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PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • Tel: +41 22 917 9000 • Fax: +41 22 917 9008 • E-mail: ohchr-registry@un.org

Mandate of the Special Rapporteur on the right to development

TO THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
ARUSHA, UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 001/2025

IN THE MATTER OF A REQUEST BY THE PAN AFRICAN LAWYERS UNION FOR AN
ADVISORY OPINION ON THE OBLIGATION OF STATES WITH RESPECT TO THE CLIMATE CRISIS

Made under Rule 84(2) of the Rules of the African Court on Human and Peoples' Rights

Amicus filed by Mr Surya Deva, United Nations Special Rapporteur on the Right to Development

3 July 2026

PARTICULARS OF AUTHOR

Organization:	***Mr Surya Deva, United Nations Special Rapporteur on the Right to Development***
Physical address:	Palais Des Nations • 1211 Geneva 10, Switzerland
Postal address:	Palais Des Nations • 1211 Geneva 10, Switzerland
Tel.	+41 22 917 9000
Email:	hrc-sr-development-deva@un.org hrc-sr-development@un.org

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I. EXECUTIVE SUMMARY

1. I submit this amicus brief in my capacity as the United Nations Special Rapporteur on the right to development ("UN Special Rapporteur"). It follows on this Court's *Notice on the Request for Leave to Act as* Amici Curiae of 28 November 2025, requesting to file an *amicus curiae* brief in the present proceeding.[1]

2. This amicus brief is intended to assist the Court in answering the questions raised in the *Request for an Advisory Opinion on the Obligations of States with Respect to the Climate Crisis, Advisory Opinion No. 001/2025* ("Advisory Opinion Request"). I am honoured to contribute to the Court's considerations of these important issues for Africa and globally.

3. In this brief, I advance the following arguments for kind consideration by the African Court on Human and Peoples' Rights ("Court"):

   (a) that a climate justice lens should be used to interpret the obligations of States in relation to climate change (Part IV);
   (b) that the realisation of the right to development is impacted by climate change in varied ways, that the right to development is compatible with effective climate actions because sustainability is in-built in this right, and that several aspects of this right will be critical to ensuring fair and just transitions towards a green economy (Part V);
   (c) that the State duty to cooperate – which is also a component of the right to development – is critical to ensure that historical polluting States and corporations assist African States in relation to mitigation, adaption and remediation (Part VI); and
   (d) that States have an obligation to regulate effectively corporations (including fossil fuel corporations) at domestic, extraterritorial and international levels (Part VII).

II. EXPERTISE AS THE UN SPECIAL RAPPORTEUR ON THE RIGHT TO DEVELOPMENT

4. My role is part of "[t]he system of Special Procedures" that "is a central element of the United Nations human rights machinery and covers all human rights: civil, cultural, economic, political, and social".[2] Special Rapporteurs serve as independent human rights experts and are selected for our "(a) expertise; (b) experience in the field of the mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity".[3] Special Procedures "undertake to uphold independence, efficiency, competence and integrity through probity, impartiality, honesty and good faith" and do "not receive financial remuneration".[4]

5. In the performance of my mandate as Special Rapporteur, I have the legal status of an expert on mission for the United Nations, within the meaning of Articles VI and VII of the

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[1] *Notice on the Request for Leave to Act as* Amici Curiae, Request for Advisory Opinion No. 001/2025, Ref: AFCHPR/ADV.O/001/2025/005 (28 November 2025).
[2] Office of the High Commissioner for Human Rights ("OHCHR"), *Special Procedures of the Human Rights Council*, https://www.ohchr.org/en/hrbodies/sp/pages/introduction.aspx
[3] UN Human Rights Council, *Institution-building of the United Nations Human Rights Council*, A/HRC/RES/5/1 (June 18, 2007), https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/5/1
[4] OHCHR, *Special Procedures of the Human Rights Council*

Convention on the Privileges and Immunities of the United Nations, adopted by the United Nations General Assembly on 13 February 1946. As such, I enjoy such privileges and immunities as are necessary for the independent exercise of my functions, including in respect of words spoken or written acts done in the course of the performance of my missions, including immunity from legal process of every kind.

6. This application is submitted voluntarily without prejudice to, and should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, its officials and experts on mission, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations. I further clarify that authorisation for the position and views expressed herein, in full accordance with the independence afforded to my mandate, was neither sought nor given by the United Nations, the United Nations Human Rights Council, the Office of the United Nations High Commissioner for Human Rights, or any of the officials associated with those bodies.

7. As mentioned, my mandate forms part of the Special Procedures system of the United Nations Human Rights Council. UN Special Rapporteurs undertake country visits, act on cases of reported violations and infringements of human rights, contribute to the development of international human rights standards, and provide advice for technical cooperation. We work closely with other Special Procedures, the Office of the High Commissioner for Human Rights and report annually to both the UN Human Rights Council and the UN General Assembly.

8. The UN Human Rights Council created the mandate of the Special Rapporteur on the right to development in 2016.[5] The mandate was most recently renewed by the Human Rights Council in 2025.[6] The mandate contributes to the promotion, protection and fulfilment of the right to development. The Human Right Council has requested the Special Rapporteur to discharge the mandate in the context of (i) the implementation of the 2030 Agenda for Sustainable Development, (ii) the Sendai Framework for Disaster Risk Reduction, (iii) the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, and (iv) the Paris Agreement on climate change.

9. My term as the Special Rapporteur began on 1 May 2023. Since then, I have promoted a holistic understanding of the right to development and taken steps to integrate it within development policies and programmes at local, national, regional and international levels. In particular, I have encouraged States, UN entities and other actors to embrace a new model of "planet-centred participatory development" to address the root causes of the triple planetary crisis.[7]

10. I presented my first report to the UN Human Rights Council (A/HRC/54/27) in September 2023, outlining my vision on reinvigorating the right to development. All of my subsequent thematic reports are directly relevant to the issues raised in the Advisory Opinion Request:

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[5] UN Human Rights Council, *Resolution 33/14: The right to development,* UN Doc A/HRC/RES/33/14 (5 October 2016).

