



# General Assembly

Distr.: General  
1 July 2013

Original: English

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## Human Rights Council

Twenty-fourth session

Agenda item 3

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

## **Report of the Independent Expert on the promotion of a democratic and equitable international order, Alfred-Maurice de Zayas\***

### *Summary*

The Independent Expert submits this progress report in accordance with Human Rights Council resolutions 18/6 and 21/9. It summarizes activities undertaken from August 2012 to June 2013, and addresses the spectrum of issues inherent in the mandate. For ease of reference, 14 documents and declarations have been included as annexes to the report. The Independent Expert understands the mandate as universal, aiming at the convergence of civil, cultural, economic, political and social rights into a coherent synthesis necessary for the process of achieving an international order that is more democratic and equitable. The vast scope of the resolutions manifest the Council's vision and call for the formulation of pragmatic recommendations to States, civil society, National Human Rights Institutions and the Council itself. A peaceful and just international order can be achieved when stakeholders collaborate to change paradigms and apply international law uniformly, in keeping with the United Nations Charter and human rights treaties

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\* The annex to the present report is circulated as received, in the language of submission only.

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## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction .....	1–4	3
II. Activities .....	5–11	3
III. Democratic and equitable deficits .....	12–24	4
IV. Obstacles .....	25–41	10
V. Good practices.....	42–50	14
VI. Conclusions and recommendations .....	51–60	16
A. Recommendations to States .....	54–56	17
B. Recommendations to the Council .....	57	20
C. Recommendations to Civil Society and National Human Rights Institutions	58–60	21
Annex		
Excerpts or full texts of relevant documents .....		23

## I. Introduction

1. “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.” Article 21(3), Universal Declaration of Human Rights.
2. “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Article 1, International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR).
3. “Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives.” Vienna Declaration and Programme of Action, paragraph 8.
4. This report of the Independent Expert is submitted to the Human Rights Council pursuant to Council resolutions 18/6 and 21/9, covering multiple aspects of the mandate, with emphasis on the fostering of full, equitable and effective participation.

## II. Activities

5. In the period from 1 August 2012 to 14 June 2013, the Independent Expert deployed manifold activities directly associated with the different aspects of the mandate. He forwarded two questionnaires to States, intergovernmental organizations, national human rights institutions and non-governmental organizations. He expresses thanks for all responses received.
6. On 16 May 2013, he convened an expert consultation in Geneva with the aim of gathering inputs for this report. On 6 June 2013, he convened a consultation on global enforcement mechanisms as a means to achieve an international order, which will be subject of his report to the General Assembly.
7. He was invited to and participated in numerous events pertinent to the mandate during the twenty-first, twenty-second and twenty-third sessions of the Council. While in New York to present his first report to the General Assembly in October 2012, he had the opportunity to meet with numerous Permanent Missions, United Nations Special Procedures mandate holders and other stakeholders.
8. He further took part in other events related to his mandate:
  - (a) From 1–3 October 2012, he delivered a paper on democratic governance at the Council’s Social Forum on people-centered development and globalization.<sup>1</sup>
  - (b) From 4–5 December 2012, he participated in the first annual Forum on Business and Human Rights.
  - (c) As a follow-up to a closed expert meeting on the Advisory Committee Declaration on the right to peace held 26–27 November 2012 in Caux-Sur-Montreux, Switzerland, which he attended, he took part in the first session of the Open-ended Intergovernmental Working Group on a Draft United Nations Declaration on the Right to Peace in February 2013.

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<sup>1</sup> Martin Khor, “Globalization and the South”, Third World Network, Penang 2002.

(d) On 5 April 2013, he contributed a paper to the Workshop on the impact of unilateral coercive measures on the enjoyment of human rights.<sup>2</sup>

9. Furthermore, he participated, *inter alia*, in:

(a) A conference hosted by Earth Focus in Geneva, on 10 December 2012, on the occasion of 2012 Human Rights Day.

(b) A panel discussion commemorating the 10th anniversary of the International Day of Zero Tolerance to Female Genital Mutilation, organized by several missions and UNICEF on 6 February 2013.

(c) A meeting analysing the Declaration on the right to peace, organized by the CSO Coalition on the Human Right to Peace, on 11 March 2013.

(d) A lecture on the scope of his mandate at the University of Middlesex 7–8 March 2013; and two lectures at the University of Nottingham, on 8 and 9 March 2013.

(e) A seminar, entitled “A Democratic New International Economic Order”, organized by the International Association of Democratic Lawyers, in Paris, 23–24 May 2013.

10. In light of Council resolution 21/9, the Independent Expert interacted with academia, think tanks and research institutes, including the South Center, the Inter-Parliamentary Union, the Committee for a Democratic United Nations, the Kofi Annan Foundation, the International Commission of Jurists, and CETIM. On 11 October 2012 he held a working session with the Executive Director of South Center and also met with the Secretary General of the Geneva-based Inter-Parliamentary Union. On 25 February he met with professors of the Geneva Academy of International Humanitarian Law and Human Rights concerning the Swiss Initiative to Commemorate the 60th Anniversary anniversary of the Universal of Human Rights, and on 6 March with representatives of the International Commission of Jurists on the World Court on Human Rights.<sup>3</sup>

11. In December 2012 he published, together with Ms. Aurea Roldan, an analysis of the Human Rights Committee’s General Comment 34 on “Freedom of Opinion and Freedom of Expression” in the *Netherlands International Law Review* (vol. LIX, pp. 425-455), and the role of access to information and freedom of the media in ensuring a democratic international order.

### III. Democratic and equitable deficits

12. A democratic and equitable international order is inherent in the fundamental human rights that humanity shares.<sup>4</sup> It is achievable, step-by-step, when every country and people act at the local, regional and international levels, aware that such an international order must be based on the United Nations Charter and the human rights treaties, which together make up what we can safely call the Constitution of the modern world, subject, of course,

<sup>2</sup> See <http://www.ohchr.org/EN/NewsEvents/Seminars/Pages/WorkshopCoerciveMeasures.aspx>, chapter 7.1 on United States exceptionalism and unilateralism in Rosa Freedman, *The United Nations Human Rights Council*, Routledge 2013, pp. 151–154.

<sup>3</sup> See <http://www.udhr60.ch/docs/World-court-final1211%20.pdf>; <http://www.udhr60.ch/>

<sup>4</sup> See e.g. [http://www.un.org/en/globalissues/democracy/human\\_rights.shtml](http://www.un.org/en/globalissues/democracy/human_rights.shtml); [http://www.un.org/en/globalissues/democracy/democracy\\_and\\_un.shtml](http://www.un.org/en/globalissues/democracy/democracy_and_un.shtml); [http://www2.ohchr.org/english/issues/rule\\_of\\_law/democracy.htm](http://www2.ohchr.org/english/issues/rule_of_law/democracy.htm); *Democracy, Human Rights and the Emerging Global Order*, a Workshop hosted by the Brookings Institution’s Managing Global Order project, 29–30 November 2012.

to necessary reforms. The Preamble and articles 1 and 2 of the Charter lay down the intention of the “peoples of the United Nations” to build an international order of peace, human rights and development.

13. With regard to an international democratic and equitable order, it is obvious that such international order depends on the sovereign equality of States, the right of peoples to self-determination and on a commitment to sharing the riches of the planet in a spirit of international solidarity.<sup>5</sup> While self-determination is closely related to the idea of democracy, participation in international decision-making is still far from equal or even equitable. Indeed, the United Nations Security Council is not democratic, nor are the Bretton Woods institutions. There are other players which are not democratic in their structure or in their *modus operandi*, including certain elitist organizations such as the Trilateral Commission, the Atlantic Council and the Bilderberg Group, as well as better-known conferences of the G-8, G-20, the World Economic Forum, and military alliances such as the North Atlantic Treaty Organization (NATO). Meanwhile, transnational corporations exert increasing influence on global decision-making and impact on the options of sovereign States and on the enjoyment of human rights.<sup>6</sup> Corporations – whether national or multinational – do not operate on the basis of democratic principles but seek primarily profit, and their decisions affect the international order. Reforms are necessary so as to ensure the equitable participation of States, large and small, in global decision-making, especially concerning decisions on peacekeeping, the environment, trade relations and the common heritage of humankind.

14. In a democracy, it is the people who are sovereign. Therefore, with regard to the promotion of democracy at the local, country and regional levels, civil society must have a stronger voice in all political processes. The situation in some countries is grave, since freedom of expression, peaceful assembly and association, and free and fair elections, are not ensured; opposition leaders are arrested or killed; journalists, whistleblowers and bloggers are harassed, intimidated and detained; public demonstrations are prohibited; peaceful demonstrators massacred, elections are reduced to masquerades, etc. Several Rapporteurs have documented these violations,<sup>7</sup> the Human Rights Council has adopted pertinent resolutions, and the Human Rights Committee has adopted important jurisprudence thereon.<sup>8</sup> The Independent Expert is highly concerned about such situations where the rule of law and the respect for key principles such as free, fair and competitive elections are blatantly violated.

