

Reviewing the Compatibility of States' Climate Policies with their Obligations under the ICESCR

Under the International Covenant on Economic Social and Cultural Rights, States must take steps, individually and through international assistance and co-operation, to the maximum of their available resources, with a view to achieving progressively the full realization of the rights provided under the Covenant.

In the context of climate change, this obligation requires that States take urgent steps to protect economic, social and cultural rights from climate harm, through mitigation, adaptation and climate finance measures. Specifically, this includes measures to reduce their carbon emissions in a manner that is consistent with the objective to prevent particularly dangerous increases in global temperatures and with the principle of Common but Differentiated Responsibility, and for developed countries, the provision of climate finance to support developing countries coping with the impacts of climate change.

The Committee on Economic, Social and Cultural Rights affirmed in 2018 its commitment to “provide States guidance as to how they can discharge their duties under the International Covenant on Economic, Social and Cultural Rights in the mitigation of climate change and adaptation to its unavoidable effects”.

This briefing note seeks to define the obligations of States under the Covenant (and relevant international climate agreements that might inform the implementation of the Covenant) with respect to climate change and to point the members of the Committee towards reliable information that will assist them to assess States' compliance with those obligations, in the context of climate change. The note thus provides weblinks to country-specific information and assessments describing the climate commitments made by individual States, their adequacy in the light of science and equity, and the performance of governments towards meeting these objectives.

In order to discharge their obligations under the Covenant, States must:



1. Adopt and communicate emissions reductions targets in line with scientific prescription to keep the increase of temperatures below 1.5°C

>> To obtain an assessment of the adequacy of climate commitments (2025 or 2030), see [the Climate Action Tracker published by an international consortium of research organizations](#) and [Climate Equity Reference Calculator which reviews these pledges primarily from the view point of equity](#).



2. Lay out a long-term vision for the orderly decarbonization of their economies

>> [You can find out which countries have done so by visiting the UNFCCC webpage.](#)



3. Design, implement and keep under review, policies to meet their climate commitments and deliver the reduction in emissions necessary to keep temperatures below dangerous levels.

>> You can access the national report submitted by each State to the UNFCCC which provides information regarding current emissions trends ([here for developed countries](#) and [here for developing countries](#)).

>> To compare this information with independent assessments of the adequacy of existing measures and policies, you can use the [online tool provided by the international consortium "Climate Action Tracker"](#) or the [most recent Climate Change Performance Index published by another consortium of research organizations](#).



4. Adopt policies seeking to address any extra-territorial emissions of greenhouse gases, for instance in relation to energy exports, investments in fossil fuels or emissions embedded in the imports of goods.



5. States in a position to do so should contribute to the global realization of economic, social and cultural rights through international cooperation, including by providing financial support to the countries most impacted by climate change and guarantee that these funds adequately support policies directed to protecting the most vulnerable.

>> You can access [here a qualitative assessment of the climate finance provided by key donors](#) and [here a complementary assessment reviewing the contributions of European States](#).

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Introduction

Climate change poses an 'existential threat' to humanity, including threats to livelihoods, food security, health, stability and to life, warned UN Secretary General, Antonio Guterres, in a recent speech.¹ A group of UN Human Rights Special Rapporteurs described climate change as 'one of the greatest human rights challenges of our time'² citing the serious impacts on, and threats to, the rights to food, water, sanitation, health, housing and life.³ Those impacts and threats are now of such a scale, severity and prevalence, that it will be impossible to protect and realise human rights in the remainder of the 21st century, without addressing climate change.

Whilst civil and political rights are also threatened by the effects of climate change, the most significant and identifiable impacts are on the rights protected by the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Intergovernmental Panel on Climate Change (IPCC) in its 5th Assessment Report⁴ identified 'key risks'⁵ due to dangerous anthropogenic interference with the climate system. The majority of those risks connect to the enjoyment of economic, social and cultural (ESC) rights. For example:

- Risk of death, injury, ill-health, or disrupted livelihoods due to storm surges, coastal flooding, sea level rise and inland flooding.
- Risks due to extreme weather events leading to breakdown of infrastructure networks and critical services such as electricity, water supply, and health and emergency services.
- Risk of mortality and morbidity during periods of extreme heat.
- Risk of food insecurity and the breakdown of food systems linked to warming, drought, flooding, and precipitation variability and extremes.
- Risk of loss of rural livelihoods and income due to insufficient access to drinking and irrigation water and reduced agricultural productivity.
- Risk of loss of marine and coastal ecosystems, biodiversity, and the ecosystem goods, functions, and services they provide for coastal livelihoods.
- Risk of loss of terrestrial and inland water ecosystems, biodiversity, and the ecosystem goods, functions, and services they provide for livelihoods.

