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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

International solidarity and climate change

Report of the Independent Expert on human rights and international solidarity*

Summary

The present report is the third submitted to the Human Rights Council by the Independent Expert on human rights and international solidarity, Obiora Chinedu Okafor. In the report, submitted pursuant to Council resolution 35/3, the Independent Expert discusses the issue of human rights-based international solidarity in the context of climate change.

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I. Introduction

1. After reporting to the Human Rights Council in June 2019, the Independent Expert on human rights and international solidarity, Obiora Chinedu Okafor, presented his second thematic report to the General Assembly, in which he discussed human rights-based international solidarity in the context of global refugee protection. The Independent Expert conducted one country visit in 2019, to Qatar from 2 to 10 September. The Independent Expert thanks Costa Rica and Bolivia for the positive replies received from his requests for visits and reminds other States about the need for positive replies to his requests to visit.

2. In the present report, the Independent Expert engages with one of the thematic priorities that he established for his mandate, namely the enjoyment, or lack thereof, of human rights-based international solidarity in the context of climate change. This subject is consistent with the promise made in his first report to the Human Rights Council (see A/HRC/38/40) to examine matters that lie at the intersection of international solidarity and climate change. An important goal of the report is to better illuminate the role of human rights-based international solidarity in responding to climate change, which is a common concern of humanity. A complementary objective is to strengthen the appreciation of the role that the lack of human rights-based international solidarity plays in exacerbating the challenges brought upon the world by climate change.

3. The Independent Expert considered it pressing to address the issues identified in the report, given the tragic impacts of climate change across the world, the fact that greenhouse gas emissions reached a record high in 2018,¹ and that diverse States, peoples and institutions are striving to contribute to the avoidance of further climate change-induced harm. It is hoped that the analysis, conclusions and recommendations offered here will – from a human rights perspective – support the implementation of the 2015 Paris Agreement and the 1992 United Nations Framework Convention on Climate Change; the programming of the International Labour Organization (ILO) on a just transition to sustainable economic systems; negotiations to regulate transnational corporations under international human rights law; the struggles of relevant social movements; and other relevant endeavours.

4. The report is divided into five sections. This first section introduces the report. In section II, a background on human rights-based international solidarity in the context of climate change is provided. Section III is devoted to a discussion and analysis of positive expressions of human rights-based international solidarity in the context of climate change (good practices). In section IV, key human rights-based international solidarity gaps in the context of climate change are identified and analysed (areas to be improved). Section V offers brief concluding remarks and recommendations.

5. It should be noted that the report does not deal with the topic of climate governance in and of itself, nor does it aim to reargue the case for a link between climate change and human rights. The international human rights community has documented the relationship between human rights and climate change for over a decade (see A/HRC/41/39). The present report focuses strictly on key issues that lie at the intersection of human rights-based international solidarity and climate change. Even so, given the vastness of the topic, the report does not consider every issue or problem that falls within this scope.

II. Background on human rights-based international solidarity in the context of climate change

6. The experience of climate change has become part of the daily lives of peoples around the world. Countless individuals and groups are suffering in appalling ways from the effects of climate change, something long predicted by the scientific community.² In 2019, thousands fled their homes or were killed in Africa and the Caribbean due to Cyclone

¹ United Nations Environment Programme, *Emissions Gap Report* (Nairobi, 2019), p. xiv.

² See Intergovernmental Panel on Climate Change, *Climate Change 2014: Synthesis Report* (Geneva, 2014).

Idai and Hurricane Dorian. Raging wildfires devastated large parts of Australia, North America and Europe. In the Arctic, landscapes are being altered in ways that severely threaten indigenous cultures and health. These facts are all well known, and are examples of the negative human rights impacts of climate change that are occurring globally. Human rights-based international solidarity in the context of climate change arises partly due to the physical interdependence between humankind and nature, which has no political boundaries, and deeply interconnects disparate regions through ecological dynamics that tend to implicate all States and peoples. Protecting the global environment and addressing the local impacts of climate change through human rights-based international solidarity are, therefore, an objective necessity that can no longer be delayed.

7. Climate change results from globally interlocking economic systems that drive unsustainable modes of production and consumption, especially of fossil fuels and other extractive commodities.³ The asymmetrical distribution of wealth through the global economy also reinforces the profoundly unfair reality that those who have contributed the least to the problem at issue tend to feel its greatest effects.⁴ As temperatures rise, inequalities are compounded.⁵ Climate change exacerbates social vulnerabilities based on gender, disability, poverty, age, place of birth, indigeneity, etc.⁶ In the Independent Expert's view, the enjoyment of human rights-based international solidarity is critical to the successful transformation of these problematic economic structures, adaptation to a changing world and redress for any loss or damage resulting from climate change.

8. Expressions of international solidarity to meet these challenges are not new. For example, two long-standing concepts of the international law on climate change recognize a unity of interests, as well as respect for differing values, rights and needs in pursuing global environmental protection, and therefore express certain dimensions of international solidarity. First, the status of climate change as a "common concern of humankind" is universally accepted and implies the widest cooperation and positive action for the benefit of present and future generations.⁷ Second, has been the recognition that States have "common but differentiated responsibilities and respective capabilities", which is key to international cooperation. At a minimum, this principle captures the shared responsibilities of States to address climate change and their differing capacities to act. For developing countries, the principle may also recognize the main responsibility of developed countries for historical and per capita emissions, the lesser capacity of developing countries to adapt, and their priorities of development and poverty eradication (FCCC/CP/1995/7/Add.1, para. 1).

9. The principle of common but differentiated responsibilities and respective capabilities underpins each State's pledge under the Paris Agreement – known in that treaty as a "nationally determined contribution".⁸ The Paris Agreement grants parties some discretion in determining their nationally determined contributions because it does not stipulate internationally negotiated targets or domestic measures. However, of relevance to human rights-based international solidarity, the treaty requires that developed countries provide finance to developing countries for mitigation and adaptation, that developing countries receive technological support and that developed countries take the lead in

³ Usha Natarajan, "Climate justice", in *Routledge Handbook of Law and Society*, Mariana Valverde and others, eds. (forthcoming, on file with the Independent Expert).

⁴ Ibid.

⁵ Intergovernmental Panel on Climate Change, *Global Warming of 1.5 °C: An IPCC Special Report on the Impacts of Global Warming of 1.5 °C Above Pre-Industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty* (2018).

⁶ See the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, "Joint statement on 'human rights and climate change'" (16 September 2019); and A/HRC/41/39 and Corr.1.

⁷ General Assembly resolution 43/53.

⁸ Paris Agreement, art. 4 (1)–(3).

reducing emissions.⁹ The Paris Agreement also commits States to pursue common efforts to limit the rise in the global temperature to 1.5°C to significantly reduce the risks posed to vulnerable States and peoples.¹⁰

10. However, there is a deep chasm between State behaviour thus far (including their pledges) and what is needed to prevent further climate change and to avoid the grave dangers that this portends. For one, as is well known, the second highest emitting State has submitted its formal notification of withdrawal from the Paris Agreement. Other States have laudably maintained their commitment to the accord, but their pledges are inadequate. Even if all States meet their conditional nationally determined contributions, we would still be on track to experience a catastrophic 3°C increase in the world's temperature.¹¹ Companies continue to operate in a largely underregulated manner while profiting from greenhouse gas emissions. Yet, insofar as companies and international organizations contribute to the problem through emissions, project finance and other practices that give rise to similar and complementary responsibilities to the duties of States, they also have a duty to respect the human right to international solidarity in this context (A/HRC/35/35, p. 18).

