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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Report of the Working Group on the Right to Development on its twenty-first session (Geneva, 17–21 May 2021)\***

*Chair-Rapporteur: Zamir Akram*

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\* The annex is being issued without formal editing, in the language of submission only.



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## I. Introduction

1. The present report was prepared pursuant to Human Rights Council resolution 9/3, in which the Council decided to renew the mandate of the Working Group until it had completed the tasks entrusted to it by the Council in its resolution 4/4, and that the Working Group should convene annual sessions of five working days and submit its reports to the Council.
2. The mandate of the Working Group on the Right to Development, as established by the Commission on Human Rights in its resolution 1998/72, is to monitor and review progress made in the promotion and implementation of the right to development as set out in the Declaration on the Right to Development, at the national and international levels, providing recommendations thereon and further analysing obstacles to its full enjoyment, focusing each year on specific commitments in the Declaration; to review reports and any other information submitted by States, United Nations agencies, other relevant international organizations and non-governmental organizations on the relationship between their activities and the right to development; and to present for the consideration of the Commission a sessional report on its deliberations, including advice to the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the implementation of the right to development and suggesting possible programmes of technical assistance at the request of interested countries with the aim of promoting the implementation of the right to development.
3. In its resolution 42/23, the Human Rights Council decided that the Working Group, at its twenty-first session, would commence the elaboration of a draft legally binding instrument on the right to development on the basis of the draft prepared by the Chair-Rapporteur, through a collaborative process of engagement.<sup>1</sup>
4. In its decision OS/14/101, the Human Rights Council noted that the twenty-first session of the Working Group could not be held as scheduled in the United Nations calendar of meetings for 2020 owing to the restrictions linked to the coronavirus disease (COVID-19) pandemic, and decided to postpone the organization of the twenty-first session of the Working Group until 2021, as well as its twenty-second session, also scheduled in 2021.

## II. Organization of the session

5. The Working Group on the Right to Development held its twenty-first session virtually from 17 to 21 May 2021. The session was opened by the United Nations High Commissioner for Human Rights.<sup>2</sup> In her statement, she stressed that the pandemic had exposed, exploited and exacerbated systemic inequalities and structural discrimination, disproportionately affecting people living in poverty and in marginalized situations. In the Declaration on the Right to Development, States had called for equal opportunities and the equitable distribution of economic resources, including among all countries. The right to development demanded better governance of global economic frameworks and cooperation among all States. More could be done to uphold the right to development, thereby averting or mitigating a large portion of the devastating harm that was being done by the COVID-19 pandemic. States should be encouraged to ground all efforts to recover from the pandemic in the right to development and all other human rights.
6. At its first meeting, on 17 May 2021, the Working Group re-elected by acclamation Zamir Akram as Chair-Rapporteur. In his opening statement, the Chair-Rapporteur recalled that the COVID-19 pandemic had led to a multitude of cross-cutting crises that had had a devastating impact on the right to development and reversed decades of gains in terms of well-being, notably for those already in situations of greater vulnerability. Universal health coverage was key to the response to COVID-19 and developing countries, including the least developed countries, needed urgent support to be provided to enable their health systems to deal with this and future pandemics. The pandemic's socioeconomic impacts were

<sup>1</sup> See A/HRC/WG.2/21/2 and Add.1.

<sup>2</sup> All statements are available at [www.ohchr.org/EN/Issues/Development/Pages/21stSession.aspx](http://www.ohchr.org/EN/Issues/Development/Pages/21stSession.aspx).

unprecedented and required global solidarity to overcome it, especially since those impacts were aggravated by inequalities within and among countries.

7. The Working Group subsequently adopted its agenda<sup>3</sup> and programme of work.

8. During the session, the Working Group heard general statements and held an interactive dialogue with the Chair of the Expert Mechanism on the Right to Development and the Special Rapporteur on the right to development. It also considered States' contributions and commenced the elaboration of a draft convention on the right to development.

### **III. Summary of proceedings**

#### **A. General statements**

9. Representatives of the following States made statements: Azerbaijan (on behalf of the Movement of Non-Aligned Countries), Brazil, Burkina Faso, Chile, China (also on behalf of a group of like-minded countries), Cuba, Egypt, India, Indonesia, Iran (Islamic Republic of), Lao People's Democratic Republic, Mexico, Namibia, Nepal, Pakistan (also on behalf of the Organization of Islamic Cooperation (OIC)), Philippines, South Africa, Sri Lanka, Syrian Arab Republic, United Kingdom of Great Britain and Northern Ireland, Uruguay and Venezuela (Bolivarian Republic of). A representative of the European Union also made a statement. Representatives of the following civil society organizations made statements: Organization for Defending Victims of Violence, Associazione Comunità Papa Giovanni XXIII (also on behalf of the Working Group on the Right to Development of the Forum of Catholic-Inspired NGOs in Geneva),<sup>4</sup> Centre for Human Rights at the University of Pretoria, Finn Church Aid, Maat for Peace, Development and Human Rights Association, International Human Rights Council, Women's Federation for World Peace International, Partners for Transparency, Centre Europe-tiers monde, International Human Rights Association of American Minorities and International-Lawyers.org.

10. Azerbaijan (on behalf of the Movement of Non-Aligned Countries) said that States had a duty to cooperate in ensuring and eliminating obstacles to development and to promote a new economic order based on sovereign equality, interdependence, mutual interest and cooperation among States. The United Nations, as well as the international financial and multilateral trading system, should mainstream the right to development in their policies, strategies and operational activities. The challenges and obstacles within the Working Group, which had for many years made it impossible for it to fulfil its mandate, were of deep concern. A legally binding instrument could make development a reality for all, ensuring that the operationalization of the right to development became a priority in achieving the Sustainable Development Goals.

11. The European Union reiterated its support for the right to development, which was based on the indivisibility and interdependence of all human rights. It also reiterated the multidimensional nature of development strategies and the view of individuals as central subjects of the development process. The European Union underlined the importance of a human rights-based approach to development and reiterated that it was not in favour of elaborating an international legal standard of a binding nature on the right to development, as the European Union did not believe that that was an appropriate or efficient mechanism for realizing sustainable development. It should be clarified in the proposed draft that human rights were central to all efforts to pursue development, that States needed to adhere to their

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<sup>3</sup> A/HRC/WG.2/21/1.

