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Item 75 (b) of the preliminary list\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## Right to development

### Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the right to development, Saad Alfarargi, submitted in accordance with Human Rights Council resolutions [33/14](#) and [42/23](#).

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\* [A/76/50](#).



## Report of the Special Rapporteur on the right to development, Saad Alfarargi

### *Summary*

In the present report, the Special Rapporteur on the right to development, Saad Alfarargi, examines the relationship between the right to development and climate change. He notes the challenges that developing countries continue to face owing to limited participation, access to information, accountability and remedies, funding and technology.

The Special Rapporteur finds that there must be a just transition away from a carbon-based economy and towards one that is based on sustainable development, the protection of human rights and the principle that no one is left behind. Such a future can only be achieved by understanding the Paris Agreement in the context of the right to development and equity between the global North and South, whereby the global North assists the South in building a climate-resilient economy. This climate-resilient economy will require significant funding for developing countries so that they can adapt to climate change and become equal partners in mitigating greenhouse gas emissions. Lessons learned from the coronavirus disease (COVID-19) pandemic about global connectivity, along with the economic infusions that many Governments are putting towards recovery, can facilitate a just transition.

In the report, the Special Rapporteur finds that fostering diversified, “green” economies with climate-resilient, sustainable development will not only bolster the right to development and adaptation in developing countries, but will also improve global equity, allowing developing countries to become stronger partners in mitigating climate change.

The Special Rapporteur notes several key issues associated with climate change and the right to development and provides recommendations for furthering the right to development and for combating climate change.

## I. Activities of the Special Rapporteur

1. The present report is submitted to the General Assembly pursuant to Human Rights Council resolutions 33/14 and 42/23.
2. At the forty-eight session of the Human Rights Council, the Special Rapporteur on the right to development, Saad Alfaragi, will submit a thematic report to the Council (A/HRC/48/56), in which he will examine climate action practices at the national level from the perspective of the right to development. He will highlight good practices and review challenges in ensuring the meaningful participation of rights holders. He will conclude with recommendations on integrating the right to development into climate action. The report will also contain a summary of the activities of the Special Rapporteur between September 2020 and July 2021.

## II. Background information on the right to development and climate change

### A. Introduction

3. The Special Rapporteur on the right to development is mandated to contribute to the promotion, protection and fulfilment of the right to development in the context of the implementation of the 2030 Agenda for Sustainable Development and other internationally agreed outcomes of 2015, including the Paris Agreement on climate change. In order to implement this mandate, he intends to examine the intersection of climate action and the right to development.
4. To gather information about the extent to which rights holders have been placed at the centre of decision-making on climate action, the Special Rapporteur issued a call for submissions from States Members of the United Nations, international organizations, practitioners, non-governmental organizations, think tanks, academics and other stakeholders.<sup>1</sup>
5. In 2020, against a background of increasing impacts of climate change, the coronavirus disease (COVID-19) rapidly emerged as a global pandemic. People who are at greatest risk of vulnerability, most marginalized and least empowered have been hit the hardest by both COVID-19 and climate change. The COVID-19 pandemic and policies to mitigate it have sharpened the disparities between more developed countries, where vaccines became abundant in a relatively short time, and developing countries, which continued to experience outbreaks and large death tolls.<sup>2</sup> The Special Rapporteur will examine some issues related to pandemic recovery in the context of climate change and the right to development in the present report.
6. The present report serves to expand upon the Special Rapporteur's guidelines and recommendations on the practical implementation of the right to development, which were contained in the report he presented to the United Nations Human Rights Council in September 2019 (A/HRC/42/38).

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<sup>1</sup> The call for information and all submissions from States Members of the United Nations and other stakeholders are available at: [www.ohchr.org/EN/Issues/Development/SRDevelopment/Pages/SRDevelopmentIndex.aspx](http://www.ohchr.org/EN/Issues/Development/SRDevelopment/Pages/SRDevelopmentIndex.aspx).

<sup>2</sup> Indermit Gill and Philip Schellekens, "COVID-19 is a developing country pandemic", Brookings Institute, 27 May 2021; Reuters, "Fact check: COVID-19 deaths have occurred in developing countries and among the US homeless", 4 March 2021.

## B. Impact of climate change on the right to development

7. Climate change multiplies the threats to human rights worldwide. It already affects and will increasingly affect a wide range of internationally guaranteed human rights, including the right to development. For example, extreme weather events, natural disasters, rising sea levels, floods, heat waves, droughts, desertification, water shortages, and the spread of tropical and vector-borne diseases can impede civil and political rights (the rights to life, liberty and property), and economic, social and cultural rights (the rights to work, education, social security, mental health, adequate food, clothing and housing).<sup>3</sup>

8. Climate change is inherently discriminatory. Its impacts have already fallen on the most vulnerable parts of global society: those who have not yet reaped the benefits of development and are not able to shield themselves or adequately recover from the fires and floods aggravated by climate change. For example, the effects of climate change are detrimental and disproportionate for many small islands and developing States, as noted in the report of the Independent Expert on human rights and international Solidarity on International Solidarity and Climate Change (A/HRC/44/44). The loss and damage to these States implicate a wide range of human rights.<sup>4</sup> Thus far, countries that are more developed have been better able to adapt to climate change by building climate-resilient infrastructure and using technology to improve their livelihoods and comfort levels.

9. Disproportionate impacts stem from the historical circumstances that have led to inequality, including colonization that depleted the resources of indigenous peoples and created global wealth disparities,<sup>5</sup> as well as trade systems put in place after the Second World War.<sup>6</sup> Dominant economic models fail to support the transformation of production and consumption patterns to sustainable and equitable levels, impede States from adopting their own development objectives<sup>7</sup> and fail to ensure human rights within the constraints of our global borders.<sup>8</sup>

10. In addition, more developed countries tend to have diversified economies that are more resilient to economic shocks and harm caused by climate change. Populations with a limited adaptive capacity (e.g. limited financial resources, mobility and technology) have suffered greater impacts.<sup>9</sup>

<sup>3</sup> Centre for International Environmental Law, “Reviewing the compatibility of States’ climate policies with their obligations under the ICESCR”, Climate Governance Note 2019/1, February 2019.

<sup>4</sup> Patrick Toussaint and Adrian Martínez Blanco, “A human rights-based approach to loss and damage under the climate change regime”, *Climate Policy*, vol. 20, No. 6, pp. 744–745 (2020).

<sup>5</sup> Lucia Fry and Philippa Lei, *A greener, fairer future: Why leaders need to invest in climate and girls’ education*, (Washington, D.C., Malala Fund, 2021).

<sup>6</sup> See Martin Khor and others, “Promoting sustainable development by addressing the impacts of climate change response measures on developing countries”, Research Paper 81 (Geneva, South Centre, 2017).

<sup>7</sup> See, for example, Kepa Artaraz, Melania Calestani and Mei L. Trueba, “Introduction: *Vivir bien/Buen vivir* and post-neoliberal development paths in Latin America – scope, strategies, and the realities of implementation”, *Latin American Perspectives*, vol. 48, No. 3, pp. 4–16 (2021).

<sup>8</sup> See, for example, Kate Raworth, “What on Earth is the Doughnut?”.

<sup>9</sup> Florian Weiler, “Adaptation and health: Are countries with more climate-sensitive health sectors more likely to receive adaptation aid?”, *International Journal of Environmental Research and Public Health*, issue 16, No. 8, p. 1353 (2019).

### **C. How projects to mitigate climate change relate to the right to development and how projects to support development affect climate change**

11. Policies and projects to address climate change can have unintended impacts on human rights, including the right to development. The Paris Agreement includes mechanisms that have the potential to impede the right to development if adequate safeguards are not ensured.