The more recent Special Report on Global Warming of 1.5°C confirms these risks and underlines that an increase of the temperatures by 1.5°C would trigger severe risks for natural ecosystems and human societies and that these risks would increase even further with any additional amount of warming.⁶

¹ See: <https://news.un.org/en/story/2018/05/1009782>; <https://www.un.org/sg/en/content/sg/press-encounter/2018-03-29/secretary-generals-press-encounter-climate-change-qa>

² An Open Letter from Special Procedures mandate-holders of the Human Rights Council to the State Parties to the UN Framework Convention on Climate Change on the occasion of the meeting of the Ad Hoc Working Group on the Durban Platform for Enhanced Action in Bonn (20-25 October 2014): https://www.ohchr.org/Documents/HRBodies/SP/SP_To_UNFCCC.pdf

³ See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20822&LangID=E>

⁴ 2014: Summary for policymakers. In: Climate Change 2014: Impacts, Adaptation, and Vulnerability, Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Field, C.B., V.R. Barros, D.J. Dokken, K.J. Mach, M.D. Mastrandrea, T.E. Bilir, M. Chatterjee, K.L. Ebi, Y.O. Estrada, R.C. Genova, B. Girma, E.S. Kissel, A.N. Levy, S. MacCracken, P.R. Mastrandrea, and L.L. White (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, pp. 1-32.

⁵ Ibid. p 11, 12: The 'key risks' are identified with 'high confidence'. 'Risks are considered key due to high hazard or high vulnerability of societies and systems exposed, or both. Identification of key risks was based on expert judgment using the following specific criteria: large magnitude, high probability, or irreversibility of impacts; timing of impacts; persistent vulnerability or exposure contributing to risks; or limited potential to reduce risks through adaptation or mitigation.'

⁶ IPCC, 2018: Summary for Policymakers. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, Maycock, M. Tignor, and T. Waterfield (eds.)]. World Meteorological Organization, Geneva, Switzerland, 32 pp.

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As the science and knowledge about climate change improve, so do the level of confidence of the predictions and the foreseeability and urgency of the threats to human rights. A recent report by climate scientists warns of 'A domino-like cascade of melting ice, warming seas, shifting currents and dying forests could tilt the Earth into a "hothouse" state beyond which human efforts to reduce emissions will be increasingly futile.'⁷

Climate change and the role of the Committee on Economic, Social & Cultural Rights

As the guardian of ESC rights and the body charged with monitoring the implementation of the Covenant, the Committee on Economic, Social and Cultural Rights' (CESCR) role includes being alert to emerging threats to ESC rights. Consequently, climate change is increasingly being addressed by the Committee in its work, particularly in the context of its State Reporting Procedure.⁸

In its October 2018 Statement on climate change and the ICESCR, the CESCR committed to "keep under review the impacts of climate change on economic, social and cultural rights, and provide States guidance as to how they can discharge their duties under the International Covenant on Economic, Social and Cultural Rights in the mitigation of climate change and adaptation to its unavoidable effects." This involves considering:⁹

- Risk of death, injury, ill-health, or disrupted livelihoods due to storm surges, coastal flooding, sea level rise and inland flooding.
- Risks due to extreme weather events leading to breakdown of infrastructure networks and critical services such as electricity, water supply, and health and emergency services.
- Risk of mortality and morbidity during periods of extreme heat.
- Risk of food insecurity and the breakdown of food systems linked to warming, drought, flooding, and precipitation variability and extremes.

Broadly, the steps that States can take to address the threats to ESC rights posed by climate change, fall into 3 categories: mitigation; adaptation; and climate finance.

Extraterritorial impacts and obligations

A further element that is relevant to the consideration of State's obligations to address the impacts and threats to ESC rights posed by climate change, is the global nature of climate change and the extra-territorial obligations of States pursuant to the ICESCR, including the concept of 'international cooperation', set out in Article 2(1) of the Covenant.

The cross-border impacts of climate change are well known, since emissions from one territory will have impacts across the globe and over time. Similarly, climate actions share this global dimension, such that the benefits of mitigation, adaptation and climate finance solutions, will be felt across the globe. Therefore, the response of international human rights law must confront and address this global dimension of the problem and the solutions.

The Committee has noted on many occasions that its jurisdiction is not limited to the territorial borders of a State but extends to circumstances when a State exercises control, power or authority over people or situations located outside its sovereign territory, in a way that could

⁷ See <https://www.theguardian.com/environment/2018/aug/06/domino-effect-of-climate-events-could-push-earth-into-a-hothouse-state>

⁸ See CESCR Concluding Observations on Australia (2017), E/C.12/AUS/CO/5; CESCR Concluding Observations on Argentina (2018), E/C.12/ARG/CO/4.

