

Chilean NDC review: social pillar

IMPORTANT: Legal Response International (LRI) acts as an intermediary in obtaining legal advice from third parties on the query you have raised. That advice is provided to LRI but we are able to share it with you. The third-party advisers have accepted certain duties to LRI but have not and do not accept any duty to you. LRI itself does not and cannot provide legal advice. As a consequence, LRI takes no responsibility for the content of any advice that it forwards, nor does it accept any responsibility for any delay either in obtaining or sending copies to you of the advice it receives.

In forwarding the advice to you, LRI does not intend to create a lawyer-client relationship with you and to the extent permitted by law, any liability of LRI to you (including in negligence or for any damages of any kind) is excluded. Any dispute between you and LRI shall be governed by English Law, and the English Courts will have exclusive jurisdiction. In consideration of LRI sharing the advice with you, you agree to the terms set out above.

*This advice is provided in response to **Query 54/24***

Chile and its Ministry of the Environment (Ministry) requested legal advice to support the preparation of their third nationally determined contribution (Third NDC), specially the updating of the social commitments contained therein. Chile's second nationally determined contribution published in 2020 (Second NDC) includes at Chapter 3 a Social Pillar (Social Pillar). This report provides recommendations on steps Chile may take to strengthen the Social Pillar in its Third NDC, align with the international regime and reinforce the Social Pillar commitments with a focus on the just transition and sustainable development.

1 Introduction

- 1.1 This report has been prepared further to the report provided on 20 August 2024 (the **August Report**), and after a call with Johanna Arriagada Diaz of the Ministry of the Environment, Government of Chile (**Ministry**) on 13 September 2024.
- 1.2 In addition to the materials reviewed for the August Report (Chile's Second NDC and Chile's Just Transition Strategy document published in December 2021 as well as numerous NDCs prepared by other states) the following documents have been considered in this report:¹
 - (a) Framework Law on Climate Change (**Framework Law**);
 - (b) Just Socio-Ecological Transition Strategy; and
 - (c) Paper titled "Design of a mechanism for the application, monitoring and verification of the criteria of the Social Pillar of Chile's Nationally Determined Contribution (NDC)." / "Diseño de un mecanismo para la aplicación, monitoreo y verificación de los criterios del Pilar Social de la Contribución Nacionalmente Determinada (NDC) de Chile".
- 1.3 Throughout this report, we refer to minoritised groups. For the purpose of this report, 'minoritised groups' means:

¹ All documents have been translated into English and reviewed in English.

- (a) persons belonging to any group of persons which constitutes less than half of the population in the entire territory of a State whose members share common characteristics of culture, religion or language, or a combination of any of these; or
 - (b) any group of persons which is treated differently and subjugated because of their physical or cultural characteristics. A person can freely belong to an ethnic, religious or linguistic minority without any requirement of citizenship, residence, official recognition or any other status.²
- 1.4 For the purpose of this report, women and girls are included in the meaning of 'minoritised groups' as they are often restricted from participating fully or effectively in economic, social and political life.³ We also note that numerous persons who fall within this definition may experience the intersecting effects of race, class, gender and other marginalised characteristics.
- 1.5 This report, informed by our discussion with Johanna Arriagada Diaz, is comprised of the following sections:
- (a) Recommendations on improving the participatory elements of just transition decision making;
 - (b) The importance of vulnerability assessments and environmental impact assessments in achieving the just transition; and
 - (c) Considerations for financing elements of the just transition.

² This definition is based on the definition of 'minority groups' provided by the United Nations Office of the High Commissioner on Human Rights (OHCHR). Accessed via: <https://www.ohchr.org/en/special-procedures/sr-minority-issues/about-minorities-and-human-rights>

³ OHCHR, *Meeting the challenges of discrimination against women from minority groups* (2006). Accessed via: <https://www.ohchr.org/en/special-procedures/sr-minority-issues/about-minorities-and-human-rights>

2 Participation of minoritised and marginalised groups

Participation and inclusivity as key elements of a just transition

2.1 As explained in the August Report (Section 4), the inclusion and engagement of minoritised groups in consultations concerning Chile's Third NDC is key to strengthening the Social Pillar and corresponding commitments to a just transition. It is also consistent with the key objectives of the UNFCCC Just Transition Work Programme adopted at COP28 which calls for "[i]nclusive and participatory approaches to just transitions that leave no one behind".⁴ In order to achieve a socio-ecological just transition, a sustained commitment to participation and social dialogue is imperative to any decision-making and action on climate change, including decarbonisation. This extends beyond engagement and participation in the design of Chile's Third NDC, but these consultations are a crucial starting point.

