

Fossil fuels–fueled loss and damage, the right to remedy, and the polluter pays principle

With this submission, 24 organizations¹ wish to highlight the important linkages between fossil fuels and climate harm or loss and damage, and obligations and responsibilities for States and corporations related to the polluter pays principle and the right to remedy for those affected by the climate crisis, to inform the UN Special Rapporteur on the promotion and protection of human rights in the context of climate change’s upcoming report to the 59th session of the Human Rights Council on the critical topic of the fossil fuel-based economy and human rights.



¹AICED, Alliance of Climate Frontline Communities, Amnesty International, Barranquilla+20, Center for International Environmental Law (CIEL), Comité Ambiental en Defensa de la Vida, FIAN Zambia, Franciscans International, Global Initiative for Economic, Social and Cultural Rights (GI-ESCR), Green Leaf Advocacy, Habitat Defenders Africa (HDA), Housing and Land Rights Network – Habitat International Coalition, Interamerican Association for Environmental Defense (AIDA), La Ruta del Clima, the Loss and Damage Collaboration (L&DC), MENA Fem Movement for Economic, Development and Ecological Justice (MENA Fem), Natural Justice, Oxfam, Porgera Red Wara River Women’s Association Incorporated (PRWWA INC.), Quaker United Nations Office (QUNO), Soka Gakkai International, SOMO, Tebtebba, and World’s Youth for Climate Justice (WYCJ).

1. Fossil fuels and failure to phase them out at the pace required by science are the number one cause of climate-related loss and damage

Decades of scientific inquiry, research, and assessment have made clear that the key component of the fossil fuel economy, the extraction, production and consumption of fossil fuels for energy use, is the primary source of CO₂ emissions driving existential rates of global temperature rise and, in consequence, increased loss and damage to life and livelihoods. According to the IPCC Sixth Assessment Report (AR6), global energy system fossil fuel CO₂ emissions grew by 4.6% between 2015 and 2019 and account “for approximately two-thirds of annual global anthropogenic GHG emissions”.² The AR6 states with high confidence that “without urgent, effective and equitable mitigation actions, climate change increasingly threatens the rights to life, health, an adequate standard of living, education and to decent work³ of people around the globe, as well as ecosystem health and biodiversity.”⁴ These statements factually explain the causes and drivers of climate change and make evident the direct link between our fossil fuel-driven economy and increasing rates of atmospheric warming, and related loss and damage and human rights harm.

In addition to affirming the connection between fossil fuel use and increasing rates of global warming, research shows how continued reliance on fossil fuels in turn furthers loss and damage impacts on communities, populations, and natural environments, causing and exacerbating human rights violations. These impacts tend to be concentrated in communities that have experienced historical oppression and the legacy of colonialism and systemic marginalization and have contributed the least to and benefited the least from fossil fuel exploitation. The IPCC again reports high confidence that “climate change has caused widespread adverse impacts and related losses and damages to nature and people”⁵ and that since the publication of AR5, “the impacts of climate change and extreme weather events such as wildfires, extreme heat, cyclones, storms and floods have adversely affected or caused loss and damage to human health, shelter, displacement, incomes and livelihoods, security and inequality (high confidence).”⁶ This connects the fossil fuel economy with measurable economic damages and the loss of livelihoods and property, in

² Clarke, L., Y.-M. Wei, A. et al., In IPCC, 2022: *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* Cambridge University Press, Cambridge, UK and New York, NY, USA. doi:10.1017/9781009157926.008. P. 619
https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf

³ Amnesty International (2021), *Stop Burning Our Rights: What governments and corporations must do to protect humanity from the climate crisis*. Available at: <https://www.amnesty.org/en/documents/pol30/3476/2021/en/>

⁴ IPCC, 2022: Summary for Policymakers. In: *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge University Press, Cambridge, UK and New York, NY, USA. p. 40,
https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_SummaryForPolicymakers.pdf.

⁵ Ibid., 51.

