Report on Human Rights in Luxembourg's climate policy

submitted for the Human Rights Committee's 130th session

by

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Luxembourg, 31 August 2020

Executive Summary

Key Issues

- Estimations suggest that Luxembourg's thriving financial sector significantly contributes to greenhouse gas emissions, which drive climate change and therefore threaten the Right to Life as protected under the ICCPR
- Obligation to regulate both public and private financial actors to address their role in climate change and its domestic and extraterritorial consequences

This report focuses on Luxembourg's omission to fully uphold its obligation to protect the Right to Life in the context of regulating financial actors within its jurisdiction, as required under Article 6 of the International Covenant on Civil and Political Rights (ICCPR). Conservative estimations suggest that these financial institutions fund projects and investment portfolios that contribute to dangerous levels of greenhouse gases, further exacerbating climate change and thereby threatening the Right to Life both within Luxembourg and extraterritorially.

In January 2020, Luxembourg submitted its 4th periodic report to the UN Human Rights Committee, as stipulated in art. 40 of the ICCPR. In its content, the report closely follows the ICCPR article structure. One page within the report is dedicated to article 6 (the Right to Life). Here, the report focusses on issues like the death penalty or genocide, and stresses that offences against life like homicide are punishable under the penal code. Climate change – the biggest threat to the Right to Life – is however not tackled at all. The climate issue, rising greenhouse gas emissions, as well as Luxembourg's responsibility and political commitments, are ignored completely.

Climate Change and Luxembourg's International Obligations

Recognition of Climate Science

According to the latest report of the Intergovernmental Panel on Climate Change (IPCC), global average temperatures have already increased by more than 1ºC over pre-industrial levels.[1] This increase of global temperatures is more rapid than any change of temperatures on Earth over the past millennia.[2] Within Luxembourg's territory, temperatures have already increased 1.6ºC on average compared to the 1990s.[3] The scientific community has concluded for decades that human activity – particularly the combustion of fossil fuels – is the main driver of these changes. The current level of temperature increase has already had severe implications for communities across the world. It has particularly affected those exposed to climate-related extreme events such as hurricanes, droughts, floods and wildfire, which may destroy homes and livelihoods through not only their immediate effect, but also through heightened food and water insecurity.

In October 2018, the IPCC released a Special Report on 1.5ºC of Warming, which concluded that "climate-related risks for natural and human systems are higher for global warming of 1.5ºC than at present, but lower than at 2ºC".[4] The IPCC has stressed that risks increase with every additional magnitude of warming.

The IPCC notes that without significant additional emissions reduction efforts, an increase of average temperatures by more than 4ºC is "more likely than not". According to the IPCC, "the risks associated with temperatures at or above 4°C include substantial species extinction, global and regional food insecurity, consequential constraints on common human activities, and limited potential for adaptation in some cases (high confidence)." The IPCC has further reiterated that the adverse effects of climate change above 1.5°C will directly contribute to **heightened vulnerability to injury and disease**,[5] which in turn result in loss of life. In his report on "Climate Change and poverty" to the Human Rights Council's in June 2019, Special Rapporteur Philip Alston concludes "Climate change is, among other things, an unconscionable assault on the poor."[6]

The Luxembourgish government has formally endorsed the IPCC's findings through the adoption of the 1.5°C Special Report and all reports produced by the IPCC.

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[1] IPCC Special Report, 'Global warming of 1.5°C. An IPCC special report on the impacts of global warming of 1.5 °C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty' (2018) (SR 1,5), finding A1.

[2] <https://climate.nasa.gov/evidence/>, accessed 11 January 2019.

[3] STATEC, '25 indicateurs pour suivre le changement climatique au Luxembourg' (No. 20 10/2019) and RTL Today, 'Climate Change in Luxembourg in numbers' (2019) https://today.rtl.lu/news/luxembourg/a/1411628.html

[4] SR 1,5, finding A3.

[5] IPCC, 'Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change' [Field, C.B., V.R. Barros, D.J. Dokken, K.J. Mach, M.D. Mastrandrea, T.E. Bilir, M. Chatterjee, K.L. Ebi, Y.O. Estrada, R.C. Genova, B. Girma, E.S. Kissel,A.N. Levy, S. MacCracken, P.R. Mastrandrea, and L.L.White (eds.)], (2014), Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, pp. 717

[6] https://reliefweb.int/report/world/climate-change-and-poverty-report-special-rapporteur-extreme-poverty-and-human-rights

International Climate Obligations

Under the UN Framework Convention on Climate Change – which Luxembourg ratified on May 9th 1994[7] – Luxembourg is legally required to "adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs".[8]

Under the Paris Agreement, ratified by Luxembourg on November 4th 2016,[9] the State parties committed to "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".[10] The Paris Agreement additionally mandates that Parties "make finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development".[11] These commitments of Luxembourg under the Paris Agreement should inform the interpretation of, and be reinforced by, its obligations under Article 6 of the ICCPR.

