

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>

VANUATU WRITTEN COMMENTS

ANNEX 1

Advance edited versionDistr.: General
28 August 2024

Original: English

Human Rights Council**Fifty-seventh session**

9 September–9 October 2024

Agenda items 2 and 3

**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General****Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****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****Report of the Secretary-General****Summary*

The present report of the Secretary-General, submitted pursuant to Human Rights Council resolution 53/6, contains an exploration of the interlinkages between human rights and loss and damage from climate change. The report includes the identification of legal and policy frameworks relevant to ensuring effective remedies for loss and damage, a description of human rights- and equity-based approaches and solutions and a series of recommendations.

* The present report was submitted to the conference services for processing after the deadline for technical reasons beyond the control of the submitting office.

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 53/6, in which the Council requested the Secretary-General to conduct an 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, and to submit the study to the Council at its fifty-seventh session. The analytical study is informed by responses to a questionnaire sent by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in October 2023.¹

2. The Intergovernmental Panel on Climate Change has found that climate change is caused primarily by greenhouse gas emissions related to human activities and has caused widespread adverse impacts and related losses and damages to nature and people.² Estimates of the annual economic cost of loss and damage in developing countries alone amounted to at least \$435 billion in 2020, a figure that is expected to rise to at least \$580 billion by 2030, excluding non-economic losses and damages.³ Projected losses and damages escalate with every increment of global warming, while limiting global warming to 1.5 degrees Celsius would substantially reduce them.⁴

3. The outcome document of the first global stocktake, adopted at the Conference of the Parties to the United Nations Framework Convention on Climate Change at its twenty-eighth session, in 2023, acknowledged the significant gaps, including in financing, that remained in responding to the increased scale and frequency of loss and damage.⁵ Averting, minimizing and addressing loss and damage require immediate, effective and fair mitigation, adaptation and remedies for climate change-related harms as a legal, moral, development and economic imperative.⁶ Human rights- and equity-based approaches lead to more sustainable outcomes, and redistributive policies across sectors and regions that shield the poor and vulnerable, social safety nets, equity, inclusion and just transitions at all scales can enable deeper societal ambitions and resolve trade-offs with the Sustainable Development Goals, as affirmed by the Intergovernmental Panel on Climate Change.⁷

II. Loss and damage understood in terms of impacts on the full enjoyment of human rights

4. Loss and damage, referring to harm from the adverse impacts of climate change, can affect the full enjoyment of human rights. Respecting, protecting and fulfilling human rights amid the climate crisis require taking effective action to address harm to human rights from loss and damage, including economic and non-economic loss and damage. The impact of loss and damage on human rights can be both direct and indirect, with cascading implications for different interconnected rights.

5. The adverse impacts of climate change on the enjoyment of human rights have been addressed and described in previous resolutions and reports to the Human Rights Council,

¹ Submissions are available at <https://www.ohchr.org/en/calls-for-input/2024/impact-loss-and-damage-adverse-effects-climate-change-human-rights>.

² Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability* (Cambridge, United Kingdom of Great Britain and Northern Ireland, and New York, Cambridge University Press, 2022), p. 9.

³ United Nations Conference on Trade and Development (UNCTAD), "Taking responsibility: towards a fit-for-purpose loss and damage fund" (Geneva, 2023), pp. vii and 3. The figures cited are now considered to be vastly underestimated.

⁴ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability*, p. 14.

⁵ FCCC/PA/CMA/2023/16/Add.1, decision 1/CMA.5, para. 128.

⁶ See OHCHR, "Key messages on human rights and loss and damage" (2023).

⁷ Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report* (Geneva, 2023), para. C.5.2.

including with respect to the rights to life, food, health, housing, self-determination, water, sanitation, decent work and a clean, healthy and sustainable environment.⁸

A. Unequal impact of loss and damage on different population groups and countries

6. Poverty, geography and historical and structural inequity and discrimination affect people's exposure and vulnerability to the adverse effects of climate change.⁹ According to the Intergovernmental Panel on Climate Change, losses and damages are unequally distributed across systems, regions and sectors and strongly concentrated among the poorest vulnerable populations.¹⁰ According to the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, globally, the historical emissions leading to modern climate change were interlinked with exploitative economic models, legacies of colonialism and structural racism.¹¹ According to the Intergovernmental Panel on Climate Change, the present development challenges causing high vulnerability are influenced by historical and ongoing patterns of inequity, such as colonialism, especially for many Indigenous Peoples and local communities.¹² As stressed by the United Nations High Commissioner for Human Rights, countries that benefited the least from the industrial revolution have been left without the support necessary to protect their people and their environments.¹³

7. Climate change impacts are geographically differentiated, with global hotspots of high risk in West, Central and East Africa, South Asia, Central and South America, small island developing States and the Arctic, according to the Intergovernmental Panel on Climate Change.¹⁴ Loss and damage also deepens poverty. A report by the Vulnerable Twenty Group of Ministers of Finance of the Climate Vulnerable Forum has estimated that the countries represented by the Group would have been 20 per cent wealthier without climate change.¹⁵ In an average year, poor households lose 5 per cent of their total income due to heat stress and 4.4 per cent due to floods.¹⁶

8. The rights of certain groups of people are disproportionately and often intersectionally affected, including those of Indigenous Peoples, peasants, migrants, children, women and girls, persons with disabilities, older persons, people living in small island developing States and least developed countries and certain racial and ethnic groups. Climate impacts, like disrupted education, have implications for children's rights and for intergenerational equity.¹⁷ Loss and damage experienced by persons in vulnerable situations, such as persons with disabilities, can remain unaccounted for due to a lack of disaggregated data or unaddressed due to discriminatory laws.¹⁸

⁸ See, for example, Human Rights Council resolutions 7/23, 10/4, 18/22, 26/27, 29/15, 32/33, 35/20, 38/4, 41/21, 44/7, 47/24, 50/9 and 53/6; and A/HRC/31/52, A/HRC/32/23, A/HRC/35/13, A/HRC/38/21, A/HRC/41/26, A/HRC/44/30, A/HRC/47/46, A/HRC/50/57, A/HRC/53/47 and A/HRC/55/37.

⁹ A/HRC/50/57, para. 44.

¹⁰ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability*, p. 26.

¹¹ See A/77/549.

¹² Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report*, p. 101.

¹³ OHCHR, "Human Rights: a Path for Solutions" (2024).

¹⁴ Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report*, p. 51.

¹⁵ Florent Baarsch, Issa Awal and Michiel Schaeffer, "Climate vulnerable economies loss report: economic losses attributable to climate change in V20 economies over the last two decades (2000–2019)" (Climate Vulnerable Forum and Vulnerable Twenty Group, 2022).

¹⁶ Food and Agriculture Organization of the United Nations (FAO), *The Unjust Climate: Measuring the Impacts of Climate Change on Rural Poor, Women and Youth* (Rome, 2024).

¹⁷ Submissions from Plan International and Save the Children International; and A/HRC/43/30.

¹⁸ Submission from CBM Global Disability Inclusion.

B. Loss and damage and its impact on economic and social rights

9. Economic loss and damage, including due to affected income, livelihoods, crops, assets and infrastructure, impacts the enjoyment of human rights, including economic and social rights, such as the rights to health, food, housing, development, decent work and an adequate standard of living, and reduce the fiscal space for rights-enhancing spending. Climate change-related drought, for example, affects the rights to water and sanitation. The rights to food and an adequate standard of living are affected when subsistence crops and fisheries are decimated.¹⁹ The right to housing is affected when climate events destroy homes or render housing unsafe.²⁰

10. The outcome of the first global stocktake highlighted the ways in which economic and non-economic loss and damage is resulting in reduced fiscal space and constraints in the achievement of the Sustainable Development Goals.²¹ As such, loss and damage may hamper the ability and capacity of States to devote the maximum available resources to the realization of human rights. The onset of more frequent and intense climate events requires increasing humanitarian and development financing and establishing more robust preventive frameworks to build resilience and minimize the losses caused by disasters.

C. Non-economic loss and damage and its impact on human rights

11. According to a technical paper by the secretariat of the United Nations Framework Convention on Climate Change, non-economic losses refer to losses that are not commonly traded in markets and may impact individuals, society or the environment.²² They include: the loss of life, health or mobility (individuals); the loss of territory, cultural heritage, Indigenous knowledge, local knowledge or societal or cultural identity (society); and the loss of biodiversity or ecosystem services (environment).²³ Economic and non-economic losses and damages are terms describing different, although sometimes overlapping, dimensions of harm from climate change. For instance, in the Philippines, between 2011 and 2021, climate change-related typhoons caused an estimated \$12 billion worth of loss, which was compounded by thousands of deaths and related trauma.²⁴

12. Since climate change exacerbates, *inter alia*, biodiversity loss, ecosystem degradation, soil depletion and desertification, it frequently impedes the effective enjoyment of the right to a clean, healthy and sustainable environment and interrelated cultural rights.²⁵ Rapid warming, the thawing of the permafrost and the lack of winter ice in the Arctic harm Indigenous Peoples' rights when their cultures, lifestyles, health and livelihoods linked to the environment are threatened.²⁶ The loss of ancestral living spaces, the degradation of key ecosystems and reduced water availability due to climate impacts have led to migration and the associated loss of cultural, religious and traditional practices and linguistic diversity, for example, disrupting the migratory patterns of pastoralists.²⁷

13. Premature loss of life due to climate impacts can be a form of loss and damage and a violation of the right to life.²⁸ As stated by the Human Rights Committee in paragraph 62 of its general comment No. 36 (2018), climate change constitutes one of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. According to the World Meteorological Organization (WMO), extreme weather caused over

¹⁹ See [A/HRC/53/47](#) and [A/HRC/55/37](#).

²⁰ See [A/HRC/52/28](#); and submission from Displacement Solutions.

²¹ [FCCC/PA/CMA/2023/16/Add.1](#), decision 1/CMA.5, para. 129.

²² See <https://unfccc.int/sites/default/files/resource/docs/2013/tp/02.pdf>, para. 159.

²³ See <https://unfccc.int/sites/default/files/resource/docs/2013/tp/02.pdf>, table 2.

²⁴ Submissions from the Philippines and the Commission on Human Rights of the Philippines.

²⁵ See, for example submission from Ecuador (in Spanish).

²⁶ Submissions from the Danish Institute for Human Rights and the Alaska Native Women's Resource Center.

²⁷ Submission from IMAL Initiative for Climate and Development.

²⁸ See <https://unfccc.int/sites/default/files/resource/docs/2013/tp/02.pdf>, paras. 75–77 and table 2.

2 million deaths between 1970 and 2021.²⁹ About 37 per cent of heat-related deaths can be linked to climate change.³⁰ Poverty exacerbates such risks, compelling work even in unsafe temperatures. In Iraq, dust storms and heat exceeding 50 degrees Celsius have led to the loss of life.³¹ Discrimination and inequality deepen risks. For example, studies suggest that greater inequality within countries is correlated with higher flood mortality.³²

14. There is also a nexus between climate change, conflict, hunger and mobility. Displacement, according to the Office of the United Nations High Commissioner for Refugees (UNHCR), can be a form and a consequence of loss and damage and can drive further harm, such as exploitation and gender-based violence.³³ Most refugees and internally displaced persons come from 48 fragile or conflict-affected States, which are also among those most vulnerable to climate change and the least ready to adapt.³⁴ Climate impacts may interact with conflict, violence or other persecution as interrelated drivers of displacement, multiplying loss and damage.³⁵

15. Non-economic losses and damages are vast and rising exponentially as climate impacts become more prevalent across systems, including in terms of affecting the full and effective enjoyment of human rights, reaffirming the case for urgent action.

III. Legal and policy frameworks for addressing the impact of loss and damage on human rights

16. Overall, human rights norms, standards, considerations and obligations should shape and guide all climate action. International human rights law applies to averting, minimizing and addressing loss and damage associated with climate change and its impact on human rights. The need for a rights-based approach to climate action is affirmed in the Paris Agreement, whose preamble includes the provision that Parties should respect, promote and consider their respective obligations on human rights when taking action to address climate change. In paragraph 45 of its general recommendation No. 37 (2018), the Committee on the Elimination of Discrimination against Women affirmed that any steps taken by States to prevent, mitigate and respond to climate change and disasters within their own jurisdictions or extraterritorially must be firmly grounded in the human rights principles of substantive equality and non-discrimination, participation and empowerment, accountability and access to justice, transparency and the rule of law.

17. The right to an effective remedy is a fundamental principle of international human rights law.³⁶ It applies to human rights violations relating to loss and damage from climate change. For example, the Committee on the Rights of the Child has encouraged States to take note that, from a human rights perspective, loss and damage is closely related to the right to remedy and the principle of reparations, including restitution, compensation and rehabilitation.³⁷

18. International human rights law calls for remedies to be provided for its violation. Remedies should be available and accessible to all people for human rights violations resulting from loss and damage. According to OHCHR, the obligations of States in the

²⁹ See <https://wmo.int/news/media-centre/economic-costs-of-weather-related-disasters-soars-early-warnings-save-lives>.

³⁰ World Health Organization (WHO), "Climate change", 12 October 2023, available at <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>.

³¹ Submission from Iraq.

³² Submission from Oxfam International.

³³ Submission from UNHCR.

³⁴ Ibid.

³⁵ See, for example, [A/HRC/38/21](#); and submissions from International Organization for Migration (IOM) and UNHCR.

³⁶ See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; and Human Rights Committee, general comment No. 31 (2004).

³⁷ Committee on the Rights of the Child, general comment No. 26 (2023), para. 106. See also [A/77/226](#), para. 26.

context of climate change extend to all rights holders and to harm that occurs both inside and beyond boundaries, to whom they should be accountable for their contributions to climate change, including for failure to adequately regulate the emissions of businesses under their jurisdiction.³⁸ The Committee on the Rights of the Child has affirmed that States have obligations to address any harm and climate change-related risks to children's rights in the context of business enterprises' extraterritorial activities and operations and should enable access to effective remedies.³⁹

19. Remedies for loss and damage could also be informed by other international law principles, including the principles of equity, the polluter pays principle and common but differentiated responsibilities and respective capabilities. Remedies and reparatory justice require a comprehensive and multipronged approach grounded in international human rights law, including, where appropriate, the right to reparations, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.⁴⁰ Compensation could be provided for loss and damage to redress harm and the associated violations of human rights. The United Nations Declaration on the Rights of Indigenous Peoples contains an elaboration of remedies, including compensation, and the statement that Indigenous Peoples have the right to redress for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent, and that, unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress (art. 28). The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas recognizes the right of peasants and other people working in rural areas to effective and non-discriminatory access to justice and contains a call for States to provide effective and prompt remedies. These may include the right of appeal, restitution, indemnity, compensation and reparation, as well as the right of peasants and other people working in rural areas to return to their land and to the restoration of their access to the natural resources used in their activities and necessary for the enjoyment of adequate living conditions, including following disasters, or compensation when return is not possible (arts. 12 (1) and (2) and 17 (5)).

20. In general, compensation can be provided for any economically assessable damage, appropriate and proportional to the gravity and circumstances of the violation, for example, physical or mental harm, material damages and loss of earnings, moral damage, health-care and social services costs and lost opportunities, including employment, education and social benefits.⁴¹ In the case of non-economic loss and damage, compensation could be provided, for example, for damage to ecosystems and human rights harms. Difficulties in quantifying non-economic loss and damage should not, in principle, preclude compensation. For instance, while the loss of life is ethically irremediable, there remains an underlying legal obligation to provide effective remedies and reparation to victims of arbitrary deprivation of the right to life.⁴² Under human rights law, those responsible for climate change are accountable for compensatory measures, including financial, for harm incurred.

