



General Assembly

Distr.: General
25 July 2011

Original: English

Human Rights Council

The Social Forum

Geneva, 3-5 October 2011

Item 2 of the provisional agenda

Implementation of Human Rights Council resolution 16/26 entitled “The Social Forum”

Background report submitted by the United Nations High Commissioner for Human Rights

Summary

The present report contains information on the promotion and effective realization of the right to development, including in the context of the twenty-fifth anniversary of the Declaration on the Right to Development. It provides an overview of measures and actions needed to implement the right to development at the local, national, regional and international levels, with particular focus on the role and contribution of civil society and non-governmental organizations. The report elaborates on international assistance and cooperation in the promotion of an enabling environment for the realization of the right to development. In the conclusion, some issues for further consideration during the 2011 Social Forum are proposed.

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I. Introduction

1. The Human Rights Council, in its resolution 6/13, decided to preserve the Social Forum,¹ originated by the Subcommission on the Promotion and Protection of Human Rights, as a unique space within the United Nations for interactive dialogue between the representatives of Member States, the United Nations human rights machinery, intergovernmental organizations and various stakeholders, including civil society and grass-roots organizations, on issues relating to the national and international environment needed for the promotion of the enjoyment of all human rights by all.

2. In its resolution 16/26, the Council decided that the 2011 Social Forum should focus on three main issues: (a) the promotion and effective realization of the right to development, in the context of the commemoration of the twenty-fifth anniversary of the Declaration on the Right to Development; (b) measures and actions needed to make the right to development a reality for everyone at the local, national, regional and international levels, including the role and contribution of civil society and non-governmental organizations; and (c) international assistance and cooperation, as well as the promotion of an enabling environment for the realization of the right to development.

3. The present report is submitted in accordance with paragraph 8 of resolution 16/26, in which the Council requested the United Nations High Commissioner for Human Rights to consult all actors identified in the resolution on the above-mentioned issues, and to submit a report as a background contribution for the dialogues and debates at the 2011 Social Forum, to be held from 3 to 5 October 2011 in Geneva, Switzerland. The Office of the High Commissioner for Human Rights (OHCHR) addressed on 6 June 2011 note verbales to Member States and letters to other stakeholders named in resolution 16/26, requesting input for inclusion in the present report. Contributions were received from Morocco, Saudi Arabia, the Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC), the African Women's Association, Amis des Etrangers au Togo and the Asia Indigenous Peoples Pact (Thailand).

II. Promotion and effective realization of the right to development, in the context of the twenty-fifth anniversary of the Declaration on the Right to Development

4. The constituent elements of the right to development are rooted in the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, as well as other United Nations instruments. Through the Charter of the United Nations, Member States undertook to “promote social progress and better standards of life in larger freedom” and “to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”. Article 28 of the Universal Declaration of Human Rights echoes these principles.

5. The primary inspiration for the modern articulation of the right to development comes from Judge Keba M'Baye of Senegal, who in 1972 argued that development should

¹ For more information on the Social Forum, including the previous sessions, see www.ohchr.org/EN/Issues/Poverty/SForum/Pages/SForumIndex.aspx.

be viewed as a right. The right to development as a human right emerged in the United Nations system in parallel to that of the quest for a new international economic order² and the Charter of Economic Rights and Duties of States³. The former Commission on Human Rights started its deliberations on the right to development in 1977 and the first Working Group on the right to development was established in this same period, and was mandated to draft a declaration. This resulted in the adoption of the Declaration on the Right to Development⁴ by the General Assembly in 1986,⁵ the first comprehensive elaboration of the substantive content of the right to development.

6. The right to development is defined in article 1, paragraph 1, of the Declaration, as an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. The Working Group on the Right to Development recognized “the human person as the central subject of development” (E/CN.4/2006/26, para. 31) and reiterated that the right to development was “a universal and inalienable right and an integral part of fundamental rights” (E/CN.4/2004/23, para. 43 (c)). The preamble of the Declaration defines development as a comprehensive economic, social, cultural and political process, which aims 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 distribution of benefits resulting therefrom.

7. The United Nations has supported a series of mechanisms to promote the implementation of the right to development both prior to and following the adoption of the Declaration, namely the Working Group of Governmental Experts on the Right to Development (1981-1989), the Working Group on the Right to Development (1993-1995) and the Intergovernmental Group of Experts on the Right to Development (1996-1997). The current open-ended working group established to monitor and review progress made in the promotion and implementation of the right to development was set up in 1998 along with an expert mechanism - the independent expert (1998-2003) - later replaced by a high-level task force on the implementation of the right to development (2004-2010) composed of five independent experts from five geographical regions.

