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

## **Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice**

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, submitted pursuant to Human Rights Council resolutions [15/21](#), [32/32](#) and [41/12](#).

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\* [A/76/150](#).



## **Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule**

### *Summary*

In the present report, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, unpacks the challenges and risks facing individuals, communities and organizations exercising their rights to freedom of peaceful assembly and of association in order to support and advance climate justice. Civil society plays an essential role in addressing the climate crisis and ensuring a just transition towards environmentally sustainable economies and societies, including fostering a green recovery from the COVID-19 pandemic. The rights to freedom of peaceful assembly and of association are essential to the work of civil society actors, providing means through which they may come together to build a greener and more sustainable future. Unfortunately, all too often these rights are violated extensively within the climate justice context. In this report, the Special Rapporteur calls on States and other relevant actors to respect and ensure these fundamental freedoms and to ensure that civil society actors can continue their work in this field.

## I. Introduction

1. The present report is submitted by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, to the General Assembly in accordance with Human Rights Council resolution 41/12.

2. In this report, the Special Rapporteur addresses the challenges and risks facing individuals, communities and organizations exercising their rights to freedom of peaceful assembly and of association in order to support and advance climate justice and provides recommendations to Governments and other stakeholders on how to better protect these freedoms and the social mobilizations that they enable.

3. In the context of the preparation of this report, the Special Rapporteur convened several online consultations with civil society from across the world. The Special Rapporteur also held bilateral discussions with the United Nations Environmental Programme and the Office of the Envoy of the Secretary General on Youth. He expresses his gratitude to all participants for their contributions. The Special Rapporteur also benefited from 14 submissions by States, 44 from civil society organizations, 5 from national human rights institutions and 1 submission from the United Nations Children's Fund (UNICEF). The report also builds on the work of other United Nations organizations, treaty bodies and special procedures, including previous thematic reports issued by the mandate holder.

## II. The existential threat of climate change

4. At the end of 2020, the Secretary-General emphasized the grim trajectory that humanity is on, as follows: "Humanity is waging a war on nature. This is suicidal. Nature always strikes back – and it is already doing so with growing force and fury. Biodiversity is collapsing ... Today, we are at 1.2 degrees of warming and already witnessing unprecedented climate extremes and volatility in every region and on every continent. We are headed for a thundering temperature rise of 3 to 5 degrees Celsius this century."<sup>1</sup>

5. The extensive impacts associated with these climate changes are catastrophic for human life, depleting food security and water supply, making many currently inhabited regions uninhabitable and leading to increases in the number of deaths and in suffering and hardship. Populations have been and will continue to be displaced and conflicts will be generated and exacerbated. The International Labour Organization (ILO) has indicated that climate change is already having a serious impact on employment worldwide, leading to climate-driven migration, working conditions that are more dangerous and job losses in both urban and rural areas.<sup>2</sup>

6. While no one is immune to the effects of the climate crisis, its impacts are not spread evenly over regions and populations. People living in poverty, marginalized populations and communities with livelihoods based on agriculture or coastal resources face some of the most severe impacts and confront the highest barriers to adaptation.<sup>3</sup> Climate change-related impacts have particularly severe consequences

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<sup>1</sup> "The state of the planet", address of the Secretary-General delivered at Columbia University, 2 December 2020.

<sup>2</sup> International Labour Organization (ILO) Guidelines for a just transition towards environmentally sustainable economies and societies for all (2015).

<sup>3</sup> See [A/HRC/41/39](#).

for women, children and other groups facing systematic marginalization,<sup>4</sup> as climate change exacerbates existing economic and social inequalities.

7. Despite multilateral commitments laid down in United Nations instruments and conventions from the 1980s on, including the United Nations Framework Convention on Climate Change, the Kyoto Protocol to the Convention and the Paris Agreement adopted under the Convention, progress has been insufficient and unequitable.<sup>5</sup> While the Paris Agreement has sought to keep the rise in global temperature below 2 degrees Celsius above pre-industrial levels and, ideally, to keep the rise in temperature below 1.5 degrees Celsius above pre-industrial levels, national commitments to cut emissions have fallen far short of the measures necessary to achieve this target.<sup>6</sup> Emissions are in many cases not merely permitted but actively encouraged by Governments, as several States provide the fossil fuel industry with extensive subsidies.<sup>7</sup> The world's failure to reduce emissions has been compounded by the environmental and social consequences of climate change which have been largely ignored over the last years, as many initiatives aimed at shifting to renewable energy have not been designed and managed so as to build resilience within affected communities, including workers and indigenous peoples, and to reduce inequality.

8. The window of opportunity to address the climate crisis and its impacts is rapidly closing. The Special Rapporteur is encouraged by some positive signs, including the ambitious pledges put forward by some States in the lead-up to the twenty-sixth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change. Yet, as with the COVID-19 pandemic health crisis and sustainable development efforts,<sup>8</sup> States cannot address the climate emergency alone. The ability of individuals to mobilize, organize and connect and to contribute to shaping public opinion and decision-making without fear, a subject further explored in the following section, is essential to the production of effective climate action and just transitions. Ensuring that such contributions can be made requires full enjoyment of the rights to freedom of peaceful assembly and of association.

### III. The rise of the climate justice movement

9. Civil society, indigenous peoples, environmental human rights defenders, trade unions and social movements across the world have worked for decades to address climate change. To the extent that pressure has built towards meaningful action on climate change, that pressure has been driven by the tireless commitment of these actors to raising popular awareness of environmental challenges, advocating for the realization of the right to a healthy environment for all, including future generations, and proposing solutions. As observed by the Intergovernmental Panel on Climate

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<sup>4</sup> See, for example, Committee on the Elimination of Discrimination against Women, general recommendation No. 37 (2018) ([CEDAW/C/GC/37](#)); and [A/HRC/44/30](#).

<sup>5</sup> See Council on Foreign Relations, "Global climate agreements: successes and failures", backgrounder written by Lindsay Maizland (2021); United Nations Framework Convention on Climate Change, "Nationally determined contributions under the Paris Agreement", synthesis report by the secretariat ([FCCC/PA/CMA/2021/2](#)) (26 February 2021).

<sup>6</sup> See United Nations Framework Convention on Climate Change, "Nationally determined contributions under the Paris Agreement", synthesis report by the secretariat ([FCCC/PA/CMA/2021/2](#)) (26 February 2021).

<sup>7</sup> See International Monetary Fund, "Climate change: fossil fuel subsidies" (accessed on 24 June 2021).

<sup>8</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E).

Change (IPCC), “civil society is to a great extent the only reliable motor for driving institutions to change at the pace required”.<sup>9</sup>

10. Civil society endeavours include efforts to protect the world’s lands, forests and oceans; to produce and analyse scientific data pertaining to climate change and associated harms; to build communities that are resilient, including by drawing on traditional knowledge; to prepare meaningful, fact-based proposals to limit climate change and mitigate its impacts; to document, call attention to and hold State and non-State actors accountable for environmental degradation while promoting the protection and welfare of workers, indigenous peoples and communities experiencing the impact of such degradation; and to push for policy change, including through national and international advocacy and litigation.

11. The failure by Governments and other key actors to address the unfolding climate crisis has spurred a global social movement in recent years. Individuals and organizations worldwide, prominently including young people and front-line defenders, have risen up to assert their rights, to raise popular awareness of climate challenges and to advocate for more ambitious climate action on the national, regional and international levels. This movement has been engaged in numerous peaceful demonstrations around the world, including demonstrations taking the form of civil disobedience.

12. The rights to freedom of peaceful assembly and of association are essential to this work, as they form the essential means through which groups of individuals can gather together around shared goals. Examples of the exercising by individuals of their rights to freedom of peaceful assembly and of association towards achieving climate justice are countless. The Special Rapporteur provides only a few examples from the collection of inputs he received in the context of the preparation of this report.

