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

Annex IV – Relevant legal practices

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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Annex IV – Relevant legal practices

As a complement to the report 'The imperative of defossilizing our economies' (A/HRC/59/42), this document provides an illustrative overview of relevant legal initiatives at the national and sub-national levels that can be related to some of the recommendations made in the report. This is not meant to be a comprehensive global overview, but rather provide an indication of relevant areas of national and sub-national legislative developments, and one international law initiative, on which the Rapporteur would invite States, sub-national public authorities, national human rights institutions, researchers, civil society and the UN System to exchange lessons learnt, support impact assessments and develop capacity building initiatives. Such initiatives should also include consideration of policy and institutional approaches at national and sub-national levels, as well as bottom-up, community-led or multi-stakeholder initiatives, as well as other inter-governmental (including mini-lateral[1]) initiatives, which are not covered in this document. Crucially, human rights holders most affected by climate change and by these climate measures should be central in these conversations and assessments.

Fossil Fuel Phase-out laws

There are several examples of national laws that have focused on the phase out of specific fossil fuels. Portugal has banned the use of coal for the production of electricity since 2021; and prohibited the granting of new hydrocarbon prospecting or exploration concessions on its national territory.[2] A Climate Transition Authority, in Queensland, Australia, which has the purpose to end all extraction of fossil fuels in Queensland, has powers to refuse pending licences, and to amend or cancel licenses granted. Such decisions can not be reviewed, unless there is a jurisdictional error. [3]

Costa Rica declared its territory free from the exploration and exploitation of oil and gas, prohibiting any permits or concessions for exploration or exploitation.[4] Ireland's Climate Action and Low Carbon Development Act contains provisions to empower the government to end exploration and extraction of gas, following a previous phase-out for oil.[5] Spain's Law on Climate Change and Energy Transition From prohibits new authorizations for exploration,

[1] E Morgera, "Bilateralism at the Service of Community Interests? Non-judicial Enforcement of Global Public Goods in the Context of Global Environmental Law" (2012) 23 *European Journal of International Law* 743-767.
[2] Lei n.º 98/2021 de 31 de dezembro de 2021, Lei de Bases do Clima.
[3] Queensland, Australia, 2023, https://www.parliament.qld.gov.au/Work-of-the-Assembly/Tabled-Papers/docs/5723t302/5723t302-53e0.pdf.
[4] Ley Para Declarar Costa Rica Como País Libre De Exploración Y Explotación De Petróleo Y Gas Expediente Nº 23.579.
[5] Climate Action and Low Carbon Development Act 2015**;** Petroleum and Other Minerals Development (Prohibition of Onshore Hydraulic Fracturing) Act 2017 (6 July 2017; Ireland; https://www.oireachtas.ie/en/bills/bill/2016/37/?tab=bill-text).

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research permits, or exploitation concessions for hydrocarbons within its national territory, including the territorial sea, exclusive economic zone, and continental shelf; and requires that the application of new tax benefits to fossil fuel energy products must be duly justified based on social or economic interest or the lack of technological alternatives. [6]

Germany's Coal Phase-Out Act and the Structural Transition Act regulate the phase out of coal and support affected regions, including priority investment areas such as infrastructure, digitalization, research, environmental protection, and reforestation. a commitment to phasing out coal-fired power generation by 2038 and banning fossil fuel-run heating systems entirely by 2045.[7] Hard-coal power reduction starts with voluntary plant closures, transitioning to mandatory closures after 2027. An auction system compensates operators for capacity reductions. After 2027, forced shutdowns will occur. New coal-fired plants are banned since 14 August 2020. Workers 58 years old and older losing jobs due to plant closures receive up to five years of compensation until pension eligibility. Early pension reductions can be offset by direct payments to statutory pension insurance**.** The impact on electricity prices will also be reviewed at regular intervals. Depending on the findings, there are plans to authorise steps to relieve the burden on private and commercial electricity consumers.

