

Submission from the International Development Law Organization (IDLO) in response to the call for inputs by the Chairs of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation to the first Global Stocktake pursuant to Decision 19/CMA.1, paragraph 19.

6 March 2023

Rome, Italy

Introduction:

The first Global Stocktake (GST) provides Member Parties and stakeholders the opportunity to fully and comprehensively assess the level of implementation of the Paris Agreement, identify the concrete steps needed to progress towards its long-term objectives, and strengthen the global response to the threat of climate change. The 2022 Nationally Determined Contributions Synthesis Report made it abundantly clear that Member Parties were not on track to reach the Paris Agreement goals, nor limit global temperature increases to 1.5°C above pre-industrial levels.¹ The first GST should act as a catalyst for renewed and increased ambition and chart a credible, achievable path for a climate-resilient world, with the rule of law and justice as the bedrock of future action.

Through its recommendations and conclusions, the first GST should recognize that people-centred climate justice, grounded in rule of law principles, must be a fundamental part of the climate action agenda going forward. Transformative climate action of the scale needed to reach the medium- and long-term goals of the Paris Agreement requires wide-ranging and coordinated political, economic and social changes underpinned by the rule of law. This can only be achieved through a human rights-based approach, multilateral cooperation, international solidarity and multi-stakeholder partnerships. Without such inclusive, equitable and effective policies in climate action, the climate crisis will bring about more inequality, more injustice, and less peace in the long-term.²

As the only global intergovernmental organization exclusively devoted to promoting the rule of law to advance peace and sustainable development, the International Development Law Organization (IDLO) works to enable governments and empower people to reform laws and strengthen institutions to promote peace, justice, sustainable development, gender equality, and economic opportunity. Its programmes, research and policy advocacy cover the spectrum of rule of law, from peace and institution building to social development and economic recovery in countries emerging from conflict and striving towards democracy. In this submission to the first GST, IDLO's contribution will seek to address in an integrated manner a number of the

¹ UNFCCC, [Nationally Determined Contributions under the Paris Agreement: Synthesis Report by the Secretariat](#) (2022).

² IDLO, [Climate Justice: A Rule of Law Approach for Transformative Climate Action](#) (2021), page 6.

guiding questions by the SB Chairs for the technical assessment component, by highlighting ways in which a rule of law approach to climate action can:

- Strengthen fairness considerations, including equity, in Parties' NDCs;³
- Respect, promote and consider Parties' respective obligations on human rights, the right to health, the rights of Indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity;⁴
- Ensure the inclusion of a wide group of non-Party stakeholders in climate action and facilitate their contribution towards achieving the purpose and long-term goals of the Paris Agreement, including subnational governments, Indigenous peoples and local communities, youth, non-governmental organizations, international organizations, the private sector, financial institutions and multi-stakeholder initiatives;⁵
- Provide integrated and holistic approaches to climate action;⁶
- Enhance international cooperation for climate action;⁷
- Remove barriers to climate mitigation, adaptation, and finance⁸ – and mainstream best practices across all initiatives.⁹

Applying a Justice Lens to the Paris Agreement:

The climate crisis is a global human rights threat multiplier, with disproportionate and unjust impacts on those who have contributed the least to climate change, and who are in positions of vulnerability that prevent them from being able to mitigate or adapt to its effects.¹⁰ Six years on from the entry into force of the Paris Agreement, there remains a multitude of legal barriers and structural inequalities that have not been adequately addressed by Member Parties to enable the full and equal participation in climate action of many groups within civil society.

For Member Parties to respect, promote and consider their obligations on human rights in the context of the Paris Agreement, they must look beyond climate action and towards climate justice. The concept of climate justice uses a people-centered lens to accelerate climate action while ensuring the rights of the most vulnerable and disproportionately affected are protected, people are legally empowered, access to justice is guaranteed, institutions are effective, accessible and accountable, and there is broad participation in climate decision-making. Climate justice seeks to amplify the voices of marginalized communities who are most affected by the impacts of climate change, acknowledges the needs of future generations, and recognizes

³ Subsidiary Body Chairs, [Guiding Questions by the SB Chairs for the Technical Assessment Component of the First Global Stocktake](#) (2022), question 18.

⁴ Subsidiary Body Chairs, [Guiding Questions by the SB Chairs for the Technical Assessment Component of the First Global Stocktake](#) (2022), question 19.

