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A HUMAN-RIGHTS- BASED APPROACH TO CLIMATE AND DISASTER RISK FINANCING

in the Context of the
InsuResilience Global Partnership

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A Human-Rights-Based Approach to Climate and Disaster Risk Financing in the Context of the InsuResilience Global Partnership

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Executive Summary

People all over the world are facing the reality of climate change – in many parts of the world this is manifesting in an increased volatility of extreme weather events. Slow-onset processes will add an additional burden in the future. These climate change impacts are negatively affecting the realization and enjoyment of a variety of widely recognized human rights, especially of those who already find themselves in vulnerable and marginalized situations. Equally, disaster risk reduction and response measures carried out by governments or other actors can affect the enjoyment of human rights. The Paris Agreement therefore recognizes that “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights (...)” (Paris Agreement 2015). Ensuring human rights throughout a disaster situation however requires finance. In developing countries, an increasing number of climate and disaster risk financing (CDRF) instruments and activities have been implemented. If well developed and implemented, CDRF instruments can contribute to protect the human rights for the most vulnerable after a disaster or in the course of slow-onset hazards. They can improve resilience, empower right holders and even provide incentives for risk reduction and prevention activities. On the contrary, poorly designed and implemented CDRF can increase pre-existing inequalities, create new dependencies or new forms of discrimination, leaving behind the already marginalized and most vulnerable parts of the population. Therefore, CDRF instruments and activities need to respect and promote human rights principles in their development, implementation and evaluation as a preventative measure to avoid or minimize ex post human rights violations that may arise from climate risk financing actions.

This paper introduces the Human Rights Based Approach to Climate Disaster and Risk Financing (HRBA-CDRF) developed by Germanwatch (see Schäfer, Künzel & Jorks 2020) as a relevant concept for the InsuResilience Global Partnership (IGP). Based on the HRBA to Climate Risk Insurance outlined by Germanwatch in 2018 (see Hutfils 2018) the HRBA-CDRF aims to answer the 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?” According to the HRBA, CDRF instruments and activities should be developed, implemented and evaluated in a way to protect and promote the enjoyment of human rights to prevent harm to communities and ecosystems as well as promoting sustainable development in the context of climate risk management. The HRBA-CDRF aims to function as a preventive measure in aligning the development, as well as the implementation

and evaluation phases of CDRF instruments and activities with standards and principles of international law (human rights conventions and agreements, environmental and disaster risk reduction law and related normative frameworks).

With the ultimate objective of promoting and protecting Human Rights, preventing harm to communities and ecosystems, as well as promoting sustainable development the HRBA-CDRF, should be applied by all actors involved in developing, implementing and evaluating CDRF instruments and activities. 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. The HRBA-CDRF principles are operationalized 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) to guide all actors in the process of developing, implementing and designing CDRF instruments and activities that protect and promote the enjoyment of Human Rights; 2) to assess if the HRBA principles were complied with or to what extent they were fulfilled.

Promoting and protecting human rights, in the context of managing climate risks requires a combined effort. Based on the system of rights and corresponding obligations established by international law, the HRBA to CDRF should be considered and implemented by a variety of actors who are involved in the development, implementation and evaluation of instruments and activities related to CDRF. Additionally, international decision makers and initiatives need to provide guidance and support through international policy frameworks, backed by financial and technical means. Based on the HRBA-CDRF we have prepared recommendations for two groups: 1) The InsuResilience Global Partnership and 2) Actors who are involved in developing, implementing and evaluating CDRF instruments and activities.

List of Abbreviations

CDRF	Climate and Disaster Risk Financing
CSO	Civil Society Organizations
HRBA	Human-Rights-Based Approach
HRBA-CDRF	Human-Rights-Based Approach to Climate and Disaster Risk Financing
IGP	InsuResilience Global Partnership
OHCHR	Office of the High Commissioner for human rights
UN	United Nations
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UDHR	Universal Declaration on human rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
CBDRRC	Common but Differentiated Responsibilities and Respective Capacities
AM	Adaptive Management

1. Introduction

Climate change impacts – like the increasing frequency and severity of cyclones, storms and heatwaves, as well as slower onset hazards like sea -level rise, - already have profound effects on the enjoyment of human rights for people throughout the world. The implications of climate change mostly affect individuals and groups who are already disadvantaged, marginalized, excluded and vulnerable. Both facts have long been explicitly acknowledged by United Nations agencies and national governments (e.g. OHCHR). Additionally, measures to respond to climate change by governments or other actors can have impacts or neglect urgent needs on the enjoyment of human rights. This concerns both measures to mitigate greenhouse gas emissions and measures to adapt to and manage impacts of climate change. The Paris Agreement, therefore, recognizes that “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights (...)” (Paris Agreement 2015).

In developing countries, an increasing number of climate and disaster risk financing (CDRF) instruments and activities have been implemented, aiming at protecting the poorest and often most vulnerable people. Well developed and implemented CDRF instruments can improve resilience, empower right holders and even provide incentives for risk reduction and prevention activities. On the contrary, poorly designed and implemented CDRF can increase pre-existing inequalities, create new dependencies or new forms of discrimination, leaving behind the already marginalized and most vulnerable parts of the population. In order to make sure that indeed the poorest and most vulnerable benefit from CDRF schemes and that human rights violations through CDRF are prevented or minimized, the call has been made to follow a human rights-based approach (HRBA) (e.g. Schäfer et al. 2016). Further, international initiatives like the InsuResilience Global Partnership for Climate and Disaster Risk Finance and Insurance (IGP) highlight that their InsuResilience Principles “align with, and promote a human-rights based approach to climate and disaster risk finance” (InsuResilience 2019). Hutfils (2018) outlined an HRBA to Climate Risk Insurance, however, the details on definition, design and application of a Human-Rights Based Approach to Climate and Disaster Risk Financing (HRBA-CDRF) remain vague. To answer the 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?” Germanwatch developed an HRBA-CDRF (see Schäfer, Künzel & Jorks 2020). This paper introduces the HRBA-CDRF as relevant concept for the IGP.

