SPECIAL PROCEDURES
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HUMAN RIGHTS COUNCIL

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

Annex V – 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 'Fossil Fuels' (A/HRC/59/42)

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Annex V – Considerations for Treaty Bodies

Additional Materials V – Considerations for Treaty Bodies 1
Introduction 2
Considerations arising from the Special Rapporteur's report 3
Fossil fuel production, trade, and use 5
Regulation of private actors 10
Procedural rights and defenders 13
Remedy for fossil fuel-related harm 16
Future generations 17
Multilateral negotiations and reforms 18

Introduction

Human rights treaty bodies (HRTBs) 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. With regard to fossil fuels, they can offer authoritative interpretations of how States' human rights obligations apply in the context of the imperative to defossilize the economy. 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 'The Imperative of Defossilizing the Economy' to the work of HRTBs, as the fossil fuel industry had far-reaching effects on the human rights that fall within treaty bodies' mandate.

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Human rights treaty bodies have already shown growing concern over fossil fuel production and its consequences for human rights, particularly in relation to its role in driving climate change and environmental harm.[1] In 2019, a joint statement by five treaty bodies highlighted that "[i]n relation to efforts to reduce emissions, States parties should effectively contribute to phasing out fossil fuels, promoting renewable energy and addressing emissions from the land sector, including by combating deforestation".[2] The General Recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change by the Committee on the Elimination against Women (CEDAW), and the General Comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change by the Committee on the Rights of the Child (CRC) clearly make the case that fossil fuel-related activities cause human rights harm[3] and that States have an obligation to limit greenhouse gas emissions and fossil fuel use.[4] In the context of the State review process, a growing number of recommendations have looked at fossil fuels from different angles, along with other climate-related dimensions.[5]

The present document places the findings and recommendations of the Rapporteur in the context of such work by treaty bodies on fossil fuels, and distils specific considerations and questions that can support HRTBs in deploying their unique roles and expertise in ensuring the protection of human rights in the context of the defossilization of the economy.

Considerations arising from the Special Rapporteur's report

- **Addressing specifically fossil fuels whenever addressing climate change-related obligations.** Systematically consider State obligations with respect to fossil fuels, as the overwhelming cause of climate change and resultant human rights harms, and contributors to numerous other infringements on or deprivations of human rights. Under human rights law, States have obligations to refrain from and prevent conduct that foreseeably infringes on human rights, and provide remedy and reparation for human rights violations, including through access to justice and remedy from private actors. Because fossil fuel production

[1] See https://www.ciel.org/wp-content/uploads/2024/08/HRTB-Synthesis-Note-2024_CIEL_GIESCR.pdf.
[2] See https://www.ohchr.org/en/statements-and-speeches/2019/09/five-un-human-rights-treaty-bodies-issue-joint-statement-human.
[3] See CRC/C/GC/26, para 79.
[4] See CEDAW/C/GC/37, para 14, 43 and 46.
[5] This and other contextualizations of the recommendations within the practice of Treaty Bodies draw on: https://www.ciel.org/wp-content/uploads/2024/08/HRTB-Synthesis-Note-2024_CIEL_GIESCR.pdf, https://www.ciel.org/wp-content/uploads/2023/01/HRTB-2022_23Jan23.pdf and https://www.ciel.org/wp-content/uploads/2020/03/States-Human-Rights-Obligations-in-the-Context-of-Climate-Change_2020-Update.pdf.

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and use is the primary conduct driving climate change, States have obligations with regard to that conduct - not just its effects on the atmosphere – and its consequences for human rights and the environment.

- **Clarifying State duties to regulate and hold the fossil fuel industry accountable for multiple, inter-linked forms of climate harm.** The industry's climate-destructive conduct encompasses not only greenhouse emissions generation, but also biodiversity loss and additional harm to human rights that further undermine nature's capacity to regulate the climate and human resilience in the context of climate change. In addition, the fossil fuel industry is responsible for climate deception and obstruction of climate action, which had undermined efforts by public authorities and civil society in protecting human rights from climate change, for at least six decades.
- **Considering the full range of human right impacts of fossil fuels beyond climate change:** Ensure comprehensive consideration that fossil fuels adversely affect human rights in myriad ways and across generations, including through their contributions to toxic pollution (including global plastic pollution), biodiversity loss, instability, conflict and violence, among other adverse harms.
- **Considering fossil fuel uses beyond energy:** Consider the impacts of fossil fuels and corresponding State obligations across the entire fossil fuel-based economy, including dependence on products derived from and processes reliant on fossil fuels, such as petrochemicals, agrochemicals, plastics in food systems, health sector, transport, etc.
- **Making clear that the human rights duty to transition away from fossil fuels requires attention to the critical questions of *how* and *for whom***. Upholding rights in the transition means not just investing more in renewables, but ensuring those renewables displace fossil fuels or distribute energy access to those who lack it. And upholding rights in the transition does not mean replacing one form of extraction with another, to feed unsustainable production and consumption that are causing the planetary crises. It requires careful and human rights-based consideration of where resources are going, for what use and whose benefit, as well as at what cost for whom.
- **Focusing on concrete measures for effective remedy of fossil fueled harm, including climate harm:** Systematically and specifically address which remedies are necessary for harm caused by fossil fuel through the life cycle, as well as preconditions for effective and meaningful remedies for those affected based on their human rights of access to information and access to justice, when considering State obligations to regulate and hold fossil fuel companies accountable for prevention and redress of climate-related and their human rights harm.
- **Defossilizing knowledge and examining the rights impacts of deception and disinformation:** examine how industry deception, misinformation and misrepresentation