⁵ Subsidiary Body Chairs, [Guiding Questions by the SB Chairs for the Technical Assessment Component of the First Global Stocktake](#) (2022), question 21.

⁶ Subsidiary Body Chairs, [Guiding Questions by the SB Chairs for the Technical Assessment Component of the First Global Stocktake](#) (2022), question 22 (a).

⁷ Subsidiary Body Chairs, [Guiding Questions by the SB Chairs for the Technical Assessment Component of the First Global Stocktake](#) (2022), question 22 (c).

⁸ Subsidiary Body Chairs, [Guiding Questions by the SB Chairs for the Technical Assessment Component of the First Global Stocktake](#) (2022), questions 5 (b), 10 (b), and 15 (b).

⁹ Subsidiary Body Chairs, [Guiding Questions by the SB Chairs for the Technical Assessment Component of the First Global Stocktake](#) (2022), questions 5 (c), 10 (c), and 15 (c).

¹⁰ IDLO, [Climate Justice: A Rule of Law Approach for Transformative Climate Action](#) (2021), page 6.

the varied and disproportionate effects of climate change, as well as people's diverse needs in responding to it.¹¹

Placing justice issues at the heart of climate action is not only the right thing to do; it leads to better outcomes across environmental, social, and economic development indicators, and results in more impactful and durable mitigation and adaptation initiatives. The Intergovernmental Panel on Climate Change (IPCC) held with a high degree of confidence that inclusive governance that prioritises equity and justice in adaptation planning and implementation leads to more effective and sustainable adaptation outcomes.¹² Societies with higher levels of gender equality are also characterized by lower levels of deforestation, air pollution, and resource loss.¹³ When justice sector institutions consider the rights of future generations in their analysis of climate change legislation, national legislators have been instructed to increase the ambition of their short-term greenhouse gas targets and flatten the curve on climate mitigation.¹⁴ Reports have shown that promoting the participation of Indigenous peoples and local communities (IPLCs) in environmental governance can enhance the conservation, restoration, and sustainable use of nature.¹⁵ Breaking through institutional silos and integrating climate and environmental decision-making processes, finance and action across governance levels, sectors and timeframes, while also prioritizing risk reduction, equity and justice, is key to strengthening climate-resilient development.¹⁶

When considering a rule of law and human rights-based approach to climate action, it is of paramount importance for Member Parties to acknowledge the concept of intersectionality. Climate and environmental impacts are shaped by intersecting vulnerabilities and differences in, among others, gender, sex, socio-economic status, race, ethnicity, identity, age, disability, language, geographic location, and nationality. As climate change aggravates existing inequalities, it will produce different effects of the human rights of each of the groups listed in the question above, from women and girls to Indigenous peoples; from disabled people to migrants. Intersectionality can therefore be an important concept for understanding the complex array of factors that undermine human rights in the context of climate change, and must be acknowledged by Member Parties and other stakeholders when assessing the impact of climate action initiatives.¹⁷

Strengthening Regulatory Frameworks and Institutional Capacity for Climate-Resilient Development:

Rule of law principles can promote governance approaches to climate action that are capable of comprehensively implementing targets and commitments under the Paris Agreement and strengthening the prospects for climate-resilient development. Fair and effective regulatory frameworks can enhance accessibility, accountability, and institutional capacity for climate mitigation and adaptation in a coordinated manner across all sectors, which can help to avoid maladaptation or other unintended side effects of climate action that might undermine human rights or increase social tensions. Processes contributing to the development of climate change legislation, as well as Nationally Determined Contributions (NDCs) and

¹¹ IDLO, [Climate Justice: A Rule of Law Approach for Transformative Climate Action](#) (2021), page 6.

¹² IPCC, [Summary for Policymakers of the Working Group II Contribution to the Sixth Assessment Report \(AR6\) of the IPCC](#) (2022), page 30.

¹³ IDLO, [Climate Justice for Women & Girls: A Rule of Law Approach to Feminist Climate Action](#) (2022), page 10.

¹⁴ [Neubauer et al. vs. Germany, Federal Constitutional Court of Germany](#).

¹⁵ Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), [Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services](#) (2019), page 18.

¹⁶ IPCC, [Summary for Policymakers of the Working Group II Contribution to the Sixth Assessment Report \(AR6\) of the IPCC](#) (2022), page 35.

