

Non-Paper

Compilation of submissions received after the 20th session of the Working Group on the Right to Development
Secretariat of the Intergovernmental Working Group on the Right to Development

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Note by the secretariat

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the Working Group on the Right to Development**

**Secretariat of the Intergovernmental Working Group on the Right to
Development**

Questionnaire regarding a draft legally binding instrument on the right to development

Type of the instrument:

1. Should the instrument be principally

a. a framework convention,

b. a treaty focusing on inter-state relations defining rights and obligations of States,

c. a treaty modelled on existing human rights treaties, defining the rights of individuals and peoples and corresponding obligations of States and non-state actors;

d. an instrument combining existing models of human rights treaties with inter-State rights and obligations; or

e. another instrument or agreed outcome?

States and Groups of States

Honduras

A treaty modelled on existing human rights treaties, defining the rights of individuals and peoples and corresponding obligations of States and non-state actors.

Qatar

We believe that the legally binding document should be a treaty modelled on existing human rights treaties that define the rights of individuals, peoples the duties of states, and non-state actors towards them to achieve the full realization of the right to development.

Global, Regional and National Human Rights Mechanisms and Institutions

Arab Human Rights Committee

The right to development is a cornerstone for the realization of human rights and freedoms. The existence of a legal instrument regulating this right is important because it defines the content of the right to development and turns it into a concrete legal obligation. Individuals, States and the international community have a responsibility to ensure the respect and protection of the right to development. This requires the specification of the content of the legal obligations pursuant to this right, as well as the establishment of bodies entrusted with the task of monitoring the compliance of States and the international community with the obligations underpinning this right. The potential added value of a Framework Convention on the Right to Development is to complement the current human rights regime with a treaty that goes beyond individual State responsibility and takes inspiration from principles derived from international

development efforts, such as mutual accountability, alignment of policies among partner countries, and inclusive partnerships.

Argentine Ombudsman Office

Framework Convention (1.a.): this one is viewed as a valid option intended to simplify the treatment and speedy approval of the instrument.

Independent Expert on International Solidarity

I propose the instrument be principally a treaty modelled not only on the basis of existing human rights treaties, but also reflecting some of their concretized principles, defining rights and corresponding obligations of States and non-state actors in relation to development practices.

NHRI India

c. a treaty modelled on existing human rights treaties, defining the rights of individuals and people and corresponding obligations of the State and non-State actors.

Here, it is further proposed that in the obligation of states, an aspect of inter-state cooperation be expressly states as the UN Declaration on the Right to Development also embodies State's duties to cooperate with each other in ensuring development and eliminating obstacles to development.

NHRI Mexico

The instrument should be mainly:

It is considered that the instrument should define the rights of individuals and peoples, as well as the obligations corresponding to States and non-State actors, i.e., take up what is set forth in other human rights instruments.

In this sense, it is considered fundamental that the instrument of merit considers as a central axis that individuals and peoples have rights, as well as the obligation of the State that these rights are respected, observed, protected, promoted and guaranteed, that is, that they are fully exercised by the individuals or peoples.

In addition to this, the binding instrument must ensure that States create the necessary internal mechanisms so that said full exercise can be demanded within each of the States Parties, in addition to making available to individuals, peoples and the States Parties themselves, mechanisms for international enforceability and review that provide spaces that influence the enforceability of said rights.

Non-Governmental Organizations

African Heritage Foundation Nigeria

A FRAMEWORK CONVENTION ON THE RIGHT TO DEVELOPMENT seems to be the best option for accommodating the concerns of the different political groups, as it allows for a step-by-step approach.

It is a treaty under international law open to states, and binding upon ratification on parties to it.

Al-Haq

Al-Haq recommends that the proposed draft legally binding mechanism should be a multilateral treaty that focuses on inter-state relations and defines the rights and obligations of States, as well as clear consequences for States who fail to uphold their rights and obligations.

Nonetheless, it should also complement already-existing and developing human rights treaties, providing for the protection of individual and collective human rights, corresponding to the obligations of State and non-state actors under international law. This framework would increase the likelihood of the right to development being enforced by and on individual states that are parties to the mechanism. Similar, to the UN Human Rights Treaty System, a legally binding instrument on the right to development should include an individual complaints mechanism. Further, Al-Haq recommends that any draft legally binding mechanism include responsibility and liability of corporations for impeding the right to development.

Asia Pacific Form on Women, Law and Development

We suggest that the instrument combine existing models of human rights treaties, to clearly state that the right to development is a fundamental human right, both individual and collective, to recognise and break historical power inequalities between countries. The inter-state obligations can enable effective state to state dispute settlement or complaints mechanism, and underline global solidarity and cooperation based on accountability.

Association of Citizen's Tolerance and Cooperation

The instrument should principally be a treaty modelled on existing human rights treaties, defining the rights of individuals and peoples and corresponding obligations of States and non-state actors.

CINGO (Working Group on the Right to Development of the Forum of Catholic-Inspired NGOs in Geneva)*

Most probably, a Framework Convention on the Right to Development that will reaffirm the Declaration and provide an opportunity to clarify the contemporary understanding of some of its provisions, followed then by one or more optional protocols or a set of guidelines for implementation, maybe the most adequate option to accommodate the concerns of different political groups and gather a larger consensus, as it allows for a step-by-step approach and will set just general obligations.

Nevertheless, bearing in mind the poorest of the world for whom the implementation of the right to development is very relevant, crucial and urgent, we found that, among all the options submitted in the point 1, the one fitting more but not completely is the option C, taking into consideration that a convention of the Right to Development cannot be completely tailored on the existing models. However, it is possible to start from these models, to create something more specific. The right to Development is an individual and collective right, and the convention should respect this duality. Moreover, the obligations are not only pertaining to States but also other stakeholders. Having a convention with more specific obligations will make those States ratifying it, obliged to implement the contents of the convention and subjected to report regularly to the established monitoring mechanisms including the Universal Periodic Review.

Egyptian Council for Foreign Affairs

The instrument should be principally a treaty modelled on existing human rights treaties defining the rights of individuals and peoples and corresponding obligations of States and non-state actors, based on existing models of human rights treaties, with inter-state rights and obligations.

International Accountability Project

IAP urges the Working Group to anchor the draft legally binding instrument in a vision of development that respects the legitimacy, dignity and self-agency of communities as the primary leaders, stakeholders and beneficiaries of development, instead of further facilitating the current exclusionary and top-down model. By anchoring the instrument in such a vision, the Working Group would contribute to desperately needed paradigmatic change, and ensure that realizing the right to development respects, protects and fulfills human rights for all.

International Women's Rights Action Watch Pacific

A framework convention combining existing models of human rights treaties with inter-State rights and obligations.

Organization for Defending Victims of Violence

ODVV believes that the instrument needs to be in the form of a framework convention that creates legal obligations for ALL States to join in and come to an agreement to effectively deal with a global issue such as development.

Content of the instrument:

* Associazione Comunità Papa Giovanni XXIII, Association Points-Cœur, Caritas Internationalis – International Confederation of Catholic Charities, Company of the Daughters of Charity of St. Vincent de Paul, Dominicans for Justice and Peace – Order of Preachers, Istituto Internazionale Maria Ausiliatrice delle Salesiane di Don Bosco, International Organization for the Right to Education and Freedom of Education, International Movement of Apostolate in the Independent Social Milieus, New Humanity, Teresian Association and International Volunteerism Organization for Women, Education and Development (VIDES).

2. *Which previous instruments and provisions should be referenced in the preamble?*
3. *Which considerations should be incorporated in the preamble?*
4. *How should the object and purpose of the instrument be formulated?*
5. *Which elements should be included in the instrument and how should it be structured?*
6. *Which duty bearers, in particular non-state actors, should be included?*
7. *Which obligations should the instrument concretize?*
8. *How should the relationship with other rights and obligations under international law be determined?*

States and Groups of States

Honduras

(2) Charter of the United Nations

- Declaration of Human Rights
- Declaration on the Right of Development
- Convention of the Rights of the Child
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention on the Rights of Persons with Disabilities
- International Convention on the Elimination of All Forms of Racial Discrimination
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Sustainable Development Goals 2030

(3) Considerations

(a) Recalling the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world, (b) Recognizing that United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, (c) Considering the obligation of States under the Convention on the Rights of Persons with Disabilities, to valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty, (d) Recognizing the Declaration on the Right to Development, that all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development, (e) Reaffirming the obligation of States under the International Covenant on Economic, Social and Cultural Rights on the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace, (f) Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields, (Considering of the CEDAW), (g) Considering the obligation of states under the Declaration on the Right to Development that international peace and security are essential elements for the realization of the right to development, (h) Reaffirming that there is a close relationship between disarmament and development, that progress in the field of disarmament would significantly promote progress in the field of development and that the resources released through disarmament measures should be allocated to economic and social development and well-being of all peoples, and, in particular, of developing countries, (i) Recognizing the sustainable development goal 8.3 that says “States should promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalization and growth of micro-, small- and medium-sized enterprises, including through access to financial services”, (ODS 8.3) (j) Reaffirming the sustainable development goal 16.A that says: “Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime”, (ODS 16.2)

(k) Confirming that the right to development is an inalienable human right and that equal opportunities for development is a prerogative of both nations and individuals that make up nations, (l) Recognizing the obligation of States under the Convention on the Rights of the Child shall ensure to the maximum extent possible the survival and development of the child.

(4)

1. Reaffirming the right to development is an inalienable human right by virtue of which all human beings and all peoples are entitled to participate in an economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized, by formulating standardized rights and obligations focusing on the main obstacles for states institutions and non-governmental organizations, to eliminate all impediments that vulnerate the right to development.

2. The purpose of this treaty is to be able to reinforce the states institutional operability and strengthen the participation of non-state organizations in the decision-making process, obtaining the right of every human being and increasing people empowered to participate in an economic, social, cultural and political development.

(5)

1. Introduction

2. Preamble

3. Purpose

4. Definitions

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5. General Principles

6. General Obligations

7. Statistics and Data Collection

8. International Cooperation

9. National application and Monitoring

10. Committee on the Right to Development

11. Reports by States Parties

12. Considerations of Reports

13. Cooperation between States Parties and the Committee

14. Relationship of the Committee with other Body's

15. Report of the Committee

16. Conference of States Parties

17. Depositary

18. Signature

19. Consent to be Bound

20. Regional Integration Organizations

21. Entry into Force

22. Reservations

23. Amendments

24. Denunciation

25. Accessible Format

26. Authentic Text

(6)

1. Work as a consultative body.

2. Work as a monitoring organ.

3. Work as a citizen participation organ.

(7)

1. The obligations of States Parties to emphasize on strengthen their institutions on the rights of Developments.

2. The obligations of Non-State Actors on knowing their rights to work with the States Institutions in the decision-making process.

3. The obligations of Society on the right to development.

(8)

The relationship with other rights and obligations should be determined and evacuated to complement or clear all legal gaps on the treaty.

Qatar

(2) We suggest that the following instruments should be specifically included: The Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, Nations General Assembly resolution (1803), permanent sovereignty over natural resources, and the 1986 Declaration on the Right to Development. We also propose that the following conferences should be included: the New York Children's Summit (1990), the Earth Summit in Rio de Janeiro (1992), the International Conference on Human Rights in Vienna (1993), International Conference on Population and Development in Cairo (1444), the World Conference on Women in Beijing (1990), the World Summit for Social Development in Copenhagen (1995), the United Nations Conference on Human Settlements in Istanbul (1991), World Food Summit in Rome (1999), the World Conference against racism (1998), the Millennium Declaration in New York (2000), the United Nations Conference on Sustainable Development (2012) the United Nations Conference on Sustainable Development (2015), United Nations Climate Change Conference (2015).

(3) Considerations that should be included in the preamble: We propose that the concept of sustainable development should be listed in the preamble, which includes the multiple dimensions of sustainability: economic, social, human, cultural, environmental, and political development. The right to development is not confined to the right of the individual, but includes groups at the geographical, urban, rural, gender levels, and vulnerable groups in society.

(4) How to formulate the subject of the document: We believe that the document should be discussed and drafted in such a way that ensure its realization and implementation. The subject of the document should set standards on the right to development with measurable results. This is expected to be a contributing factor for the Sustainable Development Goals, and to establish developing supervisory mechanisms for assessing the implementation of the various rights and obligations.

(5) Items that should be included: Article 9 of the Declaration on the Right to Development provides that all aspects of the right to development are coherent as well as interrelated, and each aspect should be viewed. (All articles of the Declaration should be discussed in the items)

(6) We believe that governments, private institutions, civil society institutions, individuals are all duty bearers that should be included in the document with their responsibilities at the following levels:

- At the level of the United Nations and international organizations with OHCHR participation: mainstreaming the right to development in treaty body processes and supporting economic and social rights.
- At state level: adapting legislative and economic measures to combat marginalization and poverty, promoting respect for human rights, and integrating the methodology to measure compliance with the right to development into national development strategies and development policies.
- At the level of civil society: participation in the development process and mainstreaming the right to development into the activities of civil society organizations.
- At the individual: active participation and effective contribution to development and awareness of fundamental rights and duties.

(7) Duties should be enshrined in the document: in particular, the right to non-discrimination, the right to participate in public affairs, the right to an adequate standard of living, and the right to enjoy a social and international in which the rights and freedoms set forth in this Declaration can be fully realized.

(8) How to define the relationship with the other rights and obligations assumed under international law: article 9, item 1 of the Declaration on the Right to Development: nothing in this Declaration shall be interpreted as contrary to the purposes and principles of the United Nations, and any State, group or individual has not the right to engage in any

activity or to perform any act which aimed to violate human rights of the Universal Declaration of Human Rights in the International Covenants on Human Rights.

International Organizations, Programmes and Funds

UNHCR

(2) Which previous instruments and provisions should be referenced in the preamble?:

- 1951 Convention relating to the Status of Refugees
- 1967 Protocol to the Convention relating to the Status of Refugees
- 1954 Convention relating to the Status of Stateless Persons
- 1961 Convention on the Reduction of Statelessness
- The New York Declaration for Refugees and Migrants (A/RES/71/1)
- The Global Compact for Refugees (A.73.12 (Part II))
- The Global Compact for Safe, Orderly and Regular Migration
- The GP 20 Plan of Action in relation to the Guiding Principles on Internal Displacement

(3), (4), (5) The following considerations, drawn from, *inter alia*, the New York Declaration, the Global Compact for Refugees, and other relevant sources, may be relevant both to the preamble, as well as the operative elements of the instrument:

- Large movements of refugees have political, economic, social, developmental, humanitarian and human rights ramifications, which cross all borders. These are global phenomena that call for global approaches and global solutions. No one State can manage such movements on its own. Countries neighbouring countries of origin of refugees, mostly developing countries, are often disproportionately affected. In many cases, their capacities have been severely stretched in many cases, affecting their own social and economic cohesion and development. In addition, protracted refugee crises are now commonplace, with long-term repercussions for those involved and for their host countries and communities. Greater international cooperation is needed to assist host countries and communities which have lesser capacity to receive and protect refugees.
- International solidarity is core to a human-centred and human-rights based approach to development. This includes burden and responsibility sharing among United Nations Member States, together with other relevant stakeholders, for hosting and supporting the world's refugees and responding to displacement crises.
- There is a need to address the drivers and root causes of large movements of refugees, internally displaced, including protracted crises. This includes actions and programmes aimed at reducing vulnerability by combatting poverty, improving self-reliance and resilience, ensuring a strengthened humanitarian-development nexus, and improving coordination with peacebuilding efforts. Also, as recognised in the GCR, 'climate, environmental degradation and natural disasters increasingly interact with the drivers of refugee movements'.
- Joint responses involving a wide range of actors are needed in order to strengthen the nexus between humanitarian and development actors, facilitate cooperation across institutional mandates and, by helping to build self-reliance and resilience, lay a basis for sustainable solutions.
- Humanitarian financing should be adequate, flexible, predictable and consistent, to enable host countries and communities to respond both to immediate humanitarian needs and to longer-term development needs.
- Support is needed for environmental, social and infrastructural rehabilitation in areas affected by large movements of refugees.
- Prevention of displacement, is a thread that ties all UN interventions together, including in delivery on the SDGs. Central to the purpose of the 2030 Agenda is identifying and overcoming obstacles to allow marginalized populations to contribute to, and benefit from, inclusion in sustainable social and economic development processes.
- Local governments in hosting areas often lack capacity to manage and deliver public resources to ensure basic public service delivery. Strong capacity to generate resources, budget, plan, manage, deliver, coordinate and adapt public services in an inclusive and accountable manner are essential for local socio-economic development. This is especially important in refugee and IDP hosting areas where municipalities and towns have often grown in a rapid, unplanned manner. This can create pockets of exclusion where services are not adequately delivered and space for social integration and inclusive economic growth is limited.

