



**Joint Submission to the  
Human Rights Council Advisory Committee,  
in respect of its mandate to conduct a study on ‘the ways in  
which development contributes to the enjoyment of all  
human rights by all’**

**1 June 2018**

**1. Introduction and overview**

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- 1.1. Human Rights Council resolution 35/21, adopted in June 2017, requested the Advisory Committee to conduct a study on the ways in which development contributes to the enjoyment of all human rights by all, in particular on best experiences and practices, and to submit the report to the Human Rights Council before its forty-first session in July 2019. The Advisory Committee issued a questionnaire seeking submissions from all stakeholders. This submission is made in response to that call for submissions.
- 1.2. This submission is made jointly by the following non-governmental human rights organisations:
  - Center for Economic and Social Rights ([www.cesr.org](http://www.cesr.org));
  - ATD 4<sup>th</sup> World ([www.atd-fourthworld.org](http://www.atd-fourthworld.org));
  - Global Initiative for Economic, Social and Cultural Rights ([www.globalinitiative-escr.org](http://www.globalinitiative-escr.org)); and
  - Franciscans International ([www.franciscansinternational.org](http://www.franciscansinternational.org)).
- 1.3. We have concerns that the resolution and mandate for the study suggests that development always contributes to, or is a pre-requisite for, human rights realisation. In fact, human rights enjoyment *should* be the ultimate goal of development, but it is not an inevitable byproduct. Not all development is human rights-aligned, and governments need to make active efforts to

ground their development objectives in human rights. There are many examples of development initiatives or programs that have led directly to the violation of human rights and also examples of economically developed countries where human rights are not realized. Therefore, in our view there is no inevitable causal connection between economic development and the realization of human rights. Nevertheless, States' human rights treaty obligations are applicable to their development activities and there is significant evidence that rights-respecting development is more sustainable.

1.4. We also note that there are different concepts and understandings of development. Following the adoption of the 2030 Agenda for Sustainable Development in 2015, there is now an international consensus that development alone is insufficient and the international goal is for 'sustainable development'. However, the mandating resolution refers only to 'development' not 'sustainable development', which could be interpreted as focusing solely on economic development, or using economic growth as a proxy for development.

**2. Question #1: Please provide examples of best practices such as policies, action plans and any other measures undertaken by your organization and/or entity in support of the national sustainable development agendas that promote and realize all human rights including the right to development for all? Please provide concrete examples of policies, action plans and any other best practices as regards, specifically, the contribution of development to the enjoyment of all human rights.**

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### ***Human rights-based approach to development***

2.1. In identifying 'best practice' in policies, action plans and measures 'in support of the national sustainable development agendas that promote and realise all human rights', the Advisory Committee and States should be guided by human rights obligations and principles, as set out in the Universal Declaration of Human Rights and the International Human Rights Treaties. Best practice sustainable development measures must support and enable States to respect, protect and fulfil human rights and must not undermine States' ability to do so. Best practice sustainable development measures must also respect the concepts of the universality and indivisibility of all human rights: civil, cultural, economic, political and social. In addition, consistent with the defining principles of the 2030 Agenda which strives to 'leave no one behind', a human rights approach to sustainable development requires the principles of equality and non-discrimination to take centre stage. Finally, best practice development measures must ensure accountability for States' human rights obligations, by ensuring avenues for feedback, complaints and effective remedies in the case of violations.

2.2. In essence a human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights<sup>1</sup>. It is about empowering people to know and claim their rights and increasing the ability and accountability of individuals and institutions who are responsible for respecting, protecting and fulfilling rights. It seeks to analyse inequalities which lie at the heart of development problems and redress

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<sup>1</sup> Human Rights-Based Approach Portal (<https://hrbaportal.org/>)

discriminatory practices and unjust distributions of power that impede universal realization of rights.

- 2.3. A human rights-based approach to sustainable development has been helpfully articulated by a number of UN agencies. For instance, the United Nations Development Group (UNDG) adopted the UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming in 2003 and a Human Rights-Based Approach Portal (<https://hrbaportal.org/>) offers guidance for ‘UN Practitioners’ on Human Rights-Based Approaches to Programming.’
- 2.4. In addition, there are a number of resources that discuss a human rights approach in respect of particular sectors relevant to sustainable development. For example:
  - 2.4.1. The ‘Summary Reflection Guide on a **Human Rights-Based Approach to Health**’<sup>2</sup> published by the OHCHR, the WHO and others which is specifically addressed to health policy makers.
  - 2.4.2. The FAO, in consultation with the OHCHR, has also outlined the contours of a human rights based approach to sustainable development in the context of the **right to food**, in the PANTHER framework<sup>3</sup>, which underlines participation, accountability and non-discrimination and describes how to take into consideration human rights norms in implementing and assessing policies in areas such as nutrition and food security.
  - 2.4.3. The UN Technical Guidance on Maternal Mortality<sup>4</sup> provides guidance to States on the application of a human rights-based approach to the implementation of policies and programmes to **reduce preventable maternal morbidity and mortality**;
  - 2.4.4. The Basic Principles and Guidelines on Development-based Evictions and Displacement<sup>5</sup> provide guidance to States on measures and procedures to be adopted in order to ensure that **development-based evictions** are not undertaken in contravention of existing international human rights standards and do not thus constitute ‘forced evictions’; and
  - 2.4.5. The Guiding Principles on Security of Tenure for the Urban Poor<sup>6</sup> outline the human rights principles relevant to **urban tenure insecurity**;
  - 2.4.6. The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security<sup>7</sup> set out principles and internationally accepted standards of responsible practices for the **use and control of land, fisheries and forests** and incorporate a human rights-based approach.