¹⁷ IDLO, [Climate Justice for Women & Girls: A Rule of Law Approach to Feminist Climate Action](#) (2022), page 4.

National Adaptation Plans (NAPs), must be inclusive and participatory, including consultations with a diverse range of stakeholders across society.¹⁸

The role of the justice sector in holding Member Parties and non-State actors to account is imperative and indispensable. At COP27, UN Climate Change Executive Secretary Simon Stiell outlined his three critical lines of action and called for greater transparency and accountability throughout the climate action process.¹⁹ A strong, independent judiciary must be given the necessary training and resources to ensure that they can hold Member Parties to account when their climate action laws, plans, and strategies fall short of the international commitments to which they have each subscribed to. Bolstering the capacity of justice sector institutions to address important environmental issues is key to advancing the climate agenda and ensuring that pathways to justice are accessible, inclusive, transparent and accountable.²⁰ Strengthening both formal and customary and informal justice (CIJ) mechanisms to facilitate better access to justice and increase participation in justice administration is vital,²¹ particularly when many of the constituencies who are most affected by climate change live in rural areas or fragile contexts where State control is weaker and formal justice institutions are less effective.

The rule of law can also be a powerful enabler of national and global climate finance mechanisms – a need that grows more pressing over time as the impacts of climate change become increasingly felt across both the developed and developing worlds, and as funding mechanisms for loss and damage rise to the top of the climate action agenda. Strengthening the rule of law can promote investor confidence through greater legal certainty, enhanced transparency and accountability, reduced corruption and illicit financial flows, and increased access to justice through adequate dispute resolution channels to enforce and uphold contracts and commitments. This can foster an attractive investment environment and enhance public- and private-sector confidence in financing climate action that will be critical in ensuring that the international community is able to deliver on its long-overdue promise of USD \$100 billion per year for climate financing. Particular attention should be paid to addressing gender inequalities in climate finance: only 3% of climate finance from OECD Development Assistance Committee members specifically addresses gender equality as a primary target,²² while women-led environmental activism only receives 3% of global philanthropic funding.²³ The disparity in funding between adaptation and mitigation stresses this divide, with many existing funding mechanisms focusing on larger-scale mitigation projects at the expense of smaller-scale adaptation initiatives that are more likely to be designed and led by women.

Gender Equality and Empowerment of Women:

Women and girls have a right to participate in and lead climate action efforts, as equal rights holders and agents of change. It is a matter of fairness, equal opportunity and better outcomes; but also a fundamental principle inscribed in core international legal instruments – a right that all Member Parties have an obligation to respect, promote and fulfil.²⁴ As the international community strives to implement the Paris Agreement,

¹⁸ IDLO, [Climate Justice: A Rule of Law Approach for Transformative Climate Action](#) (2021), page 12.

¹⁹ UNFCCC, [COP27 Opening Remarks by the UN Climate Change Executive Secretary](#) (2022).

²⁰ IDLO, [Climate Justice: A Rule of Law Approach for Transformative Climate Action](#) (2021), page 12.

²¹ IDLO, [Climate Justice: A Rule of Law Approach for Transformative Climate Action](#) (2021), page 13.

²² IDLO, [Climate Justice for Women & Girls: A Rule of Law Approach to Feminist Climate Action](#) (2022), page 14.

²³ G7 Gender Equality Advisory Council, [Report of the G7 Gender Equality Advisory Council](#) (2021).

²⁴ IDLO, [Climate Justice for Women & Girls: A Rule of Law Approach to Feminist Climate Action](#) (2022), page 16.

understanding the gender-related dimensions of climate change and adopting effective rule of law approaches is crucial to foster the empowerment of women in all their diversity.²⁵

Women's equal participation in climate-related decision-making is vital for delivering social, economic, environmental and climate resilience benefits. Research shows that women decision-makers are more likely to design laws and policies that benefit women and address gender gaps in access to – and control over – natural resources.²⁶ A study of 91 countries found that a higher proportion of women in national politics led to stricter climate change policies, concluding that “female political representation may be an underutilized tool for addressing climate change.”²⁷ Extensive international evidence demonstrates that the benefits of women's participation for the effectiveness of household renewable energy adoption, water supply and sanitation, forest regeneration, and climate change adaptation measures.²⁸

However, despite women and girls making significant contributions to climate action at all levels, their participation and leadership falls short of equality due to a number of compounding factors. Hundreds of millions of women live in countries where they face legal discrimination in the family, the workplace, and the community²⁹ - exacerbating the injustices of climate change and environmental degradation.³⁰ In contexts where only men are recognized as *de facto* heads of households, gender-insensitive laws and policies contribute to the dispossession of women by failing to uphold their equal rights to inherit, access, own, or dispose of land. Studies have shown that a majority of national legal and policy frameworks, including NDCs, do not include principles on gender equality or women's participation in decision-making,³¹ and so will not adequately address the existing structural inequalities that hinder women and girls from being more meaningfully involved in climate action initiatives.

