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Right to development

Report of the Chairperson-Rapporteur of the Working Group on the Right to Development pursuant to Human Rights Council resolution 15/25

Compilation of the submissions received from Governments, groups of Governments and regional groups

Summary

The present report contains a compilation of the submissions received from Governments, groups of Governments and regional groups pursuant to Human Rights Council resolution 15/25.

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I. Introduction

1. The Human Rights Council, in resolution 15/25 of 1 October 2010, requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to seek the views of States Members of the United Nations and relevant stakeholders on the work of the task force on the implementation of the right to development and the way forward, taking into consideration the essential features of the right to development, using as reference the Declaration on the Right to Development and resolutions of the Commission on Human Rights, the Council and the General Assembly on the right to development. It also requested the Office of the High Commissioner to post on its website all written contributions by Member States and other stakeholders.

2. In the same resolution, the Human Rights Council requested the Chairperson-Rapporteur of the Working Group, assisted by OHCHR, to prepare two compilations of the submissions received from Governments, groups of Governments and regional groups, as well as the inputs received from other stakeholders, and to present both compilations to the Working Group at its twelfth session, scheduled from 14 to 18 November 2011.

3. In response to its notes verbales of 20 October 2010 and 5 November 2011 OHCHR received submissions from the following Governments, groups of Governments and regional groups: Cameroon, Canada, Cuba, Ecuador, Egypt (NAM), European Union, Guatemala, Japan, the Netherlands, Portugal, Qatar, Thailand and the United Kingdom.¹

4. Inputs of a general information type not explicitly addressing the work of the task force are not included in this summary but are available on the webpage of OHCHR.

II. Compilation of the submissions received from Governments, groups of Governments and regional groups

5. One submission shared the view of the task force that it was difficult to reconcile the vision of human rights aiming at maximizing the well-being of all individuals with development which “requires sound economic policies that foster growth with equity”. Although it was true that States had the primary responsibility to create an enabling environment for the development of peoples and individuals, this responsibility was, as concerns the realization of the right to development, adequately distributed in the Declaration on the Right to Development between national and international systems.

6. The provisions of the Declaration defined the right to development as an individual right but also and foremost a collective right, the right of countries, the right of the poorest nations to a development which would allow, internally, to take measures aiming at the economic and social well-being of the populations, and their participation as actors in development.

7. Another contribution underlined the importance on the efforts made within the United Nations system to transform the right to development into an integral part of the work of the United Nations bodies and mechanisms. It regretted that the efforts of the task force and of the Working Group on the Right to Development had not brought about the results hoped for and expressed disappointment over the position taken by developed countries at the Human Rights Council and the General Assembly. Opposing these

¹ <http://www.ohchr.org/EN/Issues/Development/Pages/12thSession.aspx>

resolutions demonstrated the lack of political will towards the full and effective enjoyment of this human right. The practice of imposing conditionalities for development assistance characterized the behaviour of the developed countries and demonstrated lack of real commitment to this human right. The right to development was essential for the enjoyment of the other human rights, and the international responsibility to create the necessary conditions for the full realization of this right was an inherent part of any debate on this topic.

8. One contribution expressed the view that the requisite translation of the normative framework of the right to development into an international legal framework derived from the principle of universality, indivisibility, interdependence and interrelatedness of all human rights. The right to development should be viewed as an overarching right without the realization of which the full enjoyment of all other human rights could not be ensured. The right to development was an individual and collective right entailing individual and collective responsibilities of states for the creation of an international and national environment favourable to the realization of this right. Inherent therein was the state duty to cooperate, in fulfilment of the principle of mutual accountability and responsibility whence derived the notion of international cooperation in the field of human rights. In tandem with the concept of individual and collective responsibility came the notions of internal obligation of states towards their own populations and of external obligation towards other populations and hence the need to assess the external impact of a state's individual internal actions and policies on populations outside its territory, coupled with the need for national and international policy coherence.

9. Another submission, while reiterating that the full realization of all human rights, including the right to development was an obligation for States, acting individually and collectively, within institutionalized frameworks, such as regional and international organizations, emphasized that States had the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.

10. One country was of the view that international cooperation was important in supporting the efforts of each state indirectly to realize the right to development in cases in which the government was not able to take steps to realize the right to development for its people, and that international cooperation should not be obligatory but voluntary.

11. Another submission expressed the view that the right to development focused on the intersection between development and human rights and that development could not be discussed in isolation of human rights principles. It underlined that the primary responsibility for the promotion and protection of all human rights, including the right to development, lied with the State, while acknowledging that international development could play an important role. The individual, not the State, was at the heart of the international human rights system.

A. The right to development criteria and operational sub-criteria of the task force (A/HRC/15/WG.2/TF/Add.2)

12. *This section contains comments received on the attributes, criteria, corresponding operational sub-criteria and indicators that the task force developed and presented to the Working Group. They are designed to assess the extent to which States are individually and collectively taking steps to establish, promote and sustain national and international arrangements that create an enabling environment for the realization of the right to development. The three attributes are comprehensive and human-centred development policy, participatory human rights processes and social justice in development.*

13. One submission underlined that the task force has taken into account, primarily, the right to development in its national dimension, favouring the right to development as individual right. Out of the 68 sub-criteria only about 10 made explicit reference to the collective dimension of the right to development and to the obligation of international cooperation to promote the development of poor countries.

14. While the task force favoured the human rights-based approach to development, an inverse approach apprehending human rights from development would have allowed better capturing the right to development as a right of nations alike. This approach, without questioning the equality of all human rights, did not subject the respect of human rights to the level of development, but highlighted the nation as right holder of the right to development, the enjoyment of which promoted that of the individual. This even more since the economic, social and cultural rights of individuals were dependent on the development of States.

