

# Monitoring States' Compliance with their Human Rights Obligations, in the Context of Climate Change

Opportunities offered by the Reporting Procedure of the UN Human Rights Treaty Bodies



## ***In a nutshell...***

If the State in which you are working is to be reviewed by a UN Human Rights Treaty Body, there might be an opportunity to secure policy relevant recommendations from this UN body addressing specifically the shortcomings of your government's climate policies from a human rights perspective.

This requires the submission of information to the Human Rights Treaty Body based on information that you already have for your on-going climate campaigns. The process can provide another avenue for putting pressure on States to take action on climate change and the recommendations can be used to reinforce advocacy messages at the national level, including in litigation.

For example, the Committee on Economic, Social and Cultural Rights recommended that Argentina: *'reconsider the large-scale exploitation of non-conventional fossil fuels through hydraulic fracturing in the Vaca Muerta region, in order to ensure compliance with its obligations under the Covenant, in the light of the Paris Agreement commitments. It also encourages the State party to promote alternative and renewable energy sources, reduce greenhouse gas emissions and set national targets with time-bound benchmarks..'*

## **Overview of the Human Rights Treaty Bodies & the State Reporting Procedure**

The UN Human Rights Treaty Bodies (HRTBs) are the independent expert accountability mechanisms for the international human rights system. They are the bodies that are mandated by the international human rights treaties to review States' implementation of their legally binding obligations under the respective treaties. Of the ten existing HRTBs, six are more likely to address climate-related issues due to the substance of the treaties that they supervise:

- Committee on the Rights of the Child (CRC) – 196 State parties,
- Committee on Economic, Social and Cultural Rights (CESCR) – 170 State parties,
- Committee on the Elimination of Discrimination Against Women (CEDAW) – 189 State parties,
- Human Rights Committee (HRC) – 173 State parties,
- Committee on the Elimination of Racial Discrimination (CERD) – 181 State parties,
- Committee on the Rights of Persons with Disabilities (CRPD) – 180 State parties.

The first three Committees listed above have been consistently considering climate change in their work for a number of years (see [bit.ly/ClimateRightsObligations](https://bit.ly/ClimateRightsObligations)).

The HRTB's State reporting procedure is the key mechanism for monitoring treaty implementation by States. This process offers an opportunity for civil society to advocate for policy-relevant and country specific recommendations regarding States' human rights obligations in the context of climate change.

States that have ratified UN human rights treaties are typically reviewed every six - seven years by the relevant Committee. For all the Committees, the State Reporting procedure follows a similar process taking approximately 18-24 months in total. The process involves the submission of information by the State, civil society and UN agencies, regarding the State's compliance with its treaty obligations. The Committee holds a dialogue in Geneva with the State, and then publishes its 'Concluding Observations' (COBs), outlining its concerns and recommendations on the implementation by the State of its treaty obligations.

Whilst COBs are not legally binding, they are authoritative guidance to States on their implementation of their treaty obligations. These recommendations are relevant not only to the

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State under review but can also guide other States' in understanding the nature and scope of their treaty obligations.

The State reporting procedure presents opportunities to climate lawyers and advocates to secure recommendations that address policy issues that are particularly relevant to domestic climate policies and thereby contribute to ongoing political or awareness raising campaigns.

## **Benefits of Engagement in the State Reporting Procedure:**

- ✓ **opportunity to secure policy-relevant and country-specific recommendations:** the recommendations adopted by the Committees might address very specific policy issues and can therefore be particularly relevant to the ongoing political debates and campaigns;
- ✓ **relatively short timelines between the submission of information and the adoption of recommendations:** while timelines vary between Committees, generally the State reporting procedure has shorter timelines between the submission of information by civil society and the adoption of recommendations by the Committee, compared to typical timelines associated with litigation;
- ✓ **absence of negative precedent:** contrary to other processes, engagement in the State reporting procedure does not give rise to risks of negative precedents since the Committees tend to comment only on topics of concern. Where they are not convinced by a submission they usually disregard it, rather than publicly stating any disagreement with it.