12. For example, under article 6 of the Agreement, Governments agreed to fulfil part of their mitigation commitments through voluntary cooperation. The agreement establishes mechanisms to meet their respective climate commitments through joint implementation, including a sustainable development mechanism. This mechanism is meant to operate as a central United Nations mechanism to trade credits from emissions reductions generated through specific projects – building on the experience of past market mechanisms, such as the clean development mechanism, which had been established under the Kyoto Protocol. The mechanism was put in place with no social or environmental safeguards or requirements for stakeholder participation and consultation, or access to any remedy for local communities that might be harmed by projects supported through the mechanism. As a consequence, some projects under the mechanism caused significant harm to local communities and indigenous peoples. Despite the expression of concerns related to such harm by United Nations human rights mechanisms,<sup>10</sup> no remedy was provided to the communities affected and these projects continued to be registered under the mechanism. Even where there are no clear human rights abuses, investment in a project may not make economic sense in terms of the amount of carbon reduction, and benefits or harm to local communities.<sup>11</sup>

13. Development finance can contribute to climate change, but adequate safeguards are necessary to ensure that such finance protects and supports human rights. Global energy, transport, buildings and water infrastructure emit more than 60 per cent of current greenhouse gases and increased development will serve to drive increased emissions. Recent estimates from the Organization for Economic Cooperation and Development (OECD) indicate that around \$6.3 trillion for infrastructure investment is needed each year to 2030 to meet development goals, increasing to \$6.9 trillion a year to make this investment compatible with the goals of the Paris Agreement.

### **D. International policy background on climate change and the right to development**

14. The international policy background applicable to the intersection of the right to development and climate change includes, among others, the Declaration on the Right to Development, the United Nations Framework Convention on Climate Change and Paris Agreement, and the 2030 Agenda for Sustainable Development.

15. All human persons and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development. The Declaration on the Right to Development outlines principles that should guide policy decisions on climate action. For example, it states that the right to development implies the full

<sup>10</sup> See addendum to the report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, on the status of indigenous peoples' rights in Panama ([A/HRC/27/52/Add.1](#)), para. 42.

<sup>11</sup> See, for example, Ian Mitchell and Rachael Calleja, "Aid and climate change" PowerPoint from Development Leaders Conference, Center for Global Development, 19 November 2020 (describing a mitigation project in Tonga that cost \$156/ton of carbon dioxide reduction; this same mitigation could have been achieved somewhere else with enough money left over to give every Tongan \$450, which is 7 per cent of the national income).

realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the right of peoples to full sovereignty over all their natural wealth and resources (art. 1), and that the benefits of development should be fairly distributed (art. 2).

16. The right to development is rooted in sustainable development and equity, reflecting the holistic nature of the right, which takes into account not only economic well-being but also social and environmental aspects.<sup>12</sup> The 1992 United Nations Conference on Environment and Development concluded with various significant instruments tied to sustainable development, including United Nations Framework Convention on Climate Change and the Rio Declaration on Environment and Development. It is stated in principle 3 of the Rio Declaration that the right to development must be fulfilled so as to equitably meet the developmental and environmental needs of present and future generations. The 1993 Vienna Declaration, in reaffirming the right to development, made the connection with the concept of sustainable development by stating that the right to development “should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations” (art. 11).

17. The 2030 Agenda reaffirms the key principles of the Declaration on the Right to Development and further links them to sustainable development. It also reaffirms (para. 12) the principles of the Rio Declaration, including, inter alia, the principle of common but differentiated responsibilities. Its seventeen Sustainable Development Goals range from providing access to energy and sustained economic growth (Sustainable Development Goals 7 and 8) to combating climate change and its impacts (Sustainable Development Goal 13) and protecting the environment (Sustainable Development Goals 14 and 15). Sustainable Development Goal 16 specifically incorporates a justice component into sustainable development, referring to the need to provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

18. The 2030 Agenda is anchored in human rights-based principles and commits to leaving no one behind. Goals that specifically refer to these obligations include Sustainable Development Goal 10, which aims to reduce inequality within and among countries; Sustainable Development Goal 5, on gender equality, urging governments to end all forms of discrimination; Sustainable Development Goal 2, which encourages governments to secure land access for those working in resource-based sectors, including women and indigenous people, and Sustainable Development Goal 12 on sustainable production and consumption patterns. The 2030 Agenda also requires businesses to act in accordance with the Guiding Principles on Business and Human Rights Implementing the United Nations “Protect, Respect and Remedy” Framework, which establish the responsibility to respect human rights.

19. Several targets established to achieve Sustainable Development Goal 13 are of particular relevance from the perspective of the right to development: target 13.1 (Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries); target 13.2 (Integrate climate change measures into national policies, strategies and planning); target 13.3 (Improve education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning); and target 13.b (Promote mechanisms for raising capacity for effective climate change-related planning and management in least developed countries and small island developing States, including focusing on women, youth and local and marginalized communities).

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<sup>12</sup> See, for example, Report of the World Commission on Environment and Development (A/42/427), pp. 1–82.

20. United Nations Framework Convention on Climate Change is grounded in the need for equity between the global North and South. In article 3, parties are called upon to address climate change “on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.” Article 4 provides for technology transfer from developed to developing countries. According to article 4 (7), “economic and social development and poverty reduction are the first and overriding priorities of the developing country Parties” and such priorities are to be taken into account in the context of both developed and developing countries’ implementation of their respective commitments under the Convention.

21. The Paris Agreement emphasizes the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty (preamble, para. 8). It provides a framework for financial, technical and capacity-building support from more developed countries to developing countries, both to mitigate greenhouse gases and to adapt to the effects of climate change. Notably, to achieve such results, in its preamble the Agreement explicitly states that its parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, including the right to development, as well as gender equality, empowerment of women and intergenerational equity. The Agreement recognizes that climate change has an impact on human rights, and calls for parties to consider human rights obligations (which include the right to development) when taking actions to address climate change (para. 11).

22. The procedural rights and obligations relevant to climate change are specifically recognized in article 12 of the Paris Agreement, which requires States to cooperate to enhance public awareness, public participation and public access to information. Article 13 of the Paris Agreement provides for a “transparency framework” regarding States’ compliance with obligations under the Agreement. Furthermore, it is acknowledged in article 7 of the Paris Agreement that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, the knowledge of indigenous peoples and local knowledge systems.

23. States have parallel obligations under other instruments, including the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), which requires parties to guarantee the rights of access to information, public participation in decision-making and access to justice in environmental and climate-related matters (art. 1). Likewise, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) provides for rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters (art. 1).

24. Companies planning projects related to climate change and development have a responsibility to have a human rights policy and they must engage in human rights-based due diligence prior to starting a project ([A/HRC/17/31](#)). Since 2014, the United Nations Human Rights Council has been working to develop a treaty governing the activities of companies with respect to human rights through its open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights.