Offshore exploration and extraction

Costa Rica declared a moratorium all activities that have "the purpose of developing the exploration and exploitation of oil deposits in the continental and marine national territory".[8] Belize adopted a law to ban the exploration and exploitation of petroleum and other petroleum operations in its maritime zones, in order to prevent pollution from installation devices and vessels used in the exploration or exploitation of petroleum resources of the seabed and subsoil of the maritime zone.[9] New Zealand banned new offshore oil and gas activities and restricted onshore permitting, as well as strengthening the requirements on the petroleum sector in relation to decommissioning of petroleum infrastructure and wells at the end of a petroleum permit or licence.[10] New South Wales, in Australia, prohibited the carrying out of seabed petroleum and mineral exploration and recovery and related development.[11]

[6] Ley 7/2021, de 20 de mayo, de cambio climático y transición energética https://www.boe.es/buscar/doc.php?id=BOE-A-2021-8447

[7] Act to Reduce and End Coal-Fired Power Generation (*Gesetz zur Reduzierung und zur Beendigung der Kohleverstromung*), 2020; Law on Structural Transition of Coal Regions (*Strukturstärkungsgesetzes Kohleregionen).* 2020.

8 Decree 36693-MINAET Declara Moratoria Nacional para la explotación petrolera

[9] Act 54/2017

[10] Crown Minerals (Petroleum) Amendment Act 2019

[11] Environmental Planning and Assessment Amendment (Sea Bed Mining and Exploration) Bill 2024 (New South Wales, Australia, 2023; chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.parliament.nsw.gov.au/bill/files/18546/Passed%20by%20both%20Houses.pdf

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Flaring

Norway adopted regulations requiring taxing operators for flaring-related CO2 emissions. 12 In the United States, Colorado banned routine flaring. 13 New Mexico adopted regulations prohibiting venting or flaring of natural gas during drilling, completion or production operations that constitutes waste is prohibited, establishing a general duty for the operator to maximize the recovery of natural gas by minimizing the waste of natural gas through venting and flaring. In addition, during drilling, completion and production operations, the operator is only allowed to vent or flare natural gas if authorized; and is required in all circumstances, to flare rather than vent natural gas except when flaring is technically infeasible or would pose a risk to safe operations or personnel safety, and venting is a safer alternative than flaring.[14]

Fracking

Ireland prohibited of the exploration and extraction of petroleum from shale rock, tight sands and coal seams onshore and within its internal waters.[15] Uruguay prohibited fracking for the exploitation of unconventional hydrocarbons for a period of four years.[16] France banned the use of hydraulic fracturing for the exploration and exploitation of shale gas and oil.[17]

'Superfund laws'

There are examples of legislative instruments to recover the costs associated with climate change impacts from fossil fuel companies, with a view to shifting the financial burden from taxpayers to major emitters by holding them financially liable for their historical greenhouse gas emissions. In the US, it is the case of the Climate Change Superfund Acts in the States of New York[18] and Vermont.[19] In the Philippines, it is the case of the Climate Accountability (CLIMA) Act.[20] While these legislative acts take slightly different approaches, they enact standards of strict liability for climate-related harm on fossil fuel companies on the basis of their fossil fuel extraction and refinement during a specific time period. The Philippines CLIMA Act also places a fine equal to 15 percent of a business's gross income reported in its

[12] Act n°72 relating to tax on discharge of CO2 in the petroleum activities on the continental shelf (as amended in 2015).
[13] (Colorado) Senate Bill 19-181
[14] https://www.emnrd.nm.gov/wp-content/uploads/sites/6/OCDMethaneRuleReleaseMarch252021.pdf.
[15] Petroleum and Other Minerals Development (Prohibition of Onshore Hydraulic Fracturing) Bill 2016.
[16] Law 19.585 prohibiting fracking and creating the National Commission for Scientific and Technical Evaluation (2018).
[17] Law no. 2011-835 aimed at prohibiting the exploration and exploitation of liquid or gaseous hydrocarbon mines by hydraulic fracturing; Article L. 111-13 of the Mining Code.
[18] S. 2129B (NY 2024), https://www.nysenate.gov/legislation/bills/2023/S2129/amendment/B.
[19] S. 259 (VT 2023), https://legislature.vermont.gov/Documents/2024/Docs/ACTS/ACT122/ACT122%20As%20Enacted.pdf.
[20] An Act to Institute Policies and Systems to Address Climate Change, Establishing the Necessary Institutional Mechanisms for the Protection of Most Vulnerable Communities from Loss and Damage in the Country, Providing for Corporate and State Accountabilities and Reparations for Violation Thereof, and Other Purposes, H.B. 9609 (Philippines 2023), https://docs.congress.hrep.online/legisdocs/basic 19/HB09609.pdf.

