

# RECOMMENDATIONS TO PARTIES TO THE UNFCCC ON HUMAN RIGHTS CONSISTENT CLIMATE ACTION IN 2023

The climate crisis is a human rights crisis that is worsening day by day, yet it is still possible to avert the worst impacts. Rapid and sustained action is needed if the increase in global average temperatures is to be kept within 1.5°C above pre-industrial levels, a target likely to be breached by 2027 without course correction<sup>1</sup> and the window for such action is rapidly narrowing.<sup>2</sup> Governments are failing to take adequate steps to protect humanity and human rights from accelerating climate change and its devastating impacts, most notably by failing to phase out of all fossil fuels and fossil fuel subsidies.

This document, which updates an earlier briefing from May 2023, provides recommendations to parties to the UNFCCC ahead of COP28 in the United Arab Emirates (UAE) in November/December 2023.

## KEY HUMAN RIGHTS MESSAGES FOR CLIMATE ACTION IN 2023

- All states must commit domestically and at COP28 to a **full, rapid equitable and funded fossil fuel phase out** as part of a wider energy transition package rather than relying on flawed carbon markets and carbon removal mechanisms that would only delay meaningful climate action whilst potentially also negatively impacting on human rights.
- The **Global Stocktake** must take a cross-cutting, intersectional human rights-based approach, to deliver **clear, actionable, specific, and measurable human rights-consistent plans** for all aspects of climate action, including equitable fossil fuel phase out, the provision of adequate climate finance, an accountability mechanism for state and non-state actors, and the protection of civic space, especially for environmental and human rights defenders and climate activists.
- Developed states must present a clear plan that will **substantially increase their future contributions** to climate finance and collectively meet this year the already agreed goal of raising at least 100 billion USD annually, including by meeting previous shortfalls, funded primarily through grant funding rather than loans.
- The **Loss and Damage Fund** must be operationalized by COP28 and provided with **adequate, additional and predictable financial resources** to remedy climate-induced loss and damage in developing countries, ensuring the most affected groups, including women, Indigenous peoples, children and other marginalized groups, can effectively access resources and other form of remedies.
- Adopt a **Just Transition Work Programme** that facilitates the transition to human rights-consistent renewable energy for all and results in effective measures to protect workers and frontline communities, including ensuring adequate social protection measures together with appropriate economic interventions to support those affected.
- **Protect civic space at UNFCCC meetings** for civil society, organizers and representatives of Indigenous peoples, children and youth, women, people living with disabilities, ethnic, racial, linguistic minorities, people from all socio-economic backgrounds, of all genders and sexual orientations and other marginalized groups from all countries, including the UAE, where freedoms of expression, association and peaceful assembly are severely restricted. All states must press for meaningful improvements in the human rights situation in the UAE ahead of COP28.

<sup>1</sup> World Meteorological Organization, "Global temperatures set to reach new records in next five years", 17 May 2023, <https://public.wmo.int/en/media/press-release/global-temperatures-set-reach-new-records-next-five-years>

<sup>2</sup> UNFCCC, *Technical dialogue of the first global stocktake: Synthesis report by the co-facilitators on the technical dialogue*, UN Doc. FCCC/SB/2023/9, 8 September 2023, [https://unfccc.int/sites/default/files/resource/sb2023\\_09\\_adv.pdf](https://unfccc.int/sites/default/files/resource/sb2023_09_adv.pdf)

## ROOTING DECISIONS IN HUMAN RIGHTS LAW AND STANDARDS

While the Paris Agreement and some of the following COP decisions include references to human rights law and standards, attention to human rights in COP discussions and decisions remains limited. For example, the COP26 decisions related to international carbon markets only included symbolic references to the preamble of the Paris Agreement that acknowledges that governments must respect, promote and consider their respective obligations on human rights when taking action to address climate change, but no concrete mechanism to operationalise it. Similarly, at COP27 states failed to explicitly state in the Terms of Reference of the Santiago Network for Loss and Damage that its work will be guided by human rights principles, but only stated that the technical assistance provided by the Santiago Network should take into account the preamble of the Paris agreement related to cross-cutting issues which includes human rights.<sup>3</sup> More positively, the COP27 outcome decision referred to the importance of climate action to protect, respect and fulfil the right to a clean, healthy and sustainable environment, which was universally recognized by the UN General Assembly in July 2022.<sup>4</sup>

Despite these limited official references to date, it is clear that states' human rights obligations must guide all climate decisions, both nationally and internationally. Human rights principles, law and standards help to clarify the steps that states must take to ensure that climate measures are effective to protect all people from the worst impacts of climate change without discrimination, leading to an enhanced enjoyment of their rights. To this effect, decisions taken within the UNFCCC processes and at national level should be centred on the human rights of Indigenous peoples, racialized people, and other marginalized groups who are disproportionately affected by the climate crisis. It is crucial that such groups are able to participate fully in relevant decision-making and be protected from reprisals for their engagement in the UNFCCC and from other attacks. Moreover, climate solutions proposed by these communities should be central to discussions within UNFCCC and at national level.

### Ahead of COP28 in November/December 2023, Amnesty International calls on all parties to the UNFCCC to:

- Put people and human rights, including labour rights and the rights of Indigenous peoples, at the centre of all UNFCCC negotiations and decisions. All decisions, including the Global Stocktake and COP28 final outcome documents, must reference relevant human rights obligations, principles and standards, and ensure the respect, protection, promotion and fulfilment of human rights.
- Ensure that the references to human rights included in previous COP decisions are translated into effective measures to respect, protect and fulfil human rights in climate action, including ambitious measures to phase out fossil fuels and limit global warming below 1.5°C above pre-industrial levels, measures that ensure a just transition, and the provision of adequate finance from “developed” countries with the greatest historical responsibility for emissions,<sup>5</sup> as well as additional contributions from other states in a position to do so,<sup>6</sup> to support developing countries in reducing emissions, adapting to climate change and addressing loss and damage.
- Include and fully consult relevant experts in human rights, including particularly labour, gender and Indigenous peoples' rights experts and human rights defenders in all parties' delegations to UNFCCC meetings.

<sup>3</sup> UNFCCC, Decision 12/CMA.4, Santiago network for averting, minimizing and addressing loss and damage under the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts, UN Doc. FCCC/PA/CMA/2022/10/Add.3, para 27, [https://unfccc.int/sites/default/files/resource/cma2022\\_10a03\\_adv.pdf](https://unfccc.int/sites/default/files/resource/cma2022_10a03_adv.pdf)

<sup>4</sup> Decisions 1/CP.27, UN Doc. FCCC/CP/2022/10/Add.1 and 1/CMA.4, UN Doc. FCCC/PA/CMA/2022/10/Add.1, Sharm el-Sheikh Implementation Plan, preamble.; UN General Assembly, Resolution No. 76/300, UN Doc. A/RES/76/300; UN Human Rights Council, Resolution 48/13, UN Doc. A/HRC/RES/48/13.

<sup>5</sup> In this briefing, when referring to UNFCCC processes, Amnesty International uses the terms “developing” and “developed” to refer to countries and their climate mitigation, climate finance, and loss and damage obligations, consistent with the way these terms are used by the UNFCCC and the principle of common but differentiated responsibilities and respective capabilities. “Developed” countries (as listed in Annex II of the UNFCCC) have a greater historical responsibility for emissions and are obliged under the UNFCCC and the Paris Agreement to provide new and additional climate finance to those countries in need of support for their mitigation and adaptation plans and for loss and damage for unavoidable climate harms. The term “developing” is used to refer to UNFCCC Non-Annex I countries. “Industrialized countries” is a term used to refer to UNFCCC Annex I countries, that must reduce their emissions faster than others. We recognize that these terms assume a linear understanding of progress, obscure the role of colonialism and power relations in determining wealth, and present GDP – rather than human rights or another metric – as the most important attribute of a country.

<sup>6</sup> High emitting G20 and high-income fossil fuel producing states should in particular contribute to climate finance.

- Facilitate the meaningful participation in, and full and equitable access to COP28 for representatives of Indigenous peoples, front line communities<sup>7</sup> and civil society organizations, including human rights and social justice movements and particularly children, youth, people with disabilities, ethnic, racial, linguistic minorities, people from all socio-economic backgrounds, of all genders and sexual orientations and other marginalized groups.

## **RESPECTING, PROMOTING, AND PROTECTING HUMAN RIGHTS IN CLIMATE ACTION THROUGH THE GLOBAL STOCKTAKE**

The Global Stocktake (GST) is a mechanism established under Article 14 of the Paris Agreement mandated to assess the comprehensive implementation of the Paris Agreement. This should include assessing whether activities implemented by parties respect, promote, and consider human rights, including “...the right to health, the rights of Indigenous peoples, local communities, migrants, children, persons with disabilities and peoples in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity”, as referenced in the preamble of the Paris Agreement. Equally important in the GST outcome should be the consideration of other human rights that are fundamental to ensuring access to information and public participation, poverty eradication, food security, clean and safe water supplies, ecosystem integrity, and a just transition for workers and local communities, as well as the recently recognized right to a clean, healthy and sustainable environment.

The GST will conclude at COP28 with the adoption of a report and a negotiated outcome document. The third and final round of the Technical Dialogue that informed the report took place during the Bonn Climate Conference in June 2023. There were some welcome reflections in the synthesis report of the first three rounds including the need for radical systems transformations; the ramping up of renewable energy; the ending of deforestation, raising ambition in the next round of Nationally Determined Contributions (NDCs); closing the ambition and implementation gaps; transforming the international financial architecture; and delivering support for adaptation and loss and damage. Also positively, it included some cross-cutting issues such as health, just transition and food system transformation, although it failed to mention gender equity or responsiveness, and the references to human rights could be strengthened to ensure they are mainstreamed throughout all pillars of the GST. All of these elements are needed for human rights-consistent climate action.

Disappointingly, however, the report did not call for a full phase out of fossil fuels, referring instead to a phase out of unabated emissions, which will rely on risky and unproven technologies as outlined below in the section on mitigation. The report also did not refer to historical responsibilities for emissions, which is essential to take honest stock of the current situation, to build trust between states and to inform the steps needed to deliver the ambitious climate action we need across the globe.

The report will form the basis for the political outcomes of the GST to be adopted at COP28, alongside input from states and observer organizations, many of which highlighted the need for the integration of human rights in the GST outcome.