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<sup>2</sup> OHCHR, WHO, ‘Summary Reflection Guide on a Human Rights-Based Approach to Health’, (2015), accessible here: [http://www.ohchr.org/Documents/Issues/Women/WRGS/Health/RGuide\\_HealthPolicyMakers.pdf](http://www.ohchr.org/Documents/Issues/Women/WRGS/Health/RGuide_HealthPolicyMakers.pdf)

<sup>3</sup> FAO, ‘The right to food and global strategic frameworks: The Global Strategic Framework for Food Security and Nutrition (GSF) and the UN Comprehensive Framework for Action (CFA)’, (2012), p.15, accessible at <http://www.fao.org/3/a-ap556e.pdf>

<sup>4</sup> A/HRC/21/22, Technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality.

<sup>5</sup> A/HRC/4/18 Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living.

<sup>6</sup> Report of the Special Rapporteur on the right to adequate housing, A/HRC/25/54 on the Guiding Principles on Security of Tenure for the Urban Poor.

<sup>7</sup> FAO, ‘Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security’, Rome 2012

- 2.4.7. The UN Guiding Principles on extreme poverty and human rights<sup>8</sup> provide guidance on how to apply **human rights standards in efforts to combat poverty** and are highly relevant to measures directed to realizing SDG1.
- 2.5. For development to be truly valuable and sustainable, it must be guided by human rights and must seek human rights realization for all as its ultimate outcome. This means that human rights should guide the process and design of development strategies, projects and programs, their implementation and the outcomes of such strategies, projects and programs.

### ***Process and design***

- 2.6. In relation to process and design, some of the key considerations will be participation of those whose rights are affected (in particular local communities) and the importance of human rights impact assessments.
- 2.7. In relation to the participation of rights holders, we refer to the reports of the Special Rapporteur on extreme poverty and human rights on the topic ‘the right to participation of people living in poverty’<sup>9</sup> which provides very useful guidance on the importance of ensuring participation of persons living in poverty and on measures to operationalize this. We refer also the report of the Special Rapporteur on the rights to water and sanitation on ‘Participation in the realization of the human rights to water and sanitation’<sup>10</sup>, which explains what elements are essential for ensuring active, free and meaningful participation, how difficulties in ensuring participation can be addressed, and what participation entails at different levels of decision-making. It also provides examples of participatory processes in the water and sanitation sectors.
- 2.8. Participatory budgeting initiatives ongoing around the world (and famously pioneered in Porto Alegre, Brazil<sup>11</sup>) are another very promising tool for engaging people in fundamental questions of resource allocation in development. The increasing prominence of ‘social and solidarity economy’ initiatives premised on community participation is also important to recognize.<sup>12</sup>
- 2.9. There are many good examples of participatory initiatives undertaken by civil society or social movements. For example, ATD Fourth World has developed models of participatory research and ‘merging of knowledge’,<sup>13</sup> undertaken in countries around the world, to actively include people living in poverty in the search for solutions to their own situations. In the run-up to decisions around the 2030 Agenda, the Participate Initiative conducted ‘ground-level panels’ in Egypt, Brazil, Uganda and India where participants, including urban slum-dwellers, disabled people, ex-slaves and bonded labourers, sexual minorities, people living in conflict and natural

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<sup>8</sup> ‘Final draft of the guiding principles on extreme poverty and human rights, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona’ UN Doc A/HRC/21/39, adopted by Human Rights Council resolution A/HRC/RES/21/11

<sup>9</sup> Report of the Special Rapporteur on extreme poverty and human rights, Ms. Maria Magdalena Sepúlveda Carmona, to the Human Rights Council, on ‘the right to participation of people living in poverty’, (2013), A/HRC/23/36

<sup>10</sup> Special Rapporteur on the rights to water and sanitation, report to the General Assembly on ‘Participation in the realization of the human rights to water and sanitation’, (2014) A/69/213

<sup>11</sup> [https://siteresources.worldbank.org/INTEMPowerment/Resources/14657\\_Particip-Budg-Brazil-web.pdf](https://siteresources.worldbank.org/INTEMPowerment/Resources/14657_Particip-Budg-Brazil-web.pdf)

<sup>12</sup> [http://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---coop/documents/publication/wcms\\_546398.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---coop/documents/publication/wcms_546398.pdf)

