



Advisory Memo: Fossil Fuel Commitments in Nationally Determined Contributions under the Paris Agreement

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1. Introduction: Fossil Fuel Production is Intrinsically Linked to Greenhouse Gas Emissions

- 1.1. Insufficient attention to fossil fuel production is at the heart of the failure to adequately address the climate emergency to date. This is despite the fact that the central role of fossil fuels in driving the climate emergency is incontrovertible. Global warming is caused mainly by the increasing cumulation of anthropogenic emissions of greenhouse gasses (GHG) (especially carbon dioxide, or CO₂, emissions) in the atmosphere.¹ The overwhelming driver of these cumulative GHG emissions is fossil fuel combustion and industrial processes.² Fossil fuels – coal, oil, and gas – were responsible for 86% of CO₂ emissions in the most recent decade (2010–2019).³

¹ IPCC, Synthesis Report of the IPCC Sixth Assessment Report (AR6), Longer Report, Figure 3.5, page 48; IPCC, Synthesis Report of the IPCC Sixth Assessment Report (AR6), Summary for Policymakers, March 2023, statement B.1.1.

² IPCC, Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, Summary for Policy Makers (SPM), p. 5; IPCC, Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (2021) p. 676 (IPCC AR6 WGI).

³ IPCC AR6 WGI, p. 687.

- 1.2. Fossil fuel production cannot be disconnected from combustion and industrial processes, because upstream fossil fuel production inevitably leads to, and is necessarily and causally linked to, downstream GHG emissions.⁴ Fossil fuels, once extracted, are predominantly burned for energy production across a range of sectors, and lead to GHG emissions.⁵ Moreover, the production and extraction process itself releases emissions, including methane and CO₂.⁶
- 1.3. Against this background, and the present state of climate emergency, it is clear we cannot avert the climate emergency or effectively limit its impacts without rapidly reducing fossil fuel production and use. The factual relationship between fossil fuels and climate change cannot be ignored or omitted; it is an indispensable part of the context for countries' climate change commitments.
- 1.4. Despite this, the UNEP Production Gap Report finds that countries are planning to produce 110% more fossil fuels than is compatible with the Paris Agreement's 1.5°C temperature limit by 2030, and to produce more fossil fuels than is in line with the emissions reductions committed to in their Nationally Determined Contributions (NDCs) under the Paris Agreement. Current research shows that to remain within the the 1.5°C temperature limit, fossil fuel production must fall by at least 40%⁷ but possibly as much as 58%⁸ by 2030. There is therefore a clear policy gap between emissions reduction obligations under the UNFCCC and Paris Agreement on the one hand, and fossil fuel production plans on the other.
- 1.5. **Updated NDCs due in 2025 represent the last opportunity countries face to take the action required to limit global temperature rise to below 1.5°C and avert catastrophic**

⁴ See *Gray v. The Minister for Planning and Ors* [2006] NSWLEC 720, paras. 97–100 (Pain J); *R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others* [2022] UKSC 20, paras. 1–7; 142.

⁵ Heede and Oreskes (2016) found that on average around 8.02% of potential carbon emissions from oil production are not released into the atmosphere, 1.71% for gas and 0.016% for coal due to non-energy uses of these fossil fuels in products such as in 'waxes, lubricants, petrochemicals, carbon fiber, pigments, fertilizers, steelmaking, and road oil' (p 14). This analysis shows even taking into account the non-energy uses of fossil fuels, the vast majority of fossil fuels are burned and end up in the atmosphere as greenhouse gasses: Richard Heede and Naomi Oreskes, "Potential Emissions of CO₂ and Methane from Proved Reserves of Fossil Fuels: An Alternative Analysis," *Global Environmental Change* 36 (January 1, 2016): 12–20, <https://doi.org/10.1016/j.gloenvcha.2015.10.005>.

⁶ In fact, methane leakage during the extraction process, as well as the greenhouse gas emissions resulting from production and transport processes, are routinely underestimated. Recent research found that fully accounting for these greenhouse gas emissions shows that fossil gas actually releases comparatively *more* greenhouse gas emissions than coal does: Robert W. Howarth, "The Greenhouse Gas Footprint of Liquefied Natural Gas (LNG) Exported from the United States," *Energy Science & Engineering*, October 3, 2024, ese3.1934, <https://doi.org/10.1002/ese3.1934>.

⁷ N. Grant et al., "Unabated: The Carbon Capture and Storage 86 Billion Tonne Carbon Bomb Aimed at Derailing a Fossil Phase-Out," 2023.