21. In the outcome document of its twenty-eighth session, the Conference of the Parties urged the developed country parties to continue to provide support, and encouraged other parties to provide, or continue to provide, support, on a voluntary basis, for activities to address loss and damage.⁴³ In addition to the decisions adopted under the United Nations Framework Convention on Climate Change, international cooperation and financing obligations are enshrined, *inter alia*, in international human rights law. Under the

³⁸ A/HRC/32/23, para. 38.

³⁹ Committee on the Rights of the Child, general comment No. 26 (2023), para. 108.

⁴⁰ See A/78/317; and Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

⁴¹ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 20.

⁴² Human Rights Committee, general comment No. 36 (2018), para. 4.

⁴³ FCCC/PA/CMA/2023/16/Add.1, decision 1/CMA.5, para. 88.

International Covenant on Economic, Social and Cultural Rights, States parties undertake to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of their available resources with a view to achieving progressively economic, social and cultural rights by all appropriate means (art. 2 (1)). According to the Committee on Economic, Social and Cultural Rights, States should use the maximum available resources to address the impact of climate change, particularly on disadvantaged groups.⁴⁴ Multiple United Nations human rights treaty bodies have affirmed that States have legal obligations to cooperate in good faith in the establishment of global responses addressing climate-related loss and damage suffered by the most vulnerable countries.⁴⁵ The Committee on the Rights of the Child has specifically called for States to take measures, including through international cooperation, to provide financial and technical assistance for addressing loss and damage.⁴⁶

22. Article 2 of the Paris Agreement contains a call for the agreement to be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances. The countries that have historically contributed most to climate change and those that are currently the main contributors shall, according to the Committee on Economic, Social and Cultural Rights, assist the countries most affected by climate change but least able to cope with its impact.⁴⁷ The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has noted that historical emissions are rooted in natural resource extraction, industrialization and industrial processes and consumption of the outputs of these processes⁴⁸ and that, from 1850 to 2002, industrialized countries produced three times the carbon dioxide produced by the entire global South.⁴⁹ According to Carbon Brief, allocating emissions under colonial rule to former colonial powers increases the share of responsibility of developed countries for climate change and associated harms.⁵⁰ Similarly, accounting for consumption-based emissions embodied in trade would result in a larger share of emissions being attributed to developed countries.⁵¹ Emissions by the Group of 20 countries accounted for 76 per cent of global greenhouse gas emissions in 2022; historically, between 1850 and 2021, they accounted for nearly 80 per cent of cumulative human-made carbon dioxide emissions.⁵²

23. With respect to business responsibilities, as recognized in the Guiding Principles on Business and Human Rights, where business enterprises identify that they have caused or contributed to adverse human rights impacts, they should provide for or cooperate in their remediation (principle 22). The Guiding Principles provide that, as part of their duty to protect against business-related human rights abuses, States must also take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that those affected have access to effective remedy (principle 25).⁵³ The Committee on the Rights of the Child has recalled that States have an obligation to establish non-judicial and judicial mechanisms to provide access to effective remedies for abuses of children's rights by business enterprises, including as a result of their extraterritorial activities and operations, provided that there is a reasonable link between the State and the conduct concerned.⁵⁴

⁴⁴ Committee on Economic, Social and Cultural Rights, general comment No. 26 (2022), para. 57.

⁴⁵ HR1/2019/1, para. 17.

⁴⁶ Committee on the Rights of the Child, general comment No. 26 (2023), para. 106.

⁴⁷ Committee on Economic, Social and Cultural Rights, general comment No. 26 (2022), para. 58.

⁴⁸ A/77/549, para. 12.

⁴⁹ Ibid., paras. 4 and 5.

⁵⁰ Carbon Brief, "Revealed: how colonial rule radically shifts historical responsibility for climate change", 26 November 2023.

⁵¹ Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change* (2022), pp. 244 and 245.

⁵² United Nations Environment Programme (UNEP), *Emissions Gap Report 2023: Broken Record – Temperatures Hit New Highs, Yet World Fails to Cut Emissions (Again)* (Nairobi, 2023), pp. XVII and XVIII; estimates exclude the African Union, which became a permanent member of the Group of 20 in September 2023.

⁵³ See also OHCHR, *Access to Remedy in Cases of Business-related Human Rights Abuse: An Interpretive Guide – Advance Version* (New York and Geneva, 2024).

⁵⁴ Committee on the Rights of the Child, general comment No. 26 (2023), para. 88.

Similarly, the Committee on Economic, Social and Cultural Rights has stated that the extraterritorial obligation to protect requires States parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective.⁵⁵

24. Because long-term global warming is closely proportional to cumulative net carbon dioxide emissions from human activities, historical emissions source attribution is critical to the overall attribution of responsibilities for climate impacts. Carbon dioxide emissions from fossil fuel combustion and industrial processes account for around two thirds of current greenhouse gas emissions.⁵⁶ According to the Carbon Majors database, over 70 per cent of global fossil fuel and cement carbon dioxide emissions since the Industrial Revolution can be traced to 78 coal, oil, gas and cement producers.⁵⁷ Since at least the 1960s, some of those fossil fuel companies have undertaken extensive efforts to mislead the public and investors about their knowledge of the global warming effects of their products and to undermine, obstruct and delay climate action, policies and legislation, thereby contributing to greater loss and damage today.⁵⁸ There is thus a moral rationale and legal basis for holding such fossil fuel companies accountable for climate harm and reparations. In 2024, the State of Vermont, United States of America, passed a law requiring fossil fuel companies to pay damages for climate change.

25. The importance of averting, minimizing and addressing loss and damage is recognized in article 8 of the Paris Agreement. At its nineteenth session, the Conference of the Parties established the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts to address loss and damage in particularly vulnerable developing countries.⁵⁹ As part of the funding arrangements under the United Nations Framework Convention on Climate Change, in a historic first step, the parties established and started to operationalize a loss and damage fund.⁶⁰ Notably, the parties emphasized that funding arrangements, including a fund, for responding to loss and damage were based on cooperation and facilitation and did not involve liability or compensation.⁶¹ The initial pledges for the loss and damage fund amounted to \$661 million.⁶² The pledges cover a fraction of the estimated annual costs of loss and damage.⁶³ While important, the United Nations Framework Convention on Climate Change loss and damage mechanisms are not currently designed or intended, in and of themselves, to fulfil the human rights obligations of States to provide effective remedies for climate harms.

⁵⁵ Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017), para. 30.

⁵⁶ UNEP, *Emissions Gap Report 2023*, p. XVI.

⁵⁷ InfluenceMap, "The Carbon Majors database: launch report" (2024), p. 3.

⁵⁸ Submission from the Commission on Human Rights of the Philippines.

⁵⁹ FCCC/CP/2013/10/Add.1, decision 2/CP.19.

⁶⁰ FCCC/CP/2023/11/Add.1, decision 1/CP.28. See also OHCHR submission to the fourth meeting of the transitional committee on the operationalization of the new funding arrangements for responding to loss and damage and the fund established in paragraph 3 of decisions 2/CP.27 and 2/CMA.4, 2023, available at https://unfccc.int/sites/default/files/resource/OHCHR%20Submission%20on%20Loss%20and%20Damage%20for%20TC4%202023_Oct2023.pdf.

⁶¹ FCCC/CP/2023/11/Add.1, decision 1/CP.28. See also FCCC/CP/2022/10, para. 7 (b); and FCCC/PA/CMA/2022/10, para. 71.

⁶² United Nations Framework Convention on Climate Change, "Pledges to the loss and damage fund", available at <https://unfccc.int/process-and-meetings/bodies/funds-and-financial-entities/loss-and-damage-fund-joint-interim-secretariat/pledges-to-the-loss-and-damage-fund>.

⁶³ UNCTAD, "Taking responsibility: towards a fit-for-purpose loss and damage fund", p. viii; and Julie-Anne Richards and others, *The Loss and Damage Finance Landscape* (The Loss and Damage Collaboration, 2023), p. 6.

IV. Human rights and equity-based approaches to addressing loss and damage

26. The present section outlines human rights and equity-based approaches to loss and damage, such as: (a) anchoring relevant policies and measures, including nationally determined contributions, national adaptation plans and long-term low-emission development strategies, in human rights; (b) building climate resilience through social security and a just transition towards a human rights economy; (c) promoting human rights- and equity-based approaches to mobilizing financing and freeing fiscal space; (d) advancing access to judicial remedy; and (e) developing transitional justice approaches. The approaches outlined should be seen as mutually reinforcing.

A. Integrating a human rights- and equity-based approach to loss and damage in climate laws, policies and assessments

27. Using human rights as guardrails for climate laws, policies and assessments is key to effective and equitable responses to loss and damage. Loss and damage is increasingly mentioned across climate policies. Of recent nationally determined contributions, 35 per cent refer explicitly to loss and damage,⁶⁴ and of national adaptation plans, 49 per cent do.⁶⁵ Most countries, however, have yet to assess their loss and damage risks and financial needs or determine how to address loss and damage, particularly non-economic loss and damage.⁶⁶

28. Similarly, while important progress has been made in anchoring countries' development strategies in human rights, such progress is not yet the case for many climate policies, including nationally determined contributions, national adaptation plans and long-term low-emission development strategies. Knowledge regarding the human rights aspects of, and approaches to, loss and damage remains scarce and fragmented. Acting under the United Nations Framework Convention on Climate Change, the Warsaw International Mechanism for Loss and Damage, the expert group on non-economic losses and the Santiago network for averting, minimizing and addressing loss and damage associated with the adverse effects of climate change could help to expand knowledge about the nexus between human rights, disaster risk reduction and loss and damage, including through human rights impact assessments. The creation of equity-based mechanisms and initiatives under relevant United Nations entities to assess, value, quantify and compensate for loss and damage, including the human rights impacts, should also be explored.

29. In contributions to the present report, States and other stakeholders identified elements for ensuring the consistency of loss and damage-related assessments and responses with human rights. Assessments should be rights-based, needs-based and community-led. They should account holistically for economic and non-economic loss and damage. This includes redressing structural and historical inequalities and discrimination in remedies and valuation, such as valuing all lives equally and rectifying discriminatory undervaluation. Assessments should apply the precautionary principle to assess risk, including of tipping points. The Co-Chairs of the International Law Commission's Study Group on sea-level rise in relation to international law have emphasized human dignity, a combination of needs-based and rights-based approaches, the applicability of general human rights obligations, non-discrimination and the protection of cultural heritage.⁶⁷

30. States, non-State actors, international organizations and civil society should integrate procedural safeguards, in particular those benefiting climate-affected communities. They should work together with front-line communities and individuals to ensure their inclusive, safe and meaningful participation in assessing and addressing loss and damage, applying their

⁶⁴ FAO, *Loss and Damage in Agrifood Systems: Addressing Gaps and Challenges* (Rome, 2023), p. xi.

⁶⁵ UNEP, *Adaptation Gap Report 2023: Underfinanced. Underprepared. Inadequate Investment and Planning on Climate Adaptation Leaves World Exposed* (Nairobi, 2023), p. 72.

⁶⁶ *Ibid.*, pp. XVIII, XIX and 68.

⁶⁷ A/CN.4/714.

lived experiences and expertise.⁶⁸ Examples range from the community-led participatory mapping of needs and qualitative data collection, such as testimonies concerning sacred sites, to initiatives such as the multidimensional vulnerability index.⁶⁹ Rights-based assessments should be used to inform policies, funding, remedies and the valuation of compensation.⁷⁰ States should also fulfil the right to information, including climate risk data, and to benefit from the best available science, including through the Early Warnings for All initiative.⁷¹

31. Human rights-consistent loss and damage assessments, responses and policies should take into account impacts on disproportionately affected groups, including Indigenous Peoples, women and children, and the effects of historical and structural discrimination. The robust collection of disaggregated data and intersectional, gender-responsive and child-responsive analysis can help to ensure that the diverse experiences of loss and damage beyond marketable interests are effectively addressed.

32. Direct access arrangements to funding should be available to all those affected by climate change, particularly marginalized and disadvantaged people and communities.⁷² Direct access advances rights-based solutions, including in conflict and fragile settings, whether facilitated as part of national budget support, including for social protection, or through international small grant and other modalities, including under the loss and damage fund. Front-line communities currently receive very little international climate finance. Notably, Indigenous Peoples receive less than 1 per cent of the total.⁷³

33. Human rights impact assessments and approaches should be used to assess and address the full spectrum of the human rights dimensions of loss and damage. They can help to safeguard rights relating to land, territories, water and resources, including rights to housing, food and a clean, healthy and sustainable environment. States should recognize and value customary, informal and other types of rights relating to the land, territories and resources of Indigenous Peoples and the rights of peasants and other people working in rural areas, provide equitable remedies for impacts on all types of housing and consider reforms to redistribute land to climate-displaced people.⁷⁴ States should ensure that all people, including Indigenous Peoples, racially and ethnically marginalized people and those facing the risk of displacement, can meaningfully participate in and lead policymaking and decision-making in the face of climate impacts, such as sea-level rise and the loss of statehood, territory and maritime entitlements, and realize their right to self-determination, where applicable.⁷⁵

34. The effective regulation of private sector involvement in loss and damage responses is also critical.⁷⁶ The Special Rapporteur on extreme poverty and human rights has warned that overreliance on the private sector could lead to a scenario in which the wealthy pay to escape climate impacts.⁷⁷ States should ensure that responses, such as restitution and post-disaster rebuilding, are led by the affected communities instead of businesses. In order to maintain a human rights-based approach, particular vigilance is required when engaging the private sector in the delivery of basic services to ensure that profit motives do not interfere with rights, such as to water, sanitation, housing and education. Businesses involved in loss and damage responses must respect human rights and meet their responsibilities under the

⁶⁸ A/HRC/50/57, para. 51; and submissions from United Nations Development Programme (UNDP) and Honduras (in Spanish).

⁶⁹ See General Assembly resolution 78/322.

⁷⁰ Submissions from Malaysia and the national human rights institution of Argentina.

⁷¹ Submission from International Telecommunication Union.

⁷² Submissions from UNDP, IOM and Oxfam International.

⁷³ Submission from UNDP.

⁷⁴ A/HRC/52/28; Committee on Economic, Social and Cultural Rights, general comment No. 26 (2022); United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, art. 17 (6); and submissions from the Ombudsperson of Bosnia and Herzegovina and Displacement Solutions.

⁷⁵ A/77/549, para. 75; and A/CN.4/774.

⁷⁶ A/HRC/56/34.

⁷⁷ A/HRC/41/39 and A/HRC/41/39/Corr.1, paras. 50 and 51.

Guiding Principles on Business and Human Rights to help to ensure that their efforts benefit people.

35. Promoting rights-based mobility pathways and remedies for displacement, including supporting rights holders' mobility aspirations, is essential to addressing loss and damage.⁷⁸ States should ensure safe, regular, dignified and accessible mobility pathways, legal protections for persons displaced internally and across international borders and durable solutions for immobile and trapped populations.⁷⁹ They should develop and invest in rights-based support for people moving from areas that become uninhabitable due to climate effects.⁸⁰

B. Human rights- and equity-based approaches to strengthen climate resilience

36. The conventional project-based model of climate finance is likely unsustainable as well as unsuitable in the context of loss and damage due to the unpredictability of extreme weather events, the incremental nature of slow-onset hazards and cascading and compounding climate risks.⁸¹ Addressing loss and damage in a way that advances climate justice requires wide-ranging remedies for the root causes of climate change, including its structural, temporal, collective and transboundary dimensions.⁸² 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. This 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.⁸³ Policies and programmes cannot be based on a one-size-fits all approach. They need to be tailored to national circumstances within a global economy where businesses and investors respect the rule of law, including international human rights and labour law.