⁶ Pörtner, H.-O., D.C. Roberts, et al. In: *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 48, doi:10.1017/9781009325844.002. [IPCC_AR6_WGII_FullReport.pdf](https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FullReport.pdf)

addition to non-economic forms of loss such as forced displacement, dislocation from cultural heritage, and exposure to increased threats of instability and insecurity from storms, natural disasters and exacerbated temperature extremes. Mitigation and a just transition from the present fossil fuel based economy is a necessary form of redress, as the IPCC has shown that “near-term actions that limit global warming to close to 1.5°C would substantially reduce projected losses and damages related to climate change in human systems and ecosystems, compared to higher warming levels.”⁷

2. Fossil fuels and loss and damage are inextricably linked to conflict and militarization

Militarization is a huge contributor to the fossil fuel economy and related loss and damage due to the extensive operations and infrastructure it requires.⁸ The threats to human rights posed by militarization go far beyond increased emissions⁹ since the military operations themselves are a direct danger to an equitable and safe future.¹⁰ Additionally, the extractive industry – including fossil fuels – is a major driver of conflict,¹¹ as nations and corporations seek to secure access through wars and destabilization, leading to environmental destruction, human displacement, and prolonged suffering in already climate-vulnerable countries.^{12,13} The entrenchment of militarization and the fossil fuel industry perpetuates a cycle of environmental destruction, systemic human rights violations and exacerbates the climate crisis. Military activities are responsible for 5.5% of the global emissions,¹⁴ yet they remain excluded from international climate negotiations and agreements.¹⁵ The militaries

⁷ IPCC, 2023: Sections. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, p. 95. https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_FullVolume.pdf.

⁸ Cottrell, L (2021) *The military's contribution to climate change*, CEOBS. Available at: <https://ceobs.org/the-militarys-contribution-to-climate-change/>

⁹ Crawford, Neta (2019) Pentagon Fuel Use, Climate Change, and the Costs of War. Available at: <https://watson.brown.edu/research/2019/pentagon-fuel-use-climate-change-and-costs-war>.

¹⁰ Military operations not only result in loss of life but also wreak havoc on land, habitats, and ecosystems, disrupting biodiversity on a massive scale. Explosives and military chemicals poison the soil, decreasing fertility and severely damaging plant and animal life, while also destroying crops and jeopardizing food security. Contamination of water sources—rivers and groundwater—through fuel spills, heavy metals, and chemicals from weaponry undermines access to drinking water and disrupts agriculture. The destruction of irrigation systems further jeopardizes food security, increasing dependence on imported food and straining local economies and ecosystems. See Cottrell, L (2021) *The military's contribution to climate change*, CEOBS. Available at: <https://ceobs.org/the-militarys-contribution-to-climate-change/>; and Samon, K. (2023) *Feminist food sovereignty – the paradigm shift in confronting climate crisis*, Asia Pacific Forum on Women, Law and Development (APWLD). Available at: <https://apwld.org/feminist-food-sovereignty-the-paradigm-shift-in-confronting-climate-crisis/>.

¹¹ LaSpisa, C. (2025). Dangerous Development: The Effect of Offshore Fossil-Fuel Discovery and Production on Maritime Diplomatic Conflict. *International Interactions*, 1–29. <https://doi.org/10.1080/03050629.2025.2456735>

¹² Gulati, M. et al (2024) Climate change, conflict and fragility: a recipe for disasters, ODI. Available at: <https://odi.org/en/insights/climate-change-conflict-fragility-recipe-for-disasters/>

¹³ Geyer, K. (2024) STOP FOSSIL FUELS FROM FUELLING CONFLICT: Why the Fossil Fuel Non-Proliferation Treaty is an essential climate tool for peace, WILPF. Available at: <https://www.wilpf.org/wp-content/uploads/2024/10/StopFossilFuelsFromFuellingConflict.pdf>

¹⁴ Estimating the military's global greenhouse gas emissions. Conflict and Environment Observatory. 2022: <https://ceobs.org/estimating-the-militarys-global-greenhouse-gas-emissions/>

¹⁵ Submission to the UNFCCC Global Stocktake: Military and Conflict Emissions. <https://unfccc.int/sites/default/files/resource/GST%20MILITARY%20EMISSIONS.pdf>

and arms industries are structurally dependent on fossil fuels, driving conflicts over community lands, territories and resources, illegal occupations and militarized violence that devastate Indigenous lands and frontline communities.