⁸ Civil Society Equity Review, "An Equitable Phaseout of Fossil Fuel Extraction: Towards a Reference Framework for a Fair and Rapid GlobalPhaseout." (figshare, 2023), <https://doi.org/10.6084/M9.FIGSHARE.24669393>.

climate change. It is therefore a scientific and policy imperative that updated NDCs directly address the primary cause of the problem – fossil fuel production and use.

- 1.6. This memo outlines:
 - 1.6.1. A framework of commitments that countries should include in their NDCs;
 - 1.6.2. The legal rationale for inclusion of fossil fuel commitments in NDCs under the Paris Agreement, UNFCCC and international law more broadly; and
 - 1.6.3. The strategic benefits and policy rationale of including fossil fuel commitments in NDCs.

2. A Framework for Fossil Fuel Commitments in NDCs

- 2.1. Countries will ideally adopt a comprehensive package of commitments relating to limiting fossil fuels, scaling up renewable energy and ensuring a just transition. At the very minimum **all countries should commit to issuing no new extraction licenses.** However, NDCs should also go further than this in line with the suggested commitments below.
- 2.2. **NDCs should be based on equity**, with developed countries carrying phasing out quickly in line with their greater capacity to do so, while also providing finance, technology and capacity building support to ensure developing countries can best take advantage of the opportunities to benefit from the just transition. Individual country NDCs should reflect this principle of equity in their commitments.
- 2.3. To meet the goals of the Paris Agreement, countries should adopt commitments in accordance with the list below. Commitments should be **detailed, clear** and **quantifiable.** For a holistic overview of best practice commitments across other components of NDCs, please also refer to the [Climate Action Network Guidelines for NDCs 3.0](https://climatenetwork.org/wp-content/uploads/2024/05/CAN-Guidelines-NDCs.pdf).⁹

Table of Suggested NDC Commitments

<i>Category of commitment</i>	<i>Category of country</i>	<i>Commitment</i>
Limiting fossil fuel	Producer country	Phase out fossil fuel extraction: a commitment to phase out existing supply of fossil fuels on the basis of equity, with developed countries phasing out first and fastest. The

⁹ Climate Action Network, May 2024, “Guidelines for NDCs 3.0: Delivering on the GST outcome and beyond” <<https://climatenetwork.org/wp-content/uploads/2024/05/CAN-Guidelines-NDCs.pdf>>

<i>Category of commitment</i>	<i>Category of country</i>	<i>Commitment</i>
product ion	ntries es	commitment should include a clear phase out date, aligned with the country's fair share.¹⁰ At the very minimum, all countries must commit to issuing no new extraction licenses. In addition, countries should: • Cancel existing licenses and reject permits for extraction projects; • Impose bans, quotas, tariffs or other restrictions on exported fossil fuels; • Financial measures such as cancellation of fossil fuel subsidies; taxing capital gains from fossil fuel extraction projects; implementing regulations on financial institutions that require them to eventually eliminate financing of fossil fuel extraction. Such commitments must not be substituted by payments or credits under any kind of carbon offset or credit scheme.
Limiting fossil fuel product ion	Produc er cou ntries es	End or reduce the expansion of fossil fuel reserves: a commitment to end the expansion of <i>new</i> fossil fuel reserves. For example, this could be undertaken by committing to cancel, not renew, and not issue exploration and extraction licenses within defined sets of reserves.
Limiting fossil fuel product ion	Non- produc er cou ntries es	Commitment not to explore or extract fossil fuels: countries that do not currently produce fossil fuels can demonstrate their continued leadership through a commitment not to issue exploration licenses, and/or not to extract any fossil fuels that may be present in their jurisdiction.

¹⁰ Civil Society Equity Review, "An Equitable Phaseout of Fossil Fuel Extraction: Towards a Reference Framework for a Fair and Rapid GlobalPhaseout." (figshare, 2023), <https://doi.org/10.6084/M9.FIGSHARE.24669393>.

