



REFERENCE: ACP/84/231/24

INTERNATIONAL COURT OF JUSTICE

**RIGHT TO STRIKE UNDER ILO CONVENTION NO. 87
(REQUEST FOR ADVISORY OPINION)**

**WRITTEN STATEMENT OF THE ORGANISATION OF
AFRICAN CARIBBEAN AND PACIFIC STATES
(OACPS)**

12 SEPTEMBER 2024

ORIGINAL

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I. INTRODUCTION

1. Pursuant to the Order of the President of the Court of 16 November 2023 and the letter from the Registrar of the Court of 26 April 2024, the Organisation of African, Caribbean and Pacific States (**OACPS**)¹ hereby submits its Written Comments on the Written Statements presented in connection with the request for an advisory opinion contained in the Resolution adopted by the International Labour Organization's Governing Body at its 349th bis (Special) Session on 10 November 2023.
2. These Written Comments address specific issues arising from the Written Statements submitted by other States and international organisations. It is organised in three parts. Following this introductory part, part II addresses certain specific issues organised under two sub-sections: (A) the need to fully take into account the overall context of the question put to the Court, namely the ongoing climate-driven transition to a low carbon economy and the need for a just transition of the workforce, (B) the specific legal issues that arise as a result of such context and their relevance for the right to strike and the interpretive function of the Committee of Experts on the Application of Conventions and Recommendations (**CEACR**). The third part briefly summarises the conclusions reached by these Written Comments.
3. **Overall, these Written Comments reaffirm the position expounded by the OACPS in its Written Statement in its entirety, namely:**
 - (a) The Court has jurisdiction to deliver the advisory opinion requested by the ILO in the Resolution adopted by the Governing Body at its 349th bis (Special) Session, and that there is no compelling reason for the Court to refrain from doing so.

¹ When not defined, this memorial uses the same abbreviations as the OACPS Written Statement (see OACPS Written Statement, List of Abbreviations).

- (b) The right to strike is protected under Convention No. 87 as a fundamental component and a corollary of the right to freedom of association.
- (c) The CEACR is competent to interpret Convention No. 87 as protecting the right to strike, which is inherent to the right to freedom of association, and to specify elements concerning the scope, limits, and conditions for the legitimate exercise of the right to strike.
- (d) The right to strike is a crucial component and plays a critical role for the just transition in OACPS countries, and the Court should recognise and refer to this role in its advisory opinion.²

4. On the selected issues addressed in these Written Comments, the **OACPS respectfully submits that the Court’s answers to the question put to it should emphasise the importance of the right to strike and the interpretive function of the CEACR, in the context of the ongoing transition to a low carbon transition driven economy and the need for a just transition of the workforce within it.** Specifically, the OACPS reaffirms that:

“the right to strike is [...] a crucial component of the just transition of the workforce in the context of policies to fight climate change. It enables workers to participate in shaping just transition policies [...]; collectively negotiate key aspects of the transition [...]; advocate for equitable sharing of transition costs and benefits [...]; and demand job-creating investments [...] The OACPS argues that this recognition of the right to strike in achieving the goals of the just transition provides important context for interpreting ILO Convention No. 87 as protecting the right to strike. The OACPS further argues that (i) the right to strike is crucial for achieving a just transition in OACPS countries, given the specific challenges they face; and (ii) developed States have a legal obligation to provide financial, technical and other forms of transition support to developing States”³

² OACPS Written Statement, para. 110.

³ OACPS Written Statement, para. 87.

II. ISSUES ARISING FROM THE WRITTEN STATEMENTS SUBMITTED TO THE COURT

A. The need to fully take into account the ongoing transition to a low carbon economy

5. It is remarkable that, except for the Written Statement of Vanuatu, no other written statement devotes specific attention to a core aspect of the broader context in which the question of the interpretation of the Freedom of Association and Protection of the Right to Organise Convention of 1948 (**ILO Convention No. 87**) and, more generally, of the interpretive power of the CEACR, is to be understood. Such broader context must include the inescapable fact that each and every society must undergo a profound transformation of the ways in which it produces energy, food and shelter, due to the environmental constraints that the triple planetary crisis of climate change, nature loss and pollution places on societies.⁴
6. The recognition, scope and operation of the right to strike under ILO Convention No. 87 and the interpretive function of the CEACR cannot be dissociated from this context. **The ongoing transition to a low-carbon economy is a societal transformation comparable in scale and significance to the Industrial Revolution of the 18th century, with implications for the workforce which are no less profound. Just like it would be unthinkable to consider the right to strike without considering the context of the Industrial Revolution, it is equally crucial to fully address in the present proceedings the implications of the transition to a low-carbon economy and the requirements for a just transition of the workforce.**

⁴ UNEP/International Science Council, *Navigating New Horizons. A global foresight report on planetary health and human wellbeing* (July 2024), at ix (Annex 49) (NB: the numbering of annexes continues the list appended with the OACPS Written Statement, which contained Annexes 1 to 48).