2.2 Citizen participation is provided for by the Framework Law. Article 34 (English translation) states:

"Any person or group of persons shall have the right to participate, in an informed manner, in the development, review and updating of climate change management instruments, through the mechanisms provided for this purpose in the law.

Citizen participation shall allow timely access by appropriate means to the information necessary for the effective exercise of this right. Likewise, it shall consider the opportunity and mechanisms to formulate observations and obtain a well-founded response to them, considering criteria of legal feasibility, technical relevance and timeliness; without prejudice to the standards of the indigenous consultation processes that must be carried out, when applicable. The bodies referred to in Title IV shall always facilitate the instances of citizen participation, within the framework of their competencies and attributions.

The above, in an open and inclusive manner, with special consideration for vulnerable sectors and communities, applying a multicultural and gender approach."

2.3 The importance of representative participation is also evident in other parts of the Framework Law. For example, Article 19 concerning the Scientific Advisory Committee for Climate Change includes a requirement for decisions concerning its formation to consider gender balanced participation. We also note Article 26 which provides for the possibility of territorial climate action roundtables.

(i) *Consulting with civil society organisations (CSOs)*

2.4 We understand from our conversation with Johanna Arriagada Diaz that the Ministry has experienced difficulties concerning levels of engagement from CSOs in recent consultations. This is likely due to the scheduling of consultations, as we understand there were 12 concurrent ongoing consultations in which CSOs were likely to be engaged.

2.5 In order to maximise meaningful participation of CSOs in future consultations, we recommend that the Ministry take the following steps where possible:

⁴ UNFCCC, Decisions adopted by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, FCCC/PA/CMA/2023/16/Add.1 (15 March 2024), Decision 3/CMA.5, para 1(f)

- (a) Iterate and publicise a schedule of consultations to CSOs, in advance of consultation processes;
 - (b) Stagger consultation processes, taking into account the capacity to engage with CSOs;
 - (c) Consider ways of consulting which are intentional and designed to meet the relevant objectives. By way of example, a call for written papers on an issue may not be the most effective form of engagement, particularly if certain groups are better able to communicate orally, or if greater context and information might be obtained through other formats such as roundtables. Additionally, we understand from our conversation with Johanna Arriagada Diaz that most consultations on environmental-decision making in Chile take place online. Whilst online consultation may be the most appropriate option for participation in some instances, it may not be an accessible medium for all minoritised groups. The Ministry may consider:⁵
 - (i) Mandating ongoing civil society representation on committees or management councils;
 - (ii) Developing working groups on specific projects which are inclusive of COS representatives;
 - (iii) Providing diverse channels of communication, such as holding townhalls, hosting roundtables, or arranging limited series and/or one off meetings with CSO representatives (in person and online);
 - (d) Streamline consultation processes where relevant, to ensure groups are engaged with in the most effective, time-efficient manner.
 - (e) Undertake an evaluation process which is ongoing and reflective to identify how to improve and correct procedures in the future or mid-stream.
- (ii) *Engagement of key social groups*

2.6 The following paragraphs will focus on approaches to the effective engagement of key social groups who are likely to be disproportionately impacted by the transition, due to their existing vulnerabilities. We note that this is not an exhaustive list. In any case, in order to ensure effective engagement and social inclusion, we would recommend that appropriate stakeholder analysis is carried out for each minoritised group engaged with.

- (a) **Young people:** Investment in the capacity of youth to play a role in future decision-making will strengthen Chile's transition by building trust between generations and showing youth that their perspectives are vital. Engaging with young people should be approached creatively and in a way that is likely to build trust:

⁵ World Bank, *Consultations with Civil Society: A Sourcebook Working Document* (February 2007), p. 23. Accessed via: https://www.worldbank.org/content/dam/Worldbank/Civil%20Society/cso_documents/ConsultationsSourcebook_Feb2007.pdf

- (i) **Use of digital technologies:**⁶ Digital methods of engagement are likely to be more successful with young people who are 'digital natives' and have had early experience with technology.⁷ Use of digital technology can also enable engagement to be prompt, easily accessible, innovative and non-institutionalised. Many countries are increasingly using digital platforms to engage with youth on a range of topics. By way of illustration, in Scotland (UK), young people can participate in budgeting decisions of local governments via a digital platform which enables them to receive reward points for taking part. In Uganda, youth mappers worked with civil organisations to update an open-source map of districts and identify those areas most affected by COVID-19. This allowed the government to better plan the deployment of field responders.⁸
- (ii) **Creation of youth advisory groups:** The formation of youth advisory groups can be subject specific or general. In Peru, the Country Office has established the 'Voces Nuevas', a group of young people representative of different areas and organisations, acting as an advisory group for various decisions.⁹ Research from the Council of Europe has found that, for youth, structures where their views are taken into account through co-management or production is by far the most effective form of participation.¹⁰
- (iii) **Partnering with youth organisations:**¹¹ Organisations that already promote youth engagement and empowerment are a valuable resource to any public authority seeking to better engage young people. Working with these organisations is likely to result in more effective engagement activities and strategies.
- (b) **Women:** There are various practical and logistical elements of consultation which may be barriers to effective engagement of women in decision-making.. These should be closely reviewed and considered, for example:
- (ii) **Stakeholder analysis:** As with all minoritised groups, a preliminary stakeholder analysis should be carried out to identify any potential considerations for engagement with women, including who is most appropriate to facilitate the discussions. Similarly, public authorities may complete a self-assessment to determine their own preparedness to deliver a gender-responsive deliberation.¹²

