

# Submission in follow-up to HRC resolution 21/32 “The Right to Development” Switzerland

## Operational criteria and sub-criteria

### A. General comments

With a view to contribute to the discussion around the implementation of the right to development (RtD) and according to its mandate, the High-Level Task Force (HLTF) suggested in its 2010 report to the Working Group on the Right to Development (WG) a list of criteria, operational sub-criteria and indicators attempting to address the essential features of the RtD as defined in the Declaration on the Right to Development of 1986. In order to organize these criteria, sub-criteria and indicators in a coherent and comprehensive way, the HLTF suggested to cluster them into three attributes. This clustering approach and its logic of presenting a long list of criteria in thematic groups is an appropriate methodology and helps to structure the difficult political discussion in a constructive way while focusing on substantive issues of implementation of the rtd, in conformity with the mandate given to the WG.

In our view, **the three "attributes"**, namely (1) “comprehensive and people centred development”, (2) participatory human rights processes”, and (3) social justice, do reflect important aspects of the RtD. They allow to address State responsibilities at collective, external and internal levels and to further the implementation of the RtD. They also allow for a common approach for developing and developed countries to reach the common goal of development although their responsibilities may be of different quality, responding to the variety of development contexts and to the resulting gaps in the implementation of the RtD. The HLTF's draft rightly focuses on the primary responsibilities of States (at collective, external and internal levels) and does not deal with possible secondary responsibilities of international institutions or multinational enterprises.

It remains important to **mainstream human rights** thinking and link the work of the WG to the ongoing debate on the orientation of development in other arenas and institutions (such as special organisations of the United Nations, the International Financial Institutions, OECD-DAC/Incaf). It will be important to make these institutions participate actively to the work of the WG with a view to make it as concrete and operational possible. Vice versa the ongoing debate on the post-2015 development agenda could benefit substantively from the discussion around human rights and development. While the full implementation of human rights for all is the ultimate goal of development and human rights should thus be used to measure the outcomes of development, human rights approaches and governance principles are important for shaping the process of development at international as well as national level.

In general, in the list of attributes, criteria and sub-criteria lack an explicit reference to **gender equality**. Gender mainstreaming will be of utmost importance when implementing and realizing the RtD, and it should be explicitly referred to in the list of criteria and sub-criteria and reflected in the indicators which must be particularly based on gender-disaggregated data.

**The criteria, sub-criteria and indicators** refine the three attributes in a pragmatic manner with a view to make the RtD an operational concept. This logic of concretisation (from general attributes to operational indicators) is a useful methodology with a view to reaching a common understanding on the implementation of the RtD. It might be though too early to speak about individual indicators at this stage of the process when there is no common understanding of the criteria and sub-criteria the indicators would be measuring.

At the level of content, however, the structure and the various elements of the criteria, sub-criteria and indicators are not always easy to understand and could be better explained. Of course, more discussion, particularly on the selection and drafting of sub-criteria will be needed. Given the fact that there is only limited common understanding among stakeholders what "development" really means, the Declaration of 1986 can help to build such common understanding. The Declaration is linking development closely to the realization of human rights for all - not only economic, social and cultural rights, but also civil and political rights -, without discrimination, for women and men equally. Thus, Article 1/1 of the Declaration should orientate the discussion: "The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized." In this sense, civil and political rights are as important for development processes as economic, social and cultural rights, and this should be reflected better in the attributes, criteria and sub-criteria. According to the current list of attributes, criteria and sub-criteria, attribute 1 and 3 primarily focus on the goal of improving on economic, social

and cultural rights, and civil and political rights are referred to only under attribute 2 titled "participatory human rights processes".

From a more formal point of view, the criteria and sub-criteria are drafted in a rather inconsistent way. The criteria are formulated as a kind of objective ("to promote", "to maintain", "to adopt"). On the other hand, the sub-criteria often just mention a key word or an area of concern ("health" or "agricultural technology"), but sometimes are conceived as a sub-objective ("reducing and mitigating impacts of international financial and economic crisis", 1(b)(iv), or "protect against volatility of international commodity prices", 1(b)(v)). It would be helpful for the discussion to draft the criteria and sub-criteria in a more consistent way, and add more details to describe the area of observation for each sub-criteria more concretely and practicably, drawing from the reflection around indicators, as has been mentioned before.