The relationship between these obligations has been crystallized by the Human Rights Committee in its General Comment (GC) n. 36 concerning the Right to Life, which states:[12]

> Obligations of States parties under international environmental law should thus inform the contents of Article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life must reinforce their relevant obligations under international environmental law.

Furthermore, in footnote 259 of the GC 36, the preamble of the Paris Agreement is explicitly referenced, underscoring the connection between international climate law and the ICCPR. Therefore, Luxembourg's international obligations under the Paris Agreement must inform its obligations under the ICCPR.

Luxembourg is implementing its commitments under the Paris Agreement through a Nationally Determined Contribution (NDC) submitted jointly with all Member States of the European Union. The EU's NDC incorporates the binding target of an at least 40% domestic reduction in greenhouse gas emissions by 2030 compared to 1990 emissions levels.[13] Nonetheless, researchers have highlighted that this goal is *insufficient* to keep global average temperature well below 2°C above pre-industrial levels.[14] The EU – including Luxembourg – must do more if it is to comply with Article 2.1 of the Paris Agreement and safeguard the human rights of those

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[7] United Nations Treaty Collection, 'United Nations Framework Convention on Climate Change Ratification Status' (2020) https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en

[8] UN General Assembly, 'United Nations Framework Convention on Climate Change: resolution / adopted by the General Assembly' (20 January 1994) A/RES/48/18, Article 4.2.a.

[9] United Nations Treaty Collection, 'Paris Agreement: Ratification Status' (2020) https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en

[10] UNFCCC, Paris Agreement adopted at the 21st Session of the Conference of the Parties (12 December 2015) (Paris Agreement), Article 2.1.a.

[11] Paris Agreement, Article 2.c

[12] Human Rights Committee, 'General comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life' (October 2018) CCPR/C/GC/36 paragraph 62

[13] Intended Nationally Determined Contribution of the EU and its Member States, UNFCCC Secretariat 2015

[14] Climate Action Tracker, ' EU Country Summary ' (2019)

living in the most vulnerable regions of the world. In fact, the final version of its "Integrated National Energy and Climate Plan for Luxembourg for the period 2021-2030"[15] of June 2020 contains many positive elements such as raising the reduction target to -55% by 2030, increasing the share of renewable energies to 25% by 2030 and the introduction of free public transport. Other positive elements include the further increase in Luxembourg's contributions to international climate financing and its additionality to development aid,[16] as well as, in the chapter „Chancengleichheit und Menschenrechte",[17] the comments on human rights-related aspects of climate change, such as the support for the Platform of Local Communities and Indigenous Peoples (UNFCCC) and the support for the preparation of reports on human rights related to climate change in cooperation with the Center for International Environmental Law (CIEL) and the Office of the United Nations High Commissioner for Human Rights (OHCHR).

However, there is a lack of analysis and willingness to reduce the global carbon and social footprint of domestic economic actors. Even the main source of domestic emissions – the export of fossil fuels due to lower excise duties on petrol and diesel compared to neighbouring countries – is not adequately addressed in the NEPC.

Luxembourg's climate policy has given priority to increasing the share of green energy and financial mechanisms The problem is that it is losing sight of the reduction of fossil energy sources – be it the so-called "tank tourism" of foreign customers or the global footprint. Increasing the relative share of green energy and finance is by no means equivalent to an absolute reduction in greenhouse gas emissions, given the even greater growth of their total volume. And given the limited carbon budget in the atmosphere, it is the amount of emissions that counts.

Luxembourg's domestic emissions have been increasing again according to Eurostat estimates of May 8th 2019 and May 6th 2020[18]: by 3.7% from 2017 to 2018 and even by 7.5% from 2018 to 2019. Not only does Luxembourg have the highest per capita GHR emissions in the EU, but also the largest increase in the EU. The fact that this has consequences for the Right to Life of people in other parts of the world has not yet been discussed in the political discourse in Luxembourg.

More importantly, Luxembourg fails to report emissions from extraterritorial activities financed by financial institutions under its jurisdiction when it calculates its compliance with domestic and EU emissions reduction obligations. Although Luxembourg emits approximately 10 million tons of CO2 annually within its territory,[19] it is estimated that Luxembourg-domiciled funds' overall equity portfolio finances the emission of 300-400 million tons of CO2eq annually.[20] These financed emissions are equivalent to 30-40 times the emissions generated domestically by the entire population and economy of Luxembourg.[21] The carbon footprint of these large financial flows obliterates any positive benefits from domestic climate action. The negative climate impact of Luxembourgish funds' investment in fossil fuels and other carbon-intensive activities globally