⁶ UN Department of Economic and Social Affairs, 'Promoting Youth Participation in Decision-Making and Public Service Delivery through Harnessing Digital Technologies', *Future of the World: Policy Brief No. 149* (January 2023)

⁷ *Ibid*, p. 2

⁸ *Ibid*, p. 6

⁹ UN Department of Economic and Social Affairs, 'Promoting Youth Participation in Decision-Making and Public Service Delivery through Harnessing Digital Technologies', *Future of the World: Policy Brief No. 149* (January 2023), p. 13

¹⁰ A. Crowley and D. Moxon, Council of Europe, 'New and innovative forms of youth participation in decision-making processes' ((October 2017) p. 27

¹¹ UN Department of Economic and Social Affairs, 'Promoting Youth Participation in Decision-Making and Public Service Delivery through Harnessing Digital Technologies', *Future of the World: Policy Brief No. 149* (January 2023), p. 6

¹² Care and Open Government Partnership, 'Toolkit for More Gender-Responsive Action Plans' (December 2021), p.7

- (iii) **Gender-sensitive approaches:** Women may encounter social and cultural barriers to participation, such as power imbalances in communities and difficulty in speaking in front of males, including husbands and fathers.¹³ To mitigate and manage these barriers, it is important to adopt gender-sensitive approaches. This might include holding sessions led by women with knowledge of such issues, and creating safe spaces for engagement.
- (iv) **Childcare:** As the primary caregivers to children in many countries, the availability of childcare must be considered in order to garner meaningful participation. Where participation is in person, onsite childcare may be considered.
- (v) **Meeting times and locations:** Similarly, women may have caring responsibilities together with work-related restraints, which may impact their ability and availability to participate.

(iii) *Consulting with Indigenous Peoples*

- 2.7 Globally, Indigenous Peoples share characteristics that make them uniquely vulnerable to the effects of climate change and related internal migration and displacement. This includes the risk of lost cultures and traditions. It is often the case that Indigenous Peoples are not included in decisions which will affect them, and often lack institutional support, which weakens their ability to mitigate and adapt to climate change.¹⁴
- 2.8 Indigenous Peoples are a key social group in Chile, representing 12.8% of the population.¹⁵ In addition to its national law on Indigenous Peoples¹⁶ - and the reference to Indigenous consultation processes in Article 34 of the Framework Law (see paragraph 2.2) - Chile has ratified the ILO Convention 169 (ratified in 2008 – see paragraph 2.10 below), the United Nations Declaration on the Rights of Indigenous Peoples (2007) and the American Declaration on the Rights of Indigenous Peoples (2016).
- 2.9 The right to free, prior and informed consent (**FPIC**) is recognised in each of these instruments. FPIC provides the right for Indigenous Peoples to be engaged in negotiations relating to the design, implementation, monitoring and evaluation of projects which are carried out on, or impact, their territories. The FPIC principle also allows Indigenous Peoples to withhold or withdraw their consent at any time.
- 2.10 The ILO Convention 169 was transposed into Chilean law by Decree 236 (2008).¹⁷ Later, Decree 66 (2014) further enumerated and implemented the ILO Convention 169 following consultation with Indigenous Peoples in Chile, their representative institutions and the Special

¹³ UN Department of Economic and Social Affairs, 'Promoting Youth Participation in Decision-Making and Public Service Delivery through Harnessing Digital Technologies', *Future of the World: Policy Brief No. 149* (January 2023), p/.12

¹⁴ ILO, 'Indigenous Peoples and a Just Transition for All', *ILO Policy Brief* (November 2022), p. 3

¹⁵ International Work Group for Indigenous Affairs, 'The Indigenous World 2023: Chile' (March 2023), accessed via: <https://www.iwgia.org/en/chile/5081-iw-2023-chile.html#:~:text=A%20total%20of%20%2C185%2C792%20people,called%20%E2%80%9CAgreement%20for%20Chile%E2%80%9D.>

¹⁶ Law 19, 253 of 1993.

