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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### Right to development

#### Report of the Special Rapporteur on the right to development

##### *Summary*

The present report of the Special Rapporteur on the right to development, Saad Alfaragi, is hereby submitted to the Human Rights Council pursuant to Council resolution 33/14. In the report, the Special Rapporteur presents guidelines and recommendations on the practical implementation of the right to development that arise from regional consultations on that topic that were held in 2018 and 2019 pursuant to Council resolution 36/9. Particular attention is placed on meaningful participation in setting development priorities and enjoying development benefits, methods of mobilizing resources for development that are inclusive and sustainable, monitoring and evaluation of development policies, and measures for accountability when rights are infringed. The report also contains a summary of the activities carried out by the Special Rapporteur since September 2018.



## **I. Introduction**

1. The present report, submitted pursuant to Human Rights Council resolution 33/14, outlines the activities of the Special Rapporteur on the right to development since September 2018. It also contains guidelines and recommendations on the practical implementation of the right to development that arise from regional consultations convened by the Special Rapporteur in 2018 and 2019 aimed at gathering good practices and sharing experiences in that regard. Taking the Declaration on the Right to Development as a baseline, the Special Rapporteur provides practical examples, key principles and recommendations for fulfilling the right to development. Particular aspects of implementation are examined and observations are made regarding participation, mobilizing resources, monitoring and evaluation and ensuring accountability.

## **II. Activities of the Special Rapporteur**

### **A. General activities**

2. Since the beginning of his mandate, the Special Rapporteur has focused on developing a specific methodology for the conduct of country visits to assess the implementation of the right to development. He has sent requests to visit 20 countries and is pleased that most of those requests have received a positive response. The Special Rapporteur conducted his first country visit, to Cabo Verde, from 12 to 21 November 2018. The main objective of the visit was to assess progress made in the right to development in Cabo Verde and to identify remaining challenges with a view to formulating recommendations to the Government and other stakeholders working towards implementing the Sustainable Development Goals. The Special Rapporteur expresses his gratitude to the Government of Cabo Verde for the excellent cooperation provided during the visit. A report on the visit will be submitted, as an addendum to the present report, to the Human Rights Council at its forty-second session. The Special Rapporteur will conduct his second country visit, to Switzerland, from 23 September to 2 October 2019, and is planning to conduct another country visit, to Chile, at the end of 2019. He thanks both Governments for their invitations. The reports on those country visits will be submitted to the Council at its forty-fifth session, in 2020.

3. In its resolution 33/14, the Human Rights Council requested the Special Rapporteur to contribute to the work of the Working Group on the Right to Development (established by the Commission on Human Rights in its resolution 1998/72) with a view to supporting the accomplishment of its overall mandate, taking into account, inter alia, the deliberations and recommendations of the Working Group, while avoiding any duplication. Between 29 April and 3 May 2019, the Special Rapporteur participated in the twentieth session of the Working Group. On 29 April 2019, he held an interactive dialogue with delegates attending the session and provided an overview of his mandate and the work he had undertaken.

4. In September 2018, the Human Rights Council adopted resolution 39/9, in which it requested the Special Rapporteur to participate in relevant international dialogues and policy forums with a view to enhancing the integration of the right to development into those dialogues and forums. To that end, the Special Rapporteur participated in the Second High-level United Nations Conference on South-South Cooperation, held in Buenos Aires from 20 to 22 March 2019. There, he shared the conclusions contained in his 2018 report to the General Assembly on the benefits of applying a right-to-development approach to South-South cooperation (A/73/271). On 23 April 2019, the Special Rapporteur participated in a thematic debate on the role of human rights in promoting good governance, held during the fifteenth regular session of the Independent Permanent Human Rights Commission of the Organization of Islamic Cooperation in Jeddah, Saudi Arabia. On that occasion, he discussed the links between good governance and the principles of the right to development. On 24 April 2019, the Special Rapporteur participated in an interactive dialogue with delegates attending the session and updated them on his work as

mandate holder. On 14 June 2019, the Special Rapporteur participated in an expert round table held by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on human rights principles and guidelines for the repatriation of stolen assets. In addition, the Special Rapporteur will participate in the 2019 session of the high-level political forum on sustainable development, speaking as a panellist during a thematic review on the perspectives of least developed countries and landlocked developing countries on 10 July. On 11 July, he will hold a side event focused on highlighting measures put in place by States to involve all relevant stakeholders, including groups in situations of vulnerability, in the process of gathering data and drafting voluntary national reports.

## **B. Regional consultations**

5. In September 2017, the Human Rights Council adopted resolution 36/9, in which it requested the Special Rapporteur to hold regional consultations on the implementation of the right to development. In light of that request, the Special Rapporteur convened a series of regional consultations in 2018 and 2019 that sought to identify good practices in designing, implementing, monitoring and assessing policies and programmes that contribute to the realization of the right to development. The Special Rapporteur invited all States to participate, according to their United Nations regional group, in the consultations. Specifically, the Special Rapporteur held a consultation for African States and stakeholders in Addis Ababa from 27 to 29 March 2018; a consultation for Western European and other States and Eastern European States and stakeholders in Geneva on 11 and 12 June 2018; a consultation for Latin American and Caribbean States and stakeholders in Panama City on 11 and 12 October 2018; and a consultation for Asia-Pacific States and stakeholders in Bangkok on 12 and 13 December 2018.

6. The consultations brought together representatives of Member States from each region, as well as representatives of United Nations agencies, intergovernmental organizations, academia, civil society and the private sector. On 10 and 11 April 2019, the Special Rapporteur convened a final expert meeting in Dakar at which participants sought to reflect on all the contributions made during the prior consultations and to identify universal recommendations. In May 2019, the Special Rapporteur shared the preliminary recommendations that had emerged from the consultations with those who had participated in them, including all States, for additional feedback. The outcome of the consultations is a set of practical guidelines and recommendations that can serve as a tool in designing, monitoring and assessing the structures, processes and outcomes of human rights-motivated development policies. Additional information on the regional consultation process, including agendas, contributions and outcomes, is available online.<sup>1</sup>

## **III. Guidelines on the practical implementation of the right to development**

### **A. General principles**

7. The regional consultations have reaffirmed the notion – expressed in Human Rights Council resolution 33/14 – that implementation of the right to development involves adherence to international human rights principles, including those related to non-discrimination and fundamental freedoms, and to internationally agreed frameworks on climate change, financing for development and sustainable development. In addition, just as the Declaration on the Right to Development recognizes that the human person is the central subject of development, these guidelines emphasize that fulfilling the right to development must involve empowering persons, both individually and collectively, to

<sup>1</sup> See [www.ohchr.org/EN/Issues/Development/SRDevelopment/Pages/RegionalConsultation.aspx](http://www.ohchr.org/EN/Issues/Development/SRDevelopment/Pages/RegionalConsultation.aspx).

decide their own development priorities and their preferred methods of reaching those priorities.

