

INTERNATIONAL COURT OF JUSTICE

RIGHT TO STRIKE UNDER THE ILO CONVENTION No. 87

(REQUEST FOR ADVISORY OPINION)

Written statement of the Republic of Vanuatu

15 May 2024

TABLE OF CONTENTS

I.	Chapter I: Introduction	3
	A. Background to the advisory proceedings	3
	B. Vanuatu's interest in the proceedings	4
	C. Summary of Vanuatu's argument	6
II.	Chapter II: The right to strike as protected under Convention No. 87	8
	A. Applicable rules of interpretation	8
	B. Ordinary meaning of the Convention's terms	9
	C. Object and purpose of the Convention	10
	D. Subsequent practice of parties to the Convention	12
	E. The <i>travaux préparatoires</i>	16
III.	Chapter III: The right to strike and a just transition of the workforce	18
	A. The right to strike in its broader normative context	18
	B. International recognition of the imperative of a just transition	20
	C. The right to strike in promoting a just transition	22
	(1) Ensuring worker participation in transition policies	22
	(2) Advocating for job security and social protection in the context of the just transition	24
	(3) Enabling environment for a just transition	26
	D. The consequences associated with the failure to acknowledge rights in the context of the just transition	28
IV.	Chapter VI: Conclusions	31
	Certification	33
	List of abbreviations	34
	List of annexes	35

CHAPTER I: INTRODUCTION

A. BACKGROUND TO THE ADVISORY PROCEEDINGS

1. On 10 November 2023, the Governing Body of the International Labour Organization (ILO), at its 349th bis (special) session, adopted a Resolution on the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (**Convention No. 87** or the **Convention**) with respect to the right to strike, requesting an advisory opinion from the International Court of Justice (ICJ or the **Court**), under article 37(1) of the ILO Constitution, on the following question:

Is the right to strike of workers and their organizations protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)?¹

2. There is a serious and long-standing dispute within the tripartite structure of the ILO over the interpretation of Convention No. 87 in relation to the right to strike, which has affected the functioning of the supervisory system of the International Labour Organization.² The request for an urgent referral of this matter to the Court was submitted for the consideration of the ILO Governing Body by the Workers' Group and supported by 36 governments.³
3. This Written Statement is submitted to the Court pursuant to the Order of the President of the Court dated 16 November 2023.
4. This Written Statement represents the contribution of the Republic of Vanuatu to the work of the Court. Vanuatu strongly supports the international judicial function

¹ Resolution Adopted by the Governing Body at its 349th bis (Special) Session on 10 November 2023.

² Resolution Adopted by the Governing Body at its 349th bis (Special) Session on 10 November 2023.

³ ILO, Letter of the Worker Vice-Chairperson of the ILO Governing Body to the ILO Director-General, dated 12 July 2023 [**Document No. 5**] (NB: in this Written Statement, references to 'Document No. ...' are references to the body of relevant documents submitted by the ILO to the Court in relation to the request for advisory opinion and available on the Court's website); ILO, Background report, GB.349bis/INS/1/1, Action to be taken on the request of the Workers' group and of 36 governments to urgently refer the dispute on the interpretation of Convention No. 87 in relation to the right to strike to the International Court of Justice for decision in accordance with article 37(1) of the Constitution, September 2023 [**Document No. 29**].

of the Court, especially its role of clarifying international legal obligations through advisory opinions. This is significant in relation to the question presented by the ILO, as the Court's opinion will enable the effective functioning of the ILO supervisory system.

5. The purpose of this Written Statement is to provide information to the Court on the right to strike under Convention No. 87 as a fundamental component and a corollary to the right to freedom of association as well as on the critical role of this right in advancing a just transition and sustainable development.

B. VANUATU'S INTEREST IN THE PROCEEDINGS

6. Vanuatu is a Member State of the ILO and a State party to the Freedom of Association and Protection of the Right to Organise Convention (Convention No. 87). Therefore, Vanuatu has a direct interest in the interpretation of the Convention and the effective functioning of the ILO supervisory system.
7. As a small island developing State highly vulnerable to the impacts of climate change, Vanuatu also has a strong interest in the right to strike as a fundamental enabler of a just transition to a low-carbon and climate-resilient future. Vanuatu has been a leading advocate for ambitious global climate action and has spearheaded international efforts aimed at requesting an advisory opinion from this Court regarding the obligations of States in relation to the conduct responsible for climate change and its legal consequences under international law.
8. A core aspect of climate (in)justice arises from the environmental and social implications of the delays in climate mitigation action by States responsible for causing significant harm to the climate system and other parts of the environment. The UNEP Emissions Gap Report 2023 makes this point very clear:

“The consequences of the continued delay in stringent emission reductions are evident when examining the past decade of Emissions Gap Reports. As highlighted in the Emissions Gap Report 2019 (UNEP 2019) the underlying data from the reports reveal that had serious climate action been initiated in 2010, the annual emission reductions necessary to achieve emission levels consistent with the below 2°C and 1.5°C scenarios by 2030 would have been only 0.7 per

cent and 3.3 per cent on average, respectively (Höhne *et al.* 2020). **The lack of stringent emission reductions means that the required emission cuts from now to 2030 have increased significantly. To reach emission levels consistent with a below 2°C pathway in 2030, the cuts required per year are now 5.3 per cent from 2024, reaching 8.7 per cent per year on average for the 1.5°C pathway.** To compare, the fall in total global GHG emissions from 2019 to 2020 due to the COVID-19 pandemic was 4.7 per cent (UNEP 2022).” (emphasis added)⁴

Such delays and the now drastic and urgent reductions of greenhouse gas emissions that they require have important implications for a just transition of the workforce.

9. For Vanuatu, a just transition tethered to fundamental rights, including workers’ rights, is not an abstract concept but a lived aspiration as it pursues sustainable, climate-resilient development. Labour mobility is a key pillar of Vanuatu's development strategy. Participation in labour mobility schemes has provided significant economic and social benefits for ni-Vanuatu workers, their families and communities. In 2022, personal remittances from labour mobility were estimated at over 75 million USD, equivalent to 19% of Vanuatu’s GDP.⁵
10. Vanuatu’s labour mobility experience illustrates the imperative of a just transition that protects workers’ fundamental rights and enables their participation in decision-making. Ni-Vanuatu workers engaged in labour mobility have faced challenges in accessing decent working and living conditions, securing equitable benefits, and receiving effective reintegration support upon their return.⁶ There are also significant economic and social impacts in Vanuatu resulting from high levels of participation in labour mobility schemes, including skills shortages across key sectors, and negative effects on families and communities as a result of prolonged

⁴ United Nations Environment Programme, *Emissions Gap Report 2023: Broken Record. Temperatures reach new highs, yet world fails to cut emissions (again)* (November 2023) (**Annex 1**), at p. 30. (NB: Although termed annexes, many documents referred to in the footnotes are legal references. They are referred to as annexes in this Written Statement and in the list of documents placed at the end only to facilitate access to them by the Court, as they are in the public domain. The pen-drive submitted to the Registrar only contains the documents marked as (enclosed) in the list of annexes, which are not publicly accessible).

⁵ World Bank, ‘Personal remittances, received (current US\$) – Vanuatu’ (**Annex 2**)

⁶ ILO, ‘Seasonal worker schemes in the Pacific through the lens of international human rights and labour standards’ (Technical Report, 2022) (**Annex 3**); Nuns, Bedford & Bedford, NZ RSE Impact Study: Synthesis Report, 22 May 2020) (**Annex 4**), at 8-9.

absence of workers.⁷ The right to strike is essential for ni-Vanuatu workers to be able to advocate for their rights and interests in the context of labour mobility and to shape Vanuatu’s broader just transition policies. Safeguarding this right globally is vital for Vanuatu to be able to align labour mobility as a development strategy with sustainable development objectives and human rights obligations.