13. Among those at the forefront of the movement for climate justice are indigenous peoples. As recognized by the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, owing to their close relationship with the environment, indigenous peoples are uniquely positioned to contribute to addressing climate change.<sup>10</sup> In Thailand, indigenous communities of peoples such as the Karen have developed expertise in sustainable agriculture and forest management practices and have been on the front lines of peaceful resistance against fossil fuel projects. In Australia, activism by Aboriginal and Torres Strait Islander peoples helped secure ambitious climate commitments from the private sector. The Coordinating Body of Indigenous Organizations in the Amazon Basin (COICA) has successfully advocated for indigenous peoples’ interests before international climate action forums.

14. All over the world, women are leading efforts to protect their livelihoods, lands and natural resources and the world’s biodiversity.<sup>11</sup> In Kenya, women environmental human rights defenders such as Wangari Maathai and the Green Belt Movement that she founded have fought to promote environmental conservation and to build climate resilience and sustainable livelihoods.

15. Other civil society groups and social movements have played a key role as well in supporting efforts to address environmental harms and develop more forceful

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<sup>9</sup> See IPCC, *Global Warming of 1.5°C: 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*, Valérie Masson-Delmotte and others, eds. (2019), chap. IV, p. 352.

<sup>10</sup> [A/HRC/36/46](#), para. 15.

<sup>11</sup> [A/75/184](#).

policies through which to counter climate change. In the United Kingdom of Great Britain and Northern Ireland, popular campaigns helped take the lead in bringing fracking to a halt in 2019, in supporting plans to end the sale of new petrol and diesel cars by 2030 and in the creation of the Climate Assembly in Scotland. In Argentina, organizing by civil society and protest action led to the adoption of national legislation aimed at addressing the climate crisis. National and transnational civil society networks – such as Coalition 27, an open platform of civil society groups in Montenegro devoted to jointly monitoring, advocating for and promoting environmental justice, including climate action – have been of critical importance for sharing information, knowledge and skills among groups.

16. Youth climate activists have also played a major role in the climate justice struggle, helping to shift negative narratives and elevating the rights of future generations. Youth climate activists participating in movements such as Extinction Rebellion and Fridays for Future have carried out advocacy around the world, including through striking on school days to protest lack of action on the climate crisis. Girls and young women have been some of the most vibrant voices within this movement, inspiring young activists around the world to join in.<sup>12</sup> Such efforts have supported the development of more ambitious climate goals and important legislative and judicial achievements.

17. Unions, too, have played a key role. They have been involved in advancing a just transition agenda and have influenced employers at the workplace, sectoral, national and international levels. In the Philippines, unions and the We Move as One coalition pushed for a transition to clean energy vehicles together with adopting a just-transition framework. Unions have also worked alongside other civil society actors to address environmental degradation.

#### **IV. Challenges and threats**

18. Restrictions, attacks and failure to protect the environment and its defenders have been extensively documented by the Special Rapporteur and other mandate holders in previous reports<sup>13</sup> and communications to States. While these threats are not new, the Special Rapporteur has received information indicating that as more people around the world organize to defend their lands and demand a green future, violent repression has also increased. Often, these attacks have been led by powerful actors, including transnational fossil fuel, extractive, agribusiness and financial institutions, which have exerted pressure on States to weaken their response to the climate crisis in particular and to environmental issues in general and have supported parastatal organizations engaging in a variety of campaigns against climate justice activists, including online and direct violence. The attacks have also led at times to the portrayal of climate justice activists as national security threats, rather than as front-line human and environmental rights defenders. These restrictions and attacks have also been linked to the touting of specific projects as representing climate action or the registering of such projects as constituting climate mitigation action under international carbon trading schemes.

19. The COVID-19 pandemic has amplified these threats, as States have been enacting emergency measures that further enhance their powers. There is a danger that such new powers and restrictions may outlast the pandemic and become the new means of choice through which to address crises.

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<sup>12</sup> [A/75/184](#), para. 35.

<sup>13</sup> The present report should be read in conjunction with reports [A/HRC/38/34](#); [A/HRC/29/25](#); [A/73/279](#); [A/HRC/39/17](#); and [A/71/281](#).

## A. Physical attacks, killings and intimidation

20. The most pressing challenge facing climate and environmental justice advocates is the threat of violence. Over 70 per cent of human rights defenders killed every year are involved in the protection of the environment or closely related work asserting indigenous peoples' rights and the rights of other communities that are marginalized and discriminated against.<sup>14</sup> According to the United Nations Special Rapporteur on the situation of human rights defenders "one in two victims of killings recorded in 2019 by OHCHR had been working with communities around issues of land, environment, impacts of business activities, poverty and rights of indigenous peoples, Afrodescendants and other minorities".<sup>15</sup>

21. Many of these killings have been preceded by online and offline threats, physical attacks and other acts of intimidation. Such tactics have damaging physical, social, economic and psychological impacts on those defending their communities and the environment and exert a significant chilling effect.<sup>16</sup> In preparing this report, the Special Rapporteur received reports of intimidation and physical attacks against environmental rights defenders in many countries in all continents and regions of the world. The concerns raised reflect trends previously identified by the Special Rapporteur in communications and reports to the Human Rights Council.<sup>17</sup>

## B. Vilification, smear campaigns and disinformation

22. In addition to experiencing direct attacks, climate justice activists have been the victim of vilification, disinformation and smear campaigns aimed at discrediting their work, portraying their activities as unlawful and generating scepticism centred on the climate crisis. Climate activists have been labelled as "extremists" and "green criminals", cast as "anti-development" and "foreign-funded" and portrayed as serving the interests of "militant", "extremist left-wing", "communist" and "terrorist" groups. In Kenya, for example, civil society groups documented several instances where environmental defenders were accused of having ties to the Islamist insurgent group Al-Shabaab, following their organizing against the development of a massive infrastructure project entailing the construction of seaports, pipelines and highways linking Ethiopia, Kenya, South Sudan and Uganda.<sup>18</sup>

23. Such disinformation and smear campaigns have been supported by a broad set of actors, including high-ranking government officials. The Special Rapporteur was informed that in Australia, for instance, high-ranking officials reportedly described environmental protesters as "green criminals" and suggested that the "new breed of radical activism" threatened the future of mining in the country.<sup>19</sup> In the Philippines, environmental groups are frequently referred to by high government officials as communists and/or terrorists, an approach that has been referred to as "red-tagging".<sup>20</sup>

<sup>14</sup> See Global Witness, *Defending Tomorrow: The Climate Crisis and Threats against Land and Environmental Defenders* (July 2020).

<sup>15</sup> A/HRC/46/35 (2020), para. 16.

<sup>16</sup> See A/74/159 (2019).

<sup>17</sup> See, e.g., A/HRC/38/34.

<sup>18</sup> Submission by HRW. See also Human Rights Watch, *"They Just Want to Silence Us": Abuses Against Environmental Activists at Kenya's Coast Region*, December 2018. Available at [www.hrw.org/sites/default/files/report\\_pdf/kenya1218\\_web2.pdf](http://www.hrw.org/sites/default/files/report_pdf/kenya1218_web2.pdf).

<sup>19</sup> See submissions by Human Law Centre, Greenpeace Australia Pacific, and Environmental Defenders Office; and by Amnesty International Australia. See also <https://monitor.civicus.org/updates/2020/02/04/smear-campaign-against-green-activists-anti-protest-laws-and-media-restrictions-australia/>.

<sup>20</sup> See AL PHL 1/2021.

The Special Rapporteur also received concerning reports that in Germany, the Federal Office for the Protection of the Constitution had designated the environmental group Ende Gelände (here and no further), which was engaged in acts of peaceful civil disobedience, as “left-wing extremist”.<sup>21</sup>

24. These campaigns can often be traced to powerful special interest groups, including fossil fuel companies, extractive industries and others that exert pressure on Governments. In July 2019, the Government of Alberta (Canada) launched a public inquiry into what it considered to be “anti-Alberta energy campaigns supported by foreign organizations”.<sup>22</sup> The inquiry targeted many organizations advocating for an end to fossil fuel usage and a net zero economy. Such attacks create a chilling effect on individuals’ and groups’ ability to exercise their rights to freedom of peaceful assembly and of association. They also help create a context in which the physical attacks discussed above become justified, normalized and enabled.