[15] Ministry of Energy and Spatial Planning, Ministry of the Environment, Climate and Sustainable Development: 'Integrierter Nationaler Energie- und Klimaplan für den Zeitraum 2021-2030', final version, Luxembourg, June 2020
[16] Ibid, page 102
[17] Ibid, page 106
[18] Eurostat press release 81/2019 (8 May 2019) and 78/2020 (6 May 2020)
[19] Knoema, 'Luxembourg- CO2 Emissions ' (2019) https://knoema.com/atlas/Luxembourg/CO2-emissions
[20] Due to the lack of transparency when it comes to carbon reporting of the Luxembourg finance industry, no official figures for emissions of the Luxembourg finance sector are available.
[21] Conservative estimations for Luxembourg's investment fund sector are based on benchmarks of Norway's sovereign pension fund. See György Dallos, ' Luxembourg finance industry happily serves fossil fuel companies: Carbon Haven? ' (2020) http://www.land.lu/page/article/353/336353/FRE/index.html

dwarfs the country's domestic footprint. Additionally, these financial flows enable the continued and still expanding use of fossil fuels worldwide.

Climate Change and the Protection of the Right to Life

UN Human Rights Experts have underlined that limiting warming to 1.5ºC is a human rights imperative, since warming above 1.5ºC will have very serious adverse implications for human rights, including the Right to Life, under Article 6 of the ICCPR.[22]

The Right to Life is recognized as a fundamental human right, 'basic to all human beings'.[23] Article 6 of the ICCPR provides that: "Every human being has the inherent right to life. This right shall be protected by law."[24] The right is incorporated in every human rights document and is non-derogable, even in times of emergency.[25] Its fulfilment has been linked to other human rights such as the right to food, water and an adequate standard of living.[26] The Human Rights Committee clarified the scope of the Right to Life in its GC n.36 adopted in October 2018, emphasizing that a broad range of obligations can be interpreted from this right that entitles individuals to be free from both acts and omissions that cause, or may be expected to cause, death or impair the enjoyment of a life with dignity.[27]

The Committee has reiterated that climate change affects the Right to Life. Although the Committee rejected the petitioners' claim in decision C/127/D/2728/2016, it stressed that "environmental degradation, climate change and unsustainable development constitute a serious threat to the right to life."[28] Most recently, the Committee has included in its List of Issues prior to reporting to Guyana, that the State party "provide information on the steps taken to prevent and mitigate the negative effects of climate change, particularly in the consequence of … offshore oil production" and "respond to concerns that large scale oil extraction significantly increases greenhouse gas emissions ... adversely affecting the most vulnerable groups in the State party" in relation to its Article 6 obligations.[29] This request reflects an

[22] See: 'The Effects of Climate Change on the Full Enjoyment of Human Rights', Joint Paper by five Special Procedures mandate holders of the Human Rights Council (2015), available at http://www4.unfccc.int/Submissions/Lists/OSPSubmissionUpload/202_109_130758775867568762-CVF%20submission%20Annex%201_Human%20Rights.pdf; Public Statement of the Committee on Economic, Social and Cultural Rights made on 31 October 2018, UN Document E/C.12/2018/1, paragraph 2.

[23] UN Human Rights Council, 'Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights' (15 January 2009) A/HRC/10/61, para 8.

[24] ICCPR, Article 6.

[25] HR Committee, 'CCPR General Comment No. 6: Article 6 (Right to Life)' (30 April 1982), para 1; HRC, 'CCPR General Comment no.14: Article 6 (Right to Life) Nuclear Weapons and the Right to Life (9 November 1984), para 1; HRC, 'CCPR General Comment No. 36 on Article 6 (Right to Life)' (30 October 2018), para 2.

[26] Committee on the Rights of the Child (CRC), 'General Comment No. 7 (2005): Implementing Child Rights in Early Childhood' (20 September 2006), para. 10.

[27] Human Rights Committee, 'CCPR General Comment No. 36 on Article 6 (Right to Life)' (30 October 2018), CCPR/C/GC/36 Para 3.

[28] Human Rights Committee, 'General comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life' (October 2018) CCPR/C/GC/36 Para. 9.4

[29] UN Human Rights Committee, "List of Issues Prior to reporting to Guyana" (August 2020) CCPR/C/GUY/QPR/3 paragraph 14

understanding that the production of fossil fuels leads to greenhouse gas emissions that contribute to climate change, which adversely affects the most vulnerable groups and infringes on their Right to Life. The connection between the Right to Life and the negative impacts of climate change is clear.

The Committee's GC n.36 further stated that the Right to Life requires states to take "appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity" and "these general conditions may include … degradation of the environment".[30] The General Comment recognizes that "[e]nvironmental degradation, climate change and non-sustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life".[31]

Private Actors

A State's obligations pursuant to Article 6 are not limited only to its territory. State parties also have an obligation to ensure that the conduct of actors subject to their jurisdiction does not violate the Right to Life extraterritorially.