15. In the absence of consensual clarification of the content of the right to development and of balanced recognition of its rights holders (individuals and nations), the pertinence of the criteria for measuring progress in the realization of the right to development was little evident. They seemed more appropriate for monitoring the International Covenant on Economic, Social and Cultural Rights.

16. The contributor would have appreciated a balanced treatment of the two dimensions of the right to development by linking the criteria and sub-criteria to cooperation and to adoption of measures favouring the development of under-developed countries such as criteria concerning the establishment of a new international economic order, the promotion of sovereign equality of states in economic and trade transactions, the sovereignty of States over their natural resources and the role of multilateral financial and economic institutions.

17. More precise, quantifiable indicators would reinforce the operational character of the criteria. For example, the indicator “ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families”, did not sufficiently reflect the measures taken by States concerning sub-criteria 1(e) (iii) Movement of persons. Similarly the indicator “human rights impact assessment of trade agreements, aide for trade” would need to be refined to better apprehend sub-criteria 1 (e) (i) Bilateral, regional and multilateral trade rules conducive to the right to development.

18. Another submission disagreed with the position of the task force, which, in its view, aimed at redefining the right to development, focusing on some elements of the Declaration on the Right to Development, while leaving aside other aspects of equal or higher importance. The elaboration of right to development criteria should be a first step, the necessary basis for elaborating a legally binding instrument for the implementation of the right to development and not a mechanism for monitoring countries.

19. The criteria emphasized the human rights-based approach at the national level, instead of focusing on the right to development at the global level and taking into account the dimensions of cooperation and international solidarity, as well as international responsibility for establishing the necessary conditions for the realization of the right to development. The criteria should aim at achieving conditions, which allow reaching economic development and strengthening the capacity of States to promote and protect all human rights.

20. The submission expressed concern over the inclusion of indicators for monitoring and measuring the implementation of the right to development, which could lead to the development of conditionalities for developing countries, constituting a real impediment for the advancement of these countries towards the full implementation of the right to development. This could lead to the establishment of new monitoring procedures with

respect to the human rights obligations of States, while there are already intergovernmental mechanisms in the current human rights machinery of the United Nations system.

21. The contribution disagreed with the view that, in order to operationalizing the right to development, it was necessary to include all human rights in the process of development. The world financial, energy and food crisis, as well as the lack of transparency, democratization and accountability in the international financial institutions, demonstrated the primordial importance of integrating and implementing policies oriented at development at all levels, with the intention to improve even further the capacity of states to ensure the full enjoyment of all human rights by all.

22. It was important to maintain a balance between national and international responsibilities, as well as access to resources and to participation in decision making bodies for developing countries, for the effective realization of the right to development. International cooperation was a primordial factor for the development of countries. The principal reason for underdevelopment had its roots in the centuries of colonization, slavery and exploitation. The deprivation of the right to development of hundreds of millions of people was a reality which had to be reversed. The support of the United Nations to this endeavour had to be a priority, without implying new burdens for developing countries. This should be taken into account in any future discussion on the elaboration of criteria, sub-criteria or indicators for evaluating the right to development.

23. Another submission disagreed with the reformulation of the scope and content of the right to development and specially the overemphasis of national responsibilities, in neglect of the basic notion of international cooperation. In its view, the task force based itself on an incomprehensive definition of the right to development and presented to the Working on the Right to Development a set of criteria that adopted a human rights-based approach to development. Instead, the operationalization and thereby the elaboration of a coherent set of standards culminating in an international standard of a legally-binding nature on the right to development, required a development approach to human rights.

24. The right to development criteria did not reflect adequately the dimension of international cooperation, as well as the international responsibility for creating an enabling environment for the realization of the right to development. The criteria shifted the focus towards the state responsibility to create a national environment conducive to the realisation of the right to development, without addressing the global obstacles.

25. The criteria should address the structural imbalances and hence impediments to equitable development on a global scale. Such impediments lied in the mal-functioning of the international economic, financial and political systems, including the lack of democracy in global decision-making. Addressing those imbalances and impediments required a more fair and just system governing trade, foreign direct investment, migration, intellectual property, flow of capital and labour. There was a need for a deeper reflection of how to address the concerns over inadequate resources, including the obstacles relating to the unfulfilled commitments towards aid, unsustainable debt burdens, and restrictions on labour flows from developing to developed countries, and lack of technology transfer, in particular quality-wise. Issues that merited closer attention also included the lack of equitable participation of developing countries in international decision and policy making (lack of democracy in global governance), imbalances in global trade regimes, promoting conditions that sustain peace and security, and ensuring country ownership of development policies through, *in alia*, policy space.

26. There was a lack of clarity on the three sub-levels of the criteria and on the monitoring instances of the implementation of the right to development. There was a need to reach a clear agreement on the criteria and to clarify the rights of peoples.

27. The submission was concerned about the elaboration of indicators, which seemed to represent a tool to assess the performance of governments at national level in the realization of political, economic, social and cultural rights, overlooking the role of the international community. As such, the use of indicators would further marginalize developing countries by emphasizing national responsibilities while not guaranteeing fulfilment of international obligations and a proper enabling environment. Therefore, the submission deemed it unfeasible to consider the list of indicators presented by the taskforce.

28. One country suggested that the right to development attributes should reflect article 2 of the Declaration with regard to policies concerning the fair distribution of the benefits of development, including the fair distribution of wealth, which strengthens social justice and equity. It further suggested adding, with regard to the criteria, sub-criteria and indicators of attribute 2: participatory human rights processes under national development plans, the impact of new territorial centres, considering that the right to development must have the capacity of decentralization and redistribution within a country.