In order to fully respect, protect, promote and fulfil human rights in climate action, it is essential that the outcome documents reference relevant human rights law, principles and standards, including the recently recognized right to a clean, healthy and sustainable environment and do so by adopting a cross-cutting and intersectional approach. The outcome documents should also promote meaningful participation of Indigenous peoples and civil society organizations, including for front line communities, women, children and youth, people with disabilities, ethnic, racial, linguistic minorities, and people from all socio-economic backgrounds, of all genders and sexual orientations whilst also ensuring intergenerational justice.<sup>8</sup>

<sup>7</sup> Frontline communities experience the impacts of climate change “first and worst.” See: The Climate Reality Project, *Frontline and Fenceline Communities*, <https://www.climateRealityProject.org/frontline-fenceline-communities>

<sup>8</sup> For more specific information and recommendations relating to the Global Stocktake, please see: *Respecting, promoting, and protecting human rights in climate action through the Global Stocktake: Joint Submission on views on the approach to the consideration of outputs component of the first Global Stocktake*, February 2023, Index: IOR 40/6464/2023, <https://www.amnesty.org/en/documents/ior40/6464/2023/en/>

It is also essential that the GST results in a robust accountability framework for both state and non-state actors, and for the UNFCCC, including to prevent clear conflicts of interest such as that posed by the appointment of Sultan Al Jaber as COP28 President-Designate.<sup>9</sup>

**Ahead of COP28 in December 2023, Amnesty International calls on all UNFCCC parties to ensure that the Global Stocktake outcome:**

- Includes a concrete commitment by, and guidance for, parties to respect, protect and fulfil human rights, including the rights of Indigenous peoples, by implementing a comprehensive human rights-based and intersectional approach in the planning, design, implementation and monitoring and evaluation of all relevant policies, commitments and processes related to the implementation of the Paris Agreement, including NDCs and National Adaptation Plans (NAPs) The guidance should build on existing guidance and increase synergies with human rights institutions and mechanisms.
  - Such a comprehensive approach should include not only those rights referenced in the Paris Agreement preamble but should also consider the right to non-discrimination, access to information and public participation, poverty eradication, food security, clean and safe water supplies, ecosystem integrity, and a just transition for workers and communities, as well as the recently recognized right to a clean, healthy and sustainable environment.
  - Results in urgent, effective, and equitable climate action in all sectors, including through a concrete commitment by all parties to a full, rapid equitable and funded phaseout of all fossil fuels in line with the objective to keep global warming to below 1.5°C and the fulfilment of parties' human rights obligations. To achieve this, collective NDCs must include clear pathways for such a phase-out of all fossil fuels, (coal, oil and gas) in line with 1.5°C before 2050, with significant reductions to be achieved to reduce greenhouse gas emissions by at least 43% (and carbon dioxide emissions by at least 48%) by 2030 compared to 2019.<sup>10</sup>
- Specifies that the reliance on ineffective or unproven technologies, such as carbon capture and storage and large-scale carbon dioxide removals mechanisms should be avoided or minimized to avoid directly or indirectly prolonging dependence on fossil fuels, as these are unproven or ineffective, rely on offsets, and/or come with high human rights and environmental risks.
- Delivers a concrete and rapid increase in adaptation finance to at least double that pledged in 2019 as agreed at COP26, and preferably considerably more to match actual needs, including approaches for locally led adaptation. Also delivers additional finance for loss and damage through the new fund that should be operationalised at COP28, which should be primarily in the forms of grants, not loans.
- Commits to developing, by 2025 at the latest, a concrete accountability framework for both states and non-state actors.
  - For states, this accountability framework should include mandatory human rights and environmental impact assessments of proposed plans under the NDCs.
  - For non-state actors, this accountability framework should address non-state actors' net zero targets, taking into account the recommendations of the High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities<sup>11</sup>, in order to monitor progress towards implementation of the Paris Agreement

<sup>9</sup> Amnesty International, "Climate: UAE state oil company's expansion plans prove chief executive is unfit to lead COP28 climate talks", 13 February 2013, <https://www.amnesty.org/en/latest/news/2023/02/climate-uae-state-oil-companys-expansion-plans-prove-its-chief-executive-is-unfit-to-lead-cop28-climate-talks/>

<sup>10</sup> IPCC, Synthesis Report: Summary for Policy Makers, March 2023, p21, [https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_SPM.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf)

<sup>11</sup> United Nations' High-Level Expert Group on the Net Zero Emissions Commitments for Non-State Entities. *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions* [https://www.un.org/sites/un2.un.org/files/high-level\\_expert\\_group\\_n7b.pdf](https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf)

- For the UNFCCC, this accountability framework should include a clear conflict of interests policy for the UNFCCC, that prevents entities with private interests – such as the fossil fuel industry – from influencing COP negotiations.
- Enhances meaningful and effective public participation in the planning, design, implementation, monitoring and evaluation of all relevant policies, commitments and processes related to the implementation of the Paris Agreement including by ensuring access to relevant information for all. Enhances the protection of environmental human rights defenders in the context of climate action through concrete provisions that include reporting, investigating and seeking accountability and redress for reprisals against environmental human rights defenders, and public information about the actions taken to do so, as well as public recognition of the importance of their work.

## THE NEED FOR A RAPID AND EQUITABLE PHASE OUT OF FOSSIL FUELS

The IPCC has highlighted that production from existing fossil fuel infrastructures is already estimated to exceed the remaining carbon budget for limiting warming to 1.5°C” and that emissions from existing and planned fossil fuel infrastructure, if historical operating patterns are maintained, are approximately equal to the remaining carbon budget for limiting warming to 2°C.<sup>12</sup>

At COP27, governments failed to live up to the urgency of impending climate breakdown. Despite being presented from the outset as the “implementation COP”, no new decisive measure was adopted to ensure global warming is limited to 1.5°C. In particular, there were no new mechanisms within the “Work Programme to Scale Mitigation Ambition and Implementation” - a mechanism established at COP26 to scale up measures to reduce climate change - to ensure that states set higher emission reduction targets and take adequate measures in all sectors to achieve those targets. This is particularly concerning considering that only 36 countries have submitted updated pledges since the start of 2022,<sup>13</sup> in response to the COP26 Glasgow Climate Pact Decision requesting all states to strengthen their 2030 targets. In addition, most national policies that are currently being implemented are inadequate to meet countries’ pledges.<sup>14</sup>

While the COP27 Sharm el-Sheikh Implementation Plan made a new and explicit reference to accelerating clean and just transitions to renewable energy, governments failed to commit to phasing out the use and production of all fossil fuels and all types of fossil fuel subsidies. In parallel, at COP27 and in different forums in 2023, there have been several attempts to promote risky and unproven solutions that could not only delay genuine emissions reductions, but even exacerbate the climate crisis. These include:

- The promotion of “natural gas” as a transition fuel<sup>15</sup> despite the clear indications from the International Energy Agency that any new fossil fuel development is incompatible with reaching zero emissions in 2050,<sup>16</sup> and emerging scientific evidence showing that, due to its heat-trapping potency in the short-term, “natural gas” use could precipitate catastrophic climate tipping points<sup>17</sup> and, due to leakage far beyond what is reported, may in some

<sup>12</sup> Independent Panel on Climate Change, AR6 Synthesis Report, *Climate Change 2023: Summary for Policymakers*, p20, [https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_SPM.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf)

<sup>13</sup> Climate Action Tracker, Climate Target Update Tracker, <https://climateactiontracker.org/climate-target-update-tracker-2022/> (last accessed 6 October 2023)

<sup>14</sup> World Meteorological Organisation and others, United in Science 2022, page 17, [https://library.wmo.int/index.php?lvl=notice\\_display&id=22128#.Yz8kNuzMLFq](https://library.wmo.int/index.php?lvl=notice_display&id=22128#.Yz8kNuzMLFq)

<sup>15</sup> For example, the G7 Leaders’ Summit Communique adopted on 20 May 2023 states that “publicly supported investment in the gas sector can be appropriate as a temporary response” in the context of accelerating the phase out of their dependency on Russian energy. See

[https://www.g7hiroshima.go.jp/documents/pdf/Leaders\\_Communique\\_01\\_en.pdf](https://www.g7hiroshima.go.jp/documents/pdf/Leaders_Communique_01_en.pdf). In 2022, the EU adopted the EU Complementary Climate Delegated Act, which allows private investments in certain gas activities under its sustainable finance taxonomy. The law is available at [https://finance.ec.europa.eu/publications/eu-taxonomy-complementary-climate-delegated-act-accelerate-decarbonisation\\_en](https://finance.ec.europa.eu/publications/eu-taxonomy-complementary-climate-delegated-act-accelerate-decarbonisation_en). See also: Climate Home News, “European Commission endorses fossil gas as ‘transition’ fuel for private investment”, 2 February 2022, <https://www.climatechangenews.com/2022/02/02/european-commission-endorses-fossil-gas-transition-fuel-private-investment/>

<sup>16</sup> International Energy Agency, Net-Zero by 2050, May 2021, <https://www.iea.org/reports/net-zero-by-2050> and its 2023 update, <https://www.iea.org/reports/net-zero-roadmap-a-global-pathway-to-keep-the-15-0c-goal-in-reach/executive-summary>

<sup>17</sup> The Guardian: Revealed: 1,000 super-emitting methane leaks risk triggering climate tipping points, 6 March 2023, [Revealed: 1,000 super-emitting methane leaks risk triggering climate tipping points | Greenhouse gas emissions | The Guardian](https://www.theguardian.com/environment/2023/mar/06/revealed-1000-super-emitting-methane-leaks-risk-triggering-climate-tipping-points)

circumstances pollute the air more than coal.<sup>18</sup>

- Attempts to include co-firing of ammonia and hydrogen, including from fossil fuel sources, in the power generation sector as an abatement measure.<sup>19</sup>
- The promotion of carbon capture and storage (CCS), large-scale carbon dioxide removal (CDR) and geoengineering mechanisms.<sup>20</sup> These technologies are either ineffective or unproven, making them a distraction from the need to rapidly phase out the production of fossil fuels.<sup>21</sup> They also come with high human rights and environmental risks.<sup>22</sup> The UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes has recently highlighted the risks posed by this technology to human rights, including the health and safety risks of CCS solutions whilst locking in place fossil fuel-reliance and the associated environmental injustices.<sup>23</sup> The UN Human Rights Council Advisory Committee has also underscored that, at present, the development of any new technologies intended for climate protection, including direct carbon removal and solar geoengineering, and policies to support them “would not be in accordance with the protective standards of the human rights regime”.<sup>24</sup>
- Failure to adopt clear measures to ensure that carbon market activities under Article 6 of the Paris Agreement only include those that allow for rapid, genuine emission reductions.<sup>25</sup> Moreover, parties have yet to adopt concrete mechanisms to ensure carbon markets do not violate the human rights of affected people, as well as a fully independent, accessible, and transparent grievance process, before market or non-market activities can take place.<sup>26</sup>

