|  |  |  |  |
| --- | --- | --- | --- |
|  |  | A/HRC/AC/23/CRP.4 | |
|  |  | | 22 July 2019  English only |

**Advisory Committee  
Twenty-third session**22-26 July 2019  
Item 2 (h) of the provisional agenda **Requests addressed to the Advisory Committee stemming from Human Rights resolutions:  
First Discussion Draft / Preliminary outline on the importance of a legally binding instrument on the right to development**

First Discussion Draft / Preliminary outline on the importance of a legally binding instrument on the right to development

(draft report, 22 July 2019) prepared by Ajai Malhotra,[[1]](#footnote-2) Rapporteur of the drafting group

First Discussion Draft / Preliminary Outline

Importance of a legally binding instrument on the right to development

1. Resolution 39/9 of the United Nations Human Rights Council, adopted on 27 September 2018 by a recorded vote of 30 to 12, with 5 abstentions, requested the Human Rights Council Advisory Committee, “while taking into account the views of Member States, to prepare a research-based report on the importance of a legally binding instrument on the right to development …”[[2]](#footnote-3) [[3]](#footnote-4)

2. In this context, the unanimous adoption of the Declaration on the Right to Development by the United Nations General Assembly, vide its Resolution 41/128 of 4 December 1986, was path-breaking.[[4]](#footnote-5)

3. In 1987, the Brundtland Commission report, “Our Common Future”, projected the concept of “sustainable development”, defining it as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs".[[5]](#footnote-6) It, thus, viewed development and environmental protection through the prism of "needs", in particular the development needs of the world's poor, while highlighting the notion of inter-generational equity.

4. The UN Commission on Human Rights convened in 1990 a Global Consultation on the Right to Development as a Human Right. Amongst suggestions made at it was that the United Nations “elaborate and adopt a binding comprehensive convention on the right of peoples and every human being to development” that should “envisage the creation of a corresponding mechanism to evaluate the levels of development of States and to monitor the realization of agreed upon obligations.”

5. The 1992 Rio Declaration on Environment and Development in its Principle 3 emphasised that "The Right to Development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations."[[6]](#footnote-7)

6. The 1993 Vienna Declaration and Programme of Action, endorsed by UN [General Assembly Resolution 48/121](https://www.refworld.org/refworld/docid/3b00f0a514.html) of 20 December 1993, reaffirmed the Right to Development as a “universal and inalienable right” and an integral part of fundamental human rights.[[7]](#footnote-8) It also noted that the right to development “should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations.”[[8]](#footnote-9)

7. The United Nations Millennium Declaration, unanimously adopted in 2000 at the level of Heads of State and Government, vide United Nations General Assembly resolution 55/2, stated that they “… are committed to making the right to development a reality for everyone and to freeing the entire human race from want."[[9]](#footnote-10)

8. Indeed, numerous documents adopted by the UN Human Rights Commission, the UN Human Rights Council, the UN General Assembly, the Non-Aligned Movement (NAM), and other multilateral fora, have highlighted, often at the highest level, the urgent need to make the right to development a reality for everyone.

9. The Summits of the Heads of State or Government of NAM have also, over the years, repeatedly called for working towards a Convention on the Right to Development. Thus, the 12th NAM Summit held in 1998 in Durban urged “consideration be given to the preparation of a Convention on the Right to Development as one of the important steps towards effective implementation of the right to development”.[[10]](#footnote-11) The 13th NAM Summit, held in 2003 in Kuala Lumpur, resolved that the UNCHR’s Open-Ended Working Group on the Right to Development “should continue to give priority to the operationalisation of this important right including, inter alia, elaboration of a Convention on the Right to Development.”[[11]](#footnote-12) Subsequent NAM Summits have repeated the call for a Convention on the Right to Development and the 17th NAM Summit held in 2016 in Venezuela urged the UN human rights machinery to ”ensure the operationalization of the right to development as a priority, including through the elaboration of a Convention on the Right to Development by the relevant machinery, taking into account the recommendations of relevant initiatives.” [[12]](#footnote-13) [[13]](#footnote-14)

10. With the advance of human rights, a new global consciousness encompassing a Right to Sustainable Development is crystallizing. Its overriding priority is the elimination of extreme poverty, alongside addressing inter-generational and intra-generational equity concerns. Besides addressing inequality in income and wealth, such a right has to incorporate a more equitable access for all to resources that cater to basic, subsistence level needs. As ‘trustees’ of our planet we would be less than sincere if we are concerned only about our obligations to future generations and cannot be bothered about addressing the precarious condition of the vast numbers of those in the present generation living in grinding poverty.