While the general orientation of criteria and sub-criteria is generally understandable and consistent, it is not always the case of the **selection of indicators**. In general, it is not clear what the indicators are intended for. What kind of purpose should they serve? Why is the current selection seen as relevant? What exactly should the indicators measure? Should they measure progress in "development" (as other sets of indicators mentioned in the endnotes already do)? Or should the indicators refer to progress in "accessing the right to development" or "human rights" in general (as the "human rights indicators"<sup>1</sup> do)? If the indicators are to measure progress of States in implementing the right to development, the selection is not adequate to serve as a basis for monitoring. Concretely, they are much too general or inadequate in relation to the sub-criteria they relate to (e.g. 1(b)(v) commodity prices for food staples, international price stabilization mechanisms, and non-agricultural commodity prices as indicators for "protect against volatility of international commodity prices"); they lack relevance (e.g. "child stunting rates" as the only indicator for food security, 1 (a)(v)); or they are not conceived as measurable at all (e.g. indicators 2 (a) (ii)). There seems to be a certain focus on indicators at national level (as those indicators are more available than international ones). In conclusion, the indicators are far from "SMART"<sup>2</sup> in the context of the right to development. It would be important that this work on indicators takes better into account the OHCHR recent publication on human rights indicators.

We have already mentioned that - taking into account the ongoing political (and politicised) discussion about criteria and sub-criteria - it is too early to discuss about concrete indicators, although indicators will be important in the future. In order to make the discussion as constructive as possible today, we would suggest to use the current list of "indicators" as a source to refine the sub-criteria further. In this sense, the indicators would serve as describing **areas of observation** relating to the sub-criteria they are linked with. In the current draft, some indicators are already conceived more as a description of an area of observation than as a real indicator or target.

## **B. Comments regarding attributes, criteria and sub-criteria**

### **B.1 Attribute 1: Comprehensive and human-centred development policy**

#### **B.1.1 General comments**

Although we do think that it is helpful to cluster the list of criteria and sub-criteria in a coherent way, we have some doubts about the separation between attribute 1 and 3 "social justice", since in our view attribute 3 is just a specification of a "human centred development policy". So the criteria 3 (a-c) relating to sharing benefits and burdens and eradicating of social injustices (in the sense of pro-poor development) would be seen as part of a human centred development policy, and not as an addition to it.

#### **B.1.2 Relating to individual criteria, sub-criteria and indicators**

##### **Ad Criteria 1 (a): "To promote constant improvement in socio-economic well-being".**

In accordance with Article 1 of the Declaration of 1986 we suggest to add an explicit reference in the criteria 1(a) to human development realizing all human rights ("to promote human development and improvement of well-being of all through the realization of economic, social and cultural rights as well as civil and political rights for all").

##### ***Ad sub-criteria 1(a) (i-v)***

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<sup>1</sup> See OHCHR, Human Rights Indicators: a guide to measurement and implementation, Geneva 2012, <http://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx>.

<sup>2</sup> Performance indicators are usually seen as adequate if they are Specific, Measurable, Achievable, Relevant and Time-bound, "SMART").

- *The sub-criteria (i-v) would need to use human rights language such as "the right to food, to water, to health, ..."*
- *For identifying the features of "well-being" in the sub-criteria we should draw from the discussions around the MDGs and the post-2015 development agenda, to be coherent also from a development policy point of view.*
- *The list of sub-criteria should be particularly expanded to important issues of human rights, such as*
  - *Non-discrimination and inclusion of vulnerable groups*
  - *Gender equality*
  - *Decent standard of living for all*
  - *Aspects of civil and political rights (which are part of the objectives of development). This means that sub-criteria should include aspects of civil and political rights such as right to life, right to liberty and security, freedom of expression, religion, freedom from torture, access to justice, political participation*

**Ad Criteria 1 (b) "To maintain stable national and global economic and financial systems"**

***Ad sub-criteria 1 (b) (iv) "Reducing and mitigating impacts of international financial and economic crises"***

*This sub-criteria is important to maintain with regard to the poorest countries which are most vulnerable to international financial and economic crisis. The term "particularly for the poorest countries" could be added.*

**Ad criteria 1 (c) "To adopt national and international policy strategies supportive of the right to development"**

***Ad sub-criteria 1 (c) (i):***

*This sub-criteria is particularly important for us: National development policies, plans and programmes should indeed be responsive to the priorities of the RtD.*

***Ad sub-criteria 1 (c) (ii):***

*This sub-criteria only refers to international institutions, not to international development co-operation at a bilateral level. We would suggest adding this idea: "Right to development priorities reflected in policies and programmes at bilateral and multilateral level (UN, International Monetary Fund, World Bank, World Trade Organization, regional banks and other international level).*

**Ad criteria 1 (d) "To establish an economic regulatory and oversight system to manage risk and encourage competition"**

In the light of the proposed list of sub-criteria (property rights, contract enforcement, promotion of private investment) we do not think that the criteria is well drafted. Particularly the reference to "manage risk and encourage competition" is not understandable (risks for whom? Competition on what, between whom? We think that the sub-criteria are reflecting the need for a "regulatory system based on the rule of law, conducive to economic and social development, managing risk for vulnerable groups, reducing the risk for corruption and encouraging economic competition."