For the first time this year, there will be ‘Health Day’ at COP, including a climate-health ministerial meeting. This reflects the fact that climate change itself undermines the right to health, as well as increasingly wide recognition that the same pollutants that drive climate change harm human health. For example, in 2020, there were 1.2 million deaths resulting from exposure to fossil fuel-derived air pollution.<sup>27</sup> The climate-health ministerial will result in a COP28 Declaration on Climate and Health, which is currently under negotiation. The current draft does not convey the urgency of the public

<sup>18</sup> The New York Times, “Leaks can make natural gas as bad for the climate as coal, a study says”, 13 July 2023, <https://www.nytimes.com/2023/07/13/climate/natural-gas-leaks-coal-climate-change.html#:~:text=Natural%20gas%2C%20long%20seen%20as,leaks%20that%20plague%20its%20use>

<sup>19</sup> Environment Ministers agree on drastic expansion of wind power, but no coal exit timeline, 16 April 2023, <https://www.japantimes.co.jp/news/2023/04/16/national/politics-diplomacy/japan-g7-environment-controversial-tech/>

<sup>20</sup> See for example references to “low-emission energy” in Decision 1/CMA.4, , Sharm el-Sheikh Implementation Plan, UN Doc. FCCC/PA/CMA/2022/10/Add.1 [https://unfccc.int/sites/default/files/resource/cma2022\\_10a01\\_adv.pdf](https://unfccc.int/sites/default/files/resource/cma2022_10a01_adv.pdf), paras 12 and 14; references to Carbon Capture Storage and Utilization in Activity 5 of the Workplan of the forum on the impact of the implementation of response measures and its Katowice Committee of Experts on the Impacts of the Implementation of Response Measures, UN Doc. FCCC/CP/2019/13/Add.1, <https://unfccc.int/sites/default/files/resource/Workplan%20of%20the%20forum%20and%20the%20KCI.pdf>. Also carbon removal mechanisms are being considered as activities that would accrue credits for the global carbon market mechanism under Article 6 of the Paris Agreement. See for example, Information note prepared by the informal working group on removals for the Supervisory Body of the mechanism established by Article 6, paragraph 4, of the Paris Agreement on removal activities under the Article 6.4 mechanism, UN Doc. A6.4-SB003-AA-A04, paras 11-12, <https://unfccc.int/sites/default/files/resource/a64-sb003-aa-a04.pdf>. This report was not accepted at COP27 and the Supervisory Body was requested to provide new guidance by COP28.

<sup>21</sup> Data from the Independent Panel on Climate Change shows that such mechanisms cannot bring about the scale of emissions reduction required by 2030. See Independent Panel on Climate Change, AR6 Synthesis Report, *Climate Change 2023: Summary for Policymakers*, p28, [https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_SPM.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf)

<sup>22</sup> Center for International Environmental Law, “Carbon Capture and Storage (CCS): Frequently asked questions”, 26 April 2023, <https://www.ciel.org/reports/carbon-capture-and-storage-frequently-asked-questions/>; P. Gunther and P. Ekardt, Human Rights and Large-Scale Carbon Dioxide Removal: Potential Limits to BECCS and DACCS Deployment, *Land*, 2022, Vol 11, Issue 12, <https://www.mdpi.com/2073-445X/11/12/2153>

<sup>23</sup> Human Rights Council Fifty-fourth session, *The toxic impacts of some proposed climate change solutions Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes*, Marcos Orellana, UN Doc. A/HRC/54/25, 13 July 2023, para. 70

<sup>24</sup> UN Human Rights Council 54<sup>th</sup> session, *Impact of new technologies intended for climate protection on the enjoyment of human rights: Report of the Human Rights Council Advisory Committee*, UN Doc. A/HRC/54/47, 10 August 2023, para 66

<sup>25</sup> The COP27 decision on the operationalization of international carbon markets under Article 6 of the Paris Agreement provide states with a licence to decide to keep details of carbon trading confidential, including what type and quantity of offsets have been traded, without even requiring a justification for confidentiality. Moreover, while it is positive that the initial recommendation adopted by the Supervisory Body on the definition of carbon removals was rejected, it is problematic that states requested the Supervisory Body to develop new recommendations on the same issue by COP28 without requesting it to consider human rights, including the rights of Indigenous peoples, international law or best available science. Negotiations on how to implement the Article 6.4 mechanism (also called the Sustainable Development Mechanism) will continue in 2023.

<sup>26</sup> Global Witness, “Carbon trading continues: What’s wrong with the voluntary market”, 24 May 2022, <https://www.globalwitness.org/en/campaigns/greenwashing/carbon-trading-continues-whats-wrong-with-the-voluntary-market/>

<sup>27</sup> Marinara Romanello and others, *The Lancet, Executive Summary of the 2022 report of the Lancet Countdown on health and climate change: health at the mercy of fossil fuels*, Indicator 3.3: mortality from ambient air pollution by sector, [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(22\)01540-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(22)01540-9/fulltext)

health threat, nor the main source of that threat.

**Ahead of COP28 in December 2023, Amnesty International calls on all UNFCCC parties to:**

- Ensure that the Work Programme to Scale Mitigation Ambition and Implementation and other COP28 decisions deliver actions which effectively close the emission and implementation gap, to keep the increase of global average temperatures below 1.5°C.
- Strengthen their 2030 emission reduction targets and ensure they are fully aligned with the 1.5°C imperative - which requires a 43% reduction of all GHGs by 2030 compared to 2019, including a 48% reduction in carbon dioxide emissions - and adopt and implement adequate sectoral policies.
  - Industrialized states must decarbonize their economies more quickly than others, including by adopting ambitious emission reduction targets that reflect their historical responsibility for the climate crisis. Other high-emitting countries in the G20<sup>28</sup> and high-income fossil fuel producing countries should also raise their targets, reflecting their higher level of resources.
- Fully implement the recommendations adopted at COP26 and COP27 requesting states to accelerate efforts towards the “phasedown of unabated coal power and phase-out of inefficient fossil fuel subsidies whilst also providing targeted support to the poorest and most vulnerable in line with national circumstances and recognizing the need for support towards a just transition”.<sup>29</sup>
- Adopt a commitment at COP28 for all countries to rapidly and equitably phase out all fossil fuel use and production and all fossil fuel subsidies, while recognizing the obligation for developed countries to provide adequate climate finance to developing countries, and for other states – particularly high emitting G20 and high income fossil fuel producing states - to contribute if they are in a position to do so, to achieve a managed, equitable and human rights-consistent phase out of existing coal, oil and gas production in all nations.
  - This commitment must avoid references to “low-emissions energy”, to “phasing out emissions from fossil fuels”, or “unabated fossil fuel emissions” (which would allow for their continued production and use) and particularly to the use of CCS, CDR and geoengineering mechanisms which are either ineffective or unproven, have serious human rights implications and which cannot be scaled up within the time frame we have left to limit global heating to 1.5°.
- Adopt a commitment at COP28 for all countries to cease all new oil, gas, and coal exploration and development, with industrialized countries and other high-emitting G20 countries and high-income fossil fuel producers moving first and fastest.
- Join the Beyond Oil and Gas Alliance and Powering Past Coal Alliance, if not already a member, and endorse the call to adopt and implement a Fossil Fuel Non-Proliferation Treaty.
- Adopt measures to ensure that carbon market activities only include those that allow for rapid, genuine emission reductions and facilitate the transition away from fossil fuels and do not include carbon capture and storage and carbon removal mechanisms.

<sup>28</sup> These are states which are part of the Group of 20 (G20), other than Canada, France, Germany, Italy, Japan, the Russian Federation, the United Kingdom and United States of America. States in this latter group fall in the category of industrialized countries as listed in Annex I of the UNFCCC. Collectively, G20 members are responsible for 75 % of global GHG emissions. See United Nations Environment Programme, Emissions Gap Report 2022, October 2022, [www.unep.org/resources/emissions-gap-report-2022](http://www.unep.org/resources/emissions-gap-report-2022), p. 7

<sup>29</sup> UNFCCC, Report of the Conference of the Parties on its twenty-sixth session, held in Glasgow from 31 October to 13 November 2021, Addendum Part two: Action taken by the Conference of the Parties at its twenty-sixth session, Decision 1/CP.26 Glasgow Climate Pact, para 20, UN Doc. FCCC/CP/2021/12/Add.1.

- Establish concrete mechanisms to ensure carbon market activities for emission reductions are properly regulated and respect human rights, without introducing exceptions related to national circumstances and/or practice concerning environmental and human rights impacts. Begin the process necessary to establish a fully independent, accessible, and transparent grievance and redress mechanism to ensure that communities can seek remedy for any harm caused by projects carried out under Article 6. Both measures must be in place before allowing for any carbon market activities to take place.
- Support a COP28 Declaration on Climate and Health that acknowledges the extent of the threats that fossil fuels pose to health.

## CLIMATE MITIGATION AND A JUST TRANSITION

The COP27 decision to create a dedicated work programme on just transition (JTWP)<sup>30</sup> was a welcome step. Further action must be taken to ensure the transition to renewable energy and a zero-carbon economy is carried out with full respect for the human rights of impacted workers, Indigenous peoples, fence line communities where new infrastructure will be constructed, including ensuring access to renewable, reliable and affordable energy for all. Laws, policies and measures should provide appropriate socio-economic interventions including comprehensive and adequate social protection and investment in re-employment opportunities, skills and training.

The scope of the JTWP should include those identified by the IPCC as critical to ensuring a 1.5°C pathway: 1) energy system transitions, 2) land, ocean and ecosystem transitions, 3) urban and infrastructure system transitions, and 4) industrial systems transitions.<sup>31</sup> The JTWP should focus on how they intersect and could achieve simultaneously the fulfilment of human rights, including the rights of Indigenous peoples and the rights of future generations, as well as reducing inequalities within and between countries. The JTWP should cover areas where just transition discussions are only starting and create the space for sharing developing work in all sectors, with the objective of finding common ground for elaborating recommendations. It should also address the obligation to provide international cooperation and assistance for just transition, including finance, technology transfer, capacity building and other forms of support.<sup>32</sup>

The objectives of the JTWP should incorporate the findings in the IPCC's last report, that the consideration of climate justice can help equitable sharing of benefits and burdens, especially for "the most vulnerable within and across countries and regions".<sup>33</sup> It also indicated that neglecting issues of justice risks a backlash against climate action generally, particularly from those who stand to lose from such actions, and it will also have implications for the pace, scale and quality of the transition.<sup>34</sup>

To ensure effective public participation in the JTWP, groups affected by the transition away from fossil fuels should be represented through an Advisory Body to the JTWP, whose mandate includes summarizing progress, identifying areas where synergy, cooperation and further discussion are needed between sessions, and recommending actions for decision. The Advisory Body's composition should be balanced between developed /developing country representation, and include Party experts on just transition, self-selected active observers from civil society, including trade unions, and Indigenous peoples, representatives of people living with disabilities, and representatives from communities that are low income and/or racialized and otherwise minoritized, as well as representatives from IGOs and independent experts.

