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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

Chair-Rapporteur: Mihir **Kanade** (India)



I. Introduction

1. In its resolution 42/23, the Human Rights Council 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. The Expert Mechanism on the Right to Development is composed of five members: Koen De Feyter (Belgium), Mihir Kanade (India), Bonny Ibhawoh (Nigeria), Klentiana Mahmutaj (Albania) and Armando Antonio De Negri Filho (Brazil). In January 2022, the member from the Latin America and the Caribbean region, Mr. De Negri Filho (Brazil), tendered his resignation as he undertook new professional functions that were incompatible with his work as member of the Expert Mechanism. On 22 February, the secretariat of the Human Rights Council announced the vacancy for appointment at its fiftieth session.
3. The Expert Mechanism meets twice annually for three days, in Geneva and in New York. The present report contains a summary of the fourth and fifth sessions of the Expert Mechanism, held from 3 to 5 November 2021 and from 9 to 11 March 2022.

II. Organization of the sessions

4. In 2020, at its first session, 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 the position would rotate every six months (A/HRC/45/29, para. 9). Accordingly, Mr. De Feyter chaired the fourth and fifth sessions.
5. The Expert Mechanism convened its fourth session in hybrid format from 3 to 5 November 2021, in Geneva. The session was divided into private and public segments.
6. The session was opened by the Chief of the Right to Development Section of the Office of the United Nations High Commissioner for Human Rights (OHCHR), who recalled the aims and mandate of the Expert Mechanism and reported on its accomplishments despite the lockdown and challenges brought by the coronavirus disease (COVID-19) pandemic. These included formal and informal meetings, an online dialogue with civil society organizations and social movements, and the finalization of the first thematic study. He highlighted the fact that the pandemic had shed light on the world's interdependency and interconnectedness and on the relevance of bringing forward the operationalization of the right to development, including its dimensions of international cooperation and solidarity.
7. In his opening statement, the Chair of the Expert Mechanism referred to the "Common Agenda" of the Secretary-General (see A/75/982) and his call for renewed solidarity, a new social contract rooted in human rights and a renewed vision of global cooperation and multilateralism. The Chair stressed that the right to development was the framework that brought together all these elements. Solidarity and the duty to cooperate were at the very heart of the right to development. The duty to cooperate was not limited to States' collective actions in international organizations or in other global or regional partnerships, but entailed the obligation to refrain from adopting national policies that impair or nullify the right to development of persons not strictly within their jurisdiction.
8. The Expert Mechanism convened its fifth session in full virtual form from 9 to 11 March 2022 in New York. The session comprised six public segments and one private meeting.
9. The session was opened by Assistant Secretary-General for Human Rights, who welcomed the efforts made by the Expert Mechanism to collaborate, explore synergies and strive for coherence vis-a-vis the other two existing mechanisms on the right to development, namely the Intergovernmental Working Group on the Right to Development and the Special Rapporteur on the right to development. She identified the role of the Expert Mechanism in building an evidence-based thematic foundation to implement the right to development as a distinctive mandate. The Assistant Secretary-General suggested that the right to development

should be applied as a lens to elaborate on core elements of the “Common Agenda”, including the renewal of a social contract at the national level and a new global deal at the international level.

10. In his opening statement, the Chair of the Expert Mechanism stated that the right to development integrated aspects of both human rights and development theory and practice, demanding therefore the active, free and meaningful participation of everyone. The right involved national and international dimensions of State responsibilities, the promotion of friendly relations between States, international solidarity, cooperation and assistance. The Chair stressed that discussions at the fifth session would be held in a fully open, frank and transparent manner, and that this would include dialogue with different special procedure mandate holders with the purpose of fostering coordination and bringing in expert knowledge that could complement that of the Expert Mechanism.

11. The Expert Mechanism subsequently adopted its agendas for the fourth and the fifth sessions (A/HRC/EMRTD/4/1 and A/HRC/EMRTD/5/1), and the respective programmes of work.

12. Five members of the Expert Mechanism attended the fourth session in person; four members attended the fifth session following Mr. De Negri Filho’s resignation (see para. 2 above). The Chair of the Intergovernmental Working Group on the Right to Development and the Special Rapporteur on the right to development participated online in the fourth session. Both sessions were also attended by representatives of States, United Nations bodies and specialized agencies, funds and programmes, intergovernmental organizations, regional organizations and United Nations 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.

III. Summary of proceedings

A. General statements

13. At the fourth session, general statements were delivered by the European Union, Venezuela (Bolivarian Republic of), Iran (Islamic Republic of), China and Pakistan. Statements were also delivered by representatives of the Organization for Defending Victims of Violence, Associazione Comunità Papa Giovanni XXIII and the International Human Rights Association of American Minorities.

14. Speakers reiterated their support for the Expert Mechanism and for the different initiatives on the right to development in the work towards the elaboration and adoption of a legally binding instrument. Many highlighted the complementary nature of the mandates of the three mechanisms on the right to development and the Expert Mechanism’s efforts to coordinate with them and other independent experts and bodies. Some also highlighted the Expert Mechanism’s positive role in implementing the right to development globally. One delegation expressed concern about the multiplication of nearly identical mandates in a context of financial constraints, and one speaker considered the Expert Mechanism’s focus on best practices as a mandate that fell short of addressing the actual human rights of all peoples and stakeholders, including their right to self-determination.

