Promoting Human Rights in Climate Action: Report from the Dubai Climate Conference (COP28)

The 28th session of the Conference of the Parties (COP28) to the United Nations Framework Convention on Climate Change (UNFCCC) in December 2023 was hosted in a country with closed civic space and a track record of human rights violations, and presided over by an oil executive. This context further undermined the credibility of the UNFCCC process, already strained because of its demonstrated inability — under the current procedural rules and institutional structure — to realize the ultimate objective of the Convention. Despite more than three decades of negotiations, the UNFCCC negotiations have failed to make meaningful progress toward what is most urgently needed to limit warming to 1.5°C and avoid even more catastrophic climate change — a rapid and equitable phaseout of all fossil fuels — and to address and remedy the harms that cumulative emissions and current levels of warming are already causing to people and the environment. While touted by many as “historic,” the COP28 outcomes on fossil fuels and the Loss and Damage Fund are insufficient and flawed.

This report summarizes and analyzes key developments at COP28 related to the integration of human rights in climate policies. Through this narrow but important lens, the report focuses on civic space, the Global Stocktake and fossil fuels, the Loss and Damage Fund, carbon markets, and the Just Transition work programme.

CIVIC SPACE AND HUMAN RIGHTS

COP28 took place in the United Arab Emirates (UAE), a repressive state with restrictions on freedom of assembly, free speech, and press freedom. The host nation touted this COP as the most inclusive COP ever, which was all the more hypocritical given that independent and critical voices from the region were effectively barred from participating. Despite being in the global spotlight, the UAE also initiated a new collective trial of political detainees during the conference. By participating in COP28 without denouncing these restrictions and abuses, many governments and UN authorities abdicated their responsibility to protect and promote human rights.

UN officials further restricted civil society’s freedom of speech in the COP28 venue, preventing observers from speaking up on key issues, namely the international crimes committed by Israel in Gaza and human rights violations in the Gulf region. For instance, civil society was prevented from using phrases that the UN Secretary General himself used in speeches, such as demanding a “ceasefire now.” Despite the recommendations of the Subsidiary Body for Implementation (SBI) 58 and repeated requests from civil society and UN experts, the Secretariat and the host country failed to make the host country agreement publicly available. Given the potentially severe legal consequences under Emirati law for expression of criticism against the government, its policies, or its representatives, the absence of transparency regarding the legal framework applied during COP28 left observers second-guessing the extent to which they could engage in the process without subjecting themselves to legal consequences during or after COP. This
unprecedented level of policing of observers’ speech expanded beyond restrictions laid out in the UNFCCC’s code of conduct and resulted in a chilling effect, as many observers self-censored in response to continually evolving rules. In conclusion, the UNFCCC not only failed to uphold human rights but contributed to restrictions of fundamental freedoms.

In stark contrast, more than 2,000 fossil fuel lobbyists — at least 475 of whom were focused on promoting carbon capture and storage (CCS) — were allowed to freely promote their industry’s interests. COP President Sultan Al Jaber also refused to step down — even temporarily — from his role as CEO of the country’s oil company for the duration of his official UNFCCC duties. This unprecedented demonstration of corporate capture further limited the potential of the COP to reach meaningful outcomes. It also fed the promotion of false solutions, reflected in the language agreed on in the Global Stocktake decision, which echoed the terminology used by the fossil fuel industry to deflect responsibility, delay the phaseout, and boost investment in speculative technologies that prolong fossil fuel dependence.

At the Bonn Climate Change Conference in 2023 (SB58), the UNFCCC Secretariat announced steps to increase transparency surrounding participation in UNFCCC meetings, requiring participants to disclose their affiliation prior to participation. This is important, given the growing number of fossil fuel industry representatives attending climate talks, but it is only a small step toward actually curbing corporate capture of the UNFCCC process. The UNFCCC Secretariat must put in place a comprehensive conflict of interest policy to restrict the attendance of lobbyists representing polluting industries during climate negotiations.