15. It is crucial that electoral systems be free and fair, ensure the free formation and operation of political parties, in accordance with best practices related to freedom of association,<sup>9</sup> and respect the principle of non-discrimination so that all groups, including opposition groups or groups promoting dissenting views, can take part in the electoral process. These rules should apply not only for general or important elections, but also in

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<sup>5</sup> Report of the Independent Expert on human rights and international solidarity, A/HRC/23/45 and Add.1.

<sup>6</sup> Salvador Allende at the United Nations 1972, <http://www.youtube.com/watch?v=knewNLlpkMw>.

<sup>7</sup> See, *inter alia*, reports from Independent Expert on minority issues: Special Rapporteur on the Independence of Judges and Lawyers; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the promotion and protection of human rights while countering terrorism; Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Special Rapporteur on the situation of Human Rights Defenders; and Special Rapporteurs on Belarus, Cambodia, Côte d’Ivoire, Eritrea, Islamic Republic of Iran and Sudan.

<sup>8</sup> Jakob Möller and Alfred de Zayas, *United Nations Human Rights Committee Case Law*, 2009.

<sup>9</sup> See Report A/HRC/20/27 of the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

local consultations. Participation is more than casting votes: it implies the ability for individuals and people to freely express their views, and for this voice to be heard “to shape the decisions that affect their community”.<sup>10</sup>

16. But even in ostensibly democratic States, there is no reason for complacency. Although formally free elections are held, the electoral process in many countries is dysfunctional and election results do not always correspond to the wishes of the electorate. In order to satisfy democratic requirements, there must be consultation of the public and the choice of candidates must be free and transparent. Methods to determine the will of the people, for instance, through frequent opinion polling and through referenda, should be put in place. As many observers note, representative democracy frequently manifests a disconnect between parliamentarians and the people, so that parliamentarians have agendas that do not correspond with the wishes of the electorate. This has led in many countries to apathy, cynicism and large-scale absenteeism in elections. What is needed is not only parliaments, but parliamentarians who genuinely represent the wishes of the electorate. In almost all countries, women are underrepresented and in many countries women are essentially disenfranchised.<sup>11</sup> Such disenfranchisement is undemocratic and demands corrective measures. Women must be empowered so that they can meaningfully participate in decision-making.<sup>12</sup>

17. This second report to the Council, which covers multiple aspects of Council resolutions 18/6 and 21/9, focuses primarily on the issue of participation. It is not a compilation of facts and figures, but an attempt at defining concepts and identifying obstacles. The concept of democracy – whether we mean international democracy or domestic democracy – can be defined. Yet, international organizations that call themselves democratic are not, and some countries that invoke democracy reveal themselves as autocratic or oligarchic in practice. “Representative democracy” betrays the electorate when laws have no roots in the people but in oligarchies. Studies on the concept and modalities of direct democracy are therefore becoming more topical.<sup>13</sup>

18. Democracy entails a correlation between the public interest as expressed by a majority of the population and the governmental policies that affect them. The term encompasses various manifestations, including direct, participatory and representative democracy, but Governments must be responsive to people and not to special interests such as the military-industrial complex, financial bankers and transnational corporations. Democracy is inclusive and does not privilege an anthropological aristocracy. It requires that the basic rules establishing and organizing the State and its relationship with society be put in place and accepted by the citizens. It requires consultation with the people and

<sup>10</sup> See [www.un.org/en/events/humanrightsday/2012/message.shtml](http://www.un.org/en/events/humanrightsday/2012/message.shtml).

<sup>11</sup> Concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW), report A/HRC/23/50 of the Working Group on the issue of discrimination against women in law and in practice.

<sup>12</sup> CEDAW General Recommendation 23 and CESCR General Comment 15, para. 16a; Human Rights Committee, General Comment 28.

<sup>13</sup> Global Forum on Modern Direct Democracy, Montevideo 14-16 November 2012 <http://2012globalforum.com/>, <http://movementfordirectdemocracy.com/strategy.html>, <http://www.directdemocracynow.org/>, Centre for Direct Democracy, University of Zürich <http://www.c2d.ch/>, World Conference on Direct Democracy [http://www.tfd.org.tw/iri-asia/?mod=News&page=Direct\\_Democracy\\_Developments&id=465](http://www.tfd.org.tw/iri-asia/?mod=News&page=Direct_Democracy_Developments&id=465). Andrea Good/Bettina Platipodis, *Direkte Demokratie*, Bern 2013. Daniel Thürer, “Völkerrechtliches Jus Cogens und Volkssouveränität” in Good/Platipodis, pp. 439-452. Daniel Thürer, *Direkte Demokratie. Eine Form des Widerstands?* in Hans v. Arnim (ed.) *Widerstand*, Berlin 2012, pp. 63 ff. René Roca, *Wenn die Volkssouveränität wirklich eine Wahrheit werden soll*. Zürich 2012; Paul Widmer, *Die Schweiz als Sonderfall*, Zurich 2008.

respect of the will of the voters. Although founded on majority rule, a democratic society must recognize and apply individual, minority and group rights. In other words, majority rule must be understood within the context of the rule of law and human dignity. As highlighted by the European Court of Human Rights, “Pluralism, tolerance and broadmindedness are hallmarks of a ‘democratic society’. Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids any abuse of a dominant position.”<sup>14</sup> This resolves the tension between populism and human rights, since democracy must not be abused to diminish human rights, e.g. by legitimizing torture or capital punishment, even if public opinion could be invoked or manipulated to demand it. Thus, it is necessary to strengthen the enforcement of national and regional bills of rights to provide a process and atmosphere for democracy to flourish, ensured by an independent judiciary that provides the necessary protection of both majority and minority interests.

19. Democracy has an old evolutionary history and has been adjusted to the needs of many different societies and cultures. There is no single “model” of democracy,<sup>15</sup> and no one should pretend that “one size fits all” and that one particular manifestation of democracy should be exported to countries that function differently, where the political process corresponds to other traditions. When approaching the concept of democracy, one should look beyond the label and ask the crucial question: What is the correlation between the needs and the will of the people and the political decision-making affecting them? A corollary to that question is: To what degree was truthful, reliable and pluralistic information available to facilitate genuine participation by the people in the development of law and practice? Democracy is not the end product, but the means to the end, which is the enjoyment of human rights by all.

20. In order to test the existence or otherwise of international democracy in recent times, one may ask whether States and peoples, including non-represented peoples, have had a democratic opportunity of participating in decisions concerning important issues, such as war and peace, global warming, the environment, trade relations, access to medicine and the common heritage of humankind. More concretely, would a majority of States approve the application of sanctions regimes selectively and not uniformly? Would they have approved the use of force against Serbia in 1999, against Iraq in 2003 and against Libya in 2011? Should the international community have had a voice in determining whether all avenues of peaceful negotiation had been exhausted? Should civil society be allowed a degree of participation on “technical” decisions on free trade and other agreements that result in widespread unemployment? And with regard to regional arrangements and regional constitutional law, should the citizens of the countries concerned be allowed to vote directly in favour or against treaties entailing a significant restriction of national sovereignty, e.g. should the citizens of the European Union have had an opportunity to vote by referendum on the adoption of the Treaty of Lisbon? Should they have had a say in decisions to impose or lift embargoes in situations of civil war? With regard to the reunification of the island of Cyprus, would a constitutional convention in which all Cypriot communities would have had an opportunity to negotiate a grass-roots constitution have resulted in a democratic instrument that could have bridged the impasse by involving all stakeholders?<sup>16</sup> This non-exhaustive list of international disorder illustrates that

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<sup>14</sup> European Court of Human Rights, *Case of Leyla Sahin vs. Turkey*, Application no. 44774/98, para. 108.

<sup>15</sup> Preamble, Human Rights Council Resolution 19/36, 23 March 2012.

<sup>16</sup> Andreas Auer *et al.* *A principled basis for a just and lasting Cyprus settlement in Light of International and European Law*, Brussels, 2005. Andreas Auer/Vasiliki Triga, *A Constitutional*

consultation has been flawed or entirely missing, precisely in cases where public participation would have been most necessary.

21. In order to test the existence or otherwise of domestic democracy in recent times, it may be instructive to explore how decisions such as those on the increasing electronic and video surveillance of individuals, arrest, indefinite detention, social security, health care, employment, marriage, abortion, etc. have been taken and are being taken, and the degree of genuine public participation in these decisions. More concretely, would a majority of the population accept the grave restrictions of human rights following the terrorist attacks of September 11, 2001? Would it accept the priorities imposed by Governments with regard to so-called “austerity measures”? Would it approve the bailout of the banks? Would it approve increasing militarization and the enormous slice of the budget allocated to the “defence” industry? Would it consent to the participation of their respective countries in military adventures not supported by resolutions of the Security Council and not allowed under Article 51 of the United Nations Charter? Would it consent to the sale of weapons to belligerents in foreign civil wars? Would it consent to the use of drones regardless of civilian casualties and collateral damage? Would the citizens of the 54 nations that cooperated with the system of rendition, secret prisons, “black holes”, etc. have approved illegal acts committed in the name of the “war against terrorism”?<sup>17</sup> Would they consent to the use of military commissions to try civilians? What has been the role of some media in creating an atmosphere of imminent threat and fear through disinformation and skewed reporting, in contravention of the prohibition of war propaganda stipulated in article 20 ICCPR? Would a public referendum approve adoption of infants by same-sex couples? What does it mean when mass protests demanding democratic reforms and human rights are met with excessive use of force by police? Can laws be adopted top-down without public debate and in spite of widespread protest by the population? Are populations hostage of parliamentarians and incapable of influencing policy until the next elections, which may or may not allow a choice of policies but only of candidates whose decisions are sometimes a surprise to the electorate? Many of these issues demand public debate and consultation and should not be short-circuited and decided over the heads of the people.