29. One country expressed the view that the criteria and operational sub-criteria generally reflected coherently the essential characteristics of the right to development as defined in the Declaration on the Right to Development, including the priority concerns of the international community in addition to those enumerated in MDG 8. In its view the incorporation of human rights principles with regard to the MDGs provided States with an important tool for social impact assessments. The division of indicators in structural, process and outcome indicators allowed measuring the progress made in the fulfilment of obligations derived from international human rights instruments and others, such as debt, trade, poverty reduction, financing for development and climate change. They were a useful tool to be applied by practitioners, based on the content of international human rights instruments from which basic components were selected.

30. One submission, joined by another, expressed the view that the criteria, sub-criteria and indicators were a good basis for operationalizing the right to development but further work and refinement were necessary. Some of the indicators retained would not permit to assess if a sub-criteria has been applied. For example, for 1 (a) (v) on food security and nutrition, the only indicator is that of child stunting rates. Also the only indicator for sub-criteria 1 (e) (iii) on the movement of persons is the ratification of the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families. In addition, for a number of indicators no data was available at all. The sub-criteria and indicators should be formulated in such a way that they could be applied to all states, since the right to development should be enjoyed by all human beings and peoples (see 3 (a) (iv) and indicators for 1 (h) (i), 3 (a) (iv), 3 (c) (i)).

31. The three main levels of responsibility identified by the task force, namely (a) States acting collectively in global and regional partnerships; (b) States acting individually as they adopt and implement policies that affect persons not strictly within their jurisdiction; and (c) States acting individually as they formulate national development policies and programmes affecting persons within their jurisdiction required further clarification, since international human rights law only recognised clearly that States had legally binding obligations with regard to persons falling under their national jurisdiction.

32. Another contribution similarly considered that the right to development criteria and operational sub-criteria provided a useful basis for further work on the operationalization of the right to development, underlining that further discussion and expert advice was necessary to finalize them. The submission questioned the above-mentioned three levels of responsibility in particular regarding their legal basis, their order and their relationship. They should be reversed since the last mentioned responsibility was states' primary responsibility. In addition, the word partnerships in paragraph (a) needed clarification. The

reference to “policies” in general in paragraph (b) as opposed to the reference to “development policies and programmes” in paragraph (c) required further clarification.

33. As regards the attributes, participation of women in society required more attention in attribute 2. A number of criteria, sub-criteria and indicators should be more precisely formulated (e.g. sub-criteria 1 (e) (iii), 1 (i) (iv) and indicators for 1 (g) (v) and 3 (b) (ii)), improved upon (e.g. in 1 (d) (i), 1 (d) (ii) and 1 (f) (i) the word “effective” might be added, indicators for 1 (b) (i), 1 (e) (iii), 3 (c) (ii) or reformulated (e.g. 3 (a) (iv)).

34. Only for a part of the indicators proposed international data were available. Other indicators depended on national data or the interpretation of national data. For some indicators proposed no data were available at all. Operationalization of the right to development required further work and research on data collection.

35. Another contribution expressed the view that the criteria needed to better reflect the balance between state action at the national level and international cooperation, as well as the indivisibility of civil and political rights and economic, social and cultural rights when determining the sub-criteria and would like to see an improved balance between the two. In its view the realization of the right to development required states to create an enabling environment domestically which also meant guaranteeing freedom of expression and assembly, as well as promoting rule of law, open and transparent government, civil society participation, gender equality, and the principle of non-discrimination. Progress against economic and social indicators required progress in creating these enabling conditions. State fulfilment of responsibilities in this regard was essential to the realization of the right to development for all individuals, and the criteria and sub-criteria needed to reflect this more clearly. The contributor was concerned that some of the indicators meant that data would only be available for citizens of certain countries – something that needed to be balanced with recognition of the fact that the right to development was intended as universal. In some cases, not merely the existence of policies, but the degree to which they were implemented, including at the sub national level, needed to be taken into account. In other cases, there was a need to look at how it would be possible to define and capture baseline data.

36. One country expressed the opinion that the criteria and operational sub-criteria should give attention to the responsibility of States at both the national and international levels to create conditions favourable to the realization of the right to development, in line with Article 3 of the Declaration on the Right to Development. In this regard, the criteria and operational sub-criteria might serve as useful guidance for States and other relevant stakeholders in their operationalization of the right to development and related development policies and programmes. With regard to the indicators, the submission perceived these indicators to be a compilation of social and economic information relating to the right to development, most of which could be addressed in the national development plans of respective countries.

37. The contribution particularly concurred with sub-criteria 1 (c) (ii) which addressed the right to development priorities as reflected in the policies and programmes of the World Bank, IMF, World Trade Organization and other international institutions, and the development of specific indicators on equity, non-discrimination and the right to development objectives in IMF, World Bank and the WTO programmes and policies. In the case of the Asia-Pacific region, the Asia-Pacific Economic Cooperation (APEC) Growth Strategy already reflected these priorities in its aim to create balanced, inclusive, sustainable, innovative and secure economic growth within the region.

38. Another contribution supported the three right to development attributes and that sub-criteria should include benchmarks and indicators in order to promote the

implementation of the right to development in measurable, practical ways, particularly at the national level. In addition it provided the following general and specific comments:

General:

- The Criteria, sub-criteria and indicators must maintain a strong focus on the individual under all attributes.
- Indicator data sets should be disaggregated by relevant factors such as age, sex, disability, ethnicity, socio-economic status and geographic location (urban vs. rural) especially for individual-based criteria.
- Disability and gender equality should be mainstreamed throughout the criteria, sub-criteria and indicators.
- Where indicators only call for the existence of policy frameworks on various topics, it is important that these indicators also measure implementation of the policies as well (e.g. indicator for sub criteria 1(g) (i)).
- Where indicators call for improvement of standards, e.g. 1(a)(iii) “improved drinking water and sanitation” and 1(g)(ii) “improvement in agricultural technology”, efforts should be made to establish baselines and to allow for effective measuring these improvements.