Looking ahead to COP29 in Azerbaijan, Parties must learn from the failures of COP28 and previous COPs and urgently establish robust guardrails against human rights abuses and corporate capture, particularly in light of the host nation’s restrictions on free speech, deep fossil fuel interests, and history of fossil fuel-linked scandals. The UNFCCC Secretariat must also take critical steps to guarantee the rights to participation and protest in the context of COP29 and all future COPs, including by proactively publishing host country agreements.

**GLOBAL STOCKTAKE AND FOSSIL FUELS**

The Global Stocktake (GST) is a process mandated by the Paris Agreement to assess collective progress toward achieving the mitigation, adaptation, and finance objectives of the Agreement, taking into consideration equity and best available science. The process takes place every five years and is essential to the Paris Agreement’s “ratchet mechanism”: the legal obligation for Parties to adopt progressively more ambitious climate commitments (nationally determined contributions or NDCs) every five years, taking into account the outcomes of the GST. The first GST began in 2022 and concluded at COP28. Despite being mandated to comprehensively review the implementation of the Paris Agreement, including mitigation, adaptation, finance, technology transfer, and loss and damage, discussions at COP28 were largely focused on mitigation: primarily the energy package and the demand from civil society and many Parties to include a full, fast, fair, and funded fossil fuel phaseout.

While some have called the GST decision historic because it is the first COP decision to explicitly acknowledge the need to transition away from fossil fuels, such recognition is long overdue and falls far short of what is needed: an unequivocal commitment to phase out all fossil fuels — oil, gas, and coal — without loopholes or limitations, and with the biggest cumulative emitters moving first and fastest and
providing the necessary funding for others to follow. The GST calls on Parties to “[transition] away from fossil fuels in energy systems, in a just, orderly and equitable manner, accelerating action in this critical decade, so as to achieve net zero by 2050 in keeping with the science.” And Parties’ next NDCs will be assessed against this recognition and imperative to rapidly reduce production and use of fossil fuels. But by merely “calling on” Parties to contribute to this transition, the decision does not firmly commit any Parties to doing so — though their existing legal obligations under various sources of international and domestic law may require as much. Moreover, the language limits the transition to the energy system, ignoring other dimensions of the fossil economy, such as the production of plastics, petrochemicals, pesticides, and fertilizers. Echoing language included in COP26 and COP27 decisions, the text refers to a phasedown of “unabated coal” and further entrenches the myth of fossil fuel “abatement” with a paragraph promoting unproven and dangerous technofixes such as CCS, carbon removal technologies, and hydrogen production. The fact that these technologies made it into the final outcome despite unprecedented pushback by civil society and growing recognition by policymakers and the press of their flaws and failures is a testament to the fossil fuel industry’s influence on the UNFCCC negotiations. The outcome also failed to call for the end of all fossil fuel subsidies (instead singling out “inefficient” ones) and highlighted the role of “transitional fuels,” a term the fossil fuel industry and some governments use to refer to fossil gas and other derivatives of fossil fuels.

Such an outcome — in spite of mounting public demand and the massive expressions of political support from a majority of the world’s countries for a fossil fuel phaseout — demonstrates the need for alternative fora, such as a Fossil Fuel Non-Proliferation Treaty, to manage the decline of fossil fuels free from the influence of those who profit from them. And while the decision called for tripling renewable energy capacity and improving energy efficiency, it did not guarantee the finance developing countries need to undertake such investments, nor did it emphasize that such energy measures must displace fossil fuels and expand energy access. In preparing their next NDCs, Parties must take into consideration their existing legal obligations to prevent and minimize climate-related harm, which is not possible without ending reliance on fossil fuels.

The GST was an opportunity to strengthen human rights integration in climate action, in accordance with the mandate provided in the eleventh preambular paragraph of the Paris Agreement and building upon the empirical observation by the Intergovernmental Panel on Climate Change (IPCC) that rights-based climate action results in more effective policies. This is particularly important because — despite the commitment made in the Paris Agreement — Parties have failed to effectively implement their obligations in this regard, for example in the context of NDCs¹ and carbon markets. Under “Guidance and way forward,” the GST decision “encourages Parties to implement climate policy and action that is gender-responsive, fully respects human rights, and empowers youth and children.” This paragraph does not provide clear guidance for NDCs or Constituted Bodies² of the UNFCCC, and can therefore hardly be regarded as a step forward when

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¹ According to a joint publication by the Office of the High Commissioner for Human Rights (OHCHR) and the Center for International Environmental Law (CIEL), there is an increase in explicit references to the importance of human rights between Intended Nationally Determined Contributions (INDCs) and updated NDCs but the majority of these NDCs provide little to no information about how human rights have informed the planning of the NDC and its content — including the setting of ambition levels in line with human rights obligations — or how human rights will inform their implementation, see OHCHR and CIEL (2022). Integrating Human Rights in Nationally Determined Contributions: A Toolkit for Practitioners.