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in relation to fossil fuels, climate change, and climate solutions undermines public participation, the rights to information, education, and science, and effective rights-based action to tackle the climate crisis.

- **Making clear that legal duties and responsibilities for fossil fueled climate harm extend across borders**, given the foreseeable impacts of fossil fuel production and use, the growing evidence of compounded human rights impacts in the countries that are least responsible for climate change and most affected by it (eg A/HRC/59/42/Add.1), and advances in attribution science.[6]
- **Engaging with the full science base to clarify objective standards of due diligence.** Referring to the best available science, including climate science, biodiversity science,[7] and health science, clarifies the objective nature of the standard for assessing the adequacy of measures to protect human rights in their inter-connectedness and their inter-dependence at the nexus of climate, nature, water, food and health.

Fossil fuel production, trade, and use

Treaty bodies have made a growing number of recommendations with regard to the impacts of fossil fuel activities. Some looked at the impacts on the local populations,[8] while others focused on the impacts on the broader climate system.[9] In its General Comment No. 26, the CRC put particular focus on the child rights impact assessments and fossil fuels, noting that States that have "substantial fossil fuel industries should assess the social and economic impact on children".[10] Additionally, the Committee identified the "extraction and burning of fossil fuels" as a source of significant environmental damage that contributes to child rights abuses.[11] Finally–and most poignantly–the Committee stated that States should take into consideration that "delaying a rapid

[6] Callahan & Mankin, 'Carbon Majors and the Scientific Case for Climate Liability' *Nature* 640, 893-901 (2025).
[7] Note in particular the relevance of the 2024 assessments of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services: *Transformative Change Assessment* and *Thematic assessment report on the interlinkages among biodiversity, water, food and health.*
[8] See, for instance, CERD's COB to Senegal: "The Committee is concerned about the negative impact that the exploitation of natural resources, particularly phosphates, gas, gold and oil, has on the communities living in these areas. The environmental impact of these operations, which is linked to climate change, has harmful consequences for the health, livelihoods and traditional lifestyles of the members of the communities affected, CERD/C/SEN/CO/19-23
[9] See, for instance, CRC's COB to Azerbaijan (CRC/C/AZE/CO/5-6), or the CEDAW's COB to Australia (CEDAW/C/AUS/CO/8)
[10] CRC/C/GC/26, para. 76.
[11] *Ibid,* para. 79.

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phase out of fossil fuels will result in higher cumulative emissions and thereby greater foreseeable harm to children's rights".[12]

Some Committees referred to the UNFCCC and the Paris Agreement to assess the State parties' compliance with their human rights obligations with regard to climate change and fossil fuels. For instance, the CESCR recommended that Indonesia "intensify its efforts to achieve its nationally determined contributions plan under the Paris Agreement and to reduce its greenhouse gas emissions, in particular by effectively reducing its reliance on coal and promoting alternative and renewable energy sources while upholding human rights obligations"[13]. Some recommendations looked in great detail at the climate policies of the State parties and their actual emission reduction efforts, like the CESCR's COB to Azerbaijan. The Committee highlighted that oil and gas accounted for 90 percent of the State party's export revenues and 98 percent of its own energy needs, and noted "with concern that the climate change mitigation measures taken or planned by the State party are insufficient and that the State party is not on track to meet its nationally determined contributions under the Paris Agreement or its targets for reduction in greenhouse gas emissions (art. 2(1))".[14] The Committee recommended that Azerbaijan "intensify its efforts to achieve its nationally determined contributions under the Paris Agreement and to reduce its greenhouse gas emissions, in particular by promoting alternative and renewable energy sources and respecting its human rights obligations in its natural resource exploitation and export policies".[15] In its COB to China, the CESCR, referring to the State party's Nationally Determined Contributions, recommended increasing taxation of emissions, and making "all efforts to replace fossil fuel in its energy mix, including by increasing renewable energy as an alternative".[16]