22. Undoubtedly, there is room for improvement in each and every country. No country has a perfect report card. While some countries have strong points in specific areas, they may have serious lacunae in other areas. For instance, some countries have made enormous progress on civil and political rights, but lag in the implementation of economic, social and cultural rights. In some States and territories there are minorities, indigenous populations, people under occupation, unrepresented people and persons living in extreme poverty,<sup>18</sup> who lack the possibility to effectively participate in decision-making<sup>19</sup>. Effective measures, including a judicial system of enforceable rights, should be adopted to empower women, minorities, indigenous populations, unrepresented peoples, persons with disabilities, etc., so that they can meaningfully participate in the political process and in the decisions affecting them, their right to self-determination, their traditional environment, their culture and beliefs.

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*Convention for Cyprus*, Berlin, 2009. A de Zayas, “The Annan Plan”, *The Cyprus Yearbook of International Relations*, 2006, pp. 163–178.

<sup>17</sup> See A/HRC/22/52.

<sup>18</sup> See <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13369&LangID=E>.

<sup>19</sup> A/HRC/13/25 Recommendations of the second session of the Forum on Minority Issues on minorities and effective political participation. Reports of the Special Rapporteur on extreme poverty and human rights, Special Rapporteur on the rights of indigenous peoples, Working Group on the issue of discrimination against women in law and in practice.



23. Each country has the responsibility to make improvements to its economic, judicial, political and social systems. Civil society should be given every opportunity to contribute to this process. If every country takes a step forward, all populations will benefit and international solidarity will be served.

24. Many observers have exposed the democracy deficits of the international and domestic order; identified threats to international peace; warned against the military-industrial complex; and denounced the retrogression in social justice and the crisis of democracy, which some see in the absence of public participation, and the imposition of a kind of lobby-democracy, post-democracy or pseudo-democracy, democratic only in name, because real decisions are taken by corporations and financial institutions that are not elected and not accountable to the people. Among them: Samir Amin,<sup>20</sup> Francis Boyle,<sup>21</sup> Noam Chomsky,<sup>22</sup> Ramsey Clark,<sup>23</sup> Marjorie Cohn,<sup>24</sup> Giovanni Cornia,<sup>25</sup> David Cromwell,<sup>26</sup> Colin Crouch,<sup>27</sup> Barbara Ehrenreich,<sup>28</sup> Diane Elson,<sup>29</sup> Glenn Greenwald,<sup>30</sup> Stephany Griffith-Jones,<sup>31</sup> Chris Harman,<sup>32</sup> David Harvey,<sup>33</sup> Edward Herman,<sup>34</sup> Richard Jolly,<sup>35</sup> Naomi Klein,<sup>36</sup> Robert McChesney,<sup>37</sup> Justin Lewis,<sup>38</sup> Jeanne Mirer,<sup>39</sup> Ralph Nader,<sup>40</sup> Isabel Ortiz,<sup>41</sup> Karen Parker,<sup>42</sup> Ruth Pearson,<sup>43</sup> John Pilger,<sup>44</sup> Arundhati Roy,<sup>45</sup> Frances Stewart,<sup>46</sup> Alejandro Teitelbaum,<sup>47</sup> Tzvetan Todorov,<sup>48</sup> Roland Weyl,<sup>49</sup> Luis Roberto

<sup>20</sup> *Maldevelopment - Anatomy of a Global Failure*, 2nd edition, Oxford, 2011.

<sup>21</sup> *World Politics and International Law*, 2005.

<sup>22</sup> *Hopes and Prospects*, London 2010.

<sup>23</sup> *From Civil Rights to Human Rights*, <http://ddce.utexas.edu/news/2012/11/07/nov-12-from-civil-rights-to-human-rights-talk-by-ramsey-clark/>

<sup>24</sup> See <http://www.marjoriecohn.com/>.

<sup>25</sup> See [http://www.wider.unu.edu/aboutus/people/external-project-directors/en\\_GB/cornia-external/](http://www.wider.unu.edu/aboutus/people/external-project-directors/en_GB/cornia-external/).

<sup>26</sup> *Why are we the Good Guys? Reclaiming Your Mind from the Delusions of Paranoia*. Winchester 2012.

<sup>27</sup> *Post-Democracy*, Cambridge 2004

<sup>28</sup> *Nickel and Dimed: On (not) Getting by in America*, 2001, <http://www.barbaraehrenreich.com/nickelanddimed.htm>.

<sup>29</sup> “Emerging Issues with a Focus on Economic Decision-Making” in United Nations Economic Commission for Europe (ed.) *Gender Gaps and Economic Policy*, UNECE, Geneva, 2007.

<sup>30</sup> *With Liberty and Justice for some: How the Law is Used to Destroy Equality and Protect the Powerful*, New York, 2012.

<sup>31</sup> Stephanie Griffith-Jones et al. (eds.), *Time for a Visible Hand: Lessons from the 2008 World Financial Crisis*, Oxford, 2010.

<sup>32</sup> *Economics of the Madhouse: Capitalism and the Market Today*, London, 1995.

<sup>33</sup> *A Brief History of Neoliberalism*, Oxford, 2005.

<sup>34</sup> *The Myth of the Liberal Media: An Edward Herman Reader*, 1999.

<sup>35</sup> Richard Jolly et al., *Be Outraged: There are alternatives*, 2012.

<sup>36</sup> *The Shock Doctrine: The Rise of Disaster Capitalism*, 2007.

<sup>37</sup> *Rich Media, Poor Democracy: Communication Politics in Dubious Times*, New York, 2000.

<sup>38</sup> *Constructing Public Opinion: How Political Elites Do What They Like and Why We Seem to Go Along With It*, New York, 2001.

<sup>39</sup> See <http://www.iadllaw.org/en/node/390>.

<sup>40</sup> *The Good Fight: Declare your Independence and Close the Democracy Gap*, 2004.

<sup>41</sup> See <http://www.isabelortiz.info/>.

<sup>42</sup> Association of Humanitarian Lawyers <http://www.humanlaw.org/>.

<sup>43</sup> See <http://www.polis.leeds.ac.uk/about/staff/pearson/>.

<sup>44</sup> *The New Rulers of the World*, London 2002.

<sup>45</sup> *Listening to Grasshoppers: Field Notes on Democracy*, New Delhi, 2009.

<sup>46</sup> *Horizontal Inequalities and Conflict: Understanding Group Conflict in Multiethnic Societies*, Basingstoke, United Kingdom, 2008.

<sup>47</sup> See <http://www.rebellion.org/mostrar.php?tipo=5&id=Alejandro%20Teitelbaum&inicio=0>.

<sup>48</sup> *Les ennemis intimes de la démocratie*, Paris 2012.

<sup>49</sup> *Nous peuples des Nations Unies: Sortir le droit international du placard*, CETIM, Geneva, 2008.

Zamora,<sup>50</sup> Jean Ziegler<sup>51</sup> and Howard Zinn.<sup>52</sup> The diagnosis is clear, but changing the *status quo* has proven difficult, because often those who are elected do not govern, and those who do govern are not elected.

#### IV. Obstacles

25. Numerous answers to the questionnaires, presentations at the consultations of 16 May and 6 June 2013, as well as communications received by the Independent Expert reveal dysfunctions in the democratic and equitable participation of stakeholders both at the international and the national levels.

26. Obstacles to genuine participation in decision-making in the international arena are many. A democratic and equitable international order entails a commitment to dialogue without preconditions in which all States and peoples have an opportunity to participate in global decision-making. War constitutes a breakdown of the friendly relations among States stipulated in General Assembly Resolution 2625, and a violation of Articles 2(3) and 2(4) of the United Nations Charter. The war industries in many countries and the enormous trade in weapons of all kinds generate corruption and fuel conflict throughout the world, since there is profit to be made. The existence of an immensely powerful military-industrial complex constitutes a danger to democracy, both internationally and domestically, because it follows its own logic and operates independently of popular participation. United States President Dwight Eisenhower signaled this danger on 17 January 1961.<sup>53</sup> The huge proportion of budgets devoted to the activities of the armaments and other war industries leaves little space for the promotion of human rights. Moreover, in a time of weapons of mass destruction, there is no alternative to peaceful coexistence. Unilateralism is by its very nature incompatible with an international democratic order. In spite of the will of the international community and in violation of nearly unanimous General Assembly resolutions, some States continue to rely on unilateralism with total impunity.

