



**Global Initiative**  
for Economic, Social  
& Cultural Rights

LEGAL BRIEF

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# Boosting Ambition Through International Obligations

The Added Value of Integrating Human Rights  
to the Climate Financing Discussion



**Climate  
Emergency**



## AUTHORS

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## DESIGN

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## Introduction

Human-caused climate change unequivocally poses an existential threat to people and nature, disproportionately affecting vulnerable communities who have contributed the least to rising global greenhouse gas (GHG) emissions.<sup>1</sup> Recent studies indicate that between 1990 and 2015, the richest 10% of the world's population was responsible for 52% of carbon emissions, while the poorest 50% accounted for only 7%.<sup>2</sup> Nearly half of the emissions from the richest 10% came from citizens of North America and Europe,<sup>3</sup> with Global North's higher degree of responsibility accounting for specifically 92% of total excess emissions.<sup>4</sup>

To achieve significant emission reductions and address the growing loss and damage derived from climate change, every State must make a substantial financial commitment ranging from billions to trillions of dollars.<sup>5</sup> Given the clear disparity between historical responsibility for the causes of climate change and current vulnerability to its impacts,<sup>6</sup> climate finance, flowing from developed to developing states, is intended to help undertake mitigation and adaptation efforts and address the ongoing loss and damage caused by climate change.<sup>7</sup>

However, absence of a universal and binding definition of climate financing has created ambiguity and loopholes, allowing developed

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<sup>1</sup> Intergovernmental Panel on Climate Change, 'Summary for Policymakers' in H Lee and J Romero (ed), *Climate Change 2023: Synthesis Report Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC 2023)* 6.

<sup>2</sup> Tim Gore, 'Confronting Carbon Inequality: Putting Climate Justice at the Heart of the COVID-19 Recovery' (2020) <<https://oxfamlibrary.openrepository.com/bitstream/handle/10546/621052/mb-confronting-carbon-inequality-210920-en.pdf>> accessed 2 August 2024 2.

<sup>3</sup> *Ibid.*

<sup>4</sup> Countries classified by the United Nations Framework Convention on Climate Change (UNFCCC) as Annex 1 nations (i.e., most industrialised countries). See Ashfaq Khaflan, 'Climate Equality: A planet for the 99%' (Oxfam International, 2023) <<https://oxfamlibrary.openrepository.com/bitstream/handle/10546/621551/cr-climate-equality-201123-en-summ.pdf?sequence=1>> accessed 1 September 2024

<sup>5</sup> Human Rights Council, 'Working Group on the Right to Development, Nineteenth Session, Geneva, 23–27 April 2018, Item 4(c) of the Provisional Agenda: Review of Progress in the Implementation of the Right to Development, Promoting Rights-Based Climate Finance for People and Planet' A/HRC/WG.2/19/CRP.4 <[https://www.ohchr.org/Documents/Issues/Development/Session19/A\\_HRC\\_WG.2\\_19\\_CRP\\_4.docx](https://www.ohchr.org/Documents/Issues/Development/Session19/A_HRC_WG.2_19_CRP_4.docx)> accessed 20 August 2024.

<sup>6</sup> United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 (UNFCCC).

<sup>7</sup> United Nations Climate Change, Introduction to Climate Finance, <https://unfccc.int/topics/climate-finance/the-big-picture/introduction-to-climate-finance>; UN Environment Programme, Climate finance, <https://www.unenvironment.org/explore-topics/climate-change/what-we-do/climate-finance>.

countries to treat these funds as loans rather than grants, further exacerbating the preexisting inequality among states.<sup>8</sup> Furthermore, lack of strong legal obligations and accountability mechanisms has led many developed States to approach climate finance as an optional charity rather than a binding legal duty<sup>9</sup>, thereby reducing financing ambition.