11. Recognizing the right to strike as protected under ILO Convention No. 87 is not just the correct determination under international law—it also safeguards a critical element of the broader international framework related to the just transition to a low-carbon future. Acknowledging and affirming the protection of the right to strike as part of Convention No. 87 will ensure that workers can both participate in decision-making related to economic and social transformation measures, as well as contribute to a transition that is truly just and equitable. By contrast, failure to acknowledge and affirm the right to strike would not only be inconsistent with general international law, it would also call into question the internationally agreed protection of rights in the context of the just transition.
12. This Written Statement addresses the critical role of the right to strike in ensuring decent labour conditions and environmental protection, thus advancing a just transition to a low-carbon future.

C. SUMMARY OF VANUATU’S ARGUMENT

13. As a threshold matter, Vanuatu considers that no difficulty arises in relation to the Court’s jurisdiction to render the requested advisory opinion and the absence of any compelling grounds for the Court to refuse – in its discretion – to do so. The Court should exercise its jurisdiction as its opinion will provide critical guidance to ILO as well as its members, including Vanuatu.
14. Vanuatu submits that the right to strike is protected under Convention No. 87 as a fundamental component and a corollary of the right to freedom of association. This conclusion arises from the application of the rules of interpretation of treaties to

⁷ Nuns, Bedford & Bedford, NZ RSE Impact Study: Synthesis Report, 22 May 2020 (**Annex 4**), at 30, 33 and 34.

Convention No. 87, so clearly as to render any interpretation to the contrary untenable. This conclusion is authoritatively confirmed by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) as well as by subsequent practice and the broader normative context of the Convention, including customary international law, human rights treaties and the practice under the United Framework Convention on Climate Change (UNFCCC) and the Paris Agreement.

15. Vanuatu submits that the right to strike is indispensable for realizing worker participation, social dialogue, job protections and the enabling environment needed for truly just transitions. The Court should answer the ILO's question in the affirmative and recognize the interrelation between the right to strike and the just transition, thereby providing essential guidance as States and other stakeholders navigate this complex process of deep societal transformation.
16. Finally, Vanuatu stresses that failing to acknowledge the right to strike as protected under Convention No. 87 would not only run counter to State practice on promoting human rights as part of the just transition but also undermine the normative framework for international cooperation to achieve a just transition and sustainable development. Vanuatu urges the Court to affirm the right to strike as an integral component of this framework.

CHAPTER II: THE RIGHT TO STRIKE UNDER CONVENTION NO. 87

A. APPLICABLE RULES OF INTERPRETATION

17. Vanuatu submits that the right to strike is protected by Convention No. 87. In its interpretation of Convention No. 87, Vanuatu refers to the rules of interpretation codified in Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties.⁸ Article 31 (1) provides:

‘A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.’
18. The interpretation must also include the subsequent practice of the State parties to the treaty, provided it establishes their agreement on the interpretation of the treaty, and must consider any rules of international law applicable in the relations between the parties.⁹ Only in certain circumstances, recourse may also be had to the *travaux préparatoires* of the treaty as supplementary means of interpretation.¹⁰
19. Vanuatu submits that, although Convention No. 87 does not expressly mention the right to strike, it implicitly protects it as an essential means for workers to promote and defend their interests. This construction is supported by the ordinary meaning of the terms of Convention No. 87, which necessarily implies the right to strike (B); the fact that the right to strike is essential to fulfil the Convention’s object and

⁸ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, para. 65; *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgment, I.C.J. Reports 2009, p. 213, para. 47; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, para. 160; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, para. 94; *Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgment, I.C.J. Reports 2004, p. 12, para. 83; *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v. Malaysia)*, Judgment, I.C.J. Reports 2002, p. 625, para. 37; *LaGrand (Germany v. United States of America)*, Judgment, I.C.J. Reports 2001, p. 466, para. 99; *Kasikili/Sedudu Island (Botswana/Namibia)*, Judgment, I.C.J. Reports 1999, p. 1045, para. 18; *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Judgment, I.C.J. Reports 1994, p. 6, para. 41.

⁹ Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331, art 31(3)(b)-(c).

¹⁰ Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331, art 32.

purpose (C); the subsequent practice of the Parties to the Convention (D); and the *travaux préparatoires* (E).

B. ORDINARY MEANING OF THE CONVENTION'S TERMS

20. The interpretation of Articles 2, 3, 8 and 10 of Convention No. 87, according to their ordinary meaning, demonstrates that Convention No. 87 necessarily implies a right to strike.¹¹ Article 2 affirms the right of workers and employers to ‘*establish*’ and ‘*join*’ organizations of their choosing, ‘*subject only to the rules of the organisation concerned*’.
21. Article 3 explicitly grants workers’ and employers’ organizations the ‘*right to draft their constitutions and rules*’, elect representatives, manage their administration, and formulate ‘*their programmes*’. Article 10’s definition of an ‘*organisation*’ as ‘*any organisation of workers or of employers for furthering and defending the interests of workers or of employers*’ supports the interpretation that Convention No. 87 necessarily implies a right to strike. Striking, as a quintessential tool for defending workers’ interests, is naturally encompassed within the ordinary meaning of the terms ‘*constitution*’, ‘*rules*’, ‘*activities*’, and ‘*programmes*’ as employed by the Convention.
22. Drawing on the Oxford English Dictionary (2024), the term ‘*constitution*’ is understood as ‘*the system or body of fundamental principles according to which a nation, state, or body politic is constituted and governed*’.¹² Similarly, ‘*rules*’ refer to regulations ‘*framed or adopted by an organization, institution, or other body for governing its conduct and that of its members*’.¹³ These terms imply broad authority to enact provisions that serve to further and defend the interests of workers and employers, including organizing industrial action.

¹¹ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) [Document No. 120].

¹² Oxford English Dictionary, s.v. ‘constitution (n.),’ March 2024, available at: <https://doi.org/10.1093/OED/2107816703>

¹³ Oxford English Dictionary, s.v. ‘rule (n.1),’ March 2024, available at: <https://doi.org/10.1093/OED/8650595566>

23. Furthermore, the terms ‘*activities*’ and ‘*programmes*’ in Article 3 imply a wide operational scope. ‘*Activities*’ are generally understood as the actions or engagements of an organization,¹⁴ while ‘*programmes*’ refer to a planned series of actions or events.¹⁵ The absence of any specific inclusions or exclusions of particular activities within these terms implies that the Convention protects a comprehensive range of actions, including the right to strike. If specific actions such as strikes were excluded due to not being explicitly mentioned, then logically, Article 3 would not definitively include any activities, thereby rendering Article 3 meaningless.
24. Article 8 establishes the only permissible limitations on these rights. It requires that while exercising their rights under the Convention, ‘*workers and employers and their respective organisations ... shall respect the law of the land*’. However, it states that these laws must not impair the rights guaranteed by the Convention, further reinforcing the broad protective scope that is apparent from the ordinary meaning of its terms.
25. Therefore, interpreting the terms of Convention No. 87 according to their ordinary meaning, it is logical to conclude that the Convention protects the right to strike.

C. OBJECT AND PURPOSE OF THE CONVENTION

26. The interpretation of Convention No. 87 as protecting the right to strike is confirmed by its object and purpose. The Convention’s object and purpose is to protect freedom of association and the right to organize to improve the conditions of labour and advance peace.
27. The Permanent Court of International Justice (**PCIJ**) clarified that the object and purpose of a treaty encompasses the entire treaty,¹⁶ an understanding confirmed by

¹⁴ Oxford English Dictionary, s.v. ‘activity (n.),’ September 2023, available at: <https://doi.org/10.1093/OED/3459835268>

¹⁵ Oxford English Dictionary, s.v. ‘programme | program (n.),’ March 2024, available at: <https://doi.org/10.1093/OED/8131261676>

¹⁶ *Competence of the ILO to Regulate Agricultural Labour*, PCIJ (1922) Series B, Nos 2 and 3, 23.