### C. Climate protest bans and other restrictions on assemblies

25. The climate justice movement has had its impact dampened by a proliferation of laws and administrative actions limiting and banning assemblies, many of which have specifically targeted climate protests. For example, in 2019, the London police issued an order for any assembly linked to the climate group Extinction Rebellion within London to cease and banned future protests by the group. London’s High Court ultimately ruled the ban unlawful.<sup>23</sup> The Special Rapporteur has previously expressed his concern with respect to the Police, Crime, Sentencing and Courts Bill, proposed in the Parliament of the United Kingdom in response to climate protests, which criminalizes formerly legal protest methods and enhances police power to shut down demonstrations.<sup>24</sup> Anti-assembly injunctions are being issued more readily in the context of environmental protests, particularly against peaceful protests that cause disruption to corporate activities.<sup>25</sup>

26. Some States have passed laws criminalizing protests concerning or involving “critical infrastructure”, which has been expansively defined to include pipelines and oil shipping lanes. These laws have created new felony offences, including inhibiting construction (or) transport, and have heightened criminal penalties for already illegal conduct, such as trespass. Such laws’ legislative background and scope clearly indicate that they were designed to restrict and punish climate activism. In the United States of America, 16 States passed “critical infrastructure”-related legislation between 2016 and 2021, often with specific reference to oil and gas pipelines, imposing heavy sanctions for disruptive protests near such infrastructure.<sup>26</sup> Several of these bills were proposed as a response to the protests organized by opponents of

<sup>21</sup> On the group’s activities, see <https://350.org/ende-gelände-wrap-up/> (accessed on 21 July 2021). See also submission by the German Institute of Human Rights. See further Federal Ministry of the Interior, Building and Community, *Verfassungsschutzbericht 2019* (report on the protection of the Constitution 2019), p. 152. Available at [www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/themen/sicherheit/vsb-2019-gesamt.pdf?\\_\\_blob=publicationFile&v=10](http://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/themen/sicherheit/vsb-2019-gesamt.pdf?__blob=publicationFile&v=10) (in German only) (accessed on 21 July 2021).

<sup>22</sup> See <https://albertainquiry.ca/>.

<sup>23</sup> See [www.judiciary.uk/wp-content/uploads/2019/11/Jones-Ors-v-Comm-of-Police-Approved-judgment.pdf](http://www.judiciary.uk/wp-content/uploads/2019/11/Jones-Ors-v-Comm-of-Police-Approved-judgment.pdf).

<sup>24</sup> See OL GBR 7/2021. See also submission by Coppieters Foundation.

<sup>25</sup> See, for example, 2020csoh7.pdf ([scotcourts.gov.uk](http://scotcourts.gov.uk)).

<sup>26</sup> See International Center for Not-for-Profit Law (ICNL), US Protest Law Tracker (accessed on 20 July 2021).



the Dakota Access Pipeline in North Dakota.<sup>27</sup> Similar legislation has been passed in Alberta (Canada)<sup>28</sup> and South Africa,<sup>29</sup> and proposed in Germany<sup>30</sup> and Australia.<sup>31</sup>

27. The assemblies of environmental and climate justice groups have often been met with the excessive use of force. For instance, the Special Rapporteur was informed that in October 2019, Belgian police had used water cannon, batons and pepper spray to disperse a national climate sit-in led by Extinction Rebellion activists, and arrested hundreds of protesters.<sup>32</sup> Some attacks against climate and environmental assemblies have been intensified through gender-based violence.<sup>33</sup>

28. The impact of these measures has been enhanced by COVID-19 pandemic-related emergency measures. While some restrictions have been justified in the context of support of the right to health, on other occasions, the COVID-19 pandemic has been used as a pretext to suppress assemblies, including environmental and climate demonstrations, or increase the limitations imposed on them.<sup>34</sup> The Special Rapporteur was informed that in Indonesia, protests against mining activities in East Java were dispersed on the grounds that such dispersal was necessary to prevent the spread of the COVID-19 pandemic. Mining activities, however, were reportedly allowed to continue without restriction.<sup>35</sup>

#### **D. Criminalization, judicial harassment and surveillance**

29. Another way in which States undermine the climate justice movement has been through use of the justice system against environmental activists and their organizations. At times, criminal prosecutions are followed by prison sentences. Even when such sentences are not imposed, criminal prosecution and other forms of legal harassment impose serious financial burdens and generate significant social, economic and psychosocial impacts for the accused and their families and communities.<sup>36</sup>

30. The submissions received contain several examples of inappropriate and unlawful prosecution and threats of prosecution of climate and environmental defenders.<sup>37</sup> With respect to Cambodia, the Special Rapporteur has expressed his concern over the arrest and prosecution of environmental activists affiliated with Mother Nature Cambodia, who were later convicted on charges of incitement and causing social unrest for their participation in and organization of peaceful protests against the infilling of lakes in Phnom Penh.<sup>38</sup>

31. In many countries, such charges are brought under national security-related laws, including laws penalizing sabotage, sedition and terrorism. In India, for example, the Unlawful Activities (Prevention) Act has been used to target climate

<sup>27</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21464&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21464&LangID=E).

<sup>28</sup> See [www.qp.alberta.ca/Documents/AnnualVolumes/2020/C32p7\\_2020.pdf](http://www.qp.alberta.ca/Documents/AnnualVolumes/2020/C32p7_2020.pdf).

<sup>29</sup> See [www.gov.za/documents/critical-infrastructure-protection-act-8-2019-english-isixhosa-28-nov-2019-0000](http://www.gov.za/documents/critical-infrastructure-protection-act-8-2019-english-isixhosa-28-nov-2019-0000).

<sup>30</sup> See submission by the German Institute.

<sup>31</sup> See [www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=r6657](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6657).

<sup>32</sup> An investigation into police misconduct was subsequently opened by the authorities. See submission by CIVICUS. See also Extinction Rebellion UK, Rebel daily 6: brutality in Belgium (14 October 2019).

<sup>33</sup> See A/75/184.

<sup>34</sup> See OL KHM 4/2021; and submission by Earthrights.

<sup>35</sup> Submissions by YAPPIKA-ActionAid Indonesia, ELSAM and IMPARSIAL.

<sup>36</sup> See CIVICUS, “We will not be silenced: climate activism from the frontlines to the UN” (2019).

<sup>37</sup> The Special Rapporteur has previously sent communications related to several such cases.

<sup>38</sup> See AL/KHM 8/2020; and see updates at [www.frontlinedefenders.org/en/case/environmental-rights-defenders-mother-nature-cambodia-convicted](http://www.frontlinedefenders.org/en/case/environmental-rights-defenders-mother-nature-cambodia-convicted).

activists and environmental human rights defenders, who have faced charges of “membership and support of a terrorist organization”.<sup>39</sup> On other occasions, the authorities have relied on trumped-up charges in their attempt to silence and deter climate justice activists and intimidate and pressure local communities into giving up the rights to their land and to a healthy environment.<sup>40</sup>

32. The use of such charges against climate defenders also serves as a form of public propaganda, enhancing the vilification campaigns discussed above; provides a distraction, thereby suppressing environmental defenders’ effectiveness, as they are forced to devote time and resources to their defence rather than to their fundamental cause; and creates a chilling effect, discouraging others from joining and participating in the climate justice movement. On other occasions, bail conditions, binding over orders and injunctions are used to limit climate activists’ ability to exercise their right to freedom of peaceful assembly.

33. Companies have also targeted climate defenders with what have come to be known as “strategic lawsuits against public participation”, (SLAPPs). The term refers to lawsuits, including for defamation, anti-racketeering, interfering with business and conspiracy, brought by corporations and wealthy individuals with the aim of intimidating, harassing and draining the resources of those targeted. Criminal defamation charges have reportedly been used in Latin America and Southeast Asia to prosecute indigenous people, activists and human rights defenders.

