

United Nations Special Rapporteur on the right to development

Climate Action and the Right to Development: a Participatory Approach

(POLICY BRIEF)





Climate action and the right to development: a participatory approach

A policy brief from the United Nations Special Rapporteur on the right to development, Saad Alfarargiⁱ on the occasion of the United Nations Climate Change Conference 2021

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I. Introduction

Climate change is a global human rights threat multiplier. Climate change also constitutes one of the adverse global trends that can undo decades of development. In this policy brief, the Special Rapporteur on the right to development, Mr. Saad Alfarargi, examines the relationship between the right to development and climate change.

The Special Rapporteur notes the challenges that developing countries continue to face owing to limited participation, access to information, accountability and remedies, funding and technology. He 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.

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. He 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. The Special Rapporteur encourages all countries, participating in the United Nations Climate Change Conference 2021, starting in Glasgow, United Kingdom on 31 October 2021, to integrate his recommendations in their decision-making.

II. Policy and normative background on climate action and the right to development

Article 1 of the Declaration on the Right to Developmentⁱⁱ states that: “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development ...”. The Declaration also outlines principles that should guide policy decisions on climate action, including that: (a) “The human right to development also implies the full realization of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources” (art. 1); (b) the benefits of development should be fairly distributed (art. 2); (c) “States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income”; (d) “Effective measures should be undertaken to ensure that women have an active role in the development process (art. 8)”; and (e) “States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights” (art. 8).

In its formulation, the 2030 Agenda for Sustainable Developmentⁱⁱⁱ was guided by the purposes and principles of the Charter of the United Nations, including full respect for international law, grounded in the Universal Declaration of Human Rights and international human rights treaties, and informed by other instruments such as the Declaration on the Right to Development. The key principles of the Declaration on the Right to Development were reaffirmed throughout the 2030 Agenda, as were the principles of the Rio Declaration on Environment and Development and the principle of common but differentiated responsibilities (para. 12). In Sustainable Development Goal 13, Member States committed to undertake urgent action to combat climate change and its impacts.

Several targets established to achieve Goal 13 are of particular relevance to the right to development:

(a) Target 13.1: Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries;

(b) Target 13.2: Integrate climate change measures into national policies, strategies and planning;

(c) Target 13.3: Improve education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning;

(d) 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.

None of the above targets can be effectively achieved without the informed and active participation of the affected communities in all processes and at all levels of decision-making with regard to the evaluation, planning, monitoring and implementation of climate action.

The United Nations Framework Convention on Climate Change (UNFCCC)^{iv} is grounded in the need for equity between the Global North and South. Article 3 calls on parties 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. Article 4.7 recognizes that “economic and social development and poverty reduction are the first and overriding priorities of the developing country Parties” and that 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.

The Paris Agreement^v aims to hold the increase in global average temperature rise and to strengthen the ability of countries to deal with the impacts of climate change through appropriate financial flows, a new technology framework and an enhanced capacity-building framework. In order to achieve those results, the Paris Agreement explicitly states, in its preamble, that “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, [...] the right to development, as well as gender equality, empowerment of women and intergenerational equity”. The preamble also affirms, inter alia, the importance of public awareness, public participation, public access to information and cooperation at all levels on the matters addressed in the agreement and recognized the importance of the engagements of all levels of government and various actors in addressing climate change. In article 7 (5), the Parties specifically acknowledged that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and that it should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems. In article 12 of the agreement, Parties recognized the importance of public awareness, public participation and public access to information with respect to enhancing climate action. The above commitments resonate with the commitment to ensure participation contained in the Declaration on the Right to Development.

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 (GHGs) and 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 specifically the right to development, as well as gender equality, empowerment of women and intergenerational equity. The Agreement recognizes that climate change impacts 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).

The Paris Agreement specifically recognizes the procedural rights and obligation relevant to climate change in article 12, 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. Further, article 7 of the Paris Agreement acknowledges 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, knowledge of indigenous peoples and local knowledge systems.