Notwithstanding such limitations, the 2009 Copenhagen Conference marked a pivotal moment in which developed countries collectively pledged to fund climate action by mobilising \$100 billion annually by 2020.<sup>10</sup> This commitment, confirmed in subsequent agreements, has driven the scaling up, tracking, and accounting of climate finance flows.<sup>11</sup> Pledges made by governments under the Paris Agreement (2015) include national plans for mitigating and adapting to climate change, known as Intended Nationally Determined Contributions, which are estimated to cost approximately USD\$349 billion per year,<sup>12</sup> that is, a much higher value than what had been committed in Copenhagen by developed countries. Recent developments include the operationalisation of a Green Climate Fund and a collective pledge under the Paris Agreement to build on a minimum USD\$100 billion per year baseline of climate finance after 2025<sup>13</sup> through the establishment of a New Collective Quantified Goal (NCQG) on Climate Finance, to be discussed at the upcoming COP 29 in Azerbaijan on November 2024.

Regrettably, implementation of existing pledges has fallen short. In 2020, only seven countries—Sweden, France, Norway, Japan, the Netherlands, Germany, and Denmark—met their fair share of climate finance commitments, while the US, a high contributor to the climate financing gap, provided only 5% of its fair share in 2020, and

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<sup>8</sup> Anis Chowdhury and Kwame Sundaram Jomo, *The Climate Finance Conundrum* (2022) 65 Development 29.

<sup>9</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>10</sup> CUNFCCC, 'Report of the Conference of the Parties on its 15th session, held in Copenhagen from 7 to 19 December 2009' (30 March 2010) UN Doc FCCC/CP/2009/11.

<sup>11</sup> *Ibid.*

<sup>12</sup> Lutz Weischer and others, *Investing in ambition: analysis of the financial aspects in (intended) nationally determined contributions* (2016)

<sup>13</sup> Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) FCCC/CP/2015/10/Add.1.



has continued to breach subsequent commitments.<sup>14</sup> For 2025, only Norway, Sweden, France, and Japan have made pledges consistent with their fair share, with Germany and Denmark lagging close behind.<sup>15</sup> Furthermore, the Climate Policy Initiative's (CPI) latest reports, which provide one of the most comprehensive overviews of global climate finance, found that the majority of climate finance (61%) was raised as debt, while grant-based finance accounted for only 6%.<sup>16</sup> Figures also reveal that climate finance allocation is concentrated in East Asia, the Pacific, Western Europe, and North America, marginalising Africa, Latin America, and Caribbean SIDS.<sup>17</sup> This illustrates just how far climate finance implementation has deviated from its original purpose, further perpetuating existing injustices.

These shortcomings prove that a paradigm shift is urgently needed to make pledges and contributions more ambitious and tangible. Therefore, strengthening normative obligations with regards to climate financing by integrating legal mandates stemming from various parallel regimes within international law becomes essential to increase both the mandate and the pressure for States to compromise and effectively mobilise the resources needed to finance the adaptation and mitigation measures that the climate emergency demands on a global basis.

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<sup>14</sup> Sarah Colenbrander and others, 'A Fair Share of Climate Finance' (2021) An initial effort to apportion responsibility for the \$100 billion climate finance goal ODI: London, UK 8.

<sup>15</sup> *Ibid.*

<sup>16</sup> Baysa Naran Barbara Buchner, Rajashree Padmanabhi, Sean Stout, Costanza Strinati, Dharshan Wignarajah, Gaoyi Miao, Jake Connolly, and Nikita Marini., *Global Landscape of Climate Finance*, (2023).

<sup>17</sup> *Ibid.*

# International Legal Obligations on Climate Financing

## 1. Legal Framework

The United Nations Framework Convention on Climate Change (UNFCCC) (1992) brought the aspect of “justice” to the global effort to mitigate and adapt to the impacts of climate change, mainly through the adoption of the “common but differentiated responsibility” (CBDR) principle.<sup>18</sup> It emphasises broad cooperation while recognising developed nations’ historical emissions and greater capacity, thus calling for a fair distribution of burdens.<sup>19</sup>

UNFCCC Articles 4(5) and 4(7) indicate that CBDR goes beyond just developmentalism and attempts to reorient the global economy by seeking effective financial and technological transfers between wealthier and poorer countries.<sup>20</sup> Therefore, the global endeavour to mitigate and adapt to climate change also reflects an attempt at appropriate distribution of wealth, cognizant of the historical injustices behind the climate emergency.<sup>21</sup> This perspective is critical to the discussion on climate finance; as an instrument of climate justice, climate finance is not a charity act, but a recognition of the historical debt that the Global North owes to the South for its historical exploitation of nature and peoples.