Article 41(1)(b)(ii) of the VLCT. The Court has resorted to the Preamble as an important element in establishing the object and purpose of the treaty.¹⁷

28. The title of Convention No. 87, '*Freedom of Association and Protection of the Right to Organize Convention*', reflects its primary focus on freedom of association. The Preamble further supports this conclusion by stressing '*freedom of association and protection of the right to organise*', as well as citing the Preamble to the ILO Constitution as declaring "'recognition of the principle of freedom of association" to be a means of improving conditions of labour and of establishing peace'. The Preamble clearly presents Convention No. 87 as an instrument to protect freedom of association, including the right to organize, as fundamental means to improve labour conditions and advance peace.
29. A comprehensive reading of the treaty's provisions is necessary to definitively ascertain its object and purpose. Such an examination confirms that the object and purpose of Convention No. 87 is to protect freedom of association, including the right to organize, in order to improve the conditions of labour and advance peace. Thus, Article 10 clarifies the objective of workers' organizations: to further and defend the interests of workers. Article 3(2), in turn, strengthens this by prohibiting '*any interference which would restrict ... or impede the lawful exercise*' of the rights to freedom of association recognized in Article 2 and Article 3(1). Furthermore, Article 8(2) provides that national laws must not impair the rights established under the Convention.
30. The Inter-American Court of Human Rights (IACtHR), in its advisory opinion the right to freedom of association, right to collective bargaining and right to strike, and their relation to other rights, with a gender perspective, has also concluded that while the right to strike is not '*expressly recognized in the ILO conventions*,' Article 3 of Convention No. 87 recognizes the right of worker organizations '*in full freedom, to organise their administration and activities and to formulate their*

¹⁷ *Asylum Case* [1950] ICJ Rep 266, 282; *Rights of US Nationals in Morocco* [1952] ICJ Rep 176, 196; *Sovereignty over Pulau Ligitan and Pulau Sipadan* [2002] ICJ Rep 625, para 51.

*programmes.*¹⁸ The IACtHR further observed that the Committee on Freedom of Association has ‘*accordingly recognized the importance of the right to strike as ‘an intrinsic corollary to the right to organize protected by Convention No. 87.’*’¹⁹ The IACtHR further concluded that the right to strike is a ‘*general principle of international law.*’²⁰

31. In this light, freedom of association necessarily includes the right to strike as a fundamental tool for advancing and protecting workers’ economic and social interests under Article 3. The right to strike is indispensable for trade unions in the realm of industrial relations, enabling workers to collectively secure fair employment terms and influence decisions impacting their lives and societal well-being. Given the unequal dynamics in employer-worker relationships, these goals would be highly difficult to attain under certain circumstances without the right to strike.

D. SUBSEQUENT PRACTICE OF PARTIES TO THE CONVENTION

32. The subsequent practice of the parties to Convention No. 87 confirms that the Convention protects the right to strike, as evidenced by the interpretations by the CEACR and the Committee on Freedom of Association (CFA); widespread acceptance of these views by parties, including through ratification of the Convention by dozens of States after these interpretations were issued; the confirmation by the tripartite constituencies, including workers and employers; and the protection of freedom of association and the right to strike in various human rights instruments ratified by state parties after their ratification of Convention No. 87.

¹⁸ *Right to Freedom of Association, Right to Collective Bargaining and Right to Strike, and their Relation to other Rights, with a Gender Perspective*, Advisory Opinion OC-27/21, 2021 Inter-Am. Ct. H.R. (ser. A) No. 27 (5 May 2021) para 96.

¹⁹ *Right to Freedom of Association, Right to Collective Bargaining and Right to Strike, and their Relation to other Rights, with a Gender Perspective*, Advisory Opinion OC-27/21, 2021 Inter-Am. Ct. H.R. (ser. A) No. 27 (5 May 2021) para 96.

²⁰ *Right to Freedom of Association, Right to Collective Bargaining and Right to Strike, and their Relation to other Rights, with a Gender Perspective*, Advisory Opinion OC-27/21, 2021 Inter-Am. Ct. H.R. (ser. A) No. 27 (5 May 2021) para 97.

33. Draft Conclusion 12 of the International Law Commission’s Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties states:
- (2) Subsequent agreements and subsequent practice under article 31, paragraph 3, or other subsequent practice under article 32, may arise from, or be reflected in, pronouncements of an expert body.
- (3) A pronouncement of an expert body, in the application of the treaty under its mandate, may contribute to the interpretation of that treaty when applying articles 31, paragraph 1, and 32.²¹
34. In particular, in determining the subsequent practice of parties to the Convention, Vanuatu considers that the views of the CEACR should be given great weight. The mandate of the CEACR consists in providing an impartial and technical evaluation of the application of international labour standards in ILO member States.²² The CEACR must interpret ILO Conventions to express its views on their content and meaning and, where appropriate, determine the convention’s legal scope in order to properly perform its mandate.²³ Together with the Conference Committee on the Application of Standards (CAS) they represent the twin pillars of the ILO’s supervision system.²⁴
35. As early as 1959, the CEACR affirmed that ‘*prohibition of strikes by workers other than public officials acting in the name of public powers ... may sometimes constitute a considerable restriction of the potential activities of trade unions*’ and that such prohibition may run counter to Article 8(2) of the Convention.²⁵ The

²¹ International Law Commission, Text of the draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties with commentaries, UN Doc. A/73/10, 2018 (**Annex 5**), Conclusion 12.

²² ILO, Handbook of procedures relating to international labour Conventions and Recommendations, 2019, p. 35 para 60 [**Document No. 59**].

²³ International Labour Conference, 100th Session, 2011, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, paras 10–12 [**Document No. 101**].

²⁴ Governing Body, Matters arising out of the work of the International Labour Conference Follow-up to the decision adopted by the International Labour Conference on certain matters arising out of the report of the Committee on the Application of Standards, 317th Session, Geneva, 6–28 March 2013 (**Annex 6**), p. 7 para. 19.

²⁵ ILC, 43rd Session, 1959, Report III (Part IV), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 101–129 [**Document No. 232**], pp. 114–115.

Committee has since repeatedly affirmed the right to strike as a fundamental workers' right in its observations to Member States regarding the application of Convention No. 87.²⁶

36. For its part, the CFA, established in 1951, '*has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests*'.²⁷ The CFA has explained that '*[t]he right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests*'.²⁸
37. The widespread acceptance of these views by parties to the Convention is evidenced by the ratification of Convention No. 87 by 122 since 1959. This ratification pattern indicates that 122 States ratified Convention No. 87 after the CEACR first clarified that it protected the right to strike as an inherent part of the right to freedom of association.²⁹ In fact, Vanuatu ratified Convention No. 87 in 2006, endorsing this longstanding interpretation.
38. Furthermore, the interpretation of the right to strike as protected by Convention No. 87 has been confirmed by the tripartite constituencies of the ILO, including workers and employers. The International Labour Conference, comprising government,

²⁶ ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 147-149 (German Democratic Republic) [**Document No. 165**]; ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 206-209 (Colombia) [**Document No. 166**]; ILC, 83rd Session, 1996, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 146-147 (Chad) [**Document No. 167**]; ILC, 99th Session, 2010, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 56-58 (Australia) [**Document No. 168**]; ILC, 100th Session, 2011, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 186-188 (United Kingdom) [**Document No. 169**]; ILC, 102nd Session, 2013, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 156 (Russian Federation) [**Document No. 170**].