The glaring disparity in global spending priorities further exposes this injustice: Global North countries allocate 30 times more funding to militarization than to climate finance.¹⁶ The gross misallocation of resources makes clear that these states possess the financial means to finance climate actions but instead choose to escalate planetary destruction and perpetuate neocolonial dominance—violating their obligations to redress their historical climate debt to the Global South. Just and equitable phase-out of fossil fuels is impossible without dismantling militarism and systemic oppression, and illegal occupations.¹⁷

Despite these severe impacts and often transparently neocolonial extractive proxy wars, some international financial institutions continue to support militarization as well as fossil fuels.¹⁸ The lack of accountability and the continued financial support for military operations—often at the expense of climate action—undermines efforts to protect human and environmental well-being and drive human rights violations.

3. States have the obligation to phase out fossil fuels in order to avert and minimize loss and damage

Under international human rights law, States have obligations to protect human rights from the adverse impacts of climate change through the phase out of fossil fuels²⁰, as affirmed by landmark judicial decisions. In the State of the Netherlands v. Urgenda Foundation, the Netherlands Supreme Court established that governments have a duty of care to protect their citizens through emissions reductions, including through fossil fuel phase-out.²¹ As recognized by the UN Child Rights Committee, this obligation extends beyond territories, as

¹⁶ We cannot tackle climate chaos while increasing military spending. Stop the War Coalition. 2022:

<https://www.stopwar.org.uk/article/we-cannot-tackle-climate-chaos-while-increasing-military-spending/>

¹⁷ ESCR-Net, International Network for Economic, Social and Cultural Rights (2024): [Priorities for a Peoples-Centered, Rights-Based Climate Agenda](#).

¹⁸ While the European Investment Bank (EIB) has made a public commitment to align its activities with the Paris Agreement – targeting at least 50% of its financing toward climate-related projects by 2025 – its Strategic Roadmap for 2024–2027 includes financing for defense operations, contributing to the escalation of violence, loss of life, and the environmental degradation that follows military actions, including their significant climate impact. See EIB (2020) *EIB Group's climate bank roadmap*. Available at: <https://www.eib.org/en/publications/the-eib-group-climate-bank-roadmap.htm> and EIB (2020) *EIB Group 2024–2027 Strategic Roadmap*. Available at:

<https://www.eib.org/en/publications/the-eib-group-climate-bank-roadmap.htm>

¹⁹ In 2023 the US defense budget reached \$858 billion, while the climate finance budget under the Biden administration totaled only \$44.9 billion, spread across multiple climate-related initiatives. See US Department of Defense (2023) *Department of Defense Plan to Reduce Greenhouse Gas Emissions*. Available at:

<https://media.defense.gov/2023/Jun/16/2003243454/-1/-1/1/2023-DOD-PLAN-TO-REDUCE-GREENHOUSE-GAS-EMISSIONS.PDF>

²⁰ Amnesty International, (2023), *Fatal fuels: Why human rights protection urgently requires a full and equitable fossil fuel phase out*, available at: <https://www.amnesty.org/en/documents/pol30/7382/2023/en/>

²¹ <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:PHR:2019:887>

climate impacts caused by fossil fuel emissions affect human rights globally²² – a principle reinforced in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, where the European Court of Human Rights recognized states' obligations to reduce emissions in line with the Paris Agreement. In the same line, five different UN Treaty Bodies have acknowledged that State Parties should effectively contribute to phasing out fossil fuels to comply with their obligations under international human rights law.²³

States have a duty to regulate fossil fuel companies' activities, prevent new fossil fuel developments, including by ending financing and subsidies for fossil fuels, and ensure accountability for climate harm, as demonstrated in *Milieudefensie et al. v. Royal Dutch Shell plc*,²⁴ which although is currently being appealed, also recognized that companies have a duty to mitigate the climate impacts of their activities. These obligations are grounded in the rights to life, health, food, water, housing, and a clean, healthy, and sustainable environment – rights that the UN Human Rights Committee affirmed were violated by inadequate climate action in *Daniel Billy et al. v. Australia*.²⁵ States also have the duty to ensure that the transition away from fossil fuels is just and equitable, protecting workers and communities while prioritizing support for those most affected by both climate impacts and the transition. Failure to meet these obligations constitutes a breach of international human rights law and triggers corresponding duties to provide remedy and reparations.

