

Akiko Gono

President
Présidente
Präsidentin
Presidenta

Luc Triangle

General Secretary
Secrétaire général
Generalsekretär
Secretario General

Inter-American Court of Human Rights

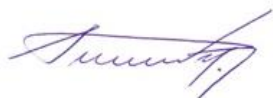
Avenida 10
Calles 45 y 47 Los Yoses
San Pedro
San José
Costa Rica
tramite@corteidh.or.cr

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Amicus Brief submitted to the Inter-American Court of Human Rights by the International Trade Union Confederation (ITUC) and Trade Union Confederation of the Americas (TUCA)

The International Trade Union Confederation (ITUC) and the Trade Union Confederation of the Americas (TUCA) hereby submit the written comments in the matter of the request for an Advisory Opinion on the Climate Emergency and Human Rights from the Republic of Colombia and the Republic of Chile. We hope that our comments are helpful in the Court's deliberations.

Fraternalmente,



Rafael Freire
Secretario General
CSA (TUCA)

Yours sincerely,



Luc Triangle
General Secretary
ITUC

INTER-AMERICAN COURT OF HUMAN RIGHTS

Request for an Advisory Opinion on the Climate Emergency and Human Rights submitted by the Republic of Colombia and the Republic of Chile

Amicus Brief Submitted to the Inter-American Court of Human Rights by the International Trade Union Confederation

Submitting organizations

The International Trade Union Confederation (ITUC) globally represents 191 million workers in 167 countries and territories and has 337 national affiliates. The Trade Union Confederation of the Americas (TUCA) is the ITUC's regional organization which represents 55 million workers in 21 countries in the inter-American region. The ITUC's primary mission is the promotion and defence of workers' rights and interests through international cooperation between trade unions, global campaigning, and advocacy within the major global institutions. Its main areas of activity include the following: human and labour rights; economic and social policy; equality and non-discrimination; and international solidarity. The ITUC coordinates trade unions' engagement with the UNFCCC process. The ITUC enjoys General Consultation Status with the UN ECOSOC.

Background

On 9 January 2023, the Governments of Chile and Colombia submitted a joint advisory opinion request to be presented before the Inter-American Court of Human Rights (IACtHR), aiming to **clarify the scope of the state obligations** for responding to the climate emergency within the framework of international human rights law.

The requesting States aim to specify the meaning of these obligations on the following issues:

- A. State obligations derived from the duties of prevention and the guarantee of human rights in relation to the climate emergency
- B. State obligations to preserve the right to life and survival in relation to the climate emergency in light of science and human rights
- C. State obligations in relation to the rights of children and the future generations in light of the climate emergency
- D. State obligations arising from consultation procedures and judicial proceedings owing to the climate emergency
- E. Convention-based obligations of prevention and the protection of territorial and environmental defenders, as well as women, indigenous peoples, and Afro-descendant communities in the context of the climate emergency
- F. Common but differentiated responsibilities.

I. The Effect of Climate Change and the Climate Change Response on Labour Rights

The adverse socio-economic impacts of climate change and of the climate change response are profound and growing. Approximately **half of the world's gross domestic product (GDP)** is dependent to a greater or lesser extent on nature and the sustainable management of

ecosystem services.¹ The economic sectors most affected by climate change include **agriculture, forestry, energy, transport, manufacturing, and building and construction**.² Together, they employ **more than half of the global workforce**. Agriculture alone provides jobs to 1.3 billion people – close to 40% of global employment – **most of them working poor**.³

People living in poverty, including **women and indigenous peoples**, are often disproportionately dependent on natural resources for their livelihoods and food security, and by implication are those most vulnerable to climate and environmental change.⁴

This is happening at a time when 4.1 billion people – 53 % of the global population – are not covered by social protection.⁵

A. Adverse socio-economic impacts of climate change

According to the ILO the adverse socio-economic impacts of climate change include unemployment or underemployment, loss of working hours, loss of income sources and livelihoods, food insecurity, malnutrition, compromised occupational safety and health, loss of homelands.

In many instances, jobs characterized **by informality, precarity and lack of protection** are further undermined by climate impacts. Risks tend to be higher for indigenous and tribal peoples, residents in rural and coastal areas, women and youth.⁶ In general, marginalized and vulnerable groups of workers who have less resilience to climate impacts are being disproportionately affected.

Social risks include **unemployment or underemployment**, as workers may partially or entirely lose their income, especially if their livelihoods depend on natural resources depleted or affected by climate change. Extreme events may lead to the loss of life, including those of households' breadwinners, and the loss of people's livelihoods or assets. ILO research shows that between 2000 and 2015, an estimated **23 million working-life years were lost annually** as a result of different environment-related disasters caused or exacerbated by human activity.⁷

The risk of work injuries as well as other physical impacts on health and well-being may increase, including premature death or injuries due to extreme events but also due to slow-onset changes. **Disabilities** may be caused or exacerbated by climate change. Health impacts

¹ ILO, World Employment and Social Outlook 2018: Greening with Jobs, 2018, 2.

² ILO (2017) Addressing the impact of climate change on labour, Governing Body document, GB.329/POL/3, para 4, available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_543701.pdf

³ Ibidem.

⁴ ILO, World Employment and Social Outlook 2018: Greening with Jobs, 2018, 2.

⁵ ILO, World Social Protection Report 2020–22: Social Protection at the Crossroads – In Pursuit of a Better Future, 45.

⁶ ILO (2017) Addressing the impact of climate change on labour, Governing Body document, GB.329/POL/3, para 3, available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_543701.pdf

⁷ ILO, Greening with Jobs, 2018, 23.

both in terms of mortality and morbidity also include increased respiratory and cardiovascular disease, mental health issues, poor reproductive and maternal health and food-, water-, vector-borne and other infectious diseases due to higher temperatures.⁸

The disruption of food systems may further affect food security and nutrition, and climate change impacts may lead **to forced displacement and migration** from affected areas within or across countries – highlighting how climate change can both cause and add to the risks people already face over the course of their lives and throughout transitions. In 2022, for example, disasters triggered a record 32,6 mln internal displacements of which 98% were caused by weather-related hazards such as floods, storms, wildfires and droughts.⁹ Nearly 60% of refugees and internally displaced people now live in countries that are among the most vulnerable to climate change.¹⁰ Over the coming decades, climate change is expected to increase the incidence of acute disasters, livelihood loss and social disorder, all of which will increase displacement and migration.¹¹

B. Adverse socio-economic impacts of climate change response

Climate change mitigation and adaptation has a profound effect on employment and on workers' rights.

According to the ILO, the impacts on employment can be considered from four perspectives: (i) new jobs will be created; (ii) some jobs might be substituted by others; (iii) certain jobs will be lost or eliminated without being substituted; and (iv) most jobs will be transformed.¹² Some industries will decline in the transition to sustainable production and consumption, including job losses in the **oil and gas industry**. Similar shifts are expected within and across a range of **extractives, manufacturing and services** sectors as a result of countries' commitments to tackle climate and environmental change. New jobs should be created in the broader renewable energy sector and in other sectors, related to green and sustainable production and consumption eg. circular economy.