37. Building and strengthening rights-based universal social protection systems should be at the centre of a just transition. The right of everyone to social security is recognized in article 9 of the International Covenant on Economic, Social and Cultural Rights. Social protection systems should serve as a central vehicle for building resilience against climate impacts.⁸⁴ Research underscores the dual role of universal social protection systems as both a productive and a protective component of healthy and sustainable societies.⁸⁵ Social security, including health care, livelihood and income security and social services, complemented by broader investments aimed at creating economic opportunities, builds resilience. Universal social protection systems can also make it easier for States to reach people affected by catastrophic climate change events through embedded support mechanisms, including for cash transfers.

38. Social protection provides a foundation for equitable, long-term, sustainable development in a changing climate. Togo, for example, has highlighted its efforts to strengthen climate-resilient social protection and socioeconomic infrastructure.⁸⁶ In its decision on the outcome of the global stocktake, the Conference of the Parties urged the parties to substantially reduce the adverse effects of climate change on poverty eradication and livelihoods by promoting adaptive social protection measures.⁸⁷ Yet, currently, over half

⁷⁸ A/HRC/38/21; and OHCHR, "Key messages on human rights, climate change and migration".

⁷⁹ A/HRC/53/34, para. 71.

⁸⁰ Submission from IOM.

⁸¹ UNEP, *Adaptation Gap Report 2023*, p. 74.

⁸² A/HRC/48/78.

⁸³ OHCHR and ILO, "Key messages on human rights and a just transition" (2023).

⁸⁴ A/HRC/55/37, paras. 15–20.

⁸⁵ ILO, *World Social Protection Report 2020–22: Social Protection at the Crossroads – In Pursuit of a Better Future* (Geneva, 2021).

⁸⁶ Submission from Togo (in French).

⁸⁷ FCCC/PA/CMA/2023/16/Add.1, decision 1/CMA.5, para. 63.

of the world's population, most of whom inhabit the regions worst affected by climate change, lack social security.⁸⁸ The Human Rights Council has expressed concern at the inadequacy of social protection schemes and emphasized that efforts to realize the right to social security in the context of loss and damage should be inclusive and universally accessible.⁸⁹

39. Developed countries should support the efforts of developing countries to increase investment in social protection systems, both to make faster progress towards Sustainable Development Goal 1.3, on adopting nationally appropriate social protection systems for all, and to climate-proof development gains. The Special Rapporteur on extreme poverty and human rights has proposed that developed countries provide financing to make up for shortfalls, including due to climate shocks, in the social protection systems of developing countries, particularly relative to the areas most affected by climate change.⁹⁰ In its study on a global fund for social protection, the International Labour Organization (ILO) recommended making climate finance available for social protection systems and developing climate adaptation-oriented social protection systems through climate-related taxation.⁹¹

C. Mobilizing finance for loss and damage through a human rights- and equity-based approach

40. Financing needs to be scaled up urgently to avert and minimize loss and damage through climate change mitigation and adaptation and to address loss and damage through effective remedies, particularly compensation. While many uncertainties remain regarding financial needs for addressing loss and damage, estimates are in the range of hundreds of billions of dollars and are predicted to rise to trillions of dollars by 2050.⁹² Presently, the developing countries together, excluding China, are estimated to require at least \$2.4 trillion annually for climate finance, including for adaptation, mitigation and loss and damage,⁹³ the same amount as the global military expenditure in 2023.⁹⁴ While, in accordance with the Paris Agreement, the new collective quantified goal on climate finance being negotiated should take into account actual and projected financial needs for mitigation and adaptation, there are differences in views as to whether it should also include financing for addressing loss and damage. Regardless of the precise mechanisms, under human rights law, harm-reducing and remedial climate action must be adequately financed. Current provisions for climate finance fall far short of the current and projected needs and obligations. Analysis has shown that they also fell short of the goal of mobilizing \$100 billion per year in 2020 and 2021, to which developed countries had committed in 2009.⁹⁵

41. Funding to compensate for loss and damage should come primarily from developed countries and those most responsible for climate change, in line with the principles of equity and polluter pays and common but differentiated responsibilities and respective capabilities. Developed countries should also consider mobilizing financing through novel sources, such as equity-based taxation.

42. Human rights and equity-based progressive taxation, guided by the polluter pays principle, would target the fossil fuel industry and major greenhouse gas emitters in particular

⁸⁸ ILO, *World Social Protection Report 2020–22*.

⁸⁹ Human Rights Council resolution 53/6.

⁹⁰ A/HRC/47/36, para. 66.

⁹¹ Nicola Yeates and others, *A Global Fund for Social Protection: Lessons from the Diverse Experiences of Global Health, Agriculture and Climate Funds*, ILO Working Paper No. 97 (Geneva, ILO, 2023), p. 67.

⁹² UNEP, *Adaptation Gap Report 2023*, pp. XIX and 73.

⁹³ United Nations Framework Convention on Climate Change, "From vision to reality, getting the job done", speech delivered by the Executive Secretary of the United Nations Framework Convention on Climate Change, 2 February 2024.

⁹⁴ Nan Tian and others, "Trends in world military expenditure, 2023", SIPRI Fact Sheet (Stockholm International Peace Research Institute, 2024).

⁹⁵ Organisation for Economic Co-operation and Development, "Climate finance provided and mobilised by developed countries in 2013–2021: aggregate trends and opportunities for scaling up adaptation and mobilised private finance" (Paris, 2023); and Oxfam International, "Climate finance shadow report 2023: assessing the delivery of the \$100 billion commitment" (Oxford, 2023).

and be designed to protect those in situations of poverty and marginalization.⁹⁶ A range of taxes and levies, including progressive global windfall taxes, financial transaction taxes, wealth taxes, an effective price on carbon and the implementation of solidarity levies, for example on shipping, aviation and fossil fuel extraction, could be explored. All States should consider a global tax on the windfall profits of fossil fuel companies, redirecting some of those revenues to people suffering loss and damage. A tax of even a small percentage of such windfall profits, which in 2022 amounted to \$3 trillion, could generate, while varying in different years, hundreds of billions of dollars.⁹⁷ New taxes need to be accompanied by efforts to counter tax evasion and avoidance and to close tax havens. Given an estimated \$480 billion in lost tax revenue annually worldwide, such efforts could generate significant additional funds toward addressing loss and damage.⁹⁸ States should promote and advance regulations to ensure that businesses, especially transnational corporations, pay their fair share of taxes everywhere they operate, especially to boost tax revenues in climate-vulnerable developing countries. There have been calls for the establishment of a global climate reparations fund to complement the State-centric loss and damage fund, with a responsibility-based approach to quantifying and implementing the climate reparations owed by fossil fuel companies due to their operational and value-chain emissions, history of climate denial, disinformation and misinformation and their efforts to obstruct, undermine or delay climate action.

43. According to the International Monetary Fund (IMF), globally, explicit fossil fuel subsidies in 2022 amounted to \$1.3 trillion.⁹⁹ States should act immediately to equitably phase-out fossil fuel subsidies in accordance with their international obligations to mitigate conduct that poses serious and foreseeable risks to human rights. Savings could be redirected to climate action, including loss and damage.

44. Appropriate debt restructuring and cancellation could be included in efforts to address loss and damage.¹⁰⁰ Currently, 93 per cent of the countries most vulnerable to climate impacts are also in debt distress or at significant risk thereof,¹⁰¹ lacking the needed fiscal space to adequately respond to mounting loss and damage.¹⁰² The prevalence of loan-based rather than grant-based international climate financing further exacerbates debt crises. More than 50 per cent of recent debt increases in developing countries is linked to the funding of disaster recovery and reconstruction.¹⁰³ Equitable debt restructuring and debt cancellation, coupled with grant-based loss and damage funding, should be promoted to free up public funds in developing countries for rights-enhancing spending, including on climate action. A human rights-based multilateral debt relief mechanism to equitably restructure or cancel debt, particularly benefiting countries most vulnerable to climate change, could help to address loss and damage.

D. Advancing access to judicial remedy and accountability for loss and damage

45. Given the current inadequacies of efforts to address loss and damage, access to justice and effective remedy through judicial and non-judicial avenues is being sought increasingly

⁹⁶ A/77/226, para. 72; and David R. Boyd and Stephanie Keene, "Air travel and maritime shipping levies: making polluters pay for climate loss, damages and adaptation", Policy Brief No. 2 of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (OHCHR, 2021).

⁹⁷ UNCTAD, "Taking responsibility: towards a fit-for-purpose loss and damage fund", pp. 25 and 33.

⁹⁸ Tax Justice Network, *State of Tax Justice 2023* (2023), p. 21.

⁹⁹ Simon Black and others, "Fossil fuel subsidies data: 2023 update", Working Paper No. 23/169 (Washington, D.C., IMF, 2023), p. 3.

¹⁰⁰ See David R. Boyd and Stephanie Keene, "Mobilizing trillions for the global South: the imperative of human rights-based climate finance", Policy Brief No. 5 of the Special Rapporteur on human rights and the environment (OHCHR, 2023).

¹⁰¹ ActionAid International, "The vicious cycle: connections between the debt crisis and climate crisis" (2023), p. 2.

¹⁰² See UNCTAD, "Tackling debt and climate challenges in tandem: a policy agenda", Policy Brief No. 104 (2022).

¹⁰³ UNCTAD, "Taking responsibility: towards a fit-for-purpose loss and damage fund", p. 4.

by affected people and States. In its landmark advisory opinion on climate change, the International Tribunal for the Law of the Sea¹⁰⁴ emphasizes that climate change poses an existential threat to human rights and that complying with the Paris Agreement alone is not sufficient to satisfy international legal obligations relating to climate change. In its resolution 77/276 requesting an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, the General Assembly asked about the legal consequences for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, including with respect to peoples and individuals. The pending advisory opinion of the Inter-American Court of Human Rights is also expected to further clarify the scope of State obligations in that context, in both their individual and collective dimensions, in order to respond to the climate emergency within the framework of international human rights law, paying special attention to differentiated impacts on individuals from diverse regions and population groups, as well as on nature and human survival.¹⁰⁵

46. Access to justice, including through courts, is an essential component of holding States, businesses and others accountable for the continuing and compounding human rights impacts of climate change.¹⁰⁶ The United Nations High Commissioner for Human Rights has highlighted the important role of human rights-related climate litigation in that respect.¹⁰⁷ The analysis by UNEP of global climate litigation demonstrates that courts in diverse jurisdictions are increasingly identifying strong linkages between human rights and climate change, with the right to a clean, healthy and sustainable environment referenced in several cases.¹⁰⁸ Disproportionately affected groups are among those engaging in climate litigation. In *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, the Grand Chamber of the European Court of Human Rights ruled in favour of the applicants, which included a group of older women, holding that the right to respect for private and family life enshrined under article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) encompassed the right for individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life.¹⁰⁹ In a recent report, the United Nations Development Programme anticipated a possible transformation in climate governance and accountability propelled by climate litigation.¹¹⁰

47. While often focused on prevention, climate litigation is being used increasingly to seek other remedies for harm from climate impacts. For instance, the Human Rights Committee recommended that Australia pay compensation for harms suffered by Torres Strait Islanders relating to its failure to protect their rights to culture and private life, family and home from climate change.¹¹¹ In other cases, petitioners have sought compensation through monetary damages related to defendants' alleged contributions to climate harms.¹¹² In a pending class action lawsuit in the United States, the plaintiffs are seeking punitive and compensatory damages from major fossil fuel companies because of worsened hurricane impacts.¹¹³

¹⁰⁴ See https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf.

¹⁰⁵ Request for an advisory opinion on the climate emergency and human rights submitted to the Inter-American Court of Human Rights by Colombia and Chile, 9 January 2023, available at https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf.

¹⁰⁶ See A/78/168.

¹⁰⁷ See OHCHR, "Human Rights: a Path for Solutions".

¹⁰⁸ UNEP, *Global Climate Litigation Report: 2023 Status Review* (Nairobi, 2023), p. 38.

¹⁰⁹ European Court of Human Rights, Application No. 53600/20, Judgment, 9 April 2024.

¹¹⁰ UNDP, "Loss and damage and climate litigation: how can the Maldives and other small island developing States (SIDS) position for greater climate action?" (New York, 2023).

¹¹¹ See *Billy et al. v. Australia* (CCPR/C/135/D/3624/2019).

¹¹² Joana Setzer and Catherine Higham, *Global Trends in Climate Change Litigation: 2023 Snapshot* (London, London School of Economics and Political Science, 2023), p. 4.

¹¹³ United States District Court, District of Puerto Rico, *Municipalities of Puerto Rico v. Exxon Mobil et al.*, case No. 3:22-cv-01550-SCC.

48. In *Sacchi et al. v Argentina*, the Committee on the Rights of the Child found that, when transboundary harm occurred, affected children's claims could, in principle, be brought under the jurisdiction of the State on whose territory emissions originated, if there was a causal link and the State exercised effective control over the source.¹¹⁴ In 2023, four inhabitants of the Indonesian island of Pari lodged a claim in a Swiss court requesting compensation from a Swiss cement company for climate-related damage occurring on the island.¹¹⁵ The National Human Rights Commission of the Philippines has called for a global inquiry into transboundary human rights issues and extraterritorial obligations with respect to loss and damage.¹¹⁶

49. To further enhance accountability, States should advance laws, regulations and policies that facilitate access to justice for climate change-related harms, hold businesses accountable for remedying loss and damage related to their activities and address extraterritorial impacts.

E. Climate justice and transitional justice approaches to loss and damage

50. The critical nature of the present situation calls for the urgent consideration of new, equity- and rights-based solutions to ensure that those suffering the brunt of climate-related harms have sufficient means to hold States and other duty bearers accountable for failing to meet their respective obligations and responsibilities to provide remedies for historical and ongoing climate injustice.¹¹⁷ Transitional justice approaches, referring to the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation,¹¹⁸ may be helpfully explored as part of a human rights- and equity-based approach to addressing loss and damage. Truth-seeking, criminal justice, reparation and guarantees of non-recurrence are key elements of transitional justice.¹¹⁹ Transitional justice approaches have already been considered in contexts beyond the traditional dimensions of conflict associated with the notion, including with regard to the legacies of colonialism and slavery, and could similarly be applied to address climate change-related harms.¹²⁰

51. Applying a transitional justice lens in this context could complement other equity-based approaches, capturing dimensions of historical, colonial and systemic injustices relating to the root causes of climate change, while providing a forward-looking preventive perspective to avoid future loss and damage.¹²¹ An approach to loss and damage informed by transitional justice could be used to ensure the non-recurrence of harm, document the causes, including the responsible actors, and the consequences, including the human rights impacts, of climate change, and advance justice and accountability informed by attribution science, common but differentiated responsibilities and specific human rights impacts, especially regarding disproportionately exposed groups. It could allow for the elaboration of climate reparations on a systemic and historic scale. Diverse forms of reparations, guarantees of non-recurrence and truth-seeking could also redress holistically the non-economic dimensions of loss and damage that other approaches may inadequately address, such as those relating to identity, a sense of place, the safeguarding of Indigenous Peoples' knowledge and ecosystem restoration.

52. The High Commissioner for Human Rights has called for the consideration of transitional justice approaches, for example, through an international commission of inquiry

¹¹⁴ *CRC/C/88/D/104/2019*, para. 10.7.

¹¹⁵ Office of the Justice of the Peace of the Canton of Zug, Switzerland, *Asmania et al. v Holcim*, Complaint, 1 February 2023.

¹¹⁶ Submission from the Commission on Human Rights of the Philippines.

¹¹⁷ *A/77/549*, para. 73. See also International Law Commission, draft articles on responsibility of States for internationally wrongful acts, with commentaries.

¹¹⁸ *S/2004/616*, p. 4.

¹¹⁹ "Guidance note of the Secretary-General: transitional justice – a strategic tool for people, prevention and peace" (2023), p. 2.