Attribute 1: Comprehensive and Human-Centred Development Policy:

- It is important to ensure balance in the criteria/sub criteria between national and international aspects of the right to development. For example:
 - o relevant sub criteria 1(c) (i) – 1(d) (ii) should highlight implementation of the right to development priorities reflected in the policies and plans identified.
 - o criteria 1 (f) & (g) should also reflect access of individuals to the various technologies listed, i.e. agricultural, manufacturing, green, health, and information.
- An indicator on “sexual violence” should be added relating to sub-criteria 1(i) (ii). Gender-based violence rates should also be added as an indicator under sub criteria 1 (i) (v).
- An additional indicator should be developed in relation to sub criteria 1(e) (ii).

Attribute 2: Participatory human rights processes

- Indicators relating to sub criteria 2 (c) (ii) should allow for more flexibility so as to ensure that they can be workable in national contexts. In particular, the indicators should be revised to take into account means other than the “existence of a legal or administrative standard requiring free, informed prior consent” to facilitate the participation of indigenous communities in relation to matters of concern to them. Free prior and informed consent is not the only, nor is it necessarily the most effective way to ensure that indigenous people can shape their futures. In the experience of the contributor the meaningful involvement of indigenous peoples in development projects and the establishment of appropriate consultative processes that support the fair and equitable balancing of interests have been far more important than focusing on consent per se.
- Criteria 2(b) reads "relevant international human rights instruments in elaborating development strategies" and lists one of the indicators as "responsibility for extraterritorial infringement of human rights including by business enterprises." If the intention is to focus on corporate social responsibility (corporate self-regulation), then

the contributor can support this inclusion. However, the criteria should not hold business enterprises directly responsible for human rights infringements under international law, nor exercise extraterritorial jurisdiction on the activities of business enterprises doing business abroad.

- CEDAW should be added to the list of core human rights conventions listed in the indicator set for sub criteria 2 (a) (i).

Attribute 3: Social Justice in Development

- The indicators for criteria 3(b) (i) are state focused. We believe that more balance could be brought to bear to measure how environmental burdens are shared between men and women, rural vs. urban dwellers, etc.
- Access for humanitarian aid and workers should also be measured though indicators listed for sub criteria 3 (b) (iii)
- Ratification of the protocol to prevent, suppress and punish trafficking in persons should not be the sole indicator relating to sub-criteria 3(c) (ii). There are other available indicators that can be added to measure the elimination of sexual exploitation and human trafficking. UNIFEM and OSAGI are potential sources.

39. One country considered that all United Nations core human rights treaties should be considered as an indicator of the “ratification of relevant international conventions”, under the establishment of a legal framework supportive of sustainable human-centred development (Attribute 2 – “Participatory human rights processes”).

40. Another country, with regard to the indicator for sub-criteria 1(g)(iv) “intellectual property and technology transfer provisions in trade agreements” expressed the view that “intellectual property provisions in trade agreements” was not an appropriate indicator. The existence of provisions going beyond the TRIPS agreement (Trips-plus rules) was not in a primary connection with technology transfer and access to technology. It was inappropriate to state that the existence of such provisions had a negative impact on technology transfer or that the absence of such provisions had a positive impact on technology transfer. Similarly, with regard to the indicators for sub-criteria 1(g)(v) “use of TRIPS flexibilities to acquire green technologies” and sub-criteria 1(g)(vi) “use of TRIPS flexibilities and price discounts to expand access to HIV antiretroviral drugs”, the contribution pointed out that the use of TRIPS flexibilities did not necessarily have a positive impact on technology transfer or access to medicines. The positive or negative impact of the use of TRIPS flexibilities could only be determined on a case by case basis depending on a variety of elements. Using TRIPS flexibilities as such was not an appropriate indicator.

41. One country suggested specifications to some indicators proposed by the task force, proposed some additional indicators and commented on the availability of national data.

B. The consolidation of findings of the task force (A/HRC/15/WG.2/TF/2/Add.1 and Corr.1)

42. *This section contains comments received on the summary of main findings of the task force’s work with regard to obstacles and challenges to the implementation of the Millennium Development Goals in relation to the right to development, social impact assessments in the areas of trade and development at the national and international levels and global partnerships for development in the areas of development aid, trade, access to medicines, debt sustainability and transfer of technology. In its conclusions and recommendations the task force further addressed the strengths and weaknesses of the MDGs, structural impediments to economic justice, resistance to addressing trade and debt*

from a human rights perspective, the ambiguity of “global partnership”, the lack of policy coherence and incentives to move from commitment to practice and the necessary balance between national and international responsibilities for the right to development.

43. One submission regretted that the task force did not achieve a proper balance between national and international responsibilities in its conclusions with regard to many aspects of international economic relations of concern to developing countries, including debt sustainability, national ownership of development policies, protection against volatility of international commodity prices, bilateral, regional and multilateral trade rules, ODA flows, use of Trade-Related Aspects of Intellectual Property Rights (TRIPS) flexibilities and equitable sharing of environmental burdens.

44. The findings failed to take into account that efforts of developing countries to achieve development were restrained by obstacles at the international level that were beyond their control such as the adverse effects of globalization, the protectionist barriers imposed by developed countries, the non-fulfilment of ODA commitments and the unsustainable external debt burden, the lack of democratization, transparency and accountability of international financial institutions.