However, both job creation and job losses are **unevenly distributed** across the world and are often concentrated in specific regions and communities. New employment opportunities are not always created for the same workers and in the same locations where jobs are lost, and not at the same time, creating both geographic and temporal disconnections.¹³ Net job

⁸ ILO (2023) Social protection for a just transition, Policy brief, available at: https://www.ilo.org/global/topics/green-jobs/publications/just-transition-pb/WCMS_867426/lang--en/index.htm

⁹ IDMC (2023) Global Report on Internal Displacement, available at: <https://www.internal-displacement.org/global-report/grid2023>

¹⁰ <https://www.unhcr.org/news/stories/climate-change-and-displacement-myths-and-facts>

¹¹ ILO (2017) Addressing the impact of climate change on labour, Governing Body document, GB.329/POL/3 available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_543701.pdf

¹² ILO (2023) Achieving a just transition towards environmentally sustainable economies and societies for all, ILC, Report VI, para 21, available at: https://www.ilo.org/ilc/ILCSessions/111/reports/reports-to-the-conference/WCMS_876568/lang--ja/index.htm

¹³ ILO (2023) ILC, Report VI, para 22.

gains may also mask the significant adverse effects in some sectors and areas and on particular population groups at different points in time.¹⁴

Illustrative case:

According to the report published by the Solidarity Center in 2020 in Bangladesh, in communities like Khulna, increased salinity, siltation, flooding, and worsening cyclones have devastated the agriculture sector.¹⁵ In 2012, as much as 80% of Khulna was affected by high levels of salinity. The loss of agricultural livelihoods due to environment-related factors has pushed workers into other precarious sectors or pushed them to migrate internally or across borders. According to the report “In many cases, the new economic activities chosen by local and migrant farmers were not profitable enough for them. Most respondents explained that they live hand to mouth. None of the respondents were part of any well-designed adaptation strategy undertaken by the government or another agency. The study also found that workers are poorly able to cope with the changes in their livelihood.”¹⁶

The major area of concern is the **quality of new jobs** created as part of transition to low carbon, socially and economically sustainable economy. The up-to-now, environmentally unsustainable, fossil-fuel based economy has been rigged with workers’ rights violations. Unless remedial action is taken, it is possible that the transition will perpetuate decent work deficits instead of addressing them, and will further increase inequalities and instability.

Illustrative case:

*Between 2010 and 2021, the Business and Human Rights Center received more than 200 allegations of human rights violations linked to the renewable energy sector. They warned that solar, wind, and hydroelectric companies were taking over land, restricting access to water, violating Indigenous people’s rights to prior and informed consent, **and denying decent wages for workers.**¹⁷*

The world of work is currently seeing rapid decline in workers protection/employment security and the growth of precarious and non-standard forms of work. According to the ILO, a significant **47% of workers worldwide are currently not in wage employment**, which is most closely bound with labour protection. As many as 33% of workers are own-account workers, employed under civil contracts, which in many countries are not covered by regulation related to minimum wage, working time, OSH and maternity protection, and are excluded by law from the right to form and join trade unions and to bargain collectively.¹⁸ **Informality**, in addition to precarious work in the formal economy, continues to pose a major challenge to labour

¹⁴ ILO (2023) Social protection for a just transition, Policy brief, available at: https://www.ilo.org/global/topics/green-jobs/publications/just-transition-pb/WCMS_867426/lang-en/index.htm

¹⁵ Rashid, Syeda Rozana, *The Intersection of Climate Change, Migration and Changing Economy* <https://www.solidaritycenter.org/wp-content/uploads/2020/07/Bangladesh.Report.The-Intersection-of-Climate-Change-Migration-and-Changing-Economy.-June-2020.pdf>

¹⁶ Ibidem, p. 15.

¹⁷ <https://www.business-humanrights.org/en/from-us/briefings/renewable-energy-human-rights-benchmark-2/>

¹⁸ ILO (2023) Leaving no one behind: Building inclusive labour protection in an evolving world of work, ILC, Report V(Rev.), available at: https://www.ilo.org/ilc/ILCSessions/111/reports/reports-to-the-conference/WCMS_875127/lang-en/index.htm

protection, taking into account that 62% of the global workforce is estimated to work in the informal economy and the data for 2016-2019 show no trend towards formalisation of employees, while they do show a trend towards informalisation for non-employees.¹⁹ Of note, the impact of the Covid-19 pandemic on the informal economy has led to further informal job growth. Informal workers were left particularly vulnerable to shocks during the pandemic.

Over the past years, there has been an overall rise in non-standard forms of employment globally, including increases in zero-hour contracts, temporary agency work, dependent self-employment and disguised employment relationships. These trends have proliferated in the wake of digitalisation and technological change (especially in the case of platform work), regulatory arbitrage, as well as, in some cases, employment policy changes that have made it easier and more attractive for firms to hire workers on precarious contracts. Overall, the rise in precarious forms of work is also leading to more polarised labour markets, increasingly contributing to widening wage inequality.²⁰

Illustrative case:

*Cobalt is used for the large batteries that store the wind energy. Research conducted by RAID and CAJJ in the cobalt mining sector in the Democratic Republic of Congo (DRC) exposed a **widespread use of the subcontracting model** reportedly to reduce costs, limit liability for workers' safety and prevent workers from joining unions.²¹ Rather than employing workers directly, the mining companies turn to subcontracting firms to provide large parts of their workforce, from miners to cleaners, to drivers, to security personnel and others. According to data, more than half of the workforce was being supplied by subcontractors and this practice was **used for the core business operations**, and on a **long-term basis**.²²*

New forms of work have been on the rise. There has been a fivefold increase in the number of digital **labour platforms** in the past decade.²³ Workers on digital labour platforms often struggle to earn a decent income, creating a danger of working poverty. In many cases, the employment relationship is not recognized and is hidden under other contractual forms to avoid the application of labor standards and the corresponding tax burdens. These workers classified as contractors lack access to labour protection and social protection, which is particularly concerning during crises and responses to crises. They are frequently unable to engage in the collective bargaining that would allow them to have these issues addressed.

Much more needs to be done to bring about long-term structural changes in different sectors of the global economy which reduce emissions based on a pro-employment macroeconomic framework and contributing to the ILO's Decent Work Agenda – full and productive employment, rights at work, social protection and the promotion of social dialogue. Such action is particularly important given that the benefits and costs of green policies may be

¹⁹ Ibidem.

²⁰ Ibidem.

²¹ RAID and CAJJ (2021) The Road to Ruin? Electric vehicles and workers' rights abuses at DR Congo's industrial cobalt mines, available at: https://raid-uk.org/wp-content/uploads/2023/03/report_road_to_ruin_evs_cobalt_workers_nov_2021.pdf

²² Ibidem.

²³ https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/--publ/documents/publication/wcms_771749.pdf

dispersed and that some groups of workers are particularly at risk of being disproportionately affected, including those who are self-employed or workers in temporary or part-time employment, many of them women, as well as those working in the informal economy, including migrant workers.²⁴ Just transition of the workforce and the creation of decent work and quality jobs are crucial to ensure an effective and inclusive transition to low greenhouse gas emission and climate resilient development.

A. Climate emergency threatens a broad range of labour and human rights

B. Protected rights impaired by the climate emergency

1. The climate emergency impairs the right to work

The right to work is enshrined in Article XIV of the American Declaration of the Rights and Duties of Man (the ADRDM), and in Article 6 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. (Protocol of San Salvador).