Some recommendations looked at domestic Courts' decisions, urging the State party to comply. An example of that is the CCPR's COB to Germany, which took note of the Federal Constitutional Court's ruling in the *Neubauer et al. v. Germany* case,[17] in which the Court had ordered to set clear provisions for reduction targets in order to limit warming to well below 2°C and, if possible, to 1.5°C, and in order not to impose excessive burden upon future generations". The Committee recommended that Germany take "all necessary steps to implement the findings of the Federal Constitutional Court", as well "develop mechanisms to ensure the sustainable use of natural

[12] *Ibid,* para. 98 (d).
[13] E/C.12/IDN/CO/2, para. 51
[14] E/C.12/AZE/CO/4, para. 16.
[15] Ibid, para. 17
[16] E/C.12/CHN/CO/3, para. 25(b)
[17] Ruling of March 2021, in the cases 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, and 1 BvR 288/20. See https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2021/03/rs20210324_1bvr265618en.html

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resources and to adopt a precautionary approach to protect persons, including the most vulnerable, from the negative impacts of climate change and natural disasters". While neither the concluding observation or the ruling focused on fossil fuels specifically, the Committee's approach is particularly effective towards the implementation of courts' ruling, and could be replicated for other relevant decisions or advisory opinions by Courts and Tribunals centred on fossil fuels.

Some recommendations targeted specific types of extractive activities. In its COB to the United Kingdom, the CEDAW looked at hydraulic fracturing (or fracking), an extremely dangerous oil and gas extraction technique. The Committee recommended that the State party "review its policy on fracking and its impact on the rights of women and girls and consider introducing a comprehensive and complete ban on fracking".[18] The same Committee provided detailed recommendations to Norway with regard to its ongoing oil and gas extraction, including specific steps that the State party should take with regard to business actors. The Committee took note that "the State party has further expanded its oil and gas industry, including by granting forty-seven new oil and gas exploration permits in January 2023, including in the Arctic, where the temperatures rise particularly fast, and despite the EU's aim to ban extraction in the Arctic",[19] and recommended that the State party review its climate change and energy policies, "in particular its policy on the extraction and export of oil and gas, as well as the activities of related State-owned companies and private companies, taking into account the disproportionate negative impact on women and girls both within and outside its territory, with a view to radically reducing greenhouse emissions in line with the Paris Agreement".[20]

A few times, treaty bodies referred to the 1.5°C temperature increase limit as a benchmark to assess State parties' emission reduction efforts and compliance with their human rights obligations. For instance, the CESCR expressed concern that Belgium was not "on track to meet its target of reducing greenhouse gas emissions by 15 per cent by 2020 and 35 per cent by 2030, compared to 2005 emissions", and recommended that it intensify its emission reduction efforts "so as to be consistent with the commitment to limit the temperature increase to 1.5°C."[21] The CRC General Comment No. 26 reiterated the importance of the best available science for the establishment of mitigation objectives and measures, and recalled the findings of the Intergovernmental Panel on Climate Change on the imperative of limiting the temperature increase to below 1.5°C above pre-industrial levels.[22]

[18] CEDAW/C/GBR/CO/8, para. 54 (b).
[19] CEDAW/C/NOR/CO/10, para. 48 (b).
[20] Ibid, para. 49.
[21] E/C.12/BEL/CO/5, para. 10
[22] CRC/C/GC/26, para 97

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The CEDAW and the CERD provide important examples of an intersectional approach when it comes to the impacts of fossil fuels. In its COB to the United Kingdom, for instance, the CEDAW expressed concern "that women in rural areas in other territories of the State party are disproportionately affected by the harmful effects of fracking, including exposure to hazardous and toxic chemicals, environmental pollution and the effects of climate change".[23] In its COB to Guyana, the Committee recognized that "the continuing and expanding extraction of oil and gas in the State party and the resulting greenhouse gas emissions could undermine its obligations to women's empowerment and gender equality, as the resulting environmental degradation and potential natural disasters have a disproportionate impact on women, in particular those in situations of poverty".[24]

A few times, Treaty Bodies looked at the extraterritorial impacts of State parties' climate and energy policies, and the corresponding obligations to review such policies. The CRC's decision on the *Sacchi et al. v. Argentina et al.* communication provides important interpretive guidance.[25] When assessing whether jurisdiction could be established under Article 5 of the Optional Protocol to the Convention on the Rights of the Child, the Committee determined that the petitioners had plausibly demonstrated that harm to their rights, stemming from emissions within the States' territories, was a foreseeable outcome, which was a ground for the recognition of victim status. The Committee also recognized that a State has effective control over emissions when it can regulate the source of those emissions,[26] suggesting that a State that fails to adequately regulate the production or use of fossil fuels may bear legal responsibility for the climate-related consequences of the ensuing emissions. While the case was found inadmissible due to the petitioners' failure to exhaust available domestic remedies, the Committee's analysis offers valuable precedent for how future climate-related claims may be assessed regarding State accountability and extraterritorial effects.