11. In an overwhelming majority of countries - irrespective of whether they are developed or developing - income, wealth, political power and resources are concentrated in the hands of a small proportion of the population. As per UNDP, the richest 10% of the world’s population earns around 40% of world income. Moreover, income inequality is rising in many countries, including developing countries where income disparities widened by 11% during 1990-2010. In fact, today over three-fourths of the total population of all developing countries live in societies with more unequal incomes than they had in the 1990’s. As regards inequality in the distribution of wealth, several recent reports highlight that the wealthiest 1% of the world’s population will soon own half the global wealth; moreover, this chasm is widening.

12. The 2015 Millennium Development Goals report indicated that 800 million people still lived in extreme poverty and suffered from hunger and recognition of the need for greater fairness, justice and equity emerged as one of the central outcomes of international negotiations on a post-2015 sustainable development agenda. A new action agenda for sustainable development for 2015-2030 was endorsed by world leaders at the United Nations in New York on 25 September 2015. While not legally binding, the 17 Sustainable Development Goals (SDGs) and 169 targets unanimously agreed to represent a defining contribution to international efforts to address socio-economic and environmental challenges confronting humanity.[[14]](#footnote-15)

13. An integrated approach to development, human rights and global environmental concerns underlies the SDGs, which assign primacy of place to the goal of eradicating extreme poverty, followed by ending hunger, achieving improved nutrition and promoting sustainable agriculture.

14. Access to food, nutrition, safe, clean and affordable drinking water, and to clean and sustainable energy, are fundamental to poverty eradication. It is estimated that 1.1 billion or 14% of the world’s population have no access to electricity and some 85% live in rural areas in the developing world. Daily water use in Europe ranges from200-300 liters per person; it is less than 10 liters in some African countries. For 884 million people worldwide who live more than 1 kilometer from a water source, use of water is often less than5 liters a day, that too of unsafe water, and this is partly because they have to carry it long distances. Close to half the people living in developing countries suffer from health problems caused by poor quality water and lack of basic sanitation.

15. The world community also endorsed a separate SDG (SDG-10) on reducing inequality within and amongst countries. SDG-10 assigns all states the target to “progressively achieve and sustain income growth of the bottom 40% of the population at a rate higher than the national average”. A prescriptive or one-size-fits-all approach has been avoided and determining the mix of policies needed to empower the bottom forty percentile of income earners has been left to the discretion of each country.

16. Wide inequality in access, entitlements and opportunities represent undesirable aspects of the way human societies are presently organized. Indeed, widening inequalities can undermine poverty reduction efforts and negatively impact an underprivileged persons’ sense of self-worth. An IMF paper on “Causes and Consequences of Income Inequality” published in June 2015 frankly acknowledges that “In advanced economies, the gap between the rich and poor is at its highest level in decades. Inequality trends have been more mixed in emerging markets and developing countries, with some countries experiencing declining inequality, but pervasive inequities in access to education, health care, and finance remain”.[[15]](#footnote-16) Extreme poverty cannot be eliminated as long as glaring inequalities persist amongst and within countries. Nonetheless, rising income inequality is not inevitable and countries have been able to contain or reduce income inequality alongside strong growth.

17. Inequalities extend beyond the rich-poor gap in income, wealth, political power and access, manifesting themselves also, for example, through urban-rural, generational and digital divides, besides gender inequalities. Accordingly, states also agreed vide SDG-10 to “empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status” by 2030. There is also a sharp digital inequality that needs to be surmounted so as to provide more equal access to the internet and other new technologies. It is estimated that more than four billion people do not have internet access, and 90% of the digitally excluded live in developing countries.

18. The concluding goal on the list of seventeen SDGs agreed to under Agenda 2030 envisages a global partnership to meet the other sixteen goals. SDG-17 incorporates provisions for strengthening domestic resource mobilization, including via improved domestic capacity for collection of tax and other revenues, and support in attaining long-term debt sustainability. It also requires developed countries to fully implement their long-standing Official Development Assistance (ODA) commitments.

19. A healthier global partnership, in line with SDG-17, would enable the developing world to more effectively access development and climate finance and environmentally sound technologies, besides boosting capacity development. This also means encouraging ODA flows to regions where their requirement is greatest. The extent of inequality within and amongst countries has to be reduced if we want a more just, peaceful and sustainable world. No country acting on its own can successfully achieve such change. The SDGs provide a template for each country to assess its performance in meeting a wide-ranging set of sustainable development goals, with the bar being not placed so high as to make them unachievable or so low as to be meaningless. All stakeholders will need to sincerely cooperate in a spirit of partnership if we are to attain the Sustainable Development Goals by the year 2030.