After a brief analysis of the interlinkages of climate change, climate risk management and human rights (Chapter 2), this paper presents the HRBA-CDRF (Chapter 3) including basic principles to be applied in the development, implementation and evaluation of respective instruments (Chapter 4). With regard to the applicability of the approach, necessary measures for each principle, framework conditions and challenges are described subsequently (Chapter 5). The paper concludes with recommendations on the application of the HRBA to relevant actors in the field of CDRF with a particular focus on the IGP (Chapter 6).

2. Setting the Context

2.1 Climate Change, Climate and Disaster Risk Management and Human Rights

Climate change impacts are negatively affecting the realization and enjoyment of a variety of human rights and will increasingly do so in the future. This fact has long been explicitly acknowledged by United Nations agencies and national governments (e.g. OHCHR 2009a, OHCHR 2009b, OHCHR 2011a, OHCHR 2011b, OHCHR 2013, OHCHR 2016, Paris Agreement 2015). While the extent and nature of these harms are quickly developing and will vary from region to region, climate risks are likely to affect the right to life, the right to adequate food and water, the right to health, the right to shelter and the right to self-determination, among others (Johl/Lador 2012). Climate change impacts on human rights mostly affect those who already find themselves in vulnerable situations due to factors that include, among others, geography, income, gender, age, indigenous or minority status and disability (OHCHR 2011a). The biggest negative human rights impacts are expected in Least Developed Countries (LDC), where people are most vulnerable, have the least capacity to adapt, and have contributed the least to the causes of climate change (UN DESA 2017). Alongside the impacts of climate change themselves **measures to respond to climate change by governments or other actors can have impacts on the enjoyment of human rights** (e.g. OHCHR 2016; UNEP 2015). This concerns both measures to mitigate emissions, and measures to adapt to and manage impacts of climate change which can interfere with human rights, particularly of the most vulnerable. For instance, climate risk management measures might benefit one group to the detriment of another—as 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 that is only affordable for wealthier members of communities, thereby damaging informal risk sharing networks that also provide protection for the most vulnerable in case of a disaster (e.g. Germanwatch 2020).

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). Pursuant to Article 6 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 the implementation¹ of the Paris Agreement contain references to human rights principles and standards that can be used by states to enforce human rights standards in climate protection measures (Eschke 2019). Therefore, all acts to combat climate change have an underlying obligation to respect human rights. In this context, human rights law not only recognizes substantive rights such as the rights to life, the right to food, the right to development and the right of indigenous people, but also procedural rights such as the right to information and the right to participate in government decision-making processes (see also chapter 2.3). 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.

2.2 Why a Human Rights-Based Approach is relevant for the IGP

People all over the world are facing the reality of climate change – in many parts of the world this is manifesting in an increased volatility of extreme weather events. Between 1999 and 2018, about 495,000 people died worldwide and losses of US\$ 3.54 trillion (in PPP) were incurred as a direct result of extreme weather events (Eckstein et al. 2019). Slow-onset processes (like sea-level rise or desertification) will add an additional burden in the future.

¹ Human rights are not explicitly enshrined in the implementation guidelines as it was demanded by Norway, Canada and the European Union.

As a result of the destruction by natural hazards, people in poor countries that are especially vulnerable to climate impacts are hindered in their sustainable development. In particular, people in LDC and Small Islands Developing states (SIDS) face a growing risk of lower investments, stranded infrastructure investments, worsening credit ratings, higher indebtedness and, ultimately, lowered adaptive capacity (Bread for the World 2019). Climate risk management is key for these countries in order to identify, reduce and transfer risks and to respond to events and disasters (IPCC 2012). One step in this process is CDRF which helps governments or other actors to address residual risks, which are not possible or cost effective to mitigate or reduce (World Bank & GFDRR 2012).

Box 1: Financial risk management instruments and human rights

Financial risk management instruments aim at building resilience by increasing the financial response capacity of governments, businesses and/or individuals to be able to meet post-disaster liquidity needs. Governments can use these funds 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 (see Ghesquiere & Mahul 2010).

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

Based on states obligations to respect, protect and to fulfil the human rights of their citizens and of any other persons in their territory or under their jurisdiction, they have a responsibility to protect their population in 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 open the 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, clarifying 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). If well developed and implemented, CDRF instruments can thus improve resilience, empower right holders, and even provide incentives for risk reduction and prevention activities –

thereby contributing to protect the human rights for the most vulnerable after a disaster, or in the course of slow-onset hazards.

An increasing number of CDRF instruments and activities have been implemented and supported in the past years. Global initiatives, like the IGP, aim at enabling more timely and reliable disaster response using risk finance and insurance solutions to help poor and vulnerable people recover more quickly, and strengthening local resilience over time (InsuResilience 2018). In order to make sure that the marginalized and most vulnerable (e.g. the poorest, eldest, female, LGBTQ, disabled members of communities) benefit from these schemes, the call has been made to follow an HRBA (e.g. Schäfer et al. 2016). The InsuResilience Principles,² for example highlight 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 InsuResilience 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.). Hutfils (2018) outlined an HRBA to Climate Risk Insurance but still, the details on definition, design and application of an HRBA-CDRF remain vague. To answer the 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?” Germanwatch developed an HRBA-CDRF (see Schäfer, Künzle & Jorks 2020)³. This paper introduces the HRBA-CDRF as relevant concept for the IGP.