The Human Rights Committee's General Comment No. 36 specifically stated the imperative for states to address the extraterritorial impacts of corporate entities within their jurisdiction:

> [State parties] must also take appropriate legislative and other measures to ensure that all activities taking place in whole or in part within their territory and in other places subject to their jurisdiction, but **having a direct and reasonably foreseeable impact on the right to life of individuals outside their territory**, **including activities taken by corporate entities based in their territory or subject to their jurisdiction,** are consistent with article 6, taking due account of related international standards of corporate responsibility, and of the right of victims to obtain an effective remedy.[32]

Additionally, the Committee has recognised that Article 6 creates a duty of due diligence, which obliges the State to protect the Right to Life from deprivations caused by actors whose conduct is not attributable to the State. In its General Comment No. 36, the Committee reiterated that "[t]he duty to protect the right to life and exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities, whose conduct is not attributable to the State."[33] This obligation extends to "**reasonably foreseeable threats and life-threatening situations** that can result in loss of life".[34]

In the context of climate change, this suggests that States must look beyond their borders to foreseeable impacts of their actions or those of private entities operating in their jurisdiction, which exacerbate climate change and violate human rights by threatening the Right to Life. The IPCC has made clear that certain areas around the globe, such as small island states and low-

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[30] Human Rights Committee, 'General comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life' (October 2018) CCPR/C/GC/36 Para. 26
[31] Ibid*,* para. 62.

[32] Human Rights Committee, 'General comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life' (October 2018) CCPR/C/GC/36 Para. 22
[33] Ibid*,* para. 7.

[34] Ibid*,* para. 7.

lying developing states, will see greater impacts of climate change, on a shorter time scale.[35] These impacts, such as exacerbated extreme weather events and natural disasters, pose a direct threat to the Right to Life.[36] These linkages have already been made explicit by the Committee, most notably in its ruling *Ioane Teitiota v. New Zealand*, which stated that the "effects of climate change in receiving states may expose individuals to a **violation of their rights under Article 6** … of the Covenant". [37] Therefore, in upholding its duties under Article 6, Luxembourg has an obligation to consider the extraterritorial threats to the Right to Life caused by actors under its jurisdiction or to which those actors contribute. This obligation must include the duty to regulate financial institutions subject to its jurisdiction, to ensure that they assess, disclose, and address how their financing contributes to global climate change, which foreseeably impacts the Right to Life.

Consequently, given the human rights imperative of the 1.5°C warming objective, Luxembourg's lack of adequate and effective regulation of financial actors within its jurisdiction undermines its commitments under the Paris Agreement and its international legal obligations under Article 6 of the ICCPR. Until the government upholds its obligation to regulate the private sector adequately, the country and its private actors will continue to have a disproportionate carbon footprint undermining the Right to Life in Luxembourg and worldwide. In the following sections, this submission demonstrates how the public and private financial actors under Luxembourg's jurisdiction are failing to assess, disclose, prevent, and mitigate the climate impacts of their investments to ensure alignment with a 1.5˚C warming scenario, which is necessary to uphold and protect the Right to Life both nationally and extraterritorially.

States' Duty to Regulate Financial Actors: Statements and Findings from UN Human Rights Treaty Bodies

Many international institutions have recognized that the Right to Life implies a State obligation to protect individuals from future climate-related harms, which is often fulfilled by adopting and implementing adequate emissions reduction regulation. Moreover, recent jurisprudence within the UN Human Rights Treaty Bodies has also elucidated the necessity of State parties to regulate the impact of high-emission investments by financial actors within their jurisdictions.

In September 2019, five Human Rights Treaty Bodies issued a joint statement on human rights and climate change. This statement reinforced the imperative of limiting global warming to 1.5˚C in order to adequately mitigate the adverse effects of climate change on human rights. Regarding States' obligations on human rights, the statement explicitly provides that parties should discontinue "financial incentives for investments in activities and infrastructure which are not consistent with low greenhouse gas emissions pathways" regardless if undertaken by public or private actors, as a mitigation measure to prevent further damage and risk.[38] This underscores the existing recognition of financial actors' relationship to greenhouse gas emissions and their mitigation.