34. Extensive surveillance by law enforcement is another result of the criminalization of environmental protesters and organizations. Such surveillance provides a channel through which the authorities can obtain information to later be used in thwarting protests and advocacy campaigns. The Special Rapporteur has received reports of individuals being filmed or photographed without their consent at climate protests. Such surveillance creates a chilling effect which may deter others from participating in assemblies or joining organizations for the purpose of pursuing climate justice.

35. The Special Rapporteur expresses the utmost concern at reports indicating that the surveillance and hacking of climate campaigners’ information appear to be carried out at the behest of private sector companies. Energy companies, including coal, oil and gas corporations, as well as companies in the car and air travel industries, have been reported to have employed surveillance firms and agents to spy on environmental protesters.

## **E. Restrictions on civil society’s operations and access to funding**

36. Environmental groups’ right to freedom of association has also been constrained by measures that represent a direct crackdown on the activities associations can engage in and that limit their ability to access funding. In some countries, new procedural requirements targeting environmental organizations, such as highly burdensome audit requirements, have been put in place.

37. It is regrettable that trends previously identified, including restrictions on access to foreign funding, continue around the world, disproportionately affecting environmental groups. In the Russian Federation, designations of organizations as foreign agents have resulted in their dissolution and in criminal penalties.<sup>41</sup> The legal frameworks underpinning such trends are incompatible with international human rights standards.

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<sup>39</sup> See, for example, IND/2/2021 and IND 5/2021.

<sup>40</sup> See, for example, AL HND 1/2021.

<sup>41</sup> See AL RUS 9/2019; RUS 4/2015.

## F. Restrictions on participation in national and international climate negotiations

38. In consultations convened in the context of the preparation of this report, civil society actors noted their exclusion from decision-making processes, including relevant United Nations forums, related to climate action and other environmental impacts affecting their communities.

39. At the national level, civil society groups indicated that barriers to public participation and access to information in environmental matters have remained in place around the world. In consultations with civil society, the Special Rapporteur heard organizations and communities express their frustration and lack of trust with respect to many local consultation processes, which were perceived as not being genuine. Although new laws have been adopted to promote participation, authorities in many countries are reportedly only “pretending to consult on projects”, while “decisions are already made”, to quote one environmental rights defender.

40. A significant barrier to participation is the limited access to the information and opportunities for consultation provided relative to bills concerning the climate crisis and a just transition, including nationally determined contributions (NDCs) as well as mitigation projects developed under the Paris Agreement, inter alia, through cooperative approaches and offset schemes which could represent false solutions to the climate crisis. Existing barriers are often heightened by the introduction of new, stricter administrative requirements for participation and by the difficulty of appealing government decisions that negatively impact climate action efforts.<sup>42</sup> The Special Rapporteur has been informed that workers and unions have routinely been excluded from climate policy discussions and from, for example, providing meaningful input into discussions on Governments’ nationally determined contributions.

41. Achieving meaningful participation at United Nations climate forums has also proved difficult. Civil society has faced barriers to access to the climate forums imposed by the forums themselves, including bureaucratic hurdles, such as visa delays and denials, the limited opportunities afforded to United Nations-accredited associations to register representatives and limited opportunities to participate effectively and meaningfully in negotiations. Front-line defenders, including rural community leaders and indigenous peoples, often struggle to access United Nations climate change negotiations and may be subject to stricter travel, funding and security restrictions. This is an egregious example of inequity, insofar as corporate actors responsible for many of the harms in question have faced far fewer barriers to obtaining access.<sup>43</sup>

42. Peaceful assemblies during multilateral meetings and negotiations impacting climate policy are often heavily restricted and face increased repression in various forms. The Special Rapporteur received reports that protesters urging negotiators to take meaningful action to address the climate crisis were forced out of negotiation rooms during the twenty-fifth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Madrid in 2019. Such actions form a pattern, bringing to mind the Special Rapporteur’s concern over reports of restrictions imposed on civil society participation at the twenty-fourth session of the Conference of the Parties to the Convention, held in Katowice, Poland, in 2018.<sup>44</sup>

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<sup>42</sup> See <https://ecnl.org/sites/default/files/2021-02/ECNL%20participation%20and%20climate%20paper%20040221.pdf>.

<sup>43</sup> See [www.civicus.org/documents/WeWillNotBeSilenced\\_eng\\_Nov19.pdf](http://www.civicus.org/documents/WeWillNotBeSilenced_eng_Nov19.pdf).

<sup>44</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24017&LangID=E;POL 3/2018](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24017&LangID=E;POL 3/2018).

## G. Challenges and risks faced by specific groups

43. In addition to the various ways in which the rights to freedom of peaceful assembly and of association of civil society members have been violated, as discussed above, the ability of individuals and groups to engage in work oriented towards protecting environmental rights and advancing climate justice has been limited by the severity of the attacks directed against and the restrictions imposed on particular groups.

44. Indigenous peoples have faced particularly severe threats and challenges. The Special Rapporteur of the Human Rights Council on the rights of indigenous peoples has highlighted the drastic increase in acts of violence, criminalization and threats to which indigenous peoples have been subjected in the course of their resistance to major business ventures.<sup>45</sup> For instance, more than 200 indigenous rights defenders were killed in Latin America between 2015 and 2019.<sup>46</sup> Challenges to indigenous peoples also stem from climate change mitigation projects that do not uphold respect for indigenous peoples' rights, including their rights to assembly, association and free, prior and informed consent.

45. Children have also faced particular challenges in exercising their rights to freedom of peaceful assembly and of association in the context of the climate crisis. In addition to having to confront all of the barriers faced by adults, they often face barriers affecting children in particular, including limitations imposed based on discriminatory policies and practices. Children attempting to exercise their right to peaceful assembly have faced limitations placed on their access to information as well as threats of violence, including threats by adults "who disapprove of their civic engagement and human rights activism".<sup>47</sup> Children who have participated in the Fridays for Future movement have faced negative reactions from their schools, including various forms of punishment.<sup>48</sup> Such rights violations have often been condoned and supported by authorities.

46. Workers, too, have faced particular barriers to enjoying their rights to freedom of peaceful assembly and of association, limiting their ability to organize and exert collective pressure on behalf of environmental matters and in support of a just transition.<sup>49</sup> Migrant workers who often come from severely climate-impacted countries to work in sectors directly affected by climate change (such as construction and agriculture) are frequently denied the opportunity to meaningfully exercise their rights to freedom of peaceful assembly and of association, limiting their ability to provide inputs to mitigation and climate-impact law and policy. Many agricultural workers are denied full labour law protection in several States, resulting in their inability to legally engage in collective bargaining and strikes oriented towards the improvement of working conditions and sustainable forms of agriculture. Informal economy workers (such as waste pickers) are also often denied their rights to freedom of peaceful assembly and of association. Workers' ability to contribute has been limited by the high levels of violence often faced by trade unionists, compounding

<sup>45</sup> See [A/HRC/24/41](#) and [A/HRC/36/46](#).

<sup>46</sup> See Economic Commission for Latin America and the Caribbean, "The indigenous peoples of Latin America: Abya Yala and the 2030 Agenda for Sustainable Development" (2020); and Global Witness, *Defending Tomorrow* (2020).

<sup>47</sup> Centre for Children's Rights, Queen's University Belfast and Child Rights Governance Global Theme, Save the Children, *Enabling the Exercise of Civil and Political Rights: The Views of Children* (2016).

<sup>48</sup> See submissions by Child Rights Connect and Anita Danka and by Young People's Commissioner of Scotland.