By adopting reports from the Intergovernmental Panel on Climate Change (IPCC), State parties to the UNFCCC have endorsed the idea that financial support from developed to developing countries, when

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<sup>18</sup> CBDR is not an invention of the UNFCCC. Its roots stretch back at least to the 1972 Stockholm Declaration on the Human Environment and arguably earlier.

<sup>19</sup> UNFCCC (n 6).

<sup>20</sup> Stephen Humpreys, ‘Climate Pathways and the Future of Human Rights’ in Nehal Bhuta (ed), *Human Rights in Transition* (Oxford University Press 2024) 211.

<sup>21</sup> Karin Mickelson, ‘South, North, International Environmental Law, and International Environmental Lawyers’ (2001) 11 *Yearbook of International Environmental Law* 52.



provided equitably, not only can enhance the global response to climate change but also promote sustainable development and the eradication of poverty.<sup>22</sup> Accordingly, the Paris Agreement expands the scope of climate actions to include mitigation, adaptation, and “loss and damage” measures, recognising that States may be impacted on a differential degree by the effects of the climate emergency and the measures taken in response.<sup>23</sup> Key points on climate finance -understood as the means by which to provide effective funding to such policies- include:<sup>24</sup>

- a. Developed countries are expected to lead in mobilising climate finance from various sources, instruments, and channels, noting the significant role of public funds;
- b. Priority is given to the specific needs of developing countries, particularly those that are most vulnerable to the adverse effects of climate change, such as Least-Developed Countries (LDCs) and Small Island Developing States (SIDS);
- c. There should be a balance between funding for mitigation (reducing emissions) and adaptation (adjusting to the effects of climate change);
- d. Developed countries should provide new and additional financial resources beyond existing aid budgets, ensuring that climate finance is not simply redirected from other development aid commitments;
- e. Developed countries reaffirmed their commitment at COP15 in Copenhagen to mobilise \$100 billion per year by 2020 to support climate action in developing countries. This target will be maintained until 2025, with a new, higher goal to be set for subsequent years (NCQG).
- f. Developed countries must biennially report on their climate finance contributions, including information on projected levels of public financial resources;
- g. The importance of capacity building is recognised, with a focus

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<sup>22</sup> *IPCC (n 1) 34.*

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<sup>23</sup> *UNFCCC (n 6).*

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<sup>24</sup> *Ibid, art 9.*

on enabling developing countries to access and utilise financial resources effectively;

h. Financial mechanisms such as the Green Climate Fund (GCF) and the Global Environment Facility (GEF) are highlighted as key instruments for delivering climate finance under the UNFCCC framework.<sup>25</sup>

## 2. Shortcomings in Climate Finance Law

UNFCCC and the Paris Agreement evidently create an obligation for developed States to provide funding to developing countries. Still, some argue that developed countries face no specific and enforceable legal duties for which they can be held accountable.<sup>26</sup> For instance, neither the scale of financing nor its timeline are specified.<sup>27</sup> Similarly, the UNFCCC, as a framework treaty, does not establish the “dates and dollars” for the reduction of GHG emissions and the financing by wealthy states for a ‘clean’ development of poor nations.<sup>28</sup>

Moreover, there is a fundamental political debate concerning which specific ‘developed’ countries should be held accountable for bearing the costs of the climate crisis.<sup>29</sup> While UNFCCC Annex II refers to members of the Organisation for Economic Co-operation and Development (OECD), the Paris Agreement stretches the language to ‘developed country parties’ without defining which specific States should be considered as such for the purpose of climate financing obligations, concurrently leading to increasing uncertainty. Another debate arises with regards to the distinction between States’ collective and individual obligations on climate finance, since the Paris Agreement falls short of detailing each country’s specific share of the collective obligation.<sup>30</sup>

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<sup>25</sup> *Ibid.*

<sup>26</sup> Alexander Thompson, ‘The Global Regime for Climate Finance: Political and Legal Challenges’ in Kevin R. Gray, Richard Tarasofsky and Cinnamon P. Carlane (eds), *The Oxford Handbook of International Climate Change Law* (Oxford University Press 2016)

<sup>27</sup> *Ibid.*

<sup>28</sup> Henry Shue, ‘Subsistence Emissions and Luxury Emissions’ (1993) 15 *Law & Policy* 39.