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[35] IPCC (2014) Working Group II Contribution to the Intergovernmental Panel on Climate Change, Fifth Assessment Report, 2013. See: http://ipcc.ch

[36] Human Rights Council, 'Resolution on Human Rights and Climate Change' (23 July 2019) A/HRC/RES/41/21 https://undocs.org/A/HRC/RES/41/21

[37] CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC) (January 2020), available at: https://www.refworld.org/cases,HRC,5e26f7134.html

[38] CEDAW, CESCR, CRC, CRPD, and CMW, 'Joint Statement on 'Human Rights and Climate Change' (2019), paragraph 12 https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E

Reviewing the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Committee has highlighted the specific impact of financial actors on climate change - and consequently on fundamental human rights.[39] In its Concluding Observations (COB) to Switzerland in 2019, the Committee on Economic, Social, and Cultural Rights noted with concern that "**public and private financial institutions**, including pension funds, maintain significant investments in the fossil fuel industry, despite its adverse impacts on the climate".[40] Additionally, the Committee recommended that the State Party take the "**necessary measures to reduce public and private investments in the fossil fuel industry and ensure that they are compatible with the need to reduce greenhouse gas emissions**."[41] These observations crystallize the necessity of States to take into account public and private financial institutions in reviewing their international human rights obligations.

The Committee on the Rights of the Child (CRC) in its List of Issues Prior to Reporting to Luxembourg (2019), required that the State "provide information regarding policies implemented by the State party to ensure that **private and publicly owned financial institutions** (…) take into consideration the implications for climate change of their investments and the resulting harmful impact on children."[42] This point was echoed in the Committee's List of Issues (LOI) prior to reporting to Switzerland, requesting that the State Party "ensure that **private and publicly owned financial institutions take into consideration the impact of climate change on the rights of the child of their investments, in particular in the fossil fuel industry"**.[43] These examples from the CRC ultimately demonstrate the established expectation that State parties guarantee appropriate regulation of both public and private financial actors within their jurisdiction, to ensure that they consider the impacts of their investments on climate change. Finally, the Committee on the Elimination of Discrimination Against Women (CEDAW) has also recognized the obligation of State parties to regulate financial actors in order to comply with the mandate of the Convention. In its COB to Sweden in 2016, the Committee stated its concern about "the **lack of systematic control by the State party of the investments made abroad by enterprises domiciled under its jurisdiction**, including by the Swedish National Pension Funds, which weakens the ability of the State party to prevent negative impacts from such investments."[44] Three years later, in its LOI prior to reporting, the CEDAW Committee highlighted that Sweden's extraterritorial obligations include ensuring that the activities of companies registered in the State party, "including their **financial flows and investments**", do not "negatively affect human rights or endanger environmental, labour and other standards".[45]

The Contribution of Luxembourg's Financial Actors to the Climate Crisis

Luxembourg's total national emissions are approximately 10 million tons of carbon dioxide annually, having increased by 3.7 in 2018 from the previous year and by an estimated 7,5% in 2019 from 2018. Yet, what is estimated to be much larger than those domestic emissions, are the greenhouse gases released by emission-intensive activities abroad that are financed by

[39] *Ibid*
[40] CESCR, 'Concluding Observations Regarding Switzerland' (October 2019), UN Doc. E/C.12/CHE/CO/4 paragraph 18
[41] Ibid, Paragraph 19
[42] CRC, 'List of Issues Prior to Reporting of Luxembourg' (March 2019) UN Doc. CRC/C/LUX/QPR/5-6 Paragraph 23
[43] CRC, 'List of Issues Prior to Reporting of Switzerland' (November 2019) UN Doc. CRC/C/CHE/QPR/5-6 Paragraph 25(c)
[44] CEDAW, 'Concluding Observations' (March 2016) UN Doc CEDAW/C/SWE/CO/8-9
[45] CEDAW, 'List of Issues Prior to the Submission of the 10th Periodic Report to Sweden' (March 2019) UN Doc CEDAW/C/SWE/QPR/10 Paragraph 8

Luxembourg's public and private financial sector: the third most competitive in Europe following London and Zurich.[46] When trying to find facts and figures to make comparisons or estimations about the climate impact of the Luxembourg fund industry, one has to conclude that there is still a great lack of transparency within the financial industry. Although a European agenda for more sustainable finance has been launched, including broader disclosure duties of social and environmental externalities of financial products, there have been no serious national efforts to increase transparency within the sector. This is regrettable as the European agenda, once transposed into national law, will only affect a small part of all financial products. Instead of only highlighting "green" (low-carbon or neutral) products, there is also an urgent need to identify and calculate the impact of "brown" (high-carbon) products. Luxembourg, as an important hub for fund distribution and world 2nd in size of assets under management, would have a responsibility and moral obligation to make more serious efforts and increase transparency throughout the financial sector, in particular for its fund-industry and its corresponding climate-footprint.

As Luxembourg does not mandate that public and private financial institutions within its jurisdiction report on the greenhouse gas emissions of projects they fund, the precise magnitude of these extraterritorial financed emissions is unknown. Extrapolating from figures reported by Norges Bank Investment Management on how much carbon dioxide Norway's large public pension fund emits, one economist estimates that the overall equity portfolio of Luxembourg-domiciled funds emits 300-400 million tons of CO_2 eq annually.[47] Unfortunately, this is only an estimate, as Luxembourg omits to mandate transparency regarding the total greenhouse gas emissions of projects funded by both public and private investment portfolios within its jurisdiction.