### III. Current practices and cooperation at the international level

#### A. Level of implementation and State compliance with climate change policies

25. The Special Rapporteur is pleased to note that States responding to the call for inputs demonstrated a range of mechanisms to address climate change, including integrating climate change concerns into national development strategies<sup>13</sup> or sectoral plans,<sup>14</sup> creating stand-alone adaptation plans<sup>15</sup> and implementing new laws<sup>16</sup> and programmes.<sup>17</sup>

26. Many States have worked to reduce their greenhouse gas emissions and have agreed to specific nationally determined contributions since signing the Paris Agreement. According to the registry of nationally determined contributions, maintained by the secretariat of the United Nations Framework Convention on Climate Change, 192 parties have submitted their first contributions and 8 have submitted their second contributions.<sup>18</sup> These include not only more developed countries such as the United States of America, but also less developed countries and those who were in transition (annex 1) at the time Convention was created. A total of 77 countries, more than 100 cities and over 170 companies have pledged to become carbon-neutral by the middle of the twenty-first century.<sup>19</sup>

27. The Special Rapporteur wishes to highlight the following achieved and planned reductions reported by States: Ukraine, in its submission of 22 February 2021, reported a 63.99 per cent greenhouse gas emission reduction from 1990 levels (excluding land use, land-use change and the forestry sector). Romania and other members of the European Union have taken measures to reduce greenhouse gas emissions, as its membership requires, with the goal of reducing emissions by 40 per cent compared to 1990 levels.<sup>20</sup> As noted in its submission of 31 March 2021, Brunei Darussalam communicated its first nationally determined contribution to Convention in December 2020, committing to a reduction in greenhouse gas emissions by 20 per cent by 2030. In 2016, Azerbaijan ratified the Paris Agreement and set a target of reducing greenhouse gas emissions by 35 per cent from 1990 levels by 2030.<sup>21</sup> Maldives has gone so far as to commit to net-zero emissions as early as 2030, so long

<sup>13</sup> Submission of Thailand of 4 March 2021.

<sup>14</sup> Submission of Lebanon of 15 April 2021.

<sup>15</sup> See, for example, submission of Thailand of 4 March 2021; submission of Kenya of 28 March 2021.

<sup>16</sup> See, for example, submission of Ecuador of 25 March 2021.

<sup>17</sup> See, for example, submission of Saudi Arabia of 28 March 2021.

<sup>18</sup> Nationally Determined Contributions Registry (interim) of the United Nations Framework Convention on Climate Change. Available at: [www4.unfccc.int/sites/ndcstaging/Pages/Home.aspx](http://www4.unfccc.int/sites/ndcstaging/Pages/Home.aspx) (accessed on 23 May 2021).

<sup>19</sup> International Institute for Sustainable Development, “77 Countries, 100+ cities commit to net-zero carbon emissions by 2050 at Climate Summit”, 24 September 2019. Available at: <https://sdg.iisd.org/news/77-countries-100-cities-commit-to-net-zero-carbon-emissions-by-2050-at-climate-summit/>. See also International Institute for Sustainable Development, “177 companies have pledged to reach net-zero emissions by 2050”, 17 December 2019. Available at: <https://sdg.iisd.org/news/177-companies-have-pledged-to-reach-net-zero-emissions-by-2050/>.

<sup>20</sup> Submission of Romania of 5 April 2021; submission by Germany and the European Commission on behalf of the European Union and its member States of 17 December 2020.

<sup>21</sup> Submission of 31 March 2021.

as it receives adequate international aid.<sup>22</sup> Some least-developed countries, including Zambia, have submitted nationally determined contributions.<sup>23</sup>

28. The Special Rapporteur is pleased to see that States are cooperating with others in their regions to advance climate initiatives. A number of State submissions demonstrated some level of international cooperation in addressing climate change. Region-wide initiatives such as the Pacific Adaptation to Climate Change Programme, the first major climate change adaptation initiative in the Pacific region, are helping to integrate climate risks into national planning and processes. The European Union and its member States in Partner Countries are pursuing a “Team Europe Approach” to achieve the goals of the Paris Agreement, protect natural resources and promote an ecological transition in their development pathways.<sup>24</sup>

29. States are using their leadership of regional and international forums to advance Paris Agreement goals. For example, Saudi Arabia made climate change a theme of its G20 presidency. As Chair of the Association of South-East Asian Nations (ASEAN) in 2021, Brunei Darussalam is championing climate action for the ASEAN region by overseeing a number of climate-related programmes not limited to areas such as the green economy, climate ambition, youth representation, and research and development.

30. The Special Rapporteur is concerned that market-based mechanisms for climate mitigation have the potential to undermine human rights.<sup>25</sup> Land-based mitigation strategies threaten the right to self-determination and access to land, which are key to fulfilling the right to development. To fulfil their obligations under human rights law and under the Paris Agreement, States must ensure that activities under article 6 contribute to sustainable development while promoting, considering and protecting human rights effectively. Mechanisms to achieve mitigation can draw from the practices and policies widely adopted by States in the policies of development and climate finance institutions.<sup>26</sup>

31. In addition, the Special Rapporteur is pleased that many States are embracing the principle of leaving no one behind and specifically integrating Sustainable Development Goals into their policies.<sup>27</sup> However, as noted at the United Nations high-level political forum on sustainable development, progress is slow or has stalled in many areas, including in efforts to address rising inequalities within and among countries and combat climate change, which, in turn, impedes achievement of the Sustainable Development Goals. The high-level political forum concluded that the world is not on track to achieve many targets by 2030. The COVID-19 pandemic has further constrained the funding needed to achieve the Sustainable Development Goals.<sup>28</sup>

<sup>22</sup> Submission of 1 March 2021.

<sup>23</sup> Nationally Determined Contributions Registry (interim) of the United Nations Framework Convention on Climate Change – Zambia. Available at: <https://www4.unfccc.int/sites/NDCStaging/pages/Party.aspx?party=ZMB> (committing to a 25 per cent reduction compared to 2010 levels alone and a 47 per cent reduction with international support).

<sup>24</sup> Submissions of Italy of 26 March and 1 April 2021.

<sup>25</sup> See, for example, Friends of the Earth International, “Chasing carbon unicorns: the deception of carbon markets and ‘net zero’”, 22 February 2021.

<sup>26</sup> Centre for International Environmental Law, *Rights, Carbon, Caution: Upholding Human Rights under Article 6 of the Paris Agreement* (2021).

<sup>27</sup> See, for example, The Department of Sustainable Development, Government of Romania, “Romania’s Sustainable Development Strategy 2030”. Available at <https://bit.ly/3wa484W>. (This includes 104 targets for 2030 that adapt the 17 Sustainable Development Goals of the 2030 Agenda).

<sup>28</sup> OECD, “COVID-19 crisis threatens Sustainable Development Goals financing”, 10 November 2020. Available at: <https://www.oecd.org/newsroom/covid-19-crisis-threatens-sustainable-development-goals-financing.htm>.

## B. Pandemic recovery in the context of climate change and the right to development

32. Many States have been working to recover from the economic downturns caused by the COVID-19 pandemic and simultaneously increase their resilience to future shocks. In the European Union, Next Generation EU is a €750 billion temporary recovery instrument to help to repair the immediate economic and social damage caused by the pandemic.<sup>29</sup> This stimulus package requires member States to submit national recovery and resilience plans, which are intended to promote clean technologies and renewables, energy efficiency, sustainable transport, and education and training, with a focus on youth and gender equality.

33. Lebanon has leveraged pandemic recovery opportunities with opportunities to implement the Paris Agreement. In April 2020, the Government of Lebanon issued a financial recovery plan that includes a comprehensive economic programme aimed at resolving deep-seated financial and institutional problems, restoring confidence, boosting economic growth and promoting a healthy financial system. The plan mandates the swift implementation of the Paris Agreement through a climate change implementation decree. According to Lebanon's 2020 update on its nationally determined contribution, climate action will be synchronized with sustainable development efforts, the just transition of the workforce and the mitigation of the adverse impact of the COVID-19 pandemic.<sup>30</sup>

34. The Special Rapporteur wishes to highlight the various State submissions providing other examples of "green recoveries". Saudi Arabia's post COVID-19 economic recovery programme will expedite the implementation of its national Vision 2030 programme, which provides for achieving 50 per cent renewables in energy mix by 2030, building the world's largest green hydrogen facility and expanding the biggest carbon capture and utilization project. Bahrain reports that its pandemic recovery, after attending to its immediate needs, shifted to a green recovery that satisfies the needs of sustainable development (e.g. banning single-use plastic bags at local bakeries). Thailand reports that COVID-19 recovery strategies are ensuring that sustainability is taken into account, including in relation to climate change mitigation and adaptation. For example, it is offering more than 16,000 jobs in the various departments related to conservation to help people affected by COVID-19 to increase their income and promote local community engagement in the conservation and management of natural resources and the environment. Ecuador joined a regional initiative called the Post COVID-19 Green Recovery for Food, Health and Water Security Strengthened by Financial and Technological Innovations in Latin American Countries, sponsored by the Inter-American Institute for Cooperation on Agriculture. This initiative seeks to strengthen the ability of countries in the region to generate and build optimal capacities for the implementation of post-COVID-19 actions.<sup>31</sup>

35. The significant public investments in COVID-19 recovery plans are a historical opportunity to reorient the processes that are leading to the irreversible destruction of the

<sup>29</sup> Submissions of 26 March and 1 April 2021.