7. As the OACPS noted in its Written Statement, the right to strike is crucial for achieving a just transition in OACPS countries, given the specific challenges they face.⁵ The OACPS agrees with the observations made in this regard in the Written Statement of Vanuatu, which helpfully characterises the just transition as *‘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’*⁶ and recalls the relevance of the 2015 ILO’s Just Transition Guidelines.⁷ As noted by Vanuatu, these guidelines stress 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’*⁸. Importantly, as further noted by Vanuatu, these guidelines have been endorsed by the International Labour Conference⁹ in a 2023 resolution which also emphasises that the 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’*.¹⁰
8. As the largest formal and structured organization of developing countries, comprising 79 member States from the African, Caribbean, and Pacific regions, and including many States that emerged from colonial rule, the OACPS recalls that the implications of the low carbon transition are very different for its members than for other States, particularly developed

⁵ OACPS Written Statement, chapter IV.

⁶ Vanuatu Written Statement, para. 50, referring to UN Department of Economic and Social Affairs, ‘Policy Brief No. 141: A just green transition: concepts and practice so far’ (4 November 2022).

⁷ Vanuatu Written Statement, para. 54, referring to ILO, *‘Guidelines for a just transition towards environmentally sustainable economies and societies for all’* (2015).

⁸ Vanuatu Written Statement, para. 54, referring to ILO, *‘Guidelines for a just transition towards environmentally sustainable economies and societies for all’* (2015).

⁹ Vanuatu Written Statement, para. 55, referring to ILC, 111th session, 2023, ‘Resolution concerning a just transition towards environmentally sustainable economies and societies for all’, para 9.

¹⁰ Vanuatu Written Statement, para. 55, referring to ILC, 111th session, 2023, ‘Resolution concerning a just transition towards environmentally sustainable economies and societies for all’, para 12.

countries. OACPS countries face very difficult choices, which they must navigate with very scarce financial and technological resources. Most OACPS members are burdened with ‘*soaring debt, export marginalization, energy poverty and climate vulnerability*’.¹¹ Moreover, they face particular challenges to decarbonise their economies due to their dependence on carbon-intensive sectors,¹² rapidly growing energy demand, and challenges in mobilising finance for clean energy projects.¹³ The Intergovernmental Panel on Climate Change (**IPCC**) has clearly recognised that the adoption of low-emission technologies ‘*lags in most developing countries, particularly least developed ones, due in part to weaker enabling conditions, including limited finance, technology development and transfer, and capacity*’.¹⁴ For the thirty-nine small island developing States that are OACPS members, which are particularly exposed to tropical cyclones and rising sea levels, the cost of adaptation is dire (20 per cent of GDP),¹⁵ and given the many domestic policy trade-offs and the massive international funding gap in this area, they seem out of reach.

9. From the perspective of international law, the implications of the transition to low carbon economy for States in the specific circumstances of OACPS members are particularly important (1) to clarify the need for inter-State cooperation and for the provision of *inter alia* financial support by developed countries in the context of OACPS countries’ transition; (2) to enable workers to participate in shaping just transition policies; (3) to collectively

¹¹ UNCTAD, ‘Four key challenges facing least developed countries’ (4 April 2022) (Annex 44 to OACPS Written Statement).

¹² A. Heras, J. Gupta, ‘Fossil fuels, stranded assets, and the energy transition in the Global South: A systematic literature review’ (2023) 15(1) *WIREs Climate Change* e866 p. 7 (Annex 41 to OACPS Written Statement).

¹³ IEA, ‘Financing Clean Energy Transitions in Emerging and Developing Economies’ (2021), Executive Summary (Annex 40 to OACPS Written Statement).

¹⁴ IPCC, *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2022), Summary for Policymakers, para B.4.2 (Annex 42 to OACPS Written Statement).

¹⁵ Kristalina Georgieva, Vitor Gaspar, and Ceyla Pazarbasioglu, ‘Poor and Vulnerable Countries Need Support to Adapt to Climate Change’ (23 March 2022, *International Monetary Fund*) (Annex 48 to OACPS Written Statement).

negotiate how such transition is organised and unfolds; (4) to specifically advocate for equitable sharing of transition costs and benefits; and (5) to demand job-creating investments.

