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Mandate of the Special Rapporteur on the promotion and protection of human rights in the context of climate change

Annex III - Fossil Fuel Cases in the context of Investor-State Dispute Settlements (ISDS)

To the report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Elisa Morgera, titled 'Fossil Fuels' (A/HRC/59/42)

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This document provides an illustrative selection of ISDS cases concerning various fossil fuels, at various stages of the full life cycle, and the challenges they raise for States in taking measures to support a phase out. The Annex is based on publicly available information and is not intended to provide a comprehensive list of ISDS cases that are specifically relevant to the protection of human rights in the context of climate change.

Case Name	Treaty Invoked	Fossil Fuel Type-Segment	Summary of Dispute	Case Outcome and Financials
Vattenfall v. Germany (I) - 2009[1]	Energy Charter Treaty (ECT)	Coal - Electricity Generation	The case arose after Vattenfall invested in building a large coal-fired power plant (the Moorburg plant) in Hamburg, Germany. Following initial approvals, Hamburg authorities imposed new, stricter environmental conditions on the plant's operation, particularly concerning its use of water from the Elbe River and potential impacts on water quality and temperature. Vattenfall argued these new requirements, implemented after a change in the local governing coalition which brought the Green Party (opposed to the plant on environmental grounds) into power, made the project economically unviable.	Settled, Claimed: 1400.00 million USD, Awarded: Unknown, Year: 2011

[1] ITALAW: https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/329/vattenfall-v-germany-i-; JUS MUNDI: https://jusmundi.com/en/document/pdf/other/en-vattenfall-ab-vattenfall-europe-ag-vattenfall-europe-generation-ag-v-federal-republic-of-germany-i-request-for-arbitration-monday-30th-march-2009; IISD: https://www.iisd.org/system/files/publications/background_vattenfall_vs_germany.pdf

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			Vattenfall filed the case, claiming Germany had breached its obligations under the ECT. The primary grounds alleged were that the imposition of the stringent environmental conditions violated the treaty's guarantee of fair and equitable treatment (FET) for foreign investments and potentially constituted a measure equivalent to expropriation, as it allegedly destroyed the investment's value. The arbitration did not proceed to a final ruling by the tribunal on whether Germany had violated the ECT. Instead, the case was concluded through a settlement agreement. Under the terms of the settlement, the Hamburg government agreed to issue the required permits for the power plant but with modified, less stringent environmental conditions compared to those Vattenfall had originally challenged. Following this agreement, the arbitration proceedings were formally discontinued. **The outcome of this case has negative implications for environmental regulation**. The settlement required the city of Hamburg to roll back environmental restrictions it had initially deemed necessary for protecting the Elbe River, seemingly due to the pressure of the investor-State claim and the potential multi-billion euro liability.	
Chevron and TexPet v. Ecuador (II) - 2009[2]	US-Ecuador Bilateral Investment Treaty (BIT)	Oil Extraction	This dispute centers on environmental liability stemming from oil operations conducted by Texaco Petroleum (TexPet), later acquired by Chevron, in Ecuador's Oriente region from the 1960s to the early 1990s. TexPet and state-owned PetroEcuador entered into the 1995 Settlement	Pending, Claimed: Unknown

[2] 1. Investment Dispute Settlement Navigator; https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/341/chevron-and-texpet-v-ecuador-ii-. 2. https://www.transnational-dispute-management.com/downloads/15993_case_report_chevron_v_ecuador_the_hague_2016.pdf. 3. ITALAW: https://www.italaw.com/cases/257

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			Agreement, under which TexPet would perform specific environmental remediation work in exchange for being released by Ecuador and PetroEcuador from all legal and contractual governmental obligations for environmental impact arising from the consortium's operations. The release, however, did not explicitly shield TexPet from potential private individual claims. After TexPet performed the agreed remediation and received explicit liability releases from the government, an environmental lawsuit known as the Lago Agrio case was allowed and later confirmed by the Ecuadorian Supreme Court. This lawsuit, brought by Ecuadorian residents in their local courts, sought extensive damages from TexPet (later Chevron) for alleged widespread environmental contamination and associated health problems resulting from TexPet's time as operator. This development subsequently led to arbitration where Chevron and TexPet successfully argued that the $9.5 billion judgment was procured through fraud, leading the tribunal to declare it unenforceable and order Ecuador to prevent its enforcement. The tribunal found Ecuador liable for breaching treaty obligations and the prior release agreements, eventually awarding damages and costs to Chevron. Even the Dutch Courts (as the Netherlands was the seat of the arbitration), including their Supreme Court, have refused to set aside the arbitral award which was the seat of the arbitration. **The case highlights the competing interests between enforcement of**	

