

INTERNATIONAL COURT OF JUSTICE

RIGHT TO STRIKE UNDER THE ILO CONVENTION No. 87

(REQUEST FOR ADVISORY OPINION)

Written Comments submitted by the
Republic of Vanuatu

16 September 2024

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I. OVERVIEW

1. Vanuatu submits these Written Comments on the Written Statements filed in these proceedings on the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (**Convention No. 87**). The evidence and arguments raised in Vanuatu's own Written Statement continue to reflect Vanuatu's position and are hereby fully reinforced. The following conclusions reached by Vanuatu, as stated in paragraph 74 of its Written Statement, are reaffirmed.

(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.

2. A review of the Written Statements submitted by other participants reveals a strong consensus that the right to strike is protected under Convention No. 87. Many of the Written Statements place emphasis on the fundamental connection between the right to strike as a component and corollary of the right to freedom of association.

Vanuatu fully supports this interpretation of Convention No. 87, which aligns with Vanuatu's own position.

3. Vanuatu draws specific attention to the arguments raised by **the Organisation of African, Caribbean and Pacific States (OACPS)** regarding the recognition of the right to strike as a crucial element in the just transition of workforces towards low-carbon, regenerative economies. The OACPS, in its Written Statement, identifies a range of obligations of States pertinent to this role. Vanuatu shares the OACPS' view that these obligations provide important normative context for interpreting Convention No. 87 in the present proceedings. Vanuatu respectfully requests the Court to recognize and consider this context in its response to the question referred by the International Labour Organisation (ILO).

II. THE WRITTEN STATEMENTS OVERWHELMINGLY AFFIRM THE RIGHT TO STRIKE AS PROTECTED BY CONVENTION NO. 87

4. The great majority of Written Statements correctly conclude that the right to strike is protected under Convention No. 87, with many recognizing it as **an essential corollary to the right of freedom of association**. For instance:

- **Spain** argued, “[w]e must emphasize the importance of the right to strike in the context of the social justice mandate of ILO and its constitutional principle of freedom of association”.¹ It further noted that “the core substance of freedom of association in Spanish law, but also, we believe, in ILO international labour standards, cannot be understood if it does not include the right to strike as an instrument unions can make use of. Otherwise, freedom of association would be left devoid of substance, and its true and effective recognition as a fundamental right would be prevented”.²
- **France** stated, “L’ensemble de ces éléments permet de constater qu’une interprétation de bonne foi de la Convention n° 87, selon le sens ordinaire de ses termes – notamment le droit pour les syndicats « d’organiser leur programme d’action » ou de « promouvoir et défendre les intérêts des travailleurs » – lus à lumière de l’objet et du but de celle-ci, qui est de « donner effet » aux droits qu’elle contient, doit conduire à considérer que le droit de grève constitue, dans le cadre de cette Convention, un corollaire indissociable de la liberté syndicale”.³
- **Italy** concluded, “the ILO supervisory bodies have recognised that there is a close link between the right to strike and the freedom of trade union association and that the former must therefore be considered protected by the

¹ Spain Written Statement, page 46.

² Spain Written Statement, page 46.

³ France Written Statement, para. 60.

*Convention No. 87 in the same way as the freedom of trade union association is”.*⁴

- **Colombia** argued, “*the ILO has constantly considered that there is a direct and necessary link between the right to strike and the right to freedom of association*”.⁵
- **Germany** observed that with respect to Article 11 of the European Convention on Human Rights, “*the connection between the freedom of association, the right to enter into collective agreements and the right to strike has thus been confirmed in a legally binding manner, though the provision does not mention the right to strike expressly in its text - as is also the case with regard to Convention No. 87. This connection is in particular based on an adequate understanding of the object and purpose of the provision on the freedom of association and, from Germany’s viewpoint, it is also transferrable to Convention No. 87*”.⁶
- **Poland** argued that, “*the right to strike ... is an element of the freedom of association in trade unions. The right to strike can be derived from provisions of ILO Convention No. 87 as a consequence of the freedom to organise*”.⁷
- **Norway** emphasized “*the importance of freedom of association and the right to organise as protected under the Convention and by the work of the ILO throughout its century of existence.*”⁸ It submitted that “*strike action is recognised internationally as a normal and well-established part of the activities and programmes that trade union organisation pursue for the promotion and defence of the workers’ interest, and that the Convention for the reasons set out above protect the right to strike of workers and their organisations*”.⁹

⁴ Italy Written Statement, para. 2.

⁵ Colombia Written Statement para. 3.3

⁶ Germany Written Statement, para. 27.

