

Submission in follow-up to HRC resolution 15/25 “The Right to Development”

European Union

1. The European Union is pleased to send a contribution, in reply to the Note Verbale dated 20 October 2010, asking for contributions from States and other stakeholders regarding the following :
 - (a) The right to development criteria and operational sub-criteria of the task force¹;
 - (b) The consolidation of findings of the task force²;
 - (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 co-operation for consideration and mainstreaming the right to development³;
 - (d) The way forward to ensure the effective implementation of the right to development.

I. General Comments

2. The European Union remains strongly committed to achieving sustainable development and eradicating poverty; promoting respect for all human rights and fundamental freedoms; working towards ensuring security, conflict prevention and resolution; and encouraging good governance, gender equality, human development, accountability and equitable globalisation. Indeed during the MDG summit, which was held in New York, in September 2010, the European Union, which provides 56% of Global Aid to Development reiterated its commitment to meeting MDGs by 2015 and offered an extra 1 billion Euros to the most off-track Developing Countries.
3. The European Union also joined the consensus outcome document of the 2010 MDG summit, entitled “*Keeping the promise: United to achieve the Millennium Development Goals*”, which “*reaffirms the importance of freedom, peace and security, respect for all human rights, including the right to development, the rule of law, gender equality, and an overall commitment to just and democratic societies for development*”⁴.
4. In New York, the EU also endorsed the commitment to “*collectively advance and strengthen the global partnership for development*”⁵ and recognised that the fulfilment of all ODA commitments is crucial to achieve the target of 0.7% of GNP for ODA to Developing Countries by 2015 and to reach the level of at least 0.5% of GNP for ODA by 2010, as well as a target of 0.15 to 0.20% for ODA to the Least Developed Countries.⁶

¹ A/HRC/15WG.2/TF/Addendum 2

² A/HRC/15WG.2/TF/Addendum 1

³ A/HRC/15WG.2/TF/2 and Corr.1

⁴ A/65/L.1 – Paragraph 3

⁵ A/65/L.1 – Paragraph 7

⁶ A/65/L.1 – Paragraph 78 f).

5. The EU wishes to reiterate that the full realisation of all human rights, including the right to development is an obligation for States, acting individually and collectively, within institutionalised frameworks, such as regional and international organisations.
6. The European Union also wishes to reiterate that « *States have the primary responsibility for the creation of national and international conditions favourable to the realisation of the right to development* », as stated in Resolution HRC 15/25.
7. Finally, the EU wishes to recall that the appropriate next steps have not been decided upon and could take a variety of forms, as also acknowledged in Resolution HRC 15/25, adopted on 1 October 2010. The EU would also like to re-state its well-known position that it is not in favour of the elaboration of an international legal standard of a binding nature, because it does not believe that this is the most appropriate instrument to operationalise the right to development.

II. The way forward

8. The European Union is committed to the implementation of the Right to Development through the elaboration of benchmarks and indicators for States to empower individuals as active agents in the development process.
9. In that context, the EU welcomes the report of the High Level Task Force (HLTF) and still believes that further work will be required at experts' level, in one form or another, in order to make the Right to Development operational, a view shared by the Chair of the HLTF. Indeed the European Union would like to recall its position regarding the overall issue of technical expertise and the mandate of the HLTF, as expressed *inter alia* during the 8th session of the Working Group on the Right to Development, which was held in April 2010. Given the very extensive and comprehensive report of the HLTF, the European Union feels that the mandate of the HLTF should have been extended in order to allow for more further refinement of the criteria, sub-criteria and indicators and with a view to developing an operational framework to be used by States, Regional and International Organisations, where relevant.
10. In the meantime, the set of criteria, sub-criteria and indicators could be further assessed by States and Regional organisations, where relevant, on a voluntary basis. Participants should be invited to report back to the WG on the findings of their evaluations, as early as possible, bearing in mind that, given the complexity of the exercise, it is unlikely that findings will be available before 2012.
11. Only when the sub-criteria have been properly assessed and refined, (if necessary, with the support of an international network of experts) 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.

III. Preliminary comments on the sub-criteria and indicators

12. The attributes, criteria, sub-criteria and indicators devised by the HLTF 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 realisation of the right to development“.

13. Such criteria, sub-criteria and indicators are a good basis for operationalising the right to development but further work and refinement are necessary.
14. For example, it is already clear that 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 is available at all.
15. The EU also holds the view that sub-criteria and indicators should be formulated in such a way that they can be applied to all countries, since the right to development should be enjoyed by all human beings.
16. Furthermore, in its report, The High Level Task Force identifies 3 main levels of responsibility, 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.

As International Human Rights law only recognises clearly that States have legally binding obligations with regard to persons falling under their national jurisdiction, the European Union would like further clarification on the 3 levels of responsibility identified by the HLTF.