<sup>29</sup> Yulia Yamineva, ‘A Legal Perspective on Climate Finance Debates: How Constructive Is the Current Norm Ambiguity?’ in Benoit Mayer and Alexander Zahar (eds), *Debating Climate Law* (Cambridge University Press 2021) 365.

<sup>30</sup> *Ibid.*



Most certainly, these normative gaps hinder climate financing's effectiveness due to the lack of clarity and foreseeability regarding duty bearers and recipients. Therefore, since climate-specific regulations provide no cross-cutting answers in this regard, it is necessary to explore potential synergies with other areas of international law to fill the identified shortcomings.



### 3. Strengthening Climate Finance Obligations Through Their Integration With the Extraterritorial Obligations of States on Economic, Social and Cultural Rights

#### 3.a Extraterritorial Obligations concerning Economic, Social and Cultural Rights

Globalisation has made the social, economic, and cultural worlds of individuals increasingly interconnected. Decisions from other, more powerful actors, such as international financial institutions and/or other States may have a much more significant and profound impact on the realisation of socioeconomic rights than the territorial State's.<sup>31</sup> The extraterritorial effects of one State's actions or omissions reveal the limitations of territorially confined legal norms for the protection of fundamental rights.<sup>32</sup>

As a response, extraterritorial obligations of States (ETOs) on Economic, Social and Cultural Rights (ESCR) can be firmly derived from binding international legal instruments from the International Human Rights Law (IHRL) regime. The International Covenant on Economic, Social, and Cultural Rights (ICESCR) requires States to take steps, both individually and through international assistance and cooperation, to the maximum of their available resources, aiming to progressively realise the rights recognised in the Covenant.<sup>33</sup> Additionally, Article 56 of the UN Charter commits all member States to take joint and separate action to achieve human rights goals.<sup>34</sup> Furthermore, the Universal Declaration of Human Rights (UDHR) emphasises the duty of international cooperation, stating that individuals are entitled to a social and

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<sup>31</sup> Wouter Vandenhoe, 'Beyond Territoriality: The Maastricht Principles on Extra-Territorial Obligations in the Area of Economic, Social and Cultural Rights' (2011) 29 *Netherlands Quarterly of Human Rights* 429.

<sup>32</sup> Margot E. Salomon and Ian Seiderman, 'Human Rights Norms for a Globalized World: The Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights' (2012) 3 *Global Policy* 458.

<sup>33</sup> In addition, the Economic and Social Council shall engage other UN bodies and agencies to facilitate international measures for effective implementation through conventions, recommendations, technical assistance, and regional meetings. See *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 2(1), 11(1), 22, 23.

<sup>34</sup> *HU.N. Charter art. 56–55, signed 26 June 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153* (entered into force 24 Oct. 1945).



international order where fundamental rights can be fully realised.<sup>35</sup>

However, these binding legal instruments lack clarity on the legal parameters for implementing the aforementioned obligations, thereby requiring further clarification<sup>36</sup> through reliance on 'subsidiary means for the determination of rules of law'<sup>37</sup>, such as jurisprudence and doctrine. Until recently, jurisprudential and scholarly analysis concerning ETOs in ESCR was very limited, given the historical neglect of ESCR, resulting in most existing international jurisprudence regarding ETOs focusing only on civil and political.<sup>38</sup> However, the adoption of the Maastricht Principles on ETOs in ESCR (2011) marked a pivotal moment in changing this tendency, forging a guiding instrument to serve as the primary general reference in the area of ETOs in respect of ESCR.<sup>39</sup>

The Maastricht Principles are based on two key conceptual foundations which could overlap or arise simultaneously. First, IHRL requires that States, when acting in ways that have "real and foreseeable impacts" on human rights beyond their borders, ensure that they respect and protect those rights and, in certain circumstances, even fulfil them extraterritorially.<sup>40</sup> Second, international law, particularly in ESCR, prescribes that States must take action to realise rights extraterritorially by means of 'international assistance and cooperation.'<sup>41</sup>