The Inter-American Commission has interpreted the content of the right to work under the ADRDM and the Protocol of San Salvador to be **highly consistent with the concept of decent work developed by the International Labor Organization (ILO)** and with the **interpretation** provided by the UN Committee on Economic, Social and Cultural Rights, in its General Comment 18 on the Right to work contained in **Article 6 ICESCR**.²⁵

One of the pillars of the principle of decent work for all is promotion of employment, which is linked to obligation to declare and pursue, as a major goal, an active policy designed “to promote full, productive and freely chosen employment” contained in the ILO Employment Policy Convention No. 122.²⁶ Convention No. 122 is supplemented by the ILO Employment Promotion and Protection Against Unemployment Convention No. 168 which obligates states to “ensure that its system of protection against unemployment (...) contribute to the promotion of full, productive and freely chosen employment”.²⁷

The ILO’s concept of “decent work” as well as the contents of the ILO Conventions Nos. 122 and 168 are reflected in the jurisprudence of the CESCR concerning the right to work contained in Article 6 ICESCR. The CESCR has underlined that the right “of every individual to freely chosen or accepted work without distinction of any kind” concerns the right to *decent work*, that is work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration and income allowing workers to support themselves and their families, as well as the right to social protection.²⁸ The CESCR has also recognized that “*right to work contributes at the same time to the survival*

²⁴ ILO (2023) Social protection for a just transition, Policy brief, available at: https://www.ilo.org/global/topics/green-jobs/publications/just-transition-pb/WCMS_867426/lang-en/index.htm

²⁵ IACHR (2020) Inter-American Commission on Human Rights, Compendium on Labor and Trade Union Rights. Inter-American Standards, para 34.

²⁶ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312267

²⁷ https://www.ilo.org/dyn/normlex/en/f?p=1000:12100::NO:12100:P12100_INSTRUMENT_ID:312313

²⁸ CESCR (2005) UN Committee on Economic, Social and Cultural Rights General Comment No.18. The right to work. November 24, 2005, para. 7.

of the individual and to that of his/her family, and insofar as work is freely chosen or accepted, to his/her development and recognition within the community”,²⁹ reflecting the wording of the preamble to the ILO Convention 168.³⁰ Further, the CESCR has also explained the link between Article 6 ICESCR and ILO Convention No. 122 by saying: “The right to work, as guaranteed in the ICESCR, affirms the obligation of States parties to assure individuals their right to freely chosen or accepted work, including the right not to be deprived of work unfairly. This definition underlines the fact that respect for the individual and his dignity is expressed through the freedom of the individual regarding the choice to work, while emphasizing the importance of work for personal development as well as for social and economic inclusion. International Labour Organization Convention No. 122 concerning Employment Policy (1964) speaks of “full, productive and freely chosen employment.”

In the context of the transition to a carbon-resilient economy, when workers lose their jobs without being provided new jobs, consistent with the decent work concept, their right to work may be affected.

Illustrative case:

According to information from Business Human Rights Centre allegations of various human rights violations were reported regarding the wind farm developments in Mexico. Not only have companies reportedly illegally constructed on indigenous lands, they failed to conduct meaningful consultation or they had manipulated consent. Human rights defenders and community leaders who defended their lands from such developments were met with violence, intimidation and threats.³¹ Profits from the wind farms were not equitably distributed.³² Peace Brigades International reported that although employment opportunities may have been created for the local population during construction of the wind farms, the types of **contracts offered are often on a weekly basis**, inhibiting workers from registering with the Mexican social security system and accessing its services. Upon completion, construction **workers become unemployed** and maintenance work is carried out by highly skilled engineers.³³

2. The climate emergency impairs the right to fair and satisfactory working conditions

Article XIV of the ADRDM contains the right to work and to fair remuneration while Article 7 of the Protocol of San Salvador enshrines the right to fair and satisfactory working conditions, the right to a minimum wage, the right to employment stability, the right to safe and healthy

²⁹ CESCR General Comment No. 18, para 1.

³⁰ See the preamble to ILO Convention No. 168, 1988: “... the importance of work and productive employment in any society not only because of the resources which they create for the community, but also because of the income which they bring to workers, the social role which they confer and the feeling of self-esteem which workers derive from them.”

³¹ IHRB (2020) What Are the Rights Implications of Wind Energy? Available at: <https://www.ihrb.org/explainers/what-are-the-rights-implications-of-wind-energy>

³² Ibidem.

³³PBI, Wind Farms and Concerns about Human Rights Violations in Oaxaca, available at: https://pbi-mexico.org/fileadmin/user_files/projects/mexico/images/News/1403BriefingWindFarmsPBI.pdf

working conditions, the right to reasonable limitation of working hours, both daily and weekly, and the right to rest, leisure and paid vacations as well as remuneration for national holidays.

Under Article 7 ICESCR³⁴ all Parties to the Covenant recognize the right to “just and favourable conditions of work,” which include: fair wages; equal remuneration between sexes; a decent living; safe and healthy working conditions; equal opportunity for promotion; and rest, reasonable working hours, and holidays with pay, including for public holidays.

This right is recognized in Articles 23 and 24 of the Universal Declaration of Human Rights as well as in numerous ILO Conventions and Recommendations.³⁵

As explained by CESCR in General Comment No. 23,³⁶ States need to “adopt laws, policies and regulations on non-discrimination, a non-derogable minimum wage, occupational safety and health, compulsory insurance coverage, minimum standards for rest, leisure, limitations on working hours, paid annual and other leaves, as well as public holidays”.

In the context of climate change measures the right to fair and satisfactory working conditions may be affected in case of lack of adequate labour protection, including in the sectors that are supporting the transition from the fossil-fuel based economy to the low emission, climate-resilient economy.

Illustrative case:

In 2020 the Australian Confederation of Trade Unions published a report outlining the opportunities ahead in creating decent, well-paid renewable energy jobs, and the experiences of workers, both good and bad, in the industry to date. While the industry has become a jobs generator and there are positive examples of well-paid, secure and highly-skilled renewables jobs, the report has also found evidence of poor employment practices. Some renewable energy sites, including solar farms have relied heavily on the use of unqualified and unlicensed workers. Workers were underpaid and not provided with and additional training needed to work in the high-voltage setting of a solar farm. The Australian unions are supporting the government’s backing of the renewable energy projects but they are calling for enterprise

³⁴ International Covenant on Economic, Social and Cultural Rights, Part III, art. 7, G.A. Res. 2200A (XXI), 21 U.N.GAOR Supp., U.N. Doc. A/6316 (Dec. 16, 1966) (entered into force Jan. 3, 1976).

³⁵ CESCR refers to the following list of the ILO instruments most relevant to the right to just and favourable conditions of work contained in Article 6 ICESCR (footnote 2): Hours of Work (Industry) Convention, 1919 (No.1); Weekly Rest (Industry) Convention 1921 (No.14); Minimum Wage-Fixing Machinery Convention 1928 (No.26); Hours of Work (Commerce and Offices) Convention 1930 (No.30); Forty-Hour Week Convention 1935 (No.47); Protection of Wages Convention 1949 (No.95); Minimum Wage Fixing (Agriculture) Convention 1951 (No.99); Equal Remuneration Convention 1951 (No.100); Weekly Rest (Commerce and Offices) Convention 1957 (No.106); Discrimination (Employment and Occupation) Convention 1958 (No.111); Minimum Wage Fixing Convention 1970 (No.131); Holidays with Pay Convention (Revised) 1970 (No.132); Minimum Age Convention 1973 (No.138); Hours of Work and Rest Periods (Road Transport) Convention 1979 (No.153); Occupational Safety and Health Convention 1981 (No.155); Protocol of 2002 to the Occupational Safety and Health Convention 1981 (No.155); Workers with Family Responsibilities Convention 1981 (No. 156); Night Work Convention 1990 (No.171); Part-Time Work Convention 1994 (No.175); Maternity Protection Convention 2000 (No.183); The Convention concerning the promotional Framework for Occupational Safety and Health 2009 (No.187); Domestic Workers Convention 2011 (No.189).