² “The InsuResilience Pro Poor Principles are aspirational principles towards the fulfillment of which all members of the Partnership should strive. Similar to other related frameworks mentioned in the preamble, the InsuResilience Principles are a set of voluntary principles for incorporating a people-centered approach to Climate and Disaster Risk Financing and Insurance Solutions. They were developed building on an inclusive and consensus based approach, encompassing a call for submissions, different webinars and a workshop. The Principles originate sequentially and intertwine, thus highlighting that various aspects related to the planning and implementation of Climate and Disaster Risk.” (InsuResilience 2019)

³ Based on the formerly proposed “human rights Approach to Climate Risk Insurance” by Germanwatch (see Hutfils 2018)

2.3 Human Rights Entitlements & 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 (cf. Hutfils 2018).⁴

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. States⁵, as primary duty bearers (and public actors acting on behalf of their governments) are required to protect everyone within their jurisdiction. But also businesses are secondary duty-bearers and must respect human rights and act accordingly.

Human rights entitlements of rights holders

Rights holders possess entitlements outlined in international human rights law which provides a foundation for the claim for support by the most vulnerable. For example, the right to life entitles every person without discrimination to safety of their own life. In the context of climate change impacts, rights holders are those affected by the impacts of extreme weather events and slow-onset hazards, increased in frequency and severity.⁶ They are entitled to protection from harm through e.g. the provision of financial resources.

Right holders are individuals that can make legitimate claims (UNIRSDSP 2020). In contrast to international environmental law, where dispute resolution mechanisms are in short supply, human rights law is full of central monitoring mechanisms. These verify compliance with numerous human rights conventions and the obligation of states to apply the provisions of the treaties at the national

⁴ 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).

⁵ 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.

⁶ 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)

level such as human rights treaty body committees and rapporteurs. When an HRBA is applied to climate change such procedures can also give a voice to the victims of climate change.

Duty bearers: Human rights obligations of states and businesses

Duty bearers are primarily states⁷ that are required to protect everyone within their jurisdiction and public actors acting on behalf of their governments. Businesses must equally 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, to protect and to fulfil human rights. The **obligation to respect** means that states must refrain from interfering with or curtailing the enjoyment of human rights. The **obligation to protect** requires states to protect individuals and groups against human rights abuses (e.g. by private actors). The **obligation to fulfil** human rights means that states must take positive action to facilitate the enjoyment of basic human rights (OHCHR 2020a).

The framework principles on human rights and the environment differentiate between: procedural, substantive, and special obligations towards those in vulnerable situations (OHCHR 2018a) and can be operationalized in the context of climate change impacts in order to fulfil the duties *to respect, protect and fulfil human rights*. They should guide all climate actions related to mitigation, adaptation, climate risk management and climate finance (OHCHR 2019a). See Annex 1 for a detailed overview on respective state obligations as proposed by the Office of the High Commissioner for human rights (OHCHR 2013).

While duty-bearers are primarily states, the fulfilment of human rights depends on more 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 mostly governmental contract partners. States therefore must regulate and monitor private service providers in order to enforce conformity with human rights (German Institute for Human Rights 2014: 13). Additionally, private stakeholders – such as private enterprises, armed groups, community leaders, civil society organizations – must be included in a broad dialogue on the concept of rights and responsibilities (ibid.). There are accepted standards and principles for non-state actors enshrined in international law that are increasingly being incorporated into domestic law (UNEP 2015). For example,

⁷ 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.

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.

In the context of CDRF instruments and activities, this is crucial since often activities are initiated and carried out by purely private, 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, all states have the duty to demonstrate that all their available resources, including through international assistance and cooperation, are put towards the full realization of human rights (ICESCR 1966) while private sector actors must respect human rights, adopt human rights policies and conduct human rights due diligence.

3. The Human Rights-Based Approach to Climate 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 and increasingly causing unacceptable harm, but also efforts to address them can cause harm. When poorly designed, implemented or evaluated (e.g. not participative for marginalized groups), these measures could even worsen negative pre-existing conditions (like marginalization) or create new violations to Human Rights.

It is therefore essential, to consider the human rights impacts of climate risk management instruments and activities to ensure that they protect existing human rights obligations and principles, thus promoting the full enjoyment of human rights. This can be ensured through the application of a human-rights based approach.

Following, the HRBA-CDRF including its objectives, legal foundation, guardrails and principles is explained shortly. A more detailed description of the approach can be found in the Germanwatch policy paper “A Human-Rights-Based Approach to Climate and Disaster Risk Financing” (Schäfer, Künzel & Jorks 2020).

3.1 Objective

The Office of the High Commissioner for Human Rights (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, applying the HRBA can be understood as an approach for analyzing 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). Hence, according to an HRBA-CDRF, **CDRF instruments and activities should be developed, implemented and evaluated in a way to protect and promote (OHCHR 2020) the enjoyment of human rights to prevent harm to communities and ecosystems as well as promoting 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 already 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).

3.2 Legal foundation

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, the Universal Declaration on Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which together build the so called “Bill of Human Rights”⁸. Together with the legal grounds of international climate, environmental and sustainability law, they form the legal basis of the HRBA-CDRF (see Schäfer, Künzel & Jorks 2020 for a detailed description).

3.3 Guardrails

Based on the above listed set of conventions, agreements, treaties and corresponding obligations established by international law (Chapter 2), the HRBA recognizes people as individual holders of human rights and states and businesses as bearers of duties (Schäfer, Künzel & Jork 2020). On the same basis, the following four elements form the guardrails of the HRBA-CDRF: 1) the prevention of social or environmental harm (*Do no harm*), 2) the precautionary approach, 3) the promotion of sustainable development as well as 4) the principles of common but differentiated responsibilities. These four guardrails are spanning a frame in which the HRBA principles for CDRF are operating (see Schäfer, Künzel & Jorks 2020 for further explanation on the guardrails).

Even though the HRBA-CDRF aims to protect individuals and groups in trying to prevent actions and omissions that interfere with fundamental freedoms, entitlements, human dignity and values that are common to all cultures and civilizations (OHCHR 2006), the instruments and activities analyzed with the approach itself can – without additional structural changes - hardly 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 put particularly strong emphasis on the needs, risks and capacities of these marginalized segments of the population who are already in vulnerable situations owing to factors such

⁸ Bill of Human Rights: <https://www.ohchr.org/Documents/Publications/Compilation1.1en.pdf>.