⁹ In accordance with Articles 16 & 17 of the ICESCR

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have an impact on the enjoyment of human rights by those people or in such situations.¹⁰ These extra-territorial dimensions of ICESCR will be important elements when characterizing and assessing States' obligations under the ICESCR in the context of climate change. Given the global nature of climate change and of the emission of greenhouse gases, these extraterritorial aspects are particularly relevant to assessing the responsibility of each State – in particular in relation to the supply of fossil fuels or to the drivers of deforestation and fossil fuel combustion.

Purpose of this Briefing note

This note is intended to provide information which might assist the Committee when assessing whether States are doing enough to avoid the climate-harms to ESC rights. Specifically, the paper will provide information and resources on:

- States' ICESCR obligations with respect to climate change;
- States' climate commitments;
- States' climate measures/ actions; and
- independent assessment tools regarding the adequacy of States' commitments and measures.

The Briefing note focuses on mitigation (the reduction of emissions of greenhouse gases) and public climate finance. Other dimensions of States' human rights obligations in the context of climate change, such as relating to procedural rights, to non-discrimination or to the need for preventive measures to guarantee rights threatened by climate risks (adaptation) are not addressed in this paper.

Mitigation Policies

Introduction to the Issue

Climate change mitigation refers to efforts to reduce or prevent emission of greenhouse gases either through reducing sources of emissions or enhancing greenhouse gas sinks. It includes measures such as using new low-energy and renewable energy technologies, making older equipment more energy efficient, changing management practices or consumer and household behaviour and limiting deforestation.

1.5°C – the legal and scientific temperature limit

Under the 2015 Paris Agreement, States committed to pursue mitigation efforts aimed at 'Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels'.¹¹ These temperature goals are supported by scientific evidence, including the 5th Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) and the most recent report of the IPCC on Global Warming by 1.5°C which found that global temperature rises of 1.5°C would

¹⁰ Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (article 12)*, (Twenty-second session, 2000), UN Doc. E/C.12/2000/4 (2000), para. 39; CESCR, *General Comment No. 15: The right to water (arts. 11 and 12)*, (Twenty-ninth session, 2002), UN Doc. E/C.12/2002/11 (2002), para. 31; CESCR, *Statement on the obligations of States Parties regarding the corporate sector and economic, social and cultural rights*, UN Doc. E/C.12/2011/1 (20 May 2011), para. 5; CESCR General Comment No. 18: Right to Work (art 6) E/C.12/GC/18 (2006), para. 52; CESCR General Comment No. 23: Right to just and favourable conditions of work (art 7) E/C.12/GC/23 (2016), para. 70; CESCR General Comment No. 24: State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, E/C.12/GC/24 (2017), paragraphs 25 – 28. See also the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2011): https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23

¹¹ Paris Agreement (2015) Article 2(a).

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have high risks of serious impacts on specific natural and human systems.¹² The report emphasised that “*climate-related risks to health, livelihoods, food security, water supply, human security, and economic growth are projected to increase with global warming of 1.5°C and increase further with 2°C.*”¹³ It further emphasizes that “*most adaptation needs will be lower for global warming of 1.5°C compared to 2°C (high confidence). There are a wide range of adaptation options that can reduce the risks of climate change (high confidence). There are limits to adaptation and adaptive capacity for some human and natural systems at global warming of 1.5°C, with associated losses (medium confidence).*”¹⁴

Many other scientific reports have also produced evidence that global warming beyond 1.5°C will have disastrous, and often, irreversible effects on the planet and its ecosystems. Studies have predicted that warming above 1.5°C strongly increases the risks of reaching critical tipping points for the earth's systems.¹⁵

The assessments of impacts on development also support a 1.5°C limit. A 2016 report of the UNDP and the Climate Vulnerable Forum analysed the significant co-benefits associated with limiting global warming to 1.5°C, including reducing air pollution and adverse health impacts, increasing energy access, avoiding crop losses and resulting loss of food security and avoiding job losses and creating new energy-related jobs.¹⁶ The impacts discussed in these reports will have significant implications for the enjoyment of ESC rights, particularly the rights to water, sanitation, food, health and work.¹⁷

1.5°C – a human rights red-line

In light of the substantial scientific evidence, human rights experts have assessed that the adverse human rights impacts associated with a 1.5°C warming scenario are so serious as to enliven States' obligations under human rights treaties. In a joint report to the UN Climate Change process, UN Special Rapporteurs to the Human Rights Council highlighted the grave human rights harms that will be caused by even a two degree Celsius increase in average global temperatures. They concluded that every additional amount of warming would lead to a greater threat to human rights and would make it more difficult for States to fulfil their human rights obligations. The Special Rapporteurs noted in particular that warming above 1.5°C was projected to impact more severely a wide range of rights.¹⁸ In other words, in their view, there is a human rights imperative to take sufficient mitigation measures to limit warming to 1.5°C.

