
CLIMATE FINANCING AND HUMAN RIGHTS.

Contribution to the report
of the United Nation High
Commissioner for Human
Rights

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Presentation

In response to the call issued by the Office of the United Nations High Commissioner for Human Rights regarding climate financing and its impact on the realization of human rights, the Institut de Drets Humans de Catalunya (IDHC) submits the present contribution, focusing on the situation of the Spanish State.

As a non-governmental organization with consultative status before the United Nations Economic and Social Council, the IDHC's mission is to contribute to the promotion and effective protection of human rights through the critical analysis of public policies and the formulation of proposals aligned with international standards

This contribution aims to provide legal and contextual analysis to assess the extent to which climate financing mechanisms in the Spanish State do or do not incorporate a human rights-based approach, as well as to identify the main existing gaps.

The information and reflections presented herein seek to contribute to the report of the United Nations Secretary General by providing inputs that may help strengthen coherence between climate action, climate financing and States' international human rights obligations.

This contribution was prepared by Paula Constanza Pereira Silva and reviewed by Karlos Castilla.

Climate financing in the Spanish State

Climate change constitutes a growing threat to the full enjoyment of human rights, particularly in the Spanish State, with regard to the rights to water, health, adequate housing and a healthy environment. Phenomena such as the increasing frequency and intensity of heatwaves, prolonged droughts and extreme weather events disproportionately affect individuals and communities in situations of vulnerability¹ especially in contexts of poverty, social exclusion and territorial inequality.

The Spanish Constitution of 1978, in its Article 45, enshrines the right of all persons to enjoy an environment suitable for personal development, as well as the duty of public authorities to ensure the rational use of natural resources in order to protect and improve quality of life. Likewise, Article 9.2 imposes an obligation to promote the conditions necessary to ensure real and effective equality, while Articles 43 and 47, relating to the protection of health and the right to adequate housing, are directly affected both by the impacts of climate change and by measures adopted to address them.

In this context, it is relevant to note that, in October 2021, the United Nations Human Rights Council formally recognized the human right to a clean, healthy and sustainable environment. This recognition did not entail the creation of a new legal right, as a majority of States already recognized this right in their constitutions or domestic legal frameworks, rather, it aimed to strengthen collective political commitment and to promote the adoption of public policies designed to prevent environmental harm and to protect human rights from environmental risks.²

The Spanish State has reported, within various national and European frameworks, on the adoption of policies and plans related to climate action, including Law 7/2021 on Climate Change and Energy Transition, the National Integrated Energy and Climate Plan (PNIEC 2021–2030), and the National Climate Change Adaptation Plan (PNACC 2021–2030). These frameworks include references to a just transition and to the social dimension of climate action. However, they do not expressly establish an obligation to integrate international human rights law into the planning and implementation of climate financing and they do not provide for mandatory human rights impact assessments associated with such financing.

¹ IPCC, *Sixth Assessment Report, Working Group II*, 2022

² Castilla. K (2022) *El derecho humano al medioambiente: ¿tarde e insuficiente?*

<https://www.idhc.org/es/publicaciones/el-derecho-humano-al-medioambiente-tarde-e-insuficiente/>

A substantial share of climate financing is channelled through European instruments, particularly the Recovery and Resilience Facility (NextGenerationEU)³, which incorporates climate objectives and the “do no significant harm” principle. However, various analyses have indicated that effective access to these funds has benefited different segments of the population unevenly, due to administrative, technical and economic barriers that particularly affect low-income households, older persons and small municipalities⁴.

Structural challenges from a human rights perspective

There are structural challenges in aligning Climate financing with human rights based approach. In particular, climate financing continues to prioritize economic, technological and energy efficiency criteria, without systematically ensuring the participation of affected communities or providing direct access to fund for local actors and groups in situations of vulnerability.

In this context, the impacts of climate change are not distributed uniformly, but are shaped by multiple social factors, such a gender, race, ethnic, background, age, disability, socio economic status or migratory status, giving rise to situations of heightened vulnerability. These preexisting inequalities determine both the degree of exposure to climate related risks and the capacity to adapt to and respond to their effects.

Accordingly, mitigation and adaptation measures financed with public resources should systematically incorporate an intersectional approach, enabling the identification and effective, equitable and just addressing of the different forms of vulnerability, while promoting inclusion, climate justice and substantive equality in decision-making processes and in the implementation of climate policies.⁵

There are also no adequate evaluation and remedy mechanisms to address potential negative impacts on human rights arising from financed projects and policies, which limits both the capacity to prevent harm and the effective guarantee of access to justice for affected individuals and communities.

³ Reglamento (UE) 2021/241 del Parlamento Europeo y del Consejo

⁴ Tribunal de Cuentas Europeo, *La ejecución del Mecanismo de Recuperación y Resiliencia*, 2023.