States have parallel obligations under other instruments, including the Aarhus Convention,^{vi} which requires Parties to guarantee rights of access to information, public participation in decision-making and access to justice in environmental and climate-related matters (art. 1). Likewise, the 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).^{vii}

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.^{viii} The UN Human Rights Council has been working since 2014 to develop a treaty governing the activities of companies with respect to human rights.^{ix}

III. Challenges within and between countries

Climate change impacts and will increasingly impact a wide range of internationally guaranteed human rights. The effects of climate change are not solely an environmental or an economic issue; they impact the enjoyment of the rights to health care,^x education,^{xi} housing,^{xii} culture^{xiii} and food;^{xiv} and they destroy property and eradicate livelihoods and employment opportunities in affected communities^{xv} and, in some instances, in entire countries.^{xvi} Indigenous peoples,^{xvii} internally displaced persons,^{xviii} persons with disabilities^{xix} and women in vulnerable situations^{xx} are among the groups disproportionately affected by climate change. Climate change also constitutes one of the adverse global trends that pose a particular challenge to the implementation of the right to development.^{xxi} However, the communities and populations most affected by climate change are oftentimes the ones that do not participate in decision-making processes on actions that address the consequences of climate change.

Women commonly face higher risks and greater burdens resulting from the impacts of climate change in situations of poverty,^{xxii} and the majority of the world's poor are women. Women's unequal participation in decision-making processes and labour markets compound inequalities and often prevent women from fully contributing to climate-related planning, policymaking and implementation. Analysis of women's inclusion in Nationally Determined Contributions,^{xxiii} (NDC being the national plans highlighting climate actions, including climate related targets for greenhouse gas emission reductions, policies and measures governments aim to implement in response to climate change to achieve the targets set out in the Paris Agreement), reveals that, out of 190 contributions, only 64 include a reference to women or gender, and of those, some only mention gender in the context of broader national sustainable development strategies rather than specifically in relation to climate change policies. In 34 NDCs women are referred to as a "vulnerable group"; in 21 women are characterized as beneficiaries of policies or projects; and in only four are women recognized as decision-makers or stakeholders in the context of climate change policymaking. The Special Rapporteur stresses that ensuring that "No one is left behind" requires a dedicated focus on the equal rights of women and on ensuring their participation in decision-making, including in relation to climate action. Women need genuine opportunities to meaningfully participate in national development planning, policy design, implementation and budgeting, including for climate action.

Another example of marginalised parts of the population are situations where in some countries indigenous communities are evicted from their land in the name of natural preservation without any compensation, leaving them homeless. Property laws do not allow indigenous communities to question the implementation of projects that affect them, nor to share in the benefits from the exploitation of resources. These communities are not provided with sufficient information: oftentimes media outlets do not reach them and, even when they do, people may not be able to make use of the reporting as they speak different languages or may not be able to read. Lack of property rights poses particular challenges during the implementation of projects aimed at reducing carbon emissions, as such projects may dispossess residents who lack recourse to seek compensation for their loss. Indigenous peoples' rights are poorly protected since their communities are not informed about mechanisms through which they can assert their rights. In addition, access to legal services is generally expensive, such services are often located far from indigenous reserves and may use languages that the indigenous peoples do not understand.^{xxiv}

Currently, neither the Kyoto Protocol^{xxv} nor the Paris Agreement provide a judicial mechanism for persons claiming to have their rights violated by projects aimed at reducing carbon emissions. When investments in internationally financed development projects are made by development finance institutions, there are some accountability tools to address issues of mismanagement or rights abuse related to climate financing. Such tools include independent accountability mechanisms, which receive complaints directly from communities that are most affected by project impacts, thus helping to identify where efforts aimed at harm prevention and remedy are needed. Independent accountability mechanisms typically resolve community grievances through a compliance review to determine whether development finance institutions have followed their stated environmental and social policies in carrying out projects and/or through a dispute resolution process to reach a mutually agreed upon solution. They can also identify system-level issues in climate financing that require attention, often through a change in policy or practice.^{xxvi} Many international finance institutions have installed independent accountability mechanisms to assure that investments meet development goals and comply with social and environmental policies. Independent accountability mechanisms provide a venue to raise and remedy harm associated with projects, thereby shining light on the social and environmental risks of investments. For example, the Green Climate Fund's Independent Redress Mechanism provides recourse to those affected or who may be affected by the Fund's projects or programmes, and also accepts requests for reconsideration of funding proposals that have been denied by the Fund's Board. But where projects are funded through private funds or bilateral agreements, few avenues for independent community feedback currently exist.