<sup>30</sup> Decision 1/CMA.4, Sharm el-Sheikh Implementation Plan, para 52, previously cited.

<sup>31</sup> IPCC, Climate Change 2023 Synthesis Report: Summary for Policymakers, section C3.2 – 3.6

<sup>32</sup> For more information on elements for the Just Transition Work Programme, see CAN International, Submission: Views on different elements of the work programme on just transition pathways referred to in paragraph 52 of decision 1/CMA.4 September 2023, <https://climatenetwork.org/wp-content/uploads/2023/09/CAN-JTWP-Submission.pdf>

<sup>33</sup> The IPCC also notes that "[v]ulnerability is higher in locations with poverty, governance challenges and limited access to basic services and resources, violent conflict and high levels of climate-sensitive livelihoods (e.g., smallholder farmers, pastoralists, fishing communities)". And that the "largest adaptation gaps exist among lower income population groups ... and adaptation progress is unevenly distributed with observed adaptation gaps". It also points out that "[p]resent 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 ... Vulnerability is exacerbated by inequity and marginalisation linked to gender, ethnicity, low income or combinations thereof, especially for many Indigenous Peoples and local communities". IPCC, Synthesis Report of the IPCC Sixth Assessment Report (AR6) - Longer Report, 2023, p.66

<sup>34</sup> IPCC\_AR6\_WGIII\_Chapter17.pdf/ page 1769



Observers should be able to participate routinely in all meetings of the JTWP, including by be allowed to take the floor, suggest agenda items, and be active in all working groups, committees, or other forms of division of work and activities of the JTWP and its Advisory Body.

**Ahead of COP28 in November/December 2023, Amnesty International calls on all UNFCCC parties to:**

- Ensure the Work Programme on Just Transition adopted at COP27 and national just transition plans enhance a collective understanding of possible just transition pathways and action to facilitate implementation and create synergies between climate action, social and intergenerational justice, human rights and the reduction of inequalities between and within countries. In this respect they should:
  - facilitate a rapid and human rights-consistent transition to zero-carbon economies, including access to renewable, reliable, and affordable energy produced in a manner consistent with human rights for all and that benefits fence line communities.<sup>35</sup>
  - translate policies and plans into effective measures to protect workers and fence line communities, including by being centred on human rights, including labour rights, prioritizing creation of decent work opportunities in affected areas and communities through appropriate investment, reskilling, training and other assistance for job seekers,
  - ensure that social protection measures are sufficient both in terms of coverage and level of support to mitigate the negative impacts on front line and fence line communities.
- Ensure, in particular, the Work Programme on Just Transition serves as a catalyst of further action, including by:
  - taking stock of progress made on issues related to just transition in other UNFCCC workstreams and under voluntary initiatives, such as the Just Energy Transition Partnerships;<sup>36</sup> and providing recommendations for developing future just transition partnerships;
  - identifying gaps, barriers and challenges in just transition strategies and best practices to overcome them;
  - designing human rights-compliant guidance for the development of inclusive and equitable national just transition strategies that ensure effective public participation in decision making, particularly for Indigenous peoples and other affected communities and individuals, including aspirational pathways to support action at all levels, as well as indicators that can be used for monitoring progress towards just transition at the local, national and regional level;
  - recommending decisions to relevant UNFCCC bodies to ensure just transition principles are integrated coherently in all processes and workstreams;
  - providing recommendations to advance a rapid and human rights-consistent just transition;
  - serving as a space for accountability and peer-to-peer evaluation of all just transition initiatives whether inside or outside the UNFCCC;

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<sup>35</sup> A fenceline community lives immediately adjacent to highly polluting facilities, in this case, those living in the vicinity of energy transition projects including for the production of renewable energy or the extraction of transition minerals. See: The Climate Reality Project, *Frontline and Fenceline Communities*, <https://www.climaterealityproject.org/frontline-fenceline-communities>

<sup>36</sup> Just Energy Transition Partnerships (JETPs) are financing cooperation mechanisms aimed at supporting heavily coal-dependent emerging economies make a just energy transition. The first JETP was announced at COP26 in 2022 between South Africa and France, Germany, the European Union and the United States. Other subsequent JETPs have been launched to benefit Indonesia, India, Vietnam, and Senegal.

- establishing an Advisory Board for the JTWP, with representation from all stakeholders and a balance between developed and developing countries, that is mandated to monitor and summarize progress, identify areas for intersessional discussion and agreement, and recommend decisions for all relevant UNFCCC bodies and processes. The Advisory Board and all meetings of the JTWP should be open to self-selected Observers from civil society and Indigenous peoples who should be able to participate in all aspects of the JTWP's work before decisions are taken.

## CLIMATE FINANCE

International climate finance currently includes funds for mitigation and adaptation provided by developed countries, and others in a position to provide financial assistance<sup>37</sup> to developing ones. Providing adequate climate finance is an obligation under both the Paris Agreement and international human rights law.<sup>38</sup> It is crucial to keeping global average temperatures below 1.5°C, as developing countries need a sufficient level of resources to carry out just and human rights consistent transitions to zero carbon economies in the quickest time frame possible. It is also essential because millions of people in developing countries need support to adapt to the effects of climate change, as lack of or inadequate adaptation measures means that they are especially vulnerable to the human rights harms associated with climate-induced events.

Yet, developed countries have failed to meet these obligations. They have not yet met their commitment - first made at COP15 and repeated at COP21 - to deliver 100 billion USD climate finance annually from 2020 till 2025 to developing countries - an amount which, in any case, falls far below what is actually needed.<sup>39</sup>

At COP27, developed states opposed the request of developing countries for them to commit to paying the existing shortfall and therefore providing the cumulative amount of 600 billion USD over the period 2020-2025. Moreover, climate change adaptation measures remain vastly underfunded, and the majority of climate funding is being provided in the form of loans,<sup>40</sup> which merely increases debt in recipient countries' when many are already facing unsustainable levels of indebtedness and are forced to put in place austerity policies that undermine human rights, including in the context of soaring climate change impacts.<sup>41</sup>

Currently, negotiations are ongoing to set a New Collective Quantified Goal on climate finance for the post-2025 period.

Considering the above shortfalls, many states and international organizations now recognize the need to reform the international financial system to ensure it is better able to provide effective solutions to developing countries that are vulnerable to the cumulative impact of ongoing global shocks, including climate impacts, debt and economic crises, as well as various armed conflicts.<sup>42</sup> Such a reform is necessary to meet states' international obligations to provide international cooperation and assistance to ensure the progressive realization of economic, social and cultural rights.<sup>43</sup>

At COP27, governments decided to launch an official dialogue process on Article 2.1c of the Paris Agreement which refers to "making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient

<sup>37</sup> High emitting G20 and high income fossil fuel producing states in particular should provide climate finance in addition to developed states.

<sup>38</sup> Under the UNFCCC and the Paris Agreement, all industrialized countries, except economies in transition such as the Russian Federation, the Baltic States, and several Central and Eastern European States, have the obligation to provide climate finance. Under the Paris Agreement other parties are encouraged to provide or continue to provide such support voluntarily. Under human rights law, all states in a position to do so must provide international cooperation and assistance for the realization of economic, social and cultural rights.

<sup>39</sup> According to information compiled by the UNFCCC's Standing Committee on Finance, 78 of 153 NDCs have costed needs, and these amount to USD 5.8–5.9 trillion up until 2030. Only 11% of the costed needs specify whether finance has to be domestic or international; of these USD 502 billion is identified as needs requiring international sources of finance. See UNFCCC Standing Committee on Finance, *First report on the determination of the needs of developing country Parties related to implementing the Convention and the Paris Agreement, 2021*, para. 16, <https://unfccc.int/topics/climate-finance/workstreams/needs-report>. These figures were as of 31 May 2021.

<sup>40</sup> OECD, *Aggregate Trends of Climate Finance Provided and Mobilised by Developed Countries in 2013–2020, 2022*, <https://read.oecd.org/10.1787/d28f963c-en?format=pdf>. See also Oxfam, *Climate Finance Short-Changed*, October 2022, <https://www.oxfam.org/en/press-releases/true-value-climate-finance-third-what-developed-countries-report-oxfam>

<sup>41</sup> See for example Amnesty International, *Multiple Crises, Fiscal Systems and Human Rights: Submission to the Independent Expert on Foreign Debt, Other International Financial Obligations and Human Rights*, 9 May 2023, Index: IOR 40/6756/2023, <https://www.amnesty.org/en/documents/ior40/6756/2023/en/>

<sup>42</sup> See for example the Bridgetown Initiative launched by the government of Barbados in September 2022, <https://www.foreign.gov.bb/the-2022-barbados-agenda/>. On 22-23 June, France will host the Summit for a new global financial pact, whose stated goal is to build a new contract between the countries of the North and the South to address climate change and the global crisis. See <https://focus2030.org/Summit-for-a-New-Global-Financial-Pact-towards-more-commitments-to-meet-the-1030#:~:text=The%20Summit%20is%20scheduled%20to,Da%20Silva%2C%20President%20of%20Brazil>

<sup>43</sup> See for example, Amnesty International, *Recommendations to states to finance economic, social and climate justice*, 5 June 2023, Index: IOR 10/6825/2023, <https://www.amnesty.org/en/documents/ior10/6825/2023/en/>

development”<sup>44</sup> The Article 2.1c discussions should be approached in a just, equitable, human rights consistent and gender sensitive manner, based on science and should be complementary to the principle of Common But Differentiated Responsibility and Respective Capabilities as defined in Article 9.1 of the Paris Agreement.<sup>45</sup> Article 2.1c should not be interpreted narrowly, as it applies to mitigation, adaptation, and loss and damage. For mitigation, this requires the provision of finance to achieve a rapid, just and equitable phase-out of all fossil fuels (coal, oil and gas), with significant reductions to be achieved in line with the need to reduce all GHG emissions by at least 43% by 2030 compared to 2019 to reach the 1.5°C target<sup>46</sup> as well as rapidly scaling up and prioritizing finance for investment in renewable energy, targeting countries and regions with lower investment For adaptation and loss and damage, this requires the provision of new and additional, predictable and adequate support to developing countries to deal with the increasing severity and frequency of climate disasters, address and adapt to current and future climate impacts and build the resilience of people, communities and ecosystems.

