1: Identify and take into account in every further step of the process:	<ul style="list-style-type: none"> <li>- All rights holders.</li> <li>- Pre-existing inequalities, discrimination, marginalisation, and vulnerabilities; or established practices to overcome these kinds of obstacles.</li> <li>- Specific needs of all rights holders.</li> </ul>
Measure 2: Establish an enabling environment for and implementation of:	<ul style="list-style-type: none"> <li>- Conditions that ensure all rights holders equal access by considering criteria of accessibility: inclusion, coverage, eligibility, economic and physical accessibility</li> <li>- Policies that ensure that projects are developed and implemented so rights holders receive culturally compatible social and economic benefits and suffer no adverse effects during the development and implementation process of CDRF instruments and activities.</li> <li>- Adaptability of the CDRF instruments and related processes if the monitoring and evaluation process reveals any negative impacts in exacerbated discrimination and inequality.</li> </ul>
<b>Principle 2: Participation and empowerment</b>	
Measure 3: Create fundamental conditions for participation of all rights holders	<ul style="list-style-type: none"> <li>- Provide a safe and enabling environment for meaningful participation, especially for vulnerable and marginalised groups and/or individuals.</li> <li>- Identify capacity gaps of marginalised and vulnerable groups, and undertake specific action for education, training, and public awareness on climate risks and financial instruments.</li> <li>- Ensure access to relevant information to enable effective and inclusive participation.</li> </ul>
Measure 4: Establish active, informed, meaningful, and inclusive formats of participation for all rights holders	<ul style="list-style-type: none"> <li>- Establish decision-making processes, in which marginalised and vulnerable groups, and their issues, are represented and have influence.</li> <li>- Take specific measures to actively involve marginalised groups and people affected by climate-induced risks and harm.</li> <li>- Make participation formats available, accessible, acceptable, adequate, and adaptable along all phases of developing, implementing, and evaluating CDRF instruments and activities for all relevant actors.</li> </ul>
<b>Principle 3: Transparency</b>	
Measure 5: Transparency	<ul style="list-style-type: none"> <li>- Ensure and regularly review the availability, accessibility, and adequacy of information on: <ul style="list-style-type: none"> <li>• Existence of CDRF options.</li> </ul> </li> </ul>

through information	<ul style="list-style-type: none"> <li>• Costs–benefits and risks of CDRF instruments for specific situations and needs.</li> <li>• How to take up and use CDRF products so they most effectively benefit needs.</li> </ul>
Measure 6: Transparency of processes, structures, and institutions	<ul style="list-style-type: none"> <li>- Establish a transparent system of governance over financial mechanisms through reporting and information disclosure requirements.</li> <li>- Establish a time-bound plan of action, including benchmarks and ultimate targets in development, implementation, and evaluation of CDRF instruments and activities to guarantee transparency in visibility, predictability, and understandability.</li> <li>- Set up monitoring and evaluation systems in a participatory manner with minimum standards and indicators that contain information, that is as disaggregated as possible, on CDRF instruments' and activities' impacts on various groups within populations.</li> <li>- Set up appropriate institutional and processual arrangements to enable people who are affected by policies to participate in monitoring and assessing their success or failure.</li> </ul>
<b>Principle 4: Accountability</b>	
Measure 7: Provide adequate pre-conditions for accountability	<ul style="list-style-type: none"> <li>- Conduct mapping of duty bearers.</li> <li>- Formulate TORs with duty bearers to facilitate accountability.</li> </ul>
Measure 8: Accountability in regard to processes	<ul style="list-style-type: none"> <li>- Jointly design and mutually agree on social and environmental impact assessments, and ensure enforcement of environmental and social safeguard policies, including a means to determine whether CDRF financing instruments and activities, in their implementation, are complying with their own policies.</li> <li>- Establish complaints mechanisms to address potential violations of policies and procedures. Ensure that the independence, transparency, accessibility, adequacy, and effectiveness of complaints further reinforce the mechanisms' support of affected people in enforcing their entitlements. This includes providing information on procedures in a timely manner and via different means of access (offline, online, telephone) so that mechanisms are accessible.</li> <li>- Establish monitoring and evaluation with minimum standards that explicitly address accountability and grievance systems, including adequate follow-up processes.</li> </ul>
Measure 9: Accountability in regard to legal frameworks	<ul style="list-style-type: none"> <li>- Make CDRF instruments' and activities' elements recognizable and enforceable by law.</li> </ul>
<b>Principle 5: Do no harm</b>	

