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## **Inputs to the Expert Mechanism on the Right to Development Study on Climate Justice, Sustainability, and the Right to Development**

**South Centre**

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### **Introduction:**

The South Centre submits these inputs to the Expert Mechanism on the Right to Development to inform its thematic report on Climate Justice, Sustainability, and the Right to Development. This submission considers the critical link between climate action and human rights, emphasising on the need for justice and equity in the transition to a low-carbon economy (hereinafter ‘just transition’) and the role of the Right to Development in achieving these objectives. 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.

### **The Right to Development in the Context of Climate Justice**

The Right to Development, as enshrined in the UN Declaration on the Right to Development, is an inalienable human right where every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.<sup>1</sup> The Right to Development is particularly relevant in the context of climate justice, as climate change disproportionately impacts the ability of developing countries to achieve their development goals. The Group of 77 and China (G77) has recognised climate change as one of the greatest challenges of this time and that its “unprecedented impacts disproportionately burden all developing countries and in particular the poorest and most vulnerable among them.”<sup>2</sup>

The G77 also recognised that climate change has increased extreme weather events and slow onset events affecting the environment and the economy and reversed hard-earned development gains, increasing the adverse impact of climate change in the populations of the South.<sup>3</sup> Therefore, any efforts towards reducing the effects of climate change, including adaptation and mitigation efforts, should be

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<sup>1</sup> Declaration on the Right to Development, Adopted by General Assembly resolution 41/128 of 4 December 1986 in <https://www.ohchr.org/sites/default/files/rtd.pdf> (accessed on 18.02.2025)

<sup>2</sup> See: Group of 77 and China, Ministerial Declaration adopted by the Forty-Eighth Annual Ministerial Meeting (2024) in <https://www.g77.org/doc/Declaration2024.htm> (accessed 18.02.2025)

<sup>3</sup> Ibid.

firmly grounded in the principles of the right to development, ensuring that climate action supports, rather than hinders, the realisation of all human rights.

Climate action must be based on the principles of **equity and non-discrimination**, prioritising the needs of the most vulnerable communities and ensuring that no one is left behind in the transition to a low-carbon economy. Just transition strategies should address existing inequalities and ensure that the benefits of climate action are shared equitably.

As part of this process, the principles of **inclusivity and participation** are fundamental. The participation of women, Indigenous communities, peasants, and the youth, among others, must be guaranteed in shaping climate policies and actions, including by promoting a more inclusive decision-making process and ensuring that traditional knowledge and experiences of all peoples and communities are considered.<sup>4</sup> Likewise, **national sovereignty, self-determination and national ownership** are key tools for guaranteeing developing countries policy space to pursue their development strategies and implement policies tailored to their specific needs and circumstances.

**South-South Cooperation (SSC)** is a vital catalyser for empowering developing countries towards achieving these objectives and building on shared needs and experiences. The principles of SSC are key tools for guaranteeing that developing countries have the necessary policy space to pursue development strategies and implement policies tailored to their specific needs and unique circumstances. **International solidarity and cooperation** must be considered a global duty to support developing countries and enable them to sustainably achieve their development goals. This includes fulfilling their commitments under the United Nations Framework Convention on Climate Change and the Paris Agreement to provide climate finance and technology transfer.

### **Common but Differentiated Responsibility (CBDR-RC), the Right to Development and Climate Action**

The CBDR-RC principle, enshrined in the UNFCCC and reiterated in the Paris Agreement, acknowledges the historical contributions of developed countries to greenhouse gas emissions and their corresponding responsibility.<sup>5</sup> Implementing CBDR-RC in a just transition requires guaranteeing sufficient carbon emissions space for developing countries to pursue their development strategies and minimising the transition's cost and social implications, particularly for vulnerable communities.<sup>6</sup>

Current global carbon emission reduction measures adopted by developed countries can disproportionately affect developing countries by reducing exports, hindering economic growth, and diverting resources from development priorities like poverty reduction and healthcare.<sup>7</sup> The

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<sup>4</sup> See, for example, the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998) and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (2018).

