Submission to the Office of the High Commissioner for Human Rights (OHCHR) Call for Inputs: Climate Financing and Human Rights

This is a contribution by the researchers on the Climate Finance for Equitable Transitions (CLiFT) project to the United Nations High Commissioner for Human Rights (OHCHR) *OHCHR - Call for Inputs: Climate Financing and Human Rights*.

CLIFT is a multi-institutional and multi-stakeholder initiative aimed at exploring the climate finance supply chain within the context of the multilateral climate change regime, international financial architecture and the multi-layered landscape of international economic law.

The NeF DeF network brings together research and policy thinking on how the shifting landscape of international development finance impacts on law, regulation and governance.

More information about CLiFT can be found on our website:
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Our submission is informed by our previous research and policy publications on the legal and policy architecture of sustainable development and climate finance in the context of greater engagement with private sector investment and finance in development. It draws on the work of CLiFT researchers which can be found here.

The contribution addresses key questions 2, 4, 6 and 7 of the Questionnaire.

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Question 2. Relationship between climate finance and human rights

Climate finance is an essential part of climate action, which aims to counter the existing impacts of climate change through adaptation as well as to find pathways towards preventing further climate change through mitigation. As such, it is also deeply linked to states' human rights obligations in the context of the climate emergency[1], in ensuring that states – particularly developing countries- have access to the resources they need not only to protect human rights but also to fulfil human rights.

We highlight two key linkages here:

(1) the **duties of developed states** to provide finance to developing countries for the latter to meet its climate change obligations which are essential for the protection and fulfilment of human rights; and

(2) the need to ensure that climate financing arrangements and conditionalities, and their implementation **do not undermine human rights**.

Climate finance is central to all parties meeting their international legal obligations under the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement.[2] The principle of 'common but differentiated responsibilities and respective capabilities' (CBDR-RC) underpins the multilateral climate regime which recognizes the historical and ongoing responsibility of developed countries' for the climate crisis and the respective economic capabilities of developed countries vis-à-vis developing countries.

Article 4.7 of the UNFCCC provides that developing countries' commitments under the UNFCCC and Paris Agreement to undertake climate change mitigation and adaptation measures are dependent on developed countries (listed in Annex II of the UNFCCC) meeting their commitments to provide financial resources and technology transfer to developing countries.[3] This includes meeting the 'agreed full incremental costs' of developing countries' measures to combat climate change.[4] Article 9.1 of the Paris Agreement reiterates this obligation by stipulating that '[d]eveloped country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention'.

[1] Inter-American Court of Human Rights Advisory Opinion AO32/25 on Climate Emergency and Human Rights, 29 May 2025 [225]-[234].
[2] This paragraph draws from previous policy work from Tan, C, Yilmaz Vastardis, A and Erdem Türkelli, G (2023), Evaluation of the Just Energy Transition Investment Plan (JET-IP), Submission to the South Africa Presidential Climate Commission (PCC) Consultation on the Just Energy Transition Plan (JET-IP), 30 March 2023.
[3] See also *Obligations of States in Respect of Climate Change* International Court of Justice (Advisory Opinion 23 July 2025), [217]-[218] and [264].
[4] Articles 4.3 and 4.4 of the United Nations Framework Convention on Climate Change 1992.

Article 4.3 provides that financial resources have to be 'new and additional' which means that the financial resources provided to developing countries by developed countries for climate action should be additional to official development assistance (ODA) and other financial flows for other sustainable development purposes. At present, most climate finance is allocated from developed countries' ODA budgets, which makes them contingent on political and fiscal pressures and not ringfenced as resourcing to meet their international climate obligations, including provision of climate finance. For example, the UK disburses climate finance through the International Climate Finance (ICF) facility which is derived primarily from the government's ODA budget. Concerns have been expressed that major cuts to existing ODA budgets by successive governments will not only reduce the amount available for climate action but also reduce the amount of ODA available for other sustainable development objectives, such as poverty reduction and humanitarian assistance.[5] The impact This, in turn, impacts on developing countries' capacity to fulfill their human rights obligations.

The Paris Agreement notes 'the significant role of public funds' and emphasizes support for 'country- owned strategies' and the transparency and predictability of financial support from developed countries (Article 9(3) and 9(7)). Alongside the principles of the CBDR-RC, additionality, predictability and country ownership, climate investments should also be guided by considerations of debt sustainability, cost-effectiveness, harmonization of climate action with social and economic impacts of mitigation and establishment of governance and safeguards to manage risks to individuals and communities and their rights.

