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IOE input to the 2023 reports of the UN Special Rapporteur on the Right to Development

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INTRODUCTION

The Special Rapporteur will be presenting to the **Human Rights Council** a report outlining a vision for the future in “reinvigorating the right to development” in September 2023 and to the **UN General Assembly** (UNGA) in October 2023 a report on “the role of business in realizing the right to development in the context of the 2030 Agenda for Sustainable Development and other relevant international human rights instruments”.

As the largest global network of the private sector and building on its well-established representation of employers in the tripartite system of the International Labour Organisation and in other global fora, the **International Organisation of Employers** (IOE) appreciates the opportunity to provide input to the UN Special Rapporteur on the Right to Development. IOE also seizes this opportunity to congratulate Mr Surya Deva on his appointment as the new Special Rapporteur for a period of three years starting on 1 May 2023.

UNGA report (Oct 2023) – “Role of businesses in realising the right to development”

The right to development was proclaimed in the Declaration on the Right to Development, adopted in 1986 by the UNGA in its resolution 41/128. *“The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”* (Article 1.1, Declaration on the Right to Development). Also, *“the human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.”* (Article 1.2). This right is also recognized in other texts such as the 1992 Rio Declaration on Environment and Development, the 1993 Vienna Declaration and Programme of Action, the Millennium Declaration, the 2002 Monterrey Consensus, the 2005 World Summit Outcome Document, and the 2007 Declaration on the Rights of Indigenous Peoples.

When addressing the role of business in realizing the right to development, there is first the need to outline the fact that **States individually are the primary duty-bearers under international human rights law, and collectively they are the trustees of the international human rights regime**. They have a duty to respect, protect and fulfil human rights and fundamental freedoms. This is highlighted under Article 3 of the 1986 Declaration, *“States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development”*. This fundamental principle is also reaffirmed in

the UN Guiding Principles on Business and Human Rights (UNGPs), the authoritative framework applicable to States and business, differentiating between the “State duty to protect human rights” and the “corporate responsibility to respect human rights”.

The right to development provides a comprehensive framework and approach to the policies and programmes of all relevant actors at the global, regional, sub-regional, and national levels. In this context, **the private sector** is fully aware of its role as the **positive transformative power of change**. At the same time, a paradigm shift is needed, in the sense that the private sector cannot be seen de facto as a polluter or an entity that abuses human rights in any way, but as an ally - or better still, **a protagonist** - in the movement towards economic, environmental, and social development. In most countries, private enterprises create the vast majority of jobs. This is especially true in developing countries, where over 90 per cent of jobs are in the private sector. Sustainable enterprises, as generators of employment and promoters of innovation and decent work, and a well-functioning and productive economy contribute directly to the right to development, notably the economic and social aspects of this right.

The private sector cannot operate effectively **unless public authorities** provide appropriate policy support as well as soft and as hard infrastructures. This holds particularly true as the right to development integrates aspects of both human rights and development policies. In addition to the State’s duty to protect and fulfil the right to development, States are responsible for **creating an enabling environment for business** to operate consistent with international human rights and environmental standards. The private sector needs to benefit from legal clarity, predictability, and clear guidelines to operate effectively.

Addressing **the root causes** of a lack of a conducive environment for the protection, respect, and promotion of the right to development is therefore a necessary precondition to uphold it. The right to development cannot be understood in **silos** as it is connected to a broader set of other rights. Notably, the right to development is intrinsically related to the exercise of the right to full sovereignty over a person’s natural wealth and resources. Unfortunately, failures of the State’s duty to protect remain a key impediment to the realisation of the right to development. In many developing countries, the lack of legal recognition of land, recognition of the employment relationship, and legal recognition of person through birth certificates are the result of a lack of good governance and high levels of informality. According to the UN, 1.5 billion people are still multidimensionally poor in a context where many countries suffer from a lack of good governance, high levels of informality, corruption, poverty, and deeply rooted social and political inequalities. Discriminatory laws and unequal access to opportunities for political participation and influence stand at the root of deprivation and disadvantage.

To uphold the right to development and all other concomitant rights, the below four **recommendations to States** should be considered. Systemic or structural problems require comprehensive solutions. These measures should be implemented in a holistic and integrated manner through collective action and considering the specific contexts and challenges faced by different countries and regions. In this endeavor, it is crucial to engage all relevant stakeholders at all relevant levels, including governments, private sector, in particular national employers’ organisation, civil society, and international organisations:

1. Based on national contexts and circumstances, governments might consider implementing **national comprehensive legislation and policy frameworks** that protect the right to development. The Indian Constitution for example does not explicitly mention the right to development but guarantees various fundamental rights that contribute to development such as the right to equality, right to education, right to work, and right to protection against exploitation. Also, National Actions Plans (NAPs) can also

provide an authoritative framework at the national level. The government of South Africa has, for instance, developed policies such as the National Development Plan that prioritise inclusive and sustainable development. These measures should be done in close coordination with **social partners** as they are the most representative actors on social, economic, and labour issues.