11. Given the insufficiency of State and corporate action, indigenous peoples, civil societies, subnational jurisdictions and others have been pursuing "climate justice", which emphasizes a human rights approach to the impacts of climate change on socially vulnerable peoples; the prevention of harm from mitigation activities; redress for loss and damage; and meaningful civic participation.¹² Similarly, acknowledging that high-emitting economic sectors will need to reform their operations in the coming years, some labour unions, Governments and employers are struggling to ensure that the international rights of workers dependent on those sectors are not compromised. They are doing so through planning for a so-called just transition that guarantees the right to decent work. Importantly, the Paris Agreement acknowledges a just transition, human rights and climate justice.¹³ Drawing on these discourses, people who lack direct regulatory power are demanding that Governments and corporations do better. They are also realizing human rights-based international solidarity in their own right through their pursuit of justice for individuals and groups who are owed protection from the precarities of climate change.

III. Positive expressions of human rights-based international solidarity in the context of climate change

A. Civil society and non-State practices

12. Civil society and non-State actors have consistently been at the forefront of addressing climate change through positive expressions of human rights-based international solidarity and of requesting those with direct authority do so as well.¹⁴ Acknowledging the breadth of such positive expressions, the Independent Expert wishes to highlight some relevant practices of indigenous peoples, youth and environmental defenders. Their efforts described in this report reflect international solidarity because they aim to push forward needed political, social and economic transformations through human rights strategies that are proactive and collaborative, are often supported by allied States and international organizations, and are complementary to conventional endeavours in the same direction. Insofar as these groups suffer disproportionately from climate change, yet are excluded from direct policymaking, their efforts to be heard also realize a subtle quality of international solidarity: when marginalized peoples share their lived experience, it may

⁹ Ibid., arts. 4 (4) and 9–10.

¹⁰ Ibid., art. 2 (1) (a).

¹¹ United Nations Environment Programme, *Emissions Gap*, p. xix.

¹² E.g., www.mrfcj.org/principles-of-climate-justice.

¹³ Paris Agreement, tenth, eleventh and thirteenth preambular paragraphs.

¹⁴ See Sébastien Duyck, Sébastien Jodoin and Alyssa Johl, eds., *Routledge Handbook of Human Rights and Climate Governance* (New York, Routledge, 2018).

enrich understanding about the oppression that global climate change perpetuates and foster greater awareness of the need for solidarity with them and others.

13. Human rights-based international solidarity in the context of climate change has a bearing on pressing questions about the persistent negative repercussions of colonialism on the ability of indigenous peoples to make decisions that affect their own lives and to contribute to the lives of others. Indeed, the recognition that indigenous peoples have rights to self-determination,¹⁵ and that indigenous knowledge advances environmental stewardship, means that there are entwined local and global imperatives for ensuring indigenous peoples can make decisions on climate change that can affect everyone else.¹⁶ Indigenous peoples have fought to gain entry into, and to reshape, political forums on climate change, advancing “both a positive vision of social and economic systems, while also contesting and engaging with dominant understandings of climate change and their hegemonic and neocolonial causes”.¹⁷ For example, they established a caucus in international negotiations that worked alongside allies to institutionalize the Local Communities and Indigenous Peoples Platform, which facilitates the integration into the international legal process of matters such as traditional knowledge. Priorities and strategies have also been adopted by global, national and local indigenous organizations, such as the group Indigenous Climate Action, which supports indigenous peoples to reclaim their “roles and responsibilities” as caretakers of the earth to achieve “a climate stable future for all”.¹⁸ Such achievements, while ongoing, are positive steps towards the expansion of human rights-based international solidarity in the climate change field, understood as the engagement of indigenous peoples as partners in responding to the common, global problem of climate change.

14. Some youth coalitions provide other examples of non-State human rights-based international solidarity in the context of climate change because their leadership and collaborations facilitate the enjoyment of rights to well-being under the Convention on the Rights of the Child for children the world over. Youth are the people envisioned to be the “future generations” when climate change rose to the international agenda 30 years ago. Nevertheless, youth still have limited opportunities to participate in climate governance. To exercise their own agency, youth gained the status of a constituency in international climate negotiations and also participate as “youth delegates”.¹⁹ Youth movements are pooling resources to organize transnationally through a global network.²⁰ Many youth marshalled demonstrations worldwide during the climate strikes, which involved approximately 7.6 million people acting in solidarity with each other, making them some of the largest protests in history.²¹ Most recently, youth from 16 countries filed a communication with the Committee on the Rights of the Child alleging that five of the world’s largest polluters are endangering the lives and welfare of millions of children around the world.²² Their advocacy on the petition may clarify rights protections in solidarity with all youth for whom the “climate crisis is not an abstract future threat”.²³

15. For their part, environmental defenders²⁴ are struggling for climate justice, each in solidarity with the other, on the frontlines of carbon intensive projects, as well as projects

¹⁵ See General Assembly resolution 61/295.

¹⁶ See Ben Powless, “The indigenous rights framework and climate change”, in *Routledge Handbook of Human Rights and Climate Governance*, Duyck, Jodoin and Johl.

¹⁷ Ibid., p. 213. See also Kyle Whyte, “Indigenous climate change studies: indigenizing futures, decolonizing the Anthropocene”, *English Language Notes*, vol. 55 (2017).

¹⁸ See www.indigenousclimateaction.com/who-we-are.

¹⁹ See Harriet Thew, “Youth participation and agency in the United Nations Framework Convention on Climate Change”, *International Environmental Agreements*, vol. 18 (2018).

²⁰ See <https://youthclimatemovement.wordpress.com>.

²¹ See <https://globalclimastrike.net/7-million-people-demand-action-after-week-of-climate-strikes>.

²² See <https://earthjustice.org/sites/default/files/files/CRC-communication-Sacchi-et-al-v.-Argentina-et-al.pdf>.

²³ Ibid., para. 3.

²⁴ Human Rights Council resolution 40/11.

that limit emissions but still have detrimental effects on local peoples and environments.²⁵ The Independent Expert sees defending lands, resources and waters against such projects as positive expressions of human rights-based international solidarity because this could curb global emissions and protect the applicable rights of indigenous and local peoples to self-determination, civic participation and security, to the benefit of all. Environmental defenders have mobilized against mining projects in Asia.²⁶ They protest the land grabs by, or for, extractive industries in Latin America.²⁷ They set up blockades and pursue judicial review to halt fossil fuel infrastructure across North America.²⁸ There is troubling evidence that environmental defenders face criminalization, which exacerbates oppression on the basis of race, given that many are racialized and indigenous peoples.²⁹ In the spirit of fellowship, however, “defenders” of these defenders are organizing to assist those on the frontlines.³⁰ Therefore, environmental defenders, and their defenders, are demonstrating the utmost solidarity with communities and everyone who faces the negative effects of climate change-related projects by upholding human rights through their direct actions.³¹

B. Country-level laws and practices

16. Individual countries may express human rights-based international solidarity with each other and with all of the world’s peoples in the context of climate change partly by eliminating their own contributions to the problem. The Paris Agreement captures this point in affirming that nationally determined contributions will reflect each party’s highest possible ambition.³² In the Independent Expert’s view, human rights-based international solidarity also demands that countries go further by tackling structural inequities connected to climate change: it requires that countries exchange financial and technological support reflecting common but differentiated responsibilities and respective capabilities, safeguard internationally protected groups and create avenues for genuine civic participation. The Paris Agreement and the United Nations Framework Convention on Climate Change have near to universal membership, which means that almost all States have international legal duties to cooperate in taking such separate and collective measures.

17. Although current State efforts to redress climate change are overwhelmingly inadequate, some countries are setting examples of positive expressions of human rights-based international solidarity in this area, demonstrating that not all States find a “race to the bottom” in the climate change field acceptable. For instance, in 2019, 73 States announced that they were working to achieve net-zero emissions by 2050.³³ Since the 1970s, many developing countries have consistently sought assistance to pursue a different and cleaner route to development than the historic path trod by the industrialized countries.³⁴ Furthermore, some domestic courts and tribunals are delivering a (limited) form of human rights-based international solidarity by granting procedural access to justice to

²⁵ See Global Witness, *Enemies of the State? How Governments and Businesses Silence Land and Environmental Defenders* (London, 2019).

²⁶ See Samina Luthfa, “Transnational ties and reciprocal tenacity: resisting mining in Bangladesh with transnational coalition”, *Sociology*, vol. 51, No. 1 (2017).

