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

Human rights bodies and mechanisms

Importance of a legally binding instrument on the right to development

Report of the Human Rights Council Advisory Committee

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I. Introduction

1. In its resolution 39/9, the Human Rights Council decided that its Working Group on the Right to Development, at its twentieth session, was to commence the discussion to elaborate a draft legally binding instrument on the right to development through a collaborative process of engagement, including on the content and scope of the future instrument. The Council also decided that the Chair-Rapporteur of the Working Group was to prepare a draft legally binding instrument on the basis of the discussions held during the twentieth session of the Working Group and the resource material from previous Working Group sessions to serve as a basis for substantive negotiations on a draft legally binding instrument, commencing at its twenty-first session. In the same resolution, the Council 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 and to present the report to the Council at its forty-fifth session.

2. The mandate for preparing the present report was tightly circumscribed to the importance of a legally binding instrument on the right to development. Issues such as content and scope, type and structure, institutional arrangements and compliance procedures of such a legally binding instrument are under consideration in a parallel process of the Working Group on the Right to Development. Accordingly, they are not covered in the present report.

3. At its twenty-second session, held in Geneva from 18 to 22 February 2019, the Advisory Committee was informed of the request to prepare the report. In response, it established a drafting group, currently composed of Ladhari Bouzid, Milena Costas Trascasas, Ion Diaconu, Ludovic Hennebel (Chair), Xinsheng Liu, Ajai Malhotra (Rapporteur), Elizabeth Salmón and Cheikh Tidiane Thiam.

4. The secretariat of the Advisory Committee circulated notes verbales on 21 February 2019 and 17 May 2019, seeking inputs from stakeholders for the preparation of the present report in line with its mandate. Nine replies were received to the notes verbales.¹ Inputs were also provided by participants in Advisory Committee meetings held in Geneva on 23 July 2019 and 19 February 2020, during which the first and second drafts, respectively, of the present report were discussed.²

II. Affirmation of the right to development

5. In its resolution 4 (XXXIII), adopted in 1977, the Commission on Human Rights first explicitly recognized the right to development as a human right and recommended that a study on the international dimensions of that right be undertaken.

6. Adopted in 1981, the African Charter on Human and Peoples' Rights was one of the first to address the right to development at the regional level. In its article 22, it is noted that all peoples are to have the right to their economic, social and cultural development, and that States are to have the duty, individually or collectively, to ensure the exercise of the right to development.

7. A groundbreaking development was the Declaration on the Right to Development, adopted by the General Assembly in its resolution 41/128. In the Declaration, the Assembly

¹ Replies were received from four Member States (Iraq, Liechtenstein, Mexico and Switzerland), the European Union and four non-governmental organizations (Al-Haq, Amnesty International, Associazione Nazionale de Promotion et de Protection des Droits de l'Homme, and Associazione Comunità Papa Giovanni XXIII).

² Statements on the first draft were made by Bolivia (Plurinational State of); China; Cuba; and Venezuela (Bolivarian Republic of), on behalf of the Non-Aligned Movement; as well as the International Human Rights Association of America Minorities. Statements on the second draft were made by Azerbaijan, as Chair of the Geneva Chapter of the Non-Aligned Movement; Cuba; Egypt; India; Namibia; the Russian Federation; and Venezuela (Bolivarian Republic of), on behalf of the Non-Aligned Movement; as well as the European Union and Associazione Comunità Papa Giovanni XXIII.

affirmed the right to development as an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized (art. 1 (1)). The Assembly also noted that the right implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources (art. 1 (2)). In addition, it declared that States have the duty to cooperate with each other in ensuring development and eliminating obstacles to it (art. 3 (3)). Finally, it puts people at the centre of the development process by noting that States have the right and duty to formulate national development policies that are aimed at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of the resulting benefits (art. 2 (3)).

8. In 1987, the concept of sustainable development was anticipated in the report of the World Commission on Environment and Development, entitled “Our Common Future”. In the report, it was noted that to make development sustainable, it was necessary to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs.³ The Commission viewed development and environmental protection in the report through the prism of needs, in particular the development needs of the world’s poor, while highlighting the notion of intergenerational equity.

9. In 1990, the Commission on Human Rights convened the Global Consultation on the Right to Development as a Human Right. Suggestions were made during the consultation, including that the United Nations should 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.⁴

10. The Rio Declaration on Environment and Development was unanimously adopted by the United Nations Conference on Environment and Development at its meeting held in Rio de Janeiro, Brazil, in June 1992. Principle 3 of the Declaration notes that the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.⁵

11. Adopted in 1993, the Vienna Declaration and Programme of Action, unanimously endorsed by the General Assembly, reaffirmed the right to development as a universal and inalienable right and an integral part of fundamental human rights. In the Declaration, it is noted that lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the international level. It is also acknowledged that the right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations.⁶

12. The Summit Conference of Heads of State or Government of Non-Aligned Countries (NAM Summit), for example, has repeatedly called for work to be done towards a Convention on the Right to Development. At the twelfth NAM Summit, held in Durban, South Africa, in 1998, States urged that consideration be given to the preparation of a Convention on the Right to Development as one of the important steps towards the effective implementation of that right.⁷

13. In the United Nations Millennium Declaration, Heads of State and Government unanimously expressed their commitment to making the right to development a reality for everyone and to freeing the entire human race from want. They also resolved to create an environment, at the national and global levels alike, that was conducive to development and

³ A/42/427, annex, p. 24.

⁴ E/CN.4/1990/9/Rev.1, para. 86.

⁵ A/CONF.151/26/Rev.1 (Vol. I), annex I.

⁶ A/CONF.157/23, pp. 5–6.

⁷ A/53/667-S/1998/1071, annex I.

to the elimination of poverty.⁸ They also put in place eight time-bound targets with a 2015 deadline, which became known as the Millennium Development Goals.

14. At the thirteenth NAM Summit, held in Kuala Lumpur in 2003, States resolved that the Working Group on the Right to Development should continue to give priority to the operationalization of that important right, including the elaboration of a Convention on the Right to Development.⁹ Subsequent NAM summits have repeated such a call.

15. At the regional level, article 19 of the Protocol on the Rights of Women in Africa, adopted in 2003, specifically acknowledged that women are entitled to fully enjoy their right to sustainable development. It also includes measures that States parties need to take in that connection.

16. Article 37 of the Arab Charter on Human Rights of 2004, adopted by the Council of the League of Arab States, describes the right to development as a fundamental human right. In the same article, it is also stipulated that all States establish development policies and take measures needed to guarantee that right. States must also give effect to the values of solidarity and cooperation among them and at the international level, with a view to eradicating poverty and achieving economic, social, cultural and political development. Article 37 also specifies that by virtue of this right, every citizen has the right to participate in the realization of development and to enjoy the benefits and fruits thereof.