20. As per the 2016 Report of the Special Rapporteur on Extreme Poverty and Human Rights, while “it is very much to be hoped that the SDG 2030 Agenda will indeed lead to greater respect for economic and social rights as human rights, this is by no means guaranteed by the terms of the Agenda as adopted and much remains to be done if that aspiration is to be meaningfully promoted.[[16]](#footnote-17)

21. Indeed despite well over three decades since the adoption of the Declaration on the Right to Development, its potential remains unrealized. A reason advanced for this is that while there are reporting procedures for substantive rights that constitute the Right to Development and the UN Human Rights Council can exercise moral persuasion over violators, the Right to Development “lacks a firm institutional platform to stand on” and “lacks justiciability”.[[17]](#footnote-18)

22. While the progressive elimination of poverty is recognized as a prerequisite for realization of the right to development throughout the world;[[18]](#footnote-19) yet, billions of people across the world continue to be left behind and are yet to see their right to development realised. As per the World Inequality Report 2018, inequality has increased in most world regions in recent decades, but at different speeds.[[19]](#footnote-20)

23. Moreover, as per the “State of Food Security & Nutrition in the World 2019” report released in July 2019[[20]](#footnote-21), it appears that the world is off-track to meet most of the Sustainable Development Goal targets linked to hunger, food security and nutrition. World hunger is rising and now affects more than 820 million people, corresponding to about one in every nine people in the world. That number has been rising for three years in a row and is back to levels seen in 2010-2011. The percentage of hungry people has also slightly increased between 2015 and 2018, to 10.8%.

24. Furthermore, the “Global Multidimensional Poverty Index 2019” brought out by UNDP and the Oxford Poverty and Human Development Initiative, also shows that, in the 101 countries studied – 31 low income, 68 middle income and 2 high income – 1.3 billion people are currently “multidimensionally poor” (which means that poverty is defined not simply by income, but by a number of indicators, including poor health, poor quality of work and the threat of violence).[[21]](#footnote-22) As per the Report, “action against poverty is needed in all developing regions”, with Sub-Saharan Africa and South Asia home to some 84.5% of the poor. Over half of those identified as poor (some 663 million) are children under 18, and around a third (some 428 million) are under 10.

25. Finally, another recent report show that the global wealth gap is far worse than previously estimated as until recently economists had limited information about how much money the super-rich had stashed away in tax havens.[[22]](#footnote-23)

26. Against this backdrop, global warming and climate change also present a challenge with serious long-term implications for sustainable development and the right to development. The consequences of climate will intensify developmental challenges and its adverse impact on the poor would be particularly severe. Rising sea levels would submerge low-lying islands and coastal lands and contaminate coastal freshwater reserves. A warmer atmosphere will spread tropical diseases and pests to new areas. Growing urbanisation is already seriously challenging services and infrastructure in stressed and densely populated coastal cities in several developing countries. Climate change will impact global food productionas drought, increased unpredictability of precipitation, and rising temperatures would reduce crop yields, while warming and acidification of the oceans would affect fisheries. The food-insecure, poor and undernourished would be disproportionately harmed. Increased drought related water and food shortages, linked to rising and extreme temperatures, may increase malnutrition and worsen rural poverty. Climate-related food productivity decline will also negatively impact livelihoods through its effects on vulnerable ecosystems. The poor and vulnerable - irrespective of whether in developed or developing countries - are particularly exposed to natural or man-made disasters and their post-disaster recovery is more complicated. It is starkly revealing that nine out of ten disaster-related deaths occur in low and middle income countries.

27. Nine replies were received by the Secretariat of the Human Rights Council Advisory Committee to its Note Verbales of 21 February 2019 and 17 May 2019 seeking inputs concerning the implementation of paragraph 18 of Resolution 39/9 of the UN Human Rights Council. These were from the European Union, four States and four Non Governmental Organisations and extracts from these are presented below:

28. The [**European Union**](https://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/RighttoDevelopment/EU.pdf) reiterated its support for the Right to Development, as based on the indivisibility and interdependence of all human rights, the multidimensional nature of development strategies and the individuals as the central subjects of the development process. It noted that the Right to Development requires the full realisation of Civil and Political Rights together with Economic, Social and Cultural Rights and hence a mix of laws and policies, creating an enabling environment for, and ensuring meaningful participation of a wide range of actors, at different levels. It highlighted the importance of a rights-based approach to development, encompassing all human rights including the Right to Development, and emphasised that the primary responsibility for ensuring the realisation of the right to development is owed by States to their citizens. It added that human rights and fundamental freedoms are the birth right of all human beings and the lack of development cannot be invoked to justify the violation of these rights. The EU stated it was “not in favour of the elaboration of an international legal standard of a binding nature, as it did not believe that it is the appropriate instrument to realise the Right to Development. It regretted that Resolution 39/9 prejudged the outcome of the ongoing discussions in the Working Group on the Right to Development. Divergent views in the understanding of the Right to Development remain. A common position has not been reached so far. There remain fundamental differences on issues such as the role of indicators, the content of the Right to Development, its implications as well as appropriate instruments to realise this right.”