Climate change is also inherently discriminatory at international level. The effects of climate change are particularly detrimental and disproportionate for many small islands and developing States.^{xxvii} 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,^{xxviii} as well as trade systems put in place after the Second World War.^{xxix} 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^{xxx} and fail to ensure human rights within the constraints of our global borders.^{xxxi} In addition, more developed countries tend to have diversified economies that are more resilient to economic shocks and harm caused by climate change.

Under article 6 of the Paris 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,^{xxxii} 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.^{xxxiii}

Market-based mechanisms for climate mitigation have the potential to undermine human rights.^{xxxiv} 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 development and climate finance institutions' policies.^{xxxv}

The terms “loss and damage” refer to negative impacts of climate change that occur despite adaptation and mitigation efforts. Climate change impacts that are permanent and irreversible are categorised as a loss, while damage refers to impacts where reparation or restoration is possible.^{xxxvi} Given the past decades of insufficient action to tackle the root causes of climate change, many States and communities most exposed to climate impacts now face loss and damage in relation to which adaptation can no longer serve as a preventive measure.^{xxxvii} In the majority of cases, loss and damage undermine the rights of communities particularly at risk of vulnerability or marginalization and threaten to undo progress achieved towards the realization of the right to development.

Internationally, loss and damage were recognized as essential parts of the global response to the climate crisis with the establishment of the Warsaw International Mechanism 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.

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^{xxxviii} and the 2019 joint statement by five Human Rights Treaty Bodies.^{xxxix} 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.” The 2019 report of the *Special Rapporteur on extreme poverty and human rights, climate change and poverty* highlights that “[h]uman rights law requires a remedy for violations and climate change is no different.”^{xl} 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.^{xli}

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 WTO Agreement as well as in the Doha Ministerial Declaration (para. 6). But there is great concern that trade measures implemented by developed countries ostensibly to address environmental concerns (such as climate change) may in fact have the effect of restricting low-income country entry into high-income country markets and of enhancing low-income countries' competitive edge. This could damage the trade and sustainable development prospects of low-income countries.^{xlii} Penalizing low-income countries for more carbon-intensive exports—as opposed to providing them with the technology to reduce emissions—is not consistent with the UNFCCC (arts. 3.1, 3.5).

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.^{xliii}

It is encouraging that many states are embracing the principle of leaving no one behind and specifically integrating Sustainable Development Goals (SDGs) into their policies.^{xliv} But progress is slow or stalled in many areas, including efforts to combat rising inequalities within and among countries and fighting climate change, which, in turn, impedes achievement of SDGs.^{xlv} Already in 2019, UN High-Level Political Forum on Sustainable Development concluded that the world is not on track to achieve many targets by 2030.^{xlvi} The COVID-19 pandemic has further constrained the funding needed to achieve SDGs.^{xlvii}

IV. The way forward after the 2021 United Nations Climate Change Conference : recommendations

A. Data collection and evaluation

To efficiently assess the consequences of climate change, it is first necessary to identify what sectors of society are the most affected, how they are being affected and which responses they find to be the most appropriate. Civil society organizations are well placed to gather qualitative information in this regard. The Special Rapporteur recommends that the capacity of civil society organisations to gather disaggregated data be enhanced, including through close cooperation with national statistical institutes, and that innovative approaches be developed to bridge gaps in data collection.