8. With that foundational principle in mind, the present guidelines highlight the importance of participation as a basis for assessing the interests of rights holders and ensuring that those interests are met. Ensuring participation for the sake of realizing the right to development involves more than merely consulting individuals and communities; it implies meaningfully placing rights holders at the centre of decision-making affecting their own economic, social, cultural and political development.

9. Thus, the view that development is only an economic outcome is incomplete since it is possible for the development priorities of a population to remain unfulfilled despite economic growth. In fact, and as the Special Rapporteur has already noted, growth without attendant redistributive policies has been linked to inequality (A/HRC/39/51, para. 12). The regional consultations have also demonstrated that development should not be conceived as merely a sequential process whereby economic growth is sought to finance social policies. Rather, the right to development conceptualizes development as a holistic process requiring the input and involvement of diverse stakeholders, including States, international organizations, civil society, academia and the private sector, to achieve sustainable results. Good governance, a just and transparent rule of law and stable institutions that are transparent, responsive and accountable are necessary preconditions.

10. As the existence of peace or conflict is also relevant (Declaration on the Right to Development, art. 7), it is recommended that the right to development be integrated into discussions on disarmament and post-conflict reconstruction. Moreover, given the impact that the international environment has on realizing the right to development (arts. 3–4), it is important that United Nations agencies, international organizations and international financial institutions mainstream the right-to-development approach in their work. Rights holders should also have ownership over, and benefit equally from, initiatives aimed at achieving the 2030 Agenda for Sustainable Development. Promoting a right-to-development approach to the Sustainable Development Goals would ensure that efforts taken to achieve the Goals are equitable, participatory, people-centred and non-discriminatory.

11. Understanding that individuals and communities must drive the processes for their own development has implications for how development is financed. When viewed through the lens of the right to development, financing for development is not a concept based on charity, nor on the giving of resources in a manner guided by the motivations and visions of the donor. Rather, truly implementing the right to development of individuals and communities means financing the development priorities expressed by the recipients. Some international instruments and policy frameworks, notably the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, already incorporate this approach. The present guidelines seek to reinforce them.

12. Likewise, the monitoring and evaluation of national and international policies should be done in a specific way when it is done to assess whether the right to development has been or is being fulfilled. Under a right-to-development approach, outcomes and methodologies are assessed not only against universal measurements but also against context-specific ones, that is, keeping in mind whether the policies are effectively improving the well-being of “the human person” identified in the Declaration on the Right to Development. Furthermore, in cases where well-being is harmed, avenues of accountability should rectify those harms and any obstacles to accountability must be removed.

13. While in the following paragraphs elements of fulfilling the right to development are grouped under particular themes, the elements are, like all facets of the right to development, interdependent and indivisible (art. 9).

## **B. Promoting active, meaningful and informed participation**

14. In the Declaration on the Right to Development it is indicated that development policies should aim 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 (art. 2). This implies a twofold set of rights and duties: first, the requirement to involve all members of the population as participants in formulating development policies and, second, the requirement that the policies benefit all people equally.

15. The present guidelines emphasize the principle that affected communities must have ownership over development agendas, budgets and processes. The recommendations address the need to ensure that all segments of society benefit from development; they also highlight visible and unseen barriers to participation, such as a lack of legal identity, the existence of violence or social restrictions.

16. In addition, the guidelines clarify that participation can only be effective if it is institutionalized and continuous. An example given from Latin America and the Caribbean region is the inclusion of a permanent “empty chair” in government bodies that could be occupied by civil society actors, thus enabling them to participate regularly in decision-making. Another example, from an Eastern European country, is the inclusion of key affected communities – along with representatives of governmental, non-governmental and private organizations – in a nationwide mechanism coordinating the response to HIV/AIDS, tuberculosis and malaria in that country.

17. The practical recommendations set out below aim at enabling all people to meaningfully participate in, and benefit from, development.

### **National level**

18. States should design and implement development projects after holding meaningful consultations to identify the development priorities of the communities in a project area and benefits-sharing arrangements that would be suitable for those affected. Specifically:

(a) Consultation processes should be institutionalized rather than ad hoc, and any potential conflicts of interest among those convening the consultations should be addressed in order to ensure that the consultations truly reflect the viewpoints of affected stakeholders (this is particularly important when consultations are convened by a State or by private actors that would benefit directly from the proposed project);

(b) Those convening a consultation should transparently inform the consulted communities about the potential impacts of the decisions to be made, and the priorities of those affected must be taken into account.

19. States should institute public planning processes that are participatory and include monitoring mechanisms. Whenever possible, States should decentralize participatory planning processes, thus enabling local communities to pursue development initiatives that reflect their interests and to draw more domestic resources.

20. Governments should implement coherent national policies that are in line with local development needs in order to foster synergies and correlation among institutions.

21. States should ensure that budgeting is participatory and people-centred rather than a purely economic exercise. Governments should be open to including civil society in economic planning and reforms. In that regard, participatory budgeting should be envisaged at the local level.

22. Governments at all levels should mobilize and empower constituencies to advocate for their own development agendas. Governments should institutionalize civil society participation as part of development planning processes. This includes planning in advance and accounting for civil society participation in data-gathering and assessment exercises.

23. States should invest in building the capacity of civil society to play an active and meaningful role in development processes. Civil society should be involved formally in policy design, implementation and evaluation. Doing so would mobilize existing local

expertise and foster a sense of ownership in the process of development while also producing less costly outputs. Civil society participation especially requires freedom of expression and access to information.