¹² IPCC, 2018, Special Report 1.5c, Figure SPM.2.

¹³ IPCC report on Global Warming of 1.5°C, Key finding B.5.

¹⁴ *Ibid.*, Key finding B.6.

¹⁵ See for example: Schleussner, C.-F., Lissner, T. K., Fischer, E. M., Wohland, J., Perrette, M., Golly, A., Rogelj, J., Childers, K., Schewe, J., Frieler, K., Mengel, M., Hare, W., and Schaeffer, M.: Differential climate impacts for policy-relevant limits to global warming: the case of 1.5 °C and 2 °C, *Earth Syst. Dynam.*, 7, 327-351, 2016, doi:10.5194/esd-7-327-2016; Adams, Sophie; Baarsch, Florent; Bondeau, Alberte; Coumou, Dim; Donner, Reik; Frieler, Katja; Hare, Bill; Menon, Arathy; Perette, Mahe; Piontek, Franziska; Rehfeld, Kira; Robinson, Alexander; Rocha, Marcia; Rogelj, Joeri; Runge, Jakob; Schaeffer, Michiel; Schewe, Jacob; Schleussner, Carl-Friedrich; Schwan, Susanne; Serdeczny, Olivia; Svirejeva-Hopkins, Anastasia; Vieweg, Marion; Warszawski, Lila; World Bank. 2013. Turn down the heat : climate extremes, regional impacts, and the case for resilience - full report (English). Turn down the heat. Washington DC ; World Bank. <http://documents.worldbank.org/curated/en/975911468163736818/Turn-down-the-heat-climate-extremes-regional-impacts-and-the-case-for-resilience-full-report>.

¹⁶ Climate Vulnerable Forum & UN Development Program, 2016 *Low Carbon Monitor: 'Pursuing the 1.5C limit: Benefits and Opportunities'* (2016); <http://climateanalytics.org/files/lowcarbonmonitor-nov2016-medres.pdf>.

¹⁷ More information is available here: <http://www.ipcc.ch/report/sr15/>.

¹⁸ *The Effects of Climate Change on the Full Enjoyment of Human Rights*, Joint paper by five mandate holders of the HRC (2015), available at http://www4.unfccc.int/Submissions/Lists/OSPSubmissionUpload/202_109_130758775867568762-CVF%20submission%20Annex%201_Human%20Rights.pdf

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Carbon budget

The 5th Assessment Report released by the IPCC in 2014 emphasised that the stabilization of temperatures in the atmosphere can only be achieved if cumulative emissions of greenhouse gases do not exceed a limited "carbon budget".¹⁹

Analysis of global carbon budgets prepared by the IPCC shows that achieving the 1.5°C goal will require the very rapid decarbonisation of the global economy. It would only take another few years of current global carbon pollution to exhaust a budget that provides a fair (66%) probability of limiting warming to 1.5°C.²⁰ This means that global carbon pollution will need to begin declining very rapidly and reach zero in the coming decades. To remain within a global carbon budget that provides a 50% chance of limiting warming to 2°C, 80% of the world's known coal reserves would need to remain unburned.²¹ To ensure a strong chance of limiting warming to 1.5°C and avoiding the serious damage to ESC rights noted above, the available carbon budget is considerably smaller and very nearly exhausted.

The 2018 Special Report by the IPCC highlights that keeping temperatures increase at a maximum of 1.5°C requires reducing global emissions by 45% by 2030 compared to 2010 levels.²² Such emissions reductions would however require urgent action and in particular halting the planning and constructions of new facilities fuelled by fossil fuels, since existing fossil fuel infrastructure would already emit throughout their projected lifetime enough emissions of greenhouse gases to consume most of this "carbon budget" associated with an increase of temperatures by 1.5°C.²³

Carbon footprint

States' climate goals under the UNFCCC only take account of emissions released from the States' territory. They do not take account of emissions embedded in exports, such as coal or oil exports, or those resulting from cross-border investments. This extra-territorial impact can however involve emissions generated in third countries that dwarfs domestic emissions. For instance, the carbon embedded in fossil fuels exported by Norway – and consequently released when these oil and gas exports are combusted in third countries - is equivalent to 10 times the level of annual emissions generated on Norwegian territory and accounted for under the UNFCCC.²⁴ As another example: the investments in fossil fuel industries of financial actors under Swiss jurisdiction (both private or public – such as the national bank) contribute to annual emissions estimated to be 20 times higher than the emissions emitted on Swiss territory and for which Switzerland accounts under the UNFCCC.²⁵

Additionally, such accounting for territorial emissions as used in the context of the UNFCCC does not take into consideration emissions embedded in imports, where emissions are generated outside the country in the process of producing goods consumed inside the country. For example, where developed economies have shifted from a production-based, to a service-

¹⁹ The global carbon budget refers to the estimated amount of carbon dioxide the world can emit while still having a likely chance of limiting global temperature rise to 2°C above pre-industrial levels. The international scientific community estimated this budget to be 1 trillion tonnes of carbon (1,000 PgC). This does not include non-carbon greenhouse gases.