States must identify methods to effectively collect data and conduct assessments on the environmental impacts of development policies and projects from their inception in order to inform their design and programming. Such assessments should ensure that the concerns of affected communities are taken into account and should be repeated periodically in order to monitor change and evaluate progress. Specifically, States should only allow development projects to go ahead if environmental impact assessments have been conducted and their results taken into account.

If policies, plans and programmes related to climate action are to be effective, it is crucial that the individuals and communities concerned be well informed of the processes for their creation and outcomes. States should establish mechanisms that provide easy access to information in all development policies and processes related to climate action and should enact legislation guaranteeing the public the right to access such information, including information about financing. Legal remedies should be provided to ensure that access to information is not denied.

States should provide information in public spaces in relevant languages and accessible formats, such as images and posters, including the use of larger fonts and audio transmission. The gender and diversity dimensions of how and where such information is displayed should be taken into consideration. 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 UNFCCC and its Paris Agreement, Agenda 2030, and international human rights instruments.

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.

States should conduct comprehensive and independent assessments of the environmental, social and human rights impacts of transboundary policies and projects in order to address any possible negative impacts that projects may have in multiple countries. Such assessments should be embedded in the design of the policies or projects, with their costs budgeted in advance. In addition, assessments should either be led by the communities concerned or have their full and effective participation or approval. The outcomes of the assessments should be publicized.

To assess the efficiency of measures to contribute to climate adaptation or mitigation, the Special Rapporteur recommends conducting systematic periodic evaluations to determine if such measures may have caused harm to local communities, or if the communities have been denied participation, the ability to consent or compensation. Data collected in the context of

the implementation of Sustainable Development Goal 13 and related targets should also be used to inform climate action planning and policymaking. Data disaggregation methodology should draw on a human rights-based approach to data.

States should enhance international cooperation for capacity-building activities aimed at improving data collection, based on the collection of comprehensive demographic data in developed and developing countries.

B. Participation

In order to integrate the right to development into climate action, Governments should consistently promote open channels for participation at all stages of the planning, implementation and monitoring of climate-related policies and programmes for all relevant stakeholders. Opportunities should be provided for equal and meaningful participation in all relevant planning and decision-making processes of the most disadvantaged sectors of society, including persons with disabilities, women, children and young people, minorities, indigenous peoples, peasants, persons of African descent and members of other disempowered and marginalized groups.

In order to ensure the genuine and informed participation of persons with disabilities in climate action, States should strengthen the capacity and resources of organizations representing persons with disabilities and actively involve them in all stages of climate action-related planning and management. States should develop systems to identify existing risks regarding the participation of organizations representing persons with disabilities and caregivers.

Building and rebuilding the physical environment affected by climate change must be done in a way that ensures accessibility, including the removal of previous physical barriers and ensuring that new ones are not erected. The input of persons with disabilities should be sought to ensure that their expertise is included in the design of the physical environment. Special measures should be established in order to provide equal access to persons with disabilities, irrespective of the nature of their disabilities, and to persons of all backgrounds who wish to participate in disaster reduction or relief efforts. Programmes specifically targeting the reduction of disaster risks for children with disabilities should be put in place and input from caregivers should be included in their design. Adequate resources should be budgeted to implement such measures.

In order to ensure a gender-equitable and universally accessible response to climate change, States must ensure the equal participation of women in decision-making, monitoring and evaluation at the national and local levels. In addition, a gender-sensitive approach should be systematically integrated into evaluation processes. States must ensure the proportional representation of women in decision-making processes at all levels, including in community-based disaster risk reduction activities.

As part of their gender-oriented planning, States should realize that women are not a homogeneous group and should therefore pay particular attention to women in situations of multiple vulnerabilities, who may be harder to reach, including: rural women living in remote areas; migrant women; and women from indigenous or minority groups who do not receive information in languages that they understand. Adequate resources should be budgeted for that purpose.