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Limiting fossil fuel production	All countries	Countries that are the home to headquarters of companies engaged in production abroad must also address the regulation of these companies' operations abroad towards limiting expansion and ultimately phasing out fossil fuel production.
Limiting fossil fuel production	All countries	Commitment not to expand non-combustion uses of fossil fuels: All production of fossil fuels results in greenhouse gas emissions throughout the production process, even if the fuels are not burnt. It is important not to expand downstream, non-combustion sources of demand for fossil fuels that may delay the phase out of fossil fuel production, such as the petrochemical industry and plastics industry. Countries should also be guided by forthcoming Global Plastics Treaty which aims to regulate and limit plastic production and use across its full lifecycle.
Renewable energy and energy efficiency	All countries	Renewable energy target: At COP28 countries agreed to triple renewable energy globally by 2030. The energy transition should also be community-centered and avoid replicating extractivist models through large-scale renewable ventures or critical mineral extraction that may harm communities or Indigenous Peoples. It should also be aligned with global goals to halt and reverse nature loss. The NDC should include quantitative targets for 2030, as well as policies and measures to achieve this commitment. Measures under this commitment should also include policies relating to Free Prior and Informed Consent (FPIC), and to protect and serve the interests of Indigenous Peoples, communities and biodiversity.
Renewable energy and energy	All countries	Phasing out fossil fuels in the power sector: Scaled up renewable energy should ensure to both displace thermal energy generation and also increase energy capacity in

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efficiency	countries	places which currently do not have adequate energy access. Countries should provide quantitative targets for the phase out of thermal power generation in line with their fair share, along with policies for safe and community-led alternatives, including providing clean cooking technologies and scaling up access to energy in underserved communities.
Renewable energy and energy efficiency	All countries	Energy efficiency commitments: Commitment to advance energy efficiency in line with a target of doubling energy efficiency globally by 2030, with clear policies to achieve this commitment.
Finance	Developed countries	Provision of finance, technology and capacity building support: Developed country parties should commit to providing grant-equivalent finance, technology and capacity-building support towards a just transition from fossil fuels, in line with their obligations under Articles 4.5, 9, 10 and 11 of the Paris Agreement and the forthcoming New Collective Quantified Goal on Climate Finance (NCQG). Finance could be provided bilaterally, or through contributing to existing multilateral funds including the Green Climate Fund. Additional finance measures that can be taken include cancellation of debt to ease the 'debt-fossil trap' on fossil fuel dependent developing countries. Finance should not, however, include any money that is provided through Article 6 in exchange for Internationally Transferred Mitigation Outcomes (ITMOs) or carbon credits. Carbon credits and offsets are not climate finance. Money from carbon credits often does not go to governments/communities but to brokers, and the climate action that is taken in developing countries as a result of

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		the carbon credit often cannot count toward their NDC because it is claimed by the developing country that purchased the credit/s (or entities in a developed country).
Finance	Developing countries	Articulation of the finance and support needed to aid in the transition: Developing countries could clearly articulate the support required to undertake the commitments outlined in their NDCs. This may include measures relating to debt relief, finance and investment, technological support and more.
Finance	All countries	Ending and redirecting fossil fuel subsidies: All countries should commit to ending fossil fuel subsidies and redirecting this finance towards investment in the just transition and economic diversification efforts. Countries should commit to undertaking an assessment to identify all direct and indirect subsidies applicable in their jurisdiction and develop a plan to phase these out, including a plan for the use of the redirected funds. The assessment should also identify which subsidies play a key social welfare role (e.g. those that subsidize transport or provide support to low income and vulnerable communities) and implement plans to minimize the financial impact on these communities. Subsidies that should be included in the assessment and phase out plan include direct expenditures to fossil fuel companies, as well as a range of indirect and implicit subsidies, such as from tax breaks and credits, guarantees, coverage in bilateral investment treaties, in-kind protections, and protections afforded by bilateral trade and investor state dispute settlement agreements.

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Finance	All countries	Highlighting commitment to important parallel processes: Countries may also use their NDCs to commit to engage in important processes aimed at reform of the multilateral financial architecture, adoption of proposals such as a wealth tax, the forthcoming Global Tax Convention and other related efforts that are key to unlocking further finance to support the transition.
Just transition and economic diversification	All countries	Commitments relating to just transition for the workforce: Targets and policies aimed at assisting the fossil fuel workforce transition from employment based in the fossil fuel sector.
Just transition and economic diversification	All countries	Economic diversification measures: Measures associated with sustainable development and industrial policy to help build new economic pathways to reduce dependence on fossil fuel revenues.
Just transition and economic diversification	All countries	Social dialogue: Ample opportunity for social dialogue, including clear consultation with communities and directly impacted groups, should be built into the policy design process for all aspects of the transition, to ensure the transition from fossil fuels to alternative energy sources, scaled up energy access, new work opportunities and economic development pathways is undertaken in a socially just, transparent and inclusive manner, leaving no one behind.