<sup>30</sup> Lebanon's Nationally Determined Contribution – Updated 2020 version. Available at: <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Lebanon%20First/Lebanon%27s%202020%20Nationally%20Determined%20Contribution%20Update.pdf>.

<sup>31</sup> Submission of Saudi Arabia of 30 March 2021; Submission of Bahrain of 28 March 2021; Submission of Thailand of 4 March 2021; Submission of Ecuador of 25 March 2021.

Earth towards more equitable and sustainable production and consumption patterns and a more democratic global governance of economic and financial systems.<sup>32</sup>

### C. Participation and access to information

36. Participation is a key component of the right to development, especially the participation of those at high risk of vulnerability. The United Nations High Commissioner for Human Rights has noted that “public participation rights encompass the rights to be consulted at each phase of legislative drafting and policymaking, to voice criticism and to submit proposals aimed at improving the functioning and inclusivity of all governmental bodies engaged in the conduct of public affairs” (A/HRC/27/29). Furthermore, companies engaged in projects to address climate change or promote development are responsible for ensuring access to information and participation through due diligence reviews prior to starting the projects.

37. The Special Rapporteur appreciates that States are mindful of their obligations to provide access to information and promote participation. For example, Lebanon reports that it regularly shares best practices through its donor organization for international exposure and meaningful South-South exchange.

38. One mechanism reported by Italy for increasing access to information is the International Aid Transparency Initiative, which organizes information and encourages transparent reporting in relation to development and humanitarian organizations in low-income countries to help donors to know where to spend.<sup>33</sup> Members include about 30 State Governments, as well as civil society organizations, development funders and banks.<sup>34</sup>

39. Many countries have laws mandating environmental impact assessments but few countries have a specific system for a human rights assessment that discloses the impacts of policies, legislation, programmes or a project on human rights.<sup>35</sup>

40. The Special Rapporteur notes the good policies included in the Information Disclosure Policy (2016) of the Green Climate Fund, which imposes on climate financers a duty to maximize information disclosure. Additionally, it is stated in the Environmental and Social Policy of the Fund that the information provided should be made available in different languages and multiple formats to ensure that marginalized groups reach a complete understanding of the project.

41. The right to development implies the right to participate in the global economy. In the trade regime, promoting the objective of sustainable development is clearly stated in the preamble of the Agreement Establishing the World Trade Organization (WTO), as well as in the Doha Ministerial Declaration (para. 6). However, there is great concern that trade measures ostensibly implemented by developed countries to address environmental concerns (such as climate change) may in fact have the effect of restricting the entry of low-income countries into high-income country markets and of enhancing the competitive edge of low-income countries. This could damage the trade and sustainable development prospects of low-income countries.<sup>36</sup> Penalizing

<sup>32</sup> Associazione Comunità Papa Giovanni XXIII, Call for information – Special Rapporteur on the right to development, “Climate change related policies and projects from a right to development perspective”, 2021.

<sup>33</sup> International Aid Transparency Initiative, “About IATI”. Available at: <https://iatistandard.org/en/about/> (accessed on 23 May 2021).

<sup>34</sup> International Aid Transparency Initiative, “Members’ Assembly”. Available at: <https://iatistandard.org/en/governance/members-assembly/> (accessed on 23 May 2021).

<sup>35</sup> World Bank, *Study on Human Rights Impact Assessments: A Review of the Literature, Differences with Other Forms of Assessments and Relevance for Development* (World Bank, 2013), p. 1.

<sup>36</sup> Khor and others, “Promoting sustainable development”, p. 46 (see footnote 6).

low-income countries for more carbon-intensive exports, as opposed to providing them with the technology to reduce emissions, is not consistent with the United Nations Framework Convention on Climate Change (arts 3 (1) and (5)).

#### D. Accountability and remedies

42. Domestic legislation is relatively undeveloped in terms of providing remedies to residents of a host country who are harmed by the projects or products of an external entity. There is some movement in Europe toward holding international entities accountable. For example, French law imposes a “duty of vigilance” on certain large French companies to prevent environmental and human rights harm caused abroad by their subsidiaries and other business relationships.<sup>37</sup> Parent companies must design, implement and account for the measures put in place to identify, prevent and address human rights risks and impacts throughout their global operations. Those harmed by an alleged lack of vigilance may sue the parent company in a French court.<sup>38</sup>

43. Standards to address climate change and sustainable development have not been backed by the creation of robust review and/or accountability mechanisms that address the issues in an integrated manner. Many of the mechanisms operate in silos, with limited roles for human rights mechanisms.<sup>39</sup> There are insufficient accountability mechanisms to hold businesses and States accountable for non-compliance with human rights.

44. Many international finance institutions have installed independent accountability mechanisms to assure that investments meet development goals and comply with social and environmental policies. Such mechanisms provide a means of raising and remedying harm associated with projects, thereby shining a light on the social and environmental risks of investments.<sup>40</sup> For example, the Independent Redress Mechanism of the Green Climate Fund provides recourse to those affected or who may be affected by Fund projects or programmes, and also accepts requests for reconsideration of funding proposals that have been denied by the Board of the Fund.<sup>41</sup> However, where projects are funded through private funds or bilateral agreements, few avenues for independent community feedback currently exist.<sup>42</sup>

45. Loss and damage refer to negative impacts of climate change that occur despite adaptation and mitigation efforts. Climate change impacts that are permanent and

<sup>37</sup> France, Law No. 2017-399 of 27 March 2017 on the duty of care of parent companies and contracting companies. This applies to companies domiciled in France with at least 5,000 employees in the parent and subsidiary companies or domiciled elsewhere with at least 10,000 employees in the parent and subsidiary company.

<sup>38</sup> Another model is the holding adopted in the case in the England and Wales Court of Appeal (Civil Division) of *David Brian Chandler v. Cape PLC* (25 April 2012), where the court held that a parent company may owe a direct duty of care to its subsidiary’s employees where (a) the businesses of the parent and subsidiary are in a relevant respect the same; (b) the parent has, or ought to have, superior knowledge on some relevant aspect of health and safety in the particular industry; (c) the subsidiary’s system of work is unsafe as the parent company knew, or ought to have known; and (d) the parent knew or ought to have foreseen that the subsidiary or its employees would rely on its using that superior knowledge for the employees’ protection.

<sup>39</sup> Franciscans International, *A Toolbox: Human Rights, Sustainable Development & Climate Policies – Connecting the Dots* (2018).

<sup>40</sup> Accountability Counsel, “The data speaks: sustainable recovery goals risk falling short without respect for human rights”, 2020. Available at: <https://www.accountabilitycounsel.org/wp-content/uploads/2020/11/human-rights-in-development-finance-data-110620.pdf>.

