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 – Considerations for Treaty Bodies

To the report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Elisa Morgera, titled ‘A human rights-based approach to the energy transition (A/80/188)

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Annex IV – Considerations for Treaty Bodies

1. Introduction

Human rights treaty bodies play a critical and distinct role in regularly evaluating whether State policies, actions and omissions, in relation to the triple planetary crises, satisfy human rights obligations and standards. As already underlined in Annex V to the 2025 report to the Human Rights Council on the Imperative of Defossilizing our Economies (A/HRC/59/42), treaty bodies can offer authoritative interpretations of how States' human rights obligations apply in the context of the energy transition. Treaty bodies' State reporting process enables a tailored analysis of each country's particular context, challenges, and needs, which makes it possible to issue targeted, case-specific recommendations.

In accordance with the resolution on the mandate of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, which welcomed the close coordination established between the Rapporteur and treaty bodies, and encouraged the Rapporteur to continue efforts in that regard (HRC Resolution 57/31, para 7), this annex relates the findings and recommendations of the Special Rapporteur's report 'A human rights-based approach to the energy transition' (A/80/188), which focuses on renewables and reliance on energy transition minerals, to the work of treaty bodies, as the transition has far-reaching effects on the human rights that fall within treaty bodies' mandate.

The present document distils general and specific considerations and questions that can support treaty bodies in deploying their unique roles and expertise in ensuring the protection of human rights in the context of the energy transition.

2. General considerations arising from the Special Rapporteur's report

Access to energy is essential to protect human rights, notably civil and political rights, the rights to life, health and an adequate standard of living. It is also essential for the prevention of discrimination against women and girls, who are often primarily responsible for household energy use and fuel collection, as the Committee on the Elimination of Discrimination against Women already underscored in its General Recommendation No. 34 (2016) on the rights of rural women. Access to renewables has also been linked to the protection of children's rights, including education, by the Committee on the Rights of the Child (CRC).[1] In its General Comment No. 26 (2023), the CRC recognised children's right to a clean, healthy, and sustainable environment as entailing State obligations to ensure an equitable and fair transition and investment in renewable energy.[2]

[1] CRC/C/MHL/CO/3-4.
[2] para 65(d).

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The Committee on Economic, Social and Cultural Rights (CESCR) already underscored in 2017 State obligations to ensure access to energy where this is still lacking or insufficient to protect human rights, in its General comment No. 24 on State obligations in the context of business activities. In its most recent General comment No. 27 on the economic, social and cultural rights and the environmental dimension of sustainable development, CESCR stressed the importance of renewable energy and a just and equitable transition away from fossil fuels, for climate change mitigation[3] and for the protection of the rights to adequate standard of living, in relation to safe cooking, heating, cooling, and lighting. CESCR equally underscored that the development of renewables should not violate the right to adequate housing or result in the reinforcement of existing inequalities – energy poverty, homelessness – especially against marginalised individuals, such as residents of informal settlements.[4] The Committee also underscored the obligation for States to adopt preventive and protective measures, including addressing physical and mental health impacts on workers in renewable energy.[5] Activities, such as large-scale mining and fossil fuel extraction have significant impacts on the enjoyment of economic, social and cultural rights. States should establish legislative and administrative frameworks to monitor corporate activities, ensure accountability and remedy to victims.[6]

Against this background, the following considerations arise from the Special Rapporteur's report:

1) **A just transition to a renewables-based economy is essential for the protection and full realization of human rights.** Reliance on renewable energy enables the phasing out of fossil fuels, contributing to the most effective climate change mitigation action and preventing further widespread and severe impacts on human rights (A/HRC/59/42). Transitioning towards renewables-based economies can also prevent toxic pollution, protect biodiversity and save $269 billion in health costs linked to air pollution.
2) **Violations of human rights in renewables development and the "rush" to energy transition minerals are foreseeable and preventable, based on international human rights standards that have already been clarified in relation to extractive activities.** The violations of the rights of Indigenous Peoples, persons of African descent and peasants, as well as human rights to food, water and health that have been documented in the context of renewables replicate unsustainable patterns and discriminatory practices that are well known in other extractive sectors.
3) **Although a rapid energy transition is needed, the transition should not be unchecked**. Disrespect for human rights is facilitated when renewables are exempted from, or subjected to lighter, planning requirements – which is becoming a global trend. Prior assessments, planning and consultations are essential to draw on the best available science, including Indigenous science and traditional knowledge, to select measures to prevent and minimize negative impacts on the environment and human rights.