A just and equitable approach to Article 2.1c requires a commitment to and implementation of a wide and ambitious agenda of scaling up public climate finance from developed, countries in line with their obligations under the Paris Agreement, complemented by financial assistance from others in a position to provide it – particularly high emitting G20 and high income fossil fuel producing states, and transforming the wider global financial system to make it fairer for developing countries. Currently, implementation of Article 2.1c is hampered by the flow of wealth out of developing countries into developed and other higher-income countries, which is estimated in the trillions per year and thus many times greater than what is provided through Official Development Assistance (ODA) and climate finance;<sup>47</sup> but efforts to reform the global financial system are hampered as developing countries continue to be structurally under-represented in financial and economic decision-making outside the UN, which maintain uneven global power relations that are rooted in colonial legacies.

Disappointingly, a pledging event on 5 October 2023 to raise funds for the Green Climate Fund, the main mechanism under the UNFCCC for disbursing climate finance, fell short of its US\$10 billion target, although other states are expected to make announcements later.<sup>48</sup> The mandate of the GCF includes obligatory finance from developed states, as well as voluntary contributions from others in a position to do so, under the principle of CBDR.<sup>49</sup>

International economic and financial system transformation is therefore required to make finance more available and affordable for developing countries to undertake climate action, including on debt, tax, and technology transfer.

Achieving Article 2.1c requires finance system transformation regarding debt, as debt distress is limiting the fiscal space in developing countries and preventing scaling of finance flows consistent with the goals of the Paris Agreement. Without debt restructuring, and cancellation if appropriate, new finance (even if at concessional rates) would have to be used to repay existing debts owed, often to private creditors and thus could not be used to the maximum extent to address the climate crisis.

While an independent debt work-out mechanism is needed, to ensure the protection and progressive realization of economic, social and cultural rights, system transformation entails going beyond debt restructuring and cancellation where appropriate, to addressing the root causes of debt distress, including the higher costs of borrowing for developing countries, the lack of grant-based assistance and failures to address tax evasion and aggressive tax avoidance.

Greater financial transparency and the establishment of a UN Convention on International Tax Cooperation to create fair global tax rules, as called for under the 2022 UN General Assembly resolution would help to strengthen the inclusiveness

<sup>44</sup> Decision 1/CMA.4, Sharm el-Sheikh Implementation Plan, para 68, previously cited

<sup>45</sup> For more information about necessary approaches to the Article 2.1c discussions, see CLIMATE ACTION NETWORK SUBMISSION ON 2.1c, June 2023, <https://climatenetwork.org/resource/climate-action-network-submission-on-2-1c/>

<sup>46</sup> IPCC, Climate Change 2023 Synthesis Report: Summary for Policymakers, *Table SPM.1: Greenhouse gas and CO2 emission reductions from 2019, median and 5-95 percentiles*

<sup>47</sup> See for example, The Guardian, “Aid in reverse: how poor countries develop rich countries”, 14 January 2017, <https://www.theguardian.com/global-development-professionals-network/2017/jan/14/aid-in-reverse-how-poor-countries-develop-rich-countries>

<sup>48</sup> Reuters, “Shortfall in climate change cash grows ahead of COP28”, 5 October 2023, <https://www.reuters.com/business/environment/un-green-climate-fund-pledges-reach-93-bln-second-replenishment-round-2023-10-05/>

<sup>49</sup> Green Climate Fund, *Governing Instrument*, Section IV: Financial Inputs, <https://www.greenclimate.fund/sites/default/files/document/governing-instrument.pdf>

and effectiveness of international tax cooperation.<sup>50</sup> Within the framework of the process towards a UN Tax Convention, a range of measures could prevent tax avoidance, tax evasion and illicit financial flows that limit developing countries' ability to collect revenue and make finance flows consistent with climate and development goals.<sup>51</sup> At the same time, any system of international taxes and levies based on the polluter-pays principle (such as on shipping, air transport or fossil fuel extraction) intended to provide an alternative source of finance for climate action, in particular for urgently needed public grant funding for adaptation and to address loss and damage, must reduce inequalities rather than deepen them. They should put the burden primarily on fossil fuel corporations, for example by increased taxation of their profits, and on wealthier consumers while protecting low-income individuals and groups from regressive impacts through social protection measures, grants and tax reforms and ensuring their access to affordable renewable energy.

There is a legally binding commitment of developed countries under the UNFCCC to enable technology transfer. However, the concepts of technology transfer under the UNFCCC and the World Trade Organization conflict. The former highlights the different responsibilities of different countries and distinctive approaches to climate technologies, while the latter builds on the principles of equal treatment and free trade.<sup>52</sup> Intellectual property rights (IPRs) must not be allowed to hamper such transfers. Exclusion of IPRs over such technologies are needed for a systemic response to address the global challenge of climate change. Existing flexibilities to overcome IPR barriers under the World Trade Organization's agreement on trade-related intellectual property rights (TRIPs) are likely to prove inadequate, as these require a case-by-case national response, that - as seen in the treatment of intellectual property rights for Covid-19 tools - is fraught with obstacles and difficulties for developing countries to use the flexibilities.

#### **Ahead of COP28 in December 2023, Amnesty International calls on all UNFCCC parties to:**

- Agree that the New Collective Quantified Goal for international climate finance from 2025 to be adopted by 2024 must be set in a manner that:
  - o is based on scientific evidence and on the full needs of developing countries, including for loss and damage;
  - o allows for setting sub-goals for mitigation, adaptation, and loss and damage;
  - o ensures resources mobilized against this goal are new and additional to previous commitments for international development and humanitarian assistance;
  - o ensures that resources under the new goal are provided largely in the form of grants instead of loans, particularly for adaptation and loss and damage, including by setting a grant-equivalent core goal or a sub-goal for disbursement as grants;
  - o ensures that resources are allocated to support human rights-consistent climate initiatives that redress imbalances of power and discriminations, including in the access to funding.
- Ensure the dialogue process on Article 2.1c:
  - o facilitates a rapid end of the financing of new projects, activities and industries that drive fossil fuel expansion and deforestation;

<sup>50</sup> See Amnesty International, *Promotion of Inclusive and Effective Tax Cooperation at the United Nations: Submission to the UN Secretary General 78th General Assembly Session, 5-19 September 2023*, 17 March 2023, Index: IOR 40/6565/2023, <https://www.amnesty.org/en/documents/ior40/6565/2023/en/>

<sup>51</sup> According to the Tax Justice Network, countries are on course to lose US\$4.8 trillion in tax to tax havens over the next 10 years. Tax Justice Network, *The State of Tax Justice 2023*, 25 July 2023, <https://taxjustice.net/reports/the-state-of-tax-justice-2023/>

<sup>52</sup> Robert Burrell, Su Jung Jee, Kerstin Hötte and Caoimhe Ring, Institute for New Economic Thinking, *Intellectual Property Rights, Climate Technology Transfer and Innovation in Developing Countries*, INET Oxford Working Paper No. 2023-14, August 2023, p52, <https://www.inet.ox.ac.uk/files/intellectual-property-rights-2023-14.pdf>

- o phases out existing funding and investments within a timeline aligned with the 1.5°C imperative;
- o contributes to the ongoing discussions about financial system transformation to relieve the unsustainable debt burden on developing countries;
- o supports the development of a UN Tax Convention that would provide a framework to:
  - Comprehensively address the problem of both illicit financial flows (IFFs) and commercial practices such as egregious and aggressive tax avoidance with a view to enabling greater domestic resource mobilization particularly in low-income countries to realize human rights-consistent climate action;
  - Create a global tax governance structure that is fair, transparent and has built in accountability mechanisms including an Intergovernmental UN Tax Commission with equal representation from each state party and that would aim to harmonize effective fiscal practices and policies based on human rights law and standards.
- o Addresses trade barriers to necessary climate technology transfer, including by ensuring that intellectual property rights do not create a barrier to access, including by identifying any necessary adjustments to states' intellectual property laws, policies and practices to ensure that climate technology transfer can happen swiftly and equitably.

**In line with the principle of common but differentiated responsibilities and respective capabilities and international human rights law, Amnesty International further calls on developed states and others with the resources to do so, particularly high emitting G20 and high-income fossil fuel producing states, to:**

- Present a clear plan to achieve and surpass the goal set at COP26 to at least double adaptation finance from 2019 levels by 2025,<sup>53</sup> taking into account that this would still be insufficient to enable developing countries to adequately support people to adapt to climate change.<sup>54</sup>
  - o Individual developed states should back up the plan with concrete adaptation finance commitments, aiming to go beyond the goal of a doubling of pledges made up to 2019.
- Present a roadmap to the delivery of not just of 100 billion USD, but also the cumulative amount of 600 billion USD over the period 2020-2025, which would make up for earlier gaps.
  - o Individual developed states, and other states in a position to do so, particularly high emitting G20 and high income fossil fuel producing states, must commit new and additional climate finance to developing countries in need of assistance for human rights-consistent mitigation and adaptation measures, aiming to ensure a balance between funding for mitigation and adaptation.
- Provide an adequate contribution to the replenishment of the Green Climate Fund aligned with their level of resources and responsibility for the climate crisis.
- Make a clear commitment at COP28 to provide climate finance to developing countries in need of assistance, primarily in the form of grants, not loans, to ensure that climate finance does not force them into fiscally unsustainable debt levels.

<sup>53</sup> UN Doc. FCCC/PA/CMA/2021/10/Add.1, para 18 (previously cited).

<sup>54</sup> It has been estimated that adaptation finance was roughly 20 billions USD in 2019. The United Nations Environment Programme estimated that that the annual costs of adaptation in developing countries could be between US\$160 billion and US\$340 billion by 2030. See UNEP, Adaptation Gap Report, 2022, <https://www.unep.org/resources/adaptation-gap-report-2022>

## LOSS AND DAMAGE

At COP27, governments established a Loss and Damage Fund and other “funding arrangements” for assisting developing countries that are particularly vulnerable to the adverse effects of climate change to respond to loss and damage.<sup>55</sup> This marked a very significant development, which fulfilled a 30-year-long demand from the most affected developing countries. The COP27 decision also created a “Transitional Committee” (TC), composed of 24 members, comprising 10 members from developed countries and 14 members from developing countries, to make recommendations on the operationalization of the fund and other new funding arrangements, which are due to be adopted at COP28.<sup>56</sup> The TC has held three out of four meetings planned ahead of COP28.<sup>57</sup> The report of the 2<sup>nd</sup> Glasgow Dialogue for Loss and Damage,<sup>58</sup> which took place during the Bonn Climate Change Conference in June 2023 and a Ministerial meeting on Loss and Damage held in September 2023 will also feed into the work of the TC and the decisions to be adopted at COP28.