- In some situations, ethnic and demographic balances are changed due to the IDP and refugee influx. Such rapid changes in social fabric may demand changes to humanitarian and development systems for accountability, transparency, oversight, participation and legitimacy.
- Stateless persons are often denied access to basic rights and services, both in law and practice, and this can have a compounding effect on their exclusion from nationality. Initiatives to include stateless persons in services available to the rest of the community is vital to ensuring integration and to disrupt cycles of intergenerational marginalisation which can prevail even once stateless persons have acquired nationality unless they have had an opportunity to develop skills and fully participate in the societies in which they live.
- Research has shown that participatory planning and management of public resources and functioning grievance mechanisms are as important to social cohesion and trust as the delivery of the public service itself. However, public service delivery at local levels is often severely underfunded or challenged by weaknesses in local capacity. Financing for inclusive local governance is even scarcer and severely under-prioritised by both Government and donors.
- Justice and security are particularly important public services without which other public services and inclusive economic development cannot be accessed or delivered. Justice and security institutions have a key role to play in ensuring the protection of the rights of IDPs, stateless persons and refugee and ensuring the civilian character of asylum. Displaced women and girls (as well as boys and men) have often experienced sexual abuse and other gender-based violence before flight; and depending on the living situation in their new location, may often be at a high risk thereof. However, often justice and security institutions might not be aware of the specific rights and circumstances of refugees, stateless persons and IDPs or might not have the capacity to deliver justice and security.
- In many situations, dysfunctional rule of law institutions may cause or contribute to insecurity and injustice; they may be directly involved in violations of rights such as non-refoulement, freedom of movement, freedom from arbitrary detention, protection from exploitation and abuse, sexual and gender based and other forms of violence; and evictions. In other cases, justice and security institutions play an indispensable role in providing community security and ensuring equal access to justice for forcibly displaced and stateless populations and local communities.
- Increasingly, the adverse effects of climate change and disasters forcibly displace people from their homes to survive. New displacement patterns, and competition over depleted natural resources can spark conflict between communities or compound pre-existing vulnerabilities. People displaced across borders in the context of climate change and disasters may in some circumstances be in need of international protection. Refugee law therefore has an important role to play in this area.
- The following constraints may oblige populations of concern to remain dependent on humanitarian support for protracted periods and/or to subsist on the socio-economic margins. This can limit development both for these displaced and/or stateless persons, but also for members of host communities and the country at large:
 - Geography: Displacement often occurs to, and in, remote, under-developed and often insecure areas, sometimes alongside very poor communities that themselves received limited attention from national development policies, processes and programmes;
 - Governance: Domestic legal frameworks, policies, institutional and administrative measures often restrict the opportunities for displaced populations and stateless persons to exercise their rights and to participate in and contribute productively to their host communities and societies. Laws and policies may also cause statelessness, a status which usually relegates those affected by it to the margins of society.
 - Status: Refugees are unable or, for valid reasons, unwilling to avail themselves of the protection of their country of origin. As a result, they are entitled to a special status, as set out in international refugee law.
 - Discrimination, the lack of access to rights, and the loss of official identity documents and papers – which often occur as a consequence of displacement or statelessness - may create barriers to access to rights and benefits on par with nationals as well as hinder the prospects to lead dignified lives, pending permanent solutions to their situation. In addition, only a small number of countries have established statelessness determination procedures through which stateless persons may be formally recognized and afforded basic rights.
 - Vulnerability: Poorest households are the most vulnerable to external shocks including conflict, climate, and environmental impacts. Socio-economic status and discrimination are also linked to marginalized circumstances. The trauma and loss of assets and capital which is frequently experienced during displacement

and the lack of adequate legal and social protection make displaced and stateless persons particularly vulnerable.

(6)

- Obligations under the instrument, including respect for human rights obligations, should extend to non-state actors, including private companies, as duty bearers in any development processes or projects.
- It is important to ensure that state entities at all levels should be duty-bearers (not solely central government).
- The United Nations and humanitarian organizations should work within a strengthened and more coherent and interlinked humanitarian, development and peace framework to ensure that humanitarian work is undertaken in a manner that is conducive for longer term development activities.
- In addition to state entities responsible for humanitarian and development assistance, The engagement of multilateral development banks and improvements in access to assistance, including concessional development financing for refugee and/or IDP and host communities should be encouraged. Increased private sector investment in support of displaced and host countries, with due respect for human rights obligations and application of the principle of no one left behind and do no harm.
- Other actors should be encouraged to contribute to the right to development, for a whole of society approach, including, *inter alia*, local authorities and local actors, cities and municipalities, parliamentarians, civil society organizations, faith-based actors, educational institutions and academics, and the private sector, including in the context of public-private partnerships.

(7)

- The principles of universality, equality and non-discrimination, accountability and participation, which should be central to the object, purpose, and effect of any development processes or projects.
- The principle of leaving no one behind, including the inclusion of refugees, asylum- seekers, internally displaced persons and stateless persons in realizing the right to development. This involves identifying and overcoming obstacles to allow marginalized populations to contribute to, and benefit from, inclusion in sustainable social and economic development processes:
 - Some populations may have specific vulnerabilities which are greater than those of others, including in countries affected by fragility, conflict and violence, and climate change and disasters. Those affected by crises need to be situated within the overall framework through efforts to address their vulnerabilities, advance their human well-being and social development and build social and economic stability.
 - This will require stakeholders to address and improve the situation of the poorest and most marginalized, enable them to enjoy their rights, and assist them to exercise agency over their development.
- Actively seek to reduce the number of populations of concern and the communities that host them impacted by marginalization, lack of access to rights and poverty through:
 - (i) promoting an enabling legal framework and realizing their participation in national and local social and economic development;
 - (ii) ensuring the inclusion of refugees and other persons of concern in national services, such as education, health, access to livelihoods and social services including social safety nets; to this end, established parallel humanitarian systems will need to be integrated into national systems benefiting host and refugee communities; and
 - (iii) building effective approaches to resilience and solutions that assist them and the governments that host them to better manage and overcome the consequences and effects of displacement. For stateless populations, the objective of inclusion also requires addressing discrimination and exclusion in law, policy and practice to prevent and reduce the phenomenon of statelessness.
- Data and evidence collection, including data that captures poverty and development levels of vulnerable groups such as refugees, asylum seekers, IDPs and stateless persons, as well as host communities.

- Conduct human rights impact assessments prior to and throughout the implementation of any development processes or projects, and give due consideration to any risks of displacement which could arise as a result of such activities.
- Ensure that all development work is carried out with full participation of involved subjects and communities; ensure the right to prior, full and informed consent.
- Ensure due consideration is given to the protection of the environment and preservation of natural resources in all development processes and projects.

(8)

- States should respect, protect and fulfil their human rights obligations as well as their obligations deriving from other international instruments, including international refugee law, in all development processes and in the implementation of development projects:
 - The principles of universality, equality and non-discrimination, participation and accountability should be central to the effective realization of the right to development.
 - The realization of the right to development should promote respect for the provisions of the International Covenant on Economic, Social and Cultural Rights and of the International Covenant on Civil and Political Rights, as well as the relevant rights contained in the 1951 Convention, 1954 Convention and other international instruments to which the State is a party.
- Consideration should be given to extraterritorial human right obligations, including in relation to including climate change and eco-destruction, tax evasion or corporate impunity, and any resulting displacement which may be caused or exacerbated.

Global, Regional and National Human Rights Mechanisms and Institutions

Arab Human Rights Committee

The right to development is an individual and collective human right. The enjoyment of the right to development necessarily involves a careful balancing between the interests of the collectivity on one hand, and those of the individual on the other.

The right to development is complementary to the right to self-determination and the free choice of peoples of their political, economic, social and cultural systems.

There is a universal right of all States to pursue their own development in an international environment which is conducive to that process.

The right and duty to eliminate colonialism, apartheid, racial and other forms of discrimination, neocolonialism and all forms of foreign oppression and domination is integral to the realization of the right to development.

Every State has the sovereign and inalienable right to choose its economic, political, social and cultural system in accordance with the will of its people. This right includes sovereign and permanent control of every State over its natural resources, wealth and economic activities. Similarly, every State has the sovereign right to rule and exercise effective control over foreign investments.

The principle of equality and non-discrimination, including the fair distribution of the benefits of development, is a constituent element of the right to development.

The right to peace is inseparable from the right to development. All forms of aggression, war, conflict, terrorism and violence undermine the right to development.

The right to development is necessary for the full realization of other rights. Positive measures are necessary as a mechanism for achieving the right of development for vulnerable groups.

Elaboration of the gender / women's rights dimension of the right to development:

- ensure participation of women at all levels and stages of development policies and programs
- promote women's access to and control over productive resources such as land and guarantee their right to property
- promote women's access to credit, training, skills development and extension services
- take into account indicators of human development specifically relating to women in the elaboration of development policies and programs
- ensure that the negative effects of globalization and any adverse effects of the implementation of trade and economic policies and programs are reduced to the minimum for women.

The environmental dimension to development: The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

Argentine Ombudsman Office

It is considered appropriate that the right to development be linked to the 2030 Agenda.

That connection would constitute its efficient cause and also its purpose for achieving the Millennium Development Goals, without the 2030 temporal limitation. Thus, the right to development would be a vehicle for attaining the SDGs, and, given the fact that the 2030 agenda is an agenda of rights, for ensuring due respect for human rights and the inviolability of human dignity, its core essence.

As for the elements to be included, it is recommended that the instrument should have just a few components in order to move quickly to gain its approval. Therefore, elements should be clear, concise, yet flexible -considering the different areas in which they will be applied-, and certainly effective. Likewise, they should serve as a sort of positive lever for the achievement of the SDGs. To this end, best practices of developed economies should also be taken into account to fit the definition of 'development' given by the *Real Academia Española* (Spanish Royal Academy): "Evolution of an economy towards improved standards of living".

States should play a key role as duty-bearers because, after all, future rules and obligations governing people and private business activities will lie with them. Therefore, a simple mechanism is hereby encouraged based on recommendations and observations given by the Group or by the Committee, followed by relevant reports submitted by each State with the effective involvement of NHRIs -in order to ensure full enforcement of human rights as well as the fulfilment of the Agenda-; and having the NGOs intervention too. This process would ensure that the duties of States and companies in fulfilling the Agenda would not be distorted (even though private business activities have been included in Res 70, paragraph 67), and that the plurality of voices and opinions, although limited by some formalities or procedures for avoiding a system based on anarchy, close the way to a single way of thinking. This is true because we proceed from the premise that pluralism, institutional quality and republicanism constitute the cornerstone of development; in that order, not in the opposite direction.

Independent Expert on International Solidarity

(2) Provisions that should be referenced in the preamble:

- a. UN Charter articles 55, 56, 103
- b. UDHR articles 22, 28
- c. Common article 2 of ICCPR and ICESCR

(3) Considerations to be incorporated in the preamble:

- a. To reflect what the HLTf referred to as the core norm of the RTD, that is, as a right to a national and international order favourable to just, equitable, participatory and human centred development.
- b. Self-determined development.
- c. Active and meaningful participation in development as an irreducible minimum.
- d. Clear commitment to distinct and direct accountability in development partnerships.
- e. Differentiation of responsibilities.

- f. Acknowledgment of historical injustices and power asymmetries.
- g. Embrace the ideology that development should deliver socioeconomic justice to the marginalized, discriminated and the historically oppressed.
- h. Acknowledgment that development should now foster the realization of human rights as one of its core objects.
- i. Reiteration that the individual and wellbeing is the subject of development.
- j. Recognition that the global policy system is a significant determinant of development outcomes that constrain States' obligations in the realization of human rights, and therefore needs to reflect a rights ethos.

(4) Formulation of the object and purpose: the object and purpose should clearly capture the redistributive agenda, reflecting principles of justice, equity participation and human wellbeing in development. The object and purpose must reflect the aspiration to constrain all actors, State and non-state, with ideals underpinned by the treaty on the RTD. The object and purpose should entrench the principle of accountability in all its dimensions (responsibility, answerability and enforceability).

(5) Elements to be included in the instrument and how it should be structured:

- a. It should reflect the notion that the realization of rights is structurally contingent on global development practices.
- b. It should reflect the sustainable development agenda as normatively based on, and operationally directed to the realization of human rights with the RTD as the guiding value.
- c. As part of the implementation, enforcement of the RTD should emphasize that accountability of all actors is essential to the realization and materialization of development justice.
 - i. It should espouse clear obligations and duties of non-state actors.
 - ii. It should define and clarify the fact that development and human rights are interrelated and mutually reinforcing. This advances the object of the UN Charter of the promotion of social progress and development.

(6) Duty bearers that should be included:

- a. IFIs
- b. TNCs
- c. All intergovernmental organizations such as UNDP, WHO, UN, UNSC on the basis that these are organs of society bound by, and under a duty to respect human rights objects, norms and principles.

(7) Obligations the instrument should concretize: it should embrace the Maastricht ETO principles but be more specific and particular to non-state actors. Both obligations of conduct and result must target non-state actors as well.

(8) How the relationship with other rights and obligations under international law should be determined: the RTD should be treated as any other right, though its sui generis character of hybridizing conceptions of rights and development into a global redistributive agenda must remain dominant.

NHRI India

(2)

It is proposed that the following Covenants and Conventions may be referred to in the Preamble of the said legally binding instrument on Right to Development.

International Covenant on Civil and Political Rights: as it recognizes inherent dignity, equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world. And further enumerates people's right to self-determination, right to freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation.

International Covenant on Economic, Social and Cultural Rights: as it envisages economic, social and cultural rights of all which are to be progressively realized. Recognizing that these rights are crucial to enable people to live with dignity, this treaty covers important areas of public policy such as, the right to work, fair and just conditions of work, social security and adequate standard of living including adequate food, clothing and housing, health and education.

The Convention on Elimination of All Forms of Discrimination against Women: as it specifies measures for the advancement and empowerment of women in private and public life, particularly in the area of education, employment, health, marriage and the family.

The Convention on the Rights of the Child: as it covers all aspects of a child's life and set out the civil, political, economic, social and cultural rights that all children everywhere are entitled to. It also explains how adults and governments must work together to make sure all children can enjoy all their rights.

The above mentioned Covenants and Conventions have been mentioned because it advances civil, political, economic, social and cultural advances and also right so vulnerable and marginal sections of the society. This is also one of the many premises of the UN Declaration on the Right to Development and will forward a multi-faceted and fairly distributed development.

(3)

Apart from the consideration from the UN Declaration on the Right to Development, the following are proposed:

- Reaffirmation of Right to Development as a human right
- Reaffirmation of the fact that people should be at the centre of the development process
- Reaffirmation of the principles of equality, non-discrimination, and equal participation
- Recognition of the need for international cooperation in the achieve right to development of all
- Recognition of the fact that the process of development has to be participatory and must involve its beneficiaries
- Emphasis on the importance of integrating relevant strategies of sustainable development

(7)

States Parties' through effective governance to ensure securing the following: Education, Healthcare, Sanitation, Drinking Water, Security and well-being.

NHRI Mexico

(2)

- Charter of the United Nations;
- Declaration on the Right to Development;
- Universal Declaration of Human Rights;
- International Covenant on Economic, Social and Cultural Rights;
- International Covenant on Civil and Political Rights.
- Convention on the Rights of the Child;
- Convention on the Elimination of All Forms of Discrimination Against Women;
- International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights.
- Racial Discrimination;
- Convention on the Rights of Persons with Disabilities;
- United Nations Declaration on the Rights of Indigenous Peoples;
- United Nations Framework Convention on Climate Change; Paris Agreement;
- Convention 142 on Human Resources Development of the International Labour Organization;
- United Nations Declaration on the Rights of Indigenous Peoples
- International Labor Organization;
- Convention 169 on Indigenous and Tribal Peoples.

(3)

- To maintain international peace and security, based on cooperation in the solution of international economic, social, cultural and environmental problems, based on the principles of equality, non-discrimination and good faith, while considering solidarity and respect and appreciation for diversity in all its forms as indispensable elements for development;
- Development as a human right of individuals and peoples;

- The importance of the States Parties guaranteeing the full enjoyment and exercise of economic, social, cultural and environmental rights, without violating other human rights.

(4)

The ultimate purpose of the Instrument, as well as of the legal instruments related to it and the mechanisms it observes for its enforceability, is to achieve, in accordance with the other legal instruments applicable to the human right to development, and those that consider human rights obligations of the States Parties, whether of international, regional or bilateral origin, or any other type of legal instrument that ensures: the full enjoyment and exercise of human rights, the full enjoyment and exercise of the human right to development for all individuals and peoples, based on the realization of all their rights, including economic, social, cultural, environmental, civil and political rights.

(5)

- Definitions;
- Principles;
- Rights of individuals and peoples;
- Obligations and rights of States Parties;
- Domestic measures of the States Parties for the realization of the human right to development;

Follow-up and protection mechanisms through bodies:

- i. Human Rights Council; Universal Periodic Review;
- ii. Creation, on the basis of the instrument, of the Committee on the Human Right to Development.

Human Right to Development

- Organic Part of the Committee and the relationship of the instrument with the United Nations, as well as subsidiary bodies;
- Opening for signature, deposit, revision, accession, entry into force, reservations and notification of reservations, peaceful settlement of disputes and languages.

(6)

- States;
- Non-State:
- Companies;

In addition to the duty bearers, the following subjects can be considered as contributors of information for the Instrument

- National Human Rights Institutions;
- Non-governmental organizations;
- Human Rights Council;
- Committee on the Human Right to Development.