¹²⁰ *Ibid.*, p. 18. See also Sonja Klinsky and Jasmina Brankovic, *The Global Climate Regime and Transitional Justice* (Routledge, 2018).

¹²¹ "Guidance note of the Secretary-General: transitional justice", p. 24. See also *A/76/80*.

to investigate the causes of environmental damage, both as an act of memorialization and in order to issue practical recommendations to States.¹²² Further consideration could be given to the establishment of a group of experts or other mechanism on climate justice which could explore applying a transitional justice lens to climate change-related loss and damage as a means to advance truth-seeking, justice, reparation and guarantees of non-recurrence, with the aspiration of systemic transformation. Such work could also draw on climate attribution science to explore causation, contributions and responsibilities in present, future and historical dimensions in order to identify and advance measures to address human rights violations resulting from loss and damage. Such an approach could assist the global community to overcome some of the current challenges posed by climate change-related loss and damage.

V. Conclusions and recommendations

53. **Loss and damage from the adverse effects of climate change may include broad and increasing harms to the enjoyment of a wide range of human rights, such as the rights to life, health, housing, food, culture, education, an adequate standard of living, development, work, water and sanitation, self-determination and a clean, healthy and sustainable environment. Averting and minimizing loss and damage depend on measures to mitigate and adapt to climate change, thereby protecting the rights of present and future generations. In accordance with human rights law, States should ensure that people whose rights have been violated because of loss and damage from climate change have access to justice and effective remedy, which may encompass reparation, compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition.**

54. **All countries should seek to remedy, including through financing, the climate harms to which they contributed, consistent with their international human rights and other obligations. Businesses responsible for climate change should also contribute to remedies.**

55. **In light of the submissions received for the present study, international human rights law and my call to action for human rights, in which I emphasized the urgency to advance climate justice, I call upon States:**

(a) **To integrate human rights in laws, policies and assessments concerning loss and damage;**

(b) **To ensure that loss and damage responses are community-led, informed by the active, meaningful and safe participation of affected persons and take into account intersectionality and historical and structural discrimination;**

(c) **To ensure that loss and damage funds integrate gender-responsive, rights-based approaches to make funds directly accessible to those on the front lines of the climate crisis, including environmental human rights defenders.**

56. **Loss and damage assessments, to be accurate and comprehensive, should integrate human rights impacts and holistically value economic and non-economic dimensions. They should, inter alia, safeguard all human rights relating to lands, territories and resources impacted by loss and damage, including the right to self-determination and cultural rights. I call upon States to support rights-based mobility pathways as a form of remedy for loss and damage.**

57. **Efforts to avert, minimize and address loss and damage should advance a just transition towards a human rights economy that puts the rights of people and the well-being of the planet at the heart of economic and social decision-making.**

¹²² OHCHR, "Human Rights: a Path for Solutions" (2024), p. 14. See also <https://www.ohchr.org/en/statements-and-speeches/2024/05/well-past-hour-countries-align-climate-laws-human-rights>.

58. I therefore call upon States:

(a) To establish and strengthen universal rights-based social protection systems to increase people's resilience in responding to loss and damage. Developed countries should seek to support the investments of developing countries in strengthening social protection systems;

(b) To mobilize adequate resources for loss and damage financing, which could include, for instance, a fair and just phase-out and repurposing of fossil fuel subsidies, the introduction of taxes and levies, including windfall taxes and solidarity levies, such as on shipping, aviation and fossil fuel extraction, and the establishment of an effective price on carbon. Such efforts should be complemented by debt relief and debt restructuring for developing countries, especially those most in need and most affected by climate change;

(c) To support the efforts of rights holders to access remedies for loss and damage through judicial and non-judicial mechanisms. States should seek to advance legal, policy and normative measures to hold polluters accountable, including for misinformation, and support loss and damage-related claims, including, where applicable, extraterritorial climate litigation. In that context, States should also seek to ban advertising by fossil fuel companies.

59. I further encourage States to consider establishing a group of experts or other mechanism on climate justice to explore human rights- and equity-based approaches to climate harm, including loss and damage and associated human rights dimensions.

VANUATU WRITTEN COMMENTS

ANNEX 2



Human Rights and a Just Transition



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER



International
Labour
Organization

A just transition is intrinsically grounded in human rights standards and obligations, including the rights to 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. Human rights requires that labour is not reduced to a commodity, but considered an investment in people, partnership and our societies.

Integrating human rights in just transition processes requires:

- a. The adoption of the international human rights framework in just transition processes, including the progressive realisation of ESC rights, for framing actions in moving both away from the fossil fuel economy, and toward a green economy.
- b. Fostering equitable access to the benefits of the transition process as well as fair distribution of its burdens.
- c. Shifting economic models to those that create wellbeing of people and planet, gender equality and the reduction of inequalities and that are not simply concerned with GDP.
- d. Protecting the rights of workers and communities affected by the ecological transformation from impacts on their livelihoods.
- e. Investing in the creation of decent jobs and the provision of social security.
- f. The participation of workers and their trade unions to provide and guarantee decent work, social protection, training opportunities and job security.
- g. Reducing consumption and production that drive excessive energy and resource demands, contaminate air, soil and water, and harm health and nature.
- h. Ensuring people and communities who experience human rights violations or abuses have access to effective remedies.

Just transition involves maximising the social and economic opportunities of environmental action, including through the establishment of an enabling environment for sustainable enterprises, while minimising and carefully managing challenges associated with it. It should be based on effective social dialogue, respect for fundamental principles and rights at work, and be in accordance with international human rights and labour laws and standards. The [ILO Declaration on Fundamental Principles and Rights at Work](#), adopted in 1998 and amended in 2022, includes freedom of association and the recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, the elimination of discrimination in respect of employment and occupation, and a safe and healthy working environment. The [ILO Guidelines for a Just Transition to Environmentally Sustainable Economies and Societies for All](#), adopted in 2015 by tripartite consensus, provide detailed guidance to implement a just transition in accord with rights law in the world of work.

The following Key Messages articulate key human rights obligations for the achievement of a just transition.

Key Messages on Human Rights Obligations for the Achievement of a Just Transition

Key Message 01

Ensure equity and justice

While the triple planetary environmental crises of climate change, biodiversity loss and pollution affect people everywhere, those who have contributed the least are often those most affected. According to the ILO, over 100 million jobs can potentially be created but also close to 80 million may be lost in the green transition. Overall, job creation will be concentrated among medium-skill jobs.² Countries that do not have the fiscal and political space to diversify their economy may face challenges to move away from polluting sectors.

Sustainable development should be rooted in a different socio-economic model that prioritizes addressing inequalities over an exclusive focus on economic growth and that tackles excessive consumption rather than treating it as a component of growth. A just transition can open new opportunities and minimize environmental impacts, while safeguarding workers' rights and the rights of those most affected by environmental degradation, including climate change, and the measures needed to address such challenges. But it does not automatically guarantee inclusive and equitable outcomes and sometimes risks exacerbating existing inequalities. For example, communities can be negatively affected and/or displaced by renewable energy projects and the exploitation of rare earth minerals. This is why it is essential for the just transition to put people at the centre, ensuring that workers, micro, small and medium-sized enterprises (MSME) and communities affected by environmental harms and actions to address them are protected.

Ensuring just transition processes are 'just' requires safeguarding the rights of workers, their communities and people in vulnerable situations. The costs of environmental degradation should be borne by polluters, and the benefits of development should be equitably distributed. Justice requires a participatory and inclusive transition that seeks to remedy past human rights harms and prevent future ones, including through the establishment and effective implementation of human rights safeguards and independent redress mechanisms.³

Equity within and amongst countries is a central principle of just transition, as it emphasizes inclusivity and the reduction of inequality by ensuring that the benefits and costs of the transition are distributed in a just and fair manner. For this reason, ensuring the transition to environmentally sustainable economies is important for all economic sectors, the formal as well as the informal economy, and for countries at all levels of development. Equity in environmental action can build social trust by ensuring that just transition pathways benefit people in developing low- and middle-income countries, Indigenous Peoples, people in vulnerable situations, and future generations.⁴

²ILO, Skills for a greener future: a global view, at:

https://www.ilo.org/skills/WCMS_732185/lang-en/index.htm#:~:text=Among%20the%20major%20findings%20highlighted,80%20million%20may%20be%20destroyed.

³See IPCC definition of climate justice, at: https://www.ipcc.ch/site/assets/uploads/2018/11/sr15_glossary.pdf

⁴According to the International Panel on Climate Change (IPCC), 6th Synthesis Report, "actions that prioritise equity, climate justice, social justice and inclusion lead to more sustainable outcomes, co-benefits, reduce trade-offs, support transformative change and advance climate resilient development. Equity, inclusion and just transitions are key to progress on adaptation and deeper societal ambitions for accelerated mitigation", at: https://report.ipcc.ch/ar6syr/pdf/IPCC_AR6_SYR_LongerReport.pdf

Key Message 01

Ensure equity and justice (cont'd)

There is no “one-size-fits-all”. Policies and programmes need to be designed in line with the specific conditions of countries, including their stage of development, economic sectors and types and size of enterprises, and in compliance with human rights, including international labour standards and obligations. This needs to take place in a global economy where businesses and investors treat respect for the rule of law, including human rights and international labour law and standards, as part of their fiduciary duty. The examples of such policies include “just transition agreements”, community planning, human rights impact assessments, fiscal transparency and accountability, Just Transition Commissions as well as new institutional structures for social dialogue established by governments.

Key Message 02

Mobilize maximum available resources for sustainable, rights-based development, including through international cooperation

States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development, as outlined in the [UN Declaration on the Right to Development](#). Under core human rights treaties, including the international labour standards, all States have the duty to mobilize, allocate and spend the maximum available resources for the progressive realization of ESC rights, including the rights to a clean, healthy and sustainable environment and a safe and healthy working environment. Failing to adopt reasonable measures to mobilize available resources to prevent foreseeable human rights harms caused by environmental degradation – including delays in transitioning to an environmentally sustainable human rights economy and society – constitutes a breach of this obligation.

The mobilization of resources to address transition-related challenges should complement, rather than compromise other efforts of States to fulfil their human rights obligations. Human rights enhancing economic policies, such as progressive taxation on income and wealth, with the private sector paying its fair share, and shifting subsidies from fossil fuels to clean energy sectors can lead to a more equitable distribution of revenues within society, while also increasing available fiscal space for human rights budgeting that supports just transition programmes and policies, structural transformation and investments in ESC rights and sustainable development, including social protection.

The triple planetary environmental crisis requires a global response, underpinned by international solidarity. Developing countries’ transition pathways require support aligned with key principles like environmental justice, intergenerational equity, polluter-pays, and common but differentiated responsibilities and respective capabilities. Under the [UN Charter](#), the [International Covenant on Economic, Social and Cultural Rights](#), and other human rights instruments, States have a duty to cooperate to advance the realization of all human rights which extends to resource mobilization. In line with the [Paris Agreement](#) and the Declaration on the Right to Development, cooperation should include, inter alia, financial, capacity-building and technological support that promote the development and growth of environmentally sustainable economies globally. The technical means to achieve a sustainable transition already exist, political will, manifested as adequate policies and means of implementation is lacking, perpetuating a completely preventable and predictable deepening of environmental crises.

Key Message 03

Guarantee access to information, participation, and access to justice

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. Effective planning for a just transition only occurs when informed negotiation through social dialogue and meaningful stakeholder engagement takes place. [Social dialogue](#) allows engagement and consultations on policymaking and implementation for all stakeholders involved, such as affected communities and Indigenous Peoples, and should have a particular focus on workers, regardless of their status (formal or informal workers; in permanent or precarious employment; employed by public or private actors).

Workers, their trade unions, communities, and other affected parties have the right to be informed about their governments' strategies to address environmental degradation and just transition policies. Credible, transparent and accessible impact assessments and data are needed to inform meaningful participation in decision-making processes related to the just transition. This ensures that diverse perspectives, needs, and concerns are taken into account, resulting in fair and inclusive processes. Engaging workers, enterprises, cooperatives, solidarity economies, Indigenous Peoples, local communities, civil society organizations, consumers and other stakeholders helps address potential conflicts and develop collaborative solutions. At the same time, States and businesses must facilitate access to remedies for those adversely affected by transition programmes.

Key Message 04

Ensure the right to work, including a safe and healthy working environment, and promote capacity-building and skills development, particularly for workers in the informal sector

The right to work, as enshrined in the [International Covenant on Economic, Social and Cultural Rights](#) affirms the obligation of States to assure individuals their right to freely chosen or accepted work, the right to organize and the right to collective bargaining, while also safeguarding them from unjust deprivation of employment. To create conditions conducive to the realization of the right to work, States must eliminate discrimination in access to employment. They must ensure equal access to economic resources, and technical and vocational and educational training (TVET), especially for women and groups in vulnerable situations. They should ensure remuneration sufficient to enable workers and their families to enjoy an adequate standard of living.⁵ States are also obliged to ensure workers are provided with a safe and healthy working environment and to prevent occupational accidents and diseases.⁶

A just transition requires States to safeguard workers against unemployment and formulate and implement policies that prioritize the economic, social and cultural rights of workers, regardless of their status (formal or informal workers; permanent or precarious employment; employed by the public or private sector). A just transition has the potential to empower societies to create new industries and jobs that offer environmentally friendly and decent employment opportunities.

⁵Committee on Economic, Social and Cultural Rights, [General Comment 18](#) on the right to work (E/C.12/GC/18).

⁶Committee on Economic, Social and Cultural Rights, [General Comment 21](#) on the right to just and favourable conditions of work (E/C.12/GC/23). ILO's international labour standards request both governments and employers to protect workers from occupational accidents and diseases. See Occupational Safety and Health Convention, 1981 (No. 155), the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129).

⁷https://www.ilo.org/wcmsp5/groups/public/-dgreports/-dcomm/documents/publication/wcms_626831.pdf

Key Message 04

Ensure the right to work, including a safe and healthy working environment, and promote capacity-building and skills development, particularly for workers in the informal sector (cont'd)

At the local level, ensuring employment opportunities for unemployed workers and workers at risk of unemployment in communities and industries affected by environmental crises and measures taken to address them, not only secures workers livelihoods but also supports communities reliant on local taxes, which, if managed properly, could secure public services, rights delivery, and enhance development at the community level. These opportunities should be accessible and dignified, assuring adequate standards of living for workers and their families in their communities.

To access new opportunities generated by the transition, workers should be provided with targeted programmes for development of new hard and soft skills, TVET through lifelong learning opportunities, reskilling, upskilling, quality apprenticeships and capacity-building projects and initiatives to support local economic diversification, small and medium enterprises, cooperatives and social and solidarity economy. These programmes should benefit, in particular, young people and workers facing job losses due to the transition.

The protection and promotion of workers' rights and trade unions' engagement in defining priorities, decision making, planning, implementation, monitoring, and evaluation play a crucial role in the just transition process. As champions of workers' rights and advocates for fair and just labour practices, trade unions are key partners in ensuring that the transition to more sustainable economies does not come at the expense of workers' livelihoods and rights.

Key Message 05

Ensure the protection and representation of informal workers, including in the design and implementation of just transition policies

According to the ILO ⁷, more than 60% of global workers remain engaged in informal and/or precarious forms of employment, with an estimated 2 billion people working informally. Workers in informal and precarious work, including migrant workers, are exceptionally susceptible to crises due to the absence of social and legal protections, skill mismatches, limited access to resources, and often inadequate representation in decision-making processes. Environmental crises compound the instability of precarious forms of employment, posing a significant threat to the world of work.