We observe that climate change mitigation has been prioritized within international climate finance policy and practice, particularly of wealthier states that act as donors of development assistance. Adaptation financing has been relegated to an auxiliary role, contrary to obligations under UNFCCC Article 4.4.

These climate change mitigation financing programmes and projects underscore market opportunities for private actors and take place in the context of the broader shift towards private financing in the development financing domain. Recent iterations include Just Energy Transition Partnerships (JETPs) that have been rolled out for low carbon transitions in various developing countries, including South Africa, Indonesia and Vietnam. The work of the CLiFT initiative on JETPs has demonstrated that these programmes prioritize private and blended finance using official sector finance to 'de-risk' financial investments and rely heavily on debt-creating instruments in the form of loans and guarantees. In addition, these plans impose policy and regulatory conditionalities on the developing countries that are implementing these transition plans, while there are limited financing and social safeguards to ensure human rights are not breached as a result of transition plans and programmes.[6]

[5] See Independent Commission on Aid Impact (ICAAI) (2024), 'UK Aid's International Climate Finance Commitments', December 2024.
[6] See note 2 and Tan, C, Erdem Türkelli G and Yilmaz Vastardis, A (2024, 'Financing Sustainable Just Energy Transitions: Challenges and Ways Forward', T20 Policy Brief, G20 Brasil 2024.

Question 4. Challenges and barriers that limit mobilization of, access to, or effectiveness of climate financing for advancing human rights-based climate action.

There are important risks when climate finance is provided mainly through market-based models that seek to derisk private sector investments. These may limit the potential of climate financing in producing outcomes that align with human rights standards due to their prioritization of private sector interests. Below, we address the risks and suggest solutions based on our previous work on JETPs.[7]

Risks of Reliance on Debt Instruments and Private Finance

Reliance on debt-creating instruments like loans, even if these are official loans on concessional terms, will impact developing countries' fiscal position and debt sustainability, leading potentially to increased sovereign debt risks. Additional macroeconomic risks may be incurred when commercial finance is relied upon. Commercial finance can increase contingent liabilities on the state (for state-guaranteed loans) and expose countries to volatility in international financial markets and legal risks of disorderly sovereign debt defaults in the absence of appropriate mechanism to deal with private creditors.[8]

The creation of more debt in the context of climate finance may run contrary to international human rights obligations, by undermining the recipient countries' capacity to respect, protect and fulfil human rights within their borders. As underscored by the Guiding Principles on Foreign Debt and Human Rights, All States... should ensure that any and all of their activities concerning their lending and borrowing decisions, those of international or national public or private institutions to which they belong or in which they have an interest, the negotiation and implementation of loan agreements or other debt instruments, the utilization of loan funds, debt repayments, the renegotiation and restructuring of external debt, and the provision of debt relief when appropriate, do not derogate from the[ir human rights] obligations.[9]

In addition, given that the realization of economic, social and cultural (ESC) rights requires considerable financial and other resources, climate finance should enhance the maximum available resources of recipient states to realize ESC rights progressively.

Climate finance obligations under international environmental law, especially under Article 4 paragraphs 3 through 10 of the UNFCCC and Article 9 of the Paris Agreement,

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[7] The following section draws on and reiterates some of the insights from Tan, C, Erdem Türkelli G and Yilmaz Vastardis, A (2024, '[Financing Sustainable Just Energy Transitions: Challenges and Ways Forward]', T20 Policy Brief, G20 Brasil 2024.
[8] Connelly, S, Patricio Ferreira Lima, K and Tan, C (2024), '[UK Parliament Responses to Deal with Sovereign Debt Crises: Proposals for Legislative Reform]' GLOBE Centre and CBLP Briefing Paper, February 2024; Tan, C (2922), 'Private Investments, Public Goods: Regulating Markets for Sustainable Development", *European Business Organization Law Review*, Vol 23, No 1.
[9] United Nations (2011), 'UN Guiding Principles on Foreign Debt and Human Rights', A/HRC/20/23, 10 April 2011, Principle 6.

are intrinsically linked to international assistance and cooperation obligations under international human rights law. In that respect, states have an obligation "to ensure that their activities, and those of their residents and corporations, do not violate the human rights of people abroad and that States, individually or through membership of international institutions, do not adopt or engage in policies that undermine the enjoyment of human rights or further engender disparities between and within States."[10]

These obligations are relevant for states providing climate finance to other states either bilaterally through their development agencies or development finance institutions or through multilateral development banks.