The TC is expected to make recommendations on establishing institutional arrangements, modalities, structure, governance and terms of reference for the fund; defining the elements of the new funding arrangements; identifying and expanding sources of funding; and ensuring coordination and complementarity with existing funding arrangements. Divergent views between developing and developed countries have emerged during the meetings of the TC, and reiterated at the September Ministerial, including on whether it should be designated as an operating entity of the financial mechanism of the Convention (similar to the Green Climate Fund and the Global Environment Facility); whether it would receive guidance from both the COP (Conference of Parties to the UNFCCC) and CMA (Conference of Parties to the Paris Agreement) or just the CMA alone; whether it would be a stand-alone institution or housed in an existing institution; the principles of the fund; who is eligible to receive funding; the scope of the fund itself; and the functioning of its board.<sup>59</sup>

Regrettably, meetings of the TC have been marred by a lack of transparency and lack of openness to observers.<sup>60</sup>

It is crucial that the Fund is made operational rapidly, that developed countries contribute to it adequately, reflecting their greater historical responsibility for emissions,<sup>61</sup> and that other countries able to contribute, particularly high emitting G20 and high income fossil fuel producing states, also do so.<sup>62</sup> The Loss and Damage Fund should be rooted in human rights principles such as non-discrimination, participation, substantive equality, inclusion, and effective redress and remedy.<sup>63</sup> The objective of the Loss and Damage Fund should be to provide effective remedy to those most affected by the climate crisis, without discrimination, in such a way that it does not put additional pressure on public budgets of developing countries. Meaningful participation of affected communities is essential in the process of determining effective and meaningful remedy. Furthermore, the resources provided to the fund must be new, additional and based on human rights obligations to provide appropriate international assistance and cooperation to other states to enable them to meet their own human rights commitments.

At COP27, states also agreed on the operationalization of the Santiago Network for Loss and Damage (SNLD), a technical advisory body established in 2019 at COP25 to provide scientific and technical advice and support to countries being

<sup>55</sup> UNFCCC, “Funding arrangements for responding to loss and damage associated with the adverse effects of climate change, including a focus on addressing loss and damage”, Decisions 2/CP.27 UN Doc. FCCC/CP/2022/10/Add.1 and 2/CMA.4, UN Doc. FCCC/PA/CMA/2022/10/Add.1, paras. 1-2, [https://unfccc.int/sites/default/files/resource/cma2022\\_10a01\\_adv.pdf](https://unfccc.int/sites/default/files/resource/cma2022_10a01_adv.pdf), [https://unfccc.int/sites/default/files/resource/cp2022\\_10a01\\_adv.pdf](https://unfccc.int/sites/default/files/resource/cp2022_10a01_adv.pdf)

<sup>56</sup> UNFCCC, “Funding arrangements for responding to loss and damage associated with the adverse effects of climate change, including a focus on addressing loss and damage”, Decisions 2/CP.27 UN Doc. FCCC/CP/2022/10/Add.1 and 2/CMA.4, UN Doc. FCCC/PA/CMA/2022/10/Add.1, para 4, (previously cited)

<sup>57</sup> For more information about the composition and work of the Transitional Committee, see UNFCCC, *Transitional Committee*, <https://unfccc.int/topics/adaptation-and-resilience/groups-committees/transitional-committee>

<sup>58</sup> The two-year “Glasgow Dialogue” was established at COP26 to “discuss the arrangements” for funding activities related to loss and damage. See Decision 1/CMA.3, Glasgow Climate Pact, UN Doc. FCCC/PA/CMA/2021/10/Add.1, para 73, [https://unfccc.int/sites/default/files/resource/cma2021\\_10a01E.pdf](https://unfccc.int/sites/default/files/resource/cma2021_10a01E.pdf)

<sup>59</sup> Third World Network Info Service on Climate Change, *Diverging views over loss and damage fund at transitional committee*, 4 September 2023, <https://twn.my/title2/climate/info.service/2023/cc230902.htm>; Climate Change News, *Ministerial shows fault lines on climate loss and damage fund*, 25 September 2023, <https://climatechangenews.com/2023/09/25/ministerial-shows-fault-lines-on-climate-loss-and-damage-fund/>

<sup>60</sup> Julie-Anne Richards, *The Loss and Damage Collaboration*, “Hiding in the technical is the political: the third meeting of the Transitional Committee (TC3) inches closer to operationalising a loss and damage fund”, 7 September 2023, <https://www.lossanddamagecollaboration.org/stories-op/hiding-in-the-technical-is-the-political-the-third-meeting-of-the-transitional-committee-tc3-inches-closer-to-operationalising-a-loss-and-damage-fund>

<sup>61</sup> Paris Agreement, Article 9.1

<sup>62</sup> Paris Agreement, Article 9.2

<sup>63</sup> Amnesty International and Centre for International Environmental Law, *Human Rights as a Compass for Operationalising the Loss and Damage Fund*, February 2023, <https://www.amnesty.org/en/documents/ior40/5773/2022/en/>

affected by loss and damage. Since then, the UNFCCC Secretariat has been coordinating the process to select the hosting organization of the SNLD technical secretariat. States were unable to agree on the choice of a hosting organization at the Bonn Climate Meeting, which is now expected to be taken at SBI59 just ahead of COP28. This means that there will be a delay in the operationalization of the SNLD which is now not expected to commence work until early 2025 at the earliest.<sup>64</sup>

**Amnesty International calls on the Transitional Committee to:**

- Focus on urgently operationalizing the Loss and Damage Fund, in line with paragraph 5(a) of 2/CP.27 and 2/CMA.4, as the core element of its mandate, and promote the understanding that the Fund will be responsible for channelling the majority of the finance needed to address loss and damage.
- Develop recommendations to adopt a governing instrument for the Loss and Damage Fund<sup>65</sup> that includes the objectives and guiding principles of the Fund, its core operational modalities, including regarding public participation, access to information, effective safeguards, and accountability, and its governance and institutional arrangements. The Transitional Committee should elaborate on the other elements of paragraph 5 from the perspective of how they are relevant to and inform the realization of paragraph 5(a).
- Ensure its work is informed by human rights law and principles and invite human rights institutions to contribute effectively and provide input to ensure this.
  - In particular, design the objectives, guiding principles and operational modalities of the Fund in a manner consistent with human rights law, principles and approaches, including the obligation to provide effective remedies to victims of human rights violations and abuses, based on non-discrimination, substantive equality, inclusion intersectionality and gender-responsiveness.
- Facilitate active and meaningful observer participation and engagement on the operationalization of the fund by Indigenous Peoples, women, youth, racialised communities, persons with disabilities and other impacted groups in all UNFCCC meetings and processes, including meaningful consultation in developing recommendations.

**Ahead of COP28 in December 2023, Amnesty International calls on all UNFCCC parties to:**

- Operationalize the Loss and Damage Fund by COP28, designating it as an operating entity of the Financial Mechanism of the Convention, and in a manner consistent with human rights, including by:<sup>66</sup>
  - clarifying that the objective of the Fund is to ensure human rights-consistent and comprehensive action to effectively address the wide range of losses and damages (economic and non-economic losses and damages, sudden-onset and slow-onset impacts) faced by communities and groups in developing countries, particularly those marginalized and in vulnerable situations, including by providing effective redress and remedy;
  - adopting guiding principles for the Fund, which must include human rights principles and standards, including the obligation to provide effective remedies to victims of human rights violations, based on non-discrimination, substantive equality, inclusion, participation, intersectionality and gender-responsiveness;
  - adopting operational modalities of the Fund that promote community-led action, including through prioritized and fully accessible direct access to funding for front-line communities and marginalized

<sup>64</sup> Third World Network, "No consensus on host agency for Santiago Network secretariat", 20 June 2023, <https://www.twn.my/title2/climate/info.service/2023/cc230611.htm>

<sup>65</sup> A useful reference can be the Governing Instrument for the Green Climate Fund, <https://www.greenclimate.fund/sites/default/files/document/governing-instrument.pdf>

<sup>66</sup> For more detailed recommendations, see Amnesty International and Centre for International Environmental Law, *Human Rights as a Compass for Operationalising the Loss and Damage Fund*, February 2023, (previously cited)

groups, including women, children and youth, people living with disabilities, refugees and migrants and Indigenous Peoples, and effective and meaningful stakeholder participation, including through access to information and by conducting inclusive and human rights-consistent needs assessments. Effective safeguards against human rights violations and abuses must be adopted, as well as accountability and grievance mechanisms to redress violations occurred as the result of the Fund's activities;

- o establishing a participatory, inclusive and representative Board of all stakeholders, including by ensuring that groups affected by climate-related loss and damage are represented, and that its modalities allow for their active participation in the design and implementation of policies and activities;
  - o ensuring the Fund is rapidly resourced with new and additional, needs-based, human rights compliant, and gender-responsive finance. This includes ensuring funding for loss and damage is adequate; predictable; full-cost grants-based, as opposed to debt-inducing instruments such as loans, or incremental cost approaches which increase burdens on recipient countries; and primarily public, including through progressive taxes and levies for corporations and sectors based on the polluter pays principle that are designed to reduce inequalities rather than deepen them by placing the burden primarily on fossil fuel producers and wealthier individuals while protecting low-income groups from regressive impacts through social protection measures, grants and tax reforms and ensuring their access to affordable renewable energy.
- Urgently agree on the host organization for the Santiago Network for Loss and Damage by COP28 at the latest and ensure the SNLD is rapidly made operational and resourced to enable it to deliver technical assistance in a human rights-consistent manner, including ensuring its activities respond to the needs of those most affected and marginalized, promote substantive equality and non-discrimination, and address all types of loss and damage, including by supporting the elaboration of human rights-consistent, inclusive and participatory Loss and Damage Needs Assessments (LDNAs).

**Amnesty International further calls on developed states and other states able to do so, particularly high emitting G20 and high income fossil fuel producing states, to:**

- Commit adequate funding to address loss and damage in developing countries, particularly through the Loss and Damage Fund once it is operational, ensuring funding is new and additional, based on grants, primarily public, and are easily accessible by frontline communities and marginalized groups who are suffering or will suffer the most from climate-induced loss and damage.
- Commit adequate and predictable funding to the Santiago Network on Loss and Damage.

## CIVIL SOCIETY PARTICIPATION

The meaningful participation of a broad range of civil society actors and Indigenous peoples at UN climate conferences and the exercise of their rights to freedom of expression, association and peaceful assembly are crucial to ensure scrutiny of governmental action and to provide diverse inputs that can shape states' decisions. Freedom of expression includes the right to access information and the right to privacy. Free exercise of these rights is therefore essential to foster global efforts to address the climate crisis.