<sup>5</sup> Natalia Pacheco Doctoral Thesis. "Social Safeguards and Equity in Payment for Environmental Services Provisions in the Paris Agreement." University of Geneva, 2019. Page 63.

<sup>6</sup> 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).

<sup>7</sup> For example, The Carbon Border Adjustment Mechanism (CBAM) can significantly impact 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-](https://www.southcentre.int/wp-content/uploads/2024/02/PB124_How-the-EUs-Carbon-Border-Adjustment-)

implementation of the principle of CBDR-RC should be considered in line with the principles of international solidarity and cooperation. Developed countries have a global duty to increase their efforts towards establishing an adequate and predictable financial and technological cooperation framework for climate action, including by enabling the transfer of clean technologies from developed to developing countries on fair and favourable terms, including through concessional financing and intellectual property rights waivers when needed to address emergencies.

Finally, capacity building for developing countries is crucial. Developing the skills and institutions necessary for planning and implementing transition policies and programs is required. However, developing countries must retain the policy space to implement measures tailored to their needs and circumstances.

## **Justice, Equity, and Accountability in Climate Justice**

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

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.<sup>8</sup> The Committee on ESCR further emphasised that States must demonstrate the most significant possible ambition in public policies addressing the negative consequences of climate change and consider that "high-income States should also support adaptation efforts, especially in developing countries (...)."<sup>9</sup> 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."<sup>10</sup>

The CBDR-RC principle and the historical energy consumption patterns of developed economies underscore the urgent need to accelerate infrastructural development in less developed economies, encompassing access to affordable energy, health, communication, and social services, which are essential for realizing the right to development. A just transition must address the inequalities among states while upholding human rights and ensuring that developing countries have the opportunity to develop sustainably and equitably.<sup>11</sup> 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.

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Mechanism-discriminates-against-foreign-producers\_EN.pdf and Suranjali Tandon and Kevin Le Merle, Evaluating the Impact of CBAM on Developing Countries, Foundation for European Progressive Studies (FEPS), 2014, p. 21.

<sup>8</sup> 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.

<sup>9</sup> Ibid, parr. 7.

<sup>10</sup> 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](https://www.oas.org/es/cidh/decisiones/pdf/2021/Resolucion_3-21_SPA.pdf)

<sup>11</sup> 3 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\\_RTDC\\_Climate\\_Action.pdf](https://www.ohchr.org/sites/default/files/2021-12/Policy_Brief_RTDC_Climate_Action.pdf) (accessed 20.02.2025).

The recent COP29 climate conference highlighted the urgent need for increased climate finance to support developing countries' climate action.<sup>12</sup> 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 most<sup>13</sup> without increasing developing countries' debt burdens. Climate finance must be separate from and in addition to existing Official Development Assistance (ODA). Debt 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. Nonetheless, developed countries must also fulfil their commitments regarding development finance under the Addis Ababa Action Agenda.<sup>14</sup> These efforts should include scaling up and fulfilling ODA commitments, including the commitment by most developed countries to reach the goal of 0.7 per cent of gross national income for official development assistance and 0.15 to 0.20 per cent of gross national income for official development assistance to least developed countries and promoting debt sustainability, as reiterated by the adoption of the Pact of the Future.<sup>15</sup>

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.<sup>16</sup> Prioritising grants and concessional finance for adaptation projects, particularly for vulnerable nations, is also necessary to avoid exacerbating debt burdens.<sup>17</sup>

## **Impact of Investor-State Dispute Settlement (ISDS) to the Right to Development and Climate Justice**

Investor-State Dispute Settlement (ISDS) provisions in international investment agreements pose a significant obstacle to developing countries pursuing climate action, 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.<sup>18</sup>

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<sup>12</sup> 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).

<sup>13</sup> 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).

<sup>14</sup> 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).

<sup>15</sup> See: United Nations, Pact for the Future, General Assembly, UN Doc. A/RES/79/1 (September 2024) in <https://docs.un.org/en/A/RES/79/1> (Accessed 20.02.2025).

<sup>16</sup> 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).

