

Submission to the UN Special Rapporteur on the promotion and protection of human rights in the context of climate change's call for inputs for his upcoming report to the UN General Assembly on the "Promotion and protection of human rights in the context of mitigation, adaptation, and financial actions to address climate change, with particular emphasis on loss and damage"

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The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) and Tax Justice Network would like to thank the UN Special Rapporteur for the opportunity to provide input into his upcoming report to the 77th session of the UN General Assembly on the promotion and protection of human rights in the context of mitigation, adaptation, and financial actions to address climate change, with particular emphasis on loss and damage. We would like to draw the attention of the Special Rapporteur to several issues outlined below that address especially questions four, seven, and eight of the questionnaire provided.

This submission focuses on the impact of human rights-violating fiscal policies from the developed or industrialized countries, specifically OECD, G20 and G7 member States on the capacity of developing countries to cope with loss and damage.

Context

The world we live in does not lack the financial resources to adequately mitigate the climate crisis as well as adapt to it. Rather than a problem of scarcity of resources, it is a question of the distribution of an abundance of resources that do exist. While there are only estimates about the costs of loss and damage, numbers on the economic loss and damage alone currently range from USD 290bn to USD 580bn yearly by 2030.¹ The costs of non-economic loss and damage, such as loss of lives, cultural heritage, security, and indigenous knowledge and science will further contribute to the heavy burden that will need to be addressed in order to fulfil people's right to effective remedy as established in the Universal Declaration of Human Rights² and the two UN Covenants³, among other instruments. Regional agreements, such as the Escazú Agreement, have more specifically established a right to access to justice, including remedies, for violations of rights related to a healthy, clean and sustainable environment.⁴ Despite of obligations derived from the Paris Agreement in which States agree to scale up finance flows consistently, climate finance remains far below the estimates of what is needed, with current estimates requiring a 540% increase of annual climate finance to pay for sufficient adaptation and mitigation solutions.⁵ Moreover,

¹ Oxfam, Footing the Bill: Fair Finance for Loss and Damage in an era of escalating Climate Impacts (2022). [Link](#)

² art. 8 UDHR

³ art. 2.3(a) ICCPR, and art. 2.1 CESCR respectively

⁴ art. 8 of the Escazú Agreement

⁵ Climate Policy Initiative, Global Landscape of Climate Finance 2021: Preview (2021). [Link](#)

States are radically failing at fulfilling their human rights obligation to international cooperation and assistance, in line with their obligation of progressive realization to the maximum of its available resources to guarantee economic, social and cultural rights under ICESCR⁶ and their commitment to spending 0.7% of their Gross National Income (GNI) on development aid as established under UNGA resolution A/RES/2626(XXV). According to the latest numbers, only four OECD countries are currently fulfilling their committed 0.7% mark.⁷

Stranded assets⁸ will play a key role in the just green transition and that they will have a severe impact on countries' economies, as industries and workers alike try to adapt to and mitigate the impact of the climate crisis on their products and services. More importantly stranded assets will be and already are a reality for the fossil fuel industry due to a shift away from fossil fuels and decreasing prices of renewable energy solutions.⁹ Moreover, international regulations on dirty energy sources limit States' capacities to tap into fossil fuels. Consequently, developing countries now discovering new fossil fuel reserves, such as most recently Mozambique, Kenya, Tanzania, Ghana, Uganda, Senegal, and Côte d'Ivoire, cannot tap into these resources to speed up their development without violating their international commitments.¹⁰ These stranded assets should therefore be considered as a part of loss and damage.

The role of fiscal policy

This lack of financial resources to effectively adapt and mitigate the climate crisis and thus to finance a just green transition lies largely within the responsibility of developed or industrialized countries, such as the member States of OECD, G7, and G20, who do not take their human rights obligations seriously enough to allocate sufficient resources to climate finance and advert climate-related human rights impacts.¹¹ Nor comply with foundational international environmental law principles, in accordance with the *Polluter Pays Principle* and the principle of *Common But Differentiated Responsibilities* envisaged in the Paris Agreement, and other relevant sources of international law.¹² A significant contributor to this

⁶ see art. 2.1 CESCR

⁷ OECD, Net ODA (indicator), 8 (2022). Accessed on 21 June 2022. [Link](#)

⁸ Assets that have suffered from unanticipated or premature write-downs, devaluations or conversion to liabilities.

