

17 March 2021

English only

Human Rights Council
Expert Mechanism on the Right to Development
Third session
30 March – 1 April 2021
Item 5 of the provisional agenda
Consideration of thematic studies

Realization of the right to development in achieving the Sustainable Development Goals*

Thematic study by the Expert Mechanism on the Right to Development

Summary

This thematic study provides guidance to States and other stakeholders on operationalizing the right to development in implementing the Sustainable Development Goals incorporated in the 2030 Agenda, focusing on their “means of implementation” and the duty of international cooperation on States. It also highlights the heightened importance and urgency of doing so during and in the aftermath of the COVID-19 pandemic to bring the 2030 Agenda back on track.

* Reproduced as received, in the language of submission only.

I. Introduction

1. In its resolution A/HRC/RES/45/6, the Human Rights Council requested the Expert Mechanism on the Right to Development (EMRTD) to implement the recommendations contained in its first annual report,² and in doing so, “to pay particular attention to the international dimension of the right to development, and how this aspect will make the practical implementation of the right to development effective at the international, regional and national levels”.³ In accordance with this request, this first thematic study seeks to provide guidance on operationalizing the right to development (RTD) in implementing the Sustainable Development Goals (SDGs), focusing on their “means of implementation” and the duty of international cooperation on States.

2. The adoption of the 2030 Agenda for Sustainable Development on 25 September 2015 heralded a new and ambitious global plan of action for transforming our world onto a sustainable and resilient path.⁴ The agenda incorporates 17 SDGs and 169 targets to be achieved by 2030. The Agenda not only enlists the outcomes to be achieved thereunder, but also crucially identifies and defines the “means of implementation” (MoI) of the SDGs.⁵ Under a heading by that name, the agenda acknowledges that its scale and ambition “requires a revitalized Global Partnership to ensure its implementation” and records the commitment of States therefor.⁶ It envisages such partnership to “work in a spirit of global solidarity, in particular solidarity with the poorest and with people in vulnerable situations”.⁷ It further notes that this partnership will be multi-stakeholder, “bringing together Governments, the private sector, civil society, the United Nations system and other actors”, and will mobilize all available resources to “facilitate an intensive global engagement in support of implementation of all the Goals and targets”.⁸

3. The 2030 Agenda incorporates MoI under two separate streams. The first stream is captured under SDG 17 titled “Strengthen the means of implementation and revitalize the global partnership for sustainable development”. The targets thereunder are divided under the five heads of “finance”, “technology”, “capacity-building”, “trade” and “systemic-issues”, the last of which is further divided into three sub-heads of “policy and institutional coherence”, “multi-stakeholder partnerships”, and “data, monitoring and accountability”. Each of these heads and sub-heads contains several targets, in total numbering nineteen, that constitute the overarching MoI for all the preceding sixteen SDGs. The second stream of MoI, in total forty-three, is comprised by targets that are specific to each of the first sixteen SDGs. These are listed under each SDG separately in alphabetical order (for instance, Targets 1.a and 1.b under SDG 1) below the targets in numerical order (for instance, Target 1.1, 1.2, 1.3). These alphabetical targets constitute the specific MoI for the numerical targets under each of the initial sixteen SDGs.

4. Of particular significance to the MoI is the Addis Ababa Action Agenda (AAAA).⁹ It has been incorporated as an integral part of the 2030 Agenda,¹⁰ which recognizes that its “full implementation” is “critical for the realization of the SDGs

² A/HRC/45/29

³ A/HRC/RES/45/6, para.11.

⁴ A/RES/70/1

⁵ *Ibid.*, para.17.

⁶ A/RES/70/1, para.39.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ Outcome document of the Third International Conference on Financing for Development, Addis Ababa, Ethiopia, 13–16 July 2015, Endorsed by UNGA Resolution 69/313.

¹⁰ A/RES/70/1, paras.40 and 62.

and targets”.¹¹ The AAAA supports, complements and helps contextualize the 2030 Agenda’s MoI targets.¹²

5. In line with the AAAA, the 2030 Agenda recognizes that “cohesive nationally owned sustainable development strategies, supported by integrated national financing frameworks, will be at the heart of our efforts”.¹³ It reiterates that “each country has primary responsibility for its own economic and social development and that the role of national policies and development strategies cannot be overemphasized”.¹⁴ It further records the commitment of all States to “respect each country’s policy space and leadership to implement policies for poverty eradication and sustainable development, while remaining consistent with relevant international rules and commitments”.¹⁵ Having noted the importance of domestic action, it acknowledges that “at the same time, national development efforts need to be supported by an enabling international economic environment, including coherent and mutually supporting world trade, monetary and financial systems, and strengthened and enhanced global economic governance”.¹⁶ The 2030 Agenda thus records the commitment of States “to pursuing policy coherence and an enabling environment for sustainable development at all levels and by all actors, and to reinvigorating the global partnership for sustainable development”.¹⁷

6. The 2030 Agenda recognizes that the sixty-two MoI targets incorporated therein are key to realizing it.¹⁸ In the absence of a global partnership for sustainable development through these MoI, it is impossible for States, especially developing and least-developed, to realize their SDG commitments.¹⁹ Progress on all SDGs is therefore directly proportional to progress on these MoI.

7. This study assumes significance since the first six years of implementation of the SDGs have been overall disappointing. By the end of 2019 and even before the COVID-19 pandemic struck, progress on many targets had decelerated compared with previous years.²⁰ Almost all the SDGs were already off-track to be met by 2030.²¹ Unsurprisingly, almost all the MoI targets had been grossly underrealized since 2015. This downward spiral has further accelerated since the beginning of 2020 with the world brought to its knees by the COVID-19 pandemic.

8. These alarming results – prior to, during, and most likely after the COVID-19 pandemic – are the inevitable consequence of the lack of operationalizing the right to development in implementing the SDGs, especially their MoI. Implementation has been underpinned by a business-as-usual approach of development viewed through the lens of privilege or charity. This study contends that if the SDGs are to bear any prospects of success, their implementation must be based on the normative framework of the RTD as elaborated in the 1986 Declaration on the Right to Development,²² where development is viewed as a human right of all persons and peoples with corresponding duties on States with respect to the MoI, including most importantly, the duty of international cooperation.

11 Ibid., para.40.

12 Ibid.

13 Ibid., para.63.

14 Ibid.

15 Ibid.

16 Ibid.

17 Ibid.

18 Ibid., para.40.

19 Ibid., para.60.

20 Sustainable Development Goals Report 2019.

21 Sustainable Development Goals Report 2020.

22 A/RES/41/128

9. The 2030 Agenda itself provides the normative justification for operationalizing the RTD in implementing the SDGs by categorically stipulating that it is “informed” by the 1986 Declaration.²³ It also “reaffirms” the RTD by reaffirming the outcomes of the major United Nations conferences and summits listed therein, each of which in turn reaffirms the RTD.²⁴ It specifically reaffirms all the principles of the 1992 Rio Declaration on Environment and Development,²⁵ which recognized that the RTD must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.²⁶ Finally, the 2030 Agenda is also “grounded” in the United Nations Millennium Declaration,²⁷ which incorporated a categorical commitment to making the right to development a reality for everyone.²⁸ These consensual assertions by States that the 2030 Agenda reaffirms the RTD, is informed by the 1986 Declaration, and is grounded in it, should be seen as a mandate that operationalizing the RTD should constitute the basis for implementation of the SDGs.