States must acknowledge the distinct challenges faced by informal workers and establish pathways for their protection, inclusion and empowerment. This involves facilitating their transition into formal employment, offering skill development programmes tailored to their needs, raising awareness of human rights, social, economic and environmental policies, ensuring access to social safety nets, and engaging in meaningful social dialogue. The use of the cooperative model, among other approaches, can prove to be an effective tool for formalization, by providing legal recognition, pooling resources, enhancing market access and bargaining power, fostering capacity building and skill development, and supporting social security and advocacy for its members.

⁷Committee on Economic, Social and Cultural Rights, General Comment 17 on the right to work (E/C.12/GC/18).

⁸Committee on Economic, Social and Cultural Rights, General Comment 23 on the right to just and favourable conditions of work (E/C.12/GC/23). ILO's international labour standards request both governments and employers to protect workers from occupational accidents and diseases. See Occupational Safety and Health Convention, 1981 (No. 155), the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129).

⁹https://www.ilo.org/wcmsp5/groups/public/-/dgreports/-/dcomm/documents/publication/wcms_626831.pdf

Key Message 05

Ensure the protection and representation of informal workers, including in the design and implementation of just transition policies (cont'd)

At the same time, targeted programmes in the informal sector where a significant number of enterprises and workers operate informally should be established. There should be channels for informal workers to engage in active, free and meaningful participation in the design of the policies.

Extending social protection to groups of workers in informal and precarious work, including migrant workers and their families, is one of the crucial priority areas in the context of just transition. This should be an integral part of government's social protection strategies and programmes, guided by principles of universality of coverage, inclusion; adequacy; non-discrimination and gender equality.

Key Message 06

Guarantee access to adequate social security

The [International Covenant on Economic, Social and Cultural Rights](#), along with other human rights instruments, guarantee every member of society the right to social security. Similarly, the ILO [Social Security \(Minimum Standards\) Convention, 1952 \(No. 103\)](#) and other international labour standards emphasize the importance of social security. Social protection systems can address or even prevent adverse impacts when applied systematically in conjunction with national transition strategies.

All states should use their maximum available resources, including through international cooperation, to secure the right to social security and access to essential services/rights delivery. Workers and communities affected by the ecological transformation should have coverage not only under social security, including healthcare, income security and social services, but also under broader investments aimed at creating economic opportunities and providing appropriate training and assistance for job seekers. States across different income categories have demonstrated that these objectives are not only feasible, but also provide the foundation for long-term, sustainable development that benefits all.

The concept of a just transition should be viewed as an opportunity to strengthen rights-based social protection, reduce inequalities, and ensure an inclusive and participatory transition process, even for workers in the informal sector or engaged in precarious forms of employment. Robust social security systems can help to mitigate the consequences of job losses resulting from environmental action, providing access to further education, and improving labour market opportunities. It can also support those most vulnerable to future shocks strengthen social safety nets, enhance community-level resilience and reduce the need for targeted interventions in future crises. Numerous research studies underscore the dual role of social protection as both a 'productive' and 'protective' component of healthy and sustainable societies.

⁸World Social Protection Report 2020-22, ILO, at:

https://www.ilo.org/wcmsp5/groups/public/@ed_protect/@soc_sec/documents/publication/wcms_817572.pdf

⁹International Covenant on the Elimination of All Forms of Discrimination against Women (CEDAW), and ILO international labour standards, including the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Workers with Family Responsibilities Convention, 1981 (No. 156), and Violence and Harassment Convention, 2019 (No. 190) and Recommendation No. 206, among others.

Key Message 06

Guarantee access to adequate social security (cont'd)

States must align just transition strategies with social security legislation and international labour standards building on and strengthening existing social protection systems, while applying the principles of adequacy, comprehensiveness, sustainability and universality, as outlined in the ILO [Social Protection Floors Recommendation, 2012 \(No. 202\)](#) and other instruments.

Key Message 07

Ensure Gender Equality and women's rights

Women, girls and LGBTIQ+ persons, especially those in marginalized or vulnerable situations, are particularly exposed to job loss, due to their overrepresentation in occupations most impacted by environmental shocks and in the informal sector. A just transition must consider the significant gender and human rights dimensions inherent in many environmental challenges and opportunities. It also has to be mindful of challenges related to socially unrecognized, unpaid or underpaid care and support work, which reinforces exclusion and discrimination faced by women and girls throughout their lives as primary caregivers, which could be intensified in economic transitions. Gender equality is a precondition for preventing exclusion and precarious working conditions for more than 50% of the global population. Failure to achieve gender equality also threatens the success of the transition, as many women and girls are actively engaged in transition-critical work, such as sustainable agriculture and the preservation of natural resources and ecosystems.

States should contemplate specific gender equality policies in order to promote fair and equitable outcomes. Mainstreaming gender equality in the context of a just transition should involve, inter alia, providing equal access to job opportunities, integrating diverse gender perspectives into decision-making, addressing gender specific impacts, advocating fair pay and working conditions, supporting unpaid care work, offering gender-targeted training, collecting gender-disaggregated data, and collaborating with gender equality advocates.

By prioritizing gender-responsive policies, the just transition process can foster a more inclusive and equitable future. Measures should include adopting gender-responsive approaches when conducting workforce training, formalizing jobs occupied by women in the agricultural, forestry and other sectors and advancing the traditional and local knowledge of Indigenous women, which already plays a crucial role in strengthening climate action.

Key Message 08

Require business enterprises to respect human rights

The primary beneficiaries of the just transition are the rights-holders, but businesses play an important role in this process. To achieve a just transition aligned with human rights, States must establish clear and comprehensive regulatory frameworks. Such frameworks should create an enabling environment for businesses, facilitating their active collaboration with workers, their trade unions and the communities where they operate.

* World Social Protection Report 2020-22, ILO,

at: https://www.ilo.org/wcmsp5/groups/public/@ed_protect/@soc_sec/documents/publication/wcms_817572.pdf

†International Covenant on the Elimination of All Forms of Discrimination against Women (CEDAW), and ILO international labour standards, including the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Workers with Family Responsibilities Convention, 1981 (No. 156), and Violence and Harassment Convention, 2019 (No. 190) and Recommendation No. 206, among others.

Key Message 08

Require business enterprises to respect human rights (cont'd)

Both States and businesses should assess potential risks posed by their action or inaction with respect to workers and communities, ensuring respect for human rights, including the principles of equality and non-discrimination, when designing and implementing transition programmes. States should aim to create an environment that supports and enhances the resilience of sustainable businesses, in particular micro, small and medium enterprises, including cooperatives, social and solidarity economy and entrepreneurs in their transition endeavours.

States should also fiercely protect scientific inquiry against conflicts of interest and take action against greenwashing and misleading claims or labels related to the ecological transition. This could include policies that require businesses to transparently disclose their just transition programmes and verifiable measures taken to implement them.

States should also fiercely protect scientific inquiry against conflicts of interest and take action against greenwashing and misleading claims or labels related to the ecological transition. This could include policies that require businesses to transparently disclose their just transition programmes and verifiable measures taken to implement them.

The [United Nations Guiding Principles on Business and Human Rights](#) provide businesses with a blueprint for managing human rights risks in just transition plans. Business enterprises need to ensure that the progress and benefits they create during the transition are accessible to and shared with the people and communities on which they depend. As part of their duty to protect human rights, States should encourage or require the exercise of human rights due diligence throughout value chains and in relation to all internationally recognized human rights, including the rights to a clean, healthy and sustainable environment and gender equality. To be human rights complaint, businesses are expected to conduct human rights due diligence, which is the process through which they identify, prevent, mitigate, and account for how they address their impacts on human rights. Where businesses identify that they have caused or contributed to adverse human rights impacts, they should, as a matter of fiduciary duty, provide remedy for the human rights costs imposed.

Key Message 09

Respect, protect and fulfil the rights of individuals, groups and Peoples in vulnerable situations

Non-discrimination and equality are core human rights principles enshrined in the Universal Declaration of Human Rights, international human rights Covenants and the Declaration on the Right to Development and elaborated upon in several other instruments, including the Convention on the Elimination of all forms of Discrimination Against Women, and the Convention on the Elimination of all Forms of Racial Discrimination and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Analogously, the ILO's international labour standards on equality provide a tool to eliminate discrimination in all aspects of work and in society as a whole. These standards are the [Equal Remuneration Convention, 1951 \(No. 100\)](#), the [Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\)](#), and the [Violence and Harassment Convention, 2019 \(No. 190\)](#). These principles are also included in many jurisdictions across all regions.

⁴ World Social Protection Report 2020-22, ILO, at: https://www.ilo.org/wcmsp5/groups/public/@ed_protect/@soc_sec/documents/publication/wcms_817572.pdf

⁵ International Covenant on the Elimination of All Forms of Discrimination against Women (CEDAW), and ILO international labour standards, including the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Workers with Family Responsibilities Convention, 1981 (No. 156), and Violence and Harassment Convention, 2019 (No. 190) and Recommendation No. 206, among others.

Key Message 09

Respect, protect and fulfil the rights of individuals, groups and Peoples in vulnerable situations (cont'd)

People in vulnerable situations, despite their remarkable resourcefulness and resilience, often have inadequate resources to adapt to environmental degradation. As a result, they can be particularly susceptible to human rights harms related to environmental degradation and the measures needed to address it. Inadequate human rights safeguards in the design and implementation of just transition programmes can have adverse human rights impacts for people and groups in vulnerable situations including women and girls, children, youth, older persons, persons with disabilities, Indigenous Peoples, minorities, migrants, rural workers, persons with disabilities, and persons living in poverty. While many transition programmes strive to create new economic opportunities for certain segments of the population, more work is needed to ensure they consider pre-existing patterns of social and economic exclusion. Participatory, accountable, transparent, and non-discriminatory processes targeted toward persons, groups, and Peoples most affected by the transition are critical and beneficial to society as a whole.

Among the groups most affected by this transition are Indigenous Peoples. A substantial portion of the resources critical for the transition are situated on or near their traditional lands and territories. Human rights requires a , in the context of a just transition, States to respect, protect and fulfil the rights of Indigenous Peoples, in accordance with the requirements, of the ILO [Indigenous and Tribal Peoples Convention, 1989 \(No. 169\)](#) and the [UN Declaration on the Rights of Indigenous Peoples](#). This entails ensuring that the rights of Indigenous Peoples are explicitly addressed in just transition policies and programmes, conducting due diligence to identify and mitigate risks that Indigenous Peoples face during the ecological transition, providing access to effective remedies when Indigenous Peoples suffer harm, including at the hands of businesses and ensuring Indigenous Peoples' rights to self-determination, land, territories and resources as well as their free, prior and informed consent before taking any decisions that may affect their rights.

Key Message 10

Protect environmental human rights defenders in the move toward a zero carbon society

The International Panel on Climate Change (IPCC) study about the need for bold action on climate change has highlighted the importance of a just transition to low carbon green economies. The work of the IPCC highlights the urgency needed to move to economic strategies that support clean energy, foster resource-efficient economic growth, create income and decent jobs, and reduce poverty and inequality.

The transition to a net-zero carbon economy is an imperative for all people but cannot come at the expense of the most vulnerable. The global energy transition is generating a surge in demand for critical minerals, which are largely located in developing countries. This is expected to lead to approximately US\$1.7 trillion in global mining investment over the next two decades. It is estimated that there is a 20- to 30-year-window to generate long-term economic growth, create new green livelihoods, and secure sustainable local development. The deployment and expansion of renewable energy technologies cannot come at the expense of the human rights of workers and people in affected communities.

Key Message 10

Protect environmental human rights defenders in the move toward a zero carbon society (cont'd)

Killings, threats, intimidation, land grabs, dangerous working conditions, poverty wages and harm to the lives and livelihoods of Indigenous Peoples and others in impacted areas are risks which need to be prevented in relation to renewable energy. Those active in defending their rights and the rights of others in this context must be protected.

As required by the ICCPR, the [UN Declaration on Human Rights Defenders](#), and other international instruments, States must respect, protect and fulfil the rights of environmental human rights defenders to participation, access to information, freedom of expression, assembly, and association, take action to protect defenders, including against threats to their lives or wellbeing, and provide access to justice and effective remedy when their rights are violated. States must also conduct timely investigations and prosecute those responsible for violence and intimidation. Care should be taken to prevent strategic lawsuits against public participation and to provide a safe and enabling environment for initiatives by young people and children to defend the right to a clean, healthy and sustainable environment.

VANUATU WRITTEN COMMENTS

ANNEX 3

Climate Emergency

Scope of Inter-American Human Rights Obligations

RESOLUTION 3/2021



OAS

More rights for more people



REDESCA

Special Rapporteur for Economic,
Social, Cultural and Environmental Rights

IACHR

Inter-American
Commission on
Human Rights

RESOLUTION No. 3/2021

**CLIMATE EMERGENCY: SCOPE OF
INTER-AMERICAN HUMAN RIGHTS
OBLIGATIONS**

(Adopted by the IACHR on December 31st, 2021)

A

Introduction

The excessive exploitation of nature to satisfy the growing pattern of consumption at the global level has caused the transgression of certain planetary limits, which set a threshold below which the biophysical processes of the Earth system operate safely for humanity. Climate, biosphere integrity, biogeochemical flows and land-use change are the essential processes that lie outside the boundary of safe operation. As such, biosphere integrity and climate stability are intimately linked, as changes in weather patterns can have devastating effects on ecosystem health. Noticeably, the destabilization of the biophysical processes of the Earth system puts at serious risk the full exercise of the rights of people, especially those with structural disadvantages.

The nexus between climate change and human rights is increasingly evident and its recognition at the international level has reached significant levels of consensus, not only in the legal regime pertaining to climate change, but also in the international human rights regime. The basis of this development lies in the existence of a directly proportional relationship between the increase in greenhouse gas emissions into the atmosphere and the frequency and intensity of meteorological changes, which implies the amplification of risks to societies, people and natural systems.

According to the Intergovernmental Panel on Climate Change (IPCC), the commitments reflected by States in their obligations under the Paris Agreement would be far from limiting the average global temperature to 1.5°C; on the contrary, a trajectory towards a temperature above 2°C is expected, if these commitments are not implemented. This would have

devastating consequences, especially for millions of people living in poverty, who even in the best of scenarios, would face food insecurity, forced migration, disease and death. This threatens the very future of human rights and would undo the last fifty years of progress in development, health and poverty reduction.

Specifically, both abrupt and slow-onset climate impacts produce changes in the natural cycles of ecosystems, droughts, floods, heat waves, fires, coastal losses, among others. They have brought with them a major threat to the enjoyment of a wide range of rights, inter alia, the right to life, food, housing, health, water and the right to a healthy environment. In addition, the measures that both States and business actors design and implement to respond to the climate crisis, including adaptation and mitigation measures to climate change, can also bring with them risks to the full enjoyment of human rights.

Similarly, nature provides the foundation for human health in all its dimensions and contributes to the immaterial aspects of the quality of life. The diversity of nature maintains humanity's ability to choose alternatives for an uncertain future. Along these lines, the Pan American Health Organization (PAHO) has established action plans on health and climate change for both the Caribbean and the Andean region, in order to propose strategies for the comprehensive management of the impacts of climate change on people's health.

In this regard, the Commission recalls that climate change directly affects the right to a healthy environment, which has been recognized as an autonomous and justiciable human right by the jurisprudence of the organs of the Inter-American Human Rights System. In this regard, Advisory Opinion 23/17 of the Inter-American Court of Human Rights (Inter-American Court of Human Rights) stands out, which stipulates that the protection of this right is not only intended to protect people's interest in ecosystems, but also aims at the protection of nature and all its components for their intrinsic value. Likewise,

the Inter-American Commission and court understand that the “jurisdiction” referred to in Article 1.1. of the American Convention¹⁴ contemplates circumstances in which extraterritorial conduct of the States constitutes an exercise of jurisdiction by that State.