(7)

- Protection, guarantee, dissemination, respect, promotion and diffusion of the human right to development;
- Protection, guarantee, dissemination, respect, promotion and diffusion of other human rights;
- To comply with the obligations contained in the international instrument;
- That the States incorporate into their legal systems the rights and obligations contained in the instrument in question;
- To comply with the observations, to the extent possible, made by the Committee on the Right to Development in the framework of the corresponding State reports;
- That the Committee consider the documents submitted by National Human Rights Institutions, Civil Society Organizations and Non-Governmental Organizations within the framework of the State reports.

(8)

On the basis of the joint protection of human rights, i.e., the importance of ensuring all rights as a whole in order to achieve the full enjoyment and exercise of each right, without undermining any other.^[1]_{SEP}

In particular, the human right to development requires not only figures and indicators to be made visible, but also full compliance with the obligations of States in terms of other rights necessary for personal and collective development to become a reality.

Non-Governmental Organizations

African Heritage Foundation Nigeria

(2) Reference in the preamble be made to the following previous instruments and provisions: -

- Article 1(1) and 2(1) of the UN Declaration on the Right to Development (UNDRTD, 1986);
- Article 22 of the 1981 African Charter on Human and Peoples' Rights (ACHPR);
- Articles 8 and 19 of the 2003 Maputo Protocol to the ACHPR on the Rights of Women in Africa;
- Agenda 2030 for Sustainable Development/Declaration Paragraphs 4, 8-9, 11, 22, 33 and 36

(3) Social, economic and environmental/ecological considerations.

(4) Object/Purpose: - Formulation to focus on the following: -

- The realization of the Right to Development and the 17 SDGs;
- Reaffirmation of the contemporary understanding of certain provisions of the Declaration such as : - Article 1 (1); the definition of People; the inclusion of the environmental dimension of the Right to Sustainable development; Article 3(3), updating the reference to the New International Economic Order; Article 8(1); elaboration of the gender/Women's rights dimension of the Right to Development.

(5) Elements and Structure: - To be structured into 7 broad parts namely:- Part 1-Preamble; Part 2-Objectives; Part 3-Guiding Principles; Part 4- Obligations; Part 5- Institutions; Part 6- Compliance, Monitoring and enforcement; and Part 7- Final Provisions.

(6) Primarily, States (Parties), Development Partners and the Private Sector (Particularly Businesses or corporate bodies/entities);

(7) States, National, and International implementing obligations; obligation to corporate/global partnership;

(8) To be based on the spirit of strengthened global solidarity.

Al-Haq

(2) The right to development should be linked to rights and obligations under international law such as those mentioned for inclusion in the preamble and shown as a right that is outlined and insinuated in previous international laws and treaties. As a starting point the Charter of the United Nations, Common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Right to Development (UNGA 41/128), General Comment No 3 (1990) of the Committee on Economic, Social and Cultural Rights, Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960), Article 2(c) of the International Convention on the Suppression and Punishment of the Crime of Apartheid (30 November 1973), the Rome Statute of the International Criminal Court, the United Nations Declaration on the Rights of Indigenous Peoples, the United Nations Convention on the Law of the Sea (in relation to the special requirements of developing States). Provisions referenced in the preamble should also include the Universal Declaration of Human Rights, Convention on the Elimination of All Forms of Discrimination Against Women, as well as provisions of international humanitarian law, relevant to situations of conflict, notably the Hague Regulations (Articles 43, 46, 52, 53, 55), and the Fourth Geneva Convention (Articles 1, 33).

(3) The preamble to this treaty should mention the consideration of international cooperation and healthy, non-exploitative, and sustainable economic growth. In addition, the preamble should refer to the right to self-determination and permanent sovereignty over natural and national resources. In particular, the right to development of peoples during armed conflict, with special mention of the collective rights of peoples under foreign occupation to development. In addition, all measures necessary should be taken to end situations of prolonged occupation, colonization, apartheid, and annexation as situations which by their nature impede the collective right to self-determination and the right to development. It would be useful to mention the right to rebuild, after armed conflict, in terms of the third prong of the R2P doctrine. Consideration should be had for the United Nations sanctioning regime, with a preference for targeted economic sanctions, where umbrella sanctions may unduly impede the right to development. Some reference may be useful to warn against austerity policies in macroeconomic models, which lead to mass unemployment, as breaching

State obligations on the right to work under the ICESCR. Notably in General Comment No. 18, the Committee on Economic, Social and Cultural Rights stated “the right to work requires formulation and implementation by States parties of an employment policy with a view to stimulating economic growth and development, raising levels of living, meeting labour requirements and overcoming unemployment and underemployment”.

(4) The instrument’s object and purpose should be drafted to highlight the rights of all peoples and individuals to economic, social, cultural and political development that is people-centered, including the right to self-determination, whereby people may determine their political status and pursue their development with sovereignty over all their natural wealth and resources. It should highlight the need for an enforcement mechanism to ensure that these values are upheld. This would be with the objective that supporting such development might lead to the enforcement of all human rights for people everywhere.

(5) The instrument should include the nature of the right, the application of the right in contexts of peace and armed conflict, special mention of rights of persons in non-self-governing territory, under colonization, apartheid, occupation. There should be section on responsibility and liability, with either an included article or additional Protocol providing for a complaints mechanism. The instrument should include the elements of economic, social, cultural, and political development, addressing economic development foremost. Economic development should include local sovereignty over all natural wealth and resources. In the special context of armed conflict and belligerent occupation, this is affirmed by obtaining consent from political and civil society representatives of occupied populations for any development of land and natural resources whereby the occupied population maintains the right of self-determination and permanent sovereignty over all resources. The obstruction of development in agriculture, mineral extraction, stone mining and quarrying, construction, tourism, and communication should be forbidden. Furthermore, the exploitation of water resources in occupied territory should be expressly forbidden as a war crime under international law. The mechanism should also address the issue of populations obtaining access to infrastructure necessary for development, such as electricity for personal use and for economic development, as well as the right to build homes and own land without threat of confiscation or demolition by foreign companies or belligerent occupiers. Development should also be supported in offshore endeavors such as fishing industries within a state/territory’s waters. Economic development should also address the degree to which a territory or state has been made dependent upon external donors and international organizations, as a result of prolonged conflict or occupation for example, and strive to provide methods to genuinely develop and/or strengthen the local economy so that dependence on external funds decreases. This can be done by addressing the root causes and nature of the issues that have led a state or territory to become dependent on foreign and humanitarian aid. More specifically, the economic element should affirm the right of any economic development in the case of occupation to be done solely for the benefit of the occupied population and place obligations on Third-State parties, banks, corporations, and investors involved in both passive and active investments to uphold this right. Those entities who infringe upon a territory or state’s right to economic development should face economic penalties and prosecution. The element of social development should include the protection of social rights such as the right for all genders to be able to work in safe conditions, maintain an adequate standard of living, obtain public education at minimum through the age of 18, vote, and be represented in their governments. Curriculum for public education should be created and regulated by each State, without intervention from foreign powers. In addition, the right to cultural development should ensure that local populations have the right to maintain all their traditional cultural practices, so long as they are not inherently life-threatening, without intervention or appropriation by an Occupying Power, or other State/s. Cultural practices include but are not limited to language, local clothing, food, music, and dance. Political development should be upheld by ensuring self-governance with free and fair elections. The elected government should have dominion over the State’s economic development without foreign interference. Additionally, such governments will have the ability and duty to regulate state education, infrastructure, welfare, and security. In the case of occupation, the occupied population should not be held to the standards of a separate legal system that prosecutes them differently than citizens of the Occupying Power’s state.

(6) Duty bearers, besides state actors, should include corporations engaged in contributing to the de-development of territories. State parties should ensure that parent companies within their jurisdiction may be held accountable for their subsidiaries’ actions in other states that infringe upon the right to development. Obligations should include the requirement of withdrawing from the area that is being exploited or de-developed within a time period that is both concrete and reasonable. In some cases, individuals may be criminally responsible for de-developing a country held

under belligerent occupation. For example, at Nuremberg, the industrialists in the I.G. Farben trial were prosecuted for the systematic economic exploitation of occupied territory, as a part of the war crime of pillage. This was a more widespread and systematic type of pillaging, whereby the economy of the occupied territory was systematically dismantled and the economic substance of the occupied territory taken over. In this vein, the treaty could reference the International Criminal Court's jurisdiction over the war crime of pillage, including systematic economic exploitation, which by its nature directly infringes the right to development and for which there is individual criminal liability.

(7) In the case of occupied territories, the instrument should outline the obligation of the Occupying Power to only develop the occupied territory for the benefit of the protected population and to quickly halt any ways in which the occupier financially benefits from the occupied territory's resources. The occupied population's best interests should be prioritized over broader war objectives. The mechanism should outline a plan that quickly and efficiently transitions entities violating the right to development out of an area, provides financial compensation for those whose right was infringed upon, and imposes penalties for failing to respect the right to development as outlined in the mechanism. In this respect, State parties have obligations to implement national legislation to hold individuals, corporate actors and corporations responsible for breaching the right to development, either nationally or extraterritorially. State parties should have obligations to search for, prosecute or extradite individuals and corporate agents, breaching the right to development, where this amounts to the war crime of pillage including by systematic economic exploitation of occupied territory. Corporations that directly infringe upon the local population's sovereignty over land and natural resources and/or contribute to it through their subsidiaries should face corporate liability while allowing for individual and collective remedies for those affected. Control of access points for the export and import of services and products by land and sea should be maintained by the local population to encourage steady labor and trade flow. The instrument should reference the obligations of States, third States and the international community to ensure the right to development of peoples under siege or sanctions regimes. In relation to the former, is the imposition of a siege, especially a prolonged siege, compatible with the right to development?

(8) In relation to the realization of the right to development during belligerent occupation, the laws of armed conflict operate as the *lex specialis*. That being said, the issue of acting for the "benefit of the occupied population" or the "best interests" test should be teased out here, especially in relation to developing natural resources during a prolonged occupation, in the interests of the occupied population and what that means in relation to Article 55 of the Hague Regulations. What do we mean by the interests of the occupied population? It must be clarified that this is limited to the best interest of the protected population under Article 4 of the Fourth Geneva Convention and does not extend to the interests of settlers unlawfully transferred into the occupied territory. But even so, who determines what represents the best interests of persons under occupation, colonization or apartheid – civil society, the political representatives, the international community? It is not clear, and the consideration, while laudable, needs more clarification.

Asia Pacific Form on Women, Law and Development

In addition to the nine core international human rights instruments and eight fundamental conventions adopted by the International Labour Organisation, we suggest to refer to:

- a. UN Declaration on the Right to Development
- b. Rio Declaration on Environment and Development
- c. Beijing Declaration and Platform for Action (BPfA)
- d. UN Framework Convention on Climate Change (UNFCCC)
- e. 2030 Agenda for Sustainable Development
- f. UN Declaration on the Rights of Peasants and Other People Working in Rural Areas
- g. UN Declaration on the Rights of Indigenous Peoples (UNDRIP)
- h. UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (aka Declaration on Human Rights Defenders)
- i. Maastricht Principles on Extraterritorial Obligation of States in the Area of Economic, Social and Cultural Rights
- j. Monterrey Consensus of the International Conference on Financing for Development
- k. Doha Declaration on Financing for Development

Firstly, it is important for the preamble to recognise states as the principal duty bearers having the primary responsibility to create favourable conditions for the realisation of peoples' right to development. This includes ensuring active, meaningful and informed participation of the people in planning, monitoring and evaluation of development policies at the local and national levels. It should also stress recognition of the right to development as a fundamental human right of the people and hence emphasise the state obligation to promote, protect and fulfil the right to development, and being cognizant that this right cannot be achieved within a national territory and needs international solidarity and cooperation, including a global partnership for development. The preamble should acknowledge the historical unequal balance of power between states that is consolidated by the dominant neoliberal development model and system. This can include some points on how the right to development is compromised by sovereign or public debts and a lack of access to justice and remedies.

To defend people's right to development as a fundamental human right and freedom, to advance states' human rights obligations and accountability to the people as the basic social contract for nation states, end conflicts, invasions, occupations and wars over resources, create an environment where people can make decisions on their lives and livelihoods, ensure access to justice and remedies when the right to development is violated, including state to state complaint mechanisms or direct case against member states by individuals.

The structure should start with the understanding that peoples should be at the centre of development, and build on to recognise communities' right to development, and in how they express it. The consideration of the principle of international solidarity, and the principles on Common But Differentiated Responsibilities (CBDR as formalised in the UNFCCC) are key. The instrument should incorporate an understanding that communities are upholding their right to development when they express their concerns or opposition to destructive projects or policies, ranging from infrastructure projects that displace communities, to fossil fuel energy strategies that are destructive to the environment and incompatible with need to act in the face of the climate crisis. Communities should not be dictated to and pressured to make sacrifices for an undefined idea of national development that they are not included in.

This instrument may address non-state actors that make it difficult to realise the right to development, such as corporations with a transnational character. However in all language addressing non-state actors, it must be emphasised that States are the primary duty-bearers and as such they are the ones who have to ensure regulation of non-state actors, including corporations, private security forces, and others who are often the direct perpetrators of human rights violations, but with the silence and complicity of the state.

State obligation to enact national and local legislation to realise peoples' right to development; State obligation to protect people from the negative impacts of private and business activities, especially marginalised and oppressed groups. Obligations to concretise should include the right to a healthy and safe environment, access to justice and remedies, free, prior and informed consent (FPIC), the necessity of human rights, gender and environmental impact assessments (whether ex-ante, periodic and post) on any economic or development policy, and based on that assessment, the obligation to withdraw or annul any agreement that violates the right to development or other fundamental human rights. For example, the direct threat of the Investor-State Dispute Settlement (ISDS) mechanism to national and people's sovereignty, right to development and human rights, should mean that States annul trade agreements that have provisions such as ISDS or amend them so that human rights including right to development have primacy. Going beyond the nation state, it must also concretise extraterritorial obligations, accountability for the Global North countries for creating inequalities historically, ranging from resource control to pollution and contribution to emissions that has created the climate crisis.

Association of Citizen's Tolerance and Cooperation

The Agenda 20/30, which has all the necessary declarations, is sufficient, with short and easily-handled guidelines for Right to Development (from all the other conclusions reached), which will cover the assessment of States' commitment to sustainable development. For this reason, a draft of a legally binding instrument on the right to development should refer to the basic document resolution 39/9, but it should explain that this draft is an open development tool that will begin with several elements - which should be targeted, and it will then expand into areas and tools that will (further) turn it into an instrument for the implementation of Agenda 20/30 regarding the right to development.

Limitation and specializing on a legally binding instrument on the right to development on feasible aspects of resolution 39/9. This means an orientation towards less scoped, more modest declaration and increased action component, by selecting only a few components of the human development strategy resolution 39/9. This resolution should be based on a "rich and poor agreement" and an international agreement on "migrating problems from a declaration to manageability" or "evolution of tools for the realization of the right to development" rather than on declarations.

The purpose of the instrument should focus on the possibility of international and national adoption of rules (tools) of development commitment in the form of: monitoring of investment corruption, tax evasion and initial assessment of sustainability of investments - in accordance with Agenda 20/30, from the countries themselves - investors, and the object of the instrument would be the specific tools for accountability and transparency of corporations and states in relation to the above-mentioned rules and tools for many types of public, corporate and business Key Assessment and causing a public debate to reconcile the need for economic development and all other components of human development. Thus, this instrument should be positioned between Agenda 20/30 and corporate initiatives (projects).

An element that the draft should "center" is how developed, underdeveloped and least developed countries could get a framework for a fair balance of interests, and thus overcoming the nominalism of ideas from the "Resolution" and the beginning of the "exchange" of discounts ("Something for Something").

The instrument should be "smart" and not just "fair".

Here the truth is helping: the less developed and poorest countries to accept standards and monitor national acts of repression of corruption, tax evasion and uncontrolled investment, and richer countries to pay for it and control their own investments in third countries (not just for those countries, in which they invest, but also for themselves). It requires focusing on three general topics:

1. How to devise political and international binding expert tools for developing countries and the least developed countries to reduce tax evasion, gray economy and corruption and/or blindness when investing in their countries (greater damage than profit) through linking planning of such national actions (National Plans for Right to Development Actions) with the funds of international donors that they would receive as assistance for such actions;
2. How can developed countries establish investment monitoring (each state of its own investments, by sending it to the Working Group on the Right to Development) in developing countries, through specially designed tools for assessing damages (Program: Investment + Care) from investing and mandatory measures to fulfill the right to development;
3. Given the "immovable" differences between different countries regarding the content of this instrument, it should provide tools for "reaching a common understanding of Resolution 39/9" and an "approximation planning" tool. Only the public sector, culture and engaged art can provide this, because the art medium cannot be manipulated by corporations or states and centers of power in them, so if the Intergovernmental Working Group on the Right to Development or Human Rights Council, Culture and Arts socially engage (Resolution 39/9: the public sector must be revitalized), will receive the culture-friendly technologies of development that will be motor fuel to the new public awareness of the right to development, thereby "pressing" the Governments, corporations and power centers to gradually accept it.

NGOs and cultural actors can play a key role in feeding the public with visions of human development and thus "from bottom to top" to harmonize the opinions of citizens from different countries.