² For example, in an earlier draft text of the Global Stocktake decision (‘Updated textual building blocks by the co-chairs,’ 5 December 2023) relevant constituted bodies were requested “to strengthen the mainstreaming of a gender perspective and inclusiveness in their work, with a view to ensure a more efficient, gender-responsive and human-rights based climate action, and to provide input to the GST.
compared with the preambular language of the Paris Agreement. Notably, the synthesis report of the technical phase of the first GST, capturing nearly two years of discussions and three technical dialogues, confirms that integrating human rights leads to more ambitious and sustainable outcomes and that this entails the effective inclusion of marginalized groups. Parties need to build on these important conclusions while preparing their next NDCs.

**LOSS AND DAMAGE FUND**

The establishment of the Loss and Damage Fund (LDF) was a major win for climate justice at COP27 in Sharm el-Sheikh. On the first day of COP28, Parties adopted [the decision on the operationalization of this fund](https://unfccc.int/resource/docs/cop27/05-hr01.pdf), prepared by a Transitional Committee (TC) established at COP27. During meetings of the TC, developed countries used [delay and denial tactics](https://unfccc.int/resource/docs/cop27/05-hr01.pdf), proposing to limit the scope of the fund concerning eligible activities and countries and denying the validity of the principle of common but differentiated responsibilities (CBDR). This severely hindered the TC’s ability to engage in conversations about the issues at hand, namely designing a fund that would deliver justice to communities that are harmed by the climate crisis and are entitled to remedy for these harms.

The compromise agreed at the fifth and final meeting of the TC in Abu Dhabi is flawed in many respects. The fund will most likely be hosted — at least temporarily, for a period of four years — by the World Bank as a Financial Intermediary Framework (FIF). This hosting arrangement is subject to conditions that the World Bank has to accept within six months of COP28. While there is no clear exit strategy for the fund to become independent after this period, the conditions and timeline provide for moments where this could happen.3 These conditions include: the World Bank hosting the fund in a manner that is in line with the fund's governing instrument (GI), all countries being eligible (including non-World Bank members), the GI superseding the World Bank’s policies in case of a clash, and direct access to resources for countries and communities.4 This compromise is far from developing countries’ demand to have an independent, standalone fund under the UNFCCC (much like the Green Climate Fund, or GCF), although the decision designates the LDF as an Operating Entity of the Financial Mechanism of the UNFCCC. On a positive note, the GI has welcome references to community access to the funds, including for Indigenous Peoples and groups in vulnerable situations. However, it remains to be seen whether this will be possible under World Bank oversight.

Another major area of concern is the resourcing of the fund, and more precisely how its voluntary nature will limit the fund’s ability to operate at the scale required. The final decision text urges developed countries to contribute and encourages other Parties to do so on a voluntary basis. This does not oblige each and every developed country to pay into the fund, and is even weaker language than in the GI of the GCF, for which developed countries have continually failed to pledge their fair share. The GI does not contain any references to the scale or imperative scaling up of the fund to address the mounting costs associated with...
loss and damage. Pledges for the LDF amount to USD $661.39 million as of February 1, 2024. Compared to the hundreds of billions of dollars needed on a yearly basis to meaningfully address loss and damage at scale, the current pledge total clearly demonstrates the limits of voluntary contributions.