Moreover, the carbon footprint of Luxembourg's financial sector must be considered in relation to the State's aforementioned international environmental and human rights obligations. In terms of reducing global greenhouse gas emissions, Luxembourg has by far the largest potential to contribute through navigating its investment fund sector, stock exchange, banks and insurers away from fossil fuels. The State therefore has a duty to ensure that investments made by financial actors subject to its jurisdiction align with the imperative to keep temperature increase below 1.5 °C, and safeguard the human rights of both the citizens of Luxembourg and citizens of nations most vulnerable to climate change.

Luxembourg's Failure to Regulate Investment

As per the UN *Guiding Principles on Business and Human Rights* – which are in line with the Human Rights Committee's GC 36 – States must protect against human rights abuse within their territory and/or jurisdiction by third parties, **including private business enterprises**.[48] Although States are not per se responsible for human rights abuse by private actors, they have a duty to effectively regulate those actors' conduct to ensure compliance with international human rights obligations. Therefore, this requires taking appropriate steps to prevent,

[46] 19th Global Financial Centres Index (GFCI 19) 2016 https://luxtimes.lu/archives/7087-luxembourg-ranks-3rd-most-competitive-european-financial-centre

[47] These numbers include direct emissions (scope 1) and emissions from purchased energy (scope 2), but do not include indirect emissions that originate from the value chain and from product use (scope 3). If we consider Scope 3 emissions, then the equity portfolio of Luxembourg-domiciled funds emits at least 600 millions tons of CO2-equivalent per year. See György Dallos, 'Luxembourg finance industry happily serves fossil fuel companies: Carbon Haven?' (2020) http://www.land.lu/page/article/353/336353/FRE/index.html

[48] Office of the High Commissioner for Human Rights, 'Guiding Principles on Business and Human Rights' (2011) https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

investigate and redress such abuse through effective policies, legislation, regulations and adjudication. In the context of climate change and human rights, this principle must be applied to States regulating the climate impacts of all actors operating within their jurisdiction, such as private banks, credit agencies, and private equity funds investing in high-emitting industries across the globe.

Regarding Luxembourg's public financial institutions, the Guiding Principles stress that the State should take "additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies, by requiring human rights due diligence".[49] Therefore, Luxembourg's public financial actors, such as its national pension fund (FDC), should be regulated according to strict standards of climate-related regulation. This may include mandating that public financial institutions align their entire portfolios with a 1.5°C warming pathway consistent with the Paris Agreement, or become fossil-free or carbon-neutral, to ensure the Right to Life is protected in the face of the life-threatening effects of global climate change.

Currently, Luxembourg's domestic finance sector is not sufficiently regulated in a way that complies with its international commitments and legal obligations. While the government is promoting Luxembourg as a "sustainable financial hub",[50] the country's €4.7 trillion investment fund industry is simply not obliged to monitor, or report on, the carbon emissions and the climate harms it finances.[51] Estimates suggest that the projects funded and the investment portfolios managed by Luxembourg's public and private finance institutions threaten the Right to Life, through their financing of greenhouse gas emission-intensive activities, incompatible with the objectives and commitments of the Paris Agreement and Luxembourg's human rights obligations under the ICCPR.

Case Study: Fonds de Compensation (FDC)
Luxembourg's National Pension Fund

A key financial actor within Luxembourg's jurisdiction is the FDC, the country's National Pension Fund, managing over 20 billion euros in its pension reserve. The mission of the FDC is to manage the compensation reserve of the general pension insurance scheme through diversifying its assets in portfolios that take into account both risk and return criteria. Climate change poses multiple financial risks, including impact risks to physical assets as well as transition risks, due to regulatory reforms, changing consumption patterns, and climate litigation.

Yet, in 2019 alone, FDC invested more than 256 million euros in some of the world's largest coal companies,[52] despite the fact that coal production and

[49] Ibid, page 6

[50] Luxembourg for Finance, 'Sustainable Finance – Showing the Way to a Greener Economy' (2020) https://www.luxembourgforfinance.com/en/financial-centre/sustainable-finance/

[51] IPE, 'Luxembourg's FDC to disclose climate risks after Greenpeace action' (2020) https://www.ipe.com/news/luxembourgs-fdc-to-disclose-climate-risks-after-greenpeace-action/10044910.article

