

# Economic, Social, and Cultural Rights Obligations of States in the Context of Climate Change

## Synthesis of Statements on Climate Change by the Committee on Economic, Social and Cultural Rights (2020 Update)



The Committee on Economic, Social and Cultural Rights (CESCR) is mandated to monitor the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which has been ratified by 166 States. By ratifying the ICESCR, States commit to take steps individually and through international cooperation and assistance, to the maximum of their available resources, with a view to progressively achieving the full realization of the economic, social, and cultural rights guaranteed in the ICESCR (article 2). The rights protected by the ICESCR include the rights to health, adequate housing, education, water, food, and culture.

The Committee has three main functions: the State reporting procedure; General Comments and Statements; and the Communications procedure (a quasi-judicial complaints mechanism). This note describes the work of the Committee on climate change under each of those functions.

To date, the CESCR has not issued any decision on climate change under its communications procedure, nor are there any pending cases before the CESCR addressing climate change.

### General Comments and Statements

While the CESCR had mentioned climate change in its General

Comment No. 15 on the right to water in 2002 (paragraph 28), 2018 was the first time the Committee adopted a public statement specifically focused on climate change. Published in the context of the release of the Intergovernmental Panel on Climate Change (IPCC) Special Report on 1.5°C, the CESCR's [Statement on climate change and the ICESCR](#) describes the implications of climate change for economic, social, and cultural rights and States' obligations under the ICESCR in that context, including obligations owed to populations outside their territories. It underlines that "a failure to prevent foreseeable harm to human rights caused by climate change, or a failure to mobilize the maximum available resources in

an effort to do so, could constitute a breach of this obligation.” The statement stresses that national climate commitments under the Paris Agreement must reflect the “highest possible ambition” in order to be compatible with States’ human rights obligations.

The Statement also highlights States’ obligations to dedicate the maximum available resources to the adoption of measures that could mitigate climate change and, for high-income States, the duty of international cooperation requir-

ing them to contribute to climate finance and support developing countries in adaptation efforts. With respect to non-state actors, the Committee emphasized the duty of States to regulate private actors to ensure that their activities do not worsen climate change and to “adopt policies that can channel modes of production and consumption towards a more environmentally sustainable pathway.”

The CESCR also joined with four other human rights treaty bodies in adopting a landmark

[Joint Statement on human rights and climate change](#) in September 2019.

## State Reporting Procedure

The CESCR was the first human rights treaty body (HRTB) to adopt a Concluding Observation (COB) on climate change, when in 2008 it recommended that Ukraine adopt “legislation on climate protection giving effect to the 1997 Kyoto Protocol to the United Nations Framework Convention on Climate Change”

### Joint Statement by the CESCR and four other HRTBs on human rights and climate change

**T**he CESCR, the Committee on the Elimination of Discrimination Against Women, the Committee on the Rights of the Child, the Committee on Migrant Workers, and the Committee on the Rights of Persons with Disabilities jointly adopted a statement on human rights and climate change in September 2019. The statement articulates the legal obligations of the 196 States that have signed the relevant UN human rights treaties (ICEDAW / women’s rights, ICRC / children’s rights, ICESCR / economic, social, and cultural rights, ICRPD / rights of persons with disabilities, and ICMW / rights of migrant workers), in the context of climate change.

The statement warns that climate impacts threaten the right to life, the right to adequate food,

the right to adequate housing, the right to health, the right to water, and cultural rights. It also underscores that some groups are more vulnerable to the risk of harm than others: “those segments of the population already marginalised or in vulnerable situations or that, due to discrimination and pre-existing inequalities, have limited access to decision-making or resources, such as women, children, persons with disabilities, indigenous peoples and persons living in rural areas.” Further, it recognizes the agency of those most impacted by climate change and emphasizes an inclusive, multi-stakeholder approach with wide participation in climate policy-making.

The statement stresses that States must, as a matter of human rights law, implement emissions cuts reflecting the highest pos-

