

# Terms of Reference

Research project: human rights impacts of climate change mitigation and adaptation policies/measures

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The German Institute for Human Rights (DIMR), Germany's National Human Rights Institution under the UN Paris Principles and the German Institute for Human Rights (Legal Position and Mandate) Act 2015, invites proposals from individual researchers, groups of individuals or institutions working in consortium for the carrying out of a research project according to the following Terms of Reference.

## 1 Background

As part of its mandate to promote and protect human rights in and through Germany, the Institute has worked since 2018 specifically on the issue of climate change and human rights. Work in this area has so far focused on the adverse effects of climate change on human rights, elements of a human rights-based approach to climate policy, climate change litigation in the European context and a mapping of engagement of National Human Rights Institutions on the topic of climate change and human rights.

The nexus between climate change and human rights has gained increased attention in the last few years. Related discussions, existing research and reports have so far predominantly focused on the direct human rights impacts of the effects of climate change (e.g. extreme weather) and related states' obligations to adopt measures to protect individuals from these impacts.

Less, but increasing attention is paid to the indirect human rights impacts of climate change, namely when state climate policies/measures themselves impact on people's human rights. Negative human rights impacts of climate policies/measures are occasionally documented, such as in the context of renewable energy projects or plantations for the production of biofuels<sup>1</sup>. A systematic identification of human rights impacts/risks of climate change mitigation and adaptation in different sectors and of underlying factors that potentially facilitate such impacts, however, is still lacking as is a compilation of promising approaches and practices of how to identify, avoid, mitigate and/or remedy these impacts.

All countries are and will have to adopt mitigation and adaptation measures to protect people living on their territory from the negative effects of climate change. However, as the form and degree of climate change impacts are initially geographically determined (i.e. some regions increasingly suffer from droughts whereas others are increasingly hit by torrential rain and flooding) so are/will be state responses to address these impacts. Measures are/will have to be context- and sector-specific and may bear various forms of human rights impacts/risks. In view of the common but differentiated responsibility of states to address climate change, countries in the Global North, for example, bear a greater

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<sup>1</sup> See for example <https://www.ecchr.eu/en/case/wind-park-in-mexico-french-firm-disregards-indigenous-rights/>

responsibility to reduce greenhouse gas (GHG) emissions and predominantly focus on ambitious mitigation measures in GHG intensive sectors, such as energy, transport and agriculture (although climate adaptation is also a growing concern in countries of the Global North in view of an increasing number of extreme weather events). Countries in the Global South, on the other hand, which in parts already suffer most from the effects of climate change, predominantly adopt a climate adaptation focus on different sectors, such as agriculture, water and housing.

This research project represents the beginning stages of DIMR's engagement with human rights impacts/risks in the context of climate change mitigation and adaptation. It is distinct from the question of direct human rights impacts of climate change and focuses on states' responsibility to adopt a human rights-based approach when taking climate action, as demanded under international human rights law and as reiterated in the Paris Climate Agreement<sup>2</sup>. DIMR's interest here is specifically in:

- Systematically identifying human rights impacts (considering substantive and procedural rights) of climate mitigation/adaptation measures/policies in different sectors, such as energy, mobility/transport, land/agriculture, construction/housing and water, thereby focusing on human rights impacts going beyond but not excluding participation rights (including FPIC) in the design and implementation of climate policies and measures by affected individuals/groups;
- Identifying underlying factors that (potentially) facilitate negative human rights impacts in these sectors;
- Examples of approaches taken by individuals/ groups negatively affected by climate mitigation/adaptation measures to address negative human rights impacts and to seek remedy;
- An overview of promising approaches and practices to identify, avoid, mitigate and/or remedy negative human rights impacts of climate change mitigation and adaptation.

## 2 Scope of the research project and questions to be investigated

This research is, at this initial stage, not confined to the German/European context, and should include examples/case studies from all world regions (Global North and Global South). It should cover the following issues as scoped below, with the research to be delivered in the form of the products listed under section 3 of these Terms. While the focus of the research project is on human rights risk assessment of states' climate action (section 2.1), the underlying factors that facilitate human rights risks/impacts of such action (section 2.2) and as well as good practices in avoiding/mitigating such risks/impacts (section 2.3), DIMR is also interested in gathering examples of approaches taken by individuals/ groups negatively affected by climate action to address these negative impacts and to seek remedy (section 2.2). **The weight allocated to each aspect of the proposed scope of the research project is to be determined with the contractor and will depend on what is feasible within the anticipated timeframe and number of contract days (section 4.1).**

### 2.1 Which human rights are and may be potentially affected by climate mitigation and adaptation?

Taking as a basis the human rights defined in the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), as well as

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<sup>2</sup> The Paris Agreement reiterates the obligation of states to "respect, promote and consider their respective obligations on human rights when taking action to address climate change" (Preamble).

relevant regional human rights treaties, what human rights are/may be potentially directly and indirectly affected by climate mitigation and/or adaptation policies/ measures in the following sectors? To illustrate these impacts, please provide at least one example per world region (Global North and Global South) for at least four sectors (whereby human rights impacts of climate mitigation/adaptation may differ or do not bear any human rights relevance in every sector in different regional contexts). **The following list is not exhaustive and the choice of sectors will be determined with the contractor:**

- Energy (e.g. wind/solar/hydroelectric energy)
- Mobility / Transportation (e.g. electro mobility, biofuels, hydrogen)
- Construction / Housing
- Agriculture / Land
- Water
- Forest and Forestry
- Fishery
- Biodiversity Protection
- Coastal and Marine Protection

As examples: How do renewable energy projects affect/ may affect people's livelihoods and thus their rights to food, water, housing and health? Do adaptation measures shift or bear the risks of shifting negative human rights impacts from one group to another (i.e. a flood embankment protecting communities upstream but increasing the risk of flooding for downstream communities with negative impacts on their right to housing)? Do mitigation and adaptation measures reinforce or bear the risk of reinforcing existing vulnerabilities and inequalities along the lines such as of gender, race, age, (dis-)ability and income? For example, are high water dikes improved - in compliance with human rights - in high-income but not low-income communities although all communities face the same flood risk?