29. [**Iraq**](https://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/RighttoDevelopment/IRAQ.pdf) reaffirmed its position “supporting the Right to Development and the importance of establishing a legally binding instrument in support of that right”.

30. The **Principality of** [**Liechtenstein**](https://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/RighttoDevelopment/Liechstenstein.pdf) acknowledged the Declaration on the Right to Development as a valid normative framework, setting out the right to development as a fundamental human right with the individual at its centre. To date, the 2030 Agenda for Sustainable Development is the fullest expression of the right to development and the Sustatinable Development Goals (SDGs) provide a universal implementation program which is rights based and people-centred. It noted that the SDGs are universally accepted and constitute a call for action for all countries – developed and developing – to cooperate in a global partnership. Therefore, “all the efforts should be focused on implementing the 2030 Agenda for Sustainable Development as the best vehicle to promote a practical implementation of the right to development. At this stage, a legally binding instrument of the right to development would be counter-productiove, as it does not enjoy universal support.” It was concerned that working towards such an instrument would undermine efforts to implement the SDGs.

31. [**Mexico**](https://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/RighttoDevelopment/MEXICO.pdf) stated thatit would provide an oral presentation on the topic under consideration at the next session of the UN Human Rights Council.

32. [**Switzerland**](https://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/RighttoDevelopment/Switzerland.docx) noted that for progress on the right to development, it is crucial to overcome blockages, work towards reconciliation between the current fronts and seek a common narrative. It noted that the Non-Aligned Movement has unfortunately not chosen this constructive approach in dealing with the question of a legally binding instrument. It expressed its conviction that if the main co-authors had returned to more nuanced language in the text of Draft resolution L.12 in at the UN Human Rights Council in 2019, “we could have imagined a much more positive voting result or even the possibility of adoption by consensus.” Unfortunately, an opportunity was missed. Further, that the resolution on the right to development adopted at the 72nd General Assembly session mentioned that options for realization of the right to development, can take various forms. As a result, Switzerland had abstained in the vote on this text in New York. On the other hand, operative paragraphs 17e, 17f and 18 of Draft resolution L.12 at the UN Human Rights Council in 2019 precipitated steps for the elaboration of a legally binding instrument, an option that was “far from an international consensus”. A “large number of States, including Switzerland, consider that the development of a legally binding instrument would not be an appropriate and effective means of realizing the right to development.”

33. The NGO **“**[**Al-Haq**](https://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/RighttoDevelopment/Al-haq.pdf)**”** presented a very detailed submission, in the context of the “half century-long administration of the Occupied Palestinian territory by Israel, seeking to highlight why a legally binding treaty on the Right to Development was especially important for occupied populations in terms of access to their natural wealth and resources, which are systematically and routinely denied in situations of prolonged belligerent occupation, colonisation, and annexation. A legally binding treaty on the Right to Development is crucial in the context of armed conflict and belligerent occupation as such contexts often result in continued and purposeful measures against the right to development of the protected civilian population.

34. After an exhaustive presentation of its position, Al-Haq highlighted several points in its conclusions and recommendations, including that: (a) the right to development in the context of belligerent occupation includes several constraints and requires the realisation of the right to self-determination expressed by the freedom of movement, access to natural resources such as land and water, permanent sovereignty over natural resources, and economy; (b) the realisation of the right to development as a stand-alone right, requires a legally binding treaty with specific references to the situation of armed conflict including belligerent occupation where international humanitarian law operates as the *lex specialis* alongside international human rights law; (c) the right to development is also implicitly enshrined in the framework of belligerent occupation, where Article 43 of the Hague Regulations requires the belligerent occupant to administer occupied territory and “take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country”. This includes administering the territory in the interests of the occupied population, with reference to military necessity and the humanitarian guarantees of international humanitarian law. The adoption of a legally binding instrument on the Right to Development, even though many provisions are already anchored in legally binding instruments, is particularly important during belligerent occupation to ensure third parties place the rights of the protected occupied population to development, to the fore. A binding treaty would ensure that the belligerent occupant must respect and ensure the realisation of the collective right to development, placing the right ahead of broader war objectives of territorial acquisition and control.