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Transparency	All countries	Enhanced reporting: Countries should increase transparency around their fossil fuel production and plans, including through reporting on the fossil fuel reserves and resources within their jurisdiction, as well as historic, current and projected future fossil fuel production. Countries should also increase transparency around policies already in place to constrain fossil fuel production or enable a just transition and economic diversification, in line with the commitments above.

3. Legal Foundations: The Paris Agreement, UNFCCC and Fossil Fuel Commitments

The UNFCCC and Paris Agreement justify including measures relating to fossil fuel extraction and just transition in NDCs in a range of ways

- 3.1. **Article 2.1(a) of the Paris Agreement requires countries to pursue efforts to limit the global average temperature increase to 1.5°C above pre-industrial levels.** It provides as follows:

Article 2

1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

(a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change; ...

- 3.2. **Article 3 of the Paris Agreement requires countries to submit nationally determined contributions, in line with the purpose of the Agreement as set out in Article 2.** Article 3 makes explicit that Article 2 articulates the purpose of the Paris Agreement, and that NDCs should meet this purpose.

- 3.3. Article 18 of the Vienna Convention on the Law of Treaties requires that parties to a treaty must ‘refrain from acts which would defeat the object and purpose of a treaty’. As noted above, current fossil fuel production policies would see more than double the amount of fossil fuels produced than is consistent with the 1.5°C temperature limit. Failing to change this trajectory and phase out fossil fuels in line with the Paris Agreement’s 1.5°C temperature goal would ‘defeat the object and purpose’ of the Paris Agreement. Thus, including measures with respect to fossil fuel extraction in countries’ NDCs is not only consistent with meeting the temperature limit under 2.1(a) but is *imperative* to meeting the Paris Agreement’s purpose.
- 3.4. **Article 4 of the Paris Agreement does not limit the types of mitigation measures which should be included in countries’ NDCs.** Article 4 requires countries to ‘prepare, communicate and maintain’ NDCs, and to pursue domestic mitigation measures with the aim of achieving these NDCs. As fossil fuel extraction inevitably results in greenhouse gas emissions, regulating the extraction and supply of fossil fuels is a mitigation measure. Each successive NDC must ‘represent a progression beyond’ a country’s previous NDCs (Article 4.3), thus each round of NDCs must represent enhanced ambition as part of the Paris Agreement’s ‘ratchet’ mechanism.
- 3.5. **Article 4.5 requires support to be provided to developing country Parties to implement their obligations under Article 4.** Articles 9, 10, and 11 of the Paris Agreement further require the provision of financial, technological and capacity building support respectively to developing country parties in fulfillment of their NDCs. Developing countries which include measures relating to fossil fuel extraction and a just transition in their NDC would therefore have a case for requesting support for any related fossil fuel phase-out or just transition-related measures from developed country Parties.
- 3.6. **Article 4.13 requires countries to account for their nationally determined contributions under the transparency framework further articulated in Article 13.** Including fossil fuel extraction and just transition in a country’s NDC will require that country to be transparent about progress towards achieving its commitments, which will set a strong precedent for other states. It will also provide a platform for the country to report on the economic and development challenges associated with transition from fossil fuel dependence.
- 3.7. **Article 4 should also be interpreted in the light of the Preamble and other Articles of the Paris Agreement.** For example:
- 3.7.1. The Preamble of the Paris Agreement takes into account ‘the imperatives of a just transition of the workforce and the creation of decent work and quality jobs’. A just

transition for workers will be essential in the transition away from fossil fuel dependence, and thus is relevant to articulate in countries' NDCs.

3.7.2. The Preamble also requires Parties to take action in light of their obligations relating to human rights, health, the rights of indigenous peoples and others. Research has shown that fossil fuels undermine international obligations in each of these areas.¹¹

