

# From stocktake to taking action:

Using the power of the law to  
respond to the climate crises

#ClimateLawsNow

Climate  
Laws  
Now

ClientEarth<sup>®</sup>

# Foreword from ClientEarth CEO, Laura Clarke OBE



Previous **COPs** have produced many climate commitments and promises, not least the milestone of the Paris Agreement in 2015. It energised climate action and served as a launch pad for net zero pledges from many governments. But there has been a big gap between ambition and action, and despite the commitments, we've not seen enough meaningful progress or delivery.

This has weakened trust between and within states, and that has far-reaching implications. International leaders doubt the integrity of other states' commitments, undermining the diplomatic cooperation that is critical to a collective response. Citizens are losing trust in their political leaders' ability to tackle the climate, while businesses are uncertain about the future regulatory landscape when we urgently need investment into the transition to zero carbon industries.

The COP28 Global Stocktake offers a critical chance to course-correct, and reestablish trust, by accelerating climate action and ambition through international cooperation and collaboration. The Stocktake is a new process, created as part of the Paris Agreement, for countries and stakeholders to see where they're collectively making progress towards meeting the goals of the agreement – and where they're not.

Parties reflecting on the key findings in the Global Stocktake must focus on strengthening existing laws and policies and introducing new ones. We need to see ambitious, progressive and science-driven Nationally Determined Contributions ahead of COP30. Parties also need to collectively agree to phase-out fossil fuels from their energy and economic systems. And human rights must be placed at the core of loss and damage funding to ensure a focus on delivering climate justice.

Climate change is not some hazard on the horizon; it's happening now, and it's impacting more people in more places around the world than ever before. Governments and corporations must now rebuild trust by delivering on the commitments they have made.

COP28 is the moment to galvanise innovative and bold action needed for a healthier, safer future. This is a crucial opportunity for positive, coordinated climate action on a global scale, and we must grasp it. It's why, at ClientEarth, we call for the right rules – the right governance, the right policies, the right frameworks – which are fundamental in driving the change we so urgently need.



# ClientEarth calls on COP28 to use the power of the law to:

## 1

### Support those most vulnerable to climate change

- **Ambitious and progressive submissions in international proceedings:** We need to see ambitious and progressive submissions from States to the different advisory proceedings before international courts and tribunals, with a particular focus on strengthening arguments on climate justice and ensure the highest levels of environmental and human rights protection;
- **Civil society engagement:** States must seek to broaden the role civil society can play in such international proceedings; and include civil society demands, with a particular focus on youth and Indigenous groups;
- **Loss and damage:** We must see the full operationalisation of the loss and damage fund, with human rights placed at the core of funding to ensure a focus on delivering climate justice.

## 2

### Align Parties with the Paris Agreement

- **Ambitious, progressive and science-driven NDCs on time for COP30:** We want to see ambitious, progressive and science-driven nationally determined contributions by COP30 in 2025, that are informed by the Global Stocktake and include absolute emissions budgets and cover all greenhouse gas emissions and sectors;
- **Effective climate laws and governance frameworks:** States should enact comprehensive and well-designed national framework climate laws to implement their Paris Agreement commitments by COP30. Parties should operationalise the plans and commitments embodied in their NDCs through binding laws that include interim and long-term targets requiring absolute reductions of all national greenhouse gas emissions;

- **Climate compatible decision-making:** Institutional practices must also change so that state entities are legally required to take national climate targets and the best available science into account in their decision-making, particularly when consenting to new infrastructure but also when allocating public investment and support.