C. Accountability

It is only possible to give effect to the right to development if there are adequate accountability mechanisms and remedies in cases of human rights violations.^{xlviii} Available mechanisms should be reliable, prompt and guarantee remedy.^{xlix}

States should adopt legal provisions making environmental rights and the right to development justiciable and should enact legislation enabling public interest litigation on environmental rights issues and/or provide additional avenues, including quasi-judicial mechanisms, through which to claim economic, social and cultural rights. States should make the working of accountability mechanisms transparent and ensure that they are accessible, including to persons living in remote areas, persons speaking minority languages and persons with disabilities.

Parliamentary committees tasked with addressing climate change/environmental issues should provide oversight and employ inquiries and public hearings as additional means of accountability.

States should put into place effective mechanisms to guarantee that development projects are carried out according to international transparency standards and in line with the Rio Declaration on Environment and Development. When projects are carried out without or in violation of environmental safeguards, avenues of recourse must be provided.

Environmental safeguards should be enforceable, and States should have a role in setting such safeguards, gathering the necessary information and determining whether enterprises and other partners implementing development projects are complying with them.

Development financial institutions should respect environmental safeguards and include respect for such safeguards in their basic criteria. They should adopt explicit environmental and social safeguarding policies and mechanisms and make them accessible to the public, including to persons with disabilities.

National human rights institutions should, among others, pursue the protection of environmental rights and climate justice claims, as well as claims related to the right to development. In addition to playing a stronger role in promoting and protecting those rights, national human rights institutions should advocate making violations of such rights justiciable within their countries. When national human rights institutions have agreed to monitor the implementation of the Sustainable Development Goals in their own countries, they should specifically refer to climate-related Goals in case analyses.

States should provide a safe environment that protects environmental rights/climate justice defenders and civil society organisations documenting the adverse impacts of development policies and projects on climate change and the right to development. Projects put in place to mitigate carbon emissions must adhere to human rights and should not increase the vulnerability of local communities. States and intergovernmental organizations should consult and collaborate with environmental defenders, recognizing the role they play in advancing the right to development, especially in the defence of land, natural resources and the environment more generally.¹

States should respect the claims of indigenous peoples for land rights, taking into consideration the impact of climate change on the enjoyment of such rights, and thus preserving their interests, and should seek their free, prior and informed consent in all development processes.

D. International cooperation to address climate change

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 to sustainable and equitable levels.

States should uphold and fully implement their commitments under the UNFCCC and its related legal instruments, including the Kyoto Protocol and the Paris Agreement, consistent with 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.

Efforts to combat climate change under the UNFCCC and its 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, which promote, respect, and consider human rights. This should include the adoption of human rights-based social and environmental safeguards; requirements for ensuring 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 grievance redress mechanism.

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.

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 26th Conference of the Parties to the UNFCCC and subsequent annual Conferences of the Parties, focused on ensuring the effective operationalization of modalities for averting, minimizing, and address loss and damage arising from climate change impacts, including through the provision of financial and technical assistance.

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, particularly from developed countries, on Loss and Damage. Until an agreement on such instruments can be found under the UNFCCC, States should uphold their duty to cooperate through the establishment of national or multilateral mechanisms to mobilize adequate resources to address loss and damage.

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 benefits adequately communities and low-income countries that are particularly vulnerable, without aggravating public debt of recipient States, privileging grants over loans.

The 26th Conference of the Parties to the UNFCCC should operationalize effectively the Santiago Network on 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 delivers 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 most effectively address issues related to the promotion and protection of human rights, including the rights of indigenous peoples and gender, among other issues. Additionally, the same consideration should be undertaken by the Executive Committee of the UNFCCC's Warsaw Implementation Mechanism on Loss and Damage.

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 extra territorial impacts of activities taking place under their jurisdiction.

Developed countries listed in Annex I of the UNFCCC 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.

To provide for a just transition, and in accordance with the principles and provisions of the UNFCCC and its 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.

Funding should be channelled through entities that have enacted environmental and social safeguards. Upon the termination of the Climate Investment Funds, this money should instead be used to fund the Green Climate Fund, the Global Environmental Facility, and the Adaptation Fund.

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.