17. In September 2005, the Heads of State and Government assembled at the United Nations in New York for the 2005 World Summit. In the summit outcome document, adopted by the General Assembly in its resolution 60/1, Heads of State and Government unanimously resolved to strengthen the United Nations human rights machinery with the aim of ensuring effective enjoyment by all of all human rights and civil, political, economic, social and cultural rights, including the right to development.

18. In 2007, the United Nations Declaration on the Rights of Indigenous Peoples was adopted, in which it was specified that indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development (art. 23).¹⁰

19. In its resolution 48/141, the General Assembly decided to create the post of the United Nations High Commissioner for Human Rights, which explicitly included a mandate to promote and protect the realization of the right to development and to enhance support from relevant bodies of the United Nations system for that purpose. The Assembly and the Human Rights Council have also consistently highlighted the right to development and have requested the Secretary-General and the High Commissioner for Human Rights to provide an annual progress report on its implementation.

20. During 2015, several important multilateral documents that reaffirmed the right to development were adopted by consensus, including the Sendai Framework for Disaster Risk Reduction 2015–2030; the Addis Ababa Action Agenda of the Third International Conference on Financing for Development; the 2030 Agenda for Sustainable Development; and the Paris Agreement. These documents imparted fresh momentum to efforts aimed at fulfilling the right to development at national and international levels.

21. In 2016, the Human Rights Council adopted its resolution 33/14, in which it decided to appoint a Special Rapporteur on the right to development, whose mandate included contributing to the promotion, protection and fulfilment of the right to development.

22. In 2018, the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas was adopted by the General Assembly in its resolution 73/165. Article 3 (2) of the Declaration provides that peasants and other people working in rural areas have the right to determine and develop priorities and strategies to exercise their right to development.

23. In 2019, the Council adopted its resolution 42/23, in which it established a subsidiary expert mechanism of five independent experts to provide it with thematic

⁸ General Assembly resolution 55/2.

⁹ A/57/759-S/2003/332, para. 345.

¹⁰ General Assembly resolution 61/295, annex.

expertise on the right to development and to promote the implementation of the right to development worldwide.

24. The right to development has consistently been reaffirmed in documents and resolutions adopted by the General Assembly, the Human Rights Commission and the Human Rights Council, as well as at NAM summits and other multilateral forums. Some of those documents have also highlighted the urgent need to make the right to development a reality for everyone.

25. In the final documents of the seventeenth¹¹ and eighteenth¹² NAM summits, held in 2016 and 2019, respectively, the Heads of State or Government urged the United Nations 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.

III. The Sustainable Development Goals and the right to development

26. In *The Millennium Development Goals Report 2015*, it was noted that while significant achievements had been made on many Millennium Development Goal targets worldwide during the period 2000–2015, progress had been uneven across regions and countries, leaving significant gaps. It was also acknowledged that millions were being left behind, especially the poorest and those disadvantaged because of their sex, age, disability, ethnicity or geographical location. It was recognized that gender inequality persisted; big gaps existed between the poorest and richest households, and between rural and urban areas; climate change and environmental degradation were undermining progress; the poor were suffering the most; conflicts remained the biggest threat to human development; and 800 million people still lived in extreme poverty and suffered from hunger.¹³ Indeed, recognition of the need for greater fairness, justice and equity emerged as a central outcome of international negotiations that led to a post-2015 sustainable development agenda.

27. Alongside the progressive development and advancement of human rights, a new global consciousness encompassing a right to sustainable development has been crystallizing over the last few decades. Its overriding priority is the elimination of extreme poverty, alongside addressing concerns of intergenerational and intragenerational equality. While members of the present generation, as “trustees” of the planet, need to be concerned about obligations to future generations on environmental and linked developmental issues, it would be less than sincere if nothing were done to address the precarious situation of the vast number of people currently living in grinding poverty.¹⁴

28. Against this backdrop, building on the momentum generated by the Millennium Development Goals, the ambitious new 2030 Agenda for Sustainable Development for the period 2015–2030 was endorsed by world leaders in 2015. The Agenda contains 17 Sustainable Development Goals and 169 targets, which were unanimously agreed and which represent a defining contribution to international efforts to address the socioeconomic and environmental challenges confronting humanity. While not legally binding, the Sustainable Development Goals are aimed at building upon and completing what the Millennium Development Goals did not achieve, and at presenting a global road map to a future where nobody is left behind.

29. The Sustainable Development Goals are focused on eradicating poverty (Goal 1); ending hunger (Goal 2); good health and well-being (Goal 3); quality education (Goal 4); gender equality (Goal 5); clean water and sanitation (Goal 6); affordable and clean energy

¹¹ NAM 2016/CoB/Doc.1. Corr.1, para. 753.15.

¹² NAM 2019/CoB/Doc.1, para. 980.15. Available at www.namazerbaijan.org/pdf/BFOD.pdf.

¹³ United Nations, *The Millennium Development Goals Report 2015* (New York, 2015), p. 8.

¹⁴ Ajai Malhotra, “A commentary on the status of future generations as a subject of international law”, in *Future Generations and International Law*, Emmanuel Agius and Salvino Busuttil, eds. (London and New York, Routledge, 1998), pp. 39–50. ¹⁵ Statement by Maria Francesca Spatolisano, Assistant Secretary-General for Policy Coordination and Inter-Agency Affairs, at the High-level Panel of the Human Rights Council Intersessional Meeting for Dialogue and Cooperation on Human Rights and the 2030 Agenda for Sustainable Development, 3 December 2019, Geneva.

(Goal 7); decent work and economic growth (Goal 8); industry, innovation and infrastructure (Goal 9); reducing inequalities (Goal 10); sustainable cities and communities (Goal 11); responsible production and consumption (Goal 12); climate action (Goal 13); life below water (Goal 14); life on land (Goal 15); peace, justice and strong institutions (Goal 16); and using partnership to help achieve the goals (Goal 17).

30. An integrated approach to peace, development, human rights and global environmental concerns underlies the Sustainable Development Goals, which encompass every aspect of human and planetary well-being. Most of the Goals and targets correspond to human rights obligations.¹⁵ Moreover, the 2030 Agenda represents the fullest expression to date of the right to development. In addition, the Agenda provides a universal implementation programme that is human rights-based and people-centred, and it constitutes a call to developed and developing countries to cooperate in a global partnership.

31. Beyond food and nutrition, health and quality education, the poor need access to safe and affordable drinking water, and to clean, safe, affordable and sustainable energy, which are fundamental to poverty eradication. Indeed, fulfilling the right to development embraces the enabling of a more equitable access by all to resources that cater to basic, subsistence-level needs.

32. It is noteworthy that the world community endorsed a goal on reducing inequalities within and among countries. Goal 10 assigns all States a target to progressively achieve and sustain income growth of the bottom 40 per cent of the population at a rate higher than the national average. In doing so, a prescriptive or one-size-fits-all approach has deliberately been avoided, and the determination of the mix of policies needed to empower the bottom 40 percentile of income earners has been left to the discretion of each country.