8. Among other activities, the task force examined Millennium Development Goal 8, on a global partnership for development, and suggested criteria for its periodic evaluation with the aim of improving the effectiveness of global partnerships with regard to the realization of the right to development. As requested by the Working Group in 2006 (E/CN.4/2006/26, para. 77), the task force applied the criteria, on a pilot basis and for the period of 2007-2009, to selected partnerships.⁶ The purpose of this exercise was to operationalize and develop further the criteria, thus contributing to mainstreaming the right to development in policies and operational activities of relevant actors at the national, regional and international levels, including multilateral financial, trade and development institutions.

² Declaration on the Establishment of a New International Economic Order, General Assembly resolution 3201 (S-VI).

³ General Assembly resolution 3281 (XXIX).

⁴ General Assembly resolution 41/128, annex.

⁵ The total voting membership at the time of voting was 159 Member States, out of which 146 voted in favour of the Declaration, 1 (the United States of America) voted against, 8 (Denmark, Finland, Germany, Iceland, Israel, Japan, Sweden and the United Kingdom of Great Britain and Northern Ireland) abstained and 4 (Albania, Dominica, South Africa, Vanuatu) were non-voting.

⁶ Consolidation of findings (A/HRC/15/WG.2/TF/2/Add.1 and Corr.1).

9. The Working Group decided in 2009 to expand the scope of the criteria and requested the task force to revise them so that they “address the essential features of the right to development, as defined in the Declaration on the Right to Development, in a comprehensive and coherent way, including priority concerns of the international community beyond those enumerated in Millennium Development Goal 8” (A/HRC/12/28, para. 45). Consequently, and in conclusion of its mandate,⁷ the task force submitted to the Working Group the criteria and operational sub-criteria for the implementation of the right to development (A/HRC/15/WG.2/TF/2/Add.2). At its twelfth session, scheduled from 14 to 18 November 2011, the Working Group will consider views of Member States and other stakeholders on the work of the high-level task force, and the way forward in the implementation of the right to development.⁸

10. In its resolution 48/141, the General Assembly established the post of High Commissioner for Human Rights and the Office of the High Commissioner for Human Rights, and explicitly included the mandate “to promote and protect the realization of the right to development and to enhance support from relevant bodies of the United Nations system for this purpose”. Through its annual resolutions on the right to development, the General Assembly requests the High Commissioner, “in mainstreaming the right to development, to undertake effectively activities aimed at strengthening the global partnership for development between Member States, development agencies and the international development, financial and trade institutions”.⁹ The Secretary-General and the High Commissioner submit an annual consolidated report to the General Assembly and the Human Rights Council on progress in the promotion and implementation of the right to development.

11. As requested by the Human Rights Council in its resolution 15/25 and the General Assembly in its resolution 65/219, OHCHR launched a programme of commemoration in 2011 of the twenty-fifth anniversary of the adoption of the Declaration, in consultation with Member States and other stakeholders. Detailed information on the commemorative activities can be found on the OHCHR website at www.ohchr.org/EN/Issues/Development/Pages/DevelopmentIndex.aspx.

III. Measures and actions needed to make the right to development a reality for everyone at the local, national, regional and international levels, including the role and contribution of civil society and non-governmental organizations

A. Implementation of the right to development at the local and national levels

12. The Declaration on the Right to Development emphasizes that States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development (art. 3, para. 1); that all human rights and fundamental freedoms are indivisible and interdependent (art. 6, para. 2); and that States should take steps to eliminate obstacles to development (art. 6, para. 3). Consequently,

⁷ The outcome of the task force work is contained in documents A/HRC/15/WG.2/TF/2 and Corr.1; Add.1 and Corr.1; and Add.2.

⁸ For more information, see www.ohchr.org/EN/Issues/Development/Pages/12thSession.aspx.

⁹ General Assembly resolution 65/219.

States are required to respect all human rights when developing and implementing economic, social, financial, monetary and trade policies. They should assess and consider the potential consequences of any such policies on human rights.