¹⁷ Decree 236, PROMULGA EL CONVENIO Nº 169 SOBRE PUEBLOS INDÍGENAS Y TRIBALES EN PAÍSES INDEPENDIENTES DE LA ORGANIZACIÓN INTERNACIONAL DEL TRABAJO

Rapporteur on rights of Indigenous Peoples.¹⁸ Decree 66 acknowledges the constitutional significance of the ILO Convention, referencing specific articles of the Constitution and the decision of the Constitutional Court in Judgments no. 309 of 2000 and No. 1,050 of 2008 which found that Articles 6(1)(a) and 6(2) have self-executing character. For ease of reference, these sections of the ILO Convention are extracted below:

Article 6. 1. *In applying the provisions of this Convention, governments shall:*

(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

...

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

- 2.11 The self-executing nature of these provisions, as determined by the Constitutional Court, means that they may directly relied upon and invoked in Chilean courts, without the need for further legislative implementation.
- 2.12 The substantive content of Decree 66 is highly deferential to the consideration of organs of the State. For example, Article 7 creates a narrow scope of measures which must be referred to consultation by excluding certain categories of measures (such as those issued in an emergency) and targeting measures which directly affect Indigenous Peoples and affording bodies a "margin of discretion". The inclusion of examples of measures in the law may also have the effect of limiting the practical application of the provision: it does not, for example, consider how the impacts of climate change may affect the exercise of indigenous traditions and customs, and whether this means that measures taken to reduce emissions may directly affect Indigenous Peoples in Chile.
- 2.13 Taking these international and domestic frameworks into account, and the self-executing character of the need to consult, the effective participation of Indigenous Peoples, as well as being essential to an inclusive and fair transition, is required by law. The Framework Law includes a reference to the need to engage in indigenous consultation processes. However, this is weakened by the inclusion of the words "where applicable" in Article 34, and there is no requirement in the law which builds on existing standards in the context of climate change. We strongly recommend that steps are taken to strengthen this position to ensure Chile's compliance with international human rights law and alignment to the objectives of the Paris Agreement.
- 2.14 The role of Indigenous Peoples as key actors in climate action has been recognised in the Paris Agreement and the 2030 Agenda for Sustainable Development. Facilitating the meaningful participation of Indigenous Peoples and Indigenous Peoples Organisations (IPOs) is an

¹⁸ Decree 66, APRUEBA REGLAMENTO QUE REGULA EL PROCEDIMIENTO DE CONSULTA INDÍGENA EN VIRTUD DEL ARTÍCULO 6 N° 1 LETRA A) Y N° 2 DEL CONVENIO N° 169 DE LA ORGANIZACIÓN INTERNACIONAL DEL TRABAJO Y DEROGA NORMATIVA QUE INDICA (2014)

effective way to ensure that just transition initiatives prioritise human rights, including the rights of Indigenous Peoples, social equity and environmental protection.¹⁹

2.15 The ILO highlights the following best practice examples for closing the participation gap with Indigenous Peoples:

- (a) **Creation of a designated lead agency for indigenous affairs:** Such institutions which are specifically dedicated to indigenous affairs are able to undertake targeted measures with a deeper understanding of indigenous needs, and build trust with IPOs.²⁰ We note that Chile has a dedicated body – CONADI – for the inclusion and support of Indigenous Peoples and indigenous affairs. We have been unable to access the official government site for CONADI and accordingly have been unable to understand the extent to which CONADI is included in environmental decision-making.
- (b) **Participation of Indigenous Peoples in NDCs:** 14 countries in Latin America and the Caribbean have highlighted the role of Indigenous Peoples in their NDCs.²¹ For many of those countries, references relate to participation in consultation processes, but also to affirmative action policies.
- (c) **Codified frameworks:** The following are examples of strong codification for indigenous participation:
 - (i) **Peru:** In 2018, Peru passed a framework law on climate change that includes an express acknowledgement of the essential role of Indigenous Peoples in the response to climate change. It is inclusive of a framework for participation of Indigenous Peoples in creation of mitigation and adaptation strategies. The regulation (in which the participation framework is contained) was prepared through a series of consultations with IPOs.
 - (ii) **Argentina:** Convention No. 169 served as the basis for a bill to regulate how indigenous peoples should be consulted when National Parks Administration intend to undertake any measures that could affect their collective rights (Administración de Parques Nacionales, Argentina 2021). The bill was drafted to operationalise the full scope of Convention No. 169 and the indigenous rights guaranteed therein, and had the effect of growing the instances of consultation and indigenous participation in dialogue and co-management roundtables.

