



Fossil Fuel-based Economy and Human Rights

Inputs to Inform the Thematic Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change to the Human Rights Council 59th session

South Centre

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1. Introduction

The South Centre welcomes the opportunity to contribute to the Special Rapporteur on Climate Change's thematic report on Fossil Fuel-based Economy and Human Rights. This submission examines the complex intersection of climate justice, human rights, and the imperative to transition away from fossil fuels. It emphasises the urgent need for a just and equitable transition that upholds human rights, particularly for marginalised and vulnerable communities, while ensuring that these processes do not disproportionately burden developing countries.

These inputs explore the critical linkages between transitioning away from fossil fuels, climate justice, and the protection of human rights. It highlights how the transition can contribute to a cleaner and healthier environment, foster sustainable development, and directly support the right to a healthy environment. It also identifies the challenges and opportunities of reducing fossil fuel subsidies, particularly in marginalised communities. The dependence of these communities on fossil fuels, the potential impacts of subsidy reduction on energy access and affordability, and the need for targeted social protection measures and investments in renewable energy infrastructure are all examined to ensure a just and equitable transition.

Furthermore, this submission analyses how Investor-State Dispute Settlement (ISDS) mechanisms in international investment agreements can hinder the phase-out of fossil fuels. It discusses the "regulatory chill" effect of ISDS, the financial burden it imposes on developing countries, and the need for a holistic reform of investment agreements to safeguard the regulatory space of states and enable them to pursue ambitious climate action.

The inputs also focus on operationalising the principle of Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) in transitioning from fossil fuels. Emphasising the need for developed countries to fulfil their climate finance commitments, facilitate technology transfer, and respect the policy space of developing countries to ensure a just and equitable transition. Finally, this submission provides concrete policy recommendations to ensure a just and equitable transition from fossil fuels. It calls for integrating human rights principles into all aspects of the transition, strengthening international cooperation, and reforming the international investment regime to remove barriers to ambitious climate action.

The South Centre believes that a just and equitable transition from fossil fuels is essential for mitigating climate change, upholding human rights and achieving sustainable development. These inputs could contribute to the Special Rapporteur's thematic report and inform the discussions on this critical issue at the Human Rights Council 59th session.

2. The Intersection of Climate Justice, Human Rights, and the Fossil Fuel Phase-Out

Transitioning away from fossil fuels has become a paradigm for achieving the objectives of the Paris Agreement. The 28th Conference of the Parties to the United Nations Convention on Climate Change (COP 28) recognised the need to enhance global efforts towards combatting climate change and transitioning away from fossil fuels.¹ The COP 28 recognised that such transitioning required to be just, orderly and equitable.² This means increasing collective action to accelerate the deployment of renewable energy sources, enhance energy efficiency, and foster a just and equitable transition for workers and communities dependent on the fossil fuel industry.

Transitioning from fossil fuels can promote a cleaner and healthier environment, foster sustainable development, and directly support the right to a healthy environment, enshrined in various international human rights instruments, as it will contribute to fighting air pollution, water contamination, and soil degradation.³ The World Health Organization estimates that air pollution is responsible for at least 7 million deaths each year, contributing to a growing global health crisis, including by increasing deaths in noncommunicable diseases such as cardiovascular issues, respiratory diseases and lung cancer.⁴ Transitioning to renewable energy sources can significantly improve air quality and public health, upholding the right to health for present and future generations. Similarly, transitioning to cleaner energy sources could yield an estimated \$178.7 billion annually in health benefits by 2040, through reduced deaths and

¹ United Nations Framework Convention on Climate Change (UNFCCC). (2023). COP28 Global Stocktake Decision.

² Ibid.