Although not mentioning fossil fuels explicitly, the CRC's COBs to Germany or the United Kingdom recommended undertaking "legislative and other measures to uphold its extraterritorial obligations concerning impacts on the environment, including in the context of international cooperation".[27] Others made a specific link between fossil fuel-related activities, domestically or abroad, with the climate change impacts felt globally. For instance, the CRC recommended that Azerbaijan "[h]armonize its current climate mitigation policy with its obligation to protect the

[23] CEDAW/C/GBR/CO/8, para. 53
[24] CEDAW/C/GUY/CO/9, para 41
[25] *Sacchi et al. v. Argentina et al.* (CRC/C/88/D/104/2019).
[26] *Sacchi et al. v. Argentina et al.* (CRC/C/88/D/104/2019), para 10.9.
[27] CRC/C/DEU/CO/5-6, para. 33(e) and CRC/C/GBR/CO/6-7, para. 45 (f).

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rights of children, … both in Azerbaijan and abroad".[28] In its COB to Norway, the CEDAW recommended reviewing the State party's climate change and energy policies, "in particular its policy on the extraction and export of oil and gas, ... taking into account the disproportionate negative impact on women and girls both within and outside its territory".[29]

While treaty bodies have made recommendations about the adequacy of climate policies, it appears that they have not taken specific stances of certain approaches or technologies that are not effective or scientifically proven, for instance carbon markets[30] or geoengineering technologies.[31] Importantly, the CRC General Comment No. 26 stated that "[m]itigation measures cannot rely on removing greenhouse gases from the atmosphere in the future through unproven technologies. States should prioritize rapid and effective emissions reductions now in order to support children's full enjoyment of their rights in the shortest possible period of time and to avoid irreversible damage to nature". Drawing on the work of other UN human rights bodies, such as the report of the Human Rights Council Advisory Committee on the Impact of new technologies intended for climate protection on the enjoyment of human rights,[32] Treaty bodies should in the future shed more light on the question of which technologies can effectively achieve emission reductions in line with the best available science while being human rights compliant.

Some recommendations addressed an important dimension that has not yet received sufficient attention, i.e. subsidies and financial support to the fossil fuel industry. The 2019 joint statement already highlighted that States should "discontinue financial incentives or investments in activities and infrastructure which are not consistent with low greenhouse gas emissions pathways, whether undertaken by public or private actors as a mitigation measure to prevent further damage and risk". The CRC has been the most active in this sense. In its COB to Azerbaijan, it recommended the State party to "[c]onsider the impact of climate change on the rights of the child in its energy policy, including in relation to fossil fuel extraction and fossil fuel subsidies", [33] and the CRC's

[28] CRC/C/AZE/CO/5-6, para. 14 (b).
[29] CEDAW/C/NOR/CO/10, para. 49(a)
[30] Statement by the UN Special Rapporteur on the promotion and protection of human rights in the context of climate change, Elisa MorgeraCOP29 and the UN Independent Expert on foreign debt and human rights, particularly economic, social and cultural rights, Attiya Waris: 'Unexpected adoption of carbon market standards in Baku raises concerns' 19 November 2024, https://www.ohchr.org/sites/default/files/documents/issues/climatechange/statements/2024-11-19-mandate-holders-stm-carbon-markets-st.pdf.
[31] The UN Special Rapporteur on the promotion and protection of human rights in the context of climate change has addressed geo-engineering in her 2024 thematic reports: A/HRC/56/46, paras 27-30; and A/79/176, paras 19 and 69.
[32] A/HRC/54/47, para 71: "The main way for States to be human rights compliant is to rapidly phase out fossil fuels through viable, scientifically proven technologies and approaches".
[33] CRC/C/AZE/CO/5-6, para. 14 (c).

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LOI to Qatar asked the State party to "ensure that private and publicly owned financial institutions take into consideration the implications of their investments for climate change and the resulting harmful impact on children".[34] The same Committee recommended that Poland "phase out the funding of coal-fired power plants and accelerate the transition to renewable energy".[35]

Questions

- **Which specific actions are States taking to effectively transition away from fossil fuels**?
- **How are States preventing and remediating harm, including extraterritorial impacts, from fossil fuel infrastructure closure?**
- **Are developed States providing international financial, capacity-building and technological support to other countries to defossilize in self-determined ways ?**
- **How are States assessing and prioritizing energy needs, in order to end energy poverty and enhance environmental and health benefits, including for children?**
- **Do States carry out strategic environmental and human rights assessments of policies, programmes and legislation in different sectors of the economy, in order to ascertain to what extent they contribute to defossilization?**
- **Do States carry out environmental and human rights assessments of proposed projects in all sectors to ascertain how they avoid the creation or further development of sacrifice zones and the delay of defossilization?**
- **Are States conducting independent, participatory and comprehensive assessments of the likely direct and indirect human rights impacts of fossil fuel subsidies phaseout?**
- **Are States requiring private and publicly owned financial institutions to divest from fossil fuels?**