[6] UN Human Rights Council, *Resolution 60/7: The right to development*, UN Doc A/HRC/RES/60/7 (7 October 2025).

[7] *Reinvigorating the right to development: A vision for the future – Report of the Special Rapporteur on the right to development, Surya Deva*, A/HRC/54/27 (4 August 2023) paras 63-68; *Financing for inclusive, sustainable and participatory development – Report of the Special Rapporteur on the right to development, Surya Deva*, A/80/206 (18 July 2025) paras 26-43.

2023 report to the UN General Assembly on *Role of business in realizing the right to development* (A/78/160), 2024 report to the UN Human Rights Council on *Right to development of children and future generations* (A/HRC/57/43), 2024 report to the UN General Assembly on *Climate justice: Loss and damage* (A/79/168), the 2025 report to the UN Human Rights Council on *Nexus between gender equality and the right to development* (A/HRC/60/25), and the 2025 report to the UN General Assembly on *Financing for inclusive, sustainable and participatory development* (A/80/206).

III. QUESTIONS ADDRESSED IN THE PRESENT AMICUS BRIEF

11. This amicus brief addresses the following questions presented to the Court in paragraph 94 of the Advisory Opinion Request:

- ✓ The States' climate change obligations in relation to both present and future generations;
- ✓ Specific obligations in relation to individuals and groups in vulnerable or marginalised situations;
- ✓ State obligations in relation to fair and just transitions;
- ✓ State obligations regarding loss and damage and reparations;
- ✓ The duty of States to regulate corporations; and
- ✓ The States' duty to co-operate.

12. The brief gives particular attention to the role and relevance of the right to development in addressing these questions. For example, it highlights the role of the following aspects of the right to development: active, free and meaningful participation; fair distribution of benefits; common but differentiated responsibilities (CBDR); intersectional non-discrimination; intergenerational equity; and international cooperation.

IV. A CLIMATE JUSTICE LENS TO INTERPRET STATE OBLIGATIONS

13. In interpreting the obligations of States in relation to climate change, it is important to adopt a "climate *justice*" lens, because concepts of climate change, climate crisis or climate emergency do not capture various facets of climate inequalities and colonialisation intertwined with climate change. Climate justice, in essence, is about not harming one's neighbours – understood in a broad sense to include both the present generation and future generations as well as nature – through global warming and remedying the harm caused directly or indirectly in proportion to one's contributions.[8]

14. Climate justice should be able to respond to the "triple injustice" of climate change: (a) the most vulnerable to the negative impacts of climate change are those who bear little responsibility for causing it; (b) these groups are limited in their resources and capacity to cope with the effects of climate change; and (c) the costs of the green transition have a greater negative impact on such low-income and vulnerable groups.[9] Moreover, since climate change affects all human rights, international climate law must be interpreted and developed in line with international human rights law. Otherwise, climate actions will not be just.

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[8] *Report of the Special Rapporteur on the right to development, Surya Deva – Climate justice: loss and damage*, A/79/168 (17 July 2024) para 16.
[9] Ibid, para 17.

15. In my 2024 report presented to the UN General Assembly ("climate justice report"),[10] I developed a "climate justice framework", which should be relevant for the Court to interpret the obligations of States. This climate justice framework comprises four pillars and 12 principles. The four pillars are mitigation, adaptation, remediation and transformation. These four pillars, derived from international climate law and international human rights law, are interrelated. The more ambitious the world community is in terms of mitigation and adaptation, the less will be the loss and damage and the consequent need for remediation for affected individuals and communities. On the other hand, transformation in the current economic order, business models and lifestyles will complement the goals of the other three pillars.

16. In the climate justice report, I outlined 12 overarching human rights principles that should be embedded across the four pillars of climate justice: Multi-species justice, Intergenerational equity, Non-discrimination, Participation, Intersectionality, Prevention, Precaution, Polluter pays, Common but differentiated responsibilities (CBDR), Just transitions, Transparency, and International cooperation and solidarity. Some of these principles are elaborated below for the Court's reference.

Intersectional non-discrimination

17. Since not all people are affected by climate change equally, States must ensure that existing multilayered inequalities are not exacerbated by climate change. As stated in my climate justice report, there is evidence to indicate that children, women, LGBTIQ+ people, minorities, Indigenous Peoples, persons with disabilities, migrants, older persons, rural populations, peasants, refugees and stateless people will be affected differently or disproportionately by climate change.

18. Moreover, if individuals or groups in vulnerable or marginalised situations live in developing countries, they will experience "dual disproportionality" of climate change: one for being who they are and a second due to the countries in which they live.[11] Considering that climate change is affecting people differently and disproportionately, the Court should stress the need for States to adopt an intersectional approach to ensure that no one is left behind.

Common but differentiated responsibilities

19. CBDR is central to climate justice. In its climate change advisory opinion, the International Court of Justice (ICJ) observed that the principle of CBDR, which is a manifestation of the principle of equity, "reflects the need to distribute equitably the burdens of the obligations in respect of climate change, taking into account, inter alia, States' historical and current contributions to cumulative GHG [greenhouse gas] emissions, and their different current capabilities and national circumstances, including their economic and social development."[12]

[10] A/79/168.
[11] Ibid, para 45.
[12] *ICJ Advisory Opinion*, para 148

20. CBDR is closely connected to the right to development. This principle has been enshrined in both the Rio Declaration on Environment and Development and the United Nations Framework Convention on Climate Change and the Paris Agreement. While all States must act decisively with the highest possible ambition and within maximum available resources, their responses, in order to be just, have to accommodate differences in respective contributions and capabilities. Similarly, if colonization and other factors have undermined the financial or technological capabilities of certain States, that should be taken into consideration in articulating respective duties of States.[13]

21. A transition towards a zero-carbon economy and phasing out of fossil fuels should be guided by CBDR, otherwise it may result in, or exacerbate, energy poverty and in turn undermine the realisation of many human rights.[14] Similarly, developed countries should have enhanced obligations under the Paris Agreement to avert, minimize and address climate change-related loss and damage and to mobilise climate finance.

