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Implementation of the recommendations of the
Working Group on the Right to Development, endorsed
by the Human Rights Council in resolution 12/23:
Right to development criteria and corresponding
operational sub-criteria

The criteria and operational sub-criteria for the
implementation of the right to development

Report on expert consultation

(Cambridge, MA, USA, 17-18 December 2009)*

* The report is prepared by Thea Gelbspan for the Measurement and Human Rights (MHR) Program of the Carr Center for Human Rights Policy at the Harvard Kennedy School of Government, and the Program on Human Rights in Development (PHRID) at the Harvard School of Public Health.

Executive summary

The Office of the UN High Commissioner for Human Rights (OHCHR), in cooperation with the Measurement and Human Rights (MHR) Program of the Carr Center for Human Rights Policy at the Harvard Kennedy School of Government, and the Program on Human Rights in Development (PHRID) at the Harvard School of Public Health, convened an expert consultation, from 17 to 18 December 2009 in Cambridge, MA, USA, in order to further refine the elaboration of the criteria and corresponding operational sub-criteria for measuring compliance with the right to development.

The meeting provided a forum for the consultation of academics, international human rights professionals and practitioners concerning the content of the right to development and approaches to measuring compliance by States. Expert input was focused on a set of criteria and operational sub-criteria¹ under consideration by the high-level task force on the implementation of the right to development with a view to revising them and making them operational and reflective of standards of qualitative and quantitative evaluation used in international institutions and recognized by the leading social scientists.

The meeting served to support the work of the task force in response to the request of the UN intergovernmental Open-Ended Working Group on the Right to Development that the task force “draw on the necessary expertise to (a) make the [right to development] criteria analytically and methodologically rigorous; (b) provide empirically-oriented tools to those involved in implementing development partnerships; and (c) ensure that they cover Millennium Development Goal 8, including target 8.A and other aspects not covered to date by the task force.”²

The consultation discussed the nature of the collective and individual obligations of states, and efforts to measure their compliance with the right to development. In that connection, participants examined a revised draft set of criteria, operational sub-criteria and indicators as prepared by the consultants³ and offered recommendations toward their improvement.

¹ A/HRC/8/WG.2/TF/2, Annex II.

² A/HRC/9/17, para. 42.

³ A/HRC/15/WG.2/TF/CRP.5.

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Introduction

1. The meeting was opened by Mr. Andrea Rossi, who extended a welcome to the participants on behalf of Director of the Carr Center Rory Steward. The Carr Center was happy to collaborate with the prior expert meeting on methodological issues of qualitative and quantitative tools for measuring compliance with the right to development which took place from 27 to 29 January 2009 at the Harvard Kennedy School of Government. Mr. Rossi noted that the definition of the right to development is still in a formative stage. Using effective quantitative tools for measuring compliance, the right to development is now moving from the general principles identified in the Declaration on the Right to Development into practical and policy frameworks.

2. On behalf of the United Nations Office of the High Commissioner for Human Rights (OHCHR), Mr. Ayuush Bat-Erdene welcomed the participants and described the mandate of the high-level task force on the implementation of the right to development and the intergovernmental Working Group on the Right to Development under the Human Rights Council, as well as the perspective of the United Nations on the right to development. The UN Commission on Human Rights first established the independent expert on the right to development, who was subsequently replaced by the task force in efforts to establish a broad base of expert advice on the implementation of the Declaration on the Right to Development. The task force was mandated to enumerate criteria in order to evaluate whether existing global partnerships under Millennium Development Goal 8 (MDG8) comply with the right to development. Since 2006, the task force has examined twelve global development, aid and trade-based partnerships and criteria. During its 2009 session, the Working Group decided that the task force should finalize its work on the criteria and submit its consolidated findings and revised criteria and operational sub-criteria at the Working Group session in 2010. While the criteria originally focused exclusively on global partnership under MDG8, it has since expanded to address more aspects of the right to development. This has allowed for a greater scope of work, and will allow recent global events to inform and strengthen opportunities for the realization of the right to development.