Many of these types of questions can be raised based on a comprehensive overview of climate mitigation and adaptation activities across different sectors as seen through the lens of the named human rights instruments. This is in many ways the core of the research project, and is to be approached comprehensively, with conceptual breadth and considerable creativity. However, the research should undertake a prioritisation of the risks per sector and only explore in depth those which are either especially serious and irreversible (or especially likely to be realised. This prioritisation can be undertaken in part by reference to observed negative human rights impacts or observed risks of negative human rights impacts in the different sectors. The prioritised impacts/risks of mitigation and/or adaptation measures may not be confined to one specific sector but can be cross-sector (e.g. appropriateness of measures in view of (unknown) future climate risks and associated human rights impacts/risks).

## **2.2 What underlying factors facilitate (potential) negative human rights impacts of climate change mitigation/adaptation?**

The research should also analyse key underlying factors that lead or facilitate (potential) negative human rights impacts of climate mitigation/adaptation. It should also identify examples of approaches taken by individuals/ groups negatively affected by climate measures to address these negative impacts and to seek remedy. Questions that may guide this research include:

- What underlying factors lead or facilitate (potential) negative human rights impacts of climate mitigation/adaptation? Do they point to gaps in human rights protection per se in the country in

question (i.e. climate adaptation may reinforce existing social inequalities or mitigate the effects of social inequality but will not change the underlying factors of social inequality even if adaptation measures entail robust human rights safeguards)? Do they point to gaps in regulation/human rights safeguards of climate measures in a specific sector or to gaps in implementation, or both?

- What, if anything, has been done to identify, avoid, mitigate and/or remedy negative human rights impacts? If there has been no identification, avoidance, mitigation and/or remedy, is this a result of the lack of competent policy instruments / mechanisms, the failure to implement these instruments/ mechanisms, or the denial of those affected by negative impacts to access existing mechanisms?
- What approaches do individuals/ groups take when climate mitigation/adaptation measures negatively impact on their human rights? Where foreign financing/ investment in climate measures is involved do they use complaint mechanisms of donor countries/ organisations? In case of domestically financed measures do they seek remedy in national/regional courts? Are there indications of the effectiveness of the approaches taken?

### **2.3 Are there promising approaches and practices to identify, avoid, mitigate and/or remedy negative human rights impacts of climate change mitigation and adaptation measures/policies?**

Survey any relevant promising approaches/practices advanced to identify and mitigate the negative human rights impacts of climate mitigation and adaptation policies/measures, covering both prevention, mitigation and remedy. The research should identify approaches/practices that are already implemented (if existent), proposed approaches/practices in political proposals/policies e.g. in national or regional parliaments or governments or by international organisations, or in academic literature or by initiatives from e.g. civil society (from both the human rights and/or climate/environmental community). If possible, existing approaches/ policies/ practices should be mapped, together with any subsequent evaluation or monitoring of their effectiveness.

## **3 Products**

The research is to be delivered in the form of the following products, the exact nature and format of which will be fine-tuned with the contractor.

### **3.1 Desk study**

The research questions should be addressed in a desk study. The goal is to provide a basis for further research, inquiry, and lobbying by the Institute over the next two to three years as it works toward well-supported and comprehensive human rights positions on these matters. The study is to include an executive summary and conform to the house format citation style of the Institute, for which a template will be provided.

### **3.2 Literature list**

A comprehensive bibliography covering the research questions in section 2 above should be provided, sorted by publication type and including literature that was identified as being relevant without being able to be read for or included in the desk study. This bibliography is to be delivered in the form of a Citavi 6 database.

## 4 Submission of proposals; project timeline

The research project will be carried out by a contractor selected on the basis of proposals submitted to the Institute.

### 4.1 Timeline for deliverables

The contractor will design and conduct the research subject to the following timeline:

- Submission of proposals by 12 September 2021
- Award of the research contract by 20 September 2021
- Submission of the final products by 1 December 2021

We anticipate that the carrying out of the project will require between 30-40 working days.

### 4.2 Selection criteria

The contractor will be selected on the basis of the submitted proposals. Proposals may be submitted by individuals, institutions, or consortia of institutions and individuals, and the proposals must demonstrate:

- Established expertise in the field of human rights as they relate to climate change;
- Academic research and publishing experience.

Furthermore, the proposals should include:

- CVs and lists of publications for the researcher(s) who will carry out the project;
- An exposé of 2–3 pages covering the proposed weighting of the aspects to be covered by the research project (section 2); the proposed methodology, a tentative outline, and a timeline for the conduct of the research;
- A financial proposal showing the basis for the calculation as a daily fee multiplied by the anticipated number of days and showing both net price and gross price taking account of any taxes (such as VAT/Mehrwertsteuer).

### 4.3 Evaluation of proposals

The award of the contract will rate submitted proposals according to price (30% of the rating), quality of the exposé and researchers (60%), and the speed with which the final products can be delivered (10%).

Arrangements for barrier-free tender formats can be made upon request. Proposals should be submitted via email by **12 September 2021 at noon (CEST, UTC+2)** to

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Questions about these Terms of Reference or the research project may be directed to

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