13. At the international level, States should consider the impact of their actions and decisions on the realization of the right to development, particularly within the framework of international trade and financial institutions, and bilateral and regional trade agreements. Prior to undertaking any commitments, they should assess whether their decisions would impair the national and international conditions required for achieving the right to development.

14. The Declaration emphasizes the importance of participation by stressing the right and the duty of States to formulate appropriate national development policies based on the active, free and meaningful participation of all individuals in development and in the fair distribution of its benefits (art. 2, para. 3). The Declaration is aimed at empowering individuals and attaches great importance to their contribution and involvement in the development process and the just sharing of its benefits. States should respect the participation principle of the right to development by involving all stakeholders, especially civil society, non-governmental organizations and representatives of marginalized and vulnerable groups, in all stages of the development process. States should allow national consultations and people's participation in decision-making in areas that will affect their lives, and take into consideration the needs, concerns and interests of their people.

15. Implementing the participation principle in the constitution-making process, for instance, would contribute to the implementation of the right to development. If constitutions are instruments to enhance national unity and territorial integrity by, inter alia, developing a collective agenda for social and political change, popular participation is essential in defining the agenda for reform and reflecting people's concerns and aspirations.¹⁰ The principle of self-determination and active, free and meaningful participation of people, the definition of development, the indivisibility and interdependence of rights, and the imperative of social justice are elements of the right to development that are relevant to constitutions and constitution-making.¹¹ The constitution-making process in Kenya between 2000 and 2005 is a good example demonstrating the relevance of the principles above. One of the recommendations that came from the people and is very relevant to the right to development was to have more control over and to understand better the decisions which they cannot make themselves but do affect their lives deeply.¹²

16. In its contribution to the present report, Morocco highlighted the historic importance of its new Constitution adopted on 1 July 2011 by public referendum. In addition to reinforcing the protection of fundamental freedoms and civil, cultural, economic, social and political rights, the new Constitution foresees the establishment of several councils and institutions, including an economic and social council and a national council on human rights, as well as other bodies in charge of, for example, youth, and the combating and prevention of corruption. The effective implementation of the right to development is also undertaken through the National Initiative for Human Development, which disbursed 10 billion dirhams between 2006 and 2010 for projects and activities aimed at, inter alia, the strengthening of dialogue with civil society organizations, the enhancement of the

¹⁰ Yash Ghai, "Redesigning the State for 'Right Development'", in *Development as a Human Right: Legal, Political and Economic Dimensions*, Bård A. Andreassen and Stephen P. Marks, eds. (Cambridge, Mass., Harvard School of Public Health, 2007), p. 184.

¹¹ Ibid. p. 179.

¹² Ibid. p. 194.

participation of women and youth in social development process, community support and capacity-building, job creation, and support to vulnerable groups of the society, such as persons with disabilities. Morocco has been making tremendous efforts through investment, as well as through economic and social reforms, in achieving the Millennium Development Goals at the country level.

17. The contribution from Saudi Arabia outlines three salient features in implementing the contents of the declaration on the right to development. The features are: enhancing the right to development and exercising it effectively; measures and actions to make the right to development a reality; and global cooperation and preparation of an enabling environment for realizing the right to development. The State enhances the right to development at three interrelated levels: through its basic law of governance; its nine development plans since 1970, of which the Ninth Development Plan (2010-2014) aims to realize sustainable development and ensure the right to development; and its remarkable success in realizing its Millennium Development Goal targets. In its contribution, reference is made to the enhancing of development efforts directed to developing countries through several channels; the foremost of those initiatives are executed and supervised by the Saudi Fund for Development. As a major donor country, the total volume of assistance provided by the State to developing countries from 1973 to 2010 amounted to more than US\$ 103.46 billion.

B. Implementation of the right to development at the regional level

18. The right to development is explicitly enshrined in the legally binding African Charter on Human and Peoples' Rights, which states that "all peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind" (art. 22, para. 1); and that "States shall have the duty, individually or collectively, to ensure the exercise of the right to development" (art. 22, para. 2). The African Charter played an important role in the case of the Endorois people in Kenya seeking justice, by laying down the legal framework for the implementation of this right (see para. 39 below).