24. Governments and international cooperation partners should establish participatory and effective decision-making mechanisms. These mechanisms should involve groups affected by particular development policies, programmes and projects.

25. States have a duty to ensure that non-State actors, including corporations they host or incorporate, as well as parent or controlling companies, conduct their activities in line with international human rights standards and in line with the clearly expressed priorities of affected and beneficiary communities. Governments should also enact legislation clearly setting out the parameters of public participation in public-private partnership schemes.

26. To avoid perpetuating existing inequalities, when undertaking development programmes States should pay close attention to intersecting grounds of discrimination, including discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, nationality, social origin, property, birth, disability or other status.

27. Governments should promote channels of participation on a continuous basis. There should be opportunities for the equal participation of those who are more disadvantaged, including people with disabilities, women, children and youth, minorities, indigenous peoples, Afrodescendants and members of other disempowered or marginalized groups. States should provide opportunities for communities to “opt in” in cases where decisions are being made that affect them but where they have not been affirmatively identified as an affected population. Specifically:

(a) States receiving migrants should see these rights holders as agents of development rather than addressing migration as a security issue;

(b) States should ensure that all people, including members of minorities, have legal identity and equal access to personal identification documents as the absence of such documentation prevents participation and risks the accumulation of rights violations (e.g. in terms of access to health care, education, housing, employment, social protection and voting);

(c) States should mobilize youth as agents of change and development.

28. Governments should promote quality representation of women and marginalized populations in decision-making at the national level, including by increasing the representation of members of such groups in public and private institutions. Often women and marginalized populations are seen as the beneficiaries of development programmes; rarely are they among the decision makers or those consulted.

29. As part of their gender-oriented planning, States should take into consideration the fact that women are not a homogeneous group and therefore pay particular attention to women who face multiple vulnerabilities and are harder to reach.

30. States should integrate human rights and the right to development into their national curricula.

31. States should promote human rights education that emphasizes gender-sensitivity and non-discrimination at all levels to allow people to make informed decisions and participate in political, economic, social and cultural development.

32. States should establish mechanisms that provide easy access to information related to development policies and processes and enact legislation guaranteeing access to information, including information about project financing, including co-financing, and about the Sustainable Development Goals.

33. Governments should define reliable and up-to-date information schemes when development plans are being designed. Government institutions should devote adequate resources to information-sharing and be mandated to produce and disclose information in a timely fashion. Legal remedies should be provided to ensure that access to information is not denied.

34. States and other actors should employ technology and digital networks, as appropriate, as vehicles for increased participation, bearing in mind that participation cannot be facilitated through technology alone given that access to technology is not uniform.

35. National human rights institutions should engage in public education to empower communities to claim their rights.

36. National human rights institutions should, within the scope of their mandates, act as platforms for participation, including by facilitating the gathering and sharing of information about development programmes.

37. States should respect the right of indigenous peoples to self-determination to fulfil the right to development. Indigenous peoples should be empowered to develop their own development priorities and provide their free, prior and informed consent as guaranteed by the United Nations Declaration on the Rights of Indigenous Peoples and the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization.

38. States should guarantee access to information and meaningful participation for all stakeholders in decision-making on the extraction of natural resources.

39. States should understand participation as a continuum that involves consultation, participation, monitoring and evaluation, and access to justice. These elements should be the components of any integrated participation scheme.

#### **Regional and international levels**

40. States and intergovernmental organizations should promote and strengthen civil society awareness-raising efforts related to the right to development at the regional level; develop civil society networks across their region to share good practices and successes; and create bridges between various civil society actors working in the fields of development, human rights, peace and security.

41. States should guarantee that all stakeholders are meaningfully included in the process of negotiating international agreements, including international trade agreements. Doing so requires building the capacity of States and non-State representatives engaged in negotiation processes. Information on upcoming initiatives should be made available at the national level at an early stage so that civil society and concerned communities can participate in multilateral negotiation processes.

42. States should design development assistance programmes with the aim of furthering the development priorities of countries that receive bilateral aid, and ensure that the development priorities of recipient countries have been set following meaningful participation processes within the recipient State.

43. Governments should widen the civic space to allow the democratic and meaningful participation of all stakeholders in multilateral processes, including those related to climate change.

44. Global and regional intergovernmental organizations should centralize the concept of stakeholder participation in their strategic planning on development processes.

#### **Non-State actors**

45. All actors, including institutions, businesses and investors, who produce information about development projects should provide that information transparently. Specifically:

(a) Information about development projects should be shared with the affected communities as a matter of priority, in the language of those communities and in accessible formats. The information might need to be translated into local and indigenous languages;

(b) Information should be shared in a format that is accessible to target populations (for example, technical information should be conveyed using language understood by laypersons; moreover, information should be made available online or be provided in conjunction with training to enable communities to access the information by telephone).

46. Civil society should play a greater role in informing populations about the right to development and what it means for their sustainable development.
47. Regional civil society networks should integrate the right to development into their human rights advocacy and seek to mainstream it at the local level.
48. Civil society should be mobilized and international solidarity networks should be engaged so that they can adopt unified positions in international negotiations. Building stronger networks of civil society and national human rights organizations would enable stakeholders to push forward common agendas at the regional and international levels.
49. Human rights advocates should emphasize the relationship between achieving the Sustainable Development Goals and meeting core human rights commitments. The impetus provided by the Goals should be used to strengthen cooperation between the development sector and the human rights community.
50. Development banks should conduct meaningful consultations to ensure that the development priorities of the intended beneficiaries are furthered by the projects they finance. The banks should also guarantee access to information about projects they have financed before the projects are authorized.
51. Development banks and other stakeholders involved in project management and finance should create mechanisms for holding regional and international consultations in respect of projects that will have cross-border impacts.