10. In the next paragraphs, each of these aspects is addressed by reference, when relevant, to the Written Statements submitted in this proceeding. Given the fact that only the Written Statement of Vanuatu addresses these issues specifically, it provides an important reference for these Written Comments.

B. Specific legal issues that arise as a result from the ongoing transition to a low carbon economy

- (1) *The need for inter-State cooperation and provision of financial support by developed countries in the context of OACPS countries' transition.*

11. The specific circumstances of OACPS countries summarised in paragraph 8 of this Written Comment must be taken into account, to determine the international obligations of States with regard to international cooperation and, more specifically, the obligation to provide finance. This is for two fundamental reasons.

12. First, under international human rights law, including the International Covenant on Economic, Social and Cultural Rights (**ICESCR**),¹⁶ States are required, individually and through international assistance and cooperation, to mobilise the maximum available resources for the progressive realisation of economic, social and cultural rights.¹⁷ As noted in the OACPS Written Statement,¹⁸ the right to strike is expressly recognised in Article 8(1)(d) of the ICESCR, as well as an implicit requirement of the right to freedom of association enshrined in Article 22 of the International Covenant on Civil

¹⁶ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3.

¹⁷ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3, article 2(1).

¹⁸ OACPS Written Statement, para. 25.

and Political Rights (**ICCPR**),¹⁹ as long confirmed by the UN Human Rights Committee.²⁰ The UN Committee on Economic, Social and Cultural Rights (**ESCR**) has further emphasised that the right to strike is '*self-executing*',²¹ which makes the obligation to provide finance for its implementation even more urgent and '*particularly incumbent upon those States which are in a position to assist others in this regard*'.²²

13. Second, this obligation is confirmed by other relevant rules of international law governing the just transition. The principles of equity and common but differentiated responsibilities and respective capabilities (**CBDRRC**) are a core aspect of policies to achieve the just transition to a low carbon economy under the United Nations Framework Convention on Climate Change (**UNFCCC**) and the Paris Agreement, and they require developed States to provide *inter alia* financial resources to support developing countries.²³

(2) *The need to enable workers to participate in shaping just transition policies*

14. The Written Statements of both Vanuatu²⁴ and the OACPS,²⁵ which specifically address the just transition context, fully converge on the importance of the right to strike as a core form of public participation under both international human rights law and under the Paris Agreement. This

¹⁹ International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171.

²⁰ HRC, CCPR/C/EST/CO/3 (2010), Consideration of reports submitted by States parties under article 40 of the Covenant, para. 15 (Document No. 303 referred to in the OACPS Written Statement); HRC, CCPR/C/DOM/CO/6 (2017), Concluding observations on the sixth periodic report of the Dominican Republic, paras 31–32 (Document No. 304 referred to in the OACPS Written Statement); HRC, CCPR/C/EST/CO/4 (2019), Concluding observations on the fourth periodic report of Estonia, paras 31–32 (Document No. 305 referred to in the OACPS Written Statement).

²¹ CESCR, Consideration of Report Submitted by State Party: Luxembourg, E/1991/23 (1990) [129] (Annex 2 to OACPS Written Statement).

²² CESCR, General comment No. 3: The nature of States parties' obligations (art. 2, para. 1, of the Covenant), E/1991/23, para. 14 (Annex 30 to OACPS Written Statement).

²³ United Nations Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107, art. 4; Paris Agreement, 12 December 2015, 3156 UNTS 79, art 9.

²⁴ Vanuatu Written Statement, paras. 57-60.

²⁵ OACPS Written Statement, paras. 94-96.

normative context must be taken into account for the interpretation of the ILO Convention No. 87,²⁶ pursuant to the rule of customary international law codified in Article 31(3)(c) of the Vienna Convention on the Law of Treaties (**VCLT**).²⁷

15. To recall, the right to public participation is protected by Article 25 of the ICCPR, and the Human Rights Committee has stressed the importance of this right for the conduct of public affairs.²⁸ The right to public participation is repeatedly emphasised by the Paris Agreement, most notably in Article 6(8)(b), in relation to the implementation of nationally-determined contributions, and in Article 12, as part of the obligation to cooperate.
16. This is of particular importance in the specific circumstances of the OACPS countries, which, as already noted, are burdened with '*soaring debt, export marginalization, energy poverty and climate vulnerability*'.²⁹ In such circumstances, the voices of workers must be clearly represented in transition planning, and the right to strike as a core component of the rights to participation and freedom of association can play a major role in ensuring that such is the case. This has been confirmed in the clearest terms by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association: '*The ability of individuals to mobilize, organize and connect and to contribute to shaping public opinion and decision making without fear ... is essential to the production of effective climate action and just transitions.*'³⁰

²⁶ Vanuatu Written Statement, paras. 44-49.