In order to ensure that climate financing does not lead to unsustainable indebtedness and prejudice the realization of human rights in recipient countries, it is crucial to:

- Institute debt sustainability assessments and debt audits to accompany especially larger-scale and debt-inducing climate investments;
- Channel more finance through sovereign finance, especially grant financing, to host states to decide what is best to finance, supporting country ownership of just transitions and aligning plans with national development priorities;
- Undertake assessments of bilateral and multilateral financial commitments that are contingent on legal, regulatory and policy reforms to ascertain broader social and economic impacts of conditionalities and ensure they progress rather than hinder climate action;
- Financial instruments and terms of financing must align with national climate action plans, Nationally Determined Contributions (NDCs) and SDG pathways.

Legal Risks from Private Investments

Following the adoption of the UN 2030 Agenda for Sustainable Development and the Sustainable Development Goals, there has been a clear private turn in development financing, premised on attracting foreign investors through incentives, such as guarantees, public-private partnerships (PPPs) and blended finance. This turn also permeates climate financing, particularly mitigation financing for energy transitions. International legal frameworks, such as investment treaties, that protect foreign investments run in parallel to national implementation of commitments.[11]

The Intergovernmental Panel on Climate Change (IPCC) noted that international investment protections may act as a hindrance to green transition policies in its Sixth Assessment Report in 2022.[12] For instance, investment treaty protections are likely to render both fossil fuel phase-out and clean energy policy-making more costly for governments through protections against indirect expropriation and protection of investors' legitimate expectations.[13] While the impact of investment treaties on fossil

[10] Ibid, Principle 22.
[11] Tan et al, note 2.
[12] Intergovernmental Panel on Climate Change (IPCCC) (2022), 'Climate Change 2022: Impacts, Adaptation and Vulnerability, 2022', Chapter 14, pp. 1505- 1506.
[13] Yilmaz Vastardis, A (2025, 'Inherent Incompatibility of International Investment Law with a Just Green Transition', in Choudhury, B (ed), *Global Corporations and Sustainability,* Edward Elgar, pp.127-131.

fuel phase out have been recognized,[14] they also pose a risk on states' ability to regulate in the context of so called 'climate friendly' investments, particularly when read together with the terms of climate financing deals.

Aside from offering financial support, climate finance deals also aim to create enabling regulatory environments in host states, involving regulatory and policy reforms in developing countries. While this may be desirable to facilitate the development of much needed foreign investments, when coupled by investment treaty protections, any future reforms to such policies which undermine investor profits might lead to costly investment treaty claims.[15] These costs may further prejudice the capability of developing countries to realize their human rights obligations. Furthermore, terms and conditions of private finance contracts do not always safeguard public interest. International investment treaties and contracts tend to privilege rights of private financiers and foreign investors over community rights and interests, in ways that may adversely impact human rights.

The modalities of how climate finance is delivered are important in terms of legal risks that they may present for recipient countries. Legal, regulatory, and policy reforms linked to financing instruments, such as development policy loans from MDBs or bilateral aid agencies, must be evaluated against the broader risks to the financial system and fiscal position of host governments. The additional financial risks arising from the broadening of the funding base to private actors, public-private partnerships through development finance institutions (DFIs) and philanthropic funding should be considered in determining the financial risk and liabilities incurred by host countries. There is also potential for regulatory chill where governments refrain from or postpone regulating, including to protect human rights, due to potential or actual threats of investment disputes and exposure to significant financial burdens for breaches of investment treaty standards.[16]

To counter legal risks from private investments, climate finance:

- Prioritize official financing to states and public entities instead of blended finance and guarantees for private investors, whose appetite for investment is not guaranteed;
- Organize financing in a framework of genuine partnerships that respects the policy space of host countries of climate Investments;
- Incorporate risk assessments to identify potential liabilities arising from the host countries' investment treaty and contract commitments to foreign investors.
- Be designed and implemented with investment law risks in mind.

[14] United Nations (2023), 'Report of the Special Rapporteur on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, David R. Boyd Paying Polluters: The Catastrophic Consequences of Investor-State Dispute Settlement for Climate and Environment Action and Human Rights', A/78/168, 13 July 2023.
[15] Yilmaz Vastardis, A (2026), 'A Just and Equitable Transition in the Shadow of Investment Treaties', 27 January 2025, Investment Treaty News, International institute for Sustainable Development (IISD).
[16] Carlos Boué, J (2023), 'The Investor-State Dispute Settlement Damages Playbook: To Infinity and Beyond', *Journal of World Investment and Trade*, Vol 24, No 3.