The timescale for a transition is key. States must act urgently and with the utmost speed to carry out meaningful and substantive actions, while also acknowledging the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC). Years of delay and distraction by wealthy countries and those with the highest rates of emissions have already led to a condensed timeline with more limited opportunities to reduce harms perpetrated. CO₂ and GHG emissions already released by the largest historical emitters will continue to have warming impacts for years to come. Thus the earlier and more comprehensively states halt the burning of fossil fuels, the more impactful they will be in reducing extreme loss and damage and affiliated harms to human and ecosystem health. High income countries and those with the highest rates of emissions should move faster and further in phasing out fossil fuels and provide sufficient public and grants-based financing to lower-income countries to secure access to renewable energy for people, and

²²<https://www.ohchr.org/en/press-releases/2021/10/un-child-rights-committee-rules-countries-bear-cross-border-responsibility>

²³ Office of the High Commissioner for Human Rights. Joint Statement on Human Rights and Climate Change. 16 September 2019. Available at:

<https://www.ohchr.org/en/statements/2019/09/five-un-human-rights-treaty-bodies-issue-joint-statement-human-rights-and>

²⁴ The Hague Court of Appeal, *Milieudefensie and Others v. Royal Dutch Shell PLC and Others*, case number 200.302.332/01, Judgment of 12 November 2024.

²⁵ Human Rights Committee 'Views Adopted by the Committee under Article 5 (4) of the Optional Protocol, Concerning Communication No. 3624/2019' UN Doc CCPR/C/135/D/3624/2019 (22 September 2022).

a just transition. State actions could be accelerated by supporting the call from the Fossil Fuel Non-Proliferation Treaty Initiative for a binding international treaty to phase out fossil fuel extraction, production and consumption while supporting an equitable transition to a human rights-compliant economic system not dependent on extractive fossil resources.²⁶ This would align with the mitigation targets already set out in the Paris Agreement and would further support existing legal mechanisms that define states' obligations to phase out the use of fossil fuels.

4. The phase-out of fossil fuels must happen through a just and human rights-based transition

A just and equitable phase-out of the fossil fuel economy requires a fundamental shift away from the exploitative, growth-driven development model towards a rights-based socio-economic paradigm that requires respecting planetary boundaries, and reconfiguring and redistributing global resources. States must commit to dismantling carbon-dependent economies and profit-driven extractive industries and prioritize environmentally sound and sustainable solutions such as care economies, which recognize the undervalued and underpaid care work including the critical role of women in caring for the environment while disproportionately affected by the climate impacts.²⁷

The transition to a low-carbon economy, however, risks negatively affecting communities and individuals whose livelihoods and job opportunities still rely on fossil fuels. Women, children, persons with disabilities, Indigenous Peoples, frontline communities from historically oppressed backgrounds, racialized individuals and other marginalized groups suffer more intensely from the consequences of the reliance on fossil fuels and of climate change. It is also important to note that, globally, many economies, including those of some Indigenous Peoples, rely on fossil fuel production. The transition away from fossil fuels is therefore a complex and nuanced issue and must be treated as such.

It is crucial to ensure that the phasing out of fossil fuels is accompanied by measures that ensure the shift away from polluting energy sources is guided by principles of non-discrimination equity and inclusion and does not harm those already marginalized. Impacted communities should be considered as primary stakeholders – not only victims – in the transition. Traditional, local and intergenerational knowledge, experience and expertise must be included in order to protect human rights, participation and to ensure sustainable livelihood. A transition to a low-carbon economy should take an intersectional approach and ensure that the new carbon-free economies do not reproduce systemic

²⁶ <https://fossilfuel treaty.org/>

²⁷ A Common Charter for Collective Struggle. International Network for Economic, Social and Cultural Rights. Updated with 2024 reflection: <https://www.escri-net.org/resources/common-charter-for-collective-struggle/>

inequalities, but rather help advance human and planetary wellbeing. This includes providing training and education for workers in the fossil fuel industries to shift away from these polluting activities, preventing potential increases in the cost of living due to reduced reliance on fossil fuels, diversifying the economy away from fossil fuel-dependent productive activities, and reallocating fossil fuel subsidies towards climate action, gender-responsive public services, and robust social security systems.