²⁷ See Global Witness, *Enemies of the State?*

²⁸ See Yellowhead Institute, *Land Back: A Yellowhead Institute Red Paper* (Toronto, 2019).

²⁹ See Global Witness, *Enemies of the State?* and Inter-American Commission on Human Rights, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation and Development Activities* (2015).

³⁰ See www.environment-rights.org.

³¹ There is also compelling evidence that environmental defenders are victims of the struggle to protect the environment: see www.theguardian.com/environment/2018/feb/02/almost-four-environmental-defenders-a-week-killed-in-2017.

³² Paris Agreement, art. 4 (3).

³³ See <https://sdg.iisd.org/news/73-countries-commit-to-net-zero-co2-emissions-by-2050>.

³⁴ See Karin Mickelson, “South, North, international environmental law, and international environmental lawyers”, *Yearbook of International Environmental Law*, vol. 11 (2000).

transnational litigants seeking clarity on whether the behaviours of States and corporations interfere with the enjoyment of fundamental rights.³⁵

18. Beyond these examples, the Independent Expert highlights two countries whose commitments and partnerships manifest human rights-based international solidarity because they reflect their responsibilities, capacities and social justice goals. One industrialized country in the Pacific is notable for legislating a net-zero target by 2050.³⁶ It is ending fossil fuel exploration permits and planting one billion trees.³⁷ This country has also pledged \$300 million to global climate finance, of which \$150 million will go to developing countries in the Pacific. It is committing to support the self-determination and environmental stewardship of indigenous peoples. The country has also focused on climate change adaptation for workers and communities by supporting water quality and the agricultural sector. Finally, this country is prioritizing well-being over economic growth, which carries great potential for human rights-based international solidarity as it promises to catalyse new thinking globally about the relationship between humanity, nature and development.³⁸ It will also mean that its contributions to the impact climate change has in other lands will be reduced significantly.

19. The other country, which is in Asia, is among the places most vulnerable to cyclones, storm surges and floods, which have already resulted in displacement and death.³⁹ Yet, the country produces as little as 0.3 per cent of global emissions.⁴⁰ The country has been responding to this challenge by participating in the international climate regime and collaborating with partners for climate change-related finance and capacity-building. For instance, the country has created a national action plan, established institutional arrangements, and devoted billions to disaster risk management.⁴¹ It also devised a climate change and gender action plan to account for the risks to, and positive contributions of, women.⁴² From this example, it should be clear that poorer and more vulnerable countries can express human rights-based international solidarity in the climate change field when they work towards adaptation, focus on gender and otherwise safeguard local peoples with the support of those who have both a greater responsibility for the creation of the climate change problem and a stronger capacity to act.

C. Regional laws and practices

20. Some regional laws and practices have contributed significantly to enhancing human rights-based international solidarity in the context of climate change as they cultivate fellowship among States in this field, often to their mutual benefit and that of the international community at large. The Inter-American Human Rights System stands out in this connection, as it has produced manifold hearings, reports and other practices that address the development of international human rights law on climate change. Crucially, in 2018, the Inter-American Court of Human Rights released an Advisory Opinion confirming that States have duties to prevent activities within their territories that contravene the human rights of peoples in other States due to the environmental damage that such actions lead to, a ruling that has implications for dealing with the transboundary nature of climate change.⁴³ The Inter-American Commission on Human Rights has provided a forum for

³⁵ See Jacqueline Peel and Hari M. Osofsky, “A rights turn in climate change litigation?”, *Transnational Environmental Law*, vol. 7, No. 1 (2018).

³⁶ New Zealand, Climate Change Response (Zero Carbon) Amendment Bill (Royal Assent, November 2019).

³⁷ Government of New Zealand, “Framework for climate change policy and key upcoming decisions” (2018).

³⁸ Government of New Zealand, *The Wellbeing Budget* (2019).

³⁹ See Gardiner Harris, “Borrowed time on disappearing land”, *New York Times*, 28 March 2014.

⁴⁰ *Ibid.*

⁴¹ Government of Bangladesh, Bangladesh Climate Change Strategy and Action Plan 2008.

⁴² Government of Bangladesh, Bangladesh Climate Change and Gender Action Plan (2013).

⁴³ Sumudu Atapattu and Andrea Schapper, *Human Rights and the Environment: Key Issues* (New York, Routledge, 2019), pp. 97–98.

indigenous peoples and local communities to voice their experiences on the issue of extractivism and climate change, enabling civic participation regarding this question at the international level, which is a mode of solidarity.⁴⁴ Furthermore, countries in this region adopted the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), which aims to empower all persons to make decisions that affect their lives and the environment, and to access justice when those rights have been infringed. The Agreement specifically guarantees the rights to life, personal integrity and peaceful assembly in solidarity with environmental defenders.

21. Each of the world's other regions has similarly led important efforts that contribute in some measure to human rights-based international solidarity in the context of climate change. The African region has multiple climate initiatives that connect the African Union, subregions and other political layers within the continent to formulate common positions on climate change for national planning.⁴⁵ The region also has a governance structure that coordinates Heads of State, ministers and negotiators to advocate in the international climate regime on matters of importance to the human rights of peoples in the region – in particular, strengthening international support for adaptation guided by common but differentiated responsibilities and respective capabilities.⁴⁶ The European Union has an ambitious record of legal and financial endeavours to address climate change and has made progress in reducing emissions. Under the European New Green Deal,⁴⁷ the region has proposed to devote 25 per cent of its budget to climate action, to reach net-zero emissions by 2050 and to assist members vulnerable to these commitments with a just transition.⁴⁸ As for providing international support, a European Union flagship fund committed €750 million in climate finance, primarily to the least developed countries and small island developing States.⁴⁹ Likewise, the Asian Development Bank is committing \$80 billion to support action on climate change.⁵⁰ Another example of international solidarity in the Asia-Pacific region is that, in 2019, the Pacific Islands Forum issued a fervent statement committing to act as one family, with mutual responsibilities and respect, and calling for transformational change, for example by phasing out subsidies for fossil fuels.⁵¹ Finally, human rights courts serving Africa, Europe and the Americas are expressing international solidarity across regions, having declared a commitment to dialogue at the intersection of climate change and human rights.⁵²

D. The laws and practices of cities and other local governments

22. More than 70 per cent of the world's population is expected to live in urban areas by 2050, making cities crucial sites for reducing emissions and preparing for the negative impacts of climate change.⁵³ Indeed, global concerns about extreme weather and other

⁴⁴ See www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=en&Topic=42.

⁴⁵ See the press statement of the African Commission and the African Committee of Experts on the Rights and Welfare of the Child issued on the occasion of the 33rd Assembly of the Heads of State and Government of the African Union, calling on the African Union Assembly to declare 2021 a year for collective action for addressing the threat of climate crisis in Africa to human and peoples' rights. Available at www.achpr.org/pressrelease/detail?id=476.

⁴⁶ See <https://africangroupofnegotiators.org/about-the-agn>.

⁴⁷ The European Green Deal aims to make the European Union climate-neutral by 2050 by taking several collective measures at the regional level, see: https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en.

⁴⁸ See www.europarl.europa.eu/news/en/headlines/society/20200109STO69927/europe-s-one-trillion-climate-finance-plan.

⁴⁹ See www.gcca.eu/about-gcca.

⁵⁰ Asian Development Bank, "Strategy 2030: achieving a prosperous, inclusive, resilient, and sustainable Asia and the Pacific" (Manila, 2018), p. vi.

⁵¹ Kainaki II Declaration for Urgent Climate Change Action Now (2019).

⁵² See <http://en.african-court.org/index.php/news/press-releases/item/322-kampala-declaration>.