2.16 As mentioned above, Chile has also ratified Convention No. 169 in 2008, and in 2017 included a chapter on indigenous participation in its 2050 energy policy. However, Chile's Second NDC only makes limited references to Indigenous Peoples related to (i) types of knowledge, (ii) vulnerability assessments, and (iii) forestry.²² We reiterate our recommendations in the

¹⁹ See the 'Declaration of Indigenous Peoples' Participants in the Conference on Indigenous Peoples and the Just Transition' signed at New York in April 2024. Accessed via: <https://iprights.org/index.php/en/all-news/declaration-of-indigenous-peoples-participants-in-the-conference-on-indigenous-peoples-and-the-just-transition>

²⁰ See: Ley No. 30754 (<https://busquedas.elperuano.pe/dispositivo/NL/1638161-1>) and Decreto Supremo que aprueba el Reglamento de la Ley No. 30754 (<https://busquedas.elperuano.pe/dispositivo/NL/1842032-2>)

²¹ See above no. 14, p. 13. The countries referenced are: Bolivia (Plurinational State of), Brazil, Costa Rica, Dominica, Ecuador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Suriname

²² Chile's Second NDC, p. 26, 42 and 52.

August Report concerning participation of Indigenous Peoples in the preparation of Chile's Third NDC.

2.17 To move beyond recognition of the importance of indigenous participation, towards the implementation of effective engagement with Indigenous Peoples, Chile may consider:

- (a) Mandatory inclusion of indigenous leaders or representatives of IPOs at the territorial climate action roundtables foreseen by Article 26 of the Framework Law;
- (b) Introducing requirements for Municipalities to partner with indigenous leaders or representatives of IPOs when managing climate change at a local level under Article 25 of the Framework Law; and
- (c) Creation of a supplementary regulation to strengthen the level and mode of participation of Indigenous Peoples. This should be created in consultation with Indigenous Peoples to ensure relevant vulnerabilities and sensitivities are considered.

3 Vulnerability assessments and environmental impact assessments

3.1 This section addresses the importance of assessments and evaluations, including those designed to gather data on existing vulnerabilities and codified processes such as environmental impact assessments (EIAs).

Vulnerability assessments

3.2 We understand from our call on 13 September 2024 that the Ministry intends to undertake detailed vulnerability assessments to understand local and regional needs for the just transition.

3.3 The Just Socio-Ecological Transition Strategy (JSETS) indicates that some level of vulnerability assessment has already been carried out. For example, we note that the JSETS:

- a) Acknowledges the objective of the Framework Law to face the challenges posed by climate change, moving towards a development low in greenhouse gas emissions and other climate forcing factors, until reaching and maintaining emission neutrality by 2050, as well as **adapting, reducing vulnerability and increasing resilience** to the adverse effects of climate change (emphasis added);
- b) Identifies the vulnerability of some territories including the localities of Coronel, Tocopilla, Mejillones, Concón-Puchuncaví-Quintero, Huasco and Til Til which are recognised as areas where emissions-intensive activities have created high levels of socio-ecological precariousness,
- c) Recalls the research carried out by the National Institute for Human Development on socio-environmental conflicts and areas of high social complexity.²³

3.4 Additionally, the JSETS affirms its objectives of increasing the resilience of ecological and social systems which are vulnerable, minimising the existence of new areas of high socio-ecological vulnerability, encouraging actions for the remediation of ecosystems in high socio-ecological vulnerability and promoting the reduction of emissions and contaminations in areas of high socio-ecological vulnerability. The achievement of each of these objectives depends on detailed vulnerability assessments which build on the work which has already been undertaken.

3.5 Quality and up to date data will also be essential to any funding applications that the Ministry may wish to make to assist with the implementation of local just transition pathways, and enable the Ministry to increase ambition in future NDCs (in accordance with Article 4 of the Paris Agreement). Accordingly, the design and undertaking of such assessments should be prioritised by the Ministry as part of the JSETS.

3.6 As noted by UNDP Climate Promise, a number of countries (developed and developing) have taken action to build a strong evidence base for the just transition through both qualitative and quantitative assessments:

- a) **Costa Rica – Green Covid 19 Recovery:**²⁴ Costa Rica used both quantitative modelling and qualitative mapping to understand how decarbonisation could contribute to the achievement

²³ Accessible via; [Mapa de Conflictos Medioambientales - INDH](#)

²⁴ Costa Rica Ministry of Environment and Energy, Climate Change Directorate, UN Development Programme, RAND Corporation, 'Costa Rican COVID-29 Recovery: aligning Costa Rica's Decarbonisation Investments with Economic Recovery' (March 2022). Accessed via: [A Green Costa Rican COVID-19 Recovery - Aligning Costa Rica's Decarbonization Investments with Economic Recovery | Programa De Las Naciones Unidas Para El Desarrollo \(undp.org\)](#)

of the SDGs. An example of the qualitative work is the cross-referencing of 107 individual actions described in Costa Rica's first NDC to the 17 SDGs to identify gaps and inconsistencies. For economic related SDGs, Costa Rica undertook targeted economic modelling to show where decarbonisation spending would gain in achieving the SDG in question.

