GJOP Global Justice Overcoming Poverty

Network BULLETIN

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EUROPEAN COUNTRIES WITHDRAW FROM ENERGY CHARTER TREATY: WHY? WHO BENEFITS?

Over the past year, France, Spain, the Netherlands, Germany, Poland, Luxembourg, Slovenia, and Denmark have all withdrawn from the Energy Charter Treaty (ECT), or announced their intention to do so. Italy left in 2016.

The ECT includes Investor-State Dispute Settlement (ISDS) rules. These allow foreign energy investors to sue national governments for any losses resulting from changes in government policy. The ECT conflicts with other compliance obligations governments have, for example, commitments to Paris Agreement targets and proposals to tax windfall profits[i] of oil and gas companies.

And so, member States of the European Union *(EU) are leaving the ECT, to protect themselves from being sued through the ISDS provisions of the ECT. At the same time, they have pursued and maintained bilateral trade agreements, complete with ISDS clauses, with a growing number of less economically developed countries in Africa. The Gambia, Mali, Burkina Faso, Nigeria, Rwanda, Senegal, and Eswatini are some of the countries that have been persuaded to sign these agreements. And while EU governments are protecting themselves from being sued through the ECT, developing country governments are being pressured to put themselves at risk through bilateral investment treaties.

The ECT was set up in the early 1990s and its ISDS provisions were designed to protect western investments in fossil fuel industries from nationalisation in former Soviet-bloc countries. But ISDS provisions have permitted international investors to settle a wide range of disputes with national governments. Corporations can sue states for any judicial, legislative, or regulatory decision, including at the municipal level, that could affect their bottom line. The prospect of an unfavourable result in court can often freeze, or at least make harder, government decision-making in such significant matters as effective environmental safeguards, labour rights, and safety standards.

France still has 19 bilateral investment agreement with countries in Latin America and the Caribbean, as well as another 20 with African countries. Spain has 18 and 11, respectively, and the Netherlands has 15 and 22. And all three states continue to pressure developing countries to sign new investment treaties.

On an official visit to Ecuador in August 2022, Spanish Prime Minister Pedro Sánchez insisted that 'it is important that we can conclude a [bilateral investment] treaty before the end of the year'. Repsol, Spain's biggest oil company, has several projects in Ecuador and previously sued the country over its windfall tax. The Netherlands has likewise pressed Ecuador to sign an investment treaty, ostensibly to protect its energy sector. The British-

French oil corporation Perenco, which is registered in the Bahamas, a tax haven, used the ISDS clause in the Ecuador-France bilateral agreement to sue for compensation for a tax on windfall revenues. The tribunal found in favour of the company and awarded Perenco US$412 million, and Ecuador has agreed to pay.

The Australian Labor government has a policy of excluding ISDS in new trade agreements, and of reviewing it in existing agreements, including 15 with developing countries. The EU experience of the ECT shows the urgency of this task.

Source: 'Realism About Investment Treaties' by Andrés Arauz and Guillaume Long, 3 May 2023, Project Syndicate. Submitted by Alison Healey.

PLANETARY HEALTH, HUMAN LIVES AND FOSSIL FUELS

As scientists warn that we've pushed the planet 'well outside the safe operating space for humanity' and young people march for their futures, the fossil fuel industry campaigns to keep its products, and the world, burning. Industry's push for continued dominance of the global energy market accounts for the climate emergency in the most cynical way. Most of its proposed climate 'solutions' are expensive ways to enable continued digging, fracking, pumping and profiting as the world overheats. Rather than helping rapid transition from products proven to be fueling an accelerating crisis, companies are backing away from renewable energy and doubling down on polluting products, such as oil sands bitumen.

Touting fracked methane gas as a 'natural' transition fuel, and promoting expensive, largely unproven technologies like carbon capture as solutions to rising emissions – and asking taxpayers to subsidise them – are some ploys industry is using to stay alive and make money, no matter the consequences to human lives and planetary health. We're experiencing the consequences of continued reliance on fossil fuels: heat domes, droughts, floods, insect infestations, water shortages, more extreme and unpredictable weather, climate migrants… Executives admit that technologies, such as carbon capture, are designed to help preserve their interests. 'Carbon capture gives our industry a licence to continue to operate for 60, 70, 80 years that I think it's going to be very much needed,' said the Head of Occidental Petroleum, Vicki Hollub, at a conference this year.

The industry is also on a global campaign to sell 'natural' gas, often using misleading or false information in the face of research showing, for example, that heat pumps are far more cost-effective, efficient and less polluting than gas – even in cold winter months. We're experiencing the consequences of continued reliance on fossil fuels (the industry's own scientists warned as far back as the 1950s that using oil, gas, and coal as intended could cause such impacts).