⁵³ See Organization for Economic Cooperation and Development, "Cities and climate change: national governments enabling local action: policy perspectives" (2014).

climate change effects that diminish human rights (for instance, to housing, water and sanitation) apply to urban areas (see A/64/255). A complicating factor in this regard is that cities are already sites of inequality.⁵⁴ As such, climate change may worsen inequalities between peoples living in urban areas.⁵⁵ In the context of these concerns, local governments are among the most proactive authorities pursuing climate change mitigation and adaptation. Their actions demonstrate a willingness to take responsibility for the welfare of both their own residents and peoples everywhere, often through transnational partnerships. This is a key way in which human rights-based international solidarity in the context of climate change is being advanced.

23. For example, these subnational governments express international solidarity when they voluntarily participate in the international climate regime, take on commitments and create “trans-local collaborations” for resilience within and across State borders.⁵⁶ Cities, especially, tend to set high ambitions to cut emissions, sometimes higher than their national governments.⁵⁷ Moreover, transnational city networks – such as Local Governments for Sustainability, Cities Climate Leadership Group and the Global Covenant of Mayors for Climate and Energy – facilitate learning and capacity-building in the climate change area; in some cases, they require targets and monitoring.⁵⁸ Participants in such networks are primarily located in Europe and North America, and could better engage less globally connected cities.⁵⁹ Nonetheless, subnational experimentation may eventually produce transformative effects across wide geographical areas around the world because it can disrupt our reliance on fossil fuels throughout interlocking energy systems that transcend political boundaries.⁶⁰ Urban governance thus has the potential to diminish the overall negative effects of climate change on the enjoyment of international human rights through both solidarity-driven partnerships and catalytic reforms.

24. In addition to cities, other local governments are seeking to demonstrate international solidarity by compensating for deficiencies in the ambitions of their respective States. One example is the We Are Still In coalition, whose signatories are committing to the Paris Agreement, despite their national government’s recalcitrance, and include indigenous leaders, mayors, governors, non-governmental organizations, businesses and university chancellors. Subnational jurisdictions that put a price on carbon are also linking their programmes, such as networked cap-and-trade schemes.⁶¹ Turnover is a challenge for carbon pricing networks, as some jurisdictions have reneged on their commitments. Market mechanisms also experience volatility and gaming, encourage privatization and cannot alone yield the transformation needed to address climate change. Given these and other problems with market mechanisms, discussed throughout the report, carbon pricing networks are a limited form of human rights-based international solidarity.⁶² Specifically, carbon pricing networks aim to reduce emissions (which in itself is an expression of human rights-based international solidarity) and generate public revenues to fund social programmes that foster goodwill towards climate action and enhance human rights in daily life, such as public transportation systems, resilient buildings and financial assistance to households.

⁵⁴ United Nations Human Settlements Programme, *World Cities Report: Urbanization and Development – Emerging Futures* (Nairobi, 2016), pp. 16–20.

⁵⁵ Ibid.

⁵⁶ See Jeroen van der Heijden, “Cities and subnational governance: high ambitions, innovative instruments and polycentric collaborations?”, in *Governing Climate Change: Polycentric Action?*, Andrew Jordan and others, eds. (Cambridge, United Kingdom, Cambridge University Press, 2018).

⁵⁷ Ibid., p. 83; and Taedong Lee, “Global cities and transnational climate change networks”, *Global Environmental Politics*, vol. 13, No. 1 (2013).

⁵⁸ Jennifer S. Bansard, Philipp H. Pattberg and Oscar Widerberg, eds., “Cities to the rescue? Assessing the performance of transnational municipal networks in global climate governance”, *International Environmental Agreements*, vol. 17 (2017), pp. 238 and 241; and Lee, “Global cities”, pp. 110–111.

⁵⁹ Lee, “Global cities”, pp. 110–111.

⁶⁰ See Steven Bernstein and Matthew Hoffmann, “The politics of decarbonization and the catalytic impact of subnational climate experiments”, *Policy Science*, vol. 51, No. 2 (2018).

⁶¹ Ibid.

⁶² See the discussions in the present report on carbon markets at para. 49.

E. Global laws and practices

25. There are extensive global laws and practices that manifest human rights-based international solidarity in the context of climate change. For example, there are regular global summits that generate momentum for cooperative actions among the diverse actors discussed in the present report: States, indigenous peoples, regions, cities, youth, civil societies and United Nations bodies, among others. There are, however, precious few accountability mechanisms in these summits to gauge the hundreds of commitments announced there about addressing climate change in one way or another, and this may obscure climate inaction. Nonetheless, efforts are ongoing to monitor such transnational commitments, for instance at the United Nations Environment Programme. These efforts express international solidarity because they foster and enhance bottom-up endeavours that diverse groups are making to meet common goals for all human beings.

26. One such common goal is the limitation on temperature rise that is contained in the Paris Agreement. Although the accord endorses two temperature goals of avoiding increases beyond 2°C and 1.5°C, the 2019 Climate Action Summit “reinforced the global understanding that 1.5°C is the socially, economically, politically and scientifically safe limit to global warming”.⁶³ The basis for this statement was a report of the Intergovernmental Panel on Climate Change.⁶⁴ The request to undertake the Panel’s report, and its uptake, are strong examples of human rights-based international solidarity because they assist those most susceptible to the negative impacts of climate change, including small island developing States and the least developed countries. These countries and their allies pushed for the more stringent threshold in the Paris Agreement due to evidence of the risks to vulnerable populations and ecosystems at a limit of 2°C.⁶⁵ States then invited the Panel to report on the implications of the lower threshold. In the report, the Panel confirmed it would be “markedly easier to achieve many aspects of sustainable development, with greater potential to eradicate poverty and reduce inequalities” at 1.5°C rather than 2°C.⁶⁶ Emblematic of human rights-based international solidarity, the report is now being widely referenced to identify concrete steps that would better protect the human rights of the poorest and most vulnerable peoples threatened by higher temperatures.

27. The Association of Small Island States was one of the negotiating blocs that advocated for a stringent temperature limit and has consistently exercised human rights-based international solidarity through other practices at the global level. The Association is a coalition of 44 small island and low-lying developing States in Africa, the Caribbean, the South China Sea and the Indian, Pacific and Atlantic Oceans. Because members are highly susceptible to climate change, the association has made efforts to obtain strong mitigation pledges, support for adaptation and redress for loss and damage. Beyond these efforts, the Association’s members led a powerful campaign to articulate the link between human rights and climate change in the 2007 Malé Declaration on the Human Dimension of Global Climate Change. The Association’s successes, of which there are many, can be partly explained by its unwavering commitment to global justice and alliances with industrialized States, public interest organizations, and human rights bodies and mandate holders.⁶⁷ The Association’s struggles exemplify the pursuit of international human rights through a deep solidarity-driven vision and path.

28. Finally, the positive collaborations among trade unions, employers, Governments and international organizations to achieve a just transition towards sustainable work systems are also worthy of note. The necessity to transform polluting sectors, underscored

⁶³ Secretary-General, “Report of the Secretary-General on the 2019 Climate Action Summit and the way forward in 2020” (2019), p. 5.

⁶⁴ See Intergovernmental Panel on Climate Change, *Global Warming of 1.5°C*.

⁶⁵ See Lavanya Rajamani and Jacob Werksman, “The legal character and operational relevance of the Paris Agreement’s temperature goal”, *Philosophical Transactions of the Royal Society A*, vol. 376, No. 2119 (2018).

⁶⁶ See Intergovernmental Panel on Climate Change, *Global Warming of 1.5°C*, p. 447.

⁶⁷ See, e.g., Carola Betzold, “‘Borrowing’ power to influence international negotiations: AOSIS in the climate change regime, 1990–1997”, *Politics*, vol. 30, No. 3 (2010).

by the Panel's special report, will have reverberating effects across economies that pose the risk of compromising the social and economic rights of workers. The global labour movement began conceptualizing what a just transition towards a sustainable economy ought to include in the 1990s to account for distributive outcomes and to promote a unified voice.⁶⁸ ILO has since become a leading site for (tripartite) dialogue on the requirements of a just transition. Among other contributions, in 2019, the Secretary-General announced an initiative with ILO, the International Trade Union Confederation, the International Organization of Employers and others that supports national planning for a just transition.⁶⁹ The Independent Expert sees the leadership of global organizations and movements to secure decent work for all in the context of climate change as a laudable expression of human rights-based international solidarity that has the potential to yield meaningful benefits for humanity.