3. Professor Stephen Marks defined the expectations of the consultation, in the context of the request of the Working Group that the task force “draw on the necessary expertise to make the criteria analytically and methodologically rigorous and provide empirically-oriented tools to those involved in implementing development partnerships in order to achieve the desired standard of criteria quality.”⁴

4. He explained that the objective of this exercise was to move the right to development from political commitment to development practice, using as a tool a set of criteria and operational sub-criteria for the periodic evaluation of compliance with the right to development. The present expert consultation was convened to address remaining ambiguities by drawing on two types of expertise: technical skills which could enhance proposals for indicators with methodological and empirical rigor, on the one hand, and conceptual clarity regarding both the content and the process involved in achieving the MDGs and other objectives reflected in the Declaration on the Right to Development, on the other. The process of developing the criteria and indicators has entailed commissioning the work of expert consultants in several stages. Based on the outcome of this present consultation, the criteria, sub-criteria and indicators will be further refined and submitted

⁴ A/HRC/9/17, para. 42.

for the deliberations of the task force at its meeting from 14 to 22 January 2010, in Geneva, Switzerland, and eventual submission to the Working Group in April 2010.

I. Bringing Theory into Practice: Operational Criteria for Assessing Implementation of the International Right to Development

5. Ms. Maria Green introduced the consultancy report “Bringing Theory into Practice: Operational Criteria for Assessing Implementation of the International Right to Development” as an interdisciplinary project combining international law with development practice, which aims at developing a useful tool for practical actions aimed at furthering social justice, regardless of its legal status. She noted that the language in the Declaration on the Right to Development is vague with regards to the nature of claims and obligations, who are rights-holders, and who are duty-bearers, and that further elaboration is necessary.

6. On the question of the rights-bearers under the Declaration, she recalled that conventional human rights standards identified governments as the holders of human rights duties, rather than rights. It is not states, but individuals and peoples who may claim the right to development. At the same time, States represent the collective interests of peoples as well as individuals and groups under their jurisdiction, and they may thus claim certain entitlements insofar as they are acting on behalf of their citizens. In other words, the global arrangements and regimes responsible for promoting development are vehicles for the collective responsibilities of states to realize the right to development.

7. Under international human rights standards, all states have obligations, regardless of their level of development, to further the realization of the right to development for the benefit of people both within and beyond their jurisdictions. This obligation is far-reaching, and it implies more than wealth transfers from developed to developing countries. At times, the development prospects of a developing country are influenced more by large trading partners in the developing world than by decisions made in the Global North. Professor Green further noted that the existence of formal rules and structures was distinct from the actions which take place within these rules. The right to development will be realized when it is able to shape behavior within formal structures, for example, the decision whether or not to use TRIPS flexibilities when developing countries seek to provide essential medicines to their populations. The Declaration on the Right to Development defines development as a process that “aims at the constant improvement of the well-being of the entire population and of all individuals.” The achievement of this outcome not only requires national policy but also an enabling environment internationally, which in turn calls for States to be held accountable for measures taken beyond their own borders. Further, the right to development implies social justice and equity, both nationally and internationally, as a driving principle.

8. Referring to the recent global financial crisis, she noted that the focus of the international community on development issues varies over-time and that, as a consequence, the substantive issues covered by the right to development expand and are interpreted in light of evolving norms, standards and development practices since the Declaration was adopted in 1986.

9. She then explained that the set of criteria and operational sub-criteria (indicators) contained in the report she and Professor Randolph wrote are structured around a tripartite typology of state obligations implied by the right to development. The first category refers obligations of states concerning the outcome of collective actions, such as the policies of international financial institutions, and other international arrangements and regimes

(collective obligations). Second are the conventional obligations which states have toward individuals residing within their jurisdiction (internal individual obligations). Third are the obligations of states toward people beyond their jurisdiction, who are affected, for example, by the way a state votes at a multilateral institution (external individual obligations).

10. Ms. Susan Randolph continued the introduction of the report by emphasizing the need to consider both current as well as longstanding factors which promise to continue into the future. She explained that the draft currently under review had adopted criteria and operational sub-criteria that are constant over-time, while focusing on indicators which are relevant today, but it should be borne in mind that the most useful basis of measurement in the future might be different.