45. Despite the relevance given to the need of developing countries to enjoy access to medicines, knowledge, technology and ability to use flexibilities in protecting intellectual property rights, the division of roles and responsibilities among states has not been clearly identified. The task force should have acknowledged, for example, that green technology was becoming a barrier to development, whereas it should be generational, accessible and not a means of discrimination.

46. The contribution underlined that operationalizing the right to development was not about mainstreaming human rights into the development process. Instead, it was about mainstreaming and implementing development-oriented policies at all levels, in order to further improve the capacity of States to ensure the full enjoyment of all human rights.

47. The balance between national and international responsibilities was essential, together with the notion of shared responsibility and ensuring access to resources by developing countries, as well as their participation in global decision-making for the realization of the right to development.

48. The findings of the task force were insufficient and limited and hence did not provide the rationale and the basis for the suggestions for future work of the task force. The collective responsibility dimension, particularly in creating an enabling environment for development, was essential for the realization and implementation of the right to development. This dimension needed to be considered to develop proper criteria and sub-criteria.

49. Another submission held the view that it was first necessary to reach agreement on the content of the right to development, before applying this concept in practice.

Social impact assessments

50. One country underlined the importance of assessing, prior to signing a bi- or multilateral trade agreement, the positive and negative effects of trade agreements on the enjoyment of human rights and referred to the relevant national law in this regard. Another submission pointed out that the matter should be considered carefully following discussions with WTO.

Development aid

51. One submission underlined that development cooperation should aim at adapting to national development plans and not impose unilaterally parameters for cooperation. This

was due to the specificities of each country, taking into account its needs in relation to the realization of the right to development.

52. Another contribution underlined the importance of aid effectiveness. Human rights, including the right to development, should be explicitly included as goals in the Paris Declaration on Aid Effectiveness and ministerial declarations as well as a review and evaluation framework with clear targets and indicators in order to assess the impact of the Paris Declaration on the right to development and the MDGs. A human rights-based approach to development could positively contribute to the overall realization of the right to development.

53. The view was also expressed that the Paris Declaration and its principles had widely influenced multi-lateral donors' aid practices. It was therefore not appropriate to state that the Paris Declaration "[...] did not establish a formal global partnership, but rather created a framework for bilateral partnerships between donors and creditors, and individual aid recipient countries. It is thus indirectly relevant to Goal 8." It was pointed out that an assessment process was underway, that it would be difficult to include additional monitoring criteria, such as human rights, which would require consultations among the DAC-Working Party on Aid Effectiveness, and that it was too early to conclude that "[the Paris Declaration] was therefore less useful as a framework for enhanced development effectiveness...", without legitimate evidence.

Access to essential medicines

54. One submission expressed the view that the existence of provisions going beyond those included in the TRIPS agreement (so-called Trips-plus rules) in bilateral and regional trade agreements was not in primary connection with access to medicines. It was not appropriate to argue that the existence of such provisions in itself had adverse effects on access to medicines.

Transfer of technology

55. With regard to the Development Agenda of the World Intellectual Property Organization, one submission referred to the opinion expressed by the task force that intellectual property can have negative consequences on the diffusion of the technology, since the temporary monopoly it created could restrict the sharing of the benefits of technology. The submission didn't share this opinion. In its view the monopoly right was given as a compensation of disclosure of invention. Information on the respective technology could be disseminated to the public through such disclosure, which contributes to the improvement of technology standards. If the inventors lost the opportunity to recover the research and development cost by way of the granted monopoly, they would choose to keep the technology secret, which would have a negative effect on the diffusion of technology.

56. With regard to the Clean Development Mechanism one submission referred to the finding of the task force that although there was no specific reference to human rights, it included elements of equity, participation, empowerment and sustainability, which all underscored its relevance to promoting the right to development and importance of close monitoring of these elements to ensure that it made a positive contribution to this right. In the view of the submission this finding was not appropriate because it provided a misleading message without referring to specific terms regarding the Clean Development Mechanism. With regard to the observation by the task force that the Clean Development Mechanism has been criticized in literature because of its emphasis on emissions reductions without preventing or minimizing the negative impact on human rights of peoples and communities, the same submission was of the view that this comment seemed not to be a unique issue of the Clean Development Mechanism but a common issue of development.

The finding that “some mechanism projects do not generate real emissions reductions” was inadequate without providing a detailed explanation.

57. With regard to the task force’s observation that among the other shortcomings of the Clean Development Mechanism was lack of non-discrimination, participation and accountability, the same submission observed that this comment was not an issue unique to the Clean Development Mechanism but a common issue of development. With regard to the task force’s finding that the Clean Development Mechanism as a market mechanism has been more effective in reducing mitigation costs than contributing to sustainable development and green technology transfer, the submission expressed the view that it was inadequate to state such a negative message without providing a detailed explanation.

58. As concerns the task force’s finding that some human right concerns about the Clean Development Mechanism could be addressed, inter alia, by providing affected stakeholders with the possibility of recourse where required procedures have not been properly followed or outcomes violate the human rights of communities, the submission pointed to the need to clarify what “required procedures” meant. At the same time, it was necessary not to prejudge the result of the negotiations on a future mechanism related to the Clean Development Mechanism, as this was dealt with in the overall negotiation on the post-2012 framework.

Debt sustainability

59. One submission observed that indebtedness had to respond to the criteria of necessity, proportionality and reasonability. The dedication of the amounts had to correspond to national needs and not to criteria imposed prior to the signing of loan agreements. Debt sustainability was a key element at the time of signing debt agreements so as not to affect the enjoyment of the right to development.