Intergenerational equity and the rights of future generations

22. States' climate obligations are not confined to people part of the present generation. Since climate change will also affect future generations, the present generation decision makers should consider how climate change will affect the human rights of future generations or their capabilities to realise those rights. It is in this context that intergenerational equity becomes relevant. As rightly noted by the ICJ, "Intergenerational equity is an expression of the idea that present generations are trustees of humanity tasked with preserving dignified living conditions and transmitting them to future generations."[15]

23. Intergenerational equity is one of the overarching principles of the right to development.[16] Principle 3 of the Rio Declaration on Environment and Development makes it clear that "the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations". This principle is reiterated in paragraph 11 of the Vienna Declaration and Programme of Action. This principle is also enshrined in the preamble of the Paris Agreement, and it is critical to ensure that the right to development contributes to inclusive, equitable and sustainable development.

24. The ICJ in its climate advisory opinion has recognised intergenerational equity as one of the guiding principles for the interpretation and application of the obligations of States in relation to climate change.[17] Furthermore, the Inter-American Court of Human Rights in its advisory opinion has stated that "the guarantee of intra- and intergenerational equity is essential for the interpretation and implementation of the obligations arising from the right to a healthy climate because this right, in its collective dimension, seeks the comprehensive protection of humanity as a whole."[18]

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[13] A/79/168, para 33(i).
[14] Surya Deva, 'Just Transitions Through the Vistas of the Right to Development' (2025) 32:1 *Brown Journal of World Affairs*, https://bjwa.brown.edu/32-1/just-transitions-through-the-vistas-of-the-right-to-development/
[15] *ICJ Advisory Opinion*, para 156.
[16] A/HRC/54/27, para 13.
[17] *ICJ Advisory Opinion*, paras 157 and 161.
[18] AO-32/25, para 313.

25. There has been a growing recognition of the rights of future generations in recent years,[19] something that the Court should consider in interpreting the obligations of States. For example, the Maastricht Principles on the Human Rights of Future Generations provide a detailed statement of the human rights of future generations.[20] They find the legal basis of the human rights of future generations in: (a) international law not limiting human rights to present generations; (b) international law recognizing obligations and responsibilities towards future generations; and (c) other general principles of law, norms, customs and values recognizing obligations and responsibilities towards future generations (principle 2).

26. More recently, in the Declaration on Future Generations (annexed to the 2024 Pact for the Future), States agreed that "the opportunity for future generations to thrive in prosperity and achieve sustainable development must be ensured, including by eliminating the intergenerational transmission of poverty and hunger, inequality and injustice" (Guiding Principle 3).[21] In view of these normative developments, I will encourage the Court to integrate the rights of future generations in articulating the climate obligations of States and businesses.

Fair and just transitions

27. Laws and policies adopted by States to achieve transitions concerning energy, food and infrastructure should ensure just, fair and equitable transitions so as not to leave behind individuals and groups in marginalized or vulnerable situations.[22] The push for renewable energy will, for example, be irresponsible if a quest for critical minerals might displace Indigenous Peoples without their free, prior and informed consent, force children trapped in poverty to work in hazardous mining operations or leave mining workers without any jobs. Similarly, the phasing out of fossil fuels should be complemented with access to affordable renewable means of energy for poor people to avoid energy poverty.[23]

28. In a recent article published in the *Brown Journal of World Affairs*, I have articulated a "five-dimensional just transitions framework" and tried to show why and how the right to development should be seen as an enabler of just transitions.[24] The five dimensions are: equitable distributional justice, restorative justice, ecological justice, intergenerational justice and participatory justice. For example, a green energy transition should address existing inequalities regarding energy access and affordability, adopt a fair and equitable decarbonisation schedule, compensate communities for past fossil fuels-linked harms to health and the environment, consider the impact of transition on plants and animals, and ensure active, free and meaningful participation of the affected people.

29. At a more structural level, just transitions will require more than decarbonizing our economies. It will require changes in current consumption patterns and moving away from the current extractive model of growth, which tends to ignore the environmental limits of development and mostly benefits corporations. It will also require building a new

[19] *Right to development of children and future generations – Report of the Special Rapporteur on the right to development, Surya Deva*, A/HRC/57/43 (24 July 2024) paras 58-70.
[20] See https://www.rightsoffuturegenerations.org/
[21] See https://www.un.org/sites/un2.un.org/files/sotf-pact_for_the_future_adopted.pdf
[22] A/79/168, para 33(j).
[23] Ibid.
[24] Deva, 'Just Transitions Through the Vistas of the Right to Development'.

international order that does not create inherent disadvantages for developing countries in terms of trade, investment, access to technologies, public debt and taxation.

Loss, damage and reparations

30. As noted in my climate justice report, loss and damage pose a significant challenge to realizing the right to development, especially in developing countries. Developed countries and large corporations must take a range of steps to assist, in line with their legal and historical obligations, climate vulnerable countries in realizing the right to development of their people. In addition, international financial institutions and multilateral development banks should take steps to alleviate debt burdens of developing countries. Climate change-related loss and damage undermine the right to development of individuals and communities. That impact is experienced by people (such as children, women and Indigenous Peoples) and countries (such as least developed countries and small island developing States) differently and disproportionately. In addition to providing financial assistance, developed countries and large corporations should facilitate the transfer of green technologies, build capacity, provide technical assistance and offer migration pathways to climate-induced migrants.