2. **Strengthen governance structures and institutions** to ensure transparency, accountability, and participation at all levels. Some countries such as Botswana (through its Directorate on Corruption and Economic Crime (DCEC)), Estonia (Corruption Crimes Investigation Bureau (CCIB)), or New Zealand (Serious Fraud Office) have established comprehensive national integrity systems or judicial reforms that encompass various institutions and mechanisms to prevent corruption, promote transparency, and strengthen accountability. There is a need of collaborating with international organizations, donor agencies, and development partners to leverage their support and share best practices to mobilize resources, expertise, and technical assistance for development efforts. These include among others the ILO, UNDP, IMF or the World Bank.
3. Programmes for **economic development and poverty alleviation** encourage investment in sectors such as education, healthcare, infrastructure, and job creation to reduce poverty and inequality. For example, Mexico's "*Oportunidades programs*" or Brazilian "*Bolsa Familia*" provide conditional cash transfer programmes upon certain requirements such as regular school attendance, healthcare check-ups, or participation in skills training programmes. Microfinance such as Grameen Bank in Bangladesh and small business development programmes such as the "[MSME Development Initiative](#)" provided by the Confederation of Indian Industry are also instrumental in achieving the right to development. Lastly, skills development and vocational training programmes such as Germany's dual vocational training system play a significant role in designing and implementing effective training programmes due to the active involvement of the [Confederation of German Employers' Associations](#) .
4. **Building effective and sustainable social protection systems:** Social protection mechanisms that ensure access to basic services, such as healthcare, education, housing, and social security is a precondition for the right to development. In Thailand, the ILO's technical assistance supported by the Thai government and social partners contributed to the development of a comprehensive social security system. Other countries such as Colombia, Mongolia, the Philippines, Rwanda, and Viet Nam have also shown that extending social health protection to all is achievable even in low-income settings and/ or where levels of informal employment are high. Their experience demonstrates that a sustained political and financial commitment is indispensable.

The role of the private sector in contributing to the right to development is **significant and multifaceted**. Particularly, businesses, as key actors in economic development, can contribute directly or indirectly to the realisation of this right through the following elements:

- 1) Businesses play a crucial role in **generating economic growth, creating employment opportunities, and pioneering innovative solutions** which directly contribute to development progress and some of the specific rights therein. This holds particularly true for micro-small-and-medium-sized enterprises (MSMEs). MSMEs account for 90 per cent of businesses, 60 to 70 per cent of employment and 50 per cent of GDP worldwide. As the backbone of societies, they contribute to local and national economies and to sustaining livelihoods, in particular among groups in vulnerable situations. They need much more support from their government and international partners to ensure improved productivity, business models, energy efficiency, Occupation Safety and Health (OSH) measures, and other costly and

challenging improvements. More broadly, business, by investing in new ventures, expanding existing operations, and innovating, contributes to increased productivity, income generation, and overall economic development. This, in turn, helps to uplift individuals and communities out of poverty, improving their access to essential resources and opportunities, ultimately benefitting, and contributing to individual development. The rise of affordable and accessible mobile phones as well as other digital technologies, spearheaded by private sector companies, has enabled access to information, the right to participation, enhanced access to socio-economic opportunities, and many other concrete benefits relating to the right to development. Concrete examples from companies, such as microfinance initiatives, have provided entrepreneurs and individuals in low-income communities with small loans. These loans enable individuals to start or expand their businesses, improve their livelihoods, and contribute to local economic development. Finally, when looking at global climate finance specifically, the private sector has been providing as much funding as the public sector, and it is important to highlight the significant efforts already in place ([Climate Policy Initiative, 2022](#)). These efforts need to be scaled up across the board, but we should be careful about putting undue responsibility on private entities.