³⁶ CESCR (2016) General Comment No. 23 on the Right to just and favorable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), available at: https://www.escr-net.org/resources/general-comment-no-23-2016-right-just-and-favorable-conditions-work#_ftn2

*agreements as well as transparency about the numbers of jobs in the industry and employment conditions.*³⁷

3. The climate emergency impairs the rights to form and join trade unions, the right to collective bargaining and the right to strike

Freedom of association is recognized as a civil and political right and an economic, cultural, and social right, provided for in the ACHR (Article 16) and in the Protocol of San Salvador (Article 8). The Inter-American Commission has interpreted the contents of this freedom to involve the power to establish trade union organizations and to choose their structure, together with activities and action programs, without the intervention of state authorities that limit or hinder the exercise of the above-mentioned right.³⁸ Article 8.1 of the Protocol enshrines the right to strike.³⁹ The Commission has also recognized the centrality of collective bargaining which is enshrined in Article 43 of the Charter of the Organization of American States for the defense of workers' interests.⁴⁰

The ILO has recognized that the use of fixed-term contracts or other insecure forms of employment has a significantly negative impact on the exercise of the right to freedom of association and the right to non-discrimination in employment and occupation. Accordingly, if transition of the workforce is not accompanied by the decent work and quality jobs component workers are impaired in their access to trade union rights. The ILO Committee on Freedom of Association held that "the renewal of fixed-term contracts for several years may affect the exercise of trade union rights."⁴¹ Further, the use of fixed-term contracts has a significantly negative impact for any groups at risk of discrimination in employment and occupation, including women workers. The ILO CEACR has repeatedly expressed concern regarding the maternity protection situation of women in temporary and contract employment, in light of the growth of these non-standard jobs, especially during the economic crisis.⁴² Job insecurity can make temporary workers more vulnerable and susceptible to bullying and harassment, including sexual abuse.⁴³

The ILO calls for social dialogue to be involved with environment-related subjects. A barrier to realization of the right to bargain collectively in the context of climate change response is insufficient recognition, in law and in practice, of environmental protection matters (including

³⁷ ACTU (2020) Sharing the benefits with workers: A decent jobs agenda for the renewable energy industry, available at: <https://www.actu.org.au/policies-publications-submissions/sharing-the-benefits-with-workers-a-decent-jobs-agenda-for-the-renewable-energy-industry/>

³⁸ 2020 IACHR Compendium, Para 49.

³⁹ 2020 IACHR Compendium, Para 53

⁴⁰ 2020 IACHR Compendium, Para 52.

⁴¹ ILO Committee on Freedom of Association. Definitive Report – Case No. 2884, Report No 368, June 2013 (Definitive Report) in a case regarding the Government of Chile.

⁴² International Labour Office, Maternity and paternity at work: law and practice across the world (Geneva 2014), p. 78.

⁴³ International Labour Office, Non-standard employment around the world: Understanding challenges, shaping prospects (Geneva 2016), p. 202.

climate change mitigation and adaptation measures) as legitimate subjects of trade union collective bargaining and collective action.

Illustrative cases:

The ILO supervisory bodies have pointed to allegations of violations of collective bargaining after a natural disaster, for example, in Haiti after the 2010 earthquake.⁴⁴

In 2021 the Chilean Supreme Court sided with the trade union of Maritima & Commercial Somarco Limited Ministry of Energy against the Ministry of Energy of Chile and upheld that government's energy decarbonization plan failed to include the participation of workers and violated their human rights under a just transition. (Case No. 25. 530-2021). The decision specified that in this context, the agreements adopted by the State of Chile to achieve carbon neutrality require the performance of a just transition strategy both for the workers harmed by the loss of their direct and indirect source of employment and for the communities affected by the loss of services linked to the development of the declining thermoelectric activity, allowing the transition to an environmentally sustainable economy. The ruling ordered the government authorities to implement a plan for the reinsertion into the labor market of workers affected by the decarbonization process, consulting them in that process, and adopting the control measures to ensure compliance.⁴⁵

4. The climate emergency impairs the right to freedom from child labour

The Commission and the Inter-American Court have indicated that “*children are beneficiaries of the rights enshrined in the American Convention, as well as enjoying special protective measures set out in Article 19 ACHR.*”⁴⁶ Article 7 of the Protocol of San Salvador requires States Parties to prohibit any work that jeopardizes children’s health, safety or morals, and to ensure that work is subordinated to the provisions regulating compulsory education and subjected to inspections of workplaces.⁴⁷ With regard to States’ obligations in the face of the worst forms of child labour, the Inter-American Court has indicated that priority measures should be taken to eliminate them, such as, inter alia, developing and implementing action programs to ensure the full exercise and enjoyment of the rights of the child.⁴⁸

Child labour refers to children that work in violation of ILO standards as set out in Conventions 138 and 182.⁴⁹ This includes all children under the age of 12 who work in any economic activity, as well as those aged 12 to 14 who work in lighter work, and children who are subjected to the worst forms of child labour. Worst forms of child labour include slavery,

⁴⁴ Observation (CEACR) – adopted 2011, published 101st ilc session (2012), Right to Organise and Collective Bargaining Convention, 1949 (No. 98), available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2698936,102671,Haiti,2011.

⁴⁵ [20210809_318-2021-25.530-2021_ruling-1.pdf \(climatecasechart.com\)](#)

⁴⁶ 2020 IACHR Compendium, para 109.

⁴⁷ 2020 IACHR Compendium, para 109.

⁴⁸ 2020 IACHR Compendium, para 114.

⁴⁹ ILO Convention No. 138 on Minimum Age and Convention No. 182 on the Worst Forms of Child Labour.

compulsory recruitment, prostitution, human trafficking, and the obligation to carry out activities.

Children have been identified as one of the population groups at greatest risk from the systemic shocks caused by climate change. According to the ILO, climate change is multiplying the incidence of child labour, particularly in agriculture where 70 % of all child labour is found.⁵⁰ The ILO supervisory bodies have also pointed to the effect on rapid onset disasters such as earthquakes and tsunamis on child labour, eg. in Asian countries after the 2004 tsunami.⁵¹ Eradication of child labour and the promotion of the rights of children is undoubtedly engaged in the climate emergency.

II. The ILO concept of Just Transition and the principle of decent work for all

“Just transition” has grown into an increasingly popular concept in climate policy. During the recent decade, it has been included in both international and national climate law frameworks, including the reference in the Preamble of the Paris Agreement in 2015.

The concept of just transition has been developed and agreed upon by the ILO constituents, between 2013-2015. Just transition is described as a process “towards an environmentally sustainable economy, which “needs to be well managed and contribute to the goals of decent work for all, social inclusion and the eradication of poverty”. “Just transition” establishes a linkage between work and climate change.