²⁷ Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331.

²⁸ 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, para 8. See Vanuatu Written Statement, para. 58.

²⁹ UNCTAD, 'Four key challenges facing least developed countries' (4 April 2022) (Annex 44 to OACPS Written Statement).

³⁰ 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 para 8 (Annex 34 to OACPS Written Statement).

(3) *The need to collectively negotiate how such transition is organised and unfolds*

17. A specific application of the need to enable workers to shape how the transition is organised and unfolds concerns the laws and policies governing collective bargaining. The ILO's Just Transition Guidelines emphasise the importance of '*the effective exercise of the right to organize and bargain collectively*',³¹ and they specifically refer, in their Annex 1, to ILO Convention No. 87 as relevant to the just transition.³²
18. More recently, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has also stressed the need for States to '*ensure that all workers are guaranteed the right to associate, including the right to strike, and to bargain collectively at all levels, including over matters related to climate change and just transitions*'.³³
19. Given the specific circumstances of OACPS countries, recalled in paragraph 8 of this Written Comment, including precarious employment conditions and power imbalances with respect to employers, who are often foreign investors, the recognition of the role of the right to strike in collective bargaining relating to the just transition is both relevant and important.³⁴ In this context, the Written Statement of Vanuatu rightly stresses such importance as a tool to improve job security and social protection.³⁵

³¹ ILO, 'Guidelines for a just transition towards environmentally sustainable economies and societies for all' (2015) para 13(e) (Annex 35 to OACPS Written Statement).

³² ILO, 'Guidelines for a just transition towards environmentally sustainable economies and societies for all' (2015) Annex 1 A (Annex 35 to OACPS Written Statement).

³³ 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 para 90(g) (Annex 34 to OACPS Written Statement).

³⁴ 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, para 46 (Annex 34 to OACPS Written Statement).

³⁵ Vanuatu Written Statement, para. 61.

20. Of particular significance is the reference in that Written Statement to the role of the right to strike in *'advancing gender equality and women's empowerment in the context of the just transition'* given the *'unique and intersecting forms of discrimination and marginalization'* faced by women workers, *'often exacerbated by the impacts of climate change and the structural inequalities that shape the world of work'*.³⁶ This is an aspect which, for historical reasons, is not expressly captured in the text ILO Convention No. 87, and for which the interpretive function of the CEACR — much like for the just transition — is of utmost importance.

(4) *The need to specifically advocate for equitable sharing of transition costs and benefits*

21. Another specific application of the need to enable workers to shape transition policies and their effects concerns the role of the right to strike in advocating for equitable sharing of transition costs and benefits. As recalled in paragraph 8 of this Written Comment, part of the difficulties faced by OACPS countries arise from their dependence on carbon-intensive sectors³⁷ and the challenges in mobilizing finance for clean energy projects.³⁸ Under such circumstances, the transition to a low carbon economy runs the risk of leaving a substantial part of the workforce unemployed and without a concrete alternative to earn a living. That would be an inequitable outcome and entail excessive burden sharing by those workers most affected by the structural adjustment arising from the transition.

³⁶ Vanuatu Written Statement, para. 63.

³⁷ A. Heras, J. Gupta, 'Fossil fuels, stranded assets, and the energy transition in the Global South: A systematic literature review' (2023) 15(1) *WIREs Climate Change* e866 p. 7 (Annex 41 to OACPS Written Statement).

³⁸ IEA, 'Financing Clean Energy Transitions in Emerging and Developing Economies' (2021), Executive Summary (Annex 40 to OACPS Written Statement).

22. In late 2021, the Parties to the UNFCCC expressly recognised this issue when they adopted by consensus the Glasgow Climate Pact.³⁹ This decision stresses the need, in the context of a just transition, to ‘*promote sustainable development and eradication of poverty, and the creation of decent work and quality jobs*’.⁴⁰ In such a context, as noted in the previous section, the right to strike is a core aspect of the ability of workers to collectively bargain to improve job security and social protection.
23. The ILO’s Just Transition Guidelines stress this point, with specific reference to the ILO Convention No. 87, in the context of the just transition.⁴¹ The very concept of a just transition, recalled in the Written Statement of Vanuatu, entails ensuring that ‘*no one is left behind or pushed behind in the transition to low-carbon and environmentally sustainable economies and societies*’.⁴² The right to strike empowers workers to be protected from the impacts on their livelihoods associated with the ecological transformation demanded by the just transition.⁴³ It also empowers them to advocate for alternatives, including the creation of jobs in the low-carbon economy.