15. Speakers highlighted the importance of international solidarity, particularly in the context of the COVID-19 pandemic, which had triggered a severe downturn in the world economy followed by an uneven recovery. Some speakers referred to the use of unilateral coercive measures as actions that target the principle of equality and development of all nations, and hinder the realization of the right to development and the attainment of the Sustainable Development Goals. Some delegations referred to their own accomplishments in areas such as development assistance and a global initiative that set out a blueprint for country development and international development cooperation. Various speakers welcomed the themes of the studies chosen by the Expert Mechanism, and one delegation suggested the

issue of illicit financial flows in relation to the achievement of the Sustainable Development Goals as a future topic.

16. The Expert Mechanism welcomed the interventions and the support of Member States and stakeholders. The members recalled that the right to development highlighted structural differences between and within countries, such as colonialism, racism, unequal trade exchanges and migration between countries. They welcomed speakers' views on the thematic studies and offered assurances that issues such as unilateral coercive measures, foreign debt and debt relief were and would continue to be relevant in the work of the Expert Mechanism. They recalled that the duty to cooperate was a long-standing practice in international law, and was not to be treated as a voluntary issue. The members referred to their mandate to identify good practices as an opportunity to identify also practices that were not in line with the right to development framework.

17. At the fifth session, general statements were delivered by the European Union, the Syrian Arab Republic, Venezuela (Bolivarian Republic of), India, China, Egypt, Rwanda, Saudi Arabia, the Russian Federation, Belarus and Iran (Islamic Republic of). A statement was also delivered by Associazione Comunità Papa Giovanni XXIII.

18. Speakers expressed their support for the right to development and their appreciation of the Expert Mechanism for its studies and supportive interaction with other right to development mechanisms. Many speakers also expressed their support for the further elaboration of a draft legally binding instrument. Many delegations condemned practices of unilateral coercive measures as a clear obstacle to the attainment of the Sustainable Development Goals and the protection of the right to development. Some referred to the selective use of various international financial mechanisms, and appealed for equal access to means and opportunities for development.

19. Various speakers urged the international community to strengthen solidarity and cooperation, in particular for the global recovery from the COVID-19 pandemic. One delegation highlighted the importance of supporting international efforts to facilitate access to vaccines in the light of intellectual property rights and relevant international treaties. Another delegation stated that the right to development should be a national priority for its important role in achieving the Sustainable Development Goals. Some speakers also opposed any form of politicization of the right to development and its mechanisms.

20. The Expert Mechanism welcomed the support of Member States and other stakeholders participating in the fifth session, and the remarks highlighting the right to development as a fundamental and inalienable human right. The members noted the urgent call for operationalizing the right to development, including through international cooperation, as an expression of international solidarity, which was indispensable in the context of the response to and recovery from the COVID-19 pandemic. The Expert Mechanism also noted the adverse impact of unilateral coercive measures on the right to development. They reiterated that they would continue to pay special attention to this issue within the scope of the mandate granted to them by the Human Rights Council.

B. Interactive dialogue with the Chair-Rapporteur of the Intergovernmental Working Group on the Right to Development and the Special Rapporteur on the right to development

21. At the fourth session of the Expert Mechanism, the Chair-Rapporteur of the Intergovernmental Working Group on the Right to Development spoke about the twenty-first session of the Working Group. He recognized that, while several States were supportive of a legally binding instrument on the right to development, a group of States was not. He stressed that every effort should be made during the drafting process to ensure transparency and participation. Moreover, to ensure its acceptance, the draft convention was deliberately based on existing international instruments and decisions that enjoyed consensus among States. At the Working Group's next session, States would have to decide on the process to mobilize the draft for final adoption. The Chair-Rapporteur noted the upcoming participation of the Expert Mechanism in the twenty-second session of the Working Group, and extended his full

support for the Mechanism's work on commentaries to the Declaration on the Right to Development.

22. The Special Rapporteur on the right to development provided an update on his thematic reports to the Human Rights Council and General Assembly in 2021, both on the implementation of the right to development in climate action. He had also issued a policy briefing on "Climate action and the right to development: a participatory approach". His thematic report to the General Assembly in 2022 would be devoted to the compliance of COVID recovery plans with the right to development. In 2022, he planned to take stock of his work of the past five years through regional consultations to assess achievements and identify remaining challenges. The Special Rapporteur recalled the thirty-fifth anniversary of the Declaration on the Right to Development on 4 December 2021, and proposed the organization of a commemorative event.

23. The Expert Mechanism subsequently engaged in an interactive dialogue with the Chair-Rapporteur, the Special Rapporteur and the other participants. Questions were asked and answered on various topics, notably with regard to expectations for intergovernmental discussions on the legally binding instrument and the commemorative event for the thirty-fifth anniversary of the Declaration. The Expert Mechanism expressed its availability to cooperate in both processes and stressed the importance of engaging civil society organizations to bring discussions closer to people's needs and to increase impact on their lives.

24. The Expert Mechanism also opened a discussion on observations about the potential duplication of mandates. The three mechanisms and participants concluded that there was room for synergy and complementarity with positive contributions towards addressing a complex international issue. The mechanisms complemented each other, with different focuses, and made distinctive contributions. In particular, the Expert Mechanism aimed to act as a platform for debate on the right to development, to discuss the concept of development and root causes for structural issues and to suggest good practices, especially those with complex transformative capacities. It also aimed to engage civil society and enable their effective participation in related processes.