35. The NGO [**Amnesty International**](https://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/RighttoDevelopment/AmnestyInternational.pdf) indicated at the outset that it was “not taking a position on the need or otherwise for such an instrument.” Instead, it was raising concerns about the need for a legally binding instrument on the right to development and its normative content. It requested that the Human Rights Council Advisory Committee ensure that the process going forward on any discussions on whether a legally binding instrument on the right to development is needed, and the nature and scope of the normative content of this proposed instrument, be “transparent and genuinely participatory and consultative, allow direct participation of stakeholders and include the perspectives of all stakeholders including those likely to be affected by such an instrument.” A legally binding instrument on the right to development has the potential to be a key measure to address growing inequality, within and between countries, systemic discrimination and persistent deprivation faced by marginalized groups and/or those living in poverty. To facilitate this, any discussion on the need for such an instrument must be designed in a way that reflects the opinion and experience of people most impacted by poverty, inequality, and discrimination. As regards any process relating to the normative content of “the right to development”, it strongly urged that (a) the discussions recognise that rights holders are the central subjects of the development process and that development policy should therefore make the human being the main participant and beneficiary of development; (b) Discussions are grounded in the realisation of the full range of human rights - civil, cultural, economic, political and social - and are informed by a comprehensive and inclusive understanding of “development”, including not only economic development, but also social, cultural and political development. In this context the right to development should encompass just and equitable distribution of resources, good governance and accountability for human rights violations with a particular focus on individuals and groups that have been historically marginalized and discriminated against; (c) Discussions must also be framed within the context of acknowledging that all development must be sustainable, taking into account the growing impact of climate change, and recognizing that people who are living in poverty, marginalized or discriminated against, are more vulnerable to its impacts. It added that there is a close relationship between development and the realization of human rights. For example, the rights guaranteed by the International Covenant on Economic, Social and Cultural Rights provide legal protections for several prescriptions in the General Assembly Declaration on the Right to Development. (d) It would be erroneous and counter-productive to propose or support an assumption that respect for and enjoyment of human rights are only attainable after achieving a certain level of development. On the contrary, any discussions on the need for and the scope of the right to development should reinforce the overarching nature of human rights obligations and that they apply equally to all states parties, irrespective of their level of development; (e) All UN member states have ratified at least one treaty that obliges them to respect, protect and fulfil a range of civil, cultural, economic, political and social rights. These obligations should be the foundation of discussions about the need for a legally binding instrument on the right to development. Such an instrument should take care to reinforce and strengthen these existing protections, both, in terms of the content of the right to development and in terms of how development projects should be carried out. The relationship between development and human rights has not always been easy and there are documented instances where individuals, groups and communities living in poverty and/or that have been marginalized are at particular risk of human rights violations as a result of “development projects”. At a minimum, a legally binding instrument on the right to development must provide clear protections against this; (f) Discussions on the need for a legal binding instrument on the right to development must also be rooted in states obligations to take steps, individually and through international assistance and cooperation, to ensure the full realization of all economic, social and cultural rights. States should recognize the essential role of international cooperation, and the need to take joint and separate action, to this end; and (g) Ensuring accountability for the failure to uphold and guarantee the right to development must be central to discussions on the need for a legal binding instrument on this issue. This should include how the right to remedy - which encompasses equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms – can be realized.