The decision text also states that “funding arrangements, including a fund, for responding to loss and damage are based on cooperation and facilitation and do not involve liability or compensation,” reaffirming the language adopted at the time of the drafting of Article 8 of the Paris Agreement. Under international human rights law, compensation is a key aspect of realizing the right to remedy, as recognized by several human rights mechanisms and experts in the context of climate harm. This reference related to the operationalization of the LDF illustrates the need for additional mechanisms and processes to provide effective remedy for climate-related harms and resultant violations of human rights.

It is concerning that the GI does not include any explicit reference to human rights, as it is mandated to adopt many decisions and policies that will critically shape how the LDF operates. While the decision cites the preambular language of the Sharm el-Sheik Implementation Plan, there is no explicit guidance for the Board to operate in a human rights-compliant manner. The GI does mention that the fund will take a culturally sensitive and gender-responsive approach. The Board of the LDF does not include non-party seats despite this being a key demand from civil society and several countries. Previous versions of the GI included proposals to have Indigenous Peoples and climate migrants on the Board. The further operationalization of participation modalities (inviting “active observers” and establishing “consultative forums”) is left to the Board.

Additionally, the language on social and environmental safeguards is unclear. References are made to “best practice environmental and social safeguards,” but at the same time, the decision also refers to “achieving functional equivalency” to the World Bank’s safeguards. The World Bank’s safeguards should not be set as the benchmark because they are not adequate overall and not adapted to the distinct nature of addressing loss and damage. The LDF will need to develop its own set of safeguards adapted to its distinct objectives to ensure it advances rights-compatible actions without contributing to harm. Finally, the GI does not establish an independent grievance mechanism for the LDF but states that activities financed by the fund will make use of the grievance mechanisms of the implementing agencies. This is highly problematic. A mechanism at the level of the LDF is critical to ensure that individuals and groups who are negatively affected by the activities of the fund have access to justice, and it is unclear what this means for those activities that are not implemented through an intermediary. The absence of an independent grievance mechanism is a stunning flaw considering decades of international climate finance experience demonstrating that the absence of such mechanisms results in the inability to effectively prevent and address harms to local communities. It also falls short of the standards established for other financial instruments under the UNFCCC, such as the GCF and the Adaptation Fund. The GI does require the implementing agencies’ grievance mechanisms to report to the Board in the context of LDF activities.

The Board of the LDF will meet early in 2024 and has a big task ahead of it: to address the shortcomings and gaps left by the TC and the COP28 outcome. Its first priority must be to install strong participation

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5 At COP27 in Sharm el-Sheik, Parties added the recently universally recognized human right to a clean, healthy, and sustainable environment to the original preambular human rights language of the Paris Agreement.

6 According to the decision taken in Dubai, the Board was supposed to meet before 31st of January, 2024. At the time of writing, this deadline had passed and the Board was not fully nominated yet.
modalities for civil society and Indigenous Peoples and ensure that the further operationalization of the LDF is truly people-centered and justice-driven.

**CARBON MARKETS**

After two weeks of negotiations and attempts to pass off carbon markets as climate finance, Parties considered adopting weak rules on carbon markets (under Article 6) that would have opened the door to dangerous distractions and undermined our chances to stay below 1.5°C. The proposed rules also posed additional threats to human rights, including the rights of Indigenous Peoples. Thanks to objections from some Parties, the discussions on cooperative approaches (Article 6.2) and the carbon crediting mechanism under the UNFCCC (Article 6.4) were ultimately unresolved and the agenda items carried over to next year, per Rule 16. Parties did advance non-market approaches (Article 6.8) with agreement on a platform, though questions remain about whether these non-market approaches will end up in the carbon markets.

Article 6.2 negotiations focused on a number of issues, including the relationship with Article 6.4, the registries and how different registries would interact, and issues of transparency and how to address flaws in carbon credits. The proposed final text, which was not adopted, would have allowed countries to largely do as they please with little oversight or transparency and without consequences for flawed carbon credits.