[3] E/C.12/GC/27, para 17.
[4] Ibid, para 65.
[5] Ibid, para 51.
[6] Ibid, para 12.

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4) **The energy transition should go beyond technological substitution, and rather address underlying inequities that are the root causes of the interlinked planetary crises we are facing.** The energy transition should be pursued without replicating the same economic models and assumptions that underpin the fossil fuel-based economy and its role in bringing about planetary crises and inter-generational human rights harm. Transition planning should identify and address links between renewables and continued dependency on fossil fuels, including reliance on plastics for renewable energy equipment and electric vehicles, to prevent further human rights harm. The transition should prioritize equitable access to energy and energy efficiency, as well as the prevention of overproduction and overconsumption.
5) **The energy transition should support a transformation of development models at the nexus of climate, nature, food, water and health:** Renewables should be co-developed with human rights holders that are most affected by climate change and by the negative impacts of the energy transition and energy poverty, as part of new economic models that are aligned with human and planetary health. The 2024 Global Assessments of the Intergovernmental Panel on Biodiversity and Ecosystem Services on Transformative Change and on the Nexus[7] distil the best available science to support the energy transformation according to a human rights-based and ecosystem-based approach.
6) **Fair and equitable benefit-sharing from the energy transition entails supporting co-development of energy solutions with affected human right holders**. As a requirement of the human right to science, Indigenous Peoples' human rights, and peasants' human rights, States should move away from a mere logic of exchange and 'damage control' and rather shifting to collaboratively identifying and understanding also opportunities for positive impacts, locally and globally, of proposed renewable energy development, according to Indigenous peoples', communities' and women's worldviews.

3. Considerations specific to renewable energy development

Several treaty bodies have already addressed negative impacts on human rights of renewables development. CESCR identified breaches of Indigenous Peoples' human rights in the context of hydroelectric mega-projects, including due to air pollution, biodiversity loss and deforestation.[8] These breaches have also occurred because of lack of environmental impact studies and consultations to achieve free prior informed consent (FPIC), and lack of information on compliance with agreements with affected Indigenous Peoples.[9] CESCR also expressed concern over lack of adequate compensation for displacement, delays in the validation of local development and benefit-sharing agreements, lack of independent studies on the impact of hydroelectric projects, and regular inspection of sites.[10]

[7] https://www.ipbes.net/transformative-change-assessment and https://www.ipbes.net/nexus-assessment.
[8] E/C.12/CHL/CO/5, paras 10-13; E/C.12/LAO/CO/1, para 12.
[9] E/C.12/PAN/CO/3, para 10.
[10] E/C.12/GIN/CO/1, para 16.

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CESCR also raised concern over Indigenous People affected by large-scale wind power projects on their lands, without participation, consideration or mitigation of impacts on cultural rights and standard of living, while companies escape accountability for any harm caused due to limitations in the legal framework.[11]

The Committee on Civil and Political Rights (CCPR) noted that the construction of hydropower dams resulted in illegal land grabbing, displacement of rural communities, discriminatory practices in relation to resettlement and compensation,[12] and violations of FPIC with negative effects on Indigenous lands and ways of life.[13] CCPR highlighted the use of excessive force against protestors in the context of hydroelectric projects, recommending independent and impartial investigations, reparation for victims, and compliance with international standards on the use of force by law enforcement officials.[14]

CEDAW regretted the underrepresentation of women in employment in renewable energy and recommended temporary special measures to promote gender equality in the sector. CEDAW also recommended efforts to obtain FPIC of Indigenous women before approving any project affecting their lands and resources, recognising their role as custodians of Indigenous culture and protecting their spiritual connection with water and land.[15] CEDAW also noted patriarchal attitudes that limit access to renewable energy and climate-smart technologies for women. [16]