10. The General Assembly,²⁹ and the Human Rights Council,³⁰ have emphasized that the RTD is vital for the full realization of the 2030 Agenda and should be central to its implementation and have called upon all States to spare no effort in operationalizing the same. Through this study, the EMRTD seeks to provide guidance to States and other stakeholders on how the RTD can be mainstreamed and operationalized in implementing the SDGs to ensure their course correction. It focuses on the MoI through the normative lens of the duty of international cooperation to eliminate obstacles to sustainable development and to make advances therein. It also highlights the heightened importance and urgency of doing so during and in the aftermath of the COVID-19 pandemic.

II. The normative framework of the 1986 Declaration on the Right to Development

11. The 1986 Declaration marked a significant evolution in the global understanding of development as a “comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom”.³¹ This description not only signified, for the first time at the global level, a rejection of development understood purely in economic terms, but also placed all human persons and peoples at the centre of the development process. The paradigm shift of the Declaration was that it provided the normative framework for self-determined development to be understood as a human right of all persons and peoples, and not merely as charity bestowed upon them by States individually or collectively.³² It firmly recognized that these right-holders are the central subjects of development and should be the active participants and beneficiaries of the right.³³ The Declaration was adopted with an overwhelming majority of 146 countries voting in its favour with 8 abstentions and only one opposition. Since then, however, the

²³ A/RES/70/1, para.10.

²⁴ Ibid., para.11.

²⁵ Ibid., para.12.

²⁶ A/CONF.151/26, Vol. I, annex. 1, principle 3.

²⁷ A/RES/70/1, para.10.

²⁸ A/RES/55/2, para.11.

²⁹ A/RES/75/182

³⁰ A/HRC/RES/45/6

³¹ A/RES/41/128, preamble.

³² Ibid, article 1.

³³ Ibid, article 2(1).

right has been reiterated and reaffirmed unanimously by all States in numerous key declarations, resolutions, and agendas,³⁴ including in the 2030 Agenda. In addition, it has been reaffirmed in several regional human rights instruments.³⁵

12. Key normative principles of the Declaration relevant to this study can be summarized as follows:

(a) The RTD is an inalienable self-standing human right.³⁶ Development is not merely a privilege enjoyed by human beings and peoples, nor are they mere subjects of charity;

(b) Right-holders are guaranteed three entitlements – to participate in, contribute to, and enjoy – economic, social, cultural and political development;³⁷

(c) This right also implies the full realization of the right of peoples to self-determination;³⁸

(d) Operationalizing the RTD entails respecting, protecting, and fulfilling all other human rights – civil, cultural, economic, political and social.³⁹ This signifies that given the very nature of development as a human right, it cannot be realized when there are violations of other human rights;

(e) The RTD requires focusing not only on outcomes which are sought to be realized from a development plan or agenda (the “what” question), but also on the process by which those outcomes are achieved (the “how” question). Both the processes and outcomes of development must be consistent with and based on all other human rights;⁴⁰

(f) Human beings are individually (all human persons) and collectively (all peoples) the right-holders of the RTD against their States as well as other States that may individually or collectively impair or nullify the realization of their right.⁴¹ Every State is entitled, as an agent of all persons and peoples subject to its jurisdiction, to demand respect for their RTD by other States and international organizations;⁴²

(g) The Declaration entails duties on all States to respect, protect and fulfil the RTD across the following three levels:⁴³

(i) States acting individually as they formulate national development policies and programmes affecting persons within their jurisdiction;

(ii) States acting individually as they adopt and implement policies that affect persons not strictly within their jurisdiction; and

(iii) States acting collectively in global and regional partnerships.

(h) The Declaration obligates States, individually and collectively, to eliminate existing obstacles to the realization of the RTD, refrain from adopting

³⁴ For complete list, see: Draft Convention on the Right to Development, A/HRC/WG.2/21/2, preambular para.14.

³⁵ See the African Charter on Human and Peoples’ Rights of 1981, the Arab Charter on Human Rights of 2004, the Human Rights Declaration of the Association of Southeast Asian Nations of 2012, and the Abu Dhabi Declaration on the Right to Development of 2016.

³⁶ A/RES/41/128, article 1(1).

³⁷ Ibid.

³⁸ Ibid, article 1(2).

³⁹ Ibid., article 1(1).

⁴⁰ E/CN.4/1999/WG.18/2, para.36.

⁴¹ A/RES/41/128, article 1(1).

⁴² Ibid., article 2.

⁴³ A/HRC/15/WG.2/TF/2/Add.2 and Corr.1, annex, para.1

policies that undermine its realization, and to positively create conditions favourable to its realization⁴⁴

(i) The Declaration reaffirms the duty of international cooperation on States and obliges them to do so to realize the RTD for all.

III. The Duty of International Cooperation

13. The duty of international cooperation – or the duty to cooperate – on States runs through the 1986 Declaration like a golden thread binding together all its provisions. Article 3(1) thereof stipulates that “States have the primary responsibility for the creation of national and international conditions favourable to the realisation of the right to development”. This obligation is breached if actions or policies States undertake, maintain, or support, either individually, or collectively at international organizations,⁴⁵ lead to creation of international conditions unfavourable to the realisation of the RTD, including at the national levels by other States. More specifically, article 3(3) stipulates that “States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development”. Article 4(1) further stipulates that “States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realisation of the right to development”. Under article 10, States are obliged to take steps “to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures at the national and international levels”. Specifically, with reference to developing countries, the Declaration recognizes in its article 6 that “sustained action is required to promote more rapid development of developing countries” and that “as a complement to the efforts of developing countries, effective international co-operation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development”.

14. The duty to cooperate permeates through all dimensions of national and international law, policy and practice, and engages the responsibility of States to eliminate existing obstacles to development, not create new obstacles, and positively foster policies that promote the realization of the RTD for all. This duty is not limited to collective actions by States at international organizations or in other global or regional partnerships, but also necessarily includes the obligation to refrain from adopting national policies that impair or nullify the RTD of those not strictly within their jurisdictions.

15. The duty to cooperate incorporated in the 1986 Declaration is rooted in articles 1, 2, 55 and 56 of the Charter of the United Nations.⁴⁶ Article 1(3) thereof stipulates that a purpose of the United Nations is “to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all”. Article 55 gives shape to this institutional objective and obligates the United Nations to promote higher standards of living, full employment and conditions of economic and social progress and development; solutions to international economic, social, health and related problems; international cultural and educational cooperation; and universal respect for, and observance of, human rights and fundamental freedoms. Article 56 incorporates the undertaking by States to take joint and separate action in co-operation with the United Nations for

⁴⁴ A/RES/41/128, articles 1(1), 2(3), 3(1) and (3), 4(1), 6(1) and (3) and 10.

⁴⁵ The term international organizations employed in this study includes regional, plurilateral and bilateral organizations.

⁴⁶ See also preambular paragraph one of the 1986 Declaration referring to “the purposes and principles of the Charter of the United Nations relating to the achievement of international cooperation in solving international problems of an economic, social, cultural or humanitarian nature”.

the achievement of the purposes set forth in article 55. These should be read in conjunction with article 2 which obliges the United Nations and member States, in pursuit of article 1, to fulfil in good faith the obligations assumed by them under the Charter. Pertinently, under article 103 of the Charter, the duty of States to cooperate attracts primacy over conflicting obligations under any other international agreement. In addition, the duty to cooperate has been reaffirmed in numerous Declarations and Resolutions by States and can be seen as customary international law.