Regulation of private actors

The effective regulation of private actors is essential to defossilize the economy. Regulation can take different forms, e.g. imposing proper environmental and human rights impact assessment to certain activities, preventing business actors from extracting or exporting fossil fuels, or regulating financial actors' investment into fossil fuel-related activities. It can and must also include regulation of disinformation, deception and obstruction of climate action, as well as regulatory enforcement measures, which hold actors accountable when their conduct causes or contributes to foreseeable human rights harm and afford those harmed access to justice. The 2019 joint statement by Treaty Bodieis included ending "financial backing and investment in projects or infrastructure

[34] CRC/C/QAT/QPR/5-6, para. 29.
[35] CRC/C/POL/CO/5-6, para. 37 (b).

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incompatible with low-emission development goals—regardless of whether these are public or private initiatives—as part of broader mitigation strategies".[36] Various General Comments have emphasized States' obligation to oversee and regulate the conduct of private actors, including corporations, to ensure that business-related activities do not result in human rights harm, including in connection with environmentally harmful activities, such as the CESCR General Comment No. 24 (2017) on State obligations in the context of business activities,[37] the CCPR General Comment No. 36 (2018) on the Right to Life,[38] the CRC General Comment No. 26,[39] and the CESCR General Comment No. 26 (2022) on land and economic, social and cultural rights.[40]

Importantly, this responsibility is not limited to domestic actions, but extends beyond national borders when companies are domiciled in the State's jurisdiction or are under their control. As clarified by the CESCR, "[t]he extraterritorial obligation to protect requires States parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control".[41] The 2019 joint statement by treaty bodies underscored that States must hold private actors accountable for harmful impacts, whether occurring domestically or internationally.[42]

There are interesting examples of recommendations by treaty bodies with regard to private actors and fossil fuels, and States' duties to regulate them, including to prevent extraterritorial harm. The CRC issued various recommendations on the establishment of clear regulatory frameworks for business enterprises operating in the State parties and abroad, as well as "their subsidiaries operating in or managed from the State party's territory",[43] to identify, prevent, mitigate and account for activities that negatively affect human rights, including the risks posed by fossil fuel production.[44] For instance, it recommended that Canada establish a "clear regulatory framework for the industries operating in the State party and abroad to identify, prevent, mitigate and account for activities that negatively affect human rights or endanger children's rights, in particular risks posed by fossil fuel production".[45] The CESCR expressed concern for Azerbaijan's "absence of legal obligations for business entities under the State party's jurisdiction to exercise human rights

[36] *Supra* note 2, para 3.
[37] E/C.12/GC/24.
[38] CCPR/C/GC/36.
[39] CRC/C/GC/26.
[40] E/C.12/GC/26.
[41] *Ibid.*, para. 41.
[42] See https://www.ohchr.org/en/statements-and-speeches/2019/09/five-un-human-rights-treaty-bodies-issue-joint-statement-human.
[43] CRC/C/SWE/CO/6-7, para. 15 (a).
[44] *Ibid.* and CRC/C/CAN/CO/5-6.
[45] CRC/C/CAN/CO/5-6, para. 16 (a).

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due diligence" and,[46] in that regard, noted with concern "the reportedly insufficient human rights impact assessment of business activities conducted by the State Oil Company of Azerbaijan Republic (SOCAR), as well as transnational oil and gas corporations operating in the State party".[47] The Committee recommended, among various initiatives, that Azerbaijan "[s]tep up its efforts to guarantee the quality of soil, air and water sources and protect them from pollution as a result of business operations, including by establishing the liability of business entities and individuals involved in oil and gas extraction activities that lead to such pollution".[48] The CEDAW's COB to Norway looked at the State party's duty to both review its energy policies and regulate State-owned and private companies, "taking into account the disproportionate negative impact on women and girls both within and outside its territory".[49] In its COB to China, the CESCR recommended suspending "permissions to construct coal-fired power plants and pause ongoing financing for construction, including in the State party and abroad",[50] noting that such unsustainable practices had "had an adverse impact on climate change beyond the State party's borders".[51]

A few recommendations looked at the role of financial institutions in contributing to the climate crisis. For instance, both the CESCR and the CRC expressed concern about investments in the fossil fuel industry by public and private financial institutions,[52] including pension funds. Recommendations included that the State parties take adequate action to ensure that such actors reduce these investments,[53] that introduce binding rules and regular monitoring and evaluation of financial institutions with regard to their investment and their implications upon climate change and the resulting human rights impacts.[54] The CEDAW recommended that Japan "put in place mechanisms to ensure that investments by Japanese companies in extractive sectors in third