²⁰ Analysis: Just Four Years Left of the 1.5C Carbon Budget (Carbon Brief, April 2017) <https://www.carbonbrief.org/analysis-four-years-left-one-point-five-carbon-budget>

²¹ Christopher McGlade & Paul Ekins, 'The Geographic Distribution of Fossil Fuels Unused When Limiting Global Warming to 2°C', *Nature*, January 2015. <http://www.nature.com/nature/journal/v517/n7533/abs/nature14016.html>

²² IPCC Special Report, Key finding C.1.

²³ Current fossil fuel infrastructure does not yet commit us to 1.5°C warming.

Christopher J. Smith, Piers M. Forster, Myles Allen, Jan Fuglestedt, Richard J. Millar, Joeri Rogelj & Kirsten Zickfeld, *Nature Communications*, volume 10, Article number: 101 (2019)

²⁴ See The Sky's Limit Norway: Why Norway Should Lead the Way in a Managed Decline of Oil and Gas Extraction, <http://priceofoil.org/2017/08/09/the-skys-limit-norway-why-norway-should-lead-the-way-in-a-managed-decline-of-oil-and-gas-extraction/>.

²⁵ See Swiss Climate Alliance 'Empfehlungen zu Klimarisiken an die Schweizer Nationalbank' (April 2018). Available at: https://uploads.strikinglycdn.com/files/5a167844-9010-4efc-b3f9-6303c7d68e74/KlimaAllianz_SNB-Empfehlungen_2018-04.pdf

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oriented economy, such that the majority of products consumed in the country are produced outside the country, their national greenhouse gas accounting will show a reduction in emissions. Yet, in reality, the country's consumption-linked emissions have simply been off-shored.

Therefore, an assessment of States' climate commitments and measures must look beyond national emissions accounting and consider a State's full 'carbon footprint', including exported and imported emissions.

International Obligations and Commitments of States

The Special Rapporteur on human rights and the environment has underlined that:

The foreseeable adverse effects of climate change on the enjoyment of human rights give rise to duties of States to take actions to protect against those effects. Human rights obligations apply not only to decisions about how much climate protection to pursue, but also to the mitigation and adaptation measures through which the protection is achieved.²⁶

The CESCR has also affirmed that the current or foreseeable adverse impacts on ESC rights of climate change, enliven States' obligations under ICESCR to prevent harm to ESC rights.²⁷ Specifically, with respect to mitigation, the Committee has recognised that States have an obligation to take adequate mitigation measures to combat climate change.²⁸ For example, in its Concluding Observations on Australia's 5th Periodic Report the Committee said:

The Committee is concerned about the continued increase of carbon dioxide emissions in the State party The Committee recommends that the State party revise its climate change and energy policies, as indicated during the dialogue. It recommends that the State party take immediate measures aimed at reversing the current trend of increasing absolute emissions of greenhouse gases, and pursue alternative and renewable energy production. The Committee also encourages the State party to review its position in support of coal mines and coal exports.²⁹



Where to find information about the climate commitments of States?

In the context of the UN Climate Agreements, States must adopt national targets to reduce emissions. Under the Kyoto Protocol as well as under the Copenhagen Accords (2009) and the Cancun Agreements (2010), developed countries must put forward "quantified economy-wide emissions targets" indicating the level of reductions to be achieved by 2020 by each of the developed countries. These 43 targets for developed countries are available on the website of the UNFCCC Secretariat: <https://unfccc.int/process/conferences/pastconferences/copenhagen-climate-change-conference-december-2009/statements-and-resources/appendix-i-quantified-economy-wide-emissions-targets-for-2020>

²⁶ A/HRC/25/53; See also the report of the Office of the UN High Commissioner for Human Rights, 'Analytical study on the relationship between climate change and the human right to everyone to the enjoyment of the highest attainable standard of physical and mental health', UN Doc. A/HRC/32/23 (6 May 2016), paragraph 32.