- b) **Zimbabwe – Green Jobs Assessment Report:**²⁵ Zimbabwe, together with UN Development Programme and the ILO, undertook an assessment to measure the projected impact of national climate policies on employment, GDP and greenhouse gas emissions.

3.7 The approaches taken in these assessments may be useful starting points for the Ministry as it considers the ways in which it can improve current data sets to strengthen the just transition.

Environmental impact assessments

3.8 Existing environmental impact assessments - widely recognised as a crucial instrument for public authorities to make sound decisions which promote environmental conservation, sustainable development and compliance with international environmental law – are a valuable tool for the just transition: they can promote inclusive decision-making through participation, the purpose of them is to identify and address inequities, and they are already aligned to notions of sustainable development.

3.9 Article 40 of the Framework Law provides:

"Environmental Impact Assessment System. The projects or activities submitted to environmental impact assessment in accordance with the law shall consider the climate change variable in the relevant environmental components, as provided in the respective regulation. The projects or activities mentioned in the previous paragraph must describe how they would relate to sectoral mitigation and adaptation plans, as well as to regional and local climate change management instruments. Regarding the latter, a report from the Regional Government and the corresponding Municipality will always be required, in order for them to indicate if the project or activity is related to the indicated instruments. Likewise, the climate change variable shall be considered for the purposes of the provisions of Article 25 quinquies of Law No. 19,300. For the purposes of the provisions of this paragraph, the administrative review procedure may be initiated ex officio, at the request of the owner, or at the request of the Superintendency of the Environment."

3.10 The text of Article 40 refers to the "respective regulation", which we consider refers to Decree 40 (2012) on Environmental Impact Assessments. This decree identified three participation rights for Indigenous and non-Indigenous Peoples:²⁶

- c) Regular public participation through access of a physical or electronic assessment file and the possibility of making observations;
- d) Consultation when a project meets certain characteristics and directly affects one or more groups;
- e) FPIC where the resettlement and alteration of human groups which are Indigenous Peoples.

²⁵ Government of Zimbabwe, UN Development Programme, ILO, 'Zimbabwe Green Jobs Assessment Report: Measuring the Socioeconomic Impacts of Climate Policies to Guide NDC Enhancement and Just Transition' (September 2021), accessed via: [Measuring the Socioeconomic Impacts of Climate Policies to Guide NDC Enhancement and a Just Transition | United Nations Development Programme \(undp.org\)](#)

²⁶ P Gajardo M, 'Free, Prior and Informed Consent (FPIC) under the New Chilean Impact Assessment Regulations' (2014) accessed via: [Gajardo, Paula. Free, prior and informed consent, Chilean regulations.pdf \(iaia.org\)](#)

- 3.11 The Ministry published a modified regulation via Decree 30 (2024) which integrates the requirements from the Framework Law and the Escazu Agreement (amongst others).²⁷
- 3.12 We also note that the final sentence of Article 40 of the Framework Law confers a power upon the relevant public body to retrospectively modify permissions granted in an EIA if the circumstances change significantly. This is an opportunity for public authorities in Chile to ensure that previous projects are assessed in accordance with Chile's new commitments to a just transition both in the Framework Law and its NDC.
- 3.13 In Article 13 of the Framework Law, which concerns strategic planning for water resources in basins, there is a requirement for the public authority to identify potential environmental and social impacts for evaluation when reviewing regional strategic water resources plans on a periodic basis.
- 3.14 Taking these provisions of the Framework Law into account, there is opportunity for the Ministry to embed just transition approaches into its EIA processes under the Framework Law. For example, the Ministry may consider the following:
- a) **Participation:** EIAs have a participatory element where those who are interested in a project are invited to engage in discussions or consultations, either in person, virtually or via written communications. A strengthened and just transition aligned EIA may seek to improve the depth and breadth of participation by ensuring engagement from key groups such as indigenous groups, women and girls, other minoritised groups, and design participation methods which are responsive to the needs of each of those groups.
 - b) **Assessment of environmental and social impacts:** Whilst the primary focus of EIAs is the assessment of environmental impacts of a project or activity, many environmental impacts are closely linked to social impacts. This is demonstrated within dialogues on the just transition. An inclusion of an assessment of social challenges and co-benefits in EIAs for transition projects is likely to help public authorities identify unintended adverse social impacts and mitigate those.
 - c) **Data collection and analysis to inform just transition policy:** As noted above, reliable and disaggregated data is very important to designing socially responsive policy and legal frameworks for the just transition. To the extent that policy is local or regional, some data collected in enhanced, just transition-aligned EIAs, may be informative and instructive, although this should not be used in place of separate data collection efforts.