### **C. Financing for development and mobilizing existing resources**

52. While the Declaration on the Right to Development does not expressly include a list of the financial priorities that would serve to fulfil the right to development, it does nevertheless outline the principles that should guide policy decisions at the national and international levels. For example, in the Declaration it is stated that communities should have full sovereignty over their natural wealth and resources (art. 1) and that the benefits of development should be fairly distributed (art. 2). It calls on States to take all necessary measures for the realization of the right to development and to ensure equality of opportunity for all in their access to basic resources, education, health, food, housing and employment (art. 8). In addition, at the international level, the Declaration places a duty on States to cooperate with each other, both to promote more rapid development of developing countries and to remove obstacles to comprehensive development (arts. 3 (3) and 4 (2)).
53. The present guidelines therefore address the principle that development financing should be sustainable and carried out in the interests of the intended beneficiaries. Where community resources must be utilized for broader development goals, active, meaningful and informed participation is a means through which individuals and collectives can agree on the sharing of benefits. An example of good practice in this regard comes from a country in the Asia-Pacific region, where a community was at risk of relocation due to a flood-way project proposed in the capital city. In that case, through a civil society-led consultation, community members outlined their own resettlement plan. In particular, they agreed to resettle only if they could stay close to the city because of the benefits that such proximity brought the community. In the end, the community was able to use compensation given by the Government to obtain housing on land that had previously been owned by the Government. Most importantly, however, the flood-way project was implemented only after the priorities of the community had been actively sought out. This is important because the community would be required to forfeit its own resources for the project to go forward.
54. In light of the potential harms of States' and international organizations' reliance on austerity programmes<sup>2</sup> and public-private partnerships<sup>3</sup> for resource generation, the present

<sup>2</sup> See, e.g., Maria José Romero, "What lies beneath? A critical assessment of PPPs and their impact on sustainable development" (European Network on Debt and Development, Brussels, 2015).

<sup>3</sup> See, e.g., E/2013/82 and A/HRC/37/54.



guidelines recommend alternative methods of mobilizing national and international resources. Moreover, they also identify non-financial resources to be mobilized.

55. The practical recommendations set out below relate to mobilizing resources for development programmes that are inclusive and sustainable.

### **National level**

56. States should implement effective economic and social reforms to ensure that the benefits of growth are equitably distributed to all segments of the population and to reduce inequalities. Communities whose resources are taken or put at risk by national or regional development projects must be adequately compensated.

57. States should put in place gender equality and social protection policies. Governments should pay particular attention to unpaid care work, devising economic policies and national accounting methods that enable the redistribution of care work and address the disproportionate impact that this kind of work has on women's development. States should recognize and formalize care work by remunerating those who take on the caring function and providing proper training in that regard.

58. States should promote human rights-driven budgeting, including budgeting that specifically promotes gender equality and other forms of equality.

59. States should move away from "financializing" social policies, that is, turning social services into profit-generating opportunities. There is a need to reverse the trend of privatizing social services, such as health care and education, which are the primary responsibility of States under international human rights law.

60. States should guarantee social protection floors and welfare, even in times of economic and financial crisis, in line with the Social Protection Floors Recommendation, 2012 (No. 202), of the International Labour Organization.

61. States should guarantee that communities are meaningfully involved in setting the terms for – and sharing the benefits of – all development ventures, including public-private partnerships. They should ensure that civil society plays a role in measuring the success of public-private partnerships, evaluating partnerships based on services delivered to the public and ensuring conformity with existing norms and obligations.

62. Governments should conduct human rights impact assessments before taking decisions about reducing public expenditure. States should avoid austerity measures and public spending choices that would reverse progress on universal social protection and delivery of public goods and services, undertaking such measures only when all alternative resourcing options have been exhausted.

63. States should prioritize the use of domestic resources for development over the servicing of international debt.

64. Governments should mobilize domestic resources for development by: retaining State resources, including land; strengthening tax collection capabilities; implementing fairer, more transparent and progressive tax policies;<sup>4</sup> countering corruption; asking the private sector to pay its fair share; and ending illicit financial flows that direct resources out of countries.

65. In order to enhance accountability in the private sector, tax authorities should publish the taxation rates and revenues generated by major economic actors. Fiscal authorities should have a legal obligation to monitor the taxation of major economic operators and publish accessible information in that regard.

66. States should provide transparent access to information about public financing, tax collection and oversight processes.

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<sup>4</sup> OHCHR, "The right to development and taxation".

67. States should diversify sources of revenue to ensure sustainability, thereby avoiding the negative consequences of economic shocks and discouraging corruption. Natural resource extraction should not be the only engine of development.

68. States should develop intentional development policies to which they remain committed over time, including: (a) a specific strategy about the sectors in which the State would invest and the sequencing of that investment; (b) a conscious policy commitment to social and economic inclusiveness, either through social welfare programmes or investment in public services like housing, education, social protection and health care; and (c) an open policy space where policies could be evaluated and revised as needed.

69. States should promote social innovation and new endeavours aimed at meeting social needs. Where economic activities that promote social welfare and solidarity exist, Governments should not hamper such activities and provide support.

70. States should not embark on broad economic liberalization measures without first assessing the human rights impact of the policies to be undertaken, since such measures have the potential to entrench social inequalities and undermine the regulatory capacity of States, in particular in relation to the enjoyment of social, cultural and economic rights.

71. Tax breaks and subsidies by States to businesses should be evaluated to assess whether they are achieving the goals of creating employment, providing living wages and good working conditions for the population.

72. States should not offer fiscal incentives to foreign investors and corporations without having first made an impact assessment evidencing that the benefits to their constituents outweigh losses in tax revenue and do not result in human rights infringement. States should seek to attract foreign investors that can fill domestic competence gaps and develop local businesses. Information on granting tax incentives to foreign corporations and the methodologies and outcomes of assessments should be publicly available.<sup>5</sup>

### **Regional and international levels**

73. States should shift from a donor-recipient paradigm to a genuine partnership with developing countries as envisaged in the Declaration on the Right to Development and in Goal 17 of the Sustainable Development Goals. States should base their development financing on the priorities of recipient partners and guarantee that beneficiary States have ownership of development projects carried out with this financing.

74. Governments and international organizations should not focus on development financing solely as a means to elicit economic returns. The debate on funding development should be recentred on States' obligations to promote development using the maximum resources available and seeking or providing international cooperation in that regard.

75. The European Union, as one of the major contributors to development cooperation, should continue to promote the establishment of social protection floors, which have proved to have positive impacts.