The Instrument may prescribe a Fund, a Guide and Minimum Standards for reform planning and non-legislative changes in states that are hoping for structural adjustment assistance (mainly in developing countries, and especially in the least developed countries, laws are good but not enforced), and the prescribed improvement measures (corruption, tax evasion, non-transparent investment with protectionist measures, etc.) should be assessed and the means for their implementation, in cooperation with the NGOs - previously mentioned, would report about the implementation progress.

Successful reforms and moves should be rewarded by the "Structural Adjustment Fund for the Enforcement of the Right to Development", which would be the responsibility of the Intergovernmental Working Group on the Right to Development or Human Rights Council (Board).

The “exporting” countries of the capital and the domicile countries of the investors would form a tool: "National Expert Councils for assessing the eco and humane responsibility of investment and trade with developing countries and the least developed countries."

The Intergovernmental Working Group on the Right to Development would set up an NGO Fund - and support structural government reforms for Right to Development, which would monitor such reforms and would increase the awareness of the population on the right to development.

CINGO

(2) A specific reference to the legal mandate that led to the formulation of this legally binding instrument as a fundamental step towards the implementation of the overarching mandate for the open-ended intergovernmental working group on RTD.

Reaffirming existing relevant international legal instruments such as:

- United Nations Charter
- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Rio Declaration on Environment and Development, 1992;
- Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in Vienna on 25 June 1993;
- United Nations Framework Convention on Climate Change, 21 March 1994;
- Copenhagen Declaration on Social Development (A/CONF.166/9, 14 March 1995);
- United Nations Millennium Declaration, Resolution 55/2 adopted by the General Assembly in September 2000;
- Programme of Action for the Least Developed Countries for the Decade 2001-2010;
- Monterrey Consensus, Mexico 2002;
- Vienna Programme of Action for Landlocked Developing Countries for the Decade 2014–2024;
- Doha Declaration on Financing for Development: Outcome Document of the Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, 2008;
- Addis Ababa Action Agenda - International Conference on Financing for Development, July 2015;
- A/RES/70/1; Transforming our world: the 2030 Agenda for Sustainable Development;
- Declaration on the right to peace (2016) and Declaration on the Rights of Peoples to Peace (1984);
- Un Declaration on the Rights of Indigenous Peoples;

Bearing in mind other regional instruments that recognize the right to development such as the Charter of the Organization of American States (1948), the African Charter on Human and Peoples ' Rights (1981), the Arab Charter on Human Rights (2004), the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration 2012 and the Abu Dhabi Declaration (2016).

Reaffirmation of - and relationship with - the other Conventions (the Convention on the Rights of the Child, the Universal Declaration on the Rights of Indigenous Peoples, the Convention on the Rights of People with Disabilities) that in their preamble and articles include the principles and contents of the Declaration on the right to development.

Reaffirmation of the Human Rights Council Resolutions on RTD;

A reminder of all relevant Resolutions and decisions adopted at the UNGA, HRC, Treaty bodies, and other relevant intergovernmental organizations on Right to development and /or contents of the DRTD;

A particular reference to article 28 of UDHR

A particular reference to articles 55 and 56 of the UN Charter on international cooperation

Reference to the Declaration of the Right to Peace (GA resolution 2016)

A reference to the UN Guiding Principles on Business and Human Rights

Reaffirmation that State Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States, and that nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law;

A reminder that International Organizations shall not adopt or promote any international norm or decision that could limit the achievement of the purpose and objectives of this legally binding instrument, as well as the capacity of the Parties to fulfill their obligations adopted herein.

Principles – all principles of the Declaration of the RTD should be mentioned in the preamble plus the principles of the international human rights law and the United Nations.

Principles of the DRTD:

¥ Person/People-centred Development (preamble, art. 2.1, 2.2)

¥ Integral/comprehensive development (Preamble, art.1.1)

¥ Participation (Preamble, art 1.1, 8.2)

¥ Self- determination/sovereignty of natural wealth and resources (Preamble, art. 1.2)

¥ Indivisibility and respect for Human Rights (preamble, art. 6.2)

¥ Responsibilities of States at the national and international level for an enabling environment (preamble, art. 2.3, 3.1,3.2,3.3, 4.1, 4.2, 6.3)

¥ Elimination of obstacles/Social justice (preamble, art. 6.3)

¥ New international order and international cooperation (preamble, art.3.3, 4.2, 6.1)

¥ Non- discrimination/equality of opportunities/equity (preamble, art.8)

¥ Indivisibility of DRTD (art. 9.1, 9.2)

¥ Peace and Security /Disarmament (preamble, art. 7)

¥ The active role of women in development (preamble, art.8)

And

1) Universality, indivisibility, interdependence, and inter-relationship of all human rights which therefore must be treated in a fair and equal manner, on the same footing and with the same emphasis;

2) General obligation to respect, promote and protect all human rights and fundamental freedoms at the national and international level and conducted without conditions attached;

3) The primary responsibility of the State to protect against human rights violations or abuses within the family, their territory, and/or jurisdiction by third parties;

4) Recognition of the primacy of human rights obligations over trade and investment agreements;

5) Reference to the principle of international solidarity

6) Respect of the principles of sovereign equality and territorial integrity of States and nonintervention in the domestic affairs of other States;

7) Observance of domestic laws, regulations and administrative practices;

8) General obligation of international cooperation;

9) Accountability and transparency.

(3) It is important that the preamble reaffirms the centrality of the person and the respect of his/her inherent dignity; that development, as comprehensively defined in the UN declaration, should be integral and must encompass all the dimensions including the spiritual dimension of the human being; that ecological integrity demands respect and preservation of the environment so as to meet the needs of the present and future generations; that peace and security are essential elements for the realization of the RTD and that RTD is a right of individuals and peoples.

(4) The object and purpose can be put in an article entitled “Statement of purpose” where it can be stated that the purpose of this legally binding instrument is “to create an international legally binding instrument that aims to guarantee the effective realization and implementation of RTD for the respect, promotion and protection of all human rights.

(5) The instrument can be structured as follows:

Preamble

Section I - Art.1 definitions; art. 2 Statement of purpose; art. 3 Scope;

Section II - Articles (# ?) with the main content and obligations

Section III - Institutional Arrangements: Implementation; relations with protocols; settlement of disputes; Signature, Ratification, Acceptance, Approval and Accession; Entry into force; Amendments; Reservations; Denunciation; Depositary and Languages.

The content of the instrument in section II may include the following elements:

Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of human well-being and 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. Person/People-centered development: "The human person" is the central subject, participant, and beneficiary of development

A human rights-based approach: Development should be carried out in a manner "in which all human rights and fundamental freedoms can be fully realized."

Right of peoples to self-determination including full sovereignty over all their natural wealth and resources

Participation: "Active, free and meaningful participation" of all individuals and peoples

Non-discrimination: "No distinction as to race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or another status.

Equity: "Fair distribution of the benefits" of development

Equality of opportunity for development is a prerogative for both nations and individuals who make up nations

Like all human rights, the principles of equality, non-discrimination, participation, accountability, and transparency are intrinsic to the RTD

Other contents are: Acts subject to its application; 1) Actors subject to its application; 2) Obligations of States; 3) Obligations of International Organizations and Non-State Actors 4) International Cooperation 5) Extraterritorial obligations.

States must act to eliminate human rights violations of all forms

States should promote international peace and security and disarmament and use released resources for development

States have a duty to cooperate to create an enabling local and global environment for development and to eliminate obstacles to development

The RTD requires appropriate national and international development policies and an enabling social and international order to realize all rights and freedoms

(6) The DRTD says in article 2:

2.2. All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfillment of the human being, and they should, therefore, promote and protect an appropriate political, social and economic order for development.

2.3. States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.

Therefore, the duty bearers are, in our understanding of the Declaration, as follows:

States and non-State actors such individuals and group, private sector, national, multinational and transnational companies, international financial institutions (such as World Bank, WTO, IMF that condition development with their policies).

- States have the primary responsibility to respect, protect and fulfill the RTD at three levels (A/HRC/15/WG.2/TF/2/Add.2.):

- i) Internally through national policies and programs

- ii) Internationally, through policies extending beyond their jurisdictions

- iii) Collectively, through global and regional partnerships

- International Community

- All human beings, and all those whose actions and/or omissions have an impact on development and human rights and on the environment in which these rights are fulfilled.

(7) Obligations:

- Obligations of States at the national level
- Obligations of States at the international level
- Extraterritorial obligations
- Obligations of other non-states actors

Moreover, ART. 7 of the DRTD affirms “All States should promote the establishment, maintenance and strengthening of international peace and security and, to that end, should do their utmost to achieve general and complete disarmament under effective international control, as well as to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of the developing countries.”

This article should be emphasized in the section related to obligations.

Egyptian Council for Foreign Affairs

Previous instruments to be references in the preamble:

- 1948 Universal Declaration on Human Rights;
- 1966 International Covenant on the Political and Civil Rights;
- 1966 International Covenant on Economic, Social and Cultural Rights; and
- 1986 Declaration on the Right to Development.

International Accountability Project

(2), (3)

At its core, the new legally binding instrument should embed the provisions and interpretation of the right to development as articulated under the Declaration , and expand upon its Articles to actualize the obligations requisite to fulfilling the right to development. As conveyed in Article 1 of the Declaration, the right to development is a composite right, necessitating the concurrent fulfillment of fundamental human rights and freedoms: 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.

The Preamble of the new instrument should thus refer to all core human rights treaties, including but not limited to the International Bill of Rights , the Convention on the Rights of the Child (CRC), the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). In addition, we recommend that special attention be afforded to newer instruments that have been developed since the adoption of the Declaration , including but not limited to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Convention on the Rights of Persons with Disabilities (CRPD), as well as regional instruments which focus explicitly on safeguarding the rights of people and the environment in the context of development, including the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) , and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).

Within the Preamble , the application of these instruments to the right to development should be articulated and understood in conjunction with the realities of the impacts of today’s development model, in order to provide the necessary framing to ensure the fulfillment of all rights central to the right to development.

The current design of the development model suffers from fundamental flaws that privilege a select few, while shifting harms onto some of the world’s poorest and marginalized communities, excluding many in the decision-making process. In reality, by the time communities and civil society learn about the impacts of a development project, it can be too late. The project contractors have already been hired, the environmental and social impact scoping and assessments have been drafted, consultation in whatever form that may be—adequate or inadequate, meaningful or superficial, inclusive or exclusive—has happened, and ground may have already been broken. The right to development brings to the fore the indispensable issue of agency and choice - namely, the inalienable right of every individual to participate in and contribute to the enjoyment of their economic, social, cultural, and political development. Further compounding existing barriers to participation in decision-making processes, communities increasingly face retaliation and harassment for openly criticizing development projects and for even requesting additional information from authorities.

Around the world, the space for civil society to access information, organize and participate in decisions that affect them is closed or is shrinking, and reprisals are often experienced in response to top-down imposed development agendas.

In setting the context for the draft legally binding instrument, the Preamble should acknowledge and seek to address the obstacles and challenges faced by communities in claiming the right to development, in addition to clearly reinforcing the existing normative framework underlying this right.

(5)

On the topic of duty bearers, IAP recommends that the binding instrument on the right to development explicitly address and elaborate the role of and standards for development finance institutions in relation to the right to development.

The experiences and work of IAP and our partners have demonstrated that development finance institutions are important actors that play a key role in influencing whether the right to development is realized, given their power and resources. However these institutions, composed by their shareholding and member States, have time and again violated rights of communities impacted by their projects and plans. Development finance institutions themselves, in addition to their shareholding 10 and member States, have been historically unaccountable and free from providing enforceable remedies for the violations they cause. In effect these institutions have created a platform for States to direct and receive significant investment amounts while ignoring their responsibility to follow international human and environmental best standards, practices and law.

As the primary duty bearers under the right to development, States should be obligated to meet their international human and environmental rights obligations when they act within their capacity as shareholders and member States of development finance institutions, such as the World Bank and others. Development finance institutions, and therefore the States that control them, are one of the major facilitators of the current development model, shaping national and regional policies, priorities, and regulatory frameworks through their lending and advisory support. Beyond this, they play a normative role for both public and private development finance, thus shaping development governance globally.

Operationalizing the right to development therefore requires not only lifting the corporate veil and ensuring that shareholder and member States are held accountable, but also explicitly clarifying the role and obligations of these institutions themselves, so that their operations are no longer immune, but grounded in international human and environmental rights framework and principles. For the reasons noted throughout this submission, development finance institutions should be considered duty bearers within this instrument and lead by example in ensuring that communities are informed, active participants in shaping true development.

(7)

The human person is the central subject of development and should be the active participant and beneficiary of the right to development.

The right to development is centered around people as both beneficiaries and active participants in development decisions and projects affecting them. As a composite right, all of the constituent rights and duties embedded within the right to development should therefore be concretized in the form of obligations as part of the legally binding instrument.

However, in light of the current development model, we recommend that the new legally binding instrument explicitly address the obligations of duty bearers to ensure that the human-centered – as opposed to profit-centered - approach to development embedded in the *Declaration* is not only preserved, but can be fully realized by all people. Given the seminal role played by specific rights in safeguarding the fulfillment of the right to development, IAP recommends the new instrument specifically articulate obligations around respecting, protecting and fulfilling the rights to information, participation, and associated freedoms, including expression, assembly and association. The provisions of the legally binding instrument should also be constructed in a way that ensures that duty-bearers, including development finance institutions a) proactively take measures to fulfill these rights; b) institute remedial procedures to correct existing practices that continue to violate these rights; and c) fulfill their obligation to ensure justice and remedy for violations.

The experiences of IAP and our partners have demonstrated that the right to information is the prerequisite to enabling the meaningful fulfillment of the right to participation in development processes, and ultimately for the realization of the right to development that stays true to the *Declaration*.

Communities possess legitimacy and local expertise that can improve and inform the design of potential projects and plans, anticipate and mitigate adverse impacts, and ensure they achieve positive impacts that further their development priorities. Micro-level impacts in development planning, construction and operational phases can be prevented, or promptly redressed with the assistance of local expertise, if discussed with those affected via a proper consultation process built on real access to information. Moreover, technical solutions and innovative designs proposed by those that know their territory can avoid these harms, respond to local priorities and ensure that development is community-led. Attesting to this, the results of a recent study conducted by IAP surveying 800 participants in 8 countries affected by projects funded by development finance institutions demonstrate that 65% believed that projects affecting their communities could have been modified to achieve the same goals while causing less damages. For communities to meaningfully participate in development decisions that affect their lives, accessible, adequate and timely information is paramount, in conjunction with a safe environment for people to freely ask questions, express their opinions and propose alternate visions and plans.

Unfortunately, current practice in development finance repeatedly fails to meet the expectations of this right. Strikingly, 84% of the 800 people that participated in the study affirmed that they did not have access to the necessary information to offer an informed opinion about projects affecting their communities. 15 64% of the respondents did not even know where they could obtain this information.

In order to rectify the current opacity of the development model, the new legally binding instrument must emphasize the obligations of duty-bearers to fulfill the right to information. Realizing the right to development is a journey that must start from within communities themselves, and meaningful fulfillment of the right to participation is required in order to ensure that development is led by the visions and priorities of people. Strikingly, 82% of the respondents in IAP's study made clear that their development priorities were different from the priorities of their governments. 88% of the people surveyed were not consulted during the planning phase of projects affecting their communities, and 94% stated that they were never consulted about their priorities for regional or national development plans. Only 10% of those surveyed believed the projects would benefit their communities, and only 14% believed projects would benefit the country population. These statistics illuminate the reality that national and regional plans for development projects largely do not correspond to the priorities of those most affected by them. Overwhelmingly, communities are excluded from the decision-making processes that establish priorities and decide impacts.

The current development model offers few entry points for people to safely and meaningfully participate. Compounding these challenges, consultations that do take place also lack good faith, attesting to their irregularity. For the right to participation to be meaningfully met, a dialogue with affected communities must take place throughout the lifecycle of a given project, and negotiations must have mutual agreement as their goal. In other words, good faith consultations cannot be informational sessions about decisions already taken, and the right to free, prior and informed consultation and consent for Indigenous peoples must be respected. 85% of the people surveyed by IAP did not believe that their opinions and ideas were incorporated in project plans they were consulted upon. Crucially, 78% of the people surveyed by IAP's study affirmed they did not feel safe to ask questions and express their true opinions about projects. The rapidly closing space for civil society to voice their priorities and concerns must be acknowledged by duty bearers and within the legally binding instrument. It is unfortunately not enough to simply recommend that safe spaces be created for individuals and communities to speak; attention must be drawn to the need for governments and financiers to proactively prevent reprisals against human and environmental rights defenders.

The legally binding instrument on the right to development should identify the obligations of duty bearers to redress and proactively ensure the meaningful realization of communities' right to participate in development processes, and protect the freedoms necessary to ensure a safe space to do so.

International Women's Rights Action Watch Pacific

(2)

All Human Rights treaties and related general comments should be referenced, with a particular focus on ICESCR General Comments 4 and 24, on the Right to Adequate Housing and on Business Activities, respectively, as well as CEDAW General Recommendation 34 on the Rights of Rural Women. • The state duty to protect against human rights abuses by third parties highlighted in the UN Guiding Principles on Business and Human Rights; • The Sustainable Development Goals • The UN Declaration on the Rights of Indigenous Peoples; • The Beijing Platform for Action's Declaration on the Right to Development • Regional human rights frameworks, particularly the African Charter on Human and Peoples' Rights (the Banjul Charter). • Relevant ILO conventions, such as C169 on Indigenous and Tribal Peoples, C176 on Safety and Health in Mines, C141 on Rural Workers' Organizations • Sendai Framework for Disaster Risk Reduction, the Addis Ababa Action Agenda of the Third International Conference on Financing for Development and the Paris Agreement on climate change.