Strengths and weaknesses of the MDGs

60. Regarding the strengths and weaknesses of the MDGs, one contribution shared the view of the task force that “poverty is a broader concept than not having enough income and requires, as stated in article 8 of the Declaration on the Right to Development: ‘equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income’”. The protection and promotion of all civil and political rights also contributed to the empowerment of individuals and thereby to lifting people out of poverty. The submission shared the view of the task force that the MDGs were “divorced from a human rights framework”. The submission welcomed the efforts of the United Nations High Commissioner for Human Rights to promote the intersection of MDGs and Human Rights and the exhaustive analysis on how human rights can contribute to the Goals.

61. Another contribution expressed the view that using the MDGs as a basis for development cooperation ensured that attention was given to the most urgent needs of developing countries, in coherence with the right to development. The submission shared the view of the task force that, unless substantial changes to the international relations (trade, development aid and coordination between different agencies) were made, the probability to achieve the MDGs by 2015 would diminish considerably. Progress in the realization of the MDGs and of the right to development required efficient action.

62. At the international level, progress in the following areas was necessary:

- fulfil the commitment to dedicate 0.7% of GNP to ODA;
- provide loans at sustainable conditions allowing developing countries to adopt the means and adequate facilities to foster the exercise of the right to development;
- coherence in the activities and priorities of each of the concerned financial agencies;

- ensure close coordination of economic policy at the international level;
- adjust development aid to national priorities and guarantee that aid is untied and to use national procurement and financial management systems;
- increase support to developing countries, as committed in the Doha Round, which will allow expanding the possibilities for development for developing countries and making international trade relations more equitable;
- reach agreement on environmental matters and adopt a coherent, systematic and integral approach to this topic;

63. Some areas where countries have to work to eliminate the obstacles for development:

- strengthen the institutional capacities that guarantee efficiency in the implementation of public policies;
- address deficiencies in the discharge of responsibilities, in the sense of ensuring coherence and complementarity;
- give the MDGs a local content under national control (the suggested baseline doesn't take into account the stark disparities which exist between countries);
- make progress in establishing early warning mechanisms and in the area of risk mitigation;
- make substantial changes, with a view to better formulating public policies taking into account the most urgent needs, with a view to guarantee the full enjoyment of the right to development;
- raise State income to guarantee increased expenditures in the social sector in line with or similar to the goals stipulated in the MDGs.

Structural impediments to economic justice

64. One submission noted a certain bias in the analysis of the task force as concerns the structural impediments to economic justice. In its view, the task force presented as subsidiary the non-respect by the OECD countries of their commitment to devote 0,7% of the GNI to ODA. The impact of the realization of this commitment by the OECD countries on the realization of the right to development was difficult to evaluate in the absence of the allocation of the related amounts to developing countries. It would be desirable to make available the scientific data and practices which support this affirmation of the task force in order to palliate the partiality of which the task force could be accused.

65. Another submission expressed the opinion that failure to meet the objective of 0.7 per cent of GNI devoted to ODA was not the most important obstacle to realizing the right to development and agreed with the importance of looking at aid effectiveness and sustainability. From the point of view of recipient countries, this implied, *inter alia*, that States had the right and the duty to formulate policies that aimed at good governance and 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 and transparent distribution of the benefits resulting therefrom. Furthermore, recipient countries should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic, social and cultural rights. Fighting against corruption and illegal activities was often crucial, as well as the political commitment to achieve peace. This implied, *inter alia*, that: 1) the aid provided was channelled to key sectors of the economy and society, with the full involvement of civil society; and 2) the way funds were used and the results achieved might be fully monitored.

The contribution encouraged recipient countries to explore the potentials of public-private partnerships.

66. Another submission disagreed with the conclusion of the task force that “[aid] has not placed recipient societies on a sustainable path of development” without showing any evidence, given that there have been different views on the effectiveness of aid for development.

Resistance to addressing trade and debt from a human rights perspective

67. One contribution suggested that developing a comprehensive framework or template would help multilateral organizations to test the proposed criteria.

Imperative and pitfalls of measuring progress

68. One submission welcomed the efforts of the task force to develop tools for the qualitative and quantitative evaluation of progress in implementing the right to development and, in particular, work done on indicators, which should be simultaneously rigorous, balanced and comprehensive in order to help stakeholder’s measure progress in the implementation of the right to development. The contribution found the indicators proposed useful but requiring further testing and in-depth evaluation. It pointed out that in some cases, the complete lack of data will prove a major obstacle.

Ambiguity of “global partnership”

69. One submission expressed support for the finding that the concept of global partnership for development, as used in Goal 8, remained an ambiguous concept because it referred to treaty regimes, arrangements and commitments between various stakeholders and institutions. In that context, regional organizations and instruments as well as cross-regional partnerships could provide a useful framework for assisting States in implementing the right to development.

Lack of policy coherence and incentives to move from commitment to practice

70. One contribution underlined that political compromise of governments and of the international community was essential for achieving the full enjoyment of the right to development.

71. Another submission expressed the opinion that once the right to development criteria, sub-criteria and indicators have been agreed, appropriate instruments, such as templates, guidelines or checklists could be of use to mainstream right to development considerations in policies and programmes. Regarding incentives, just as all rights should enhance the empowerment of individuals and contribute to peace, security and stability, the right to development, when made operational should guarantee the same commitment from all relevant stakeholders. The incentive to take this right seriously should be based on evidence, on the demonstrated advantage to be gained by making explicit reference to it in specific development actions and policies. Policy coherence was relevant to regional and international organizations and agencies.