⁷ Poland Written Statement, para. 4.1.

⁸ Norway Written Statement, para. 26.

⁹ Norway Written Statement, para. 26.

- **Australia** concluded, “[t]he manner in which Convention 87 was negotiated also provides an explanation for the absence of an express reference to the ‘right to strike’ in the text of the Convention. In drafting the Convention, the Conference opted to set down general principles relating to the freedom of association, rather than to regulate the minutiae of trade union activities. The materials referred to above indicate that, at the time of the drafting of the Convention, it would have been obvious to its drafters that the ‘right to strike’ was directly related to, and a component of, the freedom of association, such that it did not require explicit mention in Convention 87.”¹⁰
- **Mexico** affirmed that, “there is an inexorable relationship between the right to organize and the right to strike, where the existence of one invariably implies the existence of the other. The strike is then a *sina qua non* activity to support organized workers’ activities: collective bargaining on labor conditions and salaries, as well as the defense of their rights, which includes the right to organize or join an organization”.¹¹
- **The Netherlands** stated, “the principles unanimously adopted by the International Labour Conference at its Thirtieth Session, which form the basis for international regulation concerning freedom of association and protection of the right to organize, stress that any system of industrial relations should be founded on the guarantee of the principle of freedom of association. Therefore, the context of Article 3 of ILO Convention No. 87 supports the protection of the right to strike under this Convention. This is also in line with its object and purpose”.¹²
- **Brazil** submitted, “Articles 2, 3 and 10 of ILO Convention No. 87 establish the scope of freedom of association and of the right to organize, of which the right to strike is a corollary. Brazil considers that, according to these provisions, this right must be understood in the broadest terms, granting

¹⁰ Australia Written Statement, para. 94.

¹¹ Mexico Written Statement, para. 60.

¹² Netherlands Written Statement, para. 2.10.

*workers freedom to act collectively in order to defend and further their common interests. This collective action is not limited to the establishment of trade unions, federations or confederations. It can and must also include the right to strike”.*¹³

- **The World Federation of Trade Unions** argued, “[a]lthough not explicitly mentioned in Convention No 87, the right to strike is enshrined in it, as the core of the existence of labour organisations lies in the organisation of workers and in addressing their rightful demands towards the employers. Consequently, the ultimate means of projecting a demand towards an employer in a labour – related matter leading to a deadlock between the parties, is the right to strike. The right to associate in a trade union has commonly been understood to include the right to strike (and to bargain collectively) as without rights that derive from it, the right to association in the industrial context, would be meaningless”.¹⁴
- **The International Cooperative Alliance** observed that, “the denial of the right to strike risks creating a precedent for the limitation of the free choice of the objective an association wants to pursue and of the means it wants to employ to this end . . . Furthermore, the reduction of the objective of cooperatives weakens their capacity to (re)generate social justice”.¹⁵
- **The OACPS** observed that “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 [of Convention No. 87]”.¹⁶

5. As these and other Written Statements confirm, the right to strike is a fundamental component of freedom of association in relation to the workplace and to labour rights. Vanuatu reiterates that the terms ‘activities’ and ‘programmes’ in Article 3 of Convention No. 87 imply a wide operational scope and protect a

¹³ Brazil Written Statement, para. 22.

¹⁴ World Federation of Trade Unions Written Statement, para. 15.

¹⁵ International Cooperative Alliance Written Statement, para. 5.

¹⁶ OACPS Written Statement, para. 49.

comprehensive range of actions, including striking activity that is captured by the right to associate.¹⁷ A more restrictive reading of Article 3 would unfairly segregate and box out protected activity, thus robbing it of what the majority of participants in this proceeding agree is an indispensable component of the freedom of association captured, *inter alia*, by Article 3 of Convention No. 87.

¹⁷ Vanuatu Written Statement, para. 23.

III. THE RIGHT TO STRIKE IS PROTECTED IN INTERNATIONAL LAW

6. As set forth in Vanuatu's Written Statement,¹⁸ the International Covenant on Economic, Social and Cultural Rights (**ICESCR**) explicitly recognizes the right to strike as a protected right in Article 8. Vanuatu also noted with approval the conclusions of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, who observed in 2016 that the right to strike is now customary international law.¹⁹ The ratification of the ICESCR and the practice of States in protecting the right to strike following the adoption of Convention No. 87 is important subsequent practice for purposes of the Vienna Convention on the Law of Treaties (**VCLT**), including widespread acceptance of these views by States parties.²⁰
7. Vanuatu similarly described the broader normative context related to the right to strike, which is relevant to the interpretation of Convention No. 87 per the rules of interpretation under the VCLT.²¹
8. Vanuatu adopts in its entirety the summary of human rights protections related to the right to strike described by the OACPS in the OACPS Written Statement.²² The protection of the right to strike in documents by UN human rights treaty bodies, by the European Court of Human Rights, the European Committee of Social Rights, the African Commission on Human and Peoples' Rights, the Inter-American Court of Human Rights, in international trade agreements, in documents and proceedings of the UN Human Rights Council, and in other State practice, as outlined in the OACPS Written Statement, further supports Vanuatu's arguments related to subsequent practice and relevant broader normative context.