16. Specifically, in the context of human rights, article 6 of the 1986 Declaration obliges all States to “co-operate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms for all”. In addition to the United Nations Charter, this obligation is anchored in article 22 of the Universal Declaration of Human Rights whereby “everyone, as a member of society, [...] is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality”. Similarly, under article 28 thereof, “everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized”.

17. The International Covenant on Economic, Social and Cultural Rights obliges States Parties in its article 2 “to take steps, individually and through international assistance and co-operation, especially economic and technical” to progressively realize the rights recognized therein. In interpreting this obligation, the Committee has stressed that “international cooperation for development, and thus the realization of economic, social and cultural rights, is an obligation of all States.⁴⁷ Similarly, the Committee on the Rights of the Child has explained that “when States ratify the Convention, they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global implementation”.⁴⁸ Finally, the Convention on the Rights of Persons with Disabilities in its article 32 obligates States Parties to undertake measures regarding international cooperation in support of national efforts to realize rights recognized therein.

18. It may be stressed that the duty of international cooperation is underpinned by the indispensability of international solidarity among States.⁴⁹ Much like human dignity constitutes the foundation for universal human rights, international solidarity constitutes the foundation for the duty of international cooperation on States.

IV. Symbiotic Relation between the Right to Development and Sustainable Development

19. The 1986 Declaration understandably does not reference sustainable development which was established on the global policy agenda one year later in the 1987 report of the World Commission on Environment and Development.⁵⁰ Sustainable development was defined therein as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”⁵¹ It encompasses three general policy areas: social development, economic development and environmental protection.⁵² The social development dimension necessarily includes human rights since it is impossible to have social

⁴⁷ E/1991/23, para.14.

⁴⁸ CRC/GC/2003/527, paras.7, 60.

⁴⁹ A/HRC/35/35; A/HRC/38/40

⁵⁰ A/42/427.

⁵¹ Ibid., p.54.

⁵² A/RES/S-19/2.

development and in turn sustainable development if human rights are undermined.⁵³ The 17 SDGs and the 169 targets incorporated in the 2030 Agenda represent the current global consensus on the scope and content of sustainable development.

20. As noted above, the symbiotic relationship between the RTD and sustainable development was specifically recognized for the first time in the 1992 Rio Declaration on Environment and Development.⁵⁴ This was reiterated in the Vienna Declaration of 1993.⁵⁵ The Millennium Declaration adopted unanimously in 2000, and from which the MDGs emanated, explicitly incorporated “making the right to development a reality for everyone” as one of its objectives.⁵⁶ Finally, as noted above, the 2030 Agenda reaffirms the right to development, and is grounded in and informed by the 1986 Declaration.

21. The very adoption of the 2030 Agenda by States could be seen as an implementation by them of their duty stipulated in the 1986 Declaration to “take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development”.⁵⁷ In this sense, the SDGs could be seen as a policy expression by States of their intention individually and collectively to realize their obligations under the 1986 Declaration and a plan of action for operationalizing the RTD.⁵⁸

22. The EMRTD, however, cautions that the RTD must not be reduced to the 2030 Agenda. The SDGs were adopted only in 2015, are time bound, and are likely evolutive as newer challenges face humanity and the planet. The RTD should, therefore, not be interpreted as being dependent on the SDGs for its very existence or relevance. Its normative framework transcends any single global development agenda, including the 2030 Agenda, and applies to numerous other aspects of development as a common concern of humanity.

23. More important is the instrumental role of the RTD in better realizing the SDGs. Operationalizing the RTD can significantly improve the realization of the 2030 Agenda by providing it with a normative framework effectively stipulating that the participation in, contribution to, and enjoyment of sustainable development by all persons and peoples ought not to be seen as charity or privilege but as a human right with corresponding duties on the duty-bearers.⁵⁹ Its comprehensive coverage of “every human person and all peoples” as right-holders, provides the normative justification against treating the “leaving no one behind” principle of the 2030 Agenda as a mere political commitment. The RTD gives proper shape, colour, and texture to the SDGs by purposely stressing on the right and duty aspects of sustainable development. By insisting that development is a human right which has clearly identified duty-bearers, it stresses that the only way development can be sustainable is if it is itself treated as a right, is based on all other human rights as equally important, and ensures that no human right is undermined.⁶⁰

⁵³ A/RES/66/288, paragraphs 8, 9.

⁵⁴ A/CONF.151/26, Vol. I, principle 3.

⁵⁵ A/CONF.157/23.

⁵⁶ A/RES/55/2, para. 11.

⁵⁷ A/RES/41/128, article 4(1).

⁵⁸ Mihir Kanade, 2020, “The Right to Development and the 2030 Agenda for Sustainable Development”, p.9.

⁵⁹ Ibid.

⁶⁰ Ibid.

V. Operationalizing the Right to Development for Realizing the Means of Implementation of the SDG

24. Operationalizing the RTD requires a significant shift in current approaches to implementation of the SDGs by States, international organizations, and development agencies. Development as charity is fungible, promotes dependency, perpetuates inequality and is unsustainable. Development as a right is guaranteed, empowering, non-discriminatory, and sustainable. Adopting the normative framework of development as a human right can thus help guide the processes of implementing the 2030 Agenda, identify and overcome obstacles, shape better outcomes, empower individuals and peoples, mobilize and channel international cooperation, address adverse impacts, and promote sustainability.

25. Operationalizing the RTD is key across all measures undertaken at all levels to realize the SDGs but is especially important in relation to the MoI given their instrumental role. This requires mobilizing the MoI based on the normative framework of the RTD across all stages of planning, programming, implementation, monitoring and follow-up, whether by States in their domestic action or in development cooperation. Within the ambit of the cross-cutting general principles outlined in Parts II and III of this study, the EMRTD wishes to highlight specific aspects thereof in providing guidance on what operationalizing the RTD in realizing the MoI entails.

A. *Identifying development priorities and setting national targets*

26. The starting point for implementing the SDGs at national levels is determination national priorities and targets. The 2030 Agenda recognizes that there are different approaches, visions, models and tools available to each country, in accordance with its national circumstances and priorities, to achieve sustainable development.⁶¹ While the SDGs and targets are integrated, indivisible, global in nature and universally applicable, States are to consider their different national realities, capacities and levels of development in deciding how the “aspirational and global targets” should be incorporated in national planning processes, policies and strategies.⁶² Identification of these priorities is essentially tied to identification by each State of which MoI are necessary and to what extent for realizing its specific national targets.

27. The process of prioritization and setting of national targets can significantly benefit from the normative framework of the RTD, especially in identifying the corresponding MoI. While the 2030 Agenda incorporates respect for policy space of each country as the basis for national ownership of development priorities and policies, its normativity is anchored in the right to self-determined development inherent in the 1986 Declaration which stipulates that “States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals [...]”.⁶³ The duty mandated above is owed by each State to its entire population and individuals as well as to all other countries given the general reciprocal nature of human rights obligations among States.

28. Insofar as the right to formulate appropriate national development policies is concerned, it is to be exercised by the State against other States and the international community on behalf of or as agents of its peoples and persons – the principal right-

⁶¹ A/RES/70/1, para.59.

⁶² Ibid., para.55.