36. The NGO [**ANAPRODH**](https://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/RighttoDevelopment/ANAPRODH2.docx)highlighted the importance of a binding legal instrument on the right to development. Providing a historical backdrop to the recognition of the Right to Development, it noted that there is an inherent correlation between the enjoyment of human rights and economic development. The realization of the right to development has become necessary in the light of the evidence on the degradation of the planet, facing endemic poverty, deterioration of its environment, unsustainable lifestyles and the gap between the rich and the poor which continues to expand. Today, the challenge is to ensure economic development that will enable the most disadvantaged to escape precariousness. Reasons for hope exist, and decisions in global fora, such as the Monterrey Conference on Financing for Development, are able to boost development assistance since the Doha process has put development at the heart of the discussions on trade, intellectual property and investments. The Millennium Goals have, for the first time, established a framework of quantified and financially valued goals, accepted by all partners and capable of measuring performance. That is to say that the solutions exist to consecrate the right to development for all, to the extent that a consensus has been established around this right which still retains all its relevance and claiming scope for a more just world. All these objectives on the agenda of the international community are to be implemented in order to advance the right to development. The definition of this right presupposes an introductory distinction between two neighboring notions, that of the law of development analyzed by P.J.I.M. Dewaart from French works and the right to development which has not yet given rise to any important work. Judiciously Keba M'Baye relies on the difference made in English between "law" objective right and "right" subjective right. The right to development is a matter of human rights and as such would belong to the subjective rights, while the right of development would be the right of the means, which allows RJ Dupuy to say that one goes to the second by the first one. . In short, subjective law must be objectified in general rules of law which progressively constitute a right of development. But the problem of the content of the right to development is only imperfectly resolved by the distinction between the individual right and the collective right, all too easily perceived as complementary. An individual right to development, a simple personal promotion, would not really achieve development that implies an overall economic and social progress of the population. How can one not see then the danger that can present for the individual right, the action undertaken in the name of a national solidarity? In this respect, the right to development is not only the second generation of human rights, which covers economic and social rights; it also refers to the third generation, the one that appeals to the solidarity of men and nations, that is to say the one which, while being recognized as necessary, remains poorly controlled in its conception and in its modalities. 'application. It therefore seems essential in the right to development to closely combine the personal and collective dimensions, which are also necessary. In wanting to consider only the collective aspect of development, it is the basic individual liberties that are likely to suffer. To ignore solidarity in development is to fall into discriminatory elitism. In reference to the personalist current, one can, with R.J. Dupuy, recognize the right to development as a right to the development of the human person. At the same time, we must take into account the process collectively undertaken by integrating the dimension of solidarity, which allows Henri Sanson to refine the concept launched by the Algerian research group ten years ago by defining the right to development as "the right to be oneself for oneself and for others ".

37. It hypothesized that a legal instrument on the right to development is important and relevant because of the fact that development must be considered as a human right, a consensual and common international recognition. All States would certainly lead to the existence of a binding legal instrument on the right to development. Secondly, this legal instrument would promote the effective development of States, at the same time bringing about an improvement in the living conditions of the population.

38. Legally, the right to development must be seen as an inalienable right of the human being since it is about its development, joining at the same time the economic, social and cultural pact. Development implies "a transformation of demographic, economic and social structures, which generally accompany growth", distinguished from it by its structural and qualitative aspects in the long term. It implies that development strategies are determined by the people themselves and adapted to their situation and needs. At the global level, the United Nations, through its advocacy for the right to development, should take the lead in implementing the Declaration by establishing mechanisms to monitor activities and programs, in the purpose that they conform to the spirit and the letter of this Declaration whose scope is to be announced.

39. It recalled that the principles contained in the Declaration on the Right to Development have been forged for a long time and are consolidated by Articles 55 and 56 of the United Nations Charter. These articles emphasize the conditions of stability and well-being necessary for the raising of the standard of living and full employment. In addition, an emphasis is placed on conditions of progress and development in the economic and social order. Here we note the first dialectical link between development and peace, which constitute, with human rights, closely linked objectives. It is understood that there can be no development without peace, and that a systematic violation of human rights inevitably leads to conflict.

40. The NGO **“The Associazione Comunità Papa Giovanni XXIII (APG23)”** stated that itwas convinced that the right to development expresses, at the highest level, the values of the United Nations Charter by linking in itself the three pillars of peace and security, development, and human rights and that its realization is necessary for the protection, respect and fulfilment of all the other human rights. The implementation of the right to development in our interdependent world has become relevant and urgent for both developed and developing countries. It can limit the negative effects of the current globalization and contribute to reduce inequalities within and between countries. Furthermore, in view of the threat posed now by climate change, the speedy implementation of the right to development can be viewed as a sort of preventive solidarity that reduces the vulnerabilities of countries to environmental crisis and natural disasters. It supported the process of elaborating a legally binding instrument on the right to development because a legal approach is necessary to contribute to the realization of this right so as to leave no one behind.

41. A legally binding instrument on the right to development is important for making such a right a reality for everyone, but especially for the most vulnerable and those left behind. They are the millions of people still living in extreme poverty, adults and children affected by famine and malnutrition, those who do not have access to quality health care and still die for lack of treatment of curable diseases, those who do not have access to education, decent housing and social services, those infected with HIV/AIDS without access to anti-retroviral treatment yet, the many children living on the streets, the victims of human trafficking, the many communities affected directly by war and natural disasters, the refugees, migrants and displaced people, among all the others. All these “left behind” need actions and not words: they do not have the luxury to wait, they die.

42. Our globalised and interconnected world reveals contradictions of economic, cultural and technological progress that offers immense possibilities to a fortunate few and leaves millions of others not only on the margins of progress, but in living conditions far below the minimum demanded by human dignity. The gap between the rich and the poor, and between wealthy and impoverished countries, is unbearable and extremely unjust. Our human family has to face climate change, economic, energy and values crisis that are moving towards an even more decisive increase in inequalities both in developing and developed countries. The challenge is both to address the deepening inequalities and persisting poverty and to ensure a life of dignity for all.