<sup>17</sup> Independent Evaluation Unit of the Green Climate Fund (2023). Annual Report (2023), Green Climate Fund Document GCF/B.34/16 (2024) in <https://ieu.greenclimate.fund/sites/default/files/document/08-annual-report-2023-independent-evaluation-unit-gcf-b38-inf10.pdf>

<sup>18</sup> 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 damages, highlighting the financial risks associated with challenging fossil fuel investments. Similarly, Germany's decision to phase out nuclear power after the Fukushima disaster, was challenged by the Swedish company Vattenfall initiating an ISDS claim for €4.7 billion in compensation.

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.<sup>19</sup> This situation directly limits the Right to Development, as States are required to prioritise foreign investors' interests over their populations' needs and the imperative of environmental protection.

Therefore, reforming the international investment regime is necessary to achieve climate justice and guarantee that developing countries have sufficient policy space to implement comprehensive climate action strategies and manage the social and economic consequences of transitioning to a low-carbon economies. This reform should not be limited to structural and procedural aspects, but it must consider a holistic approach encompassing the inclusion of investor obligations to respect and protect human rights and the environment and safeguard the regulatory space of states.<sup>20</sup> Developing countries should also consider terminating or withdrawing investment agreements as a viable option.<sup>21</sup>

## Recommendations

Climate action must be firmly grounded in the Right to Development, prioritising equity, non-discrimination, and a just transition that genuinely benefits all, with particular attention to the needs of vulnerable communities. To achieve these objectives, Developing countries must be afforded the necessary policy space and robust support to implement climate actions tailored to their unique needs and circumstances, thereby ensuring national sovereignty, self-determination and national ownership of these processes.

Likewise, the Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) principle should serve as the basis for implementing the Right to Development in line with common efforts towards achieving climate justice. This means that developed countries have a crucial responsibility to fulfil their commitments regarding climate finance, technology transfer, and capacity building for developing countries. International cooperation and solidarity, including fostering South-South cooperation, should be significantly strengthened to support developing countries in achieving their sustainable development goals and implementing impactful climate action.

The CBDR-RC principle must remain central to all climate negotiations and implementation efforts, guaranteeing that developing countries have sufficient carbon emissions space to pursue their

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<sup>19</sup> See: Daniel Uribe, Paris the Grass Green: A Climate Change Carve-Out in Investment Agreements, Investment Policy Brief 25, South Centre (July 2024) in <https://www.southcentre.int/investment-policy-brief-25-5-july-2024/> (accessed 20.02.2025), also David Cheng, Jai Abhijit Unde, and James Casey Ryan, Investor Obligations in International Investment Law, Geneva Graduate Institute and South Centre (December, 2024) in [https://www.southcentre.int/wp-content/uploads/2024/11/Investor-Obligations-Geneva-Graduate-Institute-South-Centre-Report\\_December-2024.pdf](https://www.southcentre.int/wp-content/uploads/2024/11/Investor-Obligations-Geneva-Graduate-Institute-South-Centre-Report_December-2024.pdf) (accessed 20.02.2025).

<sup>20</sup> 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 18.02.2025).

<sup>21</sup> 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](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 18.02.2025).

legitimate development aspirations. Climate finance mechanisms, including the Green Climate Fund, require streamlining and simplification to ensure easy and equitable access for developing countries, with a clear prioritisation of grants and concessional finance specifically for adaptation projects. In addition, initiatives to alleviate the often-crippling debt burdens faced by developing countries and the fulfilment of Official Development Assistance (ODA) commitments by developed countries are crucial for freeing up vital resources for climate action programmes and policies, and essential social protection programs.

The international investment regime, including Investor-State Dispute Settlement (ISDS) mechanisms, requires reform to prioritise human rights and environmental protection over the narrow interests of investors, thereby enabling developing countries to implement ambitious and necessary climate policies without the constant fear of costly and potentially debilitating legal challenges. Developing countries should seriously consider terminating or withdrawing from investment agreements that hinder their ability to pursue climate-friendly policies and achieve the full implementation of the Right to development. Finally, the meaningful participation of women, Indigenous communities, peasants, and youth is essential in shaping climate policies and actions to ensure that they are truly inclusive and effective in line with the principles enshrined in the Declaration on the Right to Development.