76. The Green Climate Fund should be directly accessible to States and community-based stakeholders. Specifically:

(a) States should review the rules regulating access to funds so that they are more inclusive and guarantee projects that are truly geared towards reducing emissions and promoting clean energy solutions;

(b) States that have contributed disproportionately to climate change should meet their corresponding financial commitments, in accordance with Principle 16 of the Rio Declaration on Environment and Development.

<sup>5</sup> The Committee on Economic Social and Cultural Rights has offered similar guidance regarding the potential negative impacts of business activities on economic, social and cultural rights. See the Committee's general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights.

77. States should promote the establishment of a multilateral financial monitoring mechanism.
78. States should promote the establishment of an international debt workout mechanism.
79. Developing countries should be better integrated into the global trading system. States should promote greater intraregional trade while ensuring that regional trade agreements are assessed for their human rights and environmental impacts.
80. States should increase their international cooperation in tax matters, for example by exchanging information about tax payments, publicizing tax rates and revenues generated by major economic actors and ensuring that financial intermediaries do not accept illicit assets.<sup>6</sup>
81. Governments should develop a global and a regional taxation architecture with a view to countering the race to the bottom fuelled by tax policies that are increasingly in favour of capital to the detriment of people's welfare.
82. States should cooperate to mobilize additional resources – including knowledge sharing, technical cooperation, capacity-building and technology transfers – in order to provide the means and facilities to foster comprehensive development.
83. States should counter adverse trends, such as the imposition of unilateral coercive measures, that negatively affect multilateral cooperation and create obstacles to development.
84. States should collectively disarm and redirect the resources resulting from such disarmament to economic and social development.
85. States should share promising practices in implementing participatory budgeting and its positive impacts on growth and development.
86. States should share good practices through South-South and triangular cooperation, informing the general population of the outcome of such exchanges. Given the diversity of, and the unequal relationships between, countries in the South, a rights-based approach to such cooperation is required (see A/73/271). States should also promote cooperation with non-State actors.
87. North-South cooperation should be strengthened.

#### **United Nations entities and mechanisms**

88. Special procedure mandate holders and other international human rights experts should engage with the United Nations Conference on Trade and Development on macroeconomic conditions that impede the realization of the right to development.
89. Regional economic commissions should measure the productivity of assets in order to advise States so that they may ensure that bilateral agreements attract genuine investment.

#### **Non-State actors**

90. The private sector should promote the right to development by redirecting capital towards redistribution schemes.
91. Development banks and investors should not impose conditionalities on States that would require them to take actions, such as adjusting the tax infrastructure and imposing austerity measures, that would be detrimental to their own development.

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<sup>6</sup> The Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, has made extensive recommendations in that regard in a study examining the impact of tax-related illicit financial flows on human rights and the achievement of the Sustainable Development Goals (A/HRC/31/61).

## D. Monitoring and evaluation

92. The Declaration on the Right to Development provides that development should be carried out in a manner in which all human rights and fundamental freedoms can be fully realized (art. 1 (1)) and, as already mentioned in paragraph 7 above, it also recognizes that the human person is the central subject of development. In other words, development gains that do not benefit the human person fall short of fulfilling the right to development.

93. The present guidelines identify different methods of evaluating the impact of development programmes on human beings, such as through community monitoring, human rights impact assessments, national institutions and crowdsourcing. Incorporating constituents in the process of monitoring and evaluation increases legitimacy and ensures that programmes are carried out in accordance with rights holders' priorities. In one Latin American country, for example, the institutionalization of a civil society forum to work alongside its development bank had the effect of increasing transparency for as long as the forum was operational.<sup>7</sup> Most notably, access to information about the bank's projects was improved.

94. Furthermore, the guidelines recognize the need to expand the traditional ways of assessing policies, from relying primarily on quantitative outcomes, such as number of jobs created or the gross domestic product (GDP), to incorporating qualitative ones. An example of a good practice in this area came from a Western European country, where policymaking bodies are required to show they have assessed a policy's impact on equality in the country before instituting the policy. The findings of the assessment must be published and are subject to public scrutiny according to that State's national legislation.

95. The guidelines also acknowledge factors that hinder accurate assessments of development programmes and propose ways to overcome those shortcomings.

96. Accordingly, the recommendations set out below address ways of ensuring that development programmes are human rights-based and people-centred, both in their outcomes and their implementation.

### National level

97. States and international organizations should measure development by considering not only GDP but also by taking into account the impact of policies on well-being and the environment. Diverse and more precise measurements of inequality – not just income inequality – should be developed.

98. States should evaluate the quality of the outcome of development programmes.

99. States should identify methods to effectively collect data on the environmental impacts of development policies.

100. States should develop methodologies and parameters to measure development, including within the framework of the implementation of the Sustainable Development Goals, in a participatory manner with the involvement of civil society organizations, including academia, development practitioners, social workers and community leaders. Traditional and indigenous knowledge should be taken into consideration where appropriate.

101. States should make adequate efforts to measure the processes that have a bearing on the human rights of development policies.

102. In assessing progress towards achieving Goal 1 of the Sustainable Development Goals and its targets, States should examine the multidimensional<sup>8</sup> elements of poverty.

<sup>7</sup> The forum had begun as a civil society initiative. It was later integrated as a bank institution, but institutional support for the forum eventually waned.

<sup>8</sup> "Multidimensional poverty encompasses the various deprivations experienced by poor people in their daily lives – such as poor health, lack of education, inadequate living standards, disempowerment,

103. Governments should conduct human rights impact assessments<sup>9</sup> from the very beginning of a development project or policy formulation in order to inform the design or programming of that project or policy. The assessments should ensure that the concerns of affected communities are taken into account and should be repeated periodically in order to monitor change and evaluate progress. Specifically:

(a) States should only allow development projects to go ahead if it has been demonstrated that the human rights impact assessment conducted has been taken into account;

(b) Governments should specifically evaluate the right to development in their impact assessments in order to understand the broader picture of a project's or a policy's impact (for example, its effect on individuals, groups, nations and peoples; the impact of international dimensions of equality, the fair distribution of benefits and the impact on the environment; and the processes of participation, inclusiveness, non-discrimination, indivisibility of human rights and equality of opportunity) rather than solely the impact of the policy or project on a narrow subset of individual rights;

(c) States should transparently disclose the results of human rights impact assessments to the public;

(d) Communities that are consulted as part of a human rights impact assessment process should play a role in the implementation of the assessed project;

(e) Government officials should be trained to perform human rights impact assessments and to apply a right-to-development lens;

(f) Governments that have successfully implemented human rights impact assessments should share that knowledge with other Governments so that they can learn from prior practice.

