



South Centre

Inputs

Secretary-General's synthesis report on opportunities, best practices, actionable solutions, challenges and barriers relevant to a just transition and the full realisation of human rights for all people

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Introduction:

Following Human Rights Council Resolution 56/8 of 10 July 2024, entitled “Human rights and climate change”, the South Centre presents this submission to the United Nations Secretary-General. This submission emphasizes the critical link between climate action and human rights, advocating for justice and equity in transitioning to a low-carbon economy (hereinafter ‘just transition’). It highlights the need to protect vulnerable communities, promote economic diversification, and foster social dialogue. The document underscores the importance of the Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) principle and considers the impacts of Investor-State Dispute Settlement (ISDS) mechanisms in this transition. Finally, it presents some best practices from developing countries towards achieving a just transition and recommendations in line with such experiences.

A just transition framework for developing countries should facilitate measures that guarantee decent livelihoods and a dignified future, especially for the most vulnerable populations. This framework should consider the needs of communities dependent on fossil fuel industries, ensuring access to affordable and clean energy for low-income households and protecting the rights of local communities that often bear the burden of climate change impacts.

A just transition is crucial for creating more opportunities for equitable climate action, mitigating the adverse effects of climate change, particularly for vulnerable groups, and ensuring that climate action is socially responsible for prioritising those most impacted. Implementing a framework for sustainable energy use can significantly benefit workers and communities if it can generate new worker skills, reducing economic disruptions, and fostering social dialogue.

1. Common but Differentiated Responsibility in the Context of Just Transition and Climate Action

The CBDR-RC principle as enshrined in the United Nations Framework Convention on Climate Change (UNFCCC), provides one of the basis for action by developed and developing countries. This principle considers the historical contribution of developed countries to greenhouse gas emissions.¹ The principle was first recognised in the Rio Declaration on Environment and Development,² which considered the different contributions to global environmental degradation and the responsibility of developed countries on the “pressures their societies place on the global environment and of the technologies and financial resources they command.”

The international community strengthened this principle by reiterating it in the Paris Agreement (PA). Article 2, paragraph 2 of the PA provides that the Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities in the light of different national circumstances.

Implementing the CBDR-RC principle in the context of just transition should consider guaranteeing sufficient carbon-emissions space for developing countries to implement their development strategies and lower the cost and social implications of this transition for their populations, in particular by minimising the burden of the transition on vulnerable communities in developing countries.³

¹ Natalia Pacheco Doctoral Thesis. "Social Safeguards and Equity in Payment for Environmental Services Provisions in the Paris Agreement." University of Geneva, 2019. Page 63.

² Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, A/CONF.151/26 (Vol. I), Annex I, Principle 7.

³ See: Ministry of Environment, Forest and Climate Change (MoEFCC), Government of India. "India makes important intervention at the Second Annual High-Level Ministerial Round Table on 'Just Transition', at the CoP29 in Baku, Azerbaijan. 'Just transitions must be Just; Equity and Climate Justice should be core for discussions of Just Transitions Pathways': India to Historical Contributors of Climate Change" in <https://pib.gov.in/PressReleasePage.aspx?PRID=2074425> (accessed 19.12.2024).

Some of the current measures to globally reduce carbon emissions adopted by developed countries can disproportionately affect developing countries by reducing their exports as a result of higher tariffs and hindering their economic growth.⁴ These measures create a disproportionate burden on the populations of these nations, who often rely heavily on high-carbon intensive sectors for their livelihoods. In addition, these measures not only divert resources away from crucial development priorities, such as poverty reduction and healthcare, but exacerbate existing inequalities and undermines efforts towards sustainable development.

Therefore, the principles of equity and CBDR-RC are central to achieving a just transition. Measures and policies adopted towards this objective must consider not only the transition to low-carbon energy but also mechanisms to guarantee energy access and security, guarantee means for the development of States and communities, and particularly guarantee State efforts towards eradicating poverty.

2. Ensuring Justice, Equity, and Accountability in Just Transition

As mentioned above, the CBDR-RC principle clarifies how developing countries' obligations derived from the UNFCCC and PA should be implemented. This is not only relevant to the implementation of climate actions but for the implementation of human rights' obligations.