<sup>13</sup> [https://www.4thworldmovement.org/wp-content/uploads/2013/05/Guidelines\\_for\\_the\\_Merging\\_of\\_Knowledge\\_and\\_Practices.pdf](https://www.4thworldmovement.org/wp-content/uploads/2013/05/Guidelines_for_the_Merging_of_Knowledge_and_Practices.pdf), <http://www.atd-fourthworld.org/poverty-pioneering-research-seeks-new-answers/>

disaster-affected areas, rural poverty, or geographically isolated communities, nomadic and indigenous people, and internally displaced people evaluated the [UN High Level Panel's \(HLP\) recommendations](#) for a post-Millennium Development Goal framework. They made their own recommendations of what is needed in global development policy to end poverty, based on 'ground level' experience.<sup>14</sup> In Belfast, Northern Ireland, the organization Participation and the Practice of Rights works with deprived and marginalized communities to claim their rights, for example seeking essential improvements in their living conditions and enjoyment of the right to adequate housing.<sup>15</sup>

- 2.10. An important way of ensuring that human rights standards and principles are guiding sustainable development processes from the start, is through prior human rights impact assessments. Human rights impact assessments (HRIA) assist decision-makers to identify, understand, assess and address the potential adverse effects of the programmes, projects and activities on the human rights enjoyment of workers, communities, consumers or other rights-holders. This is particularly important in high risk sectors where human rights abuses have been identified in the past, for example, extractive industries and large infrastructure or agricultural projects. Where private actors are involved in development projects, State-mandated HRIAs can help to ensure that private actors prevent human rights abuses. Such impact assessments must include a gender analysis and consideration of how women's rights could be disproportionately impacted<sup>16</sup>, including through an increase in their burden of unpaid care work. The Independent Expert on Foreign Debt recommends that States undertake HRIAs in the context of economic reforms to understand the impact of the proposed policies.<sup>17</sup> Similarly, systematic and regular review of policies, laws and programs to verify compliance with human rights treaties is important.<sup>18</sup>
- 2.11. Where business enterprises are involved, human rights treaties impose obligations on States to protect rights against abuses by businesses, within and beyond their borders and this includes an obligation to regulate the activities of businesses operating within their borders and businesses domiciled within their jurisdiction but operating abroad. This State obligation was confirmed recently by the UN Committee on Economic, Social and Cultural Rights.<sup>19</sup>

### **Implementation**

- 2.12. In terms of implementation of development initiatives, a human rights approach would require the prioritisation of those who are the furthest behind and proactively tackling discrimination and inequalities (including indirect discrimination, systemic and structural inequalities). Implementation should ensure inclusive participation and empowerment of rights holders and include monitoring of progress. For development aimed at fulfilment of

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<sup>14</sup> <http://participatesdgs.org/ground-level-panels/>

<sup>15</sup> <https://www.pprproject.org/right-to-housing>

<sup>16</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 16 on equality between men and women, paragraph 18.

<sup>17</sup> Report of the Independent Expert on the effects of foreign debt, 'Development of guiding principles for assessing the human rights impact of economic reform policies' (2018), A/HRC/37/54.

<sup>18</sup> See for example, Committee on Economic, Social and Cultural Rights, General Comment No. 16, paragraphs 33-34.

<sup>19</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 24, 'on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities', E/C.12/GC/24

economic and social rights (e.g.: water, housing, health, food, education), initiatives should ensure availability, accessibility, acceptability and quality of services.<sup>20</sup>

- 2.13. Human rights-aligned development also respects the obligation to devote maximum available resources to the progressive realization of economic, social and cultural rights (Art 2.1 ICESCR). This means paying attention not only to the ‘size of the pie’ (i.e. overall GDP, government revenue, economic growth), but also how the pie is distributed. Indeed, redistribution of development gains is essential for the realization of human rights and tackling inequalities, including gender inequality. Generating the necessary resources to fulfill human rights obligations requires measures such as progressive taxation policies<sup>21</sup>, international co-operation and resource allocation choices which tackle poverty and inequality. Some good practices in this regard are financial transaction taxes<sup>22</sup>, requiring transparent public registers of beneficial ownership of corporations,<sup>23</sup> ending tax exemptions or ‘holidays’ for multinational corporations, ensuring VAT or sales tax includes broad exemptions on essential goods such as food, cooking oil and feminine hygiene products, and introducing robust taxes on wealth such as property or land value, capital gains or inheritance.
- 2.14. The report of the Special Rapporteur on the right to adequate housing on the topic of effective rights-based housing strategies,<sup>24</sup> provides very useful guidance to States on human rights compliant, sustainable development in the housing sector, including in the implementation of Goal 11 of the SDGs.
- 2.15. In relation to the involvement of business in the implementation of sustainable development initiatives, it must be remembered that States’ human rights obligations apply even where the relevant activities are undertaken by private entities, such as in the case of privatised public services. States must put in place a regulatory system that applies to private entities and requires them to comply with relevant human rights standards, including accessibility, quality, non-discrimination and equality.