³ United Nations Human Rights Council, 'Analytical Study on the Relationship between Climate Change and the Human Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health' (Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/32/23, 6 May 2016)

⁴ See: World Health Organisation, Health Community Calls for Urgent Action for Clean Air Ahead of WHO Conference in <https://www.who.int/news/item/27-01-2025-health-community-calls-for-urgent-action-for-clean-air-ahead-of-who-conference> (accessed 25.02.2025).

disabilities from household air pollution, reducing respiratory illnesses, cardiovascular diseases, and other health problems, particularly in vulnerable communities disproportionately affected by pollution.⁵

At the same time, climate change, driven by fossil fuel emissions, threatens essential resources through extreme weather events, droughts, and disruptions to agricultural production. The Committee on Economic, Social and Cultural Rights (Committee ESCR) has recognised that climate change threatens land access and user rights globally, particularly in vulnerable regions, disrupts coastal livelihoods through increased sea levels, and increased temperatures and extreme weather contribute to land degradation and desertification.⁶ A fossil fuel phase-out and responsible investments in sustainable development can contribute to the right to an adequate living standard, including access to essential services such as energy, water, and food.

The Committee ESCR has recognised that states must cooperate internationally to ensure climate mitigation policies and prioritise the phase-out of fossil fuels.⁷ Achieving a just, orderly, and equitable phase-out requires a holistic approach, addressing the technical aspects of energy transition and the profound social, economic, and health implications, which requires identifying the intersection of climate justice, human rights and the fossil fuel phase-out. Likewise, developed nations must fulfil their climate finance commitments, ensuring that developing countries are empowered to pursue low-carbon pathways without exacerbating existing vulnerabilities. International cooperation, underpinned by principles of equity and solidarity, is necessary to effectively mitigate the climate crisis, safeguard human rights, and secure effective responses to climate change.

3. Countering the Effects of Reducing Fossil Fuel Subsidies in Marginalised Communities

Fossil fuels support all countries' essential services such as energy, transportation, and agriculture. However, growing divides in access to modern and clean energy highlight the needs of marginalised communities and households in managing a just transition. According to the World Energy Outlook, 645 million people will still lack access to electricity by 2030, and 1.7 billion will lack access to clean cooking.⁸ The persistent lack of access to modern energy in marginalised and rural communities has entrenched dependence on fossil fuels and perpetuated the necessity of ongoing subsidies. Nevertheless, these subsidies must strictly align with strategies for poverty alleviation

⁵ See: United Nations, Achieving Universal Access by 2030 and Net-Zero Emissions by 2050: A Global Roadmap for Just and Inclusive Clean Cooking Transition (United Nations 2023), p. 8 in https://sdgs.un.org/sites/default/files/2023-07/UN-Energy%20Policy%20Brief%20-%20Clean%20Cooking%20Netzero%20pathway-%207-12-23%20clean%20with%20cover%20page2_0.pdf (accessed 25.02.2025).

⁶ UN Committee on Economic, Social and Cultural Rights, General Comment No. 26 (2022) on Land and Economic, Social and Cultural Rights (E/C.12/GC/26, 22 December 2022), para. 56.

⁷ Ibid.

⁸ International Energy Agency, World Energy Outlook 2024 (IEA 2024), p. 227 in <https://www.iea.org/reports/world-energy-outlook-2024> (accessed 25.02.2025).

and support for rural communities to foster a just, orderly and equitable energy transition for all.

Likewise, the impact of transitioning from fossil fuels in emerging markets and developing economies has seen slower growth in the creation of clean energy jobs compared to advanced economies due to lower investment and rapid non-energy sector expansion.⁹ These job losses pose significant challenges for workers and communities, as new clean energy jobs may not be geographically accessible for marginalised and rural communities. In addition, many clean energy technologies' prices are higher upfront and remain a barrier, especially for low- and middle-income households, increasing the disparity between urban and rural energy access and affordability. Rural households often face higher energy costs due to isolation and less efficient homes, greater reliance on personal vehicles, and limited access to modern energy services.¹⁰ This inequity has required public policies to safeguard basic access to energy by reducing usage costs, often translated into fossil fuel subsidies.

Although fossil fuel subsidies significantly affect states' economies and exacerbate environmental challenges,¹¹ reducing these subsidies might cause economic, political, and social difficulties. Given that millions of people living in marginalised and rural communities are still heavily dependent on fossil fuels, reducing them can increase energy prices, disproportionately impacting low-income households, and leading to social unrest.¹² Furthermore, the reduction of these subsidies can disrupt industries reliant on low-cost energy, causing job losses and limiting economic diversification efforts.¹³

Therefore, reducing fossil fuel subsidies will require careful consideration of each state's social and political context, including the potential risk of social unrest.¹⁴ Therefore, a comprehensive approach to reducing fossil fuels requires targeted social protection measures, particularly towards marginalised and vulnerable communities. These measures can include the provision of financial assistance to low-income households and supporting workers in transitioning to new industries.¹⁵ At the same time, investments in renewable energy infrastructure are crucial. Still, they must ensure

⁹ Ibid. p. 223

¹⁰ Ibid. p. 220.