33. Although article 3 of the Declaration on the Right to Development indicates that States have primary responsibility for the creation of national and international conditions favourable to the realization of the right to development, Goal 17 of the 2030 Agenda envisages a revitalization of the global partnership for sustainable development among States, as a means of achieving the other 16 Goals. In the global context, the right to development reflects a well-founded desire for an international order that does not hamper the process of development.¹⁶ It is about enablement and empowerment, requiring an enabling environment as well as good governance at the national and international levels. On the one hand, Goal 17 incorporates provisions for strengthening domestic resource mobilization, including via improved domestic capacity for the collection of tax and other revenues, and support in attaining long-term debt sustainability. On the other hand, it requires developed countries to fully implement their long-standing official development assistance commitments.

34. A global partnership in line with Goal 17 would enable the developing world to more effectively access development and climate finance and environmentally sound technologies, in addition to boosting their own capacity development. This also implies encouraging official development assistance flows to regions where the need is greatest.

35. Achieving the Sustainable Development Goals on schedule would require effective partnerships between Governments, private sector and civil society. Indeed, no country acting on its own can successfully achieve such change. The complex challenges that the Goals are aimed at addressing do not fit into neatly demarcated sectors or national borders. Climate change, for example, is a global issue, and businesses and civil society are just as important as Governments in fighting it. Inclusive partnerships built upon a shared vision and shared goals that place people and the planet at the centre are needed at global, regional, national and local levels.

¹⁵ Statement by Maria Francesca Spatolisano, Assistant Secretary-General for Policy Coordination and Inter-Agency Affairs, at the High-level Panel of the Human Rights Council Intersessional Meeting for Dialogue and Cooperation on Human Rights and the 2030 Agenda for Sustainable Development, 3 December 2019, Geneva.

¹⁶ General statement by India at the twentieth session of the Working Group on the Right to Development, Geneva, 29 April 2019. Available at www.pmindiaun.gov.in/pageinfo/MTkyNg,/.

IV. The contemporary human development setting

A. Extreme poverty

36. As noted in the 2016 report of the Special Rapporteur on extreme poverty and human rights, while it is hoped that the 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, and much remains to be done if that aspiration is to be meaningfully promoted.¹⁷ Moreover, while the progressive elimination of poverty is recognized as a prerequisite for the realization of the right to development throughout the world,¹⁸ hundreds of millions of people worldwide continue to be left behind and have yet to realize their right to development.

37. According to the *Global Multidimensional Poverty Index 2019*, published by the United Nations Development Programme (UNDP) and the Oxford Poverty and Human Development Initiative, 1.3 billion people in the 101 countries it studied – 31 low-income, 68 middle-income and 2 high-income – are defined as being “multidimensionally poor”. The term refers to poverty that is defined not simply in income terms, but by a number of indicators such as poor health, poor quality of work and the threat of violence. According to the report, action against poverty is needed in all developing regions, with Sub-Saharan Africa and South Asia home to some 84.5 per cent of the poor. Over half of those identified as poor are children under 18 years of age (some 663 million), and around one third are children under 10 years of age (some 428 million).¹⁹ Furthermore, the World Bank estimates that the coronavirus disease (COVID-19) pandemic could lead to an additional 49 million people falling back into extreme poverty.²⁰

B. Hunger, food security, health and nutrition

38. While access to adequate food is a human right, over 820 million people – or one in every nine people globally – were still hungry in 2018 despite concerted efforts. After a decade of steady decline, the absolute number of people suffering from hunger has slowly increased for several years in a row. The percentage of hungry people has risen to 10.8 per cent in the period 2015–2018, underscoring the immense challenge of achieving Goal 2 (zero hunger) by 2030. Indeed, the world presently appears off-track to meet most Goal targets linked to hunger, food security and nutrition. Hunger is rising in almost all subregions of Africa and, to a lesser extent, in Latin America and Western Asia. There has been great progress in South Asia in the last five years, but the prevalence of undernourishment there is still the highest in Asia. It is disturbing that about 2 billion people in the world experience moderate or severe food insecurity and their lack of regular access to nutritious and sufficient food puts them at greater risk of malnutrition and poor health. While moderate or severe food insecurity is primarily concentrated in low- and middle-income countries, it also affects 8 per cent of the population of North America and Europe. Moreover, in every continent, the rate of prevalence of food insecurity is slightly higher among women than men.²¹

¹⁷ A/HRC/32/31, para. 7.

¹⁸ www.ohchr.org/Documents/Issues/Development/RTDBook/PartIChapter1.pdf.

¹⁹ http://hdr.undp.org/sites/default/files/mpi_2019_publication.pdf.

²⁰ UN News, “COVID-19 pandemic exposes global ‘frailties and inequalities’: UN deputy chief”, 3 May 2020.

²¹ Food and Agriculture Organization of the United Nations, International Fund for Agricultural Development, United Nations Children’s Fund, World Food Programme and World Health Organization, *The State of Food Security and Nutrition in the World 2019: Safeguarding Against Economic Slowdowns and Downturns* (Rome, Food and Agriculture Organization of the United Nations, 2019).

C. Water and sanitation

39. With regard to clean drinking water (Goal 6), its daily consumption in Europe, for example, ranges from 200 to 300 litres per person, but it is less than 10 litres in some African countries. Sustainable access to clean, safe and affordable drinking water is a human right irrespective of who you are or where you live. However, for the 884 million people worldwide who live more than 1 km from a water source, water use is often less than 5 litres a day and consists of unsafe water.²² Close to half of the people in developing countries suffer from health problems caused by poor quality water and the lack of basic sanitation. In 2019, approximately 2.1 billion people were still living without safe drinking water, while demand and poor management had increased water stress in many parts of the world, with climate change adding dramatically to the pressure. It is also worrisome that by the year 2030, an estimated 700 million people worldwide could be displaced by intense water scarcity.²³

D. Energy

40. Access to electricity for lighting and cooking constitutes a basic, subsistence level need. While access to electricity has steadily increased worldwide over the last few decades – from 71 per cent of the global population in 1990 to 87 per cent in 2016 – nearly 1 billion people, or 13 per cent of the world’s population, still had no access to electricity in 2019.²⁴ In 2016, more than 781 million people, or 39 per cent of the world’s population, still lacked access to clean, safe and affordable fuels for cooking,²⁵ and 85 per cent of them live in rural areas in the developing world.

E. Income and wealth

41. Extreme poverty cannot be eliminated as long as glaring inequalities persist between and within countries. In a paper published by the International Monetary Fund in June 2015, it was acknowledged that in advanced economies, the gap between the rich and poor was at its highest level in decades. Inequality trends had been more mixed in emerging markets and developing countries: although some countries experienced a decline in inequality, pervasive inequities in access to education, health care and finance remained.²⁶ According to UNDP, the richest 10 per cent of the world’s population have up to 40 per cent of world income, whereas the poorest 10 per cent earn only between 2 to 7 per cent.²⁷ It is acknowledged in the *World Inequality Report 2018* that in recent decades, income inequality has increased in nearly all countries, but at different speeds.²⁸ Furthermore, a developed country study in 2019 showed that massive and persistent inequality and large numbers of people trapped in poverty are to be found even in the midst of plenty.²⁹ There is growing consensus that economic growth alone is not sufficient to reduce poverty; that growth also needs to be inclusive and encompass the economic, social and environmental dimensions of sustainable development.³⁰

42. While some countries have reduced the number of people living in extreme poverty, economic gaps have continued to grow as the very rich amass unprecedented wealth.³¹ It is

²² www.un.org/waterforlifedecade/human_right_to_water.shtml (accessed 6 July 2020).