²⁷ ILO, Compilation of decisions of the Committee on Freedom of Association, sixth edition, 2018, pp. 143-182 [**Document No. 282**], p. 143.

²⁸ ILO, Compilation of decisions of the Committee on Freedom of Association, sixth edition, 2018, pp. 143-182 [**Document No. 282**], p. 143.

²⁹ ILO, Ratifications of C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), available at: https://webapps.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312232

workers’, and employers’ delegates, has repeatedly affirmed in various Resolutions adopted since the 1950s that it considers the right to strike as an essential element of freedom of association.³⁰ It was only by the end of the 1980s that the Employers’ group ‘*begun to question the validity of certain conclusions of the Committee of Experts*’, leading to a polarization of views with the Workers’ group which has ultimately come to threaten ‘*the integrity of the supervisory system*’.³¹

39. Finally, additional subsequent practice confirming the interpretation of Convention No. 87 as protecting the right to strike is provided by the ratification of various human rights instruments that explicitly recognize freedom of association and the right to strike. Particularly important among these instruments are those that explicitly recognize the right to strike. For example, the European Social Charter, initially adopted in 1961 and revised in 1996, recognizes, in Article 6, ‘*the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into*’.³² In turn, the International Covenant on Economic, Social and Cultural Rights (ICESCR)³³ (article 8), adopted in 1966, explicitly recognizes, in Article 8(1)(d), ‘*[t]he right to strike, provided that it is exercised in conformity with the laws of the particular country*’. Furthermore, the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador) explicitly recognizes the right to strike in Article 8(1)(b). Citing these and other human rights instruments, including Convention No. 87 (articles 3, 8 and 10), the International Covenant on Civil and Political Rights (ICCPR)³⁴ (article 22), the European

³⁰ See, e.g., ILC, 40th Session, 1957, Resolution concerning the Abolition of Anti-Trade Union Legislation in the States Members of the International Labour Organisation [**Document No. 133**]; ILC, 54th Session, 1970, Resolution concerning Trade Union Rights and Their Relation to Civil Liberties [**Document No. 136**]; ILC, 57th Session, 1972, Resolution concerning the Policy of Colonial Oppression, Racial Discrimination and Violation of Trade Union Rights Pursued by Portugal in Angola, Mozambique and Guinea (Bissau) [**Document No. 137**].

³¹ ILC, 80th Session, 1993, Report of the Committee on the Application of Standards, paras 9–25 [**Document No. 100**], para 11.

³² European Social Charter (Revised) ETS 163: <https://rm.coe.int/168007cf93>

³³ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3.

³⁴ International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171.

Convention on Human Rights (article 11), and the American Convention on Human Rights (article 16), UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, concluded in 2016 that:

‘The right to strike has been established in international law for decades, in global and regional instruments, and is also enshrined in the constitutions of at least 90 countries. The right to strike has, in fact, become customary international law.’³⁵

There is thus no doubt that the right to strike is protected under international law, in particular by the ILO Constitution and Convention No. 87.

E. THE *TRAVAUX PRÉPARATOIRES*

40. The primary means of interpretation, including subsequent practice, unequivocally establish that Convention No. 87 protects the right to strike. Therefore, reliance on the preparatory works of Convention No. 87 is unnecessary. Article 32 of the VCLT and customary international law designate preparatory works as a supplementary means of interpretation, to be employed only when the principal methods ‘*leave the meaning ambiguous or obscure*’ or *lead to a result that is ‘manifestly absurd or unreasonable’*. These conditions are not present in the interpretation of Convention No. 87.
41. Although recourse to the *travaux préparatoires* is not warranted, they further corroborate the protection of the right to strike under Convention No. 87. A careful assessment of the situation at the time of the negotiation of the Convention shows that the right to strike was indeed considered,³⁶ and that the approach taken by the tripartite members was that ‘a right to strike was implied in the right of freedom of

³⁵ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report on Rights to freedom of peaceful assembly and of association, A/71/385 (2016), paras 54, 56 and 99(i) [Document No. 315], para 56.

³⁶ See, e.g., Memorandum and Draft Resolution submitted by the American Federation of Labor to the Economic and Social Council on the Guarantees for the Exercise and Development of Trade Union Rights, 1947 [Document No. 142], Draft Resolution, Art. I(H).

association’ but, for pragmatic reasons, they preferred to ‘avoid the quagmire of delineating the exact contours of the right to strike’.³⁷

42. In sum, all methods of interpretation available under the VCLT point to the conclusion that the right to strike is protected as a fundamental right under international law, and in particular within the framework of Convention No. 87. The following section places the right to strike in the broader normative context of international human rights law as well as the practice of States in implementing a just transition. In each case, the recognition and acknowledgement of the right to strike, both explicitly and as a corollary of the right to freedom of association, provide important context in the interpretation of Convention 87.

³⁷ J Vogt, J Bellace, L Compa, K D Ewing, J Hendy, K Lörcher, T Novitz, *The Right to Strike in International Law* (Hart 2021) (Annex 7), p. 167.

**CHAPTER III:
THE RIGHT TO STRIKE AND THE JUST
TRANSITION OF THE WORKFORCE**

A. THE RIGHT TO STRIKE IN ITS BROADER NORMATIVE CONTEXT

44. The rules of interpretation codified in Article 31 of the Vienna Convention on the Law of Treaties require the interpreter of a treaty to take into account ‘*any relevant rules of international law applicable in the relations between the parties*’.³⁸ In Vanuatu’s submission, the applicable rules relevant to the interpretation of Convention No. 87 include the treaties and customary international law relating to the protection of human rights as well as those relating to climate change.
45. This chapter highlights relevant and applicable rules that are especially relevant in the context of the global climate crisis and the pressing need for a just transition of the workforce when States adopt policies and measures to reduce their emissions of greenhouse gases and redress climate injustices. These rules include provisions on the right to strike contained in the ICCPR and ICESCR, because these treaties embody the key treaty pillars of the ‘international bill of rights’ with worldwide geographical application and the incorporation of detailed interpretive materials. In addition, the Paris Agreement,³⁹ adopted under the aegis of the United Framework Convention on Climate Change (UNFCCC),⁴⁰ contains provisions about climate change and a just transition of the workforce that are relevant the interpretation of Convention No. 87.
46. Article 22 of the ICCPR protects the right to freedom of association, including the right to form and join trade unions, with Article 22(3) clarifying that the article does not authorize legislative measures ‘*which would prejudice ... the guarantees*’ provided for in Convention No. 87. The ICESCR in Article 8 explicitly protects both the right to form trade unions and the right to strike, with paragraph 3

³⁸ Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331, art 31(3)(c).

³⁹ Paris Agreement, 12 December 2015, 3156 UNTS 79

⁴⁰ United Nations Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107.

mirroring the savings clause found in Article 22(3) ICCPR. This clause is significant as it safeguards Convention No. 87's broader protections, including the right to strike for those involved in the administration of the State.⁴¹

47. Importantly, the very terms of the savings clause assume that ILO Convention No. 87 protects the right to strike. Article 8(3) ICESCR emphasizes that for States that have consented to the more advanced level of protection provided for in ILO Convention No. 87, Article 8 ICESCR – which only provides basic or ‘floor’ protection - in no way diminishes that more advanced level:

‘Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention’

Given that Article 8(1)(d) ICESCR itself expressly protects the right to strike, it is implausible that the more advanced level of protection in ILO Convention No. 87 does not also protect that right. Therefore, the specific reservation of ILO Convention No. 87 in Article 8(3) ICESCR, read together with Article 8(1)(d), unequivocally demonstrates the understanding of States regarding the protection of the right to strike under ILO Convention No. 87.