5. Those harmed by the fossil fuel-driven climate crisis have a right to remedy and reparations²⁸

Under international human rights law, communities and individuals who have experienced or are experiencing human rights violations are entitled to access to effective remedies. Ensuring that individuals and Peoples whose rights have been violated obtain full reparation is fundamental to the obligation to provide remedy.²⁹

Remedy for victims of human rights abuses or violations can only be effective when it entails both procedural access to justice and substantive redress. The former requires removing regulatory, social, or economic barriers to those seeking recourse; adopting an intersectional approach; removing constraints on the ability of youth and children to vindicate their rights;³⁰ and not denying individual standing based on the pervasive effects of climate change.³¹ Substantive redress is the aspect of remedy that includes what is often called “reparations.” The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law³² were adopted by the UN General Assembly in 2005 and built upon the right to a remedy for victims of violations of international human rights law found in numerous international instruments.³³ According to these principles and guidelines, reparation should be proportional to the gravity of the violations and the harm suffered and includes:

- Restitution: Restoration of the victim’s original situation that preceded the violation of international human rights law.

²⁸ This chapter and chapter 6 on the polluter pays principle draw largely on the following report: Center for International Environmental Law (2024), “[Remedy and Reparations for Climate Harm: the Human Rights Case](#)”.

²⁹ Human Rights Committee, General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13 (May 26, 2004), para. 16, undocs.org/CCPR/C/21/Rev.1/Add.13.

³⁰ Committee on the Rights of the Child (CRC) (2023), General Comment No. 26 on Children’s Rights and the Environment with a Special Focus on Climate Change, CRC/C/GC/26 (August 22, 2023), paras. 51–57, undocs.org/CRC/C/GC/26, paras. 82–90.

³¹ Mina Juhn, “Taking a Sand: Climate Change Litigants and the Viability of Constitutional Claims,” *Fordham Law Review* 89, no. 6 (2021), <https://ir.lawnet.fordham.edu/flr/vol89/iss6/14>.

³² UN General Assembly, Resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, w, A/RES/60/147 (March 21, 2006), <http://undocs.org/A/RES/60/147>.

³³ UN General Assembly, Resolution 60/147, Preamble.

- Compensation: Monetary reparation that may be provided, especially when restitution is impossible. Beyond covering material damages and costs for several types of assistance, compensation can be granted for physical or mental harm, lost opportunities such as education and employment, and moral losses.
- Rehabilitation: Actions and measures focused on functional, psychological, social, and vocational rehabilitation, which can include medical and psychological care as well as legal and social services.
- Satisfaction: A broad category of measures often aiming to emphasize the acknowledgment of responsibility for the violation and resulting harm, publicly and symbolically acknowledge the suffering, and respect the dignity of those who have been harmed. This can include recognition of losses or official apologies.
- Guarantees of non-repetition: Measures and policies aimed at preventing future violations of human rights and reinforcing the rule of law and respect for human rights.

The types of injuries caused by climate impacts and the conduct of States and corporate actors that have caused them and continue to fuel the climate crisis give rise to a right to remedy for present and future generations.³⁴ That right triggers a corresponding duty on the part of those responsible States and corporations to ensure access to justice and to provide full reparations for the climate harm that they have caused or to which they have contributed.

6. The fossil fuel industry is accountable for climate harm and has responsibilities to repair it

The fossil fuel industry, heavily dominated and driven by Global North countries³⁵, has knowingly caused and continues to cause the global environmental crisis.³⁶ A relatively small number of corporations are largely responsible for the climate crisis.³⁷ As part of their duty to protect human rights, States must prevent, regulate, and sanction corporate conduct that may violate rights including by developing ambitious due diligence standards and robust legislative frameworks for corporate accountability in the context of the climate

³⁴ For more on the rights of future generations and their right to remedy, see Maastricht Principles on the Human Rights of Future Generations, February 3, 2023, <https://www.ohchr.org/sites/default/files/documents/new-york/events/hr75-future-generations/Maastricht-Principles-on-The-Human-Rights-of-Future-Generations.pdf>.