²³ “Message by UN Secretary-General António Guterres on World Water Day 2019”, 22 March 2019.

²⁴ Hannah Ritchie and Max Roser, “Access to energy” (2019). Available at <https://ourworldindata.org/energy-access>.

²⁵ <https://in.one.un.org/page/sustainable-development-goals/sdg-7/> (accessed on 7 July 2020).

²⁶ Era Dabla-Norris and others, *Causes and Consequences of Income Inequality: A Global Perspective*, IMF Staff Discussion Notes 15/13 (International Monetary Fund, 2015).

²⁷ www.undp.org/content/undp/en/home/sustainable-development-goals/goal-10-reduced-inequalities.html (accessed 6 July 2020).

²⁸ <https://wir2018.wid.world/files/download/wir2018-full-report-english.pdf> (accessed on 6 July 2020).

²⁹ Patrick Butler, “More than 4m in UK are trapped in deep poverty, study finds”, *The Guardian*, 29 July 2019.

³⁰ <https://in.one.un.org/page/sustainable-development-goals/sdg-10/> (accessed on 7 July 2020).

³¹ <https://inequality.org/facts/global-inequality/> (accessed 7 July 2020).

estimated that in mid-2019, the bottom half of wealth holders collectively accounted for less than 1 per cent of total global wealth, while the richest 10 per cent owned 82 per cent of global wealth and the top 1 per cent alone owned 45 per cent of global wealth.³² According to one estimate, the world's 500 wealthiest people boosted their collective net worth by 25 per cent in 2019, compared with 2018, reflecting widening wealth and income inequality.³³ Moreover, the global wealth gap is probably far worse than previously estimated since economists, until recently, had limited information about how much money the super-rich had stashed away in tax havens.³⁴

F. Generational, gender, urban-rural and other divides

43. Inequalities extend beyond the rich-poor gap in income, wealth, political power and access to resources. They are also manifested, for example, through generational, gender, urban-rural and other divides. In the circumstances, Member States also agreed 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 (target 10.2 of Sustainable Development Goal 10).

44. An intragenerational divide is to be found in an overwhelming majority of countries, irrespective of their status as developed or developing, characterized by a pattern of income, wealth, political power and resources being concentrated in the hands of a small proportion of the population.

45. The global trend towards extreme wealth and income concentration has also dramatically strengthened the economic and political power of individuals – overwhelmingly male – at the top. Women across the world continue to be underrepresented in high-level, high-paid positions and overrepresented in low-income jobs. Women of colour and those discriminated against on the basis of gender identity experience particularly high levels of poverty, unemployment and other economic hardships.³⁵ Indeed, gender discrimination and sexual harassment in the workplace aggravate and compound such persistent economic divides. Multiple news outlets reported in September 2019 that no country was on track to achieve gender equality by 2030 based on the Sustainable Development Goal gender index.³⁶

46. The pattern is broadly the same where other forms of discrimination are concerned. Often a further disadvantage is faced by children, young people, persons with disabilities, persons living with HIV/AIDS, older persons, indigenous peoples, refugees and internally displaced persons, migrants, ethnic minorities, lesbian, gay, bisexual, transgender and intersex persons, persons living in rural or remote communities, and others who are marginalized. People are yearning for better services, greater opportunities, dignity and respect. They are also seeking responsive government and an end to the discrimination that aggravates and compounds inequalities. Indeed, inequalities undermine social cohesion. They can also increase political and social tensions and, in some circumstances, can drive instability and conflict. To address inequality, countries need to generate inclusive growth – that is, share the benefits of economic growth more equitably and, in particular, increase the capabilities, opportunities and incomes of households and groups that are consistently on the margins of economic, social and political life.³⁷

³² www.credit-suisse.com/about-us/en/reports-research/global-wealth-report.html (accessed 7 July 2020).

³³ www.bloomberg.com/news/articles/2019-12-27/world-s-richest-gain-1-2-trillion-as-kylie-baby-sharks-prosper.

³⁴ Pedro Nicolaci da Costa, "Wealth inequality is way worse than you think, and tax havens play a big role", *Forbes*, 12 February 2019.

³⁵ <https://inequality.org/gender-inequality/> (accessed on 7 July 2020).

³⁶ www.nationalgeographic.org/article/sustainable-development-goals/ (accessed 7 July 2020).

³⁷ United Nations Development Programme, *Humanity Divided: Confronting Inequality in Developing Countries* (New York, 2013), pp. xi–xii.

G. Access, entitlement and opportunities

47. Our world reflects not only an uneven distribution of resources, but also inequalities in opportunities, in terms of access to entitlements and those emerging from gender, class, ethnicity and race. These inequalities, in turn, translate into unequal human development outcomes.³⁸ The wide inequality in access, entitlements and opportunities reflects undesirable aspects of the way in which human societies are presently organized. Indeed, widening inequalities can undermine poverty-reduction efforts and negatively impact an underprivileged person's sense of self-worth.

48. Inequalities in human development also hurt societies, weakening social cohesion and people's trust in government, institutions and each other. Most of those inequalities harm economies, wastefully preventing people from reaching their full potential at work and in life in general, and they constitute a roadblock to achieving the Sustainable Development Goals contained in the 2030 Agenda.³⁹ Focusing on poverty eradication and successfully reducing inequalities would have compound positive effects on the achievement of the entire set of Goals. Limiting climate change, reducing inequalities and pursuing responsible consumption are key ways to overcoming hurdles to achieving the Goals across countries.⁴⁰

H. New inequalities: tertiary education and the digital divide

49. Meanwhile, new inequalities have arisen, as the abilities that people need to compete in the immediate future evolve over time. A new gap has opened up, covering sectors like tertiary education and access to broadband. Once considered luxuries, these are now regarded as critical in order to compete and to belong, particularly in a knowledge economy, where an increasing number of young people are educated and connected but are lacking opportunities to move up the ladder.⁴¹

50. The rapid evolution and spread of information and communications technologies has transformed the global economy. While the pace of digital transformation varies, all countries are affected. A sharp digital inequality has resulted, which needs to be surmounted in order to ensure more equal access to the Internet and other new technologies and the opportunities deriving from such access. This speedy transformation of the world economy as a result of the rapid spread of new digital technologies has major implications for the implementation of the 2030 Agenda, presenting huge opportunities and challenges for developing countries. Increased levels of digitalization of societies and economies are creating new means for tackling global developmental challenges. There are, however, risks that digital disruptions will mainly favour those already well prepared to create and capture value in the digital era, rather than contributing to more inclusive development.⁴² While the rapid spread of digital technologies is transforming numerous economic and social activities, widening digital divides threaten to leave most developing countries, especially least developed countries, even further behind.⁴³ About 3.6 billion people remain offline, with most unconnected people living in

³⁸ K. Seeta Prabhu and Sandhya S. Iyer, *Human Development in an Unequal World* (Delhi, Oxford University Press, 2019), p. 1.