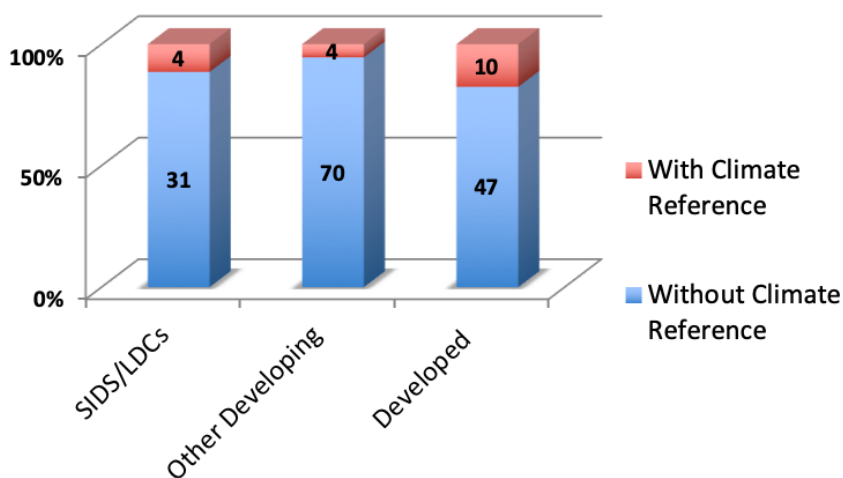
sible ambition, including by phasing out fossil fuels, promoting renewable energy, combating deforestation, and ensuring that financial flows, investments, and incentives are consistent with low-emissions pathways. It also underscores the obligations of States to regulate private actors and hold them accountable for climate harms occurring domestically and extraterritorially.

Echoing a commitment already made by CESCR in its 2018 statement, the joint statement concludes by saying that the human rights treaty bodies (HRTBs) will continue to “keep under review” the impacts of climate change on rights. Therefore, we can expect that climate change will continue to be a topic of focus in the work of the CESCR.

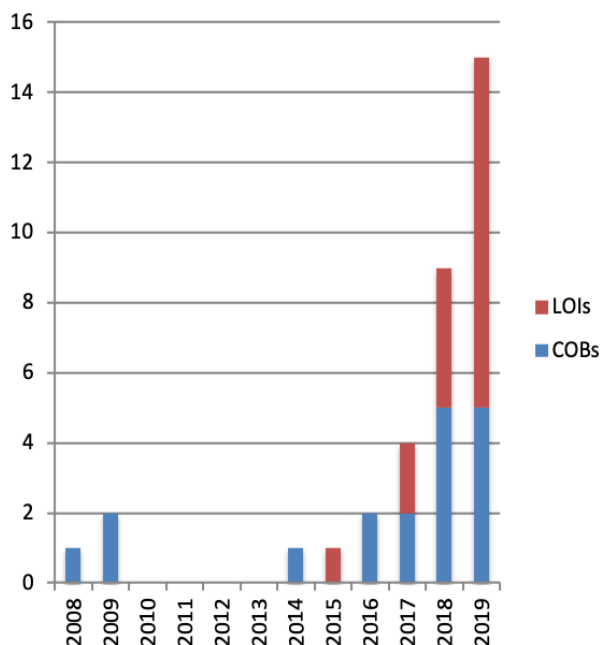
(CESCR, Ukraine, 2008). Since then, the number of references to climate change has grown steadily over time. The CESCR has made recommendations on climate change in 10.8% of all the State reviews it has undertaken between 2008 and 2019.

When references to climate change in the Lists of Issues (LOIs) are also counted, the CESCR has addressed climate change a total of 35 times (COBs and LOI/LOIPRs).

Analyzing the type of countries<sup>1</sup> receiving climate-related recommendations from the CESCR reveals that 11.4% of the Small Island Developing States (SIDS) and Least Developed Countries (LDCs) reviewed by the CESCR between 2008 and 2019 received a recommendation on climate, whereas the share amounted to 17.5% for developed countries and 5.4% for “other developing” countries (see Figure 2).



**Figure 2: CESCR’s climate change references in Concluding Observations, by country type, 2008 – 2019**



**Figure 1: CESCR’s climate change references in Concluding Observations and Lists of Issues, 2008 – 2019**

Therefore, developed States were more likely to receive a climate recommendation from the CESCR than other States. Of all the climate recommendations by the CESCR, 55% were made to developed countries.

Figure 3 shows the categorization of CESCR’s climate COBs as mitigation, adaptation, international cooperation, or procedural rights. Figure 4 shows the further categorization according to “sub-themes.” There is a relatively even spread between the four main categories for CESCR. This stands in contrast to the other HRTBs, whose recommendations have predominantly focused on the themes of adaptation, procedural rights, and international cooperation. The mitigation category was addressed in a significantly greater proportion of the CESCR’s climate COBs than in those of the Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee on the Rights of the Child (CRC).

In its recommendations relating to mitigation measures, the CESCR has become increasingly specific in addressing the main drivers of the climate crisis in the respective countries (see Figure 4). The

Committee emphasized the need to take “immediate measures” to reduce greenhouse gas emissions pointing, for instance, to coal extraction and export, fracking, oil exploitation, deforestation, the harmful activities of private actors, and the role of finance in driving the use of fossil fuels.