¹⁸ Vanuatu Written Statement, para. 39.

¹⁹ Vanuatu Written Statement, para. 39, citing 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.

²⁰ Vanuatu Written Statement, paras. 32-37.

²¹ Vanuatu Written Statement, paras. 44-56.

²² OACPS Written Statement, paras. 24-34.

9. As discussed earlier, paragraph 1 of Article 3 of Convention No. 87 protects the rights of workers to “*draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.*” Paragraph 2 of Article 3 further declares that “*public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.*” Article 11 of Convention No. 87 provides that, “[*e*]ach Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.” Because the right to strike is protected by international law, including international human rights law, workers exercising such a right are within the bounds of the ‘*lawful exercise*’ of activities protected by Article 3 of Convention No. 87, as well for purposes of Article 11, which protects the rights of workers and employers to ‘*exercise freely the right to organise*’. Similarly, under paragraph 2 of article 3, States parties cannot restrict or impede the ‘*lawful exercise*’ of the association rights protected in Article 3. ‘*Lawful exercise*’, by definition, captures the exercise of protected human rights such as (and without limitation) the right to strike.

IV. SAFEGUARDING THE RIGHT TO STRIKE IS ESSENTIAL FOR THE REALIZATION OF A JUST TRANSITION OF THE WORKFORCE

A. The right to strike is an essential component of a just transition

10. Vanuatu calls attention to its arguments in its Written Statement related to the role of the right to strike in promoting a just transition from an extractive economy to a regenerative, low-carbon economy. As explained, this role includes protecting the ability of workers to participate in transition policies and to advocate effectively for job security and social protection. Further, it entails international cooperation to create an enabling environment for a just transition at a global scale.²³
11. Vanuatu joins in full the arguments presented by the OACPS in its Written Statement related to the critical role played by the right to strike in the just transition in OACPS countries.²⁴ As set forth by the OACPS, the right to strike 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.²⁵ The OACPS further observed that the right to strike is crucial in achieving a just transition in OACPS countries given the specific challenges they face. Developed States also have a legal obligation to provide financial, technical and other forms of transition support to developing States.²⁶
12. In a recent report, the United Nations Secretary-General has affirmed that “[a] paradigm shift from contemporary economic and governance systems that threaten humanity’s future towards a human rights economy that is fair, equitable, inclusive and sustainable, creates decent work opportunities, reduces inequalities and poverty and upholds human rights is needed”.²⁷

²³ Vanuatu Written Statement, paras. 57-69.

²⁴ OACPS Written Statement, paras. 87-109.

²⁵ OACPS Written Statement, paras. 92-104.

²⁶ OACPS Written Statement, paras. 105-109.

²⁷ Report of the United Nations Secretary-General, ‘Analytical study on the impact of loss and damage from the adverse effects of climate change on the full enjoyment of human rights, exploring equity-based

13. The Secretary-General further observed that this paradigm shift “*includes a just transition grounded in such human rights as equality and non-discrimination, a clean, healthy and sustainable environment, decent work, social security, access to information, public participation and access to justice and remedies*”.²⁸
14. The Secretary-General relied on a publication issued by OHCHR and ILO in 2023, entitled “Key messages on human rights and a just transition”. This publication emphasizes the need for a just transition to be “*grounded in human rights standards and obligations*’ including ‘*the progressive realisation of [economic, social and cultural] rights, for framing actions in moving both away from the fossil fuel economy, and toward a green economy*’.²⁹ Key Message 3 observes that, “*The International Covenant on Civil and Political Rights (ICCPR), alongside various other human rights instruments, including multilateral environmental agreements, ten fundamental ILO Conventions and national laws and policies, guarantees the rights to access information, free, active, meaningful and informed participation in public affairs, and access to justice and remedies*”.³⁰
15. These recent conclusions from the Secretary-General, and particularly the need for “*free, active, meaningful and informed participation in public affairs*” in galvanizing the just transition, strengthen and support the arguments presented by the OACPS and Vanuatu with respect to the enabling role of the right to strike in the broader context of the just transition. Vanuatu urges the Court to consider this broader normative context of international legal obligations related to the promotion of a just transition, as set forth in Vanuatu’s Written Statement.
16. The relevance of this normative context for the question at stake in the present proceedings is further illustrated by the views of the Special Rapporteur on the rights to freedom of peaceful assembly of association, who has called on States to

approaches and solutions to addressing the same’ (28 August 2024) UN Doc A/HRC/57/30, para. 36 ([link](#)).