³⁹ *Human Development Report 2019: Beyond Income, Beyond Averages, Beyond Today – Inequalities in Human Development in the 21st Century*.

⁴⁰ D. Lusseau and F. Mancini, "Income-based variation in Sustainable Development Goal interaction networks". *Nature Sustainability*, vol. 2, No. 3, pp. 242–247.

⁴¹ *Human Development Report 2019: Beyond Income, Beyond Averages, Beyond Today*.

⁴² *Digital Economy Report 2019: Value Creation and Capture – Implications for Developing Countries* (United Nations publication, Sales No. E.19.II.D.17).

⁴³ *Ibid.* It is also noted in the *Digital Economy Report 2019* (p. 3) that the economic geography of the digital economy does not display a traditional North-South divide. It is consistently being led by one developed and one developing country: the United States of America and China. For example, those two countries account for 75 per cent of all patents related to blockchain technologies, 50 per cent of global spending on the Internet of Things, and more than 75 per cent of the world market for public cloud computing. Perhaps most strikingly, they account for 90 per cent of the market capitalization value of the world's 70 largest digital platforms.

low-income countries, where an average of just 20 per cent of the population is online.⁴⁴ Digital advances have generated enormous wealth in record time, but that wealth has been highly concentrated in a small number of countries, companies and individuals. Moreover, under current policies and regulations, this trajectory is likely to continue, further contributing to rising inequality. The digital divide in which over half the world has limited or no Internet access must be eliminated, and a digital economy that delivers for all must be built.⁴⁵

I. Global warming, climate change and biodiversity

51. The contemporary global warming and climate change crisis and the worrisome trend in loss of biodiversity present serious long-term implications for the right to development. The consequences of climate change will intensify developmental challenges while its adverse impact on the poor would be particularly severe. Rising sea levels will submerge low-lying islands and coastal lands and contaminate coastal freshwater reserves. A warmer atmosphere will spread tropical diseases, pathogens and pests to new areas. Growing urbanization is already seriously challenging services and infrastructure in stressed and densely populated coastal cities in several developing countries. Climate change will also impact global food production, since drought, increased unpredictability of precipitation and rising temperatures will reduce crop yields, while warming and acidification of the oceans will affect fisheries. The food-insecure, poor and undernourished will be disproportionately harmed. Increased drought-related water and food shortages, linked to rising and extreme temperatures, may increase malnutrition and worsen rural poverty. A climate-related decline in food productivity will also negatively impact livelihoods through its effects on vulnerable ecosystems. It is important to highlight that the poor and vulnerable – irrespective of whether in developed or developing countries – are particularly exposed to natural or human-made disasters, and their post-disaster recovery is more complicated. It is revealing that 9 out of 10 disaster-related deaths occur in low- and middle-income countries, while the negative consequences of climate change will even more decisively increase inequalities in developing and developed countries.⁴⁶ The climate crisis also shows that the price of inaction compounds over time, as it feeds further inequality, which can in turn make climate action, envisaged under Sustainable Development Goal 13, even more difficult.⁴⁷ Climate change constitutes a clear, present and intensifying threat to the full and effective exercise of all human rights including those to life, health, a decent standard of living, non-discrimination, self-determination and development.⁴⁸

52. Biodiversity loss has an economic cost, and it could harm food security and significantly impact human health. Current negative trends in biodiversity and ecosystems will undermine progress towards 80 per cent of the assessed targets for the Sustainable Development Goals related to poverty, hunger, health, water, cities, climate, oceans and land.⁴⁹ The expected long-term adverse impact of climate change and the loss of biodiversity highlight the importance of a legally binding instrument on the right to development.

J. Current socioeconomic situation

53. The *World Social Report 2020* records deep divides within and across countries despite a period of extraordinary economic growth and widespread improvements in living

⁴⁴ “ITU-WHO Joint Statement: Unleashing information technology to defeat COVID-19”, 20 April 2020.

⁴⁵ *Digital Economy Report 2019: Value Creation and Capture*, p. iv.

⁴⁶ Centre for Research on the Epidemiology of Disasters and the United Nations Office for Disaster Risk Reduction, *Poverty & Death: Disaster Mortality – 1996–2015* (2016).

⁴⁷ *Human Development Report 2019: Beyond Income, Beyond Averages, Beyond Today*.

⁴⁸ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25404&LangID=E.

⁴⁹ Directorate General for External Policies of the Union, *Biodiversity as a Human Right and its implications for the EU’s External Action* (European Union, April 2020).

standards.⁵⁰ It also underscores how gender, ethnicity, race, place of residence and socioeconomic status continue to shape the opportunities people have in life. The benefits of globalization remain overwhelmingly concentrated among those already privileged. Many others continue to live in dire need of the fulfilment of their right to a life of dignity, freedom and equal opportunity. Several dimensions across the 2030 Agenda, with cross-cutting impacts, are not only behind schedule but even moving in the wrong direction: inequalities are rising, the climate is changing more quickly, biodiversity losses are increasing, and waste production is overwhelming.⁵¹ The global economy has undergone its lowest growth in a decade, slipping to 2.3 per cent in 2019 and a prolonged weakness in global economic activity may cause significant setbacks for sustainable development, including the goals to eradicate poverty and create decent jobs for all, while pervasive inequalities and the deepening climate crisis are fuelling growing discontent in many parts of the world.⁵²

54. According to Secretary-General António Guterres, in early 2020 the global economy was facing a significant and widespread slowdown amid prolonged trade disputes and wide-ranging policy uncertainties. Poverty rates were increasing in numerous countries, climate risks were more pressing than ever and inequalities remained broad within and among countries.⁵³ Despite considerable efforts, he warned that efforts to achieve the Sustainable Development Goals by 2030 were not on track. Moreover, with under a decade remaining to achieve them, no country was yet convincingly able to meet a set of basic human needs at a globally sustainable level of resource use.⁵⁴

55. Progress on the Sustainable Development Goals had been stalling even before the COVID-19 pandemic aggravated an already bleak global economic scenario. The pandemic has exposed glaring weaknesses in public health delivery, and it has highlighted the interdependencies between economic, environmental and social outcomes. The pandemic has also highlighted the frailties and inequalities of our societies and compounded existing inequalities.⁵⁵ It has led to a sharply contracting global economy and deepening of existing divides, with the poorest and most vulnerable being hit hardest. An early bounce back and global recovery from the COVID-19 crisis is crucial for the world to get back on track to achieve the Goals by 2030. The creativity and magnitude of our response must match the unique nature and scale of this unprecedented crisis, which no country will be able to overcome alone.⁵⁶ It is also in everyone's interest to ensure that developing countries have the best chance of managing it. As highlighted by the Secretary-General, countries must build back from the COVID-19 crisis in a way that safeguards a better future for all.

