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# The looming legal showdown on climate justice

A large group of people are gathered for a climate protest in front of a modern building with a light-colored, vertically-slatted facade. In the foreground, a man with glasses and a white shirt is speaking into a microphone, gesturing with his hand. Behind him, a large crowd of diverse individuals is holding various protest signs. A prominent pink banner reads "FOR LOSS AND DAMAGE". Other visible signs include "CLIMATE EMERGENCY! Fight for Climate Justice Now!", "PAY UP", "CLIMATE JUSTICE", and "CLIMATE DAMAGE NOW!". A large map of the world is mounted on the building wall in the background. The scene is set outdoors on a sunny day, with shadows cast on the ground.

Activists call for climate justice at COP27 on Thursday morning © REUTERS

**Simon Mundy** and **Kenza Bryan** 16 MINUTES AGO

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Hello from Sharm el-Sheikh, for our fourth special COP27 edition of Moral Money — in your inbox every weekday for the duration of the climate summit.

The World Bank's embattled leader David Malpass spoke at COP27 yesterday, having arrived later than planned, after his plane from South Africa was hit by lightning. If that seemed a bad omen, Malpass nonetheless put on a game show, stressing the [multilateral lender's commitment](#) to boosting climate finance. "We reached \$32bn in climate finance this past year, a record that was above our Glasgow target," he said.

But the institution's numbers have come under fierce scrutiny, as has its continued support for fossil fuel projects. Malpass is still suffering the consequences of his disastrous refusal, in September, to say whether he accepted the scientific consensus on climate change (he later said he did). Yesterday he was pursued by a [Guardian journalist](#) who repeatedly asked him: "Are you a climate denier?"

"You know that I'm not," Malpass said. But many people here are far from confident about that — and the urgent need for more World Bank support for climate change mitigation and adaptation will remain a subject of intense debate in the coming days.

Today I tackle something that has been getting less press coverage than Malpass, but needs to be on your radar: the growing push to use international law to tackle climate change. And Kenza continues her best-in-class coverage of the antitrust issues around corporate climate action.

See you tomorrow. *(Simon Mundy)*

## COP27 day 4 in brief:

- US climate envoy John Kerry announced his proposed system to finance the phaseout of coal power using carbon credits. The idea has received a [deeply divided response](#), as our colleague Camilla Hodgson reported.
- Nuclear energy supporters [sought to polish](#) the industry's spotty image on Wednesday, using COP27 to argue that atomic power offers a safe and cost-efficient way to decarbonise the world.

- At least 100 more [fossil fuel lobbyists](#) are attending COP this year than last, according to analysis of the UN's provisional list of attendees by Corporate Accountability, Corporate Europe Observatory, and Global Witness.

## Vanuatu's legal push for climate justice gathers momentum

We've been writing about the increasingly assertive approach being taken by developing country leaders as they run out of patience with the broken climate promises of richer nations.

One of the most prominent voices has been Nikenike Vurobaravu, president of the tiny Pacific nation of Vanuatu that — like much of its region — is badly exposed to cyclones and rising sea levels. “Fundamental rights are being violated,” he told delegates in a speech on the first day of COP27. “We are measuring climate change not in degrees of Celsius or tonnes of carbon, but in human lives.”

Vurobaravu is at the forefront of a drive by states to explore international legal avenues to tackle fossil fuel expansion. At the UN General Assembly in September, he became the first head of state to announce national support for a fossil fuel non-proliferation treaty (NPT). Soon after that, Vanuatu announced it would seek to file a climate case at the International Court of Justice — a drive that Vurobaravu says has attracted support from 85 other nations.

Yesterday I sat down with Vurobaravu in a small meeting room within the heaving COP27 venue to learn more about his climate drive.



Vanuatu president Nikenike Vurobaravu, centre, with Commonwealth secretary-general Patricia Scotland and Bahamas prime minister Philip Davis, at COP27 yesterday © Ahmed Moussa

“We are concerned about the UNFCCC process,” he said, referring to the UN Framework Convention on Climate Change that underpins the COP conferences. “Frankly, we’ve been in these climate negotiations for the last 30 years. And I hope that this COP will be different. But so far, in spite of these negotiations, everybody can see that emissions continue to rise.”

This is why Vanuatu — while still taking full part in the UNFCCC process — has decided to start using “the international law toolbox”, Vurobaravu said. His support for a fossil fuel NPT was a big moment for the [global campaign](#) set up in 2019 by the Canadian activist Tzeporah Berman, which calls for an international treaty explicitly ruling out fossil fuel expansion.

The NPT campaign had already attracted the support of the World Health Organization, 101 Nobel laureates, and city governments from London to Buenos Aires. Since Vanuatu’s September announcement, two other small nations — Tuvalu and Timor-Leste — have followed suit, as has the European parliament.

Official support for the NPT from large nations is conspicuously absent. But Vurobaravu said he was confident more would come aboard, amid a hardening consensus that the expansion of fossil fuel production must end. “A long journey has to start,” he said. “And a couple of us in the Pacific are taking the first steps.”

Vanuatu's second initiative, however, already has a good deal of support from governments around the world. In December, Vanuatu plans to move the UN General Assembly to seek an opinion from the ICJ on human rights implications. By determining the rights of countries most exposed to climate change — and the obligations of those most responsible for driving the crisis — an ICJ opinion could have a powerful impact on the international climate conversation.