***Ad sub-criteria 1 (d) (i-ii)***

*According to our comment on the related criteria, we would suggest that the sub-criteria should be amended to include*

*(i) a system of property rights ensuring equitable access to resources*

*(ii) a system of enforcement of legal rules and contracts relating to economic activities, at national and international level*

*(iii) Policies and regulations promoting private investment in the interest of development for all.*

**Ad criteria 1 (e) "to create an equitable, rule-based, predictable and non-discriminatory international trading system"**

The overall logic does not differentiate between national and international actors at the level of criteria, but brings differentiation at the level of sub-criteria. Thus we would prefer to drop the "international" here to make sure that also national trading systems are to be conceived in an equitable, rule-based predictable and non-discriminatory manner.

***Ad sub-criteria 1 (e) (i-iii)***

*While we do think that sub-criteria (i) should be kept as it is, referring to international rules only, we think that market access (sub-criteria ii) and movement of persons (sub-criteria iii) should include, but not be reduced to global or international relations. Internal issues of access to*

markets and movements of persons are also important to keep in mind in relation to the rtd for all.

**Ad criteria 1 (f) "to promote and ensure access to adequate financial resources"**

**Ad sub-criteria 1 (f) (i):**

*The mobilization of domestic resources is important, but in this context, it is not just the issue of mobilizing, but also of using domestic resources for realizing the rtd. Therefore we suggest to add this idea to sub-criteria 1 (f) (i): "Domestic resource mobilization for realizing the right to development for all".*

**Ad sub-criteria 1 (f) (ii) and (iii):**

*The magnitude and terms of bilateral and multilateral ODA is an important sub-criteria which will have quantitative and qualitative aspects, as shown in the indicators proposed. Particularly the qualitative aspects relating to ODA will need further reflection and discussion taking into account the debates in other multilateral fora. For the moment, we would suggest not to use the term "capital flows" in these criteria, but replace it by "official development assistance" ODA.*

**Ad criteria 1 (g) "to promote and ensure access to the benefits of science and technology and sub-criteria**

Access to scientific and technological knowhow is an important empowering tool for States as well as communities and individuals, thus important at international and internal level. Within the logic of Article 27 of the Universal Declaration of Human Rights we would emphasize the importance of this concept, including the ideas of access to information for all and access to international exchange on cultural, scientific and technological experience.

**Ad sub-criteria 1 (g) (i):**

*Pro-poor technology development strategy is certainly needed at international and national levels, but it is also important to provide access to information on scientific and technological issues in order to empower groups and communities to face the challenges of development they face. We would therefore prefer the wording "Pro-poor technology development strategy and access to information on scientific and technological knowhow."*

**Ad sub-criteria 1 (g) (iv):**

*This sub-criteria on "technology transfer, access and national capacity" is not understandable, particularly in the perspective of the broad array of indicators mentioned. It should be separated into two sub-criteria referring to (1) regulating intellectual property, licensing and technology transfer" and (2) access to global information networks. Both sub-criteria would refer to international and national aspects. With regard to the indicators "intellectual property and technology transfer provisions in trade agreements" should be deleted and replaced by "regulatory environment (including intellectual property regime) adequate to incentivise research and development and technology transfer".*

**Ad sub-criteria 1 (g) (v):**

*While "green energy technology" will be an important issue for development cooperation, particularly under the following criteria of "environmental sustainability", it might be more appropriate to mention "energy technology, including green energy technology" more broadly in this sub-criteria. With regard to the indicators: "use of TRIPS flexibilities..." might also work as a disincentive to the acquisition and technology transfer of energy technology, including green energy technology. We therefore propose to delete the indicator "use of TRIPS flexibilities to acquire green technologies". Rather we would propose a positive indicator such as "put in place an investor-friendly regulatory environment to encourage innovation and transfer of technology".*

**Ad sub-criteria 1 (g) (vi):**

*With regard to the suggested indicators we think that the indicators should better reflect the different factors influencing access to medicines, which are mainly: appropriate and effective national and international public health policies, practices in pricing, taxes and customs duties, registration, management and logistic of medical products as well as intellectual property rights and trade related aspects.*

**Ad criteria 1 (h):" to promote and ensure environmental sustainability and sustainable use of natural resources"**

This is certainly a most important aspect of realizing the right to development, at international as well as internal level.