<sup>4</sup> 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).

human rights obligations in doing so and that rights holders were individual human beings, whereas the role of States was to fulfil, respect and protect human rights. The text promoted the narrative of international solidarity and economic and social development as prerequisites for the realization of human rights. The European Union stressed, inter alia, that the text made reference to concepts whose meaning was unclear in the context of international human rights law, introduced vague notions of extraterritorial obligations for States and falsely equated coercive measures with violations of the right to development.

12. Pakistan (on behalf of OIC) stressed that the realization of the right to development was essential for both human development and the enjoyment of civil, political, economic, social and cultural rights. A legally binding instrument would help to bridge the gaps and strengthen the capacities of States in promoting and protecting human rights, especially the right to development, making tangible progress towards achieving the Sustainable Development Goals. The full support and cooperation of OIC was assured to the Chair-Rapporteur of the Working Group on the Right to Development, the Special Rapporteur on the Right to Development and the Expert Mechanism on the Right to Development in fulfilling their respective mandates.

13. China said that the right to development was an inalienable part of fundamental human rights. The ongoing COVID-19 pandemic had highlighted inequalities between and within countries and exposed the serious, long-term underinvestment by multilateral human rights mechanisms in the right to development. Some countries refused even to recognize the right to development. It was important for all parties to step up investment in operationalizing the right to development, enhance international cooperation on the right to development and implement that right around the world by taking concrete action. It was significant for the Working Group to hold a session at this important juncture and to start negotiations on a legally binding instrument on the right to development. All parties were encouraged to participate in the negotiations in a constructive manner and to contribute to quickly reaching an agreement on a legally binding instrument.

14. Pakistan said that the draft instrument was the product of extensive engagement across regions, had benefited from a range of expertise and perspectives and represented the essence of multilateralism. Pakistan hoped that all the members of the Working Group would demonstrate their will to codify the inalienable right to development at an early date as a means of shaping and strengthening a rules-based international economic order. Egypt stressed that the right to development was a fundamental factor in ensuring human rights and achieving the Sustainable Development Goals. The participation of all States was important in achieving the 2030 Agenda for Sustainable Development and countries would hopefully be able to reach a common consensus on that issue. The Islamic Republic of Iran reiterated that the right to development had come under attack and faced serious obstacles and barriers; one particular obstacle to the right to development that had persisted and even intensified over time was the imposition of unilateral coercive measures. The Islamic Republic of Iran emphasized the importance of international cooperation for the realization of the right to development. The Bolivarian Republic of Venezuela highlighted the importance of promoting integration models at the regional and international levels that were based on international solidarity and cooperation and the principle of mutual responsibility to achieve nations' well-being and development. All delegations should attend the twenty-first session of the Working Group with the necessary political will and engage in constructive negotiations.

15. Nepal stressed that the integration of the right to development into national policies remained key to achieving the Sustainable Development Goals. It emphasized the need for making collective efforts and for all States and relevant stakeholders to get on board in the elaboration of the legally binding instrument. The universalization of the instrument was essential to its effective implementation. Namibia welcomed the fact that the draft instrument clarified that rights holders were individuals and peoples and that States were duty holders with the obligation to respect, protect and fulfil the right to development. Namibia called upon those States that were sceptical about the progress that had been made in this field to study the instrument with an open mind and engage constructively to improve its language where necessary. Chile stressed that, for a legally binding instrument on the right to development to be fully sound, there had to be broad consensus regarding the need for such

a treaty. Chile called upon States to seek consensus to strengthen the right to development together with all other human rights, considering their universality, indivisibility, interdependence and interrelation and without establishing hierarchies among rights.

16. The Philippines welcomed the fact that the draft legally binding instrument did not create new concepts, rights or obligations and that it recognized the obligation of States and non-State actors to respect human rights. The functions of the envisioned treaty body should be clearly delineated and based on the existing international institutional mechanisms dealing with the Sustainable Development Goals. Burkina Faso said that it was time for States and other stakeholders to move from rhetoric to action and to overcome differences in order to achieve the adoption of a legally binding instrument on the right to development, which would also help to achieve the Sustainable Development Goals. The Lao People's Democratic Republic said that the right to development was at the core of the Sustainable Development Goals and that development, peace and human rights were closely linked. Without development, poverty could not be eradicated. Sustained effective international cooperation was essential in assisting developing countries, including the least developed countries, as a complement to their national comprehensive development plans.

17. Brazil stressed the importance of striving to achieve the widest and most inclusive agreement in terms of content and participation in the draft convention. That challenging goal would require everyone to demonstrate flexibility, cooperation and goodwill. Working together, it would be easier to find common ground for the progressive implementation of the right to development and to mainstream it in the work of the United Nations. Sri Lanka highlighted that the current global circumstances made it more urgent now than ever before to take concrete measures to realize the right to development as a universal and inalienable right. It was fundamental to operationalize that right through the adoption of a legally binding instrument. International cooperation coupled with national programmes was the other crucial factor for securing the right to development for all and for addressing the social and economic effects of the pandemic. The Syrian Arab Republic reaffirmed that international cooperation was an essential element for supporting and complementing national efforts – in the light of income inequalities among countries, especially poor and developing countries – to realize the right to development, including within the framework of the 2030 Agenda. The adoption of an agreement on the right to development would contribute to the realization of that right.

18. South Africa stated that the Sustainable Development Goals gave content to the right to development, especially the commitment to the means of implementation. It called for those involved to engage in a manner that put the interests of rights holders at the centre of deliberations. Any conditionalities on the right to development would in essence run contrary to the spirit of the 2030 Agenda, the United Nations Framework Convention on Climate Change and the Paris Agreement, central to which were the agreed principles of common but differentiated responsibilities and equity. Uruguay attached great importance to civil and political rights, including the right to development. The international community and individual countries played an important role in ensuring those rights, and more attention should be paid to the implementation of the Sustainable Development Goals, especially during the COVID-19 pandemic. Indonesia stressed that, with the challenge of the pandemic persisting and exacerbating existing inequalities, the Working Group remained a valid platform for leading a comprehensive discussion on the implementation of the right to development with the involvement and contribution of States, civil society organizations and relevant human rights mechanisms.