On the other hand, the risk of harm is particularly high for those segments of the population that are currently in a situation of marginalization or vulnerability or that, due to discrimination and pre-existing inequalities, have limited access to decision-making or resources, including women; children and adolescents; indigenous peoples; persons with disabilities; people living in informal settlements; migrants; peasants and people living in rural areas. This, despite the fact that they have contributed marginally to greenhouse gas emissions, the main cause of the climate crisis. As an example, during the fires in August 2019 that affected much of the Brazilian, Paraguayan, and Bolivian Amazon due in part to poor control over forest management, the Commission warned that indigenous peoples are the most affected.

Particularly, climate change poses serious threats to all Caribbean nations, despite the numerous differences between them. According to the IPCC, average temperatures in the region have increased between 0.1° and 0.2°C every decade, over the past three decades. Rainfall patterns in the region have changed, and an increase in the number of consecutive dry days is expected. Additionally, sea levels have risen at a rate of between two and four centimeters per decade over the past 33 years, a pattern that poses serious risks to the region’s valuable freshwater resources and to the coastal population that depends on tourism and agriculture. Even more serious, this would have devastating consequences, especially for millions of people living in poverty, who even in the best of cases, would face food insecurity, forced migration, disease and death.

Similarly, the Commission also emphasizes the disproportionate effects that the climate emergency has on the countries of Central America. According

to ECLAC, it has been identified that the intensity and increased frequency of tropical storms and hurricanes and prolonged droughts have affected the living patterns of people in that area of the region, causing internal displacement caused by the lack of opportunities and the destruction of infrastructure, among other factors. To that extent, issues such as the food crisis, the issue of human mobility and inequality and poverty rates could be increased disproportionately, jeopardizing the resilience and adaptation capacity of these countries to improve the living conditions of the people who inhabit them.

This resolution is framed in the context of mandates received from the General Assembly of the Organization of American States (OAS), which entrusted the IACHR (among other tasks) to contribute "to efforts to determine the possible existence of a link between the adverse effects of climate change and the full enjoyment of human rights." Similarly, the Commission takes note of the provisions of the preamble to the Paris Agreement, which recognizes that in addressing climate change, States "should respect, promote and take into account their respective human rights obligations". The purpose of this resolution is to systematize the human rights obligations of States in the context of the climate crisis in order for them to make public policy decisions under a rights-based approach.

B

Considerations

RECALLING the pronouncements of the IACHR and the Office of the Special Rapporteur on Economic, Social, Cultural, and Environmental Rights (REDESCA), where they have been expressing their deep concern about the risks associated with the decline in the effective enjoyment of human rights in the Americas due to climate change.

EMPHASIZING that climate change is one of the greatest threats to the full enjoyment and exercise of human rights of present and future generations, to the health of ecosystems and all species that inhabit the planet.

CONSIDERING that environmental degradation can cause perpetual and irreparable damage to human beings and nature, so a healthy environment is an essential right to ensure the existence not only of humanity but also of all forms of life on Earth.

UNDERLINING the importance of reorienting development towards a model that allows diversifying the energy matrix, moving towards cleaner technologies, energy efficiency and advancing sustainable agri-food systems, understanding these as decisive decisions to face climate change, the reduction of poverty and structural inequality.

REAFFIRMING that the implementation of international human rights standards together with the 2030 Agenda and its Sustainable Development Goals are an effective framework proposed by the International Community, States and civil society to adopt urgent measures to combat climate change and a necessary roadmap to ensure the protection of the right to a healthy environment and related human rights.

HIGHLIGHTING recent developments in environmental rights, in particular the adoption and entry into force of the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), and the adoption of UN Human Rights Council Resolution 48/13 recognizing the right to a healthy environment.

TAKING INTO CONSIDERATION that a significant part of global greenhouse gas emissions are caused by the activities, products and services of companies and that current systems of heavy consumption contribute substantially to climate change and environmental degradation and put at risk the enjoyment of human rights.

EMPHASIZING the urgency of redoubling mitigation and adaptation efforts by national and subnational governments within the framework of international cooperation, in order to orient their scope towards greater development and social equity inspired by values such as dignity, equality, freedom, solidarity and justice.

EMPHASIZING that a human rights-based approach to the implementation of international commitments on environmental law and climate change enhances the effectiveness of national responses to climate change taking into account traditional and local knowledge and knowledge. Similarly, this recognition must be covered by measures to generate and strengthen capacities in education and awareness of climate change of all social actors, especially in island and coastal States.

RECALLING that indigenous peoples, Afro-descendant, tribal and peasant communities inhabit regions whose ecosystems are extremely vulnerable to the adverse effects of climate change. Endangering the survival of these peoples, their ways of life and their relationship with the territory.

NOTING that the impacts of climate change that limit access to and use of land, water and forests interfere with the enjoyment of human rights such as life, health, food, work, culture, water and sanitation and self-determination of all people, and in particular, of individuals and groups in vulnerable situations, such as women, older adults, indigenous peoples, and Afro-descendants, tribal and peasant communities.

EMPHASIZING the importance of the procedural rights of access to information, public participation and justice in environmental matters and the fundamental role of individuals, peoples, communities, movements, and groups defending environmental human rights in the construction of ambitious climate policies and goals and in the protection of strategic ecosystems in the fight against climate change such as the oceans, the jungles, and forests.

RECALLING that particularly, the loss of native forests brings with it different problems such as modification in nutrient cycles, alterations to the hydrological regime, decrease in the capacity of retention and infiltration of water, increase in erosion and sedimentation of soils, drought, among others.

RECOGNIZING that the principle of progressivity and non-regression is fundamental for the realization of economic, social, cultural, and environmental rights and for the fulfillment of international and inter-American commitments assumed under the human rights and environmental law instruments in force to combat climate change, such as the United Nations Framework Convention on Climate Change and the Paris Agreement, among others.

STRESSING that National Human Rights Institutions and other State control bodies play a very important role in ensuring that States and other non-State actors, such as business, take measures to slow down the negative consequences of climate change; and that States devote the maximum available resources to the adoption of measures to mitigate it.

REITERATING that States must take action to limit the anthropogenic emission of greenhouse gases, which also concerns the obligation to regulate the activities and policies that produce it, in order to prevent as much as possible, the effects on the rights of people.

C

Operative Part

The Inter-American Commission on Human Rights (IACHR), in support of the Office of the Special Rapporteur on Economic, Social, Cultural, and Environmental Rights (REDESCA); within the framework of the functions conferred upon it by Article 106 of the Charter of the Organization of American States, in application of Article 41.b of the American Convention on Human Rights and Article 18.b of its Statute resolves to adopt the following resolution on “climate emergency: scope of inter-American human rights obligations”:

I. Centrality of the rights approach in the construction of climate change instruments, policies, plans, programs, and norms on climate change

1. States should adopt and implement policies aimed at reducing greenhouse gas emissions that reflect the greatest possible ambition, foster resilience to climate change and ensure that public and private investments are consistent with low-carbon and climate-resilient development.
2. Those states in the region that have passed legislation on climate change and energy transition and those that have made a commitment to develop and update their Nationally Determined Contributions (NDCs) must incorporate a human rights approach into their construction and implementation.

3. States must ensure that climate norms, policies and actions are constructed, updated and/or re-examined in a transparent and participatory manner with all social actors ensuring that climate actions do not adversely affect people's rights, the possibility of submitting observations by appropriate means and of contesting decisions through judicial or administrative means.
4. Within the framework of the obligation to mobilize the maximum of available resources in order to move towards a gradual but determined decarbonization of the economies of the region, States that are part of multilateral financing agencies should intensify their efforts to ensure that these institutions provide accessible credits or immediate subsidies in the field of mitigation and adaptation.
5. States must make significant efforts to advance comprehensive, universal, and comprehensive environmental education policies and programs, allowing people to acquire environmental awareness, modify their consumption behaviors and care for the environment, as well as aimed at ensuring that authorities and companies adopt patterns of sustainable development and protection of nature.
6. Given the limitation of resources, States must undertake an active search for them for the formulation and implementation of ambitious public climate policies in the face of public and private climate funds, such as multilateral banks, as well as mobilize their own resources towards mitigation and adaptation actions.
7. States should implement actions that promote international cooperation in a broad and participatory manner, at the bilateral, regional, and global levels. Based on the principle of common but differentiated responsibility, those States that have greater financial capacity must provide the guarantees to provide greater technical and logistical capacity to the States that have a greater degree of impact on climate change, as well as less financial and infrastructure capacity to face the climate emergency.

II. Human rights in the context of environmental deterioration and the climate emergency in the Americas

8. All persons within the territories or within the jurisdiction of the OAS Member States are subject to all the rights contained in the American Declaration of the Duties and Rights of Man and other inter-American and international instruments to which the State concerned is a party. Likewise, the right to a healthy, balanced and pollution-free environment is part of the set of rights that States must guarantee and protect by reason of their obligations at the national and regional levels. This in turn implies, as stated in Advisory Opinion No. 23 of the Inter-American Court, recognizing that this right also protects all components of nature as a legal interest in itself, even in the absence of certainty or evidence about the risk to individual persons. It is about protecting nature and the environment not only because of their connection with a utility for the human being or because of the effects that their degradation could cause on other rights of people, such as health, life, or personal integrity, but also because of their importance for other living organisms with whom the planet is shared, also deserving of protection.
9. States must comply with their international obligations to protect and guarantee the enjoyment and exercise of human rights by all persons who, as a result of environmental impacts, including those attributable to climate change, are significantly affected both individually and collectively. In this sense, when fulfilling their obligations, they must try to do so taking into account the interdependence and indivisibility existing between all rights, understood integrally and in a conglobated way, without hierarchy among themselves and enforceable in all cases before those authorities that are competent to do so.
10. In order to comply with the substantive and procedural obligations arising from the right to a healthy environment, States must interpret in good faith the principles of environmental law in order to seek harmonization and consistency with the principles of international human rights law. In this regard, it is necessary for states to implement social and environmental impact studies, which must be carried out under

the parameters established by the ISHR and taking into account the cumulative damages and greenhouse gases that enter the atmosphere and contribute to climate change. Such actions must be framed under the application of the principle of due diligence, from which the principles of precaution and prevention of environmental damage are derived, they must be seriously considered in order to avoid damage, both within the territory and transboundary.

11. States have an obligation to cooperate in good faith in order to prevent pollution of the planet, which entails reducing their emissions to ensure a safe climate that enables the exercise of rights. This involves exchanging resources, technology, knowledge and capacities to build societies that operate in a low-emission environment, move towards a clean and just energy transition, and protect people's rights. States that are in a position to do so should contribute to covering the costs of mitigation and adaptation of States prevented from doing so, in accordance with the principle of common but differentiated responsibilities. In general, the fundamental principles of climate justice should serve as a guide for international cooperation.
12. States must ensure that both public and private entities reduce their GHG emissions. This translates into implementing prevention, supervision, regulation and access to justice measures in the field of GHG reduction, aimed at both the public and business sectors. For this, States can resort to the design of financial and fiscal incentives for sustainable activities, low in carbon footprint and accompanied towards a transition to renewable and clean energy sources. Such programs must be constructed with a cross-cutting approach to rights.
13. States should consult and seek the consent of persons whose rights could be violated by programs and projects that involve a risk of significant environmental damage. Such programmes and projects include those aimed at mitigating greenhouse gases and adapting to the impacts of climate change.
14. States should take appropriate measures to ensure that individuals and communities affected by human rights abuses and violations under their jurisdiction have access to effective redress mechanisms, including the accountability of companies and the determination of their criminal, civil or administrative responsibility. In case of violation of rights as a result of environmental damage, States have the obligation to make full reparation to the victims, which implies the restoration of the environment as a mechanism of integral restitution and guarantee of non-repetition.
15. To this end, for the effective protection of human rights, States must

take appropriate measures to mitigate greenhouse gases, implement adaptation measures and remedy the resulting damages. These obligations should not be neglected because of the multi-causal nature of the climate crisis, as all States have common but differentiated obligations in the context of climate action. As with economic, social, and cultural rights, environmental rights, in the context of climate change, must be guaranteed to the maximum of the resources available to the State in order to progressively achieve their full effectiveness by all appropriate means.

III. Rights of individuals and groups in situations of vulnerability or historical discrimination in environmental and climate matters

16. Climate change affects all people, but it generates differentiated impacts with respect to the effective enjoyment of their rights. States have a reinforced obligation to guarantee and protect the rights of individuals or groups who are in situations of vulnerability or who are particularly vulnerable to the damage and adverse impacts of climate change because they have historically and systematically borne the greatest burden of structural inequality.
17. States must immediately adopt measures that take into account the perspectives of gender equality and intersectionality, in addition to differentiated approaches, which make visible the aggravated risks to human rights against individuals, groups, and communities in a situation of vulnerability and historical exclusion in the hemisphere.
18. People in poverty, extreme poverty, homelessness or living in informal settlements are more susceptible to the immediate and long-term impacts of climate change. States have the responsibility to generate public policies and all the necessary measures to protect in a priority and specific way the rights of people living in poverty, both in urban and rural contexts. The lack of purchasing power of people requires that States take reinforced measures to protect the human rights of the population in a situation

of poverty population in the face of climate change, guaranteeing their participation in decision-making.

19. Women and girls face greater risks, threats and violations of their human rights, such as life, personal integrity and health, due to the adverse effects of climate change that increase all existing gender inequalities. States should adopt differentiated measures to address all women in their various roles, to prevent and eradicate all forms of violence when exposed to natural disasters, such as floods, storms, avalanches, and landslides, caused by climate change. They must also guarantee them the right to education and access to technological means to increase their resilience and adaptation to climate change. Similarly, States should encourage the effective participation of women and girls in decision-making regarding policies and measures to combat climate change.
20. Faced with migrant workers and others who mobilize for reasons directly or indirectly associated with climate change, States must guarantee due process during the procedure leading to the recognition of their migratory status, and in any case guarantee their human rights, such as the safeguard of non-refoulement while their status is determined. For their part, they must guarantee access to the right to health associated with climatic or meteorological phenomena to all people without discrimination based on national origin or any other reason prohibited under the contexts of human mobility. Likewise, access to justice, to reparation measures and guarantees of non-repetition to people forced to move by expansion of development projects that aggravate the adverse consequences of climate change must also be recognized.
21. Based on the principle of intergenerational equity, all children and adolescents have the right to enjoy a healthy environment and to live on a planet equal to or in better conditions than their ancestors. States should ensure that the impacts of climate change do not threaten their rights to life, personal integrity, and health because of their special sensitivity to temperature changes and vector-borne diseases. States must also ensure that their rights to education, identity, housing, water, and sanitation are not affected by the destruction or alteration of basic infrastructure for their well-being such as schools, hospitals, and public transport systems.
22. To reduce the impacts of diseases associated with climate change on the health of people who are older adults and people who are in a situation of disability, it is necessary for States to develop plans and policies for preventive care in medical care specifically on this type of risk, and to generate training programs for their caregivers or family members in case of emergencies or disasters caused by climate change.

IV. Rights of indigenous peoples, tribal communities, Afro-descendants and peasants or those working in rural areas in the face of climate change.