- 2) Companies can contribute to the right to development by adopting **responsible business practices**. The International Organisation of Employers has launched the concept of a [Centre for Human Rights and Responsible Business Conduct](#) in December 2022 to leverage its global network of 150 Employer and Business Organisations to better equip companies of all sizes to navigate in and operationalize the complex set of standards and requirements related to Responsible Business Conduct/Business and Human Rights – also in anticipation of the Corporate Sustainability Due Diligence Directive which is currently being negotiated in the European Union. This includes respecting human rights, promoting labour standards, ensuring workplace safety, and respecting environmental sustainability. By incorporating social and environmental considerations into their operations, businesses can contribute to the well-being and sustainable development of the communities in which they operate. Businesses also have a responsibility to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products, or services by their business relationships, including in their supply chains, even if they have not contributed to those impacts. Many businesses have taken steps to promote responsible sourcing and production throughout their supply chains via for example programs to improve labour conditions and environmental sustainability in their supplier factories. Such initiatives contribute to the right to development by promoting fair labour practices and minimising the negative impact on local communities and the environment.
- 3) However, in this context, **support and guidance from States are needed**, in particular in developing countries. As part of their duty to protect and in line with UNGP 3 (c), States should “provide effective guidance to business enterprises on how to respect human rights throughout their operations”. Most businesses across the globe are small and medium enterprises (SMEs) and these, unfortunately, do not have the capacity nor the resources to promote responsible business conduct. Therefore, to effectively uphold the right to development, States need to focus on **effective economic, fiscal and policy measures** that trigger **incentives** for businesses to act responsibly and create positive synergies between Responsible Business Conduct (RBC), productivity, and competitiveness. This should be achieved by building a **stronger business case** for developing countries through the capacity building of employers’ organisation and their members. The IOE is currently mobilizing in kind and financial resources for its abovementioned Centre on Human Rights and Responsible Business Conduct. There is a critical need to bring SMEs into the debate by giving them access to supply chains and new markets by making them aware of the added value and benefits they will receive from acting responsibly. What

is needed is a new business case promoted by the State on the nexus of trade and RBC to create incentives. In this regard, we should harness the full potential of technology. The lack of awareness of business and human rights due diligence in developing countries is a complex issue that requires a **multifaceted solution**. It involves not just the businesses themselves, but also the larger ecosystem involving government bodies, civil society, and international entities. There is also an urgent need for policy reforms and the establishment of robust legal frameworks that promote “**a stay and behave**” rather than a “cut and run” approach. When required to respect human rights throughout their operations, business needs to be supported by States, and States should effectively implement and enforced national laws, which will ultimately ensure right to development.

- 4) **Sustainability strategies that promote a just transition also promote the right to development.** Different elements and various significant contributions from the private sector are provided in the recent [IOE guidance paper on Just Transition](#). An important example includes renewable energy investments, as well as many other investments and technological developments, where many businesses have made substantial investments in renewable energy projects, such as wind farms and solar installations. These investments play a crucial role in driving the transition to a more sustainable and clean energy future. However, for a just transition to be inclusive and successful, the State’s continuous, coherent, and anticipatory support of skills needs, in collaboration with the private sector, based on skills analysis and taking into account projected needs, local contexts, and geographical distribution is key to protect millions of jobs that are at stake in the very short term and ensure an effective just transition that reinforces the right to development.
- 5) Businesses, particularly those engaged in research and development, **contribute to harnessing the potential of technology and connectivity, and knowledge sharing.** By sharing expertise, providing training, and supporting technology transfer initiatives, businesses can enhance the capacity of developing nations to foster innovation, improve productivity, and address social challenges. This enables local industries to grow and contributes to the overall development of the country. Technology companies have played a significant role in expanding access to information and connectivity in developing regions. For instance, in 2022, the **IOE and Microsoft launched the innovative Tech@Work programme**. The programme’s main aim is **to train 20,000 participants from four of the least developed African countries - Senegal, the Democratic Republic of Congo, Lesotho, and Uganda - imparting them with comprehensive digital, soft, and entrepreneurial skills**. The overarching objective is to bolster their employability and aid in initiating income-generating activities. As of June 2023, the Tech@Work programme has successfully equipped over 2,000 young individuals with these essential skills. The programme also extends to assisting these individuals in their job hunts or entrepreneurial ventures, ensuring that they can effectively leverage their newly acquired skills. This infusion of digital skills and enhanced connectivity not only broadens their access to education and healthcare information but also unlocks economic opportunities, thereby fostering the right to development.
- 6) **Through partnerships**, businesses can work in collaboration with governments, civil society organisations, and local communities to address development challenges collectively. Through partnerships, businesses can leverage their resources, expertise, and networks to support initiatives that promote inclusive development, such as infrastructure projects, education and healthcare programmes, and community development projects.