V. Moving forward on the right to development

56. Former High Commissioner for Human Rights Navi Pillay made the following observation:

On one side, proponents of the right to development assert its relevance (or even primacy) and, on the other, sceptics (and rejectionists) relegate this right to secondary importance, or even deny its very existence. Unfortunately, while generating plenty of academic interest and stimulating political theatre, that debate has done little to free the right to development from the conceptual mud and political quicksand in which it has been mired all these years.⁵⁷

⁵⁰ *World Social Report 2020: Inequality in a Rapidly Changing World* (United Nations publication, Sales No. E.20.IV.1).

⁵¹ *Global Sustainable Development Report: The Future is Now*.

⁵² *World Economic Situation and Prospects 2020* (United Nations publication, Sales No. E.20.II.C.1).

⁵³ *Ibid.*, p. iv.

⁵⁴ *Global Sustainable Development Report: The Future Is Now*, pp. xi and xx.

⁵⁵ UN News, "COVID-19 pandemic exposes global 'frailties and inequalities': UN deputy chief", 3 May 2020.

⁵⁶ United Nations, *Shared Responsibility, Global Solidarity: Responding to the Socio-economic Impacts of COVID-19* (March 2020).

⁵⁷ *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (United Nations publication, Sales No. E.12.XIV.1).

57. Moreover, challenges and obstacles within the Working Group on the Right to Development have for many years made it impossible to fulfil its mandate.⁵⁸ Despite more than 33 years having passed since its adoption, the potential of the Declaration on the Right to Development remains unrealized.

A. Support for a legally binding instrument

58. Against this backdrop, it is important to recall that an overwhelming majority of Member States have endorsed the right to development as a fundamental human right. A clear majority of Member States also assign high importance to putting in place a legally binding instrument in support of that right.⁵⁹ Particularly noteworthy is a joint statement made by the Group of 77⁶⁰ and the Non-Aligned Movement.⁶¹ The statement was made in September 2016 at the high-level segment of the General Assembly to commemorate the thirtieth anniversary of the Declaration on the Right to Development, and it is especially significant since it reflects the position of two of the largest groupings at the United Nations. In the statement, the Group of 77 and the Non-Aligned Movement reiterated their unequivocal commitment to the right to development and also specified the need to strive for greater acceptance, operationalization and the realization of the right to development at the international level.⁶²

59. In the final document of the eighteenth NAM Summit, it was declared that eradicating poverty in all its forms and dimensions, including extreme poverty, was one of the critical elements in the promotion and realization of the right to development and was the greatest global challenge and an indispensable requirement for sustainable development, which required a multifaceted and integrated approach.⁶³ The final document of the eighteenth NAM Summit incorporated 43 references to the right to development. In one such reference, it was reaffirmed that all human rights, including the right to development, are universal, inalienable, indivisible, interdependent and interrelated, and that human rights issues must be addressed within the global context through a constructive, non-confrontational, non-politicized and non-selective, dialogue-based approach, in a fair and equitable manner, with objectivity, respect for national sovereignty and territorial integrity, non-interference in the internal affairs of States, impartiality, non-selectivity and transparency as the guiding principles, taking into account the political, historical, social, religious and cultural particularities of each country. In the final document, it was agreed that work for greater acceptance, operationalization and realization of the right to development at the international level would be undertaken. In addition, all States were urged to undertake necessary policy formulation at the national level and to institute measures for implementation of the right to development as a fundamental human right. They were also urged to expand mutually beneficial cooperation, in order to ensure development and to eliminate obstacles to it, in the context of promoting effective international cooperation for the realization of the right to development. Furthermore, the United Nations human rights machinery was urged to ensure priority operationalization of that right, including by elaborating a Convention on the Right to Development.⁶⁴

B. Opposition to a legally binding instrument

60. On the other hand, several Member States, while pointedly reiterating their support for the right to development, have not favoured elaboration of a binding international legal

⁵⁸ Statement by Bolivarian Republic of Venezuela on behalf of the Non-Aligned Movement, twentieth session of the Working Group on the Right to Development, Geneva, 29 April 2019.

⁵⁹ This has been repeatedly affirmed by NAM summits. The current membership of the Non-Aligned Movement constitutes just over 62 per cent of membership in the United Nations.

⁶⁰ The Group of 77 consists of 134 Member States and is currently the largest intergovernmental organization of developing countries at the United Nations.

⁶¹ The Non-Aligned Movement consists of 120 member States, 17 observer States and 10 international organizations with observer status.

⁶² www.g77.org/statement/getstatement.php?id=160922 (accessed on 7 July 2020).

⁶³ NAM 2019/CoB/Doc.11.

⁶⁴ NAM 2019/CoB/Doc.1, paras. 977.1, 980.14 and 980.15.

standard on the right to development.⁶⁵ In addition, one Member State that considers that the development of a legally binding instrument would not be an appropriate and effective means of realizing the right to development has contended that in order to progress in the elaboration of a legally binding instrument on the right to development, then it is crucial to first overcome blockages, work towards reconciliation and seek a common narrative.⁶⁶ Presenting its view that at this stage a legally binding instrument would be counterproductive, as it did not enjoy universal support, one Member State has even suggested that working towards such an instrument would undermine efforts to implement the Sustainable Development Goals.⁶⁷ Another Member State expressed reservations over developing a legally binding instrument on the right to development, because in its view, such an instrument did not enjoy consensus, would imply a duplication of efforts and could even reverse the existing consensus. It instead suggested redoubling efforts to elaborate criteria and operational sub-criteria for the fulfilment of the right to development, gathering a consensus on them and aligning such efforts with commitments assumed under the 2030 Agenda. The State was of the view that discussions on an instrument on the right to development could take place after guidelines are developed.⁶⁸

C. Progress on a legally binding instrument

61. Taking forward the approach of the majority of Member States, it is imperative to more effectively promote and implement the Declaration on the Right to Development. The Declaration clearly places primary responsibility on States to create favourable conditions for its realization. Moreover, Member States have a duty to cooperate with each other in ensuring development, eliminating obstacles to it and taking steps to facilitate the full realization of the right to development. Indeed, international cooperation is integral to the implementation and realization of that right.