⁹ IRENA, Renewable Power Generation Costs in 2020 (2021). [Link](#)

¹⁰ Kyra Bos, Joyeeta Gupta, Stranded assets and stranded resources: Implications for climate change mitigation and global sustainable development, Energy Research & Social Science, Volume 56, 2019. [Link](#)

¹¹ Sarah Colenbrander, Yue Cao, Laetitia Pettinotti and Adriana Quevedo, A fair share of climate finance? Apportioning responsibility for the \$100 billion climate finance goal (Overseas Development Institute, 2021). [Link](#)

¹² The Polluter Pays Principle has been recognized as a general principle of international environmental law. It was initially formulated in the OECD Council Recommendation on Guiding Principles concerning the International Economic Aspects of Environmental Policies in 1972 and enshrined in Principle 16 of the Rio Declaration. Today the principle is reflected in several bilateral and multilateral environmental treaties, including the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, The Protocol on Civil Liability and Compensation for Damage caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters, the Helsinki Convention, among others. A wide number of countries across the world have also incorporated this principle into their domestic legal frameworks and in the development of national jurisprudence. Although its legal nature has been disputed by some commentators, considering its widespread use and incorporation into domestic and international law, it can be seen as an emerging norm of customary law. See International Law Commission (ILC), "Draft Principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, with commentaries" (2006), p. 74 and 75. The principle of Common but Differentiated Responsibilities (CBDR) is envisaged in Principle 7 of the Rio Declaration, as well as in several key environmental treaties, including

lack of resources dedicated to climate finance is the acquiescence to or even promotion of many of these countries towards tax evasion and avoidance, as well as illicit financial flows.¹³ As the Principles for Human Rights in Fiscal Policy points out, “States must create an international environment enabling the effective realization of human rights... including the fight against illicit financial flows.” (p.54) Furthermore, the principles highlight the obligation of halting the corporate tax rate’s global ‘race to the bottom’ and combating low-tax jurisdictions.¹⁴ Modelling based on the latest data from the OECD and the Bank of International Settlements shows that some USD 483 billion a year is lost to international tax abuse, with the majority of this - \$312 billion - due to the abusive tax practices of multinational corporations. A further \$171 billion in tax revenue is lost to offshore tax evasion by wealthy individuals.¹⁵ OECD member States are responsible for 78 percent of these revenue losses.¹⁶

It must also be emphasized that these estimates concern only the ‘direct’ revenue losses – i.e., they do not consider the compounding impact of the ‘race to the bottom’ in corporate taxation. Researchers at the International Monetary Fund estimate that, at a global level, indirect losses from global corporate tax abuse are at least three times larger than direct losses, thus, implying annual revenue losses are well in excess of USD 1 trillion.¹⁷

These realities benefit only multinational corporations and wealthy individuals.¹⁸ As such, while developed countries lose more overall, the proportional impact on national budgets is much greater in developing countries. This loss of revenue undermines the redistribution of resources towards public services that are crucial for populations living in vulnerable situations. Continuing to allow this unequal distribution of taxing rights will only widen the already large gap between the world’s wealthiest and poorest populations.

This means that instead of benefitting from a redistributive effect given through human rights-based fiscal policies, the public resources needed to finance a just green transition are siphoned away to the richest percentiles of States and society. Fiscal policies are thus often designed without proper consideration of the needs and demands of the marginalized and systemically discriminated against groups and individuals, in turn fueling violations of States’ minimum core obligations to ensure the satisfaction of at least minimum levels of economic, social and cultural rights, such as the right to water, the right to food, the right to housing, in combination with the right to non-discrimination, as well as its obligation to strive to ensure the widest possible enjoyment of the rights.¹⁹ In this line, the Committee on Economic, Social and Cultural Rights has already stated that a failure to prevent foreseeable human rights harm caused the

the Vienna Convention of 1985, the Montreal Protocol, the United Nations Framework Convention on Climate Change, the Paris Agreement, the Kyoto Protocol, and the Convention on Biological Diversity. The CBDR principle is recognized as a foundational principle of international environmental law, but its character as customary international law is still highly disputed.