⁶³ A/RES/41/128, article 2(3).

holders.⁶⁴ States can never exercise this right against their own population and individuals to determine national development priorities since such determination is to be done “on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom”.⁶⁵

29. The right of persons and peoples to “participate in and contribute to” development is a defining feature of the RTD and is fundamental to its operationalization. The EMRTD stresses that all laws, policies, and practices to realize the SDGs must be designed and implemented with participation and contribution of the right-holders. Failure to ensure multi-stakeholder participation, or free, prior, and informed consultation with persons and peoples who might be positively or negatively impacted by such actions, or failure to obtain consent in case of indigenous peoples, will result in a violation of their RTD. The right to participate in and contribute to development is often violated when it is not operationalized since the very inception. It is especially important at the stage of prioritization and national target-setting, including as part of periodic reviews at national levels, since all subsequent actions to realize the SDGs must flow from these.

B. Identifying Obstacles to Development at all Levels

30. The 2030 Agenda acknowledges that “each country faces specific challenges in its pursuit of sustainable development”.⁶⁶ The SDGs can be successfully implemented only when obstacles thereto are identified and addressed in a targeted, deliberate, and concrete manner. No number of measures undertaken by States can be fully successful if existing barriers are ignored. Adopting the normative framework of the RTD can help better realize the SDGs since it obliges States to eliminate obstacles to development.⁶⁷

31. The EMRTD stresses that obstacles to development can arise due to national as well as international conditions and that “States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development”.⁶⁸ Obstacles to development can emanate for a State from the international level due to action or inaction by other States individually, as well as collectively at international organizations or other global or regional partnerships.

32. Good governance at the national levels is an important condition for realization of human rights and sustainable development, however, the same is true for good governance at the international levels. The 2030 Agenda envisages a world in which “democracy, good governance and the rule of law as well as an enabling environment at national and international levels, are essential for sustainable development”.⁶⁹ Operationalizing the RTD essentially means not assuming *a priori* that lack of progress on the SDGs by a State is the result only of bad governance by that State. It requires taking a step back and identifying whether the State has adequate “governance space” in the first place to realize the SDGs as well as the capacity to do so.⁷⁰ Implementation of the SDGs in countries can be seriously impeded because laws, policies or practices adopted at the international level limit the governance space needed by States to plan and implement necessary self-determined development policies. This can happen, for instance, because of unilateral

⁶⁴ Mihir Kanade, *The Multilateral Trading System and Human Rights: A Governance Space Theory on Linkages* (London, Routledge, 2018), p.208; Anne Orford, “Globalization and the Right to Development” in Philip Alston (ed.), *People’s Rights* (Oxford, Oxford University Press, 2001), p.137.

⁶⁵ A/RES/41/128, article 2(3).

⁶⁶ A/RES/70/1, para.22 and 56.

⁶⁷ A/RES/41/128, article 3(3); see also, preambular paragraph 10.

⁶⁸ *Ibid.*, article 3(1).

⁶⁹ A/RES/70/1, para.9.

⁷⁰ See; Kanade, *The Multilateral Trading System and Human Rights: A Governance Space Theory on Linkages*, Chapter 2.

sanctions not in accordance with international law imposed by other countries, or conditionalities on bilateral or multilateral aid and assistance that are out-of-sync with or harmful to national priorities, or inflexible trade rules. At the same time, implementation of the SDGs can be hampered at the national levels due to inadequate access to or availability of international resources and cooperation for overcoming internal capacity deficits. This can happen, for instance, when international financing for sustainable development or access to science, technology and capacity-building is unavailable or inadequate.

33. The MoI incorporated in the 2030 Agenda are aimed at overcoming these obstacles to development, especially those emanating from the international levels. As such, it is crucial that as national priorities are set, or revised through periodic reviews, obstacles to realization of the SDGs emanating from the national as well as international levels are identified by States. This is an indispensable process in also determining the MoI to be mobilized.

C. *The Duty to Seek International Cooperation*

34. Once States have set their national priorities and targets, identified the obstacles thereto, as well as the necessary MoI, they have the obligation to seek international cooperation as appropriate. The duty to seek international cooperation to mobilize the necessary MoI is inherent in the obligation of States to realize the RTD of persons and peoples within their jurisdiction.⁷¹ This duty especially assumes significance when States find themselves unable to realize their targets on their own or where obstacles emanate from the international levels. States will fail in discharging their obligations when MoI are available but are not sought. Indeed, the nature of several MoI targets is such that to be mobilized in line with self-determined development priorities, they may entail concrete steps to be undertaken by States to seek appropriate international cooperation.⁷²

35. The duty to seek international cooperation in mobilizing the MoI is not affected by the right of the receiving State to reject any cooperation that undermines the RTD. Operationalizing the RTD, however, does mean that the burden to justify such a rejection lies on the receiving State.

D. *The Duty of International Cooperation to Realize the Means of Implementation*

36. While mobilization of some MoI, given their nature, may need to be preceded by a request for specific international cooperation by a State, many others are self-executing or relate to activation of existing individual or collective commitments of States.⁷³ In all instances, States have the duty to cooperate in realizing the MoI targets through a revitalized global partnership for sustainable development. Although several MoI targets may not be legally binding on their own and a failure to realize them in one instance may not separately constitute an internationally wrongful act by States, repeated failure can cumulatively result in their composite failure to abide by their individual and collective duty to cooperate.⁷⁴

37. The duty to cooperate for realizing the MoI has different dimensions. It firstly refers to the obligation of a State under the 1986 Declaration to eliminate obstacles to development of others that may emanate from its individual national action as well

⁷¹ For a parallel obligation related to economic, social and cultural rights, see: Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, principle 34, <https://www.etoconsortium.org/en/main-navigation/library/maastricht-principles/>

⁷² See illustratively, Targets 1.a, 2.a, 3.b, 3.c, 3.d, 4.c, 5.b, 6.a, 7.a, 7.b, 9.a, 9.c, 10.b, 11.c, 12.a, 15.a, 15.b, 16.a, 17.1, 17.3, 17.4, 17.9, 17.18, 17.19.

⁷³ See illustratively, Targets 1.b, 2.b, 2.c, 4.b, 5.c, 8.a, 8.b, 10.a, 10.c, 12.c, 13.a, 13.b, 14.a, 14.b, 14.c, 17.2, 17.5, 17.6, 17.8, 17.10, 17.12, 17.13, 17.14, 17.15, 17.16.

⁷⁴ See, article 15 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts.

as from collective action at regional and international organizations. It also relates to a States' obligation to create conditions favourable to the realization of the RTD of others by taking collective enabling measures through global or regional partnership to activate the MoI. Finally, it refers to the obligation on a State, individually and collectively, not to create new obstacles to the realization of the RTD of others through cooperation practices related to the MoI.

E. Planning, Programming and Implementation of Development Cooperation

38. The duty to cooperate must inform and guide the process of realizing MoI through development cooperation at every stage and is especially important in planning, programming and implementation. The EMRTD wishes to highlight two specific aspects where operationalizing the RTD is most pertinent.

(i) Recalibrating the Human Rights-Based Approach to Development

39. The RTD requires implementing the MoI in a manner that is fully compatible with and firmly based on all human rights. When development itself is viewed as a human right, it can neither result from, nor result in, violations of other human rights. There can be no trade-off between rights in realizing the SDGs.