<sup>49</sup> Submissions by Solidarity Center, Solidarity Uganda, Centra Organizations of Trade Unions Kenya, and Confederación Sindical de Trabajadores de las Américas.

the high level of violence exercised against environmental activists. Often, restrictions on workers' rights to organize and bargain collectively, including through strikes, are particularly severe within the context of foreign investments.<sup>50</sup>

47. There are direct links between climate change and environmental degradation and gender-based violence. Scarcity of resources, displacement and conflict generated by climate change all deepen existing inequalities. Gender-based violence is frequently used to reinforce existing privileges and control over resources. Women are disproportionately impacted. In Latin America, women environmental rights defenders are among the most threatened rights defenders, owing to both the nature of their work and their gender. Attacks are also perpetrated in the form of smear campaigns, physical and sexual assaults and even killings, such as that of Mama Fikile Ntshangase, a South African environmental activist and community leader.<sup>51</sup>

## V. Meeting human rights obligations

48. The rights to freedom of peaceful assembly and of association are recognized and protected, inter alia, under article 20 of the Universal Declaration of Human Rights and articles 21 and 22 of the International Covenant on Civil and Political Rights. They are also encompassed in article 8 of the International Covenant on Economic, Social and Cultural Rights and guaranteed by other international conventions protecting the rights of groups that are marginalized and discriminated against, including, for example, the Convention on the Rights of the Child (art. 15), the Convention on the Elimination of All Forms of Discrimination against Women (art. 7), the United Nations Declaration on the Rights of Indigenous Peoples (arts. 17 and 18) and the Convention on the Rights of Persons with Disabilities (art. 29). These rights are exercised and enjoyed individually and collectively.

49. Human rights law imposes both negative and positive obligations on States. Negative obligations require States to refrain from applying laws and engaging in practices that interfere with the exercise of rights. Any restrictions or limitations on rights must be permissible under international human rights law, meaning that they must be prescribed by law and be necessary and proportionate in a democratic society in order to pursue legitimate interests, as prescribed by the International Covenant on Civil and Political Rights. Restrictions must not be discriminatory or impair the essence of a right.<sup>52</sup>

50. Positive obligations require States to promote and protect the exercise of rights. These obligations entail the promotion of an enabling environment, including a legal and institutional framework within which rights can be effectively exercised. States must protect individuals and groups from actions by non-State actors, including business enterprises that would impair the enjoyment of their rights. States also have an obligation to provide effective remedies in the event of violation of these freedoms.<sup>53</sup>

51. These obligations are pertinent to addressing the climate crisis. The Paris Agreement calls for States to “respect, promote and consider their respective obligations on human rights”, including the rights of indigenous peoples, as well as to take into account “the imperatives of a just transition of the workforce and the

<sup>50</sup> See Fangjin Ye, “The impact of bilateral investment treaties (BITs) on collective labor rights in developing countries”, *Review of International Organizations*, vol. 15, No. 4 (October 2020), pp. 899–921.

<sup>51</sup> See AL ZAF 3/2020.

<sup>52</sup> A/HRC/20/27, paras. 39–42 and 64–65.

<sup>53</sup> A/HRC/20/27, paras. 33–38 and 63.

creation of decent work and quality jobs in accordance with nationally defined development priorities”.

52. While States have primary responsibility for the realization of the rights to freedom of peaceful assembly and of association, businesses also have a responsibility to respect and protect these freedoms,<sup>54</sup> including as laid out by the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. Such responsibility extends to their employees as well as to communities affected by their activities. Multilateral entities also have positive responsibilities to actively protect peaceful assemblies and to establish and maintain an enabling environment for civil society.<sup>55</sup>

53. Compliance with these obligations in the context of the current climate crisis requires the adoption of the following measures.

#### **A. An enabling environment for civil society as essential for addressing the climate crisis and ensuring a just transition**

54. Addressing the climate crisis and ensuring a just transition require the existence of a vibrant and dynamic civil society. Under the United Nations Framework Convention on Climate Change, States parties accept their obligation to “promote and facilitate ... public participation in addressing climate change and its effects and developing adequate responses”.<sup>56</sup> The Paris Agreement recognizes the important role played by public participation in ensuring the effectiveness of climate action. Under the Agreement, States parties agree to take measures to enhance “public participation and public access to information, recognizing the importance of these steps with respect to enhancing actions under this Agreement”,<sup>57</sup> and acknowledge that adaptation action should follow a “participatory and fully transparent approach”.<sup>58</sup> The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) also require States to ensure public participation in environmental decision-making.<sup>59</sup>

55. The Special Rapporteur stresses that guaranteeing full participation in the context of the climate crisis requires full respect for and protection and fulfilment of the rights to freedom of peaceful assembly and of association, which are inextricably intertwined with the right to take part in the conduct of public affairs.<sup>60</sup> The mandate holder and other human rights mechanisms have previously laid out extensive principles applicable to the rights to freedom both of peaceful assembly and of association. In the context of achieving the 2030 Agenda for Sustainable Development, the Special Rapporteur has stressed that engagement in the following areas is essential to building an enabling environment for civil society organizations: (a) entry procedures and dissolution processes; (b) regulation of operations; (c) access

<sup>54</sup> See Human Rights Committee, general comment No. 37 (2020) (CCPR/C/GC/37), para. 31.

<sup>55</sup> [A/69/365](#).

<sup>56</sup> United Nations Framework Convention on Climate Change, art. 6.

<sup>57</sup> Paris Agreement, art. 12.

<sup>58</sup> *Ibid.*, art. 7.

<sup>59</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), arts. 6 and 7; and Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean. (Escazú Agreement), art. 7.

<sup>60</sup> See, for example, [A/73/279](#).

to resources; (d) political influence and access to power; and (e) conducting peaceful assemblies. This framework remains applicable to efforts to tackle climate change.

56. A critical element within an enabling environment for the work of civil society towards low-emissions and climate-resilient societies is the ability to access funding from national, foreign and international sources. Limitations on associations' access to foreign funding, including the imposition of burdensome administrative requirements on those seeking to secure such funding (e.g., the requirement to register as a foreign agent), are highly suspect and should be subject to strict rights-based scrutiny. In the context of climate justice, such requirements often have a devastating impact on communities' ability to adapt and become prepared for climate-related risks. Under their climate justice agenda, States should remove onerous bureaucratic limitations on associations' access to funding, including foreign funding.

57. Unannounced raids by law enforcement authorities seeking to review an organization's compliance with the legal requirements governing access to foreign funding contravene international human rights obligations. Failure to comply with transparency and accountability requirements, including registration and reporting requirements, should not lead to closure or criminal prosecution.<sup>61</sup> Under no circumstances may suspension or dissolution be based – explicitly or inexplicitly – on an association's activities in promotion of climate action and a just transition.

58. The Special Rapporteur has observed that international development cooperation on climate action has increased in recent years. He welcomes efforts to ensure that international aid is accessible by civil society organizations and communities, including indigenous peoples, as well as by women-led and children's organizations. He values the adoption of an Indigenous Peoples Policy<sup>62</sup> by the board of the Green Climate Fund and calls for its full implementation. The Special Rapporteur encourages the Fund, as well as other international financial institutions, to continue adopting measures to ensure effective engagement in the Fund's activities and financing for all sectors of civil society, including local organizations and rural communities.

59. Freedom of peaceful assembly should also be guaranteed, as peaceful assemblies play a vibrant role in mobilizing populations and influencing public policy, a theme that is developed further below.

## **B. Recognition and facilitation of climate-related protests, including civil disobedience**

60. The exercise of the right to peaceful assembly is one of the most important tools people have for advocating for more effective and equitable climate action and environmental protection. Several mandate holders have stressed that the exercise of the right to freedom of peaceful assembly is an essential component of democracy and “an invaluable tool through which to ensure policy formation in the interest of the public good”.<sup>63</sup>

61. As mentioned above, any restrictions imposed must be necessary and proportionate to the legitimate aim pursued. The practice of imposing blanket prohibitions on peaceful assemblies fails that test and does not comply with States'

<sup>61</sup> See, for example, [A/HRC/23/39](#).

<sup>62</sup> See [www.forestpeoples.org/sites/default/files/documents/GCF\\_B.19\\_05\\_-\\_GCF\\_Indigenous\\_Peoples\\_Policy.pdf](http://www.forestpeoples.org/sites/default/files/documents/GCF_B.19_05_-_GCF_Indigenous_Peoples_Policy.pdf).

