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Implementation of the mandate and programme of work

**Draft commentary on article 1 (1) of the Declaration on the
Right to Development (25 September 2022)**

Conference room paper

Article 1 (1)

The right to development is 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.

I. General introduction to the commentary

1. In 1986, the General Assembly adopted the Declaration on the Right to Development, by its resolution 41/128. The Declaration is not in itself legally binding. Nevertheless, many of its provisions are anchored in legally binding instruments, such as the Charter of the United Nations and the International Covenants on Human Rights. Some of its principles such as those relating to friendly relations and cooperation among States, self-determination and non-discrimination are part of customary international law, and thus binding on all States.

2. The Declaration was adopted by an overwhelming majority of States. 146 member States voted in favor, one against and eight abstained.¹ The Declaration has impacted considerably on the behavior of States, on the United Nations system, on intergovernmental organizations and non-State actors. Since 1986, the Declaration has provided the normative underpinnings for a human and people centered approach to development.

3. The Declaration does not contain an implementation mechanism, nor does the text as such create a cause of legal action. These limitations have led to the adoption by the General Assembly and the UN Human Rights Council of resolutions requesting member States to conclude a legally binding instrument on the right to development that would ensure that the right to development is on a par with all other human rights.

4. On 18 May 2021, the Expert Mechanism on the Right to Development adopted a Statement supporting the elaboration of a legally binding instrument with a view to strengthening the effective operationalization and full implementation of the right to development. In the Statement, the Expert Mechanism takes position on the essential elements such an instrument should contain.

5. Pending the adoption and ratification of a legally binding instrument on the right to development, the Commentaries on the Declaration offer an opportunity to interpret the Declaration in the light of normative developments that have occurred since its adoption. The Expert Mechanism adopts these commentaries with a view to contributing to the

¹ In favor: Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burma, Burundi, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cote d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic Kampuchea, Democratic Yemen, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, Fiji, France, Gabon, Gambia, German Democratic Republic, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iran, Ireland, Italy, Jamaica, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Rwanda, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Tanzania, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe.

Against: United States of America

Abstaining: Denmark, Finland, Germany, Federal Republic of, Iceland, Israel, Japan, Sweden, United Kingdom of Great Britain and Northern Ireland

reinvigorating and mainstreaming of the right to development, and to encouraging civil society and grassroots organizations to use the right to development in their work.

6. EMRDT Commentary No. 1 addresses Article 1(1) of the Declaration.

II. Commentary No. 1 on article 1(1) of the declaration on the right to development

7. In the Declaration development is a self-standing human right held by every human person and all peoples.

A. Development as a human right

8. As a human right, development is self-determined: the rights holders determine the meaning of development. The meaning of development will therefore differ from context to context and may evolve over time.

9. The contemporary global understanding of development identifies three dimensions of development: the economic, social and environmental. The need to reconcile these dimensions is expressed in the concept of sustainable development. As the Inter-American Court on Human Rights has recalled “the protection of the environment should be understood as an “integral part” of the development process” and “the scope of the human rights of everyone depends on achieving the three [said] dimensions of sustainable development” [Cf. The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17, paras 52-53]. The Declaration on the Right to Development should be interpreted in the light of this global understanding.

10. Rules, policies and practices pertaining to development at national and international levels shall seek to optimally reconcile the creation of economic well-being, ecological sustainability and social justice as understood locally by the rights holders.

11. In no case shall development rules, policies and practices at national and international levels entail violations of civil, cultural, economic, environmental, political and social human rights.

B. The individual right to development

12. As an individual right, the right to development entitles all persons on an equal basis to participate in, contribute to and enjoy development. All persons are entitled to participate in the elaboration of development measures at national and international levels that are centered on human beings and to hold relevant development actors accountable in this respect. Individuals shall not be denied the opportunity to contribute to development through their own capabilities. They are entitled to share in the benefits that development brings without discrimination.

13. Women are entitled to fully enjoy their right to development. Discrimination against women in their enjoyment of the right to development as participants and beneficiaries shall be eliminated, including through tackling gender-based stereotypes. Women shall have access to a broad range of educational and training programs that allow them to fully realize their capabilities to participate in, contribute to and enjoy development. Women are entitled to participate in the elaboration and implementation of development measures at all levels. They are entitled to access the resources that enable them to live better.