(3)

The current neoliberal economic systems of production and consumption that frame the development context severely impede the realisation of the right to development. This RtD agenda must therefore be approached innovatively to disrupt entrenched hierarchies of wealth in the world-system and achieve genuine development. • People(s) must not be sacrificed for the realization of development agendas. Rather, the goal of development must be to facilitate the rights of people(s). • Development should incorporate a concept of social and redistributive justice. Development must therefore be understood not only as economic and infrastructural development, but through concepts of human and social development, such as life expectancy, education, and per capita income. Development must be measured not merely by a concept of growth, but by a reduction in inequality. • Development agendas must not neglect children and future generations' right to development. Development agendas must therefore incorporate concepts of climate justice—promoting a circular economy by minimizing waste and maximizing resources. • Development must be approached within the context of militarism, which presents a great obstacle to sustainable development. Disarmament must therefore be incorporated into the development agenda.

(4)

The object and purpose of the RtD instrument is to rebalance and reorder the existing economic system by asserting a corrective approach to development. Its provisions must be interpreted and applied so as to safeguard the rights of persons, peoples, and the planet. • RtD must be read in light of all other rights outlined in both ICESCR and ICCPR • Development is both an individual and a collective right. • Development agendas must recognise and address the varying needs and rights of different communities, particularly marginalized communities. • Development initiatives that affect indigenous peoples' ancestral land or resources must ensure free, prior and informed consent (FPIC) from the affected indigenous communities. • The treaty should be read in light of the understanding that development must be people-led. • Community-involvement in the design of development projects is imperative. • RtD should radically shift current models of development focused on megaprojects and large-scale infrastructural redevelopment, in which global south economies make the least gains in the global value chains. • A greater balance must be struck between states and institutions financing development projects and states receiving development aid--conditional aid and debt dependency should no longer be business as usual. • Women should be included in development plans, and should reap the benefits of development. • The RtD must balance the needs of the people and the planet, as it incorporates both the rights of current generations with the rights of future generations. • Development must be approached within the context of global migration, militarism, technology and artificial intelligence and the increasing trend of gig economy.

(5)

The treaty should enshrine the RtD as a legal, claimable, and justiciable right that is fundamental to all persons and peoples. • The instrument should ensure an accountability framework for the right to development, incorporating both a mechanism to measure compliance, as well as a mechanism for sanctions in the event of noncompliance. • In measuring compliance, development indicators should focus not only economic growth, but on human and social development—indicators such as HDI and GINI should be utilized. • Elements should include: FPIC, gender equality, people-led development (see section above).

(6)

Business actors, particularly multinational corporations, infrastructure developers, contractors, real-estates; • International Financial Institutions such as the World Bank, the International Monetary Fund, Asian Development Bank • Foreign direct investors and investment state dispute settlement (ISDS) mechanisms • World Trade Organisation (WTO) and World Economic Forum • UN agencies such as United Nations Development Programme, United Nations Conference on Trade and Development.

(7)

The instrument should concretize the human rights obligations of states to respect, protect, promote and fulfil the right to development; • Due diligence: the State responsibility to investigate, prosecute and punish violations of human rights caused by non-state actors. • Minimum core obligations are vital in the realisation of the right to development.

Although States are expected to progressively move towards fulfilment of the right to development, they concurrently have minimum core obligations in relation to human rights and social development which must be met immediately, such as the right to essential primary healthcare, food, basic shelter and education. • The Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights • Obligation to regulate non-state actors - remedies must be more comprehensive, assurance on non-recurrence of violation, should not just be about 'do no harm' • Obligation to safeguard the rights of non-citizens • Other key obligations defined by binding treaties.

(8)

Harmonization of normative standards

Fulfilling the gaps in existing relevant standards in relation to the Rtd

Borrowing from better/higher standards (national/regional/international) eg Banjul Charter

Harmonization of existing mechanisms and procedures eg special procedures, treaty bodies.

Organization for Defending Victims of Violence

(3)

The instrument should reaffirm the Convention on the Right to Development.

(4)

The purpose of the instrument should be realization of the right to development in ALL countries especially the developing and under developed countries WITHOUT discrimination of any kind.

(7)

ODVV believes that it is necessary that some provisions of the instrument ban the use of political tools or economic measures including Unilateral Coercive Measures (UCM)s by some States to prevent development from taking place in other States.

Considering the fact that it is vital for ALL countries to move in the path of development without discrimination and it is necessary for ALL states to have equal access to international systems, mechanism and instruments needed for development, ODVV believes that some provisions of the instrument must ban international organizations and service providers such as the SWIFT (Society for Worldwide Interbank Financial Telecommunication) from being politically abused by some States to seriously prevent the development process in other countries.

ODVV strongly believes that the instrument must commit ALL States to refrain from violating the right to development in other countries. Moreover, the instrument should consider punishments for the States that violate or prevent the right to development in other States. Or the instrument can consider especial implementation guarantees that prevent some States from violating the rights of other States to development.

ODVV suggests a compensation mechanism to be defined in the instrument to bring to justice the perpetrators of violation of right to development in other States and to compensate for the loss of victims.

World Wide Fund for Nature International

(2) WWF recommends that an instrument on the right to development:

Fully integrate and build on key environmental obligations, commitments and principles, with a special attention of those that were agreed since the 1986 Declaration on the Right to Development. The following critical

instrument should be the basis of any instrument on the right to development:

- a. 1972 Stockholm Declaration, 1992 Rio Declaration, Rio+20 Declaration
- b. The 3 Rio Conventions: UNCBD, UNCCD and UNFCCC
- c. The 2030 Agenda for Sustainable Development
- d. Other relevant Multilateral Environmental Agreements depending on the specific issues addressed in the instrument.

Institutional arrangements:

9. What type of institutional arrangements should be foreseen?

a. A conference of State Parties with subsidiary bodies?

b. An expert body with the mandate to submit reports on its work to the General Assembly, adopt recommendations, views and general comments?

10. Which entity should serve as the Secretariat?

11. Should there be a funding mechanism for covering the costs of the institutional arrangements and implementing recommendations?

States and Groups of States

Honduras

(9) An expert body with the mandate to submit reports on its work to the General Assembly, adopt recommendations, views and general comments.

(10) The Office of the High Commissioner of United Nations.

(11) Yes, in that way states institutions and non-states institutions will identify their advances and their deficiencies.

Qatar

The institutional arrangements should include the following:

- **Establishing a Panel of Experts** charged with preparing reports concerning the General Assembly, and adapting general recommendations, opinions, and comments. The institution should involve multiple stakeholders to enhance the content of the document and ensure all rights. The institution should set time for the work of the team.
- **Secretariat:** The secretariat of the institution responsible for the implementation of the Convention under the direct supervision of OHCHR.
- **Financing:** As stated in Paragraph 14 of Human Rights Council resolution 2/27 on allocation of resources for the realization of the right to development in a balanced and visible manner, and the State of Qatar affirms its full cooperation in the realization of the right to development to make it a reality for all people.

Global, Regional and National Human Rights Mechanisms and Institutions

Arab Human Rights Committee

The State is primarily responsible for the right to development and the implementation of its programs.

There is an important “international” dimension of the right to development. There is a growing interrelationship between “national” and “international” aspects of development.

International cooperation is necessary to remove obstacles that prevent the effective mobilization and use of resources.

The importance of the principle on “the global enabling environment conducive to the right to development”

The global development process faces many obstacles which are of a largely transnational character. In the economic sphere these obstacles include continuing patterns of domination and dependency, unequal trade relations and restrictions from external sources on the right of every nation to exercise full sovereignty over its national wealth

International economic and financial institutions should adopt the principles of human rights and the right to development in their policies and programs, especially in the policies imposed on developing countries.

Argentine Ombudsman Office

In our view, option 9.b. is the one we consider more appropriate, subject to some exceptions. That is to say, the group of experts should be highly qualified but limited in number in order to be effective and, leaving aside the formal rounds of consultations and studies that they decide to undertake, its work must be carried out in brief time. Moreover, we believe that the mandate to submit reports to the General Assembly does not appear to be appropriate because it would not make the above-mentioned procedure possible. The Office of the High Commissioner or the Human Rights Council seems to be better suited for this task.

As regards point 10., we are in favour of a General Secretariat, a coordinating body managed by the GANHRI. As a result, this would put the Alliance in a prominent place; and it would also contribute to enhance the institutional quality of the body as well as of its members, the NHRIs, which must be independent from the Administration and impartial. Here, everyone wins: the Group of Experts for having a Secretariat; GANHRI for gaining greater influence within the human rights system and each one of its members for being compelled to exhibit the highest institutional quality that it is possible for them to reach.

Finally, point 11.: This group should be financially supported by the United Nations because, in our opinion, it should not be unlinked from the Agenda. 2030.

Independent Expert on International Solidarity

(9) Type of institutional arrangements that should be foreseen: the two envisaged bodies and their processes do not envisage the incorporation of non-state actors. The treaty must find ways of engaging all actors into the implementation processes. Traditional approaches modelled on statist international law cannot guarantee effective implementation.

(10) Entity that should serve as the secretariat: OHCHR RTD unit.

(11) Should there be a funding mechanism for covering institutional arrangements and implementing recommendations: Yes, but corporations should not be allowed to contribute as this may distort the human rights potential.

NHRI Mexico

(9)
The possibility of having a Conference of the Parties for revisions to the instrument proposed by the States Parties, as well as for the designation of the Secretariat of the instrument, is considered relevant.

(10)
An internal entity, selected by the Conference of Parties.

(11)
Yes, as long as it does not hinder the effectiveness and entry into force of the binding international instrument.

Non-Governmental Organizations

African Heritage Foundation Nigeria

(9) (a) A conference of State Parties with subsidiary bodies;

(10) Secretariat :- be entrusted to the office of the High Commissioner for Human Rights;

(11) Yes there should be a funding mechanism.

Al-Haq

(9) An expert body should have the mandate to submit reports to the General Assembly, adopt recommendations and general comments and views. The expert body should be composed of impartial members who can objectively document violations of the right to development.

(10) The UN Department of Economic and Social Affairs should serve as the Secretariat for this mechanism.

(11) The costs of arrangements and the implementation of recommendations should be funded through mandatory annual payments of each UN Member State, regardless of whether they sign on to the proposed mechanism for the right to development. Funding should not be reliant upon voluntary contributions that may wane with disapproval of the application of the right to development mechanism against violating states.

Asia Pacific Form on Women, Law and Development

(9) We suggest option b is the better institutional arrangement.

(10) OHCHR.

(11) Yes.

Association of Citizen's Tolerance and Cooperation

(9) An expert body with the mandate to submit reports on its work to the General Assembly, adopt recommendations, views and general comments

(11) The Intergovernmental Working Group on the Right to Development can form a Funding for Structural Change Planning for the Right to Development, which would fund the design of national reforms, their expert judgment, the approval process and the National Development Action Plans, as well as the Reimbursement Fund, for the reimbursement of funds - spent by the state for these planned improvements, if it is estimated that the improvements have occurred.

A Fund for Planning Structural Changes for the Right to Development should also have a Program for the Promotion of the Right to Development, to finance a common understanding of development issues that would have an international and national component.

CINGO

(9) Institutional Arrangements

- A Conference of States parties (every two years)
- A body (Committee) of independent experts of high moral standing, recognised competence in the field covered by the Convention such as human rights, international law and right to development (12 or maximum 18), elected by States Parties with secret ballot from among their nationals and serving in their personal capacity for a period of 4 years (renewable). In choosing the experts, consideration should be given to equitable geographical distribution, gender balance as well as to the principal legal systems. The Experts will have the mandate to submit reports on its work to the General Assembly, adopt recommendations, views and general comments.

(10) The Secretary-General through the Office of the High Commissioner on Human Rights at the central and regional level.

(11) We do not know, but, if possible, yes.

Egyptian Council for Foreign Affairs

An expert body with the mandate to submit reports on its work to the General Assembly with views, comments and recommendations. OHCHR should serve as the secretariat. Concerning the funding mechanism, UN regular budget together with extra-budgetary contribution.

International Women’s Rights Action Watch Pacific

(9) 1. A conference of State Parties with subsidiary bodies? 2. An expert body with the mandate to submit reports on its work to the General Assembly, adopt recommendations, views and general comments?

It is not clear how a RtD mechanism would provide a tangible benefit to the HR system, and we would like to point out that a multiplicity of instruments and mechanisms is a concern. Existing frameworks like SDGs and legal obligations are already clarified through treaty body processes. In light of this, we advise incorporating the RtD into existing mandates rather than creating a separate institution/mechanism. More specifically, the RtD mechanism should be integrated into existing mechanisms such as Treaty Body reviews, the UN High Level Political Forum on Sustainable Development, and Universal Periodic Reviews and should be placed at the center stage of the GA’s agenda.

(10) -

(11) Yes

Organization for Defending Victims of Violence

ODVV believes that there must be a monitoring body such as the thematic mandate holder on the right to development to monitor and report the situation in all State parties and non-state parties in terms of their commitment or lack of commitment to the instrument and their attempts to attain development goals and their support of development to take place in other States or prevention of development in other states.

Compliance, monitoring and enforcement arrangements:

12. *What type of compliance, monitoring and enforcement procedures should be envisaged?*

- a. A compliance committee with a facilitation and enforcement branch?*
- b. A reporting procedure with periodic reports, reviewed by an expert body?*
- c. A self-assessment combined with a peer review mechanism?*
- d. A communications procedure?*
- e. An inquiry procedure?*
- f. An inter-State complaints procedure?*
- g. An advisory opinion procedure?*
- h. Should some procedures be optional and if, should the procedures be included in the text of the instrument in the form of an opting in or opting out clause or in an optional protocol?*
- i. How should the relationship with other relevant procedures and mechanisms be determined?*

States and Groups of States

Honduras

A reporting procedure with periodic reports, reviewed by an expert body?

Qatar

Type of the Compliance, Monitoring and Enforcement arrangement: There should be a compliance committee for the right to development and under the auspices of the Human Rights Council, whereas reporting is supposed to occur throughout a compliance committee. States should also review its reports periodically and discuss the reports before the Committee and the experts. We also consider that some of the procedures contained of the compliance arrangements are optional and included in the text of the instrument in the form of a participation or non-participation condition.

Global, Regional and National Human Rights Mechanisms and Institutions

Arab Human Rights Committee

The International instrument should create an international mechanism to monitor the compliance of States with regard to the protection and realization of the right to development. The monitoring mechanism shall be composed of

specialized independent experts elected by the States Parties and responsible for reviewing the reports submitted by these States, as well as receiving communications from States and individuals on complaints. The monitoring mechanism shall also provide guidance to countries and international bodies on interpreting and implementing the right.

Argentine Ombudsman Office

From our point of view, 12.a. and b. are highly interesting because they are consistent with the criteria laid down in previous paragraphs. Again, what is important here is that States, NHRIs and NGOs can express their opinions and that the Group or Committee, after following this practice in a frequency to be determined, make observations, if applicable. As for optionality, we consider that it would distort the above principles. On the other hand, since concluding observations would lack *imperium*—even though they will really have *authorictis*—we do not see that this clause be included therein.

Independent Expert on International Solidarity

What type of compliance monitoring and enforcement process should be envisaged: I am in support of option A—a compliance committee with a facilitation and enforcement branch—provided that finer details be refined.

NHRI Mexico

- Periodic reporting procedure;
- A procedure to deal with communications (complaints) from individuals or groups of individuals, peoples;
- Consider dispute settlement mechanisms between States Parties, as well as the competence of the International Court of Justice if necessary, in accordance with its Statute. This situation is observed in other international human rights instruments such as the Convention on the Elimination of All Forms of Discrimination against Women or the International Convention on the Elimination of All Forms of Racial Discrimination.

Non-Governmental Organizations

African Heritage Foundation Nigeria

Enabling clause on Compliance Committee consisting of individual experts with a facilitative branch (domestic responsibility, individual and collective dimension of duty to cooperate) and Enforcement branch including recourse for individuals and people (The Treaty body mechanism).

Al-Haq

The Right to Development as enshrined in this mechanism should be monitored and enforced with a facilitation and enforcement branch. This could be accomplished by active UN presence on the ground or frequent visits where violations of the right to development occur. This should include a UN representative residing on the ground, when possible, so that violations can be rapidly brought to their attention, documented, and brought to the UN General Assembly. The procedures for monitoring, enforcement, and compliance should not be optional and must be adhered to by all states bound to this treaty.

Asia Pacific Form on Women, Law and Development

A reporting procedure with periodic reports, reviewed by an expert body. Support creating a new reporting procedure, which may act as a supplement or balance between the CPR and ESCR committees.

An inter-State complaints procedure. Support such a procedure, given the power inequalities between countries.

Would ideally not have an opting out clause.

It should help strengthen the work of the treaty bodies and the Human Rights Council, as already the existing mechanisms are overburdened and this potential expert body could allow more monitoring of important issues.