31. Climate change has clear consequences for the realization of all human rights. It is a well-established principle of international human rights law that effective remedies must be available for violations of human rights by States or other actors.[25] Remediation in the context of climate change should be interpreted in the sense of full reparation, comprising restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The affected individuals and communities should be able to seek remedies for past, current and future climate change-related loss and damage.[26] Moreover, remediation should be available for both the impacts of climate change on human rights and for adverse human rights impacts of climate finance projects concerning mitigation or adaptation. Considering that climate justice poses unique problems in relation to remedy challenges, such as those related to causation, attribution of responsibility, burden of proof and legal standing to bring an action, the Court should be open to develop innovative remedies. For example, collective remedies such as setting up a joint climate remediation fund by companies at the national, regional and global levels to compensate affected communities may be desirable.[27]

32. The polluter pays principle, acknowledged in principle 16 of the Rio Declaration on Environment and Development, requires the polluter to bear the cost of pollution. The Polluter pays is a fundamental principle originally introduced by the OECD, and a cornerstone of EU environmental law (article 191(2) TFEU). States and businesses that caused or contributed the most to climate change must pay in proportion to their contributions. The Carbon Majors database, which traces cumulative historical emissions of 122 industrial producers from 1854 to 2022, reveals that over 70 per cent of global CO2 emissions historically can be attributed to just 78 corporate and State producing entities.[28] The ICJ did not consider that the "polluter pays" principle is part of the applicable law for the purposes of its Advisory Opinion, though it noted that this does not preclude the possibility that forms of strict liability for hazardous acts and other kinds of acts that are not wrongful under international law are developing.

[25] A/72/162.
[26] A/79/168, para 27.
[27] Ibid, para 29.
[28] See https://carbonmajors.org/briefing/The-Carbon-Majors-Database-26913.

33. The African Court is uniquely placed to highlight remediation duties of States and corporations in relation to climate change, including for historical carbon emissions. It should also recognise the polluter pays principle.

International cooperation

34. International cooperation is a key aspect of the UN Charter (arts 1, 55 and 56) and the 1986 Declaration on the Right to Development (arts 3-4). It is also enshrined in the Paris Agreement. The ICJ has affirmed that the duty to cooperate lies at the core of the UN Charter, and in the context of climate change, States have a customary obligation to co-operate.[29]

35. As noted in my climate justice report, effective climate action requires collective action on the part of States in line with the principle of international cooperation and solidarity. Climate change-related loss and damage will affect disproportionately least developed countries, lower-middle income countries and small island developing States. However, because of an interconnected world and the transboundary nature of climate change, such impacts would have consequences for developed countries in the form of social conflicts and forced migration. International cooperation is therefore not merely an option but an obligation to deal with climate change, something that the Court should underline. Such cooperation entails sharing good practices, building capacity, providing technical assistance, sharing green technologies, offering financial aid, providing early warning about extreme weather events and negotiating in good faith.[30]

V. RIGHT TO DEVELOPMENT, CLIMATE CHANGE AND PLANETARY LIMITS

36. The 1986 Declaration on the Right to Development defines the right to development as an "an inalienable human right by virtue of which 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."[31] The right to development has been reaffirmed in numerous subsequent international instruments and policy documents such as the Rio Declaration on Environment and Development (1992), the Vienna Declaration and Programme of Action (1993), the Addis Ababa Action Agenda (2015), the 2030 Agenda for Sustainable Development (2015), the Paris Agreement on Climate Change (2015), the Pact for the Future (2024), and the Sevilla Commitment (2025).

37. The right to development is also recognised in several regional human rights instruments such as the 1948 Charter of the Organization of American States (Article 17), the 1981 African Charter on Human and Peoples' Rights (Article 22), the 2004 Arab Charter on Human Rights (Article 37), and the Association of Southeast Asian Nations Human Rights Declaration 2012 (Article 35). Moreover, the right to development is expressly mentioned in the constitution of a few African countries such as Ethiopia (Article 43), Malawi (Article 30), Mauritania (Article 19) and Morocco (Article 31).

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[29] *ICJ Advisory Opinion*, paras140 and 364.
[30] A/79/168, para 33 (l).
[31] Declaration on the Right to Development, General Assembly resolution 41/128 (4 December 1986) art 1(1).

38. Similar to several other human rights, the right to development has both individual and collective dimensions.[32] The right consists of three elements: every human and all peoples are entitled to (i) participate in, (ii) contribute to, and (iii) enjoy economic, social, cultural, and political development.[33] In other words, this is not merely a passive right to be enjoyed by individuals. Rather, individuals are expected to have an "active, free and meaningful" participation in decision-making processes. Moreover, they should contribute to the realization of the right to development of others.[34] Active, free and meaningful participation of individual and groups in climate change-related policies, plans and projects developed by States and corporations will be critical.[35]

39. The right to development is a holistic right encompassing four facets of development: economic, social, cultural, and political. In fact, the aim of "the constant improvement of the well-being of the entire population and of all individuals" can only be realized by pursuing a holistic understanding of the right to development.[36] I have deduced the following five principles of the right to development from the 1986 Declaration and subsequent international instruments: intersectionality, fair distribution, intergenerational equity, self-determination, and international cooperation.[37]

40. Like other human rights, the enjoyment of the right to development is impacted by climate change. Climate change-related extreme weather events, natural disasters, rising sea levels, floods, heat waves, droughts, desertification and the spread of vector-borne diseases will affect all four facets of the right to development: economic, social, cultural and political.[38] My 2024 report to the UN General Assembly provided the following non-exhaustive typology of impacts on the right to development: (a) cutting pathways to economic, social, cultural and political development such as loss of schools, houses, livelihoods or cultures; (b) diversion of resources affecting access to basic needs such as food, education and health facilities; (c) inability to adapt and build resilience due to limited financial or technological capabilities; (d) climate finance for mitigation and adaptation due to worsening debt burdens, which in turn trigger austerity measures or diversion of resources meant for realizing human rights; and (e) climate-induced forced displacement exacerbating various vulnerabilities.[39]