[52] Greenpeace,'Green hypocrisy: Luxembourg's Pension Funds Invest in Oil and Coal' (2020) https://www.greenpeace.org/luxembourg/fr/en-press-release/9163/green-hypocrisy-luxembourgs-pension-fund-invests-in-oil-and-coal/

consumption must be urgently phased out in order to ensure a maximum of a 1.5°C warming.[53] This represents a more than 60% increase from the FDC's coal investments in 2015, the year when the Paris agreement was signed.[54] Between 2018 and 2019, Luxembourg's FDC also increased its investments in the so-called Carbon Majors,[55] the list of active climate polluters including ExxonMobil, Shell, BHP Billiton and Gazprom who are linked to 71% of industrial greenhouse gas emissions since 1988.[56]

The fund's prolonged and increased investments in Carbon Majors are inconsistent with reducing the fund's carbon footprint and climate-related financial risks. Furthermore, despite FDC's recent commitment to deliver a sustainability report in the third quarter of 2020,[57] the fact that this public fund has contributed so heavily to fossil fuels for years after the signing of the Paris Agreement demonstrates that the Luxembourgish government has omitted to adequately regulate emission-intensive investments of financial actors subject to its jurisdiction.

Regulation of Financial Institutions' Climate Impacts

To respond to the climate emergency we are now facing and ensure we are on a pathway to keeping global average temperature increase below 1.5°C, in order to limit the adverse impacts on human rights, the government of Luxembourg must adopt policies that are in line with climate science, ensure the full enjoyment of human rights domestically, and prevent violation of these rights abroad. This includes the adoption of effective regulation of the finance sector and the active pursuit of the phase-out of fossil fuels, which are inherently incompatible with a 1.5°C warming, from the portfolios of public financial institutions.[58] Below are key elements necessary for State parties to appropriately regulate financial institutions in the context of climate change: assessing investment impact, disclosing climate-related risks, addressing investment policy changes to proactively prevent and mitigate climate harm, aligning financial actors' investments with the objectives of the Paris Agreement and where possible, provide remedy for the adverse effects of climate change. As part of States' effort to uphold their international human rights and

[53] Climate Analytics, 'Global and regional coal phase-out requirements of the Paris Agreement: Insights from the IPCC Special Report on 1.5°C' (2019) https://climateanalytics.org/media/report_coal_phase_out_2019.pdf
[54] Greenpeace, 'Green hypocrisy: Luxembourg's Pension Funds Invest in Oil and Coal' (2020) https://www.greenpeace.org/luxembourg/fr/en-press-release/9163/green-hypocrisy-luxembourgs-pension-fund-invests-in-oil-and-coal/
[55] Greenpeace, 'Green hypocrisy: Luxembourg's Pension Funds Invest in Oil and Coal' (2020) https://www.greenpeace.org/luxembourg/fr/en-press-release/9163/green-hypocrisy-luxembourgs-pension-fund-invests-in-oil-and-coal/ and Votum Klima, "Der Luxemburgische Pensionsfonds und die Menschenrechte' (2017)
[56] Heede, Richard,.'Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers, 1854–2010', Climatic Change 122 (2013), 229-241
[57] *See* Letter from FDC President (March 2020) https://storage.googleapis.com/planet4-luxembourg-stateless/2020/03/34bba859-fdc_letter_brief-lepage-12.3.2020.pdf
[58] *See* GGON (2019) *Oil, Gas and The Climate: An Analysis of Oil and Gas Industry Plans for Expansion and Compatibility with Global Emission Limits* page 3 http://ggon.org/wp-content/uploads/2019/12/GGON_OilGasClimate_English_Dec2019-1.pdf

environmental obligations in the context of climate change, States must mandate these practices from all financial actors within their jurisdictions.

Assessment

As a starting point, State parties must mandate that public and private financial actors assess the contribution to climate change of each of their investments. These assessments should provide accurate and appropriate sources of data that can be analyzed at a *systemic level*, to facilitate authorities' understanding of the climate impacts posed by these investments, and the channels through which this contribution is most likely to be transmitted.[59] An accurate and appropriate assessment includes the analysis of all types of greenhouse gas emissions affiliated with investment, and at all stages of a given project. This must include assessing the Scope 3 emissions of a given investment project, which include indirect emissions that occur in a company's value chain.[60]

Disclosure

Following assessment, the findings of the contribution to climate change of said investments should be disclosed to all shareholders, clients, or beneficiaries of a given financial institution. One of the essential functions of financial markets is to price risk to support informed, efficient capital-allocation decisions.[61] If the contributions to climate change are not disclosed in these risks, investors cannot transparently identify how to make efficient investment decisions in line with a 1.5°C degree warming. Climate disclosures from financial actors therefore must provide the *accurate and timely* release of information about current and past operations of a given investment, based on their initial assessment.[62] Regarding public financial institutions, there is an additional obligation to practice accurate and appropriate public climate disclosure in regard to the obligation of States to allow every citizen to take part in the conduct of public affairs,[63] which may include decisions regarding where public funding is allocated.