Many of the Article 6.4 discussions centered on two sets of recommendations on rules, guidelines, and principles from the **Supervisory Body (SB)**: one on methodologies (the frameworks for how carbon credits are generated through a project) and one on activities involving removals, as well as the lack of an established independent grievance mechanism. Activities involving both land- and engineering-based removals pose numerous risks, including land grabs, lack of permanence of removal, and impacts on water and food sovereignty, many of which were laid out by the Human Rights Council Advisory Committee report on “new technologies for climate protection.” After refusing to adopt the recommendations on removals at COP27, Parties voiced serious concerns about the new iteration presented by the SB, especially with regards to environmental integrity, human rights, and the rights of Indigenous Peoples. The new text still failed to explicitly or adequately address human rights and left many critical elements to be decided. Additionally, Parties voiced concerns about the to-be-developed grievance mechanism. The SB had put forth draft papers on the grievance mechanism and on a Sustainable Development Tool to receive comments (in a far too short comment period), but both had significant flaws and they remain open for discussion at the SB. Many Parties voiced concerns about the inadequate consultation as well. Again, the Parties seemed unwilling to give clear guidance to the SB about these tools or to assert that all the governance elements need to be in place prior to full operationalization.

Ultimately, Parties could not accept the text on either Article 6.2 or 6.4, and during the final session, several raised concerns about the lack of human rights requirements in both. By refusing to adopt inadequate rules, Parties avoided the worst possible outcome, which would have locked into place loose rules that would risk replicating the flaws of past and current carbon markets. This is a welcome postponement after a year of scandals — from fraud and over-crediting to land grabs and sexual abuse — exposing the continued failures and human rights violations in carbon markets.
Looking forward, Parties will start over on these key issues in Bonn and at COP29. In parallel to these negotiations, the Article 6.4 SB will continue meeting this year to attempt to make progress on operationalizing the Article 6.4 mechanism. Over the four meetings they have planned, it is expected that they will again decide on recommendations on methodologies and activities involving removals to forward for discussion at COP29 and will also work to finalize the Sustainable Development Tool and appeals and grievance mechanism. The SB has repeatedly failed to deliver outcomes that integrate human rights and preserve the integrity of the Paris Agreement. It is imperative that the SB put all governance elements in place prior to the full operationalization of the mechanism to prevent activities posing even greater risks to human rights and the environment. The active engagement of observers and especially of Parties in this process — including through submissions and closer monitoring of the SB’s activities — will be essential moving forward.

**JUST TRANSITION**

The establishment of the Just Transition work programme (JTWP) within the Sharm el Sheikh Implementation Plan at COP27 marked a crucial development toward climate action as envisioned in the preamble of the Paris Agreement. This program is designed to facilitate a fair, equitable, and inclusive transition, ensuring that no one is left behind. Discussions at COP28 focused on defining the JTWP’s scope, objectives, outcomes, and institutional arrangements. Given the programme’s overarching goal, it was essential for these aspects to be thorough and firmly rooted in human rights principles.

As reported by the [Third World Network](https://www.thirdworldnetwork.org/), the process was not without contention, but the [JTWP was finally adopted](https://www.thirdworldnetwork.org/) in the early hours of December 13, 2023. The decision’s preamble highlights the principle of common but differentiated responsibilities and respective capabilities in the context of different national circumstances, alongside a range of human rights obligations included in the Sharm el-Sheikh Implementation Plan. That the preamble of such a decision so intrinsically linked to the promotion and fulfillment of human rights failed to go beyond generic language represents a missed opportunity to explicitly illustrate that human rights principles are essential for a just transition. The final decision fell short on human rights, particularly regarding operational aspects where further progress and clarity were expected but not realized.

On the other hand, the text emphasizes social protection, social dialogue, and the recognition of labor rights. It is the first time that a COP decision explicitly recognizes the importance of labor rights in the context of climate action, underscoring the role of social dialogue and ensuring that social protection measures are in place to prevent precarious living conditions, in alignment with the Paris Agreement’s aim of promoting a just transition that generates quality jobs in accordance with national development priorities. Labor rights are protected by several international treaties, such as the [International Covenant on Economic, Social and Cultural Rights](https://www.ohchr.org/EN/HRBodies/CCPR/Pages/default.aspx) (ICESCR) and the [International Covenant on Civil and Political Rights](https://www.ohchr.org/EN/HRBodies/CCPR/Pages/default.aspx) (ICCPR), and have been extensively elaborated on by the International Labour Organization (ILO), including [in the context of a just transition](https://www.ilo.org/global/publications/standard-setting/convans/rights/lang--en/index.htm). This inclusion is therefore an important step in promoting coherence between international legal frameworks and fulfilling existing legal obligations in the context of the Paris Agreement.