40. Current practices for planning and programming development cooperation to realize the SDGs promoted by the United Nations system and widely adopted by development agencies, organizations, and practitioners around the world rely on the conceptual framework known as Human Rights-Based Approach to Development (HRBA).⁷⁵ HRBA – sometimes also referred to as “rights-based development” – focuses on linking and aligning the objectives of development policies and practices to specific human rights norms and standards as enshrined in international human rights instruments, as well as to the principles of accountability, empowerment, participation, non-discrimination, equality and equity that are common to all human rights.⁷⁶ It 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”.⁷⁷ In theory, the international human rights norms, standards and principles that HRBA frameworks are based on ought to be strongly rooted in the RTD. Unfortunately, in practice, HRBA frameworks for planning and programming MoI often conceptualize development as objectives to be realized through adoption of an “approach” based on human rights, rather than as a self-standing human right. This normative downgrading seriously impedes operationalization of the RTD and efforts to implement the MoI since it results in inadequate attention to the duty of States to cooperate and on elimination of obstacles in realizing the SDGs resulting from a limiting international environment.

41. To illustrate, the 2030 Agenda incorporates financing for sustainable development through development cooperation as one of the cross-cutting MoI across

⁷⁵ OHCHR, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (Geneva, United Nations, 2006); United Nations Development Group, *UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming (the Common Understanding)* (New York, United Nations, 2003).

⁷⁶ Ibid.

⁷⁷ UNSDG, *Human Rights-Based Approach*, <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>; UN Inter-agency Common Learning Package on Human Rights-based Approach to Programming, <https://unsdg.un.org/resources/un-inter-agency-common-learning-package-human-rights-based-approach-programming>; United Nations Sustainable Development Cooperation Framework Guidance, <https://unsdg.un.org/resources/united-nations-sustainable-development-cooperation-framework-guidance>

numerous SDGs,⁷⁸ including as aid and assistance.⁷⁹ HRBA as practiced by many donor countries or their development agencies requires recipients of development aid or assistance to ensure respect for human rights while implementing development projects, including through transparent and accountable institutions. While this is indispensable and intrinsic to the RTD, such HRBA frameworks generally do not view international cooperation to realize development and not impede it as a duty of the donors. In effect, these frameworks may not pay adequate attention to the obligations of development cooperation partners to not impair the RTD of recipients when aid and assistance practices undermine development priorities and policy/governance space of recipients. This occurs when donors may determine the sectors for aid allocation rather than recipients, misalign funding with recipient country priorities, or undermine recipient country ownership over development programmes.⁸⁰ Aid or assistance as loans designed to be debt-augmenting or attached with predatory conditionalities, or requiring “in-donor contracts”, can violate the RTD of recipients.⁸¹ None of the responses to questionnaires received for this study provided instances of HRBA frameworks that focus on obligations of States externally and collectively in the same manner as they focus on realization of obligations by States internally.

42. HRBA frameworks for development cooperation that do not place equal attention to all three levels of obligations on States, and the duty of international cooperation, are flawed and based on an erroneous presumption that the SDGs can be realized by countries without the support of enabling international environment. This is precisely what the MoI targets through a revitalized global partnership are intended to achieve. As such, when an HRBA framework is applied for implementing the SDGs, it is vital that it normatively links the MoI targets with the duty of States to cooperate, in addition to normatively linking practices to realize the numerical targets with human rights obligations of States internally.

(ii) Human Rights Impact Assessments

43. Human Rights Impact Assessments (HRIAs) are important mechanisms for ensuring an enabling national and international environment conducive to the realization of human rights. Their indispensability has been explored in various respects,⁸² including in the context of realization of the RTD.⁸³ An HRIA may be understood as a structured process for identifying, understanding, assessing and addressing the potential or actual adverse effects of laws, policies or practices, and serves to ensure that these are consistent with international human rights norms.⁸⁴ HRIAs also help democratize resource mobilization and spending policies since they entail broad participation, transparency and accountability.⁸⁵ These are of central importance to the RTD in the context of the MoI. Since operationalizing the RTD

⁷⁸ See illustratively, Targets 1.a, 2.a, 3.c, 7.a, 8.a, 9.a, 10.b, 10.c, 11.c, 15.a, 15.b, 17.1, 17.2, 17.3, 17.4, 17.5, 17.13.

⁷⁹ See particularly, Targets 1.a, 8.a, 10.b, 11.c, 17.2.

⁸⁰ These “aid effectiveness principles” have been reaffirmed in the Paris Declaration on Aid Effectiveness (2005), the International Health Partnership Plus (2007), the Accra Agenda for Action (2008), the Busan Partnership for Effective Cooperation (2011), and the Global Partnership for Effective Development Cooperation (GPEDC) (2011).

⁸¹ Mihir Kanade, *From the Means of Implementation to Implementation of the Means: Realizing the SDGs as if they Matter*, 2020.

⁸² Guiding Principles on human rights impact assessments of trade and investment agreements, A/HRC/19/59/Add.5; Guiding Principles on Human Rights Impact Assessment of Economic Reforms, A/HRC/40/57; Olivier de Schutter and others, “Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights”, principle 14, *Human Rights Quarterly*, Vol.34, 2012, pp.1084-1171.

⁸³ Kanade, *Multilateral Trading Regime and Human Rights*.

⁸⁴ A/HRC/40/57

⁸⁵ *Ibid.*, para.6.

requires not only participation and contribution to sustainable development by all persons and peoples but also their enjoyment, the only way to ensure that the contrary is not being or will not be achieved is through impact assessments. Additionally, since development as a right must be consistent with all other human rights, assessment of the actual and potential impacts on all human rights becomes indispensable.

44. Operationalizing the RTD requires that States, individually and jointly, conduct prior and ongoing assessment of actual and potential risks and impacts of their laws, policies, and practices at the national and international levels, as well as of the conduct of legal persons which they are in a position to regulate, including businesses, to ensure compliance with the RTD in realizing the SDGs.

45. HRIAs are especially important for establishing international conditions favourable to realization of the RTD. HRIAs must therefore include impact assessment of national action by States on the RTD of those not strictly within their jurisdiction. The EMRTD notes with concern that, in general, there is a significant lack of HRIAs conducted by States in implementing their SDG commitments. Where these are conducted, they restrict assessments only to impacts on persons and peoples within their jurisdictions and not beyond.

46. HRIAs are especially important when States take collective action at international organizations that have the potential to either impede the realization of the SDGs or promote them. Because international organizations have independent legal personality under international law, actions taken under the framework of such organizations may be attributable to their member States only under limited circumstances. This necessitates independent impact assessments, especially when laws, policies or practices are adopted at international organizations in areas of finance and trade that may impede the realization of the SDGs. The EMRTD again notes with concern the general absence of mainstreaming HRIAs in many international organizations that are instrumental in implementing the MoI for realizing the SDGs. For instance, none of the International Financial Institutions and Development Banks require prior HRIA for determining the appropriateness of conditionalities on loans given to various States. Similarly, there are no systems in place at the World Trade Organization (WTO) for conducting prior, ongoing, or post-facto HRIA of multilateral trade agreements or policies. States are under an obligation to ensure that such systems are instituted in international organizations that they are part of in discharge of their duty to cooperate in realizing the RTD.

F. Indicators for Progress on the Means of Implementation Targets

47. Under the 2030 Agenda, the Inter-Agency and Expert Group on SDG Indicators has been mandated to develop the global indicator framework for agreement by the UN Statistical Commission.⁸⁶ The global indicator framework is required to address all SDGs and targets including the MoI and is to be complemented by indicators at the regional and national levels that States may develop.⁸⁷ Realization of the SDGs can be credibly measured only if the global indicators are consistent with the RTD. This necessitates clear and quantifiable indicators for both national and international action, with benchmarks as appropriate. This is especially important for the global indicators of the MoI targets that are explicitly based on international cooperation,⁸⁸ since national or regional indicators may be mostly inward-looking.