41. At the same time, the right to development is often perceived as a barrier to effective climate action. In my view, the Court should reject such a misconception, because the right to development is not a licence to destroy the planetary ecosystem or undermine the ability of future generations to fulfil their development aspirations.[40] In fact, sustainability is in-built in the right to development and there is no inherent normative contradiction between the right to development and the right to a clean, healthy and sustainable environment. Article 24 of the African Charter makes it clear that all "peoples shall have the right to a

[32] UN Special Rapporteur on the right to development, 'Decoding the Right to Development', https://www.ohchr.org/en/documents/tools-and-resources/decoding-right-development.
[33] Declaration on the Right to Development, General Assembly resolution 41/128 (4 December 1986) art 1(1).
[34] Deva, 'Just Transitions Through the Vistas of the Right to Development', 6.
[35] See A/HRC/63/32.
[36] Deva, 'Just Transitions Through the Vistas of the Right to Development', 6.
[37] UN Special Rapporteur on the right to development, 'Decoding the Right to Development'.
[38] A/76/154, para 7.
[39] A/79/168, para 41.
[40] A/HRC/54/27, para 13.

general satisfactory environment favourable to their development". In other words, Articles 22 and 24 of the Charter should be read together.

42. At the international level, Principle 3 of the Rio Declaration on Environment and Development makes it clear: "The right to development must be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations." A similar language is found into paragraph 11 of the Vienna Declaration and Programme of Action. The 2030 Agenda for Sustainable Development reaffirms that development must be sustainable. It puts "planet" alongside "people" and "prosperity": "We are determined to protect the planet from degradation, including through sustainable consumption and production, sustainably managing its natural resources and taking urgent action on climate change, so that it can support the needs of the present and future generations."[41]

43. It is true that the right to development of many people in Africa (or in the Global South generally) have not yet been realised. However, the trajectory of their economic development cannot follow the destructive path adopted by many Global North countries. Instead of pursuing infinite cumulative economic growth in terms of GDP, developing countries should ask a more fundamental question: what kind of development and for whom? They should only pursue development that is inclusive, sustainable and participatory. For this reason, I have articulated a model of "planet-centred participatory development". The sole or predominant focus of development on human beings is problematic because human beings are not the only living organisms on the Earth.[42] Moreover, present generation decision makers should consider the rights of future generations when taking decisions.

44. A shift from "people-centred" to "planet-centred" development is consistent with recent normative developments. For example, the Inter-American Court of Human Rights, in its advisory opinion on the climate emergency and human rights, affirmed that nature is a subject of rights.[43] The Court reasoned that "recognition of Nature's right to conserve its essential ecological processes contributes to strengthening a truly sustainable development model that respects planetary limits and ensures the availability of crucial resources for present and future generations".[44]

45. In a similar vein, the Kunming-Montreal Global Biodiversity Framework acknowledges that both "nature and nature's contributions to people are vital for human existence and good quality of life, including human well-being, living in harmony with nature, and living well in balance and harmony with Mother Earth".[45] The vision of this Framework is "a world of living in harmony with nature where 'by 2050, biodiversity is valued, conserved, restored and wisely used, maintaining ecosystem services, sustaining a healthy planet and delivering benefits essential for all people'".[46]

46. I am of the view that a shift towards the planet-centred participatory development will require several transitions: in addition to energy transition, we would need transitions in

[41] A/Res/70/1 (21 October 2015).
[42] A/80/206, para 35.
[43] Advisory Opinion OC-32/25 of 29 May 2025.
[44] Ibid, para 279.
[45] CBD/COP/DEC/15/4, annex, para. 7(b).
[46] Ibid, para 10.

food systems, the world of work, business models, and the international financial architecture.[47] The right to development provides a transformative pathway to achieve inclusive and sustainable development that leaves no one behind—neither human beings nor nature. In fact, transitions related to energy, food, and work will not be just unless core aspects of the right to development are embedded into just transition policies, practices, and projects of States, public development banks, and businesses.[48]

47. Achieving climate change-related just transitions will require several enabling conditions. International cooperation, a key principle of the right to development, in the form of financial assistance, green technology transfer, capacity building, peer learning, and technical assistance will be one of them. This aspect is elaborated further in Part VI below.

VI. THE DUTY TO CO-COOPERATE

48. The duty of States to co-operate constitutes a foundational principle of international law and lies at the core of the international legal order. Article 1 of the United Nations Charter expressly commits States to achieving international co-operation in solving international problems of an economic, social, cultural or humanitarian character. This obligation is further elaborated in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, [49] which reflects the *opinio juris* of States regarding customary international law.[50]

49. In its climate change advisory opinion, the ICJ reaffirmed that the duty to co-operate has crystallised as a rule of customary international law, particularly in the field of environmental protection.[51] The ICJ observed that this duty has long been recognised in environmental instruments, including Principle 24 of the Stockholm Declaration and Principle 7 of the Rio Declaration on Environment and Development, both of which emphasise co-operation as an essential element in protecting the environment.[52] The ICJ therefore concluded that the duty of States to co-operate for the protection of the environment possesses a customary character and forms part of the applicable law governing international environmental protection.[53]

50. The ICJ emphasised that the duty to co-operate assumes even greater importance in relation to climate change because the climate system constitutes a global shared resource affecting all States.[54] The ICJ noted that uncoordinated unilateral actions by States are unlikely to produce meaningful results in addressing environmental challenges of a transboundary or global nature. [55] The duty to co-operate requires States to work collectively towards concrete emission-reduction objectives and to contribute to achieving global temperature