# 3

## Phase-out fossil fuels

- **Tackle greenwashing:** Using domestic legislation for a demand reduction strategy for fossil fuels (akin to the WHO Framework Convention on Tobacco Control), encompassing non-price measures such as bans on advertising, promotion and sponsorship and bans on involvement in climate policy;
- **Credible pledges with transition plans:** Non-state actors must publish credible transition plans and close the gap between net zero target promises and what is delivered, in line with the UN High Level Expert Group's guidelines on corporate net zero commitments;
- **Phase-out of fossil fuels:** Parties must agree to phase-out fossil fuels from their energy and economic systems in a just manner, including an end to fossil fuel subsidies;
- **Climate-neutral sources of energy:** Parties must set out clear plans enshrined in domestic legislation to phase-out fossil fuels, shifting energy systems away from fossil fuels towards climate-neutral sources of energy, whilst minimising the negative impacts of mining and energy infrastructure on biodiversity and people.



# Intro to ClientEarth

**ClientEarth** uses the power of the law to bring about systemic change that protects all life on Earth. Our work focuses on three areas. We work to **strengthen the law:** we advocate for the right legislation and policy positions, we even draft those for governments. We work to **build the field** of environmental law by training lawyers and prosecutors, supporting community groups and partner NGOs, and providing legal guidance to citizens, authorities and businesses.

And we use **strategic litigation** and other interventions to ensure compliance with legislation, hold governments and corporates to account, and establish new norms and precedents.

# COP28 and the Paris Agreement's First Global Stocktake



The 2015 Paris Agreement saw 196 out of 198 UNFCCC Parties commit to a legally binding international treaty on climate change, which aims to limit global warming to 1.5°C above preindustrial levels, among other goals. Over the past two years, the individual strategies - or Nationally Determined Contributions (NDCs) - of each signatory country have been analysed and were presented in September 2023 in the Global Stocktake. This Global Stocktake is a central instrument of the Paris Agreement that forms part of an “ambition mechanism” articulating the preparation of countries’ pledges. **COP28 is the first opportunity for Parties to reflect on the Global Stocktake to pave the way for future commitments: most notably as they prepare ambitious NDCs for COP30 in 2025.**

The Global Stocktake found that: *“Global emissions are not in line with modelled global mitigation pathways consistent with the temperature goal of the Paris Agreement...There is a rapidly narrowing window to raise ambition and implement existing commitments in order to limit warming to 1.5°C above pre-industrial levels.”* As a comprehensive assessment of climate action, the Global Stocktake highlighted progress and gaps in achieving emission reduction targets, and recommended increased urgency, action and transparency to close that gap.

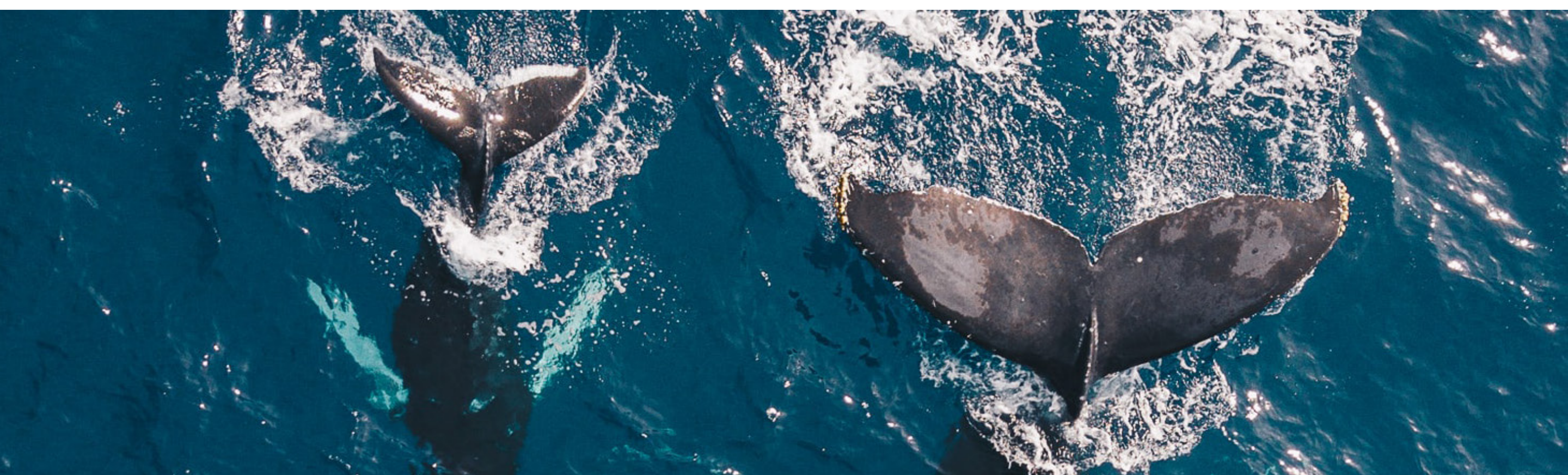
## **ClientEarth asks of Parties at COP28 to translate the Global Stocktake into action**