Boundaries have been exceeded in biosphere integrity, climate change, manufactured materials, such as synthetic chemicals and substances, nuclear waste and weapons, land system change, freshwater change and biogeochemical flows. An assessment in *Science Advances* found that six of nine 'planetary boundaries' – global system thresholds – have been crossed and we're on the brink of two others. Four of the most vital biological boundaries are at or near the highest risk level. This means 'the systems have been driven far from the safe and stable state that existed from the end of the last ice age, 10,000 years ago, to the start of the industrial revolution,' *The Guardian* reports.

Although the boundaries don't mark irreversible tipping points, 'they are points after which the risks of fundamental changes in the Earth's physical, biological and chemical life support systems rise significantly.' We're also reaching critical points for ocean acidification and atmospheric aerosol loading. The only one we've retreated from is 'stratospheric ozone depletion', thanks to the 1987 *Montreal Protocol on Substances that Deplete the Ozone layer* – demonstrating that international cooperation works!

We've had decades of transition to a clean energy economy, but energy and its front groups, media allies, companies and 'captured' politicians have slowed progress to the point where rapid and far more disruptive change is now needed. 'If you want to have security, prosperity and equity for humanity on Earth, you have to come back into the safe space and we're not seeing that progress currently in the world', said the former director of the *Stockholm Resilience Centre*, Johan Rockström, who led the team that developed the boundaries framework.

Why aren't we seeing that progress? The fault lies largely with the fossil fuel industry, which has used false and deceptive information to sow doubt and confusion about the ever-increasing evidence of its role in the crisis – often contradicting its own scientists – to slow or stall climate action. But we're also living with outdated economic systems based on a limited understanding of nature and our place in it.

Enough is enough. We must listen to scientists, youth, Indigenous Peoples and environmentalists. We have to reject industry deception and embrace new ways of seeing and being that respect nature and its limits.

Source: 'Planetary boundaries, climate strikes underscore need to end fossil fuels' by David Suzuki, David Suzuki Foundation, with contributions from senior editor and writer, Ian Hanington, 28 September, 2023.

IT'S NEVER TOO LATE TO STOP A COAL MINE

MESSAGE RECEIVED FROM INDIGENOUS LEADER IN NORTH QUEENSLAND, AUSTRALIA

Waddamuli, Wangan and Jagalingou (W&J) Nagana Yarrbayn Cultural Custodians, have sustained efforts over twelve years to prevent, limit or stop the opening up of our territory for coal mining, especially the Adani Carmichael Mine project. In each phase of our campaign over this time, W&J people have engaged directly with Adani and the State to assert our rights and gain control over our Country and the destiny of our people. Our effort has always been focussed on the core of First Nations rights that are at the heart of our defence of Country against Adani's coal mine: Aboriginal sovereignty, self-determination, land rights, protection of lands and waters, and upholding cultural law and practice. Other mine proposals have also been dealt with along the way, including, recently, support for the successful litigation led by *Youth Verdict*, against the Waratah coal mine on climate, environment, and human rights grounds.

This is part of the broader W&J intent to keep as much mining out of the Galilee basin as possible, and therefore to keep the State and mining corporations from destroying our homelands. Adani still sits on the edge of being a short term and scaled-down proposition, and we continue to investigate strategic opportunities to halt the mine's progress altogether.

It's never too late to stop a coal mine.

The work of W&J First Nations people at present, especially the Nagana Yarrbayn W&J Cultural Custodians, needs to go to the next level to achieve the twin goals of advancing First Nations human rights and protecting Country and culture.
The three main things you can support us in are:

- Securing Waddananggu – our sovereign base on Country
- Leveraging our human rights to stop adverse developments and advance our people.
- Building up a First Nations human rights movement and allied non-Indigenous support.

Waddananggu
Our ceremonial grounds on W&J Country at Waddananggu continue to thrive as we have established our second camp at *Gamu Yuna Warba* (which is an important free flowing spring).

Our Human Rights agenda
By practising our important fire and water ceremonies on Country, we are asserting our human rights as defined and protected under the Human Rights Act (Queensland), and under international law.

First Nations Rights Movement and Community Development
Through our continuing on-Country presence, and by making preliminary human rights complaints and placing cultural heritage and environmental protection demands on the State, we have built up the identity and work of the Nagana Yarrbayn W&J Cultural Custodians.

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Twelve years is a long time to sustain our work to achieve full recognition of our human rights, and the protection of our Country and culture. It has been your support that has helped us to push back on Governments and corporations that would deny us our rights and our ability to speak for Country. We are grateful for your commitment to this important cause.

In solidarity,

Adrian Burragubba, Senior Cultural Custodian, W&J Nagana Yarrbayn Cultural Custodians

Contributions to the Bulletin and responses to its content are welcomed. Deadline: 14th of each publication month. Publication office in Sydney.

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Design: Thanks to Marian Kelly

[i] Windfall profits are a sudden and unexpected spike in earnings, often caused by an abnormal event. Some countries have legislated, or proposed to legislate for a windfall tax, ie, a special tax on extraordinary windfall profits.