The Committee has given equal attention to adaptation in its recommendations and focused less on procedural rights than the CEDAW or the CRC, both of which put a stronger emphasis on those elements. All of the CESCR COBs categorized under procedural rights focused on the participation of civil society in climate policy-making. An example of a CESCR recommendation on procedural rights is its recommendation to New Zealand to “put in place effective mechanisms to ensure meaningful participation of Māori in all decision-making processes affecting their rights” and ensure “its climate change policies are developed and implemented in partnership with Māori, including through their effective participation in the Climate Commission” (CESCR, New Zealand, 2018).

International cooperation received equal attention in the CESCR’s climate COBs as mitigation and adaptation. The COBs on international cooperation all linked to the United Nations Framework Convention on Climate Change (UNFCCC) framework, generally by referencing the State’s Paris Agreement commitments or the Nationally Determined Contribution that States must communicate periodically under the Agreement. Often those recommendations urged developing States to “seek international support and assis-

tance in order to mobilize the financial and technological support to which it is entitled in mitigating and responding to the effects of climate change” (Bangladesh, 2018). The CESCR also explicitly reminded developed states of their responsibility to provide climate finance over and above the current level of official development assistance.

It is surprising that the CESCR made no recommendations regarding “climate response measures.” This category refers to measures taken by States to combat climate change that have an adverse impact on human rights. The CESCR has in the past raised concerns about development projects that have adversely impacted economic, social, and cultural rights, but it has not addressed such issues explicitly for climate mitigation or adaptation projects. It is expected that this theme might receive more attention in the coming years, particularly as

the imperative of a just transition is increasingly recognized by States and stakeholders.

### Compilation of Key CESCR Statements on Climate Change

*All Concluding Observations adopted by the CESCR can be accessed here: [bit.ly/CESCRcobs](https://bit.ly/CESCRcobs).*

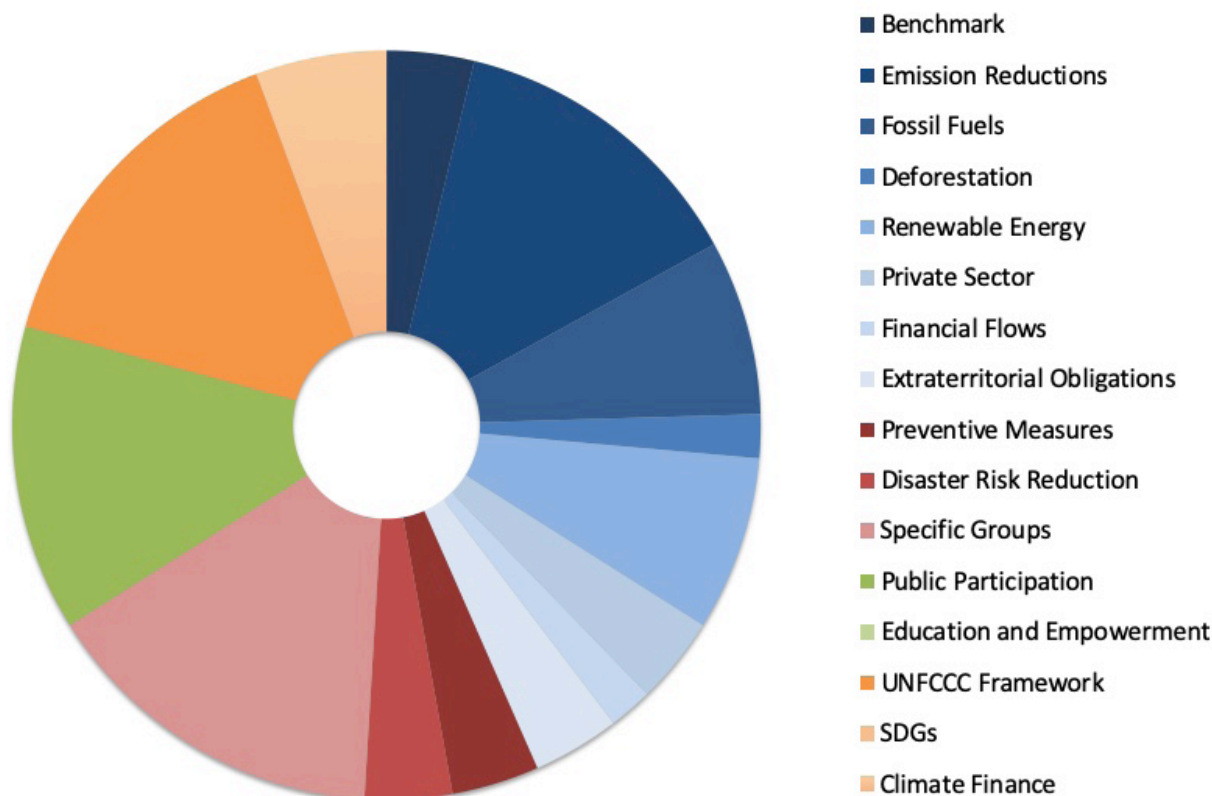
*The CESCR’s statement on climate change and the ICESCR in the context of the IPCC Report on Global Warming of 1.5 degrees is available here: [bit.ly/CESCR1o5c](https://bit.ly/CESCR1o5c).*