19. The United Kingdom noted that the primary obligation for ensuring the realization of the right to development was owed by States to their people. A lack of development could never provide States with an excuse to fail to meet their human rights obligations. While the United Kingdom would continue to engage constructively in the international debate, the deliberations must recognize the legitimate concerns of all parties and have reaching consensus as their aim. India expressed its full support for the elaboration of a legally binding instrument on the right to development and said that it looked forward to constructive discussions. The proposed legal framework should provide more assistance in several areas, inter alia, in the extension of financial assistance, an equitable international trading environment, climate justice, access to technology and the full realization of social and

economic rights. Mexico said that ensuring equality was essential for achieving just and inclusive societies, that special attention had to be paid to the specific needs of those living in conditions of vulnerability and that international cooperation was required to face global challenges. However, Mexico reiterated its reservations about the viability of negotiating a legally binding instrument considering that the current international human rights legal framework already contributed to the realization of all human rights, including the right to development, and added that States should concentrate their efforts on the effective implementation of 2030 Agenda. Cuba recalled that the right to development was a collective right and regretted that the lack of political will from developed States had prevented its implementation and legal recognition. The mandate of the Working Group to initiate debates for the drafting of a legally binding instrument needed to be implemented now.

20. The Organization for Defending Victims of Violence reiterated that unilateral coercive measures prevented the attainment of the Sustainable Development Goals and violated all human rights and that the draft convention should prohibit the use of unilateral coercive measures and establish a compensation mechanism for victims of such measures. The Associazione Comunità Papa Giovanni XXIII (on behalf of the Working Group on the Right to Development of the Forum of Catholic-Inspired NGOs in Geneva) stressed that a convention on the right to development would reinforce the notion of international solidarity that must be translated into a duty to cooperate. By introducing a monitoring and reporting system, the convention would hopefully contribute to the effective operationalization and full implementation at all levels of the right to development. The Centre for Human Rights at the University of Pretoria highlighted that all development projects and processes underscored the importance of engaging with communities to identify and define what development looked like to them by exploring development processes that were people-centred and culturally appropriate and acceptable and by ensuring respect for the principle of seeking the free, prior and informed consent of those affected. Finn Church Aid noted that least developed countries often faced the most serious obstacles to the right to development and that a convention on the right to development should seek to empower such States, their communities and national actors. The Maat for Peace, Development and Human Rights Association focused on the effects of conflict and violence on the right to development, particularly in Libya and the State of Palestine, where conflict had greatly affected the rights to housing, security and health, among others. It called for international assistance in both situations.

21. The International Human Rights Council called for the establishment by the Working Group of a specialized emergency committee and condemned the failure to recognize the socioeconomic consequences of sanctions on targeted countries. The Women's Federation for World Peace International recalled the duty of States and the international community to implement the right to development and hold accountable those undermining that right. Partners for Transparency stressed that corruption was considered one of the key barriers in achieving the Sustainable Development Goals and highlighted the need for the Working Group to exert more efforts in terms of engaging the largest possible number of civil society organizations concerned with combating corruption. Centre Europe-tiers monde stressed that the draft convention should refer to human development and capacity-building and ensure that excluded people could be involved in decision-making. The project remained largely theoretical and there was relatively little to operationalize it. The International Human Rights Association of American Minorities said that gaps remained in addressing violations of the right to development and that the needs of peoples in non-self-governing territories and of indigenous peoples had to be addressed. International-Lawyers.org expressed the hope that due consideration would be given to identifying synergies and promoting cooperation with regional organizations, for example in the African context.

## **B. Interactive dialogue with the Chair of the Expert Mechanism on the Right to Development and the Special Rapporteur on the right to development**

22. The Chair of the Expert Mechanism on the Right to Development reminded participants that the Expert Mechanism had held three formal sessions and 20 informal

intersessional meetings. Moreover, it had submitted its first annual report to the Human Rights Council and, in fulfilment of its mandate, had agreed to develop and submit to the Council five thematic studies. The first study would address the issue of operationalizing the right to development in achieving the Sustainable Development Goals. On 4 December 2020, the Expert Mechanism and several United Nations experts called upon the international community to take immediate action and together to prevent development setbacks. On 1 March 2021, the Expert Mechanism took the lead in issuing a statement on COVID-19 and vaccine nationalism.

23. The Special Rapporteur on the right to development provided an overview of his mandate and work. In 2018 and 2019, he conducted regional consultations on the implementation of the right to development that resulted in a set of practical guidelines and recommendations. These could serve as a tool in designing, monitoring and assessing the structures, processes and outcomes of human rights-based development policies. He presented those guidelines in his thematic report to the Human Rights Council at its forty-second session, in September 2019, while his report to the General Assembly at its seventy-fourth session addressed disaster risk reduction. The Special Rapporteur's 2020 reports to the Council and the Assembly addressed the issue of financing for development, at the national and at the international and regional levels, respectively. In 2021, he would devote his thematic reports to the subject of climate change and human rights from the perspective of the right to development.

24. Azerbaijan (on behalf of the Movement of Non-Aligned Countries), the Islamic Republic of Iran, the Bolivarian Republic of Venezuela and the Lao People's Democratic Republic made statements, followed by the Associazione Comunità Papa Giovanni XXIII (on behalf of the Working Group on the Right to Development of the Forum of Catholic-Inspired NGOs in Geneva), the Sikh Human Rights Group, the International Human Rights Council, the Women's Federation for World Peace International and the International Human Rights Association of American Minorities. Several speakers reiterated their support for the mandate of the Special Rapporteur and the Expert Mechanism and welcomed their work to further the right to development. Azerbaijan (on behalf of the Movement of Non-Aligned Countries) noted the importance of the mandates of the Special Rapporteur and the Expert Mechanism and their complementary contribution to the effective implementation of the work of the Working Group. The Islamic Republic of Iran stressed that, although the three mechanisms on the right to development had different mandates, they complemented each other. Effective synergies among the mechanisms and mandate holders needed to be ensured. The Lao People's Democratic Republic proposed that the Special Rapporteur and the Working Group consider the eradication of poverty and its root causes as a main priority area in the legally binding instrument. The Associazione Comunità Papa Giovanni XXIII stressed that the Special Rapporteur and the Expert Mechanism were not duplicating mechanisms; instead, they contributed to different tasks with regard to the implementation of the right to development.