IV. Key human rights-based international solidarity gaps in the context of climate change

A. Transforming the fossil fuel economy

29. There is a growing consensus that fossil fuel exploitation must be radically transformed to avoid further dangerous climate change.⁷⁰ The burning of fossil fuels and biomass produces the vast majority of global emissions (70 per cent) (A/74/161, para. 12). The burning of coal alone is responsible for nearly a third of temperature rise since the Industrial Revolution.⁷¹ Clearly, from the point of investment until use, fossil fuels are entrenched in our lives and the global economy. Overcoming our reliance on fossil fuels is therefore an imperative and a tremendous collective action problem. In the Independent Expert's view, this situation poses a dual challenge to human rights-based international solidarity. States and corporations that persist in exploiting fossil fuels produce a major gap in international solidarity as their behaviour does not reflect the highest possible ambition, nor cooperation, and it compromises the human rights of peoples around the world. On the other hand, there may be unfair outcomes of restructuring the fossil fuel economy on the rights to an adequate standard of living in the poorest of the States that produce fossil fuels.⁷² This dual problem threatens the willingness of differently situated fossil fuel producers to take collective action. At the same time, it perpetuates global asymmetries between those who profit the most from, and people who suffer the greatest from the consequences of, climate change.

30. Based on existing and proposed fossil fuel operations, the world is already on a path to not meeting the stated common goal of keeping the global temperature increase below 1.5°C.⁷³ One consequence of this finding is that, if this critical target is to be met, an enormous amount of fossil fuels must be kept in the ground.⁷⁴ There is thus a dwindling carbon budget for the planet as a whole. Human rights-based international solidarity thus demands that, bearing in mind the common but differentiated responsibilities principle, States and corporations (especially in the global North) that invest in, subsidize and exploit

⁶⁸ See David J. Doorey, "A transnational law of just transitions for climate change and labour", in *Research Handbook on Transnational Labour Law*, Adelle Blackett and Anne Trebilcock, eds. (Cheltenham, Edward Elgar, 2015).

⁶⁹ See <https://sdg.iisd.org/news/un-secretary-general-launches-climate-action-summit-jobs-initiative>.

⁷⁰ See, e.g., Georgia Piggot and others, "Addressing fossil fuel production under the UNFCCC: Paris and beyond", Stockholm Environment Institute Working Paper 2017-09 (Seattle, 2017); A/HRC/41/39; A/74/161.

⁷¹ See International Energy Agency, *Global Energy and CO₂ Status Report* (Paris, 2019).

⁷² See Sivian Kartha and others, "Whose carbon is burnable? Equity considerations in the allocation of a 'right to extract'", *Climatic Change*, vol. 150 (2018).

⁷³ See Dan Trong and others, "Committed emissions from existing energy infrastructure jeopardize 1.5°C climate target", *Nature*, vol. 572 (2019).

⁷⁴ See Christophe McGlade and Paul Ekins, "The geographical distribution of fossil fuels unused when limiting global warming to 2°C", *Nature*, vol. 517 (2015) (based on the temperature limit of 2°C).

fossil fuels must cooperate to eliminate much fossil fuel production because climate change is a global ecological process and, while they profit from continued emissions, they imperil the fundamental human rights of everyone around the world.

31. Recognizing this need to move away from fossil fuels, some financial regulators have been ahead of the curve in warning that investments in fossil fuels pose a risk of “stranded assets”.⁷⁵ However, beyond the investor perspective, there has been little engagement with poorer developing countries that produce oil, gas and coal about the ramifications of tackling fossil fuels on their rights to development, including important social and economic rights that are bound up with their energy production systems.⁷⁶ The assumption underlying current approaches to restricting fossil fuels is that the market will decide which countries better endure the transition away from their exploitation.⁷⁷ Recent proposals in this regard are selective, and are not organized and internationally negotiated.⁷⁸ They include divestment, moratoriums and the elimination of international finance for fossil fuels in developing countries. An international solidarity concern here is that such measures, which rightly help to curb fossil fuels, raise questions about both distributive outcomes and the possibilities for collective action.

32. Indeed, piecemeal market approaches to constrain the exploitation of fossil fuels may exacerbate disparities in the global economy by disproportionately affecting poorer fossil fuel producing countries – especially if they depend on this sector for revenues, livelihoods and access to electricity and heat, while having less capacity than wealthier States to diversify their economies and switch to renewable energy.⁷⁹ Current approaches may also incentivize attempts to profit from expanded fossil fuel production in the near term, which aggravates climate change and makes it more difficult to adjust to renewable energy systems. Despite our climate crisis, in 2018, investments in coal rose by 2 per cent and investments in oil and gas rose by 4 per cent.⁸⁰

33. Apart from discussions about climate change, there are rich debates in the international human rights community about the mixed record that fossil fuels and other extractive operations have in yielding socioeconomic gains, as well as about widespread local experiences with displacement and violence arising from systems of extraction (see, e.g., A/HRC/41/54). While these debates are extremely important, they tend not to grapple sufficiently with the reality that climate change leaves us with no choice but to drastically restructure current modes of production and consumption tied to high-emitting extractives, most notably fossil fuels, and that a badly managed transition may itself perpetuate structural injustices.

34. From the perspective of human rights-based international solidarity, what is missing is genuine global cooperation on a managed transition away from unsustainable fossil fuels that prioritizes the achievement of justice for the most vulnerable peoples, especially in the global South (see A/74/161). Support, rather than market competition, should drive the allocation of our global carbon budget in line with the principle of common but differentiated responsibilities and respective capabilities.⁸¹ Sharing burdens under this principle in the context of fossil fuels relates to the inability of poorer States to act while also fulfilling human rights; the main responsibility of high-emitting States for creating the problem; and the sheer necessity of solidarity and cooperation. Consistent with common but differentiated responsibilities and respective capabilities, wealthy developed and developing States could take the lead in reforming their fossil fuel sectors and provide

⁷⁵ See, e.g., Pilita Clark, “Mark Carney warns investors face ‘huge’ climate change losses”, *Financial Times*, 29 September 2015.

⁷⁶ Siân Bradley, Glada Lahn and Steve Pye, *Carbon Risk and Resilience: How Energy Transition is Changing the Prospects for Developing Countries with Fossil Fuels* (London, Chatham House, 2018), p. 45.

⁷⁷ Kartha and others, “Whose carbon is burnable?”, p. 119.

⁷⁸ See Piggot and others, “Addressing fossil fuel production”; Bretton Woods Project, “EIB rules out most fossil fuel funding from 2021, setting new benchmark for MDBs”, 12 December 2019.

⁷⁹ See Kartha and others, “Whose carbon is burnable?”.

⁸⁰ See International Energy Agency, *World Energy Investment 2019* (Paris, 2019).

⁸¹ See Kartha and others, “Whose carbon is burnable?”.

poorer and less adaptable countries with adequate finance and technological substitutes. Human rights-based international solidarity would be at the core of these processes: it underscores the need for planning among differently situated actors in the fossil fuel economy with ambition, justice and the utmost haste.

B. Reforming corporate law and practices

35. An overwhelming share of emissions from fossil fuels and other sectors is traceable to corporations that either directly emit or define the choices that consumers have or do not have to reduce their emissions across supply chains.⁸² States have duties to regulate corporations to protect the international human rights of people living at home and abroad, including environmental rights.⁸³ The Supreme Court of Canada has recently found that it is not plain and obvious that corporations enjoy a blanket exclusion under customary international law from liability for violating the human rights of individuals in another State.⁸⁴ The Commission on Human Rights of the Philippines is also anticipated to release findings that corporations headquartered abroad can be held liable for harms to individuals in another country, specifically arising from climate change.⁸⁵ In spite of the positive tenor of these developments, legal measures to regulate corporate emissions are direly lacking.⁸⁶ At a general level, the absence of stringent requirements on corporations is a gap in international solidarity because it underscores inadequate State efforts to meet the Paris Agreement's collective goal and thereby protect human rights. More fundamentally, this report identifies the profit-seeking and transnational organization of corporate governance as a profound structural impediment to human rights-based international solidarity in the climate change field – one that calls for mutual assistance among States to re-envision the basic rules of corporate governance.