The UN Special Rapporteur on Freedom of Peaceful Assembly and of Association has made useful recommendations on civil society participation in multilateral institutions<sup>67</sup> and on the essential nature of these freedoms to advancing climate justice,<sup>68</sup> including the establishment of focal points on reprisals at both national level and in multilateral forums such as

<sup>67</sup> UN General Assembly, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on the exercise of the rights to freedom of peaceful assembly and of association in the context of multilateral institutions, 1 September 2014, UN Doc. A/69/365

<sup>68</sup> UN General Assembly, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on the exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice, 23 July 2021, UN Doc. A/76/222



the UNFCCC. He also recommended that multilateral organizations should not organize major events likely to draw protests in locations where they cannot receive assurances that local authorities have the political will and technical capacity to uphold international standards, and that multilateral institutions should require domestic authorities to produce a report detailing how demonstrations, protests and other public gatherings around international events were managed by police, and that such reports be made public. The Rapporteur also called for the repeal of laws and practices that illegitimately restrict the place where, and manner in which, protests may take place, including laws criminalizing protests at or near business work sites as well as blanket bans on particular forms of protest.

COP27 in Egypt, a country with an extremely poor human rights record, was marred by access issues, including high hotel prices and food costs within the UNFCCC space, as well as reports of harassment, and surveillance of some civil society participants. At least one participant registered to attend events in the Green Zone was denied access, despite having a valid visa.<sup>69</sup> Scores of Egyptians were arbitrarily detained and interrogated in the run up to COP27 by the Supreme State Security Prosecution on suspicion of supporting calls for peaceful protests during the conference,<sup>70</sup> leading to a climate of fear for participants attending.

A group of UN Special Procedures raised concerns with the UNFCCC Secretariat about these reports.<sup>71</sup> In a response to the Special Procedures,<sup>72</sup> the UNFCCC Executive Secretary stated that the Secretariat had taken “some time to adequately cover the pertinent issues, and to analyse and seek solutions with Parties and the UN system in efforts to address these concerns for future conferences”.

The letter said that the UNFCCC had consistently engaged with Egypt in the run up to COP27 on concerns about access to affordable accommodation and had worked with the UN Department of Safety and Security (UNDSS) to enable advocacy actions inside the Blue Zone. The letter also made reference to some standard provisions of the Host Country Agreement (HCA), including Article 9 which provides that “[s]ecurity within the Conference premises shall be the responsibility of the UNDSS” while “[s]ecurity outside the Conference premises shall be the responsibility of the Government”. It went on to say that “[t]he HCA also contains important safeguards for representatives of civil society in the COP and nationals, with Article 10(5) providing that “participants accredited and issued badges by the secretariat to attend and participate in [COP 27] and persons performing functions in connection with the Conference shall be immune from legal process with respect to words spoken or written and any act performed by them in connection with their participation in [COP 27].” In relation to visa issues, the letter said that those of which the UNFCCC secretariat was made aware were brought to the attention of the Egyptian government for action but did not provide any information as to the outcome of those issues.<sup>73</sup>

While this information is welcome, it is imperative that there should be full transparency around HCAs, in order for participants to be able to have confidence that their rights are protected in UN spaces and that there is an adequate complaints process which enables them to be able to seek redress, including guarantees of non-repetition. As such, HCAs should routinely be made public, in line with the UNFCCC SBI conclusions of June 2023 that noted that for transparency the host country agreement for sessions of COP should be made publicly available consistently in line with the United Nations Charter.<sup>74</sup>

The same conclusions encouraged all hosts of UNFCCC meetings to reaffirm their commitment to upholding the purposes and principles of the UN Charter and international human rights law before, during and after UNFCCC sessions and mandated events, and to ensure that participants can exercise those human rights without fear of intimidation and

<sup>69</sup> Amnesty International, Egypt: Prominent Italian human rights activist banned from entering Egypt to participate in COP 27, 10 November 2022 Index: MDE 12/6194/2022, <https://www.amnesty.org/en/documents/mde12/6194/2022/en/>

<sup>70</sup> Amnesty International, “Egypt: Arrests over calls for protests during COP27 expose reality of human rights crisis”, 6 November 2022, <https://www.amnesty.org/en/latest/news/2022/11/egypt-arrests-over-calls-for-protests-during-cop27-expose-reality-of-human-rights-crisis/>

<sup>71</sup> Letter from the mandates of the Special Rapporteur on the promotion and protection of human rights in the context of climate change; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism to the Executive Secretary of the UNFCCC on undue restrictions on civil society participation in the 27th Conference of the Parties to the UN Framework Convention on Climate Change (COP27), 30 September 2022, Ref.: AL OTH 96/2022, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27597>

<sup>72</sup> Letter from Simon Stiell, Executive Secretary of the UNFCCC in response to AL OTH 96/2022 of 30 September 2022, 10 February 2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=37360>

<sup>73</sup> Letter from Simon Stiell, Executive Secretary of the UNFCCC in response to AL OTH 96/2022 of 30 September 2022, 10 February 2023, Section IV, (previously cited)

<sup>74</sup> UNFCCC Subsidiary Body for Implementation, 58<sup>th</sup> session, Arrangements for intergovernmental meetings: Draft conclusions proposed by the Chair, 15 June 2023, UN Doc. FCCC/SBI/2023/L.10, para. 18

repercussions. Nevertheless, despite assurances from the UAE that it will make “space available for climate activists to assemble peacefully and make their voices heard”,<sup>75</sup> there are fears that participants could face similar – or even more severe – restrictions on their rights at COP28, which will take place in the extremely repressive atmosphere of the United Arab Emirates,<sup>76</sup> a state which has not ratified core human rights treaties such as the International Covenant on Civil and Political Rights and the International Covenant on Economic and Social Rights.<sup>77</sup> Regrettably, the UAE rejected numerous recommendations from other states to ratify these two treaties in its last Universal Periodic Review.<sup>78</sup> International human rights organizations such as Amnesty International are not able to enter the country to conduct research or advocacy and no UN Special Procedure has been able to conduct an in-country visit since 2014.<sup>79</sup> Migrant workers face poorer working conditions than Emirati citizens, the rights of women and girls<sup>80</sup> and LGBTQI+ individuals<sup>81</sup> are curtailed and it is illegal to criticize the government, under a raft of repressive laws.<sup>82</sup> As a result, there is effectively no civic space, including online,<sup>83</sup> within which Emiratis can operate to hold their government to account.

Scores of activists and human rights defenders are arbitrarily detained in the UAE, including some 60 of the group known as the “UAE 94”, with most being held past the expiry of unjust sentences,<sup>84</sup> while others live in self-imposed exile. Some non-Emiratis have also been detained for criticism of their own governments made in the UAE or prior to visiting the UAE.<sup>85</sup> There is a pattern of torture and other ill-treatment against human rights defenders<sup>86</sup> and of enforced disappearances.<sup>87</sup>

In the lead-up to COP28, the UAE has shown its continued commitment to repression by continuing to pursue and violate the rights of the UAE 94 mass trial victims. In May, the Emirati government demanded and secured from Jordan the extrajudicial deportation of UAE 94 convict Khalaf al-Rumaithi, who had escaped abroad when the dragnet began in 2012.<sup>88</sup> In June 2023, families of five UAE 94 prisoners received calls from their loved ones asking the families to hire lawyers for these prisoners. The prisoners were not allowed to say anything further in these calls. These facts suggest that the Emirati government is preparing new prosecutions against the prisoners. Since these calls in early June, authorities have cut off all communication – calls and visits – between at least 11 UAE 94 prisoners and their families.

There are also fears that participants in COP28 could be subjected to unlawful electronic surveillance, including through the use of spyware. Human rights defenders in the UAE have long been victimized by spyware tools from cyber-surveillance companies such as NSO Group and Hacking Team, including Ahmed Mansoor,<sup>89</sup> who was targeted with

<sup>75</sup> Amnesty International, “Pledge to allow ‘peaceful assembly’ at COP28 highlights the UAE’s lack of freedom”, 3 August 2023,

<https://www.amnesty.org/en/latest/news/2023/08/global-pledge-to-allow-peaceful-assembly-at-cop28-highlights-the-uaes-lack-of-freedoms/>

<sup>76</sup> For more information on Amnesty International’s human rights concerns in the UAE, see *The Human Rights Situation in the UAE ahead of COP28*, 1 June 2023, Index: MDE 25/6755/2023, <https://www.amnesty.org/en/documents/mde25/6755/2023/en>

<sup>77</sup> The UAE has ratified other core human rights treaties. See OHCHR, Ratification Status for United Arab Emirates, [tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=184&Lang=EN](http://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=184&Lang=EN), last accessed 7 October 2023

<sup>78</sup> UN Human Rights Council 54th Session, Report of the Working Group on the Universal Periodic Review: United Arab Emirates, UN Doc. A/HRC/54/15, 29 June 2023 and its Addendum, UN Doc. A/HRC/54/15/Add.1

<sup>79</sup> Amnesty International, *Dissidents imprisoned and migrants racially targeted: Submission to the 43rd session of the Universal Periodic Review*, 25 October 2022, paragraph 13. For list of Special Procedure pending visit requests, see <https://spinternet.ohchr.org/ViewCountryVisits.aspx?visitType=all&lang=en>

<sup>80</sup> UN Committee on the Elimination of Discrimination against Women, *Concluding observations on the fourth periodic report of the United Arab Emirates*, 12 July 2022, UN Doc. CEDAW/C/ARE/CO/4

<sup>81</sup> Amnesty International, *Dissidents imprisoned and migrants racially targeted: Submission to the 43rd session of the Universal Periodic Review*, 25 October 2022, paras 11-12, Index: MDE 25/5983/2022, <https://www.amnesty.org/en/documents/mde25/5983/2022/en/>; Human Rights Watch, *Stop Policing Gender Expression: Arrest of Singaporeans Sheds Light on Misuse of Law*, 7 September 2017, <https://www.hrw.org/news/2017/09/07/uae-stop-policing-gender-expression>

<sup>82</sup> These laws include Federal Law No.15 of 1980 Concerning Press and Publications, Articles 70, 89; the Code of Crimes and Punishments (Federal Law No. 31 of 2021) Articles 183, 184; and Federal Decree Law No. 34 of 2021 on Combatting Rumours and Cybercrimes, Article 1.