43. All humans are equal in their dignity. Therefore, all currently existing inequalities in entitlements and opportunities are unacceptable! They show how far away we are from the implementation of the Right to Development and from achieving social justice. Claiming the Right to Development for social justice implies at international level, among other things, to formulate sound economic policies that foster growth with equity. It means carrying out democratic reforms of financial institutions, making globalisation really inclusive, adopting a new and effective model of international cooperation based on international solidarity and without conditions (except the request for accountability!), removing inequities and asymmetries in the global trade and recognising extraterritorial obligations. It means, inter alia, preventing and controlling corruption, eliminating tax havens and tax evasion, transferring technology and cancelling the foreign debt of, at least, the Last Developed Countries.

44. States are the principal protector of human rights and fundamental freedoms within their boundaries, but many developing countries are not in a position to fulfil basic economic, social and cultural rights of their citizens; they often lack the financial resources and the technical capacities to effectively meet their obligations in respect to this**.** Especially in view of expanding global interdependence, it is imperative to recognize that human rights and development are a shared responsibility between all members of the international community, States and non-states actors.

45. To provide the Right to Development with a legally binding framework for its implementation, will be a further important step towards the realisation of a new more humane and responsible social and international order. It will also offer an opportunity to enrich the holistic definition of development of the UN declaration with the notion that development should respect and preserve the environment and meet the needs of present and future generations.

46. APG23 noted that a legally binding instrument on the Right to Development (RTD) is important for the following reasons:

47. It will codify an enabling right for the respect of all the other human rights (national dimension leading to create domestic policies) and for the reduction of inequities (international dimension). In fact, it is the first step to combat inequalities, for societies cannot reach full potential if all their segments are not participating in, contributing to and benefiting from economic, social, cultural and political development.

48. For the first time, a holistic and integral concept of development will be codified in a UN legally binding instrument.

49. It will offer an opportunity to include important new aspects, for instance a concept of development that meets the needs of our time without compromising the capability of future generations to adapt it to their needs, and the concepts of intergenerational equity, sustainability and environment preservation.

50. It will offer an opportunity for establishing national benchmarks for the implementation of RTD. In this way, RTD will become an additional yardstick for measuring the legitimacy of a state, that is, the responsibilities of state authorities towards their populations.

51. We live in an interdependent and globalized world. The implementation of the RTD, (that has been the first of the so-called solidarity rights to be recognized) is crucial in order to face the new challenges posed by globalization.

52. A Convention will offer a legal framework with the potential to humanize the global marketplace and affirm the need for a programme of international economic justice.

53. It will reinforce the obligations for international cooperation.

54. It will give further legal expression to the notion that the ability of States to develop, and to fulfil their human rights obligations, are bound by structural arrangements and actions of the (powerful members) of the international community (International obstacles).

55. It will introduce a monitoring and reporting system.

56. There was added value in having a treaty on RTD because the focus on individual State responsibility in current human rights treaty law prevents the integration of human rights into the international development effort. It also prevents international human rights law from delivering on its promise of protection to those adversely affected by globalization. The potential added value of a right to development treaty can be to complement the current human rights regime with a convention 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 (full participation of State and non- State actors).

57. Another added value lies in the establishment of a common responsibility for the realization of this right among a multiplicity of duty bearers including non-State actors, and, for the further elaboration of the collective aspects of the right.

58. The normative potential of a binding instrument on the RTD relates primarily to the external dimension of the right, or to the solidarity aspect of it. In fact, the notion of solidarity, translated into a duty to cooperate and to actively engage in international cooperation and assistance for development, forms another core obligation concerning the implementation of the RTD.

59. An additional value of a convention on RTD (compared to other treaties) is that it will create obligations not only towards individuals but also towards peoples (collective dimension of the right to development).

60. APG23 recalled that work on the criteria and operational sub-criteria and set of standardsfor the implementation of the right to developmentthat has beencarried out in the previous sessions of the OEIWG should be reflected somehow in the legally binding instrument. Furthermore**,** the process of drafting a legally binding instrument on RTD should be participatory and inclusive. A legally binding instrument on RTD should not depart from the UN declaration; it should not dilute the declaration either but rather clarify and enrich its contents. A legally binding instrument should include all the principles of the UN Declaration such as equality and non-discrimination, gender equality, participation, accountability, sovereignty, policy coherence, rule of law, good governance, international cooperation, indivisibility of human rights, including the right to self-determination. A legally binding instrument on RTD should find an adequate balance between the national and international dimensions of RTD. Moreover, development per se is a dynamic concept, thus, its definition in a legally binding instrument should balance the inalienable core aspects of development with the possibility of a constant adaptation and improvement in a changing world.