## **Potential Limits of Engagement in the State Reporting Procedure:**

- ✓ **limited window of opportunity:** opportunities to submit parallel information and to seek climate-related recommendations from the HRTBs is limited by the scheduling practice of the Committees which results in some countries being reviewed very infrequently;
- ✓ **non-binding nature of recommendations:** since HRTBs recommendations are non-binding, their implementation remains a challenge. The impact of recommendations depends largely on the capacity of civil society and other institutional actors to leverage these recommendations in domestic policy processes and campaigns.

For example, the Committees have made recommendations: addressing **deforestation** to rainforest nations; denouncing the **export of fossil fuels** by Australia, Norway and Canada; and raising issues with Sweden and Switzerland regarding the **insufficient regulation of investments in fossil fuels by financial actors**, including pension funds and central banks. In most cases, these recommendations were made following the submission of information by civil society highlighting those climate-related topics most crucial for the State under review.

To support the drafting of parallel reports addressing failures to uphold human rights obligations in the context of climate change and climate policies, CIEL and GI-ESCR have prepared a short guidance note and template. We encourage you to review this note if you are considering submitting a parallel report.

### **Good practice: HRTBs underline responsibility of Norway for oil exports**

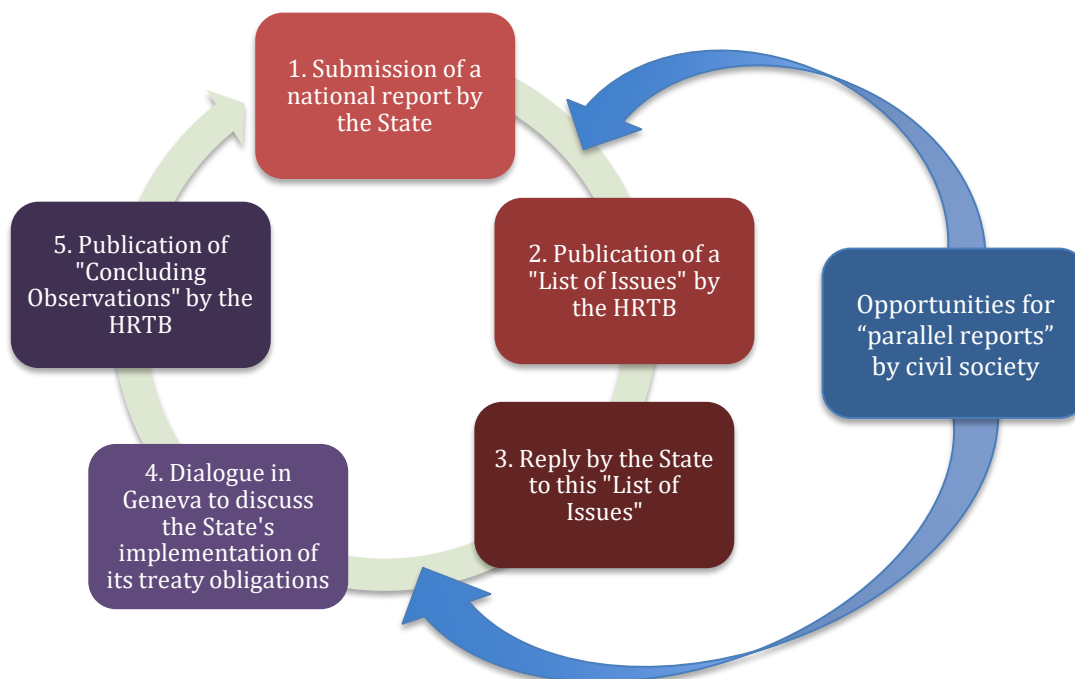
The Norwegian government's incoherent climate policies were exposed in a case brought in the Norwegian Courts. The case argued that on the one hand Norway demonstrates its commitment to combating climate change and its human rights impacts, through domestic cuts in emissions of greenhouse gases, whilst on the other hand continuing to issue licenses for the extraction of oil from the Arctic. In the Court's ruling, it accepted the government's argument, concluding that the Norwegian State is not responsible for emissions of greenhouse gases resulting from Norwegian oil exported to other countries.