36. Currently, the profit incentive of corporate boards does not typically require them to take decisions that benefit the broader societies in which they are headquartered, let alone the peoples of other countries.⁸⁷ This poses a grave structural problem for international solidarity in the context of climate change, since corporate governance tends to elevate the profits of shareholders over environmental protection with little regard for the impacts of climate change on human rights.⁸⁸ In practice, directors make decisions relating to climate change for compliance with regulatory standards (which are largely wanting), based on the business case for the company and investors.⁸⁹ This militates against protecting human rights through the most robust global climate action.

37. There are now a proliferating number of guidelines that promote corporate reporting on climate-related financial risks, which are a limited expression of cooperation across States and financial actors.⁹⁰ However, disclosures about “stranded assets” and other such financial risks (with no greater substantive regulation of corporate behaviour) accomplish relatively little from a solidarity viewpoint, as they mainly enable lenders, insurers and investors to make self-interested choices about their stakes in a corporation, based on the presumption that this will lead to good environmental decisions. Thus, financial disclosures

⁸² See, e.g., Carbon Disclosure Project, “CDP carbon majors report 2017” (London, 2017).

⁸³ Olivier de Schutter, “Towards a new treaty on business and human rights”, *Business and Human Rights Journal*, vol. 1, No. 1 (2016), pp. 44–45; Atapattu and Schapper, *Human Rights and the Environment*, pp. 85–107.

⁸⁴ Whether the customary international law norms pleaded in that case do apply to corporations, as a matter of law and fact, has been left for a trial judge to determine. *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 (Canada).

⁸⁵ See www.ciel.org/news/groundbreaking-inquiry-in-philippines-links-carbon-majors-to-human-rights-impacts-of-climate-change-calls-for-greater-accountability.

⁸⁶ See, e.g., Lisa Benjamin, “The responsibilities of carbon major companies: are they (and is the law) doing enough?”, *Transnational Environmental Law*, vol. 5, No. 2 (2016).

⁸⁷ See Beate Sjøfjell, “Redefining the corporation for a sustainable new economy”, *Journal of Law and Society*, vol. 45, No. 1 (2018).

⁸⁸ *Ibid.*, pp. 38–40.

⁸⁹ *Ibid.*, pp. 36–38.

⁹⁰ E.g., Recommendations of the Task Force on Climate-Related Financial Disclosures (2017).

may reinforce profit-driven corporate governance and cannot by themselves match the direct solidarity action required in the climate change field. In brief, these market approaches may supplement, but ought not replace, deeper reforms to corporate governance.

38. Finally, there are major gaps in international solidarity in this area arising from the transnational nature of corporations. As in other areas of human rights, in the case of climate change, the presumption that State jurisdiction to regulate corporations is territorially defined is incongruent with de facto corporate practices that are transnational.⁹¹ For example, in jurisdictions where fossil fuel producers are required to disclose and reduce emissions, companies may not be required to account for the higher emissions of end-users who will burn exported fossil fuels. Corporations registered in a home State may not be required to disclose and limit emissions produced by a subsidiary in a host State with less stringent regulations. Furthermore, corporations may not be held to account for carbon embedded in their products from supply chain partners.

39. There are developments under way that might begin to address many of the gaps identified in this section. For example, some jurisdictions may put a price on carbon embedded in imported goods.⁹² Countries are working towards the elaboration of a binding treaty to regulate the activities of transnational corporations and other business enterprises under international human rights law.⁹³ In 2019, the Business Roundtable acknowledged deficits in corporate governance with members declaring that they would move from shareholder primacy to a commitment to all stakeholders, including protecting the environment.⁹⁴ New requirements for corporate governance are also being tested; one country has mandated a social and ethics committee for designated companies.⁹⁵ These measures are promising either because they may improve international cooperation or recognize binding corporate duties.

C. The equity and adequacy of climate finance and technologies

40. Financial and technological support for the poorest and most vulnerable States and peoples is necessary to stay within the global carbon budget, in part because it tackles the incapacity of those who cannot act, despite their best efforts. It also reflects a commitment to justice across international borders, given that many of the poorest countries have contributed shockingly little to the globe's cumulative emissions, not to mention the people living in extreme poverty within these countries. Furthermore, international finance and technology transfers are a primary means of assisting developing countries with adaptation. These forms of support thus draw on longstanding debates about the legacies of colonialism in the climate change field, and can contribute to securing an equitable future through international solidarity.⁹⁶ Past efforts to establish a new international economic order similarly proposed to redistribute finance and technologies between industrialized and postcolonial nations aligned with international solidarity.⁹⁷ When climate change rose to international attention, these proposals were reinterpreted to enable cooperation on this new global issue and were enshrined as duties to support developing countries in implementing

⁹¹ See Karen Morrow and Holly Cullen, "Defragmenting transnational business responsibility", in *The Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability*, Beate Sjøfjell and Christopher M. Bruner, eds. (2019).

⁹² See Michael Mehling and others, "Designing border carbon adjustments for enhanced climate action", *American Journal of International Law*, vol. 113, No. 3 (2019).

⁹³ Human Rights Council resolution 26/9.

⁹⁴ See www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans.

⁹⁵ South Africa, Companies Act (2008), sect. 72.

⁹⁶ See Lavanya Rajamani, *Differential Treatment in International Environmental Law* (Oxford, Oxford University Press, 2006).

⁹⁷ See the Charter of Economic Rights and Duties of States.

the United Nations Framework Convention on Climate Change, according to the principle of common but differentiated responsibilities and respective capabilities.⁹⁸

41. Still today, the provision of such climate finance and technologies expresses human rights-based international solidarity. It is indispensable to reorient economies towards a sustainable future and to strive for dignity, poverty alleviation, equality, economic/social rights, and the right to development. Under the Paris Agreement, developed countries have obligations to assist developing countries financially and other parties are encouraged to provide support.⁹⁹ To that end, developed countries pledged to mobilize funds of \$100 billion annually until 2025. States have also affirmed that climate finance should be balanced between mitigation and adaptation.

42. However, when it comes to putting these promises to work, climate finance is woefully deficient. The total amount of funding contributed thus far by the developed countries falls short of the above pledge to developing countries.¹⁰⁰ The institutions charged with delivering such funding (and hence the application procedures that countries must navigate) are sprawled across various mechanisms of the United Nations climate regime, bilateral agreements, donor funds, development banks, carbon markets and foreign direct investment.¹⁰¹ Additionally, only between 21 and 29 per cent of public flows of such funds have gone to adaptation, widening the gap in finance needed to help developing countries prevent the worst effects of climate change and alleviate poverty.¹⁰² It is no wonder then that adequate climate finance is not reaching the poorest and most vulnerable countries, including the small island developing States and the least developed countries.¹⁰³ What is more, the majority of public climate finance has taken the form of loans,¹⁰⁴ which exacerbates the indebtedness of developing countries.

43. The Green Climate Fund was established to centralize finance in a new mechanism that could improve concerns about access and fairness. However, only a fraction of climate finance has, thus far, been committed to this Fund.¹⁰⁵ Despite its mandate for direct access and country ownership, almost three quarters of finance from the Fund has gone to five large international organizations, including the European Bank for Reconstruction and Development, the World Bank and the United Nations Development Programme.¹⁰⁶ These and other difficulties jeopardize the Fund's purpose to improve equitable access to significant climate finance, which could strengthen cooperation on clean energy, resilient food systems and other instantiations of the right to development.