19. The 2004 Arab Charter on Human Rights stipulates that "all peoples have the right of self-determination and control over their natural wealth and resources and, accordingly, have the right to freely determine the form of their political system and to freely pursue their economic, social and cultural development" (art. 2, para. 1). It reaffirms the right to development in article 37, by stating that "the right to development is a fundamental human right", and "every citizen shall have the right to participate in the development, and contribute to and enjoy the benefits, of their goods and fruits of their labor". Pursuant to this article, "all State Parties shall establish development policies and take measures to ensure this right".¹³ It also stresses the need to give effect to the values of solidarity and cooperation among States and, at the international level, to eliminate poverty and achieve economic, social, cultural and political development. The Arab Charter on Human Rights is a binding treaty, having entered into force on 15 March 2008 following its ratification by seven members of the League of Arab States.¹⁴ Nevertheless, there is no enforcement mechanism to implement the Charter. There have been discussions on the possibility to

¹³ As translated by M. Amin Al-Midani and M. Cabanettes, "Arab Charter on Human Rights 2004", *Boston University International Law Journal*, vol. 24 (Fall 2006), p. 147.

¹⁴ Algeria, Bahrain, the United Arab Emirates, Jordan, the Libyan Arab Jamahiriya, the Palestinian Authority and the Syrian Arab Republic.

adopt an optional protocol, which could ensure a stronger control mechanism and allow for individual complaints, and the creation of an Arab court of human rights.¹⁵

20. The Charter of the Organization of American States declares in article 17 that “each State has the right to develop its cultural, political, and economic life freely and naturally”. There is a debate as to whether this right of the State to develop is the same as the right to development *per se*.¹⁶ Given that in chapter VII of the Charter, entitled “Integral development” there is no explicit reference to development being a right or to article 17, the question as to whether the Charter recognizes the right to development remains to be answered. The American Convention on Human Rights does not include any reference to the right to development either.

21. The Bangkok Declaration, adopted by Asian States in 1993, reaffirms “the right to development ... as a universal and inalienable right and an integral part of fundamental human rights, which must be realized through international cooperation, respect for fundamental human rights, the establishment of a monitoring mechanism and the creation of essential international conditions for the realization of such right” (art. 17). In article 18, it recognizes “that the main obstacles to the realization of the right to development lie at the international macroeconomic level, as reflected in the widening gap between the North and the South, the rich and the poor”. In accordance with article 14 of the Charter of the Association of Southeast Asian Nations (ASEAN), the ASEAN Intergovernmental Commission on Human Rights was launched in October 2009 as an inter-governmental body whose key purpose is to promote and protect human rights and fundamental freedoms of the peoples of ASEAN, and which is charged with developing an ASEAN human rights declaration.

22. The European Convention for the Protection of Human Rights and Fundamental Freedoms, which entered into force in 1953, does not contain any reference to the right to development. The Convention established an international judicial organ, the European Court of Human Rights, with jurisdiction to receive individual and inter-State complaints.

C. Implementation of the right to development at the international level

23. The Declaration proclaims that the realization of the right to development requires full respect for the principles of international law concerning friendly relations and cooperation among States in accordance with the Charter of the United Nations (art. 3, para. 2). The Declaration also stresses the importance of international cooperation by laying down the duty of States to cooperate with each other in ensuring development and eliminating obstacles to development (art. 3, para. 3). Accordingly, “States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and cooperation among all States” (art. 3, para. 3).

24. The content of the Declaration is very relevant in addressing the current global challenges. In fact, the international aspect of the right to development has become even more important considering the dimension globalization has taken. States operate in a global economy where their economic and political actions have implications for the rest of

¹⁵ Arab Centre for International Humanitarian Law and Human Rights Education, “The Arab Charter on Human Rights 2004: a new system for regional protection of human rights?”, Newsletter 2011-1. Available from www.acihl.org/news.htm?news_id=9.

¹⁶ Dante M. Negro, “Article 17 and Chapter VII of the revised OAS Charter and relevant experience of OAS institutions,” in *Implementing the Right to Development – The Role of International Law*, Stephen P. Marks, ed. (Geneva, Friedrich-Ebert-Stiftung, 2008).

the world. Therefore, the creation of an enabling environment for the implementation of the right to development is essential and requires actions at both the national and international levels.

25. The 1993 World Conference on Human Rights held in Vienna reaffirmed the right to development as a universal and inalienable right and an integral part of fundamental human rights. Article 10 (part I) of the Vienna Declaration and Programme of Action affirms that States should cooperate with each other in ensuring development and eliminating obstacles to development. Subsequently, several other international instruments have reaffirmed the right to development, such as the 1992 Rio Declaration on Environment and Development, the United Nations Millennium Declaration, the 2002 Monterrey Consensus of the International Conference on Financing for Development, the 2005 World Summit Outcome, and the 2007 United Nations Declaration on the Rights of Indigenous Peoples.