CINGO

We opt for answer b): A reporting procedure with periodic reports, reviewed by an expert body.

The convention can have an article that says that States ratifying this convention are obliged to present a periodic report to an expert body and to include systematically in their UPR report and in the reports related to the other ratified treaty bodies, the implementation of the RTD.

Egyptian Council for Foreign Affairs

A reporting procedure with periodic reports, to be reviewed by an expert body, together with self-assessment with a peer review mechanism, combined with an Advisory opinion procedure.

International Accountability Project

One of the most acute gaps experienced by communities in the current development model is that of compliance and accountability for environmental and human rights violations that occur in the name of development. The limitations in the accountability framework involving development finance institutions is emblematic of the piecemeal approach to development that the binding instrument should aim to rectify.

IAP's experience working with communities adversely impacted by development finance institutions has shown that, as currently implemented -- for instance, without the necessary suite of powers to enforce solutions upon a finding of non-compliance -- the independent accountability mechanisms (IAMs) of these institutions cannot provide effective and adequate means of remedy or accountability for communities harmed by development projects. Many communities utilize these mechanisms after they have nearly exhausted local avenues for remedy for harms resulting from a project funded by development finance institutions. In this case, IAMs fulfill an important role by providing an avenue for communities to directly share their experience, expertise and grievances, and are empowered to respond by recommending solutions and remedies, facilitating dialogue with senior staff and decision-makers, investigating allegations of non-compliance, and where their mandate allows, engaging in dispute resolution.

Despite this critical role, the current limitations of IAMs mean that communities face numerous difficulties in accessing them,²⁵ and even when access is possible, further disappointments when attempting to enforce their rights. Among the difficulties faced by communities when accessing these bodies, are their lack of enforcement capabilities of investigative findings and their intrinsic connection with the "development" logic of the institutions they seek to hold to account. At the same time, IAMs play a valid role by providing an opportunity for community grievances to be heard, facilitating negotiation processes that could result in the implementation of communities' demands, and conveying lessons learned to management.

Based on this analysis, IAP recommends that the legally binding instrument on the right to development contemplate a combination of procedures in order to seek the implementation of this cornerstone right by duty bearers, including development finance institutions.

- a) **A compliance body with facilitation and enforcement branches** would combine aspects where IAMs might thrive, such as facilitating the implementation of socio-environmental responsibilities of development finance institutions when conversing with project-affected communities, while addressing a key weakness of IAMs - the enforcement of their findings when violations of said socio-environmental responsibilities occur. While IAMs continue to be important bodies of oversight in relation to the safeguard frameworks of development finance institutions, they have consistently failed to take the full set of human and environmental rights standards and norms into consideration in their tasks. An international body with the freedom to apply and implement these standards and norms would play an important role in complementing the work of IAMs. The enforcement branch should ensure that the Boards and management of development finance institutions are not able to prevent or deter the implementation of decisions that seek to hold them accountable, and require remedy to be provided to communities adversely affected by their investments.
- b) **A reporting procedure reviewed by a body of experts** could also create space for discussions within States and development finance institutions, and give communities and civil society the opportunity to participate in discussions concerning the very core of development processes through international standards and oversight.
- c) **A communication and an inquiry procedure** would provide the mechanism with a more direct link to specific situations resulting from the projects and plans of development finance institutions that might require detailed and rapid attention due to possible occurring or future violation of international standards.

d) **An advisory opinion body** would also serve as a possible preventive mechanism in order to guide development finance institutions and States in the direction of community-centered and community-led development that would prevent violations of international standards and norms, and ensure the realization of the right to development.

Therefore, we recommend that the compliance, monitoring and enforcement mechanism connected to the future instrument on the right to development be a combination of the following: a compliance committee with a facilitation and enforcement branch; a reporting procedure with periodic reports, reviewed by an expert body; a communications procedure; an inquiry procedure; and an advisory opinion procedure. IAP further recommends that this mechanism should work in close coordination with other human and environmental rights procedures and mechanisms, always following the human rights principles that determine that the most favorable law applies to the human person, and that social justice must be the primary goal of duty bearers, irrespective of structural challenges.

International Women's Rights Action Watch Pacific

Combination of 1 (specialised committee at the GA level),4,5,6,7.

Final provisions:

13. What elements should be specified in the final provisions?

a. Who can become a party to the LBI?

b. What is the desired number of ratifications for entry into force?

c. Should reservations be possible?

d. Should there be a clause on dispute resolution with respect to the interpretation or application of the instrument with jurisdiction of the International Court of Justice?

e. Should there be a clause concerning the possibility to denounce the agreement?

States and Groups of States

Honduras

(a) Any State who wants to be part of it.

(b) The number desired of ratifications should be 10 States.

Qatar

Producing legal effect: The United Nations requires to sign the Convention and promote the signature or ratification of it. The signature represents acceptance of the Convention, and the legal effect of signing the Convention is limited to the obligation of the signatory State by refraining from any act contrary to the object and purpose of the Convention on that issue.

We propose that States should be allowed to **enter reservations to the provisions** contained therein or Some of these provisions; therefore, the State should be allowed to release a statement that excludes or changes the legal effect of certain provisions of the Convention in respect of that State. In any case, no reservations shall be permitted with the object and purpose of the Convention.

The human rights obligations of States: there are three levels of human rights obligations of states: the obligation to respect, protect, and fulfil. The obligation to fulfil includes both the obligation to commitment as well as provide. The obligation to respect requires that State refrain from interfering, directly or indirectly, with the enjoyment of the right, the obligation to protect requires States to adapt measures that will prevent third parties to have a negative impact on the level of enjoyment or to prejudice the guarantees established, and the obligation to perform requires States to adopt appropriate legal, administrative, budgetary, judicial and promotional measures towards the full realization of rights. The failure of the State to fulfil its obligation under any of these levels constitutes a violation of human rights.

The progressive realization of certain rights that might not be attained only in a gradual: all rights involve aspects that may be applied immediately, and other aspects of the right that may only be applied gradually. A distinction must therefore be made between the State party's inability to comply with its obligations relating to the right and Its unwillingness or its failure to adapt the necessary measures to ensure the realization of the right despite its ability to do

so. The burden of proof the impossibility of the full realization of the right lies with the State concerned; thus, it should have to prove that it had made every effort and used all available resources to fulfill its obligations, and it had been unable to full realization of the right.

Legal effect of ratification or accession to a convention: At the national level, the legal effect of the convention varies depending on the nature of its legal system. Human rights conventions recognize minimum standards and guarantees. The Convention on the Rights recognizes the standards and guarantees; therefore, the State should seek to raise those standards and guarantees. If the level of guarantees or standards varies, everyone shall enjoy provisions that provide maximum guarantees or standards with respect to the implementation of the right.

Global, Regional and National Human Rights Mechanisms and Institutions

Argentine Ombudsman Office

(a) The OHCHR is uniquely positioned to form the Group, ensuring equitable representation of all regions.

(b) Likewise, we believe that this Office will be able to assess the critical mass from which it is possible to define the number of ratifications for the agreement to entry into force.

(c) According to our view, in principle, it would be unwise. However, everything will depend on the final text of the Instrument.

(d) Taken into account the mechanism depicted above, it seems to be adequate that a summary procedure be established within the scope of the Office of the High Commissioner for Human Rights to solve disputes.

(e) Yes, this clause should be included because the denunciation of the agreement, regardless of motivation, contributes to facilitate its first ratification.

Independent Expert on International Solidarity

Elements that should be specified in the final provisions:

- a. Who can become a party to the LBI: States.
- b. What is the desired number of ratifications for entry into force: [left blank]
- c. Should reservations be possible: yes.
- d. Should there be a clause on dispute resolution with respect to the interpretation or application of the instrument with jurisdiction of the ICJ: yes.
- e. Should there be a clause concerning the possibility to denounce the agreement: no.

NHRI Mexico

- Regarding those who may be party, consider the States Parties signatories to the Charter of the United Nations, as well as members of specialized agencies, States Parties to the Statute of the International Court of Justice and States invited by the General Assembly of the UN, so that the binding international instrument will be available for possible accession.

- It is considered that the number may be 10 instruments of ratification deposited with the Secretary General of the United Nations (e.g. the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights).

- It is considered that reservations should be possible, in accordance with other international instruments, as long as they are not incompatible with the object and purpose of the binding instrument or inhibit the functioning of its organs.

- It is considered that there should be a clause regarding dispute settlement, with respect to the interpretation or application of the instrument that considers dispute settlement mechanisms, including the International Court of Justice and its Statute.

- It is considered that denunciation should not be possible, due to the object and purpose of the binding instrument.

However, it can be accepted considering the freedom of the States to bind themselves as long as it does not violate the full observance of the rights related to development contained in other international instruments binding on the States

Parties and without prejudice to the obligations acquired during the time of validity, including the communications (complaints) filed before the respective Treaty Body.

Non-Governmental Organizations

African Heritage Foundation Nigeria

- (a) States
- (b) 40 with geo-political zone spread;
- (c) Yes, reservations be made possible;
- (d) Yes, a clause on dispute resolution necessary.
- (e) No, efforts should be made to promote inclusivity and consensus building across ideological divides.

Al-Haq

Any UN Member State may, and is encouraged to, become a party to this legally binding instrument, which should be entered into force once it has been ratified by at least 20 States. Reservations from any provisions of this legally binding instrument should not be permissible, nor should the possibility to denounce the agreement be allowed. A clause should be added that grants jurisdiction in case of violations to the International Court of Justice. The final provisions should also include a possibility to propose amendments to the agreement, which would require a conference to consider such amendments that would be adopted if a majority of state parties vote in favor of the agreement.

Asia Pacific Form on Women, Law and Development

- (a) -
- (b) 20
- (c) No
- (d) From our perspective this should be a yes; as it will facilitate violations of the right to development to be brought under the ICJ.
- (e) The clause could specify that parties can withdraw, but are asked not to denounce the instrument.

CINGO

- (a) All States, regional integration organizations and some non-State actors such as international institutions.
- (b) The Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession.
- (c) Yes, but not those incompatible with object and purpose of the instrument.
- (d) Yes, it can be good to have it; it can a specific article on "Settlement of disputes"
- (e) A clause on denunciation is usually contemplated in the other conventions, therefore, it can also be included in a legally binding instrument on RTD.

Egyptian Council for Foreign Affairs

- (a) UN member states
- (b) Desired number of ratifications for entry into force: 100 States
- (c) No reservations
- (d) Dispute resolutions should be included with a possibility to seek the ICJ Advisory Opinion
- (e) No possibility of denouncing the agreement

International Accountability Project

A range of instruments, in attention to the sovereignty of States, allow for denunciation. However, principles such as the prohibition of regression and obligation of progressive realisation of human and environmental rights require the observation of sovereignty not only from the lens of a right, but also of a responsibility of States in relation to those under its jurisdiction and to the international community. In the words of the International Commission on Intervention and State Sovereignty:

Thinking of sovereignty as responsibility, in a way that is being increasingly recognized in state practice, has a threefold significance. First, it implies that the state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare. Secondly, it suggests that the national political authorities are responsible to the citizens internally and to the international community through the UN. And thirdly, it means that the agents of state are responsible for their actions; that is to say, they are accountable for their acts of commission and omission. The case for thinking of sovereignty in these terms is strengthened by the ever-increasing impact of international human rights norms, and the increasing impact in international discourse of the concept of human security.

Due to the above-mentioned principles, widely recognised as applicable in relation to human rights obligations and the notion of sovereignty as a responsibility, IAP recommends that denunciation of the instrument should not be allowed. The opposite would mean a clear regression of human rights obligations, as it would, among other things, impede communities access to instruments enabling complaint and democratic participation, and also derogate the sovereign responsibility of States in relation to the international community. Such derogation would most likely jeopardize the implementation of obligations necessary to realize the right to development.

International Women's Rights Action Watch Pacific

1. Who can become a party to the LBI? All UN Member
2. What is the desired number of ratifications for entry into force? 20
3. Should reservations be possible? No
4. Should there be a clause on dispute resolution with respect to the interpretation or application of the instrument with jurisdiction of the International Court of Justice? Yes
5. Should there be a clause concerning the possibility to denounce the agreement? No

Other relevant comments:

States and Groups of States

European Union

We have to re-state our position that we are not in favour of the elaboration of an international legal standard of a binding nature as we do not believe that this is the appropriate mechanism to realise the right to development. However, we remain open to consider the criteria and operational sub-criteria and the elaboration of standards, on the understanding that how they will be applied is not yet agreed and could take various forms, including the elaboration of guidelines on the implementation of the right to development.

Mauritius

Pertaining to (a) the enforcement arrangements and (b) the final provisions, it is desirable that any direct complaints procedure should be option and reservations possible.

Mexico

Mexico, as it has stated before, maintains reservations regarding the negotiation of an international treaty on the subject, with regard to the discussion and vote on Council resolution 39/9, which can be summarised in the following considerations:

- In international law, the existence of a "right to development" in se, i.e. as a subjective right under international law, is debated. The doctrinal currents and countries that object to the existence of a new right called "right to development" argue that in reality it is not a right in itself, but that development is evidence of the full enjoyment of human rights, mainly those known as programmatic, economic, social and cultural rights.
- In line with the above, Mexico insists that the right to development be understood as the result of the protection of various human rights and fundamental freedoms, mainly economic, social and cultural rights, which generate the conditions for development to which the goals of the 2030 Agenda aspire.
- It is considered that there is already an international framework on which States must base themselves to make development effective, including the Declaration on the Right to Development as a reference framework for human

rights and the 2030 Agenda, so that the negotiation of a legally binding instrument would imply duplication of efforts, as well as the fragmentation of international law and could even reverse the consensus reached.

- At the 33rd and 39th sessions of the Human Rights Council, Mexico expressed its reservation to the need to develop a legally binding international instrument on the right to development, given that the concept does not meet with the consensus of States.

- Mexico suggests redoubling and concentrating efforts to fulfil the mandate of the resolution in the sense of concluding the elaboration of criteria and operational sub-criteria for the implementation of the right to development with the aim of gathering consensus on the matter and generating State practice, aligning these efforts with the commitments assumed under the 2030 Agenda.

- During the 70th UNGA, through an explanation of vote, Mexico pointed out that any discussion on a possible instrument on the right to development should take place in the future, once these guidelines have been elaborated, and through a collaborative process of all the regions involved.

Switzerland

In order to make progress on the right to development, it is crucial to overcome blockages, work towards reconciliation between the current fronts and seek a common narrative. Unfortunately, the Non-Aligned Movement did not choose this constructive approach during this session of the Council on the draft resolution L.12 "Right to Development", especially on the paragraphs dealing with the issue of a legally binding instrument.

Switzerland is convinced that if the main co-sponsors had reverted to more nuanced language in the text this year, one could have imagined a much more positive voting outcome or even the possibility of a consensus adoption. Draft resolution L.12 is unfortunately a missed opportunity.

The General Assembly resolution on the right to development, adopted at the 72nd session of the GA, mentions that the options for the realisation of the right to development, elaborated by the Working Group, can be presented in various forms. Consequently, Switzerland abstained from the vote on this text in New York.

On the other hand, operative paragraphs 17e, 17f and 18 of draft resolution L.12 precipitate the steps towards the elaboration of a legally binding instrument, an option that is far from being the subject of an international consensus. A large number of states, including Switzerland, consider that the elaboration of a legally binding instrument would not be an appropriate and effective way to realise the right to development.

For the above-mentioned reasons, Switzerland is obliged to vote no in today's vote on the draft resolution L.12.

Non-Governmental Organizations

Asabe Shehu Yar Adua Foundation

Instrument Combining Existign Models Of Human Rights Treaties With Inter-State Rights And Obligations

The RTD had gained ground in some regional and inter-regional international legal instruments, the most prominent expression at a regional level is Article 22 of the 1981 African Charter on Human and Peoples' Rights. To date, that Charter remains the only hard law document bestowing an individual and collective RTD with binding and enforceable obligations imposed on States. In the Preamble to the African Charter, the African States involved stated their conviction that **'it is essential to pay a particular attention to the right to development'**. According to Article 22, all peoples 'shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind' and all States 'shall have the duty, individually or collectively, to ensure the exercise of the right to development'. The African Commission has dealt with at least seven complaint cases that are relevant to this provision. In response to a complaint that became known as the *Endorois* case, the African Commission found (in November 2009) that the government of Kenya had violated Article 22. This case will be further explained below.

Another example, from the inter-regional level, is that of the treaties that through the years have formed the basis for development cooperation relations between the ACP Group (nowadays consisting of 79 States in Africa, the Caribbean and the Pacific), and the EU. While the respective Lomé Conventions and the Cotonou Partnership Agreement, that have been in place consecutively since 1975, did not directly refer to the RTD, their approach, contents and basic general principles certainly came a long way towards operationalizing the RTD in a comprehensive manner. An example is the integral understanding of 'development' as an objective and process to be pursued, with economic, social, cultural, political and possibly other relevant dimensions.

Another illustration is the contractual approach, by which both the ACP and the EU States formally committed themselves, in binding legal instruments, to the principles, objectives, procedures and institutions for their development cooperation relations, and by which the EU bound itself to making available a specified set of resources in support of these relations. An additional main feature of the ACP-EU treaties that fits the outlook of the UNDRTD quite well is the central role they gradually assigned to human rights.