C. Coordination meeting and focused thematic discussion with special procedures and experts

25. At the fifth session, the Expert Mechanism held a coordination meeting on the duty to cooperate with the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights and the Independent Expert on human rights and international solidarity. The meeting was also joined by the Special Rapporteur on extreme poverty and human rights. Mr. Kanade opened the discussion by recalling that the duty to cooperate was enshrined in the Charter of the United Nations, in several core human rights treaties and, in particular, in various provisions of the Declaration on the Right to Development. The duty included States' obligation not to adopt national policies that infringe on human rights, including the right to development, extraterritorially. It also embodied the obligation to promote human rights for all, including the right to development, collectively when States act in international and regional partnerships.

26. The Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights stressed the broad impact of unilateral and secondary sanctions, which prevented people and companies from cooperating and trading, which in turn had other consequences, such as preventing children from going to school and barring access to life-saving medical procedures for pregnant women and others. It also prevented States from having access to credit to deal with emergency situations, such as the COVID-19 pandemic. Sanctions did not always include humanitarian exceptions, including for access to medicines, medical equipment and food. Where they existed, exception licences were expensive, difficult to obtain and hard to implement. Therefore, every State and international organization should apply cooperation, dialogue, the rule of law and the prohibition of discrimination and double standards as the foundation of international relations. It was critical to apply a precautionary approach and to elaborate legality and humanitarian

assessments before imposing any sanction. The Special Rapporteur further advocated for the irrevocable prohibition of sanctions on goods, materials, equipment and spare parts necessary to guarantee the basic needs of populations and the maintenance of the critical infrastructure without having to request any license or to provide justification. This included food, medicines, medical equipment, spare parts, fertilizers, water, electricity, gas, gasoline and diesel supply systems, education, and Internet access.

27. According to the Independent Expert on human rights and international solidarity the draft declaration on the right of peoples and individuals to international solidarity incorporated the duty to cooperate as an essential element in its article 7. The duty to cooperate was the action word for any kind of international solidarity, which was not limited to States, but also applied to – not yet specified – non-State actors. Many argued that the duty to cooperate had no binding legal content, but such an approach was inaccurate. The duty to cooperate was established in international binding instruments, such as the International Covenant on Economic, Social and Cultural Rights (art. 2), the Universal Declaration of Human Rights (art. 12) and the Charter of the United Nations (Art. 28), and in many soft law instruments, particularly in the context of refugee protection. Furthermore, article 27 of the African Charter on Human and Peoples' Rights provided for a duty to the international community, which had an individual dimension that, in the current context, may mean that individual scientists who developed COVID-19 vaccines had a duty to share them. The pandemic had illustrated why the duty to cooperate was so important. The Independent Expert referred to the dissent of different States as a challenge to the duty to cooperate; however, when looked in detail, the dissent was on specific aspects of human rights claims, and was not a universal dissent. The same group of countries that were keen on the responsibility to protect civil and political rights were the same that rejected the duty to cooperate in a binding legal way.

28. The Special Rapporteur on extreme poverty and human rights referred to the duty to cooperate by negotiating new international treaties. Article 23 of the International Covenant on Economic, Social and Cultural Rights referred to the conclusion of conventions as an instrument of international assistance and cooperation. The International Court of Justice had established a duty to negotiate new treaties in specific cases where States had conflicting rights that could be reconciled only through negotiation. Furthermore, the Committee on Economic, Social and Cultural Rights, in its general comment No. 24 (2017), established a duty to cooperate to address impunity of transnational corporations operating across different jurisdictions that could be effectively regulated only if States cooperated with one another. The duty to negotiate in good faith was included in various international legal instruments and had two interpretations. The first, a minimalist approach, restricted this duty to announcing one country's intention to resort to unilateral measures to provide a chance to enter into a discussion; the second approach saw this as a duty to put forward proposals in good faith, giving negotiations a chance to succeed. Accordingly, the special procedures of the Human Rights Council who identified a need for more international cooperation should be allowed to point to the duty to negotiate new instruments, giving that negotiation a chance to succeed. In this context, the Special Rapporteur proposed a new fund for social protection to allow least developed countries and developing countries to seek funding to finance social protection floors, a proposal that was gaining momentum.

29. During the discussion, representatives of Cuba, China, the Syrian Arab Republic, Iran (Islamic Republic of), the Russian Federation and Belarus took the floor. Overall, the States opposed unilateral coercive measures, including economic, commercial, and financial embargoes, as such measures obstructed humanitarian aid, hampered economic development, negatively affected investment and mechanisms of cooperation among societies, and led to the impoverishment of people. They highlighted the utmost importance of the duty to cooperate in overcoming obstacles to the implementation of the right to development on the ground. This duty could be applied to a wide spectrum of stakeholders, ranging from Governments, national and foreign investors, international organizations through to grass-roots organizations, especially in the context of the COVID-19 pandemic. One delegation suggested that the independent experts who had participated in the meeting should produce studies based on facts and data to demonstrate the negative impact of unilateral coercive measures on the realization of the right to development and on international solidarity.

30. The members of the Expert Mechanism expressed their appreciation for the engagement of the three Special Procedure mandate holders, and also for their important inputs and suggestions regarding the operationalization of the duty to cooperate, a core element in international law, including in the right to development framework. They acknowledged the challenges involved in finding solutions anchored in the principles of international law, while considering their unavoidable political dimensions. The members noted, among other matters, the need for a more thorough assessment of legality and expected humanitarian impact before sanctions could be imposed.