25. The Chair of the Expert Mechanism welcomed the statements and made comments on the legally binding instrument under the relevant agenda items. The Special Rapporteur too welcomed the statements made by Governments and civil society, which he said would guide his future work, and stressed the need to intensify consultations, discussions and meetings. He noted that the draft legally binding instrument included many positive aspects – for example, it provided a definition of the right to development and included human beings individually and collectively, as well as international organizations, as rights holders. The draft also defined their obligations. It also included specific articles on issues such as gender equality and indigenous peoples.

### **C. Contributions by States and other stakeholders**

26. The Bolivarian Republic of Venezuela highlighted that it had to face internal and external destabilizing factors and challenges because of changes in global realities, adding that the Global South as a whole faced many challenges. It stressed the existence of global injustices created by colonialism and neo-colonialism and through the imposition of unilateral coercive measures, all of which ran counter to the principles of the Charter of the



United Nations and international law. A deep change in the prevailing international system was therefore necessary.

27. The Sikh Human Rights Group said that the language of the draft convention should be more pluralistic, so as to speak to the whole planet. The Women's Federation for World Peace International stressed that a difference should be made between the Sustainable Development Goals and the right to development, with the latter addressing the specific conditions of least developed countries. It also addressed the need to set up task forces to allow greater participation of civil society, especially youth. In addition, the United Nations system should view the right to development to be as important as any other right.

#### **D. Elaboration of a draft legally binding instrument**

28. The Chair-Rapporteur gave a briefing on the composition of the group charged with drafting the legally binding instrument on the right to development, as well as on the structure of the draft. The members of the drafting group were Koen De Feyter, Diane Desierto, Mihir Kanade, Margarete Macaulay and Makane Moïse Mbengue. Furthermore, the Chair-Rapporteur provided information on the drafting process, including on the presentation of the draft text to the General Assembly and the Human Rights Council. The members of the drafting group then gave presentations, which were followed by an interactive discussion.

29. The Chair-Rapporteur asked the delegates and other stakeholders to send to the Secretariat, in writing and after the conclusion of the session, their concrete proposals for language to be included in the draft convention on the right to development. The Secretariat would compile those contributions and submit the revised draft in the form of a conference room paper for consideration by the Working Group at its twenty-second session, to be held in November 2021. The summary below of the interactive discussion does not, therefore, include the concrete proposals made by the delegates and other stakeholders.

30. Mr. Kanade introduced the structure of the legally binding instrument on the right to development and stressed that an inclusive process had been adopted to elaborate the text, with extended consultations having been held with stakeholders and international legal experts. He detailed the fundamental international agreements used in drafting the document. He stressed, among other things, that States operated at three levels to meet their obligations: they acted individually within their jurisdiction, they acted individually not strictly within their jurisdiction and they acted collectively in the framework of global and regional partnerships. He also noted that previous agreements did not provide a clear definition of development rights, suggesting there was a need for such a definition.

31. Azerbaijan (on behalf of the Movement of Non-Aligned Countries) reiterated its support for the process of drafting the legally binding instrument and called upon States to take measures to ensure the implementation of the right to development within their countries and to establish effective international cooperation with a view to taking an active part in the drafting process. Pakistan emphasized the importance of protecting all human rights, promoting sustainable development, ensuring development financing, building a transparent economic system and codifying the right to development. The legally binding instrument for the right to development would contribute significantly to achieving the Sustainable Development Goals. China highlighted the importance of the legally binding instrument on the right to development and assured its continued support for it while calling upon States to actively participate in the process. The Islamic Republic of Iran stressed that States had to cooperate to realize the right to development and that this should be clearly reflected in the legally binding instrument. The draft convention should also duly refer to the obstacles to the realization of the right to development, such as those created by unilateral coercive measures.

32. The Maat for Peace, Development and Human Rights Association underlined the importance of making sure that no one would be left behind in efforts to promote development and called for the draft to include the right to water and the right to be safe from war in order to help people in marginalized situations to fully enjoy their right to development. The Women's Federation for World Peace International underlined the importance of education in ensuring the right to development and, in particular, of educating those whose rights are being violated about their rights. The Associazione Comunità Papa Giovanni XXIII

(on behalf of the Working Group on the Right to Development of the Forum of Catholic-Inspired NGOs in Geneva) stressed that the draft did not address the factors that had an important impact on efforts to ensure the right to development, such as international justice, the protection of intellectual property, the transfer of technology, toxic waste and terrorism. Furthermore, international solidarity should further be referred to in the context of the COVID-19 pandemic. The International Human Rights Association of American Minorities noted that the draft did not address foreign occupation and the relationship between international law and the rights of indigenous peoples. The International Human Rights Council referred to obstacles to development, including terrorism and discrimination on the grounds of race and ethnic affiliation, and suggested working on common denominators of international law and religious law.

33. The Chair of the Expert Mechanism presented the position of the Expert Mechanism with regard to the draft convention on the right to development. She emphasized the importance of active, free and meaningful participation in defining the right to development as a legally binding mechanism.

34. Mr. Mbengue presented the main elements of the preamble, which set out the main considerations guiding the convention, listed its legal foundations and emphasized the aims that guided its interpretation. Among the guiding considerations was the assumption that the right to development was a common concern of humankind, that all human rights were universal, indivisible, interrelated, interdependent and mutually reinforceable and that the right to development was a sine qua non condition for achieving sustainable development. The preamble also referred to best practices in treaty law-making.