26. In the outcome document of the High-level Plenary Meeting of the General Assembly on the Millennium Development Goals, Heads of State and Government reaffirmed 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.¹⁷ They added that development efforts at the national level need to be supported by an enabling national and international environment that complements national actions and strategies (para. 10). They also recognized the role of the right to development in the implementation and achievement of the Millennium Development Goals (para. 23 (j)).

27. The Istanbul Declaration (A/CONF.219/L.1), adopted on 13 May 2011 at the Fourth United Nations Conference on the Least Developed Countries, highlights the respect for all human rights, including the right to development, as an essential element for sustainable development. Likewise, the Programme of Action for the Least Developed Countries for the Decade 2011-2020 (A/CONF.219/3) stresses the promotion of and respect for all internationally recognized human rights, including the right to development.

28. In response to the High Commissioner's call for initiatives to commemorate the twenty-fifth anniversary of the Declaration, the Committee on Economic, Social and Cultural Rights issued on 20 May 2011 a statement (E/C.12/2011/2) emphasizing the close relationship and the complementarity between the International Covenant on Economic, Social and Cultural Rights and the Declaration on the Right to Development, particularly between the rights contained in the Covenant and the right to development.

29. On 1 July 2011, a joint statement was also issued by the Chairpersons of the United Nations human rights treaty bodies set up to monitor the implementation of the core human rights treaty obligations at the national level.¹⁸ In the statement, the Chairpersons declared that the right to development finds clear resonance in various human rights treaty provisions, which emphasize the multi-faceted, multi-dimensional and complex nature of development processes and the need for development to be inclusive, equitable and sustainable. Many elements of the right to development are reflected in human rights treaty provisions and jurisprudence of treaty bodies, including on self-determination; fair distribution of resources; equality and non-discrimination, particularly on grounds of sex, gender, age, race and disability; active, free and meaningful participation; accountability and transparency; substantive rights relating to adequate standard of living, including food, water and sanitation, housing, health services, education, employment, and enjoyment of culture; freedom of expression, assembly and association; and international assistance and

¹⁷ General Assembly resolution 65/1, para. 3.

¹⁸ See http://www2.ohchr.org/SPdocs/Issues/Development/JointStatChairUNTB_25AnniversaryRtD.doc.

cooperation. For all these reasons, the Chairpersons stressed their determination to make a concerted effort to promote a development-informed and interdependence-based reading of all human rights treaties, so as to highlight and emphasize the relevance and importance of the right to development in interpreting and applying human rights treaty provisions and in monitoring compliance with these provisions. In that way, they would help further the realization of the right to development by ensuring that the necessary conditions are in place for achieving economic and social progress and development for all, including vulnerable individuals and groups.

30. National policies, regardless of any specific area, be it climate change, trade or any other field, are not implemented in isolation from the international legal and policy framework. States have obligations arising from bilateral, regional and international commitments, which they consider in decision- and policymaking at the national level. In an era of globalization, the rights and responsibilities of all are interrelated and interdependent. The recognition of collective and shared responsibilities and inter- and intra-generational equity are essential for the realization of the right to development. As stated in the Vienna Declaration and Programme of Action, “lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the international level” (part I, art. 10).

D. Role and contribution of civil society and non-governmental organizations

31. The role and contribution of civil society in development efforts and in the realization of human rights is recognized in several international instruments. The Vienna Declaration and Programme of Action stresses the need for States and international organizations, in cooperation with non-governmental organizations, to create favourable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights (part I, art. 13).

32. In the outcome document of the High-level Plenary Meeting of the General Assembly on the Millennium Development Goals, the Heads of States and Government call on civil society, including non-governmental organizations, voluntary associations and foundations, the private sector and other relevant stakeholders at the local, national, regional and global levels, to enhance their role in national development efforts as well as their contribution to the achievement of the Millennium Development Goals by 2015 (para. 17).

33. Similarly, the Istanbul Declaration calls on civil society, including non-governmental organizations, voluntary associations and philanthropic foundations, the private sector, academia and other relevant stakeholders at all levels to enhance their roles in the development efforts of least developed countries, as appropriate (para. 17).