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			contractual obligations and the citizens' right to claim damages, raising concerns about environmental justice.	
Lone Pine Resources v. Canada - 2013[3]	North America Free Trade Agreement (NAFTA)	Oil & Gas - Extraction (Fracking)	The Government of Quebec revoked the claimant's permits for petroleum and natural gas exploration in the Utica shale gas basin, including beneath the St. Lawrence River, without compensation following the passage of the 'Act to limit oil and gas activities'. This act was passed after recognizing environmental risks. The Tribunal rejected the expropriation claim brought by the company, primarily because Lone Pine conceded the point after the Tribunal determined the investment must be viewed as a whole (including retained land permits), and alternatively, because losing the river permits did not substantially deprive Lone Pine of this whole investment. Additionally, the Minimum Standard of Treatment claim was rejected because **the Tribunal gave high deference to Quebec's democratic legislative process and its public policy choices aimed at environmental protection.**	Decided in favor of State, Claimed: 109.80 million USD, Year: 2022

[3] ITALAW: https://www.italaw.com/sites/default/files/case-documents/italaw171018.pdf

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Rockhopper v. Italy - 2017[4]	ECT	Oil & Gas - Extraction	The arbitration concerned Italy's denial of a production concession for Rockhopper's Ombrina Mare oil and gas project, located within 12 nautical miles of Italy's coast. This denial resulted from Italian legislation which re-introduced a ban on hydrocarbon exploration and production activities within that coastal limit in 2015 for environmental reasons. Rockhopper argued that Italy's measure constituted an unlawful expropriation of its investment and a breach of the Fair and Equitable Treatment (FET) standard under the ECT. The tribunal found Italy liable for breaching the ECT. Specifically, it determined that Italy's conduct amounted to an unlawful expropriation of Rockhopper's investment. **The decision is seen as increasing the financial burden on states implementing climate-related legislation.**	Decided in favor of Investor, Claimed: 281.30 million USD, Awarded: 190.50 million USD, Year: 2022
Uniper v. Netherlands - 2021[5]	ECT	Coal - Electricity Generation	The arbitration concerns the Netherlands' 2019 "Prohibition of Coal in Electricity Production Act," which mandated a phase-out of coal for power generation by 1 January 1 2030. Uniper argued this measure negatively impacted its modern MPP3 coal-fired power plant in Maasvlakte (operational c. 2016) by forcing premature closure or conversion without providing compensation. Uniper alleged breaches of	Discontinued, Claimed: around €1 billion, Year: 2023

[4] JUS MUNDI: https://jusmundi.com/en/document/decision/pdf/en-rockhopper-exploration-plc-rockhopper-italia-s-p-a-and-rockhopper-mediterranean-ltd-v-italian-republic-final-award-wednesday-24th-august-2022

[5] European Commission: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7830; Investment Dispute Settlement Navigator: https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/1129/uniper-v-netherlands; Global Arbitration Review: https://globalarbitrationreview.com/article/uniper-withdraws-ect-claim

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			the ECT, primarily unlawful expropriation and violation of the Fair and Equitable Treatment (FET) standard. The arbitration was terminated before an award on the merits was rendered. The termination was reportedly linked to conditions imposed by the German government as part of its significant financial bailout of Uniper during the 2022 energy crisis, requiring the withdrawal of the claim. **Although there is no binding legal outcome in this case, as a final ruling was ultimately averted by external geopolitical and economic factors, the case highlights the potential for expensive ISDS claims to create fear of enacting laws on fossil fuel phase-out.**	
Shell v. Nigeria (II) - 2021[6]	Netherlands -Nigeria BIT	Oil - Extraction	Official sources, such as the International Centre for Settlement of Investment Disputes (ICSID) case registry, confirm the existence and key procedural history of the arbitration (ICSID Case No. ARB/21/7), including its formal discontinuance. However, these official records do not reveal the specific circumstances or reasons leading to such a conclusion, beyond noting the procedural order. Information regarding the context and effective resolution of the underlying dispute primarily comes from media reports and related public knowledge derived from	Discontinued, Settled: $111 million (media reports), Year: 2022