48. Decades of subsequent practice underscore the imperative of coherent interpretations of the right to strike as protected under various international instruments. As commentators note:

‘The ILO has routinely invoked concepts and interpretations concerning the right to strike which are drawn from ILO standards and practice, even where states are not parties to the ILO instruments. The CDESCR thus accepts that ILO standards supply relevant guidance on the right to strike, and that its content is not left to national discretion. The ILO

⁴¹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3, art 8(2) ICESCR. See further Ben Saul, David Kinley, Jacqueline Mowbray (eds), *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (Oxford University Press, 2014) (Annex 8), page 601.

standards have tended to loosely operate as an informal *lex specialis* in defining the application of Article 8 limitations.⁴²

49. Like for all ICESCR rights, States are required to take steps individually and through international assistance and cooperation (ICESCR, Article 2(1)) to realize the right to strike, including by treaty action, soft law making, consultation, research and technical assistance (ICESCR, Article 23). As further explained in this Written Statement, these obligations are paramount in the context of a just transition.

B. INTERNATIONAL RECOGNITION OF THE IMPERATIVE OF A JUST TRANSITION

50. A just transition refers to ‘*strategies, policies or measures to ensure no one is left behind or pushed behind in the transition to low-carbon and environmentally sustainable economies and societies.*’⁴³ The term has its origins in trade union activism,⁴⁴ which has highlighted the importance of worker and union solidarity and a strong labour voice in dialogue with governments and businesses about responses to climate change.⁴⁵
51. The UNFCCC, ratified by all parties to Convention No. 87, sets an ultimate objective of preventing ‘*dangerous anthropogenic interference with the climate system.*’⁴⁶ The Paris Agreement, ratified by nearly all parties to Convention No. 87⁴⁷ and signed by all of them, recognizes in its preamble ‘*the imperative of a just transition of the workforce and the creation of decent work and quality jobs.*’⁴⁸ The Paris Agreement also calls upon States to respect and promote their human rights

⁴² Ben Saul, David Kinley, Jacqueline Mowbray (eds), *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (Oxford University Press, 2014) (Annex 8), page 582

⁴³ UN Department of Economic and Social Affairs, ‘Policy Brief No. 141: A just green transition: concepts and practice so far’ (4 November 2022) (Annex 9).

⁴⁴ UN Department of Economic and Social Affairs, ‘Policy Brief No. 141: A just green transition: concepts and practice so far’ (4 November 2022) (Annex 9).

⁴⁵ V. Silverman, ‘Sustainable Alliances: The Origins of International Labor Environmentalism’ (2004) 66 *International Labor & Working-Class History* 118 (Annex 10)

⁴⁶ United Nations Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107, art 2.

⁴⁷ With the exception of Yemen and Libya.

⁴⁸ Paris Agreement, 12 December 2015, 3156 UNTS 79, preambular para 11.

obligations, and thus to respect and promote the right to strike, when taking climate action.⁴⁹

52. Both the ILO and the UNFCCC have produced extensive policy analysis on just transitions, situating them at the intersection of international climate change law and international labour law.⁵⁰ In the context of the UNFCCC, the importance of a just transition has been reaffirmed in subsequent climate agreements and decisions, including the 2021 Glasgow Climate Pact⁵¹ and the 2023 decision to establish a just transition work programme under the Paris Agreement.⁵² These instruments highlight the need to ensure that just transitions promote sustainable development, poverty eradication, and decent work for all.
53. The notion of a just transition aligns with the ILO's foundational philosophy that social concerns must be integral to economic decision-making, that costs of economic transitions should be socialized, and that economic management is best achieved through genuine dialogue between social partners.⁵³
54. The ILO's 2013 resolution concerning sustainable development, decent work, and green jobs cites Convention No. 87 as relevant to a just transition framework,⁵⁴ stressing the need for a well-managed just transition⁵⁵ with the active engagement of workers.⁵⁶ Its 2015 *Guidelines for a just transition towards environmentally*

⁴⁹ Paris Agreement, 12 December 2015, 3156 UNTS 79, preambular para 12.

⁵⁰ See, e.g., the ILO publications related to the just transition available at: <https://www.ilo.org/topics/just-transition-towards-environmentally-sustainable-economies-and-societies#publications>; UNFCCC, 'Implementation of just transition and economic diversification strategies: a compilation of best practices from different countries' (March 2023) (**Annex 11**).

⁵¹ Decision 1/CMA.3: Glasgow Climate Pact, 8 March 2022, UN Doc. FCCC/PA/CMA/2021/10/Add.1 (**Annex 12**), para 36.

⁵² Decision 3/CMA.5: United Arab Emirates just transition work programme, 15 March 2024, UN Doc. FCCC/PA/CMA/2023/16/Add.1 (**Annex 13**)

⁵³ Dan Cunniah, 'Preface' (2010) 2:2 International Journal of Labour Research 121-123 (**Annex 14**)

⁵⁴ ILC, 102nd Session, 2013, 'Resolution concerning sustainable development, decent work and green jobs' (**Annex 15**), Appendix.

⁵⁵ ILC, 102nd Session, 2013, 'Resolution concerning sustainable development, decent work and green jobs' (**Annex 15**), para 4.

⁵⁶ ILC, 102nd Session, 2013, 'Resolution concerning sustainable development, decent work and green jobs' (**Annex 15**), para 9.

sustainable economies and societies for all reiterate that just transition policies should respect, promote and realize fundamental principles and rights at work, including freedom of association and the right to organize and bargain collectively under Convention No. 87.⁵⁷

55. In June 2023, the International Labour Conference reaffirmed ‘*urgent action to advance just transition*’ as an imperative for social justice, decent work, poverty eradication and tackling climate change.⁵⁸ Its resolution concerning a just transition towards environmentally sustainable economies and societies for all reiterates that just transition ‘*should be based on effective social dialogue, respect for fundamental principles and rights at work, and be in accordance with international labour standards*’⁵⁹ and endorses the 2015 *Guidelines for a just transition* as the central reference for policy-making and basis for action.⁶⁰
56. The recognition described above forms the international context in which Convention No. 87 is situated and reflects State practice relevant to its interpretation.

C. THE ROLE OF THE RIGHT TO STRIKE IN PROMOTING A JUST TRANSITION

(1) Ensuring worker participation in transition policies

57. The Paris Agreement repeatedly stresses the need for public participation in order to meet its objectives, including that of limiting warming. It affirms ‘*the importance of education, training, public awareness, public participation, public access to information and cooperation at all levels*’ on climate action.⁶¹ Article 6(8) requires States Parties to recognize the ‘*importance of integrated holistic and balanced non-*

⁵⁷ ILO, ‘Guidelines for a just transition towards environmentally sustainable economies and societies for all’ (2015) (**Annex 16**).

⁵⁸ ILC, 111th session, 2023, ‘Resolution concerning a just transition towards environmentally sustainable economies and societies for all’ (**Annex 17**), para 1.

⁵⁹ ILC, 111th session, 2023, ‘Resolution concerning a just transition towards environmentally sustainable economies and societies for all’ (**Annex 17**), para 12.

⁶⁰ ILC, 111th session, 2023, ‘Resolution concerning a just transition towards environmentally sustainable economies and societies for all’ (**Annex 17**) para 9.