³⁵ <https://investinginclimatechaos.org/>

³⁶ CIEL, Smoke and Fumes. The Legal and Evidentiary Basis for Holding Big Oil Accountable for the Climate Crisis (CIEL, 2017), <https://www.ciel.org/wp-content/uploads/2019/01/Smoke-Fumes.pdf>.

³⁷ Research shows that just 90 fossil fuel and cement producers, so-called “Carbon Majors,” have caused the majority (63 percent) of industrial GHG emissions since the start of the industrial revolution in 1751 and this historical trend continues until this day. See Data for Carbon Majors Database, accessed February 28, 2025, <https://carbonmajors.org> and Jonathan Watts, “Just 57 Companies Linked to 80% of Greenhouse Gas Emissions Since 2016,” Guardian, April 3, 2024, <https://www.theguardian.com/environment/2024/apr/04/just-57-companies-linked-to-80-of-greenhouse-gas-emissions-since-2016>.

emergency. States must ensure that companies that have caused or contributed to human rights violations related to climate change assume the costs of their reparation.³⁸ States must adhere to their obligations under international human rights and environmental law, recognizing that compliance with these frameworks is essential to prevent environmental destruction, resource appropriation, and land dispossession.³⁹

In addition to State duties to realize corporate accountability, corporations also have independent obligations under international human rights law to respect human rights and, therefore, refrain from engaging in harmful conduct, regardless of the political will or capacity of States to fulfill their human rights obligations.⁴⁰ The obligations of corporations in this context entail providing effective remedies for human rights harms that they have caused and to which they have contributed. These duties are not limited to corporations that directly contribute to GHG emissions. Business enterprises that facilitate and finance GHG-intensive business activities, such as banks and insurance companies, also have individual responsibilities to respect human rights and conduct due diligence under the UN Guiding Principles on Business and Human Rights (UNGPs) as adopted by the Human Rights Council in 2011.⁴¹

7. Polluter pays principles-based sources of finance are key to provide meaningful remedy for climate harm

The Global North must pay its climate debt to the Global South in accordance with the polluter pays – recognized under international law and included in numerous domestic environmental laws globally – and CBDR-RC principles. These and other principles of international law establish a clear legal and moral framework requiring major global polluters to not only pay their climate debt, but also ensure that those disproportionately affected by climate-induced harms have guaranteed access to effective recourse mechanisms and remedies, ensuring accountability and redress for historical and ongoing harms. Principle 16 of the Rio Declaration on Environment and Development (1992) lays out that States should promote “the internalization of environmental costs” and should take into account that “the polluter should, in principle, bear the cost of pollution.” Principle 13 notes that States shall not only develop national laws regarding liability and compensation for victims of environmental damage and pollution but also shall cooperate to develop relevant international law. The Rio Declaration, therefore, acknowledges that people must have an

³⁸ CIEL (2024), “[Remedy and Reparations for Climate Harm: the Human Rights Case](#)”.

³⁹ CESCR General comment No. 26 (2022) on Land and Economic, Social and Cultural Rights, 22 December 2022, para. 49.

⁴⁰ CIEL (2024), “[Remedy and Reparations for Climate Harm: the Human Rights Case](#)”.

⁴¹ Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Information Note on Climate Change and the Guiding Principles on Business and Human Rights (OHCHR, 2023), <https://www.ohchr.org/sites/default/files/documents/issues/business/workinggroupbusiness/Information-Note-Climate-Change-and-UNGPs.pdf>.

avenue for remedy when there is environmental harm and that those who have caused the harm should have to provide support for remediating it.