When it comes to ensuring **access to effective remedy** in the context of the right to development, as any other right, a major challenge observed is the **lack of an effective judicial system and the associated barriers linked to a failure of the state's duty to protect and provide effective remedy**. In many countries, a primary difficulty is accessing justice due to a lack of trust and confidence in the judiciary system from both sides. Practical and procedural barriers, such as overcoming bureaucratic obstacles, indiscriminately affect both the plaintiff and the defendant.

Developing a comprehensive and coordinated approach involving states, national human rights institutions, development finance institutions, and businesses through operational grievance mechanisms, and international cooperation can ensure that affected individuals and communities, including business have access to effective remedy. Also, National Human Rights Institutions (NHRIs) play a crucial role in providing access to effective remedy by receiving complaints, conducting investigations, and issuing recommendations for redress. Examples of countries with strong NHRIs include the Human Rights Commission of Malaysia and the National Human Rights Commission of India. These bodies need to be strengthened and their independence respected. A good combination of different types of grievance mechanisms, including operational grievance mechanisms provided by companies can represent solutions to remediate effectively harm caused.

HRC Report (Sep 2023) – “Reinvigorating the right to development: A vision for the future”

It is important to highlight efforts to promote the right to development of vulnerable or marginalized individuals and communities. Brazil for example has made efforts to address these issues through various steps, including Social Inclusion Programs, support for informal sector workers, SMEs, and also informal enterprises, and gender equality initiatives, including the Maria da Penha Law, which addresses domestic violence against women. Efforts have also been made to promote women's economic empowerment and political participation.

However, while progress has been made, challenges and gaps remain in the implementation of the right to development. With the objective of reinvigorating the right to development, the below elements should be considered:

- At the international level, the adoption of the Sustainable Development Goals (SDGs) by the UN has been a significant milestone for the right to development. The SDGs encompass a comprehensive framework that addresses multiple dimensions of development and promotes human rights, including the right to development. The SDGs provide a global roadmap for countries to work towards inclusive and sustainable development. There is therefore a need to better connect the dots between the SDGs and the right to development.
- Greater focus at national levels on addressing the root causes, in particular poverty reduction and social inclusion. Many countries have made progress in reducing poverty rates and addressing social inequalities, thereby contributing to the realization of the right to development. Efforts such as social protection programs, inclusive quality education, and healthcare initiatives have played a crucial role in improving living conditions and fostering inclusive development.
- Analysis of regional economic integration initiatives, which aim to promote sustainable development and improve economic opportunities for member states. These initiatives are important contributors to the realisation of the right to development at the regional level.

- Foster the active engagement of the private sector in promoting the right to development should be encouraged where applicable through modern legislation, for business to thrive. This can be achieved through inclusive economic growth, development plans, supporting social development initiatives and reducing unnecessary bureaucratic burdens. These efforts must be associated with embrace the future of work and all the new technologies associated to it (Industry 4.0, IoT etc.), to generate employment, increase productivity and competitiveness and foster development, in particular in developing countries.

Thematic priorities for 2023-26

Fostering all aspects of development is at the heart of the SDGs and development cooperation. Given the interconnectedness of the right to development and the SDGs, the Special Rapporteur should focus on the integration and implementation of the right to development within the SDG framework. This may involve analysing progress, identifying challenges, and promoting synergies between development cooperation efforts and the realisation of the right to development.

Given the importance of focusing on the next three years, it seems essential for the Special Rapporteur to engage in a **comprehensive analysis of the impacts of the root causes** that prevent the effective promotion and implementation of the right to development and how to address them in concrete terms. In particular:

- The negative impact of informality on the right to development
- The negative impact of poverty on the right to development
- The negative impact of the lack of good governance, rule of law, and corruption on the right to development
- A cost analysis of the effect of administrative burdens on the sustainability of companies and its impact on the right to development.
- Barriers to access to an effective remedy
- Recommendations to States to promote an enabling environment for the right to development.

In addition, it would also be useful to better understand the **positive interconnections between trade and economic and social development**. To maximise the benefits of trade, countries need to pursue trade policies that prioritise inclusive growth and tackle trade-related problems. As the positive impact of trade on economic and social development depends on a fair and inclusive trading system, supportive policies, and adequate infrastructure, collaboration with the World Trade Organization and UN Conference on Trade and Development could represent interesting avenues of research.

Finally, the Special Rapporteur may consider sharing best practices on the positive role played by the private sector in advancing the right to development, through actions taken by employers' federations and businesses. IOE stands ready to support the Special Rapporteur in this regard.

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