**On the reduction of emissions and the need to phase out fossil fuels (mitigation)**, the CESCR has stated that States must:

- increase their efforts to reduce greenhouse gas emissions (CESCR, Germany, 2018) and set national targets with time-bound benchmarks (CESCR, Russia, 2017);



**Figures 3: CESCR’s climate change references in Concluding Observations, by category, 2008 – 2019**



**Figure 4: CESC's climate change references in Concluding Observations, by sub-theme, 2008 – 2019**

- intensify their efforts to achieve their greenhouse gas emissions reduction targets for 2020 and increase the target for 2030 to be consistent with the commitment to limit temperature increases to 1.5°C (CESCR, Switzerland, 2019);
  - take immediate measures aimed at reversing the current trend of increasing absolute emissions of greenhouse gases and pursue alternative and renewable energy production (CESCR, Australia, 2017);
  - effectively regulate private actors to ensure that their actions do not worsen climate change, hold them accountable for harm they generate both domestically and extra-territorially, and ensure that they respect maximum air pollutant emissions limits (Joint Statement, 2019; CESCR Statement);
  - ensure compliance with commitments made in the Paris Agreement in relation to the exploitation of fossil fuels (CESCR, Argentina, 2018) and reconsider the increase in oil exploitation and large-scale mining in the light of the State's commitments under the Paris Agreement (CESCR, Ecuador, 2019);
  - review their position in support of coal mines and coal export (CESCR, Australia, 2017);
  - dedicate the maximum available resources to the adoption of measures that could mitigate climate change, including addressing emissions from the land sector, such as slowing down deforestation and moving to agro-ecological farming (Joint Statement, 2019; CESCR Statement);
  - discontinue financial incentives or investments in activities and infrastructure, such as the fossil fuel industry, that are not consistent with low greenhouse gas emissions pathways and climate-resilient development, whether undertaken by public or private actors (Joint Statement, 2019; CESCR, Switzerland, 2019).
- On the protection of rights from the impacts of climate change (adaptation), the CESCR requires States to:**
- ensure that strategies and action plans on climate change and disaster risk reduction are formulated and implemented

on the basis of human rights (CESCR, Bangladesh, 2018; CESCR Statement);

- strengthen public policies and strategies aimed at mitigating the impact of natural disasters and climate change on the population (CESCR, Cabo Verde, 2018) and reduce the vulnerability of communities by increasing their preparedness and fostering prevention measures (CESCR, Mauritius, 2019);
- address the impact of climate change on Indigenous Peoples more effectively while fully engaging Indigenous Peoples in related policy and program design and implementation (CESCR, Canada, 2016) and address the adverse effects of climate change on their land and resources (CESCR, Finland, 2014).

On **procedural rights**, the CESCR affirmed that States are required to:

- ensure an inclusive, multi-stakeholder approach, which harnesses the ideas, energy, and ingenuity of all stakeholders (Joint Statement, 2019);

- respect, protect, and fulfill the rights of all, including by mandating human rights due diligence and ensuring access to education, awareness raising, environmental information, and public participation in decision-making (Joint Statement, 2019);
- ensure that national and regional strategies and action plans on climate change and disaster response and risk reduction are formulated with the meaningful participation of affected communities and civil society (CESCR, Bangladesh, 2018; CESCR Statement);
- ensure that the use of non-conventional fossil energies is preceded by consultation with affected communities and impact assessment processes (CESCR, Canada, 2016).

On **international cooperation and linkages with international frameworks**, the CESCR has articulated that States must:

- support adaptation and mitigation efforts in developing countries, by facilitating transfers of green technologies and

by contributing to financing climate mitigation and adaptation (Joint Statement, 2019);

- ensure that the contribution to the Green Climate Fund is over and above the current level of official development assistance and is not to the detriment of development assistance in other areas (CESCR, Denmark, 2019);
- strengthen international cooperation and seek the support to which developing States are entitled in mitigating and responding to the effects of climate change (CESCR, Mauritius, 2019; CESCR Statement);
- comply with the obligations of the Paris Agreement (CESCR, Germany, 2018) and with commitments as a developed country under the UNFCCC and the Kyoto Protocol (CESCR, Australia, 2017);
- cooperate in good faith in the establishment of global responses addressing climate-related loss and damage suffered by the most vulnerable countries (Joint Statement, 2019).

<sup>1</sup>In this note, countries are categorized in line with the United Nations Framework Convention on Climate Change (UNFCCC) Annexes.



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