As a specific subject, the concept of a just transition was first discussed, at the 102nd Session of the International Labour Conference (ILC) in June 2013. In 2013 the ILO constituents adopted a resolution and a set of conclusions concerning sustainable development, decent work and green jobs.⁵² Later, in November 2015, the Governing Body endorsed the tripartite **“Guidelines for a just transition towards environmentally sustainable economies and societies for all”** (Just Transition Guidelines), based on the principles and key policy areas set out in the 2013 Conference conclusions.⁵³ According to the Guidelines, **“just transition” is understood as an all-encompassing framework that addresses the need for action on climate change with the need for decent work for all, social inclusion, and eradication of poverty.**⁵⁴ In 2017 “just transition” was for the first time mentioned in an international labour standard – ILO Recommendation No. 205 on Employment and Decent Work for Peace and

⁵⁰ ILO (2023) Issue paper on child labour and climate change, available at: https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_905673/lang--en/index.htm; ILO, ‘World Report on Child Labour’. r: Economic Vulnerability, Social Protection and the Fight against Child Labour’. Report, 29 April 2013. http://www.ilo.org/ipec/Informationresources/WCMS_178184/lang--en/index.htm

⁵¹ Sri Lanka – Observation (CEACR) – adopted 2009, published 99th ilc session (2010) Worst Forms of Child Labour Convention, 1999 (No. 182), available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2310385,103172,Sri%20Lanka,2009.

⁵² ILO, Resolution and conclusions concerning sustainable development, decent work and green jobs, International Labour Conference, 102nd Session, 2013.

⁵³ ILO, Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All (ILO Just Transition Guidelines), 2015, available at: https://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/documents/publication/wcms_432859.pdf

⁵⁴ ILO Just Transition Guidelines, para 4.

Resilience.⁵⁵ Accordingly, Recommendation No. 205 not only deals directly with crisis situations resulting from disasters that can be caused by climate change, but it advocates for response and recovery measures that, importantly, take into account the “need for a just transition towards an environmentally sustainable economy,” including in its guiding principles.

Next, in 2019, the ILC **adopted ILO Centenary Declaration for the Future of Work** at its 108th (Centenary) Session.⁵⁶ The Declaration recognizes climate and environmental change among the **drivers of transformative change in the world of work**. It directs the efforts of the ILO to “ensuring a just transition to a future of work that contributes to sustainable development in its economic, social and environmental dimensions”. Most recently, in June 2023 the ILC both (unanimously) endorsed the ILO Just Transition Guidelines and adopted a framework for action.⁵⁷ This framework covers the social dimension of environmental and climate change broadly through four supportive elements; namely: (i) promoting inclusive, sustainable and job-rich economies; (ii) advancing social justice; (iii) managing the process of just transition; and (iv) financing a just transition.

In addition, the role of the transnational private sector in the responsibility for climate change response should not be overlooked, as it is part of a deepening environmental crisis rooted in structural causes stemming from the prevailing model of accumulation, production, distribution and consumption. However, it is to be hoped that, as the 2023 ILO resolution states, governments, employers and workers will be key agents of change and will “urgently take concerted and coherent action based on effective social dialogue.”⁵⁸

The **Just Transition Guidelines** highlight 9 policy areas which should be taken into account in a just transition framework. Each includes issues to be addressed by governments, workers’ and employers’ organizations – separately and/or jointly. These key policy areas to address environmental, economic and social sustainability simultaneously include:

- I. Macroeconomic and growth policies
- II. Industrial and sectoral policies
- III. Enterprise policies
- IV. Skills development
- V. Occupational safety and health
- VI. Social protection
- VII. Active labour market policies
- VIII. Rights
- IX. Social dialogue and tripartism

Each of the policy areas can be linked to the international labour standards complements (ILO Conventions and Recommendations). As the Conclusions to the Resolution concerning sustainable development, decent work and green jobs from the 2013 International Labour Conference (ILC) state in Paragraph 14(m): “*International labour standards offer a robust*

⁵⁵ Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R205

⁵⁶ ILO Centenary Declaration for the Future of Work, 2019, para. II(A)(i).

⁵⁷ ILO, Resolution and conclusions concerning a just transition towards environmentally sustainable economies and societies for all, 111st Session, 2023, available at: https://www.ilo.org/ilc/ILCSessions/111/committees/just-transition/WCMS_885375/lang--en/index.htm

⁵⁸ https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_885375.pdf

framework for addressing the challenges to the world of work associated with the greening of the economy and, more broadly, with the transition towards sustainable development and poverty eradication.” The Guidelines refer to these conclusions when governments are asked, in Paragraph 15(b), to “*consider and promote those international labour standards most relevant to the just transition framework towards environmentally sustainable economies and societies for all (as listed in the appendix of the ILC 2013 conclusions), with a view to their ratification and full implementation*”.

The concept of just transition towards environmentally sustainable economies and societies **incorporates the rights-based principle of decent work for all**, which is **grounded in the international labour standards**.

“Decent work” is a concept developed in 1999⁵⁹ and institutionalized in the **2008 Declaration on Social Justice for a Fair Globalization**⁶⁰ – **all Members of the Organization** must pursue policies based on four strategic objectives: employment, social protection, social dialogue, and rights at work (this is the “**Decent Work Agenda**”).

Accordingly, the ILO builds the concept of decent work on four components - **full and productive employment, rights at work, social protection and the promotion of social dialogue**.⁶¹ Employment here covers work of all kinds and has both quantitative and qualitative dimensions. Thus, **decent work applies** to all workers - not just to workers in the formal economy or those engaged on the basis of employment contract but **also to e.g. unregulated wage workers, the self-employed and home workers**.⁶² Workers’ rights include both the fundamental rights of workers (freedom of association, non-discrimination at work, safe and healthy environment and the absence of forced labour and child labour); and social dialogue, in which workers exercise their right to present their views, defend their interests and engage in discussions to negotiate work-related matters with employers and authorities. Accordingly, the goal of decent work is not just the creation of jobs, but the creation of jobs of acceptable quality and linked to rights.

Of note, ILO Recommendation No. 205 contains six sections outlining various aspects of the **world of work** and their **relevance** in the design and implementation of prevention of crisis situations resulting from disasters and response measures (Paragraphs 10-40). These sections concern **all the four pillars of decent work** - employment, social protection, rights, and social dialogue (as well as education, vocational training, and guidance).

The principle of decent work for all is related to the climate change action framework also by its link to the concept of sustainable development. During the UN General Assembly in September 2015, decent work and the four pillars of the Decent Work Agenda – full and productive employment, rights at work, social protection and the promotion of social dialogue

⁵⁹ ILO (1999) Report of the Director-General: Decent work. International Labour Conference, 87th Session, Geneva, available at: [https://www.ilo.org/public/libdoc/ilo/P/09605/09605\(1999-87\).pdf](https://www.ilo.org/public/libdoc/ilo/P/09605/09605(1999-87).pdf)

⁶⁰ ILO Declaration on Social Justice for a Fair Globalization, 2008. The Declaration was updated in 2022 to reflect the inclusion of a safe and healthy working environment in the ILO framework of fundamental principles and rights at work. Available at: , https://www.ilo.org/global/about-the-ilo/mission-and-objectives/WCMS_099766/lang--en/index.htm

⁶¹ ILO (1999) Report of the Director-General: Decent work. International Labour Conference, 87th Session, Geneva, available at: [https://www.ilo.org/public/libdoc/ilo/P/09605/09605\(1999-87\).pdf](https://www.ilo.org/public/libdoc/ilo/P/09605/09605(1999-87).pdf)

⁶² Ibidem, pp. 3-4.