Furthermore, while women have been at the forefront of climate justice claims around the world – from the European Court of Human Rights³² to the High Court of Lahore³³ - they continue to face broad challenges to equal access to justice due to systemic discrimination and diverse cultural barriers. Many recent legal cases have been grounded in Paris Agreement principles, yet women and girls are prevented from upholding and enforcing their human rights in the context of the climate crisis. The barriers to justice they face include reliance on men for assistance, discriminatory laws that prevent women from fully and equally exercising their legal capacity, non-availability of justice services in rural and remote regions, the time and cost of pursuing legal action, and the difficulty of claiming compensation for loss and damage. Women often have limited access to information concerning their environmental rights, or lack the legal and social standing to initiate environmental litigation. Insofar as these challenges intersect with other forms of marginalization,

²⁵ IDLO, [Climate Justice for Women & Girls: A Rule of Law Approach to Feminist Climate Action](#) (2022), page 4.

²⁶ Asian Development Bank, [Gender-Inclusive Legislative Framework and Laws to Strengthen Women's Resilience to Climate Change and Disasters](#) (2021), page 11.

²⁷ A. Mavisakalyan and Y. Tarverdi, [Gender and Climate Change: Do Female Parliamentarians Make a Difference?](#), European Journal of Political Economy, Volume 56 (2019), page 151.

²⁸ Asian Development Bank, [Gender-Inclusive Legislative Framework and Laws to Strengthen Women's Resilience to Climate Change and Disasters](#) (2021), page 11.

²⁹ UN Women, IDLO, World Bank, and Task Force on Justice, [Justice for Women: High-level Group Report](#) (2019), page 19.

³⁰ IDLO, [Climate Justice for Women and Girls: A Rule of Law Approach to Feminist Climate Action](#) (2022), page 12.

³¹ M. Picard, [Empowering Women in Climate, Environment and Disaster Risk Governance: from National Policy to Local Action](#), UN Women (2021), page 26.

³² [Union of Swiss Senior Women for Climate Protection v. Swiss Federal Council and Others](#).

³³ [Maria Khan et al. v. Federation of Pakistan et al.](#)

young women and girls, Indigenous women, and women who have been displaced due to climate-induced disasters face the most significant disadvantages in accessing justice.³⁴

An explicitly feminist approach to climate action, based on the rule of law, is necessary to understand how gender identities relate to the impacts of climate change. Such an approach is also essential to promote women's equal access to productive resources, such as finance, land, water, green jobs and clean energy, and to value women's local and traditional knowledge. Equality for all women and girls strengthens the collective ability of people worldwide to tackle the climate crisis and deliver more successful mitigation and adaptation solutions.³⁵

The legal empowerment of women and girls is essential for women and girls to uphold their environmental rights in the context of the Paris Agreement. Best practices that should be supported by Member Parties include legal education, the provision of paralegal and legal services,³⁶ efforts to improve the social accountability of justice providers, and the protection of civic space for women's advocacy. The protection of civic space for women environmental human rights defenders must be a priority, as grassroots women and Indigenous activists often face compounding threats of violence in their advocacy due to racial and gender-based discrimination. The protection of frontline women environmental human rights defenders might be achieved, for example, through elevation and replication of regional frameworks such as the Escazú Agreement.³⁷

Through the first GST, it is also important for Member Parties to promote gender-transformative governance of land and natural resources. Women constitute 43 per cent of the rural labour force in the Global South,³⁸ yet account for less than 15 per cent of all landowners.³⁹ Gender-transformative governance of land and natural resources is vital for empowering women and girls to be positive agents of environmental justice by promoting their active participation in the management of their natural environment. Reforming laws that restrict women's ownership can have significant positive impacts on women's ability to realize rights to land. For land rights to be effective and transformative for women, they must integrate respect for a broad spectrum of forms of tenure, supported by a coordinated and coherent legal and policy framework, subjected to ongoing monitoring and accountability mechanisms, and guaranteed through adequate and sustainable resource allocations.⁴⁰ For Indigenous women in particular, promoting, upholding and enforcing the principle of free, prior and informed consent (FPIC) can be a vital legal tool to respect their agency and protect their right to a clean, healthy and sustainable environment.⁴¹

³⁴ IDLO, [Climate Justice for Women and Girls: A Rule of Law Approach to Feminist Climate Action](#) (2022), page 13.