11. Supplementing Professor Green's explanation of the three typed of state obligations, she noted that the criteria and indicators selected reflected a balance at several levels. For example, the indicators relate to structure, process and outcome⁵ and also balance between universal obligations and those which are regionally or culturally specific. Further, the selection sought to balance prospective and retrospective indicators. Finally, the selection took into account the need for indicators to be based on data which are available, valid, reliable, comparable (across time and space) and possible to disaggregate across population groups.

12. Finally, she noted that an effort had been made selecting indicators to avoid events-based data, household opinion surveys and expert judgments as sources of information. In addition, data sources were examined in order to evaluate their reliability, and it was concluded that some seemingly strong indicators did not hold up under scrutiny. They had examined closely the methodologies used in the construction of socioeconomic indicators and sought to ensure that the indicators, when possible, relied on data compiled by national institutes and correlated to standard international harmonized databases (such as those maintained by the ILO, the World Bank, UNICEF, etc.).

II. Deliberations in Plenary

13. The 23 experts participating in the meeting (see Annex 1) proceeded to offer some preliminary comments on the draft criteria and indicators presented by the consultants. Several participants expressed support for the report of the consultants and agreed that the criteria should be flexible in order to adapt to the evolving priorities of the international community. Participants also acknowledged the value of the criteria reflecting the indivisible nature of the rights contained in the International Covenants of Economic Social and Cultural Rights, and on Civil and Political Rights. They felt the criteria should avoid any implication that the obligations of human rights conventions were in any way negotiable, although priority could be given to the "minimal core content" approach employed by the Committee on Economic, Social and Cultural Rights.

14. The category of collective obligations of states is used in the report to capture the behaviour of multilateral entities whose decisions and actions result from the collective actions of member states, to which it would be difficult to attribute direct responsibility to any one state. She acknowledged the complexity of identifying the extra-territorial obligations of states when the act in the international political economy in ways that determine the extent to which there is an "enabling environment" for the realization of the right to development. While efforts to assign human rights obligations to international institutions (such as financial institutions) are complex, states represented in these

⁵ "Outcome" is understood as the result of synergy between a number of actions.

institutions must be held accountable for the outcomes of their collective institutional actions. This is a complex task, and caution must be employed to clearly establish the legal foundations for these obligations.

15. The consultants noted that, similar to the status of human dignity as the central organizing principle of the Universal Declaration on Human Rights, the core obligation underlying the right to development was the “constant improvement of the well-being of the entire population and of all individuals.” Thus an environment which enables this goal implies obligations by states towards people and groups residing beyond their borders.

16. Participants were aware of the diversities of political perspectives regarding the potential value and feasibility of an eventual legally binding instrument on the right to development. However, participants saw the value of using international law to advance the realization of the right to development, whether through an instrument that is legally binding or other mechanisms. Even the human rights norms States have accepted by ratifying the International Covenant on Economic, Social and Cultural Rights, while broadly accepted, have not been mainstreamed into development practice. Furthermore, the Covenant does not exhaust the international normative space concerning human rights relevant to development. The criteria under present review will therefore provide an important new basis for furthering these rights.

17. The value of events-based indicators was underscored as a valuable way of tracking assessments by treaty bodies and other human rights mechanisms of the performance of states. In that connection, the experience of the Committee on Economic, Social and Cultural Rights in its efforts to measure state compliance with treaty obligations under the ICESCR offers some valuable insights. In the case of the development of indicators on the right to food, the Committee first generated an extensive list of some 500 indicators. Subsequently, in collaboration with UN agencies (such as FAO, WHO, UNESCO, etc.) this set of indicators was reduced to 37, and then further reduced to 24. Following this, three countries possessing accessible and reliable data were selected to pilot the measurement scheme on a voluntary basis. This collaborative process ensured that the indicators developed were conducive to dialogue with states, and generated guidance as to how to improve their compliance with rights obligations. States are now working to develop benchmarks for priority issues, which will be negotiated with the country rapporteur on the Committee to ensure that they reflect a balance between rigor and attainability. All parties to this process, including states and NGOs, have registered general satisfaction with the outcome.

18. Concerning the changes made in the current version of criteria and the addition of indicators in comparison with the prior version considered in the last meeting of the Task Force in April of 2009,⁶ frequent reference was made to the value of the logic of attributes and components of rights as the starting point for defining criteria and indicators. In addition, the final indicators need to adhere to the broader efforts to measure compliance within the international human rights systems, as well as being politically acceptable to members of the Working Group. At all times principles and substantive rights must be distinguished and treated separately.