### **Outcomes**

- 2.16. In terms of sustainable development outcomes, the objective should be the full enjoyment of all human rights for all, rather than objectives focused purely on economic growth, business profits or foreign investment. Further, it is crucial to ensure monitoring and accountability, and that rights holders have access to effective remedies for actions and inactions which harm human rights. Monitoring, accountability and access to remedies must also be in place in respect of the development activities of private actors.
- 2.17. Rights such as freedom of expression and association are particularly important in this context, as rights holders must be able to provide feedback, express grievances, raise

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<sup>20</sup> See for example: Committee on Economic, Social and Cultural Rights, General Comment No. 13 on the right to education (1999) E/C.12/1991/10; CESCR General Comment No. 15 on the right to water, (2003), E/C.12/2002/11; CESCR General Comment No. 4 on the right to adequate housing, (1991, Sixth session).

<sup>21</sup> Report of the Special Rapporteur on Extreme Poverty and Human Rights on taxation and human rights (2014), A/HRC/26/28

<sup>22</sup> [http://europa.eu/rapid/press-release\\_MEMO-12-799\\_en.htm](http://europa.eu/rapid/press-release_MEMO-12-799_en.htm)

<sup>23</sup> <http://www.theweek.co.uk/93312/government-makes-u-turn-on-tax-haven-transparency-laws>

<sup>24</sup> Report of the Special Rapporteur on the right to adequate housing on effective rights-based housing strategies, (2018), UN Doc A/HRC/37/53

complaints and critique government policies. Therefore, an enabling environment for civil society to monitor and hold duty bearers accountable for rights violations, without retaliation, is essential. In addition, truly independent National Human Rights Institutions can play an important role in monitoring human rights compliance in sustainable development initiatives and are often also mandated to adjudicate complaints.

- 2.18. Data and statistics are key components of effective monitoring and accountability of development initiatives. Disaggregation of data is pertinent to enabling the identification of those groups being left behind and structural also discrimination or inequalities. The OHCHR has produced a guide on a human rights-based approach to data collection and disaggregation<sup>25</sup>.
- 2.19. Finally, accountability and access to effective remedy require States to have in place avenues for holding development actors accountable and for pursuing remedies in the case of violations. Access to effective judicial mechanisms are a fundamental requirement, but non-judicial mechanisms can also be effective.

**3. Question 2: What, in the view of your organization and/or entity, can be included in the report to explain the conceptual context and comprehensive interpretation of ‘contribution of development to the enjoyment of all human rights’?**

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- 3.1. Development can contribute to the enjoyment of human rights. For example, the resources generated from economic development can be used to improve the training of judges and others within the criminal justice system to avoid bias and discrimination, to provide shelters for victims of domestic violence, or to fund free primary education. Development that brings people out of poverty can help them to enjoy their right to an adequate standard of living. However, it is mistaken to imply that development automatically leads to human rights enjoyment. It very much depends on the type of development that is pursued, in terms of its aims, process and outcomes, and how the resulting benefits are distributed.
- 3.2. There are many different conceptions of ‘development’. Traditionally, it has largely been used to mean essentially ‘economic growth’ and increasing Gross Domestic Product. However, over the last few decades growth has not been broadly shared, and the fruits of growth are increasingly concentrated among very few. Moreover, the path of development that most countries have chosen is increasingly recognized to have had devastating environmental consequences.
- 3.3. Over time, in mainstream conceptions of development the reduction of extreme poverty was added as an overarching explicit goal, alongside economic growth. This reframing of development - encapsulated by the Millennium Development Goals - represented some improvement, but not enough. Even after the MDG era, many still remain ‘extremely’ poor, meanwhile millions of those who are not officially in ‘extreme’ poverty remain unable to meet

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<sup>25</sup> OHCHR, ‘A human rights-based approach to data: Leaving No One Behind in the 2030 Agenda for Sustainable Development’, (2016), accessible here: <http://www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf>

their basic needs or live in dignity. Inequalities have also grown hugely, and environmental degradation and climate change are rampant.

- 3.4. Moreover, the definition and measurement of poverty has long been a source of concern. Human rights experts and mechanisms have repeatedly made clear that poverty should not be defined in purely economic terms. As stated in the UN Guiding Principles on extreme poverty and human rights, *'Poverty is not solely an economic issue, but rather a multidimensional phenomenon that encompasses a lack of both income and the basic capabilities to live in dignity'*. The Committee on Economic, Social and Cultural Rights stated in 2001 that poverty is *'a human condition characterized by the sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights'*.<sup>26</sup>
- 3.5. The concept of 'sustainable development' is a welcome improvement. Although it came to prominence following the original 'Earth Summit' in Rio in 1992, the shift to the goal of 'sustainable development' was officially enshrined as a commitment of the entire international community in 2015 with the adoption of the 2030 Agenda. The 2030 Agenda Declaration makes clear that sustainable development must encompass the economic, environmental and social dimensions of development, and be based on human rights. The Agenda underlines that it *'seeks to realise the human rights of all'* and is *'grounded in the Universal Declaration of Human Rights, international human rights treaties'*<sup>27</sup>. It is concerning that Resolution 35/21 seems to backtrack from the SDGs, in not using the concept of 'sustainable development'. The SDGs include goals and targets on reducing inequalities, and also have a more nuanced approach to poverty, including a target (1.2) on reducing multidimensional poverty, as well as eliminating extreme income poverty.
- 3.6. Unfortunately, there are many examples of development programs, policies and initiatives infringing on, threatening or violating human rights. Indeed, documented human rights violations associated with development projects run the range of civil, political, economic, social, cultural and environmental rights abuses. For example, infrastructure projects such as mines, dams and power plants are commonly cited by governments, the private sector and international financial institutions as invaluable contributions to development. However, there have been countless cases of such projects trampling on the human rights of the local community: from forced evictions<sup>28</sup>, to catastrophic water pollution<sup>29</sup>, to unsafe working conditions<sup>30</sup>. Clear violations of human rights, including reprisals, threats, torture, incarceration<sup>31</sup> and even assassination<sup>32</sup>, have often been used as a tool to try and silence dissent about the social, environmental and human rights costs of development projects.