²⁷ CESCR General Comment No. 15 'The right to water' (2002) E/C.12/2002/11, paragraph 28; E/C.12/AUS/CO/4 (CESCR, 2009); E/C.12/FIN/CO/6 (CESCR, 2014); E/C.12/CAN/CO/6 (CESCR, 2016); E/C.12/PHL/CO/5-6 (CESCR, 2016); E/C.12/RUS/CO/6 (CESCR, 2017); E/C.12/AUS/CO/5 (CESCR, 2017); E/C.12/ARG/CO/4 (CESCR, 2018); E/C.12/DEU/CO/6 (CESCR, 2018). See also: CIEL & GIESCR, 'States' Obligations under the Covenant on Economic, Social and Cultural Rights, in the Context of Climate Change' (2018): <http://www.ciel.org/wp-content/uploads/2018/01/HRTBs-synthesis-report-CESCR.pdf>.

²⁸ CESCR Concluding Observations on Australia (2009), E/C.12/AUS/CO/4; CESCR Concluding Observations on Canada (2016), E/C.12/CAN/CO/6; CESCR Concluding Observations on Australia (2017), E/C.12/AUS/CO/5.

²⁹ CESCR Concluding Observations on Australia (2017), E/C.12/AUS/CO/5, paragraphs 11 & 12.

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Additionally, the same agreements also invited developing countries to submit “nationally appropriate mitigation actions” consisting of emission reduction commitments by 2020 – many of which were conditional on receiving sufficient means of implementation from international partners. Forty-six developing countries have submitted such nationally appropriate mitigation actions to the UNFCCC, these proposals can also be found on the website of the UNFCCC Secretariat: <https://unfccc.int/process/conferences/pastconferences/copenhagen-climate-change-conference-december-2009/statements-and-resources/4>

Under the Paris Climate Agreement (2015), Parties to the Agreement must now put forward “nationally determined contributions” every five years. According to the terms of the Agreement, these contributions must “represent a progression beyond the Party’s then current nationally determined contribution” and they must also “reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances” (article 4.4). The contributions submitted by developed countries must continue to take the form of “economy-wide absolute emission reduction targets” (= “Kyoto type targets”) while developing countries are provided with more flexibility and might therefore also select to put forward targets covering only specific sectors of their economy.

The contributions submitted by the States Parties in 2015 define the emission reductions to be achieved by 2025 or 2030 and a new or updated contribution must be submitted by each State by the end of 2020. The UNFCCC Secretariat maintains a registry with the nationally determined contributions submitted by 188 countries:

<https://www4.unfccc.int/sites/ndcstaging/Pages/Home.aspx>

Member States of the European Union have opted for the option to provide to the UNFCCC only one joint emissions reduction target for all 28 States. The effort required to meet this collective objective is then divided among members through emissions allowances for the most important industries and through a “Burden-Sharing Agreement” defining national targets covering the emissions of other sectors such as housing, transport, agriculture and waste. The targets for the reduction of emissions by 2020 for all EU Member States can be found here: https://www.eea.europa.eu/data-and-maps/daviz/national-2013-and-2020-ghg#tab-chart_1

The targets for the reduction of emissions between 2021 and 2030 for all EU Member States can be found here: https://ec.europa.eu/clima/policies/effort/proposal_en



Assessing the adequacy of these commitments

The UNFCCC Secretariat lacks the mandate to review the adequacy of individual national targets but the Secretariat has stressed that the level of ambition represented by the current targets is not sufficient to meet the objectives of the Paris Agreement and to avert dangerous climate change. Several online tools developed by international teams of experts or think tanks provide independent assessments of the adequacy of individual State targets in light of science and equity.

Particularly user-friendly, the Climate Action Tracker reviews for 30 key states and for the EU the current trend in emissions and their mid-term and long-term climate targets?/policies? in light of the objectives of the Paris Agreement. For all of these actors, the Climate Action Tracker also provides a critical assessment of the policies implemented by the country and of potential regulatory gaps. Note however, that this tool is not useful for EU member States, since it addresses the EU as a whole.

<https://climateactiontracker.org/countries/>

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The Climate Equity Reference Calculator offers an interactive tool to assess the fair level of ambition for each State based on equity indicators. The emphasis of this tool is on providing an assessment of the “fair share” of each country to meet the objectives of keeping temperatures below 1.5°C. The calculator compares this fair emissions pathways with projected emissions as well as any commitment adopted by the country.
<https://calculator.climateequityreference.org/>



Long-term decarbonization strategies

Additionally under the Paris Climate Agreement Article 4.19, all Parties to the agreement should “strive to formulate and communicate long-term low greenhouse gas emissions development strategies, mindful of [the objectives of the Paris Agreement]”. States also agreed that such strategies should be communicated to the UN by 2020.³⁰ As of 1st February 2019, only 10 States have communicated such a long-term development strategy. The list of these strategies is kept updated on the UNFCCC webpage: <https://unfccc.int/process/the-paris-agreement/long-term-strategies>



Information regarding the implementation of policies and progress towards national targets

The implementation of effective policy measures, as well as the monitoring of their performance, are key to reducing the climate threat. Such policies must include, among others, measures seeking to lower and phase out fossil fuels in the generation of electricity and efforts to limit the reliance on the internal combustion engine for vehicles.