Questions

- **What measures are in place to prevent discrimination in access to energy and prioritize the needs of the most vulnerable?**
- **What measures are in place to reduce energy demand linked to over-production and over-consumption?**
- **Are policies, laws, plans and decisions on renewables based on a full life-cycle assessment of environmental and human rights impacts?**
- **Are domestic legal frameworks on climate change, energy, nature, water, mining and human rights coherent in supporting a human rights-based and ecosystem-based just energy transition?**
- **Are hydropower and bioenergy development considered with the highest level of precaution and only after extensive consideration of alternatives?**
- **Are biodiversity protection and restoration integrated into renewables development, including strategic and project-level assessments, planning and development, site selection, project design, operational and monitoring practices?**

[11] E/C.12/SWE/CO/7, para 10-11 and 18-19.
[12] CCPR/C/141/2/Add.4.
[13] CCPR/C/ETH/CO/2, para 47-48; CCPR/C/PAN/CO/4, para 39.
[14] CCPR/C/PAN/CO/4, para 23-24
[15] CEDAW/C/NZL/CO/9, para 16-17 and 43.
[16] CEDAW/C/TCD/CO/5, para 41, 23(a) and 42(b).

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- **Are fair and equitable benefit-sharing legislation, negotiations, monitoring and community-company agreements supporting communities' own vision of sustainable development?**
- **Are decentralized energy projects, particularly when Indigenous-, community- and women-led, and community (co)ownership supported in the development of renewables, through policy, cost reduction and technology support?**
- **Are there measures requiring the funded collection, recycling, repurposing, and responsibly disposing of renewable energy equipment and infrastructure?**

4. Considerations specific to energy transition minerals

Treaty bodies have elaborated an extensive body of recommendations on the human rights impacts of mining in general in relation to consultations with Indigenous Peoples, regulation of private companies, access to information, prevention of pollution, impact assessments, protection of workers' human rights, benefit-sharing and compensation.[17] More recently, they have started to address energy transition minerals.

CESCR expressed concern over transition mineral extraction in Indigenous territories, due to inadequate consultation in the context of unresolved land disputes and legislative reforms that could undermine Indigenous coastal and livelihood rights, stressing the importance of inclusive energy transition planning that consider impacts on cultural rights.[18] CESCR recommended transparent and enforceable frameworks requiring businesses to monitor and report on their conduct.[19]

CEDAW expressed concern over lithium mining activities that disproportionately affect the rights to access to water of rural and Indigenous women, while provoking higher risks of violence and criminalisation for women environmental human rights defenders.[20] CEDAW also noted links between illegal mining of transition and armed conflicts, lack of benefit-sharing, and exclusion of women from mining-related decision making.[21]

CRC expressed concern over child labour in transition minerals mines, lack of applicable legal, regulatory or compliance framework, lack of environmental impact assessment, and lack of clean-up of contaminated areas that are hazardous to children.[22]

Questions

- **Are decisions on mineral extraction based on evidence (including demand and demand projections) that demonstrate the need for the energy transition, taking**

[17] E/C.12/PER/CO/5, E/C.12/MNG/CO/5, E/C.12/MRT/CO/2, CERD/C/BOL/CO/21-24.
[18] E/C.12/CHL/CO/5, para 12-15; E/C.12/SWE/CO/7, para 10.
[19] E/C.12/SWE/CO/7, para 11 and 19.
[20] CEDAW/C/CHL/CO/8, 53-54
[21] CEDAW/C/COD/EP/CO/1, para 5, 10, 15-16.
[22] CRC/C/ZMB/CO/5-7, para 14-15.

into account best available science, including Indigenous science and traditional knowledge, and technological progress in renewables development?

- **Are policies, laws, plans and decisions on energy transition minerals based on a full life-cycle assessment of environmental and human rights impacts, in the context of increasing climate change?**
- **Are there domestic measures in place to ensure efficiency, sustainability and responsibility into the life cycle of energy transition minerals, including waste management, decommissioning and safe recovery of minerals from end-of-life products?**
- **Are fair and equitable benefit-sharing legislation, negotiations, monitoring and community-company agreements supporting communities' own vision of sustainable development?**
- **Are Indigenous and community leadership and (co)ownership required and supported, as part of the authorization, FPIC and consultation processes, when minerals are located in Indigenous territories and traditionally occupied territories?**

5. Considerations specific to international cooperation

In its most recent General comment No. 27 on the economic, social and cultural rights and the environmental dimension of sustainable development, CESCR recognised the current global economy reproduces historical inequalities rooted in colonialism, and that developing states bear the burdens of extraction and overconsumption, while developed states gain disproportionate economic benefits.[23] The Committee thus clarified the obligations of developed states to lead mitigation measures by providing financial and technical aid to support climate action in developing states.[24] These considerations are very relevant to the context of the energy transition. For instance, Africa possesses more than 60% of the planet's solar energy potential, but only receives 2% of worldwide renewables funding. In addition, 90% of patents for renewable technologies are held by companies based in wealthy nations, resulting in high costs for companies located in developing countries.