4. Financing the just transition in Chile

- 4.1 We have been asked to provide some best practice examples and possible options for making available finance to support Chile's just transition.

Comparative review of commitments made by countries in NDCs

- 4.2 This section details examples of best practices from other NDCs in emerging markets. These are set out in the format of a comparative table (see below under 1.3) with an overview of the different (i) countries; (ii) NDC; and (iii) type of climate finance strategy employed.
- 4.3 From a general view, countries are employing a mix of debt and equity instruments and mobilizing funds from public, private, international and domestic resources. Direct climate

²⁷ Decree 30, APRUEBA MODIFICACIÓN AL DECRETO SUPREMO Nº 40, DE 2012, DEL MINISTERIO DEL MEDIO AMBIENTE, QUE ESTABLECE EL REGLAMENTO DEL SISTEMA DE EVALUACIÓN DE IMPACTO AMBIENTAL

taxes or levies are not widely used. Two examples from the Comparative Table in 1.3 are the NDCs for Zimbabwe and Indonesia: the proceeds from the climate tax or levy (paid by private market participants) are applied towards a debt fund or debt facility that will be further giving funding (either as a loan, equity or guarantee) to fund climate-related projects or businesses.

Climate Finance Strategy	Country	Details	Source
National Climate Finance Facility	Zimbabwe	<p>The Infrastructure Bank of Zimbabwe (IDBZ) is working on the establishment of a National Climate Finance Facility (CFF).</p> <p>The CFF provides a platform for combining private sector investment and climate finance sources for green infrastructure projects. The Government of Zimbabwe co-funds the CFF from the proceeds of climate related taxes for green infrastructure development. The CFF can draw capital from multilateral and bilateral financiers and the private sector and can deploy financing through grants, loans, equity and guarantees.</p>	Zimbabwe Revised Nationally Determined Contribution 2021 Final.pdf (unfccc.int) – page 42-44
	Zimbabwe	<p>The National Climate Change Fund receives funding from various private, public, international and domestic resource to support the country's particular climate change priorities. It can take on different forms of financing instruments such as grants and concessional loans across various sectors to support climate change mitigation.</p>	Zimbabwe Revised Nationally Determined Contribution 2021 Final.pdf (unfccc.int) – page 42-44
National Climate Change Fund	Bangladesh	<p>The Bangladesh Climate Change Trust Fund (BCCTF) has undertaken 800 projects with an investment of 449.3 million USD to implement strategic actions of the Bangladesh Climate Change Strategy and Action Plan (BCCSAP), which mainly focus on adaptation, mitigation and climate change research.</p>	NDC submission 2021 0826revised.pdf (unfccc.int) – page 21
	Maldives	<p>Maldives seeks to establish a National Climate Change Trust Fund to attract</p>	Update of Nationally Determined

		investments and to implement a range of alternative financing mechanisms for increasing resilience and low emission development programmes.	Contribution of Maldives (unfccc.int) – page 22
Government investment	Belize	Belize has increased public capital investment in climate change, particularly for resilience building aspects. In 2018-19 the government invested USD \$8.9 million in domestic public finance for resilience building projects	on (unfccc.int) – page 10
	Maldives	Maldives have noted that they would continue allocations from the Maldives Green Fund to finance investments on climate action.	Update of Nationally Determined Contribution of Maldives (unfccc.int) – page 22
Debt-For-Climate Swaps	Armenia	Debt swaps for climate and nature are a financial instrument allowing countries to obtain debt forgiveness and reductions from external creditors in return for a commitment, on the part of the country, to invest in the protection of the environment. Armenia is considering the application of these swaps in their NDC.	NDC of Republic of Armenia 2021-2030.pdf (unfccc.int) – page 10
	Tunisia	Facilitated by a debt-for-climate swap with Germany, the Tunisian coastal protection agency APAL is investing over 15 million euros in improving the ability of Tunisia’s coastline to adapt to climate change.	Debt-for-climate swaps BMZ
	Egypt	Egypt and Germany signed a debt swap agreement worth 54 million euros in June 2023. The debt conversion is financing two transmission lines that will connect two new wind farms (the Red Sea and Amunet wind farms, both with an output of 500 Megawatts) to the national power grid.	
	Kenya	The Kenyan government is providing the equivalent of 60 million euros over the course of several years for projects agreed with Germany. Once the projects have been successfully implemented, Germany will waive debt repayments in the equivalent amount.	