Just transition was later included in the subsequent decisions from COP 17 in Durban and COP 18 in Doha, alongside the related, well established concepts, such as sustainable development and poverty eradication.⁶⁸

A reference to just transition linked with the rights-based “decent work” concept has been subsequently included in the preamble of the Paris Agreement of 2015. Preambular para 10 implies the need to manage the transition with a view to recognising and considering the needs, concerns and rights of workers by referring explicitly to the “**just transition of the workforce**” and “**creation of decent work**” and “**quality jobs**”.

As part of COP21 (adopting the Paris Agreement) parties also agreed (in decision 11/CP.21) to improve the existing Forum on the impact of the implementation of response measures. The work programme adopted at the meeting comprised two areas: Economic diversification and transformation; and “*just transition of the workforce, and the creation of decent work and quality jobs*”.⁶⁹

Since the Paris Agreement, the just transition has been addressed by the UNFCCC process in a number of follow-up ways. This includes the following:

At COP 24 in Katowice in 2018 Parties have revised the 6-year work programme (decision 7/CMA.1, Annex) that confirmed both “economic diversification and transformation” and “*just transition of the workforce, and the creation of decent work and quality jobs*” at part of the Forum’s work under the Paris Agreement. A ministerial declaration - “Solidarity and Just Transition Silesia Declaration” – promoted by the Polish presidency of the conference was also adopted as part of the leaders’ summit at COP 24. The Silesia Declaration for example, stresses that “***just transition of the workforce and the creation of decent work and quality jobs are crucial to ensure an effective and inclusive transition to low greenhouse gas emission and climate resilient development and to enhance the public support for achieving the-long term goals of the Paris Agreement***”.⁷⁰

At the next climate conference (COP25 in Madrid in 2019) the UN and ILO launched their **Climate Action for Jobs Initiative** - designed to support countries in implementing their national climate action commitments, while ensuring that jobs, well-being and a just transition remain at the heart of climate responses.⁷¹

Through the decisions made at COP 26 in Glasgow and COP 27 in Sharm-el-Sheikh, Parties have further clarified and extended the content of just transition, compared to its conceptualization in the Paris Agreement. Paragraph 20 of the Glasgow Climate Pact calls upon the Parties to ‘transition towards low-emission energy systems [...] while providing

⁶⁸ See UNFCCC ‘Decision 2/CP.17, Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention’ (15 March 2012) UN Doc FCCC/CP/2011/9/Add.1 paras 87–89; UNFCCC ‘Decision 1/CP.18, Agreed outcome pursuant to the Bali Action Plan’ (28 February 2013) UN Doc FCCC/CP/2012/8/Add.1 section E. Economic and social consequences of response measures, recital 4.

⁶⁹ Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015, Addendum, Part two: Action taken by the Conference of the Parties at its twenty-first session FCCC/CP/2015/10/Add.2, decision 11/CP.21, available at: <https://unfccc.int/resource/docs/2015/cop21/eng/10a02.pdf#page=25>

⁷⁰ Solidarity and Just Transition Silesia Declaration, paragraph 9, available at: <https://data.consilium.europa.eu/doc/document/ST-14545-2018-REV-2/en/pdf>

⁷¹ <https://www.climateaction4jobs.org/>.

targeted support to the poorest and most vulnerable in line with national circumstances and recognising **the need for support towards a just transition**. Paragraph 52 recognizes “*the need to ensure just transitions that promote sustainable development and eradication of poverty, and the creation of decent work and quality jobs, including through making financial flows consistent with a pathway towards low greenhouse gas emission and climate-resilient development, including through deployment and transfer of technology, and provision of support to developing country Parties;*”⁷²

Accordingly, as illustrated by the history of UNFCCC negotiations since the Cancún Agreements, just transition has, from the start, been **linked with broader commitments** under the UNFCCC regime to recognise and minimise the adverse socio-economic impacts of response measures to climate change and with the concept of equity. By explicitly referencing the concept of just transition in connection with “decent work” (which has a well-defined and rights-based meaning in the international labour law), these references to just transition highlight the relevance of international labour principles and commitments contained in the concept of “decent work” and bring them close to the context of the climate change law.

B. Just transition, obligation to minimize adverse socio-economic impacts and the principle of equity

1. Just Transition and the obligation to minimize adverse socio-economic impacts of response to climate change

Both the UNFCCC (Arts. 4(1)(f-h); (8) and(10)) and the Kyoto Protocol (Arts. 2(3) and 3(14)), as well as the Paris Agreement (Art. 4(15)), contain an explicit **obligation to consider the concerns arising from the adverse impacts of the implementation of response measures**. As illustrated by the Cancún Agreements, just transition has, from the start, **been linked** with this broader obligation. Consequently, just transition has served as one of the key focus areas within UNFCCC’s work programming relating to this commitment, such as the “Forum on the impact of the implementation of response measures” initiated at COP 16⁷³ and COP 17 in Durban⁷⁴ and most recently revised at COP 24 in Katowice.⁷⁵ Just transition remains as one of the focus areas for the work programme, which demonstrates broad support for the concept and a shared interest in the topic from different country groups. Accordingly, just transition has influenced the debates on the impacts of response measures, already before its inclusion in the Paris Agreement. The reference to just transition in the Paris Agreement has, moreover, consolidated the concept’s position within the Agreement and further legitimised its use in its interpretation. As the most recent work plan under the forum on the impact of response measures indicates, just transition continues to be a key theme within this

⁷² UNFCCC ‘Decision 1/CP.26, Glasgow Climate Pact’ (8 March 2022) UN Doc FCCC/CP/2021/12/Add.1, para 52.

⁷³ UNFCCC ‘Decision 1/CP.16, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention’ (15 March 2011) UN Doc FCCC/CP/2010/7/Add.1 section I. A shared vision for long-term cooperative action, para 10.

⁷⁴ UNFCCC ‘Decision 8/CP.17, Forum and work programme on the impact of the implementation of response measures’ (15 March 2012) UN Doc FCCC/CP/2011/9/Add.2 para 1(g).

⁷⁵ UNFCCC ‘Decision 7/CMA.1 Modalities, work programme and functions of the forum under the Paris Agreement on the impact of the implementation of response measures’ (19 March 2019) UN Doc FCCC/PA/CMA/2018/3/Add.1.

workstream. In this way, the concept assists in the interpretation of what Parties' commitments in relation to minimising the adverse effects of their response measures should include.