⁶¹ Paris Agreement, 12 December 2015, 3156 UNTS 79, preambular para 15.

market approaches’ in implementing nationally determined contribution, and the need for such approaches to ‘[e]nhance public and private sector participation in the implementation of nationally determined contributions.’⁶² Article 7 requires adaptation action to be ‘participatory’ and ‘fully transparent.’⁶³ Capacity building for developing countries vulnerable to climate change should also be ‘participatory’ and ‘cross-cutting.’⁶⁴ Finally, Article 12 imposes an obligation of cooperation on States Parties to enhance public participation in the Agreement’s implementation.⁶⁵

58. The right to participate in public affairs is also protected under international human rights law, including in Article 25 of the ICCPR. The UN Human Rights Committee has observed that the obligation of States under this provision entails ‘ensuring freedom of expression, assembly and association,’ so as to enable citizens to participate in the conduct of public affairs through organizing themselves.⁶⁶
59. Similarly, the rights to freedom of expression and freedom of assembly under the European Convention on Human Rights⁶⁷ (articles 10 and 11) specifically protect participation in demonstrations, even when such action has the effect of physically obstructing the activities objected to.⁶⁸
60. The right to strike enables the public participation in climate policy that is called for in the Paris Agreement and prescribed by international human rights law. It allows workers to mobilize and shape public opinion, essential for producing

⁶² Paris Agreement, 12 December 2015, 3156 UNTS 79, art 6(8)(b).

⁶³ Paris Agreement, 12 December 2015, 3156 UNTS 79, art 7.

⁶⁴ Paris Agreement, 12 December 2015, 3156 UNTS 79, art 11(2).

⁶⁵ Paris Agreement, 12 December 2015, 3156 UNTS 79, art 12.

⁶⁶ UN Human Rights Committee, ‘General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25)’ (12 July 1996) UN Doc. CCPR/C/21/Rev.1/Add.7 (**Annex 18**), para 8.

⁶⁷ Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 UNTS 221

⁶⁸ *Steel and Others v. the United Kingdom*, ECtHR Application no 67/1997/851/1058, Judgment (23 September 1998), para 92; *Hashman and Harrup v. the United Kingdom*, ECtHR Application no. 25594/94, Judgment (25 November 1999), para 28; *Bumbeş v. Romania*, ECtHR Application no 18079/15, Judgment (3 May 2022), paras 92, 94, 95; *Chernega and Others v. Ukraine*, ECtHR Application no. 74768/10, Judgment (18 June 2019), paras 219, 220, 222.

effective and equitable climate action and just transitions.⁶⁹ For Vanuatu, labour mobility programmes have provided economic and social benefits, enhancing Vanuatu's economy through remittances and offering work opportunities for low to semi-skilled ni-Vanuatu workers. The right to strike empowers these workers to influence policies that affect them and claim equitable benefits as part of a just transition.

(2) *Advocating for job security and social protection in the context of the just transition*

61. The right to strike empowers workers, particularly those most vulnerable in economic and social transitions, to negotiate enhanced working conditions and advocate for job security and social protections.⁷⁰ Restricting the right to strike would limit workers' ability to exert collective pressure on transition matters to ensure the effective protection of their rights, contrary to what a just transition requires. The Special Rapporteur on the rights to freedom of peaceful assembly and of association has therefore called on States to guarantee all workers the right to strike and to bargain collectively over just transition matters.⁷¹
62. Restricting the right to strike would be particularly harmful for vulnerable groups, including migrants, Indigenous Peoples, people living in poverty, and children. These groups are disproportionately affected by climate change, risk being negatively affected by measures taken in response to climate change, and face an

⁶⁹ Clément Nyaletsossi Voule, Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 23 July 2021, UN Doc A/76/222 (**Annex 19**), para 8.

⁷⁰ José Francisco Calí Tzay, *Green financing – a just transition to protect the rights of Indigenous Peoples*, Report of the Special Rapporteur on the human rights of Indigenous Peoples, 21 July 2023 UN Doc. A/HRC/54/31 (**Annex 20**), para 6; Olivier de Schutter, The “just transition” in the economic recovery: eradicating poverty within planetary boundaries, Interim Report of the Special Rapporteur on extreme poverty and human rights, 7 October 2020 UN Doc. A/75/181/Rev.1 para 56 (**Annex 21**), para 56.

⁷¹ Clément Nyaletsossi Voule, Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 23 July 2021, UN Doc A/76/222 (**Annex 19**), para 90(g).

increased risk of prejudice or harm in work-related settings.⁷² Migrants, for example, including those fleeing deteriorating climatic conditions, are often vulnerable because of lacking labour and occupational health and safety standards, the absence of unionization, and exposure to discrimination.⁷³ The right to organize and engage in collective bargaining, supported by the right to strike, offers essential legal protection to such migrant workers.⁷⁴

63. The right to strike is also a crucial tool for advancing gender equality and women’s empowerment in the context of the just transition. Women workers face unique and intersecting forms of discrimination and marginalization, which are often exacerbated by the impacts of climate change and the structural inequalities that shape the world of work. In Vanuatu, for example, women’s limited participation in labour mobility schemes due to factors such as family separation, inadequate access to information, poor working conditions, and complex predeparture requirements⁷⁵ highlights the gender-specific barriers that hinder women’s full and equal participation in the labour market. Exercise of the right to strike enables women workers to challenge these barriers collectively and advocate for their rights and interests in the transition to a low-carbon economy. At a more fundamental level, engaging in collective bargaining and social dialogue empowers women workers globally to contribute to a transition grounded in principles of gender equality and fundamental rights.

⁷² José Francisco Calí Tzay, *Green financing – a just transition to protect the rights of Indigenous Peoples*, Report of the Special Rapporteur on the human rights of Indigenous Peoples, 21 July 2023 UN Doc. A/HRC/54/31 (**Annex 20**), para 6; Olivier de Schutter, *The “just transition” in the economic recovery: eradicating poverty within planetary boundaries*, Interim Report of the Special Rapporteur on extreme poverty and human rights, 7 October 2020 UN Doc. A/75/181/Rev.1 para 56 (**Annex 21**), para 56.

⁷³ François Crépeau, *Labour exploitation of migrants*, Report of the Special Rapporteur on the human rights of migrants, 3 April 2014, UN Doc A/HRC/26/35 para 45 (**Annex 22**), para 19.

⁷⁴ François Crépeau, *Labour exploitation of migrants*, Report of the Special Rapporteur on the human rights of migrants, 3 April 2014, UN Doc A/HRC/26/35 para 45 (**Annex 22**), para 45.

⁷⁵ Elizabeth Hill, Matt Withers and Rasika Jayasuriya, *The Pacific Labour Scheme and Transnational Family Life* (Policy Brief 2018) (**Annex 23**), at page 1.

64. In sum, a dynamic civil society⁷⁶ and the protection of the rights to organize and conduct strikes, including over climate and transition issues,⁷⁷ are essential for challenging discriminatory practices and realizing a just transition. State practice confirming the same must be taken into account in the interpretation of Convention No. 87, thus supporting the conclusion that it protects the right to strike.

(3) *Enabling environment for a just transition*

65. Developed States are under an obligation to provide financial and technical support to enable climate action, including the just transition, in developing States.⁷⁸ ILO Record No.7A, adopted in June 2023, calls on States to ‘*promote international cooperation and global solidarity supporting developing countries most vulnerable to the effects of environmental and climate change including small island developing States and least developed countries*’.⁷⁹ The ILO itself should ‘*provide Members, including small island developing States and least developed countries, with the capacity to embark on a just transition through technical assistance and capacity building*’.⁸⁰
66. A chief purpose of the United Nations is achieving international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and developing friendly relations among nations based on respect for the

⁷⁶ Clément Nyaletsossi Voule, Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 23 July 2021, UN Doc A/76/222 (**Annex 19**), para 54.

⁷⁷ Clément Nyaletsossi Voule, Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 23 July 2021, UN Doc A/76/222 (**Annex 19**), para 74.