Necessary balance between national and international responsibilities for the right to development

72. One contribution underlined that States had the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development. It supported good governance, both at national and international levels and recognized that States, acting individually and collectively, could contribute to creating an enabling environment and ensure greater justice in the global political economy. The MDGs were a useful model.

73. Another submission underscored that the primary responsibility of States to ensure the fulfilment of the right to development was within their jurisdictions and that the focus on the national dimension must remain central, taking into account international dimensions as appropriate.

C. The conclusions and recommendations of the task force, in particular with regard to the suggestions for further action on the criteria, thematic areas of international cooperation for consideration, and mainstreaming the right to development (A/HRC/15/WG.2/TF/2 and Corr.1)

74. *This section contains comments received on the suggestions by the task force for further action on the criteria, thematic areas of international cooperation for consideration including issues not covered by the Working Group to date and mainstreaming the right to development.*

General comments

75. Several submissions underlined the importance of a step-by-step approach and of the sequence to follow with regard to the suggestions of the task force. Some suggested that the first step should be to gather comments of all relevant actors on the criteria, sub-criteria and indicators for the right to development. Consequently, these comments should be discussed with the support of experts with a view to improve, refine and reach agreement on the criteria, sub-criteria and indicators. The paramount importance of the necessary expertise was underlined by several submissions.

76. Once agreement was reached on the criteria and operational sub-criteria other proposals of the task force for further work could be taken forward.

77. One submission suggested that a comprehensive and coherent set of standards could be developed for the operationalization of the right in practice. Standards should be made operational in terms of benchmarks and indicators with regard to the obligations of states, which include the empowerment of individuals as active agents in the development process. This step of developing a set of standards could start with seeking information on existing types of instruments used in the UN to translate policy into action (e.g. guidelines, codes of conduct and practice notes).

78. It could then be explored to what extent existing treaty regimes could accommodate right to development issues within their legal and institutional settings, to what extent the preparation of a reporting template and whether reporting on the right to development in the UPR process would be useful.

Circulation of the criteria for comments

79. One state expressed the view that the circulation of the criteria to States and other relevant stakeholders was a useful way to further improve these criteria. It was also a way of ensuring that the criteria obtain the widest support from all stakeholders. Another submission deemed it premature to suggest any dissemination or circulation of the criteria and sub-criteria in their current format.

Preparation of a reporting template

80. With regard to the proposed preparation of a reporting template, while one country expressed its support, others underlined that it was important to follow a sequence and agree first on the criteria, sub-criteria and indicators. One submission highlighted the need for further discussion on the issue, to clarify questions such as the official status of the criteria and the monitoring body to which States should report.

81. Another submission expressed concern about transforming criteria, sub-criteria and indicators, not yet considered or endorsed by States, into a reporting template for countries. This would imply the establishment of mechanisms monitoring States with regard to their human rights commitments, when there are already intergovernmental mandated mechanisms for reviewing states' human rights duties and responsibilities.

Consultations with regional institutions

82. With regard to the suggestion of holding senior-level consultations with regional institutions one submission observed that this had to be preceded by refining the criteria in line with the parameters of the right to development. It was further suggested organizing these regional meetings in full coordination and consultation with States. These consultations should reflect concretely on how to promote the effective realization of the right to development. One country expressed support for the suggestion to encourage initiatives and senior-level consultations involving regional institutions on the integration of right to development concerns and criteria into their policies and activities.

83. Another country, while supportive of the recommendation to organize regional consultations with new intergovernmental bodies on human rights, namely, the ASEAN Intergovernmental Commission on Human Rights and the Arab Human Rights Committee, expressed the view that the consultations should not be confined to the criteria, but should be broadened to include possible ways to operationalize the right to development within the respective regions, taking into consideration both the national and international aspects of this right.

Further development of a comprehensive and coherent set of standards

84. One submission expressed the view that the ultimate use of the criteria, and sub-criteria, where appropriate, after their refinement and endorsement by States, was the elaboration of a comprehensive and coherent set of standards on the right to development that should form the basis of an international legally-binding instrument on the right to development. This follow-up work should be undertaken at the intergovernmental level, with the mentioned goal in perspective and duly reflecting the principles, balance and elements set out in the Declaration on the Right to Development. It also had to take into consideration that the right to development was not limited to the fulfilment of the MDGs or the partnerships identified in MDG8. Such a framework was used as an operational framework that should have served only as an example, upon the basis of which lessons would be drawn to be reflected in the criteria and operational sub-criteria in a more expansive translation, bearing in mind "the priority concerns of the international community beyond those enumerated in Millennium Development Goal 8" for a better refinement and finalisation of the criteria and operational sub-criteria.

85. One country was in favour of a legally binding instrument on the right to development. This required the adoption of the content of the right to development by consensus. It encouraged the task force to better refine the criteria retained and to develop pertinent indicators which take into account the right to development as a right of poor nations. The definitive criteria could be submitted to the governmental experts. A regional approach should be adopted in this regard.

86. Another country observed that although there existed a legally binding instrument emphasizing the national dimension of the right to development as an individual right, the International Covenant on Economic, Social and Cultural Rights, norms of the same nature for the international obligations of the right to development were absent.

87. Several countries informed that they did not support the elaboration of a legally-binding instrument on the right to development. One country argued that a legally-binding instrument was not appropriate for moving the right to development from political

commitment to development practice. The responsibility to create an enabling environment could not be translated into binding obligations. Another submission found that a legally-binding instrument was not the most appropriate instrument to operationalize the right to development. One country was of the view that the possibilities of existing human rights instruments and mechanisms to help realise the right to development should first be explored. One country suggested that it was necessary to seek other options including guidelines. Another country favoured more action-oriented and practical approaches.