As to the specific scope of these mandates, the Principles clarify that States have extraterritorial obligations according to three non-cumulative criteria:

1. When States exercise authority or effective control over people or situations outside their territory;

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<sup>35</sup> *Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A) art 28.*

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<sup>36</sup> *Salomon (n 32).*

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<sup>37</sup> *Statute of the International Court of Justice, art. 38 (1.d).*

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<sup>38</sup> *Salomon (n 32).*

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<sup>39</sup> *Ibid.*

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<sup>40</sup> *Maastricht Principles Drafting Group, 'Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights' (2011) 29 Netherlands Quarterly of Human Rights 578, Par 8.*

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<sup>41</sup> *Ibid.*

2. When States engage in acts or omissions that have foreseeable effects on the enjoyment of ESCR, both within and outside their territory;
3. When States exercise decisive influence or take measures, either individually or jointly, through executive, legislative, or judicial branches, to realise ESCR.<sup>42</sup>

In particular, the second criterion of “Foreseeable Effects” considers that a State may, through its conduct, influence the enjoyment of human rights outside its national territory, even in the absence of effective control or authority over a situation or a person.<sup>43</sup> The preservation of human rights is considered a global concern, with such obligations owed to the international community as a whole, a concept known as *erga omnes* obligations.<sup>44</sup> This global responsibility requires States to not only provide assistance and cooperate internationally but also ensuring that their own actions or omissions do not negatively impact human rights in other.<sup>45</sup>

Since extraterritorial obligations imply active duties that States must uphold regarding the impact of their conduct both within and outside their borders, publicly funded climate financing constitutes by itself an action or omission that is also englobed under this normative mandate. Therefore, it is important to explore the concrete differential avenues for States to comply with their extraterritorial obligations on ESCR when implementing climate financing policies, bridging both human rights and climate regime regulations.

### 3.b Applying ESCR’s ETOs to Embolden Climate Finance Ambition

The obligation of developed States to provide climate finance to their developing counterparts aligns well with two critical scopes of ESCR’s ETOs: the real and foreseeable impacts of human rights beyond borders and the general obligation to provide international assistance

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<sup>42</sup> *Ibid.* Par 9.

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<sup>43</sup> Olivier De Schutter et. Al., ‘Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights’ (2012) 34 *Human Rights Quarterly* 1084, 1105.

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<sup>44</sup> *Ibid* 1103.

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<sup>45</sup> *Ibid.*



and cooperation for the full enjoyment of human rights. The decision by the UN Committee on the Rights of the Child in *Sacchi et al. v. Argentina et al.*, despite being deemed inadmissible, recognised ETOs regarding climate action by considering the significance of causation and foreseeable harm supported by scientific evidence and the authors' testimonies.<sup>46</sup> Moreover, scientific reports demonstrate that failure to adapt to and mitigate the climate emergency directly impacts the enjoyment of ESCR in resource-limited States, thereby fulfilling the "foreseeable impacts" criterion.<sup>47</sup>

Developed States do indeed possess the "sufficient resources" needed to finance global climate action,<sup>48</sup> thereby indicating their "capacity to influence" and ability to make differences regarding human rights fulfilment globally, among which is the duty to assist developing countries in mitigating and adapting to climate change. Therefore, it can be inferred that when developed States do not meet their climate finance obligations, they may incur violations of their ETOs regarding ESCR.

The explanation above demonstrates that building a human rights-based climate finance is crucial to ensure that climate action is both procedurally and substantively just<sup>49</sup>, achieving more ambitious and equitable results. Success of such an approach should be measured according to the volume of effectively mobilised funds, their distribution, the form the funding takes, the activities it supports, and the way in which those activities are implemented.<sup>50</sup> Accordingly, civil society organisations have developed five pillars to monitor climate finance implementation:

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<sup>46</sup> *UN Committee on the Rights of the Child, Sacchi, et al. v. Argentina, et al. Communication No. 104/2019 (2019), Para 9.4.*

