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

Annual report of the Expert Mechanism on the Right to Development

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I. Introduction

1. The Human Rights Council, in its resolution 42/23 of 27 September 2019, decided to establish a subsidiary expert mechanism to provide the Council with thematic expertise on the right to development in searching for, identifying and sharing best practices with Member States and to promote the implementation of the right to development worldwide.

2. On 13 March 2020, the Human Rights Council appointed Koen De Feyter (Belgium), Armando Antonio De Negri Filho (Brazil), Bonny Ibhawoh (Nigeria), Mihir Kanade (India) and Klentiana Mahmutaj (Albania) as members of the Expert Mechanism on the Right to Development for a three-year period starting from 1 May 2020.¹ The selection was carried out in accordance with the procedure established in paragraphs 39 to 53 of the annex to Council resolution 5/1. The members of the Expert Mechanism may be re-elected for one additional period.

3. The Expert Mechanism meets twice annually for three days each in Geneva and in New York. Its sessions may be a combination of public and private meetings. The meetings of the Expert Mechanism are open to the participation, as observers, of States, United Nations mechanisms, bodies and specialized agencies, funds and programmes, intergovernmental organizations, regional organizations and mechanisms in the field of human rights, national human rights institutions and other relevant national bodies, academics and experts on development issues, and non-governmental organizations in consultative status with the Economic and Social Council. The Expert Mechanism reports annually to the Human Rights Council on its work, followed by an interactive dialogue with the Council.

4. The summary of the discussions set out in sections III and IV below is not intended to be a verbatim record, but rather an overview of the main points discussed by the Expert Mechanism. The report contains the vision of the Expert Mechanism and includes a number of recommendations concerning its future work and mandate for consideration and approval by the Human Rights Council.

II. Organization of the session

5. The first session of the Expert Mechanism was scheduled to be held in New York from 30 June to 2 July 2020. However, it could not be held as an in-person meeting owing to the lockdown measures and travel restrictions imposed in the context of the coronavirus disease (COVID-19) pandemic. For technical reasons, it was not possible to hold an open virtual meeting with simultaneous interpretation in the six official languages of the United Nations: the Expert Mechanism is aware of the shortcomings as a result of these circumstances and expresses hope that its future sessions can be held in public. The first session was therefore held virtually, composed of a series of private meetings, held on 16, 23 and 30 April, 7, 14 and 28 May and 11, 23 and 25 June 2020.

A. Attendance

6. All five members of the Expert Mechanism attended the first session.

B. Opening of the session

7. In her opening statement, the President of the Human Rights Council, Elisabeth Tichy-Fisslberger, highlighted the importance of multilateralism in the achievement of the goals of the Human Rights Council and its mechanisms. The COVID-19 pandemic and

¹ Further information on the Expert Mechanism is available on its web page (www.ohchr.org/EN/Issues/Development/EMD/Pages/Expert-Mechanism-on-the-Right-to-Development.aspx).

lockdown had increased the work of human rights mechanisms, which needed to find creative ways to deliver on their mandates, with a view to bettering the human rights situation of people around the world. Since the lockdown had begun, the Human Rights Council had organized two informal conversations, one with the United Nations High Commissioner for Human Rights and one with the special procedure mandate holders, and on 29 May 2020 had adopted a President's statement on the human rights implications of the COVID-19 pandemic, for the first time by way of a silence procedure. She deplored the issues of systemic racism and police violence, which had been highlighted by the outrageous murder of George Floyd. She concluded by stressing the importance of the work of the Expert Mechanism and by expressing her trust in its future endeavours.

8. The Chief of the Development and Economic and Social Issues Branch of the Office of the United Nations High Commissioner for Human Rights (OHCHR) addressed the Expert Mechanism on behalf of the OHCHR. He explained that OHCHR had a specific work programme and section dealing with the right to development. It was necessary to move beyond rhetoric and ideological debates to concrete analysis and identification of practical solutions. Even before the COVID-19 pandemic, the international community was struggling to achieve the 2030 Agenda for Sustainable Development, and the social and economic impact of the pandemic would further derail efforts to achieve the Sustainable Development Goals. While the impact would be felt in all countries, most developing countries, in particular, did not have sufficient financial resources to mitigate the consequences of the economic recession. In conclusion, he stressed the need to devise an efficient development model that addressed at least the most burning issues, including increasing inequalities, unemployment – youth unemployment in particular – and climate-related, environmental and biodiversity disasters.