Under the UN climate change regime, developed countries must and developing countries should (with the exception of least developed country Parties and small island developing States) provide biennial reports regarding their emissions reductions and the policies implemented. The biennial reports are subject to an international review and are therefore considered reliable sources of information regarding domestic climate action. These reports constitute a good source of information regarding the actual trends in emissions and the policies implemented or foreseen.

For developed countries, the most recent of these reports are available here:

- http://bit.ly/UNFCCC_NatReport_Dvped

For developing countries, these reports are available here:

- http://bit.ly/UNFCCC_NatReport_Dvping

Again the UNFCCC Secretariat is not mandated to conduct any assessment of the adequacy or effectiveness of these domestic climate policies. Several international consortium however offer such an independent assessment:

- For thirty key nations and for the EU as a whole, the Climate Action Tracker offers a good assessment of national implementation – both in terms of emissions projected under current policies and a description of the effectiveness of various policies and of regulatory gaps.
<https://climateactiontracker.org/countries/>
- The Climate Change Performance Index also seeks to review annually the performance of 56 countries (including an individual review of all EU member states) based on 14 indicators related both to domestic policies and to international cooperation. This index

³⁰ Paris Climate Conference (2015), UNFCCC Decision 1/CP.21, paragraph 35.

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offers a ranking of the performance of different countries. However, its authors clearly stipulate that no individual country has implemented sufficient policies to achieve a “very good” rating. For 33 selected countries and for the EU, the Index also provides a short qualitative assessment of current policies and an indication of regulatory gaps. <https://www.climate-change-performance-index.org/>

Contribution to Climate Finance

Introduction to the Issue

Significant resources are needed to support the large-scale investments required to undertake meaningful mitigation and adaptation measures. The capacity of States to take such measures to combat climate change varies significantly and often those States suffering the greatest impacts have the least resources for mitigation and adaptation measures. In recognition of this dilemma, the UNFCCC and its related agreements, require financial assistance to be provided by States with more resources, to those with fewer resources and those who are more vulnerable to the impacts of climate change. Therefore, climate finance is another essential element of the measures States must take to address climate change.

The UNFCCC Standing Finance Committee defines climate finance as ‘finance that aims at reducing emissions, and enhancing sinks of greenhouse gases and aims at reducing vulnerability of, and maintaining and increasing the resilience of, human and ecological systems to negative climate change impacts’.³¹ Broadly it refers to the flow of funds to all activities, programmes or projects that support climate change related actions. It includes private and public sources of finance, bilateral and multi-lateral arrangements and support provided via development aid, private equity, loans, or concessional finance. It also includes financing for mitigation activities, adaptation activities and for loss and damage.

Under the Paris Agreement, States emphasised that climate finance should be balanced between resources for mitigation and for adaptation. However, current trends see the vast majority of climate finance being directed to mitigation activities and adaptation being neglected.³² In addition, analyses of the estimated costs of effective adaptation and the level of climate finance supporting adaptation initiatives, have identified a significant ‘adaptation finance gap’.³³ This has particular significance for developing countries and climate-vulnerable countries, who are expected to have much higher adaptation needs and costs. Therefore, developed States should be encouraged to increase the level of climate finance directed to adaptation.

Many poorer countries have also complained that too much climate finance is being provided through loans rather than as grants. Obviously, loans leave recipient developing countries indebted in respect of their climate actions, usually in contexts where the recipient had very little responsibility for the carbon emissions causing climate change.

In addition, the climate finance provided should not contribute to or exacerbate human rights violations. Climate action and projects benefitting from international climate finance can lead to

³¹ Note that there is no official UNFCCC definition of climate finance. UNFCCC Standing Committee on Finance, ‘2014 Biennial Assessment and Overview of Climate Finance Flows Report’, page 5, paragraph 4: https://unfccc.int/files/cooperation_and_support/financial_mechanism/standing_committee/application/pdf/2014_biennial_assessment_and_overview_of_climate_finance_flows_report_web.pdf

³² See Barbara Buchner et. al. ‘Global Landscape of Climate Finance 2017’ (October 2017). Available at: <https://climatepolicyinitiative.org/publication/global-landscape-of-climate-finance-2017/>

³³ UN Environment Program, ‘The Adaptation Finance Gap Report 2016’, (May 2016): <http://www.unep.org/climatechange/adaptation/gapreport2016/>

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human rights violations. States should ensure that adequate safeguards, remedies, and processes are in place to prevent and redress any violations of the rights of indigenous peoples or local communities, occasioned by the climate projects they finance.