⁵ Castilla. K (2022) *El Cambio Climática Interseccionalidad* <https://www.idhc.org/es/publicaciones/cambio-climatico-e-interseccionalidad/>

This situation is particularly problematic in light of the international commitments undertaken by the Spanish State, including under the International Covenant on Economic, Social and Cultural Rights, which require States to use the maximum of available resources for the progressive realization of rights, as well as to prevent foreseeable negative impacts resulting from public policies

In the field of international cooperation, Spain participates in climate financing initiatives, particularly through the Spanish Agency for International Development Cooperation (AECID)⁶ and multilateral climate funds⁷. These initiatives represent a viable pathway to support adaptation to climate change in highly vulnerable countries, contributing to the protection of rights such as access to water, food and health, as well as other rights that are directly affected by climate impacts.⁸

However, a significant share of international climate financing continues to be channelled through loans, which may increase the debt burden of recipient countries and limit their capacity to guarantee economic, social and cultural rights. According to Oxfam⁹ more than 70 per cent of international public climate finance is provided in the form of loans, raising serious tensions with the principle of international cooperation and with a human rights based approach.

A promising practice consists in prioritizing grant-based climate financing, particularly for adaptation and loss and damage projects, as well as in exploring innovative non debt creating mechanisms (debt- for Climate swaps)¹⁰ provided that they are aligned with human rights standards.

Notwithstanding these promising practices, in the case of the Spanish State there is a lack of systematized public information that would allow for a clear assessment of the relationship between the quality and quantity of climate financing and its effective impact on the realization of human rights, such as health, housing, access to water or social protection. The absence of specific tools for the evaluation and monitoring of human rights impacts hampers the analysis of the effectiveness of climate financing and limits the ability to identify necessary adjustments to ensure equitable and sustainable outcomes.

⁶ AECID, *Plan Director de la Cooperación Española 2024–2027*.

⁷ *Green Climate Fund (GCF), Global Environment Facility (GEF), Adaptation Fund, Climate Investment Funds (CIF)*.

⁸ Aylwin, Betroni, Castilla (2023) *Impactos del cambio climático en los derechos humanos*.

<https://www.idhc.org/es/publicaciones/impactos-del-cambio-climatico-en-los-derechos-humanos/>

⁹ Oxfam, *Climate Finance Shadow Report, 2023*.

¹⁰ UNDP, *Debt for Climate Swaps and Human Development, 2023*.

Environmental taxation constitutes a relevant pathway for mobilizing domestic resources for climate action.¹¹ In the Spanish State, instruments such as energy taxes or taxes on polluting activities can generate significant revenues to finance mitigation and adaptation policies.

From a human rights perspective, these mechanisms offer an opportunity to strengthen fiscal and climate justices, provided that they are designed in accordance with progressivity criteria and are allocated to social protection measures. However, when environmental taxes are not accompanied by compensatory mechanisms, they may have regressive effects and disproportionately affect low- income households, exacerbating situations of energy poverty.¹²

In this regard, and in light of the analyses conducted, it is considered essential that revenues generated from environmental taxation be explicitly linked to the financing of social and climate policies, such as energy efficiency support programmes. This approach enables progress towards a just ecological transition, consistent with States' obligations regarding substantive equality and the protection of human rights.

According to the United Nations Environment Programme, the annual adaptation finance gap in developing countries is estimated to range between USD 194 billion and USD 366 billion¹³, which highlights the structural inadequacy of current climate finance flows.

In this context, it is imperative that the Spanish State move towards a model of climate financing that is fully aligned with its constitutional and international human rights obligations, by incorporating human rights impact assessments, mechanisms for meaningful participation, as well as transparency and accountability, in order to ensure that climate action contributes in a real and equitable manner to the protection of the rights of all people.

Based on the elements outlined above, this contribution suggests that the report of the Secretary General could emphasize the need to explicitly integrate a human rights-based approach into climate financing, including ex ante and ex post impact assessments to identify, prevent and address negative impacts on the effective enjoyment of human rights, particularly for persons and communities in situations of vulnerability. Furthermore, the report could underline the importance of prioritizing non-debt-creating climate finance mechanisms, especially in the areas of adaptation to climate change and loss and damage, as well as of promoting fiscal and financial instruments that incorporate

¹¹ Comisión Europea, *Environmental Taxation Trends in the EU, 2022*.

¹² International Energy Agency, *World Energy Outlook 2022*

¹³ PNUMA, *Adaptation Gap Report, 2023*.

progressivity and redistributive criteria, in order to avoid regressive impacts and contribute effectively to a just and inclusive ecological transition. Finally, it could highlight the central role of meaningful participation, access to information and accountability in the governance of climate finance, ensuring direct access to resources for local actors and affected communities, as well as the existence of accessible grievance and remedy mechanisms.