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<sup>26</sup> E/C.12/2001/10, paragraph 8.

<sup>28</sup> <https://www.escr-net.org/news/2014/escr-net-calls-suspension-posco-india-steel-project-amidst-ongoing-human-rights-concerns>

<sup>29</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20384&LangID=E>

<sup>30</sup> <https://www.amnestyusa.org/reports/profits-and-loss-mining-and-human-rights-in-katanga-democratic-republic-of-the-congo/>

<sup>31</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22696&LangID=E>

<sup>32</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19805>



Indeed, economic development sometimes occurs in contexts rife with abuses and threats to civil and political rights - for example jailing political dissidents, curtailing free speech or restricting freedom of movement. Frequently these actions are 'justified' by governments with reference to the need for economic growth and stability. It is important to note that with the 2030 Agenda, the international community has recognized that sustainable development also requires access to justice, the rule of law, public access to information and protecting fundamental freedoms (Goal 16).

- 3.7. Finally, it is crucial to note that even the most 'developed' countries in the world (in economic terms) have serious human rights issues within their borders, demonstrating that economic development is not a guarantee of human rights enjoyment. Indeed, the richest countries in the world have vast and growing levels of economic inequality and other disparities (in particular along lines of race and gender), and many millions of people in those countries live in extreme deprivation despite overall wealth<sup>33</sup>. Achieving a high level of economic development clearly does not automatically lead to the universal fulfilment of human rights. It is thus often not the 'lack of development' that is an obstacle to the realization of human rights, but instead the lack of people-centred, sustainable, rights-realizing development – and this is true of all countries.
- 3.8. As the Special Rapporteur on extreme poverty and human rights stated in his mission report on China, there is a fundamental difference between '*achieving development objectives and respecting human rights obligations. The two are mutually reinforcing, but they are not synonymous.*'<sup>34</sup> Ultimately, human rights – which are clearly defined legal obligations - must have priority over time-bound 'development' objectives, and guide their design and implementation. Indeed, the ultimate goal of sustainable development must be human rights for all. 'Development' or 'economic growth' is not beneficial or valuable if it does not holistically improve people's wellbeing, power, living conditions, agency, and the environment they live in, and reduce disparities, discrimination and inequalities.

#### **4. Question 3: What are the main challenges or obstacles your organization and/or entity faces in promoting and realizing all human rights including the right to development for all due to the lack of development?**

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- 4.1. The most significant challenges we face as human rights organizations in working to promote rights-centred sustainable development are the following.

##### ***The broader geo-political environment***

- 4.2. The main obstacle our organizations face in promoting the realization of all human rights is not the lack of development, but the ***resistance of many States to bring human rights into discussions of development or to meaningfully take human rights into account when pursuing development.*** As the Special Rapporteur on extreme poverty and human rights, Mr Philip Alston, pointed out in his 2015 report to the UN Human Rights Council on the

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<sup>33</sup> See e.g. end of mission statement of Special Rapporteur on extreme poverty and human rights after his mission to the USA.

<sup>34</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/076/79/PDF/G1707679.pdf?OpenElement>

relationship between extreme poverty and extreme inequality, many States are determined “to keep the areas of international economics, finance and trade quarantined from human rights.”<sup>35</sup>

- 4.3. As a result, despite rhetorical recognition of the importance of human rights in the SDGs, there remain few examples of real efforts to operationalize human rights. The current development model is resulting in **growing social and economic inequalities**, which “stifle equal opportunity, lead to laws, regulations and institutions that favour the powerful, and perpetuate discrimination against certain groups, such as women.”<sup>36</sup>
- 4.4. In addition to the disconnect between discussions of human rights and economic policy, ‘developed’ countries are aggravating the situation through decreases in Official Development Assistance, and/or by imposing aid conditionalities and development policies that are not necessarily human rights compliant. For example, the UK development cooperation agency, DIFID, explicitly promotes private-sector led ‘solutions’ and funds UK companies to do development work, without requiring a human rights-based approach.<sup>37</sup>
- 4.5. Also hugely problematic in this regard are practices such as the imposition of **inequitable trade rules, the failure to regulate multinational corporation and the investor-state dispute settlement (ISDS) system that privileges the ‘rights’ of corporations above the rights of people**. Further, in many countries development activities and economic growth have benefited only a tiny elite, many of whom then hide their money off-shore, leaving insufficient State resources for the realization of all human rights.