[6] Reuters: https://www.reuters.com/article/us-shell-nigeria-arbitration/shell-files-intl-arbitration-against-nigeria-over-oil-spill-case-idUSKBN2AF0SG/; BBC: https://www.bbc.com/news/world-africa-58181836; The Guardian: https://www.theguardian.com/business/2021/aug/12/shell-to-pay-111m-over-decades-old-oil-spills-in-nigeria; Investment Dispute Settlement Navigator: https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/1142/shell-v-nigeria-ii-

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			the domestic proceedings in Nigeria. According to these reports, the dispute originally arose from an oil spill in the Ejama-Ebubu community in Rivers State, Nigeria, during the Biafran war (1967–1970). In 2010, Nigerian courts ordered Shell to pay 17 billion naira (approximately $45 million at the time) in compensation to the affected community; due to accruing interest, this amount reportedly grew to over 180 billion naira by 2021 (according to Reuters). Shell contested the ruling, arguing it was not given a fair opportunity to defend itself against the claims. In November 2020, Nigeria's Supreme Court rejected Shell's request to appeal the award, prompting Shell to seek international arbitration under the Netherlands-Nigeria Bilateral Investment Treaty. However, on October 13, 2022, the arbitral tribunal issued an order taking note of the discontinuance of the proceeding. While the official ICSID order did not publicly detail the reasons for the discontinuance, various media reports indicated that Shell (specifically its Nigerian subsidiary, SPDC) had previously, in August 2021, agreed to pay $111 million directly to the Ejama-Ebubu community. This payment constituted a full and final settlement of the long-running domestic court case that had formed the basis of Nigeria's enforcement actions and triggered the international arbitration. This settlement effectively resolved the core issue, leading to the closure of the ICSID case. **The situation highlights the tension between holding corporations accountable for historical environmental damage through domestic**	

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			courts and the recourse available to investors under bilateral investment treaties. Shell's decision to pursue arbitration after facing adverse judgments in Nigerian courts raises questions about the potential use of ISDS mechanisms to challenge or circumvent domestic judicial processes, particularly those concerning significant public interest issues like environmental harm and community compensation.	
Discovery Global v. Slovakia - 2021[7]	US-Slovakia BIT	Oil & Gas - Extraction	The Claimant alleged that various state actions and failures, particularly concerning access to drill sites, and the imposition of full environmental impact assessments (EIAs), prevented them from carrying out geological exploration and the drilling of oil and natural gas in areas in northeastern Slovakia which violated treaty standards including fair and equitable treatment (FET) and constituted expropriation. The Arbitral Tribunal ultimately dismissed all of Discovery's claims on the merits, finding no breach of the BIT by Slovakia. The Tribunal reasoned that Claimant's inability to proceed with drilling was primarily due to its own conduct and failures, such as insufficient legal due diligence regarding road access rights, missing contractual deadlines for lease extensions, resorting to self-help measures, not fully utilizing available legal remedies, and failing to adequately manage local opposition, rather than constituting treaty breaches by the state. Slovakia's successful defense reinforces **a state's right to regulate in the public interest, particularly for environmental protection,**	Decided in favor of State, Claimed: At least $568.2 million, Year: 2025

[7] Investment Dispute Settlement Navigator: https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/1178/discovery-global-v-slovakia; ITALAW: https://www.italaw.com/sites/default/files/case-documents/italaw1826704.pdf; Ministry of Finance of the Slovak Republic: https://www.italaw.com/sites/default/files/case-documents/italaw182645.pdf