¹¹ UNDP, Fossil Fuel Subsidy Reforms - Lessons and Opportunities (2021) <https://www.undp.org/sites/g/files/zskgke326/files/2021-10/UNDP-Fossil-Fuel-Subsidy-Reforms-Lessons-and-Opportunities.pdf> (accessed 24.02.2025).

¹² IISD, 'Lessons from Ecuador on Fossil Fuel Subsidies' <https://www.iisd.org/articles/lesson-ecuador-fossil-fuel-subsidies> (accessed 26.05.2025).

¹³ Louisa Raitbaur, "The New German Coal Laws: A Difficult Balancing Act", *Climate Law* 11, 2 (2021): 176-194.

¹⁴ Ecuador and Jordan Jordan's decision to postpone subsidy reductions due to regional instability

¹⁵ International Labour Organization (ILO), Guidelines for a Just Transition towards Environmentally Sustainable Economies and Societies for All (ILO 2015) https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---ifp_seed/documents/publication/wcms_432859.pdf, p. 15.

universal access and benefits for the most impacted communities by recognising energy as a public good.¹⁶

International cooperation and coordination are also essential for reducing fossil fuel subsidies and ensuring an effective and inclusive transition to clean energy. Integrating human rights principles into reducing fossil fuel subsidies to safeguard vulnerable communities' rights to a healthy environment and sustainable livelihoods and guarantee universal access to affordable and dependable energy. This holistic perspective ensures that the transition to a low-carbon economy does not exacerbate existing inequalities or create new ones. Additionally, facilitating the transfer of clean and appropriate technologies to developing countries on preferential terms, by addressing intellectual property barriers and fostering collaborative research is necessary to promote effective, just transition strategies. Increasing technical expertise in renewable energy is also required to enhance energy governance and policymaking.

4. Investor-State Dispute Settlement as a Barrier to Phasing-Out Fossil Fuels

Investor-State Dispute Settlement (ISDS) provisions in international investment agreements significantly hinder developing countries' ability to phase out fossil fuel subsidies. The threat of costly legal procedures and substantial claims related to policy changes that may impact investments can deter governments' ambitious reforms to transitioning from fossil fuels, creating a "regulatory chill" effect.¹⁷

In addition, the financial burden of ISDS disputes further exacerbates developing countries' challenges in achieving a just transition away from fossil fuels. These countries often have limited resources and require substantial financial support to invest in renewable energy and provide social safety nets. However, defending against ISDS claims and paying out damages can drain public funds, diverting resources from essential investments in climate mitigation and adaptation and social protection programs.¹⁸

Therefore, reforming the international investment regime is necessary to achieve climate justice and guarantee that developing countries have sufficient policy space to implement comprehensive climate action strategies, including phasing out fossil fuel and managing the social and economic consequences of transitioning to low-carbon

¹⁶ Lavinia Steinfort and Rowan Mataram, Reclaiming Energy Report: Part 4 - Global Public Goods, Transnational Institute (18 December 2024) in <https://gemini.google.com/app/93a832afdb22ffe9> (accessed 26.02.2025).

¹⁷ For example, in 2012, Occidental Petroleum was awarded \$1.77 billion in an ISDS case against Ecuador for terminating an oil concession contract due to environmental damages, highlighting the financial risks associated with challenging fossil fuel investments. Similarly, Germany's decision to phase out nuclear power after the Fukushima disaster, was challenged by the Swedish company Vattenfall initiating an ISDS claim for €4.7 billion in compensation.