²⁸ Report of the United Nations Secretary-General, ‘Analytical study on the impact of loss and damage from the adverse effects of climate change on the full enjoyment of human rights, exploring equity-based approaches and solutions to addressing the same’ (28 August 2024) UN Doc A/HRC/57/30, para. 36 ([link](#)).

²⁹ OHCHR and ILO, “Key messages on human rights and a Just Transition” (2023) p. 2 ([link](#)).

³⁰ OHCHR and ILO, “Key messages on human rights and a Just Transition” (2023) p. 5 ([link](#)).

guarantee all workers the right to strike and to bargain collectively over just transition matters.³¹ Further, the Inter-American Commission on Human Rights has adopted a Resolution on Climate Emergency, which recognizes that States must take into account their human rights obligations, including labour and trade union rights (such as, relevantly, the right to strike), “*when designing and implementing policies for a transition to a carbon-free future*”.³²

17. Vulnerable countries, including OACPS member States such as Vanuatu, are facing economic conditions that are crippling their ability to participate in a just transition. As set forth in the OACPS Written Statement, these include ‘*soaring debt, export marginalization, energy poverty and climate vulnerability*’, ‘*shrinking growth prospects, weakening investment, and surging debt*’, and ‘*rising interest rates, depreciating currencies, and slowing global growth*’.³³ Disabling the right to strike in Convention No. 87 risks exacerbating pre-existing economic inequalities and creating a world where vulnerable and low-income countries lack the social mechanisms and legal frameworks that can provide the public participation needed to transition to low-emissions economies.
18. Finally, Vanuatu reiterates and calls specific attention to the points raised by the OACPS related to the obligations of developed States to provide financial, technological, and capacity-building support to developing States to realize a just transition, including through effective protection of the right to strike.³⁴ Vanuatu further underscores that the obligations of paragraph 2, Article 3 of Convention No 87—that “*public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof*”—are fully applicable in the context of the right to strike, thus requiring States to support rather than undermine the realization of this right all over the world as part of the just transition. Vanuatu joins the OACPS in urging the Court to clarify and affirm that

³¹ Vanuatu Written Statement, para. 61, citing 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).

³² See Resolution No. 3/2021 Climate Emergency: Scope of Inter-American Human Rights, para. 48 ([link](#)).

³³ OACPS Written Statement para. 47.

³⁴ OACPS Written Statement, para. 107.

developed States must “*refrain from any actions that would directly or indirectly restrict freedom of association, collective bargaining, or industrial action in developing States*” and must “*proactively promote the full exercise of these rights in the context of just transition investments and projects*”.³⁵

B. Interpreting Convention No. 87 to protect the right to strike aligns with universal human rights and just transition norms

19. Human rights, including labour rights such as the right to strike, are widely recognized as a fundamental aspect of a just transition. As set out here, as well as in numerous Written Statements submitted in the present proceedings, the right to strike is protected by Convention No. 87 as a corollary to the right to associate, as well as through the prohibition on States in interfering with lawful exercise of association rights such as strike activities.
20. Vanuatu respectfully submits that the Court’s interpretation of Convention No. 87 should reflect the indivisible and interdependent character of all human rights. Any approach that might be perceived as diminishing the importance of economic, social, and cultural rights, such as the right to strike, would be contrary to principle and could undermine the holistic efforts required by law to pursue a just transition.
21. Moreover, the Court’s clarification in these advisory proceedings will also provide valuable guidance for domestic implementation of the right to strike, including in the wider context of climate change and the need for a just transition to a regenerative, low-carbon economy. Vanuatu is currently in the process of reviewing its domestic legislation to ensure full alignment with its international obligations under ratified conventions, including ILO Convention No. 87. Accordingly, as mentioned in the the Statement of Antoine Boudier, President of the Vanuatu Chamber of Commerce and Industry, “[c]larification of the protection

³⁵ OACPS Written Statement, para. 107.

of the right to strike under ILO Convention No. 87 will support [the] ongoing national efforts to implement the right to strike in law and in practice.”³⁶