- 3.8. **The Paris Agreement was adopted under the UN Framework Convention on Climate Change (UNFCCC) and as such, must be interpreted in light of the UNFCCC.** In its Article 3.3, the UNFCCC states that 'Parties should take precautionary measures to anticipate, prevent and or minimize the causes of climate change and mitigate its adverse effects.' This reflects the precautionary principle in customary international law. Given the intrinsic link between fossil fuel extraction and greenhouse gas emissions, it is clear that taking precautionary measures necessitates measures relating to reducing the production of fossil fuels.
- 3.9. The preamble of the UNFCCC also recognises 'the special difficulties of those countries, especially developing countries, whose economies are particularly dependent on fossil fuel production, use and exportation, as a consequence of action taken on limiting greenhouse gas emissions,' and that 'responses to climate change should be coordinated with social and economic development... taking into account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty.'
- 3.10. Thus, the UNFCCC recognises the challenges associated with a just transition from fossil fuels for fossil fuel dependent developing countries. NDCs under the Paris Agreement provide an important opportunity to address both the need to take precautionary measures in reducing fossil fuel production, and to highlight the need for support for a just transition and economic diversification from fossil fuels.
- 3.11. **At COP28 in Dubai countries called on states to contribute to global efforts towards 1.5°C, including 'Transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner, accelerating action in this critical decade, so as to achieve net zero by 2050 in keeping with the science'** (Decision 1/CMA.5, para 28(d)). This was one of the outcomes of the Global Stocktake, which occurs every five years (Article 14 of the Paris Agreement). The 2023 Global Stocktake also stated that the next round of countries' NDCs should be 1.5°C-aligned and cover 'all greenhouse gases, sectors and categories'

¹¹ "Fossils Fuels at the Heart of the Planetary Environmental Crisis: UN Experts," OHCHR, accessed July 17, 2024, <https://www.ohchr.org/en/press-releases/2023/11/fossils-fuels-heart-planetary-environmental-crisis-un-experts>.

(Decision 1/CMA.5, para 39). Article 14.3 of the Paris Agreement specifies that the Global Stocktake shall inform parties in updating and enhancing their commitments under the Paris Agreement, including their NDCs. Hence countries should address the commitments and findings of the Global Stocktake in their updated NDC, including the commitment to transition away from fossil fuels.

- 3.12. **The Pact for the Future adopted by the UN General Assembly in September 2024 further cements the COP28 language relating to fossil fuels**, reconfirming countries' obligations to transition away from fossil fuels and demonstrating that fossil fuels are one of the key challenges on the multilateral agenda.
- 3.13. **At COP27 in Sharm El-Sheikh country Parties agreed to establish a 'work programme on just transition for discussion of pathways to achieving the goals of the Paris Agreement', including the 1.5°C temperature goal.** Including measures relating to a just transition from fossil fuels in a country's NDC will create a clear hook for technical engagement within the just transition work programme that may result in useful technical or capacity building support to aid in the transition.
- 3.14. **A growing body of international law is beginning to recognise that countries face binding legal obligations with respect to limiting greenhouse gas emissions, and that these obligations derive not only from the UNFCCC and Paris Agreement but also more broadly.** For example, the [ITLOS Advisory Opinion on climate change](#) found that the definition of "pollution" under Article 1(1)(4) of the UN Convention on the Law of the Sea encompasses anthropogenic GHG emissions because they have deleterious effects on the marine environment, both directly and indirectly, and that states have an obligation to take all necessary measures to prevent, reduce, and control pollution from GHG emissions. Advisory Opinions further exploring a) obligations with respect to climate change and human rights, and b) the broader corpus of international law are forthcoming from the Inter-American Court of Human Rights and International Court of Justice respectively. Addressing the source of greenhouse gas emissions – fossil fuels – in countries' NDCs is therefore also a critical step in discharging a broader set of international obligations that include and extend beyond the Paris Agreement.

4. Policy Foundations: The Strategic Benefits of Fossil Fuel Commitments

- 4.1. In addition to the justifications found within the UNFCCC and Paris Agreements themselves, there are important policy considerations for the inclusion of fossil fuel extraction and just transition measures in a countries' NDC. These include:

- 4.1.1. **Policy coherence** – as noted above, countries are currently planning to produce more fossil fuels than is compatible with their NDCs. There is a clear policy mismatch between fossil fuel supply policy on the one hand and climate policy on the other.
- 4.1.2. **Setting a precedent in the multilateral sphere** – by including fossil fuel extraction and just transition measures in their NDCs, countries can contribute to further normalizing discussions about fossil fuel supply in multilateral climate fora, and potentially influence future UNFCCC negotiations.
- 4.1.3. **Emphasize the need for support for the transition** – developing countries can make some of their commitments conditional on financial, technological or capacity building support from developed country Parties, and outline their needs in relation to the just transition and economic diversification. This would engage the relevant provisions under the Paris Agreement related to support – as outlined above – as well as make an important public policy statement that may be used as a future advocacy tool about the need for greater financing of the transition from fossil fuels.
- 4.1.4. **Including an investment plan in NDCs** – covering fossil fuel supply would also reinforce the UNFCCC’s call for finance and investment plans to be included in NDCs, given the objective (as per Article 2.1.c of Paris) to move away from financing high-carbon to low-carbon sources.

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