³⁵ IDLO, [Climate Justice for Women and Girls: A Rule of Law Approach to Feminist Climate Action](#) (2022), page 10.

³⁶ IDLO, ["Community Paralegals and Customary and Informal Justice"](#) (2021).

³⁷ IDLO, [Climate Justice for Women and Girls: A Rule of Law Approach to Feminist Climate Action](#) (2022), page 18.

³⁸ E. Dagousset, [Women's Human Rights and the Right to a Clean, Safe, Healthy, and Sustainable Environment - Manual for Judges 2019](#), The Raoul Wallenberg Institute of Human Rights and Humanitarian Law (2019), page 9.

³⁹ Food and Agriculture Organization, IFAD and World Food Programme, [Rural Women and Girls 25 Years After Beijing: Critical Agents of Positive Change](#) (2020), page 15.

⁴⁰ IDLO, [Climate Justice for Women and Girls: A Rule of Law Approach to Feminist Climate Action](#) (2022), page 20.

⁴¹ IDLO, [Climate Justice: A Rule of Law Approach for Transformative Climate Action](#) (2021), page 11.

Indigenous Peoples and Local Communities:

Through the internationally-recognized principle of Free, Prior and Informed Consent (FPIC), Indigenous peoples and local communities (IPLCs) have a right to give or withhold their consent for any action or developments that affect their lands, territories, or rights. By some estimates, these lands and territories account for 20 percent of the total surface of the Earth, and contain 80 percent of the planet's remaining biodiversity.⁴²

The indispensable contribution of Indigenous people and traditional knowledge to ecosystem conservation and nature-based solutions for climate action has steadily gained recognition at a global and regional level since the adoption of the Paris Agreement, including through the operationalization of the Local Communities and Indigenous People's Platform (LCIPP), and through provisions in regional environmental treaties such as the Escazú Agreement, which provides for the inclusion of Indigenous communities' perspectives in environmental matters. Despite this, IPLCs tend to be excluded from decision-making processes at national and local levels, which can prevent them from advocating for their rights and interests or seeking redress when their rights pertaining to FPIC are violated.

Better access to justice and legal empowerment for Indigenous populations are required to ensure that Indigenous rights are safeguarded, and to facilitate the participation and leadership of IPLCs in climate action policymaking.⁴³ Recent years have borne witness to the positive contribution of the justice sector in upholding FPIC and protecting the rights of IPLCs: in January 2022, the Constitutional Court of Ecuador rendered a landmark judgment for Indigenous rights, holding that the country's 14 recognized Indigenous groups must have the final say over all oil, mining, and extractive projects on their land. Several months prior, in October 2021, the Environment and Land Court in Meru, Kenya upheld a complaint from the El Molo, Turkana, Samburu and Rendille communities that the title deeds for a wind power project in the Lake Turkana area were acquired irregularly because due process in relation to FPIC had not been adequately followed.

The Lake Turkana case demonstrates that even climate action initiatives which contribute to the objectives of Article 2.1 of the Paris Agreement can still fail to respect, promote or consider the respective obligations of IPLCs, and underlines the paramount importance of strengthening environmental rule of law and the capacity of the justice sector in contributing to human rights-based and people-centred climate justice. Indigenous and customary and informal justice (CIJ) systems should be supported to enable inclusive, equitable and effective climate action, uphold Indigenous rights, and facilitate the participation and leadership of IPLCs in climate action policymaking at local, national and international levels.⁴⁴

⁴² Indigenous Peoples Major Group for Sustainable Development, [Thematic Report for the High-Level Political Forum of Agenda 2030](#) (2020), page 2.

⁴³ IDLO, [Climate Justice: A Rule of Law Approach for Transformative Climate Action](#) (2021), page 10.

⁴⁴ IDLO, [Climate Justice: A Rule of Law Approach for Transformative Climate Action](#) (2021), page 19.