International Obligations and Commitments of States

Under Article 2(1) of the ICESCR States are obliged to *'to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant....'* Pursuant to this provision States must seek and/or provide 'international assistance and co-operation' to other States in order to further the Convention purpose of achieving the full realization of ESC rights.³⁴ This includes providing international co-operation and assistance to combat climate change.

In the context of the UN Climate Agreements, this obligation has been further defined. The UNFCCC and subsequent decisions made by the Conference of the Parties included the importance of providing adequate finance to developing countries to mitigate and adapt to climate change.

Under Articles 4(3) and 4(4) of the UNFCCC, developed country Parties and those listed in Annex II are obligated to assist developing countries comply with the Convention and adapt to the adverse effects of climate change. Under Article 4(3) developed countries *'shall provide new and additional financial resources'* to help developing countries meet their obligations, while under article 4(4), developed country Parties and those in Annex II "shall also assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation."

In 2010, the UNFCCC Parties adopted the Cancun Agreements and reaffirmed that finance should be "scaled-up, new and additional".³⁵ This refers to the insistence, particularly from developing countries, that climate finance be new and additional resources, rather than the re-purposing of monies already committed for aid and development financing. In addition, developed countries committed to mobilizing USD 100 billion per year by 2020 to address developing countries' needs.³⁶

Under the Paris Agreement, Parties reaffirmed these commitments stating that "developed country Parties shall provide financial resources to assist developing country Parties".³⁷ Further, in article 9(4) countries specified that these scaled up finances should be balanced between adaptation and mitigation. The Parties confirmed the need to mobilize USD 100 billion per year by agreeing that by 2025 they would set a new "collective quantified goal from a floor of USD 100 billion per year, taking into account the needs and priorities of developing countries".³⁸ The Paris Agreement also provides that the *'mobilization of climate finance should represent a progression beyond previous efforts.'*³⁹

³⁴ See CESCR General Comment No. 2: The nature of States parties' obligations (art. 2, para. 1), UN Doc E/1991/23 (1990), paragraphs 13 & 14.

³⁵ Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention, Decision 1/CP.16, UN Doc. FCCC/CP/2010/7/Add.1 (2010), para. 97.

³⁶ *Id.* at para. 98.

³⁷ Paris Agreement, para. 9(1).

³⁸ Adoption of the Paris Agreement, Decision 1/CP.21, UN Doc. FCCC/CP/2015/10/Add.1 (2015), para. 53.

³⁹ Article 9(3)

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Where to find information regarding climate finance commitments and implementation

Official information related to the climate finance provided by individual countries is available in the biennial reports that governments must submit to the UNFCCC. For developed countries, the most recent of these reports are available here (see section 7 of each report):

<https://unfccc.int/process-and-meetings/transparency-and-reporting/reporting-and-review-under-the-convention/national-communications-and-biennial-reports-annex-i-parties/third-biennial-reports-annex-i>



Independent Tools to Assess the Adequacy of States' Climate Finance Commitments and Measures

The NGO Oxfam publishes one of the most comprehensive assessments of the climate finance provided by developed countries. Based on data available in governmental reports to the UNFCCC, this "climate finance shadow report" offers an assessment of progress towards the \$100bn goal; where the money is coming from; where it is going; what it is being spent on; and how donors are counting the money they report.

The Oxfam report is particularly valuable as it looks beyond quantitative figures to consider the extent to which climate finance is actually beneficial to the world's poorest. The climate funds provided by thirteen countries among the largest donors, as well as the EU, are considered in the report. Some of the key points contained in the 2018 report and of particular relevance to assessing the human rights relevance of these funds, include the following: Estimated net climate-specific assistance is far lower than reported climate finance; Grant-based assistance (as compared to loans and equity) is too low and is rising too slowly; and assistance for climate adaptation and assistance to LDCs are too low and increasing too slowly.

<https://www.oxfam.org/en/research/climate-finance-shadow-report-2018>

For member states of the EU, the ACT Alliance provides a more detailed assessment of the climate finance provided by 28 Member States of the EU as well as Switzerland and Norway. This report comes to the same four key conclusions as the Oxfam report: funds are counted twice (under ODA and under climate finance); For many EU member states, climate finance provided is not "new and additional" compared to funds allocated under ODA; the climate finance provided by the EU Member States does not sufficiently support adaptation actions; climate finance is too rarely provided in the form of grants and is not provided to the LDCs as a matter of priority.

<https://actalliance.eu/news-post/climate-finance-a-game-of-numbers/>

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