The Green Climate Fund should develop and adopt its own environmental and social safeguards through a transparent, inclusive, and participatory process. It should also update its Information Disclosure Policy to embrace its principles of maximum disclosure and transparency and to ensure the right to access to information. Further, the Green Climate Fund should improve the transparency of its project pipeline, 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.

In addition to providing direct funding and technology, developed countries can help fulfil the right to development of low-income countries through enhancing the terms of trade in favor of low-income countries and supporting increased trade policy space for low-income countries such as on special and differential treatment and TRIPS flexibilities.

High-income countries can help 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

Low-carbon and climate-resilient technology 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 down to lower levels of government and involving groups at high risk of vulnerability. Technology must be diffused into the domestic economies of low-income countries to help them diversify and build sustainability. Job training is crucial to reduce the risks of rising unemployment, poverty and inequality in the face of climate change.

High-income countries could provide and license technology to low-income country government agencies 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 the UNFCCC to address the technology issues.

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 knowledge and practices.

F. Systems to Evaluate Progress in Achieving Climate-Resilient and Sustainable Development

Under article 14 of the Paris Agreement, the Conference of the Parties shall periodically take stock of the implementation of the Agreement to assess the collective progress towards achieving its purpose and its long-term goals (referred to as the “global stocktake”). The first global stocktake under the Agreement was scheduled to take place in 2023.

As part of the global stocktake, 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.

States should provide inputs into the global stocktake with respect to how their climate change actions under the UNFCCC/PA framework promote the right to development and how their development activities support their international climate obligations.

V. Conclusion

We are at a crucial time in history. On 31 October 2021, key climate leaders will meet to start discussing commitments at the United Nations Climate Change Conference. It is becoming increasingly obvious that despite some progress, the sum total of climate policies in place across the world will not keep global warming within the limits agreed in Paris. Action needs to be accelerated in particular by those with the biggest responsibility and capacity to do so. Climate action can not be postponed for next decade, or next year, or tomorrow- we all have to act now. There is, however, an urgent need to look at climate action from a human rights perspective. Governments need to promote channels of participation, both at national and at international levels, at all stages of the planning, implementation, evaluation and monitoring of climate action policies and programmes on a continuous basis for all relevant stakeholders, in particular those who are most disadvantaged.