**Parties must use COP28 to respond to the conclusions of the Global Stocktake and translate these into concrete actions.** As Parties reflect on the key findings, they must focus on strengthening existing laws and policies and introducing new ones: the use of law and policies was mentioned **25** times in the Global Stocktake and the need for more ambition, implementation, accountability and credibility in country commitments to the Paris Agreement was reflected in the **17** key findings. The report noted the need to shift our economies and energy systems away from fossil fuels **15** times. Big business was specifically called out in the Global Stocktake, with a need for rigorous accounting to *“lend credence to their contributions, track progress with environmental integrity, and avoid double counting”*. It was also noted that the lack of political will is the greatest barrier to the climate crisis – not technology or finance. The Global Stocktake stated:

**“Creativity and innovation in policymaking and international co-operation is essential”.**

**COP28 provides the first opportunity for Parties to convene, collaborate, and course-correct. We call on COP to issue a legally-binding declaration rooted in the findings of the Global Stocktake.**

COP28 must pave the way for future commitments, with Parties translating the Global Stocktake into concrete actions backed up with legislative steps. Parties must adopt durable, equitable, long-term reforms that integrate sufficient climate action into all aspects of planning, decision-making, and implementation, ideally with clear national climate laws that will set out clear and ambitious frameworks for action. These must have rules on governance, policies and frameworks to ensure regulatory certainty and a just transition.





# 1

---

## Using the power of international law to support those most vulnerable to climate change

**We expect to see Parties at COP28 set out steps to address:**

- **Ambitious and progressive submissions in international proceedings:** We need to see ambitious and progressive submissions from States to the different advisory proceedings before international courts and tribunals, with a particular focus on strengthening arguments on climate justice and ensuring the highest levels of environmental and human rights protection;
- **Civil society engagement:** States must seek to broaden the role civil society can play in such international proceedings; and include civil society demands, with a particular focus on youth and Indigenous groups;
- **Loss and damage:** We must see the full operationalisation of the loss and damage fund, with human rights placed at the core of funding to ensure a focus on delivering climate justice.

For decades, Small Island States have championed international, co-operative efforts under the existing international system governing climate change and greenhouse gas reductions: the United Nations Framework Convention on Climate Change (UNFCCC), and the Paris Agreement made under it. They are also increasingly assuming leading roles in clarifying international legal obligations to accelerate global efforts to mitigate and adapt to climate change.

There are three advisory opinions pending before international courts and tribunals: the International Court of Justice (ICJ), the International Tribunal on the Law of the Sea (ITLOS) and the Inter-American Court of Human Rights (IACtHR), all seeking clarification on big legal questions about how States must deal with climate change under international law. These proceedings signify the next step of progress on international climate cooperation: after developing international processes and rules for climate action, it is now time for legal interpretation by the courts.

This is a watershed moment for international law to develop its jurisprudence on climate change and determine how the international legal framework accounts for the rights of the most affected small island states and communities.