C. Election of officers

9. The Chief of the Right to Development Section of OHCHR conducted the election process. The Expert Mechanism agreed to have one chair, who would also be the rapporteur of the annual report, one vice-chair and rapporteurs for the thematic studies. The vice-chair would automatically become the next chair, and rotation would occur every six months. The members elected by acclamation Mr. Ibhawoh as Chair and Ms. Mahmutaj as Vice-Chair for the first six-month period, to be followed by Mr. De Feyter, Mr. De Negri Filho and Mr. Kanade.

D. Adoption of the agenda and programme of work

10. The Chair introduced the provisional agenda and draft programme of work of the first session of the Expert Mechanism, which it adopted by consensus.

III. Summary of proceedings

11. Following its establishment, the Expert Mechanism held a series of meetings in order to make progress in the implementation of its mandate.

12. The Expert Mechanism exchanged views with the Special Rapporteur on the right to development. The Special Rapporteur informed the Expert Mechanism about the work that he had undertaken so far and the plans for the near future. He welcomed the establishment of the Expert Mechanism and the possibility for effective cooperation in the spirit of complementarity and of mutually reinforcing capacities and expertise. The Expert Mechanism shared the view that it was important to cooperate closely in the selection of topics for study, in sharing information and in joint efforts to promote the realization of the right to development. The Expert Mechanism attempted to reach the Chair-Rapporteur of the Working Group on the Right to Development, but failed owing to technical difficulties in virtual communication.

13. The Expert Mechanism discussed extensively the terms of its mandate, with a view to arriving at a shared understanding of what the Council had requested from the Expert

Mechanism and a shared vision of how the Expert Mechanism could best fulfil its mandate, without duplicating the work undertaken by other related mechanisms. It considered the mandates, methods of work and activities of the other United Nations human rights mechanisms that specifically dealt with the right to development, notably the Special Rapporteur on the right to development and the Working Group on the Right to Development. It noted the mandate that the Human Rights Council had assigned to the Advisory Committee to prepare a research-based report on the importance of a legally binding instrument on the right to development. Furthermore, the Expert Mechanism considered how the right to development was integrated into the work of other human rights mechanisms, notably the universal periodic review mechanism. Lastly, it discussed the consequent implications for the thematic work that it would undertake and the methods on the basis of which it would operate.

14. As a subsidiary body of the Human Rights Council, the Expert Mechanism would follow the rules of procedure of the Council and those regarding committees – as well as rules 45 and 60 – of the General Assembly, as applicable (rule 18 of the rules of procedure of the Human Rights Council). The Expert Mechanism did not prepare specific rules of procedure or methods of work, without precluding the possibility that it might prepare its own rules of procedure and methods of work in the future.

15. The Expert Mechanism agreed that the annual reports should address thematic issues, which could be informed by relevant panel discussions or topical issues, such as the implications of the COVID-19 pandemic, anniversaries and commemorative events, or the preparation of a legally binding instrument. Regarding the COVID-19 pandemic, members discussed the possibility of addressing the issue within a wider focus on pandemics or public health emergencies of international concern, either as a specific thematic study or as a cross-cutting issue.

16. With regard to the preparation of a legally binding instrument, the Expert Mechanism agreed on the importance of engaging with and supporting actively the mandate of the Working Group on the Right to Development.

17. The Expert Mechanism discussed its mandate to provide the Council with thematic expertise on the right to development in searching for, identifying and sharing best practices with Member States and to promote the implementation of the right to development worldwide. It determined that the identification of best practices would form part of the thematic studies. The promotional and advocacy work would also centre on the thematic studies, as well as on other topical issues.

18. For effective implementation of its mandate, the Expert Mechanism would consult and engage with Member States and other stakeholders, including international organizations and grass-roots organizations, with a view to identifying needs and areas for support and collaboration.