<sup>41</sup> Green Climate Fund, “Independent Redress Mechanism”. Available at: <https://irm.greenclimate.fund/> (accessed on 12 June 2021).

<sup>42</sup> Accountability Counsel, “The data speaks” (see footnote 40).

irreversible are categorized as a loss, while damage refers to impacts where reparation or restoration is possible.<sup>43</sup> Given the past decades of insufficient action to tackle the root causes of climate change, many of the States and communities most exposed to climate impacts now face loss and damages for which adaptation can no longer serve as a preventive measure.<sup>44</sup> In the majority of cases, this loss and damage undermines the rights of communities particularly at risk of vulnerability or marginalization, and threatens to undo any progress achieved in past decades towards the realization of the right to development.

46. Under the United Nations climate agreements, loss and damage were recognized as essential parts of the global response to the climate crisis with the establishment of the Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts in 2013 and with the adoption of article 8 of the Paris Agreement. However, little progress has been achieved at the international level to meet the actual need of the most impacted countries. The inadequacy of international cooperation aimed at addressing loss and damage pose a systemic threat to the realization of a broad range of human rights for those communities and indigenous peoples most exposed to adverse climate impacts – in particular to their right to development.

47. The current international response to loss and damage does not sufficiently consider human rights. It was stated in a 2019 report that different market mechanisms (in the field of humanitarian crises), which fund efforts to remedy the harmful impacts of, inter alia, climate change, had failed to meet human rights criteria for responding to loss and damage caused by climate change.<sup>45</sup>

48. The duty of international cooperation applies in the context of climate change, as stressed by the 2018 statement by the Committee on Economic, Social and Cultural Rights<sup>46</sup> and the 2019 joint statement by five human rights treaty bodies.<sup>47</sup> The latter also added that “States must co-operate in good faith in the establishment of global responses addressing climate-related loss and damage suffered by the most vulnerable countries, paying particular attention to safeguarding the rights of those who are at particular risk of climate harm and addressing the devastating impact, including on women, children, persons with disabilities and indigenous peoples.” It was stated in the 2019 report on climate change and poverty of the Special Rapporteur on extreme poverty and human rights that “[h]uman rights law requires a remedy for violations and climate change is no different” (A/HRC/41/39). These obligations relate to mitigation, adaptation, finance and loss and damage, and the duty to regulate businesses and other actors to prevent any more human rights violations.<sup>48</sup>

<sup>43</sup> Ibid.

<sup>44</sup> Adelle Thomas, Inga Menke and Olivia Serdeczny, “Loss and damage costing and financing mechanisms: Caribbean outlook”, Climate Analytics. Available at: [https://climateanalytics.org/media/ln\\_d\\_costing\\_and\\_financing\\_mechanisms\\_caribbean\\_outlook.pdf](https://climateanalytics.org/media/ln_d_costing_and_financing_mechanisms_caribbean_outlook.pdf).

<sup>45</sup> ActionAid, “Market solutions to help climate victims fail human rights test”, 8 April 2019. Available at: <https://actionaid.org/sites/default/files/publications/Loss%20and%20Damage%20Finance%20and%20Hum....pdf>.

<sup>46</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “Climate change and the International Covenant on Economic, Social and Cultural Rights – Statement of the Committee on Economic, Social and Cultural Rights”. Available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23691&LangID=E>.

<sup>47</sup> OHCHR, “Five UN human rights treaty bodies issue a joint statement on human rights and climate change”, 16 September 2019. Available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E> (accessed on 8 April 2021).

<sup>48</sup> Centre for International Environmental Law, *Funding Our Future: Five Pillars for Advancing Rights-Based Climate Finance* (2021).

## E. Financial assistance and equitable access to science and technology to address climate change

49. Climate action requires ambitious action and significant financial resources to support substantial emissions reductions, adaptation to climate change and measures to address loss and damage owing to climate change.

50. As noted in the submissions by Ecuador (25 March 2021) and Maldives (1 March 2021), many low-income countries are not in a position to contribute to international financial support. Rather, they are seeking support. In contrast, some countries that were considered to be less developed when the Convention was created (e.g. Romania) are now supporting other countries through bilateral and multilateral channels. Bilateral projects implemented so far by Romania have gone to least developed countries (e.g. Democratic Republic of Congo and the Sudan), lower middle-income countries (e.g. Georgia and Republic of Moldova) and small island States prone to climate change-related natural disasters.

51. In order to develop in a climate-resilient manner, middle and low-income States (and people at high risk for vulnerability within high-income States) need assistance from those who contributed most to climate change. This concept, known as a “just transition”, has advanced from its origination in the labour union movement and is now relevant to all sectors of society.<sup>49</sup> It has become intertwined with the concept of climate justice,<sup>50</sup> whereby the global North, which is historically responsible for climate change, has the moral and legal obligation<sup>51</sup> to lead efforts to deal with the impact of climate change. Climate justice demands the equitable distribution of climate finance. As noted in the Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (A/HRC/31/52), States acting individually and in cooperation must take steps to protect those most vulnerable to the impacts of climate change. Development contributes to adaptive capacity; indeed, many determinants of adaptive capacity are themselves indicators of the degree of development of a country.<sup>52</sup> By assisting those who are at high risk of vulnerability to fulfil their right to development, developed countries can help these populations to adapt.<sup>53</sup>

52. The current climate finance architecture is based on equity to ensure that developed States – historically most responsible for climate change – have the duty to help developing States, which are more vulnerable to the effects of climate change.<sup>54</sup> According to article 4 (3) and (4) of the United Nations Framework Convention on Climate Change, developed States “shall provide new and additional financial resources” to help developing States to achieve the objectives of the

<sup>49</sup> See Samantha Smith, *Just Transition, A Report for the OECD* (OECD, 2017). Available at: <https://www.oecd.org/environment/cc/g20-climate/collapsecontents/Just-Transition-Centre-report-just-transition.pdf>; see also the preamble to the Paris Agreement (“Taking into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities”).

<sup>50</sup> See James Goodman, “From Global Justice to Climate Justice? Justice Ecologism in an Era of Global Warming”, *New Political Science*, vol. 31, No. 4, (2009) pp. 499–514.

<sup>51</sup> Article 3.1 of the United Nations Framework Convention on Climate Change provides for the principle of common but differentiated responsibilities.

<sup>52</sup> Indur Goklany, “Integrated strategies to reduce vulnerability and advance adaptation, mitigation, and sustainable development”, *Mitigation and Adaptation Strategies for Global Change*, vol. 12, No. 5 (June 2007), pp. 755–786.

<sup>53</sup> South Centre, “Sustainable development in the context of climate change: overriding priority of the South”, Analytical Note SC/GGDP/AN/ENV/, 6 September 2008. Available at: [https://www.southcentre.int/wp-content/uploads/2013/07/AN\\_ENV6\\_Sustainable-development-in-Climate-Change\\_EN.pdf](https://www.southcentre.int/wp-content/uploads/2013/07/AN_ENV6_Sustainable-development-in-Climate-Change_EN.pdf).

<sup>54</sup> Centre for International Environmental Law, *Funding Our Future* (see footnote 48).

Convention, and “shall also assist the developing country parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation.” In article 9 of the Paris Agreement, the duty of developed country parties to assist financially developing country parties for mitigation and adaptation action is reiterated, and in article 8 (1) and (2) the need for “averting, minimizing and addressing loss and damage associated with the adverse effects of climate change” is highlighted.