#### ***Insufficiency of resources devoted to fulfilling human rights***

- 4.6. A major challenge faced by human rights organizations around the globe is the systematic under-resourcing of policies, goods and services essential for fulfilling human rights. Despite the obligation in the ICESCR to devote maximum available resources to the progressive realization of economic, social and cultural rights, and the obligation of non-retrogression, many countries around the world (low-, middle- and high-income) are continuing cutbacks to social spending, including on essential public services and social protection programmes.<sup>38</sup> This wave of ‘austerity’ has been especially intense since the global financial crisis of 2008-9. In many cases these are combined with regressive taxation ‘reforms’ and the scaling back of regulatory safeguards in order to supposedly smooth the way for business and investment. Often, these measures are instituted under pressure from international financial institutions.<sup>39</sup>
- 4.7. Austerity measures have been shown to have severely detrimental human rights impacts, especially on women, people living in poverty and other already-disadvantaged groups<sup>40</sup>, and

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<sup>35</sup> Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston, Human Rights Council, A/HRC/29/31, 27 May 2015, p. 19.

<sup>36</sup> *Ibid.*, p. 1.

<sup>37</sup> See Committee on Economic, Social & Cultural Rights, Concluding Observations on the United Kingdom, E/C.12/GBR/CO/6, paragraphs 14 & 15

<sup>38</sup> Ortiz and Cummins, *The Age of Austerity* (2013)

<sup>39</sup> <http://www.brettonwoodsproject.org/2017/09/imf-gender-equality-expenditure-policy/>

<sup>40</sup> See e.g. Special Rapporteur on poverty 2011; Council of Europe <https://edoc.coe.int/en/fundamental-freedoms/7304-the-impact-of-the-economic-crisis-and-austerity-measures-on-human-rights-in-europe.html>; CESR on Brazil

have prompted criticism and a statement from the Committee on Economic, Social and Cultural Rights.<sup>41</sup> As the ILO, UN Women and UNICEF have found, in nearly all cases there is fiscal space for devoting more resources to social investments.<sup>42</sup> However, most countries are failing to explore alternatives to austerity, such as budget reallocations (e.g. cutting military spending), or more progressive revenue-raising strategies (such as increasing tax rates on the highest incomes or on wealth). For example, cross-border tax abuse results in the loss of billions of dollars every year from developing countries according to UNCTAD, but the legal loopholes, under-regulation and financial secrecy jurisdictions which enable and encourage these abuses persist, despite the inclusion of a commitment to curb illicit financial flows in SDG 16.4. As the UN Independent Expert on Foreign Debt wrote in his 2016 study, '*Curbing illicit financial flows will be essential for realizing human rights and achieving sustainable development.*'<sup>43</sup>

### **Prejudice, discrimination and stigma**

- 4.8. One of the other major causes of ongoing human rights violations is the fact that, due to pervasive prejudice and discrimination against persons living in poverty, they are structurally disempowered and their grievances are ignored, such that ***extreme poverty is both a cause and a consequence of violations that are not addressed***. As stated in the UN Guiding Principles on Extreme Poverty and Human Rights, "*Persons living in poverty are confronted by the most severe obstacles – physical, economic, cultural and social – to accessing their rights and entitlements. Consequently, they experience many interrelated and mutually reinforcing deprivations – including dangerous work conditions, unsafe housing, lack of nutritious food, unequal access to justice, lack of political power and limited access to health care – that prevent them from realizing their rights and perpetuate their poverty. Persons experiencing extreme poverty live in a vicious cycle of powerlessness, stigmatization, discrimination, exclusion and material deprivation, which all mutually reinforce one another.*"<sup>44</sup> These deprivations are often justified by ***negative stereotypes*** that label certain groups as lazy, worthless, or undeserving. These attitudes lead to policies and practices that make social protection, services or welfare benefits conditional on certain tasks or behaviours, or targeted only at the 'extreme' or 'working' poor, further stigmatizing people living in poverty.

### **Lack of accountability of the private sector in a period of increasing privatization**

- 4.9. Despite the endorsement of the UN Guiding Principles on Business and Human Rights by the UN Human Rights Council in 2011, business involvement in human rights abuses continues with impunity, as reported by the Business and Human Rights Resource Centre: "***The impunity of companies for involvement in human rights abuses is increasing, and in the***

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<http://www.cesr.org/factsheet-brazils-human-rights-advances-imperiled-austerity-measures>; Amnesty Spain <https://www.amnesty.org/en/latest/news/2018/04/spain-cruel-austerity-measures-leave-patients-suffering/>

<sup>41</sup> See <http://www.cesr.org/spain%E2%80%99s-austerity-criticized-again-un-rights-review> and E/C.12/2016/1

<sup>42</sup> Ortiz, Cummins and Karunanethy (2017) <http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2017/fiscal-space-for-social-protection-and-sdgs-en.pdf?la=en&vs=3648>