27. The reality of economic, political and military imbalance leads to pressures on the weak that have little choice but to bend to various forms of coercion, threats, sanctions or carrot-and-stick practices. This asymmetry has led to the organization of the Non-Aligned movement, and numerous regional organizations (ALBA, CELAC, MERCOSUR, OIC), whose members do not always apply democratic rules, that attempt to balance out the overwhelming economic and political power of a few nations.

28. During the expert consultation convened by the Independent Expert in Geneva on 16 May 2013, participants expressed the hope for reform in the way decisions on global issues are taken, including decisions on war and peace, trade imbalances, commodity prices, financial markets, the environment and international peacekeeping. In the International Monetary Fund and the World Bank, voting systems are not equitable insofar as the majority of the votes are given to developed country governments, which results in favouring the financial interests of elites at the expense of the disadvantaged. The reform of

<sup>50</sup> See <http://www.nlgazcentral.org/luis-roberto-zamora-bolanos-speaks-on-peace/>, and <http://www.peaceasahumanright.org/Peace/HOME.html>.

<sup>51</sup> *Destruction massive : Géopolitique de la faim*, Paris, 2011.

<sup>52</sup> *The Historic Unfulfilled Promise*, New York 2012.

<sup>53</sup> President Dwight D. Eisenhower, <http://www.youtube.com/watch?v=8y06NSBBRtY>. *Public Papers of the Presidents of the United States*, Dwight D. Eisenhower, pp. 1035-40.

these institutions<sup>54</sup>, the Security Council<sup>55</sup>, and the World Trade Organization is necessary. Maybe alternative institutions should be devised.<sup>56</sup>

29. In the domestic arena, there are as many obstacles. Communications received from civil society organizations claim that, for a variety of reasons, which vary from country to country, some people cannot participate in decision-making. As highlighted by the Working Group on the issue of discrimination against women in law and in practice, structural and social discrimination against women prevent them from taking part in political and public life in all almost all countries in the world.<sup>57</sup> It is unacceptable that a number of women who have taken part in peaceful protests in some parts of the world have met with violence, including sexual violence. States must demonstrate determination in putting an end to structural violence, and implementing positive measures to ensure the participation of more than half of the Earth's population in public and political life.

30. Indigenous groups<sup>58</sup> maintain that they have been denied effective representation and that their participation is essentially pro forma, since, regardless of their views, governments pursue their own agendas and only perfunctorily listen to them. In particular, some indigenous claim material breaches of treaties<sup>59</sup> made by their ancestors with the European powers, others claim deception when the treaties were made. They maintain their right to self-determination, autonomy and identity, including sovereignty over their natural resources, which have been taken from them without their consent and without appropriate compensation, in contravention of common article 1 of the ICCPR and ICESCR. A fundamental issue to many indigenous is that of their status as peoples, since they do *not* want to have the citizenship of the country which colonized them; in some cases, they challenge self-determination referenda in which they claim they had little or no possibility to manifest their will.<sup>60</sup> They maintain that the right of self-determination cannot be exercised against the will of the population concerned, and that self-determination referenda should only allow the indigenous to vote and not the colonizers.

31. Many other groups at risk – including human rights defenders, students, minorities and people living in poverty – suffer from a lack of genuine participation in society and in decision-making. It is crucial that States take appropriate measures to ensure that obstacles

<sup>54</sup> Yilmaz Akyüz, *Reforming the IMF : Back to the Drawing Board*, Third World Network, Penang, Malaysia, 2006.

<sup>55</sup> International Law Association, Study Group on United Nations Reform, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1971008](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1971008); Hague Academy Lectures of Vera Gowlland, “The Relationship between the Security Council and the International Criminal Court” [http://untreaty.un.org/cod/avl/ls/Gowlland-Debbas\\_PS.html](http://untreaty.un.org/cod/avl/ls/Gowlland-Debbas_PS.html); “The Relationship between Collective Security and State Responsibility” [http://untreaty.un.org/cod/avl/ls/Gowlland-Debbas\\_S.html](http://untreaty.un.org/cod/avl/ls/Gowlland-Debbas_S.html); Alejandro Teitelbaum, “Naciones Unidas: Reformarla o Reconstruirla?” published in *Derechos de los pueblos y gobernanza mundial, Facultad de Humanidades y Ciencias de la Educación (HUHEZI) de la Universidad de Mondragón*, Iruña, 2007, pp. 77–118; Erskine Childers and Brian Urquhart, *Renewing the United Nations System*, Uppsala 1994; Joseph Schwartzberg, *Revitalizing the United Nations*, New York 2004.

<sup>56</sup> Samir Amin, *Global History - a View from the South*, Oxford, 2010; Samir Amin, *Ending the Crisis of Capitalism or Ending Capitalism?* Oxford, 2011.

<sup>57</sup> A/HRC/23/50.

<sup>58</sup> See reports of the Special Rapporteur on Indigenous Issues. See also the statement of Special Rapporteur on Indigenous Issues on the occasion of the Twelfth Session of the United Nations Permanent Forum on Indigenous Issues, 22 May 2013.

<sup>59</sup> See <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/696c51cf6f20b8bc802567c4003793ec>.

<sup>60</sup> See, for instance, “shadow reports” submitted to the Human Rights Committee and to the Committee on the Elimination of Racial Discrimination by indigenous groups, and the recommendations in the relevant concluding observations <http://www1.umn.edu/humanrts/usdocs/hruscomments2.html>.

do not “exacerbate their exclusion and often perpetuate the privilege of elites who are able to influence policy directly”.<sup>61</sup>

32. The concerns of mass protesters demanding democratic reforms as well as of the *Indignados* and Occupy movements deserve greater democratic attention and corrective action. Democratic participation cannot mean only elections; it implies direct influence in the democratic process, however that is achieved. Dictatorial regimes that conduct no elections, semi-democratic regimes with rigged elections and dysfunctional democracies with pro forma elections hinder the international democratic order. Electoral systems should be gradually improved and electoral monitoring worldwide should be welcomed by Governments<sup>62</sup>. But genuine participation starts at the grassroots and must include a reliable system of selecting candidates who are truly representative of the voters. When the candidates are selected by party machines and the only persons who are ever selected are the elites, then the system is dysfunctional, producing candidates who are not committed to their constituents but to party discipline and to those who finance the party.

33. By definition, democracy is oriented toward the public interest, not toward shareholder profit or the market. Aspects of unregulated capitalism and privatization are simply incompatible with the idea of democracy – because they are demonstrably not what the *demos* wills or even needs, but what a handful of investors want in order to maximize profits with the excuse that the “trickle down” effect will ultimately help the poor. But do the people agree to the trickle down philosophy, which mostly does not work? How can the financial institutions be held to account when unregulated markets fail and general unemployment ensues? Yet, Governments have “rescued” the banking industry, bailed out at the expense of the “trickle down” poor, who are defenceless against the generalized abuse of power.

34. Privatization of public functions constitutes an attack on democracy, because the public interest can only be protected by a public entity, whether a municipal administration or parliament, and not by a board of directors of a corporation oriented toward profit and expanding markets.

35. My initial report to the Council identified a number of obstacles, including those of a semantic nature. Undoubtedly, language itself interferes with the proper analysis of social and economic issues, when the terminology used is vague or misleading, or when different countries and media use the words “democracy”, “freedom”, “rule of law”, “international community”, “consensus”, “globalization”, “peace”, “terrorism”, etc. with different meanings. There are also generic obstacles such as hubris, self-righteousness, moral cynicism, moral nihilism, and those artificial, self-imposed thinking barriers such as the idea that only positivistic law is law, only positivistic rights are rights. Another obstacle is the lack of solidarity among civil society representatives, who should demonstrate a commitment to the equality in human dignity of all victims and reject media focus on “politically correct” victims and systematic blackout of others. Competition among victims is a sad phenomenon manifesting double standards. Civil society has not only rights but also duties, which it must exercise ethically and responsibly. States, National Human Rights Institutions, intergovernmental organizations and non-governmental organizations must demonstrate the same commitment to the brotherhood of humankind and the universality of human rights – not just to rights *à la mode*.

36. One premise of this report is that democracy requires a free press that informs the public, enabling it to exercise conscientious judgment, free of government censorship and

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<sup>61</sup> A/HRC/23/36, para. 14.

<sup>62</sup> Global Commission on Elections, Democracy and Security, *Deepening Democracy: A Strategy for Improving the Integrity of Elections Worldwide*.

corporate–media manipulation. There is a legitimate democratic expectation that the media will have not only diversity of ideas but also diversity of ownership. Domestically, each government should take a close look at its telecommunications legislation, at the concentration of ownership in the media, and utilize anti-trust legislation to break up conglomerates that hinder open debate and diversity. What passes for journalism in many countries actually leaves the population indoctrinated, not informed. Too often journalism reflects a structural bias for the elites, the government and corporate interests.