104. Governments should conduct human rights impact assessments when planning and implementing austerity measures.<sup>10</sup> The practice of conducting human rights impact assessments, including in areas like trade and finance,<sup>11</sup> should be further developed.

105. States should promote research and development on evaluation processes; human rights principles should be mainstreamed into evaluation trainings.

106. States, individually and collectively, should develop the capacity of and provide support to communities and other actors in the establishment of monitoring and evaluation mechanisms. This will enable communities to conduct evaluations of development programmes and produce relevant independent reports.

107. Governments and international organizations should ensure that evaluations are a multi-stakeholder endeavour and that they are implemented before, during and after development programmes have been executed. States should ensure that the right to development is monitored at all levels of government, including by subnational government bodies.

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poor quality of work, the threat of violence, and living in areas that are environmentally hazardous, among others." See <https://ophi.org.uk/policy/multidimensional-poverty-index/>.

<sup>9</sup> A human rights impact assessment is an instrument for measuring the effects of a policy, piece of legislation, programme or project on human rights. World Bank, *Human Rights Impact Assessments: A Review of the Literature, Differences with Other Forms of Assessments and Relevance for Development* (February 2013), p. 1. The Guiding Principles on Business and Human Rights address the need to assess the human rights impacts of business activities as "human rights due diligence" (A/HRC/17/31, annex, principles 4 and 17–21).

<sup>10</sup> See the guiding principles on human rights impact assessments of economic reforms developed by the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights (A/HRC/40/57).

<sup>11</sup> See, e.g., the ex ante human rights impact assessment commissioned by the Economic Commission for Africa, the Friedrich-Ebert Stiftung Geneva office and OHCHR, *The Continental Free Trade Area (CFTA) in Africa: A Human Rights Perspective* (2017).

108. States should train authorities at all levels to conduct and respond to evaluations. States should make government officials aware of the fact that evaluations of development policies and programmes, including sectoral policies, will be carried out.

109. Governments should give consulted communities information on the outcomes of assessments and field research carried out to monitor and evaluate development programmes.

110. National councils for social and economic development (or equivalent institutions) should develop multi-stakeholder forums that facilitate the development of a national agenda for development that is fair and equitable. A national observatory of equality could be attached to these institutions to monitor implementation. In addition, provincial councils should be established to carry out similar work at the local level.

111. States should collect disaggregated data. Data disaggregation efforts need to draw on a human rights-based approach to data.<sup>12</sup> The aim of such an approach is to evaluate not only the outcomes of policies but also the structures and processes that lead to those outcomes. Specifically:

(a) In a human rights-based approach to data, the process of data collection should actively involve the community about whom the information is being gathered;

(b) Respondents should be able to self-select how they identify in terms of ethnicity, sexual orientation, gender identity and disability status;

(c) Data privacy should be maintained and balanced against the need for transparency;

(d) Data should be disaggregated to enable an assessment of how policies and programmes are affecting individuals and groups that have faced discrimination.

112. National statistical offices and national human rights institutions should collaborate to facilitate the operationalization of a human rights-based approach to data.

113. States should enhance the international cooperation provided for capacity-building activities aimed at improving data collection in developed and developing countries.

114. Civil society's capacity to gather disaggregated data should be enhanced and innovative approaches should be developed to bridge gaps in data collection. In that regard, civil society should work closely with national statistical institutes.

115. States should guarantee the existence of a civic space conducive to the gathering of reliable data, especially for assessing the true perceptions of communities.

116. States should ensure that women are equally represented in decision-making related to monitoring and evaluation, both at national and local levels. A gender-sensitive approach should be systematically integrated into evaluation processes.

117. States should empower targeted recipients of social programmes, including the poor, to conduct social audits of public sector departments and ministries responsible for delivering such programmes.

118. In their monitoring and evaluation policies, States should take into account groups that have been discriminated against or historically excluded, including women, ethnic and religious minorities or suppressed majorities, indigenous peoples, persons with disabilities, internally displaced persons, refugees and asylum seekers, deep rural communities, forest communities, nomadic communities, youth, those who may be unaccounted for including stateless peoples, people deprived of liberty and others. Specifically:

(a) Governments should undertake a mapping exercise, through the collection of disaggregated data, of those who are excluded along prohibited grounds of discrimination, while taking into consideration issues of intersectionality;

<sup>12</sup> OHCHR, "A human rights-based approach to data: leaving no one behind in the 2030 Agenda for Sustainable Development" (Geneva, 2018).

(b) States should give due attention to monitoring the structural obstacles faced by persons of African descent in many regions.

119. States should adopt mixed approaches to data collection in order to capitalize on existing resources. They could do so by using mass media and communication tools as resources for data collection and by building networks of opinion leaders (for example, traditional and religious leaders, including women leaders) who could gather information while ensuring the inclusion and active participation of disadvantaged groups.

120. States, individually and collectively, should use local capacities to conduct evaluations and should promote the expertise developed by civil society networks specialized in evaluation.

### **Regional and international levels**

121. States reporting on their commitments in relation to the Paris Agreement on Climate Change, the Sendai Framework for Disaster Risk Reduction 2015–2030, the Addis Ababa Action Agenda and the 2030 Agenda for Sustainable Development should expressly address how they have implemented the right to development.

122. Global and regional intergovernmental organizations should collaborate in their strategic planning to tackle issues related to the right to development.

123. States should exchange good practices on evaluating development policies and programmes. They should promote South-South cooperation on evaluation, including by reporting good practices in periodic reports and developing an online repository of promising practices.

124. States should conduct comprehensive and independent assessments of the environmental, social and human rights impacts of transboundary policies and projects to address the negative impacts that projects might have in multiple countries. The assessments should be embedded in the design of the policies or projects, with their costs budgeted in advance. The assessments should be either led by the communities concerned or have their full and effective participation or approval, and the outcomes of the assessments should be publicized.