<sup>43</sup> A/HRC/31/61

<sup>44</sup> See [http://www.ohchr.org/Documents/Publications/OHCHR\\_ExtremePovertyandHumanRights\\_EN.pdf](http://www.ohchr.org/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf)

*context of increasing economic nationalism, it is likely to get worse – particularly where business interests are able to ride populist nationalist politics to acquire deep influence and insulate themselves from accountability. Companies are increasingly targeting activists, using the justice system to hold them accountable with repression and lawsuits.”*<sup>45</sup>

- 4.10. Due to austerity policies after the financial crisis and political pressure to favour the private sector, there is now a growing trend **to privatize the delivery of public and social services** (such as education, water, and health services). The inherent profit motive of business entities, tends to lead to systemic discrimination against the poor and minorities, in contradiction to States’ obligations to ensure that services are available, accessible, culturally acceptable, and of quality for all.<sup>46</sup> Systemic discrimination leads to inequality and segregation in society, such that the rich have access to higher quality education, health, water and sanitation services and the poor and marginalised have limited access to low quality services.<sup>47</sup>

#### **Lack of participation in development processes and increasing restrictions on civic space**

- 4.11. In many countries in the world, in spite of the fact that freedom of expression, freedom of association and assembly, and participation in public decision-making processes are basic human rights<sup>48</sup>, States are cracking down on civic space and the ability to organize. CIVICUS reports *‘that at present there are **serious systemic problems with civic space (the space for civil society) in 109 countries, the majority. In 2017, attacks on civic space came even in countries where they were rarely seen before.**’*<sup>49</sup> In particular, people living in extreme poverty are denied a say in the design, implementation, monitoring and evaluation of policies and programmes which impact them directly, for the reasons spelled out in paragraph 4.6. Yet over and over again, experience has shown that meaningful public participation leads to the design of more appropriate and sustainable development projects, and thus a better use of resources. In the Philippines, for example, some of the families that were re-housed outside of Manila as part of a project to move people out of zones subject to flooding, ended up returning to Manila, because they had not been consulted and no consideration had been given to ways in which they could earn a living in their new environment.<sup>50</sup>

#### **5. Question 4: What would be your organization’s and/or entity’s conclusions and recommendations drawn from challenges and best practices of ensuring contribution of development to the enjoyment of all human rights for inclusion into the report of the Advisory Committee?**

- 5.1. Aligning human rights standards and development objectives is essential to achieve people-centered and sustainable development, and to overcome poverty and extreme inequality. The achievement of development objectives must not be equated with the realisation of human

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<sup>45</sup> Business and Human Rights Resource Centre, *‘Corporate impunity is common & remedy for victims is rare’*, *Corporate Legal Accountability Annual Briefing*, April 2017, p. 3. See [https://www.business-humanrights.org/sites/default/files/documents/CLA\\_AB\\_Final\\_Apr%202017.pdf](https://www.business-humanrights.org/sites/default/files/documents/CLA_AB_Final_Apr%202017.pdf)

<sup>46</sup> See e.g. Committee on Economic, Social and Cultural Rights, General Comment No. 15, E/C.12/2002/11.

<sup>47</sup> See for example, Report of the Special Rapporteur on the right to education, A/HRC/29/30.

<sup>48</sup> ICCPR Article 25 (a); Committee on Civil and Political Rights, General comment No. 25 (1996) paragraph 5; Universal Declaration of Human Rights Article 21 (a).

<sup>49</sup> [https://civicus.org/documents/reports-and-publications/SOCS/2018/socs-2018-overview\\_top-ten-trends.pdf](https://civicus.org/documents/reports-and-publications/SOCS/2018/socs-2018-overview_top-ten-trends.pdf), p 4.

<sup>50</sup> See <http://www.atd-fourthworld.org/mass-resettlements-philippines-mutual-support-among-families/>

rights without critical examination of what those objectives are, how they are pursued and what their outcomes are. As past experiences have shown, any development model that is guided primarily by the quest for economic growth above all else and measured through reductive aggregate macroeconomic indicators like the Gross Domestic Product, is very unlikely to contribute to human rights. Human rights violations can - and do- happen in the midst of overall improvement of economic indicators. This is particularly true in a time in which inequalities are reaching record heights.<sup>51</sup>

- 5.2. While the change from 'development' to 'sustainable development' and the explicit incorporation of human rights in the Agenda 2030 are positive steps, much remains to be done, in practice, before development may contribute more systematically to the realization of human rights. The realization of all human rights (civil, cultural, economic, political and social) for all should be considered as the ultimate goal of development. Human rights standards should be considered the framework in which any development policy ought to be designed, implemented and evaluated. In particular, human rights principles that shall be followed in any human rights compliant policy-making include participation, accountability, non-discrimination, and respect for the rule of law.<sup>52</sup>
- 5.3. Currently, there appears to be a lack of political will to ensure the centrality of human rights norms and principles in adopting, implementing and monitoring voluntary commitments such as the SDGs. Human rights defenders who denounce these abuses and communities who resist these negative impacts on their rights are faced with increased violence and repression.<sup>53</sup> In addition, too few financial and other resources are available to States to fund human rights enjoyment and sustainable development, due to ideological and political resistance to measures which would force multinational corporations and wealthy individuals to pay their fair share, including by cracking down on tax evasion<sup>54</sup> and avoidance.
- 5.4. States must address business accountability for the impact that they have on human rights, in the context of development activities. While the adoption of the UN Guiding Principles on Business and Human Rights in 2011 has provided some additional guidance for States and business actors in this field, there is still a clear need for international binding rules that can