Prior to the appeal of the case, two HRTBs issued recommendations underlining the extra-territorial human rights responsibility of the Norwegian state for emissions resulting from Norwegian exported oil, stressing that this responsibility does not halt at its border.

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## Key Stages of the HRTB reporting procedure



### First stage of the process<sup>1</sup>: identification of key human rights issues

**Step 1:** The process begins with the State submitting its Report on the implementation of its human rights treaty obligations since its last review. Civil society organisations are able to submit parallel reports to the Committee commenting on the State report and providing their assessment of the human rights situation in the country.

**Step 2:** Having considered information provided by the State and other stakeholders, the Committee then adopts a 'List of Issues' (LOI), which is a list of 25-30 questions asking the State to clarify or provide further information on specific issues.

**Step 3:** The State is then required to respond to the LOI by submitting a supplementary report providing the further information requested. Civil society has a second opportunity to provide information to the Committee, including by responding to or commenting on the LOIs or the further information submitted by the State.

### Second stage of the process: dialogue and adoption of recommendations

**Step 4:** The Committee then holds a 6 hour "dialogue" in Geneva with the State's delegation. During the dialogue the State presents its report and then the Committee asks a series of questions which the State must answer. This dialogue is held in public and is webcast. Civil society can observe, but not intervene, during this public dialogue. An informal briefing is typically organized in the days preceding the dialogue between members of the Committee and civil society organizations.

**Step 5:** Within 1-3 weeks after the dialogue, the Committee publishes its "Concluding Observations" (COBs) concerning the state under review. The COBs are a set of concerns and recommendations (approx. 30-40) to the State regarding the fulfilment of its obligations under the

<sup>1</sup> Note that many of the HRTBs are moving towards a 'Simplified Reporting Procedure' (SRP) for some State reviews. The SRP has a slightly different process – most notably, it commences with the Committee issuing a 'List of Issues Prior to Reporting' and the State report then responds to that LOIPR.

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Opportunities offered by the Reporting Procedure of the UN Human Rights Treaty Bodies

relevant treaty. The State is required to implement the COBs at the national level and to report back on their implementation within approximately 18 months.

## Maximizing the benefits of engagement with the Human Rights Treaty Bodies

The impact of the process and the COBs depends largely on the capacity of civil society to publicise them, advocate for their implementation at the national level and exploit the recommendations to support ongoing climate campaigns. In this context, it is important to consider the opportunities offered by each stage of the process to build awareness about the review and to apply political pressure. The table on the following page provides an overview of the potential opportunities.

### ⇒ **Media outputs and outreach**

The HRTB State reporting procedure can be useful for demonstrating that the policy demands of national civil society are considered valid and legitimate by the UN human rights institutions. This can make a powerful story that can be relayed in the press and via social media to increase awareness and outreach around existing domestic climate advocacy.

The process offers multiple media and communications opportunities: the submission of the State reports; the submission of the parallel report to the Committee; the dialogue between the Committee and the State; and the publication of the COBs by the HRTB.

### ⇒ **National Follow-Up**

To ensure the COBs are implemented at the national level, it is important to follow-up in the country with relevant governmental and non-governmental actors. This can include: participating in any national mechanism established to follow-up on the recommendations of HRTBs; reaching out to the National Human Rights Institution (NHRIs) to consider whether it can play a role in promoting implementation of the recommendations; informing political allies such as parliamentarians and other NGOs about the COBs and working with them to leverage these recommendations in relevant advocacy and policy-making spaces (?).

### **Good practice: impacts of Spanish coal power plants on children's rights**

In 2018, the Committee on the Rights of the Child raised concerns about the impacts of coal-fired power plants in Spain on the health of children and on climate change.

As a result of the outreach to the media by IIDMA, one of the organizations that submitted the report, one of the largest Spanish newspapers published two articles highlighting the civil society submission and the Committee's strong recommendation to 'carry out an assessment of the impact of air pollution from coal-fired power plants on children's health and on the climate as a basis for designing a well-resourced strategy to remedy the situation and regulate strictly the maximum emissions of air pollutants, including by private businesses'.