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).

3.4 HRBA-CDRF 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) which should guide all phases of the process (OHCHR 2015). They should serve as a reminder that climate policy has the target to protect humans and their ecological co-world, it does not exist in a vacuum, in isolation from general obligations of international law, in particular Human Rights law (Burkett 2009). The approach developed by Hutfils (2018) built a starting point for the selection of principles for a more holistic HRBA-CDRF. In order to protect and promote the enjoyment of human rights, to prevent harm to communities and ecosystems as well as to promote sustainable development in the context of managing climate and disaster risks, the development, implementation and evaluation of all CDRF instruments and activities should be guided by the following five principles, derived from international and human rights and environmental law: (1) “Non-Discrimination and Equality”, (2) “Participation and Empowerment”, (3) “Transparency”, (4) “Accountability” and (5) “Do-no-harm”. For each of the five principles we subsequently present a definition. For a detailed explanation of the principles please see Schäfer, Künzel & Jorks 2020.

1 **Non-Discrimination & Equality**

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

2 **Participation & Empowerment**

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

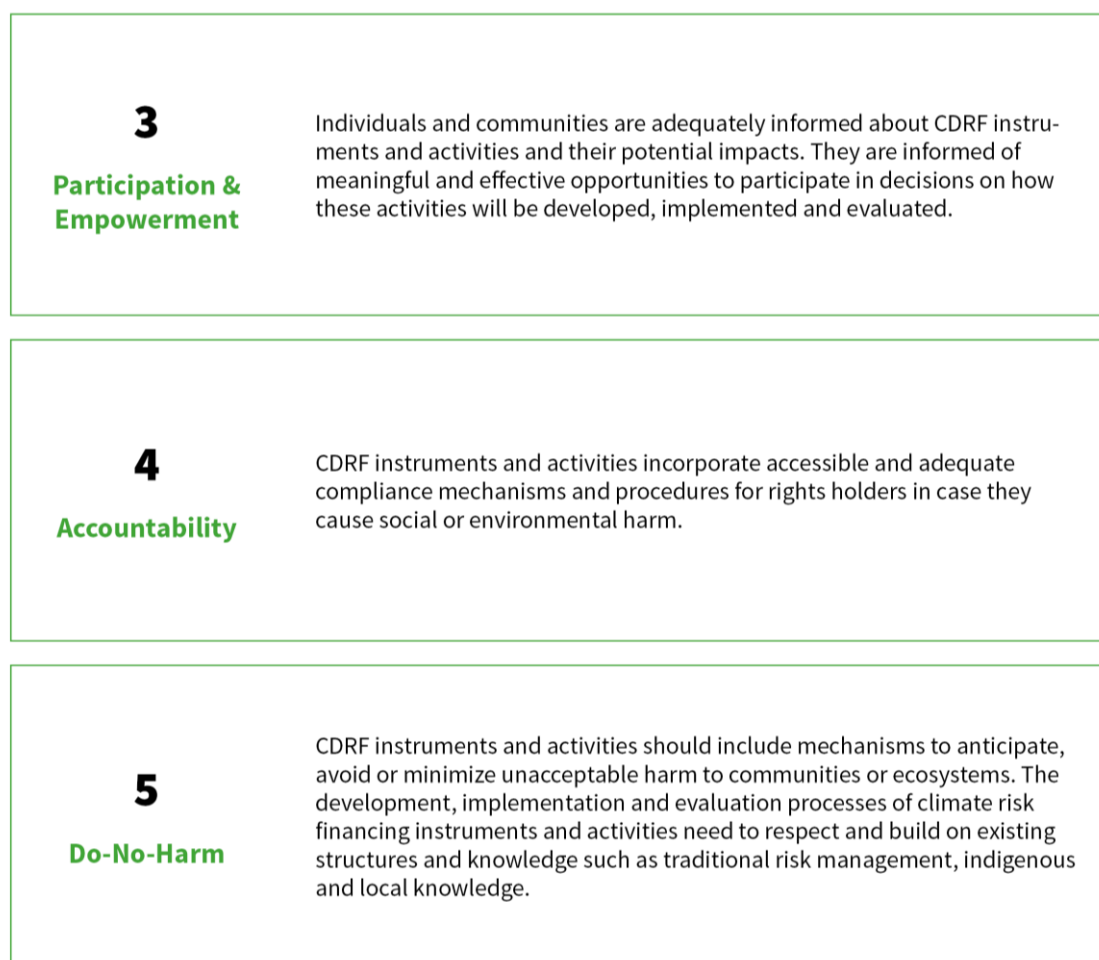


Figure 1: The HRBA-CDRF Principles (Source: Schäfer, Künzel & Jorks 2020)

For the case of climate risk insurance, research identified potential adverse effects on ecological and social systems. For ecological systems: Some climate risk insurance schemes bundle the insurance product with other services, e.g. agricultural advisory services. In this context, studies have shown an increased use of hybrid seeds and cash crops which replaced drought-resistant subsistence plants (Cole et al. 2017) or led to an increased use of fertilizers by farmers (Karlan et al. 2014). For social systems: 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 constantly developed over long periods of time following deep-seated cultural risk awareness, and show evidence of early climate risk management approaches (Ngwese, M.N. et al. 2018). Informal risk sharing arrangements are often inclusive, providing protection for the most vulnerable members of a community in case of a disaster. Research could show that for example, farmers with climate risk insurance may change (as in

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. Climate and disaster risk financing instruments and activities should therefore be carefully integrated within the local context, and existing coping strategies should further strengthen them and to make sure that also the most vulnerable community members are covered. Otherwise, as concluded by Müller et al. (2017), the instruments could “create long-term maladaptive outcomes and undermine the ability of these systems to reduce vulnerability”. Therefore, a key point for compliance with the Do-No-Harm principle for CDRF instruments and activities is to **respect and build on existing structures and knowledge** such as traditional risk management, indigenous and local knowledge. Before putting e.g. an insurance scheme in place, which requires a thorough and participative assessment of existing structures, it is important to investigate and assess the views and choices of the community and give them a voice. Insurance might then become a complementary part to a broader climate risk management that integrates both traditional and formal approaches (Germanwatch 2020). CDRF instruments and activities should, moreover, be accompanied by comprehensive policies to safeguard the environment and communities, especially those most affected and in marginalized situations.