## 1.1

### **Advisory Opinion from the International Court of Justice**

On 29 March 2023, led by Vanuatu, the United Nations General Assembly passed a resolution requesting an advisory opinion on climate change and human rights from the world's highest court, the International Court of Justice (ICJ). The ICJ is now tasked with clarifying States' obligations to limit climate harm to, amongst others, the human rights of present and future generations and the environment, and the consequences under international law if they fail to do so.

The initiative was launched by the Pacific Island Students Fighting Climate Change (PISFCC), championed by Vanuatu and supported by the World's Youth for Climate Justice (WYCJ) movement and has seen widespread global civil society mobilisation. ClientEarth is supporting civil society and State actors to bring progressive arguments before the ICJ that confirm and strengthen the link between the climate crisis and the human rights obligations on States, and

that bring clarity on responsibilities for States and remedies for countries and communities at the forefront of the climate crisis. This may also have a positive impact on global climate negotiations.

*The deadline for written submissions is 22 January 2024. ClientEarth is calling on States and intergovernmental organisations to participate widely in the proceedings through written submissions and participation in the oral hearings. Civil society demands, particularly youth and Indigenous voices, must be included.*

## 1.2

### **Advisory Opinion from the Inter-American Court of Human Rights**

In January 2023, Colombia and Chile submitted a request for an advisory opinion to the Inter-American Court of Human Rights to clarify what obligations States have when it comes to climate change under the human rights treaty signed by countries throughout the Americas.

The IACtHR has already had a significant impact on advancing issues of human rights and environmental protection through a previous advisory opinion that had far reaching global implications for the interpretation of States' human rights obligations.

*The deadline for all written submissions is 18 December 2023. ClientEarth will be making a submission to the court and calls on participating States and organisations to reflect the voices of civil society, paying special regard to youth and Indigenous voices.*

## 1.3

### **Advisory Opinion from the International Tribunal for the Law of the Sea**

The Commission of Small Island States on Climate Change (COSIS) is a collective of nine countries that are low emitting, but highly vulnerable to the impacts of climate change and rising sea levels. COSIS was formed in 2021 at the international climate talks in Glasgow.

In December 2022, COSIS lodged a legal request to the International Tribunal for the Law of the Sea (ITLOS), seeking legal clarification on whether State Parties' failure to limit greenhouse gas emissions, and the resulting negative effects on the marine environment, could be seen as a contravention of the Law of the Sea,

and whether nations must take steps to reduce that harm.

*In March 2023, ClientEarth published a [legal briefing](#) on the questions and submitted an updated version to the Tribunal in June. ClientEarth shared its analysis with civil society and State actors, and attended the September 2023 hearing to ensure civil society presence and foster engagement with States. We are calling on States to actively engage on the ICJ as they did on ITLOS.*

## 1.4

### **Loss and damage**

The agreement on a loss and damage fund at COP27 marked an historic breakthrough and an important step for climate justice. Leaders of developing nations have consistently expressed frustration that the promised funds have not been mobilised fast enough, despite financial promises. In early November 2023, the Transitional Committee set up at COP27 to operationalise the loss and damage fund met in Abu Dhabi. Beyond one mention of human rights in its preamble, the text does little to nothing for the advancement of climate justice, so intrinsically linked with the purposes of its establishment.

*ClientEarth joins other civil society organisations in calling for human rights to be placed at the centre of loss and damage. Specifically, it is vital that references to human rights are restored in the loss and damage fund's "objectives and purpose". Without this reference, the fund's capacity to ensure that justice and remedy for affected communities is undermined. Principles of international environmental law and a human rights-based approach must guide the work on the fund moving forward.*



# 2

---

## Using the power of new national climate laws to align Parties with the Paris Agreement

**We expect to see Parties at COP28 set out steps to address:**

- **Ambitious, progressive and science-driven NDCs on time for COP30:** We want to see ambitious, progressive and science-driven nationally determined contributions by COP30 in 2025, that are informed by the Global Stocktake and include absolute emissions budgets and cover all greenhouse gas emissions and sectors;
- **Effective climate laws and governance frameworks:** States should enact comprehensive and well-designed national framework climate laws to implement their Paris Agreement commitments by COP30. Parties should operationalise the plans and commitments embodied in their NDCs through binding laws that include interim and long-term targets requiring absolute reductions of all national greenhouse gas emissions;
- **Climate compatible decision-making:** Institutional practices must also change so that state entities are legally required to take national climate targets and the best available science into account in their decision-making, particularly when consenting to new infrastructure but also when allocating public investment and support.