IV. The consolidation of findings of the task force

17. The European Union shares the view expressed by the HLTF in their consolidated findings, namely that each country has primary responsibility for its own economic and social development and that only States can move the Right to Development from political commitment to development practice.
18. At the same time, as stated in the outcome document of the New York MDG Summit, *“development efforts at the national level need to be supported by an enabling national and international environment that complements national actions and strategies”*.⁷

⁷ A/65/L.1 – Paragraph 10

19. The EU takes note of some obstacles the HLTF has identified for moving the right to development from political commitment to development practice, namely “*the strengths and weaknesses of the MDGs, structural impediments to economic justice, the resistance to addressing trade and lending from a right to development perspective, the imperative and pitfalls of measurement tools, 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.*”⁸

20. Whilst the EU does not necessarily endorse the findings of the HLTF in this regard, we would like to make use of this opportunity to provide a few comments. Please note that this is not a comprehensive list of comments and also note that the sub-headings of the report have been kept only for ease of reference.

Strengths and weaknesses of MDGs

21. Regarding the strengths and weaknesses of the MDGs, the European Union shares the views of the HLTF 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”⁹ The protection and promotion of all civil and political rights also contribute to the empowerment of individuals and thereby to lifting people out of poverty. The European Union also shares the view of the High Level Task Force that the MDGs are “divorced from a human rights framework”¹⁰. In that respect, the European Union welcomes the efforts of the UN High Commissioner for Human Rights to promote the intersection of MDGs and Human Rights and her exhaustive analysis on how human rights can contribute to the Goals, as this is totally consistent with the EU’s Human-Rights based approach to Development.

Structural impediments to equitable development on the global scale

22. Regarding the structural impediments to equitable development on the global scale, the European Union is also of the opinion that failure to meet the objective of 0.7 per cent of gross national income devoted to official development assistance is not the most important obstacle to realising the right to development. We also agree with the importance of looking at aid effectiveness and sustainability. From the point of view of recipient countries, this implies *inter alia* that States have the right and the duty to formulate policies that aim 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 is often crucial, as well as the political commitment to achieve peace whenever peace is lacking. From the point of view of Donor countries, this implies *inter alia* that: 1) the aid

⁸ A/HRC/15/WG.2/TF/2/Addendum 1 – Paragraph 63

⁹ A/HRC/15/WG.2/TF/2/Addendum 1 – Paragraph 64

¹⁰ A/HRC/15/WG.2/TF/2/Addendum 1 – Paragraph 64

provided is channelled to key sectors of the economy and society, with the full involvement of civil society; 2) the way funds are used and the results achieved might be fully monitored. The EU also encourages recipient countries to explore the potentials of public-private partnerships.

Addressing Trade and debt from a Human Rights perspective

23. Regarding what is described in the report as resistance to address trade and debt from the Human Rights perspective, the HLTF acknowledges the active participation of WTO and UNCTAD and regional Organisations, such as the EU, MERCOSUR or International Financial institutions, such as the World Bank or the International Monetary Fund to collect information, but underlines the lack of cooperation to pilot-test criteria. The European Union believes that developing a comprehensive framework or template would help such organisations with the testing of proposed criteria.

Tools for measurement

24. The EU welcomes the efforts of the HLTF 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 stakeholders measure progress in the implementation of the right to development. In that respect, the European Union is of the view that the indicators proposed by the HLTF are useful but require further testing and in-depth evaluation and is set to undertake such an exercise. In some cases, the complete lack of data will prove a major obstacle.

Global partnerships

25. On the issue of global partnership for development, as used in Goal 8, the European Union agrees that it remains an ambiguous concept because it refers to treaty regimes, arrangements and commitments between various stakeholders and institutions. In that context, regional organisations and instruments (the Association of Southeast Asian Nations Charter and Arab Charter on Human Rights, containing an explicit article on the right to development) as well as cross-regional partnerships, such as the EU-AU strategic partnership, can provide a useful framework for assisting States in implementing the Right to Development.

Policy coherence and incentives

26. On the question of policy coherence, the EU is of 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. Also, as pointed out by HLTF, 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. Of

course, policy coherence is relevant also to regional and international organisations and agencies: the EU encourages all those initiatives that might favour a better coordination among them.

National and international responsibilities

27. As stated before, States have the primary responsibility for the creation of national and international conditions favourable to the realisation of the right to development. In that context, the EU supports good governance, both at national and international levels and recognises that States, acting individually and collectively, can contribute to creating an enabling environment and ensure greater justice in the global political economy. In that respect, MDGs are a useful model.

V. Conclusions

28. At this stage, the EU can only provide very preliminary remarks on the report of the High Level Task Force. We highly appreciate the work of the HLTF in the operationalisation of the right to development, through the formulation of criteria, sub-criteria and indicators. A first step should be to improve and refine these. Consequently, other proposals of the HLTF for further work can be taken forward, such as the preparation of a template and/or the development of an appropriate set of standards. In other words, the sequencing is very important. In addition, the EU thinks that expertise is of paramount importance and as the mandate of the HLTF was not renewed, the question of where the expertise should come from also needs to be addressed.