

**AMNESTY
INTERNATIONAL**



INTERNATIONAL SECRETARIAT
United Nations Geneva Office
22 rue du Cendrier, 1201 Geneva, Switzerland
T: +41 (0)22 906 9480 Email: uaigv@amnesty.org
W: www.amnesty.org

29 May 2019
Ref.: TIGO IOR 40/2019.003

Secretariat of the Human Rights Council Advisory Committee
OHCHR - United Nations Office at Geneva
CH-1211 Geneva 10
Switzerland

E-mail: hrcadvisorycommittee@ohchr.org

Reference: OHCHR/HRCTMD/AC22//NVRTD

RESPONSE TO THE HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE'S CONSULTATION ON THE IMPORTANCE OF A LEGALLY BINDING INSTRUMENT ON THE RIGHT TO DEVELOPMENT

Amnesty International welcomes the opportunity to provide input into discussions on the importance of a legally binding instrument on the right to development. In this submission, Amnesty International is not taking a position on the need or otherwise for such an instrument. Instead, we are raising some key concerns and considerations, and we request that these inform all discussions on the need for a legally binding instrument on the right to development and its normative content.

1. At the outset, Amnesty International requests the Human Rights Council Advisory Committee to ensure that the process going forward on any discussions on whether a legally binding instrument on the right to development is needed, and the nature and scope of the normative content of this proposed instrument, are transparent and genuinely participatory and consultative, allow direct participation of stakeholders and include the perspectives of all stakeholders including those likely to be affected by such an instrument. A legally binding instrument on the right to development has the potential to be a key measure to address (a) growing inequality, within and between countries, (b) systemic discrimination and (c) persistent deprivation faced by marginalized groups and/or those living in poverty. To facilitate this, any discussion on the need for such an instrument must be designed in a way that reflects the opinion and experience of people most impacted by poverty, inequality, and discrimination.
2. With regard to any process relating to the normative content of “the right to development”, including what “development” entails and its relationship with human rights, Amnesty International strongly urges that
 - a. The discussions recognise that rights holders are the central subjects of the development process and that development policy should therefore make the human being the main participant and beneficiary of development;

- b. Discussions are grounded in the realisation of the full range of human rights - civil, cultural, economic, political and social - and are informed by a comprehensive and inclusive understanding of “development”, including not only economic development, but also social, cultural and political development. In this context the right to development should encompass just and equitable distribution of resources, good governance and accountability for human rights violations with a particular focus on individuals and groups that have been historically marginalized and discriminated against;
- c. Discussions must also be framed within the context of acknowledging that all development must be sustainable, taking into account the growing impact of climate change, and recognizing that people who are living in poverty, marginalized or discriminated against, are more vulnerable to its impacts.

3. There is a close relationship between development and the realization of human rights. For example, the rights guaranteed by the International Covenant on Economic, Social and Cultural Rights provide legal protections for several prescriptions in the General Assembly Declaration on the Right to Development. It would therefore be erroneous and counter-productive to propose or support an assumption that respect for and enjoyment of human rights are only attainable after achieving a certain level of development. On the contrary, any discussions on the need for and the scope of the right to development should reinforce the overarching nature of human rights obligations and that they apply equally to all states parties, irrespective of their level of development.

4. All UN member states have ratified at least one treaty that obliges them to respect, protect and fulfil a range of civil, cultural, economic, political and social rights. These obligations should be the foundation of discussions about the need for a legally binding instrument on the right to development. Such an instrument should take care to reinforce and strengthen these existing protections, both, in terms of the content of the right to development and in terms of how development projects should be carried out. The relationship between development and human rights has not always been easy and Amnesty International has documented instances where individuals, groups and communities living in poverty and/or that have been marginalized are at particular risk of human rights violations as a result of “development projects”.¹ At a minimum, a legally binding instrument on the right to development must provide clear protections against this.

5. Discussions on the need for a legal binding instrument on the right to development must also be rooted in states obligations to take steps, individually and through international assistance and cooperation, to ensure the full realization of all economic, social and cultural rights. States should recognize the essential role of international cooperation, and the need to take joint and separate action, to this end.

6. Finally, ensuring accountability for the failure to uphold and guarantee the right to development must be central to discussions on the need for a legal binding instrument on this issue. This should include how the right to remedy - which encompasses equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms – can be realized.

Amnesty International welcomes the opportunity to continue to be involved in this discussion.

Yours sincerely,



Isha Dyfan
Director, International Advocacy