¹⁸ See: Daniel Uribe, Paris the Grass Green: A Climate Change Carve-Out in Investment Agreements, Investment Policy Brief 25, South Centre (July 2024) in <https://www.southcentre.int/investment-policy-brief-25-5-july-2024/> (accessed 20.02.2025), also David Cheng, Jai Abhijit Unde, and James Casey Ryan, Investor Obligations in International Investment Law, Geneva Graduate Institute and South Centre (December, 2024) in https://www.southcentre.int/wp-content/uploads/2024/11/Investor-Obligations-Geneva-Graduate-Institute-South-Centre-Report_December-2024.pdf (accessed 20.02.2025).

economies. This reform should not be limited to structural and procedural aspects, but it must consider a holistic approach encompassing the inclusion of investor obligations to respect and protect human rights and the environment and safeguard the regulatory space of states.¹⁹ Developing countries should also consider terminating or withdrawing investment agreements as a viable option.²⁰

5. Operationalising the Common but Differentiated Responsibility and Respective Capabilities Principle in Transitioning Away from Fossil Fuels

The principle of Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC), enshrined in the UNFCCC and reaffirmed in the Paris Agreement, acknowledges the historical contribution of developed countries to greenhouse gas emissions and their corresponding responsibility to lead in climate action.²¹ When phasing out fossil fuels, implementing CBDR-RC within a just transition framework necessitates ensuring sufficient carbon emissions space for developing countries to pursue their development trajectories while minimizing the transition's financial and social burdens, particularly for vulnerable populations.²²

Current global carbon emission reduction strategies, often driven by developed nations, can disproportionately impact developing countries. These impacts manifest through reduced export opportunities, hindered economic growth, and diverted crucial resources from development priorities such as poverty alleviation and healthcare.²³ In the context of phasing out fossil fuels, this means that sudden, externally imposed

¹⁹ South Centre Inputs to the UN Special Rapporteur on human rights and the environment, "Should the interests of foreign investors trump the human right to a clean, healthy and sustainable environment?" South Centre (2023) in <https://www.southcentre.int/wp-content/uploads/2023/06/South-Centre-Contribution-to-the-Call-for-Inputs-by-UN-SR-on-human-rights-and-environment.pdf> (accessed 20.02.2025).

²⁰ Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union, Document SN/4656/2019/INIT and Ank Santens and Estefania San Juan, "Latin American Arbitration in Transition" in Daniel Uribe, *Painting the Grass Green: A Climate Change Carve-Out in Investment Agreements*, Policy Brief No. 25, South Centre (2024) in https://www.southcentre.int/wp-content/uploads/2024/07/IPB25_Painting-the-Grass-Green-A-Climate-Change-Carve-Out-in-Investment-Agreements_EN.pdf (accessed 20.02.2025).

²¹ Natalia Pacheco Doctoral Thesis. "Social Safeguards and Equity in Payment for Environmental Services Provisions in the Paris Agreement." University of Geneva, 2019. Page 63

²² See: Ministry of Environment, Forest and Climate Change (MoEFCC), Government of India. "India makes important intervention at the Second Annual High-Level Ministerial Round Table on 'Just Transition', at the CoP29 in Baku, Azerbaijan. 'Just transitions must be Just; Equity and Climate Justice should be core for discussions of Just Transitions Pathways': India to Historical Contributors of Climate Change" in <https://pib.gov.in/PressReleasePage.aspx?PRID=2074425> (accessed 19.12.2024).

²³ For example, The Carbon Border Adjustment Mechanism (CBAM) can significantly impact trade and development in developing countries. See: Peter Lunenborg and Vahini Naidu, *How the EU's Carbon Border Adjustment Mechanism discriminates against foreign producers*, Policy Brief 124, South Centre, 2024 in https://www.southcentre.int/wp-content/uploads/2024/02/PB124_How-the-EUs-Carbon-Border-Adjustment-Mechanism-discriminates-against-foreign-producers_EN.pdf and Suranjali Tandon and Kevin Le Merle, *Evaluating the Impact of CBAM on Developing Countries*, Foundation for European Progressive Studies (FEPS), 2014, p. 21.

timelines or conditions can destabilize economies reliant on fossil fuel industries, without providing adequate alternatives.²⁴

Therefore, implementing CBDR-RC must be grounded in international solidarity and cooperation principles. Developed countries must significantly enhance their efforts in establishing a robust and predictable framework for financial and technological cooperation to support climate action. This includes facilitating the transfer of clean and affordable technologies for renewable energies, leveraging concessional financing, and, when necessary, waiving intellectual property rights.