53. The 2015 Paris Agreement reaffirmed the commitment made in Cancun, Mexico, in 2010 by developed countries to mobilize \$100 billion per year by 2020, extending this to the year 2025 and making the \$100 billion a floor from which to scale up climate finance. Before 2025, the parties to the Paris Agreement are supposed to set a new goal (from a floor of \$100 billion), taking into account the needs and priorities of developing countries.<sup>55</sup>

54. In 2018, climate spending reached \$78.9 billion, with 80 per cent of that from the public sector.<sup>56</sup> This funding represents an 11 per cent increase from the previous year.<sup>57</sup> However, much of the current funding comes from the public sector and is distributed from one State to another through bilateral channels.<sup>58</sup> United Nations entities and lending institutions, such as the World Bank, provide a significant portion of public multilateral funding. In some cases, exaggerated amounts of aid are being reported.<sup>59</sup> The Special Rapporteur is concerned that a significant portion of official bilateral development assistance and other official flows (official sector transactions that do not meet official development assistance criteria) may have been characterized by States as “new” when they are really the same level of spending as before.<sup>60</sup>

55. The largest fund designed to help developing countries to address the climate crisis is the Green Climate Fund. Since its establishment in 2010, the Fund has taken significant steps to ensure that the adaptation and mitigation projects and programmes it funds do not undermine human rights. To that end, it has taken steps to create an environmental and social management system, ensure respect for the rights of indigenous peoples, and promote gender equality. It has adopted an Environmental and Social Policy, an Indigenous Peoples Policy, an Information Disclosure Policy, and a Gender Policy and Action Plan. It has also created an Independent Redress Mechanism to provide an avenue for access to remedy for communities who are or who may be affected by Fund projects.

56. However, to date, the Green Climate Fund has been operating under an interim environmental and social policy and has yet to adopt its own safeguards. The Fund is also in the process of reviewing and updating its Information Disclosure Policy and guidelines on observer participation, both of which are critical to ensuring the right to access to information and participation. It has not adopted an exclusion list to specify projects that cannot be funded. The Fund works through accredited entities, which also have to comply with its policies. While it has over 100 accredited entities,

<sup>55</sup> Adoption of the Paris Agreement – Proposal by the President – Draft decision -/CP.21, [FCCC/CP/2015/L.9/Rev.1](#), para. 54.

<sup>56</sup> Mitchell and Calleja, “Aid and climate change” (see footnote 11).

<sup>57</sup> Ibid.

<sup>58</sup> Weiler, “Adaptation and health” (see footnote 9). For example, the Italian Ministry for the Environment has signed 46 memorandums of understanding for climate change-related projects and more than 80 projects have been approved. See p. 6 of the Additional Contribution of Italy of March 2021.

<sup>59</sup> Ian Mitchell and others, “Improving the measurement of climate finance and progress on the \$100bn target”, Center for Global Development (29 October 2020).

<sup>60</sup> Mitchell and Calleja, “Aid and climate change” (see footnote 11).

many challenges remain to ensure access to finance for those on the frontlines who need it most.

57. Among United Nations programmes, the Green Climate Fund plays an important role in supporting and working with low-income countries to combat climate change and shifting toward low-emission and climate-resilient development pathways. Such programmes depend on States pledging and fulfilling pledges to donate funds to the Fund. Half of all Fund's funding is intended to be dedicated to adaptation, with half of that amount dedicated to the countries most vulnerable to climate changes.<sup>61</sup>

58. The Adaptation Fund specifically funds adaptation projects that either reduce the vulnerability of social organizations and natural systems, or that boost their adaptive capacity.<sup>62</sup>

59. The United Nations Environment Programme has estimated global adaptation investment needs as costing between \$140 billion and \$300 billion per year by 2030 and between \$280 billion and \$500 billion by 2050.<sup>63</sup> Unlike mitigation, adaptation does not lend itself easily to market-based tools,<sup>64</sup> and private-sector tools for adaptation have been slow to emerge.<sup>65</sup> The amount of adaptation spending has been inadequate, constituting 30 per cent of 2018 spending to address climate change,<sup>66</sup> and the Adaptation Fund has not reached its objectives for the past two years.

60. The Special Rapporteur is further concerned that funding for adaptation and development often is in the form of loans, not grants, which could increase the debt of low-income countries. The true value of support for climate action may be as little as \$19 billion to \$22.5 billion per year once loan repayments, interest and other forms of over-reporting have been stripped out.<sup>67</sup> An OECD assessment carried out in 2018 reveals that, while the mobilization of climate finance has increased in recent years, the majority of these resources are provided for mitigation, rather than for adaptation, loss and damage.<sup>68</sup> Moreover, only a small minority of resources are made available in the form of grants (rather than loans), which are the financial tool best suited to meeting the needs of the most vulnerable countries.<sup>69</sup>

61. The Special Rapporteur finds that the efficacy of spending on carbon reduction is varied. The cost of carbon reductions can range from under \$10 to over \$1,000 per ton of carbon dioxide reduced.<sup>70</sup> Higher costs are appropriate where a project has

<sup>61</sup> Green Climate Fund, "About GCF". Available at: <https://www.greenclimate.fund/about> (accessed on 12 June 2021).

<sup>62</sup> Adaptation Fund, "Operational Policies and Guidelines – Annex 1: Strategic Priorities, Policies, and Guidelines of the Adaptation Fund Adopted by the CMP", 2017. Available at: <http://www.adaptation-fund.org/wp-content/uploads/2015/01/OPG%20ANNEX%201.pdf>.

<sup>63</sup> United Nations Environment Programme, *The Adaptation Finance Gap Report* (2016). Available at: <https://climateanalytics.org/media/agr2016.pdf>.

<sup>64</sup> Aaron Atteridge, "Private sector finance and climate change adaptation", Stockholm Environment Institute Policy Brief, 2010. Available at: <https://www.sei.org/publications/private-sector-finance-climate-change-adaptation/>.

<sup>65</sup> Barbara Buchner and others, "Global landscape of climate finance 2019", Climate Policy Initiative, 2019. Available at: <https://www.climatepolicyinitiative.org/publication/global-landscape-of-climate-finance-2019/>.

<sup>66</sup> Mitchell and Calleja, "Aid and climate change" (see footnote 11).

<sup>67</sup> Oxfam, "True value of climate finance is just a third of that reported by developed countries", 20 October 2020. Available at: <https://reliefweb.int/report/world/true-value-climate-finance-just-third-reported-developed-countries-oxfam>.

<sup>68</sup> OECD, "Climate finance for developing countries rose to USD 78.9 billion in 2018", 6 November 2018. Available at: <https://www.oecd.org/newsroom/climate-finance-for-developing-countries-rose-to-usd-78-9-billion-in-2018oecd.htm>. (accessed on 8 April 2021).

<sup>69</sup> Ibid.

<sup>70</sup> Mitchell and Calleja, "Aid and climate change" (see footnote 11).

benefits to local communities beyond carbon reduction (i.e., providing local clean energy or sustainable development).

62. As noted above, much of the climate funding currently available takes the form of bilateral foreign aid, rather than going through channels of the United Nations Framework Convention on Climate Change, such as the Global Environment Facility, the Green Climate Fund or the Adaptation Fund. Other funding is channelled through multilateral development banks. This type of funding is voluntary and not accountable to Convention and can reflect the donor's priorities rather than those of the recipient.<sup>71</sup>

63. As Maldives notes in its response, an equitable balance must be struck between protecting the property interests of technology holders and protecting the lives of people who are vulnerable to climate change and the poverty associated with a lack of development.

64. Just as there is a historical disparity in financial resources and development between the global North and South, there is also a disparity in adaptive capacity and the capacity to achieve the Sustainable Development Goals. Particularly problematic is the unequal access to scientific information and technology, especially for the least developed countries and small island developing States, as noted at the United Nations high-level political forum on sustainable development held in 2019. Low-income countries often rely on older technologies that are less efficient and pollute more. Their economies are often based on just a few key sectors that are not resilient to climate change and external shocks. They may export only a limited range of commodities, often with a high carbon content and oriented towards markets that require long distance transportation by air or sea.<sup>72</sup> They therefore lack the technology and economic diversification to either mitigate or adapt to climate change.