37. Whereas freedoms of opinion, the media, peaceful assembly and association are absolutely essential to every democracy, these rights are lacking in some countries and hollowed out elsewhere. State censorship constitutes an obvious violation of article 19 of ICCPR, but censorship is also practiced by the private sector, engendering the same undemocratic result: a manipulated public. State interference with the media and Internet is a worldwide problem. On 17 July 2011, the Human Rights Committee adopted General Comment 34, in which it addressed the threats to freedom of opinion and expression, including defamation laws, blasphemy laws, and memory laws, which interfere with the free flow of ideas and necessary debate thereon:

(a) “Defamation laws must be crafted with care to ensure that they ...do not serve, in practice, to stifle freedom of expression. All such laws, in particular penal defamation laws, should include such defences as the defence of truth ...” (paragraph 47);

(b) “Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant...” (paragraph 48).

(c) “Laws that penalize the expression of opinions about historical facts are incompatible with the obligations that the Covenant imposes on States parties in relation to the respect for freedom of opinion and expression. The Covenant does not permit general prohibition of expressions of an erroneous opinion or an incorrect interpretation of past events...” (paragraph 49).

38. Such laws have totalitarian implications and consequences, violate human dignity, the right to open debate, academic freedom, and ultimately lead to intellectual stagnation and self-censorship<sup>63</sup>, which have adverse consequences on the ability of people to participate in decision–making.

39. Access to truthful and reliable information from diverse sources is indispensable to a responsible citizenry and to the exercise of the vote. Freedoms of expression and peaceful assembly are not only rights but also civic duties that should be exercised freely and openly in every democracy. Freedom of expression is not just the right to echo politically correct ideas, but the right to express one’s personal convictions, which necessarily includes the right to be wrong. In some countries, the right to demonstrate is significantly curtailed and plagued by red tape; in others, demonstrators are arrested or even killed.

40. Increasingly, it seems that some media carry primarily the views of the elites. Even on controversial issues, there is lack of balance and little competitive opportunity for views other than those of the advertisers. Relentless advertising and hyper-commercialization of the media also have the effect of misleading the public, distracting their attention from real issues and making the audience addicted to sensationalist, trivial or trash news. A corporate media that only seeks profit and neglects public interest fails the test of a democratic media.

<sup>63</sup> Human Rights Committee General Comment No. 25, para 4, Human Rights Committee General comment 34, para. 49. Alfred de Zayas and Aurea Roldan Martín, “Freedom of Opinion and Freedom of Expression: Some Reflections on General Comment No. 34 of the UN Human Rights Committee” in *Netherlands International Law Review*, 2012, pp. 425–454.

Quite generally, it must be recognized that the profit system all too frequently trumps civil society.

41. A democratic and equitable international order cannot be achieved as long as civil society lacks mechanisms to ensure change, e.g. by democratically enforcing a shift in priorities away from military expenditures and toward general disarmament, away from surveillance of citizens and toward the prosecution of corruption and criminality, away from “austerity measures” and toward social justice.

## V. Good practices

42. The Independent Expert welcomes a number of legislative measures adopted by numerous States aimed at enhancing participation, and encourages States to put these into practice.

43. Among good practices, the Independent Expert hails the ratification by States of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and its entry into force on 5 May 2013, as well as the ratification of the African Charter on Democracy, Elections and Governance,<sup>64</sup> which entered into force on 15 February 2012. He encourages further ratifications. He recalls the entry into force on 3 May 2008 of the Convention on the Rights of Persons with Disabilities, pursuant to which States parties undertake to “Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives...”<sup>65</sup> The Committee on the Rights of Persons with Disabilities is already establishing important jurisprudence through its Concluding Observations and examination of individual cases through its Optional Protocol procedure.<sup>66</sup>

44. Several initiatives endeavour to advance a democratic and equitable international order by providing judicial and constitutional review as well as enforcement mechanisms, in particular the proposal of the Tunisian Government to establish an International Constitutional Court.<sup>67</sup> Proposals for the establishment of a World Court of Human Rights have been endorsed by the Swiss Initiative to Commemorate the 60<sup>th</sup> anniversary of the Universal of Human Rights,<sup>68</sup> the International Commission of Jurists and the International Bill of Rights Association.<sup>69</sup> The Initiative of the United Nations University for Peace<sup>70</sup> and the Stakeholder Forum for a Sustainable Future aimed at the creation of an International Court for the Environment<sup>71</sup> were discussed at Rio+20.

<sup>64</sup> See [http://www.ipu.org/idd-E/afr\\_charter.pdf](http://www.ipu.org/idd-E/afr_charter.pdf).

<sup>65</sup> Art. 29, <http://www.un.org/disabilities/convention/conventionfull.shtml>.

<sup>66</sup> See <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>.

<sup>67</sup> Comité ad hoc pour la Création d’une Cour Constitutionnelle Internationale, *Project de Création d’une Cour Constitutionnelle Internationale*, Tunis 2013.

<sup>68</sup> See <http://www.udhr60.ch/report/hrCourt-Nowak0609.pdf>; see also Julia Kozma and Manfred Nowak, “A World Court of Human Rights, Consolidated Draft Statute and Commentary”, May 2010, <http://www.eui.eu/Documents/DepartmentsCentres/Law/Professors/Scheinin/ConsolidatedWorldCourtStatute.pdf>.

<sup>69</sup> A/HRC/19/NGO/124, <http://www.internationalbillofrights.org/>.

<sup>70</sup> Joost Pauwelyn, “A World Environment Court”, *International Environmental Governance (Gaps and Weaknesses/Proposals for Reform) Working Paper*, Tokyo, UNU-IAS, 2002. Cf. Ellen Hey *Reflections on an Int’l Environmental Court, 2000*; Ole Pedersen, *An International Environmental Court*, Oxford 2012.

<sup>71</sup> See <http://www.uncsd2012.org/rio20/index.php?page=view&type=400&nr=222&menu=45> and [http://effectius.com/yahoo\\_site\\_admin/assets/docs/InternationalCourtForTheEnvironment\\_StephenHockmanQC\\_Effectius\\_Newsletter14.21260322.pdf](http://effectius.com/yahoo_site_admin/assets/docs/InternationalCourtForTheEnvironment_StephenHockmanQC_Effectius_Newsletter14.21260322.pdf).

45. Progress toward the achievement of the Millennium Development Goals and the ongoing efforts to make the post-2015 sustainable development agenda meaningful are commendable. The summit of the Peoples of Latin American and the Caribbean and Europe in January 2013 on the theme “For social justice, international solidarity and sovereignty of peoples” rejected the commercialization of nature and life, and led to the adoption of the *Declaración de Santiago de Chile*.

46. He welcomes the *Quito Communiqué* of the Inter-Parliamentary Union, adopted on 27 March 2013 by the 128<sup>th</sup> IPU Assembly, stipulating in part, “well-being policies require all citizens, and particularly vulnerable groups such as women, youth, indigenous peoples and the poor, to participate in decision-making. Being able to participate in the decisions that affect our lives and the social and environmental context around us is in itself a key dimension of well-being. Inversely, well-being is also necessary for citizens to participate effectively in the management of public affairs. Participation and its attendants of transparency and accountability are in turn key pillars of democracy and of the way democracy applies to the functioning of government at all levels - global, national and local - and in response to citizens’ needs.”<sup>72</sup> All parliaments worldwide should act in accordance with this declaration.

47. Public initiatives and referenda that lead to democratic change should be applauded, e.g. the Swiss referendum on executive pay of 3 March 2013, aimed at a more equitable domestic order. This is direct democracy in action.<sup>73</sup>

48. He welcomes the fact that civil society is becoming increasingly vocal in advancing initiatives. An example of a civil society initiative that has grown universal, leading to the adoption of the *Declaración de Santiago de Compostela*<sup>74</sup> of 10 December 2010, *Oswiecim Declaration*<sup>75</sup> of 16 May 2013 and workshops throughout the world,<sup>76</sup> is the Declaration on the Right to Peace. Worldwide participation in this movement has placed the imperative of peace-making on the agenda of the Human Rights Council<sup>77</sup> and its Advisory Committee,<sup>78</sup> and will no doubt lead to an increased awareness of the core value of peace as a condition for a just and sustainable world order.

49. For many decades, the idea of a World Parliamentary Assembly<sup>79</sup> or a United Nations Parliamentary Assembly has been under discussion. The idea is to address democracy deficits by giving expression to global public opinion and including citizens in global decision-making through elected officials. Such an Assembly could be set up by a vote of the United Nations General Assembly under Article 22 of the United Nations Charter, or it could be created on the basis of a new international treaty between governments, followed by an agreement linking it to the United Nations. Neither

<sup>72</sup> See <http://www.ipu.org/conf-e/128/quito-comm.htm>.

<sup>73</sup> See [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_1205403530\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_1205403530_text).

<sup>74</sup> See <http://www.aedidh.org/?q=node/1292>.

<sup>75</sup> See <http://www.aedidh.org/?q=node/2191>.