⁷⁸ United Nations Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107, art 4(2); Paris Agreement, 12 December 2015, 3156 UNTS 79, art 9 (financial resources from developed countries to developing countries); art 10, para 6 (support to developing countries for technological development); Decision 1/CMA.3: Glasgow Climate Pact, 8 March 2022, UN Doc. FCCC/PA/CMA/2021/10/Add.1 (**Annex 12**), para 40.

⁷⁹ ILO, ‘Outcome of the General Discussion Committee on a Just Transition’ (15 June 2023) International Labour Conference, 111th Session, 2023, ILC.111/Record No.7A (**Annex 17**), para III.21(x).

⁸⁰ ILO, ‘Outcome of the General Discussion Committee on a Just Transition’ (15 June 2023) International Labour Conference, 111th Session, 2023, ILC.111/Record No.7A (**Annex 17**), para IV.23(n).

principle of equal rights and self-determination of peoples.⁸¹ Vanuatu submits that, in the context of climate change, the UN Charter reinforces developed States' obligations under the UNFCCC with respect to providing financial and technical support to enable climate action, including the just transition, in developing States.

67. The Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, the Committee on the Rights of the Child, and the Committee on the Rights of Persons with Disabilities, have jointly affirmed that high-income States should support adaptation and mitigation efforts in developing countries by facilitating green technology transfers and contributing to climate finance.⁸² As noted above, Article 2(1) ICESCR obliges States to enable the right to strike protected in Article 8(1)(d) through international assistance and co-operation, including assistance and co-operation associated with the just transition.
68. Pursuant to these obligations, climate finance, technology transfer, and official development assistance (**ODA**) must be provided to create an enabling environment for the realization of human rights, including the right to strike, in developing States. Similarly, any financial or technical support provided by developed countries to enable just transitions in developing countries, as required under the UNFCCC and the Paris Agreement,⁸³ cannot be conditioned on limitations to the right to strike or the ability of workers to freely associate and organize. Protecting the right to strike as integral to Convention No. 87 is imperative for operationalizing the just transition and climate finance provisions of the Paris Agreement.

⁸¹ Charter of the United Nations (UN Charter), 1945, art 1.

⁸² Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, *Statement on human rights and climate change*, HRI/2019/1 (14 May 2020) (**Annex 24**)

⁸³ United Nations Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107, art 4(2); Paris Agreement, 12 December 2015, 3156 UNTS 79, art 9 (financial resources from developed countries to developing countries); art 10(6) (support to developing countries for technological development); Decision 1/CMA.3: Glasgow Climate Pact, 8 March 2022, UN Doc. FCCC/PA/CMA/2021/10/Add.1 (**Annex 12**), para 40.

69. Vanuatu’s experience with labour mobility also illustrates how climate action and just transitions in developing States are impacted by global and domestic labour market challenges. This underscores the importance of international cooperation and assistance for the realization of workers’ rights globally. Protecting the right to strike is essential to ensure just transition policies, plans and programmes are shaped through genuine social dialogue and reflect the priorities of climate-vulnerable States and their peoples.

**D. THE CONSEQUENCES ASSOCIATED WITH THE FAILURE TO ACKNOWLEDGE
RIGHTS IN THE CONTEXT OF THE JUST TRANSITION**

70. As noted earlier in this Written Statement, States are under an international obligation of co-operation with respect to rights protected by the ICESCR (ICESCR, Article 2(1)) including by treaty action, soft law making, consultation, research and technical assistance (ICESCR, Article 23). This obligation contained in the ICESCR is one of several obligations of co-operation with respect to the implementation of rights. Other sources of this obligation include Article 55 of the UN Charter, in which UN members have pledged through joint and separate action in cooperation with the UN to promote, amongst other things, ‘*universal respect for, and observance of, human rights and fundamental freedoms for all*’.⁸⁴ Article 22 of the Universal Declaration of Human Rights (UDHR)⁸⁵ also notes that everyone is entitled to the ‘*realization, through national effort and international cooperation [...] of the economic, social and cultural rights indispensable for [their] dignity and the free development of [their] personality*’. According to the Committee on Economic, Social and Cultural Rights, ‘*international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which*

⁸⁴ Vienna Declaration and Program of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, UN Doc A/CONF.157/23 (**Annex 25**); UN General Assembly Res 48/141: ‘High Commissioner for the promotion and protection of all human rights’, (7 January 1994), A/RES/48/141 (**Annex 26**), preambular para. 7

⁸⁵ UN General Assembly Resolution 217 A(III): Universal Declaration of Human Rights, 10 December 1948.

*are in a position to assist others in this regard.*⁸⁶ The UN Friendly Relations Declaration affirms States' duty to co-operate to promote economic stability and progress and fulfil in good faith their obligations under international law.⁸⁷

71. As shown in this Written Statement, States have agreed to work for a just transition within the larger international framework of rights provided by the UN Charter, the International Bill of Rights, and other international legal obligations that affirm the need for international co-operation with respect to the realization of rights, including the right to organize and the right to strike.
72. An outcome in the present proceedings that fails to recognize the right to strike as protected under Convention No. 87 could have far-reaching consequences for the international legal order and the rule of law. A key concern for Vanuatu is that negating decades of consistent, rights-protective interpretation could erode the international human rights framework itself, including its ability to serve as a reference point for a just transition towards sustainable economies and societies. From an institutional perspective, such an outcome would severely undermine the authority and credibility of the CEACR which, through its careful and detailed interpretative work, has become a major contributor to the legal certainty necessary for the effective implementation of ILO Conventions.
73. Recognizing the right to strike as part of Convention No. 87, on the other hand, would uphold the integrity of the international legal order and reaffirm the role of international law and institutions in realizing a just transition. Vanuatu therefore urges the Court to seize this opportunity and acknowledge the right to strike as part of Convention No. 87.

⁸⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 3 (1990) on article 12(1) of the International Covenant on Economic, Social and Cultural Rights, on the nature of States Parties' obligations (14 December 1990) UN Doc E/1991/23 (**Annex 27**), para. 14.

⁸⁷ UN General Assembly Resolution 2625 (XXV): Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 24 October 1970, Annex (**Annex 28**), principles IV, VII.

CHAPTER IV: CONCLUSIONS

74. For the reasons provided in this Written Statement, Vanuatu makes the following submissions:
- (a) As a threshold matter, Vanuatu considers that no difficulty arises in relation to the Court's jurisdiction to render the requested advisory opinion and the absence of any compelling grounds for the Court to refuse – in its discretion – to do so.
 - (b) Vanuatu submits that the right to strike is protected under Convention No. 87 as a fundamental component and a corollary of the right to freedom of association. This conclusion arises from the application of the rules of interpretation of treaties to Convention No. 87, as authoritatively confirmed by the CEACR as well as by subsequent practice and the broader normative context of the Convention, including customary international law, human rights treaties (most notably the ICCPR and the ICESCR) and the practice under the UNFCCC and the Paris Agreement.
 - (c) Vanuatu also submits that the right to strike is indispensable for realizing worker participation, social dialogue, job protections and the enabling environment needed for truly just transitions that leave no one behind. The Court should answer the ILO's question in the affirmative and recognize the interrelation between the right to strike and the just transition of the workforce to a low carbon economy, thereby providing vital guidance as countries navigate this complex process of structural adjustment.
 - (d) Vanuatu further submits that failing to acknowledge the right to strike as protected under Convention No. 87 would run counter to State practice on the promotion of rights as part of the just transition. It calls on the Court to affirm the right to strike as an integral part of the normative framework for international co-operation to achieve a just transition and sustainable development that leaves no one behind.

Respectfully submitted,

Dr. Margaretha Wewerinke-Singh
Counsel for the Republic of Vanuatu

15 May 2024

Certification

I certify that the annexes are true copies of the original documents referred to.