¹³ Tax Justice Network, Financial Secrecy Index 2022. [Link](#)

¹⁴ Principles for Human Rights in Fiscal Policy, 2021. [Link](#)

¹⁵ Tax Justice Network, The State of tax Justice 2021. [Link](#)

¹⁶ Tax Justice Network, The State of tax Justice 2021. [Link](#)

¹⁷ Ernesto Crivelli, Ruudde Mooij and Michael Keen, Base Erosion, Profit Shifting and Developing Countries (2015). [Link](#); FinanzArchiv, Public Finance Analysis, 72/3 (2016), 268–301; Other work suggests indirect losses may be in a range of 4- 6 times larger: Alex Cobham and Petr Janský, Global Distribution of Revenue Loss from Corporate Tax Avoidance: Re-Estimation and Country Results, Journal of International Development, 30/2 (2018), 206–32.; or 2-15 times larger Javier Garcia-Bernardo, Petr Janský and Thomas Tørsløv, Multinational Corporations and Tax Havens: Evidence from Country-by-Country Reporting, International Tax and Public Finance, (2021), 1519-1561

¹⁸ International Monetary Fund, Fiscal Monitor: Fiscal Policy from Pandemic to War (2022). [Link](#)

¹⁹ CESCR (1990), General Comment No. 3: The nature of States parties’ obligations

climate emergency, or a failure to mobilize their maximum available resources in an effort to do so, could constitute a breach of their obligations to respect, protect and fulfill human rights.²⁰

Another example of this can be found in national fiscal policies designed to tax or subsidize fossil fuels which often do not have a redistributive effect.²¹ Income generated from carbon subsidies can further exacerbate the social impacts of the climate crisis, hitting those with limited capacity to adapt first and thus causing significant human rights violations.²² Moreover, as low-income earners and those with no income typically use the least fossil fuel and energy, it does not necessarily redistribute welfare benefits.²³ Carbon tax returns, on the other hand, are often not reinvested in areas where they would alleviate loss and damage faced by those disproportionately affected by the climate crisis.²⁴ This was made manifest by the Gilets Jaunes protests in France, where carbon tax returns were not reinvested to support low-income households, but rather financed the abolition of taxes predominantly benefitting high-income people.²⁵ These fiscal strategies thus have the potential to further increase economic and social injustice and expose people already struggling to adapt to the crisis to further human rights violations and highlights that the climate crisis cannot be addressed at the expense of those most susceptible to live in vulnerable conditions. This includes disproportionate impacts on women and girls, and indigenous communities, rendering a gender-just green transition impossible and inevitably causing loss and damage.²⁶

The misallocation of financial resources is driven by the protection of tax havens, including some major OECD countries, and the failure to adhere to international cooperation and aid commitments by Global North States thus underpins the lack of resources experienced by Global South States. Absence of fair allocation of taxing rights and subsequent lack of sufficient resources prevents States from allocating enough financial resources to climate action. The response to human-induced climate disasters, including slow-onset disasters, can then only happen on a reactionary basis which is significantly more cost intensive and further aggravates the financial burden on Global South States.²⁷

Developed and industrialized States are responsible to pay up for a just green transition

The responsibility of developed and industrialized States to address the loss and damage that is being caused by the green energy transition is thus inherently part of the *Polluters Pay Principle*. A study published in the Lancet Journal for Planetary Health found that Global North States accounted for 92% of

²⁰ CESCR, Climate change and the International Covenant on Economic, Social and Cultural Rights, Statement of the Committee on Economic, Social and Cultural Rights (2018). Last accessed 22 June 2022. [Link](#)

²¹ World Bank, Fiscal Policies for Development and Climate Action (2018). [Link](#)

²² UNDP, Fossil Fuel Subsidy Reform: Lessons and Opportunities (2021). [Link](#)

²³ World Bank, Fiscal Policies for Development and Climate Action (2018). [Link](#)

²⁴ Laura Merrill, Fossil Fuel Subsidies and Taxation: Two Sides of the Same Carbon Coin (Tax Justice Network, 2020), last accessed 23 June 2022. [Link](#).