31. At its fifth session, the Expert Mechanism also held a focused thematic discussion on the right to health and the right to development in the pandemic era, with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Ms. Mahmutaj opened the discussion introducing Tlaleng Mofokeng as a celebrated medical professional, an inspiring activist for sexual and reproductive health rights, and the first woman to hold the position of Special Rapporteur on the right to health. The COVID-19 pandemic had had disproportionate consequences in developing and least developed countries, causing job losses, extreme poverty, acute hunger, reduced access to education, an increase in child labour, an increase in girl child marriage and the deepening of foreign debt. These, together with coping with inconsistent and inequitable access to vaccines, medical equipment and medication, affected both the right to health and the right to development. Ms. Mahmutaj clarified that the meeting sought to discuss current national and global initiatives to respond to the pandemic, including frameworks that would be necessary to address future pandemics.

32. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health noted that the impact of the COVID-19 pandemic had been determined less by biological factors and more by structural and socioeconomic inequality and public health policy. The starting point for millions of people worldwide was already unequal, and countries with less favourable health-care services and more limited access to the determinants of health had experienced a greater burden from COVID-19. In this context, discussions about any pandemic treaty should necessarily consider and address global socioeconomic inequalities as well as systemic racism and structural discrimination, both deeply rooted in historical, neo-colonial and current systems of oppression. To effectively fight the current pandemic and future ones, States and other stakeholders should respect human rights and comply with international assistance and cooperation, widely sharing technologies, intellectual property, data and know-how on COVID-19 vaccines.

33. During the discussion, representatives of the Syrian Arab Republic and of China took the floor, followed by representatives of non-governmental organizations and academics. Speakers raised their concern at the harsher impact that developing countries had faced due to the pandemic and the additional burden of unilateral coercive measures. They called for the equitable supply and distribution of vaccines, and for temporary waivers to the Agreement on Trade-Related Aspects of Intellectual Property Rights during health emergencies. Civil society should also be able to work with organizations such as the World Health Organization and national entities to facilitate the implementation of the right to development.

34. The members of the Expert Mechanism welcomed the engagement of the Special Rapporteur on the right to health. They understood the issues that linked the right to health to the right to development, such as vaccine nationalism, current discussions about a pandemic treaty, and international debates on the issue of participation of grass-roots organizations and communities on the ground, while stressing the impact of health crises on communities in marginalized and vulnerable situations.

D. Commentaries on the Declaration on the Right to Development

35. At the fourth session, the Chair announced the Expert Mechanism's intention to draft commentaries on the articles of the Declaration on the Right to Development, pending the adoption and ratification of a legally binding instrument. The commentaries would promote

an evolutionary interpretation of the articles, considering developments in international law, policy and practice since the adoption of the Declaration in 1986. They would identify normative gaps and shortcomings in the Declaration, which could aid the process of elaborating the future legally binding instrument on the right to development. The Expert Mechanism would discuss the draft commentaries with States and other stakeholders prior to their adoption.

36. Speakers at the fourth session noted that some provisions needed clarification and consideration. It was important to update the 1986 definition of “development”, and to clarify aspects of the individual and collective dimensions of development. The commentaries should advocate, with the right clarification, for the concept of development as a right and as a continuous process.

37. The Expert Mechanism welcomed the support of the Chair of the Intergovernmental Working Group on the Right to Development and the Special Rapporteur on the right to development, Member States, and other stakeholders for its proposal to develop commentaries on the articles of the Declaration. The Expert Mechanism decided to develop a commentary on article 1 as part of the activities to celebrate the thirty-fifth anniversary of the Declaration, progressing to all of the other articles in the coming years. The Expert Mechanism would continue to support the process within the Working Group of elaborating a legally binding instrument, and remained convinced of its need and importance.

38. At the fifth session, the Chair presented a conference room paper containing a first draft commentary on article 1 (1) of the Declaration on the Right to Development¹ for discussion. He clarified that the text was limited to the content of the provision; it was not a comment on the Declaration as a whole, or on aspects of the Declaration that were dealt with in other parts, such as the typology of State obligations. The Chair explained the two parts contained in the text: the first part presented the purpose of the commentaries and the background to the initiative, considering it was the first of its kind; the second part dealt with the specific provision and focused on the core concepts used therein, namely the meaning of development, the identification of rights holders, and how the provision could be used to strengthen the capacity of rights holders to claim the right to development.

39. Participants, including other members of the Expert Mechanism, suggested following the treaty body structure by breaking down the text and interpreting different parts of it for the sake of clarity. Some requested concrete examples of violations of the right to development and suggested a deeper focus, especially into the tension between the human rights approach to development and the development approach to human rights. Participants also felt that it was necessary to include practical illustrations, and proposed issuing a call for comments on the website of the Expert Mechanism.

E. Thematic studies

40. At the fourth session, the Chair recalled that the Expert Mechanism had identified five themes on which the members intended to submit studies to the Human Rights Council during their first three-year tenure. The first study, on operationalizing the right to development in achieving the Sustainable Development Goals, drafted by Mr. Kanade, was presented to the Council at its forty-eighth session (A/HRC/48/63). The Chair also recalled that, at their previous session (from 30 March to 2 April 2021), the Expert Mechanism had discussed a text presenting progress on the second study, on the theme “Racism, racial discrimination and the right to development”, submitted by Mr. Ibhawoh.² The Chair further explained that, at the present session, the Expert Mechanism would consider the complete draft of the second study and an outline of the third study on “Inequalities and the right to development”, presented by Armando de Negri Filho.³

41. At the fifth session, the Expert Mechanism updated Member States and other stakeholders on the third study, entitled “Inequalities and the right to development”,

¹ Available at [Fifth session of the Expert Mechanism on the Right to Development | OHCHR](#).