Dr. Margaretha Wewerinke-Singh
Counsel for the Republic of Vanuatu

15 May 2024

LIST OF ABBREVIATIONS

CAS	Conference Committee on the Application of Standards
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CFA	Committee on Freedom of Association
Convention No. 87 or Convention	Freedom of Association and Protection of the Right to Organise Convention, 1948
GDP	Gross domestic product
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ or the Court	International Court of Justice
ILO	International Labour Organization
ODA	Official development aid
PCIJ	Permanent Court of International Justice
UNFCCC	United Nations Framework Convention on Climate Change
UDHR	Universal Declaration of Human Rights
USD	United States of America Dollars
VCLT	Vienna Convention on the Law of Treaties

LIST OF ANNEXES

United Nations Environment Programme, *Emissions Gap Report 2023: Broken Record. Temperatures reach new highs, yet world fails to cut emissions (again)* (November 2023) (**Annex 1**), available at: <https://www.unep.org/resources/emissions-gap-report-2023>

World Bank, 'Personal remittances, received (current US\$) – Vanuatu' (**Annex 2**), available at: <https://data.worldbank.org/indicator/BX.TRF.PWKR.CD.DT?locations=VU>

ILO, 'Seasonal worker schemes in the Pacific through the lens of international human rights and labour standards' (Technical Report, 2022) (**Annex 3**), available at: https://webapps.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-suva/documents/publication/wcms_847010.pdf

Nuns, Bedford & Bedford, NZ RSE Impact Study: Synthesis Report, 22 May 2020 (**Annex 4**), available at: <https://www.immigration.govt.nz/documents/statistics/rse-impact-study-synthesis-report.pdf>

International Law Commission, Text of the draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties with commentaries, UN Doc. A/73/10, 2018 (**Annex 5**), available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/1_11_2018.pdf

Governing Body, Matters arising out of the work of the International Labour Conference Follow-up to the decision adopted by the International Labour Conference on certain matters arising out of the report of the Committee on the Application of Standards, 317th Session, Geneva, 6–28 March 2013 (**Annex 6**), available at: https://webapps.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_206599.pdf

J Vogt, J Bellace, L Compa, K D Ewing, J Hendy, K Lörcher, T Novitz, *The Right to Strike in International Law* (Hart 2021) (**Annex 7**) (enclosed)

Ben Saul, David Kinley, Jacqueline Mowbray (eds), *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (Oxford University Press, 2014) (**Annex 8**), page 601 (enclosed)

UN Department of Economic and Social Affairs, 'Policy Brief No. 141: A just green transition: concepts and practice so far' (4 November 2022) (**Annex 9**), available at: <https://www.un.org/development/desa/dpad/publication/un-desa-policy-brief-no-141-a-just-green-transition-concepts-and-practice-so-far/>

V. Silverman, 'Sustainable Alliances: The Origins of International Labor Environmentalism' (2004) 66 *International Labor & Working-Class History* 118 (**Annex 10**) (enclosed)

UNFCCC, 'Implementation of just transition and economic diversification strategies: a compilation of best practices from different countries' (March 2023) (**Annex 11**), available at: <https://unfccc.int/documents/624596>

Decision 1/CMA.3: Glasgow Climate Pact, 8 March 2022, UN Doc. FCCC/PA/CMA/2021/10/Add.1 (**Annex 12**), available at: https://unfccc.int/sites/default/files/resource/cma2021_10a01E.pdf?download

Decision 3/CMA.5: United Arab Emirates just transition work programme, 15 March 2024, UN Doc. FCCC/PA/CMA/2023/16/Add.1 (**Annex 13**), available at: https://unfccc.int/sites/default/files/resource/cma2023_16a01_adv_.pdf

Dan Cunniah, 'Preface' (2010) 2:2 *International Journal of Labour Research* 121-123 (**Annex 14**), available at: https://ilo.primo.exlibrisgroup.com/discovery/delivery/41ILO_INST:41ILO_V2/12102705430002676

ILC, 102nd session, 2013, 'Resolution concerning sustainable development, decent work and green jobs' (**Annex 15**), available at: <https://www.ilo.org/resource/record-proceedings/ilc/102/resolution-concerning-sustainable-development-decent-work-and-green-jobs>

ILO, ‘Guidelines for a just transition towards environmentally sustainable economies and societies for all’ (2015) (Annex 16), available at: https://webapps.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_432859.pdf

ILC, 111th session, 2023, ‘Resolution concerning a just transition towards environmentally sustainable economies and societies for all’ (Annex 17), available at: <https://www.ilo.org/resource/ilc/111/resolution-concerning-just-transition-towards-environmentally-sustainable>

UN Human Rights Committee, ‘General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25)’ (12 July 1996) UN Doc. CCPR/C/21/Rev.1/Add.7 (Annex 18), available at: <https://www.refworld.org/legal/general/hrc/1996/en/28176>

Clément Nyaletsossi Voule, Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice, report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 23 July 2021, UN Doc A/76/222 (Annex 19), available at: file:///Users/jev32/Downloads/A_76_222-EN.pdf

José Francisco Calí Tzay, *Green financing – a just transition to protect the rights of Indigenous Peoples*, Report of the Special Rapporteur on the human rights of Indigenous Peoples, 21 July 2023 UN Doc. A/HRC/54/31 (Annex 20), available at: <https://www.ohchr.org/en/documents/thematic-reports/ahrc5431-green-financing-just-transition-protect-rights-indigenous>

Olivier de Schutter, The “just transition” in the economic recovery: eradicating poverty within planetary boundaries, Interim Report of the Special Rapporteur on extreme poverty and human rights, 7 October 2020 UN Doc. A/75/181/Rev.1 para 56 (Annex 21), available at: <https://www.ohchr.org/en/documents/thematic-reports/a75181rev1-just-transition-economic-recovery-eradicating-poverty-within>

François Crépeau, Labour exploitation of migrants, Report of the Special Rapporteur on the human rights of migrants, 3 April 2014, UN Doc A/HRC/26/35 para 45 (Annex 22), available at: file:///Users/jev32/Downloads/A_HRC_26_35-EN.pdf

Elizabeth Hill, Matt Withers and Rasika Jayasuriya, *The Pacific Labour Scheme and Transnational Family Life* (Policy Brief 2018) (Annex 23), available at: https://www.arts.unsw.edu.au/sites/default/files/documents/PLS_Policy_Brief_FINAL_June_2018.pdf

Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, *Statement on human rights and climate change*, HRI/2019/1 (14 May 2020) (Annex 24), available at: <https://digitallibrary.un.org/record/3871313?ln=en&v=pdf>

Vienna Declaration and Program of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, UN Doc A/CONF.157/23 (Annex 25), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action>

UN General Assembly Res 48/141: ‘High Commissioner for the promotion and protection of all human rights’, (7 January 1994), A/RES/48/141 (Annex 26), available at: <https://documents.un.org/doc/undoc/gen/n94/012/56/pdf/n9401256.pdf?token=mYG09SbfbyffB31E4S&fe=true>

Committee on Economic, Social and Cultural Rights, General Comment No. 3 (1990) on article 12(1) of the International Covenant on Economic, Social and Cultural Rights, on the nature of States Parties’ obligations (14 December 1990) UN Doc E/1991/23 (Annex 27), available at: <https://www.refworld.org/legal/general/cescr/1990/en/5613>

UN General Assembly Resolution 2625 (XXV): Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 24 October 1970, Annex (Annex 28), available at: <https://documents.un.org/doc/resolution/gen/nr0/348/90/pdf/nr034890.pdf?token=HJJnrCsshbmrby45I&fe=true>