## 2.1

### **Nationally Determined Contributions by 2025**

NDCs currently lack the ambition necessary to curb the most severe effects of global warming. Additionally, there is a pronounced “emissions gap” between the reductions that countries have committed to and what they are on track to achieve in practice. It is essential that this gap be closed. This requires of the Parties significant legal and political follow-through to prepare for their COP30 NDC submissions. Remedying these issues requires not only more ambitious climate policies but also more effective ones.



**“Successful action against climate change requires a legal basis.”<sup>1</sup>**

At a minimum, Parties should operationalise their NDCs and any other undertakings that will deliver their obligations relating to GHG emissions through binding national laws. These should establish interim and long-term targets that require absolute reductions of all greenhouse gas emissions.

## 2.2

### **Framework climate laws**

ClientEarth recommends that as many States as possible commit to enacting comprehensive and well-designed framework climate laws to implement their Paris Agreement commitments by COP30. Framework climate laws are overarching national climate laws by which countries give effect to their international commitments under the Paris Agreement. These are critical tools in the fight against climate change. They provide the opportunity for systemic change through GHG emissions reduction targets that shape government policies.

Framework climate laws make climate governance easier. By creating a clear and comprehensive framework for long-term policy-planning and action, they provide stability and clarity. The process of

---

<sup>1</sup> Eskander, Shaikh, Sam Fankhauser, and Joana Setzer. “Global lessons from climate change legislation and litigation.” *Environmental and Energy Policy and the Economy* 2, no. 1 (2021): 44-82, at p. 45 available at <https://www.journals.uchicago.edu/doi/epdf/10.1086/711306> last accessed 14 November 2023.

enacting a framework climate law can increase the buy-in of broad segments of society, including business, NGOs, and the public at large, increasing the likelihood of enhanced public ownership and consensus.<sup>2</sup> Strong framework climate laws include an effective forward-looking “planning duty”, to ensure that policy stays on track before it is too late to correct course and targets are missed. They also provide for the establishment of an independent expert body to assist with preparing credible science-based transition pathways. Framework climate laws have been found to achieve effective emissions reductions, thus increasing the prospects of fulfilling Paris Agreement commitments.<sup>3</sup>

Globally the “adaptation gap” is increasing as more and more people and ecosystems are exposed to the devastating impacts of climate change. UNEP underlines that one out of six countries lack a national adaptation planning instrument and international financial flows remain well below what is needed to address the relevant risks and vulnerabilities.<sup>4</sup> The inclusion of provisions 4 on loss and damage ensures that States meet their international human rights obligations and their duty to cooperate. By defining clear and time-bound obligations for adaptation planning and investment as well as loss and damage mechanisms, Framework climate laws can significantly increase the resilience of communities in the face of the ever-increasing threats of climate change and close the adaptation gap.

## 2.3

### **ClientEarth’s climate advocacy**

ClientEarth has worked on environmental advocacy and legislation for more than a decade, with success in countries as diverse as Poland, the UK, Gabon, and China, on issues ranging from access to justice to air quality protection.

ClientEarth is now working to help develop framework climate laws globally. In August 2021, ClientEarth published an analysis titled [\*“Navigating Net-Zero:”\*](#)

---

<sup>2</sup> ‘Climate Laws in Europe: Good Practices in Net-Zero Management’ Ecologic Institute (February 2020), at p. 13. See also World Bank, 2020, ‘Reference Guide to Climate Change Framework Legislation’ at p. 13.