The agreed-upon timeframe for the JTWP involves a joint contact group at each session of the SBs with an annual decision at each CMA session until CMA8 in 2026 where the work programme’s effectiveness and
efficiency will be reviewed. Additionally, there will be at least two dialogues annually, with the first scheduled before June 2024 and another in November 2024. The decision text calls for input from observers and non-party stakeholders by February 15 to guide the topics for dialogues and the decisions of the Chairs of the SBs. Moreover, Parties and stakeholders are invited to submit their views on various relevant topics no later than four weeks before each dialogue. The Chair of the SBs will then prepare the annual summary report on the dialogues, while the Secretariat will provide a summary of the state of play to inform the second Global Stocktake.

For the JTWP to effectively deliver on its mandate, it must be grounded in human rights law and standards with regards to its thematic priorities, working methods, and activities, and with an aim to realize progress in the implementation of just and human rights-based national climate action that fully considers the social and justice dimensions of the climate crisis. Doing so would allow the JTWP to address social and environmental concerns comprehensively, leading to more effective climate action.

### MOVING FORWARD: RESPECTING AND PROMOTING HUMAN RIGHTS UNDER THE PARIS AGREEMENT IN 2024

The upcoming year provides a number of important opportunities for integrating human rights in climate action, including:

- Fully protecting public participation and civic space from interference at COP29 and all UNFCCC meetings to ensure that all persons can freely express themselves and peacefully demonstrate, without discrimination, ahead of, during, and after COP29. All Parties should publicly denounce all cases of reprisals and acts of intimidation against participants in UNFCCC meetings and advocate for a comprehensive conflict of interest policy preventing undue corporate influence within the UNFCCC process. The UNFCCC should proactively publish host country agreements. These issues should be addressed during 60th meeting of the Subsidiary Bodies (SB60) as Parties consider Arrangements for Intergovernmental Meetings.

- Further operationalizing the Loss and Damage Fund in a human rights-compliant manner, including through guaranteeing meaningful public participation in the Board’s decision making; realizing new, additional, public, grants- and needs-based finance at scale to address and remedy the human rights impacts of loss and damage; delivering gender-transformative and human rights-based activities; and realizing direct access to resources for local communities and Indigenous Peoples on the front lines.

- Ensuring that the Article 6.4 Supervisory Body undertakes its work in a transparent and participatory manner; works to establish a complete governance framework that includes establishing an independent grievance mechanism in line with current best practice and a Sustainable Development Tool that ensures full respect, protection, and promotion of human rights and the rights of Indigenous Peoples; and develops recommendations in line with science and international law. Additionally, ensuring that recommendations for removals do not open the door to myriad false solutions and do not undermine ecosystem integrity or human rights, including the rights of Indigenous Peoples.

- Building on and implementing the Global Stocktake finding that integrating human rights leads to more ambitious and sustainable outcomes (and that this entails the effective inclusion of
marginalized groups), as well as the GST recommendation to implement climate policy and action that is gender-responsive, fully respects human rights, and empowers youth and children. This entails ensuring that updated NDCs that are fully aligned with human rights, including by aligning mitigation ambition with the objective of keeping warming below 1.5°C by urgently and fully phasing out all fossil fuels — without reliance on speculative and risky technologies that entrench dependence on oil, gas, and coal and further jeopardize human rights — in accordance with States’ existing legal obligations and the IPCC’s findings.

- Ensuring that the thematic priorities, working methods, and activities of the Just Transition work programme are rooted in human rights obligations and lead to progress in the implementation of just and human rights-based national climate action that fully considers the social dimensions of the climate crisis.

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**Article 6.4 Mechanism**<br>The Supervisory Body will meet **four times** in 2024 and has a call for relevant inputs prior to each meeting. | Ongoing (one week periods prior to each meeting) | 6.4 Supervisory Body | Calls for Input

For all submission deadlines, see [UNFCCC Submission Portal](https://unfccc.int/submission).

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