C. The collective right to development

14. As a collective right, the right to development is a right of the society as well as of indigenous peoples and local communities.

15. Peoples enjoy the right to pursue their own development path, including the right to ensure that natural resources are used sustainably by all relevant actors in the interest of the well-being of the people.

16. Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. They have the right to be consulted and cooperated with in good faith through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing development measures that may affect them.

17. Similarly situated local communities that are not accommodated by dominant development paradigms also hold the right to development. They may be referred to in different countries by different terms, including as vulnerable and marginalized groups. These communities are entitled to active, free and meaningful participation in development measures that may affect them and in the fair distribution of the benefits resulting therefrom. The conditions of the participation process must be such that they make an objective difference to people's lives. As the African Commission on Human and Peoples' Rights has held when discussing participation: "The result of development should be empowerment of the (...) community. (...) The capabilities and choices of the [community] must improve in order for the right to development to be realized" (African Commission on Human and Peoples Rights, Endorois, 276/03 Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya, par. 283).

18. Civil society organizations and grassroots movements are entitled to rely on the requirement to ensure active, free and meaningful participation to demand the civic space in domestic and international fora to assist rights holders in enforcing the right to development.

D. Operationalizing Article 1(1) of the Declaration on the Right to Development

19. Rights holders may wish to operationalize art 1(1) of the UN Declaration of the Right to Development in various ways. The language of rights and obligations is by necessity somewhat abstract. This language comes alive through concrete examples showing the practice of claiming and implementing the right to development. The sharing of such practices is of vital importance to clarify the scope of the right to development and to demonstrate its added value.

20. As the case-law of the African Commission and Court on Human and Peoples' rights shows the individual and collective right to development is inherently justiciable when included in an domestic or international legally binding instrument. In litigation the right to development has so far been invoked primarily in purely domestic contexts. The obligation to protect pertaining to the right the development may in addition be invoked to shield the rights holders from adverse impacts by foreign actors.

21. The agency of individuals to claim the right to development may be of particular importance in legal contexts where claims by peoples are held not to be justiciable. Successful individual claims with a community dimension may well result in an outcome that benefits the community as a whole.

22. Nothing prevents the use of Article 1(1) of the UN Declaration on the Right to Development for the purpose of interpreting legally binding instruments that are applicable in the litigation at hand.

23. When a direct appeal to the right to development is refused by a dispute settlement mechanism in a specific legal context, it may be possible, depending on the circumstances of the case, to achieve some elements of the right to development through an interpretation of other collective or individual human rights. The UN Human Rights Committee has thus interpreted the right to use one's culture and the right to privacy in order to provide protection to an indigenous people against the impact of climate change (UN Human Rights Committee, Communication No. 3624/2019 Daniel Billy et al. v. Australia, CCPR/C/135/D/3624/2019, 22 September 2022). The European Court of Human Rights has acknowledged that in interpreting individual human rights, "the principle of proportionality requires that (...)

situations, where a whole community and a long period are concerned, be treated as being entirely different from routine cases of removal of an individual from unlawfully occupied property” (European Court of Human Rights, *Yordanova and others v. Bulgaria* (Application no. 25446/06), 5 June 2012, para. 121).

24. Article 1(1) may well serve as an instrument to raise awareness among rights holders and among other actors that obstacles to the realization of the right to development faced at local and domestic levels are impacted upon by an international environment that is insufficiently conducive to the realization of the right to development. The awareness that similar obstacles exist in many countries is essential to forging the global solidarity that will ensure the implementation of the right to development.

25. Article 1(1) may be used to highlight the interdependence, the indivisibility and interrelatedness of all human rights in the context of development activities. While development measures may well have a specific sectoral focus (such as health, education or food security), using the right to development prism allows contextualization both in terms of the interplay between different human rights, and in terms of the interaction between domestic and international factors affecting implementation.

26. Similarly, the right to development, as a right requiring the realization of all human rights and fundamental freedoms, offers civil society organizations and grassroots movements a space where human rights agendas focusing on a variety of rights can connect and be bridged and enriched.