35. The Russian Federation recalled that the right to development was enshrined in various international documents and noted that the draft legally binding instrument compiled selected quotations from those individual documents in a manner that rendered the text as a whole incomplete and inexact. That might lead to fragmentation and to potential conflicts of international law. The draft did not define the right to development, although some elements of a definition were included in the preamble. The Russian Federation suggested including these elements more clearly in the main text.

36. The Associazione Comunità Papa Giovanni XXIII (on behalf of the Working Group on the Right to Development of the Forum of Catholic-Inspired NGOs in Geneva) noted the importance of including non-State actors and of clarifying their role in the drafting of the legally binding instrument. It recommended including in the draft convention women's participation and environmental protection. According to Centre Europe-tiers monde, while the preamble was too detailed, it did not include human rights standards. Moreover, it suggested that any definition of the right to development should include the definition and norms of the International Labour Organization (ILO). Africans in America for Restitution and Repatriation stressed that the right to development had not been sufficiently implemented for more than 30 years and that human rights should not discriminate on the basis of political affiliation, economic status or race. It called upon stakeholders to pay attention to groups discriminated against on the basis of race, which was important for the implementation of the pledge made in the 2030 Agenda to leave no one behind.

37. Mr. Kanade responded to comments regarding the submission of concrete proposals for language to be included in the text. Replying to comments made by the Russian Federation and the United Kingdom, as well as by the European Union, on the lack of a definition of the right to development in the draft text, he explained that such a definition was present in article 4 of the draft convention, whereas development itself was not defined therein, but described.

38. Mr. Kanade introduced the first two parts of the draft. The first part comprised three opening provisions addressing the purpose of the convention, the definitions of specific terms and general principles that should guide the implementation of the obligations of duty bearers. Draft article 1 set out the object and purpose of the convention. Draft article 2 set out definitions of legal persons, international organizations, the Working Group on the Right to Development and the high-level political forum on sustainable development. Draft article 3 followed the new trend of including "general principles" in human rights treaties set by the Convention on the Rights of Persons with Disabilities. The second part focused on the right

to development itself and on rights holders. It comprised four provisions dealing with the content of the right to development and its relationship with the right to self-determination, other human rights and the general duty of everyone to respect human rights under international law. Draft article 4 (2) recognized the right of every human person and of all peoples – the rights holders – to their “active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom”. Draft article 5 was entitled “Relationship with the right to self-determination” and comprised six paragraphs. Draft article 7 was entitled “Relationship with the general duty of everyone to respect human rights under international law”.

39. The Russian Federation referred to the right to regulation and the consequences of giving States the possibility, under that right, to freely change the agreed conditions of work for foreign investors. The right to regulation should not lead to the rejection of previous obligations. The Russian Federation also noted that the draft convention seemed to indicate that only States and international organizations had the duty to respect international law, whereas non-State actors seemed not to have those duties, and suggested correcting this. The Lao People’s Democratic Republic considered that the eradication of poverty was insufficiently mentioned in the draft and asked for clarification in that regard. The Philippines recommended including transparency as one of the universal principles guiding human rights. The Islamic Republic of Iran suggested highlighting more the issues of cooperation and capacity-building in the preamble. Agreeing with China, the Islamic Republic of Iran said that there was no consensus on the meaning of the term “human rights-based approach” and considered that including that controversial concept in the convention would make it unenforceable as a whole. The Syrian Arab Republic underlined that racial discrimination, occupation and terrorism constituted major obstacles to development. The previous decade had shown that some countries used policies to destabilize developing countries for political purposes.

40. Argentina highlighted that the draft convention put forward the right to development as a mixed concept, as both an individual right and as a collective right, but that “peoples” was not defined as a concept. It also noted that the right to self-determination was only applicable when there was a holder of that right, namely, a people subjected to alien subjugation, domination and exploitation in accordance with General Assembly resolution 1514 (XV).

41. The Women’s Federation for World Peace International stressed the importance of including a precise and clear definition of development and the need to have a minimum standard for development. It also supported the comment made by the Lao People’s Democratic Republic about the lack of a mention of poverty in the draft. Centre Europe-tiers monde said that it was inappropriate to define development and suggested keeping exclusively the definition of the right to development formulated in the relevant declaration, since there was no consensus on development nor a single model of development. The International Human Rights Association of American Minorities stressed that the rights of peoples must be affirmed and fully agreed that the draft convention should refer to both the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas.

42. Mr. Kanade responded to several points raised by delegates and other speakers. Regarding suggestions to include references to ILO conventions, he indicated that the drafting committee had decided to avoid referring to only the nine core human rights treaties to accommodate other relevant instruments such as those of ILO. He noted that it was entirely possible to refer separately to the core labour standards developed by ILO. Concerning a question from China, Mr. Kanade said that the draft reflected the definition of “international organization” used by the International Law Commission. Responding to a concern by the Russian Federation about the right to regulation, he indicated that that right was established in international law and was at the heart of the right to development. Replying to comments by the Russian Federation and the Associazione Comunità Papa Giovanni XXIII on the definition of “legal persons”, he noted that the drafting committee had acknowledged that businesses had a duty to respect human rights. Concerning questions by China and Iran (Islamic Republic of) about the reference to a human rights-based approach, he stressed that the draft convention was an opportunity to adopt a clear understanding of a human rights-

based approach, to the effect that development was a human right, and to insist that development must be realized precisely because it was a human right.

43. Before introducing draft articles 8–12, Ms. Desierto referred to statements by Brazil, China, the Lao People’s Democratic Republic and the Russian Federation, as well as the European Union, questioning the nature of the obligations to be assumed by States parties to the convention. She explained that draft article 4 of the convention did not prescribe the content of development, consistent with the approach taken in 1986 in respect of the Declaration on the Right to Development, in which the individual sovereignty of States to define their respective paths, trajectories and visions of development was recognized. Ms. Desierto then explained that draft articles 8–12 emulated the structure of evolutive obligations under the International Covenant on Economic, Social and Cultural Rights, as recognized by the International Court of Justice in its related jurisprudence on the Covenant. The obligations that States parties to the convention would assume had to be read in the light of the obligations that States had already assumed under the Charter of the United Nations and existing international human rights law, which took into account their respective circumstances, as well as in the light of the commitment to transform aspects of the Declaration on the Right to Development into a legally binding instrument.