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<sup>51</sup> See inter alia: for OECD countries, the OECD report from December 2016: <http://www.oecd.org/social/OECD2016-Income-Inequality-Update.pdf>; and for the global level, the UNDP statement on SDG 1 at <http://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-10-reduced-inequalities.html>, as well as the world Inequality report 2018, available at <http://wir2018.wid.world/files/download/wir2018-full-report-english.pdf>

<sup>52</sup> See C. Golay, *NO ONE WILL BE LEFT BEHIND*, Geneva Academy of International Humanitarian Law and Human Rights, Academy Briefing No.11, January 2018, at p.11: "Human rights principles include the principles of participation, accountability, non-discrimination, transparency, human dignity, empowerment, the rule of law and solidarity (PANTHERS). Following the UN Common Understanding, these human rights principles should be used as a guide in all phases of the programming process, from assessment and analysis to law, policy and programme design and planning (including the setting of goals), implementation, monitoring and evaluation.

<sup>53</sup> See inter alia, Report of the UN Special Rapporteur on the situation of human rights defenders to the UN General Assembly, August 2016, UN Doc. A/71/281; or Global Witness report: Defenders of the Earth, Global killings of land and environmental defenders in 2016, available at <https://www.globalwitness.org/fr/campaigns/environmental-activists/defenders-earth/>

<sup>54</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 24, 'on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities', E/C.12/GC/24, paragraph 37.

regulate the activities and conduct of business actors in order to prevent human rights abuses and to effectively remedy them when they have occurred.

- 5.5. Finally, the submitting organizations wish to highlight one of the most significant challenges and threats for both human rights and development now and in the future: **climate change**. The lack of adequate and timely action by States individually and collectively to mitigate, prevent and adapt to the already severe and undeniable impact of climate change is already undermining human rights and decades of development gains. States must prioritise rights-respecting climate action and must rapidly transition to rights-respecting, decarbonised sustainable development pathways.

## 6. Recommendations

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- 6.1. The submitting organizations wish to make the following recommendations to the Advisory Committee:
- 6.1.1. Use the term '*sustainable development*', reflecting the international consensus and reiterate the primacy of States' human rights legal obligations over 'development' goals, clearly stating the distinction between human rights realisation and development objectives before detailing the conditions under which sustainable development may contribute to the realization of all human rights (civil, cultural, economic, political or social);
  - 6.1.2. Remind States to ensure the incorporation of human rights in economic and development decision-making, including at the international level, in inter-governmental bodies and discussions, and at the domestic level in policy making and project implementation;
  - 6.1.3. Encourage States to utilise the wealth of materials produced by the human rights mechanisms (e.g. special procedures reports, treaty body recommendations) on how to ensure development activities are compliant with human rights obligations, as well as guidance on the human rights-based approach to development produced by the UN;
  - 6.1.4. Reiterate the obligation of States to guarantee accountability for the realization of human rights, and to guarantee the right to an effective remedy for human rights violations and abuses when they occur (including in the context of development projects);
  - 6.1.5. Include in its report strong recommendations to States to ensure adequate and effective space for civil society in the definition, implementation, monitoring and evaluation of development programmes and to address the discrimination and social exclusion that prevent some sectors of society, and in particular those living in poverty and women, from having a voice in decision-making processes;
  - 6.1.6. Recall the obligation of States to ensure that the private sector is regulated through national legal instruments, and call on States to address legal and implementation gaps

in business accountability for human rights abuses, including through new international legally binding rules.

- 6.1.7. Underline that the realization of human rights will require the mobilization of resources, through progressive means, in order to tackle poverty and inequalities, and provide accessible quality public services and comprehensive social protection systems. This will require efforts such as progressive tax reforms in the domestic context, but also careful attention to the global systemic barriers which constrain countries' fiscal space and economic decision-making. In this regard, it will be important to recognize the responsibilities and extraterritorial obligations of those States with great power over global economic decision-making and institutions. For example, the Advisory Committee could urge States to show political will to finally curb illicit financial flows (including cross-border tax abuse) and tax havens;
- 6.1.8. Call on States to take urgent measures to address prejudice, stigma and discrimination against marginalised groups and persons living in poverty, including by putting in place effective participatory processes and mechanisms to ensure the participation of rights holders in development decision-making;
- 6.1.9. Urge States to ensure policy coherence, in compliance with human rights, between different areas of public policies, including development, finance and climate actions. This requires States to design, implement and monitor policies in these areas in line with human rights standards and principles.

**31 May 2018**