**Ad sub-criteria 1 (h) (ii):**

*We would suggest to be more explicit on qualifying the access to natural resources, particularly for local communities whose livelihoods depend on natural resources. For example: "access and control of natural resources to ensure their sustainable use, respecting the needs and aspiration of local communities."*

**Ad criteria 1 (i): "to contribute to an environment of peace and security"**

An environment of peace and security is an important pre-condition for realizing the rtd at international and national level. Development policies should be measured for their impact on international and national conflict risks as well as for their performance in protecting vulnerable groups and individuals from threats to their personal security and integrity, particularly during conflict.

**Ad sub-criteria 1 (i) (i-v)**

Therefore we would suggest to entirely re-draft the sub-criteria, and keep two sub-criteria with with wording:

- (i): impact of development policies and strategies on conflict and their causes;
- (ii) protection of vulnerable groups, particularly of women, from security threats.

**Ad criteria 1 (j): "To adopt and periodically review national development strategies and plans of action on the basis of a participatory and transparent process"**

Since this criteria is referring to the process of shaping development policies, we suggest to skip it here and integrate it into criteria 2 (c), see below.

**B.2 Attribute 2: "Participatory human rights processes"**

**B.2.1 General comments**

Development is a process of change. The RtD provides not only direction to this process, but also orientation for shaping the process itself. In our view, the respect of human rights as well as governance principles (non-discrimination/inclusiveness, transparency, accountability, participation and the rule of law) must govern the development process at international and national levels. Thus, attribute 2 is an important feature of the realization of the RtD.

**B.2.2 Relating to individual criteria, sub-criteria and indicators**

**Ad criteria 2 (a) to establish a legal framework supportive of sustainable human centred development.**

In most cases it is not about establishing but about further developing, respecting and enforcing a legal framework conducive to human centred development. We suggest therefore to replace "establish" with "further develop, respect and enforce" the legal framework (which is meant to be national and international).

**Ad sub-criteria 2 (a) (i):**

*Ratification of international conventions is not enough, we would therefore suggest to add "... and implementing international obligations".*

**Ad sub-criteria 2 (a) (ii):**

*We would emphasize the importance of this sub-criteria with a view to ensure international and national accountability on development processes.*

**Ad sub-criteria 2 (a) (iii):**

*It is important to add the dimension of "enforcing" in the draft: "National legal protection and enforcing of human rights".*

**Ad criteria 2 (b): "To draw on relevant international human rights instruments in elaborating development strategies"**

*The sub-criteria (i) and (ii) refer to using the human-rights-based approach both at national as well as international level. We do agree very much with this approach and emphasize its importance for the process of shaping decisions on development at international and national levels.*

**Ad criteria 2 (c): "to ensure non-discrimination/inclusiveness, access to information, participation and effective remedies".**

For Swiss development co-operation participation is one of the most important features of a successful development co-operation. We are convinced that without participation there is not enough ownership for development processes and projects, and sustainability is questioned. Moreover, our approach is addressing the needs of vulnerable groups and thus very much in line with the human rights principle of non-discrimination. We couldn't agree more that all these principles (which are part of the human rights based approach) are mentioned in this criteria and its sub-criteria.

***Ad sub-criteria 2 (c) (ii-iii):***

*We would suggest to merge these two sub-criteria, as we should not separate artificially the areas of participating in "development" and "social and economic decision-making". The new sub-criteria could read: "Establishment of a framework and procedures conducive for participation in shaping decisions on social and economic development".*

***Ad sub-criteria 2 (c) (iv - vi):***

*Again, the three sub-criteria could be merged in one referring to non-discrimination/inclusiveness and differential treatment of marginalized groups, as the two aspects are closely linked and can't be separated. The new draft would read: "Establishment of a legal and policy framework supportive of non-discrimination/inclusiveness, the identification of marginalized groups and reflecting their need for differential treatment."*

***Ad sub-criteria 2 (c) (v and vii):***

*We would suggest to add the idea of monitoring and evaluation (referred to in sub-criteria (v) for non-discrimination/inclusiveness issues) as a general concept to "transparency and accountability" and take up the idea of sub-criteria 1 (j) which we suggested to skip there. The sub-criteria (vii) would then read: "Mechanisms for ensuring transparency and accountability for the implementation of human rights principles, including regular monitoring and evaluation of development processes."*