² Available at [Fourth session of the Expert Mechanism on the Right to Development | OHCHR](#).

³ Ibid.

following the resignation of Mr. de Negri Filho. The Expert Mechanism also discussed an overview of the fourth study, on the “Right to development in international investment law”,⁴ prepared by Ms. Mahmutaj.

1. Racism, racial discrimination and the right to development

42. At the fourth session, Mr. Ibhawoh, presented the completed version of the study on “Racism, racial discrimination and the right to development”. He stressed the widespread recognition of racism and racial discrimination as major impediments to the enjoyment of the right to development. The study did not seek to duplicate the work of other mandates, but to complement them through the lens of racism in the right to development. It was impossible to dissociate racism from other forms of intersecting discrimination, such as religious, sexual and gender discrimination. Racism played a role in the development agenda; for example, racial prejudice and systemic oppression affected different social groups and exacerbated other forms of inequality. Discrimination on the basis of national identity limited the possibility of persons to emigrate to enjoy a higher standard of living. The study showed how housing disparities had racial characteristics, linking disparities in the administration of justice (based on racial prejudices) to well-being and the right to development. Racism manifested itself in international cooperation, creating mistrust between donors and recipients. The study finally emphasized the importance of data collection and disaggregated data on racial inclusion as a first step to fighting racism in the right to development.

43. In the ensuing discussion, a representative of a Member State noted the impact of missing elements in the report in the context of international cooperation, in particular the impact of unilateral coercive measures as discrimination against specific countries, which prevented them from fulfilling the right to development and using opportunities to protecting their populations. One speaker called for more emphasis on the issue of racism against and racial intolerance of refugees and migrants, as the narratives about these populations were full of racist ideas and rhetoric. Another speaker suggested that the study and the work of the Expert Mechanism should consider the role of the colonial interpretation of the right to development, and referred to the need for equality in discussing self-determination and links with racism.

44. Other members of the Expert Mechanism stressed that colonialism was the worst form of racial discrimination and that racism generated the conditions for colonization. Discrimination was not an issue of personal discrimination but of collective discrimination against peoples. This was manifested in migration, in employment relationships and in the lack of social protection. There was therefore a need to dismantle racism to facilitate the enjoyment of the right to development.

2. Inequalities and the right to development

45. At the fourth session, Mr. De Negri Filho explained that the study sought to address two complex challenges: the nature of inequalities; and how they constituted an obstacle for the realization of the right to development. The study would also look at social protection systems that should encompass all dimensions of security: civil, political, economic, social and environmental, and therefore all human rights as a whole. Social protection systems required economic organization able to provide access to everyone without exclusion, according to their needs and on an equal basis. The economy should not be dissociated from social life. This implied changing the current mindset of the fragmented realization of individual rights, which translated into the fragmentation of the right to development itself. Categories such as “social vulnerability” did not allow those who were “vulnerable” to claim emancipation. Hence, the study would apply categories such as “exploited” or “affected by socioeconomic policies” as these permitted addressing who was responsible and their responsibilities, namely States and systems of States. To prepare the study, Mr. De Negri Filho would hold dialogues with civil society, grass-roots organizations and social movements, which often saw development as a synonym for economic growth that did not respect human and environmental rights.

⁴ Available at [Fifth session of the Expert Mechanism on the Right to Development | OHCHR](#).

46. At the fifth session, Mr. Ibhawoh expressed appreciation for Mr. De Negri Filho's foundational research for the study and the first round of consultations held with civil society organizations and social movements in the Latin America and Caribbean region. Following Mr. Negri Filho's resignation, the Expert Mechanism would build on his preliminary research to conclude the study. The four key themes to be addressed were (a) the political economy of development and inequality, including the production, distribution and redistribution of resources and wealth; (b) the impact of debts and unilateral sanctions on inequalities and the right to development; (c) the impact of major disruptive events, such as pandemics and conflict, on exacerbating inequality within and between States; and (d) the capacities of States to enhance universal and comprehensive social protection systems, identifying obstacles and good practices. Reducing discrimination and inequality within and between States entailed the promotion of political, social and economic policies that addressed the needs of groups in disadvantaged and marginalized situations. As the study progressed, the focus would be on identifying the social, economic and political conditions within and between States that created, sustained and perpetuated inequalities.

47. In the ensuing discussion, speakers expressed their willingness to contribute to the study and referred to existing inequalities, particularly in the Caribbean region, where conditions did not always allow civil society to speak up. The Expert Mechanism announced that a call for inputs or consultations would be launched in the coming months. The members suggested that civil society draw on elements from the right to development framework as a useful tool to put inequalities on the agenda both within and among States. They also referred to the mandate of the Special Rapporteur on the situation of human rights defenders and to the increasing attention paid by OHCHR to the issue of reprisals as resources that civil society may draw on to address alleged violations.

3. Right to development in international investment law

48. At the fifth session, Ms. Mahmutaj thanked Member States and stakeholders who had responded to the call for inputs to the study on the right to development in international investment law. The aim of the study was to explore the current and future role of the right to development and sustainable development in international investment law. It would consider States' obligations to protect human rights together with their right to regulate, and the evolving role of investors as duty bearers in compliance with human rights obligations. It would also consider States' international cooperation obligations. The study would look at the role of *amicus curiae* in investment disputes not only as a source of human rights expertise but also as a means of participation for individuals or people whose human rights were directly affected by the event underlying the dispute. It would highlight good practices and provide recommendations for improvement. Since the adoption of the 2030 Agenda for Sustainable Development, approximately 224 international investment agreements had been concluded, of which 31 per cent included provisions relating to the Sustainable Development Goals, either highlighting States' right to regulate or imposing duties on foreign investors. Some of these were duties to contribute to sustainable development, to observe certain standards or to comply with human rights or corporate social responsibility. These provisions were often, however, limited to exceptions, recommendations or political commitments, and did not impose binding obligations on States or investors to contribute to sustainable development.