Seventeen other countries are co-sponsoring Vanuatu's resolution, including prominent developed countries such as Germany, Singapore and New Zealand, and large developing ones such as Bangladesh and Vietnam. In all, Vurobaravu said, 85 nations have publicly or privately voiced support — nearly half the countries in the world.

Vurobaravu noted that the ICJ opinion — if he can get enough support from UN members — will not be legally binding. "The ICJ is there to provide advice and opinion," he said. But it would give some "useful moral authority" to climate-vulnerable nations, he added — and, to the historically heavy emitters, some helpful "clarity on their obligations". (*Simon Mundy*)

## Quote of the day

"This year we've fully understood the link between fossil fuels and fascism. Putin could not have invaded Ukraine without the profits from oil and gas, or [cowed] the west with threats of turning off the taps."

US environmentalist Bill McKibben, speaking yesterday about Putin's reliance on profits from carbon-intensive energy sources for his war in Ukraine.

## Beyond COP27: the real-world chilling impact of antitrust policy

An agreement by banks to stop offering certain financial products to meatpackers who fail to eliminate deforestation from their supply chains. An agreement by luxury goods makers to stop using bulky packaging to make their items look bigger. An agreement by carmakers to invest in more expensive material for tyres that give off fewer polluting particles.

All these are [laudable examples of real-life corporate collaborations](#) that have been put on ice or abandoned completely because of perceived antitrust risks in the past two years, according to a report by the International Chamber of Commerce out today.

“Antitrust policy is rapidly becoming one of the principal inhibitors to decarbonising the real economy,” the ICC’s secretary-general John Denton told me in a written statement. He called for an “urgent step-change” by competition authorities to reduce widespread fears by companies headquartered around the world that they could accidentally trigger enforcement action when they dream up plans to improve their carbon footprint or other ESG credentials.

Moral Money has reported on the antitrust issue before, but we have usually focused on reluctance by climate alliances to boycott the financing or insurance of coal mines, plants and power for fear of being accused of forming a “green cartel”. Former Bank of England governor Mark Carney told us earlier this week that antitrust had been a [“big challenge”](#) for his climate finance movement this year.

The ICC’s research is a good reminder that the problem has its roots in the real economy, where competition authorities are always on the lookout for unnecessary sharing of sensitive information on price or output. This is meant to protect us from unnecessary increases in price or reductions in quality. But what is a regulator to do when a dramatic risk of harm to citizens emerges — climate-induced natural disasters for example — that can only be mitigated by the anti-competitive agreements it was set up to guard against?

Although the conundrum is enough to give anyone a headache, the issue appears to be firmly on the radar of the UK’s Competition and Markets Authority. The CMA has inscribed support for the transition to a low-carbon economy into its strategic objectives and launched a sustainability task force to review the case for clarifying UK law to reassure businesses. The EU is also examining the issue and is due to release new guidelines in January. National regulators inside the EU are doing their bit too (see the constant flow of [exemption rulings](#) from the Dutch competition authority for example). The Federal Trade Commission in the US did not respond to a request for comment.

The problem is, not one of the projects mentioned by the ICC were discussed with antitrust authorities, which it says is down to companies' reluctance for their projects to be used as a high-profile or costly test case. Because of this, the ICC suggests that rather than waiting to be approached, regulators should come out with proactive guidance to reassure companies they can forge ahead with collaborations.

Peter Tufano, a finance professor at Harvard Business School and co-author of a fascinating Harvard Business Review article on [the antitrust threat](#), first heard about the issue when approached by a group of concerned lawyers at last year's COP, who felt it was not high enough on the agenda. A year on, there is still not enough awareness of the scale of the problem, he said.

"The whole point of COP is to bring countries together to agree on a set of actions, and that seems perfectly natural, but it is still difficult to bring business competitors together in a similar way," he told Moral Money.

One of the challenges for economists is the idea, espoused by the EU and others, that any increase in price has to be perfectly balanced out by benefit to the consumer. This relies on working out the "social cost of carbon", using a complicated analysis of greenhouse gas and population data, then comparing this with projections of changes in price.

The fear of legal retribution, which the ICC describes as "chilling", could explain why many of the corporate climate initiatives that do see the light of day appear [a little "toothless"](#), Tufano and others wrote last month.

Hostility by some Republicans to environmental, social and governance initiatives in the US has added to this chill factor. In an [opinion piece](#) for the Wall Street Journal earlier this year, Arizona's attorney-general Mark Brnovich said he would investigate "potentially unlawful market manipulation" at Climate Action 100+, an investor-led climate initiative.

The irony is that while Brnovich made the unlikely accusation that Climate Action 100+ was compelling companies to shut down coal and natural gas plants, activists recently [called the group out](#) for being too lax in its approach to members' shareholder votes on climate issues — perhaps because it feared being too prescriptive in its approach. (*Kenza Bryan*)

## Smart Read

Have you forgotten what the Kyoto protocol was and does the number of Cs in UNFCCC upset you? This [jargon-buster](#) from the Guardian is useful for navigating news about this year's climate conference. It taught us that SLCPs are compounds such as methane and soot that play a big role in global warming.

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