2. Just Transition and the principle of equity

Just transition relates to another, far reaching, Treaty term, that is, the principle of equity. Equity refers to fairness in the distribution of benefits and burdens of development within the current generation and, arguably, among generations, and can be said to provide the dominant normative framework for climate change law. It is included as a principle in the UNFCCC and reiterated in the key articles of the Paris Agreement (Art 4(1) and 14(1)).⁷⁶ Just transition is relevant to the principle of equity because the latter means that decisionmakers should account for considerations of justice and fairness in the implementation of the climate change law. Just transition should be regarded as one of the concepts that belong under the broader guiding principle of equity, together with other more detailed principles and commitments within the UNFCCC system such as CBDR. Accordingly, just transition extends the principle's original focus on intrastate relations to embrace the equity of specific social groups within states, including categories of workers. This interpretation is supported by the Nationally Determined Contributions (NDCs) by several Parties, where they have included a reference to just transition under the section dedicated to fairness and equity considerations.⁷⁷ As an example, South Africa's NDC states that '*consistent with the emphasis in Article 4.1 on equity, and the context of sustainable development and efforts to eradicate poverty, our national process aims at a just transition*'. Linking the principle of just transition with equity allows to understand 'the ways in which climate policy intersects with other dimensions of human development, both globally and domestically' to advance equitable climate change policy.

IV. Conclusion - State Obligations to Protect Labour Rights in the Context of Climate Change

The adverse socio-economic impacts of climate change include the unemployment or underemployment, loss of working hours, loss of income sources and livelihoods, food insecurity, malnutrition, compromised occupational safety and health, loss of homelands. The impacts of inadequate, not rights-based climate change response include uneven distribution of job creation and job losses across the world, often concentrated in specific regions and communities, and poor quality of jobs, making the transition towards carbon-resilient economy perpetuate, instead of addressing them, the existing decent work deficits and creating the new ones, further increasing inequality and instability.

The climate emergency impairs the full range of human and labour rights. As the Special Rapporteur on Human Rights and Climate Change has observed: "*throughout the world, the rights of people are being denied as a consequence of climate change. This includes a denial of the rights to, inter alia, life, health, food, development, self-determination, water and*

⁷⁶ Paris Agreement Art 4(1) and 14(1).

⁷⁷ See, eg, NDC by Canada (2021) 22, Montenegro (2021) 13, South Africa (2021) 27, South Korea (2021) 27 and United Kingdom (2022) 44. Accessed through UNFCCC's NDC registry, available at: <https://unfccc.int/NDCREG>. NDCs are nationally made climate plans that clarify the climate actions, such as targets and policies, a state aims to implement as a contribution to global climate action.

sanitation, work, adequate housing and freedom from violence, sexual exploitation, trafficking and slavery.”⁷⁸

International human rights law has recognized the importance of labour rights to work, to just and favourable conditions of work and trade union rights as a central, fundamental, and guiding element for advancing the protection of human rights. Labour rights are human rights, inseparable from and inherent to human dignity. Their development is key to strengthening economic and social systems from a human rights approach, since this is vital for guaranteeing and exercising other human rights, and for the autonomous development of the person. It is also a way to guarantee that people live dignified lives.

Accordingly, States should proactively respect, protect, and fulfill human rights, including labour rights, in the context of the climate emergency. Where States fail to safeguard rights of individuals and communities both inside and outside their territories against foreseeable climate-related threats of serious harm, they should provide an appropriate remedy.

A. Adaptation and Mitigation Measures

States have an obligation to mitigate, i.e. to control and reduce GHG emissions from sources under their jurisdiction to prevent harm and protect fundamental human rights. This obligation is rooted in principles of and provisions of international law, international climate change law as well as human rights law. States also have an obligation to undertake adaptation measures to minimize and mitigate the harms caused by climate change and protect groups at risk of being affected from the impact of climate change. Human rights law recognizes an obligation on the part of States to take reasonable measures to protect and guarantee human rights in the face of foreseeable environmental risks and natural hazards. Accordingly, States must prepare for and respond to the effects of climate change, particularly those that pose a foreseeable threat to human rights, and this “duty of adaptation” is independent from State responsibility for GHG emissions and the duty of mitigation.

These obligations should be assessed in relation to standards articulated in UNFCCC agreements, including the principle of just transition. Accordingly, in taking mitigation and adaptation measures States should address the need to ensure just transition of the workforce, consistent with the principle of decent work for all, as defined by the ILO, within a rights-based context, and in particular the right to work and the right to just and favourable conditions of work.

This would require the States to take a coordinated approach to economic and social policies to promote full, productive, and freely chosen employment, to adopt policies to ensure access to employment opportunities and active labour market policies to support workforce transition towards climate-resilient economy, by creating decent work, that is work that respects the fundamental rights of the person as well as the rights of workers in terms of conditions of work safety, working time regulation, remuneration and social protection. In the climate crisis the new jobs created through mitigation and adaptation measures and well as the remaining jobs, should be good, protected jobs.

B. Social dialogue, Access to Information, Public Participation, and Access to Justice

⁷⁸ UNGA (2022) UNSR on the promotion and protection of human rights in the context of climate change, Promotion and protection of human rights in the context of climate change, U.N. Doc. A/77/226 (July 26, 2022), at para. 88.

Workers' participation in environmental debates, including those related to climate change measures, is an essential element in preventing and minimising environmental impacts and ensuring that actions for environmental improvements are accepted and therefore implemented efficiently. At COP27, the agreed Sharm El-Sheikh Implementation Plan affirmed that *"sustainable and just solutions to the climate crisis must be founded on meaningful and **effective social dialogue** and participation of all stakeholders and notes that the global transition to low emissions provides opportunities and challenges for sustainable economic development and poverty eradication."*⁷⁹

Procedural environmental rights contained in the relevant environmental instruments (Escazú Agreement,⁸⁰ UNECE Aarhus Convention)⁸¹ – such as the right to receive environmental information held by public authorities, the right to participate in environmental decision-making and the right to a review by an independent body of the authorities' decisions - are interrelated with the relevant labour rights and State obligations. At the same time, international labour standards regulate in detail the content of a fundamental labour and human right to form and join trade unions and bargain collectively. Based on the ILO Constitution, the ILO Member States are under obligation to realize the principles concerning freedom of association and the effective recognition of the right to collective bargaining contained in the fundamental ILO Conventions Nos. 87 and 98.⁸² These obligations arise from the very fact of membership in the ILO and apply to the States even if they have not ratified the Conventions in question.⁸³

Essential to a just transition towards an environmentally sustainable development is the negotiation of national, sectoral and company level mitigation and adaptation measures with workers and trade unions and ensuring full access to labour rights for all workers, regardless of occupation, type of employment contract or migration status. There is a clear link between workers' rights being upheld and the strength of any democracy. The erosion of one amounts to the degradation of the other.

Procedural environmental rights are interrelated with the relevant procedural labour rights. International labour standards outline the **principle of consultation and co-operation between public authorities and employers' and workers' organizations at the industrial and national levels**. Social dialogue procedure (ie dialogue between government and workers'

⁷⁹ UNFCCC, Decision -/CP.27, Sharm el-Sheikh Implementation Plan, Chapter VII Implementation – pathways to just transition, para 28.