62. In this context, member States of the Non-Aligned Movement firmly believe that the realization of the right to development is a necessity now more than ever, and that the international community must demonstrate its commitment and give the right to development the high profile it merits.⁶⁹

63. The right to development reflects the values of the Charter of the United Nations and encompasses the three pillars of peace and security, development, and human rights, and the realization of that right is relevant and necessary for the respect, protection and fulfilment of all other human rights.⁷⁰ It is time to overcome political polarization, transcend debate and focus on practical measures to implement the Declaration on the Right

⁶⁵ See note verbale dated 4 June 2019 from the Permanent Delegation of the European Union, Geneva, to the secretariat of the Advisory Committee to the Human Rights Council, Geneva. Available at www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/RightToDevelopment.aspx. The Permanent Delegation also expressed regret that in Human Rights Council resolution 39/9, the Council had prejudged the outcome of the ongoing discussions in the Working Group on the Right to Development, adding that divergent views in the understanding of the right to development remained, with 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 realize that right. (As at 1 January 2020, the European Union consisted of 28 Member States of the United Nations.)

⁶⁶ Note verbale dated 31 May 2019 from the Permanent Mission of Switzerland, Geneva, to the secretariat of the Advisory Committee to the Human Rights Council, Geneva (in French). Available at www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/RightToDevelopment.aspx.

⁶⁷ Note verbale dated 11 June 2019 from the Permanent Mission of Liechtenstein, Geneva, to the secretariat of the Advisory Committee to the Human Rights Council, Geneva. Available at www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/RightToDevelopment.aspx.

⁶⁸ Note verbale dated 31 May 2019 from the Permanent Mission of Mexico, Geneva, to the Working Group on the Right to Development, Geneva.

⁶⁹ Statement by the Bolivarian Republic of Venezuela on behalf of the Non-Aligned Movement.

⁷⁰ Submission by Associazione Comunità Papa Giovanni XXIII to the secretariat of the Advisory Committee to the Human Rights Council, Geneva. Available at www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/RightToDevelopment.aspx.

to Development. It is also time for the right to development to be recognized as a primary enabling right that provides a normative basis for the realization of all other rights.⁷¹

VI. Added value of a legally binding instrument on the right to development

64. A legally binding instrument on the right to development is of importance as it would promote the effective development of States while improving the living conditions of their populations. The resultant added value would also derive from the fact that it would provide a comprehensive legal framework and approach to policies and programmes covering all stakeholders and encompassing all human rights – civil, political, economic, social and cultural – while integrating aspects of both human rights and development theory and practice.

65. The Inter-American Court of Human Rights and the African Court on Human and Peoples' Rights have used the Declaration on the Right to Development to protect the culture and way of life of indigenous and tribal peoples. This can be seen, for example, in two landmark rulings of the African Court on Human and Peoples' Rights – one regarding alleged violations owing to the displacement of the indigenous Endorois community from ancestral lands, and the other regarding the alleged violation of the human rights of the Ogiek, a forest-dwelling community in Kenya.⁷² Nonetheless, such examples are more the exception than the rule and the right to development, to a large extent, still lacks justiciability. A legally binding instrument would provide added value by firming up the foundation to enable this important concern to be more comprehensively addressed.

66. Similarly, although there are reporting procedures for substantive rights that constitute the right to development, and the Human Rights Council can exercise moral persuasion over violators, the right to development itself lacks a firm institutional platform to stand on.⁷³ The codification of a legally binding instrument on the right to development would help address this lacuna.

67. Furthermore, since a legally binding instrument would embody the human rights-related principles of equality, non-discrimination, participation, transparency and accountability, as well as the principle of international cooperation, in an integrated manner, such an instrument would be able to better guide our responses to contemporary concerns and challenges.

68. A legally binding instrument can help make development a reality for all, by ensuring the operationalization of the right to development as a priority, providing an enabling environment for the full realization of the Sustainable Development Goals, and raising the right to development to the same level as all other human rights and fundamental freedoms.⁷⁴ Such an instrument would help better ensure comprehensive and human-centred development policy, participatory development processes, social justice and equity.⁷⁵ It would also boost efforts to build more inclusive, sustainable and resilient societies.

69. The realization of the right to development would foster the operationalization of every Sustainable Development Goal. The right to development should be kept central to the implementation of the 2030 Agenda, which is profoundly dependent on an integrated, holistic and comprehensive approach by all States, through which a just and equitable development is achieved, human dignity attained and the right of self-determination respected.⁷⁶ Indeed, the right to development can provide a balanced, comprehensive and

⁷¹ General statement by India at the twentieth session of the Working Group on the Right to Development, Geneva, 29 April 2019.

⁷² African Court on Human and Peoples' Rights, *African Centre for Minority Rights Development and Others v. Kenya* (2009), AHRLR 75 (ACtHPR 2009); and *African Commission on Human and Peoples' Rights v. Republic of Kenya*, ACtHPR, Application No. 006/2012 (2017).

⁷³ Paul Quintos, "Reclaiming the right to development", *Our World*, 21 November 2011.

⁷⁴ Statement by the Bolivarian Republic of Venezuela on behalf of the Non-Aligned Movement.

⁷⁵ www.un.org/en/events/righttodevelopment/pdf/rtd_at_a_glance.pdf (accessed on 7 July 2020).

⁷⁶ Statement by the Bolivarian Republic of Venezuela on behalf of the Non-Aligned Movement.

enabling framework to strengthen the global partnership to achieve the Goals while promoting all human rights for everyone.⁷⁷

70. The importance of a legally binding instrument on the right to development also derives from its potential to serve as a key measure to address growing inequality, within and between countries, systemic discrimination and persistent deprivation faced by historically marginalized or vulnerable groups and/or those living in poverty. Accordingly, codification of the right to development must encompass a more just and equitable distribution of resources, good governance and policy coherence at all levels, and accountability for human rights violations, with a particular focus on individuals and groups that have been historically marginalized and discriminated against.⁷⁸ Implementation of the right to development is relevant for both developed and developing countries and can limit the negative effects of globalization.

71. While a legally binding instrument would no doubt adhere to the principles and concepts contained in the Declaration on the Right to Development, its negotiation would provide an opportunity to enhance and enrich the content of that Declaration. Codifying a legally binding instrument on the right to development would present an opportunity to affirm and more clearly bring out the collective dimension of that right.⁷⁹

72. A legally binding framework will constitute an important step towards the realization of a new, more humane and responsible social and international order.⁸⁰ It will provide an opportunity to enrich the holistic definition of development, reflected in the Declaration on the Right to Development, with the important notion that development should also respect and preserve the environment to meet the needs of present and future generations. Indeed, it would also provide an opening to suitably incorporate the imperative of development being sustainable, the need to secure intragenerational and intergenerational equity, and enable the taking into account of the ongoing climate crisis whose disruptive impact will harm the poor, vulnerable and marginalized the most. These important issues and concepts were not reflected in the Declaration since they were yet to emerge and crystallize when it was adopted in 1986.