<sup>76</sup> A/HRC/14/38. See [http://www2.ohchr.org/english/issues/rule\\_of\\_law/workshop/](http://www2.ohchr.org/english/issues/rule_of_law/workshop/).

<sup>77</sup> See

<http://www.ohchr.org/EN/HRBodies/HRC/RightPeace/Pages/WGDraftUNDeclarationontheRighttoPeace.aspx>; Report of the Open-Ended Inter-Governmental Working Group on the Draft United Nations Declaration of the Right to Peace, A/HRC/WG.13/1/2.

<sup>78</sup> See <http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/RightToPeace.aspx>; and [http://www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee/docs/session6/A.HRC.AC.6.CRP.3\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee/docs/session6/A.HRC.AC.6.CRP.3_en.pdf).

<sup>79</sup> Joseph Schwartzberg, *Creating a World Parliamentary Assembly*, Committee for a Democratic United Nations, Berlin, 2012. Richard Falk and Andrew Strauss, “Toward Global Parliament”, *Foreign Affairs* 2001, <http://ssrn.com/abstract=1130417>; *A Global Parliament*, 2011.

mechanism requires Charter reform. Former United Nations Secretary General Boutros Boutros-Ghali has been an advocate of such an assembly. In a comment published at OpenDemocracy, Boutros-Ghali made the case for the establishment of a Parliamentary Assembly at the United Nations. In order to solve global crises more effectively, a “direct democratic connection between the world’s citizens and the world’s governance needs to be created”. He welcomed the expansion of democracy at the national level throughout the world, observing that emerging States are increasingly included in global intergovernmental deliberations. He noted, “a third dimension of democratization is almost completely neglected: Developing global democracy beyond States”.<sup>80</sup> Johan Galtung, founder of the Peace Research Institute in Oslo, wrote “For anyone who believes in democracy — rule by the consent of the ruled — a world democracy is part of it. A democratic United Nations with an evolving world parliamentary assembly is the way to go.”<sup>81</sup> Indeed, global decisions would have greater legitimacy through citizen input and involvement, if the General Assembly represented people as well as States.

50. Other civil society initiatives that deserve support are: P.E.N. International’s 2012 Declaration on Digital Freedom<sup>82</sup>; the 2008 *Appel de Blois*,<sup>83</sup> issued by Liberté Pour l’Histoire; the World Forum of Alternative’s *Universal Declaration for the Common Good of Humanity*<sup>84</sup> of 15 March 2013<sup>85</sup>; and the International Association of Democratic Lawyer’s *Paris Declaration* of 25 May 2013.<sup>86</sup>

## VI. Conclusions and recommendations

51. **Resolution 18/6 created a broad mandate aimed at the convergence of civil, cultural, economic, political and social rights. Each country is urged to take one step forward and review obstacles to democratic processes and equity and implement targeted measures that will enhance participation by all persons under its jurisdiction. This requires a change of paradigm and mindset, goodwill and self-criticism. Complacency is invariably an obstacle to progress.**

<sup>80</sup> See <http://en.unpacampaign.org/news/379.php>; Joseph Schwartzberg writes in *Creating a World Parliamentary Assembly*, “Our increasingly interdependent world can no longer function without an effective UN system. But for a variety of reasons —mainly related to the obsolescent mindsets and dubious diplomatic practices of a world still guided mainly by *Realpolitik*—a large proportion of the human family has lost faith in the UN... A democratically constituted WPA will go far toward correcting these deficiencies and would do much to promote more legitimate, transparent, representative, accountable and responsive governance at the national, as well as at the international level. Providing the diverse strands of humankind, in whose interests the UN was founded, with a meaningful voice in making the decisions that will shape their destiny will do more to legitimize the global organization than any other reform I can think of” (p. 96). Saul Mendlovitz and Barbara Walker (eds.) *A Reader on Second Assembly and Parliamentary Proposals*, Centre for UN Reform Education, Wayne, New Jersey, United States, 2003. See also Dieter Heinrich, *The Case for a United Nations Parliamentary Assembly*, World Federalist Movement, Amsterdam 1992; and Andreas Bummel, *The Composition of a Parliamentary Assembly at the United Nations*, Berlin 2010.

<sup>81</sup> Quoted in Schwartzberg, p. 6.

<sup>82</sup> Adopted at the 78<sup>th</sup> PEN Annual Congress in the Republic of Korea 2012, <http://www.pen-international.org/pen-declaration-on-digital-freedom/>.

<sup>83</sup> See annexes, [http://www.lph-asso.fr/index.php?Itemid=14&id=47&lang=fr&option=com\\_content&view=article](http://www.lph-asso.fr/index.php?Itemid=14&id=47&lang=fr&option=com_content&view=article).

<sup>84</sup> See <http://www.especieenpeligro.cult.cu/index.php/debates-y-alternativas/articulos/1521-universal-declaration-for-the>.

<sup>85</sup> See <http://www.forumdesalternatives.org/en/universal-declaration-for-the-common-good-of-humanity-project>.

<sup>86</sup> See <http://www.iadllaw.org/>.



52. It would be good to report that States and civil society are advancing in the promotion of a culture of democratic thinking, democratic *feeling* and democratic acting. Unfortunately, most areas of human activity seem to be locked into their own logic and dynamic, where democracy is conjured to legitimize the *status quo*, while doing little to give life to the concepts of participation and consultation or to core values of the United Nations, including transparency and accountability. Yet, the spirit of democracy resides in the minds of women and men, and step by step each community, State, and region can claim and reclaim it. This culture of democracy must be home-grown and cannot be exported or imposed top-down. Crucial remains the conviction that the government should serve the people and that its powers must be circumscribed by a Constitution and the rule of law. Juvenal's question *quis custodiet ipsos custodes* (who guards the guardians?) remains a central concern of democracy, since the people must always watch over the constitutional behaviour of the leaders and impeach them if they act in contravention of their duties. Constitutional courts must fulfil this need and civil society should show solidarity with human rights defenders and whistleblowers who, far from being unpatriotic, perform a democratic service to their countries and the world.

53. The "vital interests" of States must be made to conform to the Purposes and Principles of the United Nations, while respecting the sovereignty of States and the self-determination of peoples. The problem remains that, although there is talk on reforms, vested interests prevent their implementation; although there are *Indignados* and occupy movements, there is no effective mechanism to translate public protest into concrete reform. Soon everything returns to business as usual and the public remains irrelevant. Since access to information, freedom of expression and the media are indispensable to carry out reforms, it is crucial to ensure the democratization of the media, so that it exercises its watchdog function. An unfree media controlled by the State or held hostage by corporate interests undermines democracy. And whereas media hype can negatively impact decision-making, responsible media can advance a human rights agenda through information and education. The gap between institutionalized power and the people must be bridged. It bears repeating: Democracy means participation. "Formal democracy" is no democracy.

## A. Recommendations to States

54. The Independent Expert recalls the language of article 28 of the Universal Declaration of Human Rights, which stipulates "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."

55. With regard to participation at the international level:

(a) States should cooperate to reform the Security Council, so as to expand its membership and give all States, large and small, rich and poor, greater democratic participation in global decision-making. In the dynamic context of an ever-changing world, regular reforms are a condition of stability.

(b) To the extent that the Security Council is blocked by the use or threatened use of the veto power by one of the P5 States, State members and observers at the General Assembly should revitalize the General Assembly, so that it henceforth exercises a greater role in international decision-making. For instance, the General Assembly should urge States to impose economic sanctions on States that refuse to abide by Security Council, General Assembly, and Human Rights Council resolutions. The General Assembly should also refer legal questions to the International Court of Justice for advisory opinions on matters relating to democracy, participation,

equitable distribution of the world's resources, the common heritage of humankind and self-determination of peoples.

(c) States should ensure more democratic and equitable participation of all States in the financial institutions such as the World Bank, the International Monetary Fund and the World Trade Organization (WTO),<sup>87</sup> for instance by placing them under the authority of the United Nations and subordinating them to the Purposes and Principles of the United Nations Charter, pursuant to Articles 57 and 63 of the Charter. Moreover, membership in WTO could be conditioned upon acceptance of an international bill of rights, much as, for instance, membership in the Council of Europe is conditioned on acceptance of the European Convention on Human Rights.

(d) States should apply international law uniformly and abandon over-reliance on "positivism" and efforts to circumvent obligations stipulated in human rights treaties. There are no "legal black holes" in human rights, since all human beings are entitled to all rights deriving from human dignity.

(e) States should ratify the core United Nations human rights treaties and their protocols, the relevant complaints mechanisms, the Statute of the International Criminal Court, and relevant International Labour Organization Conventions, including convention 169. States should allow full participation of individuals, civil society and national human rights institutions in the preparation of reports to the United Nations treaty bodies and to the Council's Universal Periodic Review (UPR).

(f) States should practice what they preach and test their actions, in good faith, for consistency with the Purposes and Principles of the United Nations, knowing that the end does not justify the means, and that international law is by definition universal and must not be applied *à la carte*.