## **F. Systems to evaluate progress in achieving climate-resilient and sustainable development**

65. The 2030 Agenda for Sustainable Development encourages States to “conduct regular and inclusive reviews of progress at the national and subnational levels which are country-led and country-driven” (para. 79). The United Nations Secretary-General provided guidelines for States to voluntarily review their progress in achieving the Sustainable Development Goals.<sup>73</sup> States share their voluntary national review annually at the Economic and Social Council and every four years before the United Nations General Assembly.<sup>74</sup> In 2021, 44 countries participated in the annual review.<sup>75</sup>

66. A United Nations task force has prepared a set of criteria specifically for evaluating state implementation of the right to development.<sup>76</sup> It considers (a) States acting collectively in global and regional partnerships; (b) States acting individually as they adopt and implement policies that may have impacts beyond State borders; and (c) States acting individually as they adopt and implement policies affecting persons within their jurisdiction. These criteria could be considered at the next stocktaking of the Paris Agreement. Additional criteria may be needed to measure the

<sup>71</sup> South Centre, “Sustainable development in the context of climate change” (see footnote 53).

<sup>72</sup> Khor and others, “Promoting sustainable development” (see footnote 6).

<sup>73</sup> *Handbook for the Preparation of the Voluntary National Reviews* (United Nations publication, 2018). Available at: [https://www.sdg16hub.org/system/files/2018-07/17354VNR\\_handbook\\_2018.pdf](https://www.sdg16hub.org/system/files/2018-07/17354VNR_handbook_2018.pdf).

<sup>74</sup> Ibid.

<sup>75</sup> United Nations, “Q&A for voluntary national reviews at the 2021 HLPF”. Available at: [https://sustainabledevelopment.un.org/content/documents/27144QA\\_VNR\\_2021.pdf](https://sustainabledevelopment.un.org/content/documents/27144QA_VNR_2021.pdf).

<sup>76</sup> See report of the Working Group on the Right to Development on its fifteenth session (A/HRC/27/45).

extent to which transnational corporations that may escape state jurisdiction are fulfilling or impeding the right to development.

67. The Special Rapporteur is concerned that there is not yet a clear method for determining the efficacy of the funds that assist low-income countries with climate change.<sup>77</sup> For example, some projects initially marked as having no mitigation focus are later designated as having a principal mitigation objective, while others claim to have a principal mitigation objective but do not mention mitigation in any project documents.<sup>78</sup>

68. Although some nations and regions have developed carbon trading regimes,<sup>79</sup> there is no single, coordinated global scheme to manage carbon reductions and assess their efficacy.<sup>80</sup> Various entities have developed standards for certifying the amount of carbon reduced through the clean development mechanism and other offset projects, including the Gold Standard<sup>81</sup> and the Verified Carbon Standard.<sup>82</sup> While these verification programmes may be able to certify the amount of carbon a project reduces at a particular point in time, there is not a standard mechanism for assessing how the project benefits (or harms) the local communities in the vicinity of the project. There are concerns that carbon offsets have been inflated.<sup>83</sup>

69. The Special Rapporteur considers that the climate change actions of low-income countries, whether in terms of mitigation or adaptation, should not be assessed by the same standards as those of high-income countries. Rather, the assessment should be done progressively and take into account the extent to which the developmental goals of low-income countries are met as the context under which their climate change actions take place.<sup>84</sup>

70. Projects that specifically address adaptation (as opposed to carbon reduction) should be evaluated on different terms as adaptation projects must benefit a specific group of people rather than the general public good. Ensuring efficient adaptation is more difficult than ensuring efficient mitigation, given the intertwined nature of development and adaptation and the broad range of interventions and infrastructure needed to develop climate resilient systems. Projects that only partially promote “adaptation” may still be valuable to a group of people at high risk of vulnerability if they help to alleviate poverty and provide for a diversified, sustainable economy (thereby facilitating adaptive capacity).

<sup>77</sup> Mitchell and others, “Improving the measurement of climate finance and progress” (see footnote 59).

<sup>78</sup> Ibid.

<sup>79</sup> For example, European Commission, “EU Emissions Trading System (EU ETS)”. Available at: [https://ec.europa.eu/clima/policies/ets\\_en](https://ec.europa.eu/clima/policies/ets_en).

<sup>80</sup> Martin Cames and others, “How additional is the Clean Development Mechanism? Analysis of the application of current tools and proposed alternatives”, DG CLIMA, March 2016. Available at: [https://ec.europa.eu/clima/sites/clima/files/ets/docs/clean\\_dev\\_mechanism\\_en.pdf](https://ec.europa.eu/clima/sites/clima/files/ets/docs/clean_dev_mechanism_en.pdf). Even with European Union Emissions Trading System, the extent of carbon reduction is not clear. For information on assessing the effectiveness of the Emissions Trading System, see Tim Laing and others, “Assessing the effectiveness of the EU Emissions Trading System”, Centre for Climate Change Economics and Policy Working Paper No. 126, 2013. Available at: <https://www.ccecp.ac.uk/wp-content/uploads/2015/10/WP106-effectiveness-eu-emissions-trading-system.pdf>.

<sup>81</sup> Gold Standard, “Certified SDG impacts for results based finance”. Available at: <https://www.goldstandard.org/impact-quantification/certified-sdg-impacts>.

<sup>82</sup> Verra, “Verified Carbon Standard”. Available at: <https://verra.org/project/vcs-program/>.

<sup>83</sup> See, for example, Thales A. P. West and others, “Overstated carbon emission reductions from voluntary REDD+ projects in the Brazilian Amazon”, *Proceedings of the National Academy of Sciences of the United States of America*, vol. 117, No. 39 (2020), pp. 24188–24194.

<sup>84</sup> Hesham Al-Zahrani and others, “Ensuring an operational equity-based global stocktake under the Paris Agreement”, Research Paper 99 (Geneva, South Centre, 2019), p. 12; see also Paris Agreement, art. 14.1, referring to global stocktaking “in the light of equity and the best available science”.

## **IV. Conclusions and recommendations**

### **A. International cooperation to address climate change**

71. In the face of the climate crisis, the international community must design and implement ambitious and comprehensive policies and measures that pave the way for a real and transformative ecological transition. Countries must ensure the right to development by supporting development models that achieve a safe climate and meet the Sustainable Development Goals, including the need to align both production and consumption patterns with sustainable and equitable levels.

72. States should uphold and fully implement their commitments under the United Nations Framework Convention on Climate Change and its related legal instruments, including the Kyoto Protocol and the Paris Agreement, consistent with the principle of common but differentiated responsibility and respective capabilities, in light of equity and taking into account States' differentiated historical responsibility for greenhouse gas emissions.

73. Efforts to combat climate change under the Convention and the Paris Agreement must not violate human rights. States should adopt rules for the sustainable development mechanism under article 6 (4) of the Paris Agreement that include activities that promote, respect and consider human rights. This should include the adoption of human rights-based social and environmental safeguards; requirements for ensuring the meaningful participation and consultation of communities and indigenous peoples throughout the design, development and implementation of any project under this mechanism, including ensuring the free, prior and informed consent of indigenous peoples; and an independent mechanism for redressing grievances.

74. Development banks should adhere to human rights principles, and should avoid funding further development of fossil fuels to ensure that development finance is compatible with international climate obligations.