The GW HRBA to Climate and Disaster Risk Financing

Objective

Guiding climate risk financing by Human Rights principles and corresponding obligations established by international law. Seeks for climate risk financing instruments and activities to be developed, implemented and evaluated in a way to protect and promote the enjoyment of Human Rights to prevent harm to communities and ecosystems as well as to promote sustainable development.

Legal background

Anchored in a system of rights and corresponding obligations established by international law (Human Rights conventions and agreements, environmental and disaster risk reduction law and related normative frameworks).

Guardrails

1. Precautionary approach
2. Do no harm approach to communities and ecosystems
3. Promote sustainable development (incl. leave no one behind, poverty focus and gender sensitivity)
4. Common but differentiated responsibilities and respective capacities (incl. Polluter Pays)

The following principles should guide the development, implementation and evaluation of climate risk finance measures

HRBA Principles to Climate Risk Financing



Figure 2: The HRBA-CDRF (Source: Schäfer, Künzel & Jorks 2020)

4. Application of the HRBA-CDRF

4.1 Application Guideline for the HRBA-CDRF

With the ultimate objective of promoting and protecting human rights, fostering sustainable development, including through but not limited to preventing harm to communities and ecosystems, the HRBA-CDRF should be applied by all actors involved in developing, implementing and evaluating CDRF instruments and activities including those by international initiatives like the IGP. 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. Following, the principles are operationalized 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) to 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; 2) to assess if the HRBA principles were complied with, or to what extent they were fulfilled (e.g. for the IGP Monitoring and Evaluation Framework).

Box 2: Identification of necessary measures for operationalizing the HRBA-CDRF

The identification of relevant “necessary measures” for operationalizing the HRBA principles 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, acceptability (OHCHR 2012). **“Adequacy”** entails e.g. that benefits must be adequate in amount and duration so that duty bearers can realize their rights and that information must be provided so that it is digestible 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 e.g. coverage, eligibility, affordability, participation in and information about a CDRF (ECOSOC 2008). **“Availability”** means that facilities, goods and services, as well as programmes, have to 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 of CDRF instruments and activities so it can adapt to new 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 appropriation and good quality (ECOSOC 1999). CDRF instruments and activities should be respectful of the culture of individuals, minorities, peoples and communities, be sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the status of those concerned (ECOSOC 2000). Along these normative contents the HRBA-CDRF principles were, and can further be, operationalized.