19. The consultants noted that their report did not eliminate any elements of the task force’s prior version of criteria and sub-criteria; rather some of the elements were rearranged. Reference to “an enabling environment” was highlighted as a meta-category, and was disaggregated in order to avoid overlaps. In the task force’s version, non-discrimination was separated from human rights, whereas these notions were associated

⁶ A/HRC/12/WG.2/TF/2, Annex IV, pp. 30-32.

more closely in the present version. They also endeavored to enhance language relevant to social justice and equity by focusing on national, as well as the international level.

III. Critical Review and Suggestions for the Refinement of Criteria and Indicators

20. The examination and refinement the criteria and indicators presented by Professors Green and Randolph would focus the collective work of participants for the following period. Prior to this, a few observations were offered in order to guide this work going forward.

21. The inclusion of strong process indicators, as well as outcome-oriented indicators, is critical to any comprehensive measurements of compliance with the right to development. In addition to quantitative measures concerning the number of rights violations, the indicators should identify the degree to which states collaborate with human rights oversight bodies and respond to their recommendations.

22. The selection of indicators requires a balance between selectivity and comprehensiveness, given the need to balance between usability and attaining a complete representation of all of the obligations inherent in the right to development. The Task Force is not purporting to provide a complete description of all of the obligations and entitlements entailed by the right to development, but rather an illustrative set of examples.

23. Conference participants were then divided, according to self-selection, into two break-out groups; one, focusing on the criteria and sub-criteria, and the other, on the indicators. The following work that would take place would focus on fine-tuning the measurement tools. It was agreed that the break-out groups should recommend a hierarchy among indicators for specific criteria, and focus less on how the indicator correlate directly with each of the identified criteria and sub-criteria. It was decided that indicators which use reliable and available data which is already gathered and centralized by UN agencies should be preferred whenever possible. Recommendations for both descriptive and prescriptive indicators were invited, and participants were encouraged to consider the question of their usability at all times.

IV. Consideration of Revised Criteria and Indicators and Next Steps

24. Participants discussed the challenge of accessing available data, particularly data which is disaggregated in such a way as to make visible progress (or lack of progress) toward greater realization of human rights by groups that are marginalized or otherwise vulnerable to discrimination. Official data sources are often weak or otherwise compromised, and efforts must be made to locate information which may be compared across time and countries.

25. The meeting also noted the hopes of civil society organizations for greater NGO participation in the subsequent stages of this process of applying criteria and indicators of the right to development and it was suggested that a pilot initiative be launched with a research centre or highly credible NGOs that could collect and publish data and analysis based on the work of the task force.

26. It was clear to the participants that the primary addressees of these criteria were states and intergovernmental mechanisms and process (such as the Working Group on the Right to Development, the Human Rights Council, the General Assembly and the treaty-monitoring bodies of the United Nations). National institutions, academic institutions and

civil society organizations are secondary audiences. It was felt that each of these types of institutions should be encouraged to draw of the criteria and indicators as appropriate in the context of international negotiations, policymaking and planning or specialized technical programming.

27. The discussion brought out the variety of ways in which the right to development reinforces both substantive normative and procedural elements of internationally-recognized human rights standards. First, it places a focus on issues of equity, both nationally and internationally, which is not universally understood in human rights discourse. While the principle of equality is widely accepted internationally, equity remains a principle which receives varying degrees of acceptance and recognition. It provides a basis by which civil society organizations may frame demands on governments based on an internationally-recognized normative framework for economic and social developmental transcending the commitment to economic growth. The normative support to the integration of human rights and economic development offered by the right to development requires evaluating whether policies actually improve the well-being of people, rather than a simple focus on per capita income, and offer to render per capita growth subservient to the goal of enhanced well-being as a driving principle behind inclusive and equitable development.

V. Conclusion and Recommendations

28. Under international human rights law, governments are regarded as duty-bearers rather than the claimers of rights. Nevertheless, states represent the collective interests of those people under their jurisdiction, and therefore they may make claims under the right to development, on behalf of their citizens.