34. The Working Group on the Right to Development encouraged States to strengthen civil society organizations and national human rights institutions, in order to play a more prominent role in the evaluation of Millennium Development Goal 8 from the perspective of the right to development (E/CN.4/2006/26, para. 70).

35. The high-level task force on the implementation of the right to development recognized the “mobilization of civil society” among the distinctive features of human rights, including the right to development framework, and underlined the need to make use of the human rights framework for engaging civil society in participating in and monitoring development efforts, with a view to achieving the Millennium Development Goals in a rights-based manner (E/CN.4/2005/WG.18/2, para. 37). Among the partnerships examined

by the task force was the African Peer Review Mechanism (APRM). The task force sought to measure the success of APRM and found that the focus on governance and accountability and the degree of local ownership and outreach to civil society in the case of Ghana were remarkable.¹⁹ The efforts made by Ghana to ensure education, sensitization and creation of ownership of APRM among the population (A/HRC/4/WG.2/TF/2, para. 33) are worth mentioning. The task force found that the active and meaningful participation of a wide range of civil-society organizations, including those representing the poorest, was potentially one of the most positive right-to-development features of the mechanism (*ibid.*, para. 61). The role of civil society organizations was also acknowledged in the enhancement of the Heavily Indebted Poor Countries Initiative in 1999 to provide deeper and more rapid debt relief to a wider group of countries (A/HRC/12/WG.2/TF/2, para. 45). In its examination of the Cotonou Agreement, the task force stated that the conclusion and ratification of economic partnership agreements and the revision of the Cotonou Agreement should be transparent and involve parliamentary scrutiny and consultation with civil society, in order to be consistent with the right to development (*ibid.*, para. 66).

36. The independent expert on the right to development stated that “the obligation to facilitate the rights-holders’ realizing of their claims falls not only on States nationally and internationally, but on international institutions, on the civil society, and on any body in the civil society in a position to help. NGOs are one constituent of civil society that can and has often played a very effective role in the implementation of human rights”.²⁰ The independent expert underlined the role of NGOs in monitoring programmes and delivering services, as well as in advocacy, in engaging in grass-roots mobilization and in organizing beneficiaries to participate in the decision-making. He further emphasized that the role of NGOs would not be limited to national-level actions.²¹ The independent expert expressed his support for the Working Group on the Right to Development with regard to its recommendation that policies encouraging greater participation of civil society and NGOs, especially of those groups that represent the vulnerable sections, such as the poor, the homeless and the unemployed, and public interest groups (for example consumer, environmental, human rights and women’s rights organizations) in the local and national decision making should be implemented (E/CN.4/2000/WG.18/CRP.1, para. 67).

37. The Special Representative of the Secretary-General on human rights defenders recommended that where economic, social and cultural rights are expressed as principles of State policy in the national constitution and not as fundamental rights, “States must ensure that these principles are not deviated from and that civil society actors have the full opportunity to participate in discussions of social or economic policies or projects. In particular they must have the opportunity to monitor the effects of such policies and projects, to register their objections and to receive responses from the State with regard to any action that undermines the right to strive for attaining these rights” (A/HRC/4/37, para. 106).

¹⁹ Report of the Working Group on the Right to Development on its eighth session (A/HRC/4/47), para. 23.

²⁰ E/CN.4/2001/WG.18/2, para. 25. As a follow-up mechanism to the Declaration on the Right to Development, the Commission on Human Rights, in its resolution 1998/72, decided to appoint an independent expert on the right to development with a mandate to present a study on the current state of progress in the implementation of the right to development as a basis for a focused discussion at each session of the open-ended working group set up to monitor and review progress made in the promotion and implementation of the right to development. The mandate was held by Arjun Sengupta from 1998 until 2004.

²¹ *Ibid.*

38. At an expert symposium held in Berlin on 24 and 25 February 2011, organized by OHCHR and Friedrich-Ebert-Stiftung in commemoration of the twenty-fifth anniversary of the Declaration on the Right to Development, all proposals related to the operationalization of the right to development underlined the participation of civil society as a must.²²

39. Indeed, civil society and NGOs played a very effective role in the constitution-making process in Kenya between 2000 and 2005, representing a good example of their potential. The demand for a new constitution came from various social, political, religious and professional groups. This people's movement vitalized civil society, which then played a crucial role in mobilizing people and institutionalizing the movement by providing platforms for national debates. Consequently, the process became highly participatory and people-centred. NGOs cooperated with the relevant authorities in providing civic education to people.²³ This was another important element which allowed people to understand the process and its objectives, and thus empowered and enabled them to make informed decisions.