48. Although the global indicators have been periodically re-evaluated,⁸⁹ several indicators pertaining to MoI targets do not adequately measure progress on necessary international action, including international cooperation. For instance, Target 1.b

⁸⁶ A/RES/70/1, para.75.

⁸⁷ Ibid.

⁸⁸ See illustratively, Targets 1.a, 2.a, 4.c, 6.a, 7.a, 8.a, 9.a, 9.b, 11.c, 12.a, 13.b, 16.a and Targets 17.1 to 17.19.

⁸⁹ For periodic revisions, see <https://unstats.un.org/sdgs/indicators/indicators-list>.

aims to create sound policy frameworks at the national, regional and international levels based on pro-poor and gender-sensitive development strategies, to support accelerated investment in poverty eradication actions. The sole indicator 1.b.1 requires measuring only pro-poor public social spending, ignoring any quantitative or qualitative evaluation of policy frameworks at regional or international levels. Similarly, Target 4.c aims to substantially increase by 2030 the supply of qualified teachers, including through international cooperation for teacher training in developing countries, especially LDCs and SIDS. The corresponding indicator 4.c.1 only measures proportion of teachers with the minimum required qualifications by educational level but remains silent on measuring the international cooperation provided or received.

49. The inadequate attention to measuring compliance by States of their duty to cooperate is starkly evident in several indicators for targets under SDG 17. For instance, Target 17.7 aims to promote the development, transfer, dissemination and diffusion of environmentally sound technologies to developing countries on favourable terms, including on concessional and preferential terms, as mutually agreed. The corresponding indicator 17.7.1 measures only the total amount of funding for developing countries for this purpose, without measuring the concessional or preferential nature of the terms. Although Target 17.8 aims to fully operationalize the Technology bank and science, technology and innovation capacity-building mechanism for LDCs, it is not addressed at all in the corresponding indicator 17.8.1, which only measures the proportion of individuals using the Internet. Target 17.10 aims to promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the WTO, including through the conclusion of negotiations under its Doha Development Agenda. The sole indicator 17.10.1 measuring worldwide weighted tariff-average, unfortunately, does not reveal much. Similarly, Target 17.12 aims to ensure, *inter alia*, that preferential rules of origin applicable to imports from LDCs are transparent and simple and contribute to facilitating market access. The corresponding indicator is entirely silent on this.

50. States must ensure that periodic evaluations of the global indicators, especially for MoI targets, result in appropriate revisions to measure both national and international action.

G. *Highlighting Obstacles to Mobilization of Means of Implementation in the Follow-up and Review Framework*

51. The 2030 Agenda commits States to engage in systematic follow-up and review of its implementation through a “robust, voluntary, effective, participatory, transparent and integrated” framework to help States maximize and track progress in implementation and ensure that no one is left behind.⁹⁰ The 2030 Agenda enumerates several principles that guide the follow-up and review processes at all levels.⁹¹ At the global level, the High Level Political Forum on Sustainable Development (HLPF) plays a central role in overseeing this process and builds on voluntary national reviews (VNRs) undertaken by States.⁹² In addition, the 2030 Agenda integrates the dedicated follow-up and review established under the AAAA for the Financing for Development outcomes and related MoI.⁹³

52. The EMRTD notes with appreciation the comprehensive guidance provided by the United Nations Department of Economic and Social Affairs under the auspices of the HLPF to States through the 2021 edition of the Handbook for the Preparation

⁹⁰ A/RES/70/1, para.72.

⁹¹ *Ibid.*, para.74.

⁹² *Ibid.*, paras.82–85.

⁹³ *Ibid.*, para.86.

of Voluntary National Reviews.⁹⁴ Several principles thereof including multi-stakeholder engagement and participation, and leaving no one behind, are inherent to the RTD. The Handbook exhorts countries to be “specific about the main challenges and difficulties they face in implementing the SDGs” and encourages them “to provide an analysis of the causes of these challenges and difficulties and how they foresee overcoming these barriers”.⁹⁵ The Handbook also notes that the review process should discuss how MoI are mobilised, what are the difficulties encountered, and what additional resources are needed to implement the 2030 Agenda, “looking at the full range of financing sources (public/private, domestic/international) and non-financing means of implementation, such as capacity development and data needs, technology, and partnerships”.⁹⁶

53. Obstacles to mobilization of MoI arise not only from internal deficits of States or from inadequate response to requests for mobilization by a State, but also from an overall limiting international environment, including *inter alia* lack of international cooperation in realizing MoI targets related to trade, technology facilitation mechanism or technology bank, or respect for policy space of States. States conducting VNRs must ensure that obstacles to mobilization of MoI that emanate from failure of States to discharge their duty to cooperate individually or collectively are also identified and reported. This is especially important since the HLPF is also mandated to conduct thematic reviews of progress on the SDGs, including cross-cutting issues, supported by reviews by the ECOSOC functional commissions and other inter-governmental bodies and forums.⁹⁷ These thematic reviews can consider cross-cutting obstacles to mobilization of the MoI only if VNRs sufficiently identify and report them.

H. International Organizations and the Means of Implementation

54. Many international organizations and their agencies, including specialized agencies of the United Nations, have a central role to play in mobilizing the MoI, especially related to financing and trade. International law imposes an obligation on international organizations to refrain from conduct that aids, assists, directs, controls or coerces, with knowledge of the circumstances of the act, a State or another international organization to breach that State’s or that other international organization’s obligations, including with regard to the RTD.⁹⁸

55. The obligation of the United Nations to promote human rights extends to its specialized agencies, including the Bretton Woods Institutions, designated as such by virtue of and in accordance with articles 57, 63 and 64 of the Charter. At a minimum, specialized agencies (the agents) cannot undermine the mandate and obligations of the United Nations (the principal), and as such, must respect the RTD. The WTO, an important mobilizer of many MoI, has an explicit mandate in its founding agreement to promote sustainable development.⁹⁹ Failure to operationalize the RTD in mobilizing related MoI will result in a breach of its own constitution.

⁹⁴ https://sustainabledevelopment.un.org/content/documents/27024Handbook_2021_EN.pdf. These are to be read in conjunction with the Secretary-General’s proposal for voluntary common reporting guidelines for VNRs, https://sustainabledevelopment.un.org/content/documents/17346Updated_Voluntary_Guidelines.pdf.

⁹⁵ *Ibid.*, p.19.

⁹⁶ *Ibid.*, p.37.

⁹⁷ A/RES/70/1, para.85.

⁹⁸ See articles 14 to 16 of International Law Commission’s Draft Articles on the Responsibility of International Organizations.

⁹⁹ Preamble of the Marrakesh Agreement Establishing the World Trade Organization.