[46] E/C.12/AZE/CO/4, para. 14.
[47] *Ibid.*
[48] *Ibid.*, para. 15 (c).
[49] For instance, CEDAW/C/NOR/CO/10: The Committee then recommends that Norway review its climate change and energy policies, "in particular its policy on the extraction and export of oil and gas, as well as the activities of related State-owned companies and private companies, taking into account the disproportionate negative impact on women and girls both within and outside its territory, with a view to radically reducing greenhouse emissions in line with the Paris Agreement", see also CEDAW/C/UGA/Q/8-9: CEDAW requested information on "mechanisms in place, including legislation, state monitoring and standards, to hold oil companies accountable for their CO2 emissions, which contribute to the climate crisis and increased disaster risk with deleterious effects on the economy and the rural and urban poor."
[50] E/C.12/CHN/CO/3, para. 25 (d).
[51] *Ibid.*, para. 24
[52] For instance, see E/C.12/CHE/CO/4 and CRC/C/CHE/CO/5-6.
[53] E/C.12/CHE/CO/4.
[54] CRC/C/CHE/CO/5-6.

countries do not contradict the State party's extraterritorial obligations, and that women workers in these sectors are protected from gender-based violence and exploitation."

Questions

- **Are States regulating and monitoring that fossil fuel companies to close down existing operations by 2030, in consultation with the public and their workers?**
- **Are States requiring fossil fuel companies to cover the full costs of workers' retraining, closure and clean-up of industrial complexes and compensation for victims commensurate with the gravity of the human rights abuses?**
- **Are States regulating financial actors to prevent further delay or obstruct defossilization?**

Procedural rights and defenders

The right to access to information and to participation, as well as Free Prior and Informed Consent of Indigenous Peoples, are extremely relevant in the context of fossil fuel activities, throughout the full life cycle, particularly due to the well-documented discriminatory practices and disproportionate impacts on human rights holders, who often are also bearing the brunt of climate change impacts on their human rights. This applies to every phase of the process, from the environmental and human rights impact assessment, throughout the permitting phase, and the following stages of the construction, operation, transport, waste management and decomissioning. Many treaty bodies have stressed the importance of participation in climate policy-making,[55] and some recommendations have looked more in detail at the procedural rights dimensions of fossil fuel projects. For instance, in its 2019 COB to Israel, the CESCR expressed concern "about reports that the State party has given licenses to Israeli and multinational companies for oil and gas extraction and renewable energy projects in the occupied Syrian Golan and the Occupied Palestinian Territory without consulting the affected communities",[56] and recommended ceasing to issue licenses. The CEDAW recommended that Namibia "[c]onduct environmental and human rights impact assessments in relation to oil and gas exploration activities … and ensure the meaningful participation of women in consultations and decision-making processes in that context".[57] The CCPR noted that Ecuador granted concessions in Indigenous territories without

[55] See https://www.ciel.org/wp-content/uploads/2024/08/HRTB-Synthesis-Note-2024_CIEL_GIESCR.pdf.
[56] E/C.12/ISR/CO/4, para. 14.
[57] CEDAW/C/NAM/CO/6, para 52(a).

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prior consultation of the affected communities and recommended ensuring "that proper consultations are held with Indigenous communes, communities, peoples and nationalities with a view to obtaining their free, prior and informed consent concerning any measure that might have a substantial impact on their way of life and their culture",[58] including with regard to extractive activities. The same Committee, in its 2019 COB to Nigeria, expressed concern about pervasive corruption in the State party, including in the oil sector, and the lack of adoption of the proposed law to protect whistle blowers.[59]

Similarly, the CERD recommended that in Niger and Senegal, "prior to granting licenses for projects involving the development and exploitation of natural resources, the communities concerned are consulted and independent, impartial and timely studies are conducted on the social, environmental and cultural impact that such projects may have on the traditional ways of life and livelihoods of the ethnic groups that are particularly affected".[60]

Only a handful of treaty bodies looked at the issue of retaliation against those opposing certain fossil fuel projects. For instance, in its list of issues to Uganda, the CCPR asked questions about allegations of frequent arbitrary detention, intimidation and harassment of lawyers, particularly those working on human rights cases, including in natural resource extraction cases.[61] It appears that treaty bodies do not refer to "environmental human rights defenders" consistently. Only a handful of recommendations use this expression, for instance the CEDAW's COB to Costa Rica, Venezuela, Chile.[62] This expression, which is in line with the Human Rights Council Resolution 40/11, is particularly relevant as it encompasses all those individuals that engage in the protection of human rights and the environment, and whose rights are often at risk. While some Committees have already looked at the issue of judicial harassment and strategic litigation against public participation (SLAPP),[63] it appears that no recommendation dealt with cases in connection with fossil fuels-related activities. Given the mounting use of such tactics against environmental human rights defenders, Treaty Bodies should consider looking at this dimension more in detail.