Affirming Right to Development As A Fundamental Part Of The Rights Of The Human Person

At the global level, developments continued as well. The RTD was further reaffirmed in several international documents and fora, including at the World Conference on Human Rights held in Vienna in 1993. The Vienna Declaration and Programme of Action contained more than ten references to the RTD and/or the UNDRTD. In a follow-up to the World Conference, in 1993 as well, the UN General Assembly established the post of High Commissioner for Human Rights. The Preamble to the Resolution involved reaffirmed **‘that the right to development is a universal and inalienable right which is a fundamental part of the rights of the human person’**. Among the responsibilities that the UN General Assembly assigned to the High Commissioner in the same Resolution was (and still is) the task to ‘promote and protect the realization of the right to development and to enhance support from relevant bodies of the United Nations system for this purpose’. The Office of the High Commissioner for Human Rights (OHCHR) has since pursued this goal, among other things by initiating and supporting attempts to clarify and advocate the RTD. Several bodies were created in the process, and then serviced by the OHCHR. These included various Intergovernmental Working Groups on the Right to Development as of 1993, a UN Independent Expert on the Right to Development (1999–2004), and a High-level Task Force on the Implementation of the Right to Development (2004–2010). These bodies, among other things, have interpreted and analysed the scope and content of the RTD, the challenges of implementation, and recommended ways and means towards a global realization of the RTD.

RTD: Its Compliance Approach, Monitoring Processes Underscored and Enforcement Procedures Envisaged

World leaders that attended the September 2000 UN Millennium Summit—which adopted the Millennium Development Goals (MDGs) which was subsequently projected to be in place until 2015—pledged the realization of the RTD. In particular, the Heads of State and Government expressed their commitment ‘to making the right to development a reality for everyone and to freeing the entire human race from want’. Along the same lines, the Monterrey Consensus that emerged following the first International Conference on Finance for Development (2002) emphasized key elements of the UNDRTD by reinvigorating commitment on the part of the international community to support the development efforts of developing countries through international cooperation. Subsequent conferences have built upon the above agenda, including the 2015 Addis Ababa Third International Conference on Finance for Development where Heads of State and Government reaffirmed their ‘strong political commitment to address the challenge of financing and creating an enabling environment at all levels for sustainable development in the spirit of global partnership and solidarity’.

As we already indicated at the start of this paper, the recently endorsed UN SDGs also emphasize core elements of the RTD. While the SDGs are contained in a UN General Assembly Resolution, the experiences with their predecessors—the MDGs—have shown that, despite their soft law nature, such Goals can generate enormous momentum and can lead to unprecedented prioritization and intensification of implementation efforts. SDGs 16 and 17 are especially relevant for our purposes. SDG 16, among other things, focuses on promoting ‘peaceful and inclusive societies for sustainable development’, providing ‘access to justice for all’, and building ‘effective, accountable and inclusive institutions at all levels’. SDG 17 highlights the need to strengthen the means of implementation (finance, technology, capacity building, trade, systemic issues) and to revitalize the Global Partnership for Sustainable Development.

The interconnections between the SDGs and the RTD are evident. The approach and instruments of the right to development would be useful to apply when implementing the SDGs. In turn the fulfilment of the SDGs would be helpful for the realization of the right to development. At the same time we should be mindful that there are limitations to the set of SDGs and to the SDG approach. This should be supplemented by other instruments and approaches that are needed for a comprehensive understanding of the dynamics of development and thus of the right to development.

A call in support of human rights-based approaches to development is certainly very important as the impressive progressive evolution of international human rights law and the ratification records of international human rights law

instruments that the world has witnessed have not yet generated sufficient progress on the ground. The RTD remains ‘highly relevant to the real and concrete challenges to human rights in an increasingly integrated and unequal world of the twenty-first century’. Accordingly, its ‘core claim to a socially just economic system, governed by rules and principles that protect human rights, is even more important in the twenty-first century as globalization proceeds at a rapid pace’ which seeks to also clarify that the UNDRTD is ‘the only international human rights instrument that addresses the need for joint international action to address the human rights consequences of global economic arrangements’.

Measures Designed For Effective Implementation Of The RTD

The very latest development in the UN history of the RTD is the Human Rights Council decision to appoint a Special Rapporteur on the RTD (for a period of three years as of September 2016), mandated to contribute to the UN Working Group on the Right to Development and to ‘the promotion, protection and fulfilment of the rights to development in the context of the coherent and integrated implementation of the 2030 Agenda for Sustainable Development and other internationally agreed outcomes of 2015’. In addition, the new Special Rapporteur is supposed:

To engage and support efforts to maintain the right to development among various United Nations bodies, development agencies, international development, financial and trade institutions, and to submit proposals aimed at strengthening the revitalized partnership for sustainable development from the perspective of the right to development.

Finally, the new Special Rapporteur is to submit studies (on request by the Working Group on the Right to Development or the Human Rights Council) and is required to submit an annual report on her/his activities to the Human Rights Council and the UN General Assembly.

The above has traced the evolution and the continued relevance of the concept of the RTD and has pointed at the usefulness of involving the various hard and soft law international instruments that are currently available in addition to the UNDRTD. Especially selected global international human rights instruments, regional and inter-regional instruments, and the SDGs have potentially strong contributions to make, as will be further explored below. Proceeding from this background, we now first move to the substance and implications of the RTD as conceived in the UNDRTD.

Suggestions:

In light of the fierce political controversy over certain key aspects of the RTD, and the urgent need to make headway, we at Asabe Yar’ Adua foundation suggest a pragmatic approach for revitalizing its implementation. Rather than seeking recourse to the creation of new legal instruments, such as a treaty or framework convention on the RTD, in our view the most promising—though difficult—way forward is through mobilizing existing provisions of international law. This entails drawing firmer attention to relevant provisions in already existing instruments, reinterpreting such instruments where appropriate and feasible, finding new momentum for example in the SDGs, and creating at least rudimentary accountability through conducting international monitoring processes or using regional and inter-regional mechanisms where available. Some aspects of these suggestions will be examined below.

Revitalizing The Implementation Of The Right To Development By Mobilizing Existing Provisions Of International Law And Building On The Momentum Of The SDGs

We have so far indicated in this article that there is quite a bit of ground to build on in international law relevant to the RTD, contested as it is. Nevertheless, 70 years after the adoption of the UN Charter and 30 years after the adoption of the UNDRTD, still very little real RTD implementation practice has been achieved. This does not mean, however, that no progress at all has been made on tackling development issues. On the contrary, in relation to certain persistent problems such as for example under-five child mortality—which has halved in the last decades—and child poverty, tremendous achievements can be noted. According to UNICEF’s report *The State of the World’s Children 2016: A Fair Chance for Every Child*, children born today ‘are over 40 per cent more likely to survive to their fifth birthday and more likely to be in school’ than was the case in the year 2000. Even on child poverty and child mortality, however, according to UNICEF much more action is still badly needed, if only because:

In the midst of progress, millions of children continue to live—and die—in unconscionable conditions. In 2015, an estimated 5.9 million children died before reaching age 5, mostly as a result of diseases that can be readily and affordably prevented and treated. Millions more children are still denied access to education simply because their parents are poor or from a stigmatized group, because they were born female, or because they are growing up in

countries affected by conflict or chronic crises. And even though poverty is falling globally, nearly half of the world's extreme poor are children, and many more experience multiple dimensions of poverty in their lives.

Clearly, the MDGs have played a positive role in the realization of the above-mentioned successes in combating poverty and under-five child mortality. They certainly have managed to bring about renewed momentum for development goals and targets, even though they grossly restricted the agenda to eight crucial, but not all-encompassing Goals. In addition to the existing hard law provisions in the UN Convention on the Rights of the Child, no less than four out of the eight soft law MDGs specifically addressed issues concerning poverty or child mortality. This may be a basis for explaining the relatively positive changes for children since the year 2000. In other words, the MDG example suggests that old/existing law can obtain impetus from new political mobilization and momentum. This sparks hope in terms of the to be expected impact of the—more comprehensive, and more rights-oriented—SDGs.

If one analyses the existing legal provisions which are relevant to the RTD, including the hard and soft law that were already reviewed in this article, then three common substantive orientations emerge that are crucial for improving the implementation record.

Firstly, across older and newer instruments, including the SDGs, a strong call for inclusive development appears. This element has evolved most strongly out of the three orientations presented here. It entails, *inter alia*, that development objectives, targets and interventions should be non-discriminatory. The non-discrimination principle has a strong status both in international and national law. It has found its place in international human rights law but also in international trade law. Pursuing inclusive, non-discriminatory development and/or equal development opportunities implies special attention for the position, needs and rights of vulnerable, marginalized and/or discriminated people. These will often include women, children, persons with disabilities, indigenous people(s) and rural populations. The non-discrimination principle is a core element of human rights-based approaches to development and, as such, has gained more prominence in development practice than in the past. It is a crucial key to bringing home development for all.

Secondly, there is a strong need for comprehensive and coherent approaches that seek to integrate, and possibly balance, the various interests, needs and rights that come together in the concept of sustainable development and the associated implementation agenda. This entails adequately looking after economic, social, cultural, political and other relevant dimensions and manifestations of development. This also involves considering both human and ecological needs, and looking for normative and policy coherence. As observed before, the UNDRTD does not contain any environmental provisions. Consequently, in that respect it is incomplete and/or out of date. The SDGs are more progressive as far as this is concerned and explicitly seek to integrate and balance the economic, social and environmental dimensions of sustainable development. This SDG consensus should be built upon in the future.

Thirdly, to advance the RTD structurally, a new international order has to be pursued which would redress the current injustices in international economic and trade law, and allow for more forceful action on global challenges such as climate change and concerning financing development. This has been the elephant in too many relevant rooms for too long, though, both at international and national levels. As earlier described, this element of the RTD has received little follow-up. Hence is it no surprise that MDG 8, on the Global Partnership for Development, also has been labelled “the most neglected of all MDGs”. Progress in this area has been very difficult and slow and there is not much reason to believe that this picture will change drastically in the near future.

In the next section we will nevertheless review the scope for revitalizing the implementation of the RTD. In doing so we will focus on three concrete means of implementation for which we believe there to be sufficient leads for seeing at least some prospect for positive change. These means are: international cooperation, accountability mechanisms and regional and inter-regional instruments and procedures.

Advancing International Cooperation

As explained earlier, the duty to cooperate for international development is a long-standing element of international law. More in particular, it is a standing feature of various global and widely ratified UN human rights treaties. For example, the general implementation article of the 1966 International Covenant on Economic, Social and Cultural Rights already specified that States Parties to that Covenant shall ‘take steps, individually and through international assistance and cooperation, especially economic and technical’ to realize the Covenant. While the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination Against Women, the Convention

Against Torture and the Migrant Workers Convention all lack such an international cooperation provision, some other global UN human rights treaties have ever more elaborate stipulations on this aspect.

Accordingly, the general implementation article of the 1989 UN Convention on the Rights of the Child (Article 4) provides that ‘with regard to economic, social and cultural rights, States Parties shall undertake such implementation measures where needed, within the framework of international co-operation’. More specific aspects are highlighted in references to undertakings to cooperate internationally on: the production, exchange and dissemination of information and material of social and cultural benefit to the child; protecting and assisting refugee children; preventive health care and treatment of children with disabilities; health; and education. Article 45 explains the mandate of the UN Committee on the Rights of the Child to encourage international cooperation by liaising between various relevant actors.

The Convention on the Rights of Persons with Disabilities has a similar general implementation provision as the Convention on the Rights of the Child, and brings the matter even to a higher level by featuring a lengthy separate article on international cooperation in general terms. This article precedes the one on national implementation and monitoring. Likewise, the mandate of the Committee on the Rights of Persons with Disabilities also explicitly extends to encouraging international cooperation.

Due to the nature of the topic covered, it is not unexpected that the International Convention for the Protection of All Persons Against Enforced Disappearance, in its Article 15, contains ‘only’ a rather specific and modest international cooperation obligation:

States Parties shall cooperate with each other and shall afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.

All in all, the various UN human rights treaties presented above—covering a wide range of important issues relating to economic, social and cultural rights, children’s rights, persons with disabilities and the phenomenon of enforced disappearance—provide a solid and concrete legal basis and a reason for further operationalizing international cooperation for development. The UN treaty bodies involved have already acted upon this to some extent by referring to international cooperation and/or assistance in quite a few of their General Comments. In doing so, the Committee on Economic, Social and Cultural Rights has not only referred several times to the obligations of States to contribute to international cooperation, but also indicated that States Parties which lack national resources for achieving the progressive realization of economic, social and cultural rights ‘have an obligation to seek international cooperation and assistance’. In this way, at least in legal terms, the circle of the duty to cooperate has been closed.

UN Treaty Bodies

A feasible way forward in terms of RTD implementation action would be for the treaty bodies involved to pay more attention to relevant aspects of the duty to cooperate for human rights and development in the State reporting procedures that they conduct. This would entail that they enquire more frequently and more explicitly than is currently the case whether governments sufficiently provide or request international cooperation and assistance, according to what applies in the particular case.

International Duty To Cooperate SDGs

A further impetus could be found in the SDGs. After all, when endorsing the SDGs, the UN Member States referred to the goal of achieving the SDGs as a ‘collective journey’. They also expressed their determination ‘to mobilize the means required to implement this Agenda through a revitalized Global Partnership for Sustainable Development, based on a spirit of strengthened global solidarity’. Another interesting dimension could be that of stepping up South-South international cooperation, although for the time being this could only complement—and not replace—North–South cooperation. A current example is that of the India Brazil South Africa (IBSA) Dialogue Forum. This Forum was established in June 2003 because of ‘the necessity of a process of dialogue among developing nations and countries of the South to counter their marginalisation’. The three States involved collaborate in IBSA because they are determined to: (a) contribute to the construction of a new international architecture; (b) bring their voices together on global issues; and (c) deepen their ties in various areas. They also conduct ‘concrete projects of cooperation and partnership with less developed countries’. While thus this has made a potentially promising start, this seems not yet to have generated an all-encompassing policy practice. For example, there are reports that the foreign economic policies of IBSA States ‘deliberately but also unintentionally create sub-optimal conditions for the development of some of their Southern neighbours’.

Strengthening Accountability

Another vital element in pushing for more implementation action concerning the RTD is that of assigning more concrete responsibilities to both rights holders and duty bearers. The more vigilant role for the UN human rights treaty bodies that we proposed in the previous section could also contribute to processes of assigning such specific responsibilities. Obviously, monitoring the extent to which States actually perform their RTD obligations—for example in relation to making available or demanding international assistance—would then become more useful and so perhaps more achievable. In this way the State reporting procedures concerning the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on Persons With Disabilities, and to a lesser extent the International Convention on the Protection of All Persons from Enforced Disappearance, could turn into monitoring possibilities for the specific RTD elements that are relevant to the human rights treaty involved. Once such practice has taken off, over time this could perhaps even inspire greater attention for RTD issues in the work of the Human Rights Council, more in particular in the Universal Periodic Review process by which the Council reviews the overall human rights records of all UN Member States.

On the one hand, the suggestions above might seem idealistic and/or naïve. After all, most of the global efforts to further specify the implications of the RTD have stranded. One of the more recent examples is the work of the High Level Task Force on the Right to Development. The set of operational criteria and the list of indicators for the implementation of the RTD that the Task Force developed reportedly appear ‘to have brought the political divisions to a head’. On the other hand, there might be a new straw to seize, in that the process around the formulation of the SDGs has clearly generated a renewed emphasis on concrete targets, on data as a basis for evidence-based monitoring and on the development of concrete sustainable development indicators. It remains to be seen, however, how strong or weak this straw will turn out to be. While the ‘Follow-Up and Review’ section of Agenda 2030 as such is relatively elaborate and comprehensive, it is utterly disappointing that the review process is stated to be an entirely ‘voluntary and country-led’ process and that ‘the global review will be based primarily on national official data sources’. According to Shahra Razavi, Chief of Research and Data of UN Women since mid-2013, ‘there was complete consensus’ among the UN Member States about keeping the review process voluntary, ‘regardless of their regional, political, or ideological differences on other issues’. We fully agree with her that, ‘given the explicit human rights anchoring of the new Agenda, it is doubly disappointing that Member States did not break any new ground in subjecting themselves’ to more robust monitoring systems.

Using Regional and Inter-Regional Instruments and Procedures for Understanding of the RTD

As outlined above, some binding regional and inter-regional instruments have also incorporated RTD content or inspired RTD implementation efforts. These might provide leads for revitalizing the RTD as well. The most direct and prominent example of such an instrument is Article 22 of the African Charter on Human and Peoples’ Rights. The former Prince Claus Chair Holder in Development and Equity, Olajumoke Oduwole, who during her tenure of this Chair focused her work on the RTD, has noted that this Article is understudied. She also observed that: the relevance of this regional right to analysis of the universal RTD lies in its contextual guidance regarding the original intent of the African developing country players who initiated this right at the regional level, as well as the continent’s contribution in the area of jurisprudence on the RTD so far.

It is in this regard indeed that the African perspective on the RTD could be an inspiration for the revitalization or operationalization of the RTD at the global level.