**Ad criteria 2 (d) "to promote good governance at the international level and effective participation of all countries in international decision-making", and criteria 2 (e): to promote good governance and respect for rule of law at the national level**

Emphasizing that the concept of good governance is of utmost importance to us, we think that - in the overall logic - to have criteria applicable at national and international levels, it would be more useful to merge these two criteria and then differentiate the various meanings and areas of application at the level of sub-criteria. So we suggest a new wording such as: "To promote good governance, equal participation in decision-making and respect for the rule of law in development processes".

***Ad sub-criteria 2 (d) and (e)***

*We suggest to be more explicit in this sub-criteria with regard to the various general elements of good governance (transparency, accountability, effectiveness, control of corruption, the rule of law, and participation), providing for a sub-criteria for each of the principles and make sure that this is understood both at national and international levels.*

### **B.3 Attribute 3: Social justice in development**

#### **B.3.1 General comments**

This attribute focuses on the outcome of development policies with regard to "social justice". Since Swiss development co-operation orientates its own activities according these lines at bilateral and multilateral levels, it supports the proposed attribute suggesting that social justice is the most important result to be aimed at in the framework of realizing the RtD.

As already mentioned, we have some doubts about the usefulness to keep attribute 3 separate from attribute 1. However, we have no doubt that the individual criteria and sub-criteria relating to social justice should be kept, to make sure that a disaggregated perspective is kept and marginalized population groups do have their fair share in benefits and burdens of development policies.

#### **B.3.2 Relating to individual criteria, sub-criteria and indicators**

**Ad criteria 3 (a): "to provide for fair access to and sharing of the benefits of development"**

***Ad sub-criteria 3 (a) (i)***

*"Equality of opportunity" is a relatively defensive approach for a development policy, as it might focus on formal equality only instead of promoting substantive change. We would suggest to use the term "equal access to.... for marginalized groups".*

*Recalling the idea of sub-criteria 2 (c) (v) on disaggregated evaluation and assessment approaches, we agree with the idea put forward in the indicators list that disaggregated outcome data are important. A new sub-criteria could therefore read: "Collection of disaggregated data on results of development policies and programmes."*

***Ad sub-criteria 3 (a) (ii)***

*We agree with the relevance of this sub-criteria, as it shows the orientation of public financial policies.*

***Ad sub-criteria 3 (a) (iii)***

*We agree. At international level, financial support for developing countries should indeed focus on reducing marginalization of least developed and vulnerable countries.*

***Ad sub-criteria 3 (a) (iv):***

**Ad criteria 3 (b): "to provide for fair sharing of the burdens of development"**

***Ad sub-criteria 3 (b) (i-ii)***

*Assessment of environmental and other risks for vulnerable groups as well as mitigation of such risks should already be integrated into the planning and design of development investments and policies. Therefore, we would suggest to draft the sub-criteria (i) and (ii) accordingly: (i) "Assess environmental, social and economic risks of development policies and programmes for vulnerable groups when designing and implementing interventions. (ii) Mitigate risks and share burdens of development equitably. (iii) Ensure just compensation for negative impacts of development investments and policies.*

***Ad sub-criteria 3 (b) (iii)***

*Establishing safety nets to allow vulnerable groups to cope with crises of different natures is an important issue, involving responsibilities at national and international levels.*

**Ad criteria 3 (c): "to eradicate social injustices through economic and social reforms"**

Since "economic and social reforms" is a very general term, we would prefer to link the eradication of social injustices to fighting patterns of human rights violations. This would mean that policies should aim at realizing rights particularly for vulnerable groups and eliminate the obstacles they face in accessing social justice. We would therefore suggest re-formulating this criterion in the following way: "to eradicate social injustices through protecting and promoting human rights of the most vulnerable groups."

***Ad sub-criteria 3 (c) (i)***

Generally, a focus on vulnerable groups would also allow for focusing the sub-criteria more on the needs of vulnerable groups. Currently they provide a selection of issues of social injustice which are certainly relevant in many contexts, but not exhaustive and thus not most relevant. For example, the land reform (sub-criteria 3 (c) (v) is important with regard to development policies (and could be referred to under attribute 1, probably under 1 (c)), but might not be the most important issue of social injustices in all circumstances. The list of sub-criteria under 3 (c) should be redrafted.