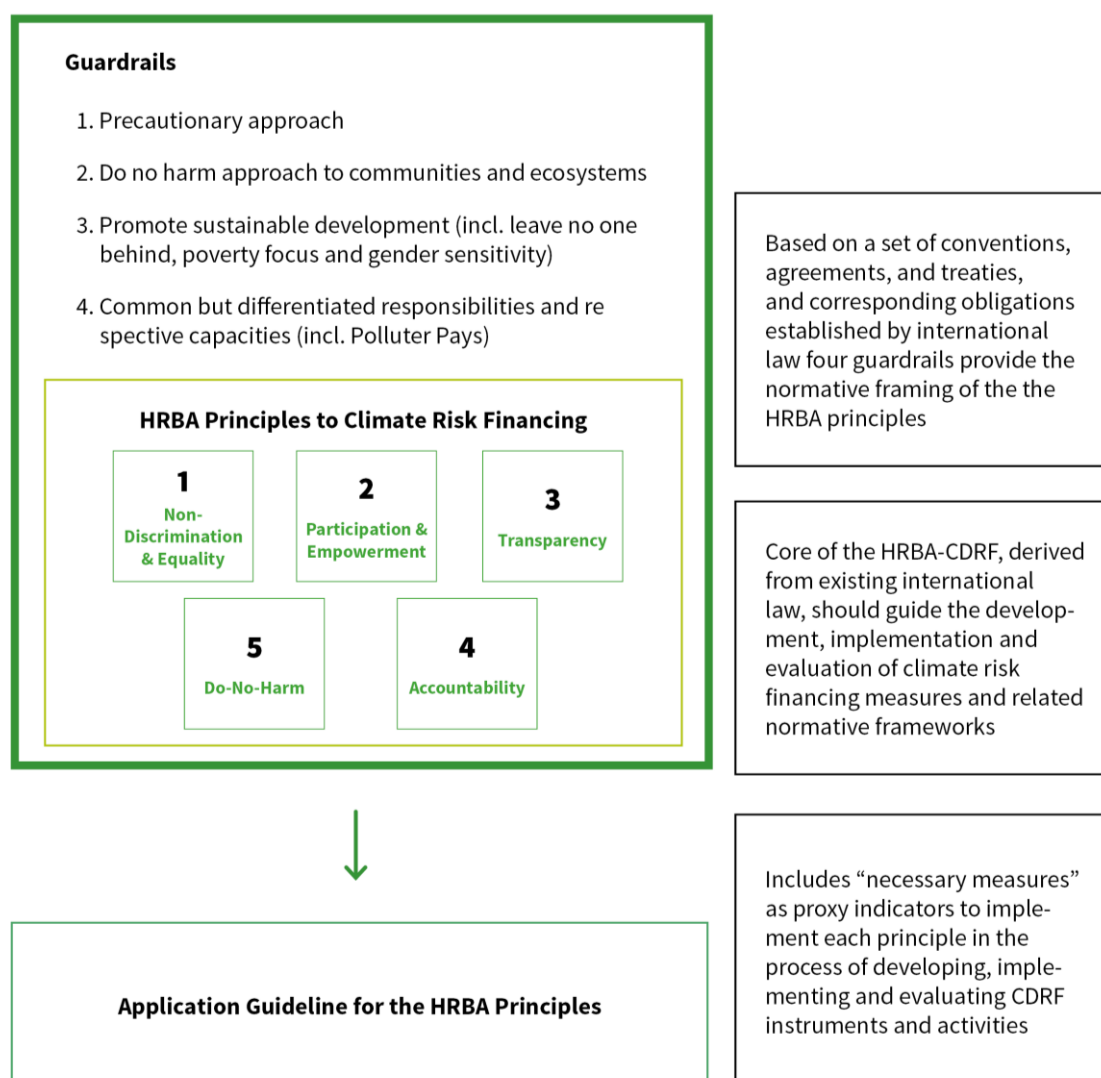


Figure 3: Applying the HRBA-CDRF (Source: Schäfer, Künzel & Jorks 2020)

The identified “necessary measures” and respective normative contents can be understood as proxy indicators. It is important to take note that necessary measures very much depend on the specific context of application, the type of instrument or activity. Therefore a one-size-fitsall approach is insufficient. The following five tables describe in detail the necessary measures for each of the five principles. All eleven measures are equally important and need to be equally fulfilled to adequately/sufficiently apply the HRBA.

Table 1: Application guideline for the HRBA-CDRF (Schaefer, Künzel & Jorks 2020)

Application Guideline for the HRBA Principles

Principle 1 Non-Discrimination and Equality

MEASURE 1	<ul style="list-style-type: none"> All rights holders
Identify and take into account in every further step of the process:	<ul style="list-style-type: none"> Pre-existing inequalities, discrimination, marginalization and vulnerabilities – or established practices to overcome these kind of obstacles Specific needs of all rights holders.
MEASURE 2	<ul style="list-style-type: none"> Conditions that ensure all rights holders equal access by considering criteria of accessibility: inclusion, coverage, eligibility, economically, physically.
Establish an enabling environment for and implementation of:	<ul style="list-style-type: none"> Policies that ensure that projects are developed and implemented in a way that all rights holders receive culturally compatible social and economic benefits and do not suffer adverse effects during the development and the implementation process of CDRF instruments and activities. Adaptability of the CDRF instruments and related processes in case of any negative impacts in terms of exacerbated discrimination and inequality are revealed by the monitoring and evaluation process.

Principle 2 Participation and Empowerment

MEASURE 3	<ul style="list-style-type: none"> Develop a safe and enabling environment for meaningful participation, especially for vulnerable and marginalized groups and/or individuals.
Create fundamental conditions for participation of all rights holders:	<ul style="list-style-type: none"> Identify capacity gaps of marginalized and vulnerable groups and undertake specific action for education, training and public awareness on climate risks and financial instruments and their alternatives. Ensure access to relevant information to enable effective and inclusive participation.
MEASURE 4	<ul style="list-style-type: none"> Establish decision making processes, in which marginalized and vulnerable groups and their issues are represented, including through the creation of decision-making spaces which include marginalized and vulnerable groups and ensuring they have influence in those spaces.
Create fundamental conditions for participation of all rights holders:	<ul style="list-style-type: none"> Make formats of participation available, accessible, acceptable, adequate and adaptable along all phases of developing, implementing and evaluating climate and disaster risk financing instruments and activities for all relevant actors.

Principle 3 Transparency

MEASURE 5	Ensure and regularly review availability, accessibility and adequacy of information on
Create fundamental conditions for participation of all rights holders:	<ul style="list-style-type: none"> Existence of CDRF options. Cost-benefits and risks of CDRF instruments for specific situations and needs and alternatives. How to take up and use CDRF products in a way that they benefit needs in the most effective way.

	<ul style="list-style-type: none"> Establish a transparent system of governance over financial mechanisms through reporting and information disclosure requirements.
MEASURE 6	<ul style="list-style-type: none"> Establish a time-bound plan of action, including benchmarks and ultimate targets in terms of development, implementation and evaluation of CDRF instruments and activities to guarantee transparency in terms of visibility, predictability and understandability.
Transparency of processes, structures and institutions	<ul style="list-style-type: none"> Set up monitoring & evaluation systems in a participatory manner with minimum standard and indicators which contain information on the impacts of CDRF instruments and activities on various groups of population that is as disaggregated as possible. 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.

Principle 4 Accountability

MEASURE 7	<ul style="list-style-type: none"> Conduct mapping of duty bearers Formulate TORs with duty bearers to facilitate accountability.
Provide adequate pre-conditions for accountability	
MEASURE 8	<ul style="list-style-type: none"> Jointly design and mutually agree on Social and Environmental Impact Assessments and ensure enforcement of its 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. Establish complaints mechanisms to address potential violations of any policies and procedures; and ensure independence, transparency, accessibility, adequacy and effectiveness of complaints further ensure of mechanisms to support affected people in enforcing their entitlements. This includes providing information of procedures in timely manner and in different means of access (offline, online, telephone) so that mechanisms are accessible. Establish monitoring & evaluation with minimum standard that explicitly addresses accountability and grievance systems, including adequate follow-up processes.
Accountability in regard to processes	
MEASURE 9	<ul style="list-style-type: none"> Make the elements of the CDRF instruments and activities recognizable and enforceable by law.
Accountability in regard to legal frameworks	