[58] CCPR/C/ECU/CO/6, para. 36 (a).
[59] CCPR/C/NGA/CO/2, para. 12.
[60] CERD/C/NER/CO/22-25, para. 23(a) and CERD/C/SEN/CO/19-23, para. 21(a).
[61] CCPR/C/UGA/CO/2.
[62] CEDAW/C/VEN/CO/9, CEDAW/C/CRI/CO/8, and CEDAW/C/CHL/CO/8.
[63] For instance, the Committee Against Torture (CAT) stated that Thailand "should vigorously investigate promptly, thoroughly and impartially all allegations of torture, ill-treatment and harassment, including judicial harassment, of human rights defenders, prosecute alleged perpetrators and appropriately punish those found guilty, provide victims with redress and take appropriate steps to ensure that human rights defenders are effectively protected against strategic litigation against public participation lawsuits." See CAT/C/THA/CO/2.

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Importantly, the CEDAW looked at the participation dimension with regard to international policy-making processes. For instance, in its COB to the Philippines and Central African Republic, it recommended supporting women to ensure their active participation in climate change-related decision-making, including with regard to the creation and operation of new funding arrangements for responding to loss and damage.[64] This type of recommendations are extremely relevant, as the participation of civil society and Indigenous Peoples in climate policy-making at the, national, regional and international level, is essential to ensure more equitable and effective policies.

It appears that Treaty Bodies have yet to address comprehensively the issue of corporate-led disinformation with regard to climate change – a longstanding problem that is only growing with the development and use of artificial intelligence (AI), itself an energy-intensive, fossil-dependent industry. The CRC General Comment No. 26 stressed that State parties' obligation to respect the rights of children entails "that they refrain from any action that would limit children's right to express their views on matters relating to the environment and from impeding access to accurate environmental information, and protect children from misinformation concerning environmental risks".[65] While a few recommendations have looked at the issue of scientific disinformation, for instance in the context of the COVID-19 pandemic,[66] currently none appears to have addressed the question of climate science. It is essential that Treaty Bodies examine how industry deception, misinformation and misrepresentation of the risks and impacts of fossil fuels, the causes and consequences of climate change, and the effect of technological interventions and responses to climate change, has the potential to undermine public participation, the rights to information, education, and science, and effective rights-based action to tackle the climate crisis.

Questions

- **Are States informing and educating the public about the fossil fuel industry's deliberate contributions to the planetary crises and about their human rights impacts?**
- **Are States ensuring the protection of environmental human rights defenders in the context of climate action and defossilization?**

[64] CEDAW/C/PHL/CO/9 and CEDAW/C/CAF/CO/6.
[65] Para. 70.
[66] For instance, the CEDAW's COB to Nicaragua noted "with concern that the misinformation to which the public was exposed on the pandemic jeopardized the life and health of many women in the State party, in particular during the major peaks of the pandemic" See CEDAW/C/NIC/CO/7-10. Similarly, the CESCR noted Brazil's "failure to take measures to prevent misinformation and promote the dissemination of accurate scientific information, including in the context of the COVID-19 pandemic and in any future public health emergency". See E/C.12/BRA/CO/3.

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- **Are States, including judges, preventing and responding to strategic litigation against public participation against environmental human rights defenders**?[67]
- **Are States effectively preventing corporate-led disinformation activities, and prohibiting fossil fuel advertisements, lobbying and greenwashing?**
- **Are States requiring private financial institutions and universities to disclose publicly funding amounts, durations and any conditions from the fossil fuel industry?**

Remedy for fossil fuel-related harm

As the impacts of climate change are mounting, human rights treaty bodies play a crucial role in refining the understanding of States' obligations to provide effective remedy and to establish mechanisms for polluters, including fossil fuel actors, to compensate for their human rights and climate harm. The concept of harm is wide, as it can range from harms caused by the extraction, production and other phases of the full life cycle of fossil fuels - domestically and extraterritorially - as well as harms caused by extreme weather events and slow-onset impacts of fossil fueled climate change. Some treaty bodies are being increasingly confronted with questions on remedy for fossil fuel-related harm, and the corresponding obligations upon States.

The CRC General Comment No. 26 affirmed that States have "an obligation to establish non-judicial and judicial mechanisms to provide access to effective remedies for abuses of children's rights by business enterprises, including as a result of their extraterritorial activities and operations", and that "from a human rights perspective, loss and damage are closely related to the right to remedy and the principle of reparations, including restitution, compensation and rehabilitation."[68] The same committee explicitly mentioned the polluter pays principle in the context of environmental degradation in its COB to South Africa, recommending that the State party "strictly implement the "polluter pays principle", and ensure that any revisions of the national development, climate, environmental and energy policies and plans integrate the linkages with the needs and rights of children".[69]

In its COB to the Netherlands, the CESCR noted reports of damage to the local population caused by extraterritorial activities of Dutch companies, including due to gas extraction and oil refinery,

[67] A/79/362.
[68] CRC/C/GC/26, para 89.
[69] CRC/C/ZAF/CO/3-6, para. 39(a).