40. Civil society and NGOs have also utilized legal strategies to further the realization of their right to development. In 2003 a case was brought by the Endorois community (a semi-nomadic indigenous community in Kenya) before the African Commission on Human and Peoples' Rights challenging eviction from their ancestral lands for the creation of a national reserve. The African Commission referred to article 22 (para. 1) of the African Charter on Human and Peoples' Rights, which states that "all peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind" and ruled that the way in which the Endorois community was dispossessed of its traditional lands and denied access to resources constituted a violation of their rights, including the right to development.²⁴

41. The African Women's Association stressed the important role that civil society and non-governmental organizations have to play at the local level and the contributions they should make, including support for village communities to improve their livelihoods and well-being. At the national level, legislative measures, and government policy and strategy must be put in place in support of an enabling environment for development, notably with regard to the provision of basic services, for example, clean water, housing, job creation, food, education and health. Civil society should actively engage in ensuring accountability and monitoring the implementation of such measures and strategies. Civil society has a role to play in denouncing aspects of corruption, mismanagement and misappropriation which hamper the realization of human rights and, in turn, restrict development.

IV. International assistance and cooperation, and the promotion of an enabling environment for the realization of the right to development

42. While the Declaration on the Right to Development holds States primarily responsible for the creation of national and international conditions favourable to the

²² See www.fes.de/GPol/pdf/RtD-BIn_summary_table1_TR.pdf.

²³ Ghai, "Redesigning the State" (note 10 above).

²⁴ *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, decision 276/2003 of the African Commission on Human and Peoples' Rights, February 2010. Available from www.minorityrights.org/download.php?id=748.

realization of the right to development (art. 3, para. 1), it also stresses the essential element of international cooperation (art. 3, paras. 2-3; see para. 23 above).

43. International assistance and cooperation requires common actions within the framework of international economic policy and decision-making. The Declaration stresses international cooperation as a complement to the efforts of developing countries, and stipulates that it is “essential in providing these countries with appropriate means and facilities to foster their comprehensive development” (art. 4, para. 2). The Vienna Declaration and Programme of Action affirms that “the international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development” (part I, art. 10).

44. The Working Group on the Right to Development underlined that, in the international economic, commercial and financial spheres, core principles, such as equality, equity, non-discrimination, transparency, accountability, participation and international cooperation, including partnership and commitments, are important for the realization of the right to development (E/CN.4/2002/28/Rev.1, para. 100). At the eleventh session of the Working Group on the Right to Development, several Member States stressed the need for international cooperation, solidarity and international responsibility for creating an enabling global environment and adequate policy space for the realization of the right to development, especially in the areas of international aid, trade, debt, access to medicines, transfer of technology, environment and intellectual property rights (A/HRC/15/23).

45. The high-level task force on the implementation of the right to development affirmed that Millennium Development Goal 8, with its focus on international cooperation, is a framework consistent with international responsibilities outlined in the Declaration on the Right to Development. Following the recommendations of the Working Group, the task force engaged in constructive dialogue and collaboration with multilateral institutions responsible for development aid, trade, access to medicines, debt sustainability and transfer of technology with the view to assessing the extent to which the global partnerships in those thematic areas contributed to an enabling environment for development.²⁵

46. The independent expert on human rights and international solidarity noted that international cooperation can be strengthened by making it a priority to set and implement international projects that specifically address the Millennium Development Goals (A/HRC/15/32, para. 31). International cooperation should involve the legitimate right to consultation as equal partners (*ibid.*, para. 33). To strengthen international cooperation means firstly to place the dignity of every human being at the centre of action of the international community (*ibid.*, para. 30). The obligations of international assistance and cooperation are complementary to the primary responsibility of States to meet their national human rights obligations. International cooperation rests on the premise that some members of the international community might not possess the resources necessary for the full realization of rights set forth in conventions (*ibid.*, para. 43).