## Drafting a parallel report to a UN Human Rights Treaty Body on climate change

If you are interested in submitting a parallel report to one of the HRTBs to stress the shortcomings of the national climate policy, we invite you to check a guidance document prepared by CIEL and GI-ESCR to facilitate the drafting of such a report.

This briefing note and the guidance document can be accessed at [bit.ly/DraftingReportClimateHRTB](https://bit.ly/DraftingReportClimateHRTB)



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	Stage of the Process	Activity	Potential Leverage and tips
Before the dialogue	<ul style="list-style-type: none"> <li>Months prior to the deadline for the submission of a parallel report</li> </ul>	<ul style="list-style-type: none"> <li>Check the submission deadline for civil society parallel reports on the Committee website.</li> <li>Raise awareness among other domestic actors about the opportunity offered by the review.</li> <li>Identify the most strategic recommendations that you will seek.</li> <li>Draft the parallel report and secure endorsement by other organizations.</li> </ul>	<ul style="list-style-type: none"> <li>Seek to inform and involve other organizations to build collective ownership of the report and of any COBs adopted by the Committee. Early engagement of potential partners will increase the likelihood that they assist in disseminating relevant recommendations and advocating for their implementation.</li> </ul>
	<ul style="list-style-type: none"> <li>Shortly prior to the dialogue</li> </ul>	<ul style="list-style-type: none"> <li>Prepare a summary of the parallel report for use in advocacy with the Committee.</li> <li>Disseminate and publicise the parallel report and the up-coming dialogue.</li> </ul>	<ul style="list-style-type: none"> <li>Since Committee members are busy with many States to review at each session, a short, succinct briefing note, summarising the main points of the parallel report can be a useful advocacy tool.</li> </ul>
During the dialogue	<ul style="list-style-type: none"> <li>Informal briefings between Committee members and civil society</li> </ul>	<ul style="list-style-type: none"> <li>If possible, participate in the civil society briefings (in person or remotely) focusing your intervention on the most strategic issues. You would need to signal your interest in participating in the informal dialogue when submitting your report.</li> </ul>	<ul style="list-style-type: none"> <li>Be very explicit regarding which recommendation would be most helpful in the national context.</li> <li>Offer to respond in writing to any specific question posed by a Committee member.</li> <li>Geneva-based civil society colleagues can also assist with advocacy in Geneva</li> </ul>
	<ul style="list-style-type: none"> <li>Dialogue between the HRTB and the State</li> </ul>	<ul style="list-style-type: none"> <li>Monitor the dialogue (in person or via the webcast) to identify questions asked by the Committee members and responses provided by the State.</li> <li>Publicise the dialogue on social media.</li> </ul>	<ul style="list-style-type: none"> <li>The questions raised by the HRTB members during the dialogue often provide an insight into the COBs that might eventuate from the review.</li> <li>Pictures of the dialogue at the UN, with quotes from State representatives, can create powerful images of the review process for national audiences.</li> </ul>
After the dialogue	<ul style="list-style-type: none"> <li>Release of the Concluding Observations</li> </ul>	<ul style="list-style-type: none"> <li>Publish a press release and inform the media.</li> <li>Reach out to partners and build awareness about the recommendations to maximize their leverage.</li> </ul>	<ul style="list-style-type: none"> <li>Inform your main audiences (media and allies) that a UN recommendation is expected prior to its release to ensure this is on their agenda.</li> <li>Drafting a press release in advance can be helpful as the recommendations are published without prior notice.</li> </ul>
	<ul style="list-style-type: none"> <li>Follow-up</li> </ul>	<ul style="list-style-type: none"> <li>Inform all relevant actors of the outcome of the review - political allies, relevant civil society organizations, actors involved in climate litigation.</li> <li>Consider participating in any follow-up process established by the government.</li> </ul>	<ul style="list-style-type: none"> <li>Seek meetings with relevant government officials who should be responsible for implementation of the COBs.</li> </ul>