Addressing Climate Harm

Finally, following the disclosure of the climate impacts of given investment projects, financial actors must actively address these impacts by mitigating emissions and ultimately preventing their contribution to climate change entirely. Mitigating the contribution to climate change from financial actors fundamentally requires re-aligning investments to be compatible with the duty to prevent any warming in excess of 1.5°C. As explained, purchasing Carbon Major stocks or funding any fossil fuels is incompatible with this imperative.[64] Therefore, following disclosure, the policies of investment funds should be realigned to divest from funding fossil fuels contributing to climate harms.

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[59] *See* Task-Force on Climate Related Disclosure, 2017 Report (pg. 2) https://www.fsb-tcfd.org/wp-content/uploads/2017/06/FINAL-2017-TCFD-Report-11052018.pdf
[60] Greenhouse Gas Protocol (2013) "Technical Guidance for Calculating Scope 3 Emissions" https://ghgprotocol.org/sites/default/files/standards/Scope3_Calculation_Guidance_0.pdf
[61] *See* Task-Force on Climate Related Disclosure, 2017 Report (pg. 2) https://www.fsb-tcfd.org/wp-content/uploads/2017/06/FINAL-2017-TCFD-Report-11052018.pdf
[62] *See* Task-Force on Climate Related Disclosure, 2017 Report (pg. 2) https://www.fsb-tcfd.org/wp-content/uploads/2017/06/FINAL-2017-TCFD-Report-11052018.pdf
[63] *See* ICCPR, Article 15 (a) "To take part in conduct of public affairs"
[64] *See* GGON, 'Oil, Gas and The Climate: An Analysis of Oil and Gas Industry Plans for Expansion and Compatibility with Global Emission Limits' (2019), page 3

This appropriate divestment from fossil fuels and re-alignment of the finance sector is not impossible, but rather has been demonstrated recently in the United Kingdom. In July 2020, the UK's biggest pension fund, the National Employment Savings Trust, a scheme with 9 million members, began to divest entirely from fossil fuels following the government's declaration of a climate emergency.[65] The fund announced that it will also seek to reduce other carbon-intensive holdings in line with the Paris Agreement, while investing more money in renewable infrastructure.[66] The divestment marks a key example of how other States can ensure their public financial actors, such as government pension funds, align their investments with the State's international human rights and environmental obligations.

As per the *Guiding Principles on Business and Human Rights*, the final step in appropriately addressing climate impacts is providing access to remedy for human rights violations caused by business practices, or to which those practices contribute.[67] Those whose rights have been infringed must play a central role in shaping the remedy to which they are entitled. In the case of climate change, complying with this obligation may entail Luxembourg using its public funds to finance an accelerated transition to a carbon neutral economy both domestically and extraterritorially, or contributing to the additional financing of climate adaptation in regions subject to climate vulnerability, in order to protect the Right to Life in the face of climate change.

Conclusion & Recommended Question

This report addresses Luxembourg's omission to uphold its obligation to protect the Right to Life under Article 6 of the ICCPR, in the context of climate change.

As demonstrated, Luxembourg has not regulated the climate impacts of its public and private financial institutions' investments in accordance with its international environmental and human rights obligations. Luxembourg's publicly-funded investment projects and portfolios – as well as those of private actors operating in its jurisdiction – have considerable extraterritorial climate impacts, incompatible with a 1.5ºC warming, which thus threatens the Right to Life and of many individuals and communities across the world. This omission to regulate climate impacts of publicly funded investments through public financial institutions as well as investments by private actors therefore constitutes a breach of the States' obligation to respect and protect the Right to Life.

In this context, we urge the Human Rights Committee to include in its List of Issues for Luxembourg the following questions to the State Party:

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[65] Patrick Colison and Jilian Ambrose, 'UK's biggest pension fund begins fossil fuel divestment'(July 2020) https://www.theguardian.com/environment/2020/jul/29/national-employment-savings-trust-uks-biggest-pension-fund-divests-from-fossil-fuels#:~:text=The%20UK's%20biggest%20pension%20fund,landmark%20move%20for%20the%20industry.

[66] Business & Human Rights Resource Center, 'UK's largest pension fund to begin divesting from fossil fuels' (July 2020) https://www.business-humanrights.org/en/uks-largest-pension-fund-to-begin-divesting-from-fossil-fuels

[67] Office of the High Commissioner for Human Rights 'Guiding Principles on Business and Human Rights (2011), page 27 https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

RECOMMENDED QUESTION

- **What action has the State Party taken to ensure that public and private financial institutions and actors operating under its jurisdiction assess, disclose, and address how their investments contribute to greenhouse gas emissions that exacerbate climate change, as well as other social and environmental externalities, adversely affecting the Right to Life, in light of the best available science and relevant international agreements?**