23. States must adopt measures to ensure that the climate crisis does not affect or jeopardize the effective protection of the human rights of indigenous peoples, Afro-descendant, tribal or peasant communities such as life, personal integrity, freedom of expression, protection of family life, water, food, the healthy environment, or communal property, among others.
24. States must respect and guarantee without any discrimination meaningful participation through the guarantee of the right to prior consultation seeking free, prior and informed consent in the design of action plans, public policies, norms and / or projects directly and indirectly related to the fight against climate change. Such participation should take into account an intercultural approach and adequately incorporate traditional and local knowledge on mitigation and adaptation and respect the duty of accommodation in the final decision.
25. The protection of the right to effective judicial protection and judicial guarantees of indigenous peoples and tribal, Afro-descendant or peasant communities must also include measures to repair material and immaterial damage, measures of satisfaction, guarantees of non-repetition, implementation of resources for the recovery of collective memory and preservation of culture.
26. States shall respect and protect the rights of peasants and other persons working in rural areas and shall take the necessary measures to combat all forms of discrimination against them in the context of the climate crisis. This also includes the obligation to protect their right to adequate food, the free use of seeds and traditional forms of food production, including agroecology, housing and work that are threatened by weather phenomena or significant temperature variations. States must ensure the availability of economic and financial support such as subsidies, loans, and grants when they lose their crops or houses due to floods or droughts, as well as all technical and legal assistance to access them.

V. Rights of land and nature defenders

27. Environmental and climate advocates are directly affected by projects that are implemented as response or adaptation measures to climate change, such as hydroelectric plants, solar and wind farms and monocultures and large-scale animal husbandry. Accordingly, by recognizing their important work at the national and regional levels and their valuable contribution to the fight against climate change, States should take immediate steps to promote and protect the rights of these persons to life, integrity and personal freedom, assembly and freedom of association, privacy and the protection of honor and dignity, movement and residence, due process and judicial guarantees, ensuring that defenders are not harassed, stigmatized, discriminated against or killed for the work they do.
28. States must act decisively and decisively to prevent attacks, threats, intimidation, or killings and effectively investigate and punish those responsible, including those directly or indirectly related to business, in contexts of social and armed conflicts.
29. States must recognize the centrality of the leadership of children, adolescents, and young people, as well as their movements, in the fight against climate change. States must generate the necessary protection mechanisms to guarantee that children and adolescents can exercise their activism and defense of environmental rights, also promoting their inclusion and participation in decision-making spaces.
30. States must also recognize the essential role that women play as environmental, land and territory defenders in the organization and leadership of processes to defend the healthy environment on the continent. It is the responsibility of States to ensure the effective participation of women environmental defenders and their movements in decision-making processes related to combating climate change, including measures taken for a just transition. In this regard, States must implement public policies and concrete measures that, together with recognizing their contribution, protect them against aggression, attacks and other forms of harassment or gender-based violence in these contexts.
31. In cases of abuses or violations of the rights of individuals or groups defending the Land and Nature where companies or private actors related to the extractive sector intervene, States must strengthen transparent and effective mechanisms for monitoring, surveillance and control over these,

providing, as appropriate, effective sanctions and adequate reparations to apply the criminal and administrative actions that are available in the countries to the protection of people's lives and livelihoods.

VI. Rights of access to information, public participation and access to justice in environmental and climate matters

32. The effective implementation of the procedural rights of access to information, public participation and justice in environmental matters is an accelerator of climate action in the region and enhances the fulfillment of the substantial obligations of States. In this sense, it is a priority not only to advance in the consecration of these rights but also in the effective implementation of them.
33. To ensure transparency and access to information on the causes and consequences of the global climate crisis, measures to address it, the impacts of projects on the climate and how to achieve them, States have a positive obligation of active transparency to generate timely, complete, understandable, clear, accessible, culturally appropriate information, truthful and expeditious on adaptation, mitigation and means of implementation on climate change for all people, taking into account the particularities and specific needs of people and groups in situations of vulnerability.
34. All information on development projects that potentially increase global temperature with greenhouse gas emissions should be governed by the principle of maximum publicity. In the same way, they must ensure the progressive strengthening of environmental information systems at the national, subnational, and local levels on greenhouse gas inventories, management and sustainable use of forests, carbon footprint, emission reduction and climate financing, among others.
35. To ensure the effective participation of all people in public or private climate decision-making processes, States should clearly demand that it be open and inclusive and occur at an early stage in all phases of decision-making and that people's comments be duly taken into account as a result of meaningful participation processes. Non-state or private actors involved

in the implementation of projects, works or activities that potentially increase the global temperature with greenhouse gas emissions should ensure and make available to the public information on the technical and physical characteristics of the project, its impacts and planned measures, as well as the technologies available for use, among others.

36. States should adopt immediate measures to guarantee access to justice in environmental and climate matters of a judicial or administrative nature in accordance with the guarantees of due process, eliminate all barriers to its exercise and ensure free technical and legal assistance. This also includes the obligation to develop remediation measures to different relevant actors and especially to people directly affected by the climate crisis.
37. It is a priority that States make focused efforts to identify, assign, mobilize and make use of the maximum of available resources to strengthen the capacities of all judicial operators, justice assistants, Public Prosecutor's Office, and control bodies to prevent, investigate and punish situations related to threats or violations of human rights related to climate change.
38. Similarly, it is recommended that States take measures to harmonize national legislation and policy measures that guarantee people affected by climate change and environmental degradation procedural rights in environmental matters; coordinate inter-institutionally and intersectorally their institutions to ensure the comprehensiveness and coherence of actions; and strengthen their technical and legal capacities for environmental democracy.

VII. Extraterritorial obligations of states in environmental and climate matters

39. States are tasked with implementing human rights obligations that are intertwined with those of international environmental law in the contexts of polluting activities within their jurisdiction, or under their control, so that they do not cause serious harm to their environment or that of other countries or areas outside the limits of national jurisdiction. At the same time, the rule of customary international law of "doing no harm" would be breached as a result of greenhouse gas emissions and thus the increase in frequency and intensity of meteorological phenomena attributable to climate change, which, regardless of their origin, contribute cumulatively to the emergence of adverse effects in other States.

40. In this regard, a State is responsible not only for actions and omissions in its territory, but also for those within its territory that could have effects on the territory or inhabitants of another State. Under this, States have the obligation, within their jurisdiction, to regulate, supervise and supervise activities that may significantly affect the environment inside or outside their territory. In addition, it is necessary to establish a contingency plan, in order to have safety measures and procedures to minimize the possibility of large environmental accidents, and mitigate the significant environmental damage that could be generated.
41. In the context of the climate crisis, the obligation to prevent transboundary environmental harm is manifested in the development and implementation of GHG mitigation targets that reflect a level of ambition consistent with the obligations of the Paris Agreement and other applicable instruments, particularly with the obligation not to exceed global temperature to such an extent as to jeopardize the enjoyment of human rights.

VIII. Responsibility of companies to respect human rights and remedy possible violations thereof in the environmental and climate context

42. Companies must adjust their behavior and operations to the norms of the business and human rights regime, in the terms established in the United Nations Guiding Principles on Business and Human Rights, taking as a reference the parameters and recommendations contained in the report "Business and Human Rights: Inter-American Standards" of the REDESCA of the IACHR.
43. In their national action plans on business and human rights, States should take into account the role of business and its contribution to the increase in GHGs, leading to the aggravation of the climate crisis and the concomitant limitation of the effective enjoyment of human rights. Such plans should expressly state that the duty of companies to respect human rights includes the adoption of human rights and environmental policies; exercise due diligence that brings together their duty to respect human rights and the reduction of GHG emissions; redress human rights violations for which they are directly responsible and work to persuade other actors

to respect human rights where influential relationships exist.

44. Companies must adopt plans to reduce GHG emissions from their products and services, as well as those from their subsidiaries and suppliers. These measures are especially aimed at those sectors that tend to pollute disproportionately, such as the fossil fuel sector and factory farming that is linked to increased deforestation. Such companies should not hinder the implementation of environmental policies that seek the common good and respect for environmental rights. In addition, companies must publicly report their emissions, their vulnerability to the climate and their risk of disused assets, while not hindering access to justice, particularly for human rights defenders in environmental matters.
45. Companies should consider the measures they can implement to help limit global warming to 1.5°C. The goal of companies should be to implement the most advanced technology available to minimize their carbon footprint, for which the implementation of ISO 14067, related to the carbon footprint of products, can be useful. In situations where the negative impact on the environment is inevitable, given the current technology or if the cost of such technology is prohibitive, the company has the co-responsibility to mitigate and remedy.
46. Companies must comply with all existing environmental laws and make clear commitments in line with their responsibility to respect human rights through environmental protection, put in place human rights due diligence processes (including human rights impact assessments) to identify, prevent, mitigate, and account for how they address their environmental impact on human rights, and enable all to be redressed. the negative human rights effects they have caused or contributed to.
47. By virtue of the right to collective property, States have the duty to own, delimit and demarcate the collective ancestral territory, taking into account the particular characteristics of the specific human group and avoiding granting concessions for projects that may affect the territories in the process of titling, delimitation and demarcation without a process of consultation and consent. Therefore, climate change mitigation and adaptation projects, implemented in collectively owned territories, would be in contravention of the ACHR if the constituent elements of the right to collective property are not fully protected. In this regard, States must exhaustively justify the limitation of this right when conflicts arise with rights of State property or third parties through measures (i) established by law; (ii) necessary; (iii) proportional, and (iv) whose purpose is to achieve a legitimate objective in a democratic society.

IX. Fiscal, economic and social policies for a just transition

48. States must take into account their human rights obligations, including labor and trade union rights, when designing and implementing policies for a transition to a carbon-free future. With this, States comply with their human rights obligations related to the mitigation and adaptation of climate change and in turn reduce the risk of potential conflicts associated with a sudden transition and without adequate planning, which could delay efforts to establish an economy compatible with a stable climate.
49. Generating taxes on fossil fuel-based energy sources and adopting policies that incentivize low-GHG activities have the potential to create jobs, increase energy efficiency and incentivize renewable energy. States should seek to distribute revenues from carbon pricing into public investments or social programs that support low-income households, including their access to energy, as a way to benefit the population most affected by climate change.
50. State policies must ensure that new jobs created in emerging sectors such as renewable energy and plant agriculture are jobs that respect labor and trade union rights. Social protection programs must be adapted to respond to climate shocks and other adverse turbulence to protect people from the effects of both climate change and climate-related policies. These programs include, but are not limited to, agricultural insurance, unemployment benefits, pensions for older workers, and universal access to health care.
51. States have the opportunity to include in their “just transition” plans systems that offer payments for ecosystem services as compensation to communities that maintain healthy ecosystems, ensuring a gender and intersectionality approach, and that people in vulnerable situations are not excluded from such programs, which may require official land titles, a certain size of land or expensive application processes.
52. Within the framework of climate finance mechanisms, States should seek the generation of institutional frameworks that allow obtaining permanent funds for the financing of losses and damages caused by climate change. Particularly, these initiatives should focus on providing the people who have been most disproportionately affected with resources to mitigate the

impacts.

53. States are recommended to implement policies focused on training and job retraining, so that people can actively contribute in low-emission growth sectors, while social programs support those who may be negatively affected.
54. To avoid rising prices of basic goods and other negative effects of carbon taxes and reduced energy subsidies on households, States should create programs to protect sectors and populations in situations of particular vulnerability through subsidies that allow accessibility to these goods.
55. States must comply with all their human rights and environmental obligations in the context of mining activities for energy transition purposes, given that the transition to a low-carbon future requires the extraction of minerals necessary for the construction of products and infrastructure that allow the operation of the renewable energy matrix.
56. States should focus their efforts on all those strategies that rapidly promote investments in climate-resilient infrastructure, forms of mobility and energy free of polluting emissions, the reduction of the use of fossil fuels, the creation and / or updating of urban plans for adaptation and mitigation to climate change and efficient waste management, with a special emphasis on the incorporation in these measures in favor of people in street situations, as well as people living in informal settlements and people in situations of extreme poverty.
57. States should consider minimizing all subsidies for fossil fuels, creating taxes on them and redistributing revenues towards clean, renewable, and non-polluting energy systems, such as wind or solar, putting respect for human rights at the center for the development of these energy sources.

Finally, the IACHR, and in particular the SRESCER as a specialized mandate, are available to the Member States to provide the required technical assistance in order to implement the standards and provisions established in this resolution.

Approved on December 31, 2021 by: Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice-President; Flávia Piovesan, Second Vice-President; Margarete May Macaulay; Esmeralda Arosemena de Troitiño; Joel Hernández García and Edgar Stuardo Ralón Orellana, members of the IACHR.

VANUATU WRITTEN COMMENTS

ANNEX 4

Statement of Mr Antoine Boudier

President of the Vanuatu Chamber of Commerce and Industry
National Employers Representative for Vanuatu
Member of the National Tripartite Labour Advisory Council

I, Antoine Boudier, President of the Vanuatu Chamber of Commerce and Industry, solemnly and sincerely affirm and declare:

BACKGROUND

1. My name is Antoine Boudier and I am the current President of the Vanuatu Chamber of Commerce and Industry (VCCI). I am a Vanuatu citizen and have called Vanuatu home my whole life.
2. I have been the President of the VCCI for 4 years having been elected to this position in 2020. I also represent employers as one of three employers' representatives on the National Tripartite Labour Advisory Council.
3. The VCCI is a statutory body established by the Chambers of Commerce and Industry Vanuatu Act in 1996 and serves as the National Employers Organisation in Vanuatu, recognised by the Government of Vanuatu and the International Labour Organisation, and is one of the tripartite partners represented in the National Tripartite Labour Advisory Council (TLAC), established under the Employment Act in 2012. The VCCI is also the recognised National Private Sector Organisation on the Pacific Island Private Sector Organisation (PIPSO).
4. The VCCI is responsible for providing information and advice to employers, the business community in general as well as the Government on matters affecting business in or the economy of Vanuatu. As part of this, VCCI advises on matters affecting employers specifically and represent employers' interests at the national and international level. Specifically, VCCI produces policy papers, guidelines and reports on employers' rights and legal compliance, with recent examples including the VCCI Guidebook for Employers; VCCI Vanuatu's Private Sector Economic Update; Advice on Employers' Obligations during COVID-19; Position Paper on the Reserved Occupations List and other important data related analysis used for advocacy and lobbying. The VCCI also provides training and coaching to employers on these areas.
5. The matters that I speak about in this Statement are based on my direct and personal knowledge of the facts stated or otherwise has been reported to me by VCCI staff, employers, Government officials and development partners in Vanuatu, in my capacity as President of the VCCI.

STRIKING IN VANUATU

6. The freedom to strike is recognised as a legal right in Vanuatu. It is protected by legislation.
7. Different contextual factors contribute to the exercise and protection of free association, collective bargaining and strike action in Vanuatu.
 - a. Vanuatu is a small island developing country with a population of approximately 320,000 people. There are limitations on its resources, both financial and human resources, across all tripartite partners.
 - b. There are also close linkages between different actors within Vanuatu's small community, including union affiliation and political party sponsorship from the private sector that influence government administrations.
 - c. There is a large informal sector which the VCCI does not represent. Employers' membership with the VCCI is automatic upon payment of an annual business license through the Government.
 - d. The predominance of micro, small and medium enterprises (MSMEs) in Vanuatu's private sector means that most employers have only small teams of workers, averaging 1 to 5 workers per employer.
8. As I understand it, the Government of Vanuatu is currently reviewing its domestic legislation to ensure full alignment with its international obligations under ratified conventions, including ILO Convention No. 87. Clarification of the protection of the right to strike under ILO Convention No. 87 will support these ongoing national efforts to implement the right to strike in law and in practice.

LABOUR MOBILITY AND CLIMATE CHANGE AS A DRIVER FOR EMIGRATION

9. Vanuatu's engagement in labour mobility programmes has created significant challenges for the private sector and employers in Vanuatu. Although remittances from workers engaged in the labour mobility schemes are one of the highest contributors to Vanuatu's GDP, being upwards of twenty (20) percent of its GDP, the schemes have also taken an estimated twenty (20) percent of its national workforce.
10. In recent research carried out by the VCCI, over 50% of employers had reported worker resignations in the past year due to workers leaving to participate in a labour mobility program. This is not surprising given workers are earning up to ten (10) times more income in these schemes than they can earn on local salaries. The cost of living in Vanuatu is also high and local salaries at the base level are not sufficient to meet basic living expenses and needs. Recent reports and data on the labour mobility schemes show

that the number one thing labour mobility workers are spending their earnings on are 'permanent' houses. Over 70 percent of workers spent their earnings on building a 'permanent' house. In Vanuatu's context, this means cement houses that can withstand the increasing frequency and severity of cyclones, replacing traditional homes made of local renewable resources like bamboo and Natangura leaves. School fees is the next highest expenditure but also in the top ten is support to family and community for disaster recovery support.