22. The Court’s clarification in these advisory proceedings will also have significant implications for labour rights outcomes on the ground. One illustration of how is provided by the example of labour mobility schemes, which impact on Vanuatu’s labour force. As the President of the Vanuatu Chamber of Commerce and Industry, Antoine Boudier, explains in his attached Statement:

“Within the context of the labour mobility schemes, ni-Vanuatu workers overseas need to be able to organise, to be represented by unions and to be able to strike, no matter where they are working in the world. This is for the benefit of ni-Vanuatu workers, who need some protection in advocating for better working conditions in climate vulnerable work environments abroad. This is also for the benefit of workers, employers and national industry in Vanuatu itself, because supporting and promoting workers’ capacity in this regard will mean that workers and industries in Vanuatu will not be left behind in initiatives directed towards a Just Transition.”³⁷

23. At this critical moment, protecting rights is more essential than ever in order to enable the conditions for a low-emissions future and ensuring the participation of all sectors in societies in preserving the habitability of the planet and the stability of the climate system for present and future generations. Vanuatu therefore respectfully invites the Court to seize the opportunity to clarify 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. Additionally, Vanuatu encourages the Court to recognize the interrelation between the right to strike and the just transition of the workforce to a regenerative, low-carbon economy.

³⁶ Statement on the Right to Strike by Antoine Boudier, President of the Vanuatu Chamber of Commerce and Industry, dated 16 September 2024, para. 8 (**Attachment 1**). See also Statement of Annette Daniel, President of the Vanuatu Trade Unions Combined, dated 16 September 2024, para. 14 (**Attachment 3**).

³⁷ Statement on the Right to Strike by Antoine Boudier, President of the Vanuatu Chamber of Commerce and Industry, dated 16 September 2024, para. 17 (**Attachment 1**). On labour mobility schemes in the context of the right to strike, climate change and a just transition, see also: Statement of Murielle Metsan Meltenoven, Commissioner of Labour, Department of Labour and Employment Services, dated 16 September 2024, paras. 15-21 (**Attachment 2**); and Statement of Annette Daniel, President of the Vanuatu Trade Unions Combined, dated 16 September 2024, paras. 7-11 (**Attachment 3**).

V. CONCLUSIONS

24. For the reasons provided in this Written Comment and the previous Written Statement, Vanuatu:

- (a) Reaffirms, in their entirety, its conclusions reached in its Written Statement (which are restated, for convenience, in para. 1 above).
- (b) Endorses the positions of other participants in these proceedings that Convention No. 87 protects the right to strike as a corollary of the right to associate, with particular emphasis on the Written Statement of the OACPS.
- (c) Submits that the Court consider the question presented before the Court and the protection of the right to strike in its broader normative context of human rights protections and the just transition framework.

* * * *

Respectfully submitted by:

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16 September 2024

Certification

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

16 September 2024

Arnold Kiel Loughman

Attorney-General of the Republic of Vanuatu

APPENDIX: LIST OF ADDITIONAL ANNEXES

Doc No.	Document name
1	<p>Report of the United Nations Secretary-General, ‘Analytical study on the impact of loss and damage from the adverse effects of climate change on the full enjoyment of human rights, exploring equity-based approaches and solutions to addressing the same’ (28 August 2024) UN Doc A/HRC/57/30.</p> <p>Available at the following link: https://www.ohchr.org/sites/default/files/2024-08/a-hrc-57-30-aev.pdf (visited on 16 September 2024).</p>
2	<p>OHCHR and ILO, “Key messages on human rights and a Just Transition” (2023).</p> <p>Available at the following link: https://www.ohchr.org/sites/default/files/documents/issues/climatechange/information-materials/v4-key-messages-just-transition-human.pdf (visited on 16 September 2024).</p>
3	<p>Resolution No. 3/2021 Climate Emergency: Scope of Inter-American Human Rights.</p> <p>Available at the following link: https://media.business-humanrights.org/media/documents/Res-3-21_EN.pdf (visited on 16 September 2024).</p>
4	<p>Statement on the Right to Strike by Antoine Boudier, President of the Vanuatu Chamber of Commerce and Industry, dated 16 September 2024.</p> <p>(Attachment 1).</p>
5	<p>Statement of Murielle Metsan Meltenoven, Commissioner of Labour, Department of Labour and Employment Services, dated 16 September 2024.</p> <p>(Attachment 2).</p>
6	<p>Statement of Annette Daniel, President of the Vanuatu Trade Unions Combined, dated 16 September 2024.</p> <p>(Attachment 3).</p>