⁸⁰ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, 2018 (entry into force in 2021), available at: <https://repositorio.cepal.org/items/86cae662-f81c-4b45-a04a-058e8d26143c>

⁸¹ UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, Denmark, 25.06.1998 (entry into force in 2001), available at: <https://unece.org/DAM/env/pp/documents/cep43e.pdf>

⁸² See: 1998 ILO Fundamental Principles and Rights at Work Declaration, para 2: "Declares that all Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining;"

⁸³ Ibidem.

and employers' organizations) **extends to all matters in context of labour relations**,⁸⁴ including environmental matters. Such consultation and cooperation should take place particularly in the preparation and implementation of laws and regulations affecting workers' and trade unions' interests.⁸⁵ Equally, the principle of consultation and cooperation applies to the process of formulation of public policy on labour, social and economic matters.⁸⁶

The ILO supervisory bodies have reaffirmed that governments should hold consultations with the most representative workers' and employers' organizations before the Government submits a draft to the Legislative Assembly or establishes a labour, social or economic policy.⁸⁷ The ILO Committee on Freedom of Association (CFA) stressed the importance that it attaches to holding consultations with sufficient advance notice and, in particular, to ensuring that the drafts of laws or decrees are submitted to these organizations for consultation well before their adoption by the Government as a prerequisite for consideration by Parliament.⁸⁸ Accordingly - as enshrined in the Paragraph 13a of 2015 ILO Guidelines for a just transition towards environmentally sustainable economies and societies for all - social dialogue on environmental matters has to be an integral part of the institutional framework for policy-making and implementation at all levels.⁸⁹

However, although the principle of consultation and cooperation contained in the international labour standards clearly extends to environmental decision-making, including legislative reforms and public policy, the implementation is lagging behind. As observed by UN Special Rapporteur Voule in his thematic report: *Exercise of the rights to peaceful assembly and of association as essential to advancing climate justice*, workers and unions have been largely excluded from climate policy discussions and from, for example, providing meaningful input into discussions on Governments' nationally determined contributions.⁹⁰

Limited access to information and opportunities for consultation remains a significant barrier in access to the procedural environmental rights by workers and trade unions. In order to overcome barriers to the full enjoyment of these rights all workers should have full access to their labour rights.

C. Social protection

At COP27, the agreed Sharm El-Sheikh Implementation Plan emphasized that a "*just and equitable transition encompasses pathways that include energy, socioeconomic, workforce and other dimensions, all of which must be based on nationally defined development priorities and **include social protection** so as to mitigate potential impacts associated with the*

⁸⁴ See: 2018 ILO Compilation of decisions of the Committee on Freedom of Association (2018 ILO Digest), para 1524.

⁸⁵ 2018 ILO Digest, paras 1530,1532.

⁸⁶ 2018 ILO Digest, para 1525.

⁸⁷ 2018 ILO Digest, para 1532.

⁸⁸ 2018 ILO Digest, para 1543.

⁸⁹ https://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/documents/publication/wcms_432859.pdf

⁹⁰ Report A/76/222: Exercise of the rights to peaceful assembly and of association as essential to advancing climate justice, para 40.

transition”.⁹¹ The text also highlighted “*the important role of the instruments related to social solidarity and protection in mitigating the impacts of applied measures*”.⁹²

A just transition towards an environmentally sustainable economy for all requires not only macroeconomic stabilization, but a strong link between social protection and employment to support workers throughout the transition and particularly in sectors negatively impacted by climate change or decarbonization efforts. Without social protection for all, based on rights, the transition may leave some behind, risking its acceptance and sustainability. Universal social protection systems are thus crucial to ensure that the transition will be socially just.

The **ILO Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205)** affirms the need for Members to develop and strengthen measures of social protection, as a means of preventing crises, enabling recovery and building resilience. Accordingly, in responding to crisis situations, States should, as quickly as possible, seek to ensure basic income security, in particular for persons whose jobs or livelihoods have been disrupted by the crisis; develop, restore or enhance comprehensive social security schemes and other social protection mechanisms, taking into account national legislation and international agreements; and seek to ensure effective access to essential health care and other basic social services, in particular for population groups and individuals who have been made particularly vulnerable by the crisis (Paragraph 21 ILO Recommendation No. 205). In a long-term, perspective, **in order to prevent crises, enable recovery and build resilience**, States should establish, re-establish or maintain social protection floors, as well as seek to close the gaps in their coverage. Specifically, the resilience response should be taking into account the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Social Protection Floors Recommendation, 2012 (No. 202), and other relevant international labour standards (Paragraph 22 ILO Recommendation No. 205). The development of all such measures should be undertaken in negotiation with workers and their organisations.

D. International Cooperation and Climate Finance

ILO Recommendation No. 205 contains specific provisions relating to international cooperation on the topic of international cooperation for promoting peace, preventing and mitigating crises, enabling recovery and building resilience through employment and decent work (Paragraphs 42-48). Accordingly, in preparing for and responding to crisis situations, States should strengthen cooperation and take appropriate steps through bilateral or multilateral arrangements, including through the United Nations system, international financial institutions and other regional or international mechanisms of coordinated response. States should make full use of existing arrangements and established institutions and mechanisms and strengthen them, as appropriate. Crisis responses, including support by regional and international organizations, should provide for a central focus on employment, decent work and sustainable enterprises, and should be consistent with applicable international labour standards. States should cooperate to promote development assistance and public and private sector investment in crisis response for the creation of decent and productive jobs, business development and self-employment. International organizations should reinforce their cooperation and the coherence of their crisis responses within their respective mandates, making full use of relevant international policy frameworks and arrangements. The ILO should play a leading role in assisting Members to provide crisis responses based on employment

⁹¹ UNFCCC, Decision -/CP.27, Sh, arm el-Sheikh Implementation Plan, Chapter VII Implementation – pathways to just transition, para 29.

⁹² Ibidem.

and decent work and focusing on employment promotion, labour market integration or access, as appropriate, capacity development and institution building, in close cooperation with regional and international institutions. Members should strengthen international cooperation, including through the voluntary and systematic exchange of information, knowledge, good practices and technology for promoting peace, preventing and mitigating crises, enabling recovery and building resilience. There should be close coordination of and complementarity among crisis responses, as appropriate, in particular between humanitarian and development assistance, for the promotion of full, productive, freely chosen employment and decent work for peace and resilience. Recommendation No. 205 is significant in that it not only deals directly with crisis situations resulting from disasters that can be caused by climate change, but it advocates for response and recovery measures that, importantly, take into account the “need for a just transition towards an environmentally sustainable economy,” including in its guiding principles.

Just transition concept has already been linked to international cooperation and climate finance in the international climate change law. Specifically, the Glasgow Climate Pact has recognized “*the **need to ensure just transitions** that promote sustainable development and eradication of poverty, and the creation of **decent work and quality jobs**, including through making financial flows consistent with a pathway towards low greenhouse gas emission and climate-resilient development, including through deployment and transfer of technology, and provision of support to developing country Parties;*”⁹³ Hence, according to the Glasgow Climate Pact, just transition includes the “*deployment and transfer of technology, and provision of support to developing country Parties*”.⁹⁴ Further, under the decision on ‘Matters relating to the Standing Committee on Finance’, Parties emphasized the need to ensure that ‘*just transition financing is incorporated into approaches to align climate action with the goals of the Paris Agreement*’.⁹⁵ The decision thus acknowledges the emergence of a new aspect of climate finance, designed towards dealing with the socioeconomic dimension of climate policies. It also underlines that this form of financing needs to feed into the achievement of the Paris Agreement goals.

⁹³ UNFCCC ‘Decision 1/CP.26, Glasgow Climate Pact’ (8 March 2022) UN Doc FCCC/CP/2021/12/Add.1, para 52.

⁹⁴ UNFCCC ‘Decision 1/CP.26, para 52.

⁹⁵ UNFCCC ‘Decision 5/CP.26, Matters relating to the Standing Committee on Finance’ (8 March 2022) UN Doc FCCC/CP/2021/12/Add.1 para 10.