11. Vanuatu also has a large agriculture sector. While most is informal subsistence or semi-commercial agriculture, we also have commercial agriculture. Our main export commodities are kava, cocoa, copra and coffee. Cyclones and other weather events or changing weather patterns caused by climate change also impact on Vanuatu's agriculture sector with plantations, farms and crops being destroyed or not growing as productively. This has an impact on both the formal employment sector, as stable work opportunities and employment is threatened, and informal sector, because adequate livelihoods from agriculture are less dependable.
12. In Vanuatu, land is owned in perpetuity by the indigenous clans of that area or island, which means that most ni-Vanuatu have access to land to support livelihoods and work opportunities through subsistence, semi-commercial or commercial agriculture. However, as the climate is getting more volatile and the weather is increasingly destroying employers', workers' and farmers' efforts, agriculture is becoming an unreliable and in some cases already unviable income source. The pull of the labour mobility schemes must also be understood in this context.
13. In sum, it is clear that climate change is a driver for workers to engage in these labour mobility programs.

JUST TRANSITION, LABOUR MOBILITY AND THE RIGHT TO STRIKE

14. At the moment, we have over 16,000 ni-Vanuatu workers in Australia and New Zealand engaged in labour mobility schemes.
15. The labour mobility schemes are relevant to a Just Transition in Vanuatu because, as already mentioned, worsening climate change impacts in Vanuatu are an important reason why many Ni-Vanuatu consider working abroad as necessary to sustain themselves and their families. At the same time, the loss of both skilled and unskilled workers in Vanuatu's domestic market to these labour mobility schemes makes it extremely challenging for Vanuatu to implement its national climate change adaptation plans. The resulting adaptation gap creates a wide range of risks, ultimately weakening the very foundation of Vanuatu's society and economy. The demand for new skills, knowledge and experience with green technology and infrastructure to support a green economy is equally pressing, slowing down sustainable development.

16. The labour mobility schemes are both the problem and the solution in this sense. There is an opportunity for ni-Vanuatu workers to gain the skills and experience needed to fill some of the gaps and skills shortages in the domestic market, whether it be as workers or entrepreneurs. Although we have limited resources and sufficient access to training or skills development support, there are many opportunities in

Australia and New Zealand for this. However, if the work opportunities and employers, or even the government through restrictive visa conditions, in Australia and New Zealand are not facilitating access, or are restricting access, to these opportunities then ni-Vanuatu workers and employers are being left behind in the Just Transition.

17. 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.

Signed: Antoine Boudier

A handwritten signature in black ink, appearing to be 'A. Boudier', with a stylized flourish at the end.

Signed: Joanna Spencer

A handwritten signature in blue ink, appearing to be 'Joanna Spencer', with a large loop at the start and several horizontal strokes below.

Date: 16 September 2024

VANUATU WRITTEN COMMENTS

ANNEX 5

Statement of Murielle Metsan Meltenoven

Commissioner of Labour, Department of Labour and Employment Services

I, Murielle Metsan Meltenoven, Commissioner of Labour, solemnly and sincerely affirm and declare:

Background

1. My name is Murielle Metsan Meltenoven and I am a national of the Republic of Vanuatu. I was born on 15 August 1985 and my professional address is Department of Labour and Employment Services, Private Mail Bag 9022, Port Vila, Vanuatu.
2. On July 2018 the Public Service Commission appointed me as the Acting Commissioner of Labour and Employment Services from 2018 to 2019. On... 26th February 2019 to 26th February 2021 I was appointed as the Commissioner of Labour and Employment Services for Vanuatu on contract basis. From April 2022 to date, I continue to occupy the position of Commissioner of Labour and Employment Services on a permanent basis.
3. As the Commissioner of Labour, I am responsible for the Vanuatu Government's domestic labour and employment matters, as well as the labour mobility programs.
4. At the domestic level, my department works closely with the International Labour Organisation ('ILO') on alignment of Vanuatu's domestic legislation with the ILO Conventions that Vanuatu has ratified, including ILO Convention No. 87. Further to this, primary functions of the Department include:
 - a. issuing permits to foreign workers;
 - b. handling employment grievances by employers and employees through the conciliation process under the Trade Dispute Act;
 - c. responding to Notices of Industrial Action;
 - d. conducting regular checks and inspections of business sites and locations, to monitor and ensure compliance with applicable labour laws (such as, e.g., occupational health and safety law); and
 - e. providing advice to employers and employees on their rights, obligations and responsibilities under national employment and labour legislation.
5. The Department also maintains two labour mobility programs, in partnership with the Australian Government and the New Zealand Government. These are called the Pacific Australia Labour Mobility ('PALM') Program; and the New Zealand Recognized

Seasonal Employment ('RSE') Program, respectively. I will briefly explain each of them.

6. In 2008, the Australian and Vanuatu Government entered into a Memorandum of Understanding for workers from Vanuatu to travel and work in Australia under the Seasonal Workers Program to work for nine (9) months. Workers are usually engaged in the agriculture and horticulture industries. In addition, under the Pacific Labour Scheme we sent Ni-Vanuatu workers to work in meat, tourism and agriculture industries facilitated by twelve (12) months to three (3) years' work visa. The two programs merged into the PALM in 2021-2022.
7. In 2006, the Vanuatu Government and New Zealand Government entered into a pilot program whereby about 40 workers travelled to New Zealand to work in Agriculture, horticulture and viticulture. The period of their visa was for seven months. The pilot scheme become successful and gave confidence to both the New Zealand and Vanuatu Governments to expand the pilot program into the RSE. Since, then the number of Vanuatu Workers have increased and currently Vanuatu is the largest sending country in terms of number of RSE workers sent to New Zealand.
8. The Department works with many development and technical partners, such as the ILO, International Organization for Migration ('IOM') and civil society organisations, to implement and support these labour mobility programs. For example, for the reintegration activities under the programs our partners include IOM and the Vanuatu Chamber of Commerce and Industry to support returning ni-Vanuatu workers to set up their own businesses once they return to Vanuatu. This is part of the Government's commitment to provide exit pathways from the labour mobility programs and reintegration support.

Role of the Department of Labour and the strike action in the domestic labour market

9. When there is a Notice of Industrial Action issued to an employer, my role under the Trade Dispute Act is to assess the Notice and to then advise the Honorable Minister of Internal Affairs; and bring the parties to the table for conciliation, with a view towards having the parties establish a collective bargaining agreement.
10. As mentioned already, Vanuatu has ratified the eight (8) 'fundamental' ILO conventions, including ILO Convention No. 87. The Department of Labour has a role in ensuring that the employers and employees understand their different obligations and rights. For example, the Department has designed information pamphlets that explain and list the different rights that employees have and placed these pamphlets at the reception area for members of the public. Also, when employees have questions relating to their rights at work or any issues or grievances with employers, the Department can provide information and try to answer their questions.

11. The Department has been involved in conciliation processes for many employment grievances between employers and employees. One of the most recent examples is a dispute between the Vanuatu Teachers Union and the Ministry of Education and Teaching Service Commission. In this matter, about four-hundred (400) teachers went to strike, on the belief that the Government has not responded to long-standing claims to entitlements.
12. There was an initial strike, which happened between May to June 2024. In relation to that strike, the Department invited the parties to the table for conciliation process. The matter was not resolved and differences remained between the relevant teachers and the Government on the total value of entitlements that are outstanding. This led to a second strike, which is currently ongoing.
13. Under the Trade Dispute Act, the period for conciliation is only 7 days. This is proving to be a very short period. Consequently, the Department is currently reviewing the Trade Dispute Act to amend the period from 7 days to 21 days for a conciliation process, based on the experience had in the Vanuatu Teachers Union strike and conciliation process.
14. In short, the right to strike in Vanuatu is recognized and already provided for in the Trade Dispute Act in Vanuatu, and we have seen a lot of industrial action happening in the last past decades in exercise of this right. The level of protection afforded by that right is important because it impacts on collective bargaining agreements and on social dialogue. If the employer does not address the issues the employees have raised then an industrial action is an important next step for workers to have their voices heard.

Impacts of Climate Change and the Labour Mobility Program

15. The impacts of climate change affect the livelihoods of ni-Vanuatu workers and increase the need for labour mobility programs. The recent history of tropical cyclones in Vanuatu illustrates this. In 2015, Vanuatu was hit by category five cyclone (TC Pam) and, before Vanuatu fully recovered economically, it was hit again by another category five cyclone in 2020 (TC Harold). Later, in 2022, twin category four cyclones (TC Kevin and TC Judy) hit Vanuatu, two days apart, affecting over 70 percent of the population. This was then followed by another category five cyclone a few months later (TC Lola).
16. The most vulnerable workers in these situations are those working in the private sector, as private businesses often cannot continue operating or need to scale down because of the loss and damage caused by these cyclones. These businesses then lay off workers. The Department has provided support to those workers who have lost their jobs during the cyclones by placing them in the labour mobility programs in Australia and New Zealand.

PALM and RSE worker's challenges

17. Although there are a lot of success stories and real benefits of the two programs, there are also challenges. One of the challenges is how climate change impacts and labour mobility intersect, affecting the resilience of our local communities. As most of the people participating in the two programs are strong, able-bodied men and women, they are leaving behind the most vulnerable people, such as children, grandparents and people with disability. With increasingly severe and frequent cyclones these communities are facing real risks, also in terms of disaster preparedness and recovery.
18. Climate impacts also affect the workers themselves, with implications for relatives back home who depend on the remittances. An example is seen in 2022 when Cyclone Dovi struck New Zealand. Most of our workers lost their belongings and work. In some cases, workers were sent back to Vanuatu without completing their visa and work contracted period. Last week I received a call from a group of PALM workers in Australia that they are not able to work due to heavy rains and they have not worked for a week and have not received any salary but salary deductions for their living expenses still continue.
19. Another complaint I have received is in relation to the health and safety of Ni-Vanuatu workers who are working in big farms. When it rains heavily, they are not able to attend work because they might be exposed to certain chemicals that are being used in those farms. They raised their complaints to us so we can ask their employers to compensate for the hours that they are not able to work on. Some farmers do compensate but others do not despite complaints from the workers. This leaves the worker no choice but to sustain themselves off their savings whilst not working, reducing their capacity to send remittances to their families back home.
20. Engaging more with labour unions could help our workers who are working in farms in Australia and New Zealand to improve their working conditions, including through collective action such as strikes. The unions could also help them advocate for a review of policies which increasingly affect them negatively due to climate change. For example, a review of the visa system on which our workers depend, which are tying the worker to their employer. So when a disaster hits a particular state or region in Australia, the worker could then still have access to decent work opportunities and won't be forced to go home with empty pockets. Currently their sub-class 403 visa does not allow the workers to do so.
21. Most of our workers seem hesitant to engage with unions or participate in advocacy while abroad. They may fear repercussions. I believe that greater clarity about their rights as workers would assist in overcoming these obstacles.



Name: Murielle Metsa Mellenoven,

Commissioner of Labour, Department of Labour and Employment Services.

Date: 16 September 2024.

VANUATU WRITTEN COMMENTS

ANNEX 6

Statement of Annette Daniel, Vanuatu Trade Unions Combined (VTUC) President
of the Vanuatu Trade Unions Combined

I, Annette Daniel, President of the Vanuatu Trade Unions Combined, solemnly and sincerely affirm and declare:

BACKGROUND

1. My name is Annette Daniel and I was recently elected as the President of the Vanuatu Trade Unions Combined (VTUC) in 2024.
2. This Statement has been given based on my direct and personal knowledge of the facts stated or is information that has been reported to me by other Trade Union representatives, including representatives of the Vanuatu National Workers Union and Vanuatu Teachers Union, in my capacity as President of the VTUC.
3. The VTUC is the national umbrella organisation for all trade unions in Vanuatu. Its main purpose is to empower trade unions to stand up and speak for the rights of workers in Vanuatu. The VTUC is also the national representative body for workers in regional organisations and with the International Labour Organisation (ILO).

RIGHT TO STRIKE IN VANUATU

4. The right to strike facilitates protected industrial action, which is the core business of trade unions. VTUC support unions and workers to exercise this right in accordance with Vanuatu's national laws. Although the right to strike is recognised in Vanuatu, the relevant domestic legislation is still undergoing reform to ensure alignment with international obligations under the ILO Conventions that Vanuatu has ratified. As a result, dispute processes are not always clear or efficient and so, in practice, there are often challenges or uncertainties with how this right is protected. This is an important area in where VTUC can and does provide support.
5. In Vanuatu, there are some legal provisions that limit opportunities to exercise the right to strike in practice, including:
 - a. Section 65 of the *Trade Dispute Act*, which requires notice to be given to the Government of the intention to strike; and
 - b. Section 49 of the *Employment Act*, which gives employers the right to terminate employees with no cause, provided notice periods are observed or paid out.
6. These two legislative provisions in practice often result in workers being terminated lawfully once notice of the intention to strike has been communicated (or even before, if the employer receives a request to enter into negotiations).

NI-VANUATU WORKERS ABROAD EXERCISING THE RIGHT TO STRIKE

7. VTUC has networks with unions in Australia. That is because there are large numbers of ni-Vanuatu workers going to Australia on seasonal work (labour mobility) programs and joining unions while they are there.
8. Seasonal work is vulnerable to environmental changes. Climate change is negatively impacting on the opportunities available for many of the seasonal workers coming back to Vanuatu from Australia. In my experience, workers might go to Australia because the farmers expect crops to be ready at a certain time of year, but then the crops are not ready because of changes to the season. Then it takes one or two months before the ni-Vanuatu seasonal worker can start undertaking work, yet their expenses are still accumulating during that time that they are not working. In response to scenarios like this, the unions have been educating such workers about their rights. Sometimes this leads to protests or picketing in Australia based on their conditions of work, but because the labour laws in Australia are generally 'employer-friendly', this can then lead to changes in the entitlements and benefits for the worker.
9. There have also been examples of ni-Vanuatu workers taking industrial action in Australia. For example, in 2022, about three hundred (300) workers on a tomato farm joined a union, and because of poor crop production that season their pay was low and then there was a stand down. The stand down was resolved in Australia with the support of the unions. However, after these workers returned to Vanuatu at the end of the season, they were not recruited to return to Australia for subsequent seasons. So although their rights were protected in Australia, the end result was a loss of future work opportunities abroad. Such complications arise in these situations across different countries, with different standards in the protection of the right to strike. Many workers are reluctant to speak out or stand up for their rights at work in Australia because of a fear that they will lose the opportunity to travel out again.
10. Although many ni-Vanuatu workers also go to New Zealand, VTUC does not have union networks to the same extent because there is less engagement with unions in New Zealand. Aside from Australia and New Zealand, I am also aware of workers on fishing boats that are working in difficult situations, with unfair treatment and underpay. When these workers have tried to take action, they have had their employment terminated and been sent back to Vanuatu. This is yet another example of ni-Vanuatu workers being left behind when working abroad and without comprehensive protection of their right to strike.
11. Given the impact of climate change on workers, any clarification on the operation of the right to strike in the context of climate change and a just transition would help the VTUC to better support workers to advocate for and promote their rights.

Signed :.....

Name: Annette Daniel

President of the Vanuatu Trade Unions Combined Date:
16 September 2024.