The United Nations Committee on Economic, Social and Cultural Rights (Committee on ESCR) has recognised that States parties to the Covenant on Economic, Social and Cultural Rights must respect, protect, and fulfil all human rights, including harm or damages associated with climate change. This obligation includes mobilising the maximum available resources to prevent human rights impacts from climate change.⁵ The Committee on ESCR further emphasised that States must demonstrate the greatest possible ambition in public policies addressing the negative consequences of climate change and consider that "high-income States should also support adaptation

⁴ For example, The Carbon Border Adjustment Mechanism (CBAM) has significantly impacted trade and development in developing countries. See: Peter Lunenborg and Vahini Naidu, *How the EU's Carbon Border Adjustment Mechanism discriminates against foreign producers*, Policy Brief 124, South Centre, 2024 in https://www.southcentre.int/wp-content/uploads/2024/02/PB124_How-the-EUs-Carbon-Border-Adjustment-Mechanism-discriminates-against-foreign-producers_EN.pdf (accessed 26.12.2024) and Suranjali Tandon and Kevin Le Merle, *Evaluating the Impact of CBAM on Developing Countries*, Foundation for European Progressive Studies (FEPS), 2014, p. 21.

⁵ Economic and Social Council, Climate Change and the International Covenant on Economic, Social and Cultural Rights, Statement of the Committee on Economic, Social and Cultural Rights (2018), paras. 5 and 6.

efforts, especially in developing countries (...)."⁶ Other regional human rights mechanisms have also recognised that "those States that have greater financial capacity must provide the guarantees to provide greater technical and logistical capacity to the States that have a greater degree of impact on climate change, as well as less financial and infrastructure capacity to face the climate emergency."⁷

In line with the CBDR-RC principle, a just transition must address the inequalities among states while upholding human rights, including the Right to Development, and ensuring that developing countries have the opportunity to develop sustainably and equitably.⁸ Climate finance is essential for supporting countries' energy transitions and meeting their commitments under the Paris Agreement. It must also consider the social and economic development challenges related to respecting and realising human rights.

The recent COP29 climate conference highlighted the urgent need for increased climate finance to support developing countries' climate action.⁹ The new collective quantified goal (NCQG) for climate finance beyond 2025 must reflect the scale and urgency of the climate crisis and ensure that finance is accessible to those who need it most¹⁰ without increasing developing countries' debt burdens. Initiatives to reduce the debt burden could allow developing countries to use future resources to increase funding for climate resilience and social protection programs and to achieve a just transition. Developed countries must fulfil their commitments regarding finance for development under the Addis Ababa Action Agenda,¹¹ which includes providing Official Development Assistance (ODA) and promoting debt sustainability.

⁶ Ibid, parr. 7.

⁷ Inter-American Commission on Human Rights, *Climate Emergency: Inter-American Human Rights Scope and Obligations*, Resolution 3/2021 at https://www.oas.org/es/cidh/decisiones/pdf/2021/Resolucion_3-21_SPA.pdf

⁸ See Saad Alfarargi, United Nations Special Rapporteur on the right to development, "Climate action and the right to development: a participatory approach" (October 2021), p. 9. Available from https://www.ohchr.org/sites/default/files/2021-12/Policy_Brief_RTD_Climate_Action.pdf.

⁹ See: United Nations Climate Change, COP29 UN Climate Conference Agrees to Triple Finance to Developing Countries, Protecting Lives and Livelihoods in <https://unfccc.int/news/cop29-un-climate-conference-agrees-to-triple-finance-to-developing-countries-protecting-lives-and> (accessed 26.12.2024).

¹⁰ See: World Meteorological Organisation, COP29 ends with compromise on climate financing, COP29 News in <https://wmo.int/media/news/cop29-ends-compromise-climate-financing#:~:text=After%20two%20weeks%20of%20intense,least%20%241.3%20trillion%20by%202035%E2%80%9D>. (accessed 19.12.2024).

¹¹ United Nations General Assembly, 'Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda)' A/RES/69/313 (27 July 2015).

Likewise, accelerating climate finance through the Green Climate Fund (GCF) is critical. It requires streamlining and simplifying the application process and providing technical assistance to developing countries to enhance access and ensure equitable distribution of funds.¹² Prioritization of grants and concessional finance for adaptation projects, particularly for vulnerable nations, is also necessary to avoid exacerbating debt burdens.¹³

3. The Impact of Investor-State Dispute Settlement Mechanism (ISDS) in Just Transition

Investor-State Dispute Settlement (ISDS) provisions in international investment agreements pose a significant obstacle to developing countries pursuing a just transition, as it allows foreign investors to sue governments for policy changes that impact their investments. The threat of costly legal procedures and the high amount of claims pursued may create a risk of a “regulatory chill” that discourages ambitious climate action such as phasing out fossil fuels, promoting renewable energy, or regulating polluting industries.¹⁴

The financial burden of ISDS disputes further exacerbates developing countries' challenges in achieving a just transition. These countries often have limited resources and require significant financial support to invest in renewable energy. However, defending against ISDS claims and paying out damages can drain public funds, diverting resources away from essential investments in climate mitigation and adaptation, social protection programs for workers in the fossil fuel industry, and job creation in green sectors.