²⁵ Thomas Piketty, L'illusion de l'écologie centriste, (Le Monde, 11 June 2019), last accessed 21 June 2022. [Link](#)

²⁶ Jacqueline Cottrell and Tatiana Falcão, A Climate of Fairness: Environmental Taxation and Tax Justice in Developing Countries (Vienna Institute for International Dialogue and Cooperation, 2018). [Link](#)

²⁷ Franck Lecocq, Zmarak Shalizi, How Might Climate Change Affect Economic Growth in Developing Countries? A Review of the Growth Literature with a Climate Lens (2007). [Link](#)

excess carbon emission, with the United States accounting for 40% of excess emissions on its own.²⁸ This means that States, who carry the main responsibility for the climate crisis and the harm done through it, have a human rights obligation to prevent and redress human rights violations in just transition processes as well as to support the on-going efforts of developing States to move to a just low-carbon economy.

Recommendations

Considering the above, we would like to present the following recommendations:

With regards to providing remedies in line with the *Polluter Pays Principle*, developed and industrialized States must support efforts by developing States to ensure that they can participate and spearhead the just green transition. Allocating sufficient financial and technical resources to developing States, in line with their international commitments to development aid (such as the 0.7% of GNI) and their respective human rights obligations, is crucial to adequately address loss and damage.

States must ensure that measures taken to transition towards a sustainable economy are guided by human rights and targeted towards those most affected and vulnerable to the climate crisis. Given the fact that women and girls are at the forefront of climate action as well as part of the group most vulnerable to the climate crisis, they must be in the center of green transition policies and projects while at the same time be amongst the key stakeholders to receive redress from the loss and damage that they have disproportionately suffered from. States thus should ensure that women's dual role in the climate crisis is adequately reflected in all policies related to climate action. This includes gender-sensitive and responsive loss and damage policies and corresponding remedies.

Our research on women's participation in the renewable energy transition has highlighted that specifically the absence of women in all their diversity from decision-making has negative implications for their human rights in the transition processes, for example their right to non-discrimination and their right to an adequate standard of living. Including women at all levels of decision-making processes, including in policy and project design, will enable a more holistic design that ensures that no one is left behind in the transition.²⁹

In order to address tax competition and eradicate tax havens, all UN member States should support a UN Tax Convention, that democratizes the international tax landscape. This should include mechanisms, such as effective minimum tax rates that eradicate tax competition, a harmonization of transparent information sharing between States, reallocation of taxing rights, international assistance in the collection of taxes, compliance with extraterritorial obligations of States regarding tax exemptions and avoidance, and be based on international human rights law and specifically non-discrimination. Eurodad's proposal for a UN Convention on Tax³⁰ could function as a starting point for such a Convention.

All States must design and implement wealth taxation with both solidarity and recurrent taxes that curb the hyper-concentration of wealth and disproportionate windfall profits. Carefully targeted human rights-

²⁸ Jason Hickel, Quantifying national responsibilities for climate breakdown: an equality-based attribution approach for carbon dioxide emissions in excess of the planetary boundary, *The Lancet Planetary Health*, 9/4 (2020), e399-404. [Link](#)

²⁹ Global Initiative for Economic, Social and Cultural Rights, *Women's Participation in the Energy Transition* (2021). [Link](#)

³⁰ For more information, see Tove Ryding, *Proposal for a United Nations Convention on Tax* (Eurodad, 2022). [Link](#)

centered carbon taxes should be implemented, feeding returns into systems, projects and mechanisms addressing loss and damage suffered by those most affected by the climate crisis, such as women and girls, thus contributing to the realization of fundamental rights. Such policies must be designed and implemented with the full and effective participation of women and girls, in all their diversity, to ensure a gender-lens.

Financial secrecy must be robustly addressed at both national and international levels in order to combat illicit financial flows, tax abuse and tax competition. A Global Asset Register that links all assets to the real beneficial and legal owners who actually control them will be key to display global inequalities adequately and thus enable policy makers to design fiscal policies adequate to meaningfully redress loss and damage. To be effective, such a register should include information on wealth, real estate, financial assets, gold, and other types of value; information about the beneficial owner of assets (rather than holding companies or anonymous shell companies owing assets on paper); and make all information available in open data format, or at the very least as machine-readable data, so as to allow information to be analyzed and cross-checked.³¹

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³¹ Tax Justice Network, Global asset register (2020). Last accessed 22 June 2022. [Link](#)