<sup>3</sup> IPCC 6th Assessment Report at p. 110 with reference to ‘WGII SPM C.5, WGII SPM C.5.1, WGII SPM C5.4, WGII SPM C.5.6; WGIII SPM B.5.2, WGIII SPM E.3.1’.

<sup>4</sup> United Nations Environment Programme (2023). Adaptation Gap Report 2023: Underfinanced. Underprepared. Inadequate investment and planning on climate adaptation leaves world exposed. Nairobi. <https://doi.org/10.59117/20.500.11822/43796>

[Global Lessons in Climate Lawmaking](#)”, in which various framework climate laws adopted around the world were scrutinised and evaluated. In 2018 we [supported](#) New Zealand with its Zero Carbon Act. ClientEarth is engaged in advocacy on German climate law amendments, and an upcoming Framework climate law in Türkiye. We also draft legislation: lawyers at ClientEarth’s Warsaw office drafted the first framework climate law proposed in Poland, presented publicly in April 2023. The proposal includes solid targets and climate neutrality by 2050 at the very latest, an independent advisory body and earmarking at least 1% of Poland’s GDP to finance climate protection from the state budget. In 2023 the outgoing government began working on two elements included in ClientEarth’s proposal. We are engaged in the energy transition in Japan, the Philippines and Indonesia through a focus on advocacy, support for regulatory reform, and shareholder activism to shift financial flows.

Our focus is global, and we will support the enactment of framework climate laws worldwide. To be effective, national framework climate laws must be specifically tailored and anchored within the national legal and political context, including any relevant regional or international law or policy provisions where applicable. A combination of national and international expertise is paramount, and each national framework climate law is unique. ClientEarth’s global reach and access to national, regional, and international expertise regarding framework climate laws enables us to see the bigger picture and to be an invaluable partner for anyone wishing to improve their climate-protection laws.





# 3

---

## Using the power of law to phase-out fossil fuels

**We expect to see Parties at COP28 set out steps to address:**

- **Greenwashing:** Using domestic legislation for a demand reduction strategy for fossil fuels (akin to the WHO Framework Convention on Tobacco Control), encompassing non-price measures such as bans on advertising, promotion and sponsorship and bans on involvement in climate policy;
- **Implementing credible pledges with transition plans:** Non-state actors must publish credible transition plans and close the gap between net zero target promises and what is delivered, in line with the UN High Level Expert Group's guidelines on corporate net zero commitments;
- **The phase-out of fossil fuels:** Parties must agree to 'phase-out' fossil fuels from their energy and economic systems in a just manner, including an end to fossil fuel subsidies;
- **Climate-neutral sources of energy:** Parties must set out clear plans enshrined in domestic legislation to phase-out fossil fuels, shifting energy systems away from fossil fuels towards climate-neutral sources of energy, whilst minimising the negative impacts of mining and energy infrastructure on biodiversity and people.

## 3.1

### **Shift away from harmful fossil fuel subsidies**

Globally, according to the IMF, total fossil fuel subsidies amounted to \$7 trillion in 2022. Fossil fuel subsidies must be phased out as soon as possible to allow for a shift of public resources from harmful subsidies to incentives and budgets for climate action. It is also an essential condition for truly delivering on Article 2.1C Paris Agreement – to make financial flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development. Phasing out fossil fuel subsidies is also paramount for achieving demand reduction and working towards a financial system that truly integrates the polluter pays principle.

## 3.2

### **Fossil fuel and climate disinformation**

Fossil fuels have devastating health, social, environmental and economic consequences, and a regulatory strategy and political will is needed to drive down consumption. These industries currently rely heavily on PR, advertising, and sponsorship to purchase “social license”, mislead the public, and obstruct and delay climate action, whilst continuing to sell fossil fuel products. Today’s strategies also spread climate disinformation by misrepresenting the scientific consensus on the urgency or methods of climate change mitigation. Fossil fuel industry PR strategies, heightened by social media algorithms and by AI, are playing out in domestic policy and discourse, with concerted efforts to embed false or exaggerated solutions which preserve fossil fuel business interests.