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and recommended that the State party take measures to ensure that proper compensation to the victims be provided, as well as future occurrences of damages related to extraction be prevented.[70] The CCPR made a similar recommendation to the Netherlands, stressing the State party's obligation to provide adequate compensation and prevent the risk of further harm.[71]

The CEDAW and the CERD made interesting recommendations with regard to mechanisms - whether at the national or international level - to address loss and damage. In its COB to Norway, the CEDAW recommended that the State party support the creation and implementation of new funding arrangements for responding to loss and damage under the United Nations Climate Change Conference or Conference of the Parties of the UNFCCC.[72] The CERD recommended that Senegal and Niger "[s]pecify, in consultation with the communities concerned, mitigation measures, compensation for damages or losses suffered, and arrangements for sharing the profits earned from such activities".[73]

Questions

- **Are States requiring remedies for fossil fuel-related harms caused by climate change, as well as by human rights violations in the full life cycle of fossil fuels?**
- **Are States putting in place concrete measures of compensation and restitution in relation to fossil fuel-related harms, which can also contribute to leverage climate finance?**
- **Are States providing for the restitution of territories to Indigenous Peoples, people of African descent and peasants in areas previously allocated to fossil fuel operations, including ecosystem restoration and full remediation of toxic contamination; or providing for compensation?**
- **Are States requiring that remedies be co-developed with affected human rights holders?**

Future generations

When it comes to climate change and fossil fuels-induced impacts, the rights of future generations should be taken into account, both to understand what the potential future impacts will be and to assess current climate policies. The Maastricht Principles of the human rights of future generations provide helpful guidance to clarify States' obligations vis-à-vis future generations, including with regard to fossil fuels-related activities.[74] Some recommendations by treaty bodies have made

[70] E/C.12/NLD/CO/6.
[71] CCPR/C/NLD/CO/5.
[72] *Supra* note 57.
[73] *Supra* note 59.
[74] See https://www.rightsoffuturegenerations.org/the-principles/english.

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explicit the risks that the fossil fuel industry poses to future generations. For instance, the CESCR expressed its concerns about Argentina and Ecuador's plans for extractive activities, including fossil fuels, highlighting that these were not in line with climate change commitments under the Paris Agreement and "would have a negative impact on global warming and on the enjoyment of economic and social rights by the world's population and future generations."[75] In its COB to Korea, the CEDAW recalled a Constitutional Court hearings "on four landmark cases on climate change policies that would impact future generations.[76] In its decision on the *Sacchi et al. v. Argentina et al.* communication, the CRC stated that the State parties, by supporting climate policies that delay decarbonization, were "shifting the enormous burden and costs of climate change onto children and future generations," thus breaching their duty to ensure the enjoyment of children's rights for posterity and failing to act in accordance with the principle of intergenerational equity.

Questions

- **Are States' developing economic models that do not shift the burden of mitigating and remedying climate change to future generations**?

Multilateral negotiations and reforms

In order to uphold their human rights obligations, including with regard to effective transition away from a fossil economy, States must also cooperate in ongoing multilateral negotiations and processes, in the reform of relevant part of international law that should support the defossilization of economies.

Some recommendations have already provided recommendations to States with regard to negotiating specific international agreements or supporting specific outcomes. For instance, the CESCR recommended that Sweden "[a]ctively engage in discussions on and commit to multilateral negotiations and agreements, such as the European Union Corporate Sustainability Due Diligence Directive, while advocating for provisions that align with international human rights standards, including the Guiding Principles on Business and Human Rights"[77]. The CESCR commended Belgium's "support in climate negotiations for a human-rights based approach, including in the context of the Gender Action Plan, the Local Communities and Indigenous Peoples

[75] E/C.12/ARG/CO/4, para. 13 and E/C.12/ECU/CO/4, para. 11.
[76] CEDAW/C/KOR/CO/9, para. 50.
[77] E/C.12/SWE/CO/7, para. 19(a).

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Platform and Action for Climate Empowerment".[78] The CEDAW recommended that Norway "[a]ctively support and participate in the creation and operation of new funding arrangements for responding to loss and damage" in the context of the UNFCCC.[79]

Questions

- **Are States supporting international cooperation on defossilization in relevant UN negotiations (UN climate negotiations, UN plastics treaty negotiations, UN negotiations on a treaty on business and human rights, and UN framework convention on international tax cooperation)?**
- **Are States supporting reform of international treaties on the protection of foreign investment and Investor-State Dispute Settlement that are undermining the protection of human rights through climate action**?

[78] E/C.12/BEL/CO/5, para. 3.
[79] *Supra* note 48.