29. Under international human rights standards, all states have the obligation, regardless of their level of development, to further the realization of the right to development on behalf of people both within and beyond their jurisdictions. These include not only individual obligations to people whose rights are affected by their actions, but collective obligations regarding the outcome of actions taken by several states, through international institutions and other means.

30. The right to development today is understood and interpreted in light of contemporary norms, standards and development practices, which have evolved since 1986. The criteria proposed seek to provide greater content to the right to development and therefore must use terms which will last over time, while indicators may reflect current conditions and require revision for future use. The selection of indicators requires close methodological scrutiny as well as the availability of data compiled by national institutes and correlated to standard international harmonized databases.

31. The question of whether an instrument on the right to development is legally binding is less significant than the extent to which it is perceived to be useful by states and other actors. In that connection, the engagement of academic and civil society in the subsequent stages of this process would be advisable.

32. The consultation concluded that the right to development, in spite of the political context in which it is subjected to contending priorities, enriches both substantive and procedural elements of international human rights law by addressing redistribution and equity questions at the national and international levels from the perspective of accountability and other principles shared by the development and human rights agendas. The greatest challenge, in this regard, lies in defining whether and how human rights, in particular the right to development, can contribute to

creating an enabling environment necessary for the constant improvement of the well-being of people.

Annex

List of participants

1. **Mr. Stephen Marks**, Chairperson, the High Level task force on the Implementation of the Right to Development; François-Xavier Bagnoud Professor of Health and Human Rights, Harvard School of Public Health, Boston, MA, USA
2. **Mr. Andrea Rossi**, Director, Measurement and Human Rights (MHR) Programme, Harvard Kennedy School of Government, Carr Center for Human Rights Policy, Cambridge, MA, USA
3. **Mr. Nicolaas J. Schrijver**, Member, the High Level task force on the Implementation of the Right to Development; Professor of Public International Law, Faculty of Law, Leiden University, the Netherlands
4. **Mr. Raymond Atuguba**, Member, the High Level task force on the Implementation of the Right to Development; Lecturer in Law, Faculty of Law, University of Ghana, Legon, Accra, Ghana
5. **Ms. Flavia Piovesan**, Member, the High Level task force on the Implementation of the Right to Development; Professor of Constitutional Law and Human Rights at the Faculty of Law, Pontifical Catholic University of São Paulo, Brazil
6. **Ms. Sakiko Fukuda-Parr**, Member, the High Level task force on the Implementation of the Right to Development; Development Economist and Professor of International Affairs at the New School, New York
7. **Ms. Maria Green**, OHCHR Consultant; Assistant Professor of Human Rights and Development, Heller School for Social Policy and Administration, Brandeis University, Waltham, MA, USA
8. **Ms. Susan Randolph**, OHCHR Consultant; Associate Professor, Department of Economics, University of Connecticut
9. **Mr. Ayuush Bat-Erdene**, Human Rights Officer, Right to Development Unit, OHCHR, Geneva
10. **Mr. Nicolas Fasel**, Human Rights Officer, Right to Development Unit, OHCHR, Geneva
11. **Mr. Rajeev Malhotra**, Economic Advisor, Ministry of Finance, India
12. **Mr. Olmedo Varela**, Senior Adviser, President's Social Cabinet/Faculty, Florida State University, USA
13. **Ms. Helen Potts**, Chief Program Officer for Health Programs, Physicians for Human Rights, Cambridge, MA, USA
14. **Mr. Eibe Riedel**, Member of Committee on Economic, Social and Cultural Rights; Swiss Chair of Human Rights, Graduate Institute of International and Development Studies, Switzerland
15. **Ms. Siobhan McInerney-Lankford**, Counsel, Environment and International Law, Legal Vice-Presidency, The World Bank
16. **Mr. David Cingranelli**, Professor of Political Science, Binghamton University, USA

17. **Mr. Pedro Pontual**, Founder, Instituto Alvorada, Brazil
 18. **Mr. Felix Kirchmeier**, Program Officer, Friedrich Ebert Stiftung Geneva Office, Switzerland
 19. **Ms. Kristian Catherine Lum**, Statistical Consultant, Benetech, USA
 20. **Mr. Xigen Wang**, Professor, Vice-Dean, Wuhan University Law School; Deputy Director of Jurisprudence Branch of China Law Society, Wuhan, China
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