Social, Economic and Governance Risks

The focus on private financing and limited public, especially grant, financing, limits the capacity of host countries to support communities, such as workers and local businesses, impacted by green transitions. Additionally, insufficient attention is paid to broader macroeconomic and fiscal risks of energy transition that impact on the national economy beyond these affected communities. For example, declining public revenues from traditional energy production sources curtail countries' expenditure on public services, such as healthcare and education, may exacerbating the structural economic challenges and undermining the realization of economic, social and cultural rights.[17]

UNCTAD has previously warned that efforts to create enabling environments for private investments in public goods, such as climate action, can accelerate the loss of policy and regulatory autonomy in developing countries, as legal and regulatory reforms, state guarantees and other blended finance instruments, and the development of new market-based instruments can outpace government capacity to direct credit creation in their own economies while disconnecting investment projects from country development plans.[18] When climate finance is used to implement energy transition programmes, as has been happening with JETPs, the financiers and implementing countries should guarantee the establishment of governance and safeguards to manage socio-economic risks arising from these programmes. This should include not only social and economic risk assessments but also consultative processes with local communities and other stakeholders.[19] Financing social and economic transitions and enhancing adaptative capacities of communities and countries are as crucial as financing infrastructure and policy and regulatory change.[20]

To counter social, economic and governance risks that may emerge:

- Host states should require the application of a human rights and environmental due diligence (HREDD) framework to assess social and economic risks and prospective impacts before, throughout and after transition investments, including on populations that may be more vulnerable,
- Projects should ensure free, prior and informed consultations with and consent by local communities to make social and environmental safeguards and standards effective;
- Financiers and investors should ensure that adequate and effective environmental and social safeguards and standards are in place for all reasonably foreseeable adverse impacts from financed projects on communities and the environment;
- Financiers should provide adequate long-term financing to minimize adverse social and economic impacts and ensure sustainability, including access to effective remedies for adversely affected persons.

[17] Tan et al, note 2.
[18] The United Nations Conference on Trade and Development (UNCTAD), *Trade and Development Report 2019: Financing a Global Green New Deal, UN Conference on Trade and Development*, UNCTAD; UNCTAD (2019), *The Least Developed Countries Report 2019. The Present and Future of External Development Finance: Old Dependence, New Challenges*, UNCTAD 2019.
[19] See for example the community impacts already emerging in Indonesia from climate financed projects, W Try Otomo and M Husnudin (2025), '[Mining False Solutions: Unpacking the JETP Debate in the Ijen Geothermal Project]', 2025, Center of Economic and Law Studies (CELIOS).
[20] Tan et al, note 2.

Risks of incompatibility with multilateral climate and other commitments

Climate financing should respect the agreed principles of the multilateral climate regime, in particular CBDR-RC and finance be new, additional and predictable as per the obligations under the UNFCCC. Alongside international environmental law commitments, states have duties of international assistance and cooperation "especially economic and technical … with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means" (Article 2.1 of the International Convention on Economic, Social and Cultural Rights). These obligations exist alongside each other and do not displace each other.

To counter risks of incompatibility with multilateral climate commitments, climate finance should be:

- 'new and additional' in line with obligations under the UNFCCC Articles 4.3 and 4.4 and supports "country-owned strategies" with transparent and predictable financing compatible with Article 9.3 and 9.7;
- Ideally channelled through funds established under the UNFCCC/ Paris Agreement;
- Not resulting in the diversion of Official Development Assistance funds from other areas such as health and education that might endanger human rights.

Question 6. Specific recommendations for mobilizing climate financing.

Climate finance should not be fragmented across different platforms and entities, nor should it be premised on strategic interests of developed countries and commercial interests of private investors over and above global collective interests on climate action and local community social, economic, and other human rights. As a legal obligation under the UNFCCC as well as under the subsequent Paris Agreement, climate finance should be guided by multilaterally agreed principles, including the principles of equity and CBDR-RC, additionality, predictability and country ownership.

Climate finance should not be reserved and mainly directed towards climate change mitigation, but also provide resources for adaptation, particularly as adaptation finance responds to the short and medium-term needs of countries most vulnerable to the impacts of climate change, including sea level rise, droughts, floods and other extreme weather events. These island or landlocked developing countries or heavily indebted countries are already facing economic resource shortages. In addition, when mitigation finance is provided to developing countries, it must be designed and financed in a way that preserves opportunities for countries to meet countries' sustainable development needs and address the transition risks for economies and local communities.

Ultimately, climate finance should be provided in line with the climate finance legal framework and developed in a holistic, inclusive and participatory manner considering the sustainable development needs and human rights of all stakeholders, respecting the obligations of developing countries. Climate finance must be part of a broader reforms to the current system of global economic governance and international economic law, including dealing with significant debt burdens of developing countries and substantially reforming the asymmetrical international investment regime.