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- ⁱ Mr. Saad Alfarargi was appointed by the Human Rights Council as the first United Nations Special Rapporteur for the right to development in 2017. For more information about his mandate and work see: <https://www.ohchr.org/EN/Issues/Development/SRDevelopment/Pages/SRDevelopmentIndex.aspx>.
- ⁱⁱ General Assembly resolution 41/128.
- ⁱⁱⁱ Transforming Our World: The 2030 Agenda for Sustainable Development, A/RES/70/1.
- ^{iv} A/RES/48/189.
- ^v FCCC/CP/2015/10/Add.1.
- ^{vi} The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.
- ^{vii} 4 March 2018, C.N.195.2018, TREATIES-XXVII.18
- ^{viii} John Ruggie, *Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, A/HRC/17/31 (2011), annex, principles 4 and 17–21).
- ^{ix} U.N. Human Rights Council, *Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights*.
- ^x <http://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>.
- ^{xi} See, for example, www.newsecuritybeat.org/2019/05/climate-change-weaken-childrens-education-tropics/; and http://www.thecommonwealth-educationhub.net/wp-content/uploads/2016/02/Climate-Change-Policy-Brief-Draft_140416_v4.pdf.
- ^{xii} A/HRC/43/43, guideline 13.
- ^{xiii} See A/75/298.
- ^{xiv} See A/70/287.
- ^{xv} According to the United Nations Office for Disaster Risk Reduction, during the period 2000–2019, there were 7,348 major recorded disaster events, claiming 1.23 million lives and affecting 4.2 billion people, resulting in approximately \$2.97 trillion in global economic losses. This is a sharp increase over the previous 20 years and the difference is explained by a rise in climate-related disasters, including extreme weather events: from 3,656 climate-related events (1980–1999) to 6,681 climate-related disasters in the period 2000–2019 (see <https://reliefweb.int/report/world/human-cost-disasters-overview-last-20-years-2000-2019>).
- ^{xvi} See for example “Small islands: Climate change 2014: impacts, adaptation, and vulnerability. Part B: regional aspects. Contribution of working group II to the fifth assessment report of the intergovernmental panel on climate change”, Nurse, Leonard A.; McLean, Roger F.; Agard, John; Briguglio, Lino; Duvat-Magnan, Virginie; Pelesikoti, Netatua; Tompkins, Emma; and Webb, Arthur (www.um.edu.mt/library/oar/handle/123456789/42142).
- ^{xvii} See A/HRC/36/46.
- ^{xviii} See A/75/207.
- ^{xix} See A/HRC/44/30.
- ^{xx} <http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2018/sdg-report-gender-equality-in-the-2030-agenda-for-sustainable-development-2018-en.pdf?la=en&vs=4332>, pp. 119–120; www.globalcitizen.org/en/content/how-climate-change-affects-women/; and <http://www.nrdc.org/stories/how-climate-change-impacts-women>.
- ^{xxi} A/HRC/36/49, para. 30 (c).
- ^{xxii} See <https://unfccc.int/gender>.
- ^{xxiii} See <http://www.genderclimatetracker.org/gender-ndc/quick-analysis>.
- ^{xxiv} A/HRC/48/56, paras 89–90.
- ^{xxv} FCCC/CP/1997/L.7/ADD.1.
- ^{xxvi} Examples include the functioning of the accountability mechanisms of the Inter-American Development Bank, the International Finance Corporation and the United Nations Development Programme (UNDP).
- ^{xxvii} See report of the Independent Expert on human rights and international Solidarity on International Solidarity and Climate Change (A/HRC/44/44).
- ^{xxviii} 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).
- ^{xxix} 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).
- ^{xxx} 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).
- ^{xxxi} See, for example, Kate Raworth, “What on Earth is the Doughnut?”.
- ^{xxxii} 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.
- ^{xxxiii} 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).
- ^{xxxiv} See, e.g., Friends of the Earth International, Chasing Carbon Unicorns: The deception of carbon markets and “net zero.” 22 February 2021.
- ^{xxxv} CIEL, Rights, Carbon, Caution: Upholding Human Rights under Article 6 of the Paris Agreement, Center for International Environmental Law (2021).

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xxxvii Adelle Thomas, Inga Menke & Olivia Serdeczny, 'Loss and Damage Costing and Financing Mechanisms: Caribbean Outlook' https://climateanalytics.org/media/ln_d_costing_and_financing_mechanisms_caribbean_outlook.pdf

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xxxix 'Five UN Human Rights Treaty Bodies Issue A Joint Statement on Human Rights and Climate Change' (OHCHR, 2019) < <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E> > accessed April 8, 2021.

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xli CIEL, *Funding Our Future: Five Pillars for Advancing Rights-Based Climate Finance* (2021).

xlii Martin Khor, Manuel F. Montes, Mariama Williams and Vicente Paolo B. Yu III, *Promoting Sustainable Development By Addressing The Impacts of Climate Change Response Measures on Developing Countries*, SOUTH CENTRE Research Paper 81 (Nov. 2017) 46.

xliii See [policy-highlights-financing-climate-futures.pdf \(oecd.org\)](#), p.2.

xliv See, e.g., Romania's National Strategy for the Sustainable Development of Romania 2030, <https://bit.ly/3wa484W>, (including 104 targets for 2030 which adapt the 2030 Agenda's 17 SDGs).

xlv The UN High-level Political Forum on Sustainable Development, UN General Assembly (Sep. 24-25, 2019) 3.

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xlvii OECD, *Global Outlook on Financing for Sustainable Development* (Oct. 2020), <https://www.oecd.org/newsroom/covid-19-crisis-threatens-sustainable-development-goals-financing.htm>

xlviii A/HRC/42/38, para. 136.

lix *Ibid.*, para. 138.

¹ A/71/281.

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