[47] Deva, 'Just Transitions Through the Vistas of the Right to Development'.
[48] Ibid, 2.
[49] General Assembly resolution 2625 (XXV)
[50] ICJ, *Nicaragua v United States*, Judgment, 1986, para 191
[51] *ICJ Advisory Opinion*, paras 140–142
[52] Ibid.
[53] Ibid.
[54] Ibid, paras 301–302
[55] Ibid, para 141

goals, consistent with the principle of common but differentiated responsibilities and respective capabilities.[56]

51. The Committee on Economic, Social and Cultural Rights in its November 2025 general comment emphasised that responding "to transboundary environmental challenges, such as climate change, pollution and biodiversity loss, which threaten the enjoyment of Covenant rights, requires an effective global response" and that in "implementing their obligation of assistance and cooperation, States Parties should consider historical contributions to environmental degradation, different capabilities, and the specific needs of developing countries." [57] Moreover, considering "the central role of science and technology in advancing sustainable development and responding to environmental crises, States Parties must facilitate the transfer of, and access to, relevant technology and scientific research necessary to realize Covenant rights."[58]

Duty to cooperate under international climate law

52. International climate treaties establish cooperation as a central legal obligation of States in addressing climate change. The global climate regime – including the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, and the Paris Agreement – require States to collaborate in mitigation, adaptation and the broader protection of the climate system.

53. The UNFCCC notes that "the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate response."[59] Article 4 of the Convention requires Parties to cooperate in the development, application and diffusion of technologies that reduce greenhouse-gas emissions, the formulation and implementation of adaptation programmes, the promotion of scientific research and systematic observation of the climate system, and the exchange of information, education and training related to climate change.[60] Through these provisions, the Convention establishes a framework for coordinated international action, recognising that effective climate governance depends on shared knowledge, technological cooperation and collective implementation efforts.

54. The Paris Agreement further strengthens this cooperative framework by establishing mechanisms through which States may work together to achieve mitigation and adaptation objectives. Article 6 provides for cooperative approaches, including internationally transferred mitigation outcomes, while other provisions emphasise support for developing countries through climate finance, technology transfer and capacity-building.[61] These mechanisms enable States to pursue collaborative climate action while enhancing the effectiveness and equity of the international climate regime.

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[56] Ibid, paras 305

[57] Committee on Economic, Social and Cultural Rights, 'General comment No. 27 (2025) on economic, social and cultural rights and the environmental dimension of sustainable development', paras 33 and 34.

[58] Ibid, para 36.

[59] United Nations Framework Convention on Climate Change, Preamble.

[60] United Nations Framework Convention on Climate Change, arts 4(1)(c), 4(1)(e), 4(1)(g), 4(1)(i)

55. I will therefore urge the Court to reaffirm that international co-operation "is not a matter of choice for States but a pressing need and a legal obligation"[62] in relation to all aspects of climate change, including mitigation, adaptation, loss and damage and remediation. Moreover, the Court should seize the opportunity to articulate variables to determine the content of this duty. For example, States should have an obligation to contribute to the Fund for responding to Loss and Damage, mobilise climate finance and transfer green technologies in proportion to their historical emissions. Similarly, providing debt relief to African States – in line with the Sevilla Commitment – should be part of the duty to cooperate.

The right to development and the duty to cooperate

56. International cooperation is an overarching principle of the right to development.[63] The Declaration on the Right to Development affirms that States have a duty to cooperate with one another in order to eliminate obstacles to development and to create conditions enabling comprehensive development, particularly for developing countries.[64] The Draft International Covenant on the Right to Development recognizes the central role that cooperation among States should play to ensure the "full, equal and meaningful enjoyment of the right to development by every individual and all peoples everywhere."[65] Article 13(4)(h) of the Draft Covenant is directly relevant here:

> 4. State Parties recognize their duty to cooperate to create a social and international order conducive to the realization of the right to development by, inter alia: [. . .]
>
> (h) Enhancing mitigation actions and adaptive capacity, strengthening resilience and response and reducing vulnerability to climate change and extreme weather events, addressing the economic, social and environmental impacts of climate change, taking into account the imperatives of a just transition, equity and the principles of common but differentiated responsibilities and respective capabilities in the light of national circumstances, and enhancing access to international climate finance, technology transfer and capacity-building to support mitigation and adaptation efforts in developing and least developed countries, especially those that are particularly vulnerable to the adverse effects of climate change.

57. Considering that both climate change and unjust transitions are having a significant impact on realising the right to development, international cooperation in the form of financial assistance, debt relief, technology transfer, capacity-building and technical cooperation is a must. These forms of cooperation are necessary to support developing countries in mitigation, adaptation and the remediation of climate-related harms.[66]

58. In my 2023 vision report to the Human Rights Council, I emphasized the central importance of States' duty to cooperate to realize the right to development, especially when addressing the many challenges facing humanity, including climate change.[67] The Court should

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[63] See https://www.ohchr.org/en/documents/tools-and-resources/decoding-right-development
[64] Declaration on the Right to Development, arts 3–4.
[65] Report by the Chair-Rapporteur of the Working Group on the Right to Development, Zamir Akram, *Draft international covenant on the right to development*, A/HRC/54/50 (18 July 2023) Art 1.
[66] Deva, 'Just Transitions Through the Vistas of the Right to Development', 10.
[67] A/HRC/54/27, para 21.

explicitly recognise that strengthening "the duty to cooperate and international solidarity will be necessary to mobilize and make available necessary resources to developing countries and in turn realize fully the right to development in all world regions."[68]