<p>Measure 10: Anticipate harm</p>	<ul style="list-style-type: none"> <li>- Building on Measures 1 and 9: Apply preventive and precautionary approaches in development and implementation, including prior assessment and systematic observation of CDRF instruments' and activities' impacts on the enjoyment of human rights.</li> <li>- Continuously assess CDRF instruments' and activities' impacts, and impacts of related processes and policies, on rights holders.</li> <li>- Assess the existence of traditional, indigenous, and local framework conditions and take them into account in the process of developing CDRF instruments and activities.</li> </ul>
<p>Measure 11: Minimise and avoid harm</p>	<ul style="list-style-type: none"> <li>- Set up social and environmental impact assessments (step 9) as well as additional policies to protect and promote human rights, especially of the most vulnerable and groups in marginalised situations.</li> <li>- Ensure integration of safeguards with robust accountability mechanisms and appropriate contingency plans to address harm should it occur.</li> <li>- Continuously adapt instruments, policies, and processes to changing needs and circumstances while ensuring a minimum level of stability.</li> <li>- Respect traditional, indigenous, and local knowledge and useful practices.</li> </ul>

## 6 The Way Forward

Promoting and protecting human rights in the context of managing climate and disaster risks requires a combined effort. Based on the system of rights and corresponding obligations established by international law, the HRBA-CDRF should be considered and implemented by a variety of actors (rights holders and duty bearers) who are equally involved. This should be done in respectful cooperation for the development, implementation, and evaluation of instruments and activities related to CDRF, which should apply the HRBA. International decision makers and initiatives such as the IGP also need to lead the way by providing guidance and support through international policy frameworks, backed by financial and technical means. The 11 proposed measures can be used to (1) guide all actors and initiatives in the process of developing, implementing, and designing CDRF instruments and activities that protect and promote the enjoyment of human rights, and (2) assess whether the HRBA principles were complied with, or to what extent they were fulfilled, such as for the IGP Monitoring and Evaluation Framework. Application of the HRBA-CDRF must be specified in the form of concrete recommendations and measures for each individual CDRF instrument, and equally for international initiatives in the context of CDRF. Schäfer, Jorks, and Künzel (2020), for example, developed a set of recommendations for the IGP. Künzel (2020) also applied the approach in assessing the contingency plan of African Risk Capacity. These two cases, only showcase two possibilities for the HRBA-CDRF's application. The approach establishes a framework that is applicable to a wider range of different types of CDRF instruments, initiatives, and also government programmes in many different ways. It can be used to review and optimize existing instrument or programmes that already contain elements of human rights conformity, it can serve to set up new initiatives based on HRBA principles, and/or it can support the integration of HRBA principles in processes of an existing scheme which did not pay respect to human rights before. Furthermore, the HRBA-CDRF can be used in a broad variety of regional contexts. This underlines that the HRBA-CDRF does not strive for a one-size fits all approach, but that there is a large variety of possibilities to achieve the aim of guiding climate risk financing by human rights principles and corresponding obligations established under international law, and seeking for climate risk financing instruments and activities to be developed, implemented, and evaluated so as to protect and promote the enjoyment of human rights, prevent harm to communities and ecosystems, and also promote sustainable development.

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For Global Equity and the Preservation of Livelihoods.