47. In the above context, “official development assistance (ODA) plays an essential role as a complement to other sources of financing for development ... [and] is also a crucial instrument for supporting education, health, public infrastructure development, agriculture and rural development, and to enhance food security. For many countries in Africa, least developed countries, small island developing States and landlocked developing countries, ODA is still the largest source of external financing and is critical to the achievement of the development goals and targets of the Millennium Declaration and other internationally

²⁵ For more details, see A/HRC/15/WG.2/TF/2/Add.1 and Corr.1.

agreed development targets”.²⁶ Furthermore, “a substantial increase in ODA and other resources will be required if developing countries are to achieve the internationally agreed development goals and objectives, including those contained in the Millennium Declaration”.²⁷

48. According to the Secretariat of UNFCCC, climate change can be considered a serious obstacle to development, with observed and projected impacts across a wide range of systems and sectors. Under the Convention, countries have taken steps to address climate change that have a positive impact in making the right to development a reality. Implementing adaptation to climate change is vital to enable countries, particularly developing countries, to respond to the adverse effects of climate change. The Convention requires all parties to take the actions necessary relating to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing countries arising from the adverse effects of climate change (art. 4, para. 8) and to take full account of the specific needs and special situations of the least developed countries in their actions with regard to funding and transfer of technology (art. 4, para. 9). In addition, and in terms of international assistance and cooperation, developed countries are required to assist developing countries in meeting costs of adaptation to the adverse effects of climate change (art. 4, para. 4).

49. The African Women’s Association considers that cooperation with international financial institutions, with United Nations development agencies and with other world institutions needs to be revised. International institutions that give assistance and cooperation to countries need to take into consideration the fact that countries on the African continent, in particular, have different realities. Before international assistance is carried out, a needs assessment should be made at the national and local level bearing in mind existing poverty and mismanagement. Therefore, international assistance and cooperation needs to focus on the economic, social, cultural, and political field for necessary development to be achieved. It is also very imperative for the donors to monitor the progress on cooperation agreements and above all ensure that persons charged with the management of these initiatives are accountable. No doubt these measures would lead to an observance, respect and enforcement of the fundamental right to development.

50. The Committee on Economic, Social and Cultural Rights, in paragraph 14 of its general comment No. 3 (1990) on the nature of States parties’ obligations, stated that international cooperation for development, and thus for the realization of economic, social and cultural rights, is an obligation of all States, in accordance with articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law and with the International Covenant on Economic, Social and Cultural Rights itself. In its statement to mark the twenty-fifth anniversary of the Declaration on the Right to Development (E/C.12/2011/2), the Committee expressed that “the complementarity between the rights contained in the Covenant and the right to development in the Declaration is manifest, *inter alia*, in the correspondence between articles 3 and 4 of the Declaration on the Right to Development relating to national and international responsibilities and article 2 of the Covenant on obligations of States parties, including the duty to provide international assistance and cooperation” (para. 5). The Committee considered that the right to development, through the systematic application of the core principles of equality, non-discrimination, participation, transparency and accountability, at both the national and international levels, establishes a specific framework within which the duty to provide international cooperation and assistance has to be implemented (*ibid.*, para. 7).

²⁶ Monterrey Consensus, para. 39.

²⁷ *Ibid.*, para. 41.

V. Conclusion and issues for consideration

51. On the basis of the information provided in the present report, the 2011 Social Forum may wish to consider the following:

(a) The need for reform of global economic governance to ensure human rights-based, democratic, equitable and inclusive cooperation that will bring about the enhanced and effective participation of developing and least developed countries, in order to create favourable international conditions for the realization of the right to development, and to complement development efforts and good governance measures at the national level;

(b) Promotion of global partnerships for development through increased and meaningful dialogue and cooperation with a broad range of actors, including United Nations agencies, regional organizations, the World Bank, the International Monetary Fund, the World Trade Organization, the private sector, civil society and academia, in support of the effective realization of the right to development;

(c) Promotion of policy coherence and coordination, shared responsibility and mutual accountability, including in the contemporary context of multiple global crises, widespread popular unrest, and the overarching reality of globalization and interdependence;

(d) The engagement of civil society in ensuring that all human rights, including the right to development, are fully integrated in development programmes and policies at all levels.

(e) Mechanisms to promote and ensure the active, free and meaningful participation of people in national and international decision-making that affects their lives;

(f) The role of civil society in identifying the challenges and obstacles at the local, national, regional and international levels to the realization of the right to development;

(g) Ensuring policy coherence from the right to development perspective and making sure that human rights impact assessments of policies and bilateral/regional/international agreements are made and their findings taken into consideration in decision-making.