Important developments have been recorded at the African regional human rights system regarding both the conceptual and operational understanding of the RTD. The African Charter on Human and Peoples’ Rights, referred to in short as the Banjul Charter, remains the only tested international instrument on the RTD with an emerging quasi-jurisprudence on the subject. At least seven of the over 229 decisions that had been rendered by the African Commission up until June 2016 have relevance for the RTD. These cases either explicitly involved the RTD, or are strongly relevant to it, for example because they address pertinent economic, social and cultural aspects of development. As already stated above, Article 22 of the African Charter stipulates that ‘all peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind’ and that ‘States shall have the duty, individually or collectively, to ensure the exercise of the right to development’. Although Obiora Okafor has noted that the content of Article 22 ‘remains obscure as to the nature of the concept of development especially as no detailed developmental programme can be deciphered from its reading’, implementation practice under this clause could provide a useful perspective on potential options for revitalizing the

RTD in international law. Okafor thought so too and in a 2013 publication already advocated that a ‘globally contextualized analysis of article 22’ of the African Charter might even hold important lessons for ‘any anticipated global treaty on the right to development’.

According to Okafor, the developments in the African regional human rights system have established that: any conception of development under article 22 must, at a minimum: (a) frame the process and goals of development as constituted in part by the enjoyment of peace; (b) envision the process and ends of development in part through a human rights optic; (c) view the gender, ethnic and other such inequities that exist in the distribution of developmental benefits as a lack of development; (d) imagine the people’s participation in their own development as an irreducible minimum; and (e) imagine the right to development as inclusive of the rights to the means, processes and outcomes of development.

For our purposes, it is indeed most important to consider how the African Commission has interpreted and given meaning to Article 22. So far, the African Commission’s most well-known decision regarding a violation of Article 22 of the African Charter is that in the *Endorois* case. This case involved the forced removal in the 1970s of the Endorois (a pastoralist group) from their ancestral land on which they had lived for centuries, to set up a national game reserve and tourist facilities. The complainants in this case raised several violations of their rights under the African Charter, including their RTD under Article 22. In the 2009 decision in this case, the African Commission found that the Kenyan government had indeed violated Article 22. It clarified the content of the RTD by noting:

that the right to development is a two-pronged test, that it is both *constitutive* and *instrumental*, or useful as both a means and an end. A violation of either the procedural or substantive element constitutes a violation of the right to development. Fulfilling only one of the two prongs will not satisfy the right to development. The African Commission notes the Complainants’ arguments that recognizing the right to development requires fulfilling five main criteria: it must be equitable, non-discriminatory, participatory, accountable, and transparent, with equity and choice as important, overarching themes in the right to development.

In that regard it takes note of the report of the UN Independent Expert who said that development is not simply the state providing, for example, housing for particular individuals or peoples; development is instead about providing people with the ability to choose where to live. He states ‘the state or any other authority cannot decide arbitrarily where an individual should live just because the supplies of such housing are made available’. Freedom of choice must be present as a part of the right to development.

In the earlier case of *Democratic Republic of the Congo v. Burundi, Rwanda and Uganda* the African Commission had already shed light on the meaning of the RTD as well as the entitlements and duties that follow. In adjudicating this case, that concerned regional military interference in the Democratic Republic of the Congo, the African Commission noted that:

the deprivation of the right of the people of the Democratic Republic of Congo, in this case, to freely dispose of their wealth and natural resources, has also occasioned another violation—their right to their economic, social and cultural development and of the general duty of states to individually or collectively ensure the exercise of the right to development, guaranteed under article 22 of the African Charter.

This specific interpretation of the RTD in a growing body of quasi-jurisprudence by the African Commission contrasts with, and could usefully complement, the more abstract current debates at the global level.

Article 22 of the Banjul Charter as interpreted by the African Commission is instrumental in at least two ways. Firstly, at the conceptual level, it offers a more detailed understanding of the RTD. Secondly, at the enforcement level, the African system might hold clues for those who advocate similar accountability or enforcement structures at the global level. The African model, its achievements, effectiveness and challenges could provide some critical thoughts, for example for those supporting a global treaty on the RTD, and thereby it would be useful to analyse and publicise these more than has been the case so far.

The other example of a treaty operating at the inter-regional level and relevant for RTD debates that was presented above is the ACP-EU Cotonou Agreement. The current version of this treaty, that provides the framework for international development cooperation between in total 107 States in Europe, Africa, the Caribbean and the Pacific, will expire in 2020. While this treaty does not refer to the RTD as such, its implementation practice shows several highly relevant features. In the run-up to the start of the renegotiations on terms of collaboration between the ACP and the

EU, there are signs that several of the achievements established in the past may be at risk. This extends, for example, to the principle of joint management of the cooperation activities and the relationship as such. Some EU Member States as well as some forces in the European Commission would not mind doing away with this aspect and returning to a more unilaterally directed basis for ACP-EU relations. This would seriously affect the participation of the ACP States in the process and so cut back on an important aspect of the RTD. There might be space, however, for curbing such tendencies, should they materialize as official positions later on in the formal negotiation process. This space might be found in the EU Action Plan on Human Rights and Democracy 2015–2019, in which the Union has committed itself ‘to move towards a rights based approach to development cooperation, encompassing all human rights by pursuing its full concrete integration into all EU development instruments and activities’ and ‘to contribute to discussions on the right to development’. Renegotiating the terms of ACP-EU collaboration will become an important litmus test for the EU’s commitment to its self-imposed policy priorities.

Recommendations:

So far, we have been able to explore in this article, the scope for revitalizing the RTD through existing international law instruments, rather than by creating additional normative frameworks. In analysing the state of the RTD 32 years after the adoption of the UNDRTD, we found a mixed picture. On one hand, the protracted debate and controversy over the RTD have more or less ended up in a stalemate at the global level, with the exception of selected UN human rights instruments and the SDGs process that we have discussed. While Agenda 2030 is directly inspired by rights-based approaches to development and the RTD, the possible hope that this may generate for revitalizing the RTD is tempered by the fact that the SDGs themselves and the attached Targets do not represent a firm rights orientation. Accordingly, we have pointed out modest potential (and partly alternative) spaces for revitalizing the RTD and its implementation efforts on the basis respectively:

A better understanding of the law on international cooperation and related obligations, especially as taken up by UN human rights treaty bodies;

Creating accountability processes, which include monitoring the extent to which States actually perform their RTD obligations; and

Learning from regional experiences on concretizing the RTD such as the ones thus far gained most notably in the African regional system.

Though not exclusive of other elements, in our view these three aspects certainly are relevant to future understandings of the RTD and to the potential realization of this right in the coming period. In particular, they reinforce the argument that, notwithstanding current contestations, the core elements of the RTD already exist firmly in international law. ‘The UN Charter and the accompanying two human rights covenants establish the foundations for an ethical system of global governance’.

While we acknowledge that RTD practice is scattered at best, and insufficient overall—and that this is due to the differences in persistent economic, political and ideological interests of ‘developed’ and ‘developing’ States—we also note that at the regional level the African human rights system is in the process heart of producing a fuller understanding of the RTD that supports its further definition (both in terms of substance and implementation obligations) and its enforceability. States across the globe would do well to take up the challenges of operationalizing and practising the RTD now, through both national and international means and measures. Besides serving to fulfil the RTD, this would also be a tremendous step forward in tackling current global problems relating to structural poverty and inequalities, contagious diseases, climate change and mass migration.

International Women’s Rights Action Watch Pacific

We want to recommend the following alternative steps in order to strengthen the normative framework and fill procedural gaps for the realisation of the right to development:

- Updating the existing Declaration on the Right to Development to reflect the current context and emerging issues (see below for IWRAW AP’s contextual analysis)
- Analysing and filling the gaps in existing instruments concerning the right to development
- Incorporating new and emerging areas/subjects through treaty-body general comments
- Cross-referencing already existing mechanisms and frameworks to ensure heightened normative standards and outcomes across the board

- Clarifying the implementation of legal obligations through the treaty body processes
- Strengthening the accountability framework in relation to business activities, particularly when conducted extraterritorially
- Putting the right to development at the center stage of the UN General Assembly's agenda
- Leveraging the Voluntary National Reviews (VNR) and HLPF processes
- Strengthening collaboration among different mechanisms such as the Universal Periodic Review, HLPF and treaty bodies

We want to draw the Working Group's attention to our critical analysis about the dominant narrative of right to development. The world today is faced with the difficult task of determining an optimal mix of realising 'people-centered' development and achieving 'planet-centered' justice. An obstacle to the realisation of the right to development is the dominant perspective and paradigm of development itself, which is premised on neoliberal economic systems of production and consumption. The problem is so deeply entrenched in the global economic and political system that it is becoming next to impossible to break this cycle of exploitation of environment and labour.

The hegemonic development models promoted through colonisation and reinforced through capitalism by the 'developed' countries in the Global North crushed the centuries-old local and indigenous knowledge and community practices of human and social development. Growth-based development policies, conditionalities of development aid, and financing institutions generally disregard the majority population, increasing income inequality within and between countries, and leaving 'poor' and 'underdeveloped' countries submerged in debt and dependency. The communities that have interfaced with this model of 'development' are more vulnerable than those that have not. Consequently, there is a dire need to balance the power and benefits of development aid and investments.

The current and problematic notion of the right to development – focused on market economies and infrastructural development in lieu of human and social development and environmental justice – must shift. Development at the cost of environmental and labour exploitation is not sustainable. The right to development should emphasise environmental justice and promote rather than erode the rights of people.

There is also a need to shift our thinking in relation to the concept of 'natural resources', as it awards economic value to the environment and establishes people's power over nature to exploit it unconditionally. If we do not change our production, consumption and convenience patterns, the sustainable development aim of 'leaving no one behind' might end up 'leaving nothing behind'.

The instrumental gender approach in the development discourse, as promoted by International Financial Institutions (IFIs), is a serious point of departure from the rights-based approach. Although IFIs identify gender equality as an important goal of development, the stated purpose of achieving gender equality is to promote economic growth – viewing gender equality as an instrument rather than as a goal in and of itself.

We want to draw the Working Group's attention to some conceptual gaps in the Declaration on the Right to Development (hereafter "Declaration")

"Effective measures should be undertaken to ensure that women have an active role in the development process", as mentioned in Article 8 (1) of the Declaration, doesn't comply with the human rights-based approach and sees women as instrumental actors in the development process, but not as the beneficiaries of the results. Further, by viewing women in this instrumentalist fashion, these development policies fail to address the social constructs and power dynamics at the root of gender hierarchies – they fail to address the exploitation and over-representation of women in the informal sector and the invisibility of unpaid care work.

"Equality of opportunity" provisions, as mentioned in Article 8 (1) of the Declaration, may not bring about real equality for women and other disadvantaged groups, communities and countries, as inequalities and social hierarchies may simply be reproduced in the labour force/productive sphere. On the other hand, the substantive equality approach is concerned with the equality of opportunity, equality of access to opportunity and – most importantly – equality of results. Therefore, any new frameworks on the right to development should recognise substantive equality for the practical realisation of the right to development.

The existing Declaration on the Right to Development, Article 4, states that “sustained action is required to promote more rapid development of developing countries.” This fails to understand the meaning of sustainable development, and inherently contradicts the spirit of ‘sustainable development’. If development is rapid, how will it be sustainable? Who gets to decide the ‘pace’ of development? Who is going to benefit from such development practices? These are some of the hard questions that the future discourses and frameworks on the right to development should try to answer.

Therefore, we urge the Working Group to consider the following recommendations in any present/future discourse, frameworks and action concerning the right to development:

1. It is important to acknowledge the negative impacts of development policies and actors in the realisation of the right to development. As this right is hugely impacted by the acts and omissions of business actors, particularly transnational corporations involved in mega infrastructure projects, stronger elaboration is needed to address the accountability deficit of business actors and IFIs whose policies and actions are non-transparent, with few opportunities for review or remedy. Trade agreements often create a further obstacle to the ability and sovereignty of states to maintain legal frameworks that ensure legal protections of the rights of communities and people.
2. The right to development is not just a process/tool to facilitate other human rights, but it is in itself an inalienable human right. Legal frameworks should establish the ‘right to development’ as a claimable constitutional right with legal remedies.
3. The prevalent rhetoric surrounding gender in development must comply with a human rights-based approach. Development initiatives for gender equality must not only focus on the symptoms but on the root causes of gender inequality.
4. In line with the spirit of SDGs ‘leaving no one behind’, any existing or new framework should recognise and address the disproportionate development needs and rights of different communities and people(s) – including, but not limited to, small farmers, fisher communities, labour unions, public interest groups, consumer associations, indigenous groups – and ensure that they benefit equally from the development processes.
5. Corporate and political interests should not shape development policies and priorities. States must ensure effective consultation with the public before designing and implementing any financial, economic and trade policies or development programmes. States must also secure the free, prior and informed consent of communities who are or will be impacted by such policies, programmes and projects. It is the responsibility of the States to ensure participatory monitoring and evaluation, particularly for trade, investment, finance and infrastructure policies through mechanisms such as human rights and environmental impact assessments.

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- a. In the process of drafting a legally binding instrument on the Right to Development, the Inter-Governmental Working Group on the Right to Development should ensure the meaningful participation of Indigenous and Afro-descendant women, in accordance with international human rights norms. This would entail the Working Group expanding its process of civil society consultation in order to create the conditions necessary to fully consider these perspectives.
- b. A legally binding instrument on the Right to Development must reflect current international human rights legal protections for Indigenous and Afro-descendant Peoples and account for their rights to self-determination, and to free, prior, and informed consent, including the right to say “no” to development plans and projects.¹⁰⁶ It should call for states to develop, in consultation with Afro-descendant and Indigenous Peoples, binding laws, regulations, policies, and other mechanisms to protect the right to Buen Vivir, (living well/ collective well-being.)
- c. The Inter-Governmental Working Group on the Right to Development should incorporate an intersectional gender analysis in any draft of a binding instrument on the Right to Development. Among the urgent issues that should be addressed are connections between prevailing development models and discrimination women face in access to resources and power, particularly land and territory; adequate water, sanitation, healthcare, education, and other infrastructure; and independent decision making over their bodies. It should specifically account for Afro-descendant and Indigenous women’s right to participate in internal and external decision-making processes.
- d. Taking into account that prevailing approaches equate development with large-scale extraction of natural resources and industrialization, which often exacerbate the poverty and inequality Indigenous and Afro-descendant women and their communities face, the Inter-Governmental Working Group on the Right to Development should be receptive to the specificities that emerge from different ways of relating with nature and the environment, such as Indigenous and Afro-

descendant practices of Buen Vivir. Any binding instrument on the Right to Development should recognize the Right to Buen Vivir.

e. In the process of drafting a legally binding instrument on the Right to Development, the Inter-Governmental Working Group should account for the need for governments to develop mechanisms that ensure the right to collective property and collective access to land, as critical resource to ensure ways and means for the full exercise of the right to Buen Vivir or “good living.”

World Academy of Art and Science

A theory of economic novelty would have to account for the decision-making functions:

1. Intelligence which includes gathering information relevant to making decisions and its processing, storage, retrieval, and distribution to all participators performing decision functions.
2. The decision-making function of promotion requires agitation and recommendation of certain policies which in the form of prescription have the quality of law. In this sense, promotion is a critical component in decision for directly changing the common interest. It is in this sense that
2. we cannot look at economics as value-free.
3. Prescription. This decision function implicates the formulation and adoption of certain policies as authoritative pronouncements in appropriate sectors of the social process.
4. Invocation. This function of decision-making is essentially a provisional decision function that characterizes behavior as incompatible with the law and goals of the community. Those who perform the invocation function raise the question of what initiatives enhance or violate community prescriptions.
5. Application. This is the authoritative characterization of conduct as lawful or unlawful. To secure lawful ends, the applier must use tools of some form of sanction to secure appropriate application. In terms of the objectives of development, the consequences of development may be critically related to the actual applicative performance. The new economic initiative must, therefore, give careful attention to the idea of application if development goals are to be real.
6. Termination. The decision function of termination means the termination of something in the status quo and its replacement by something that changes the status quo. New economic theory must ensure the termination of dysfunctional traditional standards and embrace new thinking.
7. Appraisal. The theory of decision-making as applied to development requires that there be constant measures that may be appraised in terms of advancing toward progressive developmental goals and avoiding the regression to the opposite.

World Wide Fund for Nature International

WWF recommends that an instrument on the right to development:

Clearly and explicitly recognizes that **a safe, clean, healthy and sustainable environment is the basis of life on earth and it is a necessary condition for the fulfilment of a wide range of human rights**, including the right to life, food, health, water and sanitation.

Explicitly recognizes that, **in order to realize the right to development and eradicate poverty and hunger, governments and all other relevant actors should reverse the current dramatic and rapid loss of Nature and Nature’s contributions to people** (see [IPBES latest assessment](#) and the Global Sustainable Development Report). In fact, **without the current free contributions of Nature to people**, including clean air and water, food security and nutrition, that are particularly important for the most vulnerable and the poorest, **it will be impossible to achieve the right to development.**

Fully recognize the rights of Indigenous Peoples. The instrument should be built on UNDRIP and give particular attention on Indigenous Peoples and local communities collective tenure rights and their rights to withhold their Free Prior and Informed Consent.