The Special Rapporteur has thus recommended prioritizing, as part of the duty of international cooperation, collaborative initiatives that support mutual learning, skills sharing, local innovation, and culturally relevant solutions, while preventing lock-in and dependency. This is an application of fair and equitable benefit-sharing based on the human right to science, which can support the contextual protection and full realization of human rights in the context of the energy transition in developing countries, in accordance with the principle of common but differentiated responsibilities and capabilities and the human right to remedy to climate harm.

<u>Questions:</u> Are developed States:

[23] Ibid, para 8
[24] E/C.12/GC/27, para 8 and 17.

- **providing grant-based finance and debt relief to support developing countries' development and scaling up of renewables and circular economy solutions?**
- **supporting technology co-development, particularly in wind and solar power, with developed States to respond to local needs and share ownership of intellectual property?**
- **supporting enhancement of regulatory frameworks and institutional capacity in developing countries to carry out life-cycle assessments, inclusive planning and monitoring of renewables and transition minerals in accordance with a human rights and ecosystem-based approach?**
- **Providing direct access to finance and support for Indigenous-led, community-led and women-led renewables and transition minerals projects?**
- **creating more fiscal space to support domestic value addition and economic diversification in developing countries?**
- **creating platforms for dialogue to carry out joint assessments of Just Energy Transition partnerships and other forms of cooperation, and identify emerging and missed opportunities for transformative approaches?**
- **Providing funding for Global North/South fair research partnerships and Indigenous-led, community-led, women-led research on human rights-based pathways for the energy transition and circular economies?**

6. Considerations specific to business responsibility to respect human rights

Several treaty bodies have addressed business responsibility to respect human rights in the context of development projects and mining generally.[25] In the context of renewables and energy transition minerals, there is a growing evidence base of private developers without adequate policies and practices on the protection of the human rights of Indigenous Peoples, peasants and small-scale fishers, and environmental human rights defenders.

With specific regard to renewables development and transition minerals in or near Indigenous territories, common business practices across extractive sectors are deeply problematic in interpreting benefit-sharing as a charitable award or as a favour granted to secure social support for a project, with a view to imposing certain views of development upon Indigenous Peoples that could endanger their cultural or physical survival. It is thus necessary to collaboratively identify benefit-sharing opportunities according to Indigenous Peoples' worldviews in the early stages of planning (A/HRC/21/47) and incorporate agreed terms in contracts with reference to relevant international human rights standards and Indigenous Peoples' customary rules as principles of interpretation of the fairness and equity in benefit-sharing.
participate in project decision-making *and* share in their profits and other benefits (A/HRC/66/288; A/HRC/21/47; A/HRC/24/41).

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Questions: Do companies involved in renewables development, transition minerals and related supply and value chains have robust human rights due diligence process, with a view to:

- **assessing land tenure and estimate the direct and indirect area of influence of each project at the nexus of climate, nature, water, food and health?**
- **providing funding for independent legal and technical experts to support Indigenous Peoples, Afro-descendants, peasants and women in prior assessments, consultations and benefit-sharing negotiations?**
- **co-identifying benefit-sharing opportunities in the early stages of assessments and planning, according to community worldviews?**
- **designing systems and products to enable maximum resource and energy efficiency, circularity and extended producer responsibility?**
- **ensuring public access to information on contributions to circularity, origin of minerals, environmental and human rights impact studies, among others?**
- **ensuring meaningful job creation and integration of local experts in management and technological co-development?**
- **supporting participatory long-term monitoring throughout the life cycle, including closure planning and environmental restoration?**
- **developing, prior to commencing construction, fully-costed and independently verifiable waste management, remediation, and decommissioning plans?**
- **establishing effective and accessible operational-level grievance mechanisms for workers and communities, in local languages and with powers to provide remedies?**
- **enforcing zero-tolerance policies against retaliation against environmental human rights defenders?**