49. In the ensuing discussion, other members of the Expert Mechanism noted there could not be improvements in the realization of the right to development if development was unsustainable. They referred to current provisions of international law that established the minimum duty of business and non-State actors to respect human rights, such as common article 5 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and general comment No. 24 (2017) of the Committee on Economic, Social and Cultural Rights. The study could look at whether these provisions were included in current investment agreements and consider the obligations of home States to protect peoples' rights elsewhere from violations by business domiciled in the home State, for example through businesses conducting due diligence or impact assessments. Members of the Expert Mechanism suggested exploring further the general requirement in international law for impact assessments in investment agreements and making recommendations to bridge the gap between requirements and actual provisions.

Members noted that the study could also look at the differences between requirements in investment agreements between two developed countries and those between a developed country and a developing or least developed country.

50. Members of the Expert Mechanism suggested consulting the rich databases and specific case studies from international non-governmental organizations, such as the “Follow the Money” initiative, and engaging with them. The study could include the premises of the Guiding Principles on Business and Human Rights, and identify gaps that would be filled by taking the right to development approach as opposed to another approach, such as one centred on a Sustainable Development Goal. Some members wondered whether the study included too many different aspects of the relationship between international investment law and the right to development, *inter alia* the international agreements themselves and the related incorporation therein of notions of sustainable development; human rights and the right to development; an examination of general international law; international arbitration and tribunals; the role of national courts, whether home State or host State courts; and the reality on the ground. In terms of the parties, members suggested considering the role of non-disputing stakeholders, such as affected indigenous communities, in disputes between a business and a State. They also proposed considering the notion of social licences granted by affected communities to businesses as a condition of starting operations.

51. Participants reiterated the importance of including the participation of members of civil society in the study, as many had long worked on these issues. It would be particularly relevant to address the linkages between debt, the Sustainable Development Goals and the right to development, especially in the context of the COVID-19 pandemic, during which States had to take emergency measures to respond to the public health of their populations and were sometimes unable to honour agreements with investors. Ms. Mahmutaj noted that many of observations made had already been considered, and she provided different relevant examples. She would also try to consider other suggestions, where possible.

F. Field studies on the duty to cooperate

52. At its fourth session, the Expert Mechanism held a dialogue on two independent field studies on the duty to cooperate and non-State actors. In Peru, the study entailed the case of Antapaccay, a mine in Cuzco in the south of the country. Over the years, the mine had been exploited by different companies, and the most recent one was backed by British and Swiss capital. Social conflict in the relationship between the more than 75 communities in the area and the company in turn had been a constant element. On some occasions, rising tension had led even to the death of some community members. The social conflict involved more than the relationship between the company in turn and the community, mediated by the State; it also involved many other actors, such as other communities, local and international non-governmental organizations, service providers and consumers, all coloured by different views of development and well-being among and within the more than 75 local communities. Social conflict had often resulted from the uncoordinated work of the many actors involved. At some stage, the national anti-monopoly law in the host State had culminated in the division of the investment project and its social scheme, which triggered further unexpected conflict.

53. The many actors involved in Antapaccay mine project had looked for solutions, often in an uncoordinated manner, including in claims of alleged human rights and other abuses. Some claims had been addressed in courts of the host State or by regional and international human rights mechanisms. The Ombudsperson of another host State had mediated for the then company to address communities’ demands, and the Government of Peru had also regulated company compliance with human rights and had established bilateral plans to regulate the value chain in another mine’s activities. The Peruvian case study had showed that the current governance of development was multilevel; the way of addressing emerging social conflict should therefore also be multilevel. Different legal frameworks were already in place to address many of the elements individually, but a single overarching legal framework was still needed to address the issue comprehensively. The right to development provided that framework, particularly in its provision on the duty to cooperate.

54. The case study in Ethiopia entailed a large-scale agricultural investment. Since the 2018 economic crisis, the country had experienced a renewed interest in agriculture prompted by food price increases and a shortage of agricultural commodities in the global market. Approximately 15 million hectares of land had been opened to investment for commercial agriculture. This had resulted in an intense debate between those supporting the initiative as a development opportunity for Ethiopia and globally, and those seeing it as some sort of agro-imperialism benefiting large agribusiness, political leaders and the administration at the expense of disadvantaged communities. The study had the aim of revitalizing the right to development by looking at local claims from the perspective of local communities. It considered three foreign companies with agricultural investment in Ethiopia and chose the one (a Saudi Arabian investment) where the interaction of the many actors was most visible.

55. The case study was prepared on the basis of information gathered from field visits, interviews and focus groups with the local community, interviews with government representatives at the national and local levels, and field observation. Actors involved in the project included the home State, the World Bank, indigenous and international non-governmental organizations, the company, the host State and the local community. The investment project had triggered several concerns and contested issues. The study revealed that meaningful and constructive engagement was indeed required to revitalize the right to development in Ethiopian agricultural investments. This could be achieved by revisiting hegemonic approaches and epistemological narratives in support of large-scale agricultural investment with approaches and narratives aimed at achieving harmony and a balance between State and investor knowledge on one hand and local knowledge on the other. This could be achieved through bottom-up rather than top-down initiatives towards land concessions. It would also require looking at mechanisms to create local shareholders in agricultural investment projects, which would bring benefits to the community in terms of food production, know-how transfer and effective regulatory systems.