44. Ms. Desierto addressed the concerns expressed about the prohibition against placing limitations on the enjoyment of the right to development (draft art. 18), clarifying that such limitations referred to those already included in international human rights treaties in the form of different types of limitation clauses. Due to the various ways in which such clauses had been formulated in different international human rights treaties, it was impractical to homogenize a limitation clause on the right to development; what was important was to refer to what already existed and was applicable under international human rights law. Draft article 19, on impact assessment, was also a confirmation of what was already required under existing human rights treaties. Ms. Desierto explained that it was for individual States to define the appropriate legal framework for conducting risk and impact assessments as part of their voluntary undertakings and that no legal framework or particular format for reporting on such assessments would be imposed by the draft convention. Finally, draft article 20, which dealt with statistics and data collection, was considered uncontroversial and included provisions on privacy and its limitations, elements for data disaggregation and responsibilities concerning transparency.

45. Iran (Islamic Republic of) and the Philippines made specific recommendations in terms of gender equality, including to bring references in the draft convention in line with those in the Declaration on the Right to Development. The Russian Federation expressed concerns about provisions regarding gender equality and the inclusion of tribal peoples. China made specific suggestions regarding the provision on statistics and data collection and Brazil suggested bringing the provisions on indigenous and tribal peoples in line with those of the relevant ILO convention.

46. Mr. De Feyter presented draft articles 13–15, which incorporated the previous codification of the duty to cooperate in general international law and clarified its relevance to the right to development. Draft article 13 (1) recalled that States had the duty to cooperate in general international law in language borrowed from the Charter of the United Nations; draft article 13 (2) elaborated on the consequences of the duty to cooperate in the context of the right to development; draft article 13 (3) sought to ensure that financing-for-development schemes (as instruments of cooperation) were consistent with the convention; and draft article 13 (4) linked the need to create a social and international environment that was conducive to the realization of human rights in general and of the right to development in particular and to the necessary implementation of the commitments already made in the 2030 Agenda. Draft article 14, on coercive measures, highlighted that the duty to cooperate created a bias in favour of constructive engagement rather than obstruction, in favour of multilateralism rather than unilateralism, in favour of dialogue rather than imposition, in favour of equality rather than hegemony. Draft article 15 dealt with special and remedial measures.

47. China asked for clarification about the territorial and extraterritorial obligations of States and suggested that environmental cooperation too was important. Pakistan suggested referring to cooperation between States in ensuring development, eliminating obstacles to development and promoting an international equitable order. It also suggested including a

provision on equality of opportunity in terms of access to basic services, including education, health, food, housing, employment and fair distribution of income. The Russian Federation highlighted that the extraterritorial obligation of States to monitor the activities of companies, including abroad, would lead to an unequal distribution of responsibilities, adding that it was not clear how States could fulfil such an obligation, which required interpreting the national laws of these countries.

48. The Syrian Arab Republic said that the right to development was a fundamental human right and that its realization would contribute to the realization of the Sustainable Development Goals. Developed States had been imposing unilateral coercive measures, however, which destabilized targeted States and denied them essential financial resources. Indonesia indicated that the right to regulation reflected the duty and the right of States to formulate and decide on laws, policies and development strategies aligned with their national development priorities and the needs of their people, and that this should be one of the main principles in the realization of the right to development. Argentina indicated that the draft convention seemed to subordinate the design, approval and implementation of all legal, policy and international practices to their compatibility with the right to development, making it a sort of validation of States' foreign policies. It suggested avoiding the creation of a new category of countries (such as one composed of States with limited availability of or access to resources) and including at least one reference to the World Trade Organization, which was closely linked to the realization of the right to development.

49. Ms. Macaulay introduced draft articles 16–17. She reiterated that no new rights or obligations had been created, including in respect of gender equality. Draft article 16 (1) reiterated that States must ensure full gender equality for all women and men, in accordance with their existing international law obligations. Accordingly, they had to make sure that women and men enjoyed full gender equality and had to take measures, including temporary special measures, whenever appropriate, to end all forms of discrimination against all women and girls everywhere, ensuring that they fully and equally enjoyed the right to development. Ms. Macaulay added that gender mainstreaming in the draft convention had even been assured by the language of the title of draft article 16. She highlighted that the drafting group considered it necessary, appropriate and legitimate to concisely and precisely reaffirm the obligations of States and the rights of women and men to fully and equally enjoy their right to development. Draft article 17 dealt with the right to development of indigenous and tribal peoples. In particular, draft article 17 (2) addressed States' obligations to consult and cooperate in good faith with both indigenous and tribal peoples, through their representative institutions, to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that might affect them.

50. Mr. Kanade introduced draft articles 21–23. He explained that draft article 21 was entitled "International peace and security" and was deemed necessary in view of article 7 of the Declaration on the Right to Development. In draft article 21 (1), States parties reaffirmed their existing obligations under international law, reiterating the opening portion of article 7 of the Declaration. Draft article 21 (2) contained references to "general and complete disarmament", incorporated in article 7 of the Declaration as an objective that States "should do their utmost to achieve". Draft article 21 (2) was formulated in a manner compatible with the nature of a legally binding instrument rather than as a declaration of an expected conduct by States, but it did not seek to create new obligations or go beyond relevant existing law and practice. Draft article 22 was entitled "Sustainable development" and addressed one of the biggest voids in the Declaration: the lack of any reference to sustainable development, which emerged at the global policy level only in 1987. Draft article 23 was entitled "Harmonious interpretation" and followed the principle of harmonization elaborated by the International Law Commission in its 2006 study on the fragmentation of international law.

51. Mr. De Feyter presented the fourth part of the draft text, which dealt with institutional matters and proposed the establishment of two treaty bodies, namely a conference of the parties and an implementation mechanism. Given the political controversy that remained on raising the right to development to the same level as all other human rights, the proposed conference of the parties was designed as an inclusive institution that encouraged global dialogue among States and between States and other stakeholders, so that understanding of and support for the right to development could gradually grow. The right to development

included both States' duty towards individuals and peoples as rights holders and States' duty to cooperate with one another with a view to improving protection of human dignity. The proposed institutions would be a hybrid of the existing international treaty monitoring bodies and the compliance committees of traditional inter-State treaties. Draft article 24 (2) described the main roles of the conference of parties. Draft article 26 provided for the implementation mechanism to be established at the first meeting of the conference of the parties. It was proposed that some of the main features of the mechanism had already been included in the convention.