<sup>83</sup> The Law on Combatting Rumours and Cybercrimes (Federal Decree Law No. 34 of 2021) severely restricts online activism and dissent. For example, Article 26 imposes up to three years’ imprisonment on anyone who uses the internet to encourage a demonstration without prior permission from the government. Law available at: <https://bit.ly/3l6oBPJ> (in Arabic)

<sup>84</sup> *Joint statement: UAE human rights record ahead of COP28*, 1 May 2023, Index: MDE 25/6725/2023, <https://www.amnesty.org/en/documents/mde25/6725/2023/en/>

<sup>85</sup> Human Rights Watch, *UAE: Jordanian Convicted for Criticizing Jordan on Facebook*, 11 February 2021, <https://www.hrw.org/news/2021/02/11/uae-jordanian-convicted-criticizing-jordan-facebook>; Amnesty International, “UAE: Don’t deport Egyptian-American dissident to Egypt where he will face torture”, 8 December 2022, <https://www.amnesty.org/en/latest/news/2022/12/uae-dont-deport-egyptian-american-dissident-to-egypt-where-he-will-face-torture/>

<sup>86</sup> UN Committee against Torture, *Concluding observations on the initial report of the United Arab Emirates*, 22 August 2022, UN Doc. CAT/C/ARE/CO/1

<sup>87</sup> UN Working Group on Enforced or Involuntary Disappearances, *General Allegation: 128th Session (19 to 28 September 2022): United Arab Emirates*, <https://www.ohchr.org/sites/default/files/documents/issues/disappearances/allegations/general-allegation-uae-128.pdf>

<sup>88</sup> Amnesty International, “UAE: Authorities must ensure man forcibly deported is safe, afforded fair trial rights”, 18 May 2023, <https://www.amnesty.org/en/latest/news/2023/05/uae-authorities-must-ensure-man-forcibly-deported-is-safe-afforded-fair-trial-rights/>

<sup>89</sup> Amnesty International and the Gulf Centre for Human Rights, *Joint public statement: United Arab Emirates: Human rights defender Ahmed Mansoor remains held in solitary confinement five and half years on*, 30 September 2022, Index: MDE 25/6071/2022, <https://www.amnesty.org/en/documents/mde25/6071/2022/en/>

spyware from both companies,<sup>90</sup> and subsequently jailed by UAE authorities in response to his human rights work. In March 2023, Amnesty International's Security Lab exposed a sophisticated hacking campaign by a mercenary spyware company targeting Google's Android operating system. Google's Threat Analysis Group then found that Android users in the UAE were targeted with one-time attack links sent over SMS which, if clicked, would install the spyware on the target's phone.<sup>91</sup>

These concerns have been exacerbated by a leaked recording that the UAE has defined a narrow list of talking points for its officials around climate issues and is aiming to avoid discussion of human rights abuses in the country,<sup>92</sup> as well as the UAE's decision not to support a recommendation in its recent UPR to "[g]uarantee unreserved freedom of expression, assembly and association in all spaces, for all people and ensure that activists, lawyers, journalists and academics can operate without fear of reprisals, including by repealing or reforming the law on combating rumours and cybercrimes, and articles of the penal code, and allowing broad civil society participation in COP 28."<sup>93</sup>

#### **Ahead of COP28 in December 2023, Amnesty International calls on Egypt, as the outgoing Presidency of COP27 to:**

- Demonstrate commitment to fulfilling its human rights obligations by:
  - immediately and unconditionally releasing all those arbitrarily detained solely for the peaceful exercise of their human rights, including Alaa Abd El Fattah and Mohamed Baker,<sup>94</sup> or for reasons of discrimination on any grounds including religion, gender identity and sexual orientation;
  - taking measures to ensure that prisoners are held in conditions that meet international standards and ensure that all those held have access to timely and adequate medical care, and their families and lawyers.
  - ending reprisals against human rights defenders and civil society workers including by:
    - closing the criminal investigations into the legitimate work of human rights NGOs, known as Case 173/2011;<sup>95</sup>
    - lifting all arbitrary travel bans and asset freezes against civil society workers and human rights defenders;
    - guaranteeing a safe and enabling environment for human rights organizations including by amending Law No. 149/2019 on NGOs to bring it in line with international human rights law and standards on the right to freedom of association.
  - protecting the right to freedom of peaceful assembly including by ensuring that security forces fully comply with the UN Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
  - repealing or amending laws that criminalize the exercise of human rights and erode fair trial guarantees.<sup>96</sup>

<sup>90</sup> Bill Marczak and John Scott-Railton, The Citizen Lab, The Million Dollar Dissident: NSO Group's iPhone Zero-Days used against a UAE Human Rights Defender, 24 August 2016, <https://citizenlab.ca/2016/08/million-dollar-dissident-iphone-zero-day-nso-group-uae/> and Ryan Gallagher, Slate, *Phony WikiLeaks Tricks Activist Into Downloading Government-Grade Spyware*, 10 October 2012, <https://slate.com/technology/2012/10/ahmed-mansoor-uae-activist-allegedly-tricked-by-phony-wikileaks-into-downloading-hacking-team-spyware.html>

<sup>91</sup> "Amnesty International uncovers new hacking campaign linked to mercenary spyware company", 29 March 2023, <https://www.amnesty.org/en/latest/news/2023/03/new-android-hacking-campaign-linked-to-mercenary-spyware-company/>

<sup>92</sup> Centre for Climate Reporting, *Leaked audio reveals UAE plans to "minimise" criticism of human rights abuses ahead of major UN climate summit*, 1 September 2023, <https://climate-reporting.org/uae-human-rights-cop28/>

<sup>93</sup> UN Human Rights Council 54th Session, Report of the Working Group on the Universal Periodic Review: United Arab Emirates, Recommendation 35.150 (Costa Rica), UN Doc. A/HRC/54/15, 29 June 2023 and its Addendum, UN Doc. A/HRC/54/15/Add.1

<sup>94</sup> Amnesty International, Egypt: Further information: Human rights defender tortured in detention: Alaa Abdel Fattah, Mohamed Baker, Neama Hisham, 17 April 2023, Index: MDE 12/6692/2023, <https://www.amnesty.org/en/documents/mde12/6692/2023/en/>

<sup>95</sup> At least 15 NGO workers in Egypt remain under investigation in a case that has become known as Case 173/11, or the "foreign funding" case, part of a criminal investigation by investigative judges into the work and the sources of foreign funding of local NGOs. They are banned from travel and had their assets frozen. For more information see Amnesty International, "Egypt: Independent civil society organizations at risk of closure after NGO deadline passes", 12 April 2023, <https://www.amnesty.org/en/latest/news/2023/04/egypt-independent-civil-society-organizations-at-risk-of-closure-after-ngo-deadline-passes/>

<sup>96</sup> Such repressive laws include Law No.58/2015 on counterterrorism, Law No.8/2015 on the Organization of Lists of Terrorist Entities and Terrorists, Law No.175/2018 on cybercrimes, Law No.180/2018 on Regulating the Press and Media; Law No.107/2013 on protests; Law No.10/1914 on assembly, Law No.150/1950 on Criminal Procedures

**Ahead of COP28 in December 2023, Amnesty International calls on the United Arab Emirates, as the incoming Presidency of COP28 to:**

- Immediately and unconditionally release all those arbitrarily detained solely for the peaceful exercise of their human rights or for reasons of discrimination.
- Amend or repeal unduly restrictive laws, including the many articles of the Code of Crimes and Punishments criminalizing and curtailing the rights to freedom of expression, association, and assembly; the 1980 Law on Printing and Publishing; Article 24 of the 2012 Law on Information Technology Crimes; the 2021 Law on Combatting Rumours and Cybercrimes; and laws criminalizing gender identity, gender expression, and sexual orientation, to ensure that freedom of expression, association and peaceful assembly are guaranteed for all, whether Emirati or from other countries.
- Reverse its position and implement the recommendations by many states in the UAE's last UPR to ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.
- Ensure the timely provision of visas to all participants, and particularly those from the Global South, requiring visas in advance to enter the UAE.
- Facilitate the organization of parallel events by CSOs and Indigenous peoples ahead of and during COP28, both inside and outside the COP28 venue.
- Ensure all persons can freely express themselves and peacefully demonstrate ahead of, during, and after COP28 inside and outside the COP28 venue.

**Amnesty International further calls on the UNFCCC Secretariat to:**

- Make public the findings of any investigations into reported instances of surveillance and harassment of climate and human rights activists inside the COP27 or any future COPs.
- Liaise with the UN police to carry out a thorough and comprehensive human rights risk assessment for observers, including in relation to surveillance, arbitrary arrest and detention, the right to freedom of expression, including expression of sexual orientation and gender identity, and the right to peaceful assembly and put in place adequate measures to minimize risks of reprisals and acts of intimidation and ensure a safe environment for all observers, particularly Indigenous peoples, environmental and human rights defenders and climate activists, and communicate these to participating observers.
- Develop clear human rights principles and criteria for host countries which should be taken into account in the selection of COP presidencies and in the drafting of host country agreements, including a mandatory check list for the policing of assemblies to ensure the right to freedom of peaceful assembly will be respected and a requirement for a public report by a host country on how assemblies were policed. States that cannot provide adequate assurances that they have the political will and technical capacity to uphold international human rights law and standards should not be selected as host countries.
- To increase transparency and accountability and to enable participants to make an informed decision about whether to participate in a COP, publish the agreement with host countries, including that for COP28, in line with the conclusions of the SBI in its 58<sup>th</sup> session.
- Combat reprisals and acts of intimidation against Indigenous people or civil society actors for their engagement with the UNFCCC by:
  - publicly denouncing all cases of reprisals;
  - identifying a focal point for reprisals, with a mandate to collect information, to share it with the UN Assistant Secretary-General for Human Rights and facilitate redress.

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and Law No.58/1937 known as the Penal Code which includes provisions criminalizing consensual sex between adults in private and restricting the right to freedom of thought, conscience and religion.

- The focal point should make their contact details publicly available and inform all participants in UNFCCC meetings of the procedure to contact them.
- Facilitate adequate observer participation in all UNFCCC meetings by:
  - communicating in a clear and timely way about the meeting and opportunities for observer participation;
  - supporting observers from developing countries to ensure balanced participation;
  - ensuring adequate space is available to enable observers to be in the meeting room;
  - putting in place full, effective, and meaningful remote participation modalities.

**Amnesty International further calls on all parties to the UNFCCC to:**

- Affirm publicly ahead of COP28 the expectation of your government that public participation and civic space be fully protected without discrimination from interference in the context of all COPs, including COP28.
- Urge Egypt to abide by its international human rights obligations by releasing all those arbitrarily detained, including Alaa Abd El Fattah and Mohamed Baker, ensuring prison conditions meet international standards, repealing repressive laws that restrict the rights to freedom of expression, association and peaceful assembly and ensuring that security forces comply with international standards when policing demonstrations.
- Insist on meaningful improvements in the human rights situation in the UAE ahead of COP28, particularly the release of prisoners of conscience and the repeal of repressive laws limiting freedom of expression, association and of peaceful assembly, and those discriminating against women and girls and LGBTQI+ individuals.
- Make support for civil society's participation in global climate decision-making a foreign policy priority, including by increasing political and diplomatic efforts to protect environmental and human rights defenders as well as climate activists.
- Publicly denounce all instances of reprisals and acts of intimidation against participants in UNFCCC meetings.