IV. Thematic studies

19. Regarding the selection of topics for study, members felt that it would depend on what the Expert Mechanism was trying to achieve. There was general agreement on two overarching objectives: to mainstream, reinvigorate and operationalize the right to development; and to enhance the ability of grass-roots organizations to use the right to development. There was also general agreement that it was important to go beyond rhetoric, to identify obstacles to the realization of the right to development and to make concrete policy recommendations on how to overcome them.

20. It was also felt that the three levels of responsibility regarding the right to development, as identified by the former high-level task force on the implementation of the right to development, should be addressed: (a) States acting collectively in global and regional partnerships; (b) States acting individually as they adopted and implemented policies that affected persons not strictly within their jurisdiction; and (c) States acting individually as they formulated national development policies and programmes affecting persons within their jurisdiction (A/HRC/15/WG.2/TF/2/Add.2, annex).

21. The studies should not be limited to desk research, but involve country visits and meetings with relevant United Nations organs, specialized agencies and international financial institutions, including the World Trade Organization, the International Monetary Fund and the World Bank, as well as regional organizations. There was also a need to engage with stakeholders, such as during the annual sessions or through questionnaires and online consultations.

22. Bearing in mind a number of considerations, including the modality, method and time required for the preparation of the studies and their expected shelf life, the Expert Mechanism agreed on the list of studies outlined below.

23. The first thematic study would be on operationalizing the right to development in implementing the Sustainable Development Goals, focusing on the targets incorporated as means of implementation. It was acknowledged in the 2030 Agenda that the means of implementation were key to its realization. While it was recognized that each country had primary responsibility for its own economic and social development, the 2030 Agenda also set out, through the means of implementation, a framework for a revitalized Global Partnership for Sustainable Development. Progress on all the Sustainable Development Goals was therefore directly proportional to progress on the means of implementation. However, according to the *Sustainable Development Goals Report 2019*, progress in the first four years had not been on track, with many targets, especially the means of implementation, in fact decelerating. That downward spiral was expected only to be exacerbated by the COVID-19 pandemic. The thematic study would therefore seek to provide detailed guidance to States and other stakeholders on how the right to development could be mainstreamed and operationalized in the implementation of the Sustainable Development Goals, to ensure course correction. It would focus on the means of implementation through the normative lens of the duty of international cooperation to eliminate obstacles to sustainable development and to make advances therein. It would highlight the importance and urgency of doing so during and in the aftermath of the COVID-19 pandemic and the accompanying global crisis.

24. The second thematic study would be on racism, racial discrimination and the right to development. Central to the right to development agenda was the elimination of historical and systemic obstacles that had impeded development in some regions of the world. As reflected in the preamble of the Declaration on the Right to Development, the obstacles to be eliminated included the massive and flagrant violations of the human rights of the peoples and individuals affected by situations such as those resulting from colonialism, neocolonialism, apartheid, all forms of racism and racial discrimination, foreign domination and occupation, aggression and threats against national sovereignty, national unity and territorial integrity and threats of war. That point was reinforced in article 5 of the Declaration, in which States were enjoined to take resolute steps to eliminate the violations of the human rights of peoples affected by racism and racial discrimination. The study would examine how racism and racial prejudice had shaped the debates about the right to development, including the persistent opposition to legally binding obligations, and systemic and institutional racism as obstacles to fulfilling provisions regarding non-discrimination, equality of opportunity and fair distribution with respect to the right to development at both the national and the international levels.

25. The third thematic study would be on inequalities and the right to development. In the study, consideration would be given to the challenges of building back better in the context of a post-COVID-19 world, and to article 28 of the Universal Declaration of Human Rights, which stated that every human being was entitled to a social and international order in which the rights and freedoms set forth in the Universal Declaration could be fully realized. The study would include a discussion of inequality within and between countries, taking the right to development as a starting point for the analysis, and focusing on the political economy of development, mostly in the production, distribution and redistribution of wealth. The negative sustained impact of the COVID-19 pandemic on the social and economic conditions of countries and populations was demanding policies and action that could struggle against old and new inequalities. Capacities to enhance universal and comprehensive social protection systems, connecting economy to social life, would be explored and proposed, taking existing good practices as a reference. The deficit

of social infrastructure in the global South necessary to sustain the full range of social and economic protections would be identified as targets for development cooperation and solidarity policies at the global, regional and national levels, in accordance with the Declaration on the Right to Development, under which all States and all persons had a responsibility for development and States must work individually and collectively to create an internationally enabling environment in which the benefits of development were equitably shared by all. The emphasis on equity in the right to development provides a direct linkage with the notion of sustainable development. The effect of debts and unilateral sanctions on the right to development and social and economic protection systems would be studied as obstacles to the realization of human rights.