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latest regulatory disclosure for any act of greenwashing, climate denialism, or Strategic Lawsuit Against Public Participation (SLAPP) suits and imposes penalties on businesses that breach their determined threshold for acceptable emissions. These laws also establish different systems and modalities to allocate the funds to projects or claimants to adapt to climate change and/or remediate climate harm. There are possibilities to set specific priorities, for instance for human rights holders most affected and/or in situations of high vulnerability, and/or for specific approaches such as ecosystem restoration.

Taxes

Several countries have placed a tax on fossil fuels.[21] The carbon tax in Colombia establishes a fee that is based on the carbon content of certain fossil fuels, seeking to reduce their consumption through substitution or technological changes in productive activities. The resources collected are to be allocated, for the most part, to climate measures, such as reducing deforestation, ecosystem conservation and adaptation.[22] The European Union has introduced a temporary excess profit tax, or "solidarity contribution", on the profits of fossil fuel industry.[23]

Fossil Fuel Divestment

Ireland prohibited and restricted the investments of assets of the Ireland Strategic Investment Fund in fossil fuel undertakings. The National Treasury Management Agency is mandated to endeavour to ensure that the assets of the Fund are not directly invested in a fossil fuel undertaking and divest the assets of the Fund from such investment as soon as practicable. The exceptions to this prohibition are when an investment in a fossil fuel undertaking is intended to be consistent with the achievement of the national transition objective, the implementation of the State's climate change obligations and the policy of the Government relating to climate change and climate change objectives.[24]

Fossil Fuel Trade

In Australia, Queensland's Climate Transition Act established a fossil fuel exports reduction target so that the amount of coal, gas or oil extracted or produced from Queensland for export

[21] Eg Mexico General Law on Climate Change (2012, last amended 2023); France, Law (Loi de transition énergétique pour la croissance verte) 2015-992.
[22] Laws No. 1819 of 2016 and No. 2277 of 2022; see A/HRC/58/51.
[23] Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices; see https://taxation-customs.ec.europa.eu/news/commission-report-emergency-measure-fossil-fuels-sector-support-european-consumers-and-businesses-2023-11-30_en and A/HRC/58/51.
[24] Fossil Fuel Divestment Act 2018 (17 December 2018 https://www.irishstatutebook.ie/eli/2018/act/29/enacted/en/print.html.

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is reduced until no coal, gas or oil is extracted or produced from Queensland for export by 31 December 2030.[25]

Fossil Fuel Subsidies

The Agreement on Climate Change, Trade and Sustainability is the first binding international agreement to include a specific prohibition on fossil fuel subsidies, though none of its parties (Costa Rica, Iceland, New Zealand, and Switzerland) are significant fossil fuel producers.[26] Instead of focusing on the trade-distorting effect of a subsidy, the focus is on subsidies promoting the production or consumption of fossil fuels.[27] Financial support, as well as state price and income support for fossil fuel production along the entire value chain, as well as cost reductions for fossil fuel consumption, are relevant in this regard. State financial support also includes foregone revenue for the government, such as benefits related to energy or climate taxes.

Chapter four of the ACCTS on fossil fuel subsidies draws on the definition of a subsidy set out under WTO law but refined to deal with the particularities of the fossil fuel context. The definition of a subsidy provided by the ACCTS, and discussed further below, 'recognizes tax exemptions for exploration and extraction as subsidies... (but the) ACCTS does not apply to all tax and royalty exemptions for oil and gas production… (and research) suggests as much as 67% of oil and gas production subsidies were tax and royalty write-offs.[28]'

The ACCTS recognises that consumption subsidies may constitute a benefit in the sense of being a, 'financial contribution[29], or income or price support, (that) reduces the cost of fossil fuel use ("consumption subsidy").' [30] Production subsidies, provided there is a financial contribution, or income or price support, and a benefit is conferred are also covered by the ACCTS where, inter alia, such subsidies target activities such as, 'exploration, extraction, refining, processing, manufacturing, storage, transport, pipeline transportation, distribution, trade, or marketing of fossil fuels and it reduces the costs of such activities or increases

[25] Queensland, Australia, 2023, https://www.parliament.qld.gov.au/Work-of-the-Assembly/Tabled-Papers/docs/5723t302/5723t302-53e0.pdf.
[26] Submission by Harro van Asselt and Nick Scott.
[27] Article 4.3.2
[28] https://www.iisd.org/articles/deep-dive/agreement-climate-change-trade-sustainability-accts.
[29] This can include revenue otherwise foregone; 'government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits)'; Article 4.3.2.ii. Note footnote 11; 'In accordance with the provisions of Article XVI of GATT 1994 (Note to Article XVI) and the provisions of Annexes I through III of the SCM Agreement, the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a fossil fuel subsidy.'
[30] Article 4.3.2.b.iii. In full ; 'For a Party that uses the SCRM mechanism provided for under Article 4.4 (SCRM Mechanism), a benefit is deemed to be conferred to the extent that, as a consequence of such financial contribution, or income or price support, the SCRM falls below that Party's commitment according to Annex X (Schedules of Commitments – Fossil Fuel Subsidies).'