125. With the technical assistance of international organizations, States should conduct systematic human rights impact assessments on trade agreements to avoid causing harm to the environment and human rights.

126. Environmental and social safeguards should be enforceable and States should have a role in setting such safeguards, gathering the necessary information and determining whether private enterprises and investment banks are complying with them. Given that most international financial institutions are public institutions, States should hold them accountable to regional and international legal standards.

127. Governments and international organizations funding development programmes should not impose conditionalities on beneficiary Governments since doing so could have adverse unintended effects on the population. This is particularly true when the conditionalities weaken human development policies. Rather, when seeking to initiate development programmes in countries where the government does not respect rights, funders should choose alternative implementing partners (for example, civil society).

### **United Nations entities and mechanisms**

128. Special procedures mandate holders and other international human rights experts should engage with emerging development banks in order to provide guidance and advice on how they can promote a rights-based approach to their activities, particularly as these financial institutions look to provide an alternative to the Bretton Woods model of development financing.

### **Non-State actors**

129. Development banks should respect environmental and social safeguards. They should not attempt to avoid them by financing projects through third entities. Specifically:

(a) Development banks should make their environmental and social safeguarding policies more accessible to ordinary people and they should adopt explicit human rights policies;

(b) The monitoring mechanisms of development banks should be more participatory and ensure direct contact with affected communities and impacted areas. They should go beyond mediation and incorporate the possibility of vetoing projects that are not endorsed by the affected communities.

130. Following adequate consultations with relevant civil society entities, recently established international financial institutions and development agencies should formulate and implement safeguarding policies that are in line with international human rights standards.

131. International financial institutions and banks should conduct systematic human rights impact assessments and monitor and evaluate their policies. In particular, human rights impact assessments should be conducted on austerity measures, structural adjustments, securities and trade and investment agreements. Specifically:

(a) International financial institutions should support and implement the guiding principles on human rights impact assessments of economic reforms developed by the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights human rights, particularly economic, social and cultural rights (A/HRC/40/57);

(b) Development banks should disseminate more information on the long-term impact of their projects, including the impact in countries where they operate.

132. Civil society and affected populations should make use of the existing monitoring mechanisms of the development banks, such as the Compliance Advisor Ombudsman of the International Finance Corporation and the Multilateral Investment Guarantee Agency (members of the World Bank Group) and the Independent Consultation and Investigation Mechanism of the Inter-American Development Bank. Banks should reform these mechanisms when they prove ineffective.

133. Communities themselves, with the engagement of civil society organizations and academic bodies, should complement the State's data-collection efforts. Civil society should seek additional resources for the collection of disaggregated data that would add to information drawn from official State sources, particularly in politically sensitive environments or on politically sensitive issues.

134. Stakeholders, including civil society organizations and other non-State actors, should be trained to conduct human rights assessments and to apply a right-to-development lens.

135. Regional civil society networks should weigh in on the development policies of newly established development banks in their respective regions.

## **E. Promoting accountability and access to remedy**

136. It is only possible to give effect to the right to development if there are adequate accountability mechanisms and remedies in cases of violations. The fact that both individuals and collectives are considered rights holders – and that States, with their links to relevant non-State actors and the international community, are considered duty bearers – means that there are several prospective avenues for seeking accountability.

137. Some of these avenues are set out in the present guidelines. They include national courts, administrative procedures, complaints mechanisms and national human rights institutions. The guidelines also identify international bodies that could complement national accountability mechanisms. For example, in its 2011 statement on the importance and relevance of the right to development (E/C.12/2011/2), the Committee on Economic, Social and Cultural Rights committed itself to monitoring the implementation of all the



rights protected by the International Covenant on Economic, Social and Cultural Rights that contribute to the realization of the right to development.

138. The present guidelines emphasize that available mechanisms should be reliable, prompt and guarantee remedy. In addition, proposals are made to address the practical obstacles individuals and communities face in seeking justice, such as the lack of legal standing to bring forward cases that would uphold the right to development, the lack of jurisdiction over such cases and the inaccessibility of accountability mechanisms due to their costliness or remoteness.

139. The practical recommendations set out below include measures that might provide accountability and effective remedy in circumstances where the right to development has been infringed.

### **National level**

140. States should adopt legal provisions making economic, social and cultural rights and the right to development justiciable. States should provide additional avenues through which to claim economic, social and cultural rights, including quasi-judicial mechanisms.

141. States should enact legislation that enables public interest litigation. Such litigation should ensure compliance not only with domestic laws but also with agreed international norms related to the right to development.

142. States should use the observations and recommendations of human rights mechanisms to enhance protection of the right to development, as well as of economic, social and cultural rights, through case law at the local and national levels.

143. States should make accountability mechanisms more visible and accessible, including to persons speaking minority languages and to persons with disabilities.

144. States should ensure that domestic judicial processes are transparent; they should make the outcomes of cases, including statistics on decisions taken, publicly available.

145. States should strengthen the legal standing of victims in judicial processes.

146. States should reverse legislation that precludes persons deprived of legal capacity from challenging this status and thereby having the standing to bring cases forward.

147. In order to achieve a number of the Sustainable Development Goals and related targets, States should adopt and implement comprehensive laws on equality, which include mechanisms providing effective remedies for discrimination.

148. In line with target 10.3 of the Sustainable Development Goals, States should adopt anti-discrimination legislation that provides an avenue for bringing cases to national courts. The legislation should contain comprehensive definitions of discrimination and grounds for discrimination, which should include all the grounds prohibited under international human rights law. The legislation should be effectively enforced.

149. States should remove economic and other obstacles to accessing justice, especially in cases involving violations of economic, social and cultural rights. States should provide free legal aid to indigenous peoples and other individuals and communities, not only for criminal cases but also for cases involving violations of economic, social and cultural rights.

150. States should strengthen domestic judicial remedies to deliver timely relief. Specifically:

(a) States should require the perpetrators of human rights violations related to the right to development to resolve their cases. Perpetrators should be subject to compensation deadlines;

(b) States should provide not only judicial remedies but also administrative remedies, such as facilitating access to public services, in relation to the right to development;

(c) States should ensure access to justice, reparation and effective remedies for those whose rights have been violated as a result of natural resource exploitation.