52. The Russian Federation highlighted that in modern international law there was no norm banning the possession of nuclear weapons or their use for strategic reasons. The obligation to cooperate was relevant not only under the future convention but also in terms of the obligations arising from general international law. However, the Russian Federation believed that this norm should be critically analyzed in the light of article 23 of the Vienna Convention on the Law of Treaties. Brazil expressed doubts about the appropriateness of creating a new treaty body since States already had a huge reporting burden. China said that any kind of treaty body and monitoring mechanism should borrow or follow the current treaty bodies' practice and align their working methods with those of the current treaty bodies.

53. The International Human Rights Association of American Minorities raised the issues of how to work with States that did not cooperate and how to deal with power. It supported the recommendation to look at the practices of other treaty bodies. Finn Church Aid welcomed the opportunity that would be granted to non-governmental organizations in consultative status with the Economic and Social Council to participate as observers in the public sessions of the conference of the parties. It suggested that non-governmental organizations and the private sector, among others, be considered mechanisms that could contribute to the conference of the parties and, especially, to the proposed implementation mechanism. The Associazione Comunità Papa Giovanni XXIII (on behalf of the Working Group on the Right to Development of the Forum of Catholic-Inspired NGOs in Geneva) welcomed the inclusion in the draft convention of a description of sustainable development. Centre Europe-tiers monde said that the inclusion in draft article 24 (5) of other stakeholders, including private companies, was highly problematic and should be discarded. The International Human Rights Council stressed that, even though some organizations believed that the definition of development could hamper their activities, it was possible to define rights-based development as a general concept for development.

54. Mr. Kanade introduced the fifth part of the draft text, which contained the final provisions, on behalf of Mr. Mbengue. The provision on signature was almost identical to articles 41 and 50 of the Convention on the Rights of Persons with Disabilities, confirming the good practices adopted in other human rights treaties. Nonetheless, certain modifications had been made to the provisions in the fifth part. For example, the principles and obligations relating to international organizations that were recognized in the draft convention applied only if the organizations became parties to the convention. References to States parties, including those participating in the conference of the parties, would also apply to any organization that became a party to the convention.

55. The Russian Federation highlighted that it was not typical for international organizations to become parties to international rights protection treaties and that the Convention on the Rights of Persons with Disabilities was an exception, as it could be acceded to by so-called regional integration organizations.

## **IV. Conclusions and recommendations**

56. **At the final meeting of its twenty-first session, held on 21 May 2021, the Working Group adopted by consensus the present conclusions and recommendations, in accordance with its mandate as established by the Commission on Human Rights in its resolution 1998/72.**

57. **In his concluding remarks, the Chair-Rapporteur thanked all those involved in the Working Group's session and outlined the way forward. Concluding statements were made by Azerbaijan (on behalf of the Movement of Non-Aligned Countries), the**

European Union, the Associazione Comunità Papa Giovanni XXIII (on behalf of the Working Group on the Right to Development of the Forum of Catholic-Inspired NGOs in Geneva) and the Women's Federation for World Peace International.

## A. Conclusions

58. The Working Group expressed its appreciation to all those who contributed to the proceedings of its twenty-first session.

59. The Working Group took note with appreciation of the opening remarks made by the High Commissioner, in which she reiterated the full support of OHCHR for the Working Group and for the full realization of the right to development.

60. The Working Group welcomed the re-election of the Chair-Rapporteur and commended him for his able stewardship in guiding the deliberations during the session. It also expressed gratitude and appreciation to the Chair-Rapporteur and the experts who supported him in the elaboration of the draft convention on the right to development and the commentary thereto submitted at the request of the Human Rights Council. In that context, the Working Group expressed its appreciation for the interaction with the experts.

61. The Working Group also expressed its appreciation for the interactive dialogue held with the Chair of the Expert Mechanism on the Right to Development and the Special Rapporteur on the right to development, which had provided an opportunity to exchange views on the draft convention, the benefits of the operationalization of the right to development and the ways to overcome the obstacles and challenges to the full enjoyment of that right.

62. The Working Group expressed concern about the negative impact on the economy and society and the consequent exacerbation of inequalities within and between countries due to the COVID-19 pandemic. It stressed the need for States to take collective action in responding to pandemics and other health emergencies, and the socioeconomic consequences thereof, and in advancing sustainable development and the realization of all human rights, including the right to development.

63. The Working Group discussed how a legally binding instrument might contribute to making the right to development a reality for all by creating conditions, at the national and international levels, conducive to its realization and to halting all measures that might have an impact on the right to development, in accordance with the Charter of the United Nations, the Declaration on the Right to Development and other relevant international instruments and documents.

64. The Working Group took note of the divergent views on the draft convention on the right to development and of the fact that a number of States continued to engage in the Working Group by restating their position that they were not in favour of an international legal standard of a binding nature on the right to development, as they did not believe that this was an appropriate and efficient mechanism to realize sustainable development and that at this stage States must concentrate their efforts on the effective implementation of the 2030 Agenda, which comprises a wide and comprehensive range of consensual commitments. As they neither supported nor engaged in the negotiations on the draft convention, the outcome of those negotiations did not necessarily reflect their views.

65. The Working Group encouraged the relevant bodies of the United Nations system, within their respective mandates, including United Nations specialized agencies, funds and programmes, and other relevant international organizations and stakeholders, including civil society organizations, to give due consideration to the right to development in the implementation of the 2030 Agenda, to contribute to the work of the Working Group and to cooperate with the High Commissioner, the Expert Mechanism and the Special Rapporteur in the fulfilment of their mandates with regard to the implementation of the right to development.