59. As noted above, the right to development situates climate duties within a climate justice framework. This requires recognition of historical contributions to greenhouse gas emissions and differentiated capacities among States. In practice, this entails that wealthier or historically high-emitting countries should assume greater responsibilities in supporting climate transitions in developing countries.[69] International cooperation is also indispensable for achieving *restorative justice* in the climate change context. Given the disproportionate carbon footprints of industrialized countries, the Court should recognise that effective climate responses cannot be achieved through domestic action alone – rather, this requires collaborative international mechanisms to address mitigation, adaptation and loss and damage.[70]

African Charter on Human and Peoples' Rights

60. The African Charter on Human and Peoples' Rights, which provides the central normative framework for human rights protection in Africa, also contains several provisions directly relevant to the duty to cooperate, including in the context of climate change. Most notably, Article 22 recognises the right of peoples to development and provides that States have a duty, "individually or collectively," to ensure the exercise of this right.[71] The explicit reference to collective action – when read with Article 24 recognising the right of all peoples to "a general satisfactory environment favourable to their development" – reflects an obligation of international cooperation in achieving development objectives, including mitigation and adaptation measures necessary to address climate change.

61. African human rights jurisprudence has reinforced this interpretation. In *Social and Economic Rights Action Centre (SERAC) v Nigeria*, the African Commission held that Article 24 imposes obligations on States to prevent pollution and ecological degradation and to promote ecologically sustainable development.[72] This reasoning supports the conclusion that States must adopt measures, including cooperative measures, to prevent environmental harm that threatens the enjoyment of human rights.

62. Moreover, since Articles 60 and 61 of the African Charter explicitly empower the Court to draw inspiration from international law and other human rights instruments in interpreting the Charter, the Court should draw on international human rights instruments (including those related to the right to development) as well as international instruments environmental law and climate law.

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[68] Ibid, para 58. See also para 81: "States, especially in the global South, face significant capacity deficits – some of which are linked to past colonization and the continuing neocolonial order – in realizing the right to development. While some of these deficits relate to access to finance and technologies, others relate to good governance issues such as transparency, corruption, the rule of law, judicial independence, free media and accountability. International cooperation and solidarity will be critical to fill these capacity gaps."
[69] Deva, 'Just Transitions Through the Vistas of the Right to Development', 8–9.
[70] Ibid, 10.
[71] African Charter on Human and Peoples' Rights, art 22.
[72] *Social and Economic Rights Action Centre (SERAC) v Nigeria* (2001) AHRLR 60 (ACHPR 2001).

VII. THE DUTY TO REGULATE CORPORATIONS

63. Considering that corporations – including fossil fuel corporations – are a key contributor to greenhouse gas emissions, African States' obligations in addressing climate change must address the role of corporations. In Africa, the corporate extraction of fossil fuels, large-scale deforestation, and industrial development generate a significant share of the continent's greenhouse gas emissions and accelerate climate harms. Corporations therefore fall within the type of actors whose conduct has foreseeably and materially contributed to those harms.[73] Extractive industries have not delivered sustainable development for Africa as most profits accrue to foreign corporations and their home countries, while Africa absorbs the environmental damage and climate vulnerability. As I have highlighted in a 2023 report, the right to development cannot be realised where corporate activities, particularly in the extractive and fossil fuel sectors, systematically degrade the environmental conditions necessary for sustainable development.[74]

64. At the same time, corporations can also become part of a climate justice solution. For instance, corporations can reduce carbon emissions by using greener technologies, stop promoting unnecessary consumption, build renewable energy infrastructure and plant trees. An effective regulatory framework governing corporate conduct should (i) constrain corporate activities that contribute to the climate crisis; (ii) put in place an effective monitoring system; (iii) offer incentives to corporations taking effective measures to contribute to climate change mitigation and adaption; and (iv) provide for remediation for climate change-related human rights harms caused or contributed to by corporations. For effectiveness, the Court should include three dimensions of regulation: preventive, redressive and deterrent.[75]

65. Under international human rights law, States have a well-established obligation to protect against human rights abuses by third parties (including corporations) within their territory and/or jurisdiction. Several treaty bodies have confirmed that the obligation has both individual and collective dimensions and that the obligation does not stop at their respective borders. For example, the Committee on Economic, Social and Cultural Rights States has observed that States have an individual as well as a collective obligation to regulate more effectively the conduct of businesses, including by creating binding human rights obligations for them.[76] The Committee has reiterated that this obligation also requires States Parties to exercise due diligence in protecting rights under the ICESCR from environmental harm, applying a standard of diligence proportionate to the degree of the risk.[77]

66. The UN Committee on the Rights of the Child has similarly identified the duty of States to regulate corporations, including fossil fuel companies, to protect children from climate-related harms.[78] The Committee has interpreted States' obligations to include conducting

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[73] *Request for Advisory Opinion on the Obligations of States with Respect to the Climate Change Crisis*, PALU, African Court on Human and Peoples' Rights (2025) paras 139–145.
[74] A/78/160, paras 18–25.
[75] See Surya Deva, *Regulating Corporate Human Rights Violations: Humanizing Business* (2012).
[76] Committee on Economic, Social and Cultural Rights, 'General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities'.
[77] Committee on Economic, Social and Cultural Rights, 'General comment No. 27 (2025) on economic, social and cultural rights and the environmental dimension of sustainable development', para 11.
[78] Committee on the Rights of the Child, 'General Comment No. 26 on Children's Rights and the Environment with a Special Focus on Climate Change', paras 95–115.

environmental due diligence and ensuring that corporations are subject to liability for climate-related harms.