Principle 5 Do-No-Harm

MEASURE 10	<ul style="list-style-type: none"> Building on measure 1 and 9: Apply preventive and precautionary approaches in development and implementation, including prior assessment and systematic observation of the impacts of CDRF instruments and activities on the enjoyment of Human Rights. Continuously assess the impacts of CDRF instruments and activities, and related processes and policies on rights holders. Assess the existence of traditional, indigenous and local framework conditions and take them into account in the process of developing CDRF instruments.
Anticipate harm	
MEASURE 11	<ul style="list-style-type: none"> 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 marginalized situations. Ensure integration of safeguards with robust accountability mechanisms and appropriate contingency plans to address harm if it occurs. Continuously adapt instruments, policies and processes to changing needs and circumstances while ensuring a minimum level of stability. Respect and build upon traditional, indigenous and local knowledge and useful practices.
Minimize and avoid harm	

4.2 Framework Conditions and Challenges

In applying the HRBA to various CDRF instruments and activities, there are certain challenges and framework conditions that need to be considered so that in each phase, human rights can be protected and promoted, and harm can be prevented to a maximum extent. This chapter will reflect on some of the key challenges and framework conditions, taking into account that these heavily depend on the respective context of each CDRF instrument and activity, and can evolve and change over time.

Deeply ingrained behavior and power structures: Addressing sensitive power dynamics in relation to poverty and inequality is a fundamental part of an HRBA. Applying an HRBA requires a substantial paradigm shift for all actors in the area of climate risk management and the changing of behavior (Nelson & Dorsey 2003). People who formerly were perceived as passive recipients of support are transformed to active rights-holders who can claim entitlements. States and non-state-actors, such as businesses, are taking on the role as duty-bearers who can actively be held accountable. In this an HRBA contributes to strengthening the concept of citizenship. Meanwhile, actors are faced with dilemmas and trade-offs between the enforcement of rights as well as the retaining of a satisfactory relationship with authorities (against whom the rights are typically enforced) -“In practice this might lead to the application of only a ‘light version’ of an HRBA” (Broberg & Sano 2018). In the context of an HRBA to CDRF, meaningful participation and empowerment also require strengthening awareness and the “power within” rights holders by increasing awareness amongst right holders and duty bearers to facilitate the redefinition of social consensus on norms and behavior, and to reshape conditions behind decision-making (Pettit 2012). This is a special challenge when applying an HRBA to CDRF. The CDRF measures themselves don’t possess the capacity to foster this form of empowerment because they are not capable of influencing the external pre-existing societal conditions.

Local context: Each country, sector or community may have unique human rights challenges, which will affect and shape the nature of a particular CDRF activity. The implementation of an HRBA must be adapted accordingly. Strategies need to focus on appropriate means for strengthening local priorities towards the interests of those most discriminated and marginalized, the improvement of diverse stakeholder engagement, and the realization of new levels of accountability (Tomlinson 2017).

Potential for conflicts among rights holders: While aiming to protect and promote the human rights of the poorest and most vulnerable people, and preventing harm in a non-discriminatory, transparent and accountable way, an HRBA can be confronted with differing perceptions by rights-holders on their

personal entitlements. Rights-holders could perceive the implementation of an HRBA as favoring some groups in to others, which can lead to conflicts. At the same time, especially when aiming for a participatory implementation and process, an HRBA is often confronted with power structures amongst rights holders e.g. within a local community (Hickey & Mitlin 2009).

Shrinking space for civil society: Civil society organizations, particularly at the local level, are a primary avenue for reaching those who are discriminated against and marginalized. Against this critical importance of non-state actors in an HRBA are challenges posed by the shrinking and closing of civil society space in today's world. The effective engagement of civil society in development is affected by growing restrictions in legal and regulatory environments for CSOs, in access to policy dialogue, particularly for dissenting voices, at the country level (attacks on human rights defenders), and providers' policies in support of CSOs (Tomlinson 2017).

Adaptive management: A fundamental condition of applying the HRBA-CDRF is the need for CDRF instruments and activities to react to changing circumstances, poor design, gaps, predictable harm and violations of human rights and the HRBA principles of any kind.⁹ To facilitate this needed flexibility, an HRBA to CDRF is to be applied through adaptive management (AM). AM has the ability to address uncertainties and their social amplifications by allowing the CDRF instruments to co-evolve with risks and challenges. It encourages implementation of policy mixes as well as continues monitoring and evaluation of ongoing process and design decisions, making corrections when necessary (IPCC 2019). At the core of AM is the identification of problems and objectives, formulation of evaluation criteria, definition of system boundaries and context, evaluating trade-offs and making decisions in relation to response options, and instruments advancing response options in the context of uncertainty. Similarly, disaster risk management responds to hazards through preparation, prevention, response, analysis, and reconstruction in an iterative process. AM follows an approach of integrated planning, analysis and management into a transparent process to build a goal-oriented road map. One core requirement is transparency in the decision-making process and a structured feedback process that includes stakeholder participation (ibid.).

Data availability: Another challenge for the development process of CDRF instruments is how to ensure that money from CDRF is put towards expenses that are building resilience and adaptive capacity. To

⁹ It is equally important to ensure a decent degree of stability of all related process to ensure planning security, transparency and accountability.

achieve maximum success in applying an HRBA-CDRF, an assessment prior to the development phase is needed. This assessment needs to look at pre-existing human rights conditions, existing structures and climate risk analysis. Especially for the purpose of monitoring and overcoming patterns of discrimination, appropriate, high quality data which is disaggregated by sex and any other relevant social criteria such as age or ethnic origin, is required. Data availability and quality are common problems and need to be critically reflected throughout the development, implementation and evaluation phases (OHCHR 2012). Since the HRBA itself cannot improve the availability and quality of data, the success of the approach to some extent depends on national and local authorities providing support in this regard.