## 3.3

### **Efforts to reduce fossil fuel demand**

Globally, there are efforts to reduce the landscape of fossil fuel demand through corporate, city, and governmental actions:

- ClientEarth supports the campaign in Europe for a ban on advertising and sponsorship by fossil fuel and transport companies;
- Cities and states, such as Sydney, Amsterdam, and France have taken steps to ban fossil fuel advertising;
- Citizens Assemblies have recommended bans on fossil fuel advertising;

- Advertising agencies are boycotting fossil fuel clients; major cultural institutions and sporting events, such as the Australia Open are now rejecting fossil fuel sponsorships; and press titles are refusing to carry fossil fuel advertising.

## 3.4

### **Learning from the WHO Framework Convention on Tobacco Control**

The WHO Framework Convention on Tobacco Control asserts the importance of demand reduction strategies in addition to supply issues. In the convention, States agreed provisions on non-price measures which have deep relevance for addressing society's addiction to tobacco.

ClientEarth believes that anti-greenwashing regulation should learn from the convention and serve the following purposes:

- protection of [climate] policies from commercial and other vested interests of the [fossil fuel] industry;
- protection from exposure to [fossil fuels air pollution];
- regulation of the contents of [fossil fuel] products;
- regulation of [fossil fuel] product disclosures;
- packaging and labelling of [fossil fuel] products;
- education, communication, training and public awareness;
- [bans on fossil fuel] advertising, promotion and sponsorship; and
- demand reduction measures concerning [fossil fuel] dependence and cessation.





## 3.5

### **Case Study: Greenwashing**

At ClientEarth, we have a strong track record in using the law to tackle greenwashing, which began with a precedent-setting complaint against BP. In 2019, we lodged a world-first legal complaint alleging BP's global 'Keep Advancing' and 'Possibilities Everywhere' ad campaigns misled the public by focusing on BP's low carbon energy products, when more than 96% of BP's annual spend was on oil and gas. This led to BP withdrawing its advertisements. Today, we have a series of live actions against the greenwashing activities of KLM, Total, Danone and others to use the power of the law to stop the dangerous narratives around oil and gas, aviation growth and plastic growth.



By using the power of law Parties can deliver concrete outcomes that must intersect collaboratively to bring about positive change across global health, economic and energy systems, whilst protecting the most vulnerable and creating new jobs. The Global Stocktake has outlined the significant gap between pledges and what is being delivered by Parties, and it is critical that national governments and other stakeholders seize myriad opportunities to deliver tangible benefits for both people and the planet. International and domestic laws have a crucial role to play in ushering in those changes, and the phase-out of fossil fuel in particular. We will continue to use the law to support greater ambition and action and hold governments and corporations accountable.

Whilst securing a just transition will not be a simple journey, the power of law can help navigate the complexity as we move together towards achieving net zero by 2050. It will require leadership and solidarity between countries at key political moments. COP28 is one of those key political moments.

**COP28 is a crucial opportunity for positive, coordinated climate action on a global scale, and to close the gap between rhetoric and reality when it comes to climate ambition.**

At the 2023 Climate Ambition Summit in New York, COP28 President-Designate Dr. Sultan Al Jaber called on the world to think *“beyond borders, beyond politics, and beyond our own lifetimes”*. Dr. Sultan pointed to recent data from the Global Stocktake and the need for greater ambition and reminded the international community that it is not powerless, stating: *“as we have seen throughout history, when we act with optimism, urgency and solidarity, we can overcome even the most daunting challenges”*.

**ClientEarth hopes to see that optimism, urgency, and solidarity reflected in political statements and negotiations throughout COP28. We want to see Parties using the power of the law to restore trust in commitments and pledges by moving swiftly from Global Stocktake, to taking action.**