<sup>63</sup> See Joint Declaration on the Right to Freedom of Peaceful Assembly and Democratic Governance (2020).

human rights obligations.<sup>64</sup> This is also the case for the reliance on overly broad terms such as “critical infrastructure”, “vital installations” and “national interests” in an attempt to shield particular economic ventures from protest.<sup>65</sup> As the mandate holder has previously emphasized, States have a duty under international law to allow and promote space for opposition to commercial projects. In this context, it is important to underline that national, political, economic and government interests are not to be viewed as belonging to the same category as “national security or public order”,<sup>66</sup> recognized as grounds for the imposing of limitations under international human rights law.

62. The Special Rapporteur reiterates that a certain level of disruption of ordinary life, including disruption of traffic, annoyances and inconveniences to which business activities are subjected must be tolerated if the right to freedom of peaceful assembly is not to be deprived of meaning. In the words of the Human Rights Committee, “(p)ivate entities and broader society may be expected to accept some level of disruption as a result of the exercise of the right”.<sup>67</sup> Businesses engaged in harmful activities should accept a reasonable level of economic loss resulting from disruptions caused by the peaceful assemblies organized in opposition to them, and organizers and participants should not be held liable for those disruptions.

63. Limitations of peaceful assembly on the grounds of “disruption of traffic”, as well as in some cases the broader and more general offences of nuisance and disorderly conduct, must be tightly defined in order to comply with human rights law and prevent undue interference with the right to peaceful assembly. The Special Rapporteur has emphasized that road blocking is a legitimate means of protesting, which has long been central to social movements around the world. While road blocking may be subject to certain limited restrictions, it should never be subject to the incurring of criminal penalties.<sup>68</sup>

64. In light of the high level of public interest involved in advancing climate justice, it is particularly important that States recognize and provide space for civil disobedience and non-violent direct-action campaigns,<sup>69</sup> which are employed by many climate justice activists around the world who are following in the footsteps of other major transnational social movements. States must exercise great restraint in imposing restrictions on these forms of peaceful protests, including when taking decisions on whether to arrest, prosecute, impose pre-trial detention, convict or award damages against climate justice activists for engaging in such actions. Any limitations imposed must allow for judgment on a case-by-case basis and meet the legality, necessity and proportionality requirements, taking into account the significance of the aims of the protest in question from a rights-based perspective.

65. For example, the use of “trespassing” offences for public assemblies carried out on the private property of individuals who object to those assemblies or on critical infrastructure facilities should be assessed strictly against principles of necessity and proportionality. Prison sentences for non-violent protest activity are always disproportionate. In this regard, the European Court of Human Rights has indicated that when charging a person in connection with a protest, a “compelling consideration relating to public safety, prevention of disorder or protection of the rights of others” should be at stake and that “the need to punish unlawful conduct ... is not a sufficient

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<sup>64</sup> See [A/HRC/35/28/Add.2](#), para. 30.

<sup>65</sup> [A/HRC/29/25](#), para. 22.

<sup>66</sup> [A/HRC/32/36](#), para. 33.

<sup>67</sup> See Human Rights Committee, general comment No. 37 (2020) ([CCPR/C/GC/37](#)), para. 31.

<sup>68</sup> [A/74/349](#), para. 46.

<sup>69</sup> See Human Rights Committee, general comment No. 37 (2020) ([CCPR/C/GC/37](#)), para. 16.



consideration in this context”.<sup>70</sup> Even when public safety interests are raised in a given case in support of a restriction on the right to peaceful assembly, the State would still need to demonstrate necessity and proportionality.

66. The Special Rapporteur recalls that gatherings in private spaces fall within the scope of the right of peaceful assembly. The extent to which restrictions may be imposed on such a gathering depends on considerations including “the nature and extent of the potential interference caused by the gathering with the interests of others with rights in the property ... whether the ownership of the space is contested through the gathering and whether participants have other reasonable means to achieve the purpose of the assembly, in accordance with the sight and sound principle”.<sup>71</sup>

67. Ensuring that these principles are respected is of particular importance relative to indigenous peoples, as in many instances companies have been granted licences allowing them to enter and assume control over areas within indigenous peoples’ ancestral lands, without their free, prior and informed consent. Prohibiting indigenous peoples from protesting such ventures on their ancestral lands serves to compound the violations of rights perpetrated through use of such measures.

68. States must ensure that criminal laws penalizing activities such as usurpation, defamation, conspiracy, coercion, incitement of crime, terrorism, sedition and cooperation with foreign entities, which are often broad and ill defined, are not used to target environmental defenders and to create a chilling effect, including through prompt dismissal of such charges when they are being used to suppress climate justice advocacy. States must ensure that force is never used to disperse an assembly unless its use is strictly unavoidable in accordance with the requirements imposed by international human rights law, including international norms and standards on the use of force.

69. The Special Rapporteur warns against the violent dispersal of peaceful assembly, including climate-related protests. States should refrain from entering into agreements to provide private security for fossil fuel and other energy projects. Under these agreements, the role of security forces, which is to ensure public safety and not protect the private interests of companies, becomes confused.

70. Instead of developing new ways to restrict the rights of civil society actors and limit their impact on policy, States should respond to climate justice protests and advocacy by magnifying the voices of advocates and ensuring that their concerns are taken fully on board, including within the framework of State policy on the local, regional, national and international levels and within the context of business endeavours.

### **C. Inclusive participation in development and implementation of climate and just-transition policies**

71. Ensuring accelerated climate action and promotion of just transitions requires that all relevant processes be inclusive and that all actors in the climate justice movement be able to participate at every level. Existing barriers and structural discrimination must be considered so that no one is left behind. Inclusive participation, particularly of local communities, limits adverse impacts and ensures better environmental outcomes over time.

<sup>70</sup> *Novikova and others v. Russia*, European Court of Human Rights (ECtHR), Judgment of 26 April 2016, para. 199.

<sup>71</sup> See Human Rights Committee, general comment No. 37 (2020) (*CCPR/C/GC/37*), para. 57; and [A/74/349](#), para. 48.

72. States must ensure that everyone can fully exercise the rights to freedom of peaceful assembly and of association.<sup>72</sup> This includes indigenous peoples as well as persons belonging to other minority and discriminated-against groups, including those discriminated against on the basis of their sexual orientation or gender identity,<sup>73</sup> children, women, persons with disabilities, non-nationals, including stateless persons, refugees and migrants, all workers (formal and informal) and associations, including unregistered groups.<sup>74</sup>

73. Children's rights to freedom of peaceful assembly and of association should be ensured. According to the Committee on the Rights of the Child, children, as the beneficiaries of today's decisions, must be at the centre of the discourse on climate change and their opinion should be listened to and taken into account.<sup>75</sup> It is important that thorough reviews of law and policy be undertaken on the national level in order to ensure that all age-discriminatory laws and policies are reformed, so that children may fully participate in the climate justice movement, without reprisals. The Special Rapporteur echoes calls by the Committee for "children to be embraced as active participants and owners of decisions being made that will impact on their future well-being".<sup>76</sup>

74. States must remove all barriers to workers' ability to organize trade unions, to conduct strikes and to engage in collective bargaining, including in support of just transitions towards low-emissions economies. In 2015, ILO constituents unanimously endorsed the Guidelines for a just transition towards environmentally sustainable economies and societies for all. The Guidelines note that one element of a basic framework for addressing the challenges of a just transition for all is the exercise of the right to freedom of association and the right to bargain collectively.

75. In addition to removing restrictions, States must take measures to ensure that people are able to effectively participate in shaping climate policies on the local, national and international levels. The mandate holder and others have previously emphasized that "public participation is crucial to surmount any crisis, and civil society must be regarded as an essential partner of governments in this endeavour".<sup>77</sup> Registration status should not limit associations' ability to monitor, report on, conduct advocacy concerning and challenge the environmental impacts of business ventures and decision-making processes exerting an impact on environmental issues.<sup>78</sup> It is important, moreover, as States update their plans under the Paris Agreement and advance their energy transitions, that workers, indigenous peoples and communities are meaningfully included in the process.