(g) Most importantly, States should rigorously observe the obligations contained in Article 2, paragraph 3, of the United Nations Charter, which enjoins all States to settle disputes by peaceful means, and in Article 2, paragraph 4, which prohibits the threat of or the use of force.<sup>88</sup> States must negotiate in good faith and refrain from bullying, drawing "red lines" or formulating "ultimatums". States should recognize a right and a duty to peace and to solidarity in their Constitutions and statutes.

(h) States should abandon reliance on unilateral measures, particularly when such measures hinder international cooperation and give rise to unnecessary tensions in the international community; in particular, States should refrain from direct and indirect interference in other countries.

(i) States should impose controls on financial and commodity markets, prohibit "shadow banking" and regulate speculation. An international conference to resolve the problem of financial domination should be convened.

<sup>87</sup> Martin Khor, *Implications of Some WTO Rules on the Realization of the MDGs*, Penang, Malaysia 2005; M. Khor, *The Impact of Trade Liberalism on Agriculture in Developing Countries*, 2008; Yilmaz Akyüz, *The WTO Negotiations on Industrial Tariffs.: What is at Stake for Developing Countries*, 2005.

<sup>88</sup> Antonio Cassese (ed.): *Realizing Utopia-the Future of International Law*, Oxford 2012, "A Plea for a Global Community Grounded in a Core of Human Rights", and "For an enhanced Role of *Jus Cogens*."

56. Concerning participation at the domestic level:

(a) States should strengthen the rule of law and implement the principle of separation of powers. In particular, States should take all necessary legislative and administrative measures to make civil society participation in decision-making more effective, in particular by allowing more direct democracy through the instruments of popular initiative, referenda, recall and impeachment. Moreover, not only the law but also the actual practice must be assessed. Empowerment of the public requires education programmes on human rights, including the right to peace.

(b) States should adopt the necessary legislative, administrative and judicial measures to give effect to the Universal Declaration of Human Rights and States parties to the ICCPR should implement articles 2, 19, 21, 22 and 25 ICCPR, consistent with the principle expressed in the Advisory Opinion of the Permanent Court of International Justice, “according to which a State which has contracted valid international obligations is bound to make in its legislation such modifications as may be necessary to ensure the fulfilment of the obligations undertaken”.<sup>89</sup>

(c) States are invited to go beyond the provisions of article 25 ICCPR to ensure pluralism in elections and enhanced consultation with stakeholders. In particular, States should implement the participation and consultation recommendations in the relevant General Comments of the United Nations treaty bodies.

(d) Multiparty electoral systems and the establishment of political parties representing a wide diversity of points of view should be facilitated. States should review their legislation on the establishment and prohibition of political parties. One-party systems suffer from an obvious democratic deficit, and if only one political party is allowed to operate, provision should be made to facilitate and encourage public participation in the formulation of policies and the possibility of articulating a diversity of views within the party.

(e) States should ensure access to public information<sup>90</sup> and repeal legislation that is incompatible with articles 18 and 19 ICCPR; in particular, blasphemy and memory laws and any laws that hinder open discussion of political and historical events. States should refrain from misusing anti-terror legislation to intimidate and suppress dissent and thus undermine participation in the democratic process.<sup>91</sup> States should ensure freedom of expression online and refrain from censorship except for reasons of health and morals.

(f) States should never impose reprisals against human rights defenders and repeal laws that hinder the right to peaceful assembly in public and private spheres, impose unreasonable fines or imprisonment on demonstrators, or restrict the right to association and collective bargaining.

(g) States should ensure accountability of all State organs, and revitalize elected parliaments so that the executive power cannot circumvent the democratic process through directives or executive agreements not subject to advice and consent.

<sup>89</sup> Advisory opinion concerning the *Exchange of Greek and Turkish Populations Case* [http://www.worldcourts.com/pcij/eng/decisions/1925.02.21\\_greek\\_turkish.htm](http://www.worldcourts.com/pcij/eng/decisions/1925.02.21_greek_turkish.htm).

<sup>90</sup> 2009 Council of Europe Convention on Access to Documents; Draft Model Law for African Union Member States on Access to Information; OAS model law on Access to Public Information.

<sup>91</sup> How fusion centers spied on Occupy Wall Street <http://ufppc.org/us-a-world-news-mainmenu-35/11479>/see also Sheldon Wolin, *Democracy Incorporated: Managed Democracy and the Specter of Inverted Totalitarianism*, 2008.

(h) States should bear in mind the significant risks related to the privatization of essential public services. Privatized services must observe human rights standards including on non-discrimination, accessibility, affordability, quality and adequacy, bearing in mind that when non-State actors are involved in service provision, there is a shift to an even stronger focus on the obligation of the State to protect.

(i) States should ensure access to truthful and reliable information by the population, encourage pluralism and the democratization of the media, online and offline, if necessary through the use of anti-trust legislation to break down cartels and media conglomerates, which undermine the diversity of opinion and debate indispensable to the democratic process.

(j) States should build spaces and create conditions conducive to free debate and the expression of diverse views on issues of public concern.

## **B. Recommendations to the Council**

57. The Independent Expert makes the following recommendations:

(a) The Independent Expert welcomes the progress made by the Human Rights Council in discussing the Draft Declaration on the Right to Peace elaborated by the Advisory Committee, and encourages the Council to continue its deliberations as a constructive step toward a democratic and equitable international order. The declaration should be referred to the General Assembly for adoption.

(b) The Independent Expert notes that the self-determination item was a permanent item on the agenda of the Commission on Human Rights. Bearing in mind that self-determination is a pillar of the Charter and that it has not been achieved by many indigenous peoples, minorities, unrepresented peoples, and peoples under occupation, the Council should resume consideration of self-determination as part of items 3 and 4 of its agenda.

(c) The Council should consider holding a workshop on self-determination and genuine participation. A democratic deficit is ultimately a deficit in self-determination.

(d) The Council should consider assigning to its Advisory Committee (i) an update of the 1999 Treaty study conducted by the Sub-Commission<sup>92</sup>; (ii) the elaboration of a strategy to revitalize the 2004 Cardoso report on United Nations-Civil Society Relations (A/58/817), with a view to enhancing the role of civil society in the work of the Council, and granting non-governmental organizations at least as much time and opportunity to participate in its work as in the former Commission on Human Rights; (iii) a study on how a World Parliamentary Assembly may advance genuine participation; (iv) a study on strengthening the enforcement of its own resolutions, UPR recommendations, as well as decisions and views of the treaty bodies, including by ensuring Special Procedures mandate holders can provide advisory services and technical assistance to States in the drafting of enabling legislation; and (v) a study on the added value of establishing a World Court of Human Rights.

(e) The Council should recommend to the General Assembly the adoption of a resolution streamlining the procedure for granting consultative status to non-

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<sup>92</sup> See E/CN.4/Sub.2/1999/20  
<http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/696c51cf6f20b8bc802567c4003793ec>.

governmental organizations so as to eliminate politicization and enhance civil society access to the Council.

(f) The Council should consider recommending to the General Assembly to bring specific legal questions concerning self-determination, war, peace, democracy, corporate social responsibility and debt cancellation to the International Court of Justice for advisory opinions.

### C. Recommendations to Civil Society and National Human Rights Institutions

58. Article 29 of the Universal Declaration of Human Rights stipulates, “Everyone has duties to the community in which alone the free and full development of his personality is possible.” The Independent Expert is aware that in many countries there is little space for civil society to operate and articulate legitimate demands. Nevertheless, he encourages civil society to:

(a) Take on this challenge as a civic duty and reclaim its rights, demand consultation and effective participation in decision-making, reliable opinion polling and referenda as a right, in particular on matters of State-ordered surveillance, which affects civil and political rights, and on matters of retrogression<sup>93</sup> in social services, including “austerity measures”, privatization of essential public responsibilities, etc. Civil society should take advantage of new digital technologies and social media to revitalize democracy, e.g. by demanding social services, regulation of the financial markets, denouncing war mongering and human rights violations;

(b) Invoke United Nations procedures, including the new Optional Protocol to ICESCR. They should call their representatives to account and engage domestic and international tribunals, including regional instances of examination and settlement, and United Nations treaty bodies;

(c) Engage in peaceful resistance against structural violence imposed on them by governments and corporations. The right to freedom of peaceful assembly and of association should be invoked in order to restore democratic participation<sup>94</sup>;

(d) Insist on accountability of government officials and expose violations of human rights by their governments. In particular, civil society should investigate and take action on the revelations by whistleblowers, when it becomes apparent that democratically elected governments have acted or are acting *ultra vires* and in contravention of international law, including United Nations human rights treaties, and the 1949 Geneva Conventions and 1977 Additional Protocols. Civil society should reject impunity for crimes committed by their political leaders and for white-collar crimes of financiers and corporate magnates;

(e) Make greater use of direct democracy, if available, or demand that its representatives elaborate, discuss and adopt appropriate legislation to facilitate public initiative, referenda, recall and impeachment. Civil society should demand frequent opinion polling at both the international and national levels. Crucial is the right to