151. States should put into place effective mechanisms to guarantee that development projects are carried out according to international transparency standards and in line with the Rio Declaration on Environment and Development.

152. Parliamentary committees tasked with addressing issues related to the right to development should provide oversight when the right has been violated.

153. States should employ inquiries and public hearings as additional means of accountability.

154. In addition to judicial and administrative remedies, States should establish and strengthen institutional grievance mechanisms through which communities and individuals can express their concerns about development processes, including those involving the private sector. Doing so would address the difficulties communities face in accessing justice through the judiciary because of the protected status of corporations and avoid the need for protests that arise from the lack of effective grievance mechanisms.

155. States where transnational corporations and other business enterprises (or their parent or controlling companies) are hosted or incorporated should take measures – including the necessary administrative, legislative, investigative and adjudicatory measures – to ensure that independent authorities provide prompt, accessible and effective remedies for the human rights violations of these enterprises.

156. Governments should regulate the actions of the private sector in line with the Guiding Principles on Business and Human Rights. In particular, States should require businesses to undertake human rights due diligence and impose criminal liability for businesses that violate human rights.

157. National human rights institutions should take up economic, cultural, environmental and social rights claims and claims related to the right to development. In addition to playing a stronger role in promoting and protecting these rights, national human rights institutions should advocate in favour of making violations of these rights justiciable in their countries. Specifically, they should:

(a) Refer to specific Sustainable Development Goals when analysing cases in order to illustrate how those cases relate to development outcomes. This is particularly relevant when national human rights institutions have signed a declaration agreeing to monitor the implementation of the Goals in their own countries;

(b) Actively raise issues related to the right to development at the national and international levels, including when participating in universal periodic review processes and in treaty body reviews;

(c) Monitor States' fulfilment of their extraterritorial obligations, for example in the context of countries' foreign investments;

(d) Conduct investigations and put forward recommendations to Governments not only in response to human rights violations that have already taken place but also prospectively, to ensure that proposed development policies comply with human rights principles.

158. States should provide a safe environment that protects human rights defenders and civil society organizations, thereby enabling them to freely play their role in protecting the right to development. Specifically:

(a) States and intergovernmental organizations should consult and collaborate with human rights defenders, recognizing the role they play in advancing the right to development, especially in the defence of land, natural resources and the environment more generally (see A/71/281);

(b) States should empower and protect civil society organizations and defenders fighting corruption and financial crimes, seeking social justice, investigating illicit financial flows and documenting the adverse impacts of development policies and projects;

(c) States should recognize and protect the work of women human rights defenders, end all forms of persecution and violence against them, and ensure an enabling environment for their activism to realize the right to development;

(d) States and international development partners should provide adequate financial and other resources to non-governmental organizations, human rights defenders and other stakeholders whose work supports the realization of all human rights, including the right to development.

159. States should respect the claims of indigenous peoples for land and associated rights, preserve their interests and seek their free, prior and informed consent in development processes.

### **Regional and international levels**

160. States should properly resource international complaints mechanisms at the global and regional levels and invest in supporting strong mechanisms for implementing and following up on their findings and recommendations.

161. States Members of the United Nations should ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, enabling individuals and civil society to raise specific cases under the Covenant.

162. States members of the African Union should ratify the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. They should recognize the competence of the Court to receive cases from individuals and civil society.

163. In their reporting to the international human rights treaty bodies, States should systematically include practical examples of how their implementation of the 2030 Agenda for Sustainable Development has had a positive impact on advancing human rights.

164. States involved in the universal periodic review process of the Human Rights Council should report on progress made on the right to development. The United Nations should support initiatives in this regard, including with capacity-building assistance.

165. States should promote the integration of human rights in reports on the implementation of the Sustainable Development Goals, particularly as States review the format and organizational aspects of the high-level political forum on sustainable development.

166. States and other stakeholders should conduct further advocacy to bring the implementation of the Paris Agreement on Climate Change into full conformity with the obligation to respect, protect, promote and fulfil human rights, including the right to development.

167. States should fulfil their extraterritorial obligations by regulating the actions of multinational corporations headquartered in their territories. They should support the creation of a legally binding treaty on transnational corporations that would also bind State-owned corporations.

168. States and investors should reform the investor-State dispute settlement system, which allows complaints against States in relation to investment agreements, so that it is fairer and in compliance with international human rights standards.

169. States should establish dispute settlement mechanisms at the regional and international levels that promote and respect State sovereignty and equality between States.

### **United Nations entities and mechanisms**

170. The treaty monitoring bodies should systematically include, in their periodic reviews, assessments of States parties' implementation of the right to development.

**Non-State actors**

171. Civil society should monitor trials with a view to improving access to justice and increasing the fairness of trials. Efforts should be made to ensure that trial-monitoring programmes are sustainable even if foreign funders and international organizations cease funding.

172. Civil society should participate in parliamentary oversight assessments of the work of development banks.

173. Civil society and communities should submit more cases relating to violations of economic, social and cultural rights to the inter-American human rights system. A violation of article 26 of the American Convention on Human Rights – relating to economic, social, educational, scientific and cultural rights – was first found in 2017 by the Inter-American Court of Human Rights, so more remains to be done to enforce those rights.

174. At the regional and international levels, affected communities should employ complaints procedures, such as the European Court of Human Rights and those of the United Nations treaty bodies (the Committee on Economic, Social and Cultural Rights in particular).

175. Civil society should actively participate in the periodic reviews of treaty bodies, including by submitting shadow reports on the implementation of the right to development. Such reports may also be shared with the Working Group on the Right to Development.

176. Regional human rights mechanisms should play a stronger role in advocating for the right to development by monitoring development processes, investigating related human rights violations and developing their own accountability mechanisms.

177. International financial institutions should make their accountability mechanisms more accessible to individuals and communities.

178. International financial institutions should make the complaints and monitoring mechanisms that they finance better known to individuals affected by development programmes and projects. They should systematically provide information on the existing mechanisms and ensure that the mechanisms are accessible (economically and practically).

179. Communities should make use of mediation mechanisms established by international financial institutions, which have provided relief in some cases.

180. Recently established international financial institutions and development agencies should establish effective grievance mechanisms following adequate consultations with relevant civil society organizations.

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