VI. COVID-19 Pandemic and the Heightened Importance of Operationalizing the Right to Development

56. The COVID-19 pandemic brought the entire world to a grinding halt for the better part of 2020 and unleashed disastrous consequences in its wake. As of mid-March 2020, over 117 million people had been infected with SARS-Cov-2 and over 2.6 million have died.¹⁰⁰ The pandemic has forced 88 million to 115 million more people globally into extreme poverty.¹⁰¹ In 2020 alone, between 83 and 132 million people were added to the almost 690 million people in the world considered undernourished in 2019.¹⁰² As of February 2021, 272 million people are estimated to be acutely food insecure due to COVID-19.¹⁰³

57. At the same time, the pandemic has marked the beginning of the worst economic downturn since the Great Depression. Latin America and the Caribbean region is facing the worst recession ever,¹⁰⁴ and Africa is in its first recession in the last 25 years.¹⁰⁵ Other regions, including Asia and the Middle East are staring at similar decelerations. 90 of the 122 low and middle-income developing countries have entered into economic recession.¹⁰⁶ The crisis has wiped out the equivalent of 255 million full-time jobs globally in 2020.¹⁰⁷ Unsurprisingly, the most severe impacts have been on the weakest and poorest countries. While developing countries represent 84% of the world's population, they hold less than 20% of global financial assets.¹⁰⁸ In 2020 and 2021 alone, repayments on public external debt for developing countries overall are estimated at nearly \$3.4 trillion, including between \$666 billion and \$1.06 trillion in middle- and low-income countries.¹⁰⁹

58. The pandemic has undoubtedly had a debilitating effect on efforts to realize the SDGs. However, the 2030 Agenda was off-course even prior to the pandemic; the crisis has only accelerated its deceleration by exposing the long-standing fault-lines in international cooperation necessary to mobilize the MoI. Even before the pandemic, debt accumulation had outpaced income growth in many developing, least-developed, land-locked developing, and small island developing States.¹¹⁰ At the beginning of the pandemic, 44% of LDCs and other low-income developing countries were at high risk or in debt distress, and the figure is certain to rise as a result of the pandemic.¹¹¹ This represents a doubling of debt risk in under five years from 22% in 2015 when the 2030 Agenda was adopted.¹¹²

59. ODA disbursements by OECD-DAC countries have consistently fallen short of their commitments under Target 17.2 since the adoption of the 2030 Agenda. ODA disbursements in 2019 were approximately \$152.8 billion at 0.30% of the combined

¹⁰⁰ <https://covid19.who.int/>

¹⁰¹ World Bank, *Poverty and Shared Prosperity 2020: Reversals of Fortune* (World Bank, Washington, D.C., 2020), p.5.

¹⁰² FAO, *The State of Food Security and Nutrition in the World, 2020*.

¹⁰³ United Nations, *Global Humanitarian Response Plan: COVID-19*, https://www.unocha.org/sites/unocha/files/GHRP_ProgressReport_22FEB.pdf

¹⁰⁴ United Nations, *Debt and COVID-19: A Global Response in Solidarity*, 17 April 2020, p.5.

¹⁰⁵ <https://www.worldbank.org/en/region/afr/overview>

¹⁰⁶ OECD, *Global Outlook on Financing for Sustainable Development 2021*, p.18.

¹⁰⁷ ILO, *ILO Monitor: COVID-19 and the World of Work, Seventh Edition, January 2021*.

¹⁰⁸ OECD, *Global Outlook*, p.15.

¹⁰⁹ UNCTAD, *The Coronavirus Shock*, 9 April 2020.

¹¹⁰ United Nations, *Shared Responsibility, Global Solidarity: Responding to the Socio-Economic Impacts of COVID-19, March 2020*, p.8.

¹¹¹ United Nations, *Financing for Sustainable Development Report 2020*, pp.7, 129.

¹¹² *Ibid.*, p.XVII.

GNI of DAC countries,¹¹³ which in percentile was even lower than 2018 and 2017, and less than half of the committed level of 0.70% of GNI under Target 17.2.

60. Prior to the pandemic, the annual unmet SDG financial needs already amounted to \$2.5 trillion.¹¹⁴ Combined with a further reduction of \$700 billion estimated in 2020 and the increased need of financing due to the pandemic of \$1 trillion, the total SDG financing gap in developing countries for 2020 is estimated to have increased by 70%.¹¹⁵

61. Unfortunately, at a time when international cooperation and global solidarity is most needed, there has been an abject failure of the duty to cooperate by States across almost all MoI. Targets related to financing have rapidly decelerated. At the same time, developing and least-developed countries have been denied opportunities for mobilizing necessary resources. Repeated calls by the Secretary-General and human rights special procedures for unprecedented debt-relief to create fiscal space for countries as part of immediate measures have proven unsuccessful.¹¹⁶ Instead, countries have mostly been offered either temporary debt moratorium on limited bilateral and multilateral loans or additional concessional financing. While the former retains the debt itself while accumulating interest with time, the latter is by design debt-augmenting. In addition, conditionalities on new multilateral loans have required austerity measures and reduction on social spending, at a time when additional investment in health and education is most urgent.¹¹⁷ Similarly, calls for at least a temporary suspension of sanctions on countries have gone unheeded.¹¹⁸ These measures represent a denial of the policy space needed by States to recover from the pandemic and realize their SDGs, an essential MoI under Target 17.15.

62. Failure of the duty to cooperate has been most conspicuous in “vaccine nationalism” demonstrated by many rich countries thereby impairing the realization of equitable access to COVID-19 vaccines globally, an objective inherent to Target 3.b. By the end of January 2021, of the 12.5 billion doses that the main vaccine producers had pledged to produce in 2021, 6.4 billion had already been pre-ordered, mostly by wealthy countries.¹¹⁹ By 25 February 2021, just ten countries had administered more than 75% of all COVID-19 vaccines, while 130 countries had not yet received a single dose.¹²⁰ Some wealthy countries have attempted to hoard vaccines, having “purchased doses to vaccinate their entire populations multiple times over by the end of 2021 if all the candidate vaccines in clinical trials are given regulatory approval”.¹²¹ Estimates indicate that for poorer economies, mass

¹¹³ <https://www.oecd.org/dac/financing-sustainable-development/development-finance-data/ODA-2019-detailed-summary.pdf>.

¹¹⁴ OECD, Global Outlook, p.15.

¹¹⁵ Ibid.

¹¹⁶ UN Rights Expert Urges Governments to Save Lives By Lifting All Economic Sanctions Amid COVID-19 Pandemic, 3 April 2020, www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25769&LangID=E; US Must Lift Its Cuba Embargo To Save Lives Amid COVID-19 Crisis, Say UN Experts, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25848&LangID=E; Obiora Okafor, Solidarity Key to Post COVID-19 Response, 28 April 2020, www.openglobalrights.org/solidarity-key-to-post-covid-19-response/?lang=English.

¹¹⁷ <https://twn.my/title2/finance/2020/fi201004.htm>

¹¹⁸ UN Experts: Sanctions proving deadly during COVID pandemic, humanitarian exemptions not working, 7 August 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26155&LangID=E>

¹¹⁹ The Economist Intelligence Unit Limited, Coronavirus vaccines: expect delays: Q1 global forecast 2021, <https://www.eiu.com/n/campaigns/q1-global-forecast-2021/>.

¹²⁰ Amnesty International, G7 Countries are Shooting Themselves in the Foot by Failing to Tackle Global Vaccine Access, <https://www.amnesty.org/en/latest/news/2021/02/g7-leaders-are-shooting-themselves-in-the-foot-by-failing-to-tackle-global-vaccine-access/>

¹²¹ United Nations, Human Rights and Access to COVID-19 Vaccines, 17 December 2020, p.2.

immunisation will take until 2024, if it happens at all.¹²² As the EMRTD and other experts have previously noted, such vaccine nationalism is fuelling a global vaccine-divide that is short-sighted and counterproductive.¹²³ Recovery from the pandemic is impossible unless it ends for everyone. New mutating forms of the virus that may emerge in largely unvaccinated populations can pose a threat to everyone, including those previously vaccinated.