		This debt-for-climate swap will be used to support existing Kenyan-German cooperation projects in the areas of renewable energy and sustainable agriculture.	
Levy	Indonesia	<p>Indonesia has established the Indonesia Environmental Fund Management Agency (BPDLH). BPDLH is mandated to manage and mobilize finance for environment and allowed to mobilize climate finance from various sources both national and international sources, private and public sources, bilateral and multilateral channels.</p> <p>Since its establishment in October 2019, BPDLH has managed a reforestation fund from domestic sources about/of USD 143.86 million (sourced from a forest levy paid for by the private sector).</p>	Microsoft Word - ENDC Indonesia.docx (unfccc.int) – page 24
Bond Issuance	Oman	Oman is exploring opportunities in green finance such as the issuance of green bonds through multilateral banks.	Nationally Determined Contribution - Optimized Size2 (unfccc.int) – page 38
	Pakistan	<p>Green Bonds: Pakistan's Water and Power Development Authority (WAPDA) had launched 10-year Green Bonds raising \$500 million for a hydro-energy project. Due to its success, WAPDA is considering launching additional green bonds and the government of Pakistan may launch additional bonds in other sectors.</p> <p>Nature Performance Bonds (NPB): Pakistan is engaged with several bilateral and other development partners to channel outstanding payments into conservation and climate-related investments via NPB.</p>	Design sample Pakistan Updated Nationally Determined Contributions (8).pdf (unfccc.int) – page 70-71
	Nigeria	Nigeria has mentioned the issuance of green bonds to fund its climate priorities	NDC File Amended 11222.pdf (unfccc.int) – page 44

International Funding	Oman	Oman has implemented three Green Climate Fund programs since 2016 which include low carbon transportation development, building a resilient environment and sustainable agriculture and water, and enhancing the National Adaptation Plan process for Oman.	Nationally Determined Contribution - Optimized Size2 (unfccc.int) – page 38
	Pakistan	Pakistan has received access to some international climate finance such as one project from Adaptation Fund, three from Green Climate Fund (GCF), and completed 15 projects (approved 19) from Global Environment Fund (GEF)	Design sample Pakistan Updated Nationally Determined Contributions (8).pdf (unfccc.int) – page 70
	Indonesia	Since October 2019, BPD LH has initiated REDD+ result-based payment of USD 103 million and energy sector of USD 1.76 million from international sources.	Microsoft Word - ENDC Indonesia.docx (unfccc.int) – page 24

A closer look at practice in the EU

4.4 The European Union (EU) has released a climate transition financing toolkit in November 2021²⁸. This focuses mostly on mobilising EU funds to support projects in coal regions in transition but also addresses innovative structures used to mix local and regional resources either in fund mobilisation, deployment or capacity building. Some of the best practices highlighted in the toolkit and subsequent initiatives as follows:

- a) EU Grants and subsidies: non-repayable EU funds deployed to support projects or businesses during their climate transition phase.
- b) Specific technical assistance for former coal regions: technical resources-sharing programme developed by the EC and EIB to provide technical assistance to public authorities, local governments and public bodies (with resource sharing or trainings/education).
- c) Loans and guarantees: Multiple different programmes and loan or guarantee facilities to (directly or indirectly) support financial institutions investing in projects eligible with specific eligibility criteria.
- x
- d) Green bonds: European Green Bond Standard (EuGB) to become effective from December 2024 will enable issues to follow credible and uniform rules for issuing green bonds to finance a corporate climate transition plan. Green bonds may also be used to pay for infrastructure projects.

²⁸ EU's "Transition financing toolkit: financing projects in coal regions in transition" November 2021, here: [d08203ab-4dfa-4d28-bad3-9e6fef637063_en \(europa.eu\)](#)

Financing from the Green Climate Fund

4.5 Chile could consider benefitting or expanding partnerships with the Green Climate Fund (**GCF**) (which offers a broad mix of financing instruments, from concessionary debt and grants to loans or co-investments) and co-partners with governments to develop financing tools adapted to their specific challenges (with a mix of 50% of proceeds applied towards mitigation and 50% towards adaptation). Multiple Latin American countries have benefitted from funds received from the GCF (such as Ecuador, grant for the amount of USD 45.9 million for climate transition of local aquaculture businesses). GCF funds were used to catalyze the climate transition of one of China's most coal-intense regions, Shandong – a mix of public finance, concessional donor finance and private finance was employed for this USD 1.5 billion project by applying funds received to finance capital expenditure of selected climate sub-projects for a period of time until they become bankable and assessed against both financial and climate eligibility criteria.