In the context of the climate crisis, polluter pays means that those responsible for climate change — large cumulative emitters, be they companies or States — should be required to pay for the damage caused by their actions or inaction. States, therefore, should put in place measures to ensure that fossil fuel companies, large agribusiness, and other major emitters contribute to reparations for human rights violations and environmental damage related to climate change, as well as contribute to mitigation and adaptation activities. These measures should not only be focused on current or future actions but should also be based on historical emissions. Measures could include the establishment of international financing mechanisms, such as a fossil fuel levy or a global climate pollution tax, which can secure contributions from polluters to repair climate-related human rights violations.⁴² Measures could also include calculating the amount of climate damages and then allocating percentages to be paid by large corporate emitters based on historic responsibility⁴³ or calculating the damages attributable to certain companies based on their emissions and the social cost of carbon.⁴⁴ These ideas are strongly related to civil society's demands⁴⁵ to put alternative sources of finance in place based on the polluter pays principle, which can significantly increase the financial resources available for climate action, including addressing loss and damage. Some alternative sources proposed at the time of writing include a wealth tax on the super rich⁴⁶ and a climate damages tax on coal, oil, and gas extraction and production, which proponents suggest could leverage up to \$900 billion for the Fund for responding to Loss and Damage and national climate action.⁴⁷ All polluter pay-based sources should also be progressive, ensuring the burden is borne by polluters only and not passed down to lower-income people.

The notion that those responsible for the harm (the polluter) have to pay for remedying that harm is consistent with the right to remedy. Human rights experts have recognized the links between the right to remedy and the polluter pays principle. For example, the UN Working

⁴² See David R. Boyd and Stephanie Keene, Policy Brief #5: Mobilizing Trillions for the Global South: The Imperative of Human RightsBased Climate Finance (OHCHR, 2023), <https://www.ohchr.org/sites/default/files/documents/issues/environment/srenvironment/activities/SR-Environment-PolicyBrief-5.pdf> (recommending adoption of a global pollution tax, debt cancellation, global wealth tax, and redirection of fossil fuel subsidies, consistent with the polluter pays principle and a human rights-based approach).

⁴³ See Marco Grasso and Rick Heede, "Time to Pay the Piper: Fossil Fuel Companies' Reparations for Climate Damages," *One Earth* 6, no. 5 (2023), <https://doi.org/10.1016/j.oneear.2023.04.012> (calculating potential damages and allocating how much each of the 21 companies most responsible for the climate crisis based on historical emissions owes).

⁴⁴ Climate Analytics, Carbon Majors' Trillion Dollar Damages (Climate Analytics, 2023), 9, <https://cal-clm.edcdn.com/assets/Carbon-majors'-trillion-dollar-damages-final.pdf?v=1700110774>.

⁴⁵ See for example Amnesty International, *Plenty To Go Around: Mobilizing Finance For Climate Justice*, 16 January 2025, available at: <https://www.amnesty.org/en/documents/pol30/8850/2025/en/>

⁴⁶ Campaign to #TaxTheSuperRich for People and Planet, available at <https://taxthesuperrich.world/the-campaign/>

⁴⁷ Greenpeace et al., *The Climate Damages Tax: A Guide to What It Is and How It Works* (Stamp Out Poverty, 2024), 7, https://us.boell.org/sites/default/files/2024-04/cdt_guide_2024_0.pdf.

Group on Business and Human Rights stated that “if ... an enterprise caused pollution, it should be required to restore the environment as part of the ‘polluter pays’ principle.”⁴⁸ Measures requiring polluters to pay for the harms their activities have caused can also act as a deterrent to other entities, thus fulfilling the principle of non-repetition. Under no circumstances does applying the polluter pays principle to private actors relieve States that have enabled the polluting activities of their own responsibility for remedying harm. Critically, it should also be noted that the polluter pays principle is about ensuring that polluters are accountable and cover the costs of and provide remedy for harms they cause due to their polluting conduct. This is fundamentally different from the notion of “paying to pollute” or the false solution of relying on forest-based offsets and other carbon credits to justify continued climate-destructive conduct.⁴⁹

Finally, a structural reform of the International Financial Architecture is needed, which, among other things, entails implementing progressive taxation on wealthy individuals and corporations, debt cancellation, as well as delivery of new and additional climate finance and redirecting financial flows towards community-led solutions.

⁴⁸ Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Human Rights and Transnational Corporations and Other Business Enterprises, A/72/162 (July 18, 2017), para III.D1.43, undocs.org/A/72/162.

⁴⁹ SOMO, 9 October 2024, Regulation to reduce CO2 emissions is the most effective way to address climate change. Myth: “Pricing carbon is the most efficient way to make polluters pay”, available at: <https://www.somo.nl/myth-carbon-pricing/>