61. Finally, multilateralism is extremely important for the realization of the RTD though it is currently under threat. Therefore, we would like to reiterate the necessity of a consensual approach in formulating a new legally binding instrument in order not to further compromise the multilateral approach.

1. The present report was submitted after the deadline in order to reflect the most recent developments. [↑](#footnote-ref-2)
2. [**A/HRC/39/L.12**](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/L.12) [↑](#footnote-ref-3)
3. Issues like working methods, type and structure, content and scope, institutional arrangements and compliance procedures of a legally binding instrument on the right to development have been remitted to the Open Ended Working Group on the Right to Development of the UN Human Rights Council, guided by its Chairman-Rapporteur; they are thus beyond the mandate of the Advisory Council. [↑](#footnote-ref-4)
4. See <https://www.un.org/documents/ga/res/41/a41r128.htm> [accessed 22 July 2019] [↑](#footnote-ref-5)
5. See <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf> [accessed 22 July 2019] [↑](#footnote-ref-6)
6. UN Doc. A/CONF.151/26 (vol. I); 31 ILM 874 (1992) [↑](#footnote-ref-7)
7. UN General Assembly, *Vienna Declaration and Programme of Action*, 12 July 1993, A/CONF.157/23, available at: https://www.refworld.org/docid/3ae6b39ec.html [accessed 22 July 2019] [↑](#footnote-ref-8)
8. Ibid, Para 11 [↑](#footnote-ref-9)
9. A/RES/55/2 [↑](#footnote-ref-10)
10. <http://cns.miis.edu/nam/documents/Official_Document/12th_Summit_FD_Durban_Declaration_1998.pdf> [Accessed 22 July 2019] [↑](#footnote-ref-11)
11. See <http://cns.miis.edu/nam/documents/Official_Document/13th_Summit_of_the_Non-Aligned_Movement_-_Final_Document_Whole.pdf> [Accessed 22 July 2019] [↑](#footnote-ref-12)
12. See <http://cns.miis.edu/nam/documents/Official_Document/XVII-NAM-Summit-Final-Outcome-Document-ENG.pdf> [Accessed 22 July 2019] [↑](#footnote-ref-13)
13. The recommendations of relevant initiatives include the High-level Seminar on the Operationalization of the Right to Development (Geneva, February 2004) held under the framework of the Commission on Human Rights Working Group on the Right to Development, and the High-level Task Force on the Operationalization of the Right to Development, as well as recommendations of the 8th session of the Intergovernmental Working Group on the Right to Development regarding the “roadmap”, endorsed by the UN HRC through its Resolution 4/4, adopted by consensus at its 4th session [↑](#footnote-ref-14)
14. See <https://sustainabledevelopment.un.org/?menu=1300> [Accessed 22 July 2019] [↑](#footnote-ref-15)
15. Era Dabla-Norris & Kalpana Kochhar & Nujin Suphaphiphat & Frantisek Ricka & Evridiki Tsounta, 2015. "[**Causes and Consequences of Income Inequality; A Global Perspective**](https://ideas.repec.org/p/imf/imfsdn/15-13.html)," [IMF Staff Discussion Notes](https://ideas.repec.org/s/imf/imfsdn.html) 15/13, International Monetary Fund. [↑](#footnote-ref-16)
16. A/HRC/32/31 [↑](#footnote-ref-17)
17. See <https://ourworld.unu.edu/en/reclaiming-the-right-to-development> [Accessed 22 July 2019] [↑](#footnote-ref-18)
18. See <https://www.ohchr.org/Documents/Issues/Development/RTDBook/PartIChapter1.pdf> [↑](#footnote-ref-19)
19. See <https://wir2018.wid.world/introduction.html> [Accessed 22 July 2019] [↑](#footnote-ref-20)
20. FAO, IFAD, UNICEF, WFP and WHO. 2019. The State of Food Security and Nutrition in the World 2019. Safeguarding against economic slowdowns and downturns. Rome, FAO. [↑](#footnote-ref-21)
21. See <http://hdr.undp.org/sites/default/files/mpi_2019_publication.pdf> [Accessed 22 July 2019] [↑](#footnote-ref-22)
22. See <https://www.forbes.com/sites/pedrodacosta/2019/02/12/wealth-inequality-is-way-worse-than-you-think-and-tax-havens-play-a-big-role/#76fe0cb9eac8> [Accessed on 22 July 2019] [↑](#footnote-ref-23)