Reform of the international investment regime is vital, as the current system characterised by the use of ISDS hinders the ability of developing countries to implement comprehensive just transition strategies, leaving them with limited capacity

¹² Green Climate Fund, 'Green Climate Fund – Strategic Plan 2024-2027: Co-Chairs Proposal' (GCF/B.36/17/Rev.01) para (a). This policy was adopted by the Board in decision B.36/13. See also Green Climate Fund, 'Decisions of the Board – thirty-sixth meeting of the Board, 10 – 13 July 2023' (GCF/B.36/21).

¹³ Independent Evaluation Unit of the Green Climate Fund (2023). Annual Report (2023), Green Climate Fund Document GCF/B.34/16 (2024) in <https://ieugreenclimate.fund/sites/default/files/document/08-annual-report-2023-independent-evaluation-unit-gcf-b38-inf10.pdf>

¹⁴ For example, in 2012, Occidental Petroleum was awarded \$1.77 billion in an ISDS case against Ecuador for terminating an oil concession contract due to environmental violations, highlighting the financial risks of challenging fossil fuel investments. Similarly, the threat of ISDS influenced Germany's decision to phase out nuclear power after the Fukushima disaster, with the Swedish company Vattenfall initiating an ISDS claim for €4.7 billion in compensation.

to manage the social and economic consequences of transitioning to a low-carbon economy. This reform should not be limited to structural and procedural reforms, but must consider a holistic approach encompassing the inclusion of investor obligations to respect and protect human rights and the environment and safeguarding the regulatory space of states.¹⁵ Developing countries should also consider terminating or withdrawing investment agreements as a viable option.¹⁶

4. Good Practices and Experiences Towards Just Transition

Some developing countries have taken proactive action to ensure a just transition focusing on social equity and economic development. For example, China's 1+N Climate Policy System outlines a roadmap for decarbonising the economy, focusing on just transition principles.¹⁷ The initiative includes massive investments in renewable energy, an area in which China is already a global leader,¹⁸ aiming *inter alia* to create millions of new jobs. Furthermore, the policy promotes industrial restructuring, shifting from heavy industry to high-tech and service sectors while providing social protection for affected workers.

South Africa adopted a Just Transition Framework¹⁹ that prioritises support for coal-dependent communities through reskilling and upskilling programs, economic diversification, and social protection measures. This framework also emphasises the

¹⁵ See: South Centre Inputs to the UN Special Rapporteur on human rights and the environment, "Should the interests of foreign investors trump the human right to a clean, healthy and sustainable environment?" South Centre (2023) in <https://www.southcentre.int/wp-content/uploads/2023/06/South-Centre-Contribution-to-the-Call-for-Inputs-by-UN-SR-on-human-rights-and-environment.pdf> (accessed 26.12.2024).

¹⁶ See: Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union, Document SN/4656/2019/INIT and Ank Santens and Estefania San Juan, "Latin American Arbitration in Transition" in Daniel Uribe, *Painting the Grass Green: A Climate Change Carve-Out in Investment Agreements*, Policy Brief No. 25, South Centre (2024) in https://www.southcentre.int/wp-content/uploads/2024/07/IPB25_Painting-the-Grass-Green-A-Climate-Change-Carve-Out-in-Investment-Agreements_EN.pdf (accessed 26.12.2024).

¹⁷ See: Hengrui Liu, "Accelerating the Green Transition: China's 1+N Policy Framework, Two Sessions, and Beyond," Climate Policy Lab, 2023 in <https://www.climatepolicylab.org/climatesmart/2023/3/22/accelerating-the-green-transition-chinas-1-n-policy-framework-two-sessions-and-beyond#:~:text=The%201%2BN%20policy%20framework%20consists%20of%20overarching%20guidance%3A%20the,%2C%20metallurgy%2C%20and%20chemical%20industries.> (accessed 20 December 2024).

¹⁸ Aiqun Yu, Sophie Lu, Kasandra O'Malia, and Shradhey Prasad, 'China Continues to Lead the World in Wind and Solar, with Twice as Much Capacity Under Construction as the Rest of the World Combined' (July 2024) <https://www.unsettlemusic.com/productions/the-source> accessed 20 December 2024.