67. The UN Guiding Principles on Business and Human Rights (UNGPs) clarify that as part of their duty to protect human rights, States should take appropriate steps to prevent, investigate, punish, and redress such abuse through effective policies, legislation, regulations, and adjudication.[79] The obligations of States under the Guiding Principles to protect against business-related human rights impacts includes the duty to protect against foreseeable impacts related to climate change.[80] Several States have enacted mandatory human rights due diligence laws as part of their duty to protect against business-related human rights impacts, including to the environment.[81]

68. The ICJ in its climate change advisory opinion concluded that: "Failure of a State to take appropriate action to protect the climate system from GHG emissions — including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies — may constitute an internationally wrongful act which is attributable to that State."[82] The ICJ also observed that "a heightened degree of vigilance and prevention is required" in relation to climate change,.[83]

69. The African Commission on Human and Peoples' Rights' 2023 Resolution on Business and Human Rights in Africa recalls the UNGPs and stresses that respect for human rights norms and principles by business enterprises in the countries of operation is a prerequisite for sustainable development.[84]

70. Moreover, this Court affirmed in *LIDHO v Republic of Côte d'Ivoire* that States bear a positive duty to take the necessary measures to ensure the effective dissemination and enjoyment of the rights provided in the African Charter, including the obligation to protect persons from violation by third parties.[85] In the climate context, this means States have a duty to protect people from violations caused by polluting corporations. This Court also held in *African Commission on Human and Peoples' Rights v Republic of Kenya* that States must regulate and control private actors whose activities threaten land, forests and natural resources, because environmental destruction undermines the right to development.[86]

71. In a similar vein, the African Commission on Human and Peoples' Rights has articulated the duty of States to regulate corporations. In *SERAC v Nigeria*, the Commission observed that the failure to prevent pollution and ecological degradation caused by oil companies

[79] Human Rights Council, 'Guiding Principles on Business and Human Rights', Principles 1–3 and Commentary.
[80] Working Group on the issue of human rights and transnational corporations and other business enterprises, 'Information Note on Climate Change and the Guiding Principles on Business and Human Rights'.
[81] Surya Deva, *Options for action: Building an effective response to modern slavery in Australia* (December 2025); Surya Deva, 'Mandatory human rights due diligence laws in Europe: A mirage for rightsholders?' (2023) 36 *Leiden Journal of International Law* 389.
[82] *ICJ Advisory Opinion*, Para 427.
[83] Ibid, para 138.
[84] ACHPR/Res.550 (LXXIV) 2023.
[85] *La LIDHO, Le MIDH, La FIDH and Others v Republic of Côte d'Ivoire*, Application No. 041/2016, African Court on Human and Peoples' Rights, Judgment of 5 September 2023, paras 131 and 182.
[86] *African Commission on Human and Peoples' Rights (ACHPR) v Republic of Kenya*, application No. 006/2012, Judgment of 26 May 2017, paras 195-211

constitutes a violation of Articles 21 and 24 of the African Charter.[87] The Commission further held that the right to a satisfactory environment imposes a positive obligation to regulate and monitor the activities of third parties, including corporations, that may damage the environment and that the right of peoples under Article 21 to freely dispose of their wealth and natural resources requires States to protect people from foreign economic exploitation by multinational corporations.[88]

72. In view of the existing international and regional jurisprudence, I will strongly encourage the Court to conclude that the obligations of African States in relation to climate change include a positive duty to regulate effectively the conduct of corporations. This duty:

(a) has both individual and collective dimensions;
(b) entails enacting laws and regulations requiring corporations to reduce emissions, conduct environmental due diligence in meaningful consultation with relevant stakeholders, disclose climate-related risks and remediate climate change-related human rights harms;
(c) has an extraterritorial dimension in that States should regulate activities of corporations domiciled or incorporated within their jurisdictions or over which they exercise control;[89] and
(d) includes exercising administrative control over corporate activities and establishing effective judicial and non-judicial mechanisms to provide access to remedy for climate change-related harms caused or contributed by corporations.

VIII. CONCLUSION

73. As the UN Special Rapporteur on the right to development, I am grateful to the Court for the opportunity to intervene in this important Advisory Opinion.

74. The Court has a monumental opportunity to clarify the obligations of African States in relation to climate change and in turn complement the advisory opinions of the ICJ and the Inter-American Court of Human Rights. As highlighted in this amicus brief, the Court will add value to the existing and emerging jurisprudence in the area by:

(a) applying a climate justice lens to articulate the obligations of African States, because climate change is essentially about addressing historic and ongoing structural or systemic inequalities;

(b) embedding an intersectional approach to articulate the obligations of States and corporations to respond effectively to differentiated or disproportionate impacts of climate change on individuals and groups in disadvantaged, vulnerable or marginalised situations;

(c) considering the African context – including the colonial past of exploitation of people and the planet as well as the need to leave no on behind by achieving inclusive and

[87] *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria*, Communication No. 155/96, African Commission on Human and Peoples' Rights (2001), para 57.
[88] Ibid, para. 52.
[89] 'Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights' (2011).

sustainable development in years to come – while framing the obligations of States and corporations;

(d) underscoring the importance of fair and just transitions towards a green economy and the role of the right to development in this regard, e.g., active, free and meaningful participation, CBDR and international co-operation;

(e) highlighting that sustainability is in-built in the right to development and that it is possible to strike a balance between the right to development and the right to a clean, healthy and sustainable environment;

(f) filling the gaps in the ICJ advisory opinion, e.g., recognising the polluter pays principle, giving specific attention to the interests and rights of future generations, underscoring the importance of fair and just transitions, and stressing the reparation obligation of historical polluters in relation to loss and damage;

(g) elaborating the content of the State duty to cooperate in relation to climate change, e.g., climate finance, debt relief, technology transfer, capacity building, technical assistance and peer learning; and

(h) stressing the importance of remediation for climate change-related harms (including loss and damage) and the accountability of historical polluters, both States and corporations, including for reparations.

Signed and dated on this 3 July 2026

Respectfully



Mr Surya Deva
Special Rapporteur on the right to development