73. The importance of a legally binding instrument also derives from the opportunity it would provide to reinforce the overarching nature of human rights obligations and to affirm that they apply equally to all States parties, irrespective of their level of development.⁸¹

74. The need for such an instrument must also be rooted in the obligations of Member States to take steps, individually and through international cooperation, to secure the full realization of all economic, social and cultural rights. In this context, it would enhance the essential role of international cooperation and the need for both joint and separate action towards that end.⁸²

75. While a State is the principal protector of human rights and fundamental freedoms within its boundaries, many developing countries are not in a position to fulfil the economic, social and cultural rights of their citizens as they often lack the financial resources and technical capacities to effectively meet their obligations in that respect.⁸³ Against the

⁷⁷ General statement by India at the twentieth session of the Working Group on the Right to Development, Geneva, 29 April 2019.

⁷⁸ Letter dated 29 May 2019 from Amnesty International to the secretariat of the Advisory Committee to the Human Rights Council, Geneva. Available at www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/RightToDevelopment.aspx.

⁷⁹ The Declaration on the Right to Development, despite having been adopted by an overwhelming majority vote, has remained controversial for a few, with a particularly harsh critic alleging that it contains too much ambiguity over basic issues, such as whether it is a collective or an individual right (S. Fukuda-Parr, "The right to development: reframing a new discourse for the twenty-first century", *Social Research: An International Quarterly*, vol. 79 (2012), pp. 839–864).

⁸⁰ Submission by Associazione Comunità Papa Giovanni XXIII to the secretariat of the Advisory Committee to the Human Rights Council, Geneva.

⁸¹ Letter dated 29 May 2019 from Amnesty International to the secretariat of the Advisory Committee to the Human Rights Council, Geneva.

⁸² Ibid.

⁸³ Submission by Associazione Comunità Papa Giovanni XXIII.

backdrop of expanding global interdependence, it is useful to recognize the role that financial and technical cooperation could play in advancing the right to development.

76. While the process of development has to be nationally owned and driven by national needs, programmes and priorities, it has to be complemented by equitable economic relations and a favourable economic environment at the international level, including via enhanced international cooperation on tax matters.⁸⁴ At the international level, claiming the right to development for social justice implies, *inter alia*, formulating sound economic policies that foster growth with equity. It means carrying out democratic reforms of multilateral financial institutions; making globalization inclusive; basing international cooperation on international solidarity; removing inequities and asymmetries in global trade; preventing corruption; eliminating tax havens, tax avoidance and tax evasion; transferring technology; and cancelling foreign debt, at a minimum that of the least developed countries.⁸⁵

77. The codification of the right to development is important for making such a right a reality for everyone, especially for the poor, most vulnerable and marginalized, in order to leave no one behind. It would be beneficial if accountability for upholding the right to development is also focused upon in discussions leading to a legally binding instrument.⁸⁶

78. Such an instrument will serve to nationally codify an enabling right for the respect of other human rights and help in internationally codifying an approach towards the reduction of inequities and the elimination of discrimination. It will also codify for the first time a holistic and integral concept of development in a legally binding instrument and offer an opportunity for establishing national benchmarks for the implementation of that right.⁸⁷

79. The codification of the right to development becomes particularly relevant in the face of challenges posed by globalization. It will provide a legal framework with the potential to humanize the global marketplace and will reinforce international cooperation obligations pertaining to sustainable development.⁸⁸ This acquires fresh relevance in the context of the COVID-19 pandemic and its aftermath.

80. The focus on Member State responsibility in human rights treaty law restricts the integration of human rights into the international development effort and thus from delivering on its promise of protection to those adversely affected by globalization. The potential added value of a legally binding instrument on the right to development could also lie in complementing the current human rights regime with such an instrument which, while reiterating the primary responsibility of a State to protect and promote human rights, may take inspiration from principles derived from international development cooperation, including mutual accountability, alignment of policies among partner countries, and inclusive international partnerships.⁸⁹

81. A legally binding instrument will serve to draw out the collective dimension of the right to development and enable further elaboration of its collective aspects. The normative potential of a binding instrument on the right to development relates primarily to the external dimensions of the right, *i.e.*, to its solidarity aspects. Translating the notion of solidarity into a duty to cooperate and actively engage in strengthened international partnerships in support of development would represent another noteworthy outcome of the codification of the right to development. It may also be viewed as a sort of preventive solidarity that reduces the vulnerability of countries to environmental crises and natural disasters and provides greater resilience in the future.⁹⁰

⁸⁴ General statement by India at the twentieth session of the Working Group on the Right to Development, Geneva, 29 April 2019.

⁸⁵ Submission by Associazione Comunità Papa Giovanni XXIII.

⁸⁶ Letter dated 29 May 2019 from Amnesty International to the secretariat of the Advisory Committee to the Human Rights Council, Geneva.

⁸⁷ Submission by Associazione Comunità Papa Giovanni XXIII.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

VII. Conclusions

82. A legally binding instrument on the right to development would create an enabling environment for development and more favourable conditions for all human rights. It would facilitate a holistic approach to addressing the systemic and structural causes of poverty; strengthen the basis for inclusive growth with due attention to the rights of the poor, vulnerable and marginalized; help reduce discrimination; promote gender equality and the empowerment of women; and serve to reaffirm the principles of self-determination and full sovereignty over natural wealth and resources. It could be expected to enhance friendly ties between States parties and to boost international solidarity and cooperation, especially in areas of special concern to developing countries, in particular to landlocked developing countries, least developed countries and small island developing States, through measures such as:

- (a) Extending official development assistance;
- (b) Enhancing access to science, technology and innovation;
- (c) Providing technology transfer on preferential and concessional terms;
- (d) Capacity-building;
- (e) Promoting a universal, open, rules-based, non-discriminatory and equitable trading system;
- (f) Enhancing policy and institutional coherence;
- (g) Putting in place long-term debt sustainability.

83. Securing lasting progress through the implementation of the right to development would also require clean and good governance and effective development policies at the national level, in addition to equitable economic relations and a favourable and supportive economic environment at the international level.

84. All Member States have a duty to cooperate in eliminating obstacles to development. In this context, international cooperation has a very important role to play in advancing the right to development and its realization. The realization of that right would, in turn, strengthen and revitalize the global partnership for development.

85. The early implementation and realization of the right to development acquires a renewed urgency in view of the multidimensional challenge to eradicating extreme poverty and meeting Sustainable Development Goal timelines arising from the COVID-19 pandemic, and the contemporary threats posed by potential climate disruption and biodiversity decline.

86. As development is a dynamic concept, its reflection in a legally binding instrument would need to appropriately balance the inalienable core aspects of development while retaining the flexibility of its future adaptation in a changing world.

87. The codification of the right to development in a legally binding instrument, and the possible setting up of a new treaty body associated with it, would help channel and provide coherence to efforts by the world community to build an international economic, social, environmental and legal order conducive to the full realization of all human rights, especially the right to development.

88. A legally binding instrument on the right to development should be balanced and flexible, encourage a strong multilateral approach and be pitched at a level that would facilitate its acceptance by a sufficient number of Member States.

89. Early codification of a legally binding instrument on the right to development would be an important step in the right direction and would contribute to more effectively meeting the challenge of securing for all – present and future generations alike – a life of dignity in a clean, safe, secure and healthy environment.