¹⁹ Presidential Climate Commission. (2022). *A Framework for a Just Transition in South Africa*. Pretoria, South Africa: Presidential Climate Commission.

development of green and inclusive economies, fostering new industries and job creation in renewable energy and sustainable agriculture.

Indonesia has taken steps towards energy transition by establishing the Just Energy Transition Partnership (JETP) Comprehensive Investment Policy Plan (CIPP),²⁰ aimed at mobilising finance and technical assistance for an early coal phase-out, job creation in the clean energy sector, and community engagement. The CIPP is complemented by the Just Transition Framework (JTF), which prioritises preventing negative impacts on communities and upholding human rights during the energy transition.

India has established the "Suryamitra Skill Development Program (SSDP) to develop youth skills, considering the opportunities for employment in the growing Solar Energy Power Projects, including installing, operating and maintaining solar equipment in India and abroad. Likewise, the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGA) provides employment guarantees based on sustainable development and environmental protection principles by prioritising jobs that contribute to ecological conservation and rural infrastructure development.²¹

Brazil recently launched the National Energy Transition Policy (PNTJ), which provides a roadmap focusing on energy, agriculture, and industry sectors²² for a just and equitable energy transition in Brazil. It aims to minimise the negative impacts of the transition on vulnerable communities and workers while maximising socioeconomic opportunities. It also establishes the National Forum on Energy Transition to promote dialogue and participation and foster open discussions about the transition process.

Colombia's Energy Communities for Just Transition²³ promotes that communities join forces to generate, sell, and efficiently use energy from renewable sources. This

²⁰ Republic of Indonesia and the International Partners Group. (2023). *Comprehensive Investment and Policy Plan (CIPP) for the Just Energy Transition Partnership*. Jakarta, Indonesia: JETP Secretariat.

²¹ See: https://nrega.nic.in/MGNREGA_new/Nrega_home.aspx

²² Explanatory Memorandum, No. 37, of August 26, 2024. Resolution No. 5, of August 26, 2024, of the National Energy Policy Council - CNPE. I approve. On August 27, 2024 in <https://www.in.gov.br/en/web/dou/-/despacho-do-presidente-da-republica-580836599> (Portuguese only)

²³ Ministerio de Minas y Energía, Decreto 2236 de 2023, "Por el cual se adiciona al Decreto 1073 de 2015 con el fin de reglamentar parcialmente el artículo 235 de la Ley 2294 de 2023 del Plan Nacional de Desarrollo 2022 - 2026 en lo relacionado con las Comunidades Energéticas en el marco de la Transición Energética Justa en Colombia" in <https://normativame.minenergia.gov.co/normatividad/6821/norma/> (Spanish only)

initiative was established as a component of Colombia's National Development Plan²⁴ to increase energy access for vulnerable populations by improving energy efficiency, democratising energy management and decarbonising the economy while boosting local economies and offering affordable energy services.

Furthermore, platforms like the Group of 77 and China provide a vital space for developing countries to advocate for increased financial support, technology transfer, and policy space to pursue their just transition.²⁵ South-South cooperation initiatives, such as the International Solar Alliance (ISA) and the Coalition for Disaster Resilient Infrastructure (CDRI), further enhance the role of Developing Countries in climate action, knowledge sharing, and capacity building.

Recommendations

To ensure a just energy transition in developing countries, it is necessary to provide comprehensive support through reskilling and upskilling programs, economic diversification initiatives, and social protection measures. Increasing responsible investment and job creation in renewable energy and green technologies is key to achieving these objectives.

Fostering international cooperation is also essential as it can mobilize finance and technical assistance to support developing countries in meeting energy transition compatible with their development objectives. Furthermore, these efforts should consider reforming international investment agreements, particularly ISDS provisions, to avoid a “regulatory chill” that stops countries from implementing policies for just transition and climate action.

Finally, upholding the principle of CBDR-RC is crucial, as it recognizes the historical responsibility of developed countries for greenhouse gas emissions and requires them to provide financial and technological support to developing countries in their transition to a low-carbon economy.

²⁴ Plan Nacional de Desarrollo 2022-2026: Colombia, Potencia Mundial de la Vida, Departamento Nacional de Planeación in <https://colaboracion.dnp.gov.co/CDT/Prensa/Publicaciones/plan-nacional-de-desarrollo-2022-2026-colombia-potencia-mundial-de-la-vida.pdf> (Spanish only).

²⁵ See: Group of 77 and China Ministerial Declaration, Forty-Eighth Annual Ministerial Meeting (2024), para. 159 in <https://www.g77.org/doc/Declaration2024.htm>