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**Human Rights Council**  
**Expert Mechanism on the Right to Development**  
**Fifth session**  
9–11 March 2022  
Item 4 of the provisional agenda  
**Implementation of the mandate and programme of work**

**Commentary on article 1 (1) of the Declaration on the Right  
to Development**

**First draft of the Chair for initial discussion at the fifth session**

**Conference room paper**

## I. General introduction to the Commentary

1. In 1986, the General Assembly adopted the Declaration on the Right to Development, by its resolution 41/128. As such, the Declaration is not in itself legally binding. However, many of its provisions are anchored in legally binding instruments, such as the Charter of the United Nations and the International Covenants on Human Rights. Some of its principles such as those relating to friendly relations and cooperation among States, self-determination and non-discrimination are part of customary international law, and thus binding on all States.
2. The Declaration was adopted by an overwhelming majority of States. 146 member States voted in favour, one against and eight abstained.<sup>1</sup> The Declaration has impacted considerably on the behaviour of States, on the United Nations system and other intergovernmental organizations and on other non-State actors. Since 1986, the Declaration has provided the normative underpinnings for a human-centred approach to development.
3. The Declaration does not contain an implementation mechanism, nor does the text as such create a cause of legal action, unless elements of the text are also included in international or regional treaties or in customary law. These limitations have led to the adoption by the General Assembly and the UN Human Rights Council of resolutions that while recalling the Declaration, requested member States to conclude a legally binding instrument on the right to development that would ensure that the right to development is on a par with all other human rights.
4. On 18 May 2021, the Expert Mechanism on the Right to Development adopted a Statement supporting the elaboration of a legally binding instrument with a view to strengthening the effective operationalization and full implementation of the right to development. In the Statement, the Expert Mechanism takes position on the essential elements such an instrument should contain.
5. Pending the adoption and ratification of a legally binding instrument on the right to development, the Commentaries on the Declaration offer an opportunity to interpret the Declaration in the light of normative developments that have occurred since its adoption. The Expert Mechanism adopts these commentaries with a view to contributing to the reinvigorating and mainstreaming of the right to development, and to encouraging civil society and grassroots organizations to use the right to development in their work.
6. EMRDT Commentary No. 1 addresses the very first operative provision of the Declaration that contains the definition of the right to development.
7. Article 1 (1) of the Declaration on the Right to Development states that: “The right to development is an inalienable human right by virtue of which every human person and all

<sup>1</sup> In favour: Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burma, Burundi, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cote d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic Kampuchea, Democratic Yemen, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, Fiji, France, Gabon, Gambia, German Democratic Republic, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iran, Ireland, Italy, Jamaica, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Rwanda, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Tanzania, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe / Against: United States of America / Abstaining: Denmark, Finland, Germany, Federal Republic of, Iceland, Israel, Japan, Sweden, United Kingdom of Great Britain and Northern Ireland.

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.”

## **II. Commentary No. 1 on Article 1 (1) of the Declaration on the Right to Development**

8. In the Declaration, development is not a right of States, but a human right held by every human person and all peoples.

9. Development is self-determined: the authorship of what development is lies with the right holders and will differ from context to context and evolve over time. Nevertheless, the contemporary global understanding of development clearly identifies three dimensions of development: the economic, social and environmental. The need to reconcile these dimensions is expressed in the concept of sustainable development and the Declaration on the Right to Development should today be interpreted in the light of this common understanding.

10. A balance will therefore need to be struck in rules, policies and practices pertaining to development at national and international levels in such a way as to optimally reconcile the creation of economic well-being, ecological sustainability and social justice as understood locally. However, in any case, rights holders are entitled to a process and an outcome of development that does not violate their human rights.

11. As an individual right, the right to development entitles all persons on an equal basis to participate, contribute and enjoy development. They are entitled to hold States and other relevant actors accountable on the delivery of policies and programmes at the national level and at the international level that are centred on human beings, and on ensuring that human beings are the main participant and beneficiary of development.

12. Women are entitled to fully enjoy the right to development. Discrimination against women in their enjoyment of the right to development as participants and beneficiaries shall be eliminated. Women are entitled to participate in the elaboration and implementation of development planning at all levels and to access to resources that provide them with a higher quality of life and reduce the level of poverty among women.

13. As a collective right, the right to development is a right both of the entire population of a State as well as of peoples within a State.

14. The population of State enjoys the right to pursue its own development. This includes the right to exercise sovereignty over their natural wealth and resources. The exploitation of natural wealth and resources on the territory by all relevant actors is to be exercised in the interest of the well-being of the population of the State concerned.

15. Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. They have the right to be consulted and cooperated with in good faith through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing development measures that may affect them. Similarly situated local communities that are not accommodated by dominant development paradigms equally hold the right to development and are entitled to their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.

16. Civil society organizations and grassroots movements may wish to enhance the capacity of rights holders to claim their rights at both domestic, regional and international levels by:

- a) Exploring the use of Article 1(1) of the UN Declaration on the Right to Development in the context of litigation for the purpose of interpreting applicable legally binding obligations.
- b) Encouraging State best practices and *opinio juris* on the implementation of Article 1(1) of the UN Declaration on the Right to Development.

- c) Making use of Article 1(1) for the purposes of highlighting the interdependence, indivisibility and interrelatedness of all human rights in the context of development activities.
  - d) Ensuring that development actors are accountable for the impact on the right to development of the decisions they take.
  - e) Making use of Article 1(1) as a shield to protect populations from the adverse impact on the right to development of foreign actors.
  - f) Assisting indigenous peoples and similarly situated local communities in ensuring that their right to development is respected.
  - g) Using Article 1(1) as an awareness tool to create global solidarity between rights holders that face similar obstacles to the realization of their right to development due to an international and social order that is insufficiently conducive to the realization of the right to development.
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