76. Ability to participate in decision-making is equally important for individual projects for climate action. This should apply not only to projects emerging from international climate finance institutions such as the Green Climate Fund and the Adaptation Fund, which should ensure the effective participation of people in the design, implementation and monitoring of projects, but also to approaches adopted under article 6 of the Paris Agreement. Article 6 allows for the trading of emissions reduction credits and establishes a sustainable development mechanism as well as non-market approaches. The Special Rapporteur urges States parties to the Paris

<sup>72</sup> See [A/HRC/26/29](#).

<sup>73</sup> See Human Rights Council resolution [17/19](#) of 14 July 2011.

<sup>74</sup> See [A/HRC/20/27](#).

<sup>75</sup> Office of the United Nations High Commissioner for Human Rights, "UN child rights committee voices support for children campaigning on climate change" (27 September 2019). Available at [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25068](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25068).

<sup>76</sup> *Ibid.*

<sup>77</sup> See Joint Declaration on the Right to Freedom of Peaceful Assembly and Democratic Governance (2020).

<sup>78</sup> [A/HRC/29/25](#), para. 61.

Agreement to ensure that respect for rights is incorporated in the rules being negotiated for the implementation of article 6, including through the adoption of rights-based social and environmental safeguards, rules to ensure the participation and consultation of indigenous peoples and local communities, and an independent grievance redress mechanism.

77. The rights to freedom of peaceful assembly and of association must be fully upheld in the context of the sessions of the Conference of the Parties to the United Nations Framework Convention on Climate Change and other multilateral forums focusing on climate change. Processes and mechanisms must be strengthened to facilitate the meaningful participation of civil society and indigenous peoples in these forums. Such processes and mechanisms should be designed to promote transparency and encourage and support the participation of the constituencies most directly affected, including women and persons with disabilities. A State's full guarantee of the rights to freedom of peaceful assembly and of association should be a prerequisite for the selection of that State to host international climate forums. The Special Rapporteur notes with appreciation the commitment expressed by Italy to ensuring that forums such as the Y20 Summit held in Milan in July 2021 and the YOUTH4Climate: Driving Ambition event provide a space for meaningful participation by children.<sup>79</sup> He also welcomes the expression by Ireland of its commitment to supporting the increased participation of non-party stakeholders at the sessions of the Conference of the Parties to the United Nations Framework Convention on Climate Change, including civil society.<sup>80</sup>

78. The principles of access to information and public participation in climate-related decision-making underpin the Doha Work Programme on Action for Climate Empowerment established under the United Nations Framework Convention on Climate Change. The Special Rapporteur believes that a significant step was also taken through the establishment of the Local Communities and Indigenous Peoples Platform under the Convention, which aims towards enhancing the engagement of local communities and indigenous peoples in climate change efforts associated with the United Nations. The adoption of a new Doha Work Programme and a new workplan for the Local Communities and Indigenous Peoples Platform Facilitative Working Group at the twenty-sixth session of the Conference of the Parties to the Convention can help further support the effective participation of civil society and indigenous peoples in the development and implementation of climate policies, if these work streams are adequately informed by relevant human rights obligations.

#### **D. Prevention of, protection from and accountability for attacks**

79. It is crucial that individuals exercising the rights to freedom of peaceful assembly and of association are able to do so without fear that they may be subjected to threats, acts of intimidation or violence, including killings, arbitrary arrest or detention and gender-based violence. States must refrain from carrying out any such forms of attack.

80. States must also take effective measures to ensure that civil justice activists are protected against attacks from private actors, including through stigmatization and vilification campaigns,<sup>81</sup> and that those responsible are held to account.<sup>82</sup> The Special Rapporteur values the adoption by the United Nations Environment Programme (UNEP) of a policy on the protection of environmental defenders. He also takes note

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<sup>79</sup> Submission by Italy.

<sup>80</sup> Submission by Ireland.

<sup>81</sup> For a similar point, see [A/HRC/40/60](#), para. 43.

<sup>82</sup> For a similar point, see [A/HRC/71/281](#), para. 70.

of the adoption in February 2021 of a policy for security and protection of human rights defenders in Nepal, under which it is required that legal action be initiated against any person or government official who is found to have intimidated and harmed human rights defenders.<sup>83</sup>

81. Businesses, in addition to States, must respect the rights to freedom of peaceful assembly and of association of individuals, communities, indigenous peoples and workers and ensure that they face no attacks in reprisal for their activism, including when they directly oppose a company's activities or engage in collective bargaining on workplace issues related to environmental and occupational safety concerns. In this context, the Special Rapporteur echoes the call issued by the Working Group on Business and Human Rights for businesses to commit to a zero-tolerance policy with respect to attacks against human rights defenders, including environmental human rights defenders.<sup>84</sup> Businesses must also refrain from retaliatory firings and other forms of retaliation.

## **E. Ending legal harassment and unlawful surveillance**

82. States must protect those who exercise their rights to freedom of assembly and of association, including within the context of the climate crisis in particular, from corporate attempts to utilize the legal system to intimidate and attack them and suppress their advocacy. Legal mechanisms, including civil damage, defamation and trespass suits, have often been used to curtail the work of climate justice activists. The Special Rapporteur has previously recommended the enactment of legislation against strategic lawsuits against public participation, which should authorize the early dismissal of such lawsuits and financial penalties of sufficient magnitude to ensure that such strategies are not pursued, including awards of costs. Access to legal aid is particularly important, to enable civil society groups and individuals to adequately defend themselves, especially if legal claims proceed in court.<sup>85</sup>

83. States should adopt legislation requiring businesses subject to their jurisdiction to exercise human rights-related due diligence to identify, prevent, mitigate and account for any actions aimed at criminal prosecution and legal harassment. In this context, the mandate holder has previously recommended that States “develop, in consultation with the private sector and civil society, binding laws and standards which ensure that private actors abide by international and domestic human rights norms, including in the context of natural resource exploitation”.<sup>86</sup>

84. Businesses must adhere to the “do no harm” principle by avoiding causing or contributing to violations of the rights to freedom of peaceful assembly and of association. Among the requirements imposed under this principle is that businesses refrain from pursuing criminal complaints or civil lawsuits as a means of silencing civil society actors, including environmental human rights defenders, for their critical advocacy against companies and policies responsible for climate change and environmental degradation. Remediation should be provided to address any harms caused and operational-level grievance mechanisms should be available and accessible.<sup>87</sup> This applies to all businesses, including those involved in mitigation projects and in the shift to renewable energy.

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<sup>83</sup> Submission by Government of Nepal.

<sup>84</sup> [A/HRC/47/39/Add.2](#), para. 83.

<sup>85</sup> *Steel and Morris v. UK* (European Court of Human Rights).

<sup>86</sup> [A/HRC/29/25](#), para. 72 (d).

<sup>87</sup> See [A/HRC/47/39/Add.2](#) and [A/72/170](#).