44. Like climate finance, technology transfers to developing countries needing such support are a vital part of achieving human rights-based international solidarity in the climate change context. Accordingly, the international climate regime, donors and multilateral financial institutions have programming for technology transfers. However, in a similar manner to finance, these technology transfer channels are fragmented, not

⁹⁸ Ibid., arts. 4 and 11.

⁹⁹ Paris Agreement, art. 9.

¹⁰⁰ Charlene Watson and Liane Schalatek, "The global climate finance architecture", Climate Funds Update, February 2019, p. 1.

¹⁰¹ Ibid., p. 2; United Nations Framework Convention on Climate Change Secretariat, "Summary and recommendations by the Standing Committee on Finance on the 2018 biennial assessment and overview of climate finance flows" (Bonn, 2018).

¹⁰² See United Nations Framework Convention on Climate Change Secretariat, "Summary and recommendations by the Standing Committee", para. 39; United Nations Environment Programme, *Adaptation Gap Report* (Nairobi, 2018), pp. 21–28.

¹⁰³ See Oxfam, "Climate finance shadow report" (2018), pp. 18–19; United Nations Framework Convention on Climate Change Secretariat, "Summary and recommendations by the Standing Committee", para. 42.

¹⁰⁴ United Nations Framework Convention on Climate Change Secretariat, "Summary and recommendations by the Standing Committee", figure 2, p. 8; Oxfam, "Climate finance shadow report", p. 4.

¹⁰⁵ Watson and Schalatek, "The global climate finance architecture", p. 3.

¹⁰⁶ Friends of the Earth United States and the Institute for Policy Studies, "Green Climate Fund: a performance check" (2017), p. 3.

transparent and ambiguous in outcome.¹⁰⁷ The Clean Development Mechanism was the primary means of transferring technologies for some time, however, 74 per cent of its registered projects were hosted by only three rapidly developing economies.¹⁰⁸ Since 2010, when the parties to the United Nations Framework Convention on Climate Change established a dedicated technology mechanism, “meagre steps” have been taken to implement transfers.¹⁰⁹ For example, the Paris Agreement does not stipulate the obligations of developed countries. Research suggests that countries with already established capacity to produce, absorb and deploy technologies are gaining the most from transfers, leaving gaps in Africa and the least developed countries.¹¹⁰

45. Also troubling for international solidarity in the climate change field is the fact that States are divided on the question of alleviating the burdens imposed by intellectual property rights attached to climate technologies that may mostly benefit private companies in developed countries, to the detriment of most developing countries.¹¹¹ Many States and advocates argue that climate technologies are public goods requiring open access or adequate financial support to eliminate barriers for everyone’s benefit. There has been no progress on these issues in either the international climate regime or the trade regime.¹¹² Rather, technology transfer is occurring in an ad hoc manner.

46. Overall, it remains unclear how this model of financial and technology transfers, which prioritizes institutional complexity, privatization, loans and ambiguity, will meet the world’s common need for climate change-related structural transformation. This poses an existential and common concern and is an important human rights-based international solidarity issue.

D. Access to justice for vulnerable countries, individuals and groups

1. Redress for loss and damage

47. Although the rectification of loss and damage from climate change, which can happen in various ways,¹¹³ is a legal and moral approach to addressing the fact that climate change is caused and experienced unequally, it still faces resistance from certain States, contrary to human rights-based international solidarity.¹¹⁴ The concept of rectifying loss and damage supports international cooperation in remedying the “residual” impacts of climate change that cannot, or will not, be avoided, such as displacement, loss of culture and loss of life, which occur especially in the least developed countries and small island developing States.¹¹⁵ Rising sea levels, hurricanes and other extreme events are decimating

¹⁰⁷ See, e.g., Liliana B. Andonova, Paula Castro and Kathryn Chelminski, “Transferring technologies: the polycentric governance of clean energy technology”, in *Governing Climate Change: Polycentricity in Action?*, Andrew Jordan and others, eds. (Cambridge, United Kingdom, Cambridge University Press, 2018); and advocacy on article 6 of the Paris Agreement (replacing the Clean Development Mechanism) by civil society organizations, available at www.ciel.org/getting-article-6-right-with-human-rights.

¹⁰⁸ Andonova, Castro and Chelminski, “Transferring technologies”, pp. 267–271.

¹⁰⁹ Margaretha Wewerinke-Singh and Curtis Doebbler, “The Paris Agreement: some critical reflections on process and substance”, *University of New South Wales Law Journal*, vol. 39, No. 4, pp. 1509–1510.

¹¹⁰ See Andonova, Castro and Chelminski, “Transferring technologies”; Damilola S. Olawuyi, “From technology transfer to technology absorption: addressing climate technology gaps in Africa”, *Journal of Energy and Natural Resources Law*, vol. 36, No. 1 (2018).

¹¹¹ See Matthew Rimmer, “The Paris Agreement: intellectual property, technology transfer and climate change”, in *Intellectual Property and Clean Energy: The Paris Agreement and Climate Justice*, Matthew Rimmer, ed. (Singapore, Springer, 2018).

¹¹² Ibid.

¹¹³ See, for instance, the proposal of an adaptation levy on international air travel at www.iied.org/pubs/display.php?o=17045IIED.

¹¹⁴ See Reinhard Mechler and others, eds., *Loss and Damage from Climate Change: Concepts, Methods and Policy Options* (Cham, Switzerland, Springer, 2018).

¹¹⁵ See Maxine Burkett, “Climate reparations”, *Melbourne Journal of International Law*, vol. 10, No. 2 (2009).

the territories of all too many small island developing States and, by extension, negatively affecting human rights, including their dignity and self-determination.¹¹⁶ Therefore, they and other vulnerable developing countries invoke the need for international solidarity in redressing the climate-induced harms that they disproportionately experience.¹¹⁷

48. This loss and damage agenda aims to rectify such global injustice and human suffering to the degree possible, given the destruction emanating from climate change. International finance, in particular, is a core means to achieve human rights-based international solidarity on this issue. The international climate regime's institutional mechanism on loss and damage is examining some possibilities for extending financial support in this direction (FCCC/PA/CMA/2019/L.7). Moreover, a human rights claim in the Philippines may soon elucidate corporate duties to rectify loss and damage.¹¹⁸ However, progress on this agenda has not adequately reflected its importance. Loss and damage is a "third pillar" of international law on climate change and should be granted the same level of priority as mitigation and adaptation.¹¹⁹ After all, States gave it an independent provision in the Paris Agreement.¹²⁰ The Independent Expert sees the unwillingness of some to develop this agenda in the most robust way, notably through extending strong financial support, as an acute gap in human rights-based international solidarity, demanding a substantive enhancement thereto.

2. Protecting indigenous peoples, local communities and workers against the negative consequences of mitigation actions

49. Ensuring access to justice for indigenous peoples and local communities affected by climate change mitigation projects is yet another key gap in human rights-based international solidarity. Not unlike international development projects, climate mitigation may involve infrastructure and land use projects that displace local communities and indigenous peoples, cause environmental damage and contravene rights to free, prior and informed consent. For example, significant human rights risks are understood to arise from hydroelectric dams and biofuel projects.¹²¹ The Clean Development Mechanism provided few avenues to object to such projects and no rights of appeal or to compensation.¹²² For its part, the Paris Agreement acknowledges that parties should respect, promote and consider human rights, the rights of indigenous peoples, and local communities, among others, in taking actions to mitigate climate change.¹²³ However, States have continued to resist the inclusion of human rights safeguards in the rules they are negotiating for projects that will feed into carbon markets.¹²⁴ Setting aside other drawbacks of relying heavily on carbon markets, the absence of procedural and substantive rights for groups affected by mitigation measures clashes with the requirements of human rights-based international solidarity in this area.

50. On a different register, the international community has by now accepted that the systemic ramifications of moving to sustainable economies will require international solidarity to achieve a just transition that protects workers' rights. In the present report, the Independent Expert has also drawn attention to the reverberating effects that economic

¹¹⁶ In this regard, see the International Law Commission's ongoing project on sea-level rise in relation to international law (A/73/10, chap. X).