63. Amidst these practices, efforts to formally declare and operationalize COVID-19 vaccines as a global public good have not met with success. Proposals by many developing countries at the WTO seeking temporary waiver of selected intellectual property rights guarantees under the Agreement on Trade Related Aspects of Intellectual Property Rights have been severely opposed by developed countries. The EMRTD has previously urged WTO members to agree on the necessary waivers in compliance with their duty to cooperate and realize the RTD.¹²⁴

64. At the same time, the WHO's COVAX facility attempting to provide equitable vaccine access to all countries has been directly undermined since delays in the production for and delivery to richer countries have pushed back delivery dates for poorer nations. Similarly, the WHO's COVID-19 Technology Access Pool (C-TAP) launched in May 2020 has not been endorsed by any of the G7 countries or the European Union and has not received any contributions since it was set up.¹²⁵

65. Pervasive failure by States to discharge their duty of international cooperation has severely dented the global recovery from the pandemic and mobilization of the MoI necessary to realize the SDGs. These failures have only reinforced and heightened the importance of operationalizing the RTD during and in the aftermath of the pandemic. Calls for global solidarity and shared responsibility can only materialize if actions by States are underpinned by the duty of international cooperation.

G. Conclusions and Recommendations

66. Despite reaffirmation of the RTD and reassertion of its importance in numerous resolutions, declarations and agendas, its operationalization has been entirely lacking, especially at the international level. There is an urgent need to move beyond rhetoric and strive for greater acceptance, operationalization, and realization of the RTD across all three levels of obligations of States. States must pay full attention to their collective obligations to realize the RTD in global and regional partnerships, and to their individual obligations to not impair or nullify the realization of the right of those not strictly within their jurisdiction. The EMRTD strongly cautions against interpreting obligations of States to realize the RTD as directed only towards those within their own jurisdictions.

67. The RTD is vital for the full realization of the 2030 Agenda for Sustainable Development and should be central to its implementation. In particular, the SDGs can be realized only through a credible, effective and universal commitment to the means of implementation based on the normative framework of the RTD, especially the duty of international cooperation. The deceleration in many targets of the 2030 Agenda even prior to the COVID-19 pandemic is attributable to the failure of States to discharge their duty to cooperate in creating the enabling environment for realizing the SDGs.

¹²² The Economist Intelligence Unit Limited, Coronavirus vaccines: expect delays.

¹²³ COVID-19: UN experts urge WTO cooperation on vaccines to protect global public health, 1 March 2021, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26817&LangID=E>

¹²⁴ Ibid.

¹²⁵ Amnesty International, G7 Countries are Shooting Themselves in the Foot.

Operationalizing the RTD for mobilizing the means of implementation is indispensable to ensure course-correction.

68. The COVID-19 pandemic has exposed existing fault lines in global solidarity and international cooperation and has accelerated the derailment of the 2030 Agenda. There has never been a more urgent need for operationalizing the RTD to mobilize the means of implementation through fulfillment by States of their duty to cooperate.

69. The EMRTD makes the following recommendations:

(a) The means of implementation of the SDGs must be mobilized based on the normative framework of the RTD, including the duty to cooperate, across all stages of planning, programming, implementation, monitoring and follow-up, in compliance with the general principles outlined in Parts II and III of this study.

(b) In operationalizing the RTD, States should identify their national priorities, set targets and adopt appropriate policies for implementing the SDGs, including through periodic reviews at the national level. Identification of the necessary means of implementation should be based on this process. Other States and international organizations must respect the policy/governance space of each State in doing so. In determining national priorities and targets, States must guarantee the right to participate in and contribute to development to the right-holders, including through multi-stakeholder consultations, and where applicable, consent.

(c) As national priorities and targets are set, States must identify obstacles to their realization emanating not only from the national level but also from the international level. Identification of these obstacles is an indispensable process for identifying and mobilizing the necessary means of implementation.

(d) States must discharge their duty to seek international cooperation to mobilize the necessary means of implementation in line with their self-determined priorities and targets, especially when they find themselves unable to realize such targets without support or where obstacles emanate from the international levels. This duty is particularly important for those means of implementation that may be triggered upon specific request.

(e) Especially with respect to the means of implementation targets based on international cooperation, the RTD should be operationalized across all stages of development cooperation, including planning, programming, implementation, monitoring, follow-up and review. In compliance with the duty to cooperate, development cooperation partners, whether States, international organizations, or their agencies, should refrain from impairing or nullifying the RTD of recipients.

(f) Conceptual frameworks of Human Rights-Based Approach to Development adopted by development cooperation partners, whether States, international organizations, or their agencies, must be recalibrated, where not done, to be firmly based on the normative framework of the RTD. In applying HRBA to projects for implementation of the SDGs, analysis must not only involve obstacles to realization of human rights at the national levels, but also those emanating from the international levels. As HRBA frameworks seek to ensure that recipients respect human rights while implementing development projects, they must also ensure that development cooperation partners do the same when providing cooperation, especially on the means of implementation of the SDGs.

(g) States must, individually and jointly, conduct prior and ongoing assessment of actual and potential risks and impacts of their laws, policies, and practices at the national and international levels, as well as of the conduct of

legal persons which they are in a position to regulate, including businesses, to ensure compliance with the RTD in realizing the SDGs. Such assessments must include the impacts of national action and cooperation practices on human rights, including the RTD, of persons and peoples not strictly within their jurisdiction. Member States must institute mandatory HRIAs, especially in those international organizations or their agencies that play a direct role in mobilizing the means of implementation.

(h) International organizations must refrain from conduct that aids, assists, directs, controls or coerces, with knowledge of the circumstances of the act, a State or another international organization to breach that State's or that other international organization's obligations with regard to the RTD. International organizations with a role in mobilizing the means of implementation, including the World Trade Organization and the United Nations and its specialized agencies, especially the Bretton Woods institutions, must operationalize the RTD in their policies and practices.

(i) States must ensure that periodic evaluations of the global indicators, especially for the means of implementation targets, result in appropriate revisions to measure both national and international action.

(j) States conducting voluntary national reviews in compliance with the 2030 Agenda must ensure that obstacles to mobilization of the means of implementation that emanate from failure of States to discharge their duty of international cooperation individually or collectively are identified and reported.

(k) States must accelerate the operationalization of the RTD in mobilizing the means of implementation of the SDGs through international cooperation, global solidarity and shared responsibility, for responding to and recovering from the COVID-19 pandemic. In particular, States must operationalize COVID-19 vaccines as a global public good, refrain from vaccine nationalism to ensure equitable access to vaccines to all persons and peoples everywhere, strengthen the WHO's COVAX facility and C-TAP mechanism, and agree upon the necessary waivers to the TRIPS agreement. In compliance with their duty to cooperate, States should also take individual and collective measures, as necessary, to eliminate fiscal obstacles for States to respond to and recover from the COVID-19 pandemic. Appropriate measures include debt relief, withdrawal of unilateral coercive measures or sanctions against States or at least a temporary suspension, timely and complete fulfilment of ODA and Aid-for Trade commitments, and provision of other bilateral and multilateral financial support while respecting the policy/governance space of recipient States.

70. The EMRTD commits itself to working closely with all stakeholders in providing expert advice and guidance on operationalizing the RTD in implementing the SDGs, especially through mobilization of their means of implementation.