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			provided actions are reasonable and non-discriminatory, and that tribunals will closely examine investor conduct in assessing causation for investment failures.	
Ruby River Capital LLC v. Canada - 2023[8]	NAFTA & Canada-United States-Mexico Agreement	Liquefied Natural Gas (LNG) - Processing and Transport	The Claimant, Ruby River Capital, is a U.S. corporation registered in Delaware. The dispute stems from Ruby River's investment, made via its Québec-based subsidiary Symbio Infrastructure Partnership Limited, in two major proposed energy projects: the Énergie Saguenay (or GNLQ) Project, a natural gas liquefaction plant and maritime export terminal on the Saguenay fjord, and the associated Gazoduq Project, a planned 780-kilometre pipeline intended to transport natural gas from Western Canada across Ontario and Québec to the GNLQ facility. The arbitration was initiated after both the provincial government of Québec (in July 2021) and the federal government of Canada (in February 2022) refused to grant the necessary environmental authorizations for the GNLQ Project. The governments cited concerns including potential impacts on greenhouse gas (GHG) emissions, threats to endangered beluga whales, and lack of social acceptability, which effectively halted both initiatives. Invoking the "legacy investment claim" provisions of the Canada-United	Pending, Claimed: $20 Billion

[8] Investment Dispute Settlement Navigator: https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/1289/ruby-v-canada; ICSID: https://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C11097/DS19358_En.pdf

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			States-Mexico Agreement, the claimant alleges that these rejections violated Canada's obligations under NAFTA. Ruby River contends the treatment received from both the Quebec and Canadian governments was "fundamentally arbitrary, procedurally grossly unjust, expropriatory, and discriminatory". The case remains active and is pending before the ICSID arbitral tribunal, **highlighting the significant challenge governments face when environmental decisions impacting large energy projects lead to costly investor-State disputes under international agreements, acting as a roadblock to climate policy objectives**.	
APMC v. United States - 2023[9]	NAFTA & Canada-United States-Mexico Agreement	Oil & Gas - Construction & Transport	The Alberta Petroleum Marketing Commission, a provincial agency responsible for marketing Alberta's energy resources, invested significantly in the Keystone XL pipeline project, a proposed 1,947-kilometer pipeline to transport crude oil from Alberta, Canada, to refineries in the United States. The project received a presidential permit from the U.S. government in 2017 under the Trump administration, allowing it to cross the U.S.-Canada border. However, on 20 January 2021, President Joe Biden revoked the permit through an executive order, citing environmental concerns, including the pipeline's potential to exacerbate climate change (Executive Order 13990).	Pending, Claimed: 961.40 million USD

[9] Investment Dispute Settlement Navigator: https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/1298/apmc-v-united-states; ICSID: https://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C11663/DS19603_En.pdf

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			APMC alleges that the revocation of the permit violated US obligations under NAFTA's investment chapter, including standards related to fair treatment and expropriation. The case is currently active and pending before the arbitral tribunal. **The case underscores the tension between a state's sovereign right to regulate for environmental protection and its obligations to protect foreign investors**.	
Zeph v. Australia (II) - 2023[10]	ASEAN-Australia-New Zealand Free Trade Agreement	Coal -Mining	Zeph Investments Pte. Ltd., through its Australian subsidiary Waratah Coal Pty Ltd, proposed the Galilee Coal Mine in Queensland, a major coal mining project aimed at extracting thermal coal. While the exact legal arguments are not publicly detailed, the dispute followed a November 2022 recommendation by the Queensland Land Court that the Queensland authorities refuse to grant the necessary mining lease and environmental authority, citing evidence of climate change impacts and human rights concerns. The Queensland Department of Environment and Science subsequently followed this recommendation, denying the permits. Following this refusal, the arbitration was initiated. The initiation of this arbitration demonstrates that **even decisions based on human rights and climate change are not a shield from ISDS,**	Pending, Claimed: AUD 41.3 billion

[10] Investment Dispute Settlement Navigator: https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/1301/zeph-v-australia-ii-; italaw: https://www.italaw.com/cases/10980; Kluwer Arbotration Blog: https://arbitrationblog.kluwerarbitration.com/2023/08/24/zeph-investments-v-australia-the-latest-in-investor-state-climate-change-related-claims/

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			included when they are based on well-justified rulings by a domestic court.	