56. In the discussion that followed, representatives of Peru highlighted two elements of the presentation. The first was the State's role as mediator in the above-described multilevel scenario. In Antacapay, the Government had established a round table with several working groups to discuss specific issues with social actors, representatives of private and public entities, and public officials from the different levels of government. The goal was to channel different claims, to identify solutions to social conflict, and to respond to people's expectations. The second element was the recently approved Action Plan on Business and Human Rights for 2021–2025, which engaged the executive and other State branches, autonomous public agencies, the private sector, civil society organizations, indigenous peoples and unions. The Action Plan was supported by international organizations and cooperation, and was aimed at strengthening the strategic alliance among all actors. It acknowledged that, although the State was the main duty-bearer, cooperation relied on a fairer, more peaceful and stronger democratic society to achieve economic development that effectively improved the quality of life of everyone. These were examples that showed how, without relegating the State's crucial role, cooperation and interaction among relevant actors were essential to promote equal and sustainable development.

57. The Expert Mechanism expressed its appreciation for the independent field studies on the duty to cooperate in Peru and Ethiopia, which were a source of valuable information for its thematic work, particularly with regard to the upcoming study on the duty to cooperate and non-State actors, as well as future thematic engagements. The Expert Mechanism also thanked the two independent consultants who were responsible for the studies.

G. Meeting with non-governmental organizations

58. The members of the Expert Mechanism held an online dialogue with civil society in October 2021 as part of a series of stakeholder engagement meetings, including at the national and regional levels, related to its mandate. At its fourth session, the Expert Mechanism reiterated the important role played by civil society, both locally and internationally, to contextualize the right to development, to broaden engagement and to advocate for the operationalization of the right to development, its use as a tool of human rights advocacy and the adoption of a legally binding instrument on this right. The Expert

Mechanism committed to continue its engagement with civil society, particularly those organizations representing public interests. At its next session, members would continue to have exchanges with civil society, substantively engaging with current and emerging themes that had a direct impact on the realization of the right to development.

59. At its fifth session, the Expert Mechanism held a meeting dedicated to non-governmental organizations, the right to development, and peace and security. The meeting was opened by Mr. Ibhawoh, who invited the representatives of civil society to share their expertise on how the operationalization of the right to development could best contribute to progress in disarmament and international peace and security. He referred to the conflict in Ukraine and other troubled spots worldwide as events that illustrated the need for all stakeholders to deliberate on how the right to development framework could advance international peace and security. The 2030 Agenda acknowledged that sustainable development could not be realized without peace and security, and that peace and security would be at risk without sustainable development. Similarly, according to article 7 of the Declaration on the Right to Development, all States should promote the establishment, maintenance and strengthening of international peace and security and, to that end, should do their utmost to achieve general and complete disarmament under effective international control. States should also ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of developing countries.

60. Participants stated that civil society played a very important role on the ground and could contribute to alleviating and eliminating dire situations worldwide and to peace and security. The Declaration on the Right to Development gave a vision of how to proceed by calling upon States to create an enabling international and national environment that was conducive to development and encompassed everything that related to peace and security. In addition, civil society could bring the right to development into treaty negotiation processes, such on the human right of individuals and peoples to peace.

61. The Expert Mechanism expressed its appreciation for the participation of non-governmental organizations during the focused discussion on peace and security and the right to development. The members stressed that what was demanded and claimed most by stakeholders was the right to development, but that they often did not use that term. The right to development would gain more momentum if the term was used. Members also suggested going to where non-governmental organizations were present instead of waiting for them to attend the sessions of the Expert Mechanism. The commentaries on articles of the Declaration on the Right to Development were a good additional way to continue engagement with civil society. Commentaries could be made practical, with illustrations and examples, and be a map to guide civil society in the course of its work. The Expert Mechanism hoped for greater engagement by civil society actors in future formal sessions and other dialogues.

IV. Conclusions

62. The Expert Mechanism expressed its appreciation for the rich discussions undertaken with Member States, special procedure mandate holders, non-governmental organizations and academia during its fourth and fifth sessions. The members thanked all participants for their engagement, and welcomed the questions and answers that had helped in the formulation of conclusions.

63. The Expert Mechanism would continue its practice of coordinating with the relevant mandate holders and experts at its future sessions and through other venues.

64. The Expert Mechanism thanked Armando De Negri Filho for his work and commitment during his tenure as member for the Latin America and Caribbean region and looked forward to the appointment by the Human Rights Council of another expert from that region at its fiftieth session.

65. At the final meeting of its fourth session, held on 5 November 2021, the Expert Mechanism adopted ad referendum the study entitled “Racism, racial discrimination and the right to development” and, pending final amendments, decided to submit it to the Human Rights Council at its fifty-first session for its consideration. The Expert

Mechanism expressed its gratitude to Bonny Ibhawoh, who served as rapporteur for the preparation of the study, and to all those who submitted inputs and provided comments and expert review during the preparation of the study.

66. The Expert Mechanism thanked Mr. Ibhawoh for presenting the progress update on the study entitled “Inequalities and the right to development” at its fifth session. It expressed its appreciation for the foundational research and consultations conducted by the former member and rapporteur of the study Armando De Negri Filho, and would conduct further consultations with Member States, international organizations and civil society before finalizing the study. Members also expressed gratitude to all those who had participated in the consultations held and submitted inputs.