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revenues retained by actors engaged therein.'[31] The ACCTS also recognises that a benefit may be conferred where there is a 'financial contribution, or income or price support, primarily targeting the generation or manufacturing of the items listed in Annex VIII (List of energy products considered as fossil fuels), and it reduces the cost of their generation or manufacturing or increases revenues retained by actors engaged therein, provided that those items are generated or manufactured predominantly through the combustion of fossil fuels resulting in emissions exceeding the limits specified in Annex VIII ("subsidy to generation or manufacturing of energy products considered as fossil fuels").'[32]

With regard to consumption subsidies, parties have the option of invoking the Standardized Carbon Rate Measurement (SCRM) mechanism by agreeing on an SCRM commitment in the form of a carbon price i.e. 'the net total price applying to CO_2 emissions from fossil fuel use as a result of policy instruments that increase or decrease the CO_2 price, including carbon and energy taxes.'[33] Where a Party agrees to such a SCRM commitment, a financial contribution and price and income support for fossil energy consumption will only constitute a subsidy to the extent that they result in a reduction of that commitment.[34] SCRM Parties may choose – but do not have – to use the SCRM Mechanism[35] and make commitments in respect of a SCRM. Any commitments made have to be 'consistent with the climate targets of that Party, including under the Paris Agreement.'[36]

Parties are not permitted to introduce any new fossil fuel subsidies after the entry into force of the Agreement except where the yearly aggregate subsidies amount is below a designated de minimis level and the subsidies are not of a type otherwise prohibited.[37] For subsidies that do not fall under the de minimis level, Parties are required to either schedule or eliminate them.[38] In respect of Scheduled subsidies,[39] Parties are directed to, 'not introduce any policy changes that increase an existing scheduled fossil fuel subsidy or enlarge its eligible group of recipients.'[40] Parties are required to keep their Scheduled subsidies under review to assess their possible elimination.[41] A list of prohibited subsidies is also set out in Annex IX, in respect of which Parties are not allowed to grant new or maintain existing subsidies.[42] This includes

[31] Article 4.3.2.b.i.
[32] Article 4.3.2.b.iii
[33] Article 4.3.3.
[34] Submission by Switzerland.
[35] Article 4.4.
[36] Article 4.4.3.b
[37] Article 4.5.2. There are however exceptions for 'production subsidies for oil classified under HS 2707 and 2709-2710 and for gas classified under HS 2711 as set out in Annex VII (List of Goods considered as Fossil Fuels), when such subsidies are granted in the form of tax revenue foregone falling under subparagraph 2(a)(1)(ii) of Article 4.3 (Definitions)'; see Article 4.5.5. which also notes; ', the obligations provided for in Article 4.7 (General Cooperation), Article 4.9 (Transparency), and Article 4.10 (Review) are (however) applicable.
[38] Article 4.5.3.
[39] Scheduled subsidies are listed in Annex X to the Agreement.
[40] Article 4.5.3.
[41] Article 4.5.4
[42] Article 4.5.1.

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subsidies on coal. A small number of exceptions are permitted provided that they 'contribute significantly to the fulfilment of at least one of (a set of enumerated) policy goals.'[43]

Human rights are not mentioned explicitly in the operative text of the ACCTS.[44] The list of specific exemptions from FFS commitments set out within the Agreement's text gives to regard to 'low-income, remote or vulnerable communities or population groups'[45] where particular conditions prevail.

[43] Article 4.6.
[44] The only reference is preambular; 'acknowledging the importance of good corporate governance and responsible business conduct for sustainable development, and affirming their aim to encourage enterprises to observe internationally recognised guidelines and principles in this respect, such as the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, the OECD Principles of Corporate Governance, the United Nations Global Compact and the United Nations Guiding Principles on Business and Human Rights.'
[45] Article 4.6.2.c.