88. One submission recalled that the appropriate next steps have not been decided upon and could take a variety of forms. One country underlined that any new developments in this area should be undertaken on a consensual basis.

89. One country supported the recommendation to seek information on existing examples used in the United Nations system with regard to the appropriate form of standards to be developed based on the criteria, and to examine proposals for the structure and methods for drafting a set of standards most suited to the right to development. This cautious and gradual approach should help ensure that the standards, once developed, can be appropriately and effectively implemented.

Thematic areas of international cooperation for consideration

90. One submission pointed out that most of the areas suggested for future consideration were not really part of international cooperation. They rather formed part of national development strategies, social progress, social justice and inclusion, and sustainable development. The only two suggested thematic areas of international cooperation that merited being considered were an enabling international environment and reducing inequality between countries. Others expressed support to consider using the United Nations Development Agenda to help guide future activities of the Working Group. One country was of the view that this reflected a balanced, practical and well-considered framework for development-related discussions.

Mainstreaming the right to development

91. One submission, while generally supportive of integrating and mainstreaming the right to development in the activities of the OHCHR, United Nations agencies, funds, programmes and specialized agencies, as well as development agencies and the international development, financial and trade institutions, emphasized that any initiative in this regard had to be based on the core parameters and elements of the right to development. The same submission recommended that treaty bodies and other relevant human rights mechanisms include the right to development in their work; however, this did not entail supporting the inclusion of the suggested reporting template or of a specific reference to the right to development and the criteria developed by the task force in their own reporting guidelines.

92. One country supported the recommendation to integrate the right to development into all aspects of OHCHR's work, including its activities at the country level. The mainstreaming of the right to development should be on a par with other human rights and should be based on the indivisibility and interdependence of all human rights. With regard to the mainstreaming of the right to development in the work of the treaty bodies and other relevant human rights bodies, this should be carried out in accordance with the mandates of these respective bodies.

93. Another submission expressed the view that it was premature to include the right to development in the UPR process, which exposes it to the risk of being limited to national responsibilities in fulfilling individual human rights rather than an international responsibility to fulfil a collective right. One country supported including the right to development criteria in reporting under the UPR. Another country underlined the need to

pay equal attention to the right to development, bearing in mind both the national and international dimensions of this right, and the indivisibility and interdependence of all human rights.

D. The way forward in the realization of the right to development

94. *This section contains suggestions received on the way forward in the realization of the right to development other than those already addressed in the previous section.*

95. One submission recommended closer cooperation between the task force and the Committee on Economic, Social and Cultural Rights with a view to avoid duplication and contradictions. Supplementary work could likewise be undertaken with the OECD countries on the integration of the right to development in the formulation of their economic cooperation policies and on the impact of the internal decisions on the well-being of the populations of other countries and on the realization of the commitments deriving from the Doha cycle, the Monterrey Consensus and the Gleneagles summit.

96. Another contribution suggested that the Working Group further refine and develop the criteria, sub-criteria and indicators into a useful set of tools to help promote implementation of the right to development. These technical tools should be well thought-out and practically-oriented. They should also clearly reflect the notion, as stated in the Declaration on the Right to Development that “the human person is the central subject of development and should be the active participant and beneficiary of the right to development.” The activities and outputs of the Working Group should engage and empower individuals, communities and civil society to participate meaningfully as agents in all phases of the development process. Considering and refining the attributes, criteria, sub criteria and indicators developed by the task force should lead to the development of viable tools that states can use to create favourable conditions for individuals to realize their full development potential. The Working Group should focus on best practices, practical measures, implementation, and strengthening existing initiatives, particularly at the national and sub-national levels, rather than focussing on the impact of the international system on the right to development. It was important that the tools used to measure the content of the right to development are effective, encompass all relevant aspects of the right and are workable in national contexts.

97. It was suggested to renew the mandate of the task force so that it could provide its expertise in refining the various indicators put forward and informing the continued efforts in the Working Group.

98. Another contribution expressed the view that further work would be required at experts' level to make the right to development operational. In its view the mandate of the task force should have been extended to allow for further refinement of the criteria, sub-criteria and indicators and to develop an operational framework to be used by States, regional and international organisations. It suggested that the criteria, sub-criteria and indicators could be further assessed by States and regional organisations on a voluntary basis. Participants should be invited to report back to the Working Group on the findings of their evaluations. Only once the sub-criteria have been properly assessed and refined, should appropriate instruments, such as guidelines, templates or checklists be developed, in order to help all relevant stakeholders and human rights mechanisms and procedures to assess progress in the implementation of the right to development.

99. One country suggested raising awareness and understanding of all persons and relevant stakeholders on the content of the right to development and to build on the 25th anniversary of the Declaration on the Right to Development to strengthen their efforts in raising awareness about this right through various activities, such as the distribution of the

text of the Declaration and the organization of seminars and workshops. National, regional and international development agencies and other relevant actors should be encouraged to participate in these activities. Furthermore, human rights education and training activities by States should be comprehensive, encompassing the full range of human rights, including the right to development.

100. One country underlined the importance of following a logical sequence. The first step of this process should be to have more detailed discussion of the criteria and indicators. This would be in an inter-governmental setting, but should also involve contributions from relevant task force experts, and national development experts as necessary. The latter would provide valuable input for ensuring that the work had a strong practical application. Following this, there should be a discussion to determine how to best turn this policy into action. This could be through a number of means, including: exploring how human rights treaty regimes incorporate right to development issues in their work, the development of guidelines or voluntary principles, training and education, technical assistance, or sharing of best practice.

101. In order to ensure that the 2011 Working Group is action-orientated, it was recommended that the incoming chairperson of the Working Group on the Right to Development consult delegations early on a draft programme of work.