## **B. Recommendations**

66. The Working Group made the following recommendations:

(a) The High Commissioner and OHCHR should take the measures necessary to ensure a balanced and visible allocation of resources and pay due attention to the visibility and effective implementation and mainstreaming of the right to development by systematically identifying and undertaking tangible projects dedicated to that right, and should continue to update the Human Rights Council and the Working Group on progress in that regard;

(b) The Working Group should continue to implement its mandate through a collaborative process of engagement, in accordance with Commission on Human Rights resolution 1998/72 and other relevant resolutions of the Human Rights Council and the General Assembly;

(c) The Chair-Rapporteur of the Working Group should conduct further consultations with all Member States, international organizations, the Expert Mechanism, the Special Rapporteur, OHCHR, United Nations agencies, regional economic commissions and other organizations on the realization of the right to development, including for the elaboration of a draft convention on the right to development, taking into account the discussions held at the twenty-first session of the Working Group and the presentations made by the experts invited thereto;

(d) The High Commissioner should include in her next annual report an analysis of the realization of the right to development, taking into account existing challenges and obstacles to the realization of that right and make recommendations on how to overcome them and concrete proposals for supporting the Working Group in fulfilling its mandate;

(e) The Working Group should invite the Chair of the Expert Mechanism and the Special Rapporteur to continue to contribute to the work of the Working Group;

(f) The High Commissioner should continue to facilitate the participation of experts in the future sessions of the Working Group and to provide advice with a view to contributing to the negotiations of the draft convention on the right to development;

(g) The Chair-Rapporteur should present the report of the Working Group on its twenty-first session to the General Assembly at its seventy-sixth session and report on activities to promote the integration of the right to development in efforts to implement the 2030 Agenda.



## Annex

### List of participants

#### States Members of the Human Rights Council

Argentina, Armenia, Austria, Bangladesh, Bolivia (Plurinational State of), Brazil, Burkina Faso, the People's Republic of China, Czech, Cote d'Ivoire, Fiji, Germany, India, Indonesia, Japan, Malaysia, Mauritania, Mexico, Namibia, Nepal, Pakistan, Philippines, Poland, Republic of Korea, Russian Federation, Senegal, Somalia, Sudan, Togo, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela (Bolivarian Republic of).

#### States Members of the United Nations

Afghanistan, Algeria, Angola, Australia, Azerbaijan, Belarus, Bhutan, Botswana, Burundi, Cabo Verde, Cambodia, Chad, Chile, Cuba, Djibouti, Ecuador, El Salvador, Estonia, Eswatini, Ethiopia, Guatemala, Honduras, the Islamic Republic of Iran, Iraq, Kazakhstan, Kenya, Kuwait, the Lao People's Democratic Republic, Liechtenstein, Madagascar, Maldives, Mauritius, Mongolia, Mozambique, Niger, Nigeria, Panama, Peru, Portugal, Qatar, Singapore, Slovenia, South Africa, Sri Lanka, Switzerland, Syrian Arab Republic, Thailand, Tunisia, Uganda, United Republic of Tanzania, United States of America, Vanuatu, Yemen, Zambia.

#### Non-member observer States

State of Palestine.

#### Intergovernmental Organizations

European Union, International Organization of the Francophonie, Organization of Islamic Cooperation, South Centre, World Trade Organization, Parliamentary Assembly of the Mediterranean, United Nations Office for Disaster Risk Reduction.

#### Non-governmental organizations in consultative status with the Economic and Social Council

Africa Culture Internationale, Africans in America for Restitution and Repatriation Inc, Aid Organization, Al Mezan Centre for Human Rights, Al-Ayn Social Care Foundation, Al-Haq, All Win Network, Alliance Creative Community Project, Apostolic Ministerial International Network, Asociacion Cubana de las Naciones Unidas, Association M'zab prévention routière et développement, Association nationale de promotion et de protection des droits de l'homme, Association of Youths with Vision, Association pour la Diffusion des Droits Humains aux Peuples Autochtones, Association pour les Victimes Du Monde, Associazione Comunita Papa Ciovanni XXIII, Brain Sluice Africa Child's, Bureau Pour la Croissance Intégrale et la Dignité de L'enfant, Centre Europe-tiers monde, Centre for Human Rights, Child Rights Connect, Club Ohada Thies, Collectif des Associations Contre l'Impunité au Togo, Comite des observateurs des droits de l'homme, Edfu Foundation Inc, Family Health Association of Iran, Federal Union of European Nationalities, Fondation des Oeuvres pour la Solidarite et le Bien Etre Social, Genève pour les droits de l'homme: formation internationale, God's Harvest Foundation, Green Mobilisation Initiative, Groupe d'action pour la promotion socioculturelle et l'alphabetisation: Nouvelle Energie, Grupo de Mujeres de la Argentina - Foro de VIH Hamraah Foundation, Indian Council of South America, Institute for Sustainable Development and Research, Institute of the Blessed Virgin Mary – Loreto Generalate, International Association Against Torture, International Association of Democratic Lawyers, International Council of Women, International Eurasia Press Fund,

International Energy Charter, International Human Rights Association of American Minorities, International Organization of Parliamentarians, International Human Rights Commission Relief Fund Trust, International Human Rights Council, International Institute for Non-Alligned Studies, International Society for Peace and Safety, International-Lawyers.org, Kejibaus Youth Development Initiative, Khubaib Foundation, Kirkon Ulkomaanavun Saatio, Liberians United to Expose Hidden Weapons, Maat for Peace, Development and Human Rights Association, Make Mothers Matter, Medical Aid for Palestinians, New Humanity, Nonviolence International, Organisation Mondiale des associations pour l'éducation prenatale, Outreach Social Care Project, Partners for Transparency, Pasumai Thaayagam Foundation, People for Successful Corean Reunification, Public Organization "Public Advocacy", Regroupement des Jeunes Africains pour la Democratie et le Developpement-Section Togo, Reseau Unite pour le Developpment de Mauritanie, Sikh Human Rights Group, Soka Gakkai International The Geneva Consensus Foundation, Udisha, Universal Peace and Violence Amelioration Centre, Universal Peace Federation, Village Suisse ONG, Women's Federation for World Peace International, World Information Transfer, World Welfare Association.

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