5. Recommendations to the IGP and Other Relevant Actors

Given the foreseeable risks to the implementation of human rights even in a 2°C or 3°C world, there is an obligation on the part of the nation state (precautionary principle), supported by the international community, and with growing contributions from major polluter states and corporations (CBDR), to put in place instruments and funding that fit the scale of the challenge. Promoting and protecting human rights, in the context of managing climate risks requires a combined effort. Based on the system of rights and corresponding obligations established by international law, the HRBA to CDRF should be considered and implemented by a variety of actors who are involved in the development, implementation and evaluation of instruments and activities related to CDRF. Additionally, international decision makers and initiatives need to provide guidance and support through international policy frameworks, backed by financial and technical means. Based on the HRBA-CDRF, the following boxes of recommendations provide suggestions for starting points that the relevant actors may use to promote and protect human rights in their activities. We have prepared recommendations for two groups: 1) The IGP (mainly targeted at its High-Level Consultative Group and the Program Alliance) and 2) Actors who are involved in developing, implementing and evaluating CDRF instruments and activities.

Box 3: Recommendations for the InsuResilience Global Partnership

Put in place and provide funding for CDRF instruments adequate to the climate crisis

In view of the foreseeable massive risks to the implementation of human rights in a 2°C or 3°C world, there is a duty on the part of the nation state (precautionary principle), supported by the international community and with growing contributions from the major polluter states and companies (CBDR), to put in place CDRF instruments and provide funding that are appropriate to the scale of the challenge.

Further align the InsuResilience Principles with the HRBA-CDRF and its principles and make it standard for drafting operational policies

The InsuResilience Principles already include references to human rights. In the introduction, it is acknowledged that “The Principles align with and promote an HRBA to climate and disaster risk finance (both in terms of their attainment as well as the process requirements indicated by such an approach)”. One sub-principle directly refers to “Realize human rights” stating 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”. In order to further align the InsuResilience Principles with the HRBA-CDRF:

- Introduce and explain the HRBA-CDRF and its principles in relevant meetings for all key IGP stakeholders, and incentivize the implementation of the HRBA-CDRF in all projects and programmes under the IGP.
- Conduct a *survey* amongst all IGP projects and programmes on whether the HRBA-CDRF principles were taken into account in the development, implementation and evaluation of activities, incl. how so, why and why not; plus any other measures that may correlate with the principles. Make the results of this survey transparently available in an accessible manner.
- Develop a briefing on how HRBA-CDRF principles are currently complied with by the IGP.
- Pay special attention to ***affordability and premium support*** as a means to make sure that especially those whose human rights are threatened most have adequate access. Suggest the development of premium support methodologies and selection criteria take human rights considerations into account.
- Consider the HBRA-CDRF principles when striving to integrate CDRF instruments into overarching climate policy, and when supporting the development of sustainable insurance markets in the vulnerable countries.

- Review and possibly advance the IGP’s targeting criteria beyond economic factors according to the HRBA-CDRF principles.
- Make information on the compliance of IGP and IGP projects and programmes with the HRBA-CRF an integral part of the IGPs Annual Report.

Moreover, the IGP should **align the monitoring and evaluation framework to monitor the implementation of Vision 2025 with the InsuResilience Principles with the HRBA**. In order to do so:

- Integrate an indicator on “promoting and protecting human rights” under Result area 5 “Development/human impact of risk finance and insurance arrangements” of the M&E System. The HRBA and its principles can serve as evaluation framework for the indicator.

Box 4: Recommendations for actors involved in developing, implementing and evaluating CDRF instruments and activities

Recommendations for actors involved in developing, implementing and evaluating CDRF instruments and activities (e.g. National governments and their agencies, international organizations, donors, insurers and reinsurers, brokers, intermediaries, public service providers, community institutions, supervisors & regulators, NGOs, research institutions & think tanks)

Put in place and provide funding for CDRF instruments adequate to the climate crisis

In view of the foreseeable massive risks to the implementation of human rights in a 2°C or 3°C world, there is a duty on the part of the nation state (precautionary principle), supported by the international community and with growing contributions from the major polluter states and companies (CBDR), to put in place CDRF instruments, and provide funding that is appropriate to the scale of the challenge.

Implement the HRBA-CDRF in developing, implementing and evaluating CDRF activities

- Align the need assessment, the design and implementation of your CDRF instruments and activities systematically with the HRBA-CDRF
- Use human rights-based climate risk assessment as a standard to identify needs and instruments to address the needs.

- Develop finance instruments that are adequate to the scale of the human rights challenge in many parts of the world.
- Mainstream the guardrails of 1) the prevention of social or environmental harm (*Do No Harm*), 2) the precautionary approach, 3) the promotion of sustainable development as well as and 4) the principles of common but differentiated responsibilities throughout the whole process of identifying climate based human rights risks, integrating people at risk in a participative way and applying the HRBA to CDRF.
- Use the “necessary measures” to implement each HRBA principle in the process of developing, implementing and evaluating CDRF instruments and activities. In this regard:
 - Ensure adequate participation and empowerment by creating fundamental conditions for participation and establish active, informed, meaningful and inclusive formats of participation. Take into account that often-marginalized people – by definition without adequate participation – are the people most at risk.
- Ensure a comprehensive risk assessment now and for the coming decades – in your own country and support those efforts in partner countries. Make sure that the results:
 - Ensure non-discrimination and equality by identifying rights holders, pre-existing inequalities and needs and take them into account in every further step of the process
 - Ensure transparency of processes, structures and institutions
 - Ensure accountability by establishing adequate Complaints mechanisms to address potential violations of any policies and procedures.

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The Munich Climate Insurance Initiative was initiated as a charitable organisation by representatives of insurers, research institutes and NGOs in April 2005 in response to the growing realization that insurance solutions can play a role in adaptation to climate change, as suggested in the UN Framework Convention on Climate Change and the Kyoto Protocol. This initiative is hosted at the United Nations University Institute for Environment and Human Security (UNU-EHS). As a leading think tank on climate change and insurance, MCII is focused on developing solutions for the risks posed by climate change for the poorest and most vulnerable people in developing countries.

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