(5) *The need for job-creating investments*

24. As an extension of the conclusion in the previous paragraph, the difficulties faced by OACPS countries involve, in addition to their dependence on carbon-intensive sectors, also the inability to secure the necessary

³⁹ Decision 1/CMA.3: Glasgow Climate Pact, 8 March 2022, UN Doc. FCCC/PA/CMA/2021/10/Add.1 (Annex 36 to OACPS Written Statement).

⁴⁰ Decision 1/CMA.3: Glasgow Climate Pact, 8 March 2022, UN Doc. FCCC/PA/CMA/2021/10/Add.1, para 85 (Annex 36 to OACPS Written Statement).

⁴¹ ILO, ‘Guidelines for a just transition towards environmentally sustainable economies and societies for all’ (2015) para 13(e) and Annex 1 A (Annex 35 to OACPS Written Statement).

⁴² Vanuatu Written Statement, para. 50, referring to UN Department of Economic and Social Affairs, ‘Policy Brief No. 141: A just green transition: concepts and practice so far’ (4 November 2022).

⁴³ 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 38 to OACPS Written Statement).

investment in the low carbon economy⁴⁴ which could create alternative jobs for their workforce.

25. The dearth of investment in the green economy in developing countries is well documented, with the International Energy Agency (**IEA**) estimating that such investment would need to expand by more than seven times by the end of the 2020s to reach alignment with a net-zero emissions scenario by 2050.⁴⁵
26. In such context, the right to strike can play a role in influencing the nature of the foreign investment flows into OACPS countries, both by shaping investment policies which are better aligned with the transition to a low carbon economy and by advocating specifically for the use of such investment to support new jobs in low carbon sectors. The Written Statement of Vanuatu recalls, in this regard, the preamble of the Paris Agreement, which refers to '*the imperative of a just transition of the workforce and the creation of decent work and quality jobs*'.⁴⁶
27. This is also part of the normative context relevant for the interpretation of ILO Convention No. 87, pursuant to the customary international law rule codified in Article 31(3)(c) of the VCLT.

III. CONCLUSIONS

28. For the reasons provided in this Written Statement, the OACPS:
 - (a) Reaffirms the conclusions reached in its Written Statement in their entirety;

⁴⁴ IEA, 'Financing Clean Energy Transitions in Emerging and Developing Economies' (2021), Executive Summary (Annex 40 to OACPS Written Statement).

⁴⁵ IEA, 'Financing Clean Energy Transitions in Emerging and Developing Economies' (2021), Executive Summary (Annex 40 to OACPS Written Statement).

⁴⁶ Vanuatu Written Statement, para. 51, referring to Paris Agreement, 12 December 2015, 3156 UNTS 79, preambular para 11.

- (b) Submits that the Court's answers to the question put to it should emphasise the importance of the right to strike and the interpretive function of the CEACR, in the context of the transition to a low carbon economy and the need for a just transition of the workforce within it; and,
- (c) Emphasises, specifically the need: (i) for inter-State cooperation and provision of *inter alia* financial support by developed countries in the context of OACPS countries' transition, and the importance of the right to strike, as part of the just transition of the workforce in the context of policies to fight climate change; (ii) to participate in shaping just transition policies; (iii) to collectively negotiate key aspects of the transition; (iv) to advocate for equitable sharing of transition costs and benefits; and, (v) to demand job-creating investments.

Respectfully submitted,

H.E. Goerges Rebelo Pinto CHIKOTI
Secretary-General
Organisation of African Caribbean and Pacific States (OACPS)

12 September 2024

Certification

I certify that any copies of documents annexed to this Written Comment are true copies of the original documents referred to.

12 September 2024

H.E. Goerges Rebelo Pinto CHIKOTI

Secretary-General
Organisation of African Caribbean and Pacific States (OACPS)

APPENDIX: LIST OF ADDITIONAL ANNEXES

UNEP/International Science Council, *Navigating New Horizons. A global foresight report on planetary health and human wellbeing* (July 2024) (**Annex 49**), available at: <https://www.unep.org/resources/global-foresight-report>