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<sup>47</sup> *IPCC (n 1); Ashfaq Khalfan, 'Development Cooperation and Extraterritorial Obligations' in Malcolm Langford and Anna F. S. Russell (eds), The Human Right to Water: Theory, Practice and Prospects (Cambridge University Press 2017).*

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<sup>48</sup> *With the further adjustment in global fiscal policy aligned with climate justice and human rights. See IPCC (n 1); Ashfaq Khalfan, 'Climate Equality: A planet for the 99%' (Oxfam International, 2023) <<https://oxfamlibrary.openrepository.com/bitstream/handle/10546/621551/cr-climate-equality-201123-en-sum.pdf?sequence=1>> accessed 1 September 2024.*

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<sup>49</sup> *Tessa Khan, Promoting rights-based climate finance for people and planet (2018) 5.*

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<sup>50</sup> *Center for International Environmental Law, Funding Our Future: Five Pillars for Advancing Rights-Based Climate Finance (CIEL 2021) <[https://www.ciel.org/wp-content/uploads/2021/03/FundingOurFuture\\_5PillarsForRightsBasedClimateFinance\\_CIEL\\_mar2021.pdf](https://www.ciel.org/wp-content/uploads/2021/03/FundingOurFuture_5PillarsForRightsBasedClimateFinance_CIEL_mar2021.pdf)> accessed 8 August 2024 1.*

1. Funds provided should be adequate and predictable, matching the scale and scope of the climate crisis while ensuring consistency and reliability.
2. Distribution of funds must prioritise countries and communities most vulnerable to the adverse impacts of climate change, particularly those with the fewest resources to cope.
3. financing terms should not exacerbate structural inequalities or add to the debt burdens of recipient countries.
4. Funds must deliver real emission reductions and contribute to adaptation and remediation efforts.
5. Project planning, implementation, and evaluation must respect, protect, and promote human rights throughout the project lifecycle.<sup>51</sup>

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<sup>51</sup> *Ibid.*





## Conclusion



This legal brief has brought light to the intrinsic interrelation between climate financing obligations and the normative duties that States have to uphold economic, social and cultural rights in an extraterritorial manner. Particularly, research has shown how International Human Rights Law provides a robust normative framework to complement existing climate commitments in a more ambitious, emancipatory and people-centred approach, rightfully prioritising the needs of the Global South and increasing the burdens upon developed countries.

In light of the upcoming determination of a New Collective Quantified Goal (NCQG) at COP 29 in Baku, Azerbaijan, introducing human rights considerations provides an added value both substantively and procedurally. As to the first point, the extraterritorial duties that States must uphold in terms of ESCR provide a solid baseline by which to raise the demands for a more ambitious quantum, understanding it as the consolidation of the ‘maximum available resources’ standard established in International Human Rights Law—the criteria from which potential compliance or violations with ESCR legal duties may be measured upon—.

Regarding procedural aspects, the way in which NCQG resources are to be granted and eventually mobilised between States can also denote either compliance or violations of binding human rights obligations. Fundamentally, putting extraterritorial duties on ESCR at the core of what a developing world-sensitive implementation of global climate financing should encompass is pivotal to ensure Paris Agreement mandates such as “making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development” (Art. 2.1(c)) are not only compatible with the overall principles of such treaty (namely, CBDR and the polluter pays principle) but, most importantly, conducted in a way that does not perpetuate global inequalities and preexisting vulnerabilities.

Therefore, to increase climate financing ambition, States should actively avoid adopting a fragmented approach to their international obligations and integrate the legal mandates stemming from both climate and human rights instruments when defining their negotiating positions and eventual policies on this matter. Only through such

active integration may States not only avoid potentially incurring international responsibility upon the violation of their legally binding duties from one regime or the other, but also actively promote the scaling up of urgent, effective and successful financing of the climate transition that the triple interplanetary crisis currently demands.





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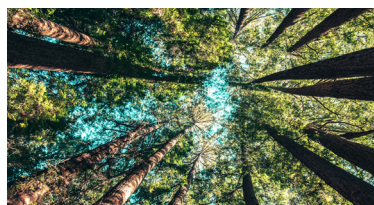
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The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) is an international non-governmental organisation. Together with partners around the world, GI-ESCR works to end social, economic and gender injustice using a human rights approach.

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