<sup>93</sup> Article 2(1) of the ICESCR establishes the principle of non-retrogression. The Inter-American Commission on Human Rights also recognizes the “*obligacion de progresividad*” in article 26 of the American Convention on Human Rights

<sup>94</sup> Stéphane Hessel, *Indignez-Vous*, 2011. Norman Finkelstein, *Gandhi*, 2012.

choose policies and not just the right to vote for a particular candidate, when the possibility of influencing the nomination of candidates is more formal than real;

(f) Discuss the pros and cons of establishing, as a consultative body, a world parliamentary assembly of directly elected representatives, which could operate within or without the United Nations;

(g) Vindicate its right to access to truthful and reliable information and insist that their governments implement articles 19 and 25 ICCPR and practice transparency. Civil society should demand media reform, so as to ensure pluralism and respect of the watchdog function of journalism. Disinformation and manipulation should be exposed. In particular, grassroots participation and interaction should be facilitated, including in the allocation of the airwaves, which belong to the people, not to multinational corporations or media magnates. The linkage of news and advertising must be revisited, since the public has a democratic right to truthful information and a variety of interpretations. They should demand that news services be neutral, and that news be separated from commentary. When broadcasting depends on the advertisers, objectivity is compromised;

(h) Denounce media dissemination of propaganda for war in contravention of article 20 ICCPR, or in apology of war crimes and crimes against humanity. Moreover, civil society could call for the adoption of effective anti-trust legislation or for the enforcement of existing anti-trust laws so as to break up media conglomerates and monopolistic practices that hinder pluralism. They should demand public participation in the allocation and regulation of airwaves, which must be considered as a public domain;

(i) Demand that corporations observe the guiding principles on business and human rights, and that governments implement the “United Nations Protect, Respect and Remedy Framework”.

59. National Human Rights Institutions working in accordance with the Paris Principles should promote and facilitate public participation in public affairs.<sup>95</sup> They should expose pseudo-democratic processes and insist on the uniform application of international law. They should advise governments on the human rights implications of proposed legislation and act as watchdogs of constitutionality.

60. The Independent Expert acknowledges the fact that much progress has been achieved since the adoption of the Universal Declaration of Human Rights in 1948. Norms and mechanisms are in place. Admittedly, an implementation gap persists. But a more democratic and equitable international order is no utopia. It can and will be achieved when individuals, civil society, States and the United Nations work together to make this aspiration a reality for our time. It is our responsibility to ensure that the Purposes and Principles of the United Nations Charter go beyond mere promises and produce fruit for generations to come.

<sup>95</sup> Danish Institute for Human Rights, *NHRIs and Public Participation*, Issue Paper, April 2013.

## Annex

[English only]

### Excerpts or full text of relevant documents

#### I. Universal Declaration on Democracy, Declaration adopted without a vote by the Inter-Parliamentary Council at its 161st session, Cairo, 16 September 1997 (excerpts)<sup>1</sup>

1. Democracy is a universally recognised ideal as well as a goal, which is based on common values shared by peoples throughout the world community irrespective of cultural, political, social and economic differences. It is thus a basic right of citizenship to be exercised under conditions of freedom, equality, transparency and responsibility, with due respect for the plurality of views, and in the interest of the polity.

2. Democracy is both an ideal to be pursued and a mode of government to be applied according to modalities which reflect the diversity of experiences and cultural particularities without derogating from internationally recognised principles, norms and standards. It is thus a constantly perfected and always perfectible state or condition whose progress will depend upon a variety of political, social, economic, and cultural factors.

3. As an ideal, democracy aims essentially to preserve and promote the dignity and fundamental rights of the individual, to achieve social justice, foster the economic and social development of the community, strengthen the cohesion of society and enhance national tranquillity, as well as to create a climate that is favourable for international peace. As a form of government, democracy is the best way of achieving these objectives; it is also the only political system that has the capacity for self-correction.

4. The achievement of democracy presupposes a genuine partnership between men and women in the conduct of the affairs of society in which they work in equality and complementarity, drawing mutual enrichment from their differences.

5. A state of democracy ensures that the processes by which power is acceded to, wielded and alternates allow for free political competition and are the product of open, free and non-discriminatory participation by the people, exercised in accordance with the rule of law, in both letter and spirit.

6. Democracy is inseparable from the rights set forth in the international instruments recalled in the preamble. These rights must therefore be applied effectively and their proper exercise must be matched with individual and collective responsibilities.

16. Individual participation in democratic processes and public life at all levels must be regulated fairly and impartially and must avoid any discrimination, as well as the risk of intimidation by State and non-State actors.

17. Judicial institutions and independent, impartial and effective oversight mechanisms are the guarantors for the rule of law on which democracy is founded. In order for these institutions and mechanisms fully to ensure respect for the rules, improve the fairness of the processes and redress injustices, there must be access by all to administrative and judicial remedies on the basis of equality as well as respect for administrative and judicial decisions

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<sup>1</sup> <http://www.ipu.org/cnl-e/161-dem.htm#Reserve>

both by the organs of the State and representatives of public authority and by each member of society.

22. The institutions and processes of democracy must accommodate the participation of all people in homogeneous as well as heterogeneous societies in order to safeguard diversity, pluralism and the right to be different in a climate of tolerance.

23. Democratic institutions and processes must also foster decentralised local and regional government and administration, which is a right and a necessity, and which makes it possible to broaden the base of public participation.

24. Democracy must also be recognised as an international principle, applicable to international organisations and to States in their international relations. The principle of international democracy does not only mean equal or fair representation of States; it also extends to the economic rights and duties of States.

25. The principles of democracy must be applied to the international management of issues of global interest and the common heritage of humankind, in particular the human environment.

26. To preserve international democracy, States must ensure that their conduct conforms to international law, refrain from the use or threat of force and from any conduct that endangers or violates the sovereignty and political or territorial integrity of other States, and take steps to resolve their differences by peaceful means.

27. A democracy should support democratic principles in international relations. In that respect, democracies must refrain from undemocratic conduct, express solidarity with democratic governments and non-State actors like non-governmental organisations which work for democracy and human rights, and extend solidarity to those who are victims of human rights violations at the hands of undemocratic régimes. In order to strengthen international criminal justice, democracies must reject impunity for international crimes and serious violations of fundamental human rights and support the establishment of a permanent international criminal court.

## **II. Inter-Parliamentary Union Quito Communique, Adopted by the 128th IPU Assembly, Quito, 27 March 2013 (excerpts)<sup>2</sup>**

By definition, well-being policies require *all* citizens, and particularly vulnerable groups such as women, youth, indigenous peoples and the poor, to participate in decision-making. Being able to participate in the decisions that affect our lives and the social and environmental context around us is in itself a key dimension of well-being. Inversely, well-being is also necessary for citizens to participate effectively in the management of public affairs. Participation and its attendants of transparency and accountability are in turn key pillars of democracy and of the way democracy applies to the functioning of government at all levels - global, national and local - and in response to citizens' needs.

Participation, transparency and accountability constitute the core of *democratic governance*, which is an end in itself and an enabler of sustainable development. There can be no true prosperity without respect for the universal values of democracy, the rule of law and human rights. Democratic governance should therefore be a stand-alone goal among the new Sustainable Development Goals, as well as a dimension of other goals that will be part of the future development framework. This is further supported by the results of a survey of hundreds of members carried out during the Assembly.

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<sup>2</sup> <http://www.ipu.org/conf-e/128/quito-comm.htm>



To help steer sustainable development on a new course, a rebalancing of the role of the market and that of government is called for. Effective ways to help reconcile market needs with social imperatives include the development of private-public partnerships, community-based enterprises and other forms of cooperative models. Government intervention to guarantee the rights of the very poor and to safeguard the natural resource base will also be needed. The interdependent challenges of sustainable development require a concerted approach that only governments can initiate and help implement.

To this end, it will be more important than ever for parliaments to assert their legitimate place in the decision-making process at the national and international levels. The institution of parliament is pivotal to the entire architecture of democratic governance and needs to be strengthened virtually everywhere in the world, with greater oversight capacities and legislative authority. More specifically, stronger parliaments will have to play a central role in the implementation of the future Sustainable Development Goals. This will include ensuring that development policies and plans are drawn up through participatory and inclusive processes, and with regular progress reports submitted to parliament for review.

This debate should continue in national parliaments as a way of engaging them in the global consultations foreseen in the Rio outcome document, aptly called *The Future We Want*.

### **III. Rio Declaration on Environment and Development, 12 August 1992 (excerpts)<sup>3</sup>**

The United Nations Conference on Environment and Development,

Having met at Rio de Janeiro from 3 to 14 June 1992,

Reaffirming the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972, and seeking to build upon it,

With the goal of establishing a new and equitable global partnership through the creation of new levels of cooperation among States, key sectors of societies and people,

Working towards international agreements which respect the interests of all and protect the integrity of the global environmental and developmental system,

Recognizing the integral and interdependent nature of the Earth, our home,

Proclaims that:

#### *Principle 10*

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

#### *Principle 20*

Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.

<sup>3</sup> <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>







