### **B. Participation and access to information**

75. States must ensure that those affected by climate change and climate-related decision-making, in particular, indigenous and local communities and those who face intersectional discrimination, have ongoing access to information; free, prior, informed consent; and participation.

76. Such information must include scientific evidence about the risks of climate change and the State's plans to implement climate change and development policies consistent with this science and in accordance with State obligations under the Convention and the Paris Agreement, the 2030 Agenda for Sustainable Development and international human rights instruments.

77. Such information should also include an assessment of risks to human rights that are associated with climate change mitigation and adaptation, the impacts of response measures, and loss and damage arising from the impacts of climate change.

78. States should adopt laws requiring human rights impact assessments that consider the implications of development and climate mitigation and adaptation projects on the right to development.

79. The State's obligations to ensure participation and access to information apply extraterritorially, to activities outside a State's territories that are within the State's influence or control.

### **C. Accountability and remedy**

80. States should ensure that their court systems and/or administrative procedures provide rights holders a means through which they can seek restitution for violations of their human rights that result from climate change, climate change response measures (including mitigation and adaptation) or development finance, including for harm that occurs extraterritorially.

81. States should fulfil their extraterritorial obligations by regulating the actions of multinational corporations and their subsidiaries that are either headquartered or operating in their territories. States should actively participate in the Human Rights Council negotiations for a binding treaty on transnational corporations and human rights.

82. Activities to mitigate or adapt to climate change should provide for independent grievance mechanisms in line with the effectiveness criteria of the United Nations Guiding Principles.

83. States should urgently enhance their cooperation to address loss and damages resulting from climate change. Adequate political attention should be dedicated to loss and damage in the implementation of the Paris Agreement, including through a dedicated agenda item at the twenty-sixth Conference of the Parties to the United Nations Framework Convention on Climate Change and subsequent annual Conferences of the Parties, focused on ensuring the effective operationalization of modalities for averting, minimizing and addressing loss and damage arising from the impacts of climate change, including through the provision of financial and technical assistance.

84. States should, as a matter of urgency, scale up financial support provided to communities most affected by loss and damage caused by climate change. An international funding facility should be established to channel new public commitments of finance, in particular from developed countries, on loss and damage. Until an agreement on such instruments can be found under the Convention, States should uphold their duty to cooperate through the establishment of national or multilateral mechanisms to mobilize adequate resources to address loss and damage.

85. Climate finance provided for loss and damage should contribute to the realization of human rights, including the right to development, of the most affected communities. The provision and distribution of these funds must be guided by the principles of transparency, participation, non-discrimination and accountability. Funding for loss and damage must be provided in a manner that adequately benefits communities and low-income countries that are particularly vulnerable, without aggravating the public debt of recipient States by prioritizing grants over loans.

86. The twenty-sixth Conference of the Parties to United Nations Framework Convention on Climate Change should effectively operationalize the Santiago Network for Averting, Minimizing and Addressing Loss and Damage, including with a well-resourced secretariat, be it as a new entity or a host organization, to ensure that the Network can begin its operations as soon as possible and deliver on the ground. The modalities for the Santiago Network must ensure that stakeholders can actively contribute to the work of the Network. The organizations, entities and experts participating in the Network should consider how to address issues related

to the promotion and protection of human rights most effectively, including the rights of indigenous peoples and gender equality, among other issues. In addition, the same consideration should be undertaken by the Executive Committee of the Warsaw International Mechanism for Loss and Damage.

87. Human rights institutions and authorities should, within the scope of their mandates, review and monitor the implementation by the States of their duty to address and remedy loss and damage caused by climate change, including in relation to their duty to cooperate internationally and to remedy the adverse extraterritorial impacts of activities taking place under their jurisdiction.

88. Developed countries listed in annex I of the Convention and lending entities should consider exchanging their historical carbon debt for debts incurred by low-income countries for development projects. Historical carbon debt could justify cancelling debts that will only keep low-income countries impoverished.

#### **D. Financial obligations for assistance to address climate change**

89. To provide for a just transition, and in accordance with the principles and provisions of the Convention and the Paris Agreement, States that have contributed disproportionately to climate change must provide adequate funding to developing countries. Adaptation funding must be sufficient to allow for climate-resilient, diversified economies that do not rely on limited, carbon-intensive sectors. Funding should be new and additional rather than shifted from other climate or development aid.

90. Funding should be channelled through entities that have enacted environmental and social safeguards. As the Climate Investment Funds conclude, this money should instead be used to fund Green Climate Fund, the Global Environment Facility and the Adaptation Fund.

91. Adaptation funding that provides for sustainable development should be prioritized over mitigation projects. Adaptation funding must be predictable and accessible so that developing countries can plan and deploy funds where there is a need.

92. The Green Climate Fund should develop and adopt its own environmental and social safeguards through a transparent, inclusive and participatory process. As the Fund has already approved over 100 projects and programmes, it is critical that it develop these safeguards to ensure that its projects and programmes do not cause harm to people or the environment, and have positive impacts.

93. The Green Climate Fund should update its Information Disclosure Policy to embrace its principles of maximum disclosure and transparency and to ensure the right to access to information. The presumption should be that information is disclosed in a timely manner allowing for participation, including that civil society and indigenous peoples should be made aware of and consulted on its policies. Furthermore, the Fund should improve the transparency of its project pipeline, (for example, as the Adaptation Fund does) so that local communities know about potential projects and programmes in their area and can participate in the design, development, implementation and monitoring of the projects.

94. The Green Climate Fund should work to improve access to climate finance for those particularly vulnerable to the impacts of the climate crisis by increasing its financing to direct access entities and considering ways to increase small grant financing. It should also provide climate finance primarily in the form of grants so as to not add to the debt burdens of countries.

95. In addition to providing direct funding and technology, developed countries can help to fulfil the right to development of low-income countries by enhancing the terms of trade in favour of low-income countries and supporting accommodations in trade policy for low-income countries, such as on special and differential treatment and flexibilities in the application of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

96. High-income countries can help to promote climate-resilient and sustainable development by removing barriers to low-carbon exports from low-income countries; refraining from penalizing higher carbon exports where low-income countries are in the process of transitioning to lower carbon exports; ensuring that WTO non-agricultural market access negotiations support the industrial development required to adapt to climate change; and ensuring WTO agriculture negotiations support the capacity of farmers in low-income countries to develop and improve their adaptive capacity.

#### **E. Technology transfer and capacity-building**

97. Low-carbon and climate-resilient technologies, along with the capacity to use them, are needed to ensure that all persons and governments are able to address climate change. Capacity-building activities should be as participatory as possible, reaching lower levels of government and involving groups at high risk of vulnerability. Technology must be disseminated into the domestic economies of low-income countries to help them to diversify and build sustainability. Job training is crucial to reducing the risks of rising unemployment, poverty and inequality in the face of climate change.

98. High-income countries could provide and license technology to government agencies in low-income countries tasked with climate adaptation or mitigation actions, or to government research and development agencies that can develop their own innovations. As with other forms of aid, there is a need for the research and development of technologies to be financed directly by UNFCCC funds. A technology policy board or council should be set up under UNFCCC to address technology issues.

99. Where technology is funded by UNFCCC, the intellectual property rights should be in the public domain. Technology, like other adaptation measures, should build on local, traditional and indigenous knowledges and practices.

#### **F. Systems to evaluate progress in achieving climate-resilient and sustainable development**

100. As part of the global stocktake under article 14 of the Paris Agreement, adaptation spending should be reported and evaluated as to whether it is above and beyond current assistance and the extent to which it supports the development objectives of the recipient State.

101. States should provide inputs into the global stocktake with respect to how their climate change actions under the United Nations Framework Convention on Climate Change and the Paris Agreement promote the right to development and how their development activities support their international climate obligations.