¹¹⁷ See Elisa Calliari, Swenja Surminski and Jaroslav Mysiak, "The politics of (and behind) the UNFCCC's Loss and Damage Mechanism", in Mechler and others, *Loss and Damage*.

¹¹⁸ See www.ciel.org/news/groundbreaking-inquiry-in-philippines-links-carbon-majors-to-human-rights-impacts-of-climate-change-calls-for-greater-accountability.

¹¹⁹ Julia Kreienkamp and Lisa Vanhala, "Climate change loss and damage: policy brief" (2017), pp. 2 and 7.

¹²⁰ Paris Agreement, art. 8.

¹²¹ See the conference room paper by Tessa Khan, "Promoting rights-based climate finance for people and planet". Available at www.ohchr.org/EN/Issues/Development/Pages/19thSession.aspx.

¹²² See Sébastien Duyck, "The Paris Agreement and the protection of human rights in a changing climate", *Yearbook of International Environmental Law*, vol. 26 (2017).

¹²³ Paris Agreement, eleventh preambular paragraph.

¹²⁴ International Institute for Sustainable Development, *Earth Negotiations Bulletin*, vol. 12, No. 775 (2019), p. 16.

transformations to avoid further climate change may indeed have on jobs in the fossil fuel sector. Given the necessity of change, ILO explains that our transition must “be well managed and contribute to the goals of decent work for all, social inclusion and the eradication of poverty”.¹²⁵ But work towards a just transition has taken over two decades to gain speed. States and international institutions have confirmed multiple programmes to address the issue. However, the agenda continues to suffer, not least because some countries use it as a “bargaining chip” to obstruct the climate negotiations.¹²⁶ There has been ample evidence for years that sustainable industries can generate quality jobs with the right government and employer supports.¹²⁷ Effectively, international solidarity to transform local, national, regional and global economies means acting in good faith to protect workers and work systems through diversification, training and other forms of mutual assistance. Meaningful tripartite engagement at ILO on these steps is also important and is another dimension of human rights-based international solidarity. Quite simply, the current scale and quality of planning is not proportionate to the challenge ahead.

3. Differential impacts on transnational rights holders in marginalized groups

51. The international community is only beginning to grapple with the inequities that climate change perpetuates for marginalized groups who have otherwise made important gains as transnational rights holders under core international human rights instruments. Special procedure mandate holders and treaty bodies have begun to acknowledge the impacts of climate change on indigenous peoples, children, persons with disabilities, older persons, persons living in poverty, workers and women.¹²⁸ Novel studies are also being produced on this lived experience. For example, researchers are shedding light on the “ecological grief” that Inuit peoples and Australian farmers experience from the loss of natural surroundings.¹²⁹ Others examine how people living in Dhaka respond to climate change in their homes and workplaces.¹³⁰ ILO has released a study on heat stress for labourers in Qatar.¹³¹ In addition, one researcher has explored how Arctic indigenous representatives vernacularize understandings of climate change as a “form of life”.¹³² These studies capture how encounters with climate change redefine what it means to be socially vulnerable. Still, from the perspective of international solidarity, there is negligible evidence of the concrete steps that Governments, employers, building owners and service providers are taking to implement international human rights commitments that would respond to these emerging issues.

52. In 2019, the Human Rights Council adopted a resolution urging States to formulate a comprehensive, integrated, gender-inclusive and disability-inclusive approach to climate change adaptation and mitigation policies.¹³³ This provides a starting point for thinking about how marginalized groups ought to be protected through concerted global action to be operationalized at the local level. More information is required, however, to integrate peoples’ lived experience into the laws and policies that jurisdictions use to fulfil their existing international human rights obligations. Therefore, in the Independent Expert’s view, there remains a serious gap in the expression of human rights-based international

¹²⁵ ILO, “Guidelines for a just transition towards environmentally sustainable economies and societies for all” (Geneva, 2015), p. 4.

¹²⁶ See Carbon Brief, “COP25: key outcomes agreed at the UN climate talks in Madrid” (15 December 2019).

¹²⁷ See, e.g., ILO, *Greening with Jobs: World Employment Social Outlook 2018* (Geneva, 2018).

¹²⁸ For example, the “Joint statement on ‘human rights and climate change’”, the Special Rapporteur on extreme poverty and human rights and the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

¹²⁹ See Neville Ellis and Ashlee Cunsolo, “Hope and mourning in the Anthropocene: understanding ecological grief”, *The Conversation*, 4 April 2018.

¹³⁰ See www.gdi.manchester.ac.uk/research/impact/the-lived-experience-of-climate-change.

¹³¹ See www.ilo.org/beirut/projects/qatar-office/WCMS_723539/lang--en/index.htm.

¹³² Candis Callison, *How Climate Change Comes to Matter: the Communal Life of Facts* (Durham, North Carolina, Duke University Press, 2014), p. 1.

¹³³ Human Rights Council resolution 41/21.

solidarity towards marginalized groups who are connected transnationally by experiences of disempowerment that climate change compounds.

V. Conclusions and recommendations for human rights-based reform

53. Given the existential threat posed by climate change and the negative human rights implications of the deficient progress made thus far to address many facets of the problem through cooperation, common but differentiated responsibilities and respective capabilities and the highest possible ambition for direct action (i.e., human rights-based international solidarity), it is imperative that States and other actors vastly strengthen their efforts to address the concerns raised in the present report. The Human Rights Council is very well positioned to facilitate that process.

54. In light of the topics discussed in the report, the Independent Expert makes the following recommendations:

(a) All States, corporations and international organizations should take all necessary separate and joint steps towards achieving net-zero emissions by 2050, consistent with their highest possible ambitions to reduce emissions and the common objective of keeping the global temperature rise below 1.5°C under the Paris Agreement;

(b) To that end, States, corporations and financial institutions, particularly the highest emitting States, in historical and contemporary terms, should consider ceasing to pursue the exploration of and new investments in fossil fuels as a matter of human rights-based international solidarity, since the shared carbon budget will be exceeded if already existing and proposed fossil fuel developments proceed;

(c) States, corporations and financial institutions should cooperate to ensure that any transformation of the fossil fuel economy (which is imperative) does not perpetuate asymmetries between richer and poorer States and peoples. As countries phase down or even phase out their fossil fuel operations, wealthier countries should provide poorer countries that are less adaptable to the transition with support based on the right to development of the poorer States, and the social and economic rights of their people that are tied to energy systems;

(d) States and corporations should cooperate to reform basic transnational norms of corporate governance to ensure that corporate decision-making prioritizes the protection of international human rights threatened by climate change over profits and other financial interests;

(e) States should cooperate in good faith towards elaborating a treaty to regulate the activities of transnational corporations and other business enterprises under international human rights law to – in part – help correct the inability, or unwillingness, of States to regulate the contributions that such entities make to climate change as a result of their transnational organization and operations;

(f) States should meet their obligations to provide financial and technological support to other States under the international climate regime, scale up these obligations as much as possible, and stipulate precise obligations where this level of precision is lacking, consistent with the principle of common but differentiated responsibilities and respective capabilities. In doing so, they should eliminate barriers that prevent developing countries, especially the poorest and most vulnerable among them, from accessing international climate finance and technologies, including barriers created by intellectual property rights regimes;

(g) States should cooperate through the international climate regime and international human rights community, including through ILO, to guarantee access to justice in the context of climate change with respect to the following:

(i) Rectifying loss and damage associated with the inequalities perpetuated by climate change, including by giving this agenda the same priority as

mitigation and adaptation and providing meaningful financial support to affected countries and peoples;

(ii) Safeguarding the enjoyment of international human rights among indigenous peoples and local communities affected by climate change-related projects, including protecting environmental defenders from criminalization;

(iii) Formulating and implementing concrete plans from the global to the local levels for a just transition towards sustainable economies that ensures the right to decent work for all;

(iv) Cooperating to realize international human rights obligations as they apply to marginalized groups uniquely affected by climate change, including indigenous peoples, the elderly, children, persons with disabilities, persons living in poverty and women.