85. States and businesses must refrain from conducting unlawful or arbitrary surveillance (including digital surveillance) against climate advocates. Allegations of these attacks should be duly investigated by independent and impartial bodies.<sup>88</sup>

86. Investors as well have an important role to play in preventing the legal harassment and arbitrary surveillance of climate justice activists. Investors should use the power of their leverage to send a clear message to businesses and Governments that legal retaliation against civil society groups engaged in climate justice advocacy will not be tolerated. All financial institutions should ensure that their investment choices discourage such practices.<sup>89</sup>

## VI. Conclusions and recommendations

### A. Conclusions

87. **The current climate crisis presents a challenge of unparalleled proportions. It is already responsible for generating and exacerbating widespread human rights violations around the world; if forceful action is not immediately taken, this will lead to even more catastrophic harm and human suffering in future.**

88. **The strongest voices pushing back against the status quo, and in favour of more meaningful climate action, have come from civil society, including indigenous peoples, young people, children and other communities that have experienced the impact of the crisis. Unfortunately, instead of receiving support, climate justice advocates have been attacked both by States and by business interests. Urgent attention is needed at the local, national, regional and international levels to ensure that those fighting for climate justice receive the support they deserve, as a means of respecting their rights and ensuring that their struggles for climate action and a just transition are recognized and supported.**

89. **The Special Rapporteur warns against the use of the climate crisis as an opportunity to further close the civic space. The COVID-19 pandemic crisis has exposed several of the negative effects that a global crisis can have on democratic systems and the rule of law. In addition to serving as a smokescreen for the institution and implementation of rights-violating measures, the crisis has deepened and exacerbated pre-existing inequalities within and between societies. Serious effort and attention will be necessary to ensure that the climate crisis does not lead to similar outcomes.**

### B. Recommendations

90. **States should:**

(a) **Recognize publicly at the highest levels the work of civil society and the importance of the rights to freedom of peaceful assembly and of association as essential to the advancement of climate action and just transition;**

(b) **Adopt all necessary measures to ensure that individuals, organizations, communities and indigenous people exercising their rights to freedom of peaceful assembly and of association in support of climate justice are not subjected to attacks, harassment, threats and intimidation, including conducting thorough, prompt, effective and impartial investigations into killings**

<sup>88</sup> [A/HRC/47/24](#), para. 57, and [A/HRC/41/41](#).

<sup>89</sup> [A/72/170](#).

and violence against civil society actors, ensuring that perpetrators are brought to justice and refraining from issuing official and unofficial statements stigmatizing civil society groups engaged in climate justice;

(c) Ensure that the rights to freedom of peaceful assembly and of association in support of climate justice are fully and equitably enjoyed by all groups and communities, including indigenous peoples, youth, children, women, members of other minority and discriminated-against groups, workers and associations, including unregistered groups, including by eliminating existing barriers and adopting positive measures to ensure that marginalized communities are provided with specific, meaningful opportunities to exercise the full extent of these rights in the context of climate justice;

(d) Ensure that law and practice illegitimately restricting the place where and manner in which protests may take place, including laws criminalizing protests at or near business worksites as well as blanket bans on particular forms of protest, are reformed, in order to ensure full access to and enjoyment of the right to freedom of peaceful assembly. Among other things, States should amend laws criminalizing road blocking as a form of peaceful protest. States should recognize and provide space for civil disobedience and non-violent direct-action campaigns and ensure that any restriction complies with legality, necessity and proportionality requirements;

(e) Ensure that their legal systems do not provide avenues through which corporations and other public and private entities can intimidate, criminalize and deter climate justice activists through judicial processes, including strategic lawsuits against public participation, injunctions and binding over orders. States should both repeal criminal defamation and adopt anti-strategic lawsuits against public participation legislation to protect civil society actors against legal harassment;

(f) Lift restrictions that prevent national and international civil society groups and communities engaged in climate activism from gaining access to the funding that they need to carry out their work;

(g) Ensure that all workers are guaranteed the right to associate, including the right to strike, and to bargain collectively at all levels, including over matters related to climate change and just transitions;

(h) Engage in consultations with climate and environmental activists, including workers and groups facing marginalization or discrimination, to solicit information about restrictions affecting their ability to exercise assembly and association rights in campaigns for climate justice, and take actions to address such restrictions;

(i) Ensure that civil society and communities can meaningfully participate in all climate and just-transition policy development and implementation at all levels of decision-making. This means:

(i) Putting in place transparent and inclusive processes to ensure that everyone, including women, indigenous peoples, youth, children, persons with disabilities and other groups facing marginalization or discrimination, is provided with equal opportunities to effectively participate in climate decision-making. This includes ensuring meaningful consultation prior to the adoption of climate- and energy-related laws and projects;

(ii) Ensuring that international and national activities implementing Action for Climate Empowerment work programmes recognize the need to protect the rights to freedom of peaceful assembly and of association as

essential to enabling the participation and mobilization of all stakeholders in advancing climate action and just transitions;

(iii) Strengthening multi-stakeholder platforms including civil society and other relevant actors, and supporting their ability to contribute to the planning, implementation and monitoring of nationally determined contributions, national adaptation plans and other national climate plans;

(iv) Engaging workers and their representative organizations fully in the development of climate and just-transition policies;

(v) Accessing and effectively implementing multilateral agreements supporting access to information, public participation and environmental justice.

91. When engaging in foreign policy, States should:

(a) Make support for civil society's participation in global climate decision-making a foreign policy priority, including by increasing political and diplomatic efforts to protect environmental human rights defenders;

(b) Guarantee that any mechanism established or approaches operationalized in relation to the implementation of the Paris Agreement, including under its article 6, fully comply with existing human rights obligations;

(c) Work with other States and stakeholders to ensure that all relevant substantive outputs and work programmes adopted under the United Nations Framework Convention on Climate Change and the Paris Agreement reflect and promote the right of civil society, and in particular that of the constituencies most directly affected, to participate in climate-related decision-making;

(d) Ensure that multilateral forums (including the G7; the G20; and Brazil, the Russian Federation, India, China and South Africa (BRICS)) publicly recognize the vital role of civil society in advancing climate action and just transitions;

(e) Ensure civil society participation in climate summits and negotiations, both by providing official opportunities for participation and by pushing Governments hosting these events to respect the rights of environmental activists; and facilitate the issuance of visas for those seeking to engage with climate forums and meetings taking place on their territory.

92. Businesses and investors should:

(a) Publicly recognize the key role that civil society plays in advancing climate justice;

(b) Refrain from engaging in and publicly condemn all acts of intimidation and attacks against environmental rights activists;

(c) Refrain from pursuing legal action or conducting surveillance as a means of silencing environmental rights activists;

(d) Conduct human rights due diligence to identify any risks to the rights to freedom of peaceful assembly and of association related to their business activities, including those posed by law enforcement or other government officials, and take action to ensure that no rights violations occur;

(e) Engage fully with workers and their organizations at the workplace and at industry levels to advance a just transition throughout global value chains;

(f) **Develop and implement grievance mechanisms to address human rights concerns;**

(g) **Use their leverage to stop State authorities and business partners from engaging in repressive actions against individuals exercising their rights to freedom of peaceful assembly and of association in the advancement of climate justice and terminate business relationships when repressive practices continue;**

(h) **Refrain from investing in or sourcing materials or services from other companies with a record of intimidation, attacks or threats against climate or environmental activists.**

**93. International institutions should:**

(a) **Ensure that civil society is fully and effectively included in all processes aimed at developing, implementing and monitoring responses to the climate crisis, giving due consideration to the report of the Special Rapporteur on the exercise of the rights to freedom of peaceful assembly and of association within the context of multilateral institutions. In particular:**

(i) **International institutions should ensure equitable access to United Nations meetings, including meetings related to the United Nations Framework Convention on Climate Change, the Paris Agreement and other multilateral environmental frameworks;**

(ii) **International institutions should establish strict internal guidelines governing the policing of assemblies during international meetings and events, including climate-related forums, in line with international legal obligations;**

(iii) **International institutions should develop policies, including child-appropriate procedures, to ensure meaningful and sustained participation of individuals, groups and communities representing marginalized people;**

(iv) **International finance institutions and regional development banks should ensure that agreements on the financing of projects to support carbon neutral/sustainable development clearly emphasize respect for the rights to freedom of peaceful assembly and of association, particularly of the workers and communities affected by such projects;**

(v) **The International Labour Organization should work with Governments and social partners to ensure the full protection of the right to freedom of association, including the rights to strike and to bargain collectively, and encourage full and expeditious implementation of the 2015 Guidelines for a just transition towards environmentally sustainable economies and societies for all;**

(vi) **The United Nations Environment Programme should continue to strengthen implementation of its policy on the protection of environmental defenders.**

**94. Furthermore, the Special Rapporteur encourages national human rights institutions to continue to promote the rights to freedom of peaceful assembly and of association and collaborate and contribute towards a human rights-based approach for the implementation of the Paris Agreement and the 2030 Agenda for Sustainable Development.**