67. The Expert Mechanism commended the overview of the ongoing study entitled “Right to development in international investment law,” presented by Klentiana Mahmutaj. It thanked all stakeholders who provided inputs, and had taken note of the suggestions to incorporate existing databases on international investment and specific case studies that had been compiled over the years by international non-governmental organizations. It looked forward to the final draft of the study.

68. The Expert Mechanism took note of the suggested themes for future studies, including the linkages between the right to development and self-determination; the effects of unilateral coercive measures; debt restructuring; illicit financial flows; individual and collective rights; migration; the right to health; discrimination against persons with disabilities; the legacies of colonialism; and human development and cultural rights.

69. The Expert Mechanism would further elaborate the commentary on article 1 (1) of the Declaration on the Right to Development to include a deeper analysis of the different components of the article, and practical examples for it to provide both States and civil society with guidance on operationalizing the right to development. The draft commentary would be amended to reflect these suggestions. To enrich the commentary and to ensure the right to participate, the Expert Mechanism had decided to make the revised draft of the commentary available on the relevant website and to call for written comments and contributions. The commentary would be finalized in 2022.

70. The Expert Mechanism reiterated the important role that civil society plays in contextualizing the right to development, broadening engagement and advocating for the operationalization of the right to development, and in its use as a tool of human rights advocacy, and in adopting a legally binding instrument. The Expert Mechanism planned to continue its practice of organizing a dedicated meeting with non-governmental organizations at its future sessions, and welcomed suggestions for deepened engagement with civil society.

Annex I

Participants in the fourth session

States Members of the United Nations

Algeria, Angola, Belgium, Bolivia (Plurinational State), China, Colombia, Cuba, Ecuador, Egypt, Germany, Greece, Hungary, Iran (Islamic Republic of), Iraq, Jamaica, Lao People's Democratic Republic, Libya, Madagascar, Maldives, Mexico, Myanmar, Nepal, Nicaragua, Nigeria, Pakistan, Peru, Portugal, Romania, Russian Federation, Saudi Arabia, Senegal, Slovakia, Sri Lanka, Switzerland, Syrian Arab Republic, Tunisia, Venezuela (Bolivarian Republic of), Zimbabwe

Non-member observer States

State of Palestine

United Nations

United Nations Industrial Development Organization, Food and Agriculture Organization of the United Nations, United Nations Conference on Trade and Development

Intergovernmental organizations

European Union, Organization of Islamic Cooperation

International organizations

Cultural Diversity and Sustainable Development for Peace, South Centre

National human rights institutions and other relevant national bodies

Qatar National Human Rights Committee

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

Associazione Comunità Papa Giovanni XXIII, Centre for Health, Science and Law, Club Ohada Thies, Comité des observateurs des droits de l'homme, Geneva for Human Rights, Global Hope Network International, International Federation of Social Workers, International Human Rights Association of American Minorities, International Relief Services, Organization for Defending Victims of Violence, Promotion du développement économique et social

Academia

Bahir Dar University, Graduate Institute of International and Development Studies, Pontifical Catholic University of Peru

Annex II

Participants in the fifth session

States Members of the United Nations

Algeria, Armenia, Azerbaijan, Belarus, Cambodia, Cameroon, Chile, China, Congo, Côte d'Ivoire, Cuba, Djibouti, Dominican Republic, Egypt, El Salvador, Ethiopia, Greece, Guyana, Haiti, India, Iran (Islamic Republic of), Israel, Italy, Madagascar, Morocco, Nepal, Nicaragua, Pakistan, Peru, Philippines, Republic of Moldova, Russian Federation, Rwanda, Saudi Arabia, Solomon Islands, Sudan, Syrian Arab Republic, Thailand, Togo, Tunisia, Turkey, United Republic of Tanzania, Venezuela (Bolivarian Republic of), Yemen, Zambia

Non-Member States represented by observers

Holy See

United Nations

United Nations Conference on Trade and Development

Intergovernmental organizations

Andean Health Organization – Hipólito Unanue Convention, Commonwealth, European Union, Organization of Islamic Cooperation

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

African Centre for Advocacy and Human Development, Associazione Comunità Papa Giovanni XXIII, Centre for Health, Science and Law, Club Ohada Thies, CIVICUS, Europe – Third World Centre, General Conference of the Seventh-day Adventists, International Association for Religious Freedom; Coordinating Council for South Asia, International Federation of Settlements and Neighbourhood Centres, International Human Rights Council, Khmer National Liberation Front, Maat Foundation for Peace, Development and Human Rights, Pax Christi International, Réseau unité pour le développement de Mauritanie, Rosa-Luxemburg Foundation, Sikh Human Rights Group, Sisters of Charity Federation, Society for International Development, Syrian Orthodox Church, Teresian Association, Hunger Project (México), Unitarian Universalist Association, Zonta International

Other non-governmental organizations

Creative Response to Conflict, Foro Social de la Deuda Externa y Desarrollo de Honduras, Global Social Justice, Grameen Foundation, K'áhshó Got'ínę Government, National Birth Equity Collaborative, Socio-Economic Rights Institute of South Africa, WWF India

Academia

Academics Stand Against Poverty, Dr. Harisingh Gour Vishwavidyalaya University, Irish Centre for Human Rights, McMaster University, University of Oslo, Roma Tre University, The New School, University for Peace, University of Antwerp, University of Colombo Sri Lanka, University of Minnesota, University of Notre Dame, University of Sussex, University of Toronto