26. The fourth thematic study would be on the right to development in international investment law. International investment law afforded protection to foreign investors and their investments while recognizing a State's right to regulate its affairs and to protect the interests of its population. The study would explore the current and potential relevance of the right to development in international investment law as one of those interests, including its use as a justification for conduct by a State, negating its liability to a foreign investor. The study would take account of the wider debate as to whether provisions of bilateral investment treaties should be read in the light of human rights law and case practice thus far. It would consider whether the Declaration on the Right to Development provided an adequate basis for invoking the right to development in international investment law disputes. The study would also assess whether new bilateral investment treaties should expressly refer to the host State's human rights obligations or include a specific reference to the right to development or to the Declaration.

27. The final thematic study to be undertaken during the current three-year term of the Expert Mechanism would be a field study on non-State actors and the duty to cooperate. The aim of the study would be to focus on the duty to cooperate in overcoming obstacles to the implementation of the right to development on the ground. While the duty to cooperate applied primarily to States, in the study it would be taken to imply a broader partnership with non-State actors, consistent with the use of the term "all stakeholders" in the 2030 Agenda (see also articles 13 and 29 of the draft convention on the right to development (A/HRC/WG.2/21/2, annex) and the United Nations Sustainable Development Cooperation Framework). The study would include an on-site investigation of a situation involving a local community whose enjoyment of rights had been affected not only by the State, but also by external actors: a private non-State actor (a foreign company or non-governmental organization), an intergovernmental organization, and the home State of the non-State actor. It could either focus on a situation in which cooperation had been attempted and evaluate the cooperation against the duty to cooperate, as an example of best practice, or focus on a situation in which cooperation was lacking, in order to show how implementation of the duty to cooperate could have greatly assisted in protecting the rights of the rights holders.

V. Adoption of the report and recommendations

28. The Expert Mechanism adopted the present report by consensus ad referendum.

29. The Expert Mechanism also adopted the following recommendations for consideration and approval by the Human Rights Council at its forty-fifth session.

Recommendation 1: Participation in the Working Group on the Right to Development

The Human Rights Council requests the Expert Mechanism to participate in the sessions of the Working Group on the Right to Development and to actively contribute and provide expert advice to the Working Group in order to support the effective implementation of its mandate.

Recommendation 2: Thematic studies of the Expert Mechanism

The Human Rights Council requests the Expert Mechanism to prepare and submit to the Council one to two thematic studies per year in the discharge of its mandate.

Recommendation 3: Coordination between the mechanisms dealing with the right to development

The Human Rights Council invites the Special Rapporteur on the right to development and the Chair-Rapporteur of the Working Group on the Right to Development to participate as required in the sessions of the Expert Mechanism with a view to coordinating their work.

Recommendation 4: Engagement with other human rights mechanisms

The Human Rights Council requests the Expert Mechanism to engage with other human rights mechanisms, such as the special procedures, the universal periodic review mechanism, the human rights treaty bodies and regional human rights mechanisms, and to make recommendations on how those mechanisms may integrate the right to development into their work.

Recommendation 5: Reporting to the General Assembly

The Human Rights Council requests the Expert Mechanism to report to the General Assembly on an annual basis, in addition to its annual reporting to the Council, and to engage with Member States, relevant United Nations agencies and civil society organizations based at United Nations Headquarters.

Recommendation 6: Engaging with Member States and other stakeholders

The Human Rights Council requests the Expert Mechanism to undertake country visits in the discharge of its mandate to provide the Council with thematic expertise on the right to development in searching for, identifying and sharing best practices with Member States, and to undertake visits to the relevant international organizations and/or participate in the relevant United Nations conferences and regional and other international meetings with a view to promoting the implementation of the right to development worldwide.