Furthermore, building capacity for developing countries is essential. This involves fostering the development of skills and institutions necessary for planning and implementing transition policies and programs tailored to the phasing out fossil fuels. Developing countries must retain the policy space to implement measures that align with their specific national circumstances and development needs, ensuring that the transition from fossil fuels is environmentally sound, socially equitable, and economically viable.

6. Recommendations

Transitioning away from fossil fuels is imperative to mitigate the escalating climate crisis. However, this transition must be undertaken in a manner that is both just and equitable, ensuring that the rights of all people are protected and that the burdens of this transition are not detrimentally impacting developing countries. To achieve these objectives, it is necessary that transitioning strategies follow a comprehensive approach that integrates human rights principles into all aspects of energy transition policies and programs, strengthens international cooperation to support developing countries in their transition efforts, and reforms the international investment regime to remove barriers to ambitious climate action.

In the first case, transitioning away from fossil fuels must be firmly grounded in human rights principles. This requires a comprehensive approach integrating the protection and fulfilment of fundamental rights, such as the right to health, a healthy environment, and an adequate standard of living, into all energy transition policies and programs. In the establishment of these strategies, States must pay attention to the needs and rights of marginalised and vulnerable communities, including those directly dependent on the fossil fuel industry, Indigenous peoples, women, and those living in poverty.

Strong social protection measures are essential to mitigate the potential negative impacts of the transition on these groups. This includes establishing comprehensive social safety nets, such as income support, unemployment benefits, and retraining programs, to support workers and communities as they shift away from fossil fuel-based economies. Additionally, ensuring equitable access to clean energy is crucial. Therefore,

²⁴ SV Krishna Chaitanya, 'COP28: Rich Rigid on Climate Finance, Developing Nations Not Ready to Give Up Fossil Fuels Without CBDR', The New Indian Express (12 December 2023) in <https://www.newindianexpress.com/nation/2023/Dec/12/cop28-rich-rigid-on-climate-finance-developing-nations-not-ready-to-give-up-fossil-fuels-without-c-2640911.html> (accessed 26.02.2025).

universal access to affordable and reliable clean energy services must be guaranteed, with targeted support for low-income households and marginalised communities to bridge the energy divide and ensure that all share the benefits of the transition.

Secondly, international cooperation is fundamental to achieving an equitable transition from fossil fuels. Developed countries bear historical responsibility for greenhouse gas emissions and must support developing countries in transitioning to clean energy and achieving sustainable development. This requires fulfilling their climate finance commitments and providing adequate and predictable financial support to developing countries for mitigation, adaptation, and just transition initiatives. Moreover, developed countries should promote the transfer of clean and appropriate technologies to developing countries on fair and favourable terms, including through concessional financing and intellectual property rights waivers when necessary. This will enable developing countries to leapfrog to cleaner and affordable technologies and accelerate their transition to low-carbon economies.

Equally important is the effective operationalisation of the Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) principle. In the context of phasing out fossil fuels, CBDR-RC necessitates ensuring sufficient carbon emissions space for developing countries to pursue their development trajectories without compromising their ability to meet their people's basic needs and achieve sustainable development goals. This also means respecting the policy space of developing countries to implement measures that align with their specific national circumstances and development needs, ensuring that the transition is not only environmentally sound but also socially equitable and economically viable.

Finally, the current international investment regime, particularly Investor-State Dispute Settlement (ISDS) mechanisms, poses significant challenges to transitioning away from fossil fuels. Therefore, reforming the international investment regime is essential to safeguard the regulatory space of states and enable them to pursue comprehensive climate action strategies without undue fear of litigation and limiting the “regulatory chill” for adopting climate action. This reform should address ISDS challenges by either reforming these mechanisms to exclude climate-related policy measures from their scope or terminating them altogether. Furthermore, it is crucial to introduce investor obligations